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## Modernizing Chicago: Eliminating the Clybourn Corridor's Restrictive Planned Manufacturing District Zoning Regulations

Kevin Major

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## Comment

# Modernizing Chicago: Eliminating the Clybourn Corridor's Restrictive Planned Manufacturing District Zoning Regulations

*Kevin Major\**

*In Chicago, the resolution of the fervent debate surrounding a certain land-use restriction known as the planned manufacturing district (“PMD”) zoning designation will have a direct impact on Chicago’s future. PMDs protect industrial operations by preventing all residential and many commercial uses of land in certain areas of the city. In 1988, Chicago began implementing PMDs to protect industrial operations that an influx of residential development—which had forced industrial companies to consider selling, relocating, or closing—threatened.*

*Chicago continues to rely on PMDs. Fifteen PMDs currently operate, but some of these districts face increased scrutiny as Chicago’s industrial sector steadily declines. The Clybourn Corridor PMD is the PMD that has faced the greatest scrutiny. Those who advocate for the elimination of the Clybourn Corridor’s PMD designation argue that the current land-use restriction is a relic of a different economic era and that the historic justification for preventing residential and commercial growth is not applicable in the current Chicago economic market. But those who support the Clybourn Corridor PMD argue that Chicago should protect the few industrial jobs left in the area.*

*This Article ultimately advocates for the City of Chicago to eliminate the Clybourn Corridor’s PMD designation. In place of the current land-use restrictions, this Article calls for the creation of a new set of zoning laws that maximize the value and efficiency of the land in the Clybourn Corridor by allowing residential and commercial uses. Under these new land-use laws, Chicago can shed an outdated and inefficient set of restrictions and create a new hub of economic growth.*

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\* J.D. Candidate, Loyola University Chicago School of Law, 2018.

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## INTRODUCTION

Imagine a two-flat residential building next to the Willis Tower. Imagine walking on a quiet residential block in the Bucktown neighborhood and seeing a forty-story business tower next to a small coffee shop. These scenarios seem unrealistic, but why? What is preventing a developer from tearing down a stretch of single-family homes in Hyde Park and erecting a 75,000-square-foot manufacturing facility or building a single-family home across the street from the Daley Center? The answer: zoning laws.

Zoning laws regulate the character of a designated area by imposing land-use restrictions and controlling specific elements of a structure, such

as height and density.<sup>1</sup> Chicago, along with nearly every other major city in the United States,<sup>2</sup> enacted zoning laws to control the city's development and bring a sense of cohesion to its neighborhoods.<sup>3</sup> The effect that zoning laws have on a city extends far beyond simply its aesthetic qualities. These laws also affect the trajectory of a city's economy, the type of individuals and companies that call the city home, and the city's national reputation.<sup>4</sup> Thus, cities must strive to create logical and efficient zoning regulations to reach their full social and economic potential.<sup>5</sup>

In Chicago, the planned manufacturing district ("PMD") is a specific zoning designation that was created to control the city's development by preventing all residential and many commercial uses of land within predominately industrial areas.<sup>6</sup> But the PMD has recently faced heightened scrutiny from politicians, real estate developers, and citizens for being outdated and inefficient.<sup>7</sup> A great deal of this scrutiny is

1. See PATRICIA E. SALKIN, *AMERICAN LAW OF ZONING* § 7.1 (5th ed.), Westlaw (database updated May 2016) ("Zoning ordinances, for example, were used to control competition, to require the construction of homes of a certain size, to minimize traffic congestion, to guide or limit community growth, and to regulate the exterior design of buildings."); see also CHI., ILL., ZONING ORDINANCE § 17 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il) (explaining that land-use restrictions limit the types and purposes of development in an area (i.e. prohibiting residential use from an area)); see generally 65 ILL. COMP. STAT. 5/11-13 (2016) (describing the State of Illinois' zoning goals and requirements).

2. See Patrick J. Krieger, *The City with (Almost) No Limits*, URBANLAND (Apr. 20, 2015), <http://urbanland.uli.org/industry-sectors/city-almost-no-limits/> (describing how Houston, Texas does not have a formal system of zoning laws).

3. The Chicago City Council must approve amendments to the Chicago zoning ordinance. CHI., ILL., ZONING ORDINANCE § 17-13-0204 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

4. See SALKIN, *supra* note 1, § 9.14 ("Some ordinances undertake to zone out particular uses, to establish single-use districts, to provide for planned development districts, or to require that certain uses be established only after approval of an administrative agency or the legislative authority of the municipality."); see generally RAHM EMANUEL ET AL., *MAYOR EMANUEL'S INDUSTRIAL CORRIDOR MODERNIZATION: NORTH BRANCH* (Aug. 10, 2016), [http://www.cityofchicago.org/content/dam/city/depts/zlup/Industrial\\_Modernization/2016\\_08\\_10\\_NorthBranch2ndMeeting\\_rev\\_FINAL\\_reduced.pdf](http://www.cityofchicago.org/content/dam/city/depts/zlup/Industrial_Modernization/2016_08_10_NorthBranch2ndMeeting_rev_FINAL_reduced.pdf) [hereinafter EMANUEL MODERNIZATION PLAN] (discussing Mayor Emanuel's proposal for redeveloping the North Branch Industrial Corridor and the resulting effects the redevelopment will have on Chicago).

5. See, e.g., Roderick M. Hills, Jr. & David Schleicher, *The Steep Cost of Using Noncumulative Zoning to Preserve Land for Urban Manufacturing*, 77 U. CHI. L. REV. 249, 251 (2010) (discussing the negative effects of noncumulative zoning laws, or zoning laws that prevent a mix of uses).

6. CHI., ILL., ZONING ORDINANCE § 17-6-0400 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

7. See, e.g., Chuck Sudo, *Are Chicago's PMDs Getting in the Way of Development?*, BISNOW

directed toward one specific PMD: the Clybourn Corridor PMD.<sup>8</sup> The Clybourn Corridor is a 115-acre area<sup>9</sup> located between Clybourn Avenue and the Chicago River, just north of Goose Island in Chicago's Second Ward.<sup>10</sup> In 1988, the City of Chicago designated the Clybourn Corridor as its first PMD.<sup>11</sup> The Clybourn Corridor PMD is located within the larger North Branch Industrial Corridor.<sup>12</sup>

PMDs are distinguishable from industrial corridors in several ways.<sup>13</sup> Industrial corridors are not zoning districts, but rather planning designations that may include PMDs as well as other areas of industrial activity.<sup>14</sup> Industrial corridors provide less zoning protection than PMDs, but still promote the retention of industrial land uses.<sup>15</sup> The city has designated twenty-six industrial corridors throughout Chicago.<sup>16</sup>

The Chicago Zoning Ordinance divides the Clybourn Corridor PMD into two subdistricts: a "core zone" along the Chicago River and a "buffer

CHI. (June 16, 2015), <https://www.bisnow.com/chicago/news/commercial-real-estate/are-chicagos-pmds-getting-in-the-way-of-development-46924> (providing a brief history of Chicago's planned manufacturing districts ("PMDs") and discussing how the designation negatively impacts growth in the Clybourn Corridor).

8. See, e.g., Ryan Ori, *Alderman: Scrap Clybourn Corridor Industrial Zoning*, CRAIN'S CHI. BUS. (Feb. 3, 2016), <http://www.chicagobusiness.com/realestate/20160203/CRED03/160209931/alderman-scrap-clybourn-corridor-industrial-zoning> (detailing the PMD controversy in the Clybourn Corridor).

9. THE UNIV. OF WIS. MILWAUKEE CTR. FOR ECON. DEV., *CURBING INDUSTRIAL DECLINE OR THWARTING REDEVELOPMENT? AN EVALUATION OF CHICAGO'S CLYBOURN CORRIDOR, GOOSE ISLAND, AND ELSTON CORRIDOR PLANNED MANUFACTURING DISTRICTS 13* (2005) [hereinafter THE UNIV. OF WIS. MILWAUKEE].

10. See, e.g., *Clybourn Corridor PMD*, BRIAN HOPKINS 2ND WARD ALDERMAN, <http://www.aldermanhopkins.com/clybourn-pmd-updates> (last visited Sept. 24, 2016) [hereinafter HOPKINS] (showing a map of the Clybourn Corridor PMD).

11. Ori, *supra* note 8.

12. Eddie Arruza, *Reevaluating Chicago's Industrial Corridors*, WTTW (June 13, 2016), <http://chicagotonight.wttw.com/2016/06/13/reevaluating-chicago-s-industrial-corridors>.

13. U.S. EQUITIES REALTY, LLC, *PLANNED MANUFACTURING DISTRICT MODERNIZATION REPORT 4* (Sept. 9, 2013) [hereinafter U.S. EQUITIES REALTY].

14. *Id.*

15. *Id.* The Chicago Plan Commission must review any request for a zoning change within an industrial corridor. The plan commission will reject the request if the zoning change would cause conflicts with existing businesses in the corridor or weaken the corridor's industrial integrity. See generally CITY OF CHI., DEP'T OF HOUSING & ECON. DEV., *CHICAGO SUSTAINABLE INDUSTRIES PHASE ONE: A MANUFACTURING WORK PLAN FOR THE 21ST CENTURY* (Mar. 2011), [https://www.cityofchicago.org/content/dam/city/depts/zlup/Sustainable\\_Development/Publication\\_s/Chicago\\_Sustainable\\_Industries/Chicago\\_Sustainable\\_Book.pdf](https://www.cityofchicago.org/content/dam/city/depts/zlup/Sustainable_Development/Publication_s/Chicago_Sustainable_Industries/Chicago_Sustainable_Book.pdf) [hereinafter DEP'T OF HOUSING & ECON. DEV.] (discussing the purpose of industrial corridors and providing a map of their locations throughout the city).

16. Arruza, *supra* note 12; see DEP'T OF HOUSING & ECON. DEV., *supra* note 15, at 5 ("In addition to providing the appropriate zoning and a compatible industrial environment, Chicago's industrial corridors provide convenient access to truck routes, interstate highways, rail yards and other infrastructure assets that are essential to industrial companies.").

zone” in the eastern part of the PMD.<sup>17</sup> In the core zone, the zoning ordinance permits heavy manufacturing land uses, including chemical production and waste management.<sup>18</sup> The buffer zone is designed to act as a boundary between the heavy industrial uses along the river and nearby neighborhoods—such as Lincoln Park—as no natural barrier exists between the two.<sup>19</sup> The industrial uses permitted in the buffer zone are limited to uses such as light manufacturing, restaurant, and retail.<sup>20</sup> While some of the permissible land uses in the two subareas differ, neither the core zone nor the buffer zone allow for residential use.<sup>21</sup>

The scrutiny faced by the Clybourn Corridor PMD leads to a debate regarding whether the area’s PMD designation should be removed or maintained. Those who find the Clybourn Corridor PMD outdated, including the alderman for the area, Brain Hopkins, argue that its PMD designation should be removed.<sup>22</sup> One of the main arguments offered for removing the Clybourn Corridor’s PMD designation is that such a zoning classification unjustly restricts certain commercial and all residential uses.<sup>23</sup> As a result of these restrictions, critics argue that major economic growth, specifically through tax revenue, is lost in exchange for supporting industrial firms.<sup>24</sup> Moreover, critics argue that the designation props up industrial facilities in the area that are a relic of a past economic era.<sup>25</sup> Critics point to the growth of Chicago’s West Loop neighborhood as an example of what the Clybourn Corridor could become if the city

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17. DEP’T OF HOUSING & ECON. DEV., *supra* note 15, at 13.

18. *See generally* CHI., ILL., ZONING ORDINANCE § 17-6-0403-F (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il) (detailing the permitted land uses in the core zone).

19. *See generally id.* (discussing the allowable land uses in the buffer zone).

20. *See* THE UNIV. OF WIS. MILWAUKEE, *supra* note 9, at 13 (discussing how the presence of residential neighborhoods east of Clybourn Avenue forced the city to create two zones within the Clybourn Corridor PMD that allow different uses).

21. *Id.*

22. *See* Ori, *supra* note 8 (outlining the arguments presented by Alderman Hopkins and others who are against the PMD designation).

23. A detailed analysis of the types of uses that are permitted in a PMD can be found in the “Planned Manufacturing District” section of the Chicago zoning ordinance. CHI., ILL., ZONING ORDINANCE § 17-6-0400 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

24. *See Mayor Emanuel’s Industrial Corridor Modernization Initiative*, CITY CHI., [http://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/repositioning-chicago-s-industrial-corridors-for-today-s-economy.html](http://www.cityofchicago.org/city/en/depts/dcd/supp_info/repositioning-chicago-s-industrial-corridors-for-today-s-economy.html) (last updated Mar. 14, 2017) (proposing a redevelopment plan that creates economic growth primarily through the creation of jobs).

25. *See* Ori, *supra* note 8 (discussing how several industrial facilities are closing or relocating to different areas of the city or to the suburbs).

removed its PMD zoning designation.<sup>26</sup>

Despite mounting opposition to the Clybourn Corridor's PMD designation, there are still supporters of the area's current zoning classification. This group is largely comprised of individuals and groups with a stake in the area's remaining industrial firms.<sup>27</sup> Supporters argue that the PMD designation must remain because much of the area's industry has already been displaced.<sup>28</sup> Supporters of the PMD point to Chicago's zoning ordinance's stated goal of having a diversified economy in further support of their argument.<sup>29</sup> They also assert that allowing residential uses in the area would lead to nuisance claims that would spell the end of any remaining industrial operations.<sup>30</sup>

The Clybourn Corridor PMD debate will have a lasting impact on Chicago.<sup>31</sup> If the Clybourn Corridor PMD is eliminated, this might cause the city to strip other PMDs, including the Elston Corridor PMD and the Goose Island PMD, of their designation as well.<sup>32</sup> In addition to

26. See Adam Hengels, *Planned Manufacturing Districts: Planning the Life Out of Districts*, MKT. URBANISM (Nov. 6, 2014), <http://marketurbanism.com/2014/11/06/planned-manufacturing-districts/> (detailing how Chicago's West Loop neighborhood has become an area of great economic growth due in part to its ability to attract new businesses to the area and provide housing for their employees).

27. Proponents of maintaining the Clybourn Corridor PMD are often economically connected with the industrial firms in the Clybourn Corridor. For example, Mike Holzer and Robert Doepel wrote an article in *Crain's Chicago Business* advocating for the PMD designation to remain. See Richard Doepel & Mike Holzer, *Letter to City Hall: Hands off the PMDs!*, CRAIN'S CHI. BUS. (Sept. 3, 2016), <http://www.chicagobusiness.com/article/20160903/ISSUE07/309039995/letter-to-city-hall-hands-off-the-pmds>. Mr. Holzer is the Executive Director of North Branch Works and Mr. Doepel is the Chairman. North Branch Works is an organization that serves businesses in the North River and Addison Industrial corridors. See *generally About Us*, NORTH BRANCH WORKS, <http://northbranchworks.org/about-us/> (last visited Oct. 14, 2016) (discussing the work done by the organization).

28. Doepel & Holzer, *supra* note 27; see Donna Ducharme, *Planned Manufacturing Districts: How a Community Initiative Became City Policy*, in HAROLD WASHINGTON AND THE NEIGHBORHOODS 227 (Pierre Clavel & Wim Wiewel eds., 1991) (explaining the concept of "industrial displacement" and its impact on the City of Chicago).

29. Ori, *supra* note 8; see CHI., ILL., ZONING ORDINANCE § 17-6-0400 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il) (noting that the PMD "zoning classification is needed to . . . maintain the city's diversified economy for the general welfare of its citizens").

30. See Hills & Schleicher, *supra* note 5, at 251 (discussing how nuisance claims often result from bringing residential uses to industrial areas and often force industrial firms to either close, move, or change their operations).

31. See EMANUEL MODERNIZATION PLAN, *supra* note 4 (explaining how redevelopment of the city's industrial corridors will help determine the city's economic future); see also Sudo, *supra* note 7 (detailing the potential growth that a change in the Clybourn Corridor's zoning designation could bring to Chicago).

