

Northwestern Journal of Law & Social Policy

Volume 15 | Issue 3

Article 4

Spring 2020

Environmental Justice in Little Village: A Case for Reforming Chicago's Zoning Law

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Recommended Citation

Charles Isaacs, *Environmental Justice in Little Village: A Case for Reforming Chicago's Zoning Law*, 15 *Nw. J. L. & Soc. Pol'y.* 357 (2020).

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Environmental Justice in Little Village: A Case for Reforming Chicago’s Zoning Law

Charles Isaacs

ABSTRACT

Chicago’s Little Village community bears the heavy burden of environmental injustice and racism. The residents are mostly immigrants and people of color who live with low levels of income, limited access to healthcare, and disproportionate levels of dangerous air pollution. Before its retirement, Little Village’s Crawford coal-burning power plant was the lead source of air pollution, contributing to 41 deaths, 550 emergency room visits, and 2,800 asthma attacks per year. After the plant’s retirement, community members wanted a say on the future use of the lot, only to be closed out when a corporation, Hilco Redevelopment Partners, bought the lot to build a warehouse that would house hundreds of diesel trucks. At every stage in the process, Hilco enjoyed the advantage of a shockingly antiquated zoning code that has systematically transformed Little Village into a hotbed of environmental hardship and to this day provides miniscule room for impacted residents to vocalize their concerns. This Note argues that Chicago’s zoning code must be amended to deliver environmental justice to communities like Little Village. Following the leadership of other cities across the United States, the City of Chicago should reform the zoning system with new requirements for community engagement, environmental justice analysis, and transparency. If Chicago does not counteract the discriminatory effects of an unjust, undemocratic zoning code, then the people with the narrowest means for seeking political, economic, and medical relief will continue to suffer from lopsided levels of environmental degradation.

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“Before you make a decision, you have to have all of the facts.”
 —Kim Wasserman, Executive Director, Little Village Environmental Justice Organization (LVEJO)¹

INTRODUCTION

At the intersection of 26th Street and Albany, a large terracotta archway over the road reads “*Bienvenidos a Little Village.*” Welcome to Little Village, the Mexico of the Midwest.

Little Village truly feels like a “little village.” Located on the western edge of Chicago, the neighborhood has a largely self-sufficient economy and a self-determined culture, separate from the rest of the city. The “little village” feel dates back to the 1820s. A small pop-up community of farmers, Little Village quickly attracted newcomers as a clean, pastoral alternative to grimy downtown Chicago.² The people who comprised it

¹ Staff, *Little Village Environmental Justice Organization*, <http://www.lvejo.org/about-us/staff/> (last visited Apr. 10, 2020).

² FRANK S. MAGALLON, CHICAGO’S LITTLE VILLAGE: LAWNDALE-CRAWFORD 11 (2010).

designed it to provide everything they needed.³ If you lived in Little Village, you also likely shopped and worked in Little Village. You might spend your entire day talking to Little Village residents, walking on Little Village land, and breathing Little Village air.

Today, Little Village bears the heavy burdens of environmental injustice.⁴ The residents are comprised of a largely working-class, immigrant, Latinx community. Surrounded by railroads, expressways, factories and warehouses, the people of Little Village suffer from disproportionate exposure to dangerous air pollution.⁵ Historically, Crawford Generating Station was the leading culprit of local pollution, an old coal-fired power plant, standing tall and dormant on a seventy-two-acre lot on the neighborhood's southern border.⁶ Drawing on debates over the future use of the lot, this Note makes the case for a series of reforms to the Chicago Zoning Ordinance (Zoning Ordinance) to advance the goals of environmental justice for communities like Little Village.

The central debate over the Crawford lot pits a local community group against a well-resourced corporation. The Little Village Environmental Justice Organization (LVEJO) is a neighborhood group that focuses on organizing for a healthier community in Little Village, with campaigns focusing on clean power, public transit, and open spaces.⁷ Seven years ago, LVEJO persuaded Chicago's city government to effectively force the coal plant into retirement.⁸ LVEJO advanced a community proposal to repurpose the land for urban agriculture and ultimately secured an agreement with the landowners on "guiding principles" for the future use of the lot.⁹ But then, Hilco Redevelopment Partners (Hilco) purchased the lot in 2017 and acquired a "Planned Development" rezoning amendment one

³ *Id.*; see also *Little Village History*, ENLACE CHI., <https://www.enlacechicago.org/littlevillagehistory> (last visited May 8, 2019); John R. Schmidt, *South Lawndale, aka Little Village*, WBEZ BLOGS (Mar. 20, 2013), <https://www.wbez.org/shows/wbez-blogs/south-lawndale-aka-little-village/08cd0f0a-248a-464d-84ec-75995bc6bec4>.

