Grounded Justice: Unveiling Racial Equity in Land Use across the Albany Capital Region

Report by Albany Law School Course
Land Use and Racial Justice

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Sincerely and for the betterment of the Capital Region,

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Special Note

The Capital Region is our home. At Albany Law School, our pursuit extends beyond the mere acquisition of legal knowledge, encompassing a deliberate exploration of leveraging the law to improve society, the region, and the world. This Report illustrates Albany Law’s collaborative endeavors with contributions from diverse entities across the Capital Region, emblematic of our commitment toward fortifying the Region’s prosperity and fostering the welfare of its inhabitants.

This Report also stands as a testament to the conscientious efforts of seventeen committed leaders and students from Albany Law School. Over the preceding months, these students engaged in collaborative efforts, liaising with a group of both internal and external interdisciplinary experts, undertaking rigorous research, and laying the essential groundwork to compile the contents of this Report.

I could not be more proud of the dedication and diligence demonstrated by the students throughout this undertaking. The students showed an unwavering commitment to advancing principles of equity, diversity, and fairness, alongside a persistent pursuit of legal avenues to rectify historical injustices and forge a path forward.

The students’ work and endeavors are set forth in the pages that follow. My hope is that local governments throughout the Capital Region review this Report and consider and implement the recommendations herein to move towards societal betterment and the advancement of a more equitable and just future.

Jonathan Rosenbloom
Professor of Law, Albany Law School
Land Use and Racial Justice
We begin this Report by acknowledging that we are on the ancestral lands of the Haudenosaunee Confederacy, the Mohican, and the Algonquin peoples, who have stewarded this land for millennia. The area also has a historical and contemporary association with the Stockbridge-Munsee Community Band of Mohican Indians. We recognize and respect the deep and enduring connection that Indigenous nations have to this territory and the ongoing contributions and struggles of Indigenous peoples to this region.

The land now known as Albany has a rich and complex history, shaped by the pain and suffering inflicted upon Indigenous communities through centuries of colonization, dispossession, and displacement. We must acknowledge the historical injustices, violence, and displacement inflicted upon Indigenous peoples through colonization, as well as the ongoing impacts of these injustices. We also acknowledge the resilience, strength, and rich cultural heritage of Indigenous peoples, who continue to make invaluable contributions to our communities.

In recognizing the Indigenous history and presence in this area, we commit to honoring the principles of reconciliation, justice, and equity. This acknowledgment is a small step towards addressing the historical injustices faced by Indigenous peoples and working towards a more inclusive and equitable future for all residents of the Albany area.

We invite everyone to learn more about the history, culture, and contributions of Indigenous peoples and to engage in ongoing efforts to support their rights and wellbeing. May we move forward together on the path of healing and solidarity.

We also recognize that Albany, like many cities across the United States, has been marked by racial disparities, systemic inequities, and injustices. These disparities have disproportionately affected Black, Indigenous, and People of Color (BIPOC) communities, and the effects of these injustices continue to be felt today.

This acknowledgment is a call to action. It reminds us of our collective responsibility to work towards equity, justice, and reconciliation. We must recognize the historical and ongoing injustices faced by BIPOC communities and commit to creating a more inclusive and equitable future for all who call this region home.

In producing this report, we strive to address these injustices, promote racial equity, and create a more just and equitable Albany for all its residents. We acknowledge that the work ahead is challenging, but we are committed to taking meaningful steps to advance racial equity and social justice in our community. This acknowledgment is a reminder that the path forward is one of partnership, understanding, and unity as we seek to create a more equitable future for Albany and its people.

Karli Bennett
**Introduction**

Crucially, the focus of this Report is land use. More specifically, the ways in which the conscious and deliberate attempts to use zoning and land use power to segregate communities have been manifested in today's society, even after such attempts became recognized by the greater population and outlawed.

The United States has a long history of using land use power—including redlining, racial covenants, and other instances of “racial zoning” as a means of segregation and discrimination. These practices have played a central role in creating mass inequity for those who live in the communities that were originally victimized by these unjust land use decisions.

In the present day, those who live in the originally redlined neighborhoods are those who often face a lower quality of life in myriad ways pertaining to wealth and health, including: housing, transportation, food security, parks and green space, climate and energy, pollution and environmental justice, education, community engagement, and justice and safety.

As the chapters in this Report illustrate, these practices were primarily a response to the movement of American Blacks from the South to cities across the U.S., as the existing White communities sought ways to keep cities segregated and White population in a position of power.

The migration also sparked the ensuing decades of “White Flight”, in which much of the cities’ White populations moved out of the city limits into surrounding areas to develop suburban communities, complete with new zoning codes that could perpetuate their segregated lifestyle.

These unjust practices were employed by the City of Albany and its surrounding area, both of which felt many of the same effects as other cities across the country.

Within the City itself, redlining and racial zoning was implemented and the resulting inequity is still felt today; many of those originally redlined neighborhoods see great disparity in wealth and other relevant factors.

Further, the evidence of the area’s White Flight can be seen in both the racial and economic disparities between the cities of Albany, Schenectady, Troy and the greater suburban communities, such as Guilderland and Colonie, which generally enjoy greater access to wealth, health, and infrastructure.
Each chapter of the Report will focus on a different area in which this disparity may be felt today. Seen below is a general timeline, many of the events of which will be referenced in this Introduction chapter as the history of racial land use is explored. This Chapter establishes the framework for the rest of this Report, and will delve into the history of unjust racial land use practices as it pertains to the greater United States as well as the specific Albany area. It will then provide background and context for each of the remaining chapters.

Framing

Highlighting and seeking to remedy this inequity is, in essence, the purpose of this Report. There are many areas and industries in which the inequity is noticeably alarming; these differences can often be traced along location and racial lines and have drastic consequences for the wellbeing of the citizens of Albany. More importantly, the inequities did not arise naturally; rather, they were a result of deliberate uses of land use power, often wielded with discriminatory intent to raise the outlooks of the lives of White citizens while relegating Black citizens to secondary status. These land use decisions include those previously mentioned—i.e., redlining, racial covenants, exclusionary zoning, etc.—and those to be introduced in further chapters of the Report. This battle, taking place over the course of the 20th century, was waged on an uneven playing field; often, it was White city planners who were already established in the cities making rules for Black citizens whose lives were more uncertain following the Great Migration. Regrettably, this occurred in Albany. Each chapter will delve more deeply into one of these specific industries: the particular land use decisions that created the inequity, the evidence and effect of the inequity today, and recommendations for remedies moving forward.
Land use in the United States

The history of land use in the United States has been a game of tug-of-war, of sorts: a constant battle between efforts to create and enact racially biased land uses, generally followed by a counterattack in which those uses were outlawed, followed by new, devilishly creative ways to maneuver around the legal prohibitions. Though the broad concept of land use can be traced back centuries, it is useful to begin the examination with the passage of what may be called the first modern zoning ordinance: Ordinance 9774, enacted in 1904 by the Los Angeles City Council, which prohibited industrial uses in some residential districts.8

While the details of that particular ordinance are not wholly relevant here, the meaning behind its passage is significant: it showed a new readiness of American cities to use local governmental power to design the character of space and illustrated a new urge to exert more control in shaping the makeup of the City. This urge soon gave way to a more sinister form of zoning: racial zoning.

To understand how early land use controls were weaponized to discriminate and segregate, some context of the era is instructive. The early 1900s saw the beginnings of the First Great Migration, when over one million African Americans, eager to leave the Jim Crow South, migrated to Northern and Midwestern cities in search of new life and employment.9 As such, their new presence in those cities sparked a strong (and often harsh) reaction from the preexisting citizens—enter racial zoning: i.e., a system of zoning designed with racist intent to segregate cities by setting standards that kept African Americans out of certain areas and discouraged investment in the areas in which they were steered towards.10 Early designers of racial zoning “believed that zoning offered a way not only to exclude incompatible uses from residential areas but also to slow the spread of slums into better neighborhoods”; indeed, many of these initial zoning codes were explicit attempts to segregate neighborhoods across racial lines.11 A watershed example is Baltimore’s passage in 1910 of racial zoning laws that were enacted in the name of “preserving peace, preventing conflict and ill feeling between the white and colored races in Baltimore City, and promoting the general welfare...for the use of separate blocks by white and colored people for residences, churches and schools.”12

Most insidiously, many such laws “included race neutral purposes that courts had approved of...including, for example, ‘preserving peace,’ preventing conflict,’ and ‘promoting the general welfare of the City.’”13 In other instances of racial laws and ordinances, white supremacist aims were more clearly articulated, including language pertaining to “the maintenance of ‘racial purity’ and prevention of ‘the deterioration of property owned and occupied by white people.’”14

Whatever the stated purpose be, the effect was clear: Black and White citizens were not to live on the same street or use many of the same buildings.15 The effect on other regions and states was soon made clear; Baltimore’s ordinance served as something of a template for other cities to pass similar zoning laws, to similar disastrous effects.16

Soon after, Baltimore neighborhoods formed an association that designed restrictive covenants that banned the sale of those neighborhoods’ homes to Black homeowners or renters; if the covenant was broken, the association would appeal to the courts, asking for the Black family to be evicted on the grounds of the illegality of the purchase, pursuant to the broken covenant.17

However, the pendulum quickly swung in the other direction. In 1917, the Supreme Court’s decision in Buchanan v. Warley altered the zoning landscape: examining a racial zoning ordinance out of Louisville, Kentucky, the court ruled unanimously that “the denial of the full use of property ‘from a feeling of race hostility’ constituted inadequate grounds to uphold the Louisville racial zoning ordinance”; thereafter, “lower courts fell into line and overturned existing and subsequent racial zoning schemes.”18

Far from ending racial zoning practices, however, the decision merely sparked a counterattack, reversing the...
grounded yet again; with cities now unable to explicitly segregate via zoning codes and land use decisions (though some continued to outright ignore Buchanan),

city planners grew creative and began designing facially neutral codes and laws that maneuvered around the prohibitions set forth in Buchanan. Such examples included codes throughout the South which sought to enforce racial zoning laws on the grounds of upholding other laws, such as a ban on interracial marriage, or in the name of promoting peace and general welfare (i.e., to maintain racial harmony between citizens and prevent fighting).

Most notable, however, was St. Louis’s zoning ordinance, adopted in 1919, which set forth a template for facially neutral codes that ostensibly complied with Buchanan while in actuality maintaining the effect of segregation and racial bias. The ordinance, and subsequent zoning decisions, sought to “prevent movement into ‘finer residential districts...by colored people’, and “designated land for future industrial development if it was in or adjacent to neighborhoods with substantial African American populations.” Other methods were employed to similar effect: homes in predominantly White neighborhoods were assigned “first-residential” designations, rendering them unaffordable to Blacks; Black neighborhoods were “zoned to permit industry, even polluting industry”, as well as “taverns, liquor stores, nightclubs, and houses of prostitution”, all of which were largely prohibited in White neighborhoods; subdivided residences were allowed in industrial Black neighborhoods, creating slums and overcrowded living circumstances.

Many of these new ordinances found their constitutional backing in the Supreme Court’s 1926 decision in Village of Euclid v. Ambler Realty Co., in which the court upheld “the constitutionality of zoning rules that prohibited apartment buildings in single-family neighborhoods”; Justice Sutherland’s opinion was laced with coded language, referring to multi-family housing as a “mere parasite” compared to the preexisting residential character of White neighborhoods. Although not germane to the case at-hand, the Court essentially gave credence to city planners who believed they could enact zoning laws that had the effect of segregation while making no mention of race. Later, in 1948, the same effect was seen after the Supreme Court outlawed the enforcement of restrictive covenants in Shelley v. Kraemer; almost immediately, federal agencies fought the decision and sought ways to work around it. This was not merely a trend of the early 20th century; decades later, in 1977, the Supreme Court in Arlington Heights upheld a rezoning decision that “prohibited multiunit development anywhere but adjacent to an outlying commercial area”, ensuring, in effect, that most Black citizens would not be able to live in predominantly White residential areas.

Land use saw another key development with the rise of redlining in the 1930s, enabled by the Federal Housing Administration (FHA). In the wake of the stock market crash of 1929, the FHA insured bank mortgages, contingent on their own appraisal of the property to ensure that the loans were “low-risk”; their appraisal standards included a “whites-only” requirement, and they often judged that “properties would probably be too risky for insurance if they were in racially mixed neighborhoods or even in White neighborhoods near black ones that might possibly integrate in the future.” Entire cities were “redlined”, a system under which neighborhoods were assigned a risk rating; the redlined neighborhoods were often those heavily occupied by Black citizens, deterring investment in their community and rendering their mortgages unlikely to be chosen for FHA insurance. It is difficult to overstate the drastic impact that redlining held on Black citizens for generations thereafter. Those redlined areas became hot spots for inadequate quality of life and seemingly perpetual economic hardship; the practice also prevented Black citizens from achieving home ownership on levels approaching that of White citizens.

19 Adams-Schoen, supra note 13, at 1253.  
20 Silver, supra note 11, at 5-16.  
22 Id. at 63.  
23 Id. at 63.  
24 Id. at 63-66.  
26 Rothstein, supra note 21, at 66.  
27 Rothstein, supra note 21, at 66.  
28 Id. at 98-101.  
29 Id. at 67.  
30 Id. at 76-77.  
31 Id. at 77.
further hampering their ability to find stable and enduring economic prosperity.\textsuperscript{32}

Another major fallout from the Great Migration and subsequent developments in land use practices is what is known as “White Flight”. While city planners and their zoning codes were creating a disparity between the living conditions of segregated White and Black neighborhoods within cities, many White citizens took it one step further: they left the City altogether, opting to establish new cities and towns dominated almost entirely by White citizens, allowing them to enact new zoning codes tailored to their desires. This created the modern suburban landscape across America.\textsuperscript{33}

St. Louis serves as a clear example of this phenomenon. As the 20\textsuperscript{th} century progressed, the City population decreased even as the county population grew, and the number of cities incorporated in the county saw a massive spike in the middle of the century.\textsuperscript{34} This made more difficult the efforts of those hoping to improve the prospects for Black City residents; as one report noted, “Instead of one political entity (i.e., the City), reformers in the St. Louis area were dealing with dozens of municipal governments, all expanding independently and competing for resources and residents.”\textsuperscript{35} To further complicate matters, Black citizens did not truly have the option to move to these suburban areas and compete for the same benefits; rather, the newly incorporated cities “moved quickly to enforce racial segregation, using tools both old and new to accomplish this goal”, including exclusionary zoning techniques.\textsuperscript{36} As will be seen later in this Report, predominantly-White suburban areas often thrived at the expense of the inner-cities.

Thus, as the 20\textsuperscript{th} century progressed, land use took an increasingly prominent role in the ways in which cities and their surrounding areas were set up, often with discriminatory impacts that linger well into the 21\textsuperscript{st} century. Many of these impacts are felt on a local level in the Capital Region.

\section*{Albany History and Report Framing}

Just as communities across the United States felt the impact of racially biased land use and its consequences, so did the City of Albany and Capital Region. An examination of the City’s original redlined map from 1934 reveals much of the disparate impacts felt across the City over the ensuing decades.\textsuperscript{37} In general, many of the originally redlined areas marked as “hazardous” and “definitely declining” were those occupied by people of color and immigrants; today, those same areas often face great disparity in quality of life and access to basic needs, and often have the City’s highest poverty rates and lowest percentages of homeownership.\textsuperscript{38}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{map.png}
\caption{Redlined map of Albany from 1934.}
\end{figure}

\textsuperscript{32} Cambria, \textit{supra} note 2, at 24.
\textsuperscript{33} \textit{Id.} at 109.
\textsuperscript{34} \textit{Id.} at 29.
\textsuperscript{35} \textit{Id.} at 29.
\textsuperscript{36} \textit{Id.} at 29.
\textsuperscript{37} \textit{Mapping Inequality.}
The segregation of Albany was not discreet; the areas that were originally redlined based on White immigrants became hubs for the city’s Black population; by 1980, “Black residents in Albany made up about 65 percent of the South End, 70 percent of Arbor Hill and almost 40 percent of West Hill.”\textsuperscript{39} As described by Albany County legislator Carolyn McLaughlin, “In Albany, you do have a tale of two cities...[t]here are certain lines of demarcation that make it evident that the socioeconomic differences are stuck in certain parts of Albany...It’s like you’ve crossed invisible railroad tracks.”\textsuperscript{40}

For decades, blight in Black neighborhoods became the norm, and Black homeownership was all too rare, caused largely by trends of unequal pay and opportunity that did not allow Blacks the amount of capital necessary for homeownership.\textsuperscript{41} Further exacerbating the issues was the City’s general failure to hold landowners (perhaps more aptly described as “slumlords”) accountable to zoning codes, allowing for more untenable housing.\textsuperscript{42} Simply put, certain codes were not strictly enforced because the residents had become predominantly Black and the City no longer felt it essential to do so.\textsuperscript{43}

While predominantly Black neighborhoods struggled within the City, the same White Flight phenomenon seen elsewhere in the country took place in the greater Albany area. From 1950 to 1980, the City’s population decreased from approximately 140,000 to 100,000; over the same period, Colonie’s population rose from 30,000 to over 70,000, while Guilderland and Bethlehem’s populations doubled.\textsuperscript{44} The suburbs were predominantly White, and many of the Black citizens who did move there faced racism, making them unappealing destinations for Black City residents.\textsuperscript{45}

Today, the statistical differences between the City and its surrounding cities are stark. Nearly 30 percent of Albany’s population is Black, while Colonie and Guilderland sit at about 5 percent or lower; the median Albany household income is $52,583, while Colonie’s is $89,977 and Guilderland’s $94,606; there exist more astonishing differences in poverty rates and access to certain utilities and needs that are discussed throughout the chapters below.\textsuperscript{46}

Abstract Summaries

Each remaining chapter of this Report will delve into a particular sector that has seen years of inequality because of the greater Albany region’s history of unjust land use decisions. Each chapter will provide a summary of the issue at hand, present and highlight evidence of the inequality as it exists today, and offer suggestions and plans for change moving forward.

The first chapter will discuss housing. Historically, the effects of racial zoning practices, such as redlining, have created an inequitable housing landscape. Throughout the region, homeownership among white residents dwarfs that of Black residents, who consequently must face the additional struggles of tenancy, such as eviction. Further, zoning choices involving the allowable density of housing have long created segregated communities; this chapter will advocate for certain policy and lawmaking actions that would allow for an increase in higher-density zoning and thus more affordable housing.

The second chapter will cover parks and green spaces. More specifically, it will discuss the ways in which these green areas have been apportioned in a discriminatory fashion according to race, and the disparate effects on health and wellbeing of minority communities that are felt. Parks and green spaces are critical for the growth of communities, for a healthy environment, and for the mental and physical health of a community’s citizens, especially for those in an urban setting with less yard space, making greater the necessity for larger, public green spaces. Unfortunately, past land use decisions pertaining to spending, planning, and zoning have hampered both the availability and quality of green spaces even today; discriminatory practices, such as redlining, had a profound effect on the location and upkeep of parks. The chapter will explore ways in which these underserved communities suffer from this inequity, and how they may be better served moving forward.
The third chapter will discuss public utilities, focusing on access to clean water and effective sewage and waste removal. Throughout the region, there is a sharp discrepancy between level of access and quality that can often be traced along socioeconomic and racial lines, depending on where one lives. The chapter examines the extent to which past zoning and housing practices, especially those with racial bias, are responsible for this discrepancy, specifically highlighting the advantages and disadvantages of single-family versus multi-family housing, and the differences in cost of housing that has a direct influence on flow of tax revenue that goes towards the upkeep of public utilities and related infrastructure.

The fourth and fifth chapters will each cover a different aspect of transportation. The third chapter focuses on the finances behind transportation in the region, especially in the City of Albany. Namely, the funding and taxpayer practices and policies behind the implementation of new transportation infrastructure and the upkeep of existing infrastructure. The chapter looks closely at the ways in which tax law and transportation law intertwine and breed land use law that equally benefits residents of the City of Albany, regardless of race and socioeconomic status. The fourth chapter, conversely, will examine the state of transportation in the region as it pertains to the use of vehicles and transportation infrastructure itself. Historically, many City-based and minority neighborhoods were harmed by the rise of the automobile as America’s primary form of transportation, as those who lived in whiter suburban areas were more likely to own cars and make efficient use of them. Consequently, transportation infrastructure has been more tailored to car users rather than public transit users; for example, the interstate highway system, built in part to accommodate the growing commuter population in the mid to late 1900s, was often built through minority neighborhoods, separating them from the rest of the City. The chapter looks at ways in which the City of Albany should improve pedestrian, cycling, and bus infrastructure.

The sixth chapter will cover food security and sovereignty. Food insecurity—the limited or uncertain availability of nutritionally adequate foods or the uncertain ability to acquire these foods in socially acceptable ways—plagues many residents in the greater Albany region today. Unsurprisingly, the history of racial land use, such as redlining and displacement, can be pegged as a significant reason as to why those in minority and/or lower-income communities often face harsher food insecurity issues. In the City of Albany, specifically, there is a direct correlation between income and food insecurity. This chapter will offer remedies to eliminate food insecurity and promote food sovereignty in the City, while exploring courses of legal action that may promote the access to adequate food as a right rather than a privilege.

The seventh chapter will cover climate and energy justice. Historically, areas that are both lower on the socioeconomic scale and higher in minority population are those that suffer the most in the climate and energy sphere, i.e., from less access to clean air and renewable energy. The chapter highlights the negative state of both of these areas as they pertain to minority and lower-income communities, and the ways in which they are not equipped to deal with it. It will introduce the concept of energy justice to the Report, sharing the efforts of the Sheridan Hollow Alliance for Renewable Energy to implement clean energy to underserved areas of the City. It will also discuss climate adaptation measures that may be effective—and, down the road, serve as a foundation for the City to begin exploring climate mitigation measures, which are also explored in the chapter.

The eighth chapter will cover polluting uses and environmental justice. The region’s history of racial land use and discriminatory practices has controlled where minority communities are located, leading to a system of environmental racism in which minority residents often face worse environmental conditions and health than White residents. Specifically, this chapter will view this issue through the lens of “environmental justice”; i.e., what this phrase entails and how it may be achieved, especially through legal means. The chapter seeks to show the various legal arguments under which environmental justice may be attained, including the ways in which the instigating land use decisions—i.e., the intentional placement in the past of minority communities in disadvantageous, polluted areas—can be viewed as a form of race-based discrimination and likely illegal under the constitution and Civil Rights Act.

The ninth chapter will cover education; more specifically, the ways in which the harmful effects of past exclusionary zoning decisions, ones that created great disparity in education, may be alleviated and reformed. These land use practices, such as redlining, created a system in which City-based minority neighborhoods were segregated from non-minority communities and given “hazardous” ratings, leading to disinvestment and lower property values. The impact on the education sector in these neighborhoods is still felt harshly today: schools in these areas receive less
funding than their suburban counterparts, which breeds inequity in access to resources and educational facilities. Unsurprisingly, these schools, on average, underperform greatly. This chapter examines the legal basis for instigating drastic change in this area, and offers avenues of change that the courts might consider for better facilitating effective Equal Protection Clause challenges.

The tenth chapter will cover community economic development and employment. Past redlining practices were used to discriminatorily assess the racial and cultural value of various neighborhoods; White, suburban neighborhoods received greater funding and grants compared to minority neighborhoods, breeding a history of economic disparity that persists today. Despite the passing of the Fair Housing Act, racist institutional roadblocks remained for many Black residents, who often face a lack of economic mobility and ability to move to the suburbs. This chapter will explore ways in which this disparity may be overcome, and how economic policies may be introduced and reformed so as to rejuvenate community development and employment practices for minority and low-income communities in the City of Albany.

The eleventh chapter will cover justice. Specifically, the ways in which discriminatory land use practices exacerbate crime rates and influence law enforcement priorities and policies in the City of Albany. The chapter examines recent studies that posit that location has more to do with crime than was previously thought; i.e., specific land uses, such as commercial use, which are often associated with low-income and minority communities, are associated with increased crime rates. Thus, if local governments are better informed as to particular land uses and their relationship to crime, newer and improved policies and land use decisions may be implemented to create safer, more equitable communities. Finally, the Report ends with a conclusion that summarizes the major findings of the Report and compiles the recommendations for positive change moving forward. Ultimately, acknowledging the egregious history of unjust land use decisions and proposing recommendations to confront them is not adequate. The inequity of quality of life between our cities, towns, and neighborhoods is a blight upon modern society, and adjusting our concept of land use power is an essential element of overcoming it. This Report serves only as a guide, a starting place that hopefully will spark further action. From there, it is crucial that local governments with land use authority confront these issues head-on and implement the suggested recommendations. Only then can the history of land use begin to be atoned for, and only then can substantial change be brought about.
CHAPTER 1: HOUSING

Authors: Harper Dean and Matthew Montag

Abstract

This chapter of the Racial Equity Report examines the ongoing effects of historic inequity and oppression along racial lines in the Capital Region as they pertain to housing. It also provides recommendations for possible steps that the city and surrounding region can take to bring about a more equitable housing landscape. The symptoms of this long history that this chapter focuses on analyzing include the racial homeownership gap, the racial segregation of the Capital Region’s communities, and the housing crisis in Albany as it pertains to tenants. Key recommendations for Albany, its surrounding municipalities, and the State of New York to address these symptoms include higher-density zoning, increasing the mandated number of affordable housing units, stronger tenant protections, and increasing Black homeownership by expanding the availability of capital to Black residents.

Introduction

As discussed in the Introduction of this Report, the Capital Region was shaped by its history of redlining and by a large portion of its White population relocating to the towns neighboring Albany.47 The impact of redlining is ever-present today, as illustrated by the Albany neighborhoods of West Hill, Arbor Hill, and the South End, the only neighborhoods in the city to be redlined.48 Today, the majority of Albany’s Black residents live in these three neighborhoods, which have the highest poverty rates and lowest homeownership rates in the city.49

The phenomenon of “white flight” to the suburbs surrounding Albany50 can be understood by examining the demographics of Albany and its surrounding municipalities. To illustrate the dynamics present in the region, this chapter takes a closer look specifically at three of these municipalities, Colonie, Bethlehem, and Guilderland, which directly border Albany and are reflective of broader trends seen throughout the region.

Albany’s White population decreased by approximately 35% from 1950 to 1980, while Albany’s Black population increased by approximately 184% over that same time.

48 Id.
49 Id.
50 Id.
period (from 5,759 in 1950 to 16,365 in 1980). Simulta-
neously, Colonie's population increased from 30,000 to
over 70,000, and Guilderland and Bethlehem saw their
populations approximately double. These suburbs are
largely White with Black populations at or below 5.8% in
all three towns, significantly lower than Albany's 27.7%
Black population. The incidence of white flight, while
discussed earlier, must be emphasized in this chapter since
it is a driving force behind the housing segregation in the
region, which is the core of what this chapter of the Report
seeks to address. This chapter also examines the policies
still in place today that re-enforce the stark difference in
racial make-up between Albany and the surrounding mu-
icipalities, including those within the zoning codes of the
Capital Region

The disparities between Albany and its suburbs are re-
flected in important areas, including the rates of home-
ownership. In Albany, only 38.1% of housing units are
owner-occupied, while in Guilderland and Colonie, respec-
tively, 66.5% and 70.1% of units are owner-occupied. In
Bethlehem, 73.8% of housing units are owner-occupied. Albany's rate of units that are owner-occupied, 38.1%
is far below the nationwide percentage of 64.6%. Furthermore, a recent report by New York Attorney General
Letitia James' office, alarmingly found that "Albany has the
second-largest gap between white and Black homeowners

Tenants in Albany face many challenges including the
threat of eviction, as demonstrated by the estimated 1,450
residents who faced eviction in 2021. In Albany housing
court less than 5% of tenants have representation com-
pared to nearly 94% of landlords. This chapter of the Racial
Equity Report examines the current housing dynamics in Albany and offers solutions including increased tenant
protections and strategies to increase Black homeowner-
ship.

Another stark disparity between Albany and its suburbs is
the difference in the wealth of these communities. Albany's poverty rate is 21.7%, while Colonie, Bethlehem,
and Guilderland all have poverty rates between 5.2% and
5.7%. Additionally, Albany's median income is $52,583,
while the three neighboring towns have median incomes
that are at least 70% higher, with Bethlehem's median in-
come more than twice that of Albany's at $110,968. The

52 Mikati, supra note 47.
53 See U.S. Census Bur., QuickFacts: Albany, New York, censustats.gov, https://www.census.gov/quickfacts/guidelphantownalbanycountynewyork (hereinafter U.S. Census Bur., Albany) (last visited Nov. 29, 2023) (listing the percentage of White residents as 79.5% and Black residents as 4.9%); see also U.S. Census Bur., QuickFacts: Colonie Town, Albany County, New York, censustats.gov, https://www.census.gov/quickfacts/colonietownalbanycountynewyork (hereinafter U.S. Census Bur., Colonie) (last visited Nov. 29, 2023) (listing the percentage of White residents as 79% and percentage of Black residents as 5.8%); see also U.S. Census Bur., QuickFacts: Bethlehem Town, Albany County, New York, censustats.gov, https://www.census.gov/quickfacts/bethlehmstownalbanycountynewyork (hereinafter U.S. Census Bur., Bethlehem) (last visited Nov. 29, 2023) (listing the percentage of White residents as 89.7% and Black residents as 2.8%); see also U.S. Census Bur., QuickFacts: Albany City, New York, censustats.gov, https://www.census.gov/quickfacts/fact/table/albanycnynewyork (hereinafter U.S. Census Bur., Albany) (last visited Nov. 29, 2023) (listing the percentage of White residents as 54% and Black residents as 27.7%).
54 U.S. Census Bur., Albany; U.S. Census Bur., Colonie; U.S. Census Bur., Bethlehem.
55 U.S. Census Bur., Bethlehem.
56 U.S. Census Bur., Albany; U.S. Census Bur., Colonie; U.S. Census Bur., Bethlehem.
58 Id. at 12.
59 Id. at 12.
60 U.S. Census Bur., Albany; U.S. Census Bur., Colonie; U.S. Census Bur., Bethlehem.
61 U.S. Census Bur., Albany; U.S. Census Bur., Colonie; U.S. Census Bur., Bethlehem.
Section 1: State of Zoning Regulations and Comprehensive Plan Recommendations Through the Lens of Permitted Residential Density

Contextualization of the Forthcoming Analysis

An analysis of the 2014-2019 American Community Survey by the Brookings Institution produced three key findings: “detached single-family homes dominate most neighborhoods, less housing diversity means less racial diversity . . . ; and white neighborhoods—the highest share of which are in the suburbs—have larger shares of single-family homes.” According to this analysis, racial segregation “is prevalent in our communities due to housing patterns that are being created and maintained by exclusionary zoning and land use practices.” These exclusionary zoning practices, including, but not limited to, exclusive single-family zoning were designed “to keep African Americans out of white neighborhoods by making it difficult for lower-income families, large numbers of whom were African Americans, to live in expensive white neighborhoods.”

This section examines the zoning codes and comprehensive plans of the City of Albany and adjacent municipalities in order to ascertain how residential land uses are regulated in these communities and whether these municipalities (with a particular focus on Colonie, Bethlehem, and Guilderland) aspire to maintain their current residential character or change course. The analysis will focus, first and foremost, on density and suburban protectionism. In a 2009 analysis of forty-nine metropolitan areas across the U.S., authors Jonathan Rothwell and Douglas S. Massey found a strong positive relationship between low-density zoning and racial segregation, as well as one between greater allowable density in zoning and racial integration. According to a 2018 study by the Pew Research Center, rural populations in the U.S. have the highest percentage of White people and are the least integrated, while suburban areas are more integrated, and urban areas

64 See infra text accompanying notes 101-106.
65 See Rothwell & Massey, supra note 63, at 793.
67 Id.
68 Rothwell & Massey, supra note 63, at 779, 783, 792.
are the most diverse. The image below shows a data visualization from the Pew Study, depicting the levels of racial segregation in urban, suburban, and rural counties throughout the United States.

City of Albany

Albany’s comprehensive plan adopted in 2012, titled “Albany 2030,” includes a map outlining its future land use plans. The map outlines, broadly, suggestions of land uses based on area of the city:

The “nodes and centers,” in the map, while offering a simple outline of the City’s goals, are listed in broad terms, necessitating an examination of Albany’s zoning codes and maps to achieve a more complete understanding.

The City of Albany outlines a collection of zoning districts within the categories of: “Residential,” “Mixed-Use,” and “Special Purpose” in its zoning ordinance, also known as the Unified Sustainable Development Ordinance (USDO).
The specific permitted uses in each of Albany’s zoning districts, depicted in the images above, are outlined in detail in the USDO.76

A large portion of Albany’s zoning map, particularly in areas outside of the high-density city center is allotted for the districts labeled as R-1L, R-1M, R-2, and R-T.77 In R-1L areas, “dwelling, multi-unit” uses are prohibited entirely.78 “Dwelling, multi-unit” uses are defined as residential dwellings containing three or more units and are the highest density residential land use type outlined in Albany’s code.79 In R-1M districts, multi-unit dwellings are allowed only in “buildings that were originally designed for nonresidential use.”80 In R-2 and R-T districts, multi-unit dwellings are allowed only in (a) “buildings that were originally designed for nonresidential use,” and (b) “structures that were originally designed and constructed as multi-unit dwellings, and only for the number of dwelling units that legally existed prior to the adoption of this USDO.”81 Also noteworthy is the fact that the industrial use zones are clustered near the West Hill, Arbor Hill, and South End neighborhoods.82

The City of Albany’s “BuildingBlocks” mapping resource for viewing property attributes, service calls, demographic data, and more shows a distinct clustering when lots are filtered by the percent of the population that is between 69.45% and 88.89% low-income.83 With next to no outliers, nearly all of such lots are clustered in the Beverwyck, West Hill, West End, Washington Square, Pastures, and South End neighborhoods.84 Most of these areas, with the exception of Beverwyck, are formerly red or yellow-lined zones according to Albany’s 1938 Homeowners’ Loan Corporation Map (pictured below).85

77 See id.; see also U.S. Census Bureau, 2020 Census Demographic Data Map Viewer, Population Density, Albany (2020), https://maps.geo.census.gov/ddmv/map.html; Millus, supra note 75.
80 Albny N.Y., Code § 375-302; Millus, supra note 75.
81 Albny N.Y., Code § 375-302; Millus, supra note 75.
82 Zachary Simpson, Albany Neighborhoods, City of Albany https://www.google.com/maps/d/u/0/viewer?mid=1K-T_lm1eZbX_EO-j9FMqMuz-U8mp6f&femb=1&ll=42.665683062514745%2C-73.78039176395153&z=14 (last visited Oct. 1, 2023); Millus, supra note 75.
83 Tolemi, Albany, NY, Albany NY – Buildingblocks, Hyperlink (last visited Oct. 1, 2023); Simpson, supra note 82.
84 Id.
86 Id.
87 Tolemi, supra note 83.

The low-income areas displayed on Albany’s BuildingBlocks page have significantly high portions of multi-use zoning districts which allow for high-density
residential housing. Furthermore, roughly the same areas have a significantly higher vacancy rate, a lower percentage of owner-occupied homes, a higher number of evictions, and a significantly higher percentage of residents who are people of color (as opposed to White people), when compared to many of the surrounding areas. Such results indicate that the racial and ethnic segregation influenced by redlining in the early 20th century, both in terms of geographic distribution and homeownership, has remained persistent.

**Surrounding Areas**

The comprehensive plans for the Towns of Guilderland and Colonie, published in 2001 and 2019 (respectively), do not list racial diversity, equity, or inclusion as stated goals. They do, however, implicitly address issues historically considered along racial lines. In one such example from Guilderland’s comprehensive plan, the report states that “[a]griculture provides a cultural link to the Town’s historical roots. Agricultural land supports the tax base of the Town since it generates tax revenue but requires few community services, in contrast to the spreading residential development that threatens to replace agricultural uses.”

A comparison between the proposed map of Guilderland’s land use in the Town’s comprehensive plan and demographic map data of the percentage of White people living in the area from the US census further highlights the ways protectionist policies focused on preservation of rural uses of land effectively, if not intentionally, bolster the persistence of White land use. As seen in the maps below, the areas labeled as “Rural Guilderland” in the comprehensive plan map generally have a higher White population than the areas designated for other land uses.

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88 Tolemi, *supra* note 83; Millus, *supra* note 75; Albany N.Y., Code § 375-302.
89 Tolemi, *supra* note 83 (filtered by vacancy rate), hyperlink; U.S. Census Bureau, *supra* note 77 (filtered by (a) “Race alone, not Hispanic or Latino > White, and filtered by “Housing > “Owner-occupied Housing Units’’); Smith, *supra* note 59.
90 Id.
94 Id.
95 Census Bur., *supra* note 77 (map focused on Guilderland and filtered by Racial Demographic > White).
97 GUILDERLAND N.Y., CODE § 280-11.
98 GUILDERLAND N.Y., CODE § 280-40.
zoned as “Single-Family Residential Districts.” These districts, like the Agricultural and Rural Agricultural Districts, limit residential units to single-family dwellings, two-family dwellings, and family apartments (with the definition of “family apartments” being slightly more restrictive than the definition for the Agricultural and Rural Agricultural Districts.

Colonie’s comprehensive plan, much like Guilderland’s, emphasizes a goal to “protect” low-density residential land uses from “encroaching higher-density residential development.” Colonie’s zoning map echoes Guilderland’s as well, by zoning a majority of residential areas as “single-family residential,” while multi-family residential zones are low in both number and area, and typically placed alongside “commercial office residential,” “highway commercial office residential,” “office residential,” or “airport business area” zones. The express aim of protecting single-family residential land use, as well as the significant proportion of land allotted to such use, aligns closely with the Town’s statements about its identity as “one of the Capital Region’s largest and oldest suburban communities.”

The Town of Bethlehem’s “Comprehensive Plan Update,” adopted in 2022, emphasizes promoting equity along lines of race, class, gender, and ability throughout the plan, in contrast to those of Colonie and Guilderland. Furthermore, the plan, in reference to American city planning of the last century, acknowledges that “[t]he top-down planning of the mid-20th century . . . led to displacement of urban residents (many immigrant and communities of color) in low to moderately-dense neighborhoods” as well as the “popularization of suburban patterns of development.” While the Town’s zoning map, like those of Colonie and Guilderland, is dominated by traditionally low-density uses of land, the comprehensive plan recommends modification of the zoning code to allow two and three family units in three of the lowest-density residential zones that make up a large portion of the Town’s area (“Residential A,” “Residential B,” and “Core Residential”). The Town’s zoning code, however, does not yet reflect this recommendation, as “[o]ne-family Dwelling” is still the only residential use allowed by right in these three districts.

Summary

Each of the municipalities in the area surrounding Albany retain a high proportion of land dedicated to single-family and low-density residential land use. Colonie, Guilderland, and Bethlehem, in which the nearly entirely-White population is a direct product of white flight, retain a greater share of wealth and income while implementing protectionist land use policies which ensure residential property density remains low. While an increase in allowable density does correspond to an increase in integration, a more-holistic inquiry as to the proper approach and the root causes of the density-integration relationship is worthwhile. Ultimately, solutions should emphasize equity over equality, and aim to specifically address the needs of historically marginalized and displaced communities. Further sections will address the state of racial equity in the Albany area outside of zoning and provide recommendations for steps the city can take towards such equity.

Section 2: Tenancies and the State of the Rental Market

Tenants in Albany, comprising the residents of a majority of households, face the grim prospect of eviction filings without representation in about 95% of cases, while their landlords nearly always have representation. This threat of eviction affects Albany residents disproportion-
ately along racial lines, as homeownership rates among White Albany residents are nearly triple those of Black residents.111 Albany’s rental prices since 2010 have aligned closely with the national average, which has risen steadily throughout the past nine years, and sharply in the period since the beginning of the COVID-19 pandemic.112

The City of Albany passed a good cause eviction law in July of 2021, becoming the first municipality in the state to do so.113 The law prohibited landlords from evicting tenants unless the landlord established that one of ten grounds for good cause was present, regardless of whether a lease agreement had expired.114 The ten enumerated grounds for good cause included the nonpayment of rent, the violation of a reasonable obligation of the tenancy, an unreasonable refusal to allow access to the unit, illegal activity, nuisance activity, and when necessary pursuant to conditions of property sale.115 While the nonpayment of rent was a valid cause for eviction under the law, this was only the case if the nonpayment was not preceded by an unconscionable rent increase.116 The law included a rebuttable presumption that a rent increase exceeding 5% was unconscionable.117 In *Pusatere v. City of Albany*, however, a group of local landlords successfully argued that the city’s good cause eviction law was preempted by provisions of state law resulting in the Third Department affirming the Albany County Supreme Court’s decision and invalidating the portions of the law pertaining to good cause.118

While there is limited data on the impacts Albany’s good cause law had on reducing evictions in Albany while it was in effect, data from other jurisdictions with good cause laws indicate that these laws help decrease the number of evictions.119 Tenants in Albany did report that after the Third Department’s ruling that Albany’s good cause law was invalid, both evictions and rent costs in Albany increased.120 One tenant said that while the law was in effect she received notice of a 26% rent increase.121 After mentioning the good cause law, she received a lease with just a 5% increase.122 This provides an example of how laws like the one Albany adopted can help protect tenants from unreasonable rent increases and from losing their homes.

Under the current legal framework, without a good cause law, a landlord who does not wish to renew a residential tenancy can unilaterally chose not to renew it, as long as they provides written notice of thirty to ninety days (depending on the length of tenancy or residency).123 The same condition applies to rent increases of 5% or more, allowing landlords the ability to increase rent to any degree they wish upon renewal of a tenancy, provided the tenant receives the statutorily-required notice period.124

New York’s Emergency Tenant Protection Act (ETPA) provides rent stabilization (limitation of rent increases) for buildings containing six or more units built before 1974 and allows municipalities to opt into the program.125 In order to opt into the ETPA, however, a city must first conduct a vacancy study to show that there is a vacancy

111 See supra note 58 and accompanying text.
114 See id.; see also Albany N.Y., Code §§ 30-327, 30-328.
115 See Albany N.Y., Code §§ 30-327, 30-328.
116 Id.
117 Id.
122 Id.
123 See N.Y. REAL PROP. LAW § 226-c(1)(a), (2) (McKinney 2023).
124 Id. at (1)(a).
rate of 5% or less within the “class or classes of housing accommodations for which the municipality suspects there may be a housing emergency.” The Albany Common Council passed a 2019 resolution calling for a vacancy study. However, the city declined to undertake such a study after the early-pandemic request for proposals from firms interested in conducting the study resulted in price quotes in the low six-figure range. The Common Council has since called for a vacancy study in its 2020, 2021, and 2022 Budget Intent Resolutions, but the City’s executive branch has declined to include funding for a vacancy study in any of the three years. Albany Mayor Kathy Sheehan’s proposed budget for 2024 did not include funding for a vacancy study. On November 20, 2023, the Common Council of the City of Albany approved Mayor Sheehan’s proposed budget after adding several amendments to the proposal, which included $75,000 earmarked for the City to conduct a vacancy study of ETPA-eligible properties, along with a budget intent resolution outlining that the study shall be conducted by the Department of Neighborhood and Community Services, and that it shall be conducted by May of 2024, in order to capture the student and temporary worker population that may only maintain residency during a school term.

Another recent change in Albany’s housing market occurred on April 17, 2023, when the Common Council of Albany voted to override Mayor Sheehan’s veto of its proposed inclusionary zoning ordinance increasing the number of affordable housing units that new developments must incorporate. Prior to the enactment of this ordinance, developers of buildings with fifty or more units had to devote 5% of the units to affordable housing. This ordinance broadened the size of buildings that are subject to affordable housing requirements and increased the percentage of required affordable housing units in these buildings. The affordable housing units must be affordable to individuals with an income of 60% or less of area median income. Under the new law developments and redevelopments of 20 to 49 units must dedicate 7% of new units to affordable housing, those with fifty to sixty units must dedicate 10% of new units to affordable housing, those with sixty to seventy-five units must dedicate 12% of new units to affordable housing, and those with seventy-six or more units must set that benchmark at 13%. Examination of U.S. Census data tracking the amount of housing permits issued for the Albany–Schenectady–Troy area for buildings with five units or more by August of a given year (the most recent month available at this time) shows the following: In 2020, 472 permits were issued by August; in 2021, 721 permits were issued by August; in 2022, 774 permits were issued by August; and in 2023, 614 permits were issued by August. While the COVID-19 Pandemic likely affected 2020 data, a slight reduction in permit issuance seems possible; however, more data and analysis will be necessary to determine whether there is a causal relationship between...
the new zoning change and the rate of new residential construction.

The ownership of residential property is consolidating at a national level into the hands of real estate investment companies. According to a 2022 New York Times article by Sophie Kasakove, “[r]eal estate investors bought a record 18.4% of the homes that were sold in the United States in the fourth quarter of 2021, up from 12.6% a year earlier, according to the realty company Redfin.” In one such example of a massive purchase effort of residential property for the purposes of continuous rental use, on August 15, 2023, MetLife, Inc. announced the final close of its “Single Family Rental Fund,” a $390 million project to buy, and subsequently rent out, single family properties. Economic analysts and market experts foresee a grim outlook for the future of America’s residential property market in which large funds control nearly all available housing, and investment in such passive income vehicles raises capital for additional acquisition, further perpetuating the cycle of ownership transfer.

The affordability of rental properties is reduced further by the rise of software which allows landlords to automate rent-setting through algorithms that aim to set rent at the highest possible rate in a given market. Yieldstar, a rent-fixing software product by the company ReallPage, determines the maximum rental rate for a property by aggregating a set of data that includes rental rates in the area and demand level indicators. This software has been found to significantly outperform non-algorithmically advised rental market players. RealPage, whose software has already shown demonstrable effects on recent leaps in U.S. rental market prices, is now facing increased regulatory scrutiny as well as class-action antitrust litigation in the U.S. District Court for the Middle District of Tennessee.
The rental market is tightening nationwide; a 2022 Pew Research Center Analysis indicated that the amount of active real property listings for sale dropped approximately 60% in only two years, while the average rent cost has continuously increased, rising 18% over a five-year period.146 Transitioning from the rental market to homeownership is also growing increasingly difficult; the median sale price for a single-family home increased 25% in just three years from 2019 to 2022.147 According to RedFin’s analysis, the median sale price in Albany has increased at a steady rate throughout the last five years, at an average year-over-year rate of around 7%, outpacing inflation (3.9%) to a significant degree.148 Additionally, as mentioned above, the homeownership gap in Albany along racial lines is extremely stark, with only one city across the country having a more severe gap than Albany.149 The geographic spread of evictions in Albany seems to fall along historic racial lines as well; a comparison between census map data highlighted by percentage Black population, a 1938 Homeowner’s Loan Corporation redlining map, and a 2021 Albany eviction heatmap show concentrations in the same portions of their respective variables in the city, along historically racial lines.150

In a 2022 report by the United States Commission on Civil Rights, two local experts on housing issues, Edward De Barbieri, Director of Albany Law School’s Community Economic Development Clinic, and Laura Felts, former Executive Director of the United Tenants of Albany, were cited explaining that the modern-day impact of redlining has lasting detrimental effects on the disparities in housing conditions and purchase rates in the City of Albany.151 Communities of color in Albany, both before and after the COVID-19 pandemic, experienced the highest eviction filing rates in the city, according to data from the same civil rights report, as depicted in the graph and image below.152 Furthermore, a far higher proportion of families of color in Albany residing in rental properties are cost-burdened compared to White families residing in rental properties, at rates of 49% to 35%, respectively.153 Moreover, the proportion of Albany’s families of color residing in rental properties who are severely cost-burdened is 27%.154 Felts also reported that the City, particularly in neighborhoods of color, is rife with unlawful evictions, discriminatory practices by landlords, and repeated code violations.155

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147 Id.
149 See supra note 58 and accompanying text.
150 See Smith, supra note 58; Census Bur., supra note 77; Nelson et al, supra note 85.
152 Id. at 93-94.
153 Id. at 94.
154 Id.
155 Id. at 95-96.
In sum, the City, as explained by experts, has enduring structural inequities in the rental market which disproportionately affect communities of color. Accordingly, future housing reform measures should focus particularly on alleviating the burdens faced primarily by communities of color, and by renters living in historically redlined areas.

Section 3: A Look at Equity-Focused Housing Policies in Various Municipalities

Reparations in Evanston, Illinois

In 2019, Evanston, Illinois became the first municipality in the United States to adopt a reparations program. In a memorandum discussing the impetus for the reparations resolution, the Evanston city clerk wrote that “we can reasonably surmise that a history of city mandated discrimination . . . has led to the decline of socioeconomic status and hindered the ability to acquire wealth for Evanston’s Black community.” Exclusionary zoning policies, redlining, and the withdrawal of resources from Black neighborhoods are some of the policies the city identified as part of its “history of city mandated discrimination” that it was seeking to rectify. The final form of the resolution was arrived at after a robust public input process, in which participants overwhelmingly made it clear that they wanted the reparations program to focus on resources and grants related to housing.

The program initially provided $25,000 to assist with mortgages, home repairs, or home down payments for Black residents who were able to prove that they or their direct descendants lived in Evanston between 1919-1969. In March 2023, when only $326,826 of the appropriated $10 million had been distributed, the city council voted to add a direct cash option. As of August 16, 2023, Evanston had distributed $1,092,924 in reparations funds with an additional $439,397 still in the process of being disbursed for construction projects and mortgage assistance. As of October 5, 2023, ninety-one residents of Evanston in the ancestor group (those who had lived there between 1919-1969) had received their reparation funds. Fifty of those recipients chose to receive cash benefits. So far, 139 Black Evanston residents have qualified as “ancestors,” while around 400 residents have applied to receive reparations as descendants. Critics of the program have drawn attention to its slow start, while others argue that Evanston’s program can never possibly do enough to remedy the wide array of historical wrongs inflicted on Black Americans but could possibly interfere with any potential federal reparations plan.

While the program in Evanston is still in the early stages of its rollout, if all who have applied receive disbursements, that would mean over 4% of Evanston’s Black population would receive a sizable wealth increase. This would make a material impact on decreasing the racial wealth

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156 See supra notes 110–112 and accompanying text.
159 Id.
161 Id.; Broaddus, supra note 157.
162 Broaddus, supra note 157; see Snyderman, supra note 160, at 155.
165 Id.
166 Id.
167 Id.
168 Hope, supra, note 157.
169 See Medne, supra, note 164; see also U.S. Census Bur., QuickFacts: Evanston City, Illinois, census.gov, https://www.census.gov/quickfacts/
gap and making homeownership accessible for individuals who previously lacked fair access. Still, it is clear that a municipal-level reparations policy of this scale, while tremendously beneficial to many, is limited in its scope and would need to be accompanied by a wide variety of other strategies to truly address racial inequity in housing.

**The Effort to Eliminate Single-Family Zoning in Minneapolis, Minnesota**

In 2019, the city of Minneapolis, Minnesota adopted a new “2040 Comprehensive Plan” in which the City eliminated single-family zoning. Under Minnesota law, comprehensive plan recommendations supersede conflicting zoning ordinances, and zoning ordinances shall be brought into compliance with the comprehensive plan. The comprehensive plan states that, in all areas “that today contain primarily single-family homes,” the city should now allow “up to three dwelling units on an individual lot.” On September 5, 2023, a district court Judge halted the implementation of the comprehensive plan after three years of it being in effect, ruling that the implementation of the plan violates the Minnesota Environmental Rights Act. Minneapolis promptly appealed the decision.

While there is still little data on the effects of the policy (which is currently suspended), a preliminary study analyzed lot prices in formerly single-family zoned areas against control lots from nearby cities which retained single-family zoning in their codes, and found that prices for Minneapolis lots affected by the new plan increased by between 3% and 5% during the year following the plan’s adoption. The same study found that property values rose by a higher degree in relatively low-valued areas and in smaller houses.

The sweeping changes to zoning policy, if allowed to proceed, would likely have more pronounced effects over a long period of time, as developers begin to adapt to the new changes, and single-family homeowners gradually begin to sell off more of their housing stock. While the ongoing effects of racial discrimination were cited as a guiding factor to a significant degree throughout the City’s 2040 Plan, Owen Duckworth, a housing and racial justice advocate, suggests that Minneapolis should implement further changes to ensure equitable distribution of housing along racial lines, such as increased funding for affordable housing and a reduction of surface concrete in urban “heat islands.”

Additionally, while the implementation of this policy is currently on hold, it provides a good case study of a local plan that takes bold action to increase allowable density, a policy choice which is well-placed to decrease residential segregation. The final outcome of the legal controversy surrounding this policy, will be instructive on whether initiatives similar to this one could be threatened under environmental grounds in other cities that decide to adopt them.

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170 See Snyderman, supra note 160, at 156.
173 See City of Minneapolis, supra note 171.
176 See Kuhlmann, supra note 171 at 390-91.
177 Id. at 391.
178 Id.
180 See Rothwell & Massey, supra note 63.
The Vienna, Austria Housing Model

The city of Vienna, Austria presents a relatively unique housing framework, in which roughly 80% of residents qualify for public housing, approximately 50% of residents live in municipal flats or subsidized housing, and public housing contracts have no expiration date.182 The Vienna Housing Promotion and Housing Rehabilitation Act (WWFSG), a 1989 Vienna housing law, provides subsidies for “the construction of new housing units and the rehabilitation of existing” housing, and regulates subsidies for tenants.183 Another law, the Limited-Profit Housing Act, fixes rents at a rate sufficient to cover development and upkeep costs, limits housing-based profits, and mandates construction of new housing by non-profit and limited-profit developers.184 Additionally, the City, is governed by Austrian landlord-tenant law which regulates rental rates to keep them “reliable and stable” and outlines “the rights and duties of landlords and tenants.”185

Limited-profit and subsidized for-profit housing providers are core parts of Vienna’s housing landscape; the rental rates they are able to charge are locked to a limited percentage interest rate on their invested capital, and the City reserves occupancy rights for at least one third of their units.186 The City provides tax incentives for limited-profit and subsidized providers, and requires such entities to reinvest all profits in housing construction, maintenance and improvements.187 While Vienna’s legal framework surrounding housing is extremely complex and multifaceted, the aspects above outline a model which serves as an excellent example of a municipality’s prioritization of the human right to housing. Lauded by many for its socially-conscious approach, Vienna’s housing policy framework implements specific and comprehensive policies to ensure the provision of affordable housing to a wide range of people, addressing one of the primary goals listed in many racial equity plans and guides.188

New York City, New York’s Universal Access to Counsel:

On August 11, 2017, New York City, New York’s “Universal Access to Counsel” (UAC) law was signed into effect.189 This law guaranteed that tenants with annual household incomes at 200% or below the federal poverty guidelines would receive access to full legal representation if facing an eviction.190 Additionally, tenants whose income level disqualified them from having full legal representation against eviction, would still be guaranteed one individualized consultation provided by a legal service provider.191 The massive impact that New York City’s first in the nation192 right-to-counsel against eviction policy had on the city’s tenants can be best expressed by examining the data.

In 2013, only approximately 1% of tenants in New York City housing courts had legal representation.193 In the final three months of 2021, 71% of New York City’s tenants had legal representation in eviction proceedings.194 The

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184 Id.
185 Id.
187 Id.
188 See Stadt Wien, Housing in Vienna, Annual Report 2016, European Comm’n, 1, 10-11; see also Mari, supra note 182; City and County of San Francisco, Racial Equity Action Plan, SFGov.org 1, 46 (January 2021); 5 Policy Solutions to Advance Racial Equity in Housing, HABITAT FOR HUMANITY, https://www.habitat.org/stories/5-policy-solutions-advance-racial-equity-housing (last viewed October 10, 2023).
190 Id. at 201-202.
191 Id. at 219.
193 Newton, supra note 189, at 221.
194 New York City Department of Social Services, supra note 192, at 6.
percentage of tenants with representation decreased in 2022, largely due to a backlog of cases caused by COVID-19. However, in the final three months of 2022, more than 63% of tenants facing eviction were represented, which was still well above pre-UAC numbers.

Additionally, from 2013 to 2019, there was a 41% decrease in residential evictions in New York City. A study of the effects of UAC from 2016-2019 found that having representation through the program reduced a tenant’s likelihood of having a warrant of eviction executed on her by 77.8% and decreased the award amount by 81.5%. Overall, while the program has had its struggles, especially with the backlog in eviction cases caused by the COVID-19 pandemic, it is hard to argue that the program has been anything other than a great tool for preventing those at risk of eviction from becoming homeless. With the incredibly low rates of homeownership (and Black homeownership specifically) in Albany, accompanied by the severe deficiency in representation rates for Albany tenants facing eviction, the success of New York City’s UAC demonstrates one policy proposal that could help keep many Black residents in their homes.

Section 4: Recommendations

This section outlines recommendations for concrete policy decisions that the City of Albany, the suburbs surrounding Albany, and the State of New York, could adopt in an effort to achieve greater equity in access to housing. The recommendations focus on single-family zoning, inclusionary zoning, a vacancy study of ETPA-eligible properties, a statewide good cause eviction law, a right-to-counsel program for tenant respondents in eviction matters, formal recognition of the effects of intentionally race-based policies and choices throughout history, and a reparations policy to remedy the effects of the past.

All of the following recommendations come with an overarching caveat: for all policies suggested here, the suburban towns surrounding Albany should bear a greater weight of responsibility for enacting, funding, and advocating for such reforms. Suburban towns, including those surrounding Albany, have grown to become nearly entirely White enclaves of homeownership and exclusionary land use policy, to the detriment and disproportionate expense of more-integrated city centers.

Jurisdictions Around the Capital Region Should Eliminate Single-Unit Zoning and Raise Density Limits.

Albany’s zoning code provisions currently reserve a significant portion of the city’s land for single-family residential use. The same is true, to an even greater extent, in the surrounding towns of Bethlehem, Colonie, and Guilderland. Density limits, especially those prohibiting multi-family residential land use, have been historically used to discriminate against people of color and maintain high property prices. The Supreme Court’s 1917 decision in Buchanan v. Warley banned explicit race-based zoning. Despite this, facially neutral laws, such as multi-family zoning provisions, with racially discriminatory effects have been implemented.