32. See THE UNIV. OF WIS. MILWAUKEE, *supra* note 9, at 6, 17–20 (detailing the interconnectedness of the Clybourn Corridor, Elston Corridor, and Goose Island PMDs).

impacting development in the area, the debate also carries significant political implications.<sup>33</sup> Mayor Rahm Emanuel has publicly supported altering the Clybourn Corridor's restrictive zoning laws to maximize its economic growth and create a new economic hub in Chicago.<sup>34</sup> Moreover, Alderman Brian Hopkins, who will be instrumental in how the PMD debate is decided,<sup>35</sup> would have a major project in his ward that he could tout in future aldermanic campaigns, as well as a possible run for mayor later in his political career.<sup>36</sup>

This Article advocates to eliminate the Clybourn Corridor's PMD designation and proposes a new redevelopment plan ("Clybourn Corridor Redevelopment Plan"). Part I of this Article provides a brief background on how and why Chicago initially developed PMDs. Part II offers an overview of both sides of the Clybourn Corridor PMD debate: those in favor of the current zoning designation and those against it. Part III analyzes how New York and Seattle have taken different approaches in addressing their own industrial zoning regulations. Finally, Part IV of this Article urges the Chicago City Council to pass an ordinance that strips the area of its PMD designation and provides the city with control over the area's redevelopment. Additionally, this Article seeks to have the Illinois General Assembly pass a "right-to-operate" regulatory compliance defense to protect the area's few remaining industrial firms from nuisance claims brought by potentially future residential and commercial property owners. Once these two pieces of legislation are in place, the Clybourn Corridor Redevelopment Plan would take effect.

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33. Mayor Emanuel's approval rating fell to just 27 percent in a poll conducted in January 2016. See Rick Pearson & Bill Ruthhart, *Emanuel Job Approval Hits Record Low as Chicagoans Reject McDonald Video Explanation*, CHI. TRIB. (Feb. 1, 2016), <http://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-laquan-mcdonald-poll-20160131-story.html> (discussing Mayor Emanuel's declining approval rating as a result of the fallout from the shooting of Laquan McDonald). In need of a successful project that will bring economic growth to Chicago, Mayor Emanuel's PMD proposal has the potential to play an important role in his reelection bid.

34. See EMANUEL MODERNIZATION PLAN, *supra* note 4 (providing an overview of how redevelopment will lead to job growth and provide a new tax base for Chicago).

35. Some criticize the amount of influence Chicago aldermen have regarding zoning changes. See, e.g., Dan Mihalopoulos et al., *How Cash, Clout Transform Chicago Neighborhoods*, CHI. TRIB. (Jan. 27, 2008), <http://www.chicagotribune.com/news/chi-code-overviewjan27-story.html> (detailing how the Chicago City Council acts as a "rubber stamp" for aldermen's wishes, and how aldermanic prerogative is the main factor in real estate development).

36. Alderman Hopkins has not indicated that he plans to run for mayor. But the redevelopment of such an impactful area of the city is likely to bring Alderman Hopkins great notoriety in the political arena. See generally A.J. Latrace, *Alderman: Finkl's Zoning Is 'Almost like a Set of Handcuffs'*, CURBED CHI. (June 8, 2015), <http://chicago.curbed.com/2015/6/8/9953600/finkl-steel-pmd-battle> (discussing the importance of the potential redevelopment of the Clybourn Corridor and the attention it will garner).



Under the Clybourn Corridor Redevelopment Plan, redevelopment would include the expansion of allowable land uses and the institution of a planned development zoning review process for all proposed changes to property in the corridor.<sup>37</sup> Through these measures, city officials could actuate a master redevelopment plan and take full advantage of the Clybourn Corridor's unique location.<sup>38</sup> Furthermore, this Article advocates for Chicago to create a redevelopment fund for the Clybourn Corridor ("Redevelopment Fund") that would pay for the numerous expenses that will result from this project. The Redevelopment Fund could pay for environmental remediation of former industrial sites, the relocation of some industrial firms to PMDs on the south and west sides of Chicago, and infrastructure improvements such as public transportation expansion and a new bridge. Eliminating the Clybourn Corridor's PMD designation could generate millions of dollars in tax revenue for the city and create a new center of residential and commercial life in Chicago.<sup>39</sup>

## I. BACKGROUND

### A. Chicago Under Daley

Upon his election as the mayor of the City of Chicago in 1955, Mayor Richard J. Daley inherited a poor economy riddled by a thirty-year decline in property values and the loss of residents and jobs to the Chicago suburbs.<sup>40</sup> Mayor Daley set out to revitalize Chicago's economy

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37. Planned development review consists of a thorough review by city officials of all proposed land development projects. The City of Chicago could gain this power of review if it amended section 17-8-0500 of the Chicago zoning ordinance and added the development of all land in former PMDs as a type of project that activates the mandatory planned development process. See CHI., ILL., ZONING ORDINANCE § 17-8-0500 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il) (outlining the current mandatory PMD triggers).

38. Part of the Clybourn Corridor fronts the Chicago River, creating an opportunity to build residential buildings along the river. Also, the corridor is located near the Kennedy Expressway, making it easily accessible for businesses and an easy commute to and from the city for those going to work. Sudo, *supra* note 7.

39. SCOTT NATIONS, THE FUTURE OF THE CLYBOURN CORRIDOR PLANNED MANUFACTURING DISTRICT (PMD) 2 (2015), <http://www.ranchtriangle.org/The%20Future%20of%20the%20Clybourn%20Corridor%20PMD.pdf> (discussing potential benefits of redeveloping the Clybourn Corridor, including generating \$13 million of annual property taxes).

40. Joel Rast, *Manufacturing Industrial Decline: The Politics of Economic Change in Chicago, 1955–1998*, 23 J. URB. AFF. 175, 178 (2001). Mayor Richard J. Daley is arguably the most impactful figure in the history of Chicago politics. For more information on his life, see generally MIKE ROYKO, BOSS: RICHARD J. DALEY OF CHICAGO (1971) (studying the life of former mayor Richard J. Daley and his impact on the growth of Chicago).

by turning the Chicago Loop<sup>41</sup> into a business district that would create new jobs and boost property values.<sup>42</sup> In 1958, Mayor Daley collaborated with the Department of City Planning and created the “Development Plan for the Central Area of Chicago.”<sup>43</sup> The plan focused primarily on redeveloping land stretching from just south of the Chicago River to the area now referred to as the South Loop.<sup>44</sup> The plan prioritized commercial and residential growth through the construction of new office and residential buildings.<sup>45</sup> Specifically, the plan urged the city to create a “Central Commercial District” and “Government Center” in the Loop that would intensify development, increase pedestrian circulation, and “create a desirable environment for people to live and work in the heart of the city.”<sup>46</sup>

Pursuant to the vision former mayor Daley set out in the Development Plan for the Central Area of Chicago, the Loop underwent a massive transformation from 1962 to 1972.<sup>47</sup> Through its power to control land use, the City of Chicago urged developers to construct 50,000 units of middle-income housing in the near-downtown area and thirty-two million-square-feet of new office space in the Loop.<sup>48</sup> The increased amount of residential and commercial properties in the Chicago downtown area generated a great deal of revenue for the city as property values and, consequently, property taxes in the area increased.<sup>49</sup>

41. See *The Loop*, CHI. ENCYCLOPEDIA, <http://www.encyclopedia.chicagohistory.org/pages/764.html> (last visited Apr. 29, 2017) (“The Loop is the popular name for the Chicago business district located south of the main stem of the Chicago River.”).

42. Rast, *supra* note 40, at 178.

43. The development plan for the central area of Chicago details former mayor Richard J. Daley’s vision for developing the Chicago Loop. The plan includes a thorough analysis of where to construct government buildings, where to locate railroad and other transportation terminals, how to develop housing in the Loop to attract residents, and where to locate a commercial district. The document provides fascinating insight into why the Chicago Loop looks the way it does today. CITY OF CHI., DEP’T OF CITY PLANNING, DEVELOPMENT PLAN FOR THE CENTRAL AREA OF CHICAGO 1 (1958) [hereinafter DEP’T OF CITY PLANNING].

44. See *id.* at 13–18.

45. *Id.* at 7.

46. See *id.* at 7–8 (detailing plans for redevelopment of the Chicago Loop).

47. Rast, *supra* note 40, at 178.

48. See *id.* (“Success was due, in no small part, to Mayor Daley’s skillful use of the machine. By holding the offices of mayor of Chicago and chairman of the Cook County Democratic Central Committee simultaneously, Daley amassed an unprecedented degree of power, quickly whipping an undisciplined city council into line.”); see also ROBERT A. BEAUREGARD, ATOP THE URBAN HIERARCHY 135 (1989) (“The redevelopment of Chicago’s [Central Business District] in the three decades following World War II was accomplished by an injection of private investment supported and guided by public sector actions in the form of . . . implementing the necessary land-use controls.”).

49. Rast, *supra* note 40, at 183. See DEP’T OF CITY PLANNING, *supra* note 43, at 8 (“Because

Prior to the implementation of the Development Plan for the Central Area of Chicago, industrial districts, providing nearly 25 percent of the city's manufacturing jobs, surrounded the Loop.<sup>50</sup> As builders erected more commercial and residential buildings in the Loop and the downtown area pursuant to the development plan, the nearby industrial districts suffered. The Development Plan for the Central Area of Chicago directly impacted industrial firms because it set out to replace blighted industrial sites with residential and commercial buildings.<sup>51</sup> The industrial firms located in the Loop and downtown area were typically located in large multistory buildings, which made them prime targets for conversion to residential, commercial, and office uses.<sup>52</sup> The influx of new development and conversion brought higher property costs. These higher property costs, coupled with a decreased dependence on central rail systems and the opportunity to move to more efficient single-story buildings that allowed for use of assembly lines in the suburbs and other neighborhoods on the outskirts of the city, led many industrial firms to move away from the Loop.<sup>53</sup> Despite the negative effects on Chicago's industrial districts, property values rose, the downtown area became a hub for business, and Chicago's economy largely rebounded.<sup>54</sup>

### *B. The Rise of Mayor Harold Washington and the Clybourn Corridor*

Chicago faced another economic downturn in the late 1970s and early 1980s due in part to population loss and falling wages,<sup>55</sup> and the

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of the large demand for housing, serving persons of all income levels, and because of the inherent living advantages of Central Area locations, the provision of major areas for residential use was deemed highly desirable.”).

50. Rast, *supra* note 40, at 179.

51. See DEP'T OF CITY PLANNING, *supra* note 43, at 8 (“As part of a comprehensive program of urban renewal for the entire city, this Plan proposes to redevelop many blighted industrial and commercial areas surrounding the Central Area and in their place create residential areas.”); see also Rast, *supra* note 40, at 180 (discussing the development plan for the central area of Chicago and its goal to redevelop “Printing House Row,” a traditionally industrial area of the South Loop, into a residential area).

52. *Id.*; see Ducharme, *supra* note 28, at 11 (discussing how developers found these multistory buildings attractive for potential residential use).

53. See Rast, *supra* note 40, at 179 (“Higher rents for commercial and residential uses destabilized the market for industrial loft space and played a key role in the mass exodus of manufacturing firms from the near-downtown area during this period.”).

54. See *id.* at 178 (noting that Daley's efforts to turn the Loop into a business district helped him forge an alliance with important representatives from the business community and that Daley's alliance with key members of the business community provided private sector support for his redevelopment plan).

55. See R.C. Longworth, *Chicago: City on the Brink*, CHI. TRIB. (May 10, 1981), <http://archives.chicagotribune.com/1981/05/10/page/1/article/chicago-city-on-the-brink/index.html> (discussing how factors such as population decline, loss of industry, rising unemployment, and a reduced tax revenue led to Chicago's economic decline).

manufacturing industry was not spared.<sup>56</sup> From 1972 to 1983, the number of manufacturing jobs in Chicago decreased by 34 percent, resulting in a loss of 131,000 jobs.<sup>57</sup> Between 1970 and 1985, Chicago lost more than 2,000 of its 8,000 manufacturing firms.<sup>58</sup>

Angered by the city's economic downturn during this period, Chicago residents sought a change in leadership.<sup>59</sup> Many residents felt that under then-mayor Jane Byrne,<sup>60</sup> the city focused too many resources on the Loop to the detriment of other neighborhoods in the city.<sup>61</sup> To bring forth a change in policy, residents elected Harold Washington in the 1983 mayoral campaign.<sup>62</sup> Former mayor Washington was elected, in no small part, to resurrect Chicago's struggling economy.<sup>63</sup> He responded by instituting a new economic plan, "Chicago Works Together: 1984 Chicago Development Plan," which called for balanced growth between economic sectors and between the downtown area and the rest of Chicago's neighborhoods.<sup>64</sup> Along with this balanced approach,<sup>65</sup>

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56. Rast, *supra* note 40, at 180.

57. *Id.* at 180; see Longworth, *supra* note 55 (noting how "the slow death of Chicago's heavy industry, land shortages, poor city services, and a fixation on the Loop at the expense of the rest of the City all contribute" to Chicago's declining economy); see generally Philip Israilevich & Ramamohan Mahidra, *Chicago's Economy: Twenty Years of Structural Change*, in 14 ECON. PERSP. 15 (1990) (explaining how Chicago's transition from a manufacturing-dominated employment base to a service-dominated employment base impacted the city's economy).

58. See KENNETH M. REARDON, *THE REFORM EFFORTS OF MAYOR HAROLD WASHINGTON* 77 (1990) (detailing the decline of Chicago's manufacturing industry in the decades leading to the election of Mayor Harold Washington).

59. Rast, *supra* note 40, at 180.

60. Jane Byrne was elected mayor of Chicago in 1979. See generally John Byrne et al., *Chicago Remembers Jane Byrne: 'A Remarkable Life of Service,'* CHI. TRIB. (Nov. 14, 2014), <http://www.chicagotribune.com/news/local/breaking/chi-jane-byrne-reaction-20141114-story.html> (discussing the life and legacy of the former mayor of Chicago, Jane Byrne).

61. See REARDON, *supra* note 58, at 9–10 (discussing how candidates running against Jane Byrne in the 1983 mayoral election attacked her administration for focusing on the central business district and neglecting other areas of the city).

62. Rast, *supra* note 40, at 182.

63. See REARDON, *supra* note 58, at 76–77 ("Among these [economic] problems were a significant decline in its manufacturing base, serious losses in its retail sector, substantial competition for commercial office tenants, ongoing encroachment by the trucking industry into its railroad and shipping businesses, new entrants into the commodities market and a declining population.").

64. Ducharme, *supra* note 28, at 227; Rast, *supra* note 40, at 182.

65. During his campaign for mayor, Harold Washington criticized Mayor Jane Byrne for concentrating economic development resources on the city's downtown business district at the expense of older residential neighborhoods. Once elected, Washington increased municipal investment in areas of the city that had been ignored under the previous regime. Washington not only focused on funds invested in specific projects, but he also directed funds toward job creation programs and small business development in Chicago's residential neighborhoods. See REARDON, *supra* note 58, at 9–10 (discussing Mayor Harold Washington's efforts to bring economic growth to Chicago); see also Rast, *supra* note 40, at 182 ("Byrne focused economic development policy

Washington's plan offered a new land-use methodology that centered on both maximizing the value of land and increasing the number of available jobs.<sup>66</sup> This dual approach was a departure from the "highest-and-best-use tactic" to land use that previous administrations used.<sup>67</sup> No longer would residential and commercial uses be automatically prioritized over industrial uses due to the resulting property values. Instead, the number of jobs created by the industrial use would be given equal weight.<sup>68</sup>

Shortly after Mayor Washington's election, his novel approach to land use was tested. Developers approached Mayor Washington about potential zoning changes in the industrial area known as the Clybourn Corridor.<sup>69</sup> The Clybourn Corridor was zoned for industrial use, but developers believed that its numerous multistory buildings and proximity to the Loop made it the perfect place for residential, commercial, and office development.<sup>70</sup> These developers cited the traditional highest-and-best-use approach as justification for their proposed projects.<sup>71</sup>

Pursuant to this thought process, in 1983, developer Tem Horwitz<sup>72</sup> requested the first zoning change in the Clybourn Corridor, seeking to convert a vacant building that was once a piano factory into a residential building with loft condominiums.<sup>73</sup> To gain support for the project from local industrial firms, Horwitz advocated that adding a residential use to the area would force the city to better maintain the roads and claimed that a residential building was better than the currently vacant building.<sup>74</sup> The city eventually granted Horwitz's request for a zoning change.<sup>75</sup> After

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efforts on a series of high-profile redevelopment projects in the downtown area.").

66. REARDON, *supra* note 58, at 10; Rast, *supra* note 40, at 182–83.

67. Rast, *supra* note 40, at 182–83.

68. See Rast, *supra* note 40, at 183 ("In severing the connection between the two [highest and best use and job creation] and identifying job creation as the long-term policy objective, Chicago Works Together set the stage for a more open and public debate over the direction of the city's economic future.").