⁴ Meleah Geertsma, *New Map Shows Chicago Needs Environmental Justice Reforms*, NRDC (Oct. 25, 2018), <https://www.nrdc.org/experts/meleah-geertsma/new-map-shows-chicago-needs-environmental-justice-reforms>.

⁵ Brett Chase & Better Gov't Ass'n, *In Chicago, Pollution Hits West Side, South Side the Hardest, Study Finds*, CHI. SUN-TIMES (Oct. 25, 2018), <https://chicago.suntimes.com/2018/10/25/18466281/in-chicago-pollution-hits-west-side-south-side-the-hardest-study-finds>.

⁶ *History*, CRAWFORD STATION, <http://www.crawfordstation.com/history/> (last visited Mar. 29, 2019) [hereinafter *Crawford Station History*]; see generally Jonathan I. Levy et al., *Using CALPUFF to Evaluate the Impacts of Power Plant Emissions in Illinois: Model Sensitivity and Implications*, 36 ATMOSPHERIC ENV'T 1063 (2002); *Crawford Generating Station*, GLOBAL ENERGY MONITOR WIKI, https://www.gem.wiki/Crawford_Generating_Station (last visited Feb. 25, 2020).

⁷ Kari Lydersen, *Chicago Coal Plants to Shut Down Sooner than Expected*, ENERGY NEWS NETWORK (May 2, 2012), <https://energynews.us/2012/05/02/midwest/chicago-coal-plants-to-shut-down-sooner-than-expected/>. LVEJO was founded in 1994 in response to hazardous environmental exposure of children to local school renovations. *History*, LVEJO, <http://www.lvejo.org/about-us/history/#> (last visited Apr. 1, 2019) [hereinafter *LVEJO History*]. The organization follows a grassroots organizing model based on principles of intergenerational leadership, self-determination, and reliance on existing assets and resources of the community. *Mission and Vision Statements*, LVEJO, <http://www.lvejo.org/our-mission/mission-vision-statement/> (last visited Apr. 1, 2019).

⁸ *Id.*

⁹ *Coal Plant Shutdown*, LVEJO, <http://www.lvejo.org/our-accomplishments/coal-plant-shutdown/> (last visited May 8, 2019); CITY OF CHICAGO'S MAYOR'S FISK AND CRAWFORD REUSE TASK FORCE, FINAL REPORT, FISK AND CRAWFORD REUSE TASK FORCE: PROCESS, PRINCIPLES, AND RECOMMENDATIONS 7 (2012), https://delta-institute.org/delta/wp-content/uploads/Fisk_Crawford_Reuse_Task_Force_Sept-2012.pdf.

year later—diverging from the guiding principles and setting the stage for construction of a massive e-commerce shipping warehouse called “Exchange 55” equipped with 176 diesel trucks.¹⁰

Throughout this process, the Hilco plan benefited from an outdated municipal zoning system. Chicago’s zoning law maintains an antiquated zoning reclassification process intently designed to catalyze largescale industrial development while ignoring environmental justice considerations. The flaws in the law generally take three forms:

1. **Lack of Community Engagement:** The Zoning Ordinance does not require meaningful discourse with environmentally stressed populations when deciding nearby rezoning amendments.
2. **Lack of Environmental Justice Analysis:** The Zoning Ordinance sets out no obligations for assessing the cumulative impacts of a rezoning proposal on health, transportation, environment, and marginalized populations.
3. **Lack of Transparency:** The Zoning Ordinance does not require Chicago’s city government to collect and share pertinent information on rezoning decisions with the general public.

These shortfalls result in a rezoning procedure ill-equipped to fully absorb local environmental justice concerns—a failure that denies protection to at-risk groups while exacerbating the structural power disparities that plague those groups in the first place.

For these reasons, this Note makes the case for passing specific, measured, reasonable upgrades to Chicago’s zoning reclassification procedures to provide greater equity to environmental justice communities, with Little Village as a key example. Part I discusses how Little Village became a neighborhood zoned for environmental hardship. Part II describes the existing Chicago Zoning Ordinance’s denial of equity to environmental justice stakeholders. Finally, Part III proposes a set of environmental justice reforms to improve consideration of community interests in rezoning amendments.