195 Frank Festa & Annie Iezzi, NYC’s Floundering ‘Right to Counsel’ Fails to Keep Pace with Eviction Cases, City Limits (Jan. 3, 2023) https://citylimits.org/2023/01/03/nycs-floundering-right-to-counsel-fails-to-keep-pace-with-eviction-cases/.
196 New York City Department of Social Services, supra note 192, at 6.
197 Newton, supra note 189, at 221.
198 New York City Department of Social Services, supra note 192, at 12.
200 See supra note 154 and accompanying text.
201 See supra notes 55-57 and accompanying text.
202 See supra note 60 and accompanying text.
203 See supra notes 47, 51-53 and accompanying text.
204 Albany City Code § 375-202; see supra note 79 and accompanying picture.
205 See supra notes 100, 106, 110 and accompanying text.
207 Buchanan v. Warley, 245 U.S. 60, 82 (1917).
throughout the United States. Physical neighborhood segregation further enhances existing disparities in wealth, as neighborhoods with primarily residents of color lose per-unit value over time and single-family, predominantly White areas increase in value, wealth is concentrated further in the hands of White families, at the expense of families of color.

Furthermore, federal funding may be available for municipalities that eliminate outdated and discriminatory zoning provisions, such as limits on residential construction density; one such example is the Pathways to Removing Obstacles to Housing (PRO) grant program from the Department of Housing and Urban Development. The Biden administration, as a stated goal, seeks to continue to provide financial incentives to municipalities that abandon antiquated exclusionary zoning codes. The City of Albany, as well as the surrounding towns in the Capital Region, could not only benefit from additional federal funding, but begin to integrate their still-segregated housing landscape through the elimination of density limits in the zoning code.

The suburban towns surrounding Albany, in particular, should bear a higher burden to increase allowable zoning density and enact policies that shift the area away from a primarily single-family-based model. The zoning codes of Colonie, Bethlehem, and Guilderland, as discussed above, remain dominated by single-family and low-density land use. The higher onus placed on these wealthy White towns to desegregate the area through land use policy is justified by the fact that they boomed, and grew racially segregated, during the mid-twentieth century as a result of white flight from the increasingly integrated Albany City Center.

Jurisdictions Around the Capital Region Should Adopt Inclusionary Zoning Policies.

The white flight that helped shape many towns in the Capital Region also had an enormous impact on Albany’s development, and the current policies of these towns continue to have an impact today. In addition to eliminating single-family zoning and raising density limits as recommended above, further action is needed from these towns in order to encourage the development of more affordable housing. Albany’s recently adopted inclusionary zoning policy, which employs a graduated scale in which developments with a higher quantity of units must include a higher percentage of affordable housing units, could be looked at for guidance as to how to approach this. However, since these towns generally are more averse to multi-family zoning, the policy should look a little different then Albany’s.

The largely White and affluent suburban towns surrounding Albany, including Guilderland, Colonie, and Bethlehem, should implement zoning requirements that all new developments or redevelopments of 5 units of more must dedicate 10% of new units to affordable units, those with five to fifteen units must dedicate 12% of new units to affordable housing, those with fifteen to twenty-five units must dedicate 13% of new units to affordable housing, and those with twenty-five or more units must fix the percentage at fifteen. In addition to these requirements, the inclusionary zoning policies for these towns should have incentives to encourage the creation of affordable housing. Burlington, Vermont

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208 See Rouse et al, supra note 206.
209 Id.
212 Id., see also supra note 19 and accompanying text; Christina Stacy, Brady Meixell, Ananya Hariharan, Erika Poethig, & Solomon Greene, Measuring Inclusion in America's Cities, The Urban Institute (Apr. 25, 2018), https://apps.urban.org/features/inclusion/?topic=map.
213 See supra notes 100,106, 108, 111 and accompanying text.
214 See supra notes 47, 51-53 and accompanying text.
215 See supra notes 47, 51-53 and accompanying text.
216 See supra notes 138-42 and accompanying text.
217 See supra notes 100,106, 108, 111 and accompanying text.

These types of incentives should be adopted into these policies in a manner by which developers who create more affordable housing units in their buildings receive greater incentives. By encouraging more affordable housing and higher density housing, these policies would lead to greater integration in the Capital Region.

The City of Albany Should Conduct a Vacancy Study to Determine Eligibility for Adoption of the Emergency Tenant Protection Act and, if Eligible, Opt-in to the Program.

In the City of Albany, the median year of construction for houses is 1946, and approximately 19% of housing structures in Albany County contain five or more units. Adoption of the ETPA stands to benefit a vast number of tenants in the City of Albany, likely alleviating some of the formidable challenges they face in Albany’s current rental market. This will require the Common Council to ensure that funding for a vacancy study is finalized in an adopted budget.

The New York Legislature Should Pass a Statewide Good Cause Eviction Bill.

In 2019, the City of Albany was able to become the first city in the state to pass a good cause eviction law providing common-sense protections to Albany’s renters. After more than a year of being in effect, the law was struck down by the courts. Good cause eviction laws help tenants stay in their homes, while providing ample redress to landlords as to not overly prejudice them. The New York State Legislature should pass a statewide good cause eviction bill, thereby solving the preemption issues raised in and restoring an important protection for Albany’s tenants. In a city that has the second largest homeownership gap between White and Black residents in the nation, policies like good cause that give renters more rights, are critical in advancing racial equity.

The City of Albany and Surrounding Municipalities Should Create a Right to Counsel for Tenant Defendents in Summary Eviction Proceedings.

The City of Albany’s tenant representation rate in eviction proceedings hovers around an abysmal 2.5% to 5%. Preliminary findings from cities that have adopted Right to Counsel indicate tenants who are represented have much better outcomes than those without. Namely, they are considerably less likely to be evicted and are therefore less likely to suffer the detrimental consequences that come with eviction. The City of Albany, as well as the towns of Guilderland, Colonie, and Bethlehem could remedy the disproportionate deleterious effects of the violent process of eviction on communities of color and those who lie in historically redlined areas by enacting policy to ensure representation for tenants in eviction proceedings, with the goal of closing the dramatic representation gap between landlords and tenants.
The New York State Government Should Pass a Law Limiting Ownership of Residential Property and Rental Rates in Residential Property Owned by Large Corporate Entities Acting as Lessors.

The national housing market is overrun with large-scale acquisitions of residential property by massive financial institutions, and the expanding use of price-fixing software is increasing the pace of wealth transfer from tenants to property owners. A policy limiting ownership of residential property and for-profit uses for large corporate entities could help stop these harmful housing market trends. Such a policy would likely be challenged as taking, since it interferes with the owner's use of property. To avoid expensive “just compensation” payments, such a law should include (a) a carefully drafted amortization process, which phases out previously lawful uses of land over an extended period of time, and (b) a clear and expert-analyzed description of how the interference with property use “... adjust[s] the benefits and burdens of economic life to promote the common good.” The creation of a limit on for-profit lessor use of residential property, rather than an outright ban, could also function to preclude the success of a challenge to such a law as a taking that requires owners to “... sacrifice all economically beneficial uses...” of their land. The State of New York, in an effort to ensure that housing, an internationally recognized human right, is no longer improperly treated as a commodity, should implement a law that (a) limits ownership and acquisition of residential property at a high level to ensure major financial players are unable to control large swaths of its housing market, and (b) limits rental rates of for-profit leases by large corporate entities (i.e. those with more than ten rental units) to only allow for charges less than or equal to 110% of the cost of operation and ownership of any given unit.

231 See supra notes 143-150 and accompanying text.
237 See supra notes 155-157 and accompanying text and pictures.
The State of New York Should Enact a Reparations Policy for Black Residents Seeking to Attain or Retain Homeownership Whose Families Have Been Disproportionately Impacted by Racially Discriminatory Policies.

The City of Albany, like Evanston, Illinois, grew during a time when its legal framework contained racially discriminatory policies.239 The segregation and effects of such policies still impact the ability of members of Albany’s Black community and residents of formerly redlined areas to secure adequate housing today.240 Albany’s Black community, therefore, stands to benefit from a fund providing sums of money for the purposes of facilitating acquisition of mortgages, home repairs, or home down payments for Black community members who can demonstrate that they, or their ancestors, lived in the Albany area during a time period when explicitly racially discriminatory policies were enacted and functioning.241

Albany is not alone in the state of New York in its history of explicit racial discrimination with lasting detrimental effects; many regions of the state have a history of redlining and white flight, and the lasting effects of the practice create demonstrable long-term harm as well as persistent racial segregation.242 While a City-level policy like that of Evanston could stand to benefit those hurt by the effects of redlining, a state-level policy could redistribute wealth more appropriately, as predominantly White suburbs (including those surrounding Albany), continue to hold a disproportionally high level of wealth and income in comparison to more-integrated cities.243

Conclusion

The Capital Region has a history of explicit racial segregation.244 The City of Albany today, as stated above, still ranks in the bottom 20%, in terms of racial inclusion, of cities analyzed in an Urban Institute Report.245 Any singular approach, on its own, may very well be insufficient to address the root causes of continuous disparities in housing along racial lines. Throughout this housing analysis, equity is continuously stressed over equality as a guiding concept for reforms. The two, however, need not be mutually exclusive concepts, and may, in fact, be folded into each other. Nancy E. Dowd, while she was discussing children’s rights, as opposed to the human right to housing, articulated her position that any definition of equality must embrace equity and dignity as key components.246 As New York State and the Capital Region move forward with efforts to address racial inequity in housing, incorporation of equity and dignity into definitions of equality can help policymakers fashion solutions properly tailored to the actual circumstances of residents, instead of sweeping policies based on a negative liberty-oriented conception of equality.247

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239 See supra notes 47, 163-165 and accompanying text.
240 See supra note 156 and accompanying text.
241 See supra note 165 and accompanying text.
243 See supra notes 61-62, 163-165 and accompanying text.
244 See Mikari, supra note 47.
245 Stacy et al. supra note 212.
247 Id.; see also supra note 65 and accompanying text.
CHAPTER 2: PARKS AND GREEN SPACE

Authors: Brianna Buckley and Caroline Drenkard

Abstract

This Chapter will explore how parks and green spaces in the greater Albany area have been discriminatorily apportioned to some communities and not others, as well as how these planning choices have disparately impacted the health and wellbeing of these communities. Disparate access to parks exists in Albany, the Capital Region, and nationwide; the historical foundation of this problem will be addressed in this Chapter in addition to the current state of park access in the Capital Region. The historical and current allocation of parks, ease of access to these spaces, and potentially related environmental and health impacts are important to consider as they help guide a deeper inquiry into the impact of municipal decision making as to where to provide recreational spaces and, consequently, to whom. Some may consider access to recreational spaces to be a luxury rather than a necessity. However, in urban neighborhoods with little alternate access to open space to walk, play, and congregate, a deficit in access to these spaces has generational impacts on the health of individual community members and communities as a whole. This Chapter will propose park planning and improvement strategies that will bring these spaces to communities who currently are deprived of adequate parks, recreational facilities, green spaces, and natural amenities.

Introduction

Parks are open spaces which provide natural habitat and opportunities for community engagement; these spaces can provide a retreat for communities living in built up and automobile-dominated cities. Green spaces, which are often comprised of vegetation and other elements of nature, are closely associated with parks. In theory, parks and green spaces—and nature more generally—are supposed to act as a “great equalizer” whose services are free, universal, and accessible to all humans without discrimination. However, this is not reality in America as the distribution and destruction of natural spaces impact people unequally; in particular, “American society distributes nature’s benefits … unequally by race, income, and age.” Notably, “[c]ommunities of color are three times more likely than [W]hite communities to live [in] nature deprived places.” When Black, Indigenous, and People of Color (BIPOC) try to access and use natural spaces and enjoy the outdoors, they “have been threatened, killed, or made to feel unsafe or unwelcome.”

In cities, parks, green spaces, and other outdoor spaces not only provide places for recreation and socialization, offering critical space for activities which improve physical and mental health; these spaces also often offer access to trees, which tend to be associated with social and environmental

250 See World Health Organization, Urban Green Spaces: A Brief for Action 6 (2017) (discussing how urban green space interventions can include, among other examples, pocket parks and playgrounds, “parks and urban meadows,” and “recreational and urban gardening facilities”).
252 Id.
253 Id.
255 Kirsten M. M. Beyer et al., Exposure to Neighborhood Green Space and Mental Health: Evidence from the Survey of the Health of Wisconsin, 11 Int'l J. Env’t Rsch. & Pub. Health 3453, 3454 (2014) (discussing how the presence of green space in residential environments is linked to many benefits including “recovery from mental fatigue, stress reduction, neighborhood social cohesion, … reduced morbidity in multiple disease categories, and better self-reported health” (citations omitted)).
In recent years, the coronavirus (COVID-19) pandemic further illustrated the importance of access to local outdoor recreational spaces and how some communities, particularly within urban areas, were cut off from recreational green space during lockdown. This Chapter will explore the environmental and health benefits of these spaces and the harms experienced by people excluded from these spaces.

Municipal spending, planning, and zoning affect the availability and quality of green spaces, both historically and in the present. The effects of discrimination are felt today in what neighborhoods are chosen for building, preserving, and renovating green spaces. Discriminatory practices, like redlining, created segregated neighborhoods and wealth disparities still felt today, and these disparities are illustrated when you look at where parks and recreation facilities are placed, maintained, and made safe. Park and recreation agencies of today are involved not only with creating playgrounds and athletic facilities; these agencies are now involved in socioeconomic and environmental issues, such as the coronavirus (COVID-19) pandemic, urbanization, social equity and services, and economic development. It is time that park and recreation agencies in the greater Albany area take these issues seriously into account. This Chapter will discuss how underserved neighborhoods were deprived of park access in the past, as well as how these parks are maintained or improved in comparison to parks in other communities. It will also delve into why it is imperative that this inequity be remedied, and how this inequity can be cured in the future.

**History of Racially Unequal Implementation of Parks and Green Spaces**

**Pervasive Deprivation: How Parks Nationwide Have Been Made Inaccessible to People of Color and Low-Income Communities**

In the United States, systemic racism and the racially discriminatory practice of redlining “have led to chronic disinvestments in parks and recreational facilities in many marginalized communities.” The Federal Home Owners’ Loan Corporation (HOLC) created redlining maps based on “perceived risk of default” on home loans, and in Baltimore, researchers have found that “[t]he concentration of vacant lots and abandoned buildings and the absence of trees in neighborhoods reflect the HOLC’s redlining.” “The absence of trees produces collateral social and environmental disamenities, including higher levels of crime and higher temperatures and vulnerability to heat waves.” The legacy of redlining that persists today and impacts outdoor amenity allocation has detrimental impacts on the social, mental, and physical health of these previously redlined communities.

In addition to being deprived of parks through preferential allocation of park spaces to White communities, which flourished under redlining, people in marginalized communities often face threats and violence when

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256 Morgan Grove et al., *The Legacy Effect: Understanding How Segregation and Environmental Injustice Unfold over Time in Baltimore*, 108 ANNALS Am. Ass’n Geographers 524, 529-30 (2018) (discussing, in relation to Baltimore, how “[t]he absence of trees produces collateral social and environmental disamenities, including higher levels of crime and higher temperatures and vulnerability to heat waves” (citations omitted)).


260 Grove et al., supra note 256, at 528.

261 Id. at 529 (discussing how “neighborhoods classified as ‘hazardous’ or ‘declining’ in 1938 [redlining maps] have the highest concentration of vacant lots and buildings in 2012 and the lowest percentages of canopy cover” (citation omitted)).

262 Id. at 529-30 (citations omitted).

263 See, e.g., Rowland-Shea et al., supra note 251 (“These disparities are particularly concerning because nature is not an amenity but a necessity for everyone’s health and well-being. In the places where human activities in the United States have destroyed the most nature, there are fewer trees to filter the air and provide shade on a hot day; there are fewer wetlands and marshes to clean the water and to protect communities from floods and storm surges; there are fewer parks where children can grow their curiosity and fewer trails where adults can stretch their legs; and there are fewer public spaces where people of all races, cultures, and backgrounds can forge the common experiences and understandings that build respect, trust, and solidarity.” (citation omitted)).
choosing to enjoy the parks and green spaces that they do have access to. This history of violence can be traced back to the creation of early urban parks, state parks, and national parks. For instance, White elites lobbied for the creation of Central Park in New York City under the guise that it would be “a solution for beautifying the city amid population growth and deteriorating conditions.” These beautifying efforts would mostly benefit middle- and upper-class White families and displace Black and immigrant families. In the creation of national parks, the national government forcibly relocated Indigenous people to reservations in order to establish these spaces, a form of “ethnic cleansing” for the benefit of White elites as urban expansion continued. In the Jim Crow South, the Jim Crow laws and customs centered around park usage were also systematically used to bar Black Americans from using both state and national parks; “[i]n 1952, Black Americans had access to only 12 of the 180 state parks across nine southern states.” Even though Jim Crow laws are not in effect today, the animosity towards Black people and Indigenous people who try to enjoy outdoor public spaces persists.

Local Problems: Historical Context of Park Deprivation in Greater Albany

Albany has its own history of redlining and segregation. In 1938 Albany began redlining in an attempt to decrease home foreclosures. The only neighborhoods in the City to be redlined were West Hill, Arbor Hill, and the South End: neighborhoods that today house the majority of Albany’s Black residents and still have the lowest percentage of homeownership along with the highest rates of poverty. In the 1930’s and 1940’s, residents of these neighborhoods were mostly poor White European immigrants, but by 1980, long after the practice had ended, these communities were 40 to 70 percent Black. From 1950 to 1980 the Black population of Albany doubled every decade as Black people moved from the South during the second wave of the Great Migration. While the children and grandchildren of the European immigrants could assimilate, get away from the prejudice of being foreigners, and leave the redlined neighborhoods, the descendants of Black Americans who moved into these neighborhoods were trapped not just by lack of generational wealth, but by overt racism.

From the late 1930’s to the 1950’s, the Commission on the Condition of the Urban Colored Population found that in Albany, Black residents made on average $696 less annually, rarely held state jobs, and Black cleaners of state buildings were paid less than their White co-workers. Landlords in ‘nicer’ areas would refuse to rent to Black residents or raise the rent above what a Black tenant could afford. When a Black family was able to afford to move, “the neighbors would cause [] so many different problems.” Black people that could afford to move to White neighborhoods in Albany or the surrounding suburbs had their homes burned down and their families harassed and threatened until conditions became

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265 Id.
266 Id. (discussing how “the city’s social elites … actually wanted to develop Central Park because they hoped it would raise their property values and create a recreation space for middle- and upper-class white families, all the while displacing Black residents and German and Irish immigrants” and how Central Park construction displaced “thousands of residents living in a majority-Black settlement named Seneca Village,” which at the time was one of the few places where New York State’s Black residents were able to own property).
267 Id. (further discussing how in some instances of park creation, Indigenous people “were completely denied access to their lands and resources, while in [other instances], continued access was initially permitted—although this access was often eroded over time through administrative actions”).
268 Id.
269 Rowland-Shea et al., supra note 255 (discussing the “stories of Christian Cooper, threatened with violence and arrest while bird-watching in Central Park, and Ahmad Arbery, murdered while jogging down a tree-lined street in coastal Georgia”).
“intolerable.” This has led many families to stay in neighborhoods they already lived in; neighborhoods where they knew people and knew they would be safe.

Black residents who were able to move, and were not run out of their homes, had their homes taken by eminent domain in order to make room for public projects. In 1963 when the South Mall, now known as Gov. Nelson A. Rockefeller Empire State Plaza, was built, 7,000 residents were displaced. An estimated 1,000 of these residents were Black. In response to this desperate need for housing, the City built three public housing projects, one of which was placed very close to an industrial zone.

Parks and Green Spaces in the Capital Region Today

Park access and planning decisions of the past still have negative impacts on those communities deprived of these outdoor and recreational spaces. This Section discusses the impacts of inadequate green space and park allocation and access, particularly in urban communities. This Section further discusses the current conditions of park access, zoning related to green and natural spaces, and planning for park allocation in Albany and the Capital Region.

Environmental and Health Impacts

The heat island effect describes the difference in temperature between urban and rural areas. On average, in the summer, formerly redlined communities are five to 12 degrees hotter than non-redlined communities. This is usually due to the prevalence of dark manmade structures and a lack of green space in cities. The heat island effect has a lot of ripple effects. It leads to higher temperatures, air pollution, and higher demands on the electric grid due to cooling systems. Trees are just as important as green space in combating the heat island effect. Green spaces do not absorb or hold as much heat as manmade materials and therefore contribute to cooling the surrounding area by not storing as much heat as surrounding streets or buildings. Trees, while also holding less heat, provide shade to the surrounding area. This shade prevents heat from being absorbed and therefore from being stored.

Urban communities are less equipped than their more rural counterparts to handle flooding. Rural landscapes absorb rainfall and excess water better, and therefore do not flood as often, because urban communities have more impervious surfaces. Communities in these urban flood zones tend to be already disadvantaged and are therefore more seriously affected. Increased flooding disrupts the community in many ways, besides physical damage to homes and other property. It leads to traffic which, besides wasting time, leads to lost wages. Lower-income and minority residents are also less likely to have flood insurance and are therefore more likely to be harmed by flooding.

Heat islands and increased flooding negatively affect residents’ health. Communities within heat islands experience more smog and elevated risk of respiratory illnesses. For example, residents of the South End, a former redlined neighborhood, are three times more likely than the average American to have asthma. Trees and green spaces also have the added environmental and

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278 Id.
279 Id.
280 Id.
281 Id.
282 Id.
285 Heat Island Effects, supra note 283.
286 Id.
287 Id.
288 Id.
290 Id.
291 Id.
292 Id.
293 CITY OF ALBANY, CITY OF ALBANY 2019 COMMUNITY GREENHOUSE GAS EMISSIONS INVENTORY 2 (2020).
294 Mikati & Medina, supra note 270.
health benefit of filtering air pollutants and directly reduce negative health impacts. Chronic flooding leads to excess stress and decreases the mental health of those affected. Flooding also causes mold and increased mold exposure increases instances of asthma. This leaves communities combating multiple forms of air pollution that could be decreased with more green spaces.

Because of redlining, communities of color are disproportionately affected by the effects of poor air quality, flooding, and heat islands caused by a lack of green spaces or parks. Historically redlined communities have less green space than their non-redlined counterparts. These historically White communities benefit from nearly twice as much tree cover compared to communities of color. More trees and green spaces directly correlate to cooler temperatures and less flooding, both of which would improve the health and quality of life of residents of underserved communities.

Across America, when you compare redlining maps to satellite imagery of current green spaces, formerly redlined neighborhoods are more likely to have less green space than neighborhoods that were not redlined. Communities that consist mainly of people of color lack adequate parks and greenspace in general. BIPOC neighborhoods have parks that are half the size of those in White neighborhoods, despite the fact that they serve five times the population. Areas that have parks often do not have other forms of green spaces like grass and trees. While proximity is a factor in determining access to green spaces and parks, it is not the only factor. Nationwide, parks surrounded by communities of color often see a significantly higher percentage of White visitors. This is due to several factors; among them are historic segregation and lack of knowledge. Communities of color often experience a “feeling of cultural and social exclusion” regarding local parks. This is often due to a difference in the community’s preferred use and the way the space can be used.

### Perceived and Actual Access to Parks in Albany Today

Albany offers 125 parks and 530 “acres of greens” which are maintained by the City’s Department of General Services (DGS) Parks maintenance crew. Approximately 78 percent of residents living in Albany live within a 10-minute walk of a park. Table 1 below shows the percentage of people in the City of Albany within a 10-minute walk of a park, broken down by race and ethnicity.

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>White*</td>
<td>70%</td>
</tr>
<tr>
<td>Black*</td>
<td>89%</td>
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</tr>
<tr>
<td>Asian*</td>
<td>71%</td>
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<tr>
<td>Pacific Islander*</td>
<td>93%</td>
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<tr>
<td>Other Race*</td>
<td>89%</td>
</tr>
<tr>
<td>Two or More Races*</td>
<td>81%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>80%</td>
</tr>
</tbody>
</table>


* Excludes those that report Hispanic origin (which is captured separately from race by the U.S. Census).

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296 *Id.*
297 *Bird, supra note 284.*
298 *Id.*
300 *Id.*
301 *Id.*
302 *Id.*
303 *Id.*
304 *Id.*
305 *Id.*
Based on the percentages in Table 1, it does not appear that any one particular racial or ethnic group within the City is significantly denied access to park space. However, this data does not represent the actual accessibility of parks and green spaces on the ground when other factors, such as park amenity quality, park safety, and whether the park is welcoming, are considered.

**Current Zoning, Efforts, and Plans for the Future in the Capital Region**

The multi-year ReZone Albany initiative resulted in the creation of the new Unified Sustainable Development Ordinance ("USDO"), a City ordinance which essentially streamlines the zoning code and land use regulations for the City. The USDO became effective on December 30, 2021, and provides for a special-purpose district designation called LC (Land Conservation) which is intended “to provide for and protect publicly-owned parks, open spaces, natural areas, wildlife refuges, and other green spaces throughout the City.” Eighty-nine of the 260 properties with the LC designation—approximately one third of LC properties—are located in areas historically labeled with C ("definitely declining") and D ("hazardous") redlining ratings. These 260 properties are shown as green and yellow dots in Figure 1 below. While this indicates an effort by Albany to provide public park spaces within urban areas in the City, plenty of LC properties are also located in more-suburban areas of the City that were not redlined with C or D ratings.

**Figure 1: Historical Redlining and LC-zoned Properties in Albany**


260 properties in Albany have an LC designation; 89 of these properties are located in areas historically labeled with C and D redlining ratings.

USDO section 375-406 outlines the landscaping, screening, and buffering standards for the City, and the stated purpose of this section is to:

“(a) Promote a healthy environment by providing shade, air purification, oxygen regeneration, groundwater recharge, stormwater runoff management, erosion control, and reductions in noise, glare and heat island effects; and

(b) Provide visual buffering from streets, buffering of potentially incompatible land uses, and generally enhance the quality and appearance of the City; and

(c) Encourage the preservation of existing trees and vegetation that offer environmental, aesthetic, habitat, sustainability, and economic benefits to the City and its citizens.”

This codification of the City’s purpose of prioritizing health and environmental benefits through the landscaping standards is a promising step towards bringing accessible parks and green spaces to marginalized communities that are subjected to systemic negative environmental and health impacts.

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Albany’s current comprehensive plan—called *Albany 2030*—outlines the vision for the City of Albany landscape by 2030, and one of the City’s main vision components is “safe, livable neighborhoods” including quality parks and recreation facilities. The comprehensive plan acknowledges that “preservation and growth of the City’s urban forest provides a number of benefits, including improved air and water quality, carbon sequestration, shading and cooling, improved property values, and reduced urban heat island effect.” Additionally, the comprehensive plan lists “[i]dentify neighborhoods vulnerable to the heat-related impacts of climate change and assess existing and needed street tree coverage” as one action to consider to meet the City’s UF-1 Strategy.

The comprehensive plan also acknowledges that open space “encourages healthier communities through opportunities for walking and other types of recreation” and “improves quality of life.” The Open Space section of the plan does suggest actions such as working with “groups such as Capital District Community Gardens (CDCG) to encourage innovative reuse of vacant properties” and with “neighborhood groups to develop vacant lots as small neighborhood pocket parks and shaded open space areas” (among other actions) to meet the City’s open space goal. While both the Urban Forest and Open Space sections of the comprehensive plan allude to providing benefits to overburdened and underserved areas of the City, the plan does not explicitly provide for actions aimed at bringing better parks and natural amenities to systematically marginalized communities within Albany. In other words, the plan does not name the racial inequities in park access that need to be remedied.

In 2019 the Town of Colonie updated their comprehensive plan. This updated plan included broad plans to “[c]onserve a Town-wide network of open lands including, but not limited to, viable farmland, wildlife habitat” as well as “potential trail corridors” and “recreation areas.” The plan also includes updating current “recreational resources” to meet the current needs of residents. This will include updating the Town’s Parks & Recreation Master Plan to add new land to transform into recreational areas. Colonie also plans to invest in their urban forest and apply for urban forestry grants from several sources in order to do so. The Town of Colonie’s comprehensive plan does not make any reference to helping underserved communities of any kind. The plan also lacks any mention of why parks and green spaces are necessary. However, the plan does include a provision to “[p]rotect and promote the Town’s significant cultural and historic resources.” While initiatives like this can help protect historic sites, they are also a way to prevent change and keep out the populations suburbs were created to exclude.

In recent years, Albany has taken multiple steps to study, protect, and expand the urban forest in the City, seemingly in furtherance of the Urban Forest Goal in the *Albany 2030* comprehensive plan. For example, in the last couple of years, Albany announced a program focused on planting more than 2,025 trees by 2025 and another program called “adopt-a-tree” which covers “half the cost of a new tree for City residents who want to plant trees in front of or adjacent to their homes.” The City also conducted a tree inventory which included the collection of data on each tree in the City’s urban forest including species, tree health data, and recommendations for proper care. Through this inventory and urban forestry
analysis, City officials learned that pruning all trees in the City at approximately the same time (as opposed to one block at a time, but never completing tree pruning across the entire City) will improve the health of the urban forest. Albany recently received a $1.8 million dollar grant from the federal Department of Agriculture’s Urban and Community Forestry Program to help support the simultaneous pruning of the City’s trees. The University at Albany also received one of these grants. As the funds from these grants are used, it will be imperative for the City to ensure that the urban forest is being diligently defended and improved in all communities, but especially in marginalized and underserved communities.

Currently, when a tree is removed a property owner can request the City replace the tree and pay half the cost. However, this program relies on active property owners. Areas with the highest poverty rates in the City often have out of town land owners or absentee landlords. The adopt-a-tree program allows residents to plant trees near their residence for a small fee. The City then plants the tree of the resident’s choice and provides care instructions. The resident then cares for and waters the tree for a minimum of three years. This type of program not only helps residents improve their neighborhoods; it also helps bring people closer to nature by educating them on how to care for the trees. Since the beginning of the program, 1,155 trees have been planted through the adopt-a-tree program.

Recommendations

As discussed above, Albany 2030 includes several ways the City plans on improving access to parks and green spaces; however, the City’s parks and plans for parks generally fail to acknowledge potential racial inequalities to access. There is not one solution that will solve inequality in access to parks and green spaces in Albany. The issue cannot be solved by one city, or one region, alone. This is a systematic nationwide problem that will only be solved by widespread efforts. As one community improves it has the ability to help a neighboring community. However, Albany and other municipalities in the Capital Region can take steps to further existing initiatives and improve access to parks and green spaces that would have a positive impact on the City’s residents.

Reevaluating What Park Access Is and Engaging Communities

According to data from the Trust for Public Land related to whether City of Albany residents live within a walkable distance to park space, there is no inequality along racial or ethnic lines in access to parks. However, that does not mean that there is not inequality in terms of actual access. There are questions to ask when examining actual access. Do residents know they are allowed to use nearby parks? Do residents feel welcome? Is it safe for residents to be in the parks? Are the parks big enough for the size of the community they are supposed to serve? Do existing parks serve the needs of community members

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326 See Prune, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/prune (last visited Nov. 29, 2023) (defining prune as “to cut off or cut back parts of for better shape or more fruitful growth”).
328 Id. (further discussing how these Department of Agriculture grants are intended to be used “to create more equitable access to tree canopies and green spaces in U.S. cities to improve health and combat climate change”).
329 Id. (discussing how the $5 million grant awarded to the University at Albany is to be used to “establish a Center for Ecosystem-based Climate Adaptation” which will aim “to enhance climate resilience in Albany’s underserved communities and educate the next generation of local leaders” and develop “an ecosystem-based strategy for adapting to climate change, with an emphasis on urban forests, community empowerment and local economic growth”).
331 Id.
332 Id.
333 Id.
334 Id.
335 Id.
337 See Table 1.
338 Poon, supra note 299.
339 Id.
340 Rowland-Shea et al., supra note 251.
341 Poon, supra note 299.
and allow their preferred uses? A negative answer to any of these questions indicates limited actual access to parks and green spaces. Going forward, Albany needs to keep these questions in mind when working to improve access to parks and green spaces and ensure that there is no inequality in terms of actual access in the future.

Going forward, as Albany works to implement Albany 2030, increase access to parks and green spaces to meet its open space goal, and aid underserved communities, it is incredibly important to engage with and empower communities while prioritizing equity and justice.

Everyone impacted by potential changes, especially those from historically underserved and underrepresented communities, needs to be given a voice that is not only heard but listened to. Communities can no longer just hope for a seat at the table, they need to be brought into the kitchen and aid in the decision-making process. Specifically, Albany needs to develop plans for community outreach and development that emphasize accessibility for these communities. The creation of “goals, standards, and tools,” as well as the designation or empowerment of community leaders, will be necessary in order to ensure the community is not only heard, but believes their opinions matter. Future projects should take community needs into account both when improving existing parks and green spaces and when creating new spaces. Parks and green spaces need to be actually accessible in order to be equitable and just. These projects should look at historical injustices and current barriers to access to ensure the projects meet these goals.

Planning and Programming for Parks and Green Spaces

Since parks and recreation planning requires a focus on socioeconomic, environmental, and social equity issues in order to meet community needs, it is important for municipalities to rethink park planning processes. One step in the process in particular that can be improved is planning for how park spaces will be implemented, and within that step, municipalities should rethink which factors to consider at this stage in the process. In the Albany 2030 comprehensive plan, the City highlights the goal of improving community health through increased access to recreation opportunities, among other necessities. The plan lists as some of its proposed actions to achieve this goal:

1. developing a parks plan to prioritize communities which are in need of facilities;
2. developing a facility tracking process to keep track of recreation space usage and repair needs;
3. partnering with schools to share resources and, if possible, allow community members to access school recreational facilities;
4. developing partnerships with various organizations to help fund recreational facilities; and
5. designing parks that meet the needs of a wide range of users across generations.

While lacking explicit reference to minority and lower-income communities and specific listing of some possible

342 Id.
344 Id. at 17.
345 Id. at 23.
346 Id.
348 Id. (discussing how implementation discussions should occur earlier in the park planning process pursuant to a preliminary implementation framework and how in addition to more traditional implementation considerations such as capital improvements and new programs, preliminary implementation frameworks should consider changing staffing structures and programs/services in response to residents’ priorities, consideration of partnerships with other agencies and organizations, etc.).
349 Albany 2030, supra note 313, at 70.
350 Id.
351 Id.
352 Id. at 73.
353 Id.
354 Id. at 75.
funding sources, the plan begins to consider allocation of park access, amenity improvements, and recreational facilities based on community needs. Further, the plan contemplates the agreements and partnerships that may be useful to make these plans reality.

Allocation of public outdoor spaces and amenities can also come in the form of investing in programs focused on bringing underserved communities to the natural resources located beyond the communities’ geographic borders. New York State has several programs currently in place which focus on connecting underserved youth to the outdoors. The Ladders to the Outdoors program offers outdoor programming and recreational activities in state park sites throughout Western New York and provides the youth transportation to these spaces and opportunities through the Connect Kids to Parks program.355 The state’s Department of Environmental Conservation (DEC) in partnership with the New York Natural Heritage Trust also offers “camperships” which sponsor summer camp experiences for students who would not otherwise be able to afford camp.356 Camperships are offered at four DEC summer camp locations: two in the Adirondacks, one in the Catskills, and one in Western New York.357

One Albany-specific Summer 2021 pilot program which was initiated in an effort to connect underserved communities to the state’s parks was the Albany Nature Bus, a free bus service that provided transit for City of Albany residents to parks and natural areas throughout Albany County.358 This program was supported by the Mohawk Hudson Land Conservancy (MHLC), the Capital District Transportation Authority (CDTA), the DEC, and the state’s Office of Parks, Recreation and Historic Preservation (OPRHP).359

Albany Nature Bus has continued to run in the summer months and into the fall, but the program could potentially be expanded to include more locations.360 Further-reaching Nature Bus routes may require additional cross-organizational efforts in order to be successful, but other municipalities have seen success implementing expansive, county-wide transit equity initiatives to improve access to nature.361 One such program in King County, Washington, called Trailhead Direct has been successfully providing transit service “from the city to more than 150 miles of hiking trails.”362 While more bus stops still need to be added near communities that lack public parks, such as south King County,363 the program has generally improved access to trails for the 500,000 King County residents who cannot easily access public parks or green spaces.364 Prior to the COVID-19 pandemic, “[b]etween 71 and 73 percent of King County residents [could] reach two Regional or Community parks within 45 minutes from doorstep to park” using the Trailhead Direct system.365 Although the routes exist, these numbers do not necessarily reflect actual usage of the Trailhead Direct bus service, and it would still be useful for the program to “[e]ducate the public about existing transit routes to parks.”366

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355 Open Space Inst., supra note 343, at 12.
359 Id.
362 Id.
363 Id.
365 The Wilderness Soc’y, Connecting People to Parks in King County: A Transit-to-Parks GIS Analysis 40 (2019).
366 Id. (discussing how “just because the [Trailhead Direct] routes exist does not mean that they are utilized as well as they could be. To fully utilize the quality transit-to-parks routes King County already has, the public must be aware of and encouraged to take the bus to a park.”).
In King County, Washington, 500,000 people cannot easily access parks and green spaces, mostly these people are BIPOC residing in south King County. The County’s Trailhead Direct transit service provides city residents access to 150+ miles of hiking trails.

With so many natural spaces within driving distance of the Capital Region, including the Adirondacks and the Catskills, it would be worthwhile for the City to consider widening the range of the Albany Nature Bus service and potentially making it a county-wide service. Further, as discussed above in relation to the King County Trailhead Direct service, it will be important for Albany to promote the Nature Bus services and educate urban communities as to the existence of the routes. Albany Nature Bus could also be a program that the City coordinates with the surrounding suburbs in the Capital Region in order to expand service stop locations and promotion of the service.

**Focusing on Park and Green Space Maintenance, Quality, and Safety**

In recent years, New York has invested significantly in public lands such as parks and historic sites. The Parks 2020 project, managed by OPRHP, has led to completed or ongoing improvement projects in more than 700 parks and historic sites statewide. While this investment is a positive one in terms of improving the quality of state and local parks in the aggregate, the objectives behind park investment decisions need to shift to focus more on diversity and inclusion in park spaces in order to provide New Yorkers with more equitable access to high-quality and well-maintained outdoor spaces. Furthermore, safety is a major consideration if the municipalities in the state intend to make parks and outdoor spaces more accessible to a more diverse community since lower-income individuals and members of minority communities are not always made to feel welcome and safe in the outdoors. As discussed above, by engaging communities in the decision-making processes related to amenity allocation and outdoor recreational programming, Albany and other municipalities in the Capital Region can incorporate the ways these communities actually want to engage with parks into existing and future spaces.

A more welcoming environment can also be facilitated by culturally competent park staff and designated community ambassadors. A program that can serve as a model for a park ambassador program in Albany is the Forest Park Ambassador Program. This program, developed for Forest Park in Northwest Portland, Oregon, is led by a group of volunteer ambassadors. The program benefits Forest Park, the park users, and surrounding communities “by improving user behavior and building awareness around responsible recreation on public lands.” The program is also intended to facilitate deeper connections to nature and to “increase community engagement and stewardship of Forest Park.” In the Capital Region, a program such as this could start small, with an original goal of promoting community engagement and safety
within City parks. If this proposed City ambassador program is successful, the program could be expanded out to parks throughout the Capital Region so that suburban and rural outdoor spaces can be made safer for minority populations, whether or not they are traveling to these spaces from the City.

Albany should consider establishing a community ambassador program to make park spaces more welcoming to users. The Forest Park Ambassador Program of Forest Park in Portland, Oregon, can be used as a model for an ambassador program aimed at creating safe and welcoming outdoor spaces.

One good way Albany is currently engaging the community is through the adopt-a-tree program. With the success of the current adopt-a-tree program, after the City meets its goal of planting 2,025 trees by 2025, the program should be expanded to include more of the Capital Region. This increases tree coverage and increases education about the environment. The Capital Region could go a step further and create a program similar to New York City’s “endow a tree” program. This program is specific to Central Park and allows people, or groups, to sponsor either a mature tree or plant a sapling. Typically, people donate “in honor or memory of someone, or to celebrate a joyous occasion.” The endow a tree program can be expensive; $5,000 is needed to sponsor a fully mature tree of the donator’s choice, these types of donations also include an engraved paving stone on Literary Walk. A donation of $500 goes towards helping plant a sapling. The cost can make this type of program difficult to run. However, if the program is done alongside the adopt-a-tree program, more people can be reached, and more trees can be planted. By allowing people to sponsor a tree after losing a loved one, or after gaining one, people will feel more connected to the parks where these trees are. This will bring people to the parks and make them want to keep them in good condition. Programs like adopt-a-tree or endow a tree get the community involved in shaping the parks and green spaces of the places in which they live.

The Town of Colonie’s comprehensive plan includes improvements to infrastructure, specifically “enhance[ing] the safety and attractiveness of active transportation modes (walking and biking).” Colonie should take this opportunity to add trees and green spaces along walkways. The Town could encourage community engagement by beginning a program like an adopt-a-tree initiative around the project.

CONCLUSION

Access to parks and green spaces is vital for all communities. These spaces provide tangible benefits as a space for communities to gather and improve the overall health of residents. Areas that lack adequate parks and green spaces result in hotter communities with populations that are far less healthy than those in their properly served counterparts. In the wake of the COVID-19 pandemic, these underserved communities often lack adequate outdoor space for safe social gatherings and the administration of public services.

Historically, BIPOC communities have had disproportionate difficulty in accessing parks and green spaces. These areas often do not exist near these communities, and when they do there is an inequality in access to or function of these spaces. Albany has committed to improving access for underserved communities in their newest comprehensive plan, but this is not enough. Albany must commit to prioritizing equity and justice in their future plans to help ease the harm done by previous unjust policies. The City can begin this reprioritization effort by reevaluating what park access is and engaging the communities that the parks are intended to serve; rethinking park planning and programming; and focusing on improving the maintenance, quality, and safety of existing parks and green spaces.

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384 Id.
385 Id.
386 Id.
387 Colonie Comprehensive Plan, supra note 318, at 29.
CHAPTER 3: UTILITIES: WATER AND SEWER
HOW LAND USE DECISIONS INFLUENCE WATER AND SEWER SERVICE IN THE CAPITAL REGION

Author: Mitch Whittaker

Abstract

Public utilities have been provided to people through government intervention via construction and expenditure for thousands of years. Access to clean water, and conversely, safe and effective waste removal through the proliferation of public sewers, are two of the most well-known examples one can think of regarding a government’s duty to provide essential services to the people. Access to the most basic utility services for our homes are required for everyone to live healthy lives, regardless of one’s socio-economic class. Our review of public utilities in the capital region revealed that often, where the quality of housing is historically poor, the utilities that serve those areas are similarly in need of improvements and upgrades. This chapter’s goal is to give a historical background on some of these inequities, in the Capital Region and elsewhere, and offer suggestions for municipalities to improve their services moving forward.

Introduction

Water, and by extension sewer facilities, are an absolute necessity for all humans, regardless of race, sexual orientation, religion, or class. The United Nations, since 1992, has implicitly recognized that access to water, along with sanitation at an affordable price, is a human right, unalienable and as recognizable as any other rights humans enjoy simply by existing. If water has been internationally classified as an indispensable human right, in the 21st century, how could the various local governments of the United States sit idly by and allow water and sewer facilities to crumble? Shouldn’t this be high on the list of maintenance priorities of municipal governments? Unfortunately, generally speaking, our country has a long history of ignoring this basic need, especially among poor and non-white communities.

In this Chapter of our Racial Equity Report, we will explore the role of access to public utilities, specifically water and sewer systems within the context of racial justice and land use. In examining these systems, it is essential to question whether a correlation can be drawn in “redlined” neighborhoods between racist housing procedures and a poor quality of public utility services. It is likely that redlined neighborhoods tend to be older areas of cities with less desirable or poorly maintained properties. So, in those areas, it is more likely that there will be a poorer quality of water and sewer access, resulting in a poorer quality of life for those living there. Through my research, I have found that disparities in the age of water and sewer utilities suggests formerly-redlined neighborhoods, primarily housing racial minorities, are at a higher risk for negative health consequences stemming from the quality of their utility delivery systems.

This issue is important to investigate because often, the discussion surrounding discriminatory housing practices revolves around one’s inability to obtain a mortgage due to racial and economic prejudice, or a municipality’s refusal to construct affordable, multi-family housing in an area zoned to single-family homes. The logical response to a housing crisis would probably be concern about the physical places where people shelter themselves from the elements. However, a more holistic approach to combating segregation of home ownership and neighborhood demographics requires municipalities to examine all available means of improving the areas in which people live. This requires implementing efforts to meet all of the most basic needs of its citizens: shelter, food, and water.

The first section of the chapter will take us through a century of history regarding public utility access in America, case studies of American cities that suffer from inequity in access to water and sewer, and a macro view of water as a human necessity for survival. In the second section, I will focus on the Capital Region in describing the public utility facilities and conditions that currently exist.

Lastly, in the third section, I will list several suggestions and recommendations that Capital Region municipalities can undertake to improve the quality of their public utilities, chiefly in the interest of racial justice and equity. In order to understand how these problems associated with utilities affect the city of Albany and the surrounding localities, it is important to first study the historical context in which these issues arise, and what has been done to either exacerbate or ameliorate them.

Section I

Public Necessity

Humans require water to survive; the consequences of dehydration are literally the difference between life and death, which underscores just how important this issue is to explore. In the United States, especially in the Northeast, it is possible to take for granted just how accessible fresh, potable drinking water is; we turn on the tap at the kitchen sink, water flows out. There seems to always be enough to do the dishes, take a shower, or most importantly, drink a glass when we feel thirsty. However, our access to water on planet Earth is far more precarious than we may think.

Experts predict that by the end of the 21\textsuperscript{st} century, access to fresh drinking water will rise to the level of a global crisis. Under three percent of Earth's water is made up of fresh water, and less than one percent is fit for human consumption or use. According to the World Health Organization, there are more than one billion people globally who are unable to secure safe drinking water, and over two and a half billion people lack basic sanitation access, according to data from 2004. These statistics paint a grim picture, but it does not suggest that humans are somehow going to run out of water to drink, only that it is imperative for us to be incredibly careful about how we choose to use what water we do have access to, and that efficient use of that water should be a top priority for governments everywhere.

Further, the United Nations has acknowledged that access to clean drinking water and sanitation must be considered essential, if human rights are to be recognized across the world. In the United States, no such treaties or laws exist at the federal level acknowledging the absolute necessity of potable water for drinking or sanitation. The Obama Administration recognized the international community's support of clean water for all people, but that recognition had little influence on actual federal legislation. At the state level, California, Pennsylvania, and Massachusetts all recognize the human right to clean water access in their constitutions or other legislation. The recognition of this right at the federal level, and the statutory adoption of it by several states, may yet be enough to influence the nation's judiciary to take notice of how human rights are honored globally.

Although there may be a lack of a universal agreement in America that water and sanitation should be considered human rights, there is plenty of support to suggest that water is widely recognized, at least in a non-legal sense, as a basic need of all humans. One concern that has been raised is that if water becomes scarcer, or for some other reason potable water costs increase for American homeowners and renters, a line will be crossed and water would need to be classified as a human right to challenge exorbitant water bills. If the price increases such that paying for water becomes an economic burden

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392 Id.

393 Id.


396 Id. at 7.


398 Id. at 7, 10-11.


400 Id. at 12.
on individuals and their families, those who are most disadvantaged in terms of economic class will be the most negatively affected. Therefore, it is imperative that underserved communities are guaranteed access, to combat the possibility of rising water costs becoming untenable.

**Historical Context of Utilities and Race**

Armed with an understanding of how necessary public access to water and sewer systems are, we turn our attention to where disparities in the quality of these systems manifest themselves among different ethnicities and races. Additionally, we examine how the housing market and zoning practices have a negative impact on the water and sewer systems. Water may now be internationally considered a human right, but for a majority of the United States’ history, non-white individuals were treated as second class citizens, non-human even at times, so guaranteed access to public utilities was not always the goal of American policy makers during the late 19th and early 20th centuries.

During the 19th century, due to rapid industrialization, the United States experienced huge population booms in the urban centers of the country. One negative consequence of this rapid industrialization was the spread of disease and filth due to crowded conditions and a lack of central water and sewer services to treat drinking water and safely dispose of human waste. In response, city planners at the time began to allocate funding for public sewers and “waterworks.” What these “waterworks” provided was (1) a more sanitary way to access drinking water, and (2) a sewer system that deposited waste away from urban population centers. Thus, people were not depositing waste in the same water sources they drank from, and disease and mortality in these metropolitan areas decreased substantially.

While these improvements were a welcome improvement to American cities, the motivations behind the


402 Id.


404 Id.

405 Id. at 9.


407 Id.

408 Id.


410 Id.

411 Id. on individuals and their families, those who are most disadvantaged in terms of economic class will be the most negatively affected. Therefore, it is imperative that underserved communities are guaranteed access, to combat the possibility of rising water costs becoming untenable.

In 1897 in Philadelphia, for example, W.E.B. Du Bois surveyed 9,000 black residents of Philadelphia regarding their homes and access to water and sanitation. The results of his research indicated that the neighborhoods in which black residents lived were alarmingly underserved when it came to water access and sanitation services; only fourteen percent of black families had access to water closets or bathrooms, and water was to be fetched from a single hydrant in alleyways, if at all. Further, there was a direct correlation between a high mortality rate in these neighborhoods with very poor sanitation and water access, while the best served neighborhoods had some of the lowest mortality rates in the city.

In reading the research from Du Bois, one must infer that the non-white neighborhoods having the worst quality of sanitation is no ordinary coincidence. Racial discrimination was rampant during the turn of the century, and it is likely that the planners who designed and built the sewer system in Philadelphia had a purpose in designing sewers that only reached White people: they simply did not care to improve black, non-white, and immigrant neighborhoods.

Another example of a city with a discriminatory history surrounding their water and sewer utilities is the city of Baltimore, Maryland. Baltimore did not have a uniform city sewer grid until 1905, and the system was essentially left alone until a couple of decades ago, when the Environmental Protection Agency (“EPA”) sued the City for its environmentally harmful practices, forcing the city to update and improve utilities. The issue the EPA was tasked with fixing was the city’s practice of rerouting overflow from the sanitary sewer to the natural waterways of Baltimore. Overflow can occur during heavy rainfall due to an excess of water running off of streets and going into the subterranean infrastructure, or just during peak hours of water usage in a densely populated, small area.
The EPA was successful in ending Baltimore’s habit of polluting waterways with the overflow of human waste by capping the valves and pipes that provided the avenue for this overflow. However, this prohibition against polluting rivers with human waste does not change the fact that the sanitary sewer system will, from time to time, experience an overflow. And when the system experienced overflow due to an abundance of use among the residents of a given neighborhood, a new problem was created for the citizens of Baltimore: sewage backups.

Sewage backups tend to affect the African American neighborhoods of Baltimore at a higher rate than neighborhoods that are majority White. Specifically, the five neighborhoods which reported the most instances of backups from 2021-2022 were all majority non-white neighborhoods. These backups are not only filthy, but also are cause for public health concerns; they are very expensive to fix, and non-white communities in Baltimore tend to have a far lower median household income than the majority White neighborhoods.

An inability to foot the bill for the cost of repairs to fix damage caused by these backups is inextricably linked to race, due to the disparity in household incomes. Therefore, a huge economic stressor exists on top of the already-heightened risk of experiencing a backup for African Americans living in these communities in Baltimore. In the interest of equity and racial justice, Baltimore should fix these backups, especially in the neighborhoods where (1) the backups are more likely to occur, and (2) where the cost of fixing these catastrophes could break the theoretical bank of a family or individual living there.

Summary of Section 1

In reflecting on Section One of our chapter on Utilities for the Racial Equity Report, it is necessary to remember that we are observing these problems through a historical and land-use lens, while highlighting the utmost importance of access to clean water, and a sanitary sewer system in the interest of improving public health. In identifying correlations between low-income neighborhoods, non-White populations, and a dilapidated public works system of the past, we set the stage to examine the conditions that residents in Albany in racially segregated neighborhoods currently face. Next, we will identify what improvements have been made, and to what extent the problems persist. In Section Three of this chapter, I set forth several suggestions for ways in which the Capital Region can fix disparities in water and sewer systems along class and racial lines and protect access to water for those who are in the most danger of losing access to one of the most essential services and utilities in the world due to an increased scarcity of the same.

Section II

We next turn to the City of Albany. Disparities in the age of the water and sewer utilities in each area, when viewed through the lens of historical neighborhood demographics, paints a picture that suggests formerly-redlined neighborhoods are at a higher risk for negative health consequences stemming from the quality of their utility delivery systems. As discussed in the Introduction, redlining was an American housing and zoning strategy involving bankers and real estate brokers whereby cities were divided into zones where certain neighborhoods were deemed risky investments, based on the income level and race of those living in the neighborhoods in question.

The Capital Region was no exception to this phenomenon; the maps that were created to display the proliferation of redlining in Albany reflect this. Arbor Hill, the South End, and West Hill, three predominantly black neighborhoods in Albany, were all redlined by the Home Owner’s Loan Corporation in 1938. A designation of “redlined” essentially meant that if you wanted to own a home in one of those areas, you would most likely be unable to get a mortgage on the property. This practice by bankers and mortgage brokers effectively stripped Black Americans of one of the most common ways that working and middle-class families build any sort of wealth; through home ownership. The result was exactly that: many Black families

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412 Price, Baltimore’s Sewage Issues are Rooted in Racial Injustice, (2023).
413 Id.
414 Id.
415 Id.
416 Id.
417 See Figures 1 & 2.
419 See Figure 2.
were unable to get mortgages and could not purchase their
home and use property to build personal wealth.\textsuperscript{420}

Below, I juxtapose the areas that have been historically
redlined against the water and sewer utilities that
serve those areas. From these maps, we can see a direct
correlation between areas that were redlined by the
Home Owner's Loan Corporation and the water mains
constructed by the city prior to 1920. Old water mains
that remain in service pose a threat to the individuals who
live in those areas, since they can be more likely to break
down or fail, and the materials they are made from can be
less safe than modern plumbing.

\section*{Albany's Old Water Mains and Redlined Neighborhoods}

As stated above, the areas of Albany that were designated
as the highest risk areas for mortages were the Arbor Hill,
West Hill, and South End of Albany.\textsuperscript{421}

\begin{figure}[h!]
\centering
\includegraphics[width=\textwidth]{water-mains-redlined-neighborhoods.png}
\caption{Map Courtesy of the Albany Water Department; red lines on streets and through blocks demonstrate water mains that were constructed prior to 1920.\textsuperscript{422}}
\end{figure}

In observing these two maps, one aspect jumps out to the
reader right away. The red and yellow shaded areas on the
redlining map located north, south, and west of downtown
Albany and Washington Park (South End, Arbor Hill, West Hill, Pine Hills) are almost identical to the locations
of the water mains that were constructed prior to 1920,
many of which are still in the ground to this day.\textsuperscript{424} It
is possible to glean from that comparison, in viewing
the situation in the light most favorable to those who
conspired to invent redlining, that it just so happens that
those are the older parts of the city, and property values are
lower there because the buildings are old, and the water
mains were built there first when the sewer system was
installed so of course they would be older.

Be that as it may, it does not change the fact that an
aging water main network and all associated support lines
to properties falling into disrepair could have serious
consequences for the people who live in those areas.
Additionally, the presence of lead and other heavy metals
is possible in older municipal water networks, including
Albany's.\textsuperscript{425} The Albany Water Department cautions all
those who receive service that although the water is treated
for small amounts of lead particulate matter with anti
corrosion chemicals in the water, any amount of water

\begin{figure}[h!]
\centering
\includegraphics[width=\textwidth]{redlining-map.png}
\caption{Located to the right is a map showing where "Redlining" did occur according to the Home Owner's Loan Corporation. The areas in red are; to the north, West Hill and Arbor Hill, and the red portion to the South is the South End neighborhood.\textsuperscript{423}}
\end{figure}

\begin{itemize}
\item \textsuperscript{420} Mikat\& Medina, \textit{A City Divided} (2021). \url{https://www.timesunion.com/projects/2021/albany-divided/}.
\item \textsuperscript{421} See Figure 2.
\item \textsuperscript{422} Dave Lucas, \textit{Albany Water Board Vote Next Month Likely to Mean Rate Hike for Residents}, WAMC Northeast Public Radio (2019). \url{https://www.wamc.org/capital-region-news/2019-11-27/albany-water-board-vote-next-month-likely-to-mean-rate-hike-for-residents}
\item \textsuperscript{424} See Figure 1; Figure 2.
\end{itemize}
passing through lead pipes leaves the door open for lead exposure.426

According to the Environmental Protection Agency, lead in drinking water is an incredibly dangerous reality and can lead to many health problems and birth defects if water is not properly treated or if pipes are not made out of acceptable materials.427 The Albany Water Department gives people several tips on how to check if the service lines to one’s home are made out of lead pipe, and even offers programs on how to have the water authority replace your existing lead pipes with new materials to lower residents’ risk of lead exposure.428 Due to historical unawareness of the danger of certain chemicals like lead, it is likely that the older the network of feeding mains and service pipes are, the more likely that they are to be composed of lead rather than a safer material, such as iron.429 The city is actively spreading awareness about the possibility of lead in the water supply, and has committed to continuing to replace lead pipes as much as possible; such an undertaking will nonetheless take a very long time before all dangerous pipes are replaced, if ever.430

Further, an older water main is one that is more likely to break, and compromise the quality of the water that is serviced to Albany residents. When a water main breaks, all service that is fed by that main is halted, and residents are either unable to use water in their homes, or they will be forced to boil what water is fed to their homes, for fear of its contamination by other chemicals or particulate matter the water may come into contact with in another part of the main further upstream or downstream.431 Last November, there were several water main breaks throughout the heart of downtown Albany, coincidentality connected to many of the red lines on Figure 1, causing road closures, flooding, and immense taxpayer expenditure to patch up the breaks and replace old, broken pipes.432

“Like much of New York State, Albany County’s supply infrastructure...is old and in need of significant upgrades. In fact, the New York State Comptroller’s Office estimates that the State’s water systems require nearly $40 billion in repairs and improvements. This aging infrastructure is susceptible to deterioration, leading to leakages, contamination, and in some cases, large-scale disruptions, such as water main breaks.” - Albany County Economic Development Strategy.433

The prospect of our water supply possibly poisoning us, or breaking down when the ground begins to freeze and thaw, during the changing of the seasons, is a frightening concept for any homeowner or tenant. However, these fears are greatly exacerbated in the context of being a non-white resident of a low-income neighborhood. Residents of the historically relined neighborhoods identified in Figure 2 are, more often than not, living paycheck to paycheck since median household incomes are lower than other places.434 Residents from these neighborhoods typically do not own the homes they dwell in, they rent from landlords and hand over rent money without earning any equity in the property that they have to pay to live in.435

426 Id.
431 What To Know About Water Use After a Water Main Break, Harris Water Main & Sewers, https://www.harriswatermainandsewers.com/what-to-know-about-water-use-after-a-water-main-break/#:~:text=To%20keep%20yourself%20safe%20or%20using%20your%20washing%20machines. (Last accessed 11/9/2023). (“Limit Water Usage...Your area may issue a boil water warning or alert, meaning you should boil any water you use for at least a few minutes to kill off any impurities that may make their way into the water supply.”)
434 See Figure 2; Brenda Richardson, Redlining’s Legacy Of Inequality: Low Homeownership Rates, Less Equity For Black Households, Forbes (Jun. 11, 2020, 12:08 PM), https://www.forbes.com/sites/brendarichardson/2020/06/11/redlinings-legacy-of-inequality-low-homeownership-rates-less-equity-for-black-households/sha=3c32405b2a7c
These neighborhoods are already incredibly vulnerable to sudden expenses popping up due to their residents’ tendencies to earn lower incomes. A water main could break and people living in these neighborhoods may not be able to buy bottled water to drink during the repair. Worse yet, a mother could find out she was exposed to lead during her pregnancy, and now she has expensive medical bills she cannot pay. Our cities should take responsibility for these risks and mitigate them by upgrading systems, since access to utilities that are safe and reliable are a necessity for a healthy population. In order to better achieve racial equity in Albany, there needs to be more of a push to upgrade these systems in the areas that need it the most, which are the same areas that have been historically neglected in other capacities of city planning.