69. Rast, *supra* note 40, at 183.

70. *Id.*

71. *Id.*

72. Horwitz led an interesting life before becoming a developer. He spent his time doing tai chi and enjoying the arts and dance. He also led campus demonstrations against the war in Vietnam while at Columbia University. See generally Steve Kerch, *Protestor from the '60s Finds a Second Home in Development*, CHI. TRIB. (July 16, 1989), [http://articles.chicagotribune.com/1989-07-16/business/8902180152\\_1\\_steel-business-protests-places](http://articles.chicagotribune.com/1989-07-16/business/8902180152_1_steel-business-protests-places) (profiling developer Tem Horwitz).

73. Connie Lauerman, *The Clybourn Experiment*, CHI. TRIB. (Feb. 18, 1990), [http://articles.chicagotribune.com/1990-02-18/features/9001140462\\_1\\_wasteland-real-estate-industrial-muscle](http://articles.chicagotribune.com/1990-02-18/features/9001140462_1_wasteland-real-estate-industrial-muscle). The piano factor was known as Baldwin Piano. See Ian Spula, *Live in a Clybourn Lofts Town House for \$475,000*, CHI. MAG. (Jan. 6, 2015), <http://www.chicagomag.com/real-estate/January-2015/A-Sequestered-Town-Home-at-Clybourn-Lofts-Lists-for-475000/>. These condominiums would later be known as the Clybourn Lofts.

74. *Id.*

75. *Id.*

purchasing the former factory for less than two dollars per square foot, Horwitz converted the building into residential units and quickly sold all fifty-seven units.<sup>76</sup>

At the time of the Clybourn Corridor's first conversion, land for industrial use typically sold for six to nine dollars per square foot, while land for residential use sold for as much as forty dollars per square foot.<sup>77</sup> Due to the conversion's profit potential, it is not surprising that more developers requested zoning changes in the Clybourn Corridor shortly after Horwitz's conversion of the former piano factory.<sup>78</sup> The city approved several other zoning changes in the Clybourn Corridor, leading to more residential buildings and, subsequently, an exponential increase in property values.<sup>79</sup> Consequently, sellers began pricing the industrial buildings on the market for conversion to residential, commercial, or office uses.<sup>80</sup> This made the industrial buildings in the corridor worth more than two times their typical value.<sup>81</sup>

For the industrial firms who wished to remain in the area, the increase in zoning requests and building conversions proved troublesome. In 1984, property tax assessments in the Clybourn Corridor rose by an average of 100 percent.<sup>82</sup> This rise in tax assessments was amplified by the fact that, at that time, Cook County industrial and commercial properties were assessed at 40 percent of their value, whereas similar types of properties were assessed at 33 percent of their value in Lake County and DuPage County.<sup>83</sup> Industrial firms that operated in the area and looked to expand could no longer afford to do so because of high land costs.<sup>84</sup> The property costs in the Clybourn Corridor also deterred new industrial firms from moving to the area.<sup>85</sup> For firms willing to pay higher prices to come to the area, finding land became challenging, as investors bought up numerous properties in an attempt to take advantage

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76. Rast, *supra* note 40, at 183; *see* Lauerman, *supra* note 73 ("When the loft apartments went on the market in 1984, the prices ranged from \$30,000 to \$150,000 a unit depending on the size and amenities.").

77. Ducharme, *supra* note 28, at 228.

78. Lauerman, *supra* note 73; Ducharme, *supra* note 28, at 227–28.

79. Ducharme, *supra* note 28, at 228; Rast, *supra* note 40, at 183.

80. Ducharme, *supra* note 28, at 228.

81. Rast, *supra* note 40, at 183.

82. *Id.*

83. *See* Richard C. Longworth, *Boom Tales: High-Tech Haven and a Reforged Steel Town*, CHI. TRIB. (Feb. 17, 1986), [http://articles.chicagotribune.com/1986-02-17/news/8601120925\\_1\\_high-tech-united-states-steel-corp-cook-county](http://articles.chicagotribune.com/1986-02-17/news/8601120925_1_high-tech-united-states-steel-corp-cook-county) (discussing how the tax rates in Cook County led to many industrial firms relocating their operations to the suburbs).

84. *Id.*

85. *Id.*

of the wave of redevelopment.<sup>86</sup>

In addition to higher property costs, the flood of residential and commercial uses in the area led to increased restrictions on the operations of existing industrial firms.<sup>87</sup> Chicago's zoning ordinance stipulates that industrial firms operate under specific performance standards concerning noise, odor, dust, toxins, vibrations, and other potential nuisances they produce.<sup>88</sup> If a manufacturer is located near another manufacturer, these performance standards are not very strict, but if a manufacturer is located near a commercial, office, or residential use, the performance standards are much stricter.<sup>89</sup> As the city approved more zoning changes and nonindustrial uses came to the Clybourn Corridor, industrial firms in Chicago faced uncertainty about the future of their operations and firms outside of Chicago were deterred from relocating to the corridor.<sup>90</sup>

### C. A Push for Protection

To combat the rapid land-use changes that took place in the Clybourn Corridor beginning in the early 1980s, industrial firms and groups that supported industrial uses (e.g., the Local Economic and Employment Development ("LEED")<sup>91</sup> Council) looked to create an area-wide

86. See Ducharme, *supra* note 28, at 228 ("Investors were buying property and holding it until redevelopment arrived at their doorstep. Then they would sell it for other uses at higher prices.").

87. *Id.*

88. CHI., ILL., ZONING ORDINANCE § 17-9-0100 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il); see also 9 DAVID C. KING, ILLINOIS REAL PROPERTY SERVICE § 46.27, Westlaw (database updated Feb. 2016) ("An industry may locate in a particular industrial district so long [as] it meets the performance standards of that district. The Chicago Zoning Ordinance sets performance standards that vary depending on whether the district is: a restricted manufacturing district, a general manufacturing district, or a heavy manufacturing district."); Hills & Schleicher, *supra* note 5, at 255 ("Both planners and industrial users of urban land complain that intruding residential uses threaten industrial uses with complaints about noise, smell, or traffic."); see generally SALKIN, *supra* note 1, § 9.47 (discussing how performance standards are imposed and measured in typical zoning provisions).

89. See Ducharme, *supra* note 28, at 228 ("For example, a steel mill in Lincoln Park that has been operating for a hundred years under the 'manufacturing next to manufacturing' standards can suddenly, if a zoning change is granted, find itself in violation of the law [if a residential or commercial use is permitted on an adjacent property]."); see also Rast, *supra* note 40, at 183 ("Since each zoning variance approved by the city forced manufacturers occupying adjacent parcels to comply with more restrictive operating standards than before, the zoning ordinance could be used as a wedge for residential and commercial incursion into manufacturing districts.").

90. Ducharme, *supra* note 28, at 228; see also Rast, *supra* note 40, at 183 ("Ultimately, the new real estate pressures began to have a chilling effect on industrial investment activity, as uncertainties about the future of the area led more and more firms to defer expenditures for plant and equipment.").

91. See THE UNIV. OF WIS. MILWAUKEE, *supra* note 9, at 6 (discussing how the Local Economic and Employment Development ("LEED") Council worked with manufacturers to increase their hiring of Near North Side residents).

solution to address “industrial displacement.”<sup>92</sup> Fighting zoning change requests on an individual basis proved inefficient and did nothing to address the uncertainty and instability that faced the area’s industrial firms.<sup>93</sup> Therefore, the LEED Council led a study on industrial displacement to better understand its consequences and to help identify a potential city-wide solution to the issue.<sup>94</sup> The LEED Council completed the study in 1985 and provided the results to Marty Oberman, the alderman of the Forty-Third Ward.<sup>95</sup> After reviewing the study, Alderman Oberman called for a moratorium on zoning changes in the industrial area until the city could reach a comprehensive solution.<sup>96</sup> Shortly thereafter, Alderman Oberman created a task force comprised of city planning and economic officials, representatives of the LEED Council, and aldermanic staff, to devise a solution to industrial displacement.<sup>97</sup> Alderman Oberman’s involvement in the process was key for industrial advocates because it legitimized the idea of industrial displacement and transformed the problem from a local-ward issue to a city-wide issue.<sup>98</sup>

In July 1986, the task force returned and recommended that the city create a new land-use designation known as a PMD and apply it to the Clybourn Corridor.<sup>99</sup> The purpose of creating the PMD was to establish and permit land uses that were consistent with, and supportive of, industrial uses.<sup>100</sup> The task force thought that the PMD zoning

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92. Ducharme, *supra* note 28, at 229; see Winifred Curran, ‘From the Frying Pan to the Oven’: *Gentrification and the Experience of Industrial Displacement in Williamsburg, Brooklyn*, 44 URB. STUD. 1427, 1428 (July 2007) (discussing how industrial displacement is “the result of speculative real estate pressure that is tied directly to gentrification”).

93. Ducharme, *supra* note 28, at 229.

94. Rast, *supra* note 40, at 183.

95. Much of the industrial redevelopment during that period took place in the Forty-Third Ward. Ducharme, *supra* note 28, at 229–30. In 1985, the Forty-Third Ward encompassed much of what is now the Second Ward. Projects such as the Clybourn Lofts were built in the Forty-Third Ward. See Ben Joravsky, *No Entry, Gentry: New Rules for the Clybourn Corridor*, CHI. READER (Sept. 1, 1988), <http://www.chicagoreader.com/chicago/no-entry-gentry-new-rules-for-the-clybourn-corridor/Content?oid=872685> (discussing Alderman Oberman’s thoughts on the influx of commercial and residential uses to the Clybourn Corridor in the mid-1980s).

96. Ducharme, *supra* note 28, at 230.

97. Rast, *supra* note 40, at 183; see Ducharme, *supra* note 28, at 230–31 (detailing how the task force held meetings with companies to gauge their thoughts on the creation of a manufacturing district).

98. See Ducharme, *supra* note 28, at 231 (discussing how city officials began to take notice of industrial displacement as a result of the alderman’s involvement and the growing outcry from the industrial community).

99. Rast, *supra* note 40, at 183.

100. U.S. EQUITIES REALTY, *supra* note 13, at 2, 4; see Rast, *supra* note 40, at 183 (“The PMD, modeled after similar initiatives in such cities as Portland, Oregon and New York, was a zoning overlay that would prohibit further residential development and place restrictions on future



designation would protect industrial firms from pressures created by nearby nonindustrial development through the prohibition of residential and certain commercial uses in the district.<sup>101</sup> The hope was that the PMD would stabilize the manufacturing industry in the Clybourn Corridor and temper the volatile real estate market that had developed.<sup>102</sup>

While Alderman Oberman supported the idea, Mayor Washington did not immediately endorse the PMD initiative because he was concerned that endorsing it would upset real estate developers and lead to claims that he was “antigrowth.”<sup>103</sup> The LEED Council responded to Mayor Washington’s concern by rallying other pro-industrial groups to voice their support for the PMD designation.<sup>104</sup> It was only when Mayor Washington knew he had enough local and political support for the decision—sixteen months after the task force initially proposed its recommendation—that he officially endorsed the Clybourn Corridor PMD in November 1987.<sup>105</sup> Unfortunately, Mayor Washington died just three weeks after his official endorsement and his unexpected death left questions about the PMD, as the Chicago City Council had yet to officially adopt the initiative.<sup>106</sup> But Mayor Washington’s successor, Eugene Sawyer,<sup>107</sup> supported PMDs, and the initiative passed a Chicago City Council vote in October 1988.<sup>108</sup>

One of the task force’s goals in creating the PMD concept was to ensure a flexible land-use designation that other areas of the city could use.<sup>109</sup> Additionally, the task force found a city-wide, flexible policy attractive because it eliminated the need for a case-by-case determination

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commercial development within the Clybourn Corridor.”).

101. Rast, *supra* note 40, at 183; *see* Ducharme, *supra* note 28, at 222 (“The PMD concept was originally created to address the displacement concerns of these Clybourn Corridor industries. It was designed to ensure that certain manufacturing-zoned areas like the Clybourn Corridor would continue to be used for industrial purposes despite upscale residential and commercial pressures.”).

102. Rast, *supra* note 40, at 183.

103. *Id.* at 184; *see generally* Dirk Johnson, *Chicago’s Mayor Washington Dies After a Heart Attack in his Office*, N.Y. TIMES (Nov. 26, 1987), <http://www.nytimes.com/1987/11/26/obituaries/chicago-s-mayor-washington-dies-after-a-heart-attack-in-his-office.html> (discussing the life and death of Chicago Mayor Harold Washington).

104. Rast, *supra* note 40, at 184.

105. *Id.*

106. *Id.*; Wendell Hutson, *Mayor Harold Washington Honored 26 Years After His Death*, DNA INFO (Nov. 25, 2013), <https://www.dnainfo.com/chicago/20131125/woodlawn/mayor-harold-washington-honored-26-years-after-his-death>.

107. *See id.* (“Eugene Sawyer, a soft-spoken African American alderman with former ties to the machine, emerged as city council’s compromise choice for mayor. Although Sawyer’s support for the PMD was, at best, timid, the initiative survived a full city council vote.”).

108. THE UNIV. OF WIS. MILWAUKEE, *supra* note 9, at 8.

109. Ducharme, *supra* note 28, at 222.

of zoning changes.<sup>110</sup> To avoid market speculation, which inflated the value of industrial property due to anticipated conversion to residential uses, the designation would specify the permitted land uses for each PMD and the circumstances that could trigger any changes to the uses.<sup>111</sup> Pursuant to the task force's recommendation of a flexible zoning tool, the Chicago City Council amended the Chicago zoning ordinance to allow for the establishment of PMDs in other areas of the city.<sup>112</sup> In 1990, Mayor Richard M. Daley, the son of Mayor Richard J. Daley, utilized this zoning amendment to introduce PMD proposals for Goose Island and the Elston Corridor, both of which the Chicago City Council approved later that year.<sup>113</sup> Currently, the City of Chicago has fifteen PMDs.<sup>114</sup>

Pursuant to the language in Chicago's zoning ordinance, the Chicago City Council has the authority to designate an area as a PMD.<sup>115</sup> After filing an application to become a PMD, the applicant must attend at least one community meeting.<sup>116</sup> The meeting is open to the public and allows for interested residents and groups to share their views on the PMD proposal.<sup>117</sup> Following the community meeting, the zoning

110. *See id.* at 229 (“We needed a strategy to *solve* the problem, because we couldn't continue fighting zoning changes on a case-by-case basis. We might win battles, but eventually we would lose the war because we couldn't create a stable industrial environment.”).

111. *Id.*

112. The task force looked to create a designation that could be applied throughout industrial areas of Chicago, including on the city's south and west sides. THE UNIV. OF WIS. MILWAUKEE, *supra* note 9, at 9.

113. *Id.* During his campaign, Richard M. Daley was skeptical of PMDs. But upon taking office, he changed his position and supported the Goose Island and Elston Corridor districts. Critics opined that Daley's change of position was the result of generous donations from industrial operators to his campaign. John Byrne, *Gentrification Along Chicago River Worries Longtime Industrial Businesses*, CHI. TRIB. (Sept. 23, 2016), <http://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-industrial-chicago-met-20160923-story.html>.

114. The fifteen PMDs include: (1) Clybourn Corridor, (2) Elston Corridor, (3) Goose Island Corridor, (4) Kinzie Corridor, (5) Chicago/Halsted Corridor, (6) Lake Calumet, (7) Western/Ogden, (8) Stockyards, (9) Northwest, (10) West Pullman, (11) Pilsen, (12) Harlem, (13) Greater Southwest, (14) Kennedy, and (15) Armitage. CHI., ILL., ZONING ORDINANCE § 17-6-0400 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

115. The area's alderman also plays an integral role in the PMD zoning designation. In most zoning matters, the local alderman determines if a zoning change is approved, but the alderman's influence is not absolute when it comes to PMDs. *Id.* § 17-13-0700 (detailing the review and approval process of PMDs); *see generally* Joseph P. Schwieterman & Dana M. Caspall, THE POLITICS OF PLACE: A HISTORY OF ZONING IN CHICAGO (Jane Heron ed., 2006) (providing an overview of Chicago zoning law, including the influence of aldermen on the zoning process).