I. THE STORY OF LITTLE VILLAGE AND ENVIRONMENTAL INJUSTICE

The core premise of environmental justice is the existence of an uneven playing field. Dr. Robert Bullard describes the environmental justice movement as a movement “to address all of the inequities that result from human settlement, industrial facility siting and

¹⁰ Zoning is a system of controlling land use and development by organizing land into spatial areas with designated usage and development allowances. Zoning reclassifications refer to the processes by which local government changes the zoning designation of a given area. Hilco obtained the necessary zoning reclassification on September 20, 2018. Mauricio Pena & Heather Cherone, *Massive Little Village Warehouse on Old Crawford Coal Plant Site Approved by City Council* (Sept. 20, 2018), <https://blockclubchicago.org/2018/09/20/massive-little-village-warehouse-on-old-crawford-coal-plant-site-approved-by-city-council/>.

industrial development.”¹¹ Environmental justice seeks to rectify these inequities by striving for sustainable communities where all people can live, work, and play with confidence that the environment is safe, nurturing, and productive.¹² At the heart of this Note is the basic premise that equity is important in decision-making—allowing those who bear the greatest burdens to have the greatest say in what happens to them.

The evolution of environmental injustice in Little Village illustrates why Chicago’s exclusionary, undemocratic zoning practices are oppressive and problematic. Little Village became a hotbed of pollution through population growth and industrial development. Gentrification eventually pushed a wave of Mexican Chicagoans into this pocket of pollution. Today, Little Village is an environmental justice community: a neighborhood of working-class people of color under significant environmental dangers. The people carry a compilation of challenges but lack sufficient power to change their conditions. Equity-based reforms to the Chicago Zoning Ordinance could enable Little Village to obtain relief from its environmental challenges.

A. *Industrial Development and Environmental Decline in Little Village*

Little Village’s relationship with industrial development began early in Chicago’s history.¹³ The once sparsely populated farming community of South Lawndale—the original name of Little Village—became a destination for European immigrants in the second half of the nineteenth century.¹⁴ Industrial and population growth prompted and reinforced one another, with people taking residence in the middle of the community and working in factories along the neighborhood’s borders.¹⁵ Chicago’s first zoning map of

¹¹ *Environmental Justice: An Interview with Robert Bullard*, ENERGY JUST. NETWORK, <http://www.ejnet.org/ej/bullard.html> (last modified Jan. 22, 2000) (posting an interview by Errol Schweizer from July 1999 in *Earth First! Journal*). Definitions of environmental justice have proliferated in recent years in activist, academic, and policy circles. With an inventory of resources for the environmental justice movement, including writings by long-standing movement builders, the Energy Justice Network provides a reliable viewpoint on the relevant terminology. The Network defines environmental justice as “the movement’s response to environmental racism,” and environmental racism as the force that makes communities of color more heavily targeted for hazardous industries than poor communities are. *Environmental Justice/Environmental Racism*, ENERGY JUST. NETWORK, <http://www.ejnet.org/ej/> (last visited May 8, 2019); see also BARRY E. HILL, ENVIRONMENTAL JUSTICE 15–16 (4th ed. 2018). The U.S. Environmental Protection Agency (EPA) defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys the same degree of protection from environmental and health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.” *Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice> (last visited May 8, 2019).

¹² *Environmental Justice: An Interview with Robert Bullard*, *supra* note 11.

¹³ Seated four miles west of Lake Michigan, the land was part of a 284,000-acre grant from the United States Congress to the State of Illinois in 1827. Little Village is still frequently referred to as “South Lawndale” by the City of Chicago; the name “Little Village” did not arise until the 1960s. *South Lawndale History*, LAWNDALe CHRISTIAN HEALTH CTR., <https://lawndale.org/south-lawndale-history> (last visited Mar. 28, 2019).

¹⁴ The area had significant draw as a place where people could own homes and commute to work while enjoying clean running water and clean air. It was, in essence, an environmental haven and a convenient alternative to life in downtown Chicago. *Id.*

¹⁵ *Id.*

1923 captures the resultant neighborhood layout of tightly packed homes encircled by railroads and manufacturing.¹⁶

Pollution sources along the northern boundary proliferated as a result of the 1863 expansion of the Chicago, Burlington, and Quincy Railroad and the creation of the new Lawndale station.¹⁷ While spurring population growth, the increasing presence and frequency of locomotives brought smoke and coal-based dirt into the community.¹⁸ With the prospect of rail-based shipping of raw materials and goods, the railroad attracted more companies like McCormick and Western Electric to establish toxic factories along the tracks.¹⁹

Pollution sources also sprang up on the southern border, as employers aimed to reap the benefits of the new Sanitary and Ship Canal.²⁰ The canal's predecessor was a highly flood-prone stream tied to the Chicago River, which kept the southernmost grounds of South Lawndale unsuitable for residential development.²¹ Between 1885 and 1900, when engineers replaced the northern-flowing stream with a well-defined southern-flowing canal, the grounds became flood-proof and industry actors moved in.²² Use of the canal for transportation, steam generation, process uses, and waste disposal made the land along the

¹⁶ *Chicago Zoning Code 1923*, INTERNET ARCHIVE, <https://archive.org/details/ChicagoZoningCode1923/page/n65> (last visited May 8, 2019) [hereinafter *Chicago Zoning Code 1923*].

