Taking the High Road

How the City of New York Can Create Thousands of Good Retail Jobs through Neighborhood Rezoning

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Mayor de Blasio’s rezoning of neighborhoods in New York City creates major openings for Walmart and other low-road retailers to penetrate the largest retail market in the U.S.

Requiring high-road retail in rezoning can ensure the creation of thousands of good quality, career-oriented, permanent jobs, instead of poverty-wage jobs that drag down communities.

A number of policy tools and strategies are available for creating high-road retail jobs that Mayor de Blasio, council members, community board members and advocates should use.

The city should pay close attention to opportunities created by neighborhood-wide rezonings, tax breaks and economic development subsidies, and community benefits agreements to establish high-road retail standards in NYC.

New York City workers and small businesses are better off without Walmart and other low-road retailers trying to open stores in new developments created through the planned rezoning of several neighborhoods.

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In 2014, Mayor de Blasio announced a plan to redevelop multiple neighborhoods across the five boroughs through an elaborate rezoning effort. Despite the plan’s unprecedented scale and the impact it will undoubtedly have on our landscape, little if any attention has yet to be paid to the issue of jobs – specifically, the quality of permanent retail jobs in stores and businesses that will occupy the ground floors of many new apartment buildings and developments throughout the rezoned areas. These areas include East New York, Brooklyn, Long Island City, Queens, the Jerome Avenue Corridor in The Bronx, Flushing West in Queens, East Harlem in Manhattan, and the Bay Street Corridor in Staten Island.

Mayor de Blasio’s plan to rezone neighborhoods offers enormous potential for building a better retail economy in our city. This is the first report of its kind to offer a policy roadmap for how the de Blasio administration and local communities can together ensure that the thousands of jobs created in rezoned neighborhoods are high-road retail jobs with living wages and full-time hours for city residents.

The rezoned neighborhoods will likely include more dense residential and commercial development, opening a wide range of opportunities for either high-road or low-road retailers to penetrate New York City’s economy, depending on how they are handled. Given his administration’s commitment to reducing inequality, it’s crucial for Mayor de Blasio to take the high road, and to work in partnership with local residents and communities in doing so.

Put simply, Mayor de Blasio has an opportunity to deliver on his promise of making our city’s economy fairer and more equitable, and to create thousands of high-road retail jobs in rezoned neighborhoods.

Introduction:
Retail Job Growth through Mayor de Blasio’s Rezoning Plan
The Walmart Threat: Keeping Low-Road Retail Out of Rezoned Neighborhoods

As Walmart and other low-road retailers dominate the national economy, high-road retailers find it harder and harder to compete for business, placing downward pressure on wages and benefits. The purpose of this report is to identify the strategies that can be used to ensure the expansion of high-road retail in rezoned neighborhoods and to push back against the Walmartization of our city’s economy.

Mayor de Blasio can and should establish standards throughout the economic development and rezoning process that protect good, local jobs and keep out America’s worst employers. New Yorkers are ready, willing, and able to keep Walmart and other low-road employers out of rezoned areas, as demonstrated by the celebrated 2012 victory in East New York, Brooklyn. But rather than engaging in “site fights” over every individual development, New York City should implement regulatory and economic policies that keep the worst employers out of our city for good.

New York City, with about $21.7 billion in yearly grocery sales, is an obvious target for Walmart. Currently, Walmart has less than 1.5% of grocery sales in the New York metropolitan area. If the company could reach even half its national market share of 22% in New York, it would add $4.8 billion to its sales figures. That is why Walmart still has its sights on the Big Apple.

Additionally, Walmart is one of the two top retail employers in New York State, and it is growing. In six years, from 2008 to 2014, the number of Walmart stores (including Sam’s Clubs) statewide increased by 18%. Walmart now has 117 stores in New York State.