116. CHI., ILL., ZONING ORDINANCE § 17-13-0703 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

117. *Id.*

administrator<sup>118</sup> reviews the project and offers a recommendation to the Chicago Plan Commission.<sup>119</sup> The plan commission<sup>120</sup> then conducts another public hearing to determine the viability and need for the PMD designation.<sup>121</sup> Following this hearing, the plan commission offers a recommendation to the Chicago City Council Committee on Zoning, Landmarks and Building Standards.<sup>122</sup> This committee holds yet another public hearing before recommending the proposal to the city council.<sup>123</sup> Finally, the city council makes a final decision on whether to adopt the PMD amendment into the zoning ordinance.<sup>124</sup>

While the city council may adopt a PMD into the zoning ordinance, it is not necessarily a permanent designation. The plan commission conducts ongoing reviews of the district, monitoring its effectiveness and its adherence to the goals stated in the ordinance.<sup>125</sup> If the plan commission finds that a PMD has failed to adhere to the goals of the ordinance, the plan commission has authority to remove the PMD designation.<sup>126</sup>

118. As of March 2017, the current zoning administrator is Patricia Scudiero. *Zoning Ordinance Administration*, CITY CHI., [https://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/office\\_of\\_the\\_zoningadministrator.html](https://www.cityofchicago.org/city/en/depts/dcd/supp_info/office_of_the_zoningadministrator.html) (last visited Nov. 4, 2016).

119. CHI., ILL., ZONING ORDINANCE § 17-13-0704 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

120. *See Chicago Plan Commission*, CITY CHI., [https://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/chicago\\_plan\\_commission.html](https://www.cityofchicago.org/city/en/depts/dcd/supp_info/chicago_plan_commission.html) (last visited Nov. 4, 2016) (“The Chicago Plan Commission is responsible for the review of proposals that involve Planned Developments[,] . . . [PMDs], Industrial Corridors and Tax Increment Financing [(“TIF”)] Districts. . . . Established in 1909, the commission has 22 members.”).

121. CHI., ILL., ZONING ORDINANCE § 17-13-0705 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

122. *Id.* § 17-13-0706. Currently, eighteen aldermen serve on the Committee on Zoning, Landmarks and Building Standards. *Committee on Zoning, Landmarks and Building Standards*, CITY CHI.: OFF. CITY CLERK, <https://chicago.legistar.com/DepartmentDetail.aspx?ID=13666&GUID=EA45B76F-EA73-4933-965D-86C51DAE3D0B&Search=> (last visited Sept. 26, 2016).

123. CHI., ILL., ZONING ORDINANCE § 17-13-0707 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

124. *Id.* § 17-13-0708 (noting that a simple majority is needed to adopt a PMD).

125. *Id.* § 17-13-0711.

126. *Id.* No PMD designation has ever been removed. Ori, *supra* note 8. Advocates for PMDs throughout the city cite the dangerous precedent that could be set once the first PMD is removed as a justification for keeping the Clybourn Corridor’s PMD designation. The Chicago zoning ordinance currently lists five goals for PMDs:

(1) [F]oster the city’s industrial base; (2) maintain the city’s diversified economy for the general welfare of its citizens; (3) strengthen existing manufacturing areas that are suitable in size, location and character and which the City Council deems may benefit

The section of the Chicago zoning ordinance that provides the rules and regulations regarding PMDs is an example of exclusionary or noncumulative zoning.<sup>127</sup> Exclusionary or noncumulative zoning means that particular land uses—in this case residential and certain commercial—are prohibited from certain areas.<sup>128</sup> Courts have largely found that exclusionary zoning is constitutional because it serves a legitimate public purpose, namely promoting the general welfare.<sup>129</sup> Therefore, Chicago can enforce the PMD ordinance despite it being exclusionary.

## II. DISCUSSING THE CLYBOURN CORRIDOR PMD DEBATE

As of 2017, the City of Chicago Department of Planning and other city organizations have discussed altering or eliminating certain PMD designations in the city, including the Clybourn Corridor PMD.<sup>130</sup> These discussions have produced a passionate debate that one can divide into two camps: those who support the Clybourn Corridor’s PMD designation and want it to remain versus those who oppose the designation and want the PMD’s land-use restrictions removed.<sup>131</sup> This Part provides a useful analysis of the members and viewpoints of both camps.

### A. *Supporters of the Current PMD Designation*

In the face of momentum for removing the Clybourn Corridor PMD designation, those who advocate that the Clybourn Corridor PMD should be maintained include some the area’s industrial firms, as well as groups such as North Branch Works<sup>132</sup> and the Industrial Council of Nearwest

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from designation as a PMD; (4) encourage industrial investment, modernization, and expansion by providing for stable and predictable industrial environments; and (5) help plan and direct programs and initiatives to promote growth and development in the city’s industrial employment base.

CHI., ILL., ZONING ORDINANCE § 17-6-0400 (2015), <https://chicagocode.org/17-6-0400/>.

127. *See generally id.* (providing the requirements, standards, processes, and goals relating to PMDs in Chicago).

128. *See SALKIN, supra* note 1, § 9.15 (“The chief virtue of such ordinances is that they create districts for commerce and industry, and exclude from such districts residential and other uses which are capable of interfering with the planned use of land.”); *see generally* Hills & Schleicher, *supra* note 5 (explaining the issues that result from noncumulative zoning).

129. *See SALKIN, supra* note 1, § 9.15 (detailing how ordinances excluding residential uses from industrial areas were said to be related to public health, safety, morals, or general welfare); *see also* *Your Home, Inc. v. City of Portland*, 432 A.2d 1250, 1258 (Me. 1981) (“The exclusion of dwelling places in an Industrial Zone bears an obvious relationship to legitimate public purposes, so we have no difficulty in finding this portion of the ordinance constitutional.”).

130. *See, e.g.,* EMANUEL MODERNIZATION PLAN, *supra* note 4 (proposing a plan for redevelopment of the North Branch Industrial Corridor).

131. Arruza, *supra* note 12; Ori, *supra* note 8.

132. North Branch Works is a community development organization and its mission is to

Chicago (“ICNC”).<sup>133</sup> Supporters that seek to maintain the current Clybourn Corridor PMD designation are mainly concerned that changes to the zoning laws could cause increased land prices and nuisance claims, which could ultimately lead to the demise of industrial firms throughout Chicago.<sup>134</sup>

PMD advocates argue zoning restrictions that prevent residential uses keep land prices down.<sup>135</sup> They claim that without PMD zoning restrictions, industrial firms would be priced out of the area due to higher property costs resulting from speculation about potential residential use.<sup>136</sup> In the Clybourn Corridor specifically, with its close proximity to the Loop, the Chicago River, an expansive retail district, and multimillion dollar homes in Lincoln Park, Bucktown, and Old Town, PMD advocates argue that property values would skyrocket if zoning restrictions were lifted.<sup>137</sup> Even now, speculation that the city will lift the Clybourn Corridor PMD designation has led many developers to buy and hold property for future real estate projects.<sup>138</sup> This practice has left many

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expand industry in the North Branch, Addison, Ravenswood, and Kennedy Industrial corridors. *Leveraging Business Growth for Local Jobs*, NORTH BRANCH WORKS, <http://northbranchworks.org/> (last visited Sept. 24, 2016); see Doepel & Holzer, *supra* note 27 (“North Branch Works is a nonprofit organization and a delegate agency of the city’s Department of Planning and Development; our mission is to retain and expand industry and businesses located in several North Side industrial corridors.”).

133. The Industrial Council of Nearwest Chicago (“ICNC”) represents over 400 companies, including many in the Kinzie Industrial Corridor. *Overview*, INDUS. COUNCIL NEARWEST CHI., <http://www.industrialcouncil.com/overview.html> (last visited Sept. 24, 2016). See, e.g., Doepel & Holzer, *supra* note 27 (promoting PMDs and noting the benefits PMDs provide to industrial firms).

134. See Doepel & Holzer, *supra* note 27 (“The city is considering eroding PMDs by proposing to allow residential development in the areas, which is incompatible with the businesses that succeeded there for decades.”); see also SALKIN, *supra* note 1, § 9.15 (“The intrusion of homes in an industrial neighborhood may limit expansion, interfere with normal industrial activity, and subject the residential user (however voluntarily) to health and safety hazards. In a community where prime industrial land is scarce, the residential use of such land may constitute a serious waste.”).

135. See Hills & Schleicher, *supra* note 5, at 269 (discussing how cities have prohibited residential and commercial uses in traditionally industrial areas as a type of subsidy to these industrial firms); see also Hengels, *supra* note 26 (“In a race to the bottom, prohibition of housing and other uses in PMDs drives the value of that land down to the point it can compete on price with most undesirable suburban locations.”).

136. Hengels, *supra* note 26; see Hills & Schleicher, *supra* note 5, at 255 (“Manufacturers and unions worry that residential users will bid up the price of land, causing landowners to hike rents on industrial users who will respond by fleeing to the suburbs.”).

137. See Ryan Ori, *Mayor’s Move Could Bring Homes, Stores to Finkl Site*, CRAIN’S CHI. BUS. (Apr. 2, 2016), <http://www.chicagobusiness.com/article/20160402/ISSUE01/304029991/mayors-move-could-bring-homes-stores-to-finkl-site> (discussing the Clybourn Corridor’s unique location and potential for economic growth).

138. Ryan Ori, *Ace Hotel Zoning Move Irks Industrial Group*, CRAIN’S CHI. BUS. (Apr. 16, 2015), <http://www.chicagobusiness.com/realestate/20150416/CRED03/150419876/ace-hotel-zoning-move-irks-industrial-group>; see also Ducharme, *supra* note 28, at 228 (noting investors

buildings in the area vacant as they wait to be redeveloped under possibly revised zoning laws.<sup>139</sup> While residential uses typically increase property values, PMD supporters argue that the city will lose tax revenue if industrial firms leave the area.<sup>140</sup> Business properties pay a two-and-half times higher property tax rate than residential properties and they also pay sales taxes, income taxes, and transportation taxes.<sup>141</sup>

PMD supporters also claim that allowing residential and additional commercial uses in the Clybourn Corridor will lead to nuisance claims against industrial firms.<sup>142</sup> Industrial facilities must comply with certain performance standards based on the properties that surround them.<sup>143</sup> If residential, office, and additional commercial uses enter the area, industrial firms will either have to alter their practices—a change that could be extremely expensive—or leave the area altogether.<sup>144</sup> Moreover, under the Chicago municipal code, the Department of Business Affairs and Consumer Protection may suspend or revoke a business' license if it creates a nuisance by failing to correct an

would take advantage of speculation prior to PMDs being established by purchasing property at industrial prices and holding onto it before selling it at commercial or residential prices).

139. See Ori, *supra* note 138; see also Byrne, *supra* note 113 (remarking that there are large pieces of vacant or underutilized land along the Chicago River due to current zoning restrictions).

140. Doepel & Holzer, *supra* note 27.

141. *Id.* The “two-and-a-half-times higher” figure stems from the fact that residential properties are assessed at 10 percent of full market value and industrial properties are assessed at 25 percent of full market value. While industrial firms are assessed at a higher rate than residential firms, industrial firms are often subject to tax incentives that reduce the amount of taxes they must pay. Moreover, if a former industrial parcel sits vacant, that vacant land is assessed at the 10 percent rate. Finally, it should be noted that commercial properties are also assessed at 25 percent of full market value. See Gary DeClark, *Breaking Down Cook County Real Estate Tax*, CBRE (Mar. 3, 2016), <https://cbrechicago.com/2016/03/03/breaking-down-cook-county-real-estate-tax/> (analyzing Cook County real estate taxes and how tax bills are calculated); see generally *Economic Development Incentives*, CITY OF CHICAGO, [https://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/economic\\_developmentincentives.html](https://www.cityofchicago.org/city/en/depts/dcd/supp_info/economic_developmentincentives.html) (last visited Nov. 4, 2016) (detailing various tax incentives that are available to industrial organizations).

142. Hills & Schleicher, *supra* note 5, at 258. A nuisance claim is a cause of action brought by landowners for unreasonable interference with the use and enjoyment of their property as a result of disturbing environmental conditions caused by a neighboring property. See 2 ALVIN A. ARNOLD & MARK S. DENNISON, *REAL ESTATE TRANSACTIONS: STRUCTURE AND ANALYSIS WITH FORMS* § 15.45, Westlaw (database updated Aug. 2016) (providing an overview of nuisance claims).

143. CHI. MUN. CODE § 4-4-313 (2016), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago\\_il/municipalcodeofchicago?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicago\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il); see also KING, *supra* note 88 (noting that the Chicago zoning ordinance includes performance standards that regulate noise, vibration, smoke and particulate matter, toxic matter, noxious odorous matter, fire and explosive hazards, and glare or heat).

144. See Ducharme, *supra* note 28, at 228 (detailing how heightened performance standards can lead to increased operating costs that a firm's competitors in nonresidential areas do not have to incur).

objectionable condition (e.g., disturbance of the peace or excessive loud noise).<sup>145</sup>

Additionally, PMD advocates note that the Clybourn Corridor will increase in density<sup>146</sup> if the city removes the current zoning restriction.<sup>147</sup> If this already dense area becomes even more crowded, the city will need to implement costly infrastructure improvements to the area, particularly to the corridor's roads.<sup>148</sup>

While the Clybourn Corridor PMD has garnered the majority of the PMD attention, PMD supporters fear that lifting the zoning restrictions in this one PMD could have a domino effect, eventually causing the city to remove the designation for all PMDs in Chicago.<sup>149</sup> ICNC spoke of the danger of such a precedent after the controversial zoning change of a property now set to become an Ace Hotel.<sup>150</sup>

In April 2015, the Chicago City Council approved an ordinance that removed a 5,000 square-foot parcel of land from the Kinzie Corridor PMD and permitted the construction of a hotel on the parcel, a type of use that is not permitted under PMD zoning restrictions.<sup>151</sup> Even though the ordinance removed only one parcel from the PMD, the ICNC Director of Economic Development expressed concern about the precedent that the ordinance set, given that the city was quick to comply with the developer's requests, and that other developers were likely to push for

145. CHI. MUN. CODE § 4-4-313 (2016), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago\\_il/municipalcodeofchicago?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicago\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il); see ARNOLD & DENNISON, *supra* note 142, § 15:45 (discussing how a private nuisance claim can be brought as a result of “anything that annoys or disturbs the free use of one’s property, or which renders its ordinary use or physical occupation uncomfortable”); Beth Bates Holliday, *Cause of Action for Private Nuisance Caused by Noise, Light, or Odors Emanating from Neighboring Property*, in 2 CAUSES OF ACTION 277 § 4, Westlaw (database updated Mar. 2017) (stating that excessive dust, noise, vibration, bright lights, and foul odors may constitute a nuisance).

146. Density refers to how big a building can be. Density is measured by a building’s floor area ratio (“FAR”), which divides the total square footage of the building’s floors by the square footage of the parcel the structure is built on. The higher the FAR, the denser the building. *Zoning Rules*, 2ND CITY ZONING, [https://secondcityzoning.org/zoning\\_rules/](https://secondcityzoning.org/zoning_rules/) (last visited May 2, 2017).

147. See Arruza, *supra* note 12 (“It could open up hundreds of acres currently restricted to industry to housing and retail development, adding even more density to an already congested community.”).

148. See Ori, *supra* note 8 (statement of Alderman Hopkins) (“[R]edvelopment of the area will require a master plan, part of which will address traffic concerns.”).

149. Ori, *supra* note 138.

150. *Id.*

151. See Melissa Harris, *Get Ready for Exceptions to the Fulton District*, CHI. TRI. (July 30, 2015), <http://www.chicagotribune.com/business/columnists/ct-harris-fulton-market-nobu-0731-biz-20150730-column.html> (discussing the exceptions that were required to allow an Ace Hotel to be built in Fulton Market, including the removal of the parcel from the PMD, a zoning change, and an exemption from the guideline).

similar zoning changes.<sup>152</sup>

Given the threat of a domino effect, PMD advocates argue that the City of Chicago should not eliminate the PMD designation, but instead should shift its focus to attracting advanced manufacturing to the area.<sup>153</sup> Advanced manufacturing involves the use of computer-controlled or microelectronic-based equipment in the design, production, or manufacturing of a product.<sup>154</sup> PMD supporters want to use PMDs and the city's growing reputation as a leader in advanced manufacturing to attract new advanced manufacturing to Chicago.<sup>155</sup> In 2014, Chicago was awarded a \$70 million grant from the Defense Department for a digital-manufacturing center known as UI Labs.<sup>156</sup> UI Labs is an "innovation accelerator" that brings together companies, researchers, and entrepreneurs to collaborate in the formation of ideas and products.<sup>157</sup> PMD advocates argue that with its burgeoning reputation and inherent metropolitan advantages, Chicago can continue to attract government and private investment in advanced manufacturing that will create both financial and social benefits for the city.<sup>158</sup>

### B. Opponents of the Current PMD Designation

While advocates see the Clybourn Corridor PMD designation as a useful tool to preserve Chicago's industrial sector, opponents see the current PMD designation as a burden. Those who seek to have the city

152. See Ori, *supra* note 138 ("The problem is that the developer asked that the boundaries be moved to accommodate their project, and the city did it. Our concern is about the precedent that sets.").