¹⁷ *Id.*; see also *South Lawndale History*, *supra* note 13 (describing how the expanded railroad split the “Lawndale-Crawford” land into South Lawndale (future Little Village) and North Lawndale). See generally *Railway & Locomotive Historical Soc’y, Locomotives of the Chicago, Burlington & Quincy Railroad: 1855-1904*, 43 RAILWAY & LOCOMOTIVE HIST. SOC’Y BULL. 1 (1937); A.W. Newton, *Chicago, Burlington & Quincy R.R. “Chicago Terminals”*, 95 RAILWAY & LOCOMOTIVE HIST. SOC’Y BULL. 68 (1956).

¹⁸ The Burlington railroad was one of many railroads with a terminus in Chicago. By the early 1900s, almost 2,500 miles of tracks lay within the city limits, handling over 2000 trains daily. These trains contributed as much as half of Chicago’s smoke burden and half of the dirt from soft coal smoke. Over time, Chicago gained a reputation for dismal air quality as a consequence of the extensive presence of trains and railway. Trains were especially deleterious because the smoke exhaust billowing at a low height from the locomotive smokestacks covered a wide area. David Stradling & Joel A. Tarr, *Environmental Activism, Locomotive Smoke, and the Corporate Response: The Case of the Pennsylvania Railroad and Chicago Smoke Control*, 73 BUS. HIST. REV. 677, 679–81 (1999).

¹⁹ The railroad made commuting from downtown to South Lawndale an easy 20-minute trip. MAGALLON, *supra* note 2, at 10; *South Lawndale History*, *supra* note 13.

²⁰ David M. Solzman, *The Value of Inland Waterfront Industrial Sites*, 45 LAND ECON. 456, 456 (1969).

²¹ The offshoot caused so much flooding that Lawndale-Crawford took on the nickname of “Mud Lake”; the result was a highly irrigated portion of land for agricultural purposes, but at the same time, the land directly adjacent to the offshoot was likely insufficient for building homes. *South Lawndale History*, *supra* note 13; MAGALLON, *supra* note 2, at 21.

²² The Sanitary and Ship Canal has a historic place in urban planning history. Before the canal, the Chicago river flowed eastward and discharged into Lake Michigan, making the premier source for Chicago’s drinking water also the destination for industrial waste and most of Chicago’s sewage. The canal reversed the flow of the Chicago river, causing these wastes to flow to Missouri and then to New Orleans along the Mississippi river. The canal was the largest earth-moving operation at the time in North America, revealing new feats that set the stage for the monumental work of constructing the Panama Canal. The reversing of the flow of the Chicago River also led to a significant Supreme Court case, *Missouri v. Illinois*, 200 U.S. 496 (1906), a flagship example of interstate legal action and federal jurisdiction. E. Hurwitz & George R. Barnett, *Pollution Control on the Illinois Waterway*, 51 J. AM. WATER WORKS ASS’N 987, 989–90 (1959); *Chicago Sanitary and Ship Canal*, BRITANNICA.COM, <https://www.britannica.com/topic/Chicago-Sanitary-and-Ship-Canal> (last updated Jan. 24, 2020). See generally Solzman, *supra* note 20.

canal a hotbed of pollution from tanneries, lumberyards, and livestock packing.²³ Pollution also came in the form of sewage and industrial wastes flowing in from downtown Chicago and Lake Michigan.²⁴

The displacement of Chicago's population after the Great Fire of 1871 transformed South Lawndale into an industrial and working-class neighborhood.²⁵ Lacking options in a totally decimated downtown area, an influx of European immigrants moved in and took jobs at local factories and warehouses, enticing more manufacturers to relocate to the neighborhood's borders.²⁶ Housing shrunk in size, dropped in price, and rose in number.²⁷ Small bungalows and two-flats replaced affluent cottages, brick buildings, and open green space.²⁸ Apartments packed long and narrow lots along north-south residential streets, with small shops lining east-west commercial corridors.²⁹ Having sought an environmental haven from the ruins of the fire, the new arrivals turned South Lawndale into an environmental quagmire.

In 1923, city government froze this layout with a zoning map that virtually assured South Lawndale would remain a highly polluted working-class community. The 1923 Chicago Zoning Ordinance created a map of legally binding land use and volume allowance designations for each plot of land.³⁰ Drafters of the law largely honored the existing land use layout based on recent land surveys.³¹ The map designated South

²³ Solzman, *supra* note 20, at 456.