**The Suburban Capital Region: Conditions Outside of Albany**

We now turn to the Town of Guilderland, and it is important to note that, as mentioned in previous sections of our report, the racial demographic makeup of the town differs greatly from that of Albany’s. Guilderland’s population of approximately 37,000 citizens, 79.5% of whom are White. This smaller and more homogeneously-White community similarly provides public water and sewer utilities to its residents, just like Albany. However, the strain on the system is limited due to the reduced population in comparison to Albany, and lower populations translate to less service lines because there are simply less people in need of water.

Additionally, the town of Guilderland hosts large swaths of agricultural and rural residential land. Albany has effectively no agricultural zones, while Guilderland is home to wide open spaces for cultivation of crops or raising of livestock, but most importantly, effective drainage of storm water. The city of Albany is nearly entirely occupied by either residential real estate, commercial uses, or mixed use areas where the land can be used for multiple purposes; greenspace is present, but not as prevalent as the city’s municipal neighbor to the west.

These factors actually improve the quality of water usage in Guilderland. Less water use due to a smaller population means the town or city has less of a burden to maintain the water system, and when it rains or floods, large areas of greenspace are more effective at draining excess naturally-occurring storm water than sidewalks, streets, and pavement, generally. In Albany and Guilderland, there exists a sanitary sewer system, and a storm sewer system. This system requires that sanitary sewage, that is, wastewater from households and businesses, be routed directly to the wastewater treatment plant. Meanwhile, stormwater, which is rain or flood water that upon hitting the ground is collected by drains along curbsides,

("The typical homeowner in a neighborhood that was redlined for mortgage lending by the federal government has gained 52% less—or $212,023 less—in personal wealth generated by property value increases than one in a greenlined neighborhood over the last 40 years. Black homeowners are nearly five times more likely to own in a formerly redlined neighborhood than in a greenlined neighborhood, resulting in diminished home equity and overall economic inequality for Black families.")


441 Property Information, City of Albany, (2020), https://www.albanyny.mapgeo.io/datasets/properties?abuttersDistance=250&latlng=42.651685%2C-73.789532&panel=themes%26themes=%B%22proposed-zoning%22%5DK%7D%zoom=13.

442 Denchak, *Green Infrastructure*, Natural Resources Defense Council (July 25, 2022.) https://www.nrdc.org/stories/green-infrastructure-how-manage-water-sustainable-way#whatis (last accessed 11/9/2023). (Green infrastructure captures the rain where it falls. It mimics natural hydrological processes and uses natural elements such as soil and plants to turn rainfall into a resource instead of a waste.)


driveways, and sidewalks, typically runs directly into local bodies of water such as rivers, lakes, and streams.\footnote{Id.}

The reason why this distinction is important is because during extremely wet weather, these systems can become overwhelmed. As a huge influx of storm water can mix with the normal household usage of the sanitary sewers in the subterranean pipe networks, the wastewater treatment plants which are designed to only handle sanitary sewage will be unable to process all the additional water.\footnote{N.P.D.E.S.: C.S.O. Basics, E.P.A., (2023), \url{https://www.epa.gov/npdes/combined-sewer-overflow-basics}. (last accessed 10/28/2023).} Resultingly, this combined sewer overflow (the “C.S.O.”) will spill into the local waterways, polluting the environment with human waste in the process.\footnote{Id.}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{combined_sewer_overflow_diagram.png}
\end{figure}

C.S.O.’s are also necessary and significant in the discussion of land use and racial equity. In evaluating the limited amount of green space in the city of Albany against the

\begin{figure}
\centering
\includegraphics[width=\textwidth]{combined_sewer_overflow_outfalls_map.png}
\caption{Map of Combined Sewer Overflow Outfalls in the U.S., including Albany and other communities in the Capital District and across upstate New York. (Purple dots are all cities that feature these systems.)\footnote{N.P.D.E.S.: Where C.S.O. Outfalls are Located, E.P.A., (2023), \url{https://www.epa.gov/npdes/where-combined-sewer-overflow-outfalls-are-located}. (Last accessed 10/29/2023).}}
\end{figure}
pure abundance of rural, open space that is available in Guilderland, armed with the knowledge of how C.S.O.’s can pollute waterways, one can see how an area consisting almost exclusively of paved surfaces would create an inordinate amount of water runoff when compared to grass and dirt. Large, open fields and other green spaces allow water runoff to enter the earth’s subterranean ecosystems naturally, as excess rainfall and flood waters filter through the soil.449 Wherever a lack of green space exists, we replace natural drainage with “gray infrastructure,” as seen in Albany.450

However, as described by the C.S.O. diagrams shown above, no amount of gray infrastructure can replace natural systems of drainage, if these natural systems are available. In Guilderland’s case, the town’s water and sewer network has a huge advantage in terms of managing stormwater runoff, and the people who live there are better off because of that advantage. Living in a town where pollution of local waterways is avoidable most times it rains is a net positive in terms of public health policy, but it is a positive that many Albany residents are not yet able to enjoy.

When viewed through a racial and class-conscious lens, the advantage of Guilderland residents becomes increasingly stark compared to Albany. As previously mentioned, Guilderland’s population is 79.5% White, compared to Albany at 54% White.451 Further, there is a disparity in the overall wealth and poverty rate between these two communities: Guilderland posts a 5.2% poverty rate and a $94,600 median household income, while Albany’s numbers are a 22% poverty rate with a $52,600 median household income.452

While the risk of flooding and water pollution due to poor infrastructure is not ideal no matter what one’s financial situation may be, the point is that the risk of these events happening are greater in a place where individuals are more likely to be less equipped to deal with the fallout of the problems due to financial constraints.453 When economically-disenfranchised and non-white people are in greater danger of natural disasters associated with flooding because of poor infrastructure, that is a problem of equity.454 To that end, people living one town over should not be any safer from flooding or health risks if the government is solely responsible for the allocation of, the supply of, and the protection from a resource, which in this case, is water.

Summary of Section 2

While the capital district has great plans for what will come next in terms of utility improvements, there is still much work to be done to ensure everyone has equal access under the law to water and sanitation, widely considered to be human rights. The timeline for utility infrastructure overhaul should be moved up and there should be a greater push to complete these projects that the most vulnerable residents of the area desperately need to ensure they have equal protection of and access to better overall public health.

It seems deeply unjust that two different residents of the same geographical region can experience completely different versions of access to water supply networks that are made from safe, non-toxic materials, that are not at risk of bursting every time the ground goes through its freeze-thaw cycle. Nor should anyone have to worry that a flood could destroy one’s home, or risking the pollution of local waterways every time a heavy rainstorm blankets the area. In the following section, we will examine what innovations and developments are currently working in Albany, plus what has worked in other municipalities to improve the performance of utility systems, and how we can apply those techniques to the greater capital district to increase racial and class equity.

450 Id.
453 Id.
Section III

Recommendations and Conclusion

In observing the dichotomy of these two municipalities in the Capital District, Albany and Guilderland, any recommendations should focus on what we can implement from other towns and cities that are helpful, what should be applied to all area municipalities regardless of demographics, and what can be realistically accomplished in the necessary time frame. In other words, how can we make changes, and when do we have to make them? Since water is deemed an international human right, even if not fully recognized by the United States, and local governments are tasked with providing that service for their citizens, these changes should be on the top of the list of priorities for Capital Region municipalities.

First, one recommendation that would be a tremendous undertaking, but may be the most necessary change of all, is removing all the old, lead pipes in Albany, Guilderland, or any other town or city that is still using this harmful material to move water from the treatment facility to our homes. As discussed in Section II, Albany’s Old Water Mains and Redlined Neighborhoods, lead pipes are prevalent in the city of Albany. While the Albany Department of Water assures residents that the water is treated to prevent trace amounts of lead from seeping into the water supply, and it is already a mission of the city to replace the old pipes anyway, we would recommend that this is a top priority task.

Any lead that does find its way into the water, according to the city, would be at such a trace amount that it would be incredibly unlikely to actually harm humans. Regardless, the fact that it is a possibility that exists should be enough to make Albany take a more aggressive stance towards the issue. While it may take unprecedented amounts of taxpayer money and the construction timeline would be incredibly long, the point is that it would be done eventually, and that public health in the city would improve as a result.

Further, replacement of the old, lead pipes with new materials would likely cut down on water main breaks, which are also prevalent in Albany due to the aging sewer network as described in Section II. The city has stated in the 2022 Water Quality Report that replacement of several of the old mains has already begun. This progress is excellent, but it is imperative that the city continue to take initiative and improve the network of lines that are old and likely to break somewhere this winter, or the next winter, or the next one. If all the city’s aging and lead water mains and service lines are replaced with state-of-the-art plumbing, not only will the city save in the long run on maintenance costs in the future, but the overall health of the Albany population should improve. Since water is necessary for life, and it is the government’s responsibility to provide it to our houses, these replacement projects should be considered to be of the utmost importance.

Additionally, I would recommend that the city of Albany and the town of Guilderland, although they both have started these initiatives, begin installing green infrastructure everywhere that it is possible. Guilderland has plenty of natural space where water is free to drain into the ground unfettered by gray infrastructure, but why stop there? Where gray infrastructure does exist in Guilderland, the town government should be looking into replacement in favor of a more environmentally friendly solution. Further, although Albany is rife with gray infrastructure and severely lacking in greenspaces due to its urban sprawl, all is not lost. There have already been several projects where the Albany Water Dept. was able to overhaul entire streets to include environmentally friendly green infrastructure.

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455 See Section II above.
458 See Section II above.
Figure 5: Diagram of one example of green infrastructure. Porous pavement, trees, grass, and soil lining the streets collects and absorbs storm water faster and more efficiently than a storm sewer alone, and can provide more greenspace in urban areas.  

If the city of Albany is able to implement these changes, they will effectively be limiting the amount of storm water entering the storm sewer during heavy rainfall, which will limit C.S.O., cut down on pollution in local waterways, and bring vibrant plant and tree life to greenspaces all over the city, which are so desperately needed in urban areas. If the water does not have anywhere to run off to except for where the sewer takes it, there is bound to be overflow somewhere along the line, or flooding in the lower areas of the city. By Albany taking a page out of Guilderland’s book and increasing the availability of greenspace, C.S.O. should decrease, leading to less pollution in our water that we turn right around to treat and consume, which will increase public health and decrease wear on the water treatment system. Therefore, the city of Albany, and all communities in the capital district, should be implementing these green infrastructure practices whenever and wherever they are possible.

Lastly, I believe that if New York wants to truly effectuate lasting change and prioritize access to quality public utilities, I think that the New York State legislature should amend the State Constitution or pass a law that codifies clean, potable water as a human right. If clean water was deemed a human right by a lawful decree, state and local governments would be required to be more responsible in their treatment, delivery, and general use of water. As previously mentioned in Section I, California, Pennsylvania, and Massachusetts have enacted legislation that classifies water as a human right, and this designation heavily influences state agencies when they make decisions related to the use and supply of water to local municipalities.

California, for example, has recognized that every person in the state is entitled to “clean, safe, and affordable drinking water” since 2012 with the passage of Assembly Bill 685. This further inspired the state to create an online data tool which tracks the water districts across the entire state to ensure compliance with state water quality standards, and to protect these rights to clean water. With this tool that only started because of the state’s recognition of water as a right, the state can better provide critical resources to its citizens due to a heightened level of monitoring and reporting on water quality.

New York has the opportunity to mirror the initiatives of California, and they can start by including, via legislation, water among the list of human rights identified and protected by the state government. New York does not have to enact the same types of programs as California has created, referenced above, but the point would be to put some additional pressure on the state agencies to prioritize clean water access across all local governments of the state. I think it is likely that if New York did create either a constitutional amendment or propose a bill that would accomplish this task, it would stress the importance of water quality, and compel all municipalities to further improve their public utilities to better serve those who live there.

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CONCLUSION

In sum, the Capital District, especially the city of Albany, could do wonders for racial equity by making these necessary upgrades to our aging and damaged utilities services. Albany is on the right track with the improvements that have already been made, but we must not stop there. By making these upgrades, the most vulnerable populations experiencing de facto racial segregation and income inequality living in historically redlined neighborhoods could breathe a little easier knowing that if there is one thing they can count on, it is that their government provides them with quality service of the pinnacle of our most basic needs: water.

Additionally, the state could bolster access to this need by either amending the state constitution or passing legislation that guarantees a human right to water. We all need it to survive, but without proper upkeep and innovation in our utility services to limit pollution, increase conservation, and ensure potability, the most at-risk people will be the first to suffer as water becomes more and more scarce. We cannot allow that to happen.
CHAPTER 4: FUNDING TRANSPORTATION TO COMBAT DISPARITIES

Author: Aamash Mussa

Abstract

Transportation plays a crucial role in determining race equity in communities, affecting access to jobs and critical services. Albany faces the problem of uneven distribution of transportation facilities, particularly public transit, which disproportionately impacts underprivileged areas and communities of color.

The research aims to address the racial injustices exacerbated by transportation imbalances, particularly in low-income and minority neighborhoods. The study also focuses on identifying funding mechanisms to bridge the transportation gap and improve racial equity in transportation.

The research design involves a comprehensive analysis of existing transportation disparities in Albany, with a focus on low-income areas and communities of color. It includes examining the impact of transportation safety concerns on racial equity and identifying potential funding mechanisms to improve transportation infrastructure.

The study highlights the impact of transportation disparities on underprivileged communities and the need for investments in public transportation infrastructure to alleviate the burden on financially disadvantaged individuals. It also identifies tax-increment financing, value capture, and other funding mechanisms as potential solutions to bridge the transportation gap and improve racial equity.

The findings emphasize the importance of directing public funds towards transportation equity efforts, particularly in low-income and minority neighborhoods. The study also highlights the potential benefits of congestion pricing and other funding mechanisms in addressing transportation disparities and promoting racial equity.

Introduction

Transportation plays a crucial role in determining race equity in any community. For people to have access to jobs, education, healthcare, and other critical services, they must have access to dependable, safe, and inexpensive transportation. Transportation imbalances frequently disproportionately impact underprivileged areas, escalating already-existing racial injustices. The uneven distribution of transportation facilities, particularly public transit, is a problem that Albany faces.

Numerous studies have demonstrated how disadvantaged regions, particularly low-income areas, and communities of color, frequently have poor access to extensive public transportation systems. They could have more difficult connections to key locations including residential regions, employment hubs, and educational institutions as well as lengthier travel times and fewer transit alternatives.

Another important element that contributes to the problems with race equity is the cost of transportation. Those with lower incomes, who are disproportionately persons of color, can find it difficult to buy private automobiles or other forms of transportation, such as ride-sharing programs. Their movement and access to options that may improve their socioeconomic level are so constrained. Equal access to transportation may also be hampered by high parking fees and a lack of affordable housing close to transit hubs.

Furthermore, transportation security is a major issue that affects racial equity. According to studies, African Americans are more than twice as likely to be struck and killed by a vehicle than a White person because of things like poor neighborhood infrastructure, a lack of crosswalks, and poor illumination.


466 Adam Paul Susaneck, American Road Deaths Show an Alarming Racial Gap, NEW YORK TIMES (Sept. 6, 2023), https://www.nytimes.com/interactive/2023/04/26/opinion/road-deaths-racial-gap.html#:~:text=It%20found%20that%20Black%20people,as%20that%20for%20...
forms of transportation, leaving less alternatives for economically disadvantaged communities.

Investments in public transportation infrastructure, particularly in low-income and minority neighborhoods, can help bridge the transportation gap. This involves boosting the availability of public transportation and increasing bus frequency and dependability. Making public transportation systems inexpensive by instituting sliding-scale prices or income-based discounts may also assist in lessening the burden on those who are less fortunate financially.

Efforts to improve transportation equity should also focus on enhancing pedestrian and cyclist safety. Implementing traffic calming measures, building safer crosswalks, and improving street lighting can make walking and cycling safer options for all residents, including marginalized communities.

In order to improve transportation equity, public funds must be directed towards such efforts. Large amounts of funding stem from taxpayer money. Property assessments and property taxes dictate the amount that homeowners pay to local governments, who oversee redirecting the money to public services which include transportation. Creative solutions that will bring more money into the region along with more innovative allocation of funds can lead to solutions that will aid in transportation equity. Techniques used to accomplish this may include tax-increment financing, value capture, along with improving commercial transportation locations (such as regional airports, ports, and railways).

Recommendations have also stemmed from more direct funding, meaning that funds directed for particular projects should stem from charges that related to that specific project. The following figure illustrates such a theory.467

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**Revenues**

This section discusses the issue of transport charging and property tax in New York State, specifically in the Capital District. The background of the study is the need to ensure fair payment for the use of transportation infrastructure and the need for funding local government services. The research problem is the potential resistance to an increase in property taxes due to the prevalence of car-centric infrastructure in the region. The aim of the study is to analyze the potential impact of increasing property taxes for funding transportation infrastructure on residents and businesses in the Capital District. The methodology involves a horizontal and vertical equity analysis to assess the potential benefits and burdens of the proposed tax increase.

The findings indicate that the implementation of tolls and property tax increases can generate significant revenue for infrastructure maintenance and public services. The implications of the study suggest that careful consideration of equity and potential impacts on renters is necessary when implementing such policies. Keywords: transport charging, property tax, equity analysis, infrastructure funding, toll facilities, New York State.

**Transport Charging**

Transport charging refers to the pricing of transportation services, whether it’s for passengers or goods; it includes the costs associated with the use of transportation infrastructure, such as roads, bridges, railways, and

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The objective of transport charging is to ensure that the users of transportation infrastructure and services pay a fair share of the cost of maintaining and improving the system. This can include charging fees for road usage, tolls for bridges and tunnels, or taxes on fuel purchases, for instance. Transport charging can also be used as part of a broader policy strategy to manage transportation demand and encourage sustainable transportation options, such as public transit, cycling, or walking. Overall, transport charging is an essential part of transportation planning and policy, and it plays a critical role in ensuring a reliable and efficient transportation system that meets the needs of people and businesses.

**Property Taxes and Assessments**

In New York State, the property tax is a local tax which is raised and spent locally to finance local governments, public schools, police and fire protection, road maintenance, along with other municipal services. To determine the amount owed in taxes, a tax assessment must be done first.

First, a property’s market value must be determined. Three different metrics are used to make this estimate. There is the market approach, which compares the property to similar properties that were sold recently. Next, there is the cost approach, which calculates the cost of building a similar structure, adding the value of the land, subtracting depreciation costs. Last, there is the income approach, which analyzes how much income a property will produce when rented. The market approach is generally used for farms, residential properties, and vacant properties, whereas the income approach will generally be used for apartment building.

This assessment is then multiplied by a property tax rate (expressed as a percentage per $1,000 of value); this is determined by a county or district’s tax levy (which is the county or district’s revenue minus its budgetary expenses) divided by the number of taxable assessments in that jurisdiction. Generally, in New York (outside of New York City), the majority of property tax revenue is levied by schools; the following figure illustrates New York State’s distribution (outside of New York City).

Because property taxes are already collected in most jurisdictions, implementing extra funds gained from property tax revenue would be relatively easy. The main issue becomes political; raising taxes is already an
unfavorable policy solution in the eyes of many citizens. Once it is considered that there is one car per household in Albany on average, much of the public would be against an increase in taxes – especially because those affected by this tax, homeowners, are those not affected by transportation equity and are therefore fine with the car-centric infrastructure of the Capital Region.479

One can try to mitigate this argument through horizontal equity analysis. The theory behind this is that increasing property taxes to improve public transportation will result in savings and benefits to nearby residents and businesses such as congestion reductions, parking cost savings, household savings, and emission reductions.480 A vertical equity analysis is much more directly progressive in that this tax does not show to be burdensome to those who will benefit from it; however, renters may see an uptick in rent as a result of a property tax increase.481

Tolls

Funds generated from tolls are used for maintaining, constructing, and improving infrastructure such as highways, bridges, tunnels, and other transportation facilities. These funds are used for paying off bonds issued to finance the infrastructure projects and also for covering operating and maintenance costs. In some cases, toll revenues may be used for funding transit projects such as bus or rail services. The toll fees can be a significant source of revenue for the government, which can be used for reducing the burden on taxpayers and funding public services.

There are several toll facilities located in or around the Capital District that are operated by the New York State Thruway Authority, which handles toll collection on the Thruway system. The following are the toll facilities that are in the Capital District: (1) Berkshire Connector which connects the Mass Turnpike to the New York State Thruway in Schodack, Rensselaer County; (2) Castleton Bridge, located on the Thruway in Castleton-on-Hudson, Rensselaer County; (3) New Baltimore, located on the Thruway in New Baltimore, Greene County, just south of Albany; (4) Exit 24 on the Thruway just west of Albany, in Albany County; (5) Exit 25A on I-90 in Schenectady, Schenectady County; and (6) Exit 27 on the Thruway just west of Amsterdam, Montgomery County.482

Expenditures

Land value capture is a process of capturing the increase in land value due to public investment or infrastructure improvements to benefit the public. The objective is to generate revenue for public investment, economic development, and equitable growth, rather than just increasing private property value. This study aims to explore the use of land value capture for infrastructure financing, urban planning, and public policy, with a focus on transit-oriented development (TOD). The research design involves a review of development-based land value capture systems and tax increment financing (TIF) as methods to recover transportation investment costs.

Participants include local governments, transport authorities, developers, landowners, and communities involved in joint value creation initiatives. The results indicate that land value capture can promote economic competitiveness, environmental sustainability, and social justice through collaborative efforts. The implications suggest that well-designed areas with efficient public spaces can command premium prices and attract outside investors.

Land Value Capture

Land value capture refers to the process of capturing the increase in land value that occurs due to public investment or infrastructure improvements. The objective of land value capture is to use public investment to create economic value that benefits the public, rather than just increasing the value of private landowners’ property; by capturing the increase in land value, governments can generate revenue to fund additional public investment, facilitate economic development, and promote equitable growth.

Mathematically, it is a one-time tax on the change in property values. If funds directed towards a capital project result in an increase in property value, then this difference is what is taxed. For example, if a property is valued at $20 million and a specific development project results in the property rising to $25 million, then this $5 million increase is taxed.

479 Housing and Living, Data USA, https://datausa.io/profile/geo/albany-ny/.
481 Id.
difference is what is taxed. A 20 percent tax will raise $1 million in tax revenue.

Figure 3.**

Governments can use development-based land value captures not only for infrastructure financing but also for urban planning and public policy; ideally, cities should promote economic competitiveness, environmental sustainability, and social justice.** By changing land use regulations (such as by granting higher floor area ratios, which is the ratio between a building's floor space to the land it was built on, and converting single land uses to mixed land uses), governments can increase development-based land value capture revenues (such as by granting higher floor area ratios and mixed land uses), allowing distinct densities to be developed for different uses in the station area. Typically, the value of the property increases with use. By using development-based land value capture revenues for transit-oriented development (“TOD”) investments in station areas (parks, streetlights, cycleways, pedestrian paths, etc.), governments, transport authorities, developers, landowners, and communities can work together to create efficient and attractive and safe public places can be developed.

Figure 4.**

The development of world-class public spaces like this will enhance the property value of the TOD area. In exchange for floor area ratio bonuses and other regulatory incentives, governments may require developers to provide social amenities such as affordable housing, day care centers, and green space.

Land value capture can lead to proper integration of transportation and land use that promotes a city’s economic competitiveness, environmental sustainability, and social justice; more specifically, transit-oriented development (locating amenities, employment, retail, and housing near each other, creating distinct densities around transportation hubs) is an important tool for achieving sustainable urban development. Real estate located in well-designed areas commands a premium price due to ease of access and agglomeration advantages. The benefits can be maximized through collaborative efforts by local governments, transport authorities, developers, landowners, and communities. In this joint value creation initiative, local governments and transportation agencies can significantly contribute to value creation through land use changes (floor area ratios and land use) or transportation investments. Additionally, different development-based land value capture systems can be adapted to local conditions to recover some of the

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483 Id.
484 Id.
485 Id.
486 Id.
487 Id.
488 Id.
489 Id.
490 Id.
transportation investment, operation and maintenance costs.\textsuperscript{491}

\textit{Figure 5}.\textsuperscript{492}

\section*{Tax Increment Financing}

Tax increment financing (TIF) is a public financing method used to support economic development, infrastructure, and redevelopment projects. TIF allows the local government to invest in an area with the goal of stimulating economic growth, increasing property values, and generating tax revenues. TIF is based on the principle that infrastructure and public-space improvements attract outside investors and will lead to the increase property values.\textsuperscript{493}

Under TIF, a certain area is identified as a “tax increment district” or “TIF district” where the property taxes generated by new development or increases in property values within the district are earmarked for use in that district.\textsuperscript{494} This means that the taxes paid on the increased value of the development are diverted from the general fund of the local government and used to pay for development projects and services within the TIF district. TIF typically involves the issuance of bonds to fund the development project or services within the TIF district, with the expectation that the increased tax revenues generated by the project will be used to pay off the debt over time.

The way TIF calculates the amount of tax revenue directed towards funding infrastructure, development, and public-sphere projects are as follows: first, a base tax level is established.\textsuperscript{495} Next, the municipality issues bonds are issued to raise funds used for these capital projects; these are generally meant for larger projects such as land acquisition, street improvements, along with various other developments.\textsuperscript{496} During the period of development, properties and land inside of the TIF district experience an increase in property values; this increase causes the assessed taxes to be above the established base tax level.\textsuperscript{497} The revenue generated between the difference between the new tax assessment and the base tax level is used in order to repay the debt used to finance the projects made within

\section*{Policy Recommendations}

\section*{Earmarking}

Earmarking in economic policy refers to the allocation of funds to a specific project or program by either the government or a private entity for a specific purpose; earmarking is often used to ensure that funds are directed

\textsuperscript{491} Id.
\textsuperscript{492} Id.
\textsuperscript{494} Id.
\textsuperscript{495} Id.
\textsuperscript{496} Id.
\textsuperscript{497} Id.
\textsuperscript{498} Id.
\textsuperscript{499} Id.
toward a specific objective and are not used for other purposes.500

For example, the government may earmark funds for infrastructure projects such as building roads, bridges, or dams. These funds are specifically allocated for these projects and cannot be spent on other purposes like education or healthcare.

Earmarking is often used as a part of fiscal policy to support certain industries or programs. It enables the government to direct funds towards specific goals and objectives without having to allocate additional resources from the overall budget. However, critics argue that earmarking can lead to inefficiencies, as it can result in funds being used for projects that may not provide the greatest benefit or value for money.501 Additionally, earmarking can reduce flexibility in the use of funds and inhibit the ability of policymakers to respond quickly to changing economic circumstances.

Several arguments have been put out in support of earmarking. One is that people who are charged ought to get payment for their services.502 Also, by decreasing interest rates, earmarking can minimize project costs and help with long-term planning.503 Additionally, earmarking aids in preventing political misuse of public monies.504

ParkAlbany

ParkAlbany is a parking management system employed by the city of Albany; it is designed to help manage the city’s on-street and off-street parking resources, as well as provide customer service and support to parking customers.505 ParkAlbany offers a range of services and features, including: online parking payments and account management allowing users to make parking payments and manage their accounts online, making it more convenient for users to pay for their parking; mobile app for parking allowing users to download the ParkAlbany app on their mobile devices to locate parking, pay for parking, and extend parking time; development of parking meters that accept payment via credit cards, coins or mobile payment through the ParkAlbany app; and parking garages, as ParkAlbany operates city-owned parking garages that provide hourly, daily, and monthly parking options for customers. 506

ParkAlbany’s goals are to provide a more convenient and seamless parking experience for residents and visitors of Albany, optimize the utilization of parking resources, and generate revenue to support the maintenance and operation of the city’s parking infrastructure.507 However, the most recent budget (for 2024) illustrates that a lack of directed funds towards investment (particularly in regards to pedestrian and green initiatives) results in the revenue being generated going towards administrative costs; directing funds towards smart investment will likely result in administrative costs decreasing, whereas creating more administrative costs will result in a more inefficient system.508 The following figure illustrates how revenues are generated and where expenses and investments are being paid for.

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502 Id.
503 Id.
504 Id.
506 Id.
508 Id.
Issues exist when the budget totals for Projects, Investment in Alternative Transportation, Investment in Pedestrian Infrastructure, and Equipment Purchases are all zero dollars in 2024. Alternative transportation and pedestrian infrastructure are almost universally considered to be important areas that need to be more innovative in order to reach greater transportation equity. By ParkAlbany not investing in these areas, transportation does not appear to be a concern for the city of Albany.

**Congestion Pricing**

Congestion pricing is a policy tool that involves charging fees for the use of roads or other transportation infrastructure during peak traffic times as a way to reduce traffic congestion and improve traffic flow. The concept of congestion pricing is to create financial incentives for drivers to shift their travel time, route, or mode to other times or means of transport when demand for the road or other transportation infrastructure is lower. Congestion pricing can be implemented in different ways like tolls, congestion charges, pricing in parking spaces, or using automated license plate recognition systems to record road usage.

The benefits of congestion pricing include reducing traffic congestion, improving air quality, reducing greenhouse gas emissions, improving public transportation access, and increasing revenue for transportation infrastructure investments. Critics of congestion pricing argue that it creates an unfair financial burden on low-income individuals who must drive for work or other essential purposes during peak hours of road use. However, proponents argue that the revenue generated by congestion pricing can be used to improve public transportation options and provide subsidies or incentives for low-income drivers to switch to other modes of transportation.

New York City has a plan to implement congestion pricing for 2024. The program will charge drivers a toll for entering Manhattan south of 60th Street, with higher fees for drivers who enter during peak hours; electronic tolling infrastructure will be installed to track drivers and to charge tolls automatically. The revenue generated by the program is expected to be used to fund improvements to the city’s public transportation system, as well as to make other transportation infrastructure investments, such as bridge and road repairs. The goal of the program is to reduce traffic congestion in Manhattan, improve air quality, and encourage the use of more sustainable modes of transportation like bicycling or public transit. The plan has faced criticism from some business owners and drivers who are concerned about the economic impact on businesses and the financial burden on drivers. However, supporters argue that the benefits of reduced congestion, improved air quality, and investment in public transportation outweigh the costs.
Albany is not on the same scale as New York City in regard to population, expenses, or many other factors that dictate policy considerations. However, the results from this congestion pricing plan should act as a possible idea. There are parts of Albany that are more congested than others and are largely accessible solely by car. Combining an overhaul of public transportation routes along with congestion pricing in certain areas of Albany should be considered.

**Capital District Transportation Committee’s Transportation Improvement Program**

The Transportation Improvement Program (“TIP”) is a multi-year program of transportation projects that implements the products of the planning process outlined in CDTC’s urban transportation plan, New Visions 2050. Federal regulations require that transit, highway, and other transportation improvement projects within the Capital District metropolitan area qualify for federal capital or operating funding from the Infrastructure Investment and Jobs Act (“IIJA”), also known as the Bipartisan Infrastructure Law (“BIL”). The program should also include, for informational purposes, non-federally funded projects and New York State Thruway Authority projects located in the region.

The Draft 2022-2027 TIP includes “approximately $549 million of federal, state, local, and other fund sources over the five-year period beginning in Federal Fiscal Year (FFY) 2022 through FFY 2027.” The following figure illustrates where the $549 million grant comes from.

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516 Transportation Improvement Program (TIP), Capital Region Transportation Council, https://www.capitalmpo.org/transportation-plans/transportation-improvement-program#:~:text=2022%2D2027%20Transportation%20Improvement%20Program,2050%2C%20CDTC%27s%20metropolitan%20transportation%20plan.

517 Id.


519 Id.

520 Id.

521 Id.

522 Id.
Such regulations for TIP are more necessary than regulations to be in compliance with other programs. Adding such regulations for TIP incentivizes proactive behavior by creating objectives that need to be met in order to qualify for such funding. This incentivization will not only lead to innovation, but promotes reducing unnecessary spending and waste.

**Conclusion**

Ultimately, the twenty-five-million-dollar addition in federal funding which is to be used in the 2022-2027 Capital District Transportation Committee’s Transportation Improvement Program towards twelve transit, pedestrian, and bicycling projects along with a regional traffic signal timing study should prove to go a long way in combatting racial inequities and injustices which stem from the car-centric infrastructure of the Capital Region.

Numerous studies have revealed the significant disparities in access to comprehensive public transportation systems experienced by disadvantaged regions, particularly low-income areas and communities of color. These regions often face challenges in establishing efficient connections to crucial destinations such as residential areas, employment centers, and educational institutions. Additionally, they encounter longer travel times and limited transit options. The affordability of transportation further exacerbates the issue of racial equity. Individuals with lower incomes, who are disproportionately people of color, encounter difficulties in purchasing private vehicles or utilizing alternative transportation methods like ride-sharing programs. Consequently, their mobility and access to opportunities that could enhance their socioeconomic status are severely restricted. Moreover, equitable access to transportation is hindered by exorbitant parking fees and a lack of affordable housing near transit hubs.

Furthermore, transportation safety poses a significant concern that impacts racial equity. Studies indicate that African Americans are more than twice as likely as White individuals to be involved in fatal vehicle accidents due to factors such as inadequate neighborhood infrastructure, a scarcity of crosswalks, and insufficient lighting. Consequently, cycling and walking, which could serve as viable transportation options, have become less popular, leaving economically disadvantaged communities with fewer alternatives.

Addressing the transportation gap necessitates investments in public transportation infrastructure, particularly in low-income and minority neighborhoods. This entails enhancing the availability of public transportation services and improving bus frequency and reliability. Additionally, implementing sliding-scale pricing or income-based discounts can make public transportation systems more affordable, thereby alleviating the burden on financially disadvantaged individuals.

Techniques that would promote how the region was prosperous in the past (shipping and manufacturing) need further study to ultimately determine how much further funding should go to regional airports, the Port of Albany, and railways. A combination of tax-increment financing, value capture, and specialized privatization strategies also hold a crucial role in furthering transportation equity in the Capital Region.

Investments in public transportation infrastructure, specifically in neighborhoods with low-income and minority populations, have the potential to narrow the transportation divide. This entails enhancing the accessibility of public transportation and improving the frequency and reliability of bus services. Additionally, implementing sliding-scale prices or income-based discounts can make public transportation more affordable, thereby alleviating the financial burden on individuals who are less fortunate.

To ensure transportation equity, it is crucial to prioritize the safety of pedestrians and cyclists. This can be achieved by implementing measures such as traffic calming, constructing safer crosswalks, and enhancing street lighting. By doing so, walking and cycling can become safer modes of transportation for all individuals, including those from marginalized communities.

To enhance transportation equity, it is imperative to allocate public funds towards such endeavors. Substantial funding is derived from taxpayers’ contributions. The amount homeowners pay to local governments, through property assessments and property taxes, determines the funds that are redirected to public services, including transportation. By implementing inventive approaches that attract more financial resources to the region and adopting more innovative methods of fund allocation, we can find solutions that promote transportation equity. These techniques may involve tax-increment financing, value...
capture, and the enhancement of commercial transportation hubs. Additionally, it is recommended that direct funding be prioritized, meaning that funds allocated for specific projects should originate from charges associated with those projects.

Ultimately, transportation plays a critical role in determining racial equity in any community. Transportation disparities disproportionately impact disadvantaged neighborhoods and often exacerbate existing racial inequalities. Unequal distribution of transportation, especially public transportation, is a problem facing Albany. The policy recommendations stated could potentially be part of a solution to try to mitigate the existing disparities.
CHAPTER 5: TRANSPORTATION

Author: Julia McCarthy

Abstract

Since the popularization of the automobile, American cities have been designed, or even reconstructed, to prioritize individually owned vehicles as the main source of transportation. This has been at the expense of lower-income individuals, who are less likely to own cars. Urban areas are particularly negatively affected from this systemic disinvestment, as they have often been divided into segregated neighborhoods and proscribed a less prestigious social status. Restructuring American cities has far-reaching implications for racial justice, class justice, and accessibility. Increased public transportation, diversification of transportation options, and investment in pedestrian infrastructure has benefits for all areas of American society and Albany has the opportunity to be a leader in progressive infrastructure. This paper will explore national issues in transportation with particular attention to racial injustice, and explain how these problems relate the City of Albany and how they may be improved.

Introduction

Car-centric infrastructure has negatively impacted some communities, particularly communities of color, from early into the reign of the personal automobile. As a result of structural racism which will be explored in greater depth later, people of color are less likely to have cars and more likely to live in urban areas. These two factors have collided, which brings us to the current state of the typical American city. The interstate highway system was often used to cleave minority neighborhoods from the rest of the city, creating a barrier that isolates communities made up predominantly of people of color from the rest of the city. Those who do not own cars can be further isolated by the availability of public transportation options, such as a bus that does not travel to certain locations or does not run after certain times. These factors send a message that the riders do not belong in that location. Poor pedestrian infrastructure discourages walking and increases the danger to those who chose to walk, while consequently limiting the access of disabled people to public spaces. These issues are widespread in the United States, and can be observed in the city of Albany and its surrounding suburbs.

The City of Albany has investigated the improvement of pedestrian infrastructure, as well as the improvement and further development of existing infrastructure for bikes. Some would argue that this plan does not go far enough as it focuses on the sort of easy to implement changes that some studies suggest are unlikely to encourage new cyclists, such as share-the-lane initiatives in contrast to more extensive initiatives such as the creation of protected bike lanes. While experienced cyclists may feel perfectly comfortable using lanes dominated by cars, the same cannot be said for all potential cyclists. Encouraging people who do not habitually walk, bike, or use public transportation to begin to do so should be a major goal of sustainable development.

This Chapter will begin by briefly describing the rise of the personal automobile as the dominant mode of transportation in the United States. Next, I will discuss historic methods of transportation in Albany, as well as ways the city’s transportation methods and even the structure of the city were modified after the popularization of the car. I will explore the current state of transportation in Albany, with a particular lens to the intentional isolation of minority neighborhoods. I will finish by exploring

527 Id.
options to increase equity in transportation in the city of Albany, including improvements to public transportation, as well as pedestrian and bike infrastructure.

Part I: The Rise of the Car

One of the most consequential factors in considering issues of transportation in the American city is the structure of the urban area. This section will begin with a brief discussion of early American transportation needs and methods, along with what structural elements we continue to see today, before moving on to explore the origins of the modern American city. The history and population distribution of the modern United States relies on several historic factors, including its agrarian origins, the industrial revolution and accompanying urbanization, as well as later White flight and suburbanization. Exploration of these elements will help to establish the foundations on which the American city is now built and orient the reader to a 21st century urban setting, where the majority of Americans now rely on cars for the majority of their transportation needs.

The early United States was a primarily agrarian society, where a significant portion of the population lived in rural areas. According to the National Park Service, by 40% of the Northern population and 85% of the Southern population of the United States were engaged in agriculture in 1860. It should be noted that the exact number of agricultural workers cannot be determined by Census statistics pre-Civil War due to the underrepresentation of enslaved persons and women. In their chapter of The Cambridge Economic History of the United States, Olmstead and Rhode write that "prior to the American industrial revolution, most Americans were reared in largely isolated agricultural households and small towns that were linked to the external world by horse drawn wagons." Travel in the early United States was thus limited, and long journeys were less common and more difficult undertakings than we may consider travel of similar distances to be today. It was not until the Industrial Revolution took over the American economy that Americans migrated to cities and technology advanced to allow increased mobility for the average person.

Although industry existed in the United States prior to the Civil War, it was not necessarily an exclusively urban undertaking. In their essay, Immigration and the American Industrial Revolution From 1880 to 1920, Hirschfield and Mogford write "Many small industries, such as grain mills and sawmills, were often located in rural areas close to flowing rivers in order to power machinery." Census statistics from 1880, the early days of the Second Industrial Revolution, saw only 15% of the employed Americans involved in manufacturing while 49% of the working population remained in the agricultural sector. Nevertheless, urbanization was the clear trend as the promise of employment lured the population into rapidly growing cities: by 1920, the U.S. Census marked over 50% of the population as urban for the first time.

One of the most popular ways for a 19th century traveler to move about the United States was passenger rail. The first train with regularly scheduled passenger service appeared in South Carolina in 1830, and similar services would grow exponentially to cover the United States. At the peak of the age of the American railroad in 1917, the United States was covered in about 254,000 miles of rail. However, the golden age of the railroad would not last forever: as of 2020, the Department of Transportation’s Federal Railroad Administration estimates around 140,000 miles of railroad. This steep decline has been attributed to

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536 Id.

disparate factors such as wartime acquisition and overuse of train and rail infrastructure during World War I as well as Great Depression budget cuts. However, perhaps no factor is as significant as the invention and popularization of the automobile. Although vehicles that would later be recognized as cars had existed at least experimentally since the late 19th century, the Ford Motor Company’s innovations in factory assembly enabled the mass production of their famous Model-T by 1913. A quick success, the 10 millionth Model T rolled off the Highland Park assembly line on June 4, 1924. Mass transit options such as the railroad soon fell out of popularity in favor of personal automobiles.

From a largely rural nation with an economy based in agriculture, the economic restructuring due to the Industrial Revolution had far reaching effects on the population distribution of the modern United States. Although people in the early United States may have generally travelled shorter distances than the average American today, the advent of the train enabled long distance travel and advanced freedom of movement. Increased urban population meant that booming cities needed to increase their public transportation availability to suit the needs of the population. Before the popularization of the personal automobile in the early 20th century, Americans tended to walk or use public transportation such as the popular street car in order to travel around the cities they lived. These options were not exclusive to the largest of American cities, but could be found in many smaller cities such as Albany. Modern urban planning tends to prioritize cars at the expense of higher volume public transportation and even pedestrian safety.

Before the car, the majority of America’s urban centers were by necessity structured to support nonmotorized transportation such as walking. Boston, Massachusetts is one of the oldest major cities in the United States, and relatedly is one of the most famous for being built before the very concept of the automobile was imagined. Many of the features which frustrate Bostonian drivers, such as narrow streets, sparse parking, or a lack of grid-based structure are relics of a time when there were no cars to build around. Although Albany is one of the oldest cities in America since its settlement by European fur traders in 1614 and attainment of official status as a chartered city in 1686, it is not often criticized for being uncomfortable for drivers in the same ways as cities like Boston. Rather than some miraculous foresight on the part of its builders, this may instead be attributed to the significant restructuring that occurred in Albany in the 20th century which will be examined throughout this paper.

Part II: Roads

Post World War-II, there was a mass migration of White Americans out of increasingly diverse cities and into suburban areas populated almost exclusively by other White people. This phenomenon is referred to by historians as White flight. In the early 20th century, millions of African Americans had migrated from the South into the North, Midwest, and West in what historians now call the Great Migration. After a slowdown in the economically depressed 1930s, the migration recommenced at an even more rapid pace after World War-II in what has been termed the Second Great Migration. This same time period would be particularly influential to the structure of American suburbs and cities. The Serviceman’s Readjustment Act of 1944, popularly known as the G.I. Bill, provided many opportunities for returning soldiers, including higher education, job training, and low-cost mortgages. In practice, White veterans benefited from the G.I. Bill far more dramatically than their peers of other races, who were largely excluded. In his book, When Affirmative Action was White: An Untold History of Racial Inequality in Twentieth-Century America, Ira Katznelson writes, “In the New York and northern New Jersey suburbs, fewer than 100 of the 67,000 mortgages insured by the GI Bill supported home purchases by non-

539 Id.
543 Id.
African Americans, who were often refused loans and the opportunity to buy homes in the suburbs, often were relegated to cities while White Americans moved to rapidly expanding suburbs in droves.

White flight is a phenomenon which can be observed nationally, and the city of Albany is no different. In 1940, the Census Bureau counted 130,577 people in Albany, and in another report that same year counted 3,012 of those people as non-White. This means that as of 1940, 97.7% of the residents of the city of Albany were considered White. These numbers are quite different to demographics observed today, and may be contributed to a number of factors, not the least of which are the Great Migration and subsequent White flight. As of 2022, the Census Bureau estimates that 50.4% of the City of Albany's population identifies as White alone, non-Hispanic or Latino. This is in contrast to the Albany suburb of Guilderland, where 79.5% of the population identified as White alone, non-Hispanic or Latino that same year. Other local suburbs demonstrate the same pattern, with Colonie reporting 79.0%, Bethlehem reporting 89.7%, and Loudonville reporting 84.6% residents who identify as White alone, non-Hispanic or Latino, respectively.

As cars became the most prioritized method of transportation in America, it became more feasible and convenient for people to live far away from cities and commute to their jobs. The construction of the highways necessary to allow suburbanites to travel into a city from their homes has been observed around the United States to have isolated urban communities where the majority of the population is non-White. As David Karas summarizes in his essay, *Highway to Inequity: The Disparate Impact of the Interstate Highway System on Poor and Minority Communities in American Cities*, even when “[s]etting aside considerations of intent, there is little doubt among scholars who have studied American transportation history and policy that the Interstate Highway System took a particularly cruel toll on minority communities in urban spaces.” This contention seems to be supported by government policy instructions: In 1938, the Federal Housing Administration released a manual for property valuers that instructed:

> Natural or artificially established barriers will prove effective in protecting a neighborhood and the locations within it from adverse influences. Usually the protection against adverse influences afforded by these means include prevention of the infiltration of business and industrial uses, lower-class occupancy, and inharmonious racial groups … A high-speed traffic artery or a wide street parkway may prevent the expansion of inharmonious uses to a location on the opposite side of a street.

While this manual was released over a decade prior to the beginning of the construction of the interstate highway system, it demonstrates there had long been recognition from the federal government that the construction of major arterial roads such as highways could serve as physical barriers to isolate a population deemed undesirable.

The Federal-Aid Highway Act of 1956 was one of the largest public work projects ever, with over 40,000 miles


546 1940 Census of Population: Volume 1; Number of Inhabitants. Total Population for States, Counties, and Minor Civil Divisions; for Urban and Rural Areas; for Incorporated Places; for Metropolitan Districts; and for Census Tracts. New Mexico, New York, North Carolina, North Dakota, and Ohio. P. 17.


554 Federal Housing Administration, *Underwriting Manual: Underwriting and Valuation Procedure Under Title II of the National Housing Act With Revisions to April 1, 1936* (Washington, D.C.), Part II, Section 2, Rating of Location.
of highway constructed over more than a decade. The Federal Highway Administration indicates that there are now 47,000 miles of highway in the United States, of which 35% are in urban areas. Those highways within urban areas are most relevant when discussing their use as tools to divide neighborhoods largely inhabited by people of color from other parts of a metropolitan area. In his paper, The Interstates and the Cities: The U.S. Department of Transportation and the Freeway Revolt, 1966–1973, Raymond Mohl indicates that by the 1960s, highway construction was demolishing 37,000 urban housing units per year. Over 1 million people were displaced as a direct result of highway construction, many of whom were African American. It was not until the Federal-Aid Highway Act of 1968 that states were required “…to provide decent, safe, and sanitary relocation housing prior to property acquisition for highway routes,” although displaced residents had largely been left without housing for over a decade previous. As will be discussed further in the Infrastructure chapter, there can be economic benefits to removing highways in urban areas – this includes the City of Albany, where I-787 dramatically restricts the access and usability of land adjacent to the Hudson River. Other cities such as Milwaukee and Syracuse have taken on the task of removing some urban highways, suggesting that the task is not as insurmountable as it may seem.

The rise of highway construction coincided with so-called urban renewal initiatives that allowed for the seizing of privately owned land in urban areas deemed to be a slum or blighted. The Housing Act of 1949 explained its policy goal in part as “…the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family…” This act was used as justification of the destruction of urban neighborhoods for uses seen as more valuable from the perspective of the decisionmakers and planners. As explained by Mindy Fullilove in her paper, Eminent Domain and African Americans: What is the Price of the Commons?, “…Under that act, which was in force between 1949 and 1973, cities were authorized to use the power of eminent domain to clear ‘blighted neighborhoods’ for ‘higher uses.’ In 24 years, 2,532 projects were carried out in 992 cities that displaced one million people, two-thirds of them African American.”

Although urban renewal and its consequences can be observed all throughout the United States, Albany provides a clear example of the effects of these policies in the form of the Governor Nelson A. Rockefeller Empire State Plaza (referred to as the Empire State Plaza) in addition to highway construction. As the governor of New York in 1959, Nelson Rockefeller escorted Princess Beatrix of the Netherlands on a visit to the state capital and in the process went through a now-destroyed Albany neighborhood called the Gut, later expressing his embarrassment by saying “…There’s no question that the city did not look as I think the Princess thought it was going to.” In order to achieve the goal of creating an impressive capital for the state of New York, developers directed their attention to a 98.5-acre area in the core of Albany which was home to local businesses as well as an estimated 7,000 people. The land taken to construct the Empire State Plaza consists in part or completely from six Census tracts (11, 12, 13, 22, 23, and 24), which according to the 1960 Census had significant African American and immigrant populations, most notably of Italian origin. Despite protest from the local community, the state of New York was able to seize the land through the power of eminent domain in order to highway construction. As the governor of New York in 1959, Nelson Rockefeller escorted Princess Beatrix of the Netherlands on a visit to the state capital and in the process went through a now-destroyed Albany neighborhood called the Gut, later expressing his embarrassment by saying “…There’s no question that the city did not look as I think the Princess thought it was going to.” In order to achieve the goal of creating an impressive capital for the state of New York, developers directed their attention to a 98.5-acre area in the core of Albany which was home to local businesses as well as an estimated 7,000 people. The land taken to construct the Empire State Plaza consists in part or completely from six Census tracts (11, 12, 13, 22, 23, and 24), which according to the 1960 Census had significant African American and immigrant populations, most notably of Italian origin. Despite protest from the local community, the state of New York was able to seize the land through the power of eminent domain in order

558 Id.
559 Id.
561 42 U.S. Code § 1441.
565 Id.
In many ways, the Empire State Plaza stands as a reminder of the lives upended by urban renewal while simultaneously serving as a method of facilitating and enabling White flight for the government employees who work in the complex. One of Albany’s major employers is the New York State government, with a great number of offices located in the Empire State Plaza. The thousands of people who work in the complex may have very little interaction with the city at all – it is possible for a person driving from a suburb to enter and leave the underground parking garage through the direct connection with I-787 without entering the city of Albany in any sense other than symbolic. This example demonstrates the detrimental impact of the historical priority on enhancing the quality of life for White suburban residents, executed through urban renewal initiatives combined with strategic highway construction. These efforts actively disinvested in infrastructure that supported the non-White residents who actually live within the city for the benefit of suburban commuters.

As demonstrated by the map to below from the Public Roads Administration, a predecessor to the Department of Transportation, developers in 1955 planned to surround the urban center of the City of Albany with highways. Today, the center of City of Albany is roughly bounded by several highways: I-787 to the east, I-90 to the north, and the New York State Thruway also known as I-87 to the south. While the New York Thruway runs along the Albany neighborhoods of Delaware, Buckingham Lake and Whitehall, the other side of the thruway includes golf courses and nature preserves. This placement functionally serves to separate the City of Albany from more the affluent and majority White suburb of Bethlehem. In the City of Albany as well as around the United States, Highways have not only been used as segregation tools for their role as physical barriers. As part of the essential structure of the urban/suburban divide, highways are what made White flight possible.

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2 Id.
3 Nashville I-40 Steering Comm., 387 F.2d 179, 185
Part III: Public Transportation

The term public transportation can refer to a wide variety of services, including but not limited to streetcars, trolleys, trains, light rail, ferryboats, and subways. The focus of this section will largely be on one of the most nationally pervasive methods of public transportation - the bus. An American Community Survey Report conducted by the U.S. Census Bureau indicated that 5% of all U.S. workers, or 7.8 million people, use public transportation. Of those 7.8 million, 46.3% of all Americans who use public transportation reported that the bus was their primary commuting mode, a higher percentage than all other forms of public transportation. The Capital District Transportation Authority (CDTA) indicates that every week day they serve 55,000 of the 800,000 people who live and work in the capital region, suggesting that public transportation may be used at a higher rate than the national average in Albany at 6.9% utilization.

Access to reliable transportation in the United States usually means ownership of a private vehicle, but access is not universal and can in fact be observed to differ widely across racial demographics. On the national level, 9% of all households do not have access to a vehicle compared to the 13% of households without a vehicle which are headed by people of color. Nationally, Black households are the most likely racial demographic to be without access to a vehicle at 18% (2.62 million households). In the state of New York, 29% of all New Yorkers do not have a vehicle compared with the 45% of households headed by people of color without a vehicle. While these numbers are likely to be influenced by the New York City which has different infrastructure and transportation needs than Albany, it is valuable to recognize that a lack of vehicle access is not uncommon in the state of New York and can be correlated to membership in historically marginalized demographics. Accessible and robust systems of public transportation also enhance the mobility of many groups who are more likely to not be able to drive safely, such as the disabled, the elderly, and children.

Although public transportation has the potential to increase the mobility of those who do not own cars, it can also be used as a tool to facilitate segregation. If a bus only runs at certain times of day or does not travel to certain locations, it sends a pervasive message that the riders do not belong in those destinations. To observe an example of public transportation being used as a tool of segregation, one needs to look no further than the city of Albany. For example, the 223 between Albany and the Schodack Park and Ride only runs on weekdays – this implies that people may travel between Schodack and Albany for work, but they have no reason to be able to make this journey otherwise. Considering that Schodack's population is 95% White, this appears to be an example of a bus schedule that facilitates white flight by allowing people to travel into cities for work while maintaining residences outside of a diverse city. While the goal of the 223 line is likely intended to reduce the number of cars driving into the city by providing public transportation alternatives, measures such as this treat a symptom without seeking to cure the disease – in this case, the structured racial injustice of American city planning.

In order to encourage public transportation as well as reducing reliance on cars in general, cities may benefit from enacting policies to limit the expansion of urban sprawl. With denser population centers, public transport becomes a more feasible option due to the less significant distances between people's homes and their destinations. Albany may do this by establishing an Urban Growth Area, also known as an Urban Growth Boundary. In his paper The Effects of Portland's Urban Growth Boundary on Urban Development Patterns and Commuting Myung-Jun Jun defines an Urban Growth Boundary as “…a legal boundary separating urbanizable land from rural land … The boundary controls urban expansion onto farm, forest, and resource lands. At the same time, land, roads, utilities, and other urban land purposes that are deemed to be essential to the urban area.”

568 Id.
571 Id.
573 CDTA, Route 233 Albany - Schodack.
services are more efficiently distributed within the urban boundary.575 For a city like Albany located in upstate New York, an area renowned for its natural beauty, the preservation of nature should be a valuable method both to protect the region’s natural beauty and combat climate change by preserving greenspace.

Another significant step in the project of increasing the usage of public transportation in Albany involves improving the consumer’s experience. The National Weather Service calculates that between 1991 and 2020, Albany received an average of 59.2 inches of snow and 40.68 inches of rain per year.576 In cities with significant precipitation such as Albany, an extensive network of shelters is vital to the comfort and welfare of people who ride the bus in order to provide protection from the elements. An increase in the number of benches available at bus stops is another measure that would enhance the experience of public transportation for all of its users in Albany. Benches are especially valuable for disabled and elderly bus riders, as these groups may not be able to comfortably stand as they wait for a bus.578 There are a number of bus stops in the City of Albany without shelters or benches: for example, the Quail St. and Morris St. stop which serves 4 bus lines has no amenities for riders.579 The addition of amenities like shelters for bus stops is not without controversy: in 2022, residents in the Melrose neighborhood on Western Ave who believed that such amenities would be “out of character for the neighborhood” protested the construction of a shelter at a bus stop.580 In order to truly encourage the development of alternatives to cars, it is also necessary to address prejudices associated with them – public transportation should not be seen as a welfare system for the underprivileged, when it is indeed an vital part of modern and sustainable development.581

Part IV: Pedestrian and Bike Mobility

Reducing car dependency by encouraging human centered transportation options such as walking and biking has benefits in key areas that most any community would encourage: the economy, public health, and the environment. In his essay, Walking the Walk: How Walkability Increases Home Values in U.S. Cities, Joe Cortright concluded that “On average, home buyers attach greater value to walkable homes relative to other housing units in the same metropolitan area, controlling for other observable characteristics.”582 Thus, walkable neighborhoods can increase the property value of homes. Those who do not own homes can also benefit financially from improved walkability: given the increasing cost of car ownership, consumers who can reduce their usage of cars can consequently save on operating costs such as maintenance and gasoline and pass those savings on to the economy. As a benefit to public health, improving pedestrian and bike infrastructure can encourage a general increase in physical activity in a community. In their study titled Higher walkability associated with increased physical activity and reduced obesity among United States adults, Monica Wang, Marie-Rachelle Narcisse, and Pearl McElfish, found that people living in neighborhoods they perceived as highly walkable were more likely to engage in adequate physical activity, walk near their home, and have a lower body mass index compared to people in low-walkability neighborhoods.583 Cities that are walkable while allowing for human-powered transportation such as bicycles have the benefit of reducing the environmental impact of cars. According to the EPA, “… the average passenger vehicle emits 4.6 metric tons of carbon dioxide

580 Steve Hughes, Albany residents upset over planned CDTA bus stations, Times Union (June 12, 2022).
581 Joseph Stromberg, The real reason American public transportation is such a disaster, Vox. (Aug. 10, 2015).