153. See Arruza, *supra* note 12 (discussing how the executive director of North Branch Works wants the city to focus on developing advanced manufacturing in the North Branch Industrial Corridor).

154. *Advanced Manufacturing Technology*, OECD, <https://stats.oecd.org/glossary/detail.asp?ID=52> (last visited Sept. 24, 2016); see generally EXECUTIVE OFF. OF THE PRESIDENT, REPORT TO THE PRESIDENT ON CAPTURING DOMESTIC COMPETITIVE ADVANTAGE IN ADVANCED MANUFACTURING (July 2012), [https://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast\\_amp\\_steering\\_committee\\_report\\_final\\_july\\_27\\_2012.pdf](https://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast_amp_steering_committee_report_final_july_27_2012.pdf) (noting that in a report to President Obama, the President's Council of Advisors on Science and Technology described advanced manufacturing as "composed of efficient, productive, highly integrated, tightly controlled processes").

155. John Pletz, *Chicago Wins \$70 Million Grant from UI Labs*, CRAIN'S CHI. BUS. (Feb. 22, 2014), <http://www.chicagobusiness.com/article/20140222/BLOGS11/140229927/chicago-wins-70-million-grant-for-ui-labs>.

156. *Id.*

157. Pletz, *supra* note 155; *What is UI Labs?*, UI LABS, <http://www.uilabs.org/#about> (Sept. 24, 2016).

158. See Peter A. Creticos, *Prospects of New Manufacturing in the Urban Core*, 44 REAL EST. REV. J. (2015) ("These [industrial job] suppliers represent a sub-set of businesses that look to attract top-flight engineering and scientific talent for whom lifestyle and community amenities are often important factors in determining where they plan to work.").



remove the Clybourn Corridor's PMD designation justify the proposed change to the current zoning laws by citing to the area's industrial employment statistics, the current trend of urban deindustrialization, and opportunities to gain increased tax revenue by allowing residential and additional commercial uses. The group that opposes PMDs includes many residents of adjacent neighborhoods, such as Lincoln Park and Bucktown; developers who are looking to build new commercial and residential projects in the area; Alderman Hopkins, Mayor Emanuel, and other city officials who want the area to become a hub of economic activity and residential growth; and even some existing industrial firms in the area who want to sell their land at residential prices.<sup>159</sup>

Currently, 44,997,000 square-feet of vacant land coats Chicago's industrial corridors and this figure does not even include land that is operational, but being underutilized.<sup>160</sup> Each year, Chicago loses an estimated \$13 million in additional property taxes by not allowing residential development in the Clybourn Corridor PMD.<sup>161</sup> This loss in revenue is due to the fact that residential buildings tend to generate higher property taxes than industrial firms.<sup>162</sup>

In addition to lost tax revenue, opponents of the current PMD designation also cite Chicago's, specifically the Clybourn Corridor PMD's, dramatic decrease in manufacturing jobs over the past fifteen years as support for elimination of the PMD designation.<sup>163</sup> Despite the decrease in manufacturing jobs, the overall employment statistics in the North Branch Industrial Corridor are increasing, due in large part to

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159. See Hengels, *supra* note 26 (detailing how certain industrial firms have pushed to eliminate the PMD designation to sell their land for more money); see also Arruza, *supra* note 12 (providing perspectives of city officials and private groups on the PMD issue).

160. The calculation of total vacant land also does not include scattered, noncontiguous, or unused manufacturing zoned parcels outside of industrial corridors. U.S. EQUITIES REALTY, *supra* note 13, at 4.

161. NATIONS, *supra* note 39, at 2; see THE UNIV. OF WIS. MILWAUKEE, *supra* note 9, at 8 (discussing how the City of Chicago forgoes higher property tax revenues that could result from allowing residential and commercial uses by maintaining current land-use restrictions); see also DeClark, *supra* note 141 (noting that by adding residential uses to the area, the city could effectively increase tax revenue generated).

162. Jackson Danbeck, *Old Finkl Steel Site Ripe for Development*, DEPAULIA (Apr. 17, 2016), <http://depauliaonline.com/2016/04/17/old-finkl-steel-site-ripe-redevelopment/>; see also Byrne, *supra* note 113 (discussing how allowing residential uses in the Clybourn Corridor will broaden the city's tax base and lessen the impact of various tax increases).

163. See U.S. EQUITIES REALTY, *supra* note 13, at 15 (detailing Chicago manufacturing employment statistics between 2002 and 2011); Micah Maidenber, *Where Do Chicago Manufacturing, Transportation Employees Live and Work?*, CRAIN'S CHI. BUS. (Apr. 29, 2016), <http://www.chicagobusiness.com/article/20160429/NEWS05/160429806/where-do-chicago-manufacturing-transportation-employees-live-and-work> (noting that Chicago's manufacturing jobs have decreased by 33 percent when compared to the jobs ten years ago).

growth in retail jobs.<sup>164</sup> For each nonindustrial job created in the Clybourn Corridor PMD between 1988 and 2004, one manufacturing job was lost.<sup>165</sup> Therefore, opponents of the PMD designation urge the City of Chicago to recognize that removing the Clybourn Corridor's PMD designation will not decrease job opportunities.

Urban deindustrialization is not solely a Chicago phenomenon; it extends throughout the United States.<sup>166</sup> Industrial firms prioritize cheap land (i.e., land near highways or airport and away from residential uses) over a location near the downtown areas of major cities.<sup>167</sup> Cheap land enables industrial firms to build large, single-floor facilities that are more efficient than the multistory buildings that one typically finds in cities.<sup>168</sup> Not only do industrial firms benefit from the land being cheap, but the lack of residential development in these areas greatly reduces the number of complaints from neighbors and eases performance standards.<sup>169</sup> Suburban municipalities also attract industrial relocation because they offer incentive packages, such as tax breaks and funding for environmental remediation.<sup>170</sup> Finally, the aged infrastructure of industrial buildings in the city can lead firms to move to the suburbs.<sup>171</sup> Rather than deal with decaying, inefficiently structured buildings in the

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164. Overall, employment increased 44.4 percent in the North Branch Industrial Corridor between 2002 and 2011. U.S. EQUITIES REALTY, *supra* note 13, at 16; *see also* THE UNIV. OF WIS. MILWAUKEE, *supra* note 9, at 11 (stating that jobs and businesses in the retail and service sectors more than doubled between 2000 and 2004).

165. U.S. EQUITIES REALTY, *supra* note 13, at 16.

166. *See* Maidenberg, *supra* note 163 (discussing how a recent Chicago Metropolitan Agency of Planning report showed manufacturing jobs are moving from cities to suburbs throughout the United States, not just in Illinois).

167. *See* Hengels, *supra* note 26 (“Where firms once competed for locations with access to logistical hubs and outbid other uses for land near waterways in cities, they now seek locations with the cheapest land where they can have a large, single-floor facility under one roof.”); *see also* Maidenberg, *supra* note 163 (“While the suburbanization of manufacturing has been going on for years, the push appears to be deepening, with further-out villages and cities experiencing the best factory-job growth rates in the region.”).

168. Hengels, *supra* note 26; *see Industrial Development Trends in the CMAP Region*, CMAP (Jan. 16, 2015), [http://www.cmap.illinois.gov/about/updates/-/asset\\_publisher/UIMfSLnFfMB6/content/industrial-development-trends-in-the-cmap-region](http://www.cmap.illinois.gov/about/updates/-/asset_publisher/UIMfSLnFfMB6/content/industrial-development-trends-in-the-cmap-region) (noting that Chicago's average industrial parcel size is about two thirds of an acre, significantly smaller than the average industrial parcel found in suburban Cook County, Will County, Kendall County, and DuPage County).

169. *See id.* (discussing the reduced risk of noise and air pollution complaints on sites close to “negative externalities”).

170. Maidenberg, *supra* note 163; *see generally* Gary Guenther, *Federal Tax Benefits for Manufacturing: Current Law, Legislative Proposals, and Issues for the 112th Congress*, CONG. RES. SERV. 7 (Sept. 20, 2012), <https://www.fas.org/sgp/crs/misc/R42742.pdf> (discussing how tax preferences can be provided through exemptions, deductions, preferential tax rates, credits, or tax deferrals).

171. U.S. EQUITIES REALTY, *supra* note 13, at 12.

city, many industrial firms choose to move to the suburbs to open new facilities that are better equipped to handle their production.<sup>172</sup>

These factors have caused numerous industrial firms in the Clybourn Corridor to relocate to other areas or close entirely, leaving large vacant parcels in their wake. Opponents of the current PMD designation hope to ease zoning restrictions so these vacant parcels can be filled with thriving residential, commercial, and office complexes. For example, in 2013, A. Finkl & Sons steel mill made the most publicized departure from the Clybourn Corridor when it relocated its operations to a new facility on the south side of Chicago and subsequently demolished the buildings on its former Clybourn Corridor site.<sup>173</sup> Developer Sterling Bay is in advanced negotiations to purchase the twenty-eight acre site located in the heart of the Clybourn Corridor.<sup>174</sup> Sterling Bay has already purchased two other industrial properties near the Finkl site: Guttman Leather Tannery and Lakin General.<sup>175</sup> If Sterling Bay is able to complete the purchase of the Finkl site, the developer would own nearly forty acres of property along the Chicago River once the PMD zoning designation is eliminated.<sup>176</sup> C.H. Robinson, a logistics firm, has already agreed to lease the new 207,000-square-foot office building that Sterling Bay is building on the former Guttman Leather Tannery.<sup>177</sup> The developer is purchasing land currently zoned for industrial use, anticipating that the city will eliminate the PMD zoning designation. If the designation is eliminated and replaced by a zoning district that allows residential, commercial, and all types of office developments, Sterling Bay will be able to sell the land for a much higher value than for which it purchased.

Sterling Bay is also negotiating the purchase of the former Sims Metal Management property, a 4.2-acre site on the west side of the Chicago

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172. Hengels, *supra* note 26.

173. Ori, *supra* note 137. A Finkl & Sons Co. moved to Chicago in 1902. A. FINKL & SONS CO., <http://www.finkl.com/About.aspx> (last visited May 11, 2017). “It is now the world’s leading supplier of forging die steels, plastic mold steels, die casting tool steels and custom open-die forgings.” *Id.* Their facility is located at 1355 E 93rd St., Chicago, IL 60619. *Id.*

174. Ori, *supra* note 137; Ryan Ori, *Proposed Tower at Union Station Would Be One of City’s Tallest*, *CRAIN’S CHI. BUS.* (Sept. 8, 2016), <http://www.chicagobusiness.com/realestate/20160908/CRED03/160909861/sterling-bay-proposes-one-of-chicagos-tallest-towers-at-union-station> [hereinafter Ori, *Union Station*].

175. Ori, *supra* note 137.

176. *Id.*

177. The office building to be used by C.H. Robinson falls within the permitted uses of the Clybourn Corridor PMD because it constitutes as a “high-technology” use under section 17-6-0403-F of the Chicago zoning ordinance. CHI., ILL., ZONING ORDINANCE § 17-6-0403-F (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il; see generally Ori, supra note 8); see generally Ori, *supra* note 8 (discussing C.H. Robinson’s agreement to lease land from Sterling Bay).

River.<sup>178</sup> Sims Metal Management's facility in the North Branch Industrial Corridor closed after thirty-nine years of operation due to "market conditions."<sup>179</sup> Also, after receiving complaints from nearby residents and Alderman Hopkins, the city ordered General Iron Industries, another company that had been in business for over 100 years in the Clybourn Corridor, to close for code violations.<sup>180</sup> Prior to the site being closed, Lincoln Park residents had complained about explosions and fires at the former scrap yard, and Alderman Hopkins approached the owners of the facility about relocating.<sup>181</sup> Fleet and Facility Management, located in the Elston Corridor PMD is also leaving the North Branch Industrial Corridor.<sup>182</sup> The city-owned garage is moving due to high operation expenses.<sup>183</sup> The city plans to sell the eighteen-acre riverfront property to a developer who will also be required to build Fleet and Facility Management's new facility in Englewood.<sup>184</sup> Only a handful of industrial firms remain in the Clybourn Corridor: Medill Garbage Facility, ComEd, and Liberty Tire.<sup>185</sup>

While many industrial firms have left the area, retailers have pounced on properties in the buffer zone of the Clybourn Corridor. The area's retail district now totals more than 2.6 million square feet, more than any other retail area in Chicago, except for the Magnificent Mile on North

178. Ori, *supra* note 8.

179. *Id.*; see Alisa Hauser, *Bucktown Scrap Yard, Finkl Plant Neighbor, Shutters After 39 Years*, DNA INFO (Nov. 9, 2015), <https://www.dnainfo.com/chicago/20151109/bucktown-scrap-yard-finkl-plant-neighbor-shutters-after-39-years> ("Industry reports indicate a weakening demand for scrap metal."); see also SIMS METAL MGMT., [http://www.simsmm.com/local-solutions/north-america/illinois/south-paulina-shedder-yard\\_main-yard-10](http://www.simsmm.com/local-solutions/north-america/illinois/south-paulina-shedder-yard_main-yard-10) (last visited Oct. 13, 2016) ("Sims Metal Management's scrap metal recycling yard at S. Paulina Street in Chicago, IL[,] purchases and processes ferrous [and] non-ferrous scrap metal and electronic waste. The recycling center specializes in bus, railcars [and] aluminum trailer recycling and stainless steel operations.").

180. See generally Micah Maidenberg, *City Shuts Down General Iron Scrap Yard, but Owner Vows to Reopen*, CRAIN'S CHI. BUS. (Apr. 28, 2016), <http://www.chicagobusiness.com/article/20160428/news05/160429801/city-shuts-down-general-iron-scrap-yard-but-owner-vows-to-reopen> ("Inspectors grouped the violations they found under seven categories, ranging from elevator and electrical violations to problems with the company's metal shredder and fire hazards.").

181. *Id.*

182. Mina Bloom, *Redeveloping the River: 18 Riverfront Acres to Open up in Changing Area*, DNA INFO (Aug. 30, 2016), <https://www.dnainfo.com/chicago/20160830/lincoln-park/redeveloping-river-18-riverfront-acres-open-up-changing-area>.

183. *Id.*

184. See *id.* (providing that Fleet and Facility Management's new facility will be located in Englewood at the former Kennedy-King College site).

185. The City of Chicago classifies Medill Garbage Facility and ComEd as "critical services" because they provide time-sensitive utilities to the North Side of Chicago. Liberty Tire is classified as "outdoor industrial" because of its outdoor industrial uses. EMANUEL MODERNIZATION PLAN, *supra* note 4.

Michigan Avenue.<sup>186</sup> In 2015, the average asking price for retail space in the Clybourn Corridor was \$46.64 per square foot, a 6.5 percent increase from the previous year.<sup>187</sup> The cornerstone of the retail boom in the Clybourn Corridor is New City, a 360,000-square-foot development which opened in late 2015.<sup>188</sup> New City's developer, Structured Development, is also planning additional projects in the area that feature retail and office uses.<sup>189</sup>

Opponents use these arguments to show that the Clybourn Corridor PMD designation is outdated and inefficient. Still, advocates for the current designation argue that the designation must remain to protect the industrial sector of Chicago's economy.

### III. ANALYSIS

After analyzing the substantive arguments surrounding the current debate regarding the Clybourn Corridor's PMD designation, one can look to two examples from opposite sides of the United States to demonstrate the importance of the Clybourn Corridor PMD debate: New York City and Seattle. An examination of both reveals the two different outcomes Chicago may experience depending on the resolution of the PMD debate.