Walmart is the largest private employer in the world, with 2.2 million employees around the globe and 1.2 million employees in the United States. The only employers larger than Walmart are the U.S. Department...
of Defense and the People’s Liberation Army of China. Walmart is also the largest retailer in the world. Walmart’s worldwide net sales last year were $482 billion. In the U.S., Walmart’s net sales were $288 billion, almost three times its closest competitor, Costco. Walmart dominates the retail grocery landscape in the U.S., controlling approximately 22% of the national market. This means that for every $5 spent on groceries nationwide, $1 is spent at Walmart.

Accordingly, Walmart’s low-road standards have an outsized influence on the entire retail industry. So while Walmart itself is not in New York City, the harm of Walmart’s low-road business model can be seen and felt in nonunion retail jobs throughout the five boroughs. Other low-road retailers have implemented Walmart’s business practices here and Walmart’s physical entrance into New York City via rezoned neighborhoods would only accelerate and exacerbate that disturbing economic trend.

As Walmart searches for growth, its strategy has shifted. Over the last five years, same-store sales have stagnated, but total U.S. sales, driven by hundreds of new store openings, have increased 12%, or more than $30 billion. Store openings have become the main source of revenue growth.

Because of changing residential and consumption patterns, Walmart has been forced to concentrate more on urban markets and smaller formats, what it calls Neighborhood Markets, instead of its huge suburban Supercenters. At its 2014 presentation to the investment community, Walmart noted that it planned to decrease its Supercenter growth by 42% in 2015, while increasing its Neighborhood Market growth by 27%.

For all these reasons, it would be a mistake to think Walmart has given up on New York City. Walmart will closely monitor the rezoning process under Mayor de Blasio and continue to look for any possible point of entry via new developments that will be built in the coming years. As a city, we are much better off with high-road employers instead of low-road employers like Walmart. But just saying “no” is not a feasible approach to dealing with these wealthy, well-connected, growth-at-all-costs corporations. City government should incentivize and facilitate the growth of high-road retail jobs in local communities and neighborhoods, and the upcoming rezonings are a great opportunity to demonstrate leadership in doing so.
Encouraging the Growth of High-Road Retail: Why it Matters for NYC

Retail is the fastest growing low-wage sector of New York City’s economy.

Retail accounts for 15 percent of all new private sector jobs added since the recession and almost 18 percent of private sector employment, according to the NYC Economic Development Corporation. Retail is now the third largest sector of our local economy, having surpassed both finance and insurance.

Unfortunately, nonunion retail wages, scheduling practices, and working conditions continue to be inadequate and fuel the income inequality that Mayor de Blasio is focused on tackling.

But high-road retail can reverse this trend and create the kind of good quality retail jobs that New Yorkers both need and deserve. That is why we urge the de Blasio administration to support and implement a high-road retail policy agenda.

High-road retailers run their businesses according to the principle that their workforce is their most important asset. They know that a successful business model ensures that both employees and owners can thrive. That is why high-road retailers offer their workers a combination of living wage jobs with benefits, stable full-time schedules, ample training and career advancement opportunities, along with the freedom to form a union.
There are many examples of high-road retail in New York City. Retailers such as Fairway, Macy’s, Zabar’s, Duane Reade, Costco, and Century 21 Department Stores, among others* are examples of employers that by and large provide living wages and good benefits, and have demonstrated a willingness to meaningfully engage with workers about their workplace conditions. Businesses such as these should be encouraged to expand throughout our city and we should facilitate their expansion through economic and regulatory incentives. They boost our economy and create good jobs, while protecting small, local businesses from being displaced by the predatory impact of low road employers.

At a time of rapid change in our city’s development, high road retail is one of the key ways that we can strengthen our local economies, support small business, and prevent widespread displacement. Mayor de Blasio, elected officials and concerned community members should be vigilant in pursuing policy options for expanding the footprint of high-road retailers in rezoned neighborhoods.