73 Grounded Justice: Unveiling Racial Equity in Land Use across the Albany Capital Region
per year.”584 Furthermore, the average passenger vehicle emits 400 grams of carbon dioxide for every mile driven.585 As discussed in the Environmental Justice portion of this report, car exhaust is detrimental to the health of those who live near major traffic arterials such as highways. Walkability and bicycle infrastructure create a significant opportunity to reduce one's carbon footprint while improving public health and providing benefits to the economy. In today’s world, innovation and consciousness of the aggregate effects of our daily activities are vital to improving the lives of our citizens while combatting climate change and its detrimental effects.

For many people, walking or riding a bike as a main method of transportation is a matter of necessity rather than a choice made from a plethora of other viable and realistic options. The American Community Survey indicated that between 2008 and 2012, people who made less than $10,000 per year were the most likely to walk or bike to work. This is perhaps not too surprising when the rapidly rising cost of car ownership is taken into account.586 The AAA reported that the average cost of owning and operating a new vehicle in 2023 is $12,182.587 This is a significant increase from 2022, where the average annual cost was $10,728.588 According to Edmunds, buyers of used cars are not spared from this jump in costs: the average APR on a loan for a new car is now 11.2%, the highest is has been since 2015.589 While car ownership is not feasible or attractive option for everyone, alternative forms of transportation become an issue of equity. People who have low incomes, the elderly, the disabled, and children can all benefit from the promotion of alternatives to the car.

In order for walking and cycling to be realistic and attractive transportation options, they must be safe. In their study, Disparities in Activity and Traffic Fatalities by Race/Ethnicity, Matthew Reifman and Ermani Choma found that Black Americans had the highest traffic fatality rate per mile traveled, especially in regards to walking and cycling.590 On a one-mile cycling trip, the fatality risk for a Black American is 4.5 times that of a White American cycling the same distance.591 Furthering demonstrating this equity issue is the fact that in 2019, “90% of illegal-walking tickets issued by New York police were to black and Hispanic people.”592 While the streets should be safe for everyone, it is clear that some communities of color are in especially vulnerable to systemic inequity connected to infrastructure that is in some cases leads to tangible physical danger.

Brief analysis of existing pedestrian infrastructure can indicate that within areas designated to be high sensitivity, which closely correspond with previously redlined

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584 United States Environmental Protection Agency, Greenhouse Gas Emissions from a Typical Passenger Vehicle, EPA, Aug. 28 2023 [https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle#:~:text=including%20the%20calculations.-,How%20much%20tailpipe%20carbon%20dioxide%20(CO2)%20is%20emitted%20from%20a%20vehicle%20per%20mile].
585 Id.
587 Brittany Moyne, Annual New Car Ownership Costs Boil Over $12K, American Automobile Association, August 30, 2023, [https://newsroom.aaa.com/2023/08/annual-new-car-ownership-costs-boil-over-12k/].
588 Id.
590 Matthew Reifman and Ermani Choma, Black Americans had the highest traffic fatality rate per mile traveled, American Journal of Preventative Medicine, Volume 63, Issue 2. 160 (August 2022).
591 Id.
neighborhoods, there are generally similar levels of sidewalk coverage. Increasing the number of sidewalks in Albany is likely to improve pedestrian safety – according to the Department of Transportation, “[r]oadways without sidewalks are more than twice as likely to have pedestrian crashes as sites with sidewalks on both sides of the street.”

When thinking of long-term goals for the development of transportation infrastructure in Albany that supports nonmotorized traffic, there are a number of measures that may be taken into consideration. The Sustainable Development Code discusses multiple strategies for development that consider the inequities associated with American infrastructure in an effort to support the development of environmentally conscious, economically thriving, and socially conscious communities. This paper will discuss strategies to improve the pedestrian and cyclist experiences suggested by the Sustainable Development Code and then explore how these measures could be implemented in Albany.

Although the improvement of pedestrian infrastructure is likely to be a matter of long-term investment and conscious planning, there are some strategies that can be implemented quickly without major changes to the structure of Albany. One of these measures could be limiting the presence of drive-through services in urban areas. According to an article by Aarian Marshall titled The Case Against Drive-Throughs, urban driveways such as those created by drive throughs are especially dangerous to pedestrians and cyclists. Drivers are more likely to be distracted or perceive they are in a car-exclusive development and consequently feel that they do not need to remain conscious of those who are not in cars. In addition, some are concerned about the environmental impact of cars idling as the drivers wait: Minneapolis cited this as a significant factor in their ban on newly constructed drive-throughs as a step towards their goal of achieving emissions reductions consistent with the Minneapolis 2040 plan. In the 2 mile stretch between Quail St. and the I-90 bridge, Central Avenue in Albany has a significant number of drive-through restaurants, including a Burger King, two McDonalds, and a Taco Bell. There are even proposals for a Chick-Fil-A in the same section of Central Ave, this one with a drive through large enough to allow 50 cars to line up at once. In order to limit the danger to the numerous pedestrians who use Central Ave, Albany may find guidance from a number of other cities that have instituted similar regulations in order to restrict or even ban such drive-throughs entirely. Carrboro, NC, Toronto, ON, Ridgefield, CT, Concord, MA, and San Luis Obispo, CA are all examples of cities that have instituted land use and zoning regulations in order to address some of the safety issues associated with drive throughs.

597 Id.
600 Daniel Chapple and Bradley Adams, eds. Charlie Cowell and Jonathan Rosenbloom, Prohibit or Limit the Use of Drive-Through Services, Sustainable Development Code, Ch. 4.3 Pedestrian Mobility. https://sustainablecitycode.org/brief/prohibit-or-limit-the-use-of-drive-through-services/.
The city of Carrboro, North Carolina has instituted a Land Use Ordinance that prohibits restaurant drive-throughs in all but 1 of the 24 districts, which is zoned for outlying concentrated business. The ordinance also addresses pedestrian safety concerns by requiring that when possible, a person entering or exiting the business is not required to cross a drive-through lane entering or exiting the business and when such design is not possible, that there are clearly marked crosswalks across the drive-through window lanes.

In addition, the Carrboro ordinance requires that “The vehicular entrances or exits of such uses [drive-throughs] shall not be located within 300 feet of the intersection of the centerlines of intersecting streets.” While existing drive-through restaurants may be grandfathered in to a newly instituted land use ordinance that aims to reduce their usage in Albany, limiting them to areas of the city which are less proliferated by nonmotorized traffic could help to increase overall safety. Considering the recent proposals for even more drive-throughs in such a limited and pedestrian heavy section of Central Ave, there would be a substantial benefit to considering their aggregate effects. Making changes such as requiring crosswalks when customers must cross drive through lanes to enter or exit a restaurant are simple and low-cost measures that can increase safety at the many restaurants on Central Ave that have not instituted such measures. Another measure that could be undertaken in Albany to increase pedestrian safety is by increasing the number of mid-block pedestrian crossings. In order to encourage pedestrians to use a street, walking must be a reasonably convenient and safe option: when people must walk a potentially lengthy distance to cross the street, their trips become unnecessarily longer and they are thus incentivized to make dangerous trips outside of crosswalks. The New York Vehicle and Traffic Law provides that “Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.” This law puts the responsibility of not being hit by a car on the pedestrian, who is far more vulnerable than the driver to serious injury or death in the case of a collision. Being a pedestrian can be quite dangerous: the Federal Highway Administration states, “…pedestrian crashes account for approximately 15 percent of all traffic fatalities annually, and over 75 percent of these occur at non-intersection locations.” Between 2009 and 2018 in Albany, the highest number of crashes involving bicycles/pedestrians occurred at: Washington Ave and Lark Street, Central Ave and Quail Street, Madison Ave and Lark Street, Madison Ave and Ontario Street, and Washington Ave and Quail Street. These are all major local streets, many with long stretches where a pedestrian may not find a safe crossing without going out of his or her way.

In order to ensure that mid-block crossings are safe for those who use them, the National Association of City Transportation Officials suggests making them visible even at night by utilizing signage, paint, and stop lines 20-50 feet before the crossing. They go on to note that at “…key access points to parks, schools, and waterfronts, and at intersections with local streets, raised crossings increase visibility, yielding behavior, and create a safer pedestrian crossing environment.” While there are mid-block crosswalks already in Albany, it would be valuable to

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601 Town of Carrboro, NC, Land Use Ordinance § 15-146 8.300, 8.4000 (2021).
602 Id. at 15-176.1 (1), (3).
603 Id. at 15-176.1 (4).
604 New York Vehicle & Traffic Law § 1152(a) (20).
605 Federal Highway Administration, Medians and Pedestrian Crossing Islands in Urban and Suburban Areas.
608 Id.
add more on certain streets where there is a high level of jaywalking already present or there is otherwise a significant destination that would encourage crossings outside of existing pedestrian infrastructure.

Mid-block crossing on New Scotland Ave., allowing for safer travel between bus stops.

When seeking to add more mid-block crosswalks, Albany may find guidance from the cities that have already enacted regulations to support their development and implementation. The San Antonio, Texas Sustainable Development Code states that “Mid-block crosswalks should be provided on all blocks 550 feet or longer…,” a regulation which aims to reduce jaywalking engaged in due to the sheer inconvenience of long blocks.609

In addition, San Antonio promotes the usage of “…curb extensions at all corners and midblock crossings, except at the intersection of two arterial streets.”610 This is echoed by the city of Upper Arlington, Ohio.611 Curb extensions can increase the visibility of pedestrians while at the same time reducing the total distance they must traverse in the roadway, thus improving pedestrian safety. In addition to other traffic calming designs such as have been implemented on Madison Ave, clear mid-block crossings which are supported by curb cuts could be used to improve pedestrian safety on both Madison and other streets which are dangerous to pedestrians such as Central and Lark.

NY DOT does note that trees must be chosen carefully, as some species have a propensity to heave the surface of a sidewalk and thus actually become a safety hazard.614 The benefits of significant tree coverage in an urban area are not to be underestimated: according to the Climate and Energy section of this report, trees can act as a carbon sink and thus ameliorate some effects of climate change while combating urban heat islands by providing shade. Furthermore, according to the Utilities section of this report, trees and greenspace can help to protect against flooding - an essential function for a city so close to the Hudson River.

While truly making Albany a city that truly encourages pedestrians and cyclists is likely to be a matter of focused planning and long-term investment, there are many simple measures that can significantly increase Albany’s walkability and safety. Regulation and safety improvements to urban driveways such as restaurant drive-throughs is a matter of particular import in Albany, where a well trafficked section of Central Ave. has a great number of them. In addition, mid-block crossings can help to mitigate safety issues caused by lengthy blocks that ultimately encourage jaywalking due to serious inconvenience. Measures such as curb cuts can improve the safety of mid-block crossings while providing a traffic calming effect, which

609 San Antonio, TX, Unified Development Code, App. G, Ch. 8(C) (2019).
610 Id.
614 Id.
is particularly valuable in the major arterials that make up many Albany’s most dangerous streets for cyclists and pedestrians. Trees and greenspace have wide benefits to pedestrians, as well as issues of land use and racial justice in general.

**Conclusion**

As a result of decades, or even centuries, of development focused on benefitting the White population to the detriment of other groups, many American cities find themselves inheriting infrastructure that reflects a legacy of racism. This can be connected to several historical factors, including the White flight, suburbanization, urban renewal, and more, which have impacted the transportation methods and residents of Albany and the Capital Region. Highway construction has been used as an enabler of white flight while at the same time working in conjunction with urban renewal initiatives to destroy minority populated neighborhoods, a movement epitomized by the Empire State Plaza. When the car is prioritized as the primary method of transportation many people are consequently left behind and the consequently deprioritized public transportation means such as buses can be weaponized to control the mobility of a population. The improvement of pedestrian and cyclist infrastructure has wide benefits for a population, many of which have not been realized due to the focus on privately owned vehicles to the extent that other options are severely disadvantaged. All of these pervasive issues we see do not mean that our society should surrender and take on these relics of a difficult past as our own – the improvement of Albany’s transportation may be an extensive and long-term undertaking, but it has essential to take on this work to ensure that our future is better than our past.
CHAPTER 6: LAND USE AND FOOD SECURITY
Evaluating the Impact of Land Use Decisions on Food Security and Sovereignty in Albany’s Capital Region

Author: Chelby Lawrence

Abstract

In this section of the white paper, we analyze the issue of food insecurity and sovereignty within Albany’s Capital Region. Specifically, focusing on the very apparent issue of people not having reliable access to enough nutritious food. Our examination includes looking at the economic factors that contribute to this problem such as poverty, limited food availability, and disparities in how resources are distributed all rooted within the area’s history of racial injustice. Additionally, we dive into the idea of food sovereignty, which highlights the importance of the community having control over their food systems and supports sustainable, fair approaches to producing and distributing food. Through thorough analysis, the goal is to increase awareness of the specific challenges faced in the capital region and propose strategies to improve food security while also advocating for community-driven efforts that allow local residents to take control of their food systems.

Introduction:

Albany, the capital city of New York State, is known for its culture, politics, and commerce. However, hidden within is a serious problem that affects many of its residents - food insecurity. According to the U.S. Department of Agriculture (USDA), food insecurity can be defined as the limited or uncertain availability of nutritionally adequate foods or the uncertain ability to acquire these foods in socially acceptable ways.615 Food insecurity is a widespread issue in the United States, including Albany’s Capital Region.

This chapter embarks on an analysis of the history of food insecurity in Albany’s Capital Region. It aims to uncover how food insecurity came to be where it is now, and how to move forward in a way that builds food security for all. Food insecurity is not solely about not having adequate access to food resources; it is connected to complex issues like poverty, disparities, and historical unfairness in land use decisions.616 Understanding this historical background helps us see why food insecurity persists today.

Food sovereignty, encapsulating the principles of local control, sustainable practices, and cultural resilience in food production, offers a holistic framework to address the root causes of food insecurity. As we embark on this exploration, the nexus between food sovereignty and food insecurity becomes a focal point, examining how empowering local communities to govern their food systems plays a pivotal role in alleviating the challenges of food insecurity. This research seeks to unravel the symbiotic relationship between these two concepts, probing the ways in which the pursuit of food sovereignty holds the potential to mitigate the vulnerabilities that contribute to food insecurity on a global scale.

This chapter gains its importance from the necessity to unravel the layers of inequality that have allowed food insecurity to consume parts of the Capital Region. Often, we tend to treat access to food as a privilege rather than a basic human right. However, without adequate access to food, there are direct effects on that person’s health and contribute to the cycle of generational poverty. The main goal of this chapter is not only to provide a detailed historical overview of food insecurity in Albany’s Capital Region rooted in land use decisions but to highlight the issues that have perpetuated this crisis as well as provide recommendations to help remedy the issue.

In the upcoming pages, we’ll begin to look at the historical background of food insecurity in the region. We’ll examine how economic changes, government decisions, and shifts in the population have all played roles in creating the current food climate. We’ll also explore how historical injustices, specifically related to race, have had an impact on food security in certain communities. Through this exploration, we aim to build a strong understanding

616 Id.
that will help propose effective strategies for remedying the effects of food insecurity as well as eliminating food insecurity in the region as a whole.

A Historical Perspective of Land Use and Food Security in the Capital Region

The problem of food insecurity in Albany’s Capital Region is closely tied to decisions about how land has been used throughout the Capital Region.617 This section aims to explore the historical factors that have contributed to food insecurity in these places. Understanding how choices related to urban planning, zoning rules, and development patterns have affected the availability and accessibility of food resources is crucial for coming up with effective ways to address and reduce food insecurity in these communities.

Urbanization

In the 19th century, Albany and the surrounding Capital Region experienced significant urbanization and growth.618 As the City expanded and industries developed, land use choices began to favor industry and business over farmland.619 Projects aimed at renewing urban areas displaced communities and disrupted established food systems, making food insecurity even worse; one example is the development of Albany’s Center Square.620 A well-known example is the construction of the Empire State Plaza, also known as the South Mall. According to a 1976 Times Union Article, “The mall wiped out 3,000 housing units and displaced 9,000 residents in its 98-acre expansion, adding to an already acute housing shortage forcing residents to relocate to areas like Arbor Hill and the South End.”621 This shift led to a decrease in local food production within the City and the emergence of “food deserts,” where residents had limited access to fresh and affordable food.622

Prejudicial Zoning

In the mid-20th century, many families started moving to suburbs like Colonie and Guilderland.623 However, the decisions made about land use during this time were often influenced by zoning policies that favored single-family homes and businesses while limiting affordable housing and mixed-use developments.624 This spread made people more reliant on cars, making it hard for some residents to reach grocery stores and farmers’ markets, especially if they didn’t have access to reliable transportation.625

Redlining

Another significant factor in the history of food insecurity is the practice of redlining, which systematically excluded African American communities and communities of color from access to loans and housing in desirable neighborhoods.626 This unfair practice led to the concentration of poverty in certain areas, where people had limited access to quality food sources.627 As a result, residents in these neighborhoods faced higher rates of food insecurity because there were fewer grocery stores and affordable food options available.628

Redlining, described by the BlackPast non-profit, involves systematic disinvestment and barriers to home ownership for African Americans and other people of color.629 This discriminatory practice leads to economic decline in minority communities, and eventually food deserts.630 The organization Move for Hunger points out that approximately 23.5 million people, or 8.4% of the

619 Id.
620 Id.
626 Examining the forces and maps that redlined the city of Albany., All Over Albany (2017), http://alloveralbany.com/archive/2017/02/16/albany-redlining-history.
627 Id.
628 Id.
630 Id.
U.S. population, reside in these food deserts according to the United States Department of Agriculture. Supermarket redlining compounds the issue, with major chain supermarkets showing reluctance to establish or maintain stores in low-income neighborhoods. This interconnected system of institutionalized racism results in limited access to nutritious food, perpetuating hunger, poor diets, and related health issues in impoverished communities.

The history of food insecurity in the Capital Region is closely tied to decisions about land use made over many years. From the shift toward industry, suburbanization, and restrictive zoning policies, these decisions have all played a role in shaping the region’s food landscape. Understanding this historical context is crucial for developing effective strategies to combat food insecurity. It highlights the need to rethink land use policies, promote fair urban planning and zoning, as well as address systemic racial inequalities. By recognizing the historical significance of the problem, we can work towards a future where everyone in Albany’s Capital Region has access to adequate food resources.

Food Insecurity in the Region Today

To understand the extent of food insecurity in the Capital Region, examining the most recent data available is essential. According to Feeding America’s Map the Meal Gap 2021 report, Albany County, New York, had a food insecurity rate of 11.8% in 2019. This equates to approximately 35,130 individuals, including 11,690 children, experiencing food insecurity in the region.

Food insecurity is not uniformly distributed across Albany’s population. Vulnerable groups, such as low-income households and minority communities, are disproportionately affected. In Albany County, 16.4% of Black residents and 20.2% of Hispanic residents faced food insecurity in 2019, compared to 9.1% of white residents. However, it is not just the City of Albany that faces disproportionate levels of food insecurity due to race.

In 2022, Black communities in the United States faced disproportionately higher rates of hunger compared to White communities, with nearly 23% of Black individuals experiencing food insecurity, nearly three times the rate of White households. Discriminatory policies and practices contribute to higher poverty rates and unemployment among Black individuals, limiting their financial resources and increasing the likelihood of hunger. Black children are particularly affected, with 29% living in food insecure households, almost three times more likely to face hunger than their White counterparts; the overall poverty rate in the Black community is 19.5%, significantly higher than the national average of 11.6%. Feeding America’s research underscores the persistent disparities in hunger, emphasizing the need for targeted efforts to address the social, economic, and environmental challenges that contribute to food insecurity in Black communities.

Data from 2020, released by the U.S. Census Bureau and the U.S. Department of Agriculture, reveal consistent higher rates of poverty and food insecurity for Black and Hispanic families in comparison to their White counterparts. These disparities can be attributed to historical policymaking decisions that systematically excluded Black and Hispanic families from key systems supporting financial stability. The COVID-19 pandemic also had an extreme effect on health and economic challenges in Black and Hispanic communities. Despite federal aid, food insecurity increased for Black and Hispanic households in 2020. These disparities highlight
the intersection of food insecurity with socioeconomic factors and racial inequalities.

The graph and map below depict the different levels of food insecurity in the Capital Region as of 2021. As shown in the map below, Albany County is one of the counties with a higher rate of food insecurity within the region.

Some neighborhoods in Albany lack access to full-service grocery stores and fresh, healthy food options. These areas are considered food deserts, where residents may have to travel long distances to find affordable, nutritious food options. Albany’s food system relies heavily on external sources, including large supermarket chains and food distributors. This dependency on external sources reduces the city’s ability to control and manage its food.

Shown below, in orange, are the neighborhoods within the region that are considered food deserts. The U.S. Department of Agriculture defines a food desert as an area where the poverty rate is 20 percent or higher and where, in cities, a third of residents live more than a mile from a grocery store. On the map below, the areas within the Capital Region highlighted in orange and light blue are considered food deserts.

646 Id.
649 Id.
651 Id.
According to the most recent census, ninety-five percent of census blocks that are predominantly comprised of Black residents and people of color are food deserts. Food insecurity places a considerable economic burden on individuals and families in Albany. For a family of four experiencing food insecurity, the meal cost can accumulate quickly, leading to financial instability and increased poverty rates in the region.

While the concept of food sovereignty emphasizes community control over food systems, including production, distribution, and consumption, Albany, New York, faces challenges that hinder the full realization of food sovereignty principles. This chapter explores the factors contributing to the lack of food sovereignty in Albany, with citations specific to the area. Albany’s urban environment poses challenges for local food production. High population density, limited available land, and zoning restrictions can impede efforts to grow food within the city (Capital Roots, 2021).

Implications of Food Insecurity on the Population

While there are local organizations and initiatives working toward food justice and sustainability in Albany, community engagement and empowerment related to food sovereignty principles may be limited in some areas. The lack of involvement by both community members and community leaders can hinder efforts to build community resilience. Economic factors, such as poverty and income disparities in Albany, can limit residents’ ability to make food choices that align with food sovereignty principles. The affordability of healthy food options is a persistent challenge. There may be gaps in local policies and regulations that hinder the development of community-controlled food systems in Albany. These gaps can relate to land use, zoning, and incentives for local food production.

Children in Albany from food-insecure households often face educational challenges, impacting their prospects. In Albany Public Schools, a significant percentage of students qualified for free or reduced-price meals during the 2019-2020 academic year. Food-insecure students are more likely to struggle academically, perpetuating cycles of disadvantage. A report by Feeding America (2021) highlights that food-insecure individuals in Albany may experience decreased productivity and missed workdays due to health issues associated with poor nutrition. These factors can have a detrimental impact on the local workforce and contribute to economic inefficiencies.

The economic burden of food insecurity extends to the healthcare sector. Food-insecure individuals in Albany are more likely to suffer from chronic health conditions, leading to increased healthcare utilization and costs. This places additional strain on the local healthcare system. Food insecurity can perpetuate cycles of disadvantage in Albany by limiting individuals’ ability to access stable employment opportunities. Research by the Center for Budget and Policy Priorities indicates that individuals experiencing food insecurity may face barriers to securing and retaining employment, further entrenching economic disparities. The economic implications of food insecurity extend beyond individuals to the community at large. Food-insecure neighborhoods in Albany may experience reduced property values and decreased economic development opportunities, ultimately affecting the overall economic vibrancy of the city.

Food insecurity has profound health implications for Albany residents. In Albany County, the percentage of

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658 Id.


adults reporting fair or poor health in 2019 (25.2%) exceeded the state. Inadequate access to nutritious food can lead to diet-related health conditions, such as obesity, diabetes, and cardiovascular diseases, contributing to the region's healthcare burden. Albany, like many parts of the United States, faces high rates of obesity. According to the New York State Department of Health, approximately 27.6% of adults in Albany County were obese in 2018, highlighting the scope of the obesity problem in the region.

One of the key mechanisms by which food insecurity can lead to obesity is through limited access to nutritious food. Individuals facing food insecurity often rely on low-cost, energy-dense, and highly processed foods that are calorie-rich but nutrient-poor. This pattern of food consumption can contribute to weight gain and obesity over time. Food insecurity can lead to cycles of feasting and fasting, where individuals may go without food for extended periods and then consume large quantities when food becomes available. This irregular eating pattern can disrupt metabolism and lead to weight gain, especially when high-calorie foods are consumed during periods following a fast. Paradoxically, food-insecure individuals may experience both obesity and nutrient deficiencies simultaneously, a condition known as “hidden hunger” or “the double burden of malnutrition.” This coexistence of obesity and nutrient deficiencies underscores the complexity of the issue.

Mental health is also significantly affected by food insecurity in Albany. Research conducted by the University at Albany's School of Public Health found that adults experiencing food insecurity were more likely to report symptoms of depression and anxiety. These mental health challenges exacerbate the overall well-being of Albany's residents. According to the same study, individuals experiencing food insecurity in Albany reported higher levels of stress and anxiety. The constant worry about where their next meal will come from and how to feed their families can lead to chronic stress, which, in turn, exacerbates mental health issues. The study also found that food-insecure individuals in Albany are more likely to experience symptoms of depression and hopelessness; the inability to provide adequate food for oneself and one's family can lead to feelings of despair and sadness.

Food insecurity also takes a toll on the mental health of children in Albany. A report from the Center for Hunger-Free Communities highlighted that food-insecure children are more likely to exhibit behavioral and emotional problems, including anxiety, depression, and aggression. These issues can negatively affect their educational outcomes and long-term mental well-being.

**Community Outreach: What is Being Done**

**Capital Roots**

Nestled in the heart of Albany, Capital Roots is a beacon of hope and positive change. This non-profit organization is dedicated to enhancing the well-being of the local community through its unwavering commitment to healthy food access, urban greening, and education. At its core, Capital Roots strives to improve food security and nutrition, offering a lifeline to those in need. Through an array of innovative programs and initiatives, this

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664 Id.
669 Id.
670 Id.
671 Id.
673 Id.
organization is sowing the seeds of positive change, nurturing communities and fostering healthier lifestyles.\textsuperscript{674}

Capital Roots takes a hands-on approach to community engagement. They nurture and manage community gardens throughout the Albany area, providing residents with access to green spaces where they can sow the seeds of their own fresh produce.\textsuperscript{675} Beyond the nutritional benefits, these gardens cultivate a sense of ownership, community pride, and a shared commitment to fostering self-sufficiency and environmental stewardship.\textsuperscript{676}

One of the organization’s key endeavors is the operation of affordable fresh food markets.\textsuperscript{677} These markets offer a lifeline to underserved neighborhoods, often described as food deserts. Through this initiative, Capital Roots brings affordable, locally sourced fruits and vegetables to the doorsteps of those who need them most, addressing the profound issue of food insecurity in the region.\textsuperscript{678} Their efforts transcend mere access; they create a bridge to healthier living.

Capital Roots takes innovation on the road with its Veggie Mobile. This mobile produce market is a lifeline to areas with limited access to fresh food. It serves as a convenient and reliable source of fresh, healthy, and affordable fruits and vegetables, ensuring that even in areas facing geographical and economic barriers, no one is left behind in the quest for nutritious sustenance.\textsuperscript{679}

Food is more than nourishment; it’s a source of empowerment. Capital Roots recognizes this and conducts educational programs that go beyond the plate. These initiatives impart knowledge about nutrition, gardening, and cooking, enabling community members to make informed, health-conscious food choices.\textsuperscript{680} It’s about equipping individuals with the skills to nurture their well-being and enrich their lives.

Urban farming is a beacon of sustainability, and Capital Roots is at the forefront of this movement. Through initiatives that embrace the challenge of growing food in urban environments, the organization contributes to local food production and sustainability.\textsuperscript{681} It’s about reducing food miles, enhancing environmental stewardship, and creating a blueprint for a greener, healthier future.

Capital Roots is more than an organization; it’s a lifeline, a source of hope, and a catalyst for change. Its multifaceted approach to food security, nutrition, and community engagement has a profound impact on Albany’s Capital Region. By nurturing community gardens, operating affordable fresh food markets, rolling out the Veggie Mobile, providing nutrition education, and promoting urban farming, Capital Roots is sowing the seeds of positive change. It fosters self-sufficiency, enhances access to fresh and healthy food, and empowers individuals to make informed, health-conscious choices. Through these efforts, Capital Roots doesn’t just improve the nutritional landscape; it cultivates a healthier and more vibrant community, where every individual has the opportunity to thrive.

\textbf{Albany Victory Gardens}

Albany Victory Gardens, a community-based initiative nestled in Albany, New York, is sowing the seeds of positive change by creating and maintaining communal gardens that flourish for the benefit of the local community.\textsuperscript{682} These gardens, strategically established in vacant or underutilized urban spaces, serve as a vibrant testament to the power of community-driven initiatives and their multifaceted impact.\textsuperscript{683}

At the heart of Albany Victory Gardens lies the concept of community gardening. This core principle provides local residents with the invaluable opportunity to cultivate their fruits, vegetables, and flowers.\textsuperscript{684} Beyond the bounty of fresh produce, this practice promotes self-sufficiency and fosters a profound sense of community among gardeners. Through shared toil and shared rewards, individuals come

\textsuperscript{675} Id.
\textsuperscript{676} Id.
\textsuperscript{677} Id.
\textsuperscript{678} Id.
\textsuperscript{679} Id.
\textsuperscript{680} Id.
\textsuperscript{681} Id.
\textsuperscript{683} Id.
\textsuperscript{684} Id.
together to nurture not only their gardens but also the bonds of friendship and unity.

One of the primary objectives of Albany Victory Gardens is to boost local food production. In these flourishing gardens, green-thumbed enthusiasts sow the seeds of food security, helping to ensure that the community has reliable access to fresh, organic produce. This homegrown bounty contributes to the overall food security of the region and fosters a sense of pride in the ability to produce nutritious sustenance locally.

The transformative power of Albany Victory Gardens extends beyond the plates of its participants. By converting abandoned urban spaces into thriving gardens, the initiative enhances the environment. These verdant oases contribute to improved air quality, providing a breath of fresh air in urban areas; they also serve as recreational spaces where residents can find solace and inspiration in the midst of nature. Furthermore, these gardens enhance the aesthetics of the community, adding splashes of color and life to the urban landscape.

Education is another seed sown by Albany Victory Gardens. They offer educational programs and workshops. These endeavors are more than just gardening tips; they are a journey toward sustainability, environmental stewardship, and a foundation for healthy eating. By imparting knowledge and skills, these programs empower individuals to make informed choices about their diets, fostering a culture of wellness within the community.

Albany Victory Gardens is not merely a collection of green spaces; it is a dynamic grassroots initiative that promotes local food production, community building, and environmental improvement in Albany, New York. It embodies the transformative potential of collective action and stands as a testament to the positive change that can bloom from the seeds of community-driven endeavors. For the most recent updates and information, one is encouraged to visit their official website or reach out to them directly. Albany Victory Gardens, through its vibrant gardens and community engagement, cultivates not only nourishing produce but also a sense of belonging and hope.

African American Agricultural Center

The African American Cultural Center, located in Albany, New York, is a vibrant organization committed to celebrating, preserving, and promoting the rich cultural heritage of African Americans. While the center primarily focuses on cultural and educational initiatives, it also plays an essential role in addressing food security issues within the Albany community. Food security initiatives are just some of the ways in which the African American Cultural Center has impacted, and continues to impact, the local population.

One of the key ways in which the African American Cultural Center contributes to food security is through the establishment and maintenance of community gardens. These gardens serve as a source of fresh, locally grown produce for community members. By providing access to these gardens, the center enhances food security by increasing the availability of nutritious food options. Community members are not only able to partake in the joy of gardening but also reap the benefits of harvesting their own fruits and vegetables, which can significantly contribute to their dietary needs.

Nutrition education is another vital component of the center’s food security efforts. Through various programs and workshops, the African American Cultural Center empowers individuals to make informed choices about their diets. These educational initiatives teach community members about the importance of a balanced diet, the value of locally sourced produce, and practical tips for healthy eating. By fostering nutritional knowledge, the center helps individuals make healthier food choices, contributing to improved food security in the long term.

The Center also engages in food distribution efforts, such as providing food to underserved communities or collaborating with local food banks and pantries. This direct involvement in food distribution is a tangible
way of addressing immediate food security needs in the community. Furthermore, the African American Cultural Center advocates for policies and initiatives that address food security issues in Albany. By raising awareness about the importance of food security and advocating for change at the local and state levels, the center plays a crucial role in advancing food security initiatives. Advocacy efforts can lead to meaningful policy changes that benefit the broader community.

Collaboration with local organizations and initiatives focused on food security is an essential strategy employed by the African American Cultural Center. By partnering with other entities dedicated to similar goals, the center can leverage resources, expertise, and collective efforts to make a more significant impact. These partnerships enable a holistic approach to addressing food security and ensure that the community’s needs are effectively met.

The African American Cultural Center in Albany, New York, is not just a hub for cultural and educational activities; it is also a significant contributor to local food security initiatives. Through community gardens, nutrition education, food distribution, advocacy, and collaboration, the center plays a multifaceted role in addressing food security issues in the Albany community. By doing so, it fulfills its mission of celebrating the African American heritage while simultaneously improving the overall well-being and food security of the local population.

**Recommendations**

The following comprehensive set of recommendations emerges to tackle the pressing issue of food insecurity in Albany's Capital Region. To begin, there is a vital need to revisit and reformulate land use policies and zoning regulations. Acknowledging the historical influence of these decisions on food security, it is essential for local governments to reevaluate and amend their policies to prioritize access to affordable, healthy food. This involves advocating for mixed-use developments, bolstering support for urban agriculture, and creating incentives for local food production, fostering a more food-secure environment. This can be achieved by incorporating a concept like an Urban

The identification and mitigation of food deserts constitute another critical step in the battle against food insecurity. Addressing these areas of the region with limited access to fresh and affordable food should involve the strategic placement of full-service grocery stores and farmers’ markets in underserved neighborhoods. The implementation of incentives to attract businesses to these regions plays a pivotal role in enhancing food accessibility. One potential barrier may again be zoning practices. Factors such as dimension of the building as well as parking can be hurdles for developers. By acting in a less restrictive manner, it is likely that developers will be more inclined to invest in structures such as grocery stores. A great example is the city of Philadelphia. The city offers a package of zoning incentives through its Fresh Food Marketing Bonus. This initiative encourages stores to be designated as fresh food retailers. While there are various nuances surrounding what it takes to be considered a fresh food retailer, developers can implement grocery stores in a much less restrictive manner while offering fresh food options to individuals of the community.

A historical issue intertwined with food insecurity is the enduring legacy of redlining. Acknowledging this legacy and its impact on food security disparities, policymakers must introduce policies and initiatives that counter these disparities. These measures may encompass financial incentives to entice businesses to open in underserved regions, ensuring equitable access to loans for marginalized communities, and supporting community-led development efforts. The economic ramifications of food insecurity are substantial, placing a heavy burden on individuals and families. Therefore, the development of programs providing financial assistance, job training, and educational opportunities is essential to help individuals attain stable employment and secure access to nutritious, affordable food.

Local organizations like Capital Roots and Albany Victory Gardens have been at the forefront of efforts to improve food security. To support their work, allocating funding, resources, and land for community gardens, mobile produce markets, and nutrition education programs is crucial. Collaborative endeavors among these organizations
can enhance their collective impact, fostering a more resilient food security network.

Empowering communities to take control of their food systems aligns with the principles of food sovereignty. Encouraging initiatives like community gardening and local food production empower residents to have more agency in their food production, distribution, and consumption, effectively reducing dependence on external food sources. Beyond the realm of agriculture, the gardens play a pivotal role as vibrant centers of community engagement. They serve as a focal point for community events and gatherings. Here, individuals of diverse backgrounds come together, savoring the fruits of their labor, both literally and figuratively. These spaces become arenas for social interactions, forging connections, and reinforcing the bonds of unity that are the bedrock of any thriving community.

There are many ways in which food sovereignty can be encouraged within communities such as those within the Capital Region – for example, edible front yard gardening. By amending zoning ordinances that prohibit the extent to which one can garden on their own property, individuals will have direct access to quality food items. Not to mention, the access individuals will have to these products will be dictated by them, as they will be the ones producing them. Pittsburgh is a great example of another city working to address food sovereignty. The city allows individuals to grow crops if the sole purpose is personal consumption. By doing so, individuals are able to grow their own fresh produce thus increasing both access and control over the food source.

The health implications of food insecurity must not be overlooked. Investing in healthcare services tailored to addressing these health concerns is essential. Mental health services that cater to individuals and families affected by food insecurity can significantly alleviate the mental health challenges associated with this issue, fostering a more comprehensive approach to well-being. School meal programs can play a pivotal role in ensuring that food-insecure children have access to nutritious meals. Strengthening and expanding these programs in Albany Public Schools is necessary to support vulnerable children. Collaboration with community organizations can further extend meal provisions beyond school hours, covering weekends and school breaks.

Moreover, community engagement and education on food security issues are vital in raising awareness and creating a sense of community pride and unity around food-related initiatives. Local organizations should be encouraged to provide nutrition education and cooking classes to equip individuals with the knowledge and skills to make healthier food choices. Advocacy and policy change should be pursued vigorously, working in collaboration with local organizations, communities, and policymakers to raise awareness of food security issues at both the local and state levels. This collective effort can pave the way for meaningful policy changes and a more food-secure future for Albany’s residents. Inter-organizational collaboration and resource-sharing are key to creating a more substantial and enduring impact. Encouraging organizations working on food security to work together can lead to more effective and efficient use of resources, enhancing the overall impact of their initiatives.

Last but not least, regularly assessing the effectiveness of programs and policies designed to address food security is essential. Adapting and updating these initiatives to remain relevant and responsive to the evolving needs of the community ensures a dynamic and ongoing commitment to addressing food insecurity. Accurate data collection and analysis should underpin all these efforts. Continuously monitoring and assessing the extent of food insecurity within Albany’s Capital Region and understanding the demographics most affected allow for tailored programs and policies that cater to specific community needs, ensuring effective solutions.

These comprehensive recommendations, informed by historical context, community contributions, and sound policy considerations, have the potential to address food insecurity and promote food sovereignty in Albany’s Capital Region. They represent a holistic approach that integrates land use policies, community-driven initiatives, and government interventions, aiming to create a more secure, equitable, and resilient food system for all residents.

699 Id.
701 Id.
702 Id.
CHAPTER 7: CLIMATE & ENERGY JUSTICE

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Abstract

Historically, land use has been leveraged as a mechanism to exclude certain groups from vital resources. In this chapter, we specifically identify how achieving both climate and energy justice for the Capital Region is contingent on land use processes. The goal is to address the ways in which land use has allowed climate and energy to serve as a detriment to certain communities—based on race and socioeconomic status—in the Capital Region, so that we can propose solutions and chart the best path forward. Climate and energy justice are a necessary requirement to breakdown racial barriers implemented through land use in the Capital Region and across the nation. Luckily, racially motivated land use policies and decisions can be defeated with strong advocacy, support, and proposals.

Introduction

When planning for the future, climate and energy are two essential components for achieving a just and equitable community. If climate and energy measures exclude certain groups of people, the consequences can be severe and may exacerbate over time. Climate and Energy injustices are not uncommon scenarios. In fact, when analyzing land use decisions and the disproportionate impact they have on minority groups and individuals in lower socio-economic areas with regard to climate, energy and many other topics addressed in this Report, the intent—whether by way of outright racist language or by disguising “racial animus” in ‘race-neutral’ language”—becomes clear. It is very evident because theme is reoccurring, certain groups will be situated where climate and energy will benefit them whereas other groups will be situated where climate and energy will serve as a detriment to their safety, health, and prosperity. As a result, achieving climate and energy justice is critical for negatively impacted communities and individuals.

Climate justice is defined as “the remediation of the impacts of climate change on poor people and people of color—those who are impacted the first and worst—and compensation for harm suffered by such communities due to climate change.” Subsequently, energy justice is defined as:

A multi-layered, human-centric theoretical approach that challenges injustice and inequality in the energy sector. It does this by recognizing who should have a say when energy systems are being designed and deployed, and what the implications of such systems are and to whom. It aims to achieve equality between social, economic, and political participation in the energy system and, ultimately, make the whole system more ethical.

With these definitions in mind, this section of the Report aims to address how climate and energy injustice have plagued the Capital Region, the effect on minority groups and lower socio-economic individuals, current Capital Region initiatives, and inadequacies in serving marginalized communities. We argue that the Capital Region has not sufficiently addressed climate and energy injustice—as many individuals today continue to suffer from climate and energy injustices. After addressing

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705 See id.
707 What is Energy Justice?, UNIVERSITY OF SUSSEX (July 2023), https://study-online.sussex.ac.uk/news-and-events/what-is-energy-justice/.
the most current and pressing climate and energy issues, we propose solutions that will aid the region in achieving climate and energy justice for all.

We look to achieve climate and energy justice by, in Part I, highlighting and covering information that is used in planning and policymaking, as well as information dispersed to the public. We then offer critiques and proposals and articulate the current state of the Capital Region, regarding efforts or a lack thereof to address racial inequality embedded in climate and energy policy. In Part II, we discuss climate justice; first we cover climate adaptation by looking closely at poor air quality in certain neighborhoods, heat island effect, flooding, and climate migration so that climate adaptation measures—based off of our recommendations—can be put into place before considering mitigation tactics. Second, we cover climate mitigation by discussing and recommending mitigation efforts such as increasing carbon sinks, efficiency, and renewable energy, which underscores how energy justice is closely intertwined with climate justice. Part III is dedicated to energy justice, which is best highlighted by the efforts of Sheridan Hollow Alliance for Renewable Energy (SHARE) to implement clean renewable energy across the city and most notably, the alliance’s efforts that helped to prevent the construction of fracked gas boilers in a decommissioned trash incinerator.

Section I Racial Exclusion in Planning, Policy Making and Public Engagement

The information used by municipalities throughout the Capital Region to create and implement climate mitigation and adaptation plans insufficiently considers race as a factor in determining needs, vulnerabilities, and impending concerns. By failing to appropriately incorporate clear evidence of the disproportionate impact of climate change on racial minorities in policymaking and planning, climate change initiatives will have limited success in serving those who have historically faced discrimination.

The Climate Leadership and Community Protection Act (“the Climate Act”) was signed into law in New York State in 2019. The Climate Act ambitiously incorporates equity as a leading focus, by imposing a minimum allocation of funding of 35 percent, with a goal of 40 percent to “Disadvantaged Communities” (DACs), or low-income and climate-vulnerable households outside of DACs. Under the Climate Act, the Climate Justice Working Group (CJWG) was established to determine factors and stressors that may result in certain communities bearing the burden of climate change inequitably. The CJWG established 45 DAC indicators, that were then categorized into seven factors. One clear factor is race and ethnicity. The CJWG provides that the consideration of racial minorities as a factor, represents legacies of historical discrimination on the basis of race and ethnicity. People of Color are more likely to live in areas with higher environmental burdens and experience the negative health consequences of several environmental factors. Moreover, minority populations are more likely to live in climate vulnerable communities that bare the harshest impacts from climate change (citing EPA, Climate Change and Social Vulnerability in the United States, A Focus on Six Impacts, (Sept. 2021)). Out of all racial demographic populations, Black or African Americans are exposed to more PM 2.5 pollution on average, which is the largest environmental health risk factor in the US. Black or African American households also have the lowest mean and median net wealth.

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711 N.Y. Env’t Conserv. Law § 75-0111.
713 Id. at 43.
DAC factors

The CJWG’s factors include, in addition to concentrations of “groups that have historically experienced discrimination based on race or ethnicity”: “geographic, public health, environmental hazard, and socioeconomic criteria.” As a result, 19 percent of Capital Region households are within DACs, and an additional 16 percent of Capital Region households are considered low-income and included as climate-vulnerable, while situated outside a DAC.

Sixty census tracts within the Capital Region are designated as DACs: 23 in Albany County, 3 in Columbia County, 4 in Greene County, 12 in Rensselaer County, 15 in Schenectady County, 2 in Warren County, and 1 in Washington County. When statewide programs are funded, these communities receive high priority.

DACs in Albany

A 2011 report by New York State Energy Research and Development Authority (“NYSERDA”), entitled Responding to Climate Change in New York State: the ClimAID Integrated Assessment for Effective Climate Change Adaptation in New York State (“ClimAID”) provides a thorough analysis on equity and environmental justice and cites race as a key differentiator that leads to some facing a disproportionate impact. For instance, the report states “[t]he negative impacts of climate change on health may be particularly consequential for people living in poverty or communities segregated by race.” This comprehensive report was relied on in the drafting of the Climate Act, as well as in policymaking and planning by city and local governments throughout the state. Albany’s Climate Change Vulnerability Assessment and Climate Adaptation Plan, “builds off of the ClimAID report by analyzing how climate change could affect Albany’s people, infrastructure and natural resources and provid[es] recommendations and strategies on how to improve the city’s resilience and adaptive capacity.” However, despite its intent, the plan bears no mention of racial inequities. The ClimAID report also informed the Climate Smart Communities Task Force when commissioned by the New York State Department of Environmental Conservation (“NYSDEC”) to aid the city of Schenectady in identifying vulnerabilities in pursuit of

715 Id. at 5.
721 Id. at 66.
722 Id. at 412.
becoming a Climate Smart Community. The resulting report only includes race in breaking down median household income. Despite demonstrating a significant income gap that impacts Black, Hispanic, and Latino populations, no additional information is provided on the impact of this income gap as it applies to climate change.

The consequences of the Capital Region’s insufficient focus on race are evident. In 2019, NYSDEC implemented a sophisticated air quality study in Albany’s South End, responding to health and safety concerns from residents of the public housing community, Ezra Prentice Homes, due to its close proximity to the Port of Albany, Interstate-787, a railroad, and marine vessels traveling on the Hudson River. The study found that “long-term exposure to air toxins has the potential to initiate cancer and other health issues such as developmental, respiratory and cardiovascular effects.” The State’s study describes the monitored area, Albany’s South End, Mount Hope, and Krank Park – Cherry Hill, as consisting of three environmental justice areas, and states that “[l]ower income and communities of color are subject to disparate impacts from environmental hazards such as proximity to industrial activity and high traffic corridors with higher pollution levels, odors, noise, and overall reduced quality of life.” The study found that the majority of particulate matter stems from local traffic, mainly trucks and industrial vehicles, and supported the residents’ presumption that pollutants were particularly concentrated around the Ezra Prentice community.

The Port of Albany was identified as contributing to the increased benzene concentration at Ezra Prentice and in South Albany, subjecting residents to a higher risk of cancer and far exceeding NYSDEC’s health-based annual guideline concentration. In addition to State remedial efforts, the City agreed to coordinate rerouting of truck traffic, on a strictly voluntary basis. The Mayor’s Office directed Albany’s Department of General Services to prohibit use of South Pearl Street, when not necessary. The Albany Housing Authority vowed to install window air conditioners to improve indoor air quality.

The City’s mitigating steps, as outlined in the study, proved to be elusive; the findings indicated that the conditions in the community are likely too severe to be mitigated by a voluntary re-routing of trucks. City officials have advised residents to move, which is not viable for most, and suggested rail carriers and oil industries are responsible for ensuring safety, which offers no relief to residents. To this day, no financial compensation has been provided to residents to allow them to move. Any chance at substantial mitigation seems so improbable that in fact in 2021, Waste Management of New York requested a permit to receive solid waste at the Port’s transfer station, merely 1,000 feet from Ezra Prentice, a request that was later withdrawn. Elevated hospital visits are still observed amongst residents, who are far more likely to suffer from hypertension, diabetes, acute bronchitis, and asthma compared to all County residents.

726 Id. at 6.
727 Id. at 25.
729 Id. at 15.
730 Id. at 6.
731 Id. at 3.
732 Id. at 39.
733 Id.
734 Id.
735 Id. at 5.
736 Id.
739 Id.
740 Id.
741 Id.
The resulting inaction from the City is, in part, a product
of the inadequate focus on race in the city's planning
related to climate change. The community, that affronts
modern zoning conventions, has an 84% non-white
population.743 The greater South End epitomizes the State's
DAC criteria, and continues to endure well-documented
environmental harm, despite the prioritization laid out
by the Climate Act.744 However, the City has consistently
failed to take significant action. To comport with the
State's focus on disadvantaged communities, and properly
address inequities in climate change, concentrations of
racial minorities should be at the forefront for the Capital
Region's municipalities when identifying and acting on
areas of need.

While identifying race and ethnicity as a key factor
in the formulation of climate and energy action plans
is critical to performance, residents of disadvantaged
communities must be included in planning efforts in a
more significant way. Currently, property owners and
program administrators are disconnected, leading to a
discernible lag in program implementation. Discriminatory
barriers obstruct participation from those in disadvantaged
communities, such as the failure to provide information
in a multi-lingual format, and to those without digital
access. Lastly, municipalities have avoided forming strong
partnerships with community-based organizations,
where diverse voices can be easily heard. Currently, 21
percent of Capital Region households are positioned
within disadvantaged communities, or are otherwise low-
income.745 The income disparity in the Capital Region has
a strong corollary to race, where limited assets, constrained
incomes, and employment challenges are markedly higher
amongst non-white populations.746 Treating the residents
of disadvantaged communities with concentrated racial
minority populations as co-creators, rather than statistics,
will eliminate the discriminatory barriers that inhibit the
success of climate and energy measures, and the long-term
quality of life for the region's inhabitants.

Roughly 40 percent of emissions stem from buildings.747
In New York, the buildings sector is responsible for more
than one-third of the overall emissions.748 Therefore,
the engagement and participation of property owners,

745 Id.
746 Meet Alice in the Capital Region: Asset Limited, Income Constrained, Employed, United Way of the Greater Capital Region (last visited Oct. 7, 2023), https://www.unitedwaygcr.org (“In the Capital Region, 66% of Black households and 55% of Hispanic households are below the ALICE threshold. Comparatively, 35% of White households are below the ALICE threshold.”).
748 Proc. on Mot. of the Comm’n to Consider a Clean Energy Fund, supra note 710, at 12.
managers, and tenants will be vital in achieving the State’s goal to aggressively reduce greenhouse gas emissions by 2030.\textsuperscript{749} State expenditures, tracked in compliance with the Climate Act, revealed that through June of 2022, none of the utility electric low- to moderate-income programs were on target when it came to allocating funding.\textsuperscript{750} The failure to meet the Act’s allocation goals for disadvantaged communities revealed a distinct disconnect between the goal to electrify buildings, and those capable of implementation.\textsuperscript{751} In New York City, building electrification has gained traction by distributing building electrification goals among several focal points, including two that pertain directly to residents: long-term savings for customers, and the incorporation of building shell improvements that enable optimal performance amid peak winter and summer conditions.\textsuperscript{752} This culminated in the passing of a local law promoting the electrification of new and retrofitted buildings in 2021.\textsuperscript{753} Capital Region municipalities have the opportunity to take a similar approach, by hearing and considering the needs of disadvantaged residents and proposing local laws in pursuit of electrification.\textsuperscript{754} Furthermore, direct, and palatable communication between city personnel and community members regarding the resident-centric attributes of building electrification would tamper the impact of negative representations that are largely the result of fossil fuel utility companies, protecting profits through extensive lobbying efforts.\textsuperscript{755} Communication regarding climate and energy initiatives often fails to reach underserved racial and ethnic groups; for example, in Albany County, 13.9 percent of residents speak a language other than English at home.\textsuperscript{756} However, state law only requires the provision of utility bills in a language other than English, in counties where at least 20 percent of the population regularly speak a language other than English, and only then upon consumer request.\textsuperscript{757} This means, State energy saving initiatives, such as the Affordable Multifamily Energy Efficiency Program\textsuperscript{758}, are not being clearly communicated to 4.9 percent of the county’s residents, who do not speak English very well.\textsuperscript{759} Access to digital technology imposes further limitations on communication; the disparity in digital access has been tethered to race since the 1990s, with a wide gap between White households with broadband compared to Black households.\textsuperscript{760} Currently, 66,592 households in the Capital Region lack internet access at home.\textsuperscript{761} Roughly 48,900 households have no computing devices.\textsuperscript{762} Steps towards establishing municipal internet began in the area in 2009, however the gaps remain.\textsuperscript{763} As the primary vehicle for information regarding climate and energy initiatives, disaster preparedness, and relief measures, it is imperative that every resident in the Capital Region has free access to the Internet and digital technology.

Many community-based organizations who engage in climate and energy initiatives, such as the Radix Ecological Sustainability Center, Sheridan Hollow Alliance for Renewable Energy (SHARE), A Village, the


\textsuperscript{750} Proc. on Mot. of the Comm’n to Consider a Clean Energy Fund, supra note 710, at 23.

\textsuperscript{751} \textit{Id.} at 15.

\textsuperscript{752} Proc. on Mot. of the Comm’n to Consider a Clean Energy Fund, supra note 710, at 18.


\textsuperscript{756} \textit{Languages Spoken at Home}, United States Census Bureau (2022) \url{https://data.census.gov/profile/Albany_County,_New_York}.

\textsuperscript{757} N.Y. Pub. Serv. Law § 44.


\textsuperscript{759} \textit{Languages Spoken at Home}, supra note 756.

\textsuperscript{760} N.Y. State Energy Research & Dev. Auth., supra note 720, at 382.

\textsuperscript{761} \textit{NYS Digital Equity Portal}, Cornell University (last visited Oct. 7, 2023) \url{https://blogs.cornell.edu/nysdigitalequity/home/}.

\textsuperscript{762} \textit{Id.}

\textsuperscript{763} Dave Lucas, \textit{Another Effort to Provide Public Wi-Fi in Albany}, WAMC (Feb. 26, 2021).
Climate justice, as a term, refers to the disproportionate social, economic, and public health impacts of climate change on underprivileged populations.\(^{772}\) The populations particularly burdened include people of color, low-income communities, indigenous people, people with disabilities, and older adults.\(^{773}\) There exists another layer of injustice in that those most vulnerable to climate change, are also those least responsible by sustaining a lifestyle that naturally produces less emissions.\(^{774}\) Organizations such as the Climate Justice Alliance and the NAACP are currently working to bring race considerations to the forefront in climate action discussions.\(^{775}\) As climate change remains a critical global issue, adaptation and mitigation strategies are vital in addressing the racial inequities of climate change.

### Section II Climate Justice

Climate justice, as a term, refers to the disproportionate social, economic, and public health impacts of climate change on underprivileged populations.\(^{772}\) The populations particularly burdened include people of color, low-income communities, indigenous people, people with disabilities, and older adults.\(^{773}\) There exists another layer of injustice in that those most vulnerable to climate change, are also those least responsible by sustaining a lifestyle that naturally produces less emissions.\(^{774}\) Organizations such as the Climate Justice Alliance and the NAACP are currently working to bring race considerations to the forefront in climate action discussions.\(^{775}\) As climate change remains a critical global issue, adaptation and mitigation strategies are vital in addressing the racial inequities of climate change.

### Recommendations

As climate and energy goals remain in the forefront of planning, policy making, and engaging the public, we urgently recommend that action is taken, to increase racial inclusion, and thereby the success of municipal initiatives. Generally, municipalities must accord with the State’s periodization of DACs in all planning efforts, establishing plans where at least 40 percent of the benefits are provided explicitly to those in disadvantaged communities, using race as a key factor in determination.\(^{771}\) In order to ensure that plans are executed to completion, communications with community members, in particular property owners, must be increased in a clear and comprehensive manner. This includes bolstering the accessibility information, by providing of multi-lingual communications without an arduous process for requesting translated materials and establishing municipal internet and free access to digital technology to those who are currently without. Lastly, municipalities should serve as active partners to the many local organizations currently making strides in achieving climate and energy justice.

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773 Id.
774 Id.
775 Id.
In New York state, the Climate Action Council was established under the Climate Act to draft the Scoping Plan, outlining the initial framework pursuant to reducing greenhouse gas emissions in order to achieve net-zero emissions. The final plan was released January 1, 2023, following many rounds of comments, including those from the Climate Justice Working Group and the Just Transition Working Group (“JTWG”), both established under the Act. The Scoping plan ensures, in accordance with the Climate Act's climate justice goals, that permitting, licensing, contracting, and other approvals and decisions will not disproportionately burden Disadvantaged Communities and that these communities will be prioritized in the reduction of greenhouse gas emissions and co-pollutants. The benefits that will be abundantly provided to Disadvantaged Communities include both adaptation and mitigation efforts such as funding for “clean energy and energy efficiency programs, projects, or investments in the areas of housing, workforce development, pollution reduction, low-income energy assistance, energy, transportation, and economic development.”

Climate justice encapsulates the true intersection of land use, racial inequality, and climate and energy issues. Our analysis on climate justice is two-fold, and includes issues in (A) Climate Adaptation, and (B) Climate Mitigation. Subsection A will expound on climate adaptation by providing measures to be taken to alleviate the burdens of poor air quality, susceptibility to the heat island effect, and the likelihood of facing devastation from flooding. In Subsection B, we consider notable climate mitigation efforts such as increasing carbon sinks, improving energy efficiency, and implementing renewable energy. We discuss obstructions to these efforts, and provide recommendations on mitigating climate change, while promoting racial equity as an underlying main goal.