#### A. New York City: Maintaining Industrial Zoning

The New York City zoning code features a zoning classification similar to Chicago's PMD designation known as the industrial business zone ("IBZ").<sup>190</sup> New York City has twenty-one IBZs, which the city

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186. Ryan Ori, *Clybourn Corridor Closing the Gap with Mag Mile*, CRAIN'S CHI. BUS. (Jan. 25, 2016), <http://www.chicagobusiness.com/realestate/20160125/CRED02/160129917/clybourn-corridor-closing-the-gap-with-mag-mile>.

187. *See id.* (stating that retailers may prefer opening a store in the Clybourn Corridor because of the nearby wealthy residents who will provide steady business, as opposed to the tourist-driven Magnificent Mile).

188. New City features shopping, dining, and nightlife establishments. *Id.*

189. *Id.*; *see also* Alby Gallun, *This \$80 Million Clybourn Corridor Project Is Moving Forward*, CRAIN'S CHI. BUS. (Mar. 23, 2015), <http://www.chicagobusiness.com/realestate/20150323/CRED03/150329955/this-80-million-clybourn-corridor-project-is-moving-forward> ("Chicago-based Structured Development filed plans with the city for the 213,000 square-foot building at the corner of Kingsbury and Blackhawk streets, just west of New City.").

190. Sally Goldenberg, *Mayor, City Council to Ban Housing in City's 21 Industrial Business Zones*, POLITICO (Nov. 3, 2015), <http://www.politico.com/states/new-york/city-hall/story/2015/11/mayor-city-council-to-ban-housing-in-citys-21-industrial-business-zones-027511>; *see generally* NYC Industrial Business Zones, N.Y.C. ECON. DEV. CORP., <http://www.nycedc.com/industry/industrial/nyc-industrial-business-zones> (last visited Nov. 2, 2016) (noting that New York City established industrial business zones ("IBZs") to "protect existing manufacturing districts and encourage industrial growth citywide.").

created to protect industrial uses and promote industrial growth.<sup>191</sup> Residential uses are not permitted in IBZs; therefore, developers who wish to rezone land in IBZs for residential purposes must complete a full public review process.<sup>192</sup> But in November 2015, the current mayor of New York City, Bill de Blasio, declared that he would not allow any homes to be built in IBZs during his time in office.<sup>193</sup> Those who support Mayor de Blasio's move note that his decision demonstrates his effort to grow the city's industrial market and to create 20,000 industrial jobs over the next ten years.<sup>194</sup>

Others, however, argue that reserving so much physical space for solely manufacturing uses is a waste and that the city could better use this space to create affordable housing, especially considering New York City's current affordable housing crisis.<sup>195</sup> Those who oppose the mayor's decision also note that the restriction prevents developers from developing condos in IBZs along New York City's waterfront, missing an opportunity to collect additional taxes.<sup>196</sup>

### B. Seattle: Growth Through Creative Policy

Unlike Chicago and New York City, Seattle has implemented a plan that has increased the permitted land uses in an area previously zoned for industrial and some commercial use, transforming it into one of the city's fastest growing neighborhoods.<sup>197</sup> In 2004, the Seattle City Council

191. See N.Y.C. ECON. DEV. CORP. (MGIS UNIT), [http://www.nycedc.com/sites/default/files/filemanager/All\\_Ratified\\_IBZs\\_Fall\\_2013.pdf](http://www.nycedc.com/sites/default/files/filemanager/All_Ratified_IBZs_Fall_2013.pdf) (last visited May 2, 2017) (providing maps of each IBZs' boundaries).

192. See *Industrial*, N.Y.C. ECON. DEV. CORP., <http://www.nycedc.com/industry/industrial> (last visited Nov. 2, 2016) ("Residential uses are currently not permitted in IBZs, and any applications for land-use changes that affect IBZ areas would be carefully considered in the context of the Administration's economic development goals, and would require a clear land-use rationale and full public review process.").

193. See *id.* (quoting Mayor de Blasio) ("I want to send a clear message to the developers of the city. If you're buying land in an industrial area, if you're buying land in an IBZ, plan on creating an industrial business, because that's our vision for these areas."); see generally *Industrial*, *supra* note 192 (discussing specific elements of Mayor de Blasio's industrial action plan).

194. Goldenberg, *supra* note 190.

195. *Id.*; see Jake Blumgart, *The Ghost Tenants of New York City*, SLATE (Mar. 3, 2016), [http://www.slate.com/articles/business/metropolis/2016/03/new\\_york\\_city\\_public\\_housing\\_could\\_have\\_more\\_than\\_100\\_000\\_ghost\\_tenants.html](http://www.slate.com/articles/business/metropolis/2016/03/new_york_city_public_housing_could_have_more_than_100_000_ghost_tenants.html) (discussing how New York City's median rent in 2013 was \$2,900 and that there was a 39 percent decrease in affordable housing units in the city); see also Hills & Schleicher, *supra* note 5, at 256 ("In 2005, the City of New York zoned 22,500 acres of land exclusively for manufacturing uses . . . this land could provide thousands of units of housing in a city with a notorious shortage of residential units.").

196. Goldenberg, *supra* note 190.

197. See CITY OF SEATTLE, URBAN CENTER NEIGHBORHOOD PLAN: SOUTH LAKE UNION 1 (Sept. 2007), [http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web\\_informational/dpds021899.pdf](http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpds021899.pdf)

designated a neighborhood called South Lake Union (“SLU”) as an “urban center” (i.e., an area that the city identified as a future center for growth in jobs and housing).<sup>198</sup> Having identified the neighborhood as an area of future growth, the city aimed to create over 9,000 housing units and 36,000 new jobs in SLU by 2024 through rezoning, investment programs, and development incentives.<sup>199</sup>

The city rezoned large swaths of property from an “industrial-commercial” (“IC”) designation to a “Seattle-mixed” (“SM”) designation.<sup>200</sup> Under the IC-zoning designation, residential uses are prohibited, but under the SM designation, various types of residential and commercial uses are permitted.<sup>201</sup> The city also invested in transportation and the creation of green spaces to make the neighborhood more functional and livable.<sup>202</sup>

In 2013, Seattle doubled-down on its push to redevelop SLU and adopted incentive zoning policies, which enabled developers to exceed prescribed height and density (i.e. floor area) limitations if they contributed to public amenities and affordable housing.<sup>203</sup> Seattle’s updated policies have transformed SLU from a predominately industrial area with some auto-oriented commercial uses to one of Seattle’s most popular residential and commercial areas.<sup>204</sup>

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(analyzing Seattle’s South Lake Union by providing background on the area and detailing plans for the future).

198. *New South Lake Zoning Regulations*, SEATTLE DEP’T CONSTRUCTION & INSPECTIONS, (May 31, 2013), <http://buildingconnections.seattle.gov/2013/05/31/new-south-lake-union-zoning-regulations/>; *South Lake Union*, OFF. PLAN. & COMMUNITY DEV., <http://www.seattle.gov/dpd/cityplanning/completeprojectslist/southlakeunion/background/default.htm> (last visited Sept. 24, 2016).

199. *South Lake Union: Urban Design Framework*, CITY SEATTLE, [http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web\\_informational/dpds021898.pdf](http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpds021898.pdf) (last visited Apr. 12, 2017).

200. *New South Lake Zoning Regulations*, *supra* note 198.

201. *Id.*

202. SUSTAINABLE CMTYS., SEATTLE’S SOUTH LAKE UNION NEIGHBORHOOD (Dec. 2012), <https://www.sustainablecommunities.gov/sites/sustainablecommunities.gov/files/docs/seattle-south-lake-union.pdf>.

203. The rezoning also created active public spaces by instituting ground-floor retail along main streets. Furthermore, it incentivized developers to preserve landmark properties and open spaces through height and floor-area-ratio bonuses. *See New South Lake Zoning Regulations*, *supra* note 198 (“The rezone legislation will implement an incentive zoning program that will allow additional height and floor area in exchange for providing the amenities necessary to support the increased growth in the neighborhood.”).

204. The immediate growth that took hold in the area once the zoning regulations were changed led the city to create a broader planning agenda to take advantage of the area’s full potential. BERK & HEARTLAND, LLC, PUBLIC AND PRIVATE INVESTMENT IN SOUTH LAKE UNION 5 (July 2012), [http://www.seattle.gov/Documents/Departments/economicDevelopment/SLUPublicPrivateReportFinal-2012\\_0703\\_small.pdf](http://www.seattle.gov/Documents/Departments/economicDevelopment/SLUPublicPrivateReportFinal-2012_0703_small.pdf).

Despite the zoning changes and influx of residential and commercial uses, SLU has not abandoned its industrial past. Instead, it has shifted its focus from traditional, high-polluting, nuisance-creating manufacturing to advanced manufacturing.<sup>205</sup> The area's biotech, global health, and IT industry has grown, and, as a result, SLU has been able to attract major companies such as Amazon to build a new campus in the neighborhood.<sup>206</sup> Employment in computer, scientific, and technical services has increased in the area by a rate of 10 percent per year while manufacturing and warehousing have decreased.<sup>207</sup>

Chicago is fortunate in that it can use both New York City and Seattle as examples of how industrial zoning policies can impact the city's future. If Chicago were to follow the model provided by New York, the city would maintain the Clybourn Corridor PMD and attempt to reinvigorate the area as an industrial hub. But if Chicago were to follow the Seattle model, it would eliminate the Clybourn Corridor PMD designation, create more flexible zoning laws, build upon its already noteworthy reputation as a hub for advanced manufacturing, and tap into the vast potential of a unique area of the city.

#### IV. PROPOSAL

Declining employment numbers, lost tax revenue, and a mass exodus of industrial firms have left the Clybourn Corridor's PMD designation tenuous. Alderman Hopkins stated that the PMD zoning "is almost like a set of handcuffs" and that the "Clybourn Corridor, specifically, has run its course."<sup>208</sup> Alderman Hopkins justified these comments by citing the area's unique location along the Chicago River, its position near public transportation, and its closeness to multimillion dollar homes in Lincoln Park, Bucktown, and Old Town.<sup>209</sup>

In collaboration with the Department of Planning and Development and community groups, Mayor Emanuel is developing a plan to modernize the entire North Branch Industrial Corridor.<sup>210</sup> Chicago

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205. *See id.* ("The area is a center for a number of growing sectors such as biotechnology, information technology, and global health.")

206. *Id.* at 5–6.

207. *See id.* at 8 ("In 2011, industrial sectors comprised only 4% (compared to 30% in 1995) of total employment, while professional, computer, and scientific services comprised 15% of all employment.")

208. Latrace, *supra* note 36; Ori, *supra* note 8.

209. Ori, *supra* note 8; *see* Ori, *supra* note 137 (noting how wealthy areas around the Clybourn Corridor offer a unique opportunity for growth in the area).

210. *See* EMANUEL MODERNIZATION PLAN, *supra* note 4 (stating that the purpose of the project is to "guide future development and inform transportation framework" and that the city has aimed "to capture the full picture of the area and the connection between the surrounding



officials are working with local residents and interested parties to create a proposal that addresses the changing dynamics of the North Branch Industrial Corridor.<sup>211</sup> The city has made multiple drafts of its plan public and still meets with neighborhood groups and interested parties to garner feedback.<sup>212</sup> The final proposal is scheduled to be completed in 2017. The city's three goals: (1) "maintain the North Branch Industrial Corridor as an important economic engine and vital job center in the City of Chicago;" (2) "improve the multimodal transportation network so that it better supports and encourages trips made by walking, biking, taking transit, and utilizing shared-use mobility options;" and (3) "build upon the North Branch Industrial Corridor's unique natural and built environment,"<sup>213</sup> reflect a desire to work with those who support PMDs to reach a compromise that benefits all parties rather than solely developers.<sup>214</sup>

The city's plan must establish the Clybourn Corridor as a hub of innovation, residential and commercial development, and economic growth. The plan must balance the arguments that advocates of PMDs assert with the fact that utilizing the area for solely traditional manufacturing purposes is no longer an efficient or logical use of the land.

Pursuant to these targets, this Article sets out its Clybourn Corridor Redevelopment Plan.<sup>215</sup> This Article's proposed plan calls for a multistep development process that would unfold over the next decade and requires city officials, community members, and industrial advocates to work together to achieve a common goal of positioning the Clybourn Corridor for future success.

#### *A. Removing the PMD Zoning Designation and Implementing a Planned Development Review*

The first step in this Article's Clybourn Corridor Redevelopment Plan is to remove the area's archaic PMD zoning designation. Once removed, this Article urges the city to pass a new ordinance that requires any land

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neighborhoods").

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. The Clybourn Corridor Redevelopment Plan would follow a similar rollout process to the city's North Branch Corridor Modernization Report. It would be introduced at public meetings with the community to solicit feedback. The plan would also be analyzed by members of the industrial community as well as developers to gather their feedback. Finally, once the plan had received support from the community, the Department of Planning and Development, and Mayor Emanuel, Alderman Hopkins would introduce it to the Chicago City Council for approval.

being redeveloped in the former PMD to go through a process to receive, what is currently called, a “planned development” zoning designation.<sup>216</sup> The city created the planned development zoning process and designation so that developers could plan projects on a comprehensive basis.<sup>217</sup> Chicago’s planned development zoning process and designation allows the city to review major development proposals, encourage unified planning and development, and allow flexibility to promote creative design.<sup>218</sup> Planned developments tend to be large projects in terms of their size and can include the development of multiple structures and parcels of land.<sup>219</sup> Proposals must receive aldermanic approval before they are passed along to the Chicago Plan Commission for review.<sup>220</sup> The plan commission then conducts a public hearing to discuss the project with the community.<sup>221</sup> If the plan commission approves the proposed planned development, then the Chicago City Council Committee on Zoning, Landmarks and Building Standards (“Committee”) holds another public hearing.<sup>222</sup> If the committee

216. CITY OF CHI., DEVELOPMENT PLAN FOR CHICAGO PLAN COMMISSION PROJECTS 7 (2012),

[https://www.cityofchicago.org/content/dam/city/depts/zlup/Planning\\_and\\_Policy/Publications/Development%20Manual%20for%20Plan%20Commission%20Projects/Plan\\_Commission\\_Manual\\_FINAL\\_for\\_web.pdf](https://www.cityofchicago.org/content/dam/city/depts/zlup/Planning_and_Policy/Publications/Development%20Manual%20for%20Plan%20Commission%20Projects/Plan_Commission_Manual_FINAL_for_web.pdf) [hereinafter DEVELOPMENT PLAN].

217. CHI., ILL., ZONING ORDINANCE § 17-8 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il); *see Planned Development Designations*, CITY CHI., [https://www.cityofchicago.org/city/en/depts/dcd/provdrs/planning\\_and\\_policy/division/svcs/planned\\_development/designations.html](https://www.cityofchicago.org/city/en/depts/dcd/provdrs/planning_and_policy/division/svcs/planned_development/designations.html) (last visited Nov. 4, 2016) (“The Planned Development review process is divided into two parts. Part I involves basic zoning controls and statements intended to guide development of a particular site. Part II requires a review of actual plans prior to construction.”).

218. CHI., ILL., ZONING ORDINANCE § 17-8-0100 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il); *see generally* DEVELOPMENT PLAN, *supra* note 216 (discussing additional review standards concerning transportation, traffic, parking, landscape, open space, and public safety).

219. CHI., ILL., ZONING ORDINANCE §§ 17-8-0200, 17-8-0300 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

220. *Id.* § 17-13-0705; *see* DEVELOPMENT PLAN, *supra* note 216 (discussing how the package that is reviewed by the alderman and the plan commission includes an application form, planned development statements, an existing land-use map, an aerial map, a property line map, a right-of-way map, a generalized land-use plan, a site plan, a phasing plan, a landscape plan, elevations, a green roof plan, a legal survey, economic disclosure statements, a traffic study, a traffic impact study, and several other documents).

221. CHI., ILL., ZONING ORDINANCE § 17-13-0705 (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

222. *Id.* § 17-13-0707.

approves the proposed planned development zoning designation, the city council will conduct a final vote on the designation.<sup>223</sup> While this process is somewhat lengthy,<sup>224</sup> it helps to ensure that an area is developing in a manner that maximizes its utility and contribution to the city.

Planned developments allow developers to propose all types of land uses, including residential, commercial, mixed-use, office, and industrial.<sup>225</sup> While the city currently allows developers to propose any use through the planned development process, the Clybourn Corridor Redevelopment Plan would look to follow certain principles in redevelopment of a parcel or area. One principle of redevelopment would be separating existing industrial properties from new residential properties. For example, an existing industrial property, such as Liberty Tire Recycling, would be better served having nonresidential uses adjacent to it. These nonresidential uses would create a buffer around its industrial operations to reduce the number of nuisance claims brought against it.<sup>226</sup> Utilizing this planned development review process and zoning designation enables the city to implement these buffer areas.