*High road retailers in the New York metro area also include Bloomingdales, D’Agostinos, DeCicco’s Family Markets, Duane Reade, Food Basics, Food Emporium, Gristedes, H&M, Jack’s 99 World, Modell’s, Morton Williams, Pathmark, Shoprite, Stop and Shop, Telco, Waldbaums.
Key Components of High-Road Retail: What Mayor de Blasio Should Prioritize

High-road retail means something very specific: it means living wage jobs that offer full-time hours, reliable schedules, and real paths to careers, ideally with the freedom to bargain collectively. This is the progressive retail business model our city needs and deserves, especially in neighborhoods that will be rezoned. Below are the components of high-road retail that Mayor de Blasio should prioritize.

**Targeted and Local Hire:**
Requiring that a certain percentage of the workforce comes from the community in which the project occurs, as well as prioritizing workers who suffer from certain barriers to employment such as the formerly incarcerated, women, low-income residents, and others.

**Living Wage and Benefits Package:**
Requiring that workers earn a living wage that includes employer-covered benefits. The amount of a living wage varies by community and depends on whether benefits are offered or not.
**Labor Peace:**
Requiring employers to sign a labor peace agreement with relevant unions in which the employer generally agrees to card check neutrality and workplace access in exchange for the union agreeing to not strike or otherwise disrupt business operations.

**Job Training:**
Requiring the provision of training opportunities for workers, including both soft and hard skills, as needed.

**First Source Hiring:**
Requiring employers to keep job postings open for a certain period of time for the exclusive consideration of local and targeted prospective employees.

**Stable Scheduling:**
Requiring the provision of weekly schedules a certain period of time in advance, and ensuring parity for part-time workers by preventing discrimination against workers purely based on hours worked.
How We Get There: Making High-Road Retail a Reality in NYC


Zoning Changes

Most changes in land use in New York City must be approved through the Uniform Land Use Review Process (ULURP). ULURP allows for several points for community engagement and political decision making, including the environmental review process (pre-ULURP), as well as approval by community boards, the borough president, the City Planning Commission, the City Council and the Mayor.

Rezonings present significant legal barriers to establishing high-road retail, but offer important opportunities for the community to build the case for high road retail and to establish a Community Benefits Agreement (CBA). While a CBA can’t be compelled by ULURP, elected officials can make clear to developers that they will heavily weigh the community’s perspective in deciding whether to support a project, and will pay special attention to projects where the developer and community groups are
negotiating a private CBA.

On the other hand, neighborhood-wide rezonings, like those being proposed by Mayor de Blasio, are not negotiations with an individual developer and therefore present significant barriers to building the case for high road retail and establishing an enforceable CBA.

Accordingly, it is important that the city fully engage in the other opportunities alongside ULURP and CBAs to establish high road retail.

**Incentive Zoning**

The city can establish “opt-in” programs within a rezoned area that provide zoning benefits above and beyond what the current zoning allows for, in return for a commitment to meet certain standards. In NYC, these programs are often referred to as Special Purpose Districts and typically take the form of density bonuses. These bonuses must be significant enough that they entice participation, which may require the city to reduce the density increased through rezoning while increasing the available density bonus.

Because these benefits are purely voluntarily in nature, they are not subject to the same legal limitations inherent in land use regulatory decisions, and we recommend including the following high-road retail standards in exchange for these benefits:

- Targeted and local hire
- Job training
- First source hiring
- Stable scheduling

**Subsidies – Tax Breaks**

Tax breaks, which are typically used to incentivize economic development by reducing sales, property and other tax burdens, offer important
opportunities for establishing high-road retail. Living wage standards can be attached to the granting of these subsidies and is currently in place for certain projects in New York City. The Fair Wages for New Yorkers Act sets a living wage requirement for the retail jobs created at projects that receive over $1 million in subsidies.\textsuperscript{11}

However, tax breaks must be distinguished from other forms of subsidies like bonds, loans and grants. For various legal reasons, it is more challenging to establish high-road retail requirements through tax breaks than it is through bonds, loans and grants where the city expects a return on investment.\textsuperscript{12} Accordingly, we recommend that where the city provides a tax break, the following standards are applied:

- Job training programs
- Living wage and benefits package

**Subsidies – Bonds, Loans, and Grants**

Bonds, loans and grants are subsidies that the city gives out and expects a return on investment. This expectation allows the city to protect its investment by establishing high-road retail standards in return for granting the subsidy.\textsuperscript{13}

The NYC Economic Development Corporation (EDC), the main economic development arm of the city, currently provides loans and bonds to nearly one half of the projects it subsidizes.\textsuperscript{14} These projects vary from the terminal upgrades at JFK airport to the Albee Retail Development in downtown Brooklyn. Where bonds, loans or grants are provided, we recommend the following standards are applied:

- Targeted and local hiring
- Living wage and benefits package
- Job training
- First source hiring
- Stable scheduling
- Labor peace
**Land Transfers**

In each of the neighborhood-wide rezonings that will take place in New York City, there are parcels of land owned by the city. These parcels will likely be transferred to private developers and accordingly offer opportunities for establishing high road retail.

For the purposes of establishing high road retail, land sales are more restrictive than land leases, because the city does not retain an interest in the land after it is sold. However, where there is a land lease, the city has a direct interest in assuring that the development is successful and continues to provide a return on investment.\(^{15}\)

We recommend that where the city leases land, the following standards are applied:

- Targeted and local hiring
- Living wage and benefits package
- Job training
- First source hiring
- Stable scheduling
- Labor peace

**Community Benefits Agreements (CBAs)**

A CBA is a private contract between a developer and representative community groups that sets out the benefits the developer will provide to the community in exchange for the community agreeing to support the project.\(^{16}\)

CBAs, because they are private contracts, must be voluntarily entered into. They cannot be a condition of the city’s land use change approval. However, elected officials can make clear to developers and the public that they will heavily weigh the community’s perspective in deciding whether to support a project. The community’s perspective on a project is often much more favorable where there is a negotiated CBA.

Because CBAs are private agreements, they can include just about any
community benefit, and accordingly have much more leeway than most other options cited here. In fact, at the Bronx Terminal Market, the Community Benefits Agreement expressly banned Walmart from operating at the mall, demonstrating the value of a strong CBA.\footnote{17}

We recommend the following standards are applied:

- Targeted and local hiring
- Living wage and benefits package
- Job training
- First source hiring
- Stable scheduling
- Labor peace

**Conclusion**

There are ample ways for Mayor de Blasio and city government to establish high-road retail standards for neighborhoods that will be rezoned. Most of the upcoming large rezonings in New York City will offer opportunities to establish these standards through ULURP, subsidies, land transfers, and CBAs. The de Blasio administration and City Council Members should ensure that high-road retail standards for rezoned neighborhoods create tangible, lasting and enforceable economic gains for local communities and residents.
Endnotes


6 This estimate is calculated using US Census Bureau, Estimates of Monthly Retail and Food Services Sales by Kind of Business: 2013, Grocery Stores (NAICS 4451) plus Health & Personal Care Stores (NAICS 446) as the denominator and Walmart's reported grocery sales in fiscal year 2014 for its United States and Sam's Club segments.


10 For example, see the Special Clinton District in Manhattan, at http://www.nyc.gov/html/dcp/html/zone/zh_special_purp_mn.shtml


13 See note 12, above. Other potential legal challenges include Equal Protection, Privileges and Immunities, and Preemption, There are various ways to address these issues that have been practiced in jurisdictions around the country. For example, see the Partnership for Working Families, Targeted Hiring Measures and the Privileges and Immunities Clause, at http://www.forworkingfamilies.org/resources/targeted-hiring-measures-and-privileges-and-immunities-clause


15 See notes 12 and 13, above.


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