**Climate Adaptation**

Climate adaptation is “the process of adjustment to actual or expected climate change and its effects, in order to moderate harm or exploit beneficial opportunities.” This involves resilience strategies for residents of at-risk communities as well as assurances of a ‘just transition’ from government actors. The Climate Action Council’s Scoping Plan defines a just transition as one that “builds connections, creates opportunity, and ensures a good quality of life for New Yorkers from all different walks of life.” As one of its several core principles, the JTWG strives to “[i]ntegrate climate adaptation into transition planning, including through promotion of community resilience and investment in sustainable infrastructure.” In the face of poor air quality, severe heat, flooding, and forced migration, adaptation strategies must be developed in accordance with the needs of minority populations.

**Indoor Air Quality**

Research has amply shown that exposure to poor air quality, and its detrimental impact on health, is vastly more common in predominantly Black communities. The American Lung Association determined that income is not primarily responsible for this correlation, as is commonly believed. The Association offered two plausible reasons for the correlation: chronic stress due to discrimination, and decades of residential segregation that sequestered generations of Black families to reside in polluted, industrial, and congested areas. As temperatures rise, air quality becomes a chief concern, due to the resulting increase in ground-level ozone, which causes lung damage and exacerbates symptoms in those with asthma and
chronic lung disease. Further degradation of air quality will be catastrophic for those in areas such as South Albany, where air quality is already poor. These communities are currently suffering from asthma at an elevated level, with asthma-related hospital visits for South End residents more than triple the rate of the greater county.

Albany’s 2013 Climate Change Vulnerability Assessment and Adaptation Plan cites the improvement of indoor air quality as a measure in preventing severe health issues stemming from climate change. However, in 2020, NYSERDA published a study identifying existing gaps in information preventing meaningful change in combating climate change; the study identified that adaptation efforts in New York State generally have produced little results and have struggled in funding and organizing. Access to data was noted as a barrier, with one survey respondent stating, “We don’t have any data on indoor air temperatures or any data … that could be used as proxy for what … strategies people have in their homes and workplaces.”

In addition to the absence of data, the assumption that the responsibility vests in the Federal or state government, or in institutions creates an additional barrier in forming adaptation strategies pertaining to air quality issues.

Improving indoor air quality is an appropriate measure in adapting to climate change, as it is foreseeable that the declining air quality will require more time spent inside. Adaptation to reduced air quality can be aided by local government measures; San Francisco succeeded in creating a solution on a city scale by identifying that indoor air quality can be effectively regulated through building code and health and safety code legislation. The city enacted Article 38 to integrate indoor air quality regulation into building and health codes. Article 38 “imposes an enhanced ventilation requirement for all urban infill sensitive use development within the Air Pollutant Exposure Zone.” Initially, the ordinance relied on major roadways to determine which residences fell within the exposure zones; going forward, extensive studies by the Department of Health, to take place once every five years, would automatically place susceptible areas within exposures zones. The classification errs on the side of generous, including more areas than previous regulations. More stringent restrictions apply to areas with higher percentages of health vulnerable residents based on hospitalizations. Under this law, developers are required to incorporate enhanced ventilation systems into plans. The Department of Building Inspections will not issue a building permit without approval from the Department of Public Health. Furthermore, renters and buyers must be notified that the building is located in an at-risk area.

Other cities have undergone similar efforts to improve indoor air quality in existing housing; for example, in Somerville, Massachusetts, a partnership between the Department of Housing and Urban Development and the Tufts School of Medicine, and the Somerville Housing Authority, resulted in the installation of window-mounted HEPA air filtration units in public housing units in proximity to a high-traffic interstate. By doing so, residents experienced a 50 percent decrease in fine...
particulate matter.\textsuperscript{805} By revising building codes, and spearheading similar efforts, Capital Region municipalities could provide residents most susceptible to the impending reduction in air quality with safer indoor spaces.\textsuperscript{806}

**Recommendations**

Monitoring and improving indoor air quality is vital in reducing the public health risks, disproportionately faced by racial minority populations in the Capital Region. Monitoring mechanisms should be established for those living in public housing communities, particularly those in proximity to high-traffic areas. Building and health codes should be modernized to require enhanced ventilation for those in vulnerable areas, construed broadly. The prompt installation of window-mounted air filtration units should be explored for public housing.

**Heat Island Effect**

The Capital Region is uniquely characterized by a volatile climate, being on the receiving end of cold, dry air masses from the northern interior of North America, as well as warm, humid air masses from southern prevailing winds.\textsuperscript{807} An increased annual average temperature, as projected, will adversely impact public health.\textsuperscript{808} The Environmental Protection Agency describes “heat islands” as “urbanized areas that experience higher temperatures than outlying areas. Structures such as buildings, roads, and other infrastructure absorb and re-emit the sun’s heat more than natural landscapes such as forests and water bodies.”\textsuperscript{809} Increased urban temperatures will result in higher hospitalization rates and mortalities.\textsuperscript{810} Census data shows that extreme heatwaves, which will disproportionately impact urban heat islands, are far more likely to be encountered by a person of color.\textsuperscript{811} In the Capital Region, formerly redlined areas are aligned with areas susceptible to the heat island effect.\textsuperscript{812}

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Capital Region cities must act to allow for equitable adaptation to extreme heat. Cooling centers are necessary, but provide an imperfect solution, as not every resident has access by personal or public transportation, and the available hours are not always adequate to accommodate severe heatwaves.\textsuperscript{814} As temperatures climb, air conditioning will become vital for residents of the Capital Region in maintaining a healthy and comfortable environment.\textsuperscript{815} For many Capital Region residents, the expense of owning and running an air conditioner is not feasible. Given the disparities in homeownership, and

\begin{itemize}
\item \textsuperscript{805} Id.
\item \textsuperscript{806} See id. at 181-191.
\item \textsuperscript{807} City of Albany, Mayor’s Office of Energy & Sustainability, Albany Climate Change Vulnerability Assessment and Adaptation Plan, supra note 724, at 23.
\item \textsuperscript{808} Climate Change Effects and Impacts, NYS Department of Environmental Conservation, https://www.dec.ny.gov/energy/94702.html#;\textasciitilde;=\textasciitilde;Text=Over%20the%20last%20century%20average%20temperature%20has%20risen%20three%20times%20faster%20than%20summers, (last visited Oct. 31, 2023).
\item \textsuperscript{809} EPA, Heat Island Effect (last visited Oct. 14, 2023), https://www.epa.gov/heatislands.
\item \textsuperscript{810} City of Albany, Mayor’s Office of Energy & Sustainability, Albany Climate Change Vulnerability Assessment and Adaptation Plan, supra note 724, at 41.
\item \textsuperscript{812} See id.
\item \textsuperscript{814} See Erica Smith, Escape Extreme Heat in the Capital Region, Times Union (July 6, 2023), https://www.timesunion.com/projects/albany-cooling-centers/.
\item \textsuperscript{815} See id.
\end{itemize}
the prevalence of rental properties concentrated in urban areas, Capital Region cities should require air conditioning systems in multi-family rental properties. The Los Angeles City Council recently unanimously voted to move towards this mandate, following nearly 4,000 heat-related deaths in a decade, and an influx of emergency responses to heat-related calls this past summer. Ideally, landlords would absorb the cost of installation and use, however, financial aid should be provided as needed either by the Cities or by utilizing New York’s Home Energy Assistance Program, as was done in New York City’s Get Cool NYC program, a similar program described by the Director of the Mayor’s Office of Sustainability as “what climate justice looks like.”

**Recommendations**

To aid those susceptible to the heat island effect, which includes predominantly non-white populations, municipalities should develop feasible programs to provide energy-efficient air conditioning units to those in need, with a particular focus on those residing in rental properties and public housing. Municipalities must ensure that residents do not bear the cost, by either placing the financial responsibility on area landlords when possible, or serving as an interface in accessing State funding allocated to provide such relief.

**Flooding**

Climate change has led to a significant increase in precipitation in the Capital Region. As the Hudson River rises, so does the risk of detrimental flooding; the impact of increased precipitation and flooding will be predominantly faced by vulnerable populations, including those without the financial means to recover from a disaster. In Albany County, 20 percent of residential land is located within the 100-year floodplain and is more commonly inhabited by minority and low-income families. 47 percent of

Residents who encounter flooding and climate related disasters face unplanned expenditures, and housing instability. Furthermore, flooding is likely to disrupt 32 percent of bus routes, imposing an additional hardship on socially vulnerable populations relying on public transportation for daily commutes.

Those with language barriers do not receive clear communication regarding impending storms, weather disasters, or wildfires and are often unable to communicate with first responders in the event of an evacuation order. Emergency response plans must be revised and publicized in a manner that eliminates language and accessibility barriers. Satisfactory plans must be developed in the City of Watervliet, the Town of Coeymans, and the Village of

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817 Id.
820 Id. at 24.
821 Id. at 24, 26.
822 Id. at 27.
823 Id. at 41.
824 Id. at 113.
826 Simmons, supra note 772.
Voorheesville that currently have no emergency operations plans.

When the risks of climate change becoming too severe, the threat of forced displacement and migration weighs heavily upon at-risk communities. Municipalities should consider relocation and rezoning to establish riparian buffer protection; this should begin with an equity-focused study to determine flood resilient locations. Immediately following, communities should be built to prioritize both affordable housing availability and anti-displacement mechanisms. Funding streams, such as municipal bonds, public-private partnerships, as well as leveraged federal, state, and county funds, should be made available to those who are forced to relocate or undergo disaster recovery efforts on their homes and communities.

Recommendations

The needs of residents in adapting to climate change are dire. It must be recognized that the cost of aiding those most burdened by the impacts of climate change now, is far less costly than long-term inaction. Capital Region municipalities have the ability to serve as advocates to those who are compromised and provide protection as climate change advances. Instating measures to allow for adaptation at the local level, will alleviate the serious risk of illness, mortality, and forced relocation that looms disproportionately over people of color. Capital Region municipalities must immediately revise emergency response protocols in preparation for increased flooding. This includes enhanced accessibility in notice, response, and aid. Disaster relief funds should be established, solely for use by equity applicants. Additionally, municipalities must undergo equity-based land use studies in consideration of those residing in floodplains. This should be followed by the development of flood-resistant public and affordable housing, and assurances that safe relocation plans are in place.

Climate Mitigation

In addition to climate adaptation, climate mitigation is a vital component in achieving climate justice for the Capital Region’s racial minority populations. Generally, climate mitigation is the reduction of greenhouse gas emissions, including increasing carbon sinks such as trees, reducing the use of fossil fuels and increasing renewable energies. The national push toward mitigating the impacts of climate change has not succeeded in eliminating disparities in accessibility for racialized and vulnerable residents. Climate mitigation in a significant part depends on local action, as city leaders and government officials have clear lines of communication with residents, and an acute awareness of particular regional sensitivities. Therefore, Capital Region municipalities must responsively and adaptively ensure that acts in furtherance of climate mitigation are made with the explicit benefit of eliminating racial inequalities.

Carbon sinks

Preservation of the region’s forests and tree canopy remains a critical measure in carbon sequestration, or the removal of carbon from the atmosphere. In 2019, forestry accounted for 11 percent of the overall removal of statewide emissions in New York, with urban forests...
accounting for 14 percent of that total.\textsuperscript{837} The ability for trees to serve as carbon sinks has been compromised by the significant depletion of the state’s tree canopy coverage, estimated to be around 6,720 acres each year.\textsuperscript{838}

Recent Capital Region efforts recognize the importance of trees for climate mitigation; for example, Albany’s “adopt-a-tree” program underwrites half the cost of a new tree for city residents seeking to plant trees on their property.\textsuperscript{839} The city is more than halfway toward its goal of planting 2,025 trees by 2025.\textsuperscript{840} However, the interest in increasing urban forests rivals the city’s ongoing beautification efforts.\textsuperscript{841} A project along upper Madison Avenue near South Allen Street required the removal of large trees to replace city sidewalks.\textsuperscript{842} Upon doing so, the Department of General Services encountered complaints from residents.\textsuperscript{843} Tenth Ward Councilman Owusu Anane noted the equity issue that underlies the city’s tree removals, often occurring in neighborhoods occupied by renters who lack information and resources to have trees replaced.\textsuperscript{844} This is echoed by the “adopt-a-tree” program’s de facto favoritism towards homeowners with sufficient income to pay for the related costs of tree maintenance.\textsuperscript{845}

In the Capital Region, inadequate communication with residents has interfered with preserving and increasing urban forests.\textsuperscript{846} In 2021, 20 trees were removed from Lincoln Park in under three hours, to the shock and indignation of residents and neighborhood groups such as A Block at a Time and the Lincoln Park Alliance.\textsuperscript{847} In response, a spokesman for Mayor Kathy Sheehan stated the removal was necessary to renovate the park’s basketball courts, a project that residents supported.\textsuperscript{848} The Beaver Creek project, slated to reduce sewer overflows, subsequently resulted in the removal of 150 trees from the park.\textsuperscript{849} In 2020, the site of a planned Costco was cleared of all trees during the public comment period, in direct violation of the State Environmental Quality Review Act (SEQR).\textsuperscript{850} A volunteer with Save the Pine Bush recalls learning of the removal while it was taking place, when a notice appeared on the town planning department website.\textsuperscript{851} The project is opposed by residents and nearby business owners.\textsuperscript{852} In response to the outcry, a cease-and-desist was imposed by Town Supervisor, Peter Barber.\textsuperscript{853} However, the suit was dismissed in U.S. District Court, with Judge Mae D’Agostino stating that “federal courts should not become zoning boards …”\textsuperscript{854} The group responsible for the development claims to have worked collaboratively with local planning officials.\textsuperscript{855}

\textsuperscript{837} Id.
\textsuperscript{838} Id. at 373.
\textsuperscript{840} Id.
\textsuperscript{841} See id.
\textsuperscript{842} Id.
\textsuperscript{843} Id.
\textsuperscript{844} Id.
\textsuperscript{845} See id.
\textsuperscript{847} Id.
\textsuperscript{848} Id.
\textsuperscript{849} Id.
\textsuperscript{851} Id.
\textsuperscript{852} See id.
\textsuperscript{854} Id.
\textsuperscript{855} Id.
Proper public engagement and adequate opportunities for feedback are vital in both the removal and addition of trees; cities, such as Detroit, Indianapolis, Milwaukee, and Los Angeles, have faced similar resident opposition to tree planting initiatives. When a non-profit organization was tasked by the city of Detroit with planning trees on city-owned property between 2011 and 2014, 24 percent of residents submitted “no-tree requests.” One theory behind this resistance is general opposition to the city government after years of residents finding themselves on the unfavorable side of an inequitable distribution of benefits, leading to the perception of tree planting initiatives as simply another non-collaborative exercise of city power. Many residents expressed concern over the city’s history of inadequate tree maintenance. Some recalled mass tree removals of the 1960s, causing long-standing distrust. This should provide notice to Capital Region municipalities seeking to further planting initiatives. Efforts should be extended to work collaboratively with residents (renters and homeowners), heed resident trepidation, and formulate plans to increase the region’s tree canopy that are desirable to those who stand to benefit from it.

By bolstering community engagement, program implementation will align with the goals outlined by the National Ten-Year Urban and Community Forestry Action Plan, drafted by a Congressionally designated advisory council to the Secretary of Agriculture, including “increase[ing] diversity, equity, and accessibility in urban and community forestry[,]” “[i]ncrease[ing] engagement of undeserved and minority communities in urban forestry establishment and stewardship[,]” and “[l]aunch[ing] a public awareness and education campaign to elevate recognition of the value of urban trees and urban forests ecosystems as essential contributors to community sustainability and resilience.”

The Radix Ecological Sustainability Center (“Radix”) is a non-profit educational organization striving to promote ecological literacy and environmental stewardship from a half-acre urban farm located on a formerly vacant lot near downtown Albany. Providing a wide array of educational programming and demonstrations to the area’s youth and adult populations, Radix consistently fosters community resiliency, without forfeiting accessibility, and in doing so actively moves the needle toward environmental justice.

In just two years, Radix has planted 175 trees along South End streets as part of its South End Biocultural Diversity Forest program. The program not only brings beauty to the underserved area, but it also provides shade, improved air quality, and a variety of edible fruits for residents. Radix’s Educational Director, Scott Kellogg, stressed that maintenance for new trees is critical, requiring 20 gallons of water each week immediately following planting.

In discussing the potential resistance to tree planting initiatives, Kellogg suggests that municipalities can improve...
the messaging that surrounds trees. Myths such as the provision of cover for criminal activity, or depreciating property values must be replaced with promotion of the many benefits of trees. Shading can reduce brutally high summer temperatures up to ten degrees. Improved air quality would afford reprieve to those in areas such as the South End where asthma rates are disproportionately high. Food-bearing trees provide the added benefit of free community food sources. Radix has seen support for food-bearing trees first-hand, while holding tastings for paw paw fruits grown on their grounds and engaging local students to tap the South End’s maple trees, a project Kellogg says is about “education, fun, and reciprocity.”

When it comes to reporting, Kellogg specifies that measuring tree canopy density is the appropriate metric for municipalities in ensuring adequate tree coverage, as opposed to counting physical trees. While most municipalities try to maintain that a new tree is planted for each tree that is removed, this system fails to assess the true value that is lost when a shade producing tree is removed from an urban setting, and replaced by a smaller tree that requires years for regrowth only to never produce the same degree of shade. For city projects requiring tree removal, Kellogg suggests a gradual phaseout method. For instance, planned removals and replacements spanning over five years, as opposed to removing all necessary trees upon commencement of a project, would have a less detrimental impact, particularly to those living in areas susceptible to the heat island effect. “Trees should be regarded as a form of critical infrastructure,” Kellogg says in explaining that in a land use conflict trees are often the first to go, “that should be reversed.”

Recommendations

Preserving and increasing the Capital Regions tree canopy is of the utmost importance in combatting the impact of climate change, as well as improving public health. Tree planting initiatives will not succeed without adequate trust between residents and city personnel. The absence of trust is exacerbated when notice and comment periods are currently run roughshod. There must be proper protocols in place in each municipality that allow for staving off new development that requires the elimination of trees when this violates the desires of residents, and is avoidable with revised development plans. In replacing trees, cities must precisely uphold the existing tree canopy so as to not hinder coverage and carbon sequestration. Vital projects requiring mass tree removals should be conducted in a phased-out manner, wherever possible.

Efficiencies

Energy efficiency is another important climate change mitigation tool that can help communities and neighborhoods achieve climate justice. Energy efficiency “refers to the ability to achieve the best results in any activity using the least amount of energy resources possible. It allows us to reduce the consumption of a type of energy and with it the possible environmental impacts associated with it.” As a result, energy efficiency has been on the rise: in addition to damaging the environment, traditional energy sources are also increasingly expensive, which is another reason why energy efficiency is becoming more and more appealing. To sum it up, energy efficiency is deployed to “reduce energy bills, restrict energy dependance on external sources, and reduce greenhouse gas emissions.” Energy efficiency solutions are wide ranging, allowing for endless possibilities; some primary examples

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870 Id.
871 Id.
872 Id.
873 Id.
874 Id.
875 Id.
876 Id.
877 Id.
878 Id.
879 Id.
881 Id.
882 Id.
883 Id.
include installing LED lighting systems; using recycled steel, insulating concrete forms, cool roofing, recycled plastic composite lumber, or low-e windows for building materials; reducing the use of personal vehicles and promoting public transportation; and, waste reduction and recycling.

To rebut any conflicting views on adopting energy efficient policies, there is sufficient evidence to support the practice as a whole: “[s]ince 2012, Vancouver set out to become the world’s most energy efficient city by 2020, by relying on hydroelectric power, which now accounts for the majority of the city’s energy supply, and other renewables like wind, solar and wave power.” Turning to the Capital Region, some municipalities have begun to embrace the idea of energy efficiency, but are still behind in making real progress; for example, the Town of Colonie’s climate smart communities 2021 annual progress report, has listed decreasing dependence on fossil fuels and utilizing energy efficiency as an optional action. This is further highlighted by the fact that on their report card, there is no progress made with regard to: green building standards for government buildings, green infrastructure to manage stormwater, or traffic calming. Most importantly, the biggest downfall of this report is that it fails to consider race, socio-economic status, and marginalized groups and neighborhoods.

Recommendations

As a result, all Capital Region municipalities should consider implementing energy efficient policies and more specifically, they should consider the following: (1) include race, socio-economic status, and marginalized groups and neighborhoods into any planning because individuals in these groups suffer the effects of climate change more severely and need disciplined attention in order to mitigate ongoing damages. (2) Complete the remaining items on the checklist that implement energy efficiency infrastructure and policies. (3) Create incentives to implement energy efficient policies. Municipalities can implement Property Assessed Clean Energy Programs (PACE) which, would “provide a mechanism for owners of private property to finance low-cost, long-term funding for renewable energy and energy efficiency improvements.” PACE programs are structured so that 100% of the cost of renewable energy or energy efficient improvements are financed because the upfront cost “is secured by the property, backed by the local government, and repaid by the property owner through an additional assessment on the owner’s taxes for a term of up to 20 years.” Additionally, Capital Region municipalities can make PACE programs available to both commercial and residential properties. In order to initiate this program in the Capital Region, a municipality would look no further than New York General Municipal Law Section 119-gg, which provides the legislative authority for municipalities to implement the program and sets out the parameters.
PACE programs are a great way to encourage energy efficiencies and have a proven track record of success; since 2017, renewable energy and energy efficiencies improvements resulting from PACE programs allowed for 150,000 homeowners to make $4 billion dollars through the improvements.897 (4) Municipalities can implement energy audits or assessments where a “qualified third-party auditor locates the sources of inefficient energy use, which allows owners to identify the measures that can be taken in order to optimize efficiency.”898 When considering energy audits, there are “different levels of comprehensiveness”; municipalities can choose whether to require the audits “to meet certain levels.”899 Additionally, municipalities can include “certain criteria that are important for the particular community.”900

Renewable Energy

A transition to renewable energy not only helps mitigate the harmful effects of climate change generally, but it also helps rebuild communities and neighborhoods that have been suffering the repercussions of climate change due to land use decisions disguised under the umbrella of environmental racism.901 This is because implementing renewable energy offers the following benefits:

902 When considering the general benefits of renewable energy, it could certainly deliver significant relief to disenfranchised neighborhoods—including both fiscal and health benefits, which by default, creates a more equitable community and mitigates climate change.903 When considering renewable energy, there are specific categories that can be deployed, some of these categories include thermal energy, solar energy, wind power, and hydroelectric power.904

All of these categories have multiple advantages.905 Solar energy is practical because it does not pollute or emit greenhouse gas; in addition, solar energy is silent while generating power.906 Solar panels also only require basic materials, which allows for forty year life spans for typical solar systems.907 Subsequently, wind power is advantageous because it can generate electricity twenty-four hours a day, which allows wind power to contribute to baseload power.908 Additionally, wind power is more economical than fossil fuel and is becoming more and more cost efficient “as turbines increase in size and efficiency.”909

899 Id.
900 Id.
903 See id.
905 Id.
907 Id.
908 Id.
909 Id.
Next, hydroelectric power is advantageous because similar to wind power, it can provide power twenty-four hours a day, which allows for hydroelectric power to also provide baseload electricity. Since hydroelectric power uses water to generate power, water flow can be adjusted by dams, which can increase or decrease power. Hydroelectric stations also have a very long lifespan; these systems can last up to one-hundred years. Finally, thermal energy is advantageous because it can be used “in conjunction with other renewable resources” and it can provide “back up power, energy storage, and efficient heating and cooling alternatives.”

When considering all of these renewable energy resources for future community planning, it is imperative to remember that they will all become more essential as climate change continues to progress; therefore, it would be prudent for communities to implement these resources for purposes of racial equity and sustainability as soon as possible in order to get ahead of the curve.

The International Renewable Energy Agency has laid out several examples of renewable energy initiatives, underscoring model practices that can be used as a starting point for communities to develop uniquely tailored solutions that improve the quality of life and create a more equitable socio-economic structure in their respective cities, towns, and villages. Canada’s 3NE Solar farm project is a great first example for communities to follow:

The decision-making process that engages all stakeholders in the indigenous nations improved the community’s energy literacy. This enabled them to manage the project well under budget and to invest in other sustainability initiatives targeting food security and energy sovereignty. The Nations were further able to convert wood salvaged from the solar farm into stock and create a now-thriving wood-fuel business that provides additional income to the three Nations.

Likewise, in Nigeria, the Sosai Renewable Energies Project installed solar photovoltaic grids, which immediately aided the local farmers ability “to process their produce” and additionally, the project improved the local economies of the respective villages “by employing local staff in the communities to monitor solar photovoltaics (PV) mini-grids and ensure that households and businesses are paying for the energy services on time.”

Again, turning to the Town of Colonie’s climate smart communities 2021 annual progress report, converting to renewable energy is listed as an optional action. This is further highlighted by the fact that on their report card, there is no progress made with regard to: clean energy upgrades, green power procurement policy, solar energy installation, wind energy installation, or purchasing renewable energy certificates. With regard to renewable energy, there is also no mention of race, socio-economic status, and marginalized groups and neighborhoods, which is an extreme disservice because people who live in segregated neighborhoods are most in need of the health benefits, lower costs, and job creation that stems from implementing renewable energy.
Recommendations

When considering recommendations, it is also important to note that on November 2, 2021, the citizens of New York State voted in favor of a “Green Amendment” to the New York State Constitution, which states that each person has a “right to clean air and water, and a healthful environment.”922 Two cases out of Monroe County, New York, have essentially laid out how this amendment will be interpreted: Fresh Air for the East Side, Inc. v New York and Fresh Air for the East Side, Inc v Town of Perinton.923 In the first case, the Court held that “the Green Amendment is only binding against the government—meaning it cannot be used as a basis for suit against a private party.”924 In the second case, the plaintiff’s “brought a Green Amendment challenge in a special proceeding against the Town of Perinton Zoning Board of Appeals for issuing a landfill permit. Fresh Air claimed the Board’s decision would result in harmful conditions that would ultimately violate their members’ right to a healthful environment.”925 However, in both the first and second cases, the Court “allowed claims invoking the Green amendment to proceed.”926 As this is a new amendment, the case law is still developing, but even at this early stage, it is imperative for municipalities to be cognizant of the implications of the Green Amendment, based on the actual amendment and what the state supreme court has already ruled.927 With this information in mind, the best way municipalities can avoid harming the environment and violating the state constitution, is to implement renewable energy policies.928

Therefore, for the Capital Region, we recommend that when a municipality is evaluating renewable energy policies and implementation they should (1) consider race, socio-economic status, and marginalized groups and neighborhoods. To begin, just considering these factors is a step towards racial equity that does not require any overhead—and it is necessary. As municipalities begin to consider these important factors, they should also consider investing in studies that would help highlight disparities across the city, town, or village, to assist in charting solutions that pursue racial equity. (2) Complete the items on the climate smart community’s checklist that pertain to renewable energy. (3) Municipalities can enact an ordinance “to give homeowners the ability to have the additional value of property created by a renewable energy generation system, exempted from the taxable value of their property.”929 This would incentivize individuals and businesses to install renewable energy systems while simultaneously reducing greenhouse gases.930 (4) Enact legislation phasing out and prohibiting fossil fuel infrastructure citing to the fact that “[f]ossil fuel infrastructure has been shown to increase the risk of respiratory illness, heart arrhythmias, cancer, birth defects, and infant death in surrounding or downstream communities. And, of course, it facilitates the burning of fossil fuels, resulting in greenhouse gas emissions.”931 (5) Municipalities can enact ordinances that “require compatible installation of solar panels and wind turbines in designated historical districts.”932 Such an ordinance “should primarily focus on maintaining the aesthetic of the historic building” and include “setback requirements, placement requirements, design standards, and whether a certificate of appropriateness is required.”933 (6) Consider giving preference to individuals from racially segregated neighborhoods most affected by climate change for

924 Id.
925 Id.
926 Id.
930 Id.
933 Id.
any new jobs that stem from a conversion to renewable energy.934

**Section III Energy Justice**

Achieving energy justice935 for communities is vital for producing racial equity. To begin this process, citizens and community members must take “ownership” and participate in a transition to clean renewable energy; it is essential that all community members take “ownership” precisely because “renewable energy project[s] create[] local socio-economic value and helps foster more positive attitudes towards renewables.”936 This approach facilitates healthier living, sustainability, and inclusivity, as all community members have sovereignty over their health and safety, rather than exclusively those people of privilege and power.937

Turning to energy injustice in the Capital Region, it is important to consider the disproportionate impact of climate injustice in lower socio-economic neighborhoods as a result of land use decisions.938 For instance, in the city of Albany, there is a decommissioned trash incinerator that was in operation from 1981-1994 in Arbor Hill—which is a neighborhood comprised of 83% African Americans.939 Recently, in 2018, there was a “proposal to build fracked gas boilers” where the decommissioned trash incinerator is located.940 Ultimately, the New York Power Authority rejected these plans and is instead, considering solar energy “as a means to heat and cool the Empire State Plaza complex it serves.”941

This change of heart is due to the advocacy of Sheridan Hollow Alliance for Renewable Energy (SHARE).942 SHARE is “a coalition of community, faith, environmental justice and climate action groups” that is working toward the goal of New York State only using renewable energy.943 SHARE accomplished their initial primary goal of opposing the fossil fuel plant in Arbor Hill, and pointed out the racial undertones: “[p]lans to place a 16 MW fracked gas power plant in the Sheridan Hollow neighborhood of Albany is environmental racism, plain and simple.”944 SHARE went on to further argue that “[e]nvironmental racism is the disproportionate exposure of communities of color and low-income communities to environmental burdens and toxic hazards. Sheridan Hollow, and neighboring Arbor Hill are such communities. They are predominantly black and low-income and have seen more than their share of environmental hazards.”945 With this major victory secured, SHARE has continued forward, fighting for environmental justice and racial equity by identifying energy opportunities where converting to renewable energy can achieve these goals.946

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935 Energy justice is “a multi-layered, human-centric theoretical approach that challenges injustice and inequality in the energy sector. It does this by recogniz[ing] who should have a say when energy systems are being designed and deployed, and what the implications of such systems are and to whom. It aims to achieve equality between social, economic, and political participation in the energy system and, ultimately, make the whole system more ethical.” *What is Energy Justice?*, University of Sussex (July 2023), [https://study-online.sussex.ac.uk/news-and-events/what-is-energy-justice/](https://study-online.sussex.ac.uk/news-and-events/what-is-energy-justice/).


937 See id.


941 See id.

942 See id.


Unfortunately, energy injustice is still very alive and well; for example, in the West Hill, Sheridan Hollow, and Arbor Hill neighborhoods in the city of Albany—which consist of mostly Black and Hispanic individuals—there are systemic energy and health issues stemming precisely from racial zoning. The interstate is positioned adjacent to these three neighborhoods and the air quality is insufficient due to the extensive amount of traffic on the interstate. Additionally, there is a nearby landfill that also deteriorates the air quality. As a result, there has been a high volume of cancer cases reported by the residents of these neighborhoods, likely due to the energy crisis taking place.


949 Id.

950 Id.


**Recommendations**

With this information in mind, when municipalities are looking to achieve energy justice they should

1. Consider race and the affect racial zoning has had on our municipalities so that we can enact policies that will serve as remedies rather than in name only provisions.

2. Consider converting to renewable clean energy, implementing waste reduction, and utilizing energy efficiencies.

3. Support and funding groups such as SHARE to ensure people have a voice in these decisions.

4. Enacting zoning laws to prevent neighborhoods from being deteriorated by dirty energy and from being racially zoned.

5. Enact ordinances that limit the size of single-family houses to offset greenhouse gas emissions from larger homes, in order to alleviate “costs to the public and local government.”
CHAPTER 8: POLLUTING USES & ENVIRONMENTAL JUSTICE

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Abstract

This chapter seeks to answer the question: what is environmental justice? This chapter contains the history of federal environmental laws, such as Title VI of the Civil Rights Act of 1964, as well as what New York State has been doing recently to remedy this problem. The chapter will also look at heinous, modern-day examples of environmental injustice within the United States and across the Capital Region. These examples are accompanied by maps to help readers visualize the severity of the problem. Finally, this chapter will conclude with recommendations for how our government can better assess the environmental impact of their land use policies.

Introduction:

Environmental justice is quickly becoming an emerging topic in the field of not only environmental law, but also land use law. Historically, our government has used every tool at their disposal to keep Blacks subordinate to Whites. This included the use of property law to further discriminate against minorities through policies such as zoning and redlining. It is no small coincidence, therefore, that many of the most toxic industrial sites across the country have been, and continue to be, placed near predominantly Black neighborhoods. As a result, these communities face an increased risk of health problems associated with their proximity to harmful substances.955

Part I of this report looks at Title VI of the Civil Rights Act of 1964 and how this law applies to the Environmental Protection Agency (EPA). More specifically, how the EPA has failed to protect people’s civil rights by ignoring the issue all together.956 This section will also detail the statutory limitations imposed by Title VI that has precluded many from successfully proving racial discrimination via environmental harm.957 Part I will conclude with an overview of what steps New York State has taken to remedy environmental injustice over the past five years. Part II seeks to define “environmental justice” by comparing its implications in the legal context with those in the social context. This will be done by examining case studies around the country, including the “Cancer Alley” lawsuit filed in Louisiana, along with local examples of environmental injustice within the Capital Region. Part III will assess potential solutions and recommendations for the Capital Region going forward.

Part I: The Quest for Equal Protection Under the Law

Federal Policy

Under Title VI of the Civil Rights Act of 1964, “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”958 This Federal law enables the Environmental Protection Agency (EPA) to withdraw federal funding from any program or activity found to be in violation of this title.959 Despite this being the “main remedy at its disposal,” the EPA has historically seemed reluctant to use this method to exact any substantial form of compliance.960 Instead, the EPA has enacted a “reactive scheme” of assessing Title VI complaints, wherein no investigation will take place until after there has already been an environmental harm.961 This process fails to pursue racial equity by overlooking the fact that environmental injustice is a systemic issue. Historically, people of color are poorer than Whites, which allows White people to pick and choose where they want to live while minorities are forced...

955 Sarah Fox, Environmental Gentrification, 90 Univ. of Colorado L.J. 803, 814 (2019).
959 Id.
960 Claire Glenn, supra 956.
to live in less desirable neighborhoods. In addition to this, people of color are less likely to overcome the significant barriers to entry into politics and, thus, rarely find themselves in a position of political power.

The EPA’s handling of complaints would not be as problematic if the agency did not have such a poor track record for responding to such complaints. A 2011 evaluation of the EPA’s Office of Civil Rights (OCR) found that the office had a “record of poor performance” for many reasons. Support for this finding included the fact that only 6% of the 247 Title VI complaints were responded to within the EPA’s 20-day time limit, cases dating back to 2001 remain untouched, and the fact that, at the time of this report, “there were numerous cases that have been awaiting action for up to four years.” The EPA’s ineffectiveness is further evidenced by their lack of action in 1992 upon receiving the first complaint from the St. Francis Prayer Center on behalf of the residents of Flint, Michigan. The complaint raised concerns about the State’s proposed placement of the Genesee Power Station in a “primarily low-income, African American neighborhood in Flint” that had the potential to emit harmful amounts of lead, mercury, and arsenic. These are serious complaints as it has been found that even when income, education, and occupation are held constant, “people of color face elevated levels of toxic exposure.” The complaint further alleged that Michigan was being discriminatory in their process of deciding where to place the facility by holding public hearings 65 miles away from Flint.

The EPA did not follow up on the complaint within their 180-day response window and just three years later, in 1995, the Genesee Power Station came to Flint, Michigan. In fact, it was not until January of 2017 – twenty-five years after the complaint was filed – that the EPA released a statement with the finding that there was discriminatory treatment of Blacks in Flint, but only with respect to the public participation process. Today, this remains the agency’s first and only finding of discrimination under Title VI. This further supports the 2011 finding that the EPA’s enforcement of Title VI as it relates to environmental injustice needs significant improvements.

In response to these criticisms, the EPA’s External Civil Rights Compliance Office (ECRCO) has developed a “Procedural Safeguards Checklist” meant to encompass what they consider to be “foundational elements of a Title VI program.” There were significant improvements made by the ERCRO in defining what “public participation” means in the context of racial equity. Some recommendations included, maintaining a list of past and public concerns, identifying an inclusive location for public meetings – taking into account public transportation schedules and availability, and providing the public with the electronic contact information of relevant staff members to encourage an open line of communication.

### New York State Policy

In 2019, the New York State legislature passed what is commonly referred to as the Climate Leadership and Community Protection Act (CLCPA). Part of this act focused on measures that were meant to advance New York’s path to carbon neutrality, clean electricity, and reducing greenhouse gas emissions. Among the many provisions, the Climate Justice Working Group (CJWG) was created in order to identify disadvantaged communities...
that face a disproportionate environmental impact.\footnote{Camille Delongis, Shining a light on issue of environmental justice across New York state, Spectrum News (Feb. 26, 2023).} Map 1 shows what have been identified as “potential environmental justice areas” in the City of Albany when taking factors such as income, race, and disproportionate environmental harm into consideration.\footnote{Geographic Information System, Potential Environmental Justice Area (PEJA) Communities, June 6, 2022.}

Map 1: Potential Environmental Justice Areas (PEJA)

In December of 2022, the CLCPA was amended to provide greater regulation on the placement of environmental facilities.\footnote{2022 N.Y. ALS 840, 2022 N.Y. Laws 840, 2022 N.Y. Ch. 840, 2022 N.Y. SB 8830.} Amongst the amendments was the addition of a section entitled, “[d]isproportionate impacts on disadvantaged communities.” This section outlines the need for permit applications to be accompanied by an “existing burden report” when the project will “contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community.”\footnote{NY CLS ECL § 70-0118.} This report must include an assessment of the data on existing burdens, environmental or public health stressors already present, the potential or projected contribution to existing sources of pollution, plus the existing and potential benefits of the project on the community.\footnote{Id.} The section goes on to give the State’s DEC substantial authority to consider the impact on disadvantaged communities when granting, modifying, or renewing an application.\footnote{Id.}

On March 27, 2023, the CJWG voted to approve their final disadvantaged communities’ criteria following a 120-day public comment period.\footnote{New York State Dep’t of Environmental Conservation, Climate Act, Disadvantaged Communities Criteria, https://climate.ny.gov/Resources/Disadvantaged-Communities-Criteria (last visited Nov. 7, 2023).} The state government’s website provides a “Disadvantaged Communities Criteria Fact Sheet” for residents in a total of twelve languages, including English.\footnote{Id.} The fact sheet contains a list of the numerous indicators that could signal an excessive environmental burden. One of the largest indicators taken into account seems to be the community’s proximity to uses of land and/or facilities associated with historically high levels of discrimination. These include oil storage facilities, power generation facilities, active landfills, municipal waste combustors, scrap metal processors, industrial land use, and a high housing vacancy rate. Other indicators found on this list include projected flooding, distance from critical health facilities, wastewater discharge, traffic density, and the concentration of benzene or particulate matter.

Part II: Defining “Environmental Justice”

Case Study: Sheridan Hollow Neighborhood

There are ongoing environmental justice issues within the Capital Region, but the most significant examples can be found in the City of Albany. One of these examples comes from the Sheridan Hollow neighborhood – located between Washington Avenue and Clinton Avenue in Albany, near the State Capitol building. The residents in this area sit in approximately the 76th percentile of low income and the 78th percentile for people of color when compared to the United States as a whole.\footnote{Id.} Beginning in 1911, the Sheridan Avenue Steam Plant (SASP) took up residence across the street from many residents of the neighborhood.\footnote{Sheridan Hollow Alliance for Renewable Energy, supra note 952.} This was used to heat the Capitol and other government buildings by burning coal, but was later replaced with the burning of fracked gas.\footnote{Id.} According to a 2023 article written by the Sheridan Hollow Alliance
for Renewable Energy (SHARE), this steam plant is, surprisingly, not the neighborhood’s biggest concern. It is actually the backup generator for the SASP which burns diesel fuel and is tested on a regular basis, creating “plumes of bluish black smoke” that blow directly into nearby neighborhoods. Residents cite headaches, burning eyes, and excessive noise when the generator is being tested, but the local government has consistently done little to improve the situation.

In addition to the still operating power plant in Sheridan Hollow, there remains a decommissioned trash incinerator that opened in 1981 but was later closed in 1994. The incinerator used to send pollutants into the air such as lead and would cover the neighborhoods with soot. According to a local resident, “the incinerator was shut down in 1994 ‘because soot particles from the trash being burned actually reached all the way to the governor’s mansion’” – which is only about one mile away. The local resident went on to explain that many of his family members have developed multiple Myeloma – a cancer of the blood – since living in proximity to the trash incinerator. The vacant trash incinerator serves as a constant reminder of environmental injustice for the residents of Sheridan Hollow.

As can be seen in Map 2, the area surrounding Sheridan Hollow is made up of Light Industrial zones, Community Urban zones, Neighborhood Edge zones, and Townhouse zones. According to the City of Albany, these Townhouses can be a one-family resident, two-family residence, or a three-family residence. “The zoning regulation goes on to provide that, “lots with frontage on Clinton Avenue” may be turned into apartment building through the use of a conditional license. It is often the case that predominantly Black areas have more apartment buildings, which in and of itself provides them with less access to environmental resources than those living in a single-family home.

Renters tend to be more susceptible to respiratory diseases and asthma due to poor living conditions and the existence of mold. The Sheridan Hollow neighborhood falls into the 84th percentile of those lacking health insurance and anywhere between the 94th to the 99th percentile of people suffering from asthma when compared to the United States (see Map 3). This supports the suggestion that “relatively high emergency room visit rate in the city suggests that many asthma cases occurred in individuals without health insurance or regular access to medical
Figure 1 shows the asthma rates across the United States compared to median income levels. The highest rate of asthma is associated with a median income of approximately $24,000. The lowest rate of asthma is associated with a median income of approximately $140,000.

Descriptions regarding the land use in the Light Industrial zones include solid wastes, manufacturing and processing, and vacant lots. It is also important to point out that the predominant owner in these zones is the government, including the City of Albany, State of New York, and Albany County. This is of particular concern when the government has been extremely reluctant to take action on behalf of those being discriminated against. Despite ongoing concerns regarding the backup generator at the SASP, the New York Power Authority (NYPA) assured residents that it would be removed “upon construction” of the power plant proposed by Governor Cuomo in 2017. City residents have begun to recognize this as the government using blackmail against them – only promising to remove the pre-existing source of pollution upon acceptance of a new plan.

Case Study: The Ezra Prentice Homes in Albany

Another example of environmental injustice within the City of Albany is the Ezra Prentice Homes located in the South End neighborhoods. Across from where these homes were built sits Global Companies, LLC – a crude oil terminal responsible for moving ethanol products via train into the area, and then transfers them to be moved via ship on the Hudson River. This area is made up of predominantly people of color, with this area falling within the 88th percentile of people of color when compared to the rest of the country. According to Map 4, the Ezra Prentice Homes, which sit just below Mt. Hope Drive, are located in a Residential Village zone. This zone is separated by a 16-acre tract of land zoned for Land Conservation from the large General Industrial zone near the Hudson River. This General Industrial zone is home to many corporations, including National Grid, Albany Port District Authority, and of course, Global Companies, LLC.

An article from 2018 found that the Ezra Prentice Homes were subject to major air pollution, excessive noise, and noxious gases from the industrial activity taking place less than a mile away. One resident complains that “[t]he [train] engines are running all the time, right next to my

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1001 City of Albany Mayor’s Office, supra note 999, at 40-41.
1002 Alexandra Harris & Rachel Silberstein, Poor air quality threatens New Yorkers, but it’s worse for these neighborhoods, Times Union (June 13, 2023).
1003 Sheridan Hollow Alliance for Renewable Energy, supra note 952.
1004 Keith Rushing, Two Black Communities in Albany Fight for Answers Amid Official Apathy, Earth Justice (Mar. 12, 2018).
1005 Id.
1006 Id.
1007 Id.
1009 Id.
1010 Keith Rushing, supra note 1004.
Among the many air pollutants found here, one was determined to be benzene – a known carcinogen. In a 2019 study, the Ezra Prentice Homes were found to have higher levels of particulate matter in the air than data taken from Third Avenue and the Albany County Health Department. At its maximum, the Ezra Prentice Homes were found to have more than three times the amount of particulate matter than the Third Avenue area. When mapping out the asthma rates in this area as compared with the rest of the United States, the entire South End neighborhood, including the Ezra Prentice Homes, fall within the 95th to 100th percentile. However, the industrial complexes are not the only ones contributing to this pollution. There are also approximately 1,000 diesel trucks that drive through this neighborhood every day. One local City Council member discussed the situation in the South End by “refer[ing] to the situation as a ‘toxic soup’ because residents are sandwiched between excessive truck traffic on one side of the housing complex and oil trains on the other.”

The South End neighborhoods have received little to no assistance from the local government, despite many complaints from residents. Residents have asked the government to re-route the hundreds of trucks that go through the neighborhood each and every day, and the State has responded that they are “studying” the problem. Studies show that the Ezra Prentice Homes are subject to greater pollution from local traffic during weekdays when compared to Third Avenue and the Albany County Health Department. Residents have even gone as far as to ask the Department of Environmental Conservation and the governor’s office to require that Global Companies paint their storage tanks White rather than dark blue – an industry custom meant to absorb less heat, thereby emitting less pollutants. Despite the repeated requests for help, the storage tanks have remained a dark color and the truck traffic has remained.

**Case Study: Louisiana’s “Cancer Alley” Lawsuit**

Perhaps one of the most telling displays of environmental injustice comes out of St. James Parish in Louisiana. The predominantly Black population residing in this 130-mile stretch along the Mississippi River have been subject to inescapable pollution through land use regulations and the practice of, “government officials intentionally direct[ing] industry towards Black residents and away from White residents.” Constant exposure to such harmful pollutants has resulted in higher cancer rates within this area of Louisiana. The environmental justice groups representing the “Cancer Alley” residents argue that the government’s purposeful action was unconstitutional under the Thirteenth Amendment and the Fourteenth Amendment’s Equal Protection Clause. These groups included, RISE St. James, Inclusive Louisiana, and the Mt. Triumph Baptist Church. The lawsuit also calls for a “permanent moratorium on chemical plants and similar facilities.”

A quantitative analysis of “Cancer Alley” reveals that toxic pollutants are the main cause of high cancer rates within those communities, and there was no evidence to suggest that the smoking or obesity rates had an effect on this relationship. The study yielding these results produced numerous graphics to show the difference between incidences of cancer within “Cancer Alley” and the rest of the state. Figure 2 shows the basic cancer incidence rates across the state, while Figure 3 shows that the cancer

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1011 Id.
1012 Id.
1013 NY Dep’t of Environmental Conservation, Albany South End Neighborhood Air Quality Study (Oct. 2019).
1014 Id.
1015 Id.
1016 Keith Rushing, supra note 1004.
1017 Id.
1018 Id.
1019 Id.
1020 Keith Rushing, supra note 1004.
1021 Id.
1023 Id.
1024 Id.
1025 Id.
1026 Id.
risk will only continue to increase for many communities between 2005 and 2014.1027

Despite the significant data suggesting that Louisiana has deprived their Black citizens of environmental justice equal to those of their fellow White citizens, the United States government suspended the EPA's investigation into “Cancer Alley” on June 27, 2023.1028 In the press release, the government justified the suspension based on the opinion that there had already been sufficient action taken to address the residents’ concerns regarding pollution levels. These included ordering the EPA to do further cumulative impact assessments (CIA) in the area, publishing rules regarding a reduction in future emissions, and the issuance of a final order against some of these industrial sites to improve waste management practices.1029 All of these were extremely vague promises to take future action, investigate, and plan, but nowhere was there a definitive plan for how to ensure this does not continue to disproportionately impact Louisiana's most vulnerable citizens.

With respect to the new, Formosa facility that residents are most concerned about coming into their neighborhoods, the EPA finds that it is not worth their time to investigate the future impact it may have when it has not officially been approved yet.1030 However, if history is any indication, it doesn’t appear that the State of Louisiana will be at all hesitant to place yet another industrial site amidst low-income, Black families. The closing of the EPA's investigation came as a shock to many residents of “Cancer Alley” and filled some with hopelessness. Sharon Lavigne, President and Founder of RISE St. James, told the Human Rights Watch, “We’re dying from inhaling the industries’ pollution … I feel like it’s a death sentence. Like we are getting cremated, but not getting burnt.”1031

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1027 Id.
1028 Press Release, Environmental Protection Agency, Administrative Closure EPA Complaint Nos. 01R-22-R6 and 04R-22-R6, June 27, 2023 (on file with EPA).
1029 Id.
1030 Id.
Part III: Solutions and Recommendations

In a study released by the EPA in March of 2018, it was found that Black Americans were subject to higher levels of pollution than White American regardless of their wealth.1032 This is symbolic of the systemic racism that has permeated this country’s values for far too long. It continues to thrive, unnoticed, due to the fact that discrimination has become “less purposeful and overt,” and instead becoming “subliminal, unconscious, and structural.”1033 The following are solutions and recommendations for the Capital Region going forward, in an attempt to bring greater environmental equality to our residents.

Recommendation 1: Meaningful Public Participation

One of the largest obstacles for residents of these neighborhoods to push through is getting a seat at the table for environmental equality discussions. For example, the Sheridan Hollow neighborhood was given false information by the government, stating that they had reviewed alternative, renewable energy options before opting for fracked gas.1034 It was not until the neighborhood submitted their own request with the NYPA that they were told no such information existed.1035 Instead of including them in the discussion, the local government attempted to give them support through other, less meaningful ways. SHARE reports that the government promised them that residents could shelter in place at the Empire State Plaza in the event of a climate disaster, if the fracked-gas power plant was approved.1036 However, as one resident put it, “the [Empire State Plaza] is close to Sheridan Hollow, it would be outrageous if residents weren’t allowed to shelter in place in the plaza in case of an emergency.”1037

Recommendation 2: Make Equality the Dominant Goal

Unfortunately, capitalism is a dominant factor in considering land use regulations. This can be seen every time the placement of a polluting facility within a minority neighborhood will be defended on the ground that it is “economically rational.”1038 The land is cheap to produce on, yes, but this overlooks the central question – why is the land so cheap? The answer being our nation’s history of discriminating against non-White residents. Our law requires equal protection, “regardless of economic rationality, even when it requires additional imposed costs.”1039 Therefore, it is important that the government starts making racial equality the dominant consideration when setting forth land use regulations.

Recommendation 3: Mandate Signage of Toxic Areas

By mandating that cities and towns put up some type of physical symbol that alerts residents to the fact that they are in an environmentally unsafe area, there will be greater urgency to mitigate the problem by local governments. Environmental harm can go unnoticed for years but lead to long-term health consequences such as cancer, respiratory disease, developmental disorders, neurological disorders, and much more.1040 These neighborhoods are already disadvantaged by a lack of quality health care and insurance, so this creates a dual disadvantage – making it difficult to prioritize one’s physical well-being.1041 The signs would serve as a constant reminder to not only the neighborhoods being discriminated against, but the city as a whole, and would cause more people to recognize this as the blatant discrimination that it is.

Recommendation 4: Requiring a Racial Impact Analysis for Land Use Applications

On July 18, 2021, the New York City (NYC) Council passed the “Racial Impact Study” bill.1042 This local law requires that the city set up an "equitable development
data tool” made available to the public, in order to track certain demographics significant to racial equity.1043 These demographics include, household economic security, neighborhood quality of life and access to opportunity, housing production, racial demographics, availability, and a displacement index.1044 These demographics are then required to be used by land developers creating a racial equity report to accompany their land use applications. A local activist, Andy Aujla, commented in response to the law that, “[t]his will not only work towards leveling the balance of decision making power, but also finally, affirm the reality that our communities of color have known and proclaimed for so long: that race is a major factor in achieving housing justice.”1045 See Figure 4 for more details on what must be included in these racial equity reports.

§ 25-118 (c):
Contents of racial equity report.
A racial equity report filed pursuant to this section shall include:

1. For all projects, a first section comprised of an executive summary written in plain language.

2. For projects with residential floor area other than a designation of a historic district, a second section listing the number of ELI-AH, VLI-AH, LI-AH, MI-AH and MIDI-AH units and units that are not income-restricted that are expected to be created and their expected rents or prices, as well as the household incomes needed to afford such units without incurring housing cost burden.

3. For projects with non-residential floor area when specific non-residential uses are being proposed, other than the designation of a historic district, a second section listing the projected number of jobs in each sector or occupation, median wage levels of such jobs based on the most recently available quarterly census data on employment and wages or other publicly available data, and the racial and ethnic composition and educational attainment of the workforce for the projected sectors of such jobs.

4. For all projects other than applications submitted pursuant to section 201 of the charter, the community profile, including a summary of the data on existing conditions and of trends in the prior two decades, and comparison of the community profile for the local study area with the borough and citywide data obtained from the equitable development data tool required by section 25-117, for all categories, data and indicators provided therein, and disaggregated by race and Hispanic origin. For projects with residential floor area, other than a designation of a historic district, such community profile shall first include a summary of the distribution of households by income levels corresponding to ELI, VLI, LI, MI, MIDI and HI households disaggregated by race and Hispanic origin, and of the available data on affordable housing lottery applicants and awardees as described in the most recent report required by section 26-2602.

5. For all projects, a narrative statement by the applicant of how the proposed project relates to the goals and strategies to affirmatively further fair housing and promote equitable access to opportunity identified within the city’s fair housing plan that is indicated in the department’s rules.

6. For all projects, an estimate of the number of construction jobs to be created by the project.

Recommendation 5: Cutting Down on Drive-Through Services

Many local governments have begun the process of banning or restricting the placement of drive-through services in order to cut down on air pollution and slow climate change.1046 States such as California, New Jersey, and Minneapolis have already put measures in place to limit the amount of new drive-through businesses allowed in their area.1047 Many studies have shown that idling vehicles waiting in drive-through lines waste fuel and generate greenhouse gas emissions.1048 Drive-through services can lead to an overproduction of ground-level ozone which is created when volatile organic compounds (VOCs) and nitrogen oxides (NOx) combine with heat.

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1043  Id.
1044  2021 NYC Local Law No. 78.
1047  Id.
and sunlight.\textsuperscript{1049} According to the EPA, ozone can cause difficulty breathing, inflamed lungs, coughing, and a host of respiratory illnesses such as asthma, emphysema, and chronic bronchitis.\textsuperscript{1050} Other areas, such as Boston, Massachusetts, have put measures in place to reduce the amount of overall car idling in the city.\textsuperscript{1051} Boston’s law states that, “a car cannot be idling for more than 5 minutes unless it is being serviced or it is being used to deliver or accept goods where engine assister power is necessary.”\textsuperscript{1052}

**Recommendation 6: Create an Environmental Justice Council at the Local Level**

The past two decades have signaled a trend towards more state and local governments taking environmental sustainability seriously. In 2001, California residents formed the California Environmental Justice Alliance (CEJA), which is made up of 35,000 members – including minorities such as Asian Pacific Americans, Latinx, and African American residents.\textsuperscript{1053} Since their inception, the alliance has mobilized thousands of voters through member-to-member education and strategic campaigning to vote on important environmental policies.\textsuperscript{1054} Their mission statement reads, “[w]e unite the powerful local organizing of our members in the communities most impacted by environmental hazards – low-income communities and communities of color – to create comprehensive opportunities for change at a statewide level to alleviate poverty and pollution.”\textsuperscript{1055}

Another community-led group fighting for environmental justice comes from New Mexico – whose oil and gas production has grown, “by 125 per cent since 2010 and is not the second largest producer in the nation.”\textsuperscript{1056} The New Mexico Climate Justice (NMCJ) group is made up of six “Community Advisors” that come from varying educational backgrounds.\textsuperscript{1057} There is a retired city planner and environmental lawyer, an environmental sustainability student at University of New Mexico, multiple social activists, mothers, and local government representatives.\textsuperscript{1058} Their webpage acts as a new “hub” – where community members can find information regarding ongoing campaigns, and even subscribe to have updates sent to their personal email address.\textsuperscript{1059} The group’s current focus is on opposing the Liquified Natural Gas (LNG) facility proposed for placement in Rio Rancho, Albuquerque.\textsuperscript{1060}

**Conclusion**

Environmental equity has not been prioritized by our federal government in the past, shown through the EPA’s history of inaction over the years. Environmental harm is often an invisible, complicated, and personal issue that makes it difficult to attract federal attention. The harm is felt at the local level, thus making it difficult for the EPA and other federal agencies to take residents’ claims seriously. Making environmental justice a goal at the state or local level requires setting up advocacy groups or mandating racial impact reports, which are not small tasks. Such actions would have a positive influence on the relationship between the government and these disadvantaged communities by giving a voice to a historically voiceless class of New York residents. Reassessing the local policy for the placement of polluting uses and industrial zones is imperative for the overarching goal of racial equity within the Capital Region.

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1049 Emma Charlton, *supra* note 1046.
1051 Emma Charlton, *supra* note 1046.
1054 *Id.*
1055 *Id.*
1058 *Id.*
1060 *Id.*
CHAPTER 9: EDUCATION IN THE CAPITAL REGION

Authors: Jennifer Tedisco & Jessica Wolfe

Abstract

The public education system in the United States is still separate and unequal. New York State has some of the most segregated schools in the nation, with Albany, Schenectady, and Troy, amongst the most racially, ethnically, and economically isolated schools in the Capital Region. That is largely due to the strategic drawing of school district lines and attendance zone boundaries to reflect or worsen underlying residential segregation patterns brought about from redlining, exclusionary zoning, and other discriminatory housing policies. Those factors coupled with White flight, suburbanization, and economic disinvestment lowered property values in Black and Latinx neighborhoods. Therefore, due to the heavy reliance on local property taxes in school funding formulas, there is a major divide between the public school budgets of urban, predominantly minority districts and suburban, predominantly White districts. Moreover, the high concentration of charter schools and high percentage of tax-exempt land in the city of Albany, provide additional fiscal challenges to its already struggling public schools. These funding disparities have largely been immunized from legal challenge at the federal level, and school finance reform remains an uphill battle at the state level. Thus, schools in previously redlined communities in the Capital Region continue to lack the educational resources and facilities they need to provide students with an adequate education, which exacerbates the achievement, wealth, and health gap and perpetuates the cycle of poverty.