### *B. Instituting a Right-to-Operate Defense*

This Article also seeks to accompany the nonresidential buffer zones with a “right-to-operate” defense. The “right-to-operate” defense is a full regulatory compliance defense that effectively prohibits residential and commercial property owners who have moved into the corridor as part of the area’s redevelopment from bringing nuisance claims against existing industrial firms.<sup>227</sup> This Article seeks to limit claims against industrial firms who continue operating in the same capacity and continue meeting existing use standards regarding noise, odor, and vibration.<sup>228</sup> Industrial firms wishing to incorporate new technologies would be able to do so, provided that such technologies do not negatively impact the surrounding community.<sup>229</sup> The defense would resemble Illinois’ Right to Farm Law,

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223. *Id.* § 17-13-0708.

224. Planned Development zoning designations typically take six to nine months from initial proposal to approval by the city council.

225. *Id.* § 17-8-0105.

226. EMANUEL MODERNIZATION PLAN, *supra* note 4; *see* SALKIN, *supra* note 1, § 9.11 (“Where wide separation of incompatible districts is difficult to accomplish, a zone may be created for the purpose of achieving some measure of separation. Such a zone may be referred to as a buffer zone.”).

227. Hills & Schleicher, *supra* note 5, at 257–58.

228. *See id.* at 259.

229. The impact on the surrounding community is measured through noise, vibration, odor, and other outputs. *See* Terence J. Centner, *Government and Unconstitutional Takings: When Do Right-to-Farm Laws Go Too Far?*, 33 B.C. ENVTL. AFF. L. REV. 87, 106 (2006) (analyzing how farms can adopt new technologies under right-to-farm laws).

which prevents nuisance claims from being brought against farms that were operational prior to a new use moving to the area.<sup>230</sup> The purpose of this protection is to prevent the industrial firms that wish to stay in the area from being forced to terminate their operations due to nuisance claims brought by recently established residential or commercial uses in the area.<sup>231</sup> To effectuate this protection, this Article urges the Illinois General Assembly to pass a statute providing that the right-to-operate defense is available to existing industrial firms in former-PMD areas.<sup>232</sup>

One potential downside to implementing a right-to-operate defense is the risk of an industrial landowner purchasing all surrounding property to avoid nuisance lawsuits. “If an industrial landowner could somehow purchase, lease, or buy easements for all of the land within ear- or noise-shot of their industrial facility, they could protect themselves from nuisance lawsuits (or analogous administrative complaints).”<sup>233</sup> While this is a potential risk, the industrial landowner would have to outbid all interested commercial and residential developers for the land. Given the financial motivation developers have to develop the area with other uses, this Article finds this risk rather small.

### C. Prioritizing Advanced Manufacturing

One of the primary objectives of the redevelopment process is to increase advanced manufacturing in the Clybourn Corridor. The

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230. Hills & Schleicher, *supra* note 5, at 258; see 740 ILL. COMP. STAT. 70/3 (2012) (“No farm . . . shall be or become a private or public nuisance because of any changed conditions in the surrounding area occurring after the farm has been in operation for more than one year, when such farm was not a nuisance at the time it began operation . . .”). If any issue arises enforcing this new regulatory compliance defense, the few remaining industrial firms could resort to the “coming to the nuisance” defense. See 1 COMPARATIVE NEGLIGENCE MANUAL § 7.7 (3d ed.), Westlaw (database updated Mar. 2016) (discussing how the “coming to the nuisance” defense is not an absolute bar against a nuisance claim, but rather a factor to consider when determining whether a nuisance exists); see also Centner, *supra* note 229, at 96 (“Some [right-to-farm] laws are more direct and say that the operation shall not be a nuisance if it was not a nuisance before it began operating.”); see generally JAMES CHARLES SMITH & JACQUELINE P. HAND, NEIGHBORING PROPERTY OWNERS § 2.12, Westlaw (database updated Nov. 2016) (noting some misconceptions of the coming to the nuisance defense).

231. See Richard C. Ausness, *The Case for a “Strong” Regulatory Compliance Defense*, 55 MD. L. REV. 1210, 1213 (1996) (discussing how a strong regulatory compliance defense can prevent most damage claims against manufacturers that comply with performance and safety standards).

232. It is important to note that cities and municipalities do not have the authority to create defenses to state tort laws. “The state judiciary, however, could construe the common law of nuisance to include a strong regulatory compliance defense.” Hills & Schleicher, *supra* note 5, at 260. Such an interpretation would be just as effective as a statutory defense. *Id.*; see Centner, *supra* note 229, at 87–88 (detailing cases in which such “anti-nuisance” laws were found unconstitutional because they infringed on an unalienable right).

233. Hills & Schleicher, *supra* note 5, at 257–58.

Clybourn Corridor Redevelopment Plan would take advantage of Chicago's growing reputation as a center for advanced manufacturing and its close proximity to UI Labs to attract advanced manufacturers to the area.<sup>234</sup> In this regard, Chicago can look to SLU in Seattle, as well as its midwestern neighbor, Cleveland, Ohio, for examples of cities that have embraced advanced manufacturing.

Employment figures in Ohio's manufacturing industry—particularly in traditional manufacturing like automobile and heavy metal production—have decreased rapidly over the past decade.<sup>235</sup> Cleveland responded to the declining employment figures in traditional manufacturing by transitioning to advanced manufacturing, all while maintaining manufacturing as the largest sector of its economy.<sup>236</sup> Advanced manufacturing, such as the development of medical tools and technologies, provides Cleveland with a new job-creation platform.<sup>237</sup> The city and its manufacturing groups also invest in the education and training of the city's next wave of advanced manufacturing employees through internships, co-op programs, and community college courses.<sup>238</sup> Just as Cleveland has recognized the potential growth of advanced manufacturing, this Article's proposal seeks to have Chicago prioritize the reality of a new industrial era and bring advanced manufacturing to the redeveloped Clybourn Corridor.

#### D. Establishing the Clybourn Corridor Redevelopment Fund

Despite the many benefits of this Article's Clybourn Corridor

234. The goal would be to position the Clybourn Corridor similar to how Seattle positioned South Union Lake and bring the headquarters of major advanced manufacturing organizations to the area. BERK & HEARTLAND, LLC, *supra* note 204, at 5 (“The area is a center for a number of growing sectors such as biotechnology, information technology, and global health.”).

235. Between December 2007 and March 2009, industrial employment in Ohio dropped 21.6 percent in transportation (i.e. automobile manufacturing) and 11.4 percent in primary metals. *Employment Loss in Ohio's Manufacturing Industry*, FED. RES. BANK CLEVELAND (Mar. 31, 2009), <https://www.clevelandfed.org/newsroom-and-events/publications/economic-trends/economic-trends-archives/2009-economic-trends/et-20090331-employment-loss-in-ohios-manufacturing-industry.aspx> (detailing Ohio's employment statistics relating to the manufacturing industry).

236. Robert L. Smith, *Cleveland's Manufacturing Industry Roaring Back, Expected to Surpass National Growth Rate*, PLAIN DEALER (Feb. 18, 2013), [http://www.cleveland.com/business/index.ssf/2013/02/clevelands\\_manufacturing\\_indus.html](http://www.cleveland.com/business/index.ssf/2013/02/clevelands_manufacturing_indus.html) (“Manufacturing remains the largest contributor to the regional economy, accounting for 18 percent of gross regional product, or the value of goods and services provided here.”).

237. Marcia Pledger, *How Cleveland and the Rust Belt Can Come Back Through Tech, Manufacturing*, PLAIN DEALER (Apr. 22, 2015), [http://www.cleveland.com/business/index.ssf/2015/04/how\\_cleveland\\_and\\_the\\_rust\\_bel.html](http://www.cleveland.com/business/index.ssf/2015/04/how_cleveland_and_the_rust_bel.html).

238. See Smith, *supra* note 236 (discussing how the Cleveland and local manufacturing companies must train and educate young adults to prepare them for jobs in advanced manufacturing).

Redevelopment Plan proposal, this Article recognizes that the proposal would be costly. Costs would include environmental remediation, infrastructure improvements, incentivizing advanced manufacturing companies, and relocation and training fees. Therefore, to ensure adequate funding for the proposal, the city should create a special redevelopment process fund. In Mayor Emanuel's proposal drafts, he introduced and supported the idea of the city charging developers a fee to build projects in the North Branch Industrial Corridor.<sup>239</sup> Similarly, this Article's Redevelopment Plan would create a fund to pay for work in the Clybourn Corridor. Two primary sources would support the Redevelopment Fund: tax increment financing ("TIF") and a developer incentive program.

TIF district funding is this Article's first way to fund its Clybourn Corridor Redevelopment Plan.<sup>240</sup> All of the properties in the corridor's core zone and buffer zone that are currently used for industrial purposes would be designated as a "TIF district."<sup>241</sup> The city would assess the amount of property taxes generated by each parcel in this new TIF district at the time a developer proposed a new project, constituting the "baseline amount."<sup>242</sup> The property tax will likely increase once the developer completed the redevelopment of the property.<sup>243</sup> Each year, the city would compare the current property tax value with the baseline

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239. EMANUEL MODERNIZATION PLAN, *supra* note 4; *see also* Ori, *supra* note 137 ("The fee, which has not been finalized by the mayor, would fund infrastructure in transitioning areas—such as bridges (for cars or pedestrians), public transportation and other needs to support increased density—while also reinvesting in and potentially expanding manufacturing districts where industrial uses still thrive.").

240. Chicago specifies that TIF funds are only allowed to go toward certain uses. These uses include infrastructure costs and environmental remediation. *See Tax Increment Financing Program*, CITY OF CHICAGO, [https://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/tax\\_increment\\_financingprogram.htm](https://www.cityofchicago.org/city/en/depts/dcd/supp_info/tax_increment_financingprogram.htm) 1 (last visited Apr. 11, 2017) [hereinafter *TIF Program*] (summarizing Chicago's TIF Program); *see also* 9 DENISE LYNCH & JONATHAN M. PURVER, ILLINOIS REAL PROPERTY § 44.80, Westlaw (database updated Feb. 2017) (providing an overview of TIF).

241. Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 66 (2010) ("The theory of TIF is that the revenue generated within a territorially defined district is earmarked, for a period of years, to pay for physical infrastructure and other expenditures designed to spur economic growth within that district.").

242. *See TIF Program*, *supra* note 240 ("When an area is declared a TIF district, the amount of property tax the area generates is set as a base [equalized assessed value] amount."); *see also* JAMES A. CONIGLIO & M. DAVID GELFAND, 1 GELFAND, STATE AND LOCAL GOVERNMENT DEBT FINANCING § 11:16 (2d ed.), Westlaw (database updated Nov. 16) ("TIF freezes the amount of property taxes payable to all preexisting taxing entities at their predevelopment level.").

243. CONIGLIO & GELFAND, *supra* note 242 ("After the redevelopment, the values of the properties involved are reassessed, usually at much higher levels."); *see* Briffault, *supra* note 241, at 82 (noting that property values and retail sales in TIF districts generally increase as a new revenue base, but that success is not guaranteed).

amount.<sup>244</sup> The City of Chicago would continue to collect all funds generated up to the baseline, but the city would allocate all money exceeding the baseline amount into the Redevelopment Fund.<sup>245</sup> In effect, the city would set aside revenues generated from the property tax of any *increased* property value within the district for public improvements and other economic development programs.<sup>246</sup> Like standard Chicago TIFs, the district expires after twenty-three years, but can be extended if it is still contributing to the growth of the area.<sup>247</sup> Making the current core zone and certain properties within the current buffer zone into a TIF district would create significant funds to put toward projects in the Clybourn Corridor.<sup>248</sup>

In addition to designating areas of the Clybourn Corridor as a TIF district, a developer incentive program, similar to Chicago's "neighborhood opportunity bonus" program, could act as the second way to fund this Article's Clybourn Corridor Redevelopment Plan.<sup>249</sup> The neighborhood opportunity bonus program currently allows developers to pay to add floor area ratio ("FAR") (i.e., the total square footage of the building divided by the total square footage of the lot) bonuses to their projects.<sup>250</sup> The higher the FAR, the more density a project can have.<sup>251</sup> A developer can add FAR to their project up to a certain limit based on the underlying FAR proscribed by the property's zoning classification.<sup>252</sup>

244. CONIGLIO & GELFAND, *supra* note 242.

245. Briffault, *supra* note 241, at 67 ("Property taxes continued to be levied, and the revenues generated by applying the tax rate to the base value continue to be paid to the local governments.").

246. *Id.*; see also *TIF Program*, *supra* note 240 (detailing how the amount of funds generated over the baseline can be distributed to the district).

247. Growth of the area will be determined by how much money is being generated and invested in the redevelopment fund. See *TIF Program*, *supra* note 240 ("Funds are generated by growth in the Equalized Assessed Valuation (EAV) of properties within a designated district over a period of 23 years.").

248. For more information on TIF districts, see Briffault, *supra* note 241, at 65 (discussing TIF as a popular tool used by governments to spur growth).

249. *Neighborhood Opportunity Bonus: Leveraging Downtown Zoning to Foster Neighborhood Development and Central Area Growth*, CITY CHI. (Mar. 1, 2017), [https://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/realigning-zoning-with-neighborhood-growth.html](https://www.cityofchicago.org/city/en/depts/dcd/supp_info/realigning-zoning-with-neighborhood-growth.html) [hereinafter *Neighborhood Opportunity Bonus*].

250. *Id.*; see *Zoning Rules*, *supra* note 146 ("If the property has a [FAR] of 2, then the area of the building's floors will be double that of the parcel's area, and the building will have to be multi-story.").

251. The bonus equation provides that one square foot of floor area can be purchased by taking the median cost of land per buildable square foot and multiplying it by 80 percent. See *Neighborhood Opportunity Bonus*, *supra* note 249 (providing an example of a FAR bonus calculation under the neighborhood opportunity bonus program).

252. CHI., ILL., § 17-4-1003-E (2016), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

The city distributes the majority of funds collected through the neighborhood opportunity bonus program to projects in “investment zones” (i.e., areas struggling economically) located predominately on Chicago’s south and west sides.<sup>253</sup> Currently, only areas zoned “downtown” are allowed to participate in the neighborhood opportunity bonus program.<sup>254</sup> But this Article’s Clybourn Corridor Redevelopment Plan proposes a new program, the Clybourn Corridor Bonus Program, which would resemble the guidelines currently present in the neighborhood opportunity bonus program. One difference from the neighborhood opportunity bonus program, however, is that this Article’s Clybourn Corridor Redevelopment Plan’s Clybourn Corridor Bonus Program would direct 50 percent of the funds generated toward projects in the investment zones and invest the other 50 percent toward the costs of redeveloping the Clybourn Corridor. This approach would benefit a worthwhile program aimed to help struggling areas of the city, while also funding a portion of the redevelopment of the Clybourn Corridor.

### *E. Investing in the Clybourn Corridor*

Redeveloping the Clybourn Corridor will be costly. The area currently does not have the necessary infrastructure in place to fully take advantage of the location’s unique potential. But by investing resources toward improving transportation and empowering other areas of the city to become industrial hubs, these costs will benefit the city as a whole.

#### 1. Traffic Congestion

This Article recognizes that the current infrastructure of the Clybourn Corridor cannot handle any significant increase in population and traffic that would result from rezoning the area.<sup>255</sup> Alderman Hopkins also recognizes that the city will have to make several improvements to the area’s infrastructure to prepare it for more residential and commercial uses, including increasing the quality and quantity of public transportation, repairing and expanding roads, and exploring alternative

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253. See *Investment Zones Criteria*, CITY CHI., [https://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/investment-zones.html](https://www.cityofchicago.org/city/en/depts/dcd/supp_info/investment-zones.html) (last visited Apr. 12, 2017) (noting that investment zones were established by analyzing census and that this data was used to locate blighted areas).

254. *Neighborhood Opportunity Bonus*, *supra* note 249.