²⁴ Hurwitz & Barnett, *supra* note 22, at 989.

²⁵ The Great Chicago Fire of 1871 destroyed 300,000 homes, rendering massive portions of Chicago's population instantly homeless. The fire also destroyed factories and businesses. As a result, South Lawndale received not only a wave of newly arriving residents, but also a rise in businesses and major employers. Perhaps because the inner city of Chicago was so thoroughly devastated, South Lawndale became a highly self-sufficient community where people could live, work, shop, and raise a family. Thus, in the decades after the fire, 26th Street became a major commercial area. To this day, 26th Street represents the second highest grossing area of the city, following the luxury shopping district of Michigan Avenue in downtown Chicago. *Little Village History*, ENLACE CHI., <https://www.enlacechicago.org/littlevillagehistory> (last visited May 8, 2019); Schmidt, *supra* note 3; *South Lawndale History*, *supra* note 13; MAGALLON, *supra* note 2, at 11; Ji Suk Yi, *The Grid: Little Village's 'Second Magnificent Mile' Captures Heart of Mexico*, CHI. SUN-TIMES (Mar. 25, 2019), <https://chicago.suntimes.com/2019/3/25/18355132/the-grid-little-village-s-second-magnificent-mile-captures-heart-of-mexico>.

²⁶ The rural profile of South Lawndale disappeared with the arrival of major factories like Western Electric's Hawthorne Works to the west and a Sears Roebuck tower to the north. Chicago extended an elevated rail line to the north and placed rail yards to the east and west. MAGALLON, *supra* note 2, at 11; *South Lawndale: Little Village*, CHI. GANG HIST., <https://chicagoganghistory.com/neighborhood/south-lawndale/> (last visited May 8, 2019) [hereinafter *South Lawndale: Little Village*].

²⁷ By the twentieth century, South Lawndale had become a blue-collar neighborhood; by 1920, the neighborhood center served as home to 84,000 people. *South Lawndale: Little Village*, *supra* note 25.

²⁸ *Id.*

²⁹ Schmidt, *supra* note 3.

³⁰ *Chicago Zoning Code 1923*, *supra* note 16. For a brief overview of how the original zoning system worked, see generally Shertzer et al., *Race, Ethnicity, and Discriminatory Zoning*, 8 AM. ECON. J. APPLIED ECON. 217, 226–27 (2016).

³¹ *Chicago Zoning Code 1923*, *supra* note 16; JOSEPH P. SCHWIETERMAN & DANA CASPALL, *THE POLITICS OF PLACE: A HISTORY OF ZONING IN CHICAGO 17–26* (Jane Heron ed. 2006); Chicago Zoning Survey Maps 1922, U. CHI. MAP COLLECTION, U. CHIC. VISUAL RESOURCES CTR., <https://www.lib.uchicago.edu/e/collections/maps/chigov/G4104-C6G4-1922-C5-index1.html> (depicting residential blocks in the center of South Lawndale and industrial establishments to the east, west, north, and

Lawndale's boundaries, especially to the north and south, for manufacturing and the center for apartments and commercial uses.³² This layout remains intact today. Little Village is a tight grid of apartments and small shops surrounded by railroads and industry.³³

The new zoning system created a glide path for industrial development in areas like South Lawndale. As intended by supporters and drafters of the law, industrial siting became more systematic and strategic.³⁴ Across Chicago, immigrant neighborhoods like South Lawndale took on more industry and more pollution, whereas affluent lakeside neighborhoods were mostly zoned for homeownership.³⁵ This trend continued unabated across multiple revisions of the zoning map.³⁶

The establishment of the Crawford Generating Station exemplified this trend and connected the early emergence of environmental hazards to the present conflict over the Hilco plan. In 1924, one year after the passage of the zoning ordinance, construction commenced on the seventy-acre lot owned by the Edison Company on the northern banks of the canal, immediately south of South Lawndale's densely packed apartment housing and small business community.³⁷ When it opened its doors in 1925, the power station represented the largest of five coal-fired power plants serving Chicago, storing over 300,000 tons of coal and producing 532 megawatts of power—enough power to meet the demands of roughly 399,000 homes at once.³⁸

While early emissions data from the plant is unavailable, recent studies evince extensive environmental damage. The harms included significant emissions of sulfur dioxide, nitrogen oxides, and fine particulate matter (PM_{2.5}).³⁹ In a single year, the plant emitted over 3 million tons of carbon dioxide, 9,000 tons of sulfur dioxide, 2,500 tons of

south, which correspond with subsequent zoning maps for the same area in the Chicago Zoning Ordinance of 1923).

³² *Chicago Zoning Code 1923*, *supra* note 16; notably, the ordinance distinguished between “Residential” zones, mostly reserved for single-family homeowners, and “Apartment” zones, which captured other forms of housing. *See also* Shertzer et al., *supra* note 30, at 218.

³³ *Zoning and Land Use Map*, CITY OF CHI. DEP'T OF PLAN. AND DEV., <https://gisapps.cityofchicago.org/ZoningMapWeb/?liab=1&config=zoning> (last visited May 8, 2019) (search: “26th street and Pulaski Avenue”).

³⁴ Chicago's first zoning ordinance arose out of strong distaste for the randomness of urban development, with many advocates displeased by the tendency of industrial facilities to suddenly pop up in residential neighborhoods. This displeasure reflected concerns for aesthetics, comfort, and property values—though it is not unlikely that many of these advocates were also interested in preventing Black people arriving in Chicago from moving into their neighborhoods. The Chicago Real Estate Board, which actively supported the 1923 ordinance, had also lobbied for an explicit race-based zoning ordinance in the preceding decade (and they might have succeeded, had the Supreme Court not ruled such racial zoning unconstitutional in *Buchanan v. Warley* in 1917). Shertzer et al., *supra* note 30, at 220–21.

³⁵ The neighborhoods closer to the lake and stretching north from downtown Chicago were home mostly to third-generation Americans. Shertzer et al., *supra* note 30, at 232–41.

³⁶ *Id.* at 242–44.

³⁷ Crawford Station History, *supra* note 6; Julie Wernau, Fisk, Crawford coal plants had long history, as did battle to close them, CHI. TRIB. (Sep. 2, 2012), <https://www.chicagotribune.com/business/ct-xpm-2012-09-02-ct-biz-0902-crawford-fisk-20120902-story.html>.

³⁸ *Id.*; *What's a Watt*, *Energy Glossary*, CAL. DEP'T OF ENERGY, https://www.energy.ca.gov/glossary/ISO_GLOSSARY.PDF (last visited Mar. 29, 2019).

³⁹ Jonathan I. Levy et al., *supra* note 6, at 1067. PM_{2.5} are extremely dangerous given their small size (2.5 microns in diameter), which makes them able to pass from the lungs into the bloodstream when inhaled while evading the human body's defense mechanisms.

nitrogen oxides, and 145 pounds of mercury.⁴⁰ These pollutants contributed to 41 deaths, 550 emergency room visits, and 2,800 asthma attacks per year, amounting to as much as \$1 billion in public health-related damages in the final decade of operation.⁴¹ In its final years before closing in 2012, Crawford continued to use pre-1970s equipment in violation of the Clean Air Act.⁴² A 2001 national study of 378 coal plants ranked Crawford as the most serious offender of environmental justice.⁴³

These harms persisted for almost ninety years under the protective legal edifice of discriminatory zoning. The 1923 zoning ordinance targeted South Lawndale for toxic industrial development. Construction of the Crawford plant and other largescale facilities created a ring of detrimental polluting activities surrounding an increasingly dense, working-class population of mostly white immigrant families. What followed was a racial transformation in the 1970s, with white families taking flight and Mexican Chicagoans taking their place.

B. Displacement, Migration, and Environmental Discrimination

Chicago has a long history as a destination for Spanish-speaking peoples. Being a center of industry and rail transportation in the nineteenth century, Chicago drew in waves of Mexican migrant laborers.⁴⁴ By World War I, Mexican immigrants comprised a substantial slice of Chicago's population; they tended to live in neighborhoods near railyards, stockyards, meat-packing facilities, and steel mills to have easy access to fill-in jobs.⁴⁵ They commonly sent their wages to their families who were still residing in rural villages of Mexico.⁴⁶ Mexican immigrants represented almost a quarter of all immigrants entering Chicago in the 1970s.⁴⁷ Chicago became home to 250,000 Spanish-speaking people, 7% of the city population, and the fourth largest Spanish-speaking population of any major American city.⁴⁸

Before the 1970s, Mexican Chicagoans did not reside in Little Village. By the mid-twentieth century, they mainly lived in the Near West Side, one of the oldest Mexican

⁴⁰ *Crawford Generating Station*, GLOBAL ENERGY MONITOR WIKI, https://www.gem.wiki/Crawford_Generating_Station (last updated Dec. 25, 2019) (citing Clean Air Task Force, *Technical Support Document for the Powerplant Impact Estimator Software Tool*, ABT ASSOCIATES, (July 2010).

⁴¹ Jonathan I. Levy et al., *supra* note 6, at 1067; Aaron Cynic, *Study Says Coal Plants Cost Chicagoans Millions In Health Damages*, CHICAGOIST (Oct. 20, 2010, 5:40 PM), https://chicagoist.com/2010/10/20/study_says_coal_plants_cost_chicago.php.

⁴² Cynic, *supra* note 41.

⁴³ ADRIAN WILSON, NAACP, LVEJO, & INDIGENOUS ENVTL. NETWORK, *COAL BLOODED: PUTTING PROFITS BEFORE PEOPLE 98* (2011); *see also* MARTINA JACKSON HAYNES, NAACP ENVT'L. & CLIMATE JUSTICE PROGRAM, *COAL BLOODED ACTION TOOLKIT*, https://www.naacp.org/wp-content/uploads/2016/04/Coal_Blooded_Action_Toolkit_FINAL_FINAL.pdf.

⁴⁴ Nicholas De Genova, *Race, Space, and the Reinvention of Latin America in Mexican Chicago*, 25 *LATIN AM. PERSPECTIVES* 87, 100 (1998). Mexican migration also accelerated in the 1910s in response to the Mexican Revolution. JOSE MIGUEL ACOSTA-CORDOVA, UIC INST. FOR RESEARCH ON RACE AND PUB. POLICY & UIC GREAT CITIES INST., *THE LATINO NEIGHBORHOODS REPORT: ISSUES AND PROSPECTS FOR CHICAGO 5* (2017).

⁴⁵ De Genova, *supra* note 44, at 101; ACOSTA-CORDOVA, *supra* note 44, at 5.

⁴⁶ De Genova, *supra* note 44, at 101.

⁴⁷ Alvar W. Carlson, *A Cartographic Analysis of Latin American Immigrant [sic] Groups in the Chicago Metropolitan Area, 1965-76*, 96 *REVISTA GEOGRAFICA* 91, 92 (1982).

⁴⁸ *Id.* at 91-92; De Genova, *supra* note 44, at 100.

neighborhoods in Chicago to the east of Little Village.⁴⁹ The Federal Housing Acts of 1949 and 1954 targeted the Near West Side for urban renewal and “slum clearance.”⁵⁰ Immediately, the residents of the fourteen block area were under threat of displacement from Chicago housing officials.⁵¹ As a product of slum clearance, Chicago built an expressway—and in the process, evicted and displaced thousands of people between 1949 and 1955.⁵²

After the expressway’s creation, the City authorized the construction of the University of Illinois Circle Campus and public housing developments, which consequently displaced many Mexicans.⁵³ In 1961, despite significant protests from the local community, Chicago’s City Council approved a zoning reclassification to allow construction of a 106-acre college campus.⁵⁴ Construction of the campus forced roughly 4800 Mexicans to give up their homes and find new neighborhoods; many moved south to Pilsen, turning the mostly Czech neighborhood just east of Little Village into a majority-Latinx community by 1970.⁵⁵ As displacement continued, so did the westward migration; by 1980, Little Village showed its first Latinx majority.⁵⁶

The dislodgment of Chicago’s Mexican community came at a historic time of demographic change in Chicago. With nearby suburbs on the rise and the Civil Rights Movement in full swing, white Chicagoans left the city in droves as part of the nationwide “white flight” phenomenon.⁵⁷ At the same time, political and economic forces prompted more people from South Texas, Mexico, and Central America to travel north to Chicago.⁵⁸ Little Village went from being a community of mostly Czech immigrants and other Eastern Europeans to being the largest Mexican community in the Midwest, earning the epithet, “the Mexico of the Midwest.”⁵⁹

⁴⁹ ACOSTA-CORDOVA, *supra* note 44, at 5 (dating the Mexican community back to the 1920s).

⁵⁰ *Id.*

⁵¹ Chip Mitchell, *Swept from Their Homes, Chicago’s Latinos Built New Community*, WBEZ 91.5 CHI. (July 22, 2014), <https://www.wbez.org/shows/curious-city/swept-from-their-homes-chicagos-latinos-built-new-community/331fcc5d-be0b-4b20-be9f-245a562a9310> (citing LILIA FERNÁNDEZ, *BROWN IN THE WINDY CITY: MEXICANS AND PUERTO RICANS IN POSTWAR CHICAGO* (2012)).

⁵² The expressway, known as Congress Highway at the time, is now known as the Eisenhower Expressway. According to reports at the time, residents in the implicated area refused to leave and resisted calls for moving—but they did eventually move, and their homes were demolished. *Id.* (citing *City’s ‘DPs’ Sit Tight in Path of Big Projects: Evacuation Notices Just a ‘Wolf Cry’ to Them*, CHI. DAILY TRIB. (Feb. 16, 1949) (describing a housing official complaining that residents refused to leave until the buildings next door were being torn down).

⁵³ *Id.*; ACOSTA-CORDOVA, *supra* note 44, at 5.

⁵⁴ Mitchell, *supra* note 51 (citing *Protest Rally Today Against U. of I. Campus*, CHI. DAILY TRIB. (Mar. 20, 1961); *Council OKs W. Side U. of I. Site, 41 to 3: Crowd in Gallery Boos Action, Vows Fight*, CHI. DAILY TRIB. (May 11, 1961); LILIA FERNÁNDEZ, *BROWN IN THE WINDY CITY: MEXICANS AND PUERTO RICANS IN POSTWAR CHICAGO* (2012)); *CAMPUS EVOLUTION, UIC CAMPUS MASTER PLAN 14*, https://www.uocpres.uillinois.edu/UserFiles/Servers/Server_7758/file/UIC/mastrpln/phase1/Campus_Evolution.pdf.

⁵⁵ Mitchell, *supra* note 51; Baldwin Wallace Univ., *Latino Neighborhoods in Chicago, Exploring the Latino Metropolis: A Brief Urban Cultural History of US Latinos*, <http://scalar.usc.edu/works/latino-metropolis-a-brief-urban-cultural-history-of-us-latinos---1/latino-neighborhoods-in-chicago> (last updated Mar. 20, 2016).

⁵⁶ Mitchell, *supra* note 51; ACOSTA-CORDOVA, *supra* note 44, at 5.

⁵⁷ ACOSTA-CORDOVA, *supra* note 44, at 37.

⁵⁸ *Id.*

⁵⁹ Schmidt, *supra* note 3; Yi, *supra* note 25.

Thus, with its “urban renewal” actions across the Near West Side and the construction of a highway and a university, the City pushed a large population of Mexicans into the adjacent neighborhoods of Pilsen and Little Village—two areas with coal-fired power plants and environmental justice problems. Little Village became “La Villita,” a community of color situated within a ring of pollution that included the fifty-year-old Crawford plant.⁶⁰

C. Modern-Day Disadvantage and Environmental Injustice in Little Village

Today, Little Village is a vibrant community with dozens of schools, hundreds of restaurants, and Chicago’s second highest grossing commercial corridor on 26th Street.⁶¹ As a principal destination for Latin American immigrants arriving in Chicago, the neighborhood is home to over 112,000 people, 88% of whom are Latinx.⁶²

At the same time, Little Village is one of the most environmentally disadvantaged communities in the Midwest, let alone in Chicago. The U.S. Environmental Protection Agency’s (EPA) environmental justice screening tool gives the vast majority of Little Village a dangerously high Environmental Justice (EJ) index above the 95th percentile for pollution from PM_{2.5}, ozone, diesel particulate matter, proximity to hazardous waste, and lead paint risks.⁶³ Exacerbating these health risks are various intersecting social and economic concerns, including low income levels, housing vulnerabilities, limited access to healthcare, and other challenges related to race, ethnicity, and immigration status.⁶⁴ These intersecting challenges generate political disadvantage as well, undermining the community’s ability to exert itself in local government decision-making.

For every housing category, the average home value in Little Village is less than half the average for Chicago.⁶⁵ Eighty-one percent of the housing stock dates back to pre-1940—raising the likelihood for lead paint, low indoor air quality, energy inefficiencies, lack of storm-proofing, and overall housing insecurity.⁶⁶

Significant economic hardship compounds these housing issues. Little Village’s average annual household income of \$32,000 represents the bottom 30% of incomes in Chicago, a city where households average \$53,000 citywide.⁶⁷ In Little Village, 38% live

⁶⁰ *South Lawndale History*, *supra* note 13.

⁶¹ *See* Yi, *supra* note 25.

⁶² *South Lawndale (Little Village) Neighborhood in Chicago, Illinois (IL), 60608, 60623, 60632 Detailed Profile*, City-Data.com, <http://www.city-data.com/neighborhood/South-Lawndale-Chicago-IL.html> (last visited Mar. 30, 2019) [hereinafter *South Lawndale (Little Village) Neighborhood*].

⁶³ The EJ Index combines demographic and environmental information. Little Village also scores between the 90th and 95th percentiles for cancer risks and respiratory hazards. *EPA EJSCREEN*, U.S. EPA, <https://ejscreen.epa.gov/mapper/> (last visited May 8, 2019).

⁶⁴ *See South Lawndale History*, *supra* note 13.

⁶⁵ In 2016, average home values in Little Village were as follows: \$108,404 for detached homes (citywide average: \$298,915); \$114,661 for townhouses (citywide average: \$438,759); \$117,