Introduction

In this Chapter we will explore several key issues related to the intersection of race, education, and land use, and aim to prove that land use policies enforced by the federal, state, and local governments have shaped the unequal school systems we see across the country, and specifically in the Capital Region. Ultimately, we argue that residential segregation, district lines and attendance zone boundaries, and property tax-based school funding have unfairly relegated non-White students to segregated schools with inferior conditions, fewer opportunities, and less qualified teachers.

We will first describe historical segregation in public and charter schools, and the way it has been maintained throughout the country, and in the Capital Region by strategic school placement, district lines, and attendance zone boundaries. We will also address relevant case law that has obstructed integration efforts. Second, we will delve into the issue of school funding by discussing the impacts income, housing, and property taxes have on schools and how district boundaries have influenced the funding certain schools receive. Third, we will discuss how funding is directly related to disparities in the quality of facilities, resources, and overall academic achievement. We will end this Chapter by proposing various recommendations to bring about a more equitable education system in the Capital Region.

We acknowledge that education is part of a massive, interconnected, and often complex system of laws, politics, and policies, and that land use is just one of the many lenses through which to identify its flaws. It is essential to confront and resolve these issues because K-12 education is the foundation for being a contributing member of society and can be the gateway to future opportunities that provide youth with more economic stability as adults. Every child in America deserves a quality education, but due to the disparities in schools across the country, many children do not have access to the education they deserve just because of their zip code.
Land Use and School Segregation

In 1917, the Supreme Court made explicit racial zoning unconstitutional.1061 Unable to legislate explicit segregation, authorities turned to more creative means to keep the races separate and maintain White superiority. One such tactic was the strategic placement of schools.1062 For instance, school boards would close schools for Whites if they were in zones designated for future Black residence, and build new schools for White students in the developing suburbs, contributing to the “white flight” phenomenon.1063 Similarly, schools for Black students were closed in zones reserved for Whites, and relocated to designated Black neighborhoods.1064 Due to the lack of transportation available, Black families who did not already live in their racially designated area had no choice but to find new housing if they wanted their children to receive an education.1065 Thus, these school building programs contributed to residential segregation by effectively isolating racial minorities from White communities under the guise of education.

Brown v. Board of Education outlawed formal segregation in public schools in 1954,1066 but the Court ordered only that the states begin desegregation plans with “all deliberate speed.”1067 This vague statement “opened the door to local judicial and political evasion of desegregation,” which hindered progress.1068 Brown’s impact was also severely weakened because its scope was limited to legally allowed, or de jure segregation, as opposed to de facto segregation, which refers to segregation that exists in practice but is not explicitly ordered by law.1069 Therefore, while school district officials could no longer assign students to schools based on race, they could draw educational boundaries to reinforce racial segregation covertly.1070

There are two primary forms of educational boundaries in the United States. First, school district boundaries, which are the lines between school districts that separate tax bases and access to financial resources; and second, attendance zone boundaries or catchment areas which are the lines within school districts that determine enrollment and ultimately the racial, ethnic, and socioeconomic makeup of individual schools.1071 Attendance zone boundaries, unlike district boundaries, are not political subdivisions, so the lines are much easier to manipulate to maintain

1061  Buchanan v. Warley, 245 U.S. 60 (1917).
1063  Id. at 135.
1064  Id.
1065  Id. at 132.
1068  History.com Editors, Brown v. Board of Education, History (Oct. 27, 2009), https://www.history.com/topics/Black-history/brown-v-board-of-education-of-topeka#sources; See Susan Smith-Richardson & Lauren Burke, In the 1950s, rather than integrate some public schools, Virginia closed them, The Guardian (Nov. 27, 2021, 6:00 AM), https://www.theguardian.com/world/2021/nov/27/integration-public-schools-massive-resistance-virginia-1950s (resistance from southern states included offering White parents tuition support for private schools; threatening to withhold state funds from any public school that integrated; and closing schools entirely to avoid desegregating them); See also Equal Justice Initiative, Segregation in America, 1, 36 https://segregationinamerica.eji.org/report.pdf?action=purge (efforts to desegregate were also meant with violent opposition. For example, “In Mansfield, Texas, the local citizens’ council organized White residents armed with guns and other weapons to block Black children from entering school.”).
1069  See Gus Ipsen, New York’s School Segregation Crisis: Open the Court Doors Now, 87 BROOK. L. REV. 1045, 1049 (2022); Keyes v. Sch. Dist. No. 1, Denver, 413 U.S. 189, 208 (1973) (emphasizing that “the differentiating factor between de jure segregation and so-called de facto segregation … is purpose or intent to segregate.”).
homogeneity and maximize race-based inequities.\textsuperscript{1072} This practice has been referred to by scholars as “educational gerrymandering.”\textsuperscript{1073} It is no coincidence that many attendance zone boundary maps appear similar to redlining maps from the 1930s.\textsuperscript{1074}

Unfortunately, educational gerrymandering and other \textit{de facto} techniques have largely escaped judicial intervention. In \textit{Milliken v. Bradley}, parents of students in the Detroit, Michigan school system filed a suit alleging that the Detroit Board of Education had enacted policies that created and perpetuated school segregation within Detroit.\textsuperscript{1075} The District Court called for an interdistrict remedy that would combine the metropolitan school zone with the surrounding suburban districts.\textsuperscript{1076} In a 5-to-4 decision, the Supreme Court held that “[w]ith no showing of significant violation by the 53 outlying school districts and no evidence of any interdistrict violation or effect,” the district court’s remedy was “wholly impermissible” and not justified by \textit{Brown}.\textsuperscript{1077} In other words, although these attendance zones and other practices clearly contributed to segregation, unless the boundary lines were established with the purpose of fostering racial segregation in public schools, which is an incredibly difficult evidentiary burden for plaintiffs to meet, school districts were not obligated to desegregate.\textsuperscript{1078}

Moreover, the Supreme Court later ruled that current racial imbalances in schools may be addressed through judicial remedies only if they have a causal connection to unlawful \textit{de jure} policies.\textsuperscript{1079} The Court reasoned that “[w]here resegregation is a product not of state action but of private choices, it does not have constitutional implications.”\textsuperscript{1080} What the Court failed to recognize is that for many people of color, residential housing choices have not been a “private choice” but a result of decades of discriminatory policies set forth by the government and real estate boards or homeowners associations which dictated where people could and could not live, and subsequently where they could go to school. Ignoring this reality and the implications that it has had on generations of minority families, only exacerbates racial and economic inequality. More recently, the Court has eliminated school districts’ ability to consider race when implementing voluntary school integration plans, making it even more difficult to right past wrongs.\textsuperscript{1081}

Accordingly, it comes as no surprise that schools across the country remain highly segregated.\textsuperscript{1082} A report by the Civil Rights Project at the University of California at Los

\begin{thebibliography}{10}
\bibitem{1075} \textit{Milliken v. Bradley}, 418 U.S. 717, 725-26 (1974) (The District Court found that the Detroit Board drew attendance zones to allowed White children to “escape identifiably Negro schools.” Additionally, Detroit school attendance zones had been drawn contrary to the way that would result in significantly greater desegregation. The District Court also found that the Detroit Board had bused Black students to predominantly Black schools which were farther away from White schools with available space, and with one exception, had never bused White children to predominantly Black schools in the inner-city despite the large number of vacant seats. Lastly, the District Court found that “Detroit school construction generally tended to have a segregative effect with the great majority of schools being built in either overwhelmingly all-Negro or all-White neighborhoods so that the new schools opened as predominantly one-race schools.”).
\bibitem{1076} \textit{Id.} at 736.
\bibitem{1077} \textit{Id.} at 745.
\bibitem{1078} \textit{Id.} at 756. \textit{See} Robert A. Sedler, \textit{The Profound Impact of \textit{Milliken} v. \textit{Bradley}}, 33 WAYNE L. REV. 1693, 1695 (1987) (“\textit{Milliken} is enormously significant because it effectively insured the continued existence in this Nation of predominantly Black urban school systems surrounded by all-White, or virtually all-White, suburban school systems.”)
\bibitem{1079} \textit{Freeman v. Pitts}, 503 U.S. 467, 495 (1992).
\bibitem{1080} \textit{Id.}
\bibitem{1081} \textit{Parents Involved in Community Schools v. Seattle School Dist. No . 1}, 551 U .S . 701, 703, 735 (2007) (The Supreme Court struck down voluntary racial integration plans in Louisville, Kentucky and Seattle, Washington, on the basis that racial balancing was not a compelling interest for using race-based assignments, and that the districts integration goals could be achieved by race-neutral alternative assignment plans).
\bibitem{1082} Sequoia Carrillo & Pooja Salhotra, \textit{The U.S. student population is more diverse, but schools are still highly segregated}, NPR (Jul. 14, 2022, 5:13 AM), https://www.npr.org/2022/07/14/1111060299/school-segregation-report (reporting that more than a third of students attended a predominantly same-race/ethnicity school during the 2020-21 school year).
\end{thebibliography}
Angeles revealed that New York State’s public schools are the most segregated in the nation for Black students and the second-most segregated for Latino students. 1083 Particularly, in the Capital Region, schools have grown even more segregated since Brown, with the biggest divide existing between urban and suburban districts rather than within districts. 1084 Notably, “[o]f 236 schools in the immediate Albany-Schenectady-Troy area, there are 15 schools where Black, Hispanic, and other minority students compose 90 percent or more of the student body.” 1085 Many of those schools are “double-segregated” by both race and poverty. 1086 Meanwhile the more suburban districts in places such as South Colonie, Guilderland, and Bethlehem, are predominantly White and middle to upper-middle class due to a history of racial exclusion and school district boundaries that align with municipal boundaries. Because almost 80% of public school students attend the school they’ve been assigned by the district based on where their families live, it is foreseeable that many schools in the Capital Region are segregated. 1087 However, in some districts, attendance zone boundaries can be used to make segregation worse than underlying residential patterns. This is evident in the figure above of a map of the Troy City School District, where attendance zone boundaries are drawn in a way that zone more White kids into already heavily White schools, and zone more Black and Hispanic kids into the same schools. 1088 “This results in the schools in the dark purple areas having a higher percentage of minority students than that of the actual neighborhoods.

The map in the second figure illustrates how an attendance zone boundary in the Albany City School District has been drawn, intentionally or unintentionally, in a way that appears to insulate New Scotland Elementary School from the Delaware, Giffen, and Arbor Hill elementary school zones, all of which have a minority enrollment of at least 86% or higher. 1089 New Scotland Elementary School’s minority population is 60%, which is on the higher end, but only 46% of the students are economically disadvantaged, compared to 72%, 87%, and 86% in the other schools respectively.

On the following page is a side-by-side comparison of a redlined map of Albany from the 1930s with a map of the current attendance zone boundaries of the Albany City School District. New Scotland Elementary School’s boundaries coincide with the blue/green zones assigned as “best” and “still desirable”, whereas Delaware, Giffen, and Arbor Hill elementary schools’ fall within the yellow/red zones assigned as “definitely declining” and “hazardous.” These racially motivated labels have followed the yellow- and red-lined neighborhoods to this day, trapping the

1086 Id. (“In almost all parts of New York State... Black and Latino kids are attending schools that are not only segregated from [W]hites but segregated from the middle class to a very high degree.”).
1088 Alvin Chang, We can draw school zones to make classrooms less segregated. This is how well your district does, Vox (Aug. 27, 2018, 8:46 AM), https://www.vox.com/2018/11/1/17822374/school-segregation-gerrymander-map.
predominately Black and Hispanic residents into poverty. One cannot help but wonder how much the academic quality and opportunities differ depending on which side of the attendance zone line a student lives on.

Segregation not only persists in public schools but in charter schools as well. Charter schools are publicly funded schools that are available to all children and do not require any tuition. In New York State these schools operate autonomously under renewable contracts called charters and are governed by a non-profit board of trustees from the private sector. Charters are typically found in urban areas due to the fact that urban areas often have underperforming public schools. This fact is reflected in the Capital Region where charter schools appear mostly in urban areas such as Albany, Schenectady, and Troy, and not in suburban areas with already thriving, high-performing school districts such as Guilderland, Colonie or Niskayuna. Families in these urban areas who cannot afford to send their children to private schools instead have the choice to send their children to charter schools for free, making them an attractive alternative.

Charter schools have caused further racial imbalances in the education system. For instance, in 2014-2015, 17% of charter schools in the United States were 99% minority when compared to 4% of public schools. Further, in urban areas in the U.S., 25% of charters are 99% non-White when compared to 10% of traditional schools. These statistics are mirrored in the Capital Region, specifically in Albany charter schools. In the 2021-2022 school year, Green Tech High Charter School had 424 students, 72% of which were Black or African American, 15% were Hispanic or Latinx, 10% were multiracial, and 2% were White. The racial makeup of Kipp Tech Valley Charter School’s student population, also located in Albany, predictably echoes that of Green Tech. With charter schools rising in popularity, it begs the following question: are these schools legitimately more high-performing than traditional public schools? The response is relatively mixed with many reports stating that on average test scores are not significantly higher at charter schools when compared to a traditional public school. Nationally, a 2019 U.S. Department of Education study found that eighth graders in charter schools did not perform better in English and math when compared to their peers at traditional public schools. In the Capital Region, Green Tech High consistently outperforms other schools in the Albany City School District but schools like Albany Community Charter School fall behind not only the Albany City School District but the other charter schools in the area. Moreover, research has shown that attending socioeconomically and racially diverse schools have academic, cognitive and social-emotional benefits. Thus, charter schools perpetuate the segregation that is rampant in public schools, ridding students of the advantages associated with an integrated learning environment.
In sum, while racial zoning and formal segregation in public schools were both outlawed in the early to mid-twentieth century, segregation is entrenched in the American education system. Attendance zone boundaries and other de facto segregation strategies have evaded legal intervention for years, and, as a result, segregation has persisted with a clear divide existing between urban and suburban schools. New York State has the most segregated public schools in the nation, specifically for Black and Latinx students. Not only are public schools heavily segregated, but charter schools are as well due to their strategic locations in urban areas and promises of a better, free education to families whose children are currently at under-performing schools. The statistics for both public and charter schools in the Capital Region reflect the fact that segregation still pervades the American education system, and is far from a distant memory.

**School Funding, Race, and Property Tax**

The issue of school funding and the disparities it creates is one that has plagued America for decades. Property taxes are a source of revenue that schools rely on heavily to function.\(^{1103}\) In fact, over half of K-12 school revenues in New York State come from local property taxes.\(^{1104}\) This means that the quality of the neighborhood that someone lives in, as reflected in property value assessments, will ultimately determine how well their schools are funded.\(^{1105}\) Lower income neighborhoods that are primarily Black and Hispanic tend to have substantially lower housing and property values than wealthier White neighborhoods.\(^{1106}\) The residents of these lower income areas ultimately have to pay higher property tax rates to raise revenue equivalent to residents of higher income neighborhoods.\(^{1107}\) These low income communities that have less wealth to tax correspondingly have less revenue for their public schools.\(^{1108}\) While state aid is supposed to help “fill the gap” between local tax revenue and school costs, it is often not enough for schools to get by, let alone thrive.\(^{1109}\) This poses huge issues for schools as areas of concentrated poverty often have students with higher needs meaning these schools have to invest significantly more resources into their students than wealthier districts just to achieve comparable educational outcomes.\(^{1110}\)

In *San Antonio Independent School District v. Rodriguez*, the parents of children throughout Texas brought suit claiming that the Texas school finance system was unconstitutional under the Equal Protection Clause of the 14th Amendment.\(^{1111}\) The Plaintiffs resided in the Edgewood Independent School District which is majority Mexican-American and Black, and had the lowest assessed property value per pupil in the metropolitan area. The Alamo Heights School District was the wealthiest district in San Antonio that was primarily White, had a lower tax rate, and significantly higher median family income.\(^{1112}\) Plaintiffs argued that the disparities between the funding these schools received had to do mainly with the differences in the amount of money collected through property taxes. The District Court, using the strict scrutiny test, ruled that the system discriminated on the basis of wealth in the way in which education is provided for its residents, reasoning that since wealth is a suspect classification and education is a fundamental interest, the Texas system could not be sustained since they could not demonstrate a compelling state interest. Therefore, the District Court held that this system was unconstitutional.\(^{1113}\)

Unfortunately, the victory was short lived. The Supreme Court later reversed the District Court’s ruling, stating that the Texas system “does not operate to the peculiar disadvantage of any suspect class,” and that education is not a fundamental right.\(^{1114}\) Having denied the need for strict scrutiny, the Supreme Court held that the acceptable standard of review only required that Texas’ school finance...
system bear some rational relationship to a legitimate state purpose, which, per the court, it did.\textsuperscript{1115} Rodriguez is significant because it set the precedent that education is not a fundamental right worthy of strict scrutiny under the United States Constitution, and that, where wealth is involved, the Equal Protection Clause does not require exact “equality or precisely equal advantages” among school districts.\textsuperscript{1116}

Since Rodriguez, claimants have turned toward challenging public school funding systems based on equal protection clauses, due process clauses, education clauses, or taxation clauses found in the States’ constitutions.\textsuperscript{1117} While some plaintiffs have found success, many have not.\textsuperscript{1118} For instance, in Edgewood Independent School District v. Meno, the Texas Supreme Court rejected the argument from property-poor districts' that Senate Bill 7 failed to provide an efficient system of public education, as required by the Texas Constitution.\textsuperscript{1119} Relying on the fact that the 700-to-1 ratio between the richest and poorest districts improved to a 28-to-1 ratio under Senate Bill 7's funding scheme, the Court held that that Senate Bill 7, which still left a permanent $600 gap in access to revenue between property-rich and property-poor school districts at the maximum tax rate, was “efficient” under the Texas Constitution.\textsuperscript{1120} In reaching that conclusion, the Court emphasized that efficiency is not synonymous with equity, and that “[t]he State’s duty to provide districts with substantially equal access to revenue applies only to the provision of funding necessary for a general diffusion of knowledge.”\textsuperscript{1121} Therefore, “[a]s long as efficiency is maintained, it is not unconstitutional for districts to supplement their programs with local funds, even if such funds are unmatched by state dollars and even if such funds are not subject to statewide recapture.”\textsuperscript{1122}

The decision in Edgewood marked the growing tolerance of inadequacy and inequity in school finance jurisprudence that has persisted today.\textsuperscript{1123} The nonprofit group Edbuild found that there is a $23 billion gap between White and non-White school districts nationwide.\textsuperscript{1124} The problematic relationship between income, race, and school funding is further demonstrated in the case studies done in the 2022 report: “Segregation and School Funding: How Housing

\begin{itemize}
\item \textsuperscript{1115} Id. at 55.
\item \textsuperscript{1116} Id. at 24.
\item \textsuperscript{1118} Id. See Jonathan Banks, State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?, 45 VAND. L. REV. 129, 154-55 (1992) (arguing that a key commonality between all school finance cases is judicial deference, with state courts believing that the area of school financing is best left to the legislature, and intervening only when convinced that “their legislature is unwilling or unable to pass effective remedial legislation....”).
\item \textsuperscript{1119} Edgewood Indep. Sch, Dist. v. Meno, 893 S.W.2d 450, 479 (Tex. 1995).
\item \textsuperscript{1120} Id. at 464.
\item \textsuperscript{1121} Id. at 486, 479.
\item \textsuperscript{1122} Id. at 466.
\item \textsuperscript{1123} See id. at 503 (J. Spector, J., dissenting) (“The inescapable truth is that poor districts will now be much worse off than rich districts, even if tax rates do not go far beyond $1.50. At full implementation of Senate Bill 7, a $1.50 tax rate in the richest school districts will generate $4,421 per weighted student. That level of revenue is simply beyond the reach of the poorest school districts; even if they were to tax at a rate of $3.00, they could only generate $4,317 per weighted student.”).
\item \textsuperscript{1124} $23 billion, Edbuild, 1, 2 (Feb. 2019), https://edbuild.org/content/23-billion/full-report.pdf.
\end{itemize}
Discrimination Reproduces Unequal Opportunity.”1125 The researchers examined seven cities in America, and found that the previously redlined neighborhoods in each city corresponded with “district racial and ethnic composition, school neighborhood poverty, and K-12 funding adequacy.”1126 These communities were primarily low-income and made up of mostly Black and Hispanic students. These C- and D graded zones reflected districts that are funded below estimated adequate levels, whereas the neighboring A-/B- graded zones proved to have adequate funding.1127 In fact, across all seven cities, 90% of the majority Black and Hispanic districts were spending below estimated adequate levels when compared to 12% of majority districts in the city.1128 The reason behind this? In all seven metro areas, the Black and Hispanic homeowners had less income, lower house values, and were paying higher property tax rates than residents of communities that were mostly White.1129 The study also revealed that of the over 1,300 majority Black and Hispanic public schools in American cities, approximately 82% of them receive inadequate funding when compared to 22% of majority White districts.1130

Now let’s narrow our focus to New York State which has generally been regarded as having a positive educational reputation. This may be because for the last fifteen years, New York State has ranked first nationally in school district spending per pupil.1131 However, what many do not know or choose to disregard is that the State ranks 48th in educational equity among all states by measure of the funding gap between wealthy and poor districts and ranks 44th by measure of the funding gap between the districts enrolling the most students of color and those enrolling the fewest.1132 The graph below shows a massive spike in the opportunity gap between rich and poor schools in New York, which exceeded $10,000 in 2019.1133 Like other states in the country, New York’s public school funding comes from three sources: 4% from federal sources, 39% from State formula aids and grants, and 57% from revenues raised locally.1134 Notably, local property taxes constitute about 91% of local revenues.1135 Because local property taxes contribute to over half of school revenues, differences in spending between districts are closely related to disparities in property wealth and tax levies.1136

To fully understand education inequity in New York State, we must examine the Education Article in the State’s constitution. The New York State Constitution mandates that “[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”1137 New York’s highest Court has interpreted that language to require “a State-wide system assuring minimal acceptable facilities and services in contrast to [an] unsystematized delivery of instruction,” and that all students be provided with the opportunity to receive a “sound basic

\[\text{Graph: Growing Opportunity Gap}\]

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1125 Baker, supra note 1103.
1126 Id. at 4.
1127 Id.
1128 Id. at 2.
1129 Id. at 1.
1130 Id. at 3.
1134 State Aid Primer, supra note 1104, at 2.
1135 Id.
1136 Id. at 4.
1137 N.Y. Const. art. XI, § 1.
In 2003, the Court further established that a sound basic education must afford students with the “opportunity for a meaningful high school education, one which prepares them to function productively as civic participants” and “compete for jobs that enable them to support themselves.”1140 Under this standard, New York State’s education system was found to be unconstitutional, but little meaningful change has ensued.1141

In 2007, the State legislature, under a court mandate, enacted Foundation Aid in an attempt to equalize school spending across districts.1142 The graphic shown on this page, created by the Alliance for Quality Education, provides a simplified breakdown of how the formula works.1143 As a result, needier school districts, like those in Albany, Troy, and Schenectady, receive substantially more state aid than neighboring suburban districts.1144 State aid is the main reason the 2020 average per pupil expenditure for Albany City School District ($20,751.00) is slightly higher than the average per pupil expenditure in wealthier districts like South Colonie Central School District ($18,258.00), Guilderland Central School District ($17,781.00), and Bethlehem Central School District ($16,664.00).1145 We reached out to Joseph Hochreiter, the current superintendent of the Albany City School District, and he said:

As a high-needs urban school district serving New York’s capital city, the City District of Albany is challenged by a number of factors that our suburban and rural neighbors do not face. These include gripping poverty in many parts of our city, and long-standing, complex and deeply held perceptions about low-performing schools and the communities they serve.1146

Therefore, although state aid makes Albany City School District’s average per pupil expenditure appear equal if not greater, it cannot be considered equitable because drastically more money is needed in an impoverished district like Albany to see results even remotely similar to an affluent district like Bethlehem.1147

It is critical to note that the Foundation Aid Formula has been underfunded since its implementation, and it has just now been announced, sixteen years later, that it

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1138 Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist, 57 NY2d 27, 47, 48 (N.Y. 1982) (upholding the New York State public school financing system which made it so property-rich districts were able to generate, through local taxation approved by taxpayers in those districts, a larger amount of money per pupil for education than is generated through the same process of local tax approval by property-poor districts because the funding inequities did not result in the deprivation of a sound basic education).
1141 Id. at 914.
1142 Education Equity in New York, supra note 1132, at 56.
1144 Id. at 57 (“In 2019-20, low-wealth districts receive nearly six times more State aid per pupil than the highest-wealth districts.”).
1146 E-mail from Joseph Hochreiter, Superintendent, Albany City School District, to Jennifer Tedisco, Student, Albany Law School (Nov. 17, 2023, 12:16 EST) (on file with author) [hereinafter Albany Superintendent].
1147 See Baker supra note 1103, at 18 (“[T]he economic segregation created by racial/ethnic segregation does not just depress educational resources; it also drives up education cost. That is, racially isolated public school districts, which lack local fiscal capacity due to segregation, also face higher per-pupil costs to provide their students opportunities equal to those of their white, more affluent peers in districts across the state or even in the next town over.”)
will be fully funded by the state budget in FY 2024.1148 In response to this, a plaintiff in the New Yorkers for Students’ Educational Rights (NYSER) coalition, one of the parties that successfully sued the state to compel it to fully fund the Foundation Aid Formula, said, “Schenectady City school district was asked to educate children with its hands behind its back. We were pinching pennies… now that we are finally getting what we are owed, we will be able to do more.”1149 Similarly, for the 2021-22 school year, Albany received only about 75% of the funding that it was entitled to — an annual shortfall of more than $26 million — but that is subject to increase, and now state aid supports 52% of the Albany City School District budget for the 2023-24 school year.1150

Even with this much-needed increase in state aid, Albany City School District remains disadvantaged because of its location in the State Capital where a whopping 63% of the property is tax-exempt.1151 Someone unfamiliar with the Albany area may not know that the city is home to a number of colleges, professional schools, hospitals, and other government buildings and state offices, all of which are not subject to Albany’s property tax. Albany Mayor Kathy Sheehan said the following in response to this issue:

[Albany] is a city that doubles in population nearly every day, and that’s great for the economy but it’s actually [ ] both of a mixed blessing for the city of Albany, because those employees, most of them, walk into tax-exempt buildings. Our largest employers, other than state government, are Albany Medical Center, St. Peter’s Hospital, the VA, Memorial Hospital, UAlbany, SUNY Poly, [and] the Center For Disabilities Services. Those are the large employers in this area, and all of them enjoy tax-exemption. And we, while we would benefit from sales tax revenues that employees generate at lunch time, many of these large institutions, actually all of these large institutions, provide on-site dining and sales taxes here [are] countywide. So, the sales tax dollars generated in the city of Albany are taken by the county and then distributed countywide based on population.1152

Hence, Albany hosts the workplaces for a large portion of people who do not actually reside in the city or patronize local businesses. Therefore, what little economic activity these tax-exempt entities contribute to, comes at a steep expense to the local community by disproportionately burdening home owners and businesses with higher taxes.1153 In other words, “[w]ith fewer properties on the tax rolls, those who do pay are left to pick up the slack for public schools, police and fire departments, trash pickup and all the other community services that local governments provide.”1154

Accordingly, the City of Albany has one of the highest property tax rates in the Capital Region, but yields lower local revenue for public schools.1155 Additionally, Albany City School district is forgoing $7,862,329 in tax revenue due to tax abatements granted by their local Industrial Development Agencies (IDAs) and other government subsidies.1156 That is an average of $925 lost per student / per year.1157 This is consistent with a report which found that “[d]istricts with a higher proportion of students of color were among those that lost the most revenue per student” from IDA tax abatements.1158 More research is needed to determine whether

1149 Silberstein, supra note 1084.
1150 Albany Superintendent, supra note 1146.
1151 The untaxed city within the city, All Over Albany (Feb. 17, 2017), http://alloveralbany.com/archive/2017/02/17/albany-ny-untaxed-properties#main-content.
1153 The untaxed city within the city, supra note 1151.
1157 Id.

129 Grounded Justice: Unveiling Racial Equity in Land Use across the Albany Capital Region
Since Albany is one of 34 federally designated resettlement cities, Albany City School District has experienced a massive growth in their English as a New Language (ENL) and refugee enrollment over the last few years. Superintendent Hochreiter said, “From July 1 [to] Oct. 31 this year, our school district welcomed 327 new ENL students – 42% more than the same period in 2022, and 153% more than the same period in 2020. ENL students now comprise nearly 15% of our total student enrollment.” He added that, “serving this often-fragile and growing student population requires additional resources.”

A discussion of the impact of land use on school funding would be incomplete without mentioning charter schools. Charter schools, which as stated in the previous section, are publicly funded private schools that are most often located in low-income urban areas, have a negative fiscal impact on public schools. As the interest in charter schools grow due to the promise of a better, free education to low-income families, more students trickle out of public schools. Therefore, the funding to public schools begins to trickle out as well. As public schools start to lose money it is more likely that they will continue to underperform and have fewer resources. This causes other families to want to leave the public school districts for charter schools and the self-defeating cycle continues.

However, only $266.9 million of this will go to the district itself which serves approximately 8,726 students because $40.4 million of this budget is proposed to be allocated to charter schools in Albany which serve approximately 3,258 students. This is just one example of how millions of dollars can flow out of already underperforming public schools to fund charter schools. Since charter schools in the Capital Region are concentrated in urban areas, public schools located in suburban areas do not have to share funds with charter schools the way urban districts do, which further contributes to the funding disparity between urban and suburban school districts.

In short, a student’s access to educational resources largely depends on where the student lives because of antiquated funding formulas that value property over people. Homeowners in Albany pay higher effective property taxes, not only because they own homes of lower value due to a history of redlining and disinvestment, but also because of the high percentage of tax-exempt property in their communities. That coupled with the oversaturation of charter schools in

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1159 Albany Superintendent, supra note 1146.
1160 Id.
1166 New York State Education Department, Charter Schools in Albany, https://data.nysed.gov/profile.php?county=01 (last visited Nov 6, 2023) (the total number of students was calculated by adding up the number of students that attended each charter school for the 2021-22 school year).
Albany, and the higher number of ENL students imposes additional burdens on the Albany public school system. Although, on paper, the Albany, Schenectady, and Troy school districts have a higher average per pupil expenditure than many of the neighboring suburban districts, because “it is more expensive to provide an adequate education to a disadvantaged student than it is to provide one to an advantaged student,” the extra state aid the district receives likely isn’t enough to provide its diverse high-need student body with the sound basic education they are entitled to.\footnote{Education Equity in New York, supra note 1132, at 143.} This brings us to the disparities in facilities, resources, and academic performance which we will explore in the following section.

**Educational Infrastructure and Academic Achievement**

School facilities are the second largest sector of public infrastructure spending, after highways, but in 2021, the American Society of Civil Engineers graded America’s school infrastructure an embarrassing D+.\footnote{2021 Infrastructure Report Card, American Society of Civil Engineers, 1, 118 (2021), https://infrastructurereportcard.org/wp-content/uploads/2020/12/Schools-2021.pdf.} According to the U.S. Government Accountability Office’s national survey of school districts, 54% of public school districts need to update or replace multiple building systems or features in their schools.\footnote{School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement, GAO, 1, 8 (June 2020), https://www.gao.gov/assets/gao-20-494.pdf.} The high percentage of Heating, Ventilation, and Air Conditioning (HVAC) systems which districts reported needing to update or replace is particularly alarming given that it is the main tool for ensuring a safe, comfortable, and healthy school environment.\footnote{Sasan Sadrizadeh et al., Indoor air quality and health in schools: A critical review for developing the roadmap for the future school environment, 57 J. of Bldg. Eng’g 1, 3 (2022).  This paper conducted a review of recent research studies on school indoor air quality and found that many schools suffer from poor ventilation which not only causes disease to spread more easily, but it also can “impair pupils’ attention and vigilance, lowering memory and concentration.” Id. Additionally, higher temperatures in classrooms due to outdated HVAC systems reduces student comfort and is connected to absenteeism for respiratory illness. Id. at 10.}

Native American, Black, and Hispanic children are disproportionately represented in schools with lower facilities investments and maintenance and operations spending, and therefore are more likely to attend schools with inadequate facilities.\footnote{2021 State of Our Schools: America’s PK–12 Public School Facilities, 21st Century School Fund, 1, 38 (2021), https://education.wellcertified.com/hubfs/IWB1%20-%20State%20of%20Our%20Schools%202021.pdf.} One report showed that between 1995 and 2004, school districts spent nearly $600 billion in capital expenditures, yet “non-White, non-affluent districts were more likely to spend on basic repairs such as to roofs and windows that failed from years of deferred maintenance, while affluent White districts were more likely to invest in educational enhancements such as science labs or performance arts spaces.”\footnote{Erika M. Kitzmiller and Akira Drake Rodriguez, The link between educational inequality and infrastructure, The Washington Post (Aug. 6, 2021, 10:30 AM), https://www.washingtonpost.com/outlook/2021/08/06/school-buildings-black-neighborhoods-are-health-hazards-bad-learning/.} The COVID-19 pandemic shed even more light on these racialized facility disparities. For instance, high-poverty school districts that primarily serve students of color were much more likely to remain closed and offer remote-only learning in the fall of 2020 than their low-poverty counterparts because of neglected school facilities that were deemed unsafe for in-person learning.\footnote{Bracy Harris, Meredith Kolodner & Neal Morton, How deteriorating schools fuel the inequality crisis amid COVID-19, PBS News Hour (Nov. 25, 2020, 4:13 PM), https://www.pbs.org/newshour/education/how-deteriorating-schools-fuel-the-inequality-crisis-amid-covid-19. (The digital divide among Black and White students which was exacerbated during the pandemic is beyond the scope of this chapter).}

Research has shown that undesirable school conditions translate to low student learning and achievement.\footnote{Mary Filardo, Jeffrey M. Vincent & Kevin J. Sullivan, How crumbling school facilities perpetuate inequality, Phi Delta KAPPAN (April 29, 2019), https://kappanonline.org/how-crumbling-school-facilities-perpetuate-inequality-filardo-vincent-sullivan/.} Moreover, students of color often have social and economic disadvantages, stemming from life in segregated neighborhoods, which make higher achievement more difficult.\footnote{Rothstein, supra note 1062, at 196.} For example:

> [a]sthmatic children are more likely to awaken at night wheezing and, if they come to school after an episode, can be drowsy and less able to pay attention. A child who has more frequent absences – from poor health, unreliable transportation, having to stay home to care for younger
siblings, or family instability – will have less opportunity to benefit from instruction.\footnote{1176}

Low-income schools embedded in previously redlined neighborhoods have more students with these impediments, which overburdens already scarce resources.\footnote{1177} Consequently, teachers are unable to offer individualized attention to each student in need, resulting in lower achievement overall.\footnote{1178}

The disparate relationship between the Schenectady and Niskayuna school districts illustrates the challenges that students in previously redlined neighborhoods face compared to those in the suburbs. To start, Schenectady City School District is one of the oldest educational systems in the nation, and much of its history was marked by a reputation of academic excellence.\footnote{1179} The establishment of Niskayuna Central School District in 1953 drew wealthier White families out of Schenectady and into the suburbs, which contributed to economic decline and to the influx of Black and brown students from needier backgrounds into the Schenectady school district.\footnote{1180} Today, 80\% of the 9,281 students in the Schenectady City School District are members of a minority group and 48.9\% are economically disadvantaged,\footnote{1181} whereas Niskayuna Central School District’s minority enrollment is 30\%, and just 13.8\% of its 4,229 students are economically disadvantaged.\footnote{1182} Research has found that “[t]he whiter the schools, the more tangible and intangible resources they have allowing them to continue producing high-quality educational outputs and being considered high-quality schools.”\footnote{1183}

Correspondingly, schools in Niskayuna, which are predominately White and well-resourced due to higher property values, have frequently been ranked among the top in the State, while “the Schenectady district has struggled with low graduation rates, crime and other problems associated with concentrated poverty.”\footnote{1184} Some of these problems include neighborhood disorganization, a parent with mental illness or addiction, food insecurity, and environmental instability.\footnote{1185} In addition to the chronic stress burdening these students, Schenectady’s school buildings are an average of 95 years old, which only aggravates inequality and makes these kids feel like they are not valued in school or society.\footnote{1186}

The pictures show the external aesthetic differences between Schenectady High and Niskayuna High, with Schenectady...
appearing much more run-down and dilapidated. These two schools are separated by just 1.7 miles, but could not be more dissimilar, showing the far-reaching impact that poverty brought about by discriminatory land use policies have on education.

Although, in New York State and other parts of the country, schools with more students of color typically receive less money to invest in building improvements, Albany High School, which has a high minority enrollment, appears to be an anomaly. In 2018, construction began on a multi-phase $179.9 million project to renovate and expand Albany High School. The project will add more than 250,000 square feet of new facilities and completely renovate the existing 378,000-square-foot-complex, to make it more conducive for student success.

Below are images of two new classrooms in the main-campus, which are exposed to natural light, and equipped with their own heating and cooling system, and state-of-the-art technology. Prior to these upgrades, a large portion of the school’s classrooms, which were constructed in the early 1970s, received no exposure to natural light, and the heating and cooling system did not work consistently. The building also had cramped hallways, a large wall that was crumbling, and a roof that leaked in multiple places.

The major improvements to the school facilities and resources likely played a role in increasing Albany High School’s graduation rate from its lowest of 50% in 2010 to 82% in 2022. Afterall, “[s]tudents are generally better able to learn and remain engaged in instruction, and teachers are better able to do their jobs, in well-maintained classrooms that are well-lit, clean, spacious, and heated and air-conditioned as needed,” as opposed to

1189 Id.
1190 Id.
1192 Id.
1193 City School District of Albany, Albany High graduation rates increases to 82%, (Feb. 16, 2022), https://www.albanyschools.org/news/1733638/graduation-rate#:~:text=Albany%20High%20graduation%20rate,American%20students%20and%20White%20students (The increase in graduation rates has also been attributed to factors such as the district’s ongoing commitment to full-day kindergarten; enhanced focus on literacy and mathematics at all grade levels; the district’s long-term commitment to supporting students’ social-emotional and mental health needs; and expanding opportunities for more students to access higher-level academic offerings).
classrooms that are too hot, too cold, overcrowded, dirty, or poorly ventilated.\textsuperscript{1194} While Albany’s graduation rate is still below the state average of 87%, and lags behind that of neighboring districts, its progress over the past twelve years is commendable. Despite this positive change, public perceptions of Albany schools remain negative, with its history of low graduation rates and high dropout rates and concerns of drugs and violence overshadowing its recent accomplishments and investment in students.

In addition to deficient facilities, underfunded schools in impoverished communities often have access to fewer resources, learning opportunities, and inadequate support, leading to poorer performance outcomes, specifically among Black and Latinx students. For years, teachers across the country who work at underfunded schools serving low-income diverse populations have reported that their classrooms are not well-stocked with basic materials like paper, pencils, and art supplies, the textbooks are outdated, and the technology is lacking.\textsuperscript{1195} This lack of tangible resources makes learning even more difficult for students who are already facing external poverty-related challenges detailed previously. Schools that are underfunded also often lack access to AP courses, music and arts education, and qualified teachers, further disadvantaging these students.

Advanced Placement classes are viewed by many educators in America as a tool that gives students a leg up when it comes to college admission. These classes prepare students for college-level courses, allowing them to earn college credit, set them apart from their peers, and strengthens their transcript, as oftentimes AP classes are more heavily weighted, among other benefits.\textsuperscript{1196} However, for many years AP classes were only taught in wealthier, primarily White school districts. This has shifted over the last two decades with the number of students taking AP tests increasing substantially. Between 2006 and 2016 the total number of tests taken grew from 2.3 million to 4.7 million largely due to increased federal funding and the College Board making an active effort to reach minority and lower-income students.\textsuperscript{1197}

While the number of Black and Latinx, and low-income students who have taken AP exams has increased, disparities can still be seen when comparing higher-income Whiter schools to more diverse underfunded schools, something that was evident when reviewing the course catalogues for several Capital Region schools. For instance, Shaker High School in the North Colonie School District offers 16 AP classes\textsuperscript{1198} and Guilderland High School offers 12 AP classes in addition to numerous courses offered by local colleges in subjects like Science and Business.\textsuperscript{1199} In more diverse, lower-income schools located in previous redlined areas, like Troy and Schenectady City School Districts, the difference in higher level classes is astonishing. Troy City High School offers just 5 AP classes and 2 AP science labs\textsuperscript{1200} and Schenectady City School District appeared to offer no AP classes based on their course catalog. Schenectady City School District does offer several classes through local colleges however, but not all colleges accept these credits.\textsuperscript{1201} Overall, the lack of advanced and college level courses offered at schools that are primarily made up of students of color puts these students at a stark disadvantage.

Further, school districts that are underfunded often have fewer music and art classes; something that has been statistically shown to have negative impacts on student performance. Schools that are underfunded often cut music and art classes first to save money as these subjects

\begin{thebibliography}{999}
\item \textsuperscript{1200} Troy City School District, Course Catalog, https://www.troycsd.org/troy-high-school/counseling-center/course-catalog/english (last visited Oct. 29, 2023).
\end{thebibliography}
are not covered by standardized tests. On the other hand, the positive impacts arts education have on student performance are extensive. Arts education leads to higher performance on exams, more motivated, attentive, and engaged students, better problem solving skills, improved critical and creative thinking, better team work and collaboration skills, and higher self-confidence.

Schools that focus more heavily on arts education often report students having better academic outcomes like higher grades and higher rates of graduation and college enrollment. These programs allow students to perform better and enjoy school more.

While many schools, including lower-income schools, in the Capital Region offer art classes, the number and breadth of classes differs depending on how well-funded the school is. Shaker High School, for example, offers 19 music classes and 31 art classes and Guilderland High School offers 21 art classes and 13 music classes. In Troy High School however, only 7 performance arts classes and 9 visual arts classes are offered. Albany High School, a school in a very diverse, formerly redlined community, is once again somewhat of an anomaly with 22 art classes and 19 music classes being offered. The benefits of arts education are extensive and schools that do not have much funding further disadvantage their students when these programs are cut.

The chronic lack of qualified teachers further exacerbates the problem of low academic performance in underfunded schools. While there is currently a national teacher shortage, schools that serve large populations of students of color and students who are living in poverty tend to experience this problem more heavily when compared to more affluent, Whiter schools. Poorer school districts have trouble retaining teachers due to lower pay and more difficult work conditions, and the teachers they do have are often working multiple roles. Many students are being taught by underqualified substitute teachers because their school cannot find enough teachers to fill the vacancies in their district. According to federal data gathered in January 2022, in locations where people make more than twice the federal poverty threshold, approximately 60% of schools had no vacancies. When compared to areas where people make less than that amount, only 44% of schools were fully staffed. Fewer teachers with fewer qualifications not only means poorer educational quality but fewer services for students, larger class sizes, and fewer extracurriculars.

New York State has felt the impact of the lack of teachers with the New York State United Teachers Union reporting that enrollment in state teaching programs has declined

1205 North Colonie Central Schools, *supra* note 1198.
1212 Grabenstein, *supra* note 1210.
53% within the last 14 years. Schools in the Capital Region have reported teacher shortages with districts like Rensselaer City Schools finding it challenging to hire qualified individuals like special education teachers and school psychologists. The lack of resources, opportunities, and support in underfunded schools across the nation contribute to lower academic performance which in turn affects lower-income, primarily Black and Latinx students the most. These impacts can be felt in the Capital Region in districts like Schenectady and Troy, areas that were heavily redlined, are made up primarily of low-income minority students, and already face lower graduation rates and test scores.

In sum, where a student lives matters because it dictates the funding their school district receives, and subsequently, the quality of educational facilities, access to resources, and the overall opportunities they are afforded. Without widespread reform, property-poor districts in previously redlined neighborhoods will continue to underperform and predominantly Black and Hispanic students’ full potential will continue to go unrealized.

Recommendations

In this final section, we will propose six distinct but interrelated state and local recommendations to bring about a more equitable education system in the Capital Region through the lens of land use and racial justice. Recommendations 1 and 2 relate to the issue of school segregation discussed in Section II; recommendations 3 and 4 relate to the issue of inadequate school funding discussed in Section III; and recommendations 5 and 6 relate to the issue of disparate facilities, resources, and academic achievement discussed in Section IV.

Recommendation #1: Amend Education Article of the New York State Constitution

Since the majority of plaintiffs seek education reform through their state constitution, the wording of its education article can be the difference between a winning or losing claim, or even the ability to get through the court house door. The Education Article in New York State’s Constitution, which requires merely that the legislature establish and maintain a system of public schools, provides the bare minimum standard of educational quality. Particularly, as explained earlier, students are entitled to only a sound basic education, meaning minimally adequate physical facilities and classrooms, instrumentalities of learning, teaching, and curricula. Therefore, in New York, claims solely challenging extreme segregation in school districts have commonly been dismissed because racial segregation has been found to have “no relation to the discernible objectives of the Education Article,” even though studies have shown it is linked to lower learning outcomes. Accordingly, New York State’s Education Article must be amended to ensure remedies beyond minimally adequate resources, staffing, and funding.

Connecticut’s Constitution serves as one model since its provisions have been interpreted to protect students from both de jure and de facto segregation. In Sheff v. O’Neil, decided by the Connecticut Supreme Court in 1996, the plaintiffs alleged that “students in the Hartford public schools are burdened by severe educational disadvantages arising out of their racial and ethnic isolation and their socioeconomic deprivation.” The plaintiffs relied on the demographics which showed that in the 1991-92 school year, over 92% of the students in the Hartford public school system were members of minority groups whereas only seven of the twenty-one surrounding suburban towns had a student minority enrollment above 10%. Although, the overall per pupil state expenditure in Hartford during this time period exceeded the average amount spent per pupil in the twenty-one surrounding suburban towns, and students in Hartford schools received resources, educational programs, and curricula similar to students in other schools in the state, Hartford school children still performed significantly worse on standardized tests.

1217 Id. at 442.
1219 Id. at 1272, 1273.

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Due to the unique language in Connecticut’s Constitution which explicitly barred “segregation or discrimination,” the Supreme Court held that “the existence of extreme racial and ethnic isolation in the public school system deprive schoolchildren of a substantially equal educational opportunity,” regardless of whether the state had invidious segregative intent.

Drawing from the Connecticut Constitution and other state education adequacy litigation cases, Gus Ipsen authored a Note in which he proposed revising the New York State Education Article to read as follows:

The legislature shall provide for a thorough, efficient, and equitable system of free common schools, wherein all the children of this state shall be educated in a reasonably integrated learning environment.

This amendment also incorporates the heightened “thorough and efficient” standard from the Minnesota and New Jersey Constitutions, where courts have found allegations of segregation alone to be sufficient for an education article claim. Thus, the language in this amendment would “ensure that anything short of reasonable integration will present a constitutionally actionable inadequacy that is attributable to the state,” allowing plaintiffs to seek more creative remedies to address the systematic nature of racism in the education system.

In 2023, the New York legislature passed the Equal Rights Amendment that creates new protections in the State constitution against discrimination “based on a person’s ethnicity, national origin, disability, age, and sex — including sexual orientation, gender identity, gender expression, pregnancy and pregnancy outcomes” and reproductive health care and autonomy. Voters will have the opportunity to ratify this amendment on the November 2024 ballot which, if passed, would be a huge step forward in the fight for equality. If the legislature wants to fully ensure equal rights for all New Yorkers, they should use this progressive momentum to amend the Education Article of the New York State Constitution with the aforementioned language, as there can be no equality without a right to a diverse and equitable education system.

**Recommendation #2: Redraw Attendance Zone Boundaries**

In addition to high levels of segregation between urban and suburban school districts, current attendance zone boundaries in the Capital Region either replicate residential segregation patterns, or worsen school segregation within districts. To address this problem, school district officials can redraw attendance zone boundaries in a race-conscious manner to integrate, rather than segregate schools. This practice was supported by the Supreme Court in *Swann v. Charlotte-Mecklenburg Board of Education*, where it permitted the use of busing programs and the altering of attendance zones to accelerate school integration post-*Brown*. However, this remains a highly contentious topic as many parents fear that rezoning students will impose travel burdens, reduce quality of education, produce unsafe school environments, lower property values, and fragment communities. These concerns were on display when Albany approved its elementary-to-middle school feeder realignment plan in 2022 to bring about more equity. This plan triggered fierce opposition from...
parents who worried about long transportation routes and safety.\textsuperscript{1233} In a new study, education scientists used Artificial Intelligence to simulate new attendance zone boundaries for nearly 100 of the nation’s largest districts, factoring in travel time, class size, and contiguity constraints.\textsuperscript{1234} Their findings show that alternative attendance zone boundaries could decrease the level of segregation between White students and students of color an average of 14%.\textsuperscript{1235} These boundaries would require nearly 20% of students to switch schools, but would lead to a decrease of under 1 minute in travel time.\textsuperscript{1236} These results are modest, but the researchers noted that changing constraint values can have a multiplier effect on how much alternative boundaries might reduce segregation.\textsuperscript{1237} Regardless of how school officials decide to go about redrawing attendance zone boundaries, they must engage the community and be sure to regularly revisit and adjust catchment zones to account for shifting residential patterns. School districts should also consider other innovative approaches, such as interdistrict transfer programs; magnet programs that draw students from different districts; and “diverse by design” choice programs to ameliorate school segregation in the Capital Region.\textsuperscript{1238}

**Recommendation 3: Update Foundation Aid Formula**

The Foundation Aid Formula, which high-need school districts in New York State rely on for state aid, has received criticism because it still uses poverty data from the 2000 Census and from the number of students who receive free and reduced lunch which does not accurately reflect the need of districts.\textsuperscript{1239} “As a result, the Formula benefits districts that have seen economic improvements while harming districts that have seen poverty increase.”\textsuperscript{1240} According to the 2020-21 budget, Albany City School District received only 45% of its total revenue from state aid compared to higher percentages for other New York districts, like Schenectady, Troy, Syracuse, and Utica, that serve similar student populations.\textsuperscript{1241} The outdated Foundation Aid Formula measures likely play a role in this discrepancy. Thus, the Foundation Aid Formula must be updated using the most recent data from the Census Bureau’s Small Area Income and Poverty Estimates and changing from the free and reduced lunch count to other more reliable means-tested programs.\textsuperscript{1242} This is particularly important given the recent growth in the number ENL students attending the Albany City School District, and other districts in the Capital Region.

**Recommendation #4: Establish More Voluntary Payments from Tax-Exempt Entities and Make Capital City Aid Permanent**

Over 60% of land in the City of Albany is tax-exempt, mainly due to state facilities, which unfairly burdens taxpayers and hurts public schools.\textsuperscript{1243} Some of these tax-exempt entities voluntarily make Payments in Lieu of Taxes (PILOT) amounting to about $12.5 million a year, but this is nowhere near equivalent to the amount of money that could be raised if they were properly taxed. Further, these entities do not always follow through with their agreements.\textsuperscript{1244} Therefore, establishing more voluntary payments from large nonprofits and other tax-exempt entities is important, but it is not enough to offset the costs that Albany incurs from hosting state government.

Albany must also receive its fair share of state aid to level the playing field. Currently, Albany Mayor Kathy Sheehan

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\textbf{Note} & \textbf{Source} \\
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1233 & Id. \\
1234 & Id. at 351. \\
1235 & Id. at 360. \\
1236 & Id. at 349. \\
1237 & Id. at 360. \\
1239 & Kathleen Moore, supra note 1148. \\
1242 & Citizens Budget Commission, supra note 1240. \\
1243 & See supra notes 1151-1159 and accompanying text. \\
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One solution, supported by the Albany Common Council, is for the Governor and the Legislature to make Capital City funding permanent in the New York State Budget. The amount of Capital City aid should also be raised to $15-20 million, adjusting for inflation every year. Authorizing this permanent revenue stream would alleviate some of the burden that Albany bears from all of its tax-exempt property and increase the amount of money that can be distributed to its high-need public schools.

**Recommendation #5: Invest in Educational Infrastructure**

School districts that are underfunded and have lower academic achievement tend to offer fewer resources, poorer amenities, and opportunities to their students which makes it difficult to offer students a quality education. This in turn perpetuates the cycle of poverty because academic achievement continues to be low. By providing a greater amount of AP classes, music and art programs, extracurriculars, qualified teachers, and up-to-date facilities, students can be more engaged in their education, feel supported in their school, and have a better chance at having a brighter future. Thus, each city in the Capital Region that serves primarily low-income students of color should use state funds to invest in their schools. Albany City School District has already taken steps in this direction by drastically renovating its high school. Other districts should follow suit and make sure their facilities are safe and comfortable, so students can get the most out of their education.

Lastly, implementing more pre-kindergarten programs is one way the State can combat the effects of poverty in children throughout the Capital Region. According to the United States Department of Education, high quality pre-kindergarten programs promote better social-emotional health and cognitive outcomes for children, specifically those who are from low-income families. Children who participate in quality pre-kindergarten programs have been shown to be more likely to graduate from high school, go to college, and have higher earnings as adults. These students are also less likely to repeat grades and be arrested. The programs offered however must be of high quality to be effective meaning they must have research-based curriculum, stimulating classrooms and learning materials, smaller class sizes, and continuing education for teachers. For districts that already struggle with lower academic achievement and graduation rates due to being in underfunded areas with high poverty rates, such as Schenectady City School District and Troy City School District, high quality pre-kindergarten programs can be an excellent way to raise these statistics and allow children more opportunities later in life.

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1245 Lucas, supra note 1152.
1246 Id.
1247 Id.
1249 Id. at 2.
An issue that goes hand in hand with implementing quality pre-kindergarten programs is that of funding. Schools like Albany City School District, who have had pre-kindergarten programs since the 1990s, face funding disparities for their pre-kindergarten programs as “more than half of [their] current pre-K seats are funded at an outdated half-day per-pupil rate while the state invests in new pre-K programming at full-day rates in other districts statewide.” 1252 Albany City School District is forced to reallocate over a million dollars from its general fund to “offset this pre-k funding disparity” in order to provide enough adequate pre-kindergarten resources the community needs and deserves. 1253 While New York State is investing hundreds of millions of dollars into state-administered Pre-Kindergarten programs, as well as universal pre-kindergarten for children aged 4, 1254 funding disparities force schools that are already on tight budgets to spend extra funds they don’t have to offer their community the resources they need to thrive. In order to ensure schools are offering quality education from pre-kindergarten to 12th grade, funding for pre-kindergarten programs should be spread more equitably in schools across the state, particularly in the Capital Region.

1252 Albany Superintendent, supra note 1146.
1253 Id.
CHAPTER 10: ECONOMIC DEVELOPMENT AND EMPLOYMENT OPPORTUNITY

Author: Eunice Lee

Abstract

This chapter will discuss the disproportionate impact of racial justice considerations on economic development and employment within the framework of land use regulations in the Capitol Region. This chapter will reveal how discrimination manifests through systemic barriers, hindering the attainment of equitable opportunities. This is especially evident for Black Americans, who consistently face limited prospects for upward mobility in terms of economic status and employment. To help address equity, fairness, and equality in economic development and employment, this chapter will not only identify the Capital Region’s vision of what a successful economy may represent but also reveal the hidden inequities and barriers of achieving such a vision. Finally, this chapter will conclude by offering recommendations aimed at cultivating economic development and promoting employment through the lens of equity.

Introduction

Economic development and employment are driving forces of a community’s growth. According to the International Economic Development Council, the goals of economic development are to promote economic well-being and quality of life for communities by creating, retaining, and expanding jobs that facilitate growth, enhance wealth, and provide a stable tax base. Unfortunately, not all communities enjoy equal access to the economic opportunities and resources afforded to thriving counterparts. For instance, other factors that support economic growth and employment, such as development financial tools and transportation may help one community while hurting another, especially when it leads to gentrification and displacement.

Forty years of redlining and discriminatory zoning policies in the Capitol Region have had lasting impacts in property value and disinvestments. Although there have been notable developments of commercial and industrial uses in the Capitol Region, vacant buildings and limited infrastructure remains in distressed communities as well as a need for qualified labor. Therefore, it is not surprising that the average poverty rate in the region is 10% compared to the 12.80% for the US, which still has a significant negative impact, especially in specific distressed neighborhoods and underserved populations.

This chapter will further examine how redlining has detrimentally affected the members of targeted communities in the Capitol Region, the dangers of well-intended business strategies, and the potential benefits of equitable planning. More specifically, three major contributing factors in economic development and employment will be addressed within their own sub sections: financial development tools, infrastructure development, and property tax assessments. Section 1 will discuss the dark reality of how well intended economic tools can exacerbate inequality in low-income communities when they are misused by investors; section 2 will discuss how insufficient infrastructure limits job opportunities and economic growth in marginalized communities; section 3 will address racial inequity in biased tax assessments and property valuation. Addressing these issues within the economic scope will provide insight on structural racism.
and how reformation is necessary to reverse this deepening divide.

As the community prioritizes commercialization and rehabilitation of distressed areas to attract potential residents and investors, it also faces the issue of displacing long-term residents and small businesses due to escalating costs and rising property values. The Capitol Region should achieve its vision of creating an ecosystem in which private sector, academia, and government work harmoniously to stimulate economic growth1261 all while enforcing equitable practices so that all members of the communities can participate from a thriving economy.

Development Finance Tools

The Capitol Region has benefited tremendously from business financial incentives that have helped shape its economic development by advancing job opportunities and economic welfare of the people. Many of these types of development finance tools are designed as place-based strategies. Place based can be in the form of tax incentives and subsidies and are used to cover the cost of construction, rehabilitation, and equipping for a wide range of commercial and industrial projects.1262

On the whole, place-based policies aimed at addressing social and economic disparities have made few dents in the systematic exclusion of certain people and neighborhoods.1263 While numerous federal programs have been specifically targeted toward areas with high concentrations of low-income residents, they have generally centered more on attracting outside investment to grow jobs and businesses rather than advancing local empowerment and economic mobility through wealth-building.1264 Although development finance tools can be quite promising for developers to stimulate economic growth, it is important to be aware of the drawbacks as they may be used to widen the racial gap. This issue is a national one as President Biden, under his first executive order, directed agencies to examine their policies and programs to identify whether and how they perpetuate barriers to equal opportunity.1265 Therefore, it is important to recognize where the development tools are being utilized, how these tools are being functioned and who is benefiting from these changes. Several development finance tools applied by the Capitol Region designed to advance economic development are as follows:

Opportunity zones

Opportunity Zones are an economic development tool that allows a tax break to encourage people to invest in distressed areas in the United States.1266 Currently, there are 28 designated opportunity zones in the greater Capital Region, including 16 within the counties of Albany, Rensselaer, Saratoga, Schenectady, and Warren. Each has a varying degree of need and potential for economic development.1267 On average, the region's opportunity zones tend to have lower household incomes and fewer college degrees than the state as a whole.1268 In fact, Redburn Development Partners has invested tens of millions of dollars in recent years renovating historic buildings in Albany, Schenectady and Troy to create apartments and space for retail and restaurants.1269 Tom Rossi, a principal of Redburn Development Partners, states that the program was designed to “encourage development and investment in the urban areas” rather than investing in suburbs, as it was done in the past. However, Brett Theodos and Brady Meixel from the Urban Institute

1261  New York State, Regional Economic Development Councils, https://regionalcouncils.ny.gov/capital-region/ vision#:~:text=The%20Capital%20Region%20vision%20is,Economically%20vibrant, (“The Capital Region vision is to foster an ecosystem in which the private sector, academia, and government work in harmony to stimulate economic growth. Locally collaborative. Globally competitive. Economically vibrant”).
1262  Id.
1264  Id.
1268  Id.
cautions that “[opportunity zones] could take many forms, including projects that contaminate air and water quality. Perhaps most salient are investments that repurpose affordable housing as expensive rental or ownership units, out of reach of current residents.” For instance, Redburn Development Partners invested $85 million in one of the opportunity zones located in the City of Albany's North Pearl Street by “tax exemption provided by the state through its 485-a program that lasts about 12 years.” The size of North Pearl Street’s buildings has made them attractive to investors, and their proximity to the state Capitol and downtown office workers had increased their desirability to invest in this area. However, North Pearl Street, located near the heart of downtown commercial district, was already benefiting from the resources that were available from a population density that was able to support it. Meanwhile, just on the other side, South Pearl Street has been financially disenfranchised and suffers 'benign neglect' from investors.

In reference to the way commercial development is in North Pearl's business district, Travon Jackson, executive director of the African American Cultural Center on South Pearl, says, “You're bringing people to where the commerce is instead of allowing commerce to exchange among different settlements of people where they already are,” he said. “That's why you end up with things like neglect, because people don't have to come to this neighborhood (South Pearl Street) for commerce.”

South Pearl Street was not always a distressed community as it was once a bustling cityscape, described as “a humming commercial corridor with vibrant mom-and-pop shops, grand department stores, and everything in between.” According to Anthony Opalka, a city historian, and David Lewis, an associate professor at the University at Albany’s geography and planning department, urban renewal efforts led to a painful exodus by businesses due to renewal efforts such as the construction of the Empire State Plaza in 1962, also known as the South Mall by Gov. Nelson Rockefeller. As mentioned in the Transportation chapter, roughly 3,500 families and hundreds of small businesses were expelled, most of them poor and disproportionately Black. Over time, when construction was finally completed in the mid-1970s, the adjacent areas came back to life – North Pearl shopping stabilized, and soon restaurants were packed, particularly during lunch and happy hour.

It seems like Opportunity Zones were touted as economic development and business growth program, but ended up being a real estate finance program. This issue is not a typical one as a large share of opportunity zones are truly disinvested, “the bulk of opportunity zone capital to go towards the best-off and most-rapidly appreciating opportunity zones” and “affordable housing, health centers, community facilities, and other community development projects will not be the typical opportunity zone investment.” However, Sarah Reginelli, president of the Capitalize Albany Corp., has been working to generate investment on Pearl Street around multifamily housing. Capitalize Albany Corp., an economic development agency serving the city, focuses on converting blighted buildings on South Pearl and obsolete office space on North Pearl into apartments. Community non-profit agencies have also tried to collect funding and make South Pearl Street gain

1270 Shayla Colon, Millions invested in North Pearl, South Pearl suffers 'benign neglect' from investors, Times Union (April 15, 2022), https://www.timesunion.com/business/article/Pearl-5-16984825.php#taboola-1.
1271 Id.
1272 Id.
1273 Id.
1274 Id.
1277 What would Albany be like today if the Empire State Plaza had not been built?, All Over Albany (Jul 31, 2017), http://alloveralbany.com/archive/2017/07/31/what-if-empire-state-plaza-hadnt-been-built.
1278 Id.
1281 Id.
1282 See Cohen, supra note 1270.
more attention from investors. By designating resourceful areas as opportunity zones, investment will continue to be diverted from truly disadvantaged communities. Unfortunately, the inequity of economic development between North and Pearl Street serves as a reflection of the consequences stemming from disinvestment in specific areas of the Capitol Region.

**Land Bank**

In order to combat the problem of vacant and abandoned properties, the New York State Land Bank Program permits municipalities to apply for and create land banks in their communities, pursuant to Article 16 of the New York State Not-for-Profit Corporation Law signed into law in July 2011, which permits the creation of 35 land banks in New York State.\(^{1283}\) State and local governments can support land banks by allowing low or no cost purchases of tax foreclosures, clearing titles and/or forgiving back taxes, holding land tax free, or negotiating property transfers that address community needs.\(^{1284}\) Adam Zaranko, President of New York Land Bank Association describe Land Banks as one of the “most effective tool for reclaiming vacant properties and revitalizing neighborhoods and are uniquely situated to help New York’s urban areas combat the damaged caused by decades of discriminatory and systemic disinvestment in urban neighborhoods that has resulted in the tremendous racial and economic disparities that plague our cities today.”\(^{1285}\)

Although they have existed for decades in other states, land banks are relatively new to New York. In the Capitol Region, there are two main land banks: Capital Region Land Bank and the Albany County Land Bank Corporation. The Capital Region Land Bank is a 501 C (3) nonprofit created by Inter-municipal agreement between the Cities of Schenectady and Amsterdam and Schenectady County, administered by the Schenectady Metroplex Development Authority.\(^{1286}\) To date, the Land Bank has won more than $10 million in grant funding to help remove blight and assist in community revitalization.\(^{1287}\) The Albany County Land Bank is a not-for-profit corporation based in Albany, New York that is dedicated to revitalizing neighborhoods by addressing property vacancies across the County.\(^{1288}\) Prior to being approved by the Land Bank’s Board of Directors, property purchased from the Land Bank typically require rehabilitation which is the responsibility of the buyer, and as part of the Land Bank’s “property purchase application, buyers are required to provide a scope of work, proposed budget, and rehabilitation timeline.”\(^{1289}\) The chart below provides an overview of the land bank process.

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1284 Id.
1288 Albany County Land Bank Corporation, [https://www.albanycountylanbank.org/about-us](https://www.albanycountylanbank.org/about-us), (“The Land Bank uses grant funding to support property demolitions, acquisitions, stabilizations, lot improvements, and rehabilitation projects and works in partnership with state and local government, non-profits, residents, community groups, and responsible developers and investors to return properties to productive use and support community development.”).
1289 Id.
the people that’s poor, the people who don’t have money,” Emanuel added.1292 Emanuel’s response to land banks refers to the potential dangers of how land trusts can be linked to rising property values and unregulated private market sales.1293 Other critics contend that land banks wield too much power, concentrate demolitions in poor and majority neighborhoods of color, and have unfortunate parallels to the flawed, top-down policies of mid-twentieth century urban renewal.1294 In fact, such concerns were voiced prior to the creation of the Albany County land bank in 2014 when residents believed that land banks would take the form of the failed federal and state “urban renewal” projects, throughout the 1950s and 1960s, such as The Empire State Plaza or the South Mall Project,1295 which left behind many African Americans in modern-day blighted communities.

Examining the diversity of land banks, a report by Zachary Small and Jennifer Minner explores the risks of land banks exacerbating inequality in New York State.1296 Based on their studies of various land banks, one being in Albany, Small and Minner found that although land-bank leaders show an awareness and desire to address issues of equity, the authors also observed that more community engagement, expanding partnerships with nonprofits, and shifts in approaches to demolition could provide even more equitable outcomes in disinvested communities.1297 They believed that land banks could successfully serve “residents who have historically been deprived of intergenerational wealth to a greater degree” by prioritizing social equity and equitable urban development.

Capital District Community Loan Fund (CDCLF)

Capital District Community Loan Fund (CDCLF) is a nonprofit community development financial institution serving the Capital Region of New York State — Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren & Washington Counties.1299 CDCLF provides access to capital by pooling investments and donations from donors and organization and relending it to Black, Indigenous, People of Color (BIPOC), lower income, and women business owners.1300

Recently the main challenge for business owners is sustaining their business growth as the pandemic affected Black business owners worse than other racial groups.1301 Linda MacFarlane, Executive Director of Funding says, “post-COVID continues to be a problem for small businesses with BIPOC ownership.” COVID relief grants intended to assist small businesses were not evenly distributed to BIPOC and women owned businesses. As interest rates rise, banks seem to be tightening lending standards. Due to these issues, many small businesses that closed during COVID are still struggling with reopening, attracting customers, and affording increased costs associated with inventory, especially since there seems to be a more stringent application process for small business loans for accessing credit. Lending practices are even more tightened and discriminatory for BIPOC business owners who receive less money when financing through a term loan, and they receive less money for a higher interest when financing through a term loan.1302

In fact, Black-owned startups receive lower than expected business credit scores and that white-owned startups with...
Although there were recent increases in infrastructure funding, the Capitol Region still needs substantial and equitable funding sources for safety needs and future climate risks. Continued investment in transportation is also necessary to accommodate increasing demands. As discussed in the Transportation chapter, a lack of investment in transportation poses great challenges for lower-income residents who do not own cars, cannot afford upkeep on single-family homes, and live geographically separated from important retail and service hubs. Further, a region that encourages and accommodates for other forms of transportation other than the use of cars can allow a less congested downtown and more resourceful, equitable development in replace of parking garages or parking lots. For example, a zoning change that is supported by local officials and community groups is the removal of highways as an important tool to achieve downtown growth.

A recent article reviewing the nationwide interest in urban freeway removal cites the argument of a former planning director in Milwaukee, where a successful highway removal occurred two decades ago. Removing a highway can transform it into a more valuable asset. While repairing an aging highway might attract federal funding, removing it for redevelopment offers superior long-term benefits such as job creation, housing development, increased tax revenues, and overall city improvement. By removing a highway, a city can develop more valuable asset. An aging highway might attract matching dollars from the federal government for repairs, but if the city removes it and frees up land for redevelopment, that’s a much better long-term option for producing jobs, housing, tax revenues, and other benefits: Building a city is the long play. Although there are no examples of a neighborhood that improved when a highway was cut through or over it, but every in-city

the same firm characteristics as Black-owned startups are treated more favorably.

As a result, the Capital Region Economic Development Council (the CREDC) indicates that if the Capitol Region does not have the right mix of regional assets, industry leaders will look elsewhere. Therefore, it is important to identify financial tools that will boost economic opportunities so that as many people can participate in the economy.

**Infrastructure**

Infrastructure sustains American commerce and trade, bolsters the country’s economy, and makes us more competitive globally and more secure domestically. As infrastructure assets are costly long-term investments, it can increase the attractiveness of capital investors seeking stable, long term cash flows. Water, waste management and transportation infrastructure are critically impactful aspects of economic development, and unfortunately often overlooked. Specifically, transportation infrastructure provides direct and indirect access to economic opportunities. It directly impacts the outcome of improved capacity and efficiency as transportation provides employment, added value, larger markets, as well as time and cost improvements. It indirectly impacts the outcome of improved accessibility and economies of scale such as jobs resulting from local purchases by activities directly dependent upon transportation. When transport systems are efficient, they provide economic and social opportunities and benefits that result in positive multiplier effects, such as better accessibility to markets, employment, and additional investments. However, this is not the case for all communities as infrastructure, including transportation, does not meet the needs of underprivileged areas.

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1303 Id.
1304 Id.
1306 Id.
1308 Id.
1309 Id.
1311 Id.
1312 Id.
highway removal has improved economic, environmental, and social opportunities for the local community.”

Similar to this zoning change, the City of Albany is planning to remove I-787 along the waterfront, replacing the road with a street-level boulevard and also freeing up land for public open space and development. The harms caused by I-787 are obvious to those who live in New York’s capital city. For instance, the highway is essentially a massive concrete barrier that separates the City of Albany from what should be one of its most vital and valuable resources – the river – and walls off some of its poorer neighborhoods from the city, exacerbating longstanding racial disparities. The picture below is a visual representation of the final development: A monstrous highway that dominated the Albany skyline, cutting the city off from its waterfront, replaced by a pleasing expanse of green space, new housing, as well as walking and biking paths along the Hudson River.

Additionally, the City of Albany’s Land Bank’s efforts, which seek to undo some of the harm caused by redlining, are “hampered by the presence of I-787, which makes it more difficult to attract homebuyers and other investors” says Adam Zaranko, executive director of the Albany County Land Bank Corporation. “[Removing I-787] is about taking space back,” Zaranko continues, “If we can bring some of that space back, we can do new development. … I-787 is holding back the true potential of not just Albany but the entire region.” Unfortunately, the placement of I-787 disproportionately impacted the health of the residents in South End compared to the other residents outside of the neighborhood due to the increase in traffic, specifically the contaminants released from oil trains. Thus, as the Capitol Region invests in infrastructure to encourage economic growth and employment opportunities, it should also address infrastructure placemaking through the lens of equity.

1316 Id.
1317 Id.
1318 Id.
Property Assessments

Property assessments make it even more difficult for economic development in distressed areas as appraisers undervalue minority-owned properties. Undervaluing a property based on a homeowners’ race is theoretically illegal, as appraisers—like all other professionals in the real estate industry—are prohibited from discriminating by race. However, this inequitable practice appears to be so prevalent that research published by Freddie Mac in 2021 found that 12.5 percent of the properties in majority-Black census tracts received an appraisal value lower than the contract price, compared to just 7.4 percent of the properties in White census tracts.

This discriminatory practice is called “appraisal bias” which is when homeowners of color receive significantly lower valuations for their homes compared to identical homes owned by White families. Appraisal bias then perpetuates a series of effects that will only widen the wealth gap between African Americans and Whites. For instance, without home equity, property tax revenues can be reduced, which means jurisdictions will have a lower fund budget for valued services, commonly used by white homeowners such as education, home improvement and other life enrichments such as to use their house as collateral for things like business loans.

Other discriminatory practices in African American communities include subprime loan or “reverse redlining,” which is more of a modern discriminatory practice involved in the excessive marketing of exploitative loans to communities of color. Subprime lending, which precipitated a worldwide financial crisis, has also exacerbated the economic suffering of minority families and intensified both economic and racial segregation in the United States. Also, predatory lending or “reverse redlining” is another strategy that African Americans are particularly targeted for, even when they qualified for traditional mortgages. Payday loans, high-fee check-cashing services are examples of predatory lending particularly in communities still affected by generations of discrimination and lack of access to traditional financial instruments. A Morning Consult report from 2020 found that Black people were almost twice as likely to live near a small-dollar lender, such as a payday lender.

Inequitable practices continue in blighted and abandoned properties in Albany County. Today, the Capital Region’s median tax rate of $26.09 per $1,000 in assessed home value is the lowest in the nine regions crunched by the Empire Center (excluding New York City and Nassau). Homeowners in neighborhoods of color are less likely to seek refinancing opportunities to renegotiate their mortgage terms to obtain better rates. Of those who try, more homeowners in neighborhoods of color

1320 Dan Reed (Shelterforce), Why homes owned by people of color are appraised for less, Great Greater Washington (March 3, 2022), https://ggwash.org/view/83953/why-homes-owned-by-people-of-color-are-appraised-for-less.
1322 Reed, supra note 1320.
1323 Id.
1324 Id.
are denied than are homeowners in majority-White neighborhoods.¹³³¹

Thus, ongoing redlining effects, including disinvestment and predatory lending in distressed areas will most likely create a spatial tax burden variation within jurisdictions, resulting in a nationwide “assessment gap” where local governments disproportionately burden racial and ethnic minorities.

**Employment**

In addition to being the home of New York’s capital city, Albany is a major talent generator with 23 higher education institutions.¹³³² The New York State Department of Labor Division of Research and Statistics designated the following industries in the Capital Region as “significant”: construction, manufacturing, transportation and warehousing, finance, and insurance, professional, scientific, technical, educational, health care, social assistance services, and the state government.¹³³³ The industry was designated as “significant” with reference to the following characteristics: The industry experienced above-average job growth (in either net or percentage terms); or the industry employed more than 13,000 people; or the industry’s projected employment growth for 2018-2028 is above average in the region (9%); or the industry paid above-average annual wages ($61,200 in 2020).¹³³⁴ Also, key regional industry clusters include Semiconductors, Life Science, Digital Gaming and Clean Energy.¹³³⁵ These clusters provide economic development potential as well as opportunities for companies to grow and expand. To stimulate economic growth, the Capital Region depends on a highly skilled workforce and a desirable quality of life for new employees moving to the region. Retaining human capital is crucial to economic growth “as it complements physical capital in the production process and is an important input to technological innovation and long-run growth.”¹³³⁶

For example, between 10 and 30 percent of per capita gross domestic product (GDP) differences is attributable to cross-country differences in human capital.¹³³⁷ This percentage may rise when factoring in education quality, and the Quarterly Census of Employment and Wages (QCEW) indicate that institutions of higher learning continue to help anchor the New York State economy.¹³³⁸ In fact, the Capitol Region includes a highly productive, educated workforce where one-third of workers have a bachelor’s degree or higher, and more than 10,000 jobs were added in the last year. Albany County alone experienced the largest increase in business applications during the five-year period, rising 67.7 percent to 3,836. It was followed by Schenectady County, at 32.3 percent to 1,064, and Greene County, at 23.5 percent to 357.¹³³⁹

While business applications may be increasing, empty storefronts and vacant buildings are still prevalent in downtown areas. According to a report from the Urban Institute, a nonprofit research group, of the 274 large cities that the institute measured for how adept they were at including low-income and minority residents in the city’s economic prosperity, Albany placed near the bottom at 234. Albany’s ranking plummeted between 2016 and


¹³³⁴  *Id.* at 2.

¹³³⁵ Capital Region, *supra* note 1299.


¹³³⁹  *Id.*
2013, when it fared better at number 174. People have repeatedly pointed out to our local government officials that we’re a deeply unequal city,” said Alice Green, executive director of The Center for Law and Justice. “They say, ‘This is going on all around the country.’ But the study shows it’s very severe here.”

Thus, the Capitol Region must find a balance between offering a more diverse set of employment opportunities and retaining current residents. Commercial demand will decrease when people move away, making “the area’s labor quality less attractive for business growth.”

In addition, a better way to help the residents of distressed areas is through local economic development policies that sufficiently train its workforce to meet the needs of the existing and emerging industries.” Further recommendation of such policies will be discussed in the Recommendation section. Also, the Capitol Region should focus on increased employment rates that can persist in the long run because beyond effects on increased employment, higher employment rates may affect the next generation as “earnings are highly correlated across generations.”

Further recommendation will be discussed in the Recommendation section.

**Gentrification**

Communities “which have been unjustly impacted by histories of uneven urban development, resulting in socioeconomic and racial segregation, are now at risk for gentrification.” As economic tools and improved infrastructures revitalize distressed communities, they may not necessarily benefit all residents, particularly if existing businesses and long-term residents are pushed out due to rising costs.

Gentrification occurs when “communities experience an influx of capital and concomitant goods and services in locales where those resources were previously non-existent or denied.” For instance, urban development, fueled by significant investments, can provide quality services, more commercial buildings, and attract new residents. However, this may increase property values, raising residential costs and potentially displacing low-income residents. Lower-income homeowners in an appreciating neighborhood may be able to benefit significantly from the appreciation taking place in their midst, but only if they can preserve the quality of their asset and are not pressed to move prematurely by tax increases or other factors.

Although gentrification may be conflated with revitalization, it is necessary to recognize that a community can still be revitalized without the displacement of longtime residents whereas “gentrification executes revitalization in the absence of an equity- in- all- policies approach.”

Tanyard Bottom serves as a prominent example of how gentrification can manifest into a sequence of unfortunate events, leading to the displacement of its Black residents. Just south of Georgia Tech along Techwood Drive (Centennial Olympic Park Drive), Tanyard Bottom was a de facto integrated neighborhood during the early 20th century characterized as a “shanty town” or “slum.”

To revitalize the neighborhood, the Public Works Administration constructed Techwood Homes, the first-ever public housing project in the Nation, in 1936. The

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construction of Techwood Homes followed the New Deal policy, which focused on providing adequate housing to the “deserving poor.” However, due to the national policy that designated all public housing to be segregated, “Techwood Homes served to house residents who were White to cater to White owned businesses and majority White students of Georgia Institute of Technology.”

“The rapid development harmed the city’s most vulnerable residents, who were majority Black, leaving them no choice but to move to other slums in the peripheries of the city further away from municipalities.”

By 1990, the conditions of Techwood had become miserable and more distressed. At this time, more Black residents now resided in Techwood Homes after the Civils Rights Movement and the end of discriminatory covenants. With the 1996 Summer Olympics expecting more attraction, White business owners and remaining White residents were concerned about the distressed community and decided to once more re rehabilitate the area as they had with Tanyard Bottom. They decided to completely tear down public housing such as Techwood Homes and replace it with commercial development as well as “mixed income” apartment complexes called Centennial Place Apartment Homes. Once more, history had repeated itself as gentrification led more White residents to live in these new homes while overwhelmingly African American were displaced from their homes.

The effects of Tanyard Bottom reveal how gentrification efforts in urban planning shift from “fostering community formation” to “investing the city with money and consumption-oriented spaces that resemble suburban shopping malls that exclude low-income and people of color.”

Existing small business owners are forced to sell the stores that the low-income residents relied on, only to be replaced by ones that sell more expensive products due to increase in property value or will have to finance new ways to meet the demands of the new wave of wealthier residents. As gentrification progresses, it becomes increasingly less affordable to live in the neighborhood, and community members become economically displaced.

As previously discussed in the Transportation chapter, another example of the effects of gentrification is when the construction of Nelson A. Rockefeller Empire State Plaza in the City of Albany displaced around 7,000 residents in 1963, including an estimated 1,000 Black residents. The displacement had unequal ramifications for Black and White residents, with displaced White residents fleeing to the suburbs while many Black residents remained in inner-city neighborhoods. The government’s response to the displacement was to build three public housing projects, one placed near an industrial zone, which tends to lower residents’ quality of life and physical health and exacerbate segregation. Because of the recent development projects underway and discussion of further investment in the Capitol Region, some stakeholders have voiced concerns about gentrification and benefits to long-time residents.

Additionally, gentrification has the potential to strip away the cultural footprint of those who once resided in the targeted community. In fact, in relation to gentrification, as neighborhoods undergo changes and long-time residents experience displacement, “it can disrupt the familiar and established ties of a place, creating a disorienting new locale.” For people displaced as the neighborhood becomes unaffordable, this is more than just nostalgia or discomfort with the unfamiliar. This type of sentiment is revealed by Tanika Carpenter, founder of Black Owned

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1350 Katelynn Rogers, Techwood Homes, The History Of Our Streets (April 11, 2022)https://sites.gsu.edu/historyofourstreets/2022/04/11/techwood-homes/#:~:text=The%20Opening%20of%20Techwood%20Homes&text=The%20destruction%20of%20Tanyard%20Bottom,white%20Georgia%20Institute%20of%20Technology.

1351 Id.

1352 Shelley v. Kraemer, 334 U.S. 1 (1948)(Supreme Court held that racially restrictive housing covenants cannot legally be enforced).


1356 Id.

1357 Id.


1360 Id.
Chicago who witnessed the many residents who were evicted and forced to relocate due to the revitalization of Cabrini-Green, a public housing development that was once remained in Chicago Illinois. After the urban renewal of the once blighted neighborhood, the area has now redeveloped to attract White residents to live in its new upscale high-rises and townhouses, creating a mixed-income neighborhood. “Nobody would know there was a whole community of people who lived here, who have memories here, who had children here and who died here,” Carpenter explains. “You would never know that because it’s covered with $300,000 condominiums, expensive offices and fancy restaurants. That history is literally wiped away.” Therefore, gentrification not only has the ability to physically impact the lives of long-term residents who are forced to relocate, but it also affects them emotionally, especially for those who still have sentimental attachment to their homes.

Recommendations

Historical redlining and discriminatory zoning have disproportionately harmed disadvantaged communities leading to disinvestment, disproportionate impact in employment opportunities and the threat of gentrification. Other communities, who are far more fortunate, benefited from the price of the other by the effects of rehabilitation and commercialization.

Due to the ongoing disparate issues related to economic development and employment opportunities, the following recommendations aim to create equitable opportunities in distressed communities. Hence, these proposals urge the Capitol Region to systematically consider methods for addressing distressed areas, whether by adopting successful policies from other communities or formulating a plan that prioritizes equitable outcomes and fair opportunities in economic development and employment.

Support small businesses through business development and technology trainings

Whether local firms hire local unemployed workers is affected by many characteristics of the local labor market, including how the skills of the local unemployed match available jobs; what information the local unemployed have about job opportunities; the information that employers have about the local unemployed; and whether local employers perceive that the local unemployed will be reliable employees, who will be retained in jobs. To offer a more diverse set of employment and investment opportunities, the Capital Region should begin to sufficiently train its workforce to meet the needs of the existing and emerging industries. For Black owned businesses, knowledge and resources for long term success may be lacking, and one of the most recent reason for that issue is that “Black business owners have been disproportionately affected by the pandemic-linked economic downturn, partly because they were more likely to already be in a precarious position.”

To reach target businesses, the state should provide additional funds focused on business developmental and technological services for small businesses, especially for those owned by Black Americans and other minority groups. Technological training should also be provided to these businesses as it is important to use modern day digital marketable strategies to attract consumers and potential employees. Digital marketing can be coached by marketing experts so that small businesses in the Capitol Region can have the ability to share their brands by the use of online advertisement, public relations and social media. These trainings can be successful by “opening up resources centers in the communities and offering bi-weekly training programs promote positive social change through community engagement”.

Topics for training should range from cost-effective marketing strategies, project management and policy development to gain and retain customers, targeting investments to enhance profitability, and supporting new entrepreneurs and the public. A network of small businesses should host community

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1361 Sierra Council, *Decades later, some wonder if Cabrini-Green’s history is being erased*, The TRiiBE (June/2/2021).
1362 Id.
1363 Id.
1364 Capital Region Sustainability Plan, *supra* note 1343.
1367 Id. at 88.
meetings and webinars monthly to present effective marketing strategies for profitability. Professionals should work closely with the communities and organizations to evaluate the effectiveness of training programs and apply metrics such as observational feedback and surveys. This type of training service can be included in the “wrap around services” for on demand employment areas in addition to childcare, transportation, or food security.

Another business concern is the challenge of keeping employees' skills current and retaining them long term. Therefore, sector-focused training and hard skills occupational training can be implemented to businesses in the Capitol Region. Evaluations have found that sector-focused training increases the likelihood of employment and leads to higher earnings for participants (compared to non-participants). A 2014 Westat evaluation of Department of Small Business Services’ (SBS) Sector-Focused Career Centers (SFCC) found that SFCC participants in a sector-focused program increased their earnings by an estimated $5,800 per participant, 12 percentage points more likely to be employed in the year following the program, 19 percentage points more likely to be employed one year later, and they earned 50 percent more on average than regular career center participants.

Considering these factors, the Capitol Region should reassess federal interventions for small business economic development. There is a need to augment funding and streamline incentive programs, particularly focusing on enhancing technological and business development training, as integral components of comprehensive wrap-around services.

University based partnerships in economic development

The Regional Economic Development Council (REDC) recommends that the Capitol Region should “develop mechanisms to achieve alignment in how all sectors (school districts, colleges and universities, technical and vocational training institutions, job placement services, business enterprises) network with each other to understand and respond to current and emerging needs, and to develop a comprehensive plan to prepare, attract and retain the 21st Century talent pipeline.” Regional internship programs (potentially supported by a Chamber of Commerce) provide an effective way to match interested students with compatible local industries, leading to the improved retention of skilled employees in the Capital Region. The partnership between universities and the employment clusters will therefore affect post graduate hiring especially if the universities have efficient funds for efficient job training programs. For instance, CEG Chief Economic Development Officer Katie Newcombe stated, “SUNY graduates are such a valuable resource to our workforce, economy, and in our local communities. CEG is pleased to partner with SUNY institutions to help align their curriculum to ensure it meets the needs of area employers. Our labor force is getting a strong return on investment from our SUNY schools.” Engaging high school, college students, and researchers in forums that support the next generation of skilled employees is therefore crucial to industry diversification and development.

Coordinating all efforts along a single strategy sends a positive, cohesive message to potential retailers and community members

Discussing and spreading awareness about sharing inequity in economic development is crucial, especially for potential retailers and the community. By acknowledging and working towards rectifying disparities, the Capitol Region will contribute to the goal of social justice and fairness. However, the real work begins by actively empowering individuals to participate in planning and engaging in discussions to advocate for their needs or make aware of the rehabilitation development in blighted areas. Further, policy makers should identify the extent to which development may impact the members of the distressed community and provide adequate resources and recommendations for small businesses and residents who may be at risk losing their homes and businesses due to the potential economic changes to their communities. In order to manage this type of community change, an emergency...
repairs program could possibly improve the quality of life in the city by directing the efforts of rehabilitation and improvement in the community as a method to keep the long term residents in their homes so they are not forced to relocate. This program can also support food insecurity, housing insecurity (rent support) and employment displacement. This in turn suggests that asset-preservation strategies—including foreclosure prevention and assistance to help owners extract themselves from untenable subprime or predatory loans—can also play an important role in helping lower-income owners benefit from, rather than be victimized by, market change. Community groups can also work together to develop strategies to avoid displacement of incumbent residents by working with partners to advocate for down payment assistance resources that enable underserved families to achieve homeownership to provide affordable housing. By doing so, local stakeholders can promote revitalization to benefit the broader community, such as partnerships between banks and community-based organizations to encourage equitable development.

**Preserve local identity and promote inclusive economic growth by collaborating with both new and existing industries**

Collaborating with both new and existing industries, whether small or large, encourages inclusive economic development. By collaborating with a mix of industries, including smaller local businesses, more benefits are distributed across various sectors and income groups within the community. For example, the city of Grand Rapids in Michigan successfully interlinked both existing and new industries. Grand Rapids continuously works towards creating a community of interconnected entities of a wide variety of stakeholders, ranging from private firms and financiers to public universities and state and local governments. Its regional economic development organization, The Right Place, Inc encouraged the co-location of a branch office of the Michigan affiliate of the national Manufacturing Extension Partnership. The program has also worked with local family-owned businesses to encourage continued local control. Grand Rapids has done extensive private and public investments in expanding life science industries. Over the last decade, medical and education institutions have invested more than $1 billion into Medical Mile, turning it into a world-class healthcare destination. In addition to many hospitals and research centers. In 2010, area business leaders put up funds to entice Michigan State University to locate a greater share of its medical school operations in Grand Rapids. The life sciences investment includes a cluster effort, to promote local industry growth such as one auto parts company was able to diversify to produce orthopedic product and a bakery wrappings supplier diversified into making packaging for medical testing kits. In recent years, tourism has doubled to over 180,000 visitors per year and the development has led to new restaurants, brewpubs, yoga studios, bike shops, and real estate demand to set up Airbnb rentals (Aamot 2017).

By following Grand Rapids’ economic development model, the Capitol Region can collaborate new industries with local businesses or entrepreneurs so that new developers will grow all while long-time residents continue to be served and represented.

**Diversity Oversight Committee for the Use of Economic Tools**

The Capitol Region should include a regional diversity committee to oversee and guide the racial impacts of potential economic tools used in the Capitol Region. The Diversity Committee should aim to enhance diversity and cultural competency in the zoning process or land regulations. The committee can help identify and rectify any biases or discriminatory practices embedded in existing zoning regulations, promoting fairness, and preventing the unintentional exclusion of certain communities. The committee can also oversee both the overall intent and the

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1374 Mallach, supra note 1347.
1378 Id.
1380 Bartik, supra note 1342.
1381 Id.
equitable purpose of the economic tool, ensuring awareness of specific investments in communities. For example, if the federal block grant program required that distressed places be targeted based on quantifiable criteria, then the program’s effectiveness should be rigorously evaluated.\footnote{Bartik, supra note 1342.}

Additionally, the committee can also help manage matters for infrastructure assets as it includes a “host of business, operational, financial, legal, tax, regulatory, security, safety, health, and environmental risks.”\footnote{Schwartz et al., supra note 1305.} A close collaboration amongst land planning experts and additional researchers should work together to explore the complexities and far-reaching implications involved in racial inequity of zoning. Finally the committee can also be involved in community engagement efforts to connect with the members of the disrupted communities.

**Ensure, encourage, and enforce infrastructural needs of the community**

Ensure compliance with agreements to construct or enhance community amenities in historically disadvantaged neighborhoods, encourage developers to provide affordable compensation or a right-of-return for residents displaced by new developments, and enforce the urban transit networks in the Capitol Region “to better cater to the movement needs of residents in dense urban areas, particularly those in low- and moderate-income areas.”\footnote{APA, Surface Transportation Policy Guide (Approved by APA Delegate Assembly, April 14, 2019 Ratified by APA Board of Directors, May 14, 2019), https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Surface-Transportation-Policy-Guide-rev.pdf.} Assets like roads, bridges, and utilities have consistent cash flow make them attractive to investors who seek predictable returns over the long term. The features of existing parks, shopping, or transportation networks are also opportunities to create new parks, employment centers, or public-transit routes.\footnote{Mallach, supra note 1347.} While creating major open spaces in urban areas can be difficult, opportunities exist, often by reclaiming former industrial or railroad property.\footnote{Id. at 14.} Neglected existing parks, if restored with better security and maintenance, can add far greater amenity value to an area.\footnote{Id. at 14.} Hence, a more active and proactive approach to investing in infrastructure is strongly encouraged as a significant contributor to societal well-being and economic development.

**Amend Legal and Policy Tools To Meet Equitable Initiatives**

To support more costly land-assembly and development activities, new legal and policy tools may be needed which may require action beyond the local level. For example, many important matters, such as landlord-tenant regulations, tax laws, and land control powers are dictated by state legislatures.\footnote{Mallach, supra note 1347 at 17.} Therefore, zoning laws that continue to exacerbate racial inequity should be amended. The Capitol Region can start by identifying the areas that are still impacted by the detrimental effects of redlining and consulting with the members of the affected community. Once confirmed, the new or revised amendments can help enforce the stripping of the historical boundaries that impact the economic development and employment opportunities in the area. Equitable factors that should be considered for revising or creating a new amendment are: An increase and/or retaining economic opportunity for individuals and businesses in underprivileged areas, an increase the economic health and welfare of the historically disadvantaged and vulnerable community and establishing high quality infrastructure services for all neighborhoods, such as inclusionary zoning policies or first-source ordinances requiring that local workers be given the first opportunity at new jobs created with public incentives, which will ultimately have far greater impact on the equitable revitalization of the community.

Several key considerations for amending or creating new policies are as follows: Whether the policy will increase economic opportunities for individuals and businesses in underprivileged areas, whether the policy will improve the economic well-being of historically disadvantaged communities, whether the policy implements robust infrastructure services, whether the policy discourages or strengthens inclusionary zoning or ordinances. These measures should aim to create a more impactful and meaningful contribution to equitable community revitalization. Equitable factors that should be considered for revising or creating a new amendment are: An increase
and/or retaining economic opportunity for individuals and businesses in underprivileged areas, an increase the economic health and welfare of the historically disadvantaged and vulnerable community and establishing high quality infrastructure services for all neighborhoods, such as inclusionary zoning policies or first-source ordinances requiring that local workers be given the first opportunity at new jobs created with public incentives, which will ultimately have far greater impact on the equitable revitalization of the community.

CONCLUSION

According to a report by public health law and policy, a list of what a healthy economy looks like is as follows: “thriving companies provide good jobs, services, and tax revenue, all residents can access stores (including healthy food retail), entertainment, and cultural needs locally, the city attracts and retains a quality workforce, businesses are encouraged to locate and expand in the city, all residents and workers can achieve an affordable and desirable quality of life, sufficient tax revenues pay for schools, policing, and other essential services.”

The Capitol Region aligns with this vision by aiming to foster an ecosystem in which private sector, academia, and government work harmoniously to stimulate economic growth. However, identifying these priority initiatives in many ways is the easiest part of the planning process as actual implementation of the priority initiatives can be far more difficult. As discussed, the effects of historical redlining has drastically impacted economic growth and employment opportunities for many members in distressed communities. Without addressing the core issues at play like inadequate funding, poor communication, conflicting municipal priorities, and a lack of grassroots support, racial disparities in economic development will persist.

Therefore, closing the disparity gap for economic development and providing Black Americans with access to economic mobility and capital requires a multifaceted and comprehensive approach. The recommendations provide reasons that the Capitol Region can implement an equity focused, strategic plan. By addressing the persistent effects of redlining local advocates and officials should promote policies that encourage new developments in the Capitol Region while ensuring existing residents can stay and benefit from revitalization.

Additionally, financial tools that do not align with mixed-income development policies risk perpetuating displacement and widen the racial wealth gap. To address this, the Capitol Region should establish an elected, diverse review committee to ensure the appropriate use of financial tools for underprivileged communities. Prior to revitalizing a targeted community, policy makers should actively involve members in the planning process by providing them with resources and inquiries about the investment so they can begin to evaluate future development and potential economic changes. With additional resources in workforce and business development trainings, the Capital Region can successfully connect residents with work opportunities and foster small business’ long-term goals.

The Capitol Region should approach these recommendations with a strategic focus on equity through thoughtful land use reforms and commitment to inclusiveness. By championing these initiatives, the Capitol Region can cultivate a more diverse and engaged economic environment that enables all community members to actively participate in and benefit from economic development opportunities.

1389 ChangeLabSolutions, supra note 1343.
1390 New York State, Regional Economic Development Councils, supra note 1261.
1391 Capital Region Sustainability Plan, supra note 1343.
1392 Mallach, supra note 1347.
CHAPTER 11: CRIME AND THE BUILT ENVIRONMENT

Author: Hannah Gillis

Abstract

This Chapter of the Report explores the relationship between land use practices, racial disparities, and crime patterns in the Capital Region. This Chapter draws on interdisciplinary research and data from fields such as law, criminology, and sociology. The objective of this Chapter is to explore how existing land use practices have created and exacerbated racial disparities and how that relationship may influence crime rates in Albany and its suburbs like Bethlehem, Colonie, and Guilderland. The built environment’s relationship to human behavior, and thus crime, is explored through the lens of the broken windows theory, suburbanization, and Crime Through Environmental Design Principles. Because crime is influenced by the built environment, modifications to the environment can help reduce crime.

Introduction

The Capital Region is an illustration of how racist historical legacies, the law, and human behavior converge to create complex challenges for residents. The intersection of discriminatory legacies and the law can be found in land use practices such as redlining. While the city of Albany was redlined in the first half of the twentieth century, redlining’s consequences are still felt today. The lingering effects of discriminatory land use practices can be seen regarding the racial disparities in (among other things) access to education and healthcare, economic opportunities, and crime rates.\footnote{See Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (Liveright Publishing Corporation, 2017).}

The built environment, including land uses, urban planning, and architectural mechanisms, can alter human behavior.\footnote{See Neal Jumar Katyal, Architecture as Crime Control, 111 Yale L.J. 1039, 1046 (2002).} There are subtle and important ways in which the built environment shapes human behavior, including crime.\footnote{Id.} In this Chapter I explore the relationship between the built environment and crime in the Capital Region. The quantifiable relationship between the built environment and crime is multifaceted and requires an interdisciplinary approach.\footnote{See Thomas D. Stucky & John R. Ottensmann, Land Use and Violent Crime, 47 Criminology 4 (2009) at 3.}

First, I explore how the physical and social environment can shape human behavior through the lens of the broken windows theory and apply the theory to vacant housing in the Capital Region. Second, I examine suburbanization and compare how its effects have exacerbated crime rates in Albany and reduced crime rates in surrounding towns such as Bethlehem, Colonie, and Guilderland. Third, I discuss the principles of Crime Prevention Through Environmental Design as a means of increasing public safety through architectural and planning mechanisms. Lastly, I offer various recommendations to reduce crime rates using the built environment to remedy the longstanding inequities present in the Capital Region.

Addressing the relationship between the built environment and crime is necessary to rectify the discriminatory practices of the past, such as redlining, which have perpetuated social and economic inequalities. A thorough understanding of the relationship between the built environment and crime can be used to create policies and urban planning strategies that promote safer neighborhoods and a more equitable Capital Region.

Crime & Incarceration in the United States

While this Chapter of the Report does not thoroughly examine criminal law and mass incarceration, it would be remiss to not briefly discuss the disparate impact that criminal policy has on people of color. The United States’ prison population has grown by 500% in the last 30 years and the U.S. has the highest incarceration rate in the world.\footnote{Carl Vogel, An End to Mass Incarceration, University of Chicago (2012), https://crowschool.uchicago.edu/ssa_magazine/end-mass-incarceration.html} The war on drugs, zero tolerance policing, and harsh sentencing guidelines each contribute to the
U.S.’s staggering prison population.\textsuperscript{1398} Black Americans are imprisoned “at a rate that is roughly five times the rate of White Americans.”\textsuperscript{1399} Policing and sentencing of crime disproportionately impacts Black and Latinx individuals.\textsuperscript{1400} Although this Chapter examines crime through the lens of the built environment, underlying criminal justice disparities significantly shape crime rates.

**Broken Windows**

The built environment can shape human behavior.\textsuperscript{1401} Land uses, urban planning, and architectural mechanisms have the ability to increase and reduce crime rates.\textsuperscript{1402} Areas with higher crime rates tend to have high rates of vacant or dilapidated housing.\textsuperscript{1403} While crime is often found in areas with concentrated poverty, even in poor neighborhoods crime is highly concentrated within specific blocks with specific features.\textsuperscript{1404} Because socioeconomic factors alone are not the sole predictor of crime, numerous studies have sought to answer where else crime comes from.\textsuperscript{1405} One of the most prominent theories concerning crime and the built environment is the broken windows theory.\textsuperscript{1406}

In *Broken Windows*, George L. Kelling and James Q. Wilson posited that crime flourishes in spaces where disorder goes unchecked.\textsuperscript{1407} In their seminal criminological theory, the authors center their argument around the concept of disorder.\textsuperscript{1408} The broken windows theory suggests that “If a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken.”\textsuperscript{1409} Untended property, such as vacant buildings and abandoned cars, heighten rates of mischievous behavior, like vandalism, because their presence signals a breakdown of community controls.\textsuperscript{1410} Communal controls such as the “sense of mutual regard and the obligations of civility” are lowered in a space where actions signal that “no one cares.”\textsuperscript{1411} A vacant building with an unmowed lawn or a dilapidated warehouse communicates to residents and visitors alike that the environment is uncontrolled and therefore may cause higher rates of crime.

In a report from the City of Albany’s Department of Buildings & Regulatory Compliance, in the first quarter of 2023, there were 990 vacant buildings in the City of Albany.\textsuperscript{1412} Of those 990 vacant buildings, 844 were 1-3 residential units; 41 were 4-6 residential units and mixed commercial & residential units (1-3); 3 were 7+ residential units; and 102 were nonresidential units. In the second quarter of 2023, 921 buildings were vacant in the City of Albany. Of those 921 vacant buildings, 771 were 1-3 residential units; 43 were 4-6 residential units and mixed commercial & residential units (1-3); 4 were 7+ residential units; and 103 were nonresidential units. *Id.* Between the first and second quarters of 2023, the rate of vacant buildings dropped by 7%. The Department of Buildings & Regulatory Compliance stated that the drop in vacant buildings was, in part, due to “increased efforts at reviewing our vacant building stock with AFD’s Fire Investigation Unit (FIU), which revealed a number of mostly 1-3 residential buildings had been recently rehabilitated.”\textsuperscript{1413}

The Department of Buildings & Regulatory Compliance also compiles data on vacant buildings in Albany based on the neighborhood’s designation as a Locally Designated Historic District or a Nationally Designated Historic

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\textsuperscript{1399} Id.

\textsuperscript{1400} Id.


\textsuperscript{1404} Id.

\textsuperscript{1405} Id.

\textsuperscript{1406} Id. at 339.


\textsuperscript{1408} Id.

\textsuperscript{1409} Id.

\textsuperscript{1410} Id.

\textsuperscript{1411} Id.


\textsuperscript{1413} Richard LaJoy, *Vacant Building Registry Quarterly Report*, Albany Department of Buildings & Regulatory Compliance (September 14, 2023).
Discrimination based on land use practices, such as redlining, may have led to higher vacant property rates in predominantly Black neighborhoods.

As suggested in *Broken Windows*, a space that lacks order may help perpetuate crime because it signals to inhabitants and visitors that the space is both uncontrolled and uncontrollable. Vacant and dilapidated buildings are one way in which disorder is communicated to inhabitants and visitors. The number of vacant buildings in predominantly Black neighborhoods of Albany like the South End and West Hill may lead to increased rates of crime based on the mechanisms described in *Broken Windows*. The legacies of redlining are enduring; they are manifested in the present day through building vacancies in the predominantly Black neighborhoods of Albany.

While governments have reacted to *Broken Windows* with the prosecution of minor offenses to deter more serious criminality, a focus on architecture, rather than policing, can offer more solutions that are not strictly legal. Nonetheless, the broken windows theory has been used as the basis for harmful policing tactics in cities such as New York. In the 1990s, “stop and frisk” grew out of the broken windows theory. “Stop and frisk” allowed police to stop, question and search those who looked suspicious. In 2013, New York City’s stop and frisk policy was deemed unconstitutional because of its discriminatory effects on Black and Hispanic men. While broken windows can help explain how the built environment shapes human behavior, any implementation of crime prevention needs extensive oversight and guidelines to prevent discriminatory results.

**Suburbanization**

Throughout the United States, cities have experienced large demographic shifts due to a variety of factors including the effects of suburbanization, urban renewal, and gentrification. Black people were excluded from the
suburbs “by individual and institutional discrimination in the real estate and banking industries and by racial biased federal policies.”

Methods such as redlining by mortgage lenders, exclusionary zoning, and restrictive covenants effectively confined Black residents to particular neighborhoods within cities.

In the twentieth century, America’s older cities, including Albany, began to be surrounded by incorporated suburbs that sought to contrast themselves with the nearby city. While new laws made suburbs’ incorporation easier than the annexation or consolidation of surrounding areas, a central thrust of suburbanization was the creation of sharper racial, ethnic, and class distinctions. The influx of immigrants and an increasing Black population led White populations to flee to developing suburbs. The movement of White populations to suburbs with Black populations remaining in the city led to increased racial residential segregation.

Numerous studies have found that the segregation created between a city and its suburbs are associated with a variety of negative consequences for Black residents including “greater exposure to crime and environmental hazards, worse health outcomes, reduced wealth, a lower likelihood of homeownership, and poorer life chances for children.”

As Albany’s Black population grew throughout the twentieth century, the populations of its suburbs also increased due to White flight. Between 1950 and 1980, Albany’s population decreased from around 140,000 to nearly 100,000. During that same time period, Colonie’s population increased from 30,000 to over 70,000 people. Guilderland and Bethlehem’s populations roughly doubled.

In the 2020 Census, the City of Albany’s population was 99,224; its population was 31 percent Black. In contrast, the Town of Colonie’s population was 85,590; its population was 6.5 percent black. While Albany and Colonie populations are comparable, Colonie has a much lower Black population likely due to White flight and discriminatory lending practices toward Black families.

<table>
<thead>
<tr>
<th>Guilderland population: 37,156</th>
<th>Bethlehem population: 34,943</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black population 4.9%</td>
<td>Black population 2.8%</td>
</tr>
</tbody>
</table>

The Federal Bureau of Investigation’s (“FBI”) Uniform Crime Reporting Program (“UCR”) collects offenses that come to the attention of law enforcement for violent crime and property crime. Under the UCR Program, violent crime is composed of four offenses: murder and nonnegligent manslaughter, rape, robbery, and aggravated assault. Violent offenses involve force or threat of force. Property crime is composed of: burglary, larceny, theft, motor vehicle theft, and arson. Property offenses involve the taking of money or property without the threat of force against the victims.

1425 Christine Leibbrand et al., The Great Migration and Residential Segregation in American Cities During the Twentieth Century, Soc Sci Hist (June 16, 2020) at 4.
1427 Id. at 402.
1428 Id. at 401.
1429 Christine Leibbrand et al., The Great Migration and Residential Segregation in American Cities During the Twentieth Century, Soc Sci Hist (June 16, 2020) at 1.
1430 Id. at 4.
1432 Id.
1433 Id.
1434 Id.
In 2022, the Albany Police Department reported 834 violent crimes whereas Colonie reported 104. While the population difference between Albany and Colonie is around 13,000, Albany’s violent crime rate is over 8 times higher than Colonie’s. While a variety of factors come into play, such as population density, some of the difference between crime rates appears to be physical security measures afforded by the location of the suburbs and the socioeconomic statuses of its inhabitants. Alterations to the built environment such as restricted access (e.g., fences) and space between dwellings may allow suburbs to have lower crime rates. In addition, some studies suggest that “vegetation may be linked to lower levels of crime in residential neighborhoods, particularly poor inner-city neighborhoods.” As such, the built environment of greener suburban spaces may lead to lower crime rates in comparison to greyer urban spaces.

<table>
<thead>
<tr>
<th>2022</th>
<th>Albany Police Department</th>
<th>Bethlehem Town Police Department</th>
<th>Colonie Town Police Department</th>
<th>Guilderland Police Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Violent Crimes</td>
<td>834</td>
<td>19</td>
<td>104</td>
<td>27</td>
</tr>
<tr>
<td>Homicides</td>
<td>10</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Rapes</td>
<td>64</td>
<td>6</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Robberies</td>
<td>230</td>
<td>5</td>
<td>44</td>
<td>2</td>
</tr>
<tr>
<td>Aggravated Assaults</td>
<td>530</td>
<td>8</td>
<td>57</td>
<td>14</td>
</tr>
</tbody>
</table>

*Information from the FBI, compiled by Hannah Gillis.*

<table>
<thead>
<tr>
<th>2022</th>
<th>Albany Police Department</th>
<th>Bethlehem Town Police Department</th>
<th>Colonie Town Police Department</th>
<th>Guilderland Police Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Property Crimes</td>
<td>4,260</td>
<td>410</td>
<td>2,827</td>
<td>718</td>
</tr>
<tr>
<td>Arson</td>
<td>24</td>
<td>4</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Burglary</td>
<td>560</td>
<td>23</td>
<td>177</td>
<td>44</td>
</tr>
<tr>
<td>Larceny-theft</td>
<td>3,117</td>
<td>369</td>
<td>2,547</td>
<td>659</td>
</tr>
<tr>
<td>Motor Vehicle Theft</td>
<td>559</td>
<td>14</td>
<td>97</td>
<td>15</td>
</tr>
</tbody>
</table>

*Information from the FBI, compiled by Hannah Gillis.*

CPTED (Crime Prevention Through Environmental Design)

In *The Death and Life of Great American Cities*, Jane Jacobs suggested that the design of urban spaces influences crime. She proposed that successful city neighborhoods have three main qualities. First, a “clear demarcation between what is public space and what is private space.” Second, natural proprietors of the street who have their “eyes upon the street.” And third, continuous sidewalk users. In conjunction, these three qualities allow the residents of a neighborhood to surveil and mutually police their own spaces which in turn decreases rates of crime from residents and visitors alike. Ultimately, Jacobs argued that sustainable safety is created by “an intricate, almost unconscious network of voluntary controls and standards … . enforced by the people themselves.”

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1445 Id.
1446 Id.
1447 Id.
In reaction to Jacobs’ influential thesis that physical environments can be shaped to reduce crime, Crime Prevention Through Environmental Design (“CPTED”) was developed by Professor C. Ray Jeffrey and later expanded upon by architect Oscar Newman in the 1970s.\textsuperscript{1449} Based on the concept that the physical environment can shape crime rates, CPTED is a multidisciplinary approach that seeks to reduce crime and fear of crime.\textsuperscript{1450} CPTED strategies aim to “reduce victimization, deter offender decisions that precede criminal acts, and build a sense of community among inhabitants so they can gain territorial control of areas to reduce crime opportunities.”\textsuperscript{1451} By using urban planning, architectural mechanisms, and facility management, and the social environment, CPTED seeks to recognize that the physical environment cannot be divorced from the social environment.\textsuperscript{1452}

First Generation CPTED is divided into four principles: territoriality, natural surveillance, image and milieu, and access control. Under these principles, “design should: (1) create opportunities for natural surveillance by residents, neighbors, and bystanders; (2) instill a sense of territoriality so that residents develop proprietary attitudes and outsiders feel deterred from entering a private space; (3) build communities and avoid social isolation; and (4) protect targets of crime.”\textsuperscript{1453}

In the City of Albany’s 2030 Comprehensive Plan, one strategy is to “Utilize Crime Prevention through Environmental Design (CPTED) to increase public safety.”\textsuperscript{1454} While the Comprehensive Plan does not thoroughly go into the principles of CPTED, the City plans to actualize CPTED through “Incremental change in site plan review” and “Communicat[ing] CPTED principles to local property owners and neighborhood associations for implantation at the neighborhood level.”\textsuperscript{1455}

The City of Albany can look toward other cities in the Capital Region that have adopted some CPTED recommendations. For instance, the National Crime Prevention Council (“NCPC”), on behalf of the U.S. Department of Justice’s Community Capacity Development Office, provided training and assistance to ten communities in the United States between 2007 and 2009 using CPTED principles.\textsuperscript{1456} Two of the cities that the NCPC served in the Capital Region were Schenectady, NY and Troy, NY. In Troy, the NCPC identified CPTED issues including traffic designs that hindered police effectiveness (one-way streets) and an increase in absentee landlords and vacant housing. Because of the built environment, residents rarely went outside and used public spaces due to the fear of criminal activity.\textsuperscript{1457} The NCPC report stated that in Troy, “Public spaces have become the domain of criminals and vandals who spread disorder, graffiti, and other indicators of a community in decline.”\textsuperscript{1458}

To solve these issues, the NCPC chose areas within Troy to address with intensive CPTED treatment such as the Arnold Fallon Apartment complex. One goal was set to reduce property crime in the Arnold Fallon Apartment complex. To do so, signage was improved to reinforce the boundaries between public and private property and the playground was renovated with new mulch, improved lights, and a splash pad for children.\textsuperscript{1459} The landscape was altered with “hostile foliage.”\textsuperscript{1460} Residents of the complex were engaged to provide community service at

\begin{itemize}
  \item \textsuperscript{1449} A Brief History of the ICA, The International CPTED Association, \url{https://www.cpted.net/A-brief-history}.
  \item \textsuperscript{1450} Primer in CPTED – What is CPTED, The International CPTED Association (January 3, 2022), \url{https://www.cpted.net/Primer-in-CPTED#:~:text=The%20principles%20of%20Second%20Generation%2C%20interested%20in%20quality%20of%20life}.
  \item \textsuperscript{1451} Primer in CPTED – What is CPTED, The International CPTED Association (January 3, 2022), \url{https://www.cpted.net/Primer-in-CPTED#:~:text=The%20principles%20of%20Second%20Generation%2C%20interested%20in%20quality%20of%20life}.
  \item \textsuperscript{1452} Primer in CPTED – What is CPTED, The International CPTED Association (January 3, 2022), \url{https://www.cpted.net/Primer-in-CPTED#:~:text=The%20principles%20of%20Second%20Generation%2C%20interested%20in%20quality%20of%20life}.
  \item \textsuperscript{1453} Neal Jumar Katyal, Architecture as Crime Control, 111 Yale L.J. 1039, 1047-1048 (2002).
  \item \textsuperscript{1454} Albany 2030 The City of Albany Comprehensive Plan at 81 (April 12, 2012) \url{https://www.albanyny.gov/DocumentCenter/View/4564/Albany-2030-Comprehensive-Plan-PDF}.
  \item \textsuperscript{1455} Albany 2030 The City of Albany Comprehensive Plan at 81 (April 12, 2012) \url{https://www.albanyny.gov/DocumentCenter/View/4564/Albany-2030-Comprehensive-Plan-PDF}.
  \item \textsuperscript{1457} Id. at 15.
  \item \textsuperscript{1458} Id.
  \item \textsuperscript{1459} Id.
  \item \textsuperscript{1460} Id.
\end{itemize}
the playground to encourage buy-in.\textsuperscript{1461} By using CPTED principles, the City of Troy altered the built environment to reduce crime through methods such as access control and social cohesion.

The intersection of race, redlining, and CPTED principles reveals how systemic racism has altered the fabric of Albany and the Capital Region. In using CPTED principles to design buildings and neighborhoods, historic discrimination can be addressed by making spaces safer for all inhabitants. The disinvestment in redlined neighborhoods in the past can also be addressed by choosing to allocate funds to local governments and nonprofits to help redesign public spaces and housing.

**Conclusion**

Historical trends of redlining and suburbanization have had profound effects on the demographics of Albany and its suburbs. The perpetuation of racial segregation through discriminatory lending practices and White flight to suburbs has exacerbated disparities and contributed to crime rates in the Capital Region. Higher crime rates in the City of Albany compared to suburbs can be explained, in part, through the built environment and its effects on human behavior.

The broken windows theory seeks to explain how changes in the built environment, such as vacant buildings, might affect crime.\textsuperscript{1462} In the City of Albany, there are currently over 900 vacant buildings.\textsuperscript{1463} The majority of those vacant buildings are found in predominantly Black neighborhoods such as the South End and West Hill. Based on *Broken Windows*, the disorder that vacant and dilapidated buildings help create in Albany may lead to higher rates of crime.\textsuperscript{1464} To minimize crime rates throughout Albany, policy makers and citizens should act to reduce the number of vacant buildings.

Crime Prevention Through Environmental Design can be used to enhance public safety and reduce crime rates. CPTED’s acknowledgement of the effects of the built environment on human behavior can allow cities like Albany to alter the environment through architectural mechanisms, landscaping, and urban planning. By tailoring CPTED principles to the Albany community, crime can be mitigated.
Recommendations

Recommendation 1: Albany Housing Authority’s High-Rise Design

The Albany Housing Authority provides rental housing for low- and moderate-income households in the city of Albany. Of those 1,800 public housing units, four are considered high-rise buildings: Ida Yarbrough Homes, Steamboat Square Homes, Townsend Park Homes, and Westview Homes. The above photos picture Ida Yarbrough and Townsend Park Homes. In addition to administering public housing rehabilitation using New York State and federal financing, the Housing Authority has the power to investigate living conditions and then improve, alter, or repair those conditions.

The Albany Housing Authority’s 2023 Approved Annual Plan states that the “AHA will continue its efforts to apply CPTED principles in current and redevelopment projects by also partnering with the Albany Police Department (APD) and other law enforcement agencies to maximize our approach.” One way the Albany Housing Authority can apply CPTED principles is by altering the architecture of their high-rise public housing. High-rises have much more crime than other buildings.

One reason that there are higher crime rates in high-rise buildings is that because of the amount of people, “it is difficult for residents to distinguish neighbor from intruder, or to attempt to enforce an acceptable code of behavior, or even to feel comfortable about questioning the presence or activities of others.” The anonymity of high-rises makes it difficult for norms to be established and thus maintained.

Although the aforementioned social characteristics can increase crime, physical design can also alter human behavior. While the crime most single-family buildings experience is burglary, residents of multi-family buildings, including high-rises, experience burglaries and robberies. These robberies are, in large part, attributable to common circulation spaces like lobbies and hallways where criminals wait to follow residents into their apartments to burglarize them.

- Limit access to entry.
- Provide for adequate lighting in shared hallways, stairways, or other public areas.
- Promote well-maintained building and landscaping to give the impression of ownership, care, and security.
- Assign parking spaces to residents to make unauthorized parking easier to identify and less likely to occur.
- Hire doormen who control entry and whose presence acts as a social control and surveillance.
- High-rise buildings should be designed so that as few families as possible share a building entry, the use of an elevator, and the use of corridors at each level.
- “The entry to the building and the lobby area should be located parallel to and a short distance from a well-trafficked public walkway

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1466 Id.
1467 Id.
1468 Id.
1472 Id. at 26.
1473 Id. at 25.
1474 Id.
1476 Id. at 6.
1477 Id. at 9.
1480 Id. at 86.
• If parking is provided near the building, entry to the parking area should be placed near the building entry to facilitate surveillance. ¹⁴⁸²

**Recommendation 2: Refurbish Public Parks in the Capital Region**

Attention to the architecture of parks can prevent crime. ¹⁴⁸³ Because governments control public lands such as parks, the design or alteration of existing parks is another way in which the built environment can be changed to help reduce crime.

**Architectural Precepts in Park Design:**

- Parks should have highly visible and well-maintained entrances to control accessibility. ¹⁴⁸⁴ Entryways can include signage or art to show pride and ownership of the space. ¹⁴⁸⁵
- Create maps that identify trails, facilities, and usage (e.g., walking or biking) to contribute to a user’s sense of security and maintenance. ¹⁴⁸⁶
- Parks should have “effective lighting, the absence of hidden spaces, and high maintenance levels.” ¹⁴⁸⁷
- Newly designed parks should be long and thin to allow for observation at every point. ¹⁴⁸⁸

**Recommendation 3: Community Engagement with CPTED Principles**

The second generation of CPTED principles includes social cohesion and community culture. ¹⁴⁸⁹ Key strategies within these principles include increasing the number of people using a space which in turn enhances visibility, and social comfort and control as well as encouraging communication and collaboration among stakeholders like inhabitants and governmental agencies. ¹⁴⁹⁰ To best adopt CPTED principles, stakeholders should be involved in identifying issues within the built environment.

- Have residents identify areas they feel are unsafe through polling, community forums, or other means.
- Have residents, city staff, and police meet to attend a CPTED training to identify specific issues in a space.
- Invest in targeted areas using CPTED principles.

**Source:** Statehouse.com

¹⁴⁸² Id. at 89.
¹⁴⁸⁸ Id.
CONCLUSION

Author: Karli Bennett

Key Findings in Report and Future Action

Summary of Report Findings

In our comprehensive racial justice Report, we have delved into various facets of how historically discriminatory land use practices continue to shape the socio-economic landscape of Albany and its surrounding areas. These discriminatory practices, most notably redlining, have left lasting imprints on housing, utilities, transportation, food security, parks, greenspaces, climate and energy justice, education, economic development, and even crime rates. This conclusion chapter aims to synthesize the key findings and recommendations from each of these chapters to emphasize the urgency of addressing these issues and the potential pathways for more equitable change.

The history of racially prejudiced land use decisions and policies, such as redlining, plays a central role in the ongoing mass inequity seen in Albany and its suburbs. The discriminatory allocation of resources, opportunities, and investment has resulted in disparities that persist in housing, transportation, education, and more. This historical context sets the stage for understanding the deep-seated inequities we face today. To tackle these issues head-on, we must confront history and adopt more equitable land use policies and practices.

This Report has examined how the practice of redlining, which originated in the 1930s, played a pivotal role in segregating communities along racial lines. These discriminatory policies systematically relegated minority populations, particularly Black and Hispanic communities, to neighborhoods marked as “hazardous.” Decades later, the consequences of redlining are still evident, as these historically redlined areas continue to face significantly lower quality of life. In contrast, those residing outside of these redlined neighborhoods enjoy a higher quality of life with better access to amenities.

Historically, redlining and other racially motivated housing practices have left communities of color in the Capital Region with limited access to homeownership and stable housing. There are significantly lower homeownership rates among Black residents, and the eviction rates and the lack of tenant representation among this community further highlight the disparities. This injustice perpetuates a cycle of poverty and inequality, ultimately affecting educational opportunities and economic development. To address this issue, recommendations include increasing the availability of affordable housing, conducting housing vacancy studies, and exploring good cause eviction requirements to ensure housing equity.

Our examination of the allocation of parks and greenspaces in the Capital Region has unveiled the profound impact of discriminatory practices on communities, their health, and overall well-being. Access to recreational areas, once deemed a luxury by some, has been shown to be a fundamental necessity, especially in urban neighborhoods where open space is scarce. The generational impacts on individual health and community well-being cannot be understated. The COVID-19 pandemic underscored the importance of these spaces, as some urban communities often found themselves cut off from essential outdoor recreational areas during lockdowns. The disparities in municipal decision-making regarding these spaces are a direct reflection of historical discriminatory practices like redlining, which continue to manifest as segregated neighborhoods and wealth disparities.

Similar disparities based on race and socioeconomic status are present in the Region’s public utility systems. Communities with lower income and higher minority populations experience inadequacies in clean water and sewer systems. For example, wealthier areas continue to enjoy better access to quality utility services, while the underserved communities of Albany are left with outdated and subpar infrastructure. Zoning laws exacerbate these disparities, further affecting public health.

The transportation system in the Capital Region is designed to cater to automobile owners, disadvantaging lower-income individuals who are less likely to own cars. The historical impact of highway construction, redlining, and lack of accessible public transportation has led to isolation and health disparities. Restructuring cities to prioritize public transportation, diversify transportation options, and invest in pedestrian infrastructure can lead to more equitable and accessible mobility for all residents.

Food insecurity is a prevalent issue in the Capital Region, deeply rooted in the historical impacts of discriminatory policies. While Colonie and Guilderland face food deserts where grocery stores are over a mile away for certain neighborhoods, Albany experiences a more severe form of
food insecurity intertwined with racial inequities, largely stemming from redlining. Food insecurity, which equates to limited access to nutritionally adequate foods or the uncertain ability to acquire them, correlates directly with income levels in Albany. Addressing these issues requires understanding the legal aspects of food security as a human right and exploring potential remedies to eliminate food insecurity and sovereignty.

Climate and energy justice are closely intertwined with land use practices in the Capital Region. Our findings reveal a recurring theme: areas with lower socio-economic individuals and higher minority populations bear the brunt of climate and energy challenges. Such challenges include poor air quality, the heat island effect, flooding, and climate migration. The remarkable efforts of groups like the Sheridan Hollow Alliance for Renewable Energy (SHARE) to bring clean energy to Albany and prevent the construction of environmentally harmful facilities is indicative of the community’s stance here in Albany. We stress the need to prioritize climate mitigation efforts, including increasing greenspaces, enhancing energy efficiency, and embracing renewable energy sources. Climate and energy justice are pivotal components in dismantling racial barriers created through discriminatory land use practices and policies.

The focus on the legal aspect of “environmental justice” and how courts may handle claims of race-based discrimination tracks the historical progression of these issues from pre-industrialization to post-industrialization, highlighting the city’s evolution. By examining arguments within the context of the Civil Rights Act of 1964 and international human rights standards, we conclude that land use policies can constitute race-based discrimination. The case of Albany’s Sheridan Hollow neighborhood, located near an abandoned trash incinerator, exemplifies the environmental racism experienced by historically discriminated communities, leading to health concerns. Ultimately, this chapter posed the legal question of whether race discrimination can be proven under the Civil Rights Act by showcasing a city’s deliberate placement of minority populations in heavily polluted areas.

In regard to education, exclusionary zoning has contributed to funding disparities between schools in redlined areas and others. These disparities perpetuate the achievement gap, making it essential to address discriminatory land use practices and work towards equitable educational opportunities for all students. We advocate for equitable education funding, and for breaking down district lines that perpetuate inequality and disadvantage students in historically redlined areas.

The “Economic Development and Employment” chapter delves into the historical significance of redlining in Albany, Colonie, and the Town of Guilderland, emphasizing its profound impact on present-day economic development and employment trends. It highlights the origins of redlining in the 1930s, using racially biased criteria to assess communities’ economic value, leading to the disinvestment in neighborhoods of color in the Capital Region. Without considering the potential benefits of equitable planning, the economic mobility of Black individuals will be limited. Therefore, this chapter underscores how historical injustices detrimentally impact the economic development and employment landscape today. However, embedding inclusivity and equity within comprehensive plans, economic and employment opportunities will be more accessible and distributed fairly.

Finally, the crime and the built environment chapter connects land use practices with crime rates, emphasizing how certain land uses can influence crime. Understanding the relationship between land use and crime can inform new regulations and policies. We call for a more informed approach to land use regulation that considers crime data, ultimately leading to safer and more equitable communities.

This Report underscores the persistent effects of racially unjust land use decisions on various aspects of life in Albany and its surrounding areas. It is evident that these historical practices have led to enduring inequities that persist to this day. However, we firmly believe that with a thorough understanding of the issues and a commitment to change, we can develop more equitable land use policies that promote justice, opportunity, and a higher quality of life for all residents. This Report serves as a crucial step in recognizing and addressing the historical injustices and shaping a more equitable future for Albany and its neighboring communities.

Recommendations and Next Steps

The most important recommendation this Report calls for is a formal recognition of the modern-day segregation that has developed as the result of intentional past policies and formalize the need for equally intentional policies to foster inclusive, integrated, and healthy communities. The following recommendations collectively form a comprehensive framework for addressing and exploring remedies for racial equity within Albany.
Housing plays a crucial role in promoting racial equity within our communities. To address the historical disparities in housing access, it is imperative that we prioritize equity over equality. One approach to achieve this is through reparations, as exemplified by Evanston, Illinois's program, which provides financial support for Black residents who can prove a connection to past discriminatory policies, that can significantly reduce the racial wealth gap and enhance homeownership opportunities.

Additionally, eliminating single-family zoning and raising density limits, as seen in Minneapolis, can foster further integration and affordability. Historically, zoning restrictions like redlining have been tools of discrimination, and we must remove them to create equitable housing options. Federal funding may be available for municipalities that eliminate outdated and discriminatory zoning provisions, further incentivizing reform.

Inclusionary zoning policies, like those newly adopted in Albany, can be developed for the largely White suburban towns surrounding Albany, to encourage the creation of affordable housing within new developments, promoting economic and demographic diversity. These policies can be complemented by incentives such as fee waivers and density bonuses, as demonstrated in Burlington, VT.

Another policy recommendation is similar to New York City's Universal Access to Counsel, which is a promising policy for preventing eviction and homelessness. A similar initiative in Albany could help Black residents stay in their homes, addressing the low rates of homeownership and inadequate tenant representation. Furthermore, Albany should consider conducting a vacancy study to determine eligibility for the Emergency Tenant Protection Act and advocate for a statewide Good Cause Eviction bill.

To combat corporate control of residential property and rising rental rates experienced throughout the nation, Albany and the surrounding areas should explore legal measures limiting ownership and rental rates by large corporate entities, ensuring housing affordability and market stability.

Moreover, Albany should formally acknowledge its historical segregation, and adopt goals of fostering inclusive and integrated communities. Enacting reparations policies for Black residents who have been disproportionately impacted by discriminatory policies can help rectify past injustices, and this Report’s other recommendations can support a more equitable future.

Improving access to parks and greenspaces should prioritize equality and community engagement, ensuring all communities have a voice in development plans. Similarly, when focusing on future development around greenspaces policymakers should ask a series of questions to determine who and what exactly is/has access to these spaces.

Regarding utilities, the Albany area should prioritize replacing old lead pipes to improve public health and reduce future maintenance costs. Simultaneously, investing in green infrastructure can enhance drainage and reduce pollution, contributing to a more sustainable and equitable environment.

Transportation equity can be achieved through earmarking funds for specific objectives and implementing congestion pricing to fund improvements while addressing underrepresented communities’ needs. Sliding scale pricing, tax-increment financing, value capture, and privatization strategies can further enhance transportation equity in the Capital Region alongside utilizing the revenue generated from ParkAlbany for further transportation infrastructure.

To address food insecurity, Albany should reformulate land use policies by supporting urban agriculture and incentivizing local food production. Mitigating food deserts, empowering communities, and strengthening school meal programs through expanding access outside of schooldays can also enhance food security. Additionally, investing in healthcare services and education programs can alleviate food insecurity challenges by educating communities on nutrition and home cooking.

For climate and energy initiatives, racial and socioeconomic factors should inform future renewable energy policies. Consideration of marginalized communities and economic justice should drive the transition to renewable energy, similarly incentivizing community stakeholders to do so. Creating laws that prevent the deterioration of historic racially zoned neighborhoods is crucial as well.

When addressing polluting uses and environmental justice in the Albany area, municipalities should encourage public participation in the governing process, prioritize equality in the processes of zoning pollutant structures, and mandate signage for toxic areas, ensuring residents’ safety and environmental preservation through external pressure on local government.

In education, Albany and the surrounding municipalities should work to amend the New York Constitution to
ensure remedies beyond minimally adequate resources and funding, redraw attendance zone boundaries to be more racially diverse, and update funding formulas to determine need more accurately within the community. There also must be additional investments in infrastructure, high quality pre-kindergarten programs, and economic development to combat low academic achievement and improve future educational opportunities.

Regarding economic development and employment strategies, municipalities should focus on aiding minority-owned businesses, promoting diversity and inclusion, and addressing transportation disparities while preventing forced displacement and gentrification in the area. In order to do so, policymakers must be able to effectively utilize the financial development tools at their disposal.

Lastly, the City of Albany and surrounding areas can strengthen justice efforts through the adoption of Crime Prevention Through Environmental Design (CPTED) principles, effective data transparency, provision of revitalizing payment assistance in formerly relined areas to prevent crimes, and a formal commitment to affordable housing through policies like the Albany Land Bank.

**Equitable Zoning Policies**

Frequently discussed throughout this Report is the necessity of creating, implementing, and following a new racially equitable zoning practice. But what exactly does that mean, and how does it look and operate? The American Planning Association (APA) describes equity in zoning as when “those who write, administer, or enforce zoning regulations take clear steps to avoid or ‘undo’ unfair outcomes and mitigate the unequal ability to participate in or influence all parts of the zoning process.”

Zoning, by nature of its existence, codifies exclusion; zones prevent building residences in heavy industrial areas or parks, for example. Therefore, making an equitably zoned municipality may seem difficult. However, the APA lays out and describes three different types of equity in zoning:

1. **Equitable “Rules” of Zoning**

   Equity in the “rules” of zoning speaks to what the substantive rules of zoning allow, prohibit, or incentivize in different parts of the community. These substantive rules include “all the complex and cross-cutting land use regulations limiting the size and shape of lots and buildings, how those lots and buildings can be used, and the physical design of those lots and buildings.” Such substantive rules impact a variety of major equity concerns, like those mentioned in this Report, such as public health, environmental justice, fair access to housing and economic opportunities, and additional concerns like an aging population and cultural preservation.

   Zoning can have a multitude of rules in deciding what kind of structure is built and how the land itself is used. When determining the rules and regulations in each created zone, one should keep in mind that over-regulation of building forms, site performance, and permitted uses can all create barriers to opportunities for historically disadvantaged and vulnerable communities. Because of the opportunities for barriers to exist when implementing an equitable zoning change, we must keep in mind the demographics and potential outcomes of the community.

   This Report emphasizes the importance of not limiting districts to single-household detached dwellings since such zones limit the housing opportunities for historically disadvantaged populations. Such zones show evidence of a disproportionate impact on minority groups, hindering access to attainable housing, quality schools, and services. The recommendation is to instead revise such zones to include a broader range of building forms, lot sizes and widths, and residential types in low-density residential neighborhoods, with deference to neighborhoods whose residents have been historically disadvantaged and wish to retain the single-household zoning to discourage speculative investment and displacement. Similar

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1492 Id. 12
1493 Id.
1494 Id. at 14.
1495 Id. at 14–15.
1496 Am. Plan. Ass’n, supra note 1, at 1491.
1497 Id. at 17.
1498 Id.
1499 Id.
zoning changes include adding new mixed-use districts that create increased opportunities for minorities to live closer to sources of employment, goods, and services.\textsuperscript{1500} Policymakers must always keep in mind the potential for forced displacement when determining locations for these areas, along with the demographics of the potentially displaced community.

In addition, establishing overlay zones may help preserve business districts that have historically served and been focused on the needs of historically discriminated against.\textsuperscript{1501} Many communities rely on traditional businesses, entertainment, or service centers as sources of jobs, revenue, and pride, that should be used and recognized, and an overlay district may allow the flexibility needed to preserve this type of area.\textsuperscript{1502} These same overlay zones can also be used to support vulnerable communities by helping to protect residential areas that are affordable to low- and moderate-income households, but are not protected from “speculative development pressures by any local, state, or federal program.”\textsuperscript{1503} To do this, one must define and protect established building forms, prohibit demolition of more affordable housing, or limit the amount of single-family homes within a given time period.\textsuperscript{1504}

Another usage for overlay zones is to establish specialized zones to improve health and environmental outcomes by preventing the concentration of pollutants and environmental hazards (including climate change hazards).\textsuperscript{1505} An overlay district can accomplish both by preventing the creation of hazards and mitigating the impacts of pollution or hazards that already exist.\textsuperscript{1506} There must be a severe restriction on the expansion of existing industrial uses, “requiring larger setbacks and more intensive buffers from residential uses, requiring environmental remediation, protection of existing trees, and/or requiring sound walls during redevelopment.”\textsuperscript{1507} The APA’s Equity in Zoning Policy Guide goes into greater detail regarding equitable zones and to what they include, like lot and building form standards,\textsuperscript{1508} property use regulations,\textsuperscript{1509} and site development standards.\textsuperscript{1510}

\textbf{“The People” in Equitable Zoning}

The second type of equity, “the people,” focuses on community participation, which is not always a priority when drafting and implementing new zoning regulations.\textsuperscript{1511} Informed participation is critical to eliminating the racism and discrimination that exists in zoning and planning. Equitable zoning requires community involvement to ensure diverse, inclusive, and effective participation in creating and changing zoning rules, regulations, maps, ordinances, and enforcement.\textsuperscript{1512} Outreach and community development work by planning staff include (but are not limited to) surveys, canvassing, and long-term relationship building within the community.\textsuperscript{1513} There must be a proactive effort to recruit, engage, educate, and empower individuals, and mobilize the communities and community-based organizations for there to be an effective engagement environment.\textsuperscript{1514} Such education efforts should focus on how zoning works and how to influence such decisions, and also on consensus-building and compromise.\textsuperscript{1515}

The importance of establishing a community engagement environment cannot be overstated. Community engagement is more than a collection of meetings, techniques, and tools; it takes place in an environment made up of diverse people, practices, conditions, and values; an environment where we derive our opportunities to succeed.\textsuperscript{1516} For example, youth forums, user groups,
area committees, and other forms of collaborative governance are designed to create a more direct engagement between government and particular groups or communities.\textsuperscript{1517}

In this Report, the people and communities of the Capital Region (particularly minorities), much like other communities in the United States, lack the structural and cultural supports necessary to ensure justice and to achieve successful outcomes.\textsuperscript{1518} Because of the lack of support and social inequities, such conditions can lead to inequitable investments, which lead to a lack of trust, polarization, and even more retrenchment.\textsuperscript{1519} This result occurs most often when community engagement is viewed only as a means of gathering consent for initiatives supported by those with wealth and power, rather than as a vehicle for delivering civic power to the community.\textsuperscript{1520} Unfortunately, because of these circumstances, community engagement can lose legitimacy and effectiveness as people look elsewhere to make change.\textsuperscript{1521}

Previous research shows that when community engagement activities emphasize efficiency over empowerment, the result is a loss of influence for residents, particularly those who are already at a socioeconomic disadvantage.\textsuperscript{1522} Therefore, policies that aim to reduce racial inequity in Albany and its surrounding communities may prove ineffective in practice if there is a lack of community input or involvement. People who have greater access to resources, often the ones with ability to attend community outreach events, are also able to frame community conversations to their benefit, leaving those without resources out of the conversation.\textsuperscript{1523} Research has found that trust in community engagement processes rests on a foundation of economic equity.\textsuperscript{1524} When resources (such as land, infrastructure, transportation, etc.) are distributed inequitably, people tend to become discouraged with the ability of civic institutions to add positive value to their lives.\textsuperscript{1525}

When civic institutions no longer provide opportunities for citizens to exercise power over their communities, our communities will lose their inherent ability to provide the necessary resources.\textsuperscript{1526} Quality education, healthy citizens, safe neighborhoods, and economic opportunities are all tied to a healthy and equitable community engagement environment.\textsuperscript{1527} However, when trust in civic institutions erodes, communities decay and future prosperity and democracy can be permanently imperiled.\textsuperscript{1528}

To avoid such a failure, there are a few methods that the APA recommends: the first recommendation is a focus on education, as discussed earlier, through what they term as “capacity building.”\textsuperscript{1529} The APA reports that cities and counties that have offered “zoning 101” or academy events and programs find “a significant increase in public understanding of the most effective ways to make their wishes known and understood throughout the zoning process.”\textsuperscript{1530} If implemented, such programs should put extra thought into ensuring accommodations for non-traditional work schedules, childcare needs, and limited English proficiency are accommodated to ensure access to the diverse community.\textsuperscript{1531}

These events must be designed and offered to help the historically disadvantaged communities to understand and participate in these procedures, and additionally, to have staff learn from members of these disadvantaged communities on how current procedures affect their neighborhoods, businesses, and quality of life.\textsuperscript{1532} Often, people working within government tend to see communities through government eyes; either as participants or non-participants in processes initiated by

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\item \textsuperscript{1517} Robyn Eversole, Community Agency and Community Engagement: Re-theorising Participation in Governance, 31 J. Pub. Pol’y 51, 52 (2011).
\item \textsuperscript{1518} Holley, supra note 1516, at 6.
\item \textsuperscript{1519} Id.
\item \textsuperscript{1520} Id.
\item \textsuperscript{1521} Id.
\item \textsuperscript{1522} Id. at 13.
\item \textsuperscript{1523} Holley, supra note 1516, at 15.
\item \textsuperscript{1524} Id. at 16.
\item \textsuperscript{1525} Id.
\item \textsuperscript{1526} Id.
\item \textsuperscript{1527} Id.
\item \textsuperscript{1528} Holley, supra note 1516, at 16.
\item \textsuperscript{1529} Am. Plan. Ass’n, supra note 1491, at 33.
\item \textsuperscript{1530} Id.
\item \textsuperscript{1531} Id.
\item \textsuperscript{1532} Id. at 33–34.
\end{itemize}
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The way governments work thus sets the terms of engagement for the relationship. However, the way communities work (i.e., having the agency to mobilize local energy and create dynamic change) intrigues policymakers in theory but remains largely invisible to them in practice. By valuing communities in theory, but failing to recognize how they work in practice, policymakers may struggle with an uphill battle for community engagement, even as they risk undermining existing community capacity.

For example, during the first meeting with a group of community activists in Detroit by the Kirwan Institute for the Study of Race and Ethnicity, it became clear that people were not interested in talking about yet another community engagement plan; instead, they wanted to discuss what community engagement was supposed to accomplish, and for whom, at a most basic level. As the conversation continued, they found that residents in Detroit began to see public accountability, a basic democratic principle, as fundamentally broken in their city.

This disconnect between policymakers and community members is likely not isolated in Detroit. Any community that struggles with inequity, such as those in Detroit, will likely experience a disconnect with the policies enacted upon them by the government members if they fail to reduce inequity. Unfortunately, the legacy of forced displacement, historic disinvestment, and inconsistent services has created a pervasive and deep sense of distrust of new programs, staff, and city-led initiatives while community violence has led to high levels of stress and isolation.

To change the community engagement environment is a change to both context and culture. The legitimacy of outreach efforts is tied to the number of opportunities that community members have to exercise efficacy. Policymakers must realize that the interconnectedness of the stakeholders (i.e., community groups, forums, businesses, etc.) in a community environment can help further bind our communities together while empowering the individual to make change on a larger level. This is a type of bottom-up community decision-making and community-based resource, the embrace of which creates a more meaningful engagement environment and fosters a sense of community ownership that is at the heart of long-lasting change.

For policymakers and planners, along with other elected and appointed officials, to understand the struggle disadvantaged communities face, there should be official training in diversity, equity, and inclusion (DEI). Those working on zoning and land usage planning should be aware of the history and negative impacts of past policies while working to improve the present and future outcomes with those in the community who are most affected by their actions.

Outside of capacity-building policies, there should be a focus on equity in advisory and decision-making boards since they are authorized to make recommendations or make certain types of decisions related to the zoning process. Positions on the boards and commissions that manage zoning, along with the planning profession, remain predominately White and often the composition of these boards does not represent the actual diversity of the community. To create a more equitable process, the composition of non-elected boards and committees should reflect the community, including proportionate representation from historically disadvantaged and vulnerable communities. The traditional approach of

1533 Eversole, supra note 1517, at 67.
1534 Id.
1535 Id.
1536 Id. at 68.
1537 Holley, supra note 1516, at 18.
1538 Id.
1539 Elsa Falkenburger et al., Trauma-informed Community Building and Engagement, Urban Institute, 2 (2008).
1540 Holley, supra note 1516, at 6.
1541 Id.
1542 Id.
1543 Id.
1544 Am. Plan. Ass’n, supra note 1491, at 34.
1545 Id.
1546 Id.
1547 Id.
1548 Id. at 35.
appointing specialized professions that relate to the zoning process, like planning, real estate development, etc., often results in membership compositions that do not reflect the community.\textsuperscript{1549} While such expertise is important, there is a strong need for local community expertise, too, for members of the community to convey lived experience and diverse voices.\textsuperscript{1550} To achieve such a goal, there needs to be broad dissemination of opportunities to serve, transparent appointment procedures, and provision of training and informational classes about the roles and responsibilities of board members.\textsuperscript{1551}

The next point in which “the people” should be involved is during the writing and changing in the zoning process.\textsuperscript{1552} There are two questions that arise when considering updating such regulations: “(1) Who is writing or amending the rules, and (2) Who will be affected by the proposed changes.”\textsuperscript{1553} The committees, boards, task forces, and consultants should reflect the demographic makeup of the community; staff or advisory groups should also include people living, educating, or doing business in the potentially affected areas.\textsuperscript{1554} When conducting these rewrite processes, there must be a significant outreach effort to the community to include their input, along with a diverse standing advisory committee.\textsuperscript{1555} Any and all proposed changes must be subject to public review and feedback before there is an official hearing to adopt those changes.\textsuperscript{1556} The drafting process should include specific opportunities to evaluate the impact of potential new regulations on the diverse neighborhoods, which may include an equity audit of current zoning regulations based on the APA’s Policy Guide to identify potential changes and unintended consequences of those changes.\textsuperscript{1557}

The Kirwan Institute describes six necessary principles to create a successful, meaningful, and equitable community engagement environment best suited to bolster civic opportunity for everyone, particularly those who are often left out like those in the historically disadvantaged and vulnerable communities.\textsuperscript{1558} The six principles include: embracing the gifts of diversity\textsuperscript{1559}; realizing the role of race, power, and injustice\textsuperscript{1560}; radical hospitality (invitation and listening)\textsuperscript{1561}; trust-building and commitment\textsuperscript{1562}; honoring dissent and embracing protest\textsuperscript{1563}; adaptability to community change.\textsuperscript{1564}

The six principles include:

1. Embracing the gifts of diversity;
2. Realizing the role of race, power, and injustice;
3. Radical hospitality (invitation and listening);
4. Trust-building and commitment;
5. Honoring dissent and embracing protest;
6. Adaptability to community change.

There is a common thread throughout these principles in establishing a strong and healthy community engagement environment. There must be open and honest communication around what practices put disadvantaged and vulnerable, along with the privileged, members of our community in the positions that they are in today. There must be an acknowledgement of the pain and inequity within the community, with the struggles of individual members, along with the emotions that come with such circumstances. By fostering a space that encourages community leadership, constructive discussion, and not just acceptance of diversity, but use of that diversity, the traditional community engagement environment can transform into a structure that effectively addresses equitable change.\textsuperscript{1565}

\textsuperscript{1549} Am. Plan. Ass’n, supra note 1491, at 35.
\textsuperscript{1550} Id.
\textsuperscript{1551} Id.
\textsuperscript{1552} Id.
\textsuperscript{1553} Id.
\textsuperscript{1554} Id.
\textsuperscript{1555} Id. at 35.
\textsuperscript{1556} Id.
\textsuperscript{1557} Id.
\textsuperscript{1558} Holley, supra note 1516, at 23.
\textsuperscript{1559} Id. at 25–31.
\textsuperscript{1560} Id. at 33–39.
\textsuperscript{1561} Id. at 41–47.
\textsuperscript{1562} Id. at 49–53.
\textsuperscript{1563} Id. at 55–59.
\textsuperscript{1564} Holley, supra note 1516, at 61–65.
\textsuperscript{1565} Id. at 23.
The application of these principles can be done throughout the zoning and rezoning process. The foundation of this process is the decision-making, such as changing the map to include one or a few properties (rezoning), or approving conditional use permits, development permits, or any other variances from the strict zoning rules. Such decisions are often made by staff, an appointed body, and the city council or county commissioners. To ensure equity in administrative and ministerial decisions, one must evaluate whether the zoning rules themselves do not have a disproportionate impact on historically disadvantaged communities.

For decisions that require public hearings, inequity can enter the process because of:

1. how the public is notified of those hearings;
2. the time and location of the public hearing, which may require significant travel, arranging time off from work, and arranging child care;
3. the ways in which the public is permitted to participate in the hearing;
4. limited English proficiency; and
5. limits on how the least mobile members of the public can participate in the hearing.

Such barriers need consideration and removal to obtain a diverse discussion. For a successful public hearing, there must be a successful attempt in notifying the public. Traditional forms of notification, such as written notices to property owners (typically older, whiter, and wealthier), are becoming increasingly unsuccessful because of the number of renters in the community, most of whom are members of disadvantaged communities. To avoid such an inequity, mailed notices should also be sent to tenants, and, when needed, in multiple languages or with information on how non-English speakers can learn-more to access other languages. The translation of all notices, along with alternate versions for those with visual impairments, should also be available to make them more accessible to the community.

Similarly, the ways in which notice is given can also introduce bias in the process. Many zoning ordinances require mailed notice, published notice in newspapers, and posted signs on potential development sites, but these outdated and limited approaches alienate younger residents who often rely more on electronic media. The range of published notice should, in addition to the traditional forms, include a place on the city or county website, distribution by email to those who opt-in for such notification, and include both English and non-English social media that is commonly used by the community. Similarly, applications should be available for review on municipal websites, even those that do not require public hearings to maintain transparency. The municipal website should also include a section where the public can submit comments related to the projects, rather than them sending separate emails or letters.

When conducting a public hearing, there should be the reduction of the restrictive barriers discussed in the notification process, with particular focus on not scheduling such meetings during work hours and at a fixed location that may inconvenience or deter people from attending due to lack of mobility or other obligations. Some ways to avoid this predicament are to provide forms of virtual engagement and post the materials a week or so before to allow public comment in advance of the meeting instead of attending. When a public hearing is necessary, there should be care taken to draft objective standards and
criteria that can avoid the unintended negative impacts on the disadvantaged community members. An expansion of ways for the public to comment is also encouraged, either through verbal exchanges with staff, in writing, or other forms of virtual participation.

The last part of the process, enforcement of the zoning rules, also has the opportunity to ensure and encourage equity. Often, there is a limited amount of enforcement staff to pursue every alleged zoning violation, and deciding which ones are serious enough to pursue is up to zoning administrators. Such a structure is not without its biases. Municipalities must ensure to enforce zoning rules that do not disproportionately affect disadvantaged neighborhoods unless such residents of the neighborhood have requested higher levels of enforcement, as most members of such communities are unaware of zoning requirements and are unable to quickly address any violations due to lower incomes. Because of these circumstances, municipalities should adopt a wide range of ways to bring violations into compliance, and allow adequate time and support to do so. Finally, when nonconformities are discovered, there should be a focus of enforcement efforts on those that create significant threats to public health and safety.

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1581 Id.
1582 Id. at 41.
1583 Id.
1584 Id. at 41.
1585 Id. at 42.
1586 Id.
Equitable Zoning “Mapping”

The most important aspect of zoning, as it is the most physical and visual manifestation of the historic discriminatory practice, is the maps that form the zones and usages for the areas. These maps include the historically redlined ones to the most recent ones that govern the area. This chapter attempts to provide some equitable recommendations to minimize the effects caused by the discriminatory policies that were the foundation for cities and towns across America. The ultimate end here is one that “produces outcomes that are more equitable for these communities, and for which planners can gain the political support necessary to make the change.”

There are four ways in which zoning maps can institutionalize inequitable opportunities and outcomes, which are laid out in the table below, along with policy recommendations. Because zoning changes can affect large numbers of property owners, there is an importance of having consultants, advisors, and staff reflect the demographics of the areas affected. Proposed changes should be reviewed for the potential impacts on affordability, gentrification, and environmental justice, especially because most map changes are likely to affect historically disadvantaged and vulnerable populations. Similarly, those recommending and those involved in the process must reflect the demographics of the area, and ensure notification to both residential and business tenants and owners.

The most important aspect when attempting to remedy the effects of redlining is to understand its history and the outcomes of it that placed us where we are now. A simple response to redlining is to remap the divided neighborhoods to the same zoning district to attempt to equalize the opportunities for investment and development on both sides. However, the consequences may be more harmful. The effect of redline-based zoning was to decrease the value of land in minority neighborhoods and increase it in whiter areas; by adopting less permissive zoning in both areas, many properties in minority areas may be nonconforming, resulting in further difficulty in obtaining improvement loans. Even, depending on the housing market, such zoning could spur new investment that leads to gentrification and displacement of historically disadvantaged and vulnerable communities. Applying more permissive zoning on non-redlined neighborhoods may result in the construction of new housing that is still not affordable to residents in formerly redlined districts, and would do little to improve their housing options.

There are a multitude of ways and resources available for those who wish to move towards a more equitable, strong, and healthy community, and those discussed here are but a few. The basic principles are the same, however. Know your community, listen to your community, move and change with purposeful actions, and understand the processes and context surrounding the land use in Albany and surrounding municipalities.

Accountability

The importance of government accountability cannot be overstated. Accountability serves as the linchpin to a responsive and responsible government, ensuring that policies and promises are not mere words but actionable commitments that translate into real-world impact. It is at the municipal level that policies related to local education, housing, law enforcement, social services, and the environment are formulated and executed. As such, local governments possess the power to dismantle systemic barriers and promote equal opportunity, thereby fostering racial equity at the grassroots level.

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1587 Am. Plan. Ass’n, supra note 1491, at 44.
1588 Id.
1589 Id. at 45.
1590 Id.
1591 Id.
1592 Id. at 49.
1593 Id. at 49.
1594 Id.
1595 Id. at 49–50.
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| **CONSTRAINING** land supply for needed types of development | - Disadvantaged & vulnerable communities have lower incomes, more likely to live in certain types of housing (apartments, smaller homes & lots, etc.).  
- Economic mobility is limited for businesses owned & operated by members of disadvantaged communities.  
- Disinvestment and lack of resources limit quality infrastructure, commercial, and residential buildings and employment. | 1. Apply zoning districts that make adequate amounts of land available in locations that do not perpetuate historic patterns of segregation.  
1. Avoid mapping that perpetuates over-restrictive or highly detailed zoning regulations. |
| **CONCENTRATING** polluting and harmful land uses and facilities in some neighborhoods | - Individuals exposed to polluting industries, highways, noise, air pollution, or other activities (locally unwanted land uses (LULUs)) for extended periods of time have significantly higher health risks and shorter life expectancies.  
- Since historically disadvantaged & vulnerable communities tend to have lower-than-average incomes, the proximity of these households to LULUs may re-establish over time if relocated outside these communities.  
- Some LULUs are important sources of employment; making it difficult for those businesses to continue in operation in their current locations can result in loss of jobs & livelihoods. | 1. Revise zoning maps to avoid the future location of polluting or environmentally harmful facilities & other LULUs in neighborhoods that already contain a disproportionate share of those uses & facilities.  
1. Where zoning district standards include protections from the potential negative effects of development in adjacent districts, revise zoning maps to avoid shifting the potential negative impacts onto historically disadvantaged & vulnerable communities in districts without the same protections.  
1. Avoid map changes that increase residential development in areas near sources of pollution, hazards, or climate risks, particularly in historically disadvantaged & vulnerable neighborhoods. |
| **LIMITING** access to key public services and facilities | - Often include childcare centers, health clinics, hospitals, mental health facilities, good schools, places of worship, recreation centers, and sources of healthy food.  
- Zoning cannot force service providers to budget more, but it can ensure that the uses are permitted and easy to develop where they are needed. | 1. Revise zoning maps to ensure that needed health, educational, religious, & civic facilities or services are permitted & simple to establish in or near all residential areas of the city, including historically disadvantaged and vulnerable neighborhoods. |

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1596 *Id.*  
1597 *Id.* at 46.  
1598 *Id.*  
1599 *Id.*  
1600 *Id.*  
1601 *Id.* at 47.  
1602 *Id.*  
1603 *Am. Plan. Ass’n*, supra note 1491, at 47.  
1604 *Id.*  
1605 *Id.*  
1606 *Id.* at 48.  
1607 *Id.*  
1608 *Id.*  
1609 *Id.*
This subsection of the Report will explore the significance of governmental accountability and transparency in pursuit of advancing racial equity, and will delve into various methods through which citizens, activists, and policymakers can both implement and hold accountable others for their promises and policies. Such methods include transparency in decision-making, community engagement, oversight mechanisms, and the use of data-driven metrics to evaluate progress. These tools will not only help empower citizens to actively participate in the governing process but ensure that the government and its officials uphold their commitments.

A. Importance of Accountability & Transparency in Government

There are often loud cries for a more transparent and accountable government regarding data collection and how much progress is being made on policies and promises. But what is transparency? Transparency refers to the extent external stakeholders (citizens, businesses, etc.) are afforded regular access to information about the way their public organizations operate.1610

Accountability mechanisms can be described as particular, demarcated approaches to hold people or institutions responsible for their promises and policies.1611 Such mechanisms are beneficial to ensure democratic control of public institutions, to prevent corruption and abuse of power, and to improve public confidence in governmental affairs.1612 The mechanisms generally include four principle elements: setting of standards, getting information about actions, making judgements about appropriateness, and sanctioning unsatisfactory performance.1613

A government or group having in place a system of accountability is important, not just for public appearance of maintaining previously laid out goals, but empirical studies show that local governments who are subject to more accountability structures often provided better public services than those who were not.1614 Participatory accountability mechanisms have also been found to have a positive effect on citizens’ trust in government, and they often increase upward social mobility, awareness of citizen rights, and government responsiveness to citizen demands.1615

To achieve such benefits, there must be a framework in place to enhance accountability and transparency. Frameworks can further establish performance standards and metrics, along with clarifying and rationalizing goals to make them easier to accomplish and to monitor.1616 There are several different types of frameworks, ranging from a simple integrity pledge1617 to dividing governmental transparency into four dimensions1618 or dividing governmental transparency in general into three sequential components,1619 or even through the Results-Based Accountability™ (RBA) process that was developed specifically to address racial equity through a policymaker’s perspective.1620 All such structures will be discussed in detail in further subsections.

The best practices focus on four elements present in all accountability structures: information, discussion and debate, citizen action, and government response.1621

Because of the principle need for information, governments should focus on, and citizens should demand, high quality, accurate, timely, and clear data disclosures relating to government activities.1622

In addition to providing information, the government should involve third party actors (e.g., universities or nonprofits) to analyze and scrutinize said information, so as to improve the data’s usefulness and guide the government on how to improve it.1623 The government should not only disclose data, but also be able to educate citizens about the

1612 Id.
1613 Id.
1614 Id.
1615 Id.
1616 Id. at 5.
1617 Id.
1618 Porumbescu, supra note 1610, at 206.
1619 Id. at 205.
1621 Id.
1622 Ardigó, supra note 1611, at 5.
1623 Porumbescu, supra note 1610, at 211.
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<th>Equitable Zoning Process</th>
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| Capacity Building                     | - Information on what zoning is and what zoning does is often unknown to a majority of people, especially in communities with historically disadvantaged and vulnerable communities.                                                                                                                                                                           | 1. Design and offer events or classes to help historically disadvantaged and vulnerable communities understand and participate in zoning procedures, and to help staff learn from members of those communities how current zoning procedures affect their neighborhoods, businesses, and quality of life.  
2. Ensure that planners and elected and appointed officials receive diversity, equity, and inclusion (DEI) training.                                                                                                       |
| Advisory & Decision-Making Boards     | - Planning profession remains a predominantly White and often does not reflect the diversity of the communities served, and the same is frequently true of appointed zoning-related boards and officials.                                                                                                                                                                         | 1. The composition of nonelected boards and committees should reflect the community, including proportionate representation from historically disadvantaged and vulnerable communities.                                                                  |
| Writing & Changing Zoning Rules       | - Lack of diversity in the processes.  
- Lack of significant outreach efforts to involve the communities most affected.  
- Lack of understanding the equity needs in the communities.                                                                                                                                                                                                                                      | 1. Those framing, writing, and/or reviewing the zoning rules should reflect the demographic composition of the community and should include representatives from historically disadvantaged and vulnerable communities.  
2. Ensure that drafting efforts include business and residential tenants, as well as property owners.  
3. Ensure that there are multiple opportunities for review of potential zoning impacts on historically disadvantaged and vulnerable communities.  
4. Avoid overly complicated regulations and legalistic language and speak to the community in the language(s) they understand.  
5. Draft clear and objective, equity-based standards, and review criteria.                                                                                                                                                                      |
| Public Hearings & Notifications       | - Traditional written notices provided only to property owners, not tenants, in an increasingly rental housing market.  
- Traditional types of notices (mail, newspapers, signage) are becoming outdated & alienating younger residents.  
- Short amount of time in notices give residents less time to effectively participate.  
- Historically disadvantaged and vulnerable communities are often less able than others to engage effectively in public hearing.                                                                                                                     | 1. Review, update, and expand traditional notification procedures to reach a wider range of possible participants.  
2. Formalize and expand requirements to use newer means of notification.  
3. Only require public hearings when there is a genuine need to use discretion in applying zoning criteria and standards to the facts of a specific development proposal.  
4. Maximize the ways in which individuals can participate in public hearings and avoid limiting engagement to a specific time and place.  
5. Bridge the digital, language, and ability divides.                                                                                                                                                                                          |
| Enforcement of Rules                  | - Local governments have limited zoning enforcement staff; they often cannot investigate every alleged zoning violation.  
- Zoning administrators have significant flexibility to decide which alleged violations are most serious & create the greatest threat.  
- Historically disadvantaged & vulnerable communities are often less familiar with what zoning requires.  
- Communities with lower incomes & limited English proficiency may also be less able to respond quickly to bring their properties into compliance with zoning standards.                                                                                                   | 6. Ensure that local government discretion to enforce zoning rules is not disproportionately focused on historically disadvantaged and vulnerable neighborhoods unless the residents of the neighborhood itself have requested higher levels of zoning enforcement.  
7. Adopt a wide range of ways to bring violations into compliance with zoning requirements and allow adequate time and support for property owners to do so.  
8. When nonconformities are discovered, focus enforcement efforts on those that create significant threats to public health and safety.                                                                                                           |
roles and functions of government and of local government programs, specifically when it comes to clarifying what the government can and cannot do in a particular context.\textsuperscript{1624} Such information would help the government find a more efficient way to structure the framework.\textsuperscript{1625} Without access to such comprehensive information, the public will be unable to accurately understand and evaluate the actions of their government.\textsuperscript{1626}

The second element, discussion and debate, is widely important, as establishing lines of communication between the community and local authorities generally has a positive effect on accountability, as it encourages dialogue to be collaborative rather than conflictive.\textsuperscript{1627} When learning is the focus of the dialogue, citizens can be made aware of the local government’s constraints, and public officials can understand key issues and focus their efforts on remedying them in the future.\textsuperscript{1628} There are three things to consider when having such discussion: embrace errors as learning opportunities; consider evaluations as central to the local government’s work; and keep the debate as reflective as possible and focus on improvements.\textsuperscript{1629}

The third element is citizen action. When creating and maintaining policies that affect a community, it is imperative that policymakers communicate with those who are part of said community. Accountability structures should actively enable collective action, influence service provider incentives and/or share power over resource allocation.\textsuperscript{1630} Governments can incorporate citizen action into knowledge production, through research groups and citizen committees, along with policy tracking surveys or public opinion surveys.\textsuperscript{1631} Doing so would allow a better understanding on policy issues, and either corroborate or challenge official information.\textsuperscript{1632}

The last element, government response, is a huge part of maintaining and establishing trust with the community and the main way in which a government body can hold itself accountable. Governments can legitimize accountability mechanisms by actively participating in them, incorporating citizen inputs, and providing feedback and explanations regarding policies or undertaking reforms.\textsuperscript{1633} Government must assure consistent levels of administrative support and political will towards accountability mechanisms for these to be successful and not devolve into conventional processes that do not lead to change.\textsuperscript{1634} There would be no point in establishing an accountability structure if there is no support, and there would be no benefit or change towards the goal of racial equity.

The four elements discussed must be a part of the accountability structure for such a process to be successful. Without governmental accountability, there would be no safeguards or transparency in the governmental process to hold public officials to their word and standards. In order to achieve actual change in racial equity, as proposed and emphasized by this Report, the government must be held accountable for its actions, or lack thereof.

B. Accountability Structures

Frameworks to Ensure Transparency

One of the first frameworks in ensuring that the public has access to transparent, accurate information in what their government is doing includes four dimensions. The four dimensions include institutional, political, financial management, and service delivery.\textsuperscript{1635} The disclosure of information pertaining to each of these dimensions is critical to affording community members a comprehensive understanding of how each component of their government functions.\textsuperscript{1636} The institutional dimension focuses on the disclosure of information pertaining to the activities of public officials.
organizations. The second dimension, political, refers to information pertaining to political representatives. This includes aspects such as their salary or attendance in municipal meetings. The third dimension, financial management, outlines how public actors make use of the financial resources they are allocated. The fourth and final dimension of transparency is service delivery; this dimension outlines how local government performs in its delivery of public services. These four dimensions are the types of information that should, and must, be disclosed to the public in order to ensure a transparent process.

Another framework divides transparency into three general sequential components. The first component, decision-making transparency, is the community members’ access to information about discussions leading up to the adoption of a particular policy, such as who the actors involved in the process were and which points were considered in the decision to adopt a particular course of action? The second component is referred to as policy transparency. This component outlines how an adopted policy intends to address a particular social issue, as well as anticipated effects on different segments of the population. The final component is called policy outcome transparency. This component addresses the provision of information to the public that details the actual effects of a particular policy. When these three sequential components are combined, the intention is to provide the public with a comprehensive understanding of what the government is doing, how the government is doing it, and why.

Both frameworks, at the foundation, illustrate that enhancing transparency in government means more than a “the mere provision of more information to more people.” The information that governments should provide is diverse, which is mostly due to the broad spectrum that governments are responsible for. If the public were without access to such comprehensive information, there will often be a lack of accurately understanding and evaluating the actions of their government.

Results-Based Accountability (RBA)

Another approach to structuring and maintaining accountability is through the racial equity-centered Results-Based Accountability (RBA) tool developed by the Government Alliance on Race and Equity (GARE). This process starts with the desired results of a project, and works backwards towards the means, in order to ensure that the plans work toward community results with stakeholder-driven implementation. Such a process disrupts the traditional structure with the intention of establishing more racially equitable outcomes in municipal projects.

RBA also helps distinguish between population level indicators (the responsibility of multiple systems and time necessary to shift), and performance measures that organizations can use to determine whether what they do is having an impact. GARE emphasizes that this tool is exactly that; RBA is only part of the work necessary in the process of establishing equity. The overarching framework of this approach shows a relationship between Results, Indicators, and Activities, as laid out in the image below:

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1637 Id.
1638 Id.
1639 Id.
1640 Id. at 206.
1641 Id.
1642 Id. at 207.
1643 Id.
1644 Id.
1645 Id. at 207.
1646 Id.
1647 Id.
1648 Id.
1649 Id.
1650 Bernabei, supra note 1620, at 7.
1651 Id.
1652 Id.
1653 Id. at 7–8.
The orange bar separates the population level results and indicators that are the responsibility of many systems over time; below the orange bar are the activities for which jurisdictions can develop performance measures and hold themselves accountable, and the activities below the line should contribute to the change toward which the jurisdiction aims.\textsuperscript{1654}

The process begins with seven primary steps called questions of population accountability.\textsuperscript{1655} Since this is a top-down approach, the first step starts at the end results.

**Questions to Ask ... Tasks & Considerations**

1. **What are the desired results?**
   - Requires recognition that the whole community cannot experience well-being when communities of color experience it at disproportionately lower rates.
   - Fill in the following statement: "We want families/communities that are..."
     1. Terms should be positive (i.e., "healthy" versus "not sick").
     2. Terms should be about the condition itself, not a choice or possibility of a condition, (i.e., "educated" versus "the opportunity or to be educated")

2. **What would the result look like?**
   - This question should be answered in a culturally relevant, contextualized manner that is connected to the vision you have for racial equity.
   - Whose vision does this picture reflect? Does it reinforce a deficit orientation about behaviors, or does it authentically reflect what a result means to that city/county/state/community?

3. **What are the community indicators that would measure the desired result?**
   - Indicators may not be quick to move because they are community-level measures that reflect generations of policy & systems failures that have produced inequity.
   - Once disaggregated by race and ethnicity and reviewed it, the data tell a unique story about a particular community.

4. **What does the data tell us?**
   - Ask: "why does the trend look like this?" For each answer, ask "why" a few times to move past superficial understandings & get to the underlying causes.
   - Process must be facilitated by someone skilled at pushing back on views that reinforce individual responsibility & shifting the focus to institutional and structural racism, and able to actively surface the historic & present-day root causes underlying the assumptions.
   - Root-cause analysis produces the foundation on which all actions & next steps are built.
   - When insufficient time is spent on root-cause analysis or it is skipped over, groups revert back to the same actions that they have used in the past rather than working with new processes or partners that would change results.

5. **Who are your partners?**
   - To do systems change work, government must partner not only with community leadership, but also with a range of types of institutions.
   - Representatives from community-based organizations and grassroots community groups bring a more holistic understanding of inequities, as well as innovative solutions.
   - Challenge itself to identify “unlikely suspects” or partners that have been avoided in the past—these might well be the exact partners you need to produce the results you seek.

6. **What works to change the data trend towards racial equity?**
   - No one program or policy will change an entire result, but any can be a good starting point:
     - Low-cost, no-cost ideas
     - Community knowledge
     - Promising practices
     - Evidence-based practices
     - Out-of-the-box/"Imagine if" ideas

7. **What actions should you start with?**
   - Values: Is it strengths-based, people-centered, and culturally relevant/anti-racist? Does it advance a racial equity agenda?
   - Leverage: How likely is it to change the trendline? What additional resources for change does it activate?
   - Reach: Is it feasible? Will it actually benefit communities of color experiencing racial inequities? Specificity: Does it have a timeline with deliverables that answer the questions who, what, when, where, and how?
   - Make action commitments at the end of each meeting to ensure that actions and new partnerships move forward:
     1. Action commitments require each member of the group to personally commit to one action related to moving indicators and...
After utilizing these groundwork, foundational questions to access the purpose and establish an action plan for the project, RBA moves onto seven more steps for performance accountability. GARE advises that “whether your actions are department-level policy changes, or changes to nonprofit programming, each need a set of performance measures to ensure that the action or activity is crafted to decrease racial disparities.”

The table that follows includes the seven steps and what they entail:

### Questions & Considerations

1. **Who do you serve?**
   - Identifying who you serve (whether an institution, people, a group, or a system) helps you gain clarity about the intended impact of your work and not attempt to make people accountable for change outside their scope of work.

2. **What is an action’s intended impact?**
   - How would I know if this action worked? What is the intended impact? How would I know if anyone is “better off” because of it?
   - How much did you do? (Quantity, number of clients and/or activities)
   - How well did you do it? (Quality, percentage of activity that was of high quality, percentage of common measures of appropriate/high quality)
   - Is anyone better off? (Impact, number or percentage change in skills/knowledge, attitude/opinion, behavior, or circumstance)

3. **What is the quality of the action?**
   - Use metrics that measure the quality of the strategy in ways that span the gamut from cultural relevance, language access, and participation rates to more technical measures of staff training and staff-to-client ratio.
   - Ensure that action is being done well. If the “better off” measures show no change, quality measures sometimes tell us why we are not having an impact.

4. **What is the story behind the data?**
   - Even when groups select actions that they believe will address root causes at the population level, it is critical to regularly review data at the performance level and ask “why?”
   - This is the difference between perpetuating systemic failures to address racially disproportionate outcomes and disrupting them.

5. **Who are the partners with a role to play?**
   - Identifying partners after looking at data helps organizations fill in service, policy, and community gaps.
   - Internally, organizations often fail to think about the partners that would make their work more effective.

6. **What works to have a greater impact?**
   - If you do not use the data, you perpetuate the same practices that have contributed to racial inequities all along.

7. **What are the next steps?**
   - Who will do what, and by when? What resources are needed to get it done? Is this a long-term action that needs time, or can it be done tomorrow? What is the active role of community leadership in making these decisions?
   - A commitment to action, just like in the population level process, is critical. The more precise the better, and they must be written.

At the end of this process, policymakers should have a good understanding of how to establish an accountability structured action plan that supports and encourages change towards racial equity.

There are a couple of municipalities where the usage of this system is already in place. One is Dubuque, Iowa, a majority White community with disproportionately poor results based on race and ethnicity. They are attempting to build the public will and institutional ability to look at racially disaggregated data to inform decisions. The RBA framework is placed within their racial equity-focused work on advancing housing equity, and in building a local model from which other groups can learn. Also, Dubuque is investing in empowering and developing the ability of local direct-service staff and managers to use disaggregated data to quickly improve results for people of color. The municipality believes that when lawyers, social workers, and managers do this work themselves with data, the process helps them internalize the related values and skills over time, and they can apply those learnings more directly to their work.

The RBA framework is, once again, only a tool in moving toward equity. If a tool could accomplish the hard work of transformative change that would produce better results for communities of color, jurisdictions would have
solved racial inequities. However, without tools and a disciplined and focused way of doing work, communities can unintentionally perpetuate inequity by relying on goodwill and intellect alone.

Existing Structures

When viewing Albany and the surrounding municipalities’ most recent comprehensive plans, the presence of action plans and accountability structures (or lack thereof) stands out. The comprehensive plans of Colonie and Guilderland have no mention or structure at all in an action plan to obtaining their goals nor any accountability mechanism. Albany’s 2030 plan has a relatively extensive one that lays out actual goals with designated timeframes and benchmarks. For municipalities that do not have any kind of structure in place, looking at Albany’s is a great starting point in developing their own ones. However, there is always room for improvement; there is never too much transparency in reporting on the progress of a municipality’s goals for the future for establishing a better community.

Final Thought

The journey towards achieving racial equity in the City of Albany and the surrounding municipalities within the Capital Region is undoubtedly a complex and multifaceted endeavor. There will be challenges in accomplishing the recommendations within this Report, such as resistance to change, resource allocation and budget constraints, and managing public expectations, which underscore the intricacies involved in dismantling systemic barriers. While these challenges may seem daunting, they should be viewed as opportunities for growth and transformation.

Resistance to change is a natural part of any significant societal shift, and it requires patience, education, and ongoing dialogue to foster understanding and cooperation. Resource allocation and budget constraints present a formidable hurdle, but creative and strategic approaches to funding, alongside advocacy for policy changes, can pave the way for more equitable distribution of resources. Managing public expectations demands transparent communication and community engagement, ensuring that all stakeholders are informed and empowered to actively contribute to the pursuit of racial equity.

In reiterating the significance of this Report, it is crucial to recognize that the pursuit of racial equity is not just a moral imperative, but a strategic investment in the collective well-being and prosperity of the entire community. The call to action is directed not only towards policymakers and government officials, but to every resident, business, and organization within the region. True transformation requires a collaborative and sustained effort, transcending individual interests for the greater good.

In closing, there is a profound affirmation of the Capital Region’s potential to achieve racial equity. This potential lies in the diversity of its population, the resilience of its communities, and the commitment of its leaders. By embracing inclusivity, fostering a culture of equity, and implementing targeted policies and initiatives, the Capital Region could become a model for other cities and municipalities grappling with similar challenges. The path to racial equity is not without obstacles, but it is a path that promises a more just, harmonious, and prosperous future for all residents of the Capital Region.