255. See Hengels, *supra* note 26 (“The area currently lacks transit alternatives, so employees will get to work by car or bike, exasperating traffic on roads connecting Lincoln Park to the expressway.”); see also Ori, *supra* note 8 (discussing traffic issues in the Clybourn Corridor); see generally HOPKINS, *supra* note 10 (noting how the community has discussed infrastructure needs if the Clybourn Corridor is redeveloped).



forms of transportation.<sup>256</sup> This Article's Clybourn Corridor Redevelopment Plan addresses traffic congestion concerns through a multipronged approach.

The first prong of this approach is to create a new bridge at Clifton Avenue that would stretch across the Chicago River and connect to Wabansia Avenue. Wabansia Avenue would then be connected to the Kennedy Expressway. Currently, there are entrances and exits to the Kennedy Expressway on Armitage Avenue to the north and North Avenue to the south.<sup>257</sup> Adding an entrance and exit at Wabansia Avenue would help alleviate congestion from people in the area trying to get on and off the expressway and divert some traffic from Armitage Avenue and North Avenue.<sup>258</sup>

Together with creating the bridge at Clifton Avenue leading to the new connection to the Kennedy Expressway at Wabansia Avenue, this Article seeks to add additional public transportation to the Clybourn Corridor. Currently, only one Chicago Transit Authority ("CTA") bus provides access from the Clybourn Corridor to the Loop.<sup>259</sup> This route is not direct and does not stop on the north end of the Loop (i.e., an area littered with office buildings where people in Chicago work).<sup>260</sup> This Article's Clybourn Corridor Redevelopment Plan, however, adds a new CTA bus line that would run from the intersection of Cortland Street and Kingsbury Street to the Loop, enabling residents to easily access Chicago's central business district.

Another way to improve the city's traffic congestion is to increase the use of the Bloomingdale Trail ("606 Trail"). The 606 Trail is a 2.7-mile-long multiuse trail bordered by parks and homes that extends east from North Ridgeway Avenue in Humboldt Park to North Marshfield Avenue in Bucktown.<sup>261</sup> Since opening in 2015, the 606 Trail has become a

256. See Ori, *supra* note 8 (discussing traffic issues in the Clybourn Corridor).

257. *Clybourn Corridor: Planned Manufacturing District*, CHI. CITYSCAPE, <http://www.chicagocityscape.com/places.php?place=pmd-clybourn-corridor> (last visited Apr. 12, 2017); see generally Ori, *supra* note 8 ("Potential infrastructure improvements could include a new bridge over the river.").

258. Hengels, *supra* note 26; see generally SAMUEL R. STALEY, PRACTICAL STRATEGIES FOR REDUCING CONGESTION AND INCREASING MOBILITY FOR CHICAGO (July 2012), <http://chicagotonight.wttw.com/sites/default/files/Chicago%20Transportation%20Plan.pdf> (detailing Chicago's problem with traffic congestion).

259. *132 Goose Island Express*, CHI. TRANSIT AUTHORITY, <http://www.transitchicago.com/bus/132/> (last visited Apr. 13, 2017).

260. See *id.* (providing a map which shows the 132 bus does not go north of Jackson Boulevard in the Chicago Loop).

261. Leonor Vivanco, *The 606 Trail, a Study in Contrasts, Celebrates Its First Birthday*, CHI. TRIB. (June 3, 2016), <http://www.chicagotribune.com/news/ct-606-trail-anniversary-met-0531-20160602-story.html>; see THE 606, <http://www.the606.org/wp->

popular recreation destination and means of commuting for Chicagoans on the northwest side.<sup>262</sup> It has also increased the value of properties bordering the trail.<sup>263</sup> The Clybourn Corridor Redevelopment Plan would extend the 606 Trail across the Chicago River and then north and south along the newly developed Clybourn Corridor Riverwalk.<sup>264</sup> Extending the 606 Trail across the river and along the Clybourn Corridor Riverwalk would provide both a means of recreation and efficient commuting to and from the Loop.

Pursuant to this Article's quest to add more public transportation options, the Clybourn Corridor Redevelopment Plan also adds two new water-taxi stops to the area. Chicago Water Taxi currently makes trips only as far north as North Avenue.<sup>265</sup> The Clybourn Corridor Redevelopment Plan would create two more stops: one just south of Cortland Street and one between Clifton Avenue and Wisconsin Street. These additional water taxi stops would provide an alternative mode of transportation for Clybourn Corridor residents and those looking to visit the redeveloped destination.

## 2. Environmental Remediation

After decades of industrial emissions and waste disposal, the environmental remediation costs of industrial sites are likely to be exorbitant. Industrial facilities can produce dangerous emissions that harm people's health.<sup>266</sup> For example, a 2008 investigation by the *Chicago Tribune* revealed that, when operational, the Finkl Steel facility emitted chromium, lead, manganese, nickel, and zinc from its facility into

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content/uploads/2015/05/The606\_printable\_map.pdf (last visited Apr. 13, 2017) (displaying a map of the 606 Trail, including access points and nearby CTA routes).

262. See Vivanco, *supra* note 261 ("The sheer volume of runners, cyclists, strollers, families and others using the 2.7-mile Bloomingdale Trail ["606 Train"], which is under the umbrella of the 606's trail and park system, suggests it's a hit.").

263. See *id.* (discussing how the increase in property values and property taxes has created the risk of gentrifying the neighborhoods along the 606 Trail).

264. HOPKINS, *supra* note 10; see also Ori, *Union Station*, *supra* note 174 (noting that Sterling Bay Managing Director Andy Gloor discussed extending the 606 Trail once the company has finalized its deal with A. Finkl & Sons).

265. Chicago Water Taxi can provide much needed transportation to the Clybourn Corridor. While it could only operate during the warmer months, it would still take a great deal of stress off the Clybourn Corridor's roadways. It could also bring tourists visiting different parts of Chicago to the area. *Chicago Water Taxi Map Route*, CHI. WATER TAXI, <https://www.chicagowatertaxi.com/Chicago-River-Boat-Map> (last visited Apr. 13, 2017).

266. See generally *Air Pollution: Current and Future Challenges*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/clean-air-act-overview/air-pollution-current-and-future-challenges> (last visited Apr. 13, 2017) ("While overall emissions of air toxics have declined significantly since 1990, substantial quantities of toxic pollutants continue to be released into the air. Elevated risks can occur in urban areas, near industrial facilities, and in areas with high transportation emissions.").

the air and soil.<sup>267</sup> Because of the health risks that facilities' emissions can cause, it will be important to ensure protection for citizens through environmental remediation of former industrial sites.

This Article proposes that the City of Chicago enact an ordinance requiring developers to obtain a Phase I environmental site assessment ("ESA") on all properties in former industrial sites where they seek to build new projects.<sup>268</sup> Municipalities and cities often require an ESA when commercial and industrial properties are sold, redeveloped, or refinanced because an ESA identifies potential environmental contamination issues.<sup>269</sup> If the ESA identifies contamination issues, this Article seeks to use the Redevelopment Fund to treat polluted properties to prepare them for future projects that may feature residential and commercial uses.

Along with treating the properties in the corridor, the Clybourn Corridor Redevelopment Plan's environmental remediation efforts include treating the Chicago River to improve the quality of its water. Chicago has a notorious record of polluting the Chicago River.<sup>270</sup> Despite increased recreational uses in and along the river in recent years, a 2015 test by the Metropolitan Water Reclamation District revealed high levels of bacteria and pathogens that can reach tens of thousands of times above legal limits.<sup>271</sup> The study "reflect[s] Chicago's long history of treating a slow-moving prairie river as little more than an industrialized repository for the city's waste."<sup>272</sup>

Therefore, as part of a larger effort to improve the quality of the local environment, the Clybourn Corridor Redevelopment Plan would invest in detoxifying the Chicago River. The detoxification process would include dredging out the contaminated sediment in the river and increasing the penalties for individuals and companies polluting the river.<sup>273</sup>

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267. *Danger in the Air*, CHI. TRIB. (Sept. 29, 2008), [http://articles.chicagotribune.com/2008-09-29/news/0809290537\\_1\\_air-pollution-factory-emissions-risk-score](http://articles.chicagotribune.com/2008-09-29/news/0809290537_1_air-pollution-factory-emissions-risk-score).

268. *Phase I Environmental Assessment*, ALL APPROPRIATE INQUIRIES ENVTL. CORP., <http://www.aaienvcorp.com/phasei.html> (last visited Apr. 13, 2017).

269. *Phase I Environmental Site Assessments*, ENVTL. CONSULTING GROUP, <https://www.ecgmidwest.com/phase-i-environmental-site-assessments> (last visited Apr. 13, 2017).

270. See generally *Waste Disposal*, CHI. ENCYCLOPEDIA, <http://www.encyclopedia.chicagohistory.org/pages/1322.html> (last visited Apr. 13, 2017) (detailing Chicago's history of polluting the Chicago River).

271. Michael Hawthorne, *Chicago River Still Teems with Fecal Bacteria, Tests Show*, CHI. TRIB. (Aug. 28, 2015), <http://www.chicagotribune.com/news/ct-chicago-river-bacteria-20150827-story.html> (providing insight into the contamination issues in the Chicago River).

272. *Id.*

273. See Anthony Depalma, *Cleaning a River that Was Given Up for Dead*, N.Y. TIMES (Aug. 14, 2012), <https://green.blogs.nytimes.com/2012/08/14/cleaning-a-river-that-was-given-up-for->

The plan's efforts to rehabilitate the river would be part of a larger effort to utilize the corridor's riverfront property for residential uses and green space. Residential developments, particularly multiunit residential buildings, would be prioritized along the Chicago River. The city's requirement for a thirty-foot setback would be instituted along the riverfront.<sup>274</sup> This setback would allow the development of a Chicago Riverwalk-type project<sup>275</sup> on the east side of the river, providing scenic views and open green space for pedestrians.<sup>276</sup>

### 3. Promoting PMDs on Chicago's South and West Sides

Not all PMDs should be eliminated. In areas on the south and west sides of Chicago, PMDs can still be used to create well-paying jobs that help bring economic stability to blighted areas.<sup>277</sup> For example, while manufacturing jobs fell 15.5 percent from 2002 to 2011 in the North Branch Industrial Corridor, the Greater Southwest Industrial Corridor saw its number of manufacturing jobs rise 24.3 percent.<sup>278</sup> And this number is likely to increase given Clarius Partners', a real estate development and management company,<sup>279</sup> recent proposal to start a \$43 million industrial and retail project on a twenty-one acre site in North Lawndale that is expected to create 380 jobs for local residents.<sup>280</sup>

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dead/ (discussing the efforts taken to detoxify the Hudson River).

274. See CHI., ILL., ZONING ORDINANCE § 17-8-0912A (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il), (“[P]rovide a minimum setback of 30 feet from the top of the bank along all points of the waterway adjacent to the Chicago River Main Branch, Chicago River North Branch.”).

275. See *Chicago Riverwalk*, CITY CHI., [https://www.cityofchicago.org/city/en/depts/cdot/supp\\_info/chicago\\_riverwalk.html](https://www.cityofchicago.org/city/en/depts/cdot/supp_info/chicago_riverwalk.html) (last visited May 2, 2017) (providing information on the expansion of the Chicago Riverwalk); see also Judy Hsu, *Final Phase of Chicago Riverwalk to Open This Weekend*, ABC 7 EYEWITNESS NEWS (Oct. 19, 2016), <http://abc7chicago.com/news/final-phase-of-chicago-riverwalk-to-open-this-weekend/1563244/> (discussing a new addition to the Chicago Riverwalk running from LaSalle Street to Lake Street).

276. See CHI., ILL., ZONING ORDINANCE § 17-8-0912A (2015), [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

277. See Joe Cahill, *Industry Rediscovered the Other Chicago*, CRAIN'S CHI. BUS. (Aug. 12, 2016), <http://www.chicagobusiness.com/article/20160812/ISSUE10/160819954/hopeful-signs-of-industrial-renaissance-in-impooverished-chicago> (“Industrial jobs paying decent wages open a path to middle-class life for people in areas where opportunities have been diminishing for decades. And as business activity picks up in depressed sections, new streams of tax revenue will flow into depleted city coffers.”).

278. U.S. EQUITIES REALTY, *supra* note 13, at 16–17.

279. For information on Clarius Partners, see generally CLARIUS PARTNERS, <http://www.clariuspartners.com/aboutUs> (last visited Apr. 13, 2017) (discussing the company's history and scope).

280. Cahill, *supra* note 277 (“This is the latest in a series of recent industrial initiatives in

Rather than propping up an outdated designation in the Clybourn Corridor, the city should shift its focus to using the PMD zoning designation as a tool for growth in areas with high unemployment rates.<sup>281</sup> The Stockyards, Pilsen, Greater Southwest, and Greater Northwest PMDs are all examples of areas on Chicago's south and west sides that would benefit from more industrial facilities.<sup>282</sup> Several large, vacant parcels in these areas would provide a canvas for industrial developers to build new, single-floor facilities that are efficient and more cost effective than reclaiming an existing industrial facility in the Clybourn Corridor.<sup>283</sup> For instance, the former-Brach's Candy factory's thirty-acre site on Chicago's west side is set to become the location of a new 500,000-square-foot warehouse that will be used as a distribution center.<sup>284</sup> This project demonstrates that manufacturers are confident these areas of the city can house new industrial and manufacturing operations.

Promoting potential sites on the south and west sides is not enough, however. To leave a lasting impact on these communities, the City of Chicago must invest in preparing people in these neighborhoods to succeed in industrial jobs. More frequently, manufacturers look for highly trained personnel.<sup>285</sup> In response, the City Colleges of Chicago has acknowledged this trend and offers programs geared toward manufacturing education.<sup>286</sup> The City of Chicago can follow suit and offer similar programs to citizens in impoverished communities. These programs would instill the knowledge and skills necessary to succeed in

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communities hungry for jobs and investment. Earlier this year, Whole Foods announced plans for a warehouse employing 150 people on a former Ryerson steel site in Pullman on the South Side.”)

281. For an in-depth look into Chicago's unemployment rates by neighborhood, see *Chicago Unemployment Rate by Neighborhood*, ARCGIS, <https://www.arcgis.com/home/webmap/viewer.html?webmap=21de0cf2572d48d7a281f9d11929409e> (last visited May 2, 2017) (revealing that neighborhoods on the south and west sides such as West Englewood (36.6 percent) and Fuller Park (35.62 percent) are struggling with high unemployment rates).

282. NATIONS, *supra* note 39, at 7 (“The Clybourn Corridor should be transferred to a Chicago neighborhood that desperately needs the well-paying jobs manufacturing can provide.”); see Cahill, *supra* note 277 (discussing how certain neighborhoods in Chicago would greatly benefit from new industrial jobs coming to their area, in addition to the city receiving a benefit of added tax revenue).

283. See generally Cahill, *supra* note 277 (noting vacant sites on the south and west sides where industrial operations can be established).

284. Eddie Baeb, *Brach's Factory to Get New Life*, CRAIN'S CHI. BUS. (Jan. 6, 2008), <http://www.chicagobusiness.com/article/20080106/NEWS12/200027643/brachs-factory-to-get-new-life>.

285. U.S. EQUITIES REALTY, *supra* note 13, at 7.

286. See *id.* (“The City Colleges of Chicago offer various degrees geared toward manufacturing, such as Manufacturing Technology at Daley College and Process Technology at Olive-Harvey.”).

a manufacturing position.<sup>287</sup> By promoting the area and putting community members in a position to take advantage of a growing industry, the city would create lasting economic and social change in neighborhoods facing tremendous hardship.

The Clybourn Corridor Redevelopment Plan is based on ambitious ideas that challenge current city policies. While implementing these ideas will be difficult in the face of high costs and bureaucracy, they are necessary to spark new life in an area with tremendous potential. The Clybourn Corridor Redevelopment Plan will turn that potential into reality.

#### CONCLUSION

A city is a dynamic, ever-evolving organism. It warrants constant study and analysis to ascertain the most effective laws and policies to improve the welfare of its citizens. Chicago is currently faced with a glaring inefficiency. The Clybourn Corridor PMD is no longer a logical element of Chicago's zoning ordinance. While certain PMDs, such as the Stockyards PMD and Greater Southwest PMD, provide economic and social benefits to the city, the Clybourn Corridor PMD hinders growth and redevelopment. Stripping the Clybourn Corridor of its PMD designation has the potential to introduce a vibrant hub of economic activity as well as a new tax base for Chicago, positioning the corridor and the City of Chicago for significant future growth.

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287. *See id.* at 7–8 (noting that Chicagoans would need proper training to succeed in the advanced manufacturing jobs of the future).