



Taking the High Road

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

WALMART FREE NYC

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Report Highlights

- 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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Introduction: Retail Job Growth through Mayor de Blasio's Rezoning Plan

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.¹ 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.

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.² Currently, Walmart has less than 1.5% of grocery sales in the New York metropolitan area.³ 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.⁴

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.⁵ 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.⁶ 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%.⁷

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.



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*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



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Zoning Changes

Most changes in land use in New York City must be approved through the Uniform Land Use Review Process (ULURP).⁸ 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.

Rezoning⁹ 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.¹⁰ 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.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.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.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.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.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.

¹ Curbed. “De Blasio Unveils 10-Year, \$41B Affordable Housing Plan,” 5/5/2014, by Jessica Dailey, available at http://ny.curbed.com/archives/2014/05/05/de_blasio_unveils_10year_41b_affordable_housing_plan.php.

² This estimate is calculated using US Census Bureau, 2007 Economic Census, estimate for New York City of sales at Grocery Stores (NAICS 4451), available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_44A1&prodType=table plus Health & Personal Care Stores (NAICS 446), available at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_44A1&prodType=table, inflated by 13%, the U.S. Bureau of Labor Statistics estimate of the Consumer Price Index increase from January 2008 to January 2014, available at: <http://www.bls.gov/regions/new-york-new-jersey/data/xg-tables/ro2xgcpiny.htm>.

³ Metro Market Studies, available at <http://www.metromarketstudies.com/>

⁴ Walmart, Our Story, Interactive Map, available at: <http://corporate.walmart.com/our-story/locations/unit-ed-states#/united-states/new-york>

⁵ Walmart, Our Story, Interactive Map, at: <http://corporate.walmart.com/our-story/our-business/locations/>

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.

⁷ Walmart historical store counts available at: <http://stock.walmart.com/financial-reporting/unit-counts-square-footage/>. Walmart’s plan to build 200 neighborhood markets is discussed on the transcript of its pre-recorded earnings announcement on February 19, 2015, available at: http://media.corporate-ir.net/media_files/IROL/11/112761/4Q15/FY15_Q4_earnings_transcript_final.pdf, and in its earnings press release on February 19, 2015, available at: <http://news.walmart.com/news-archive/investors/2015/02/19/walmart-announces-q4-underlying-eps-of-161-and-additional-strategic-investments-in-people-e-commerce-walmart-us-comp-sales-increased-15-percent>.

⁸ ULURP Applicant Portal, available at http://www.nyc.gov/html/dcp/html/ap/step5_ulurp.shtml.

⁹ See U.S. Constitution, 5th Amendment: “nor shall private property be taken for public use, without just compensation.” For ad hoc decisions and monetary exactions, see *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and *Koontz v. St. Johns River Water Management District*, 568 U.S. ____ (2013). Generally applicable laws are subject to the Penn Central standard. *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

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

¹¹ New York City Office of the Mayor, Press Release, Mayor de Blasio Signs Executive Order to Increase Living Wage and Expand it to Thousands More Workers, September 30, 2014, at <http://www1.nyc.gov/office-of-the-mayor/news/459-14/mayor-de-blasio-signs-executive-order-increase-living-wage-expand-it-thousands-more#/0>

¹² There is a “market participant” exception to the Dormant Commerce Clause. Article I, Section 8 of the Constitution. See *White v. Mass. Council of Constr. Employers, Inc.* 460 U.S. 204, (1983).

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>

¹⁴ New York City Economic Development Corporation, FY2014 Project Info Spreadsheet, at <http://www.nycedc.com/about-nycedc/financial-public-documents>

¹⁵ See notes 12 and 13, above.

¹⁶ Partnership for Working Families, “CBAs: Definitions, Values, and Legal Enforceability,” by Julian Gross, at <http://www.forworkingfamilies.org/resources/publications/cbas-definitions-values-and-legal-enforceability>

¹⁷ See summary of the Gateway Center at Bronx Terminal Market CBA, at <http://communitybenefits.blogspot.com/2009/08/gateway-center-at-bronx-terminal-market.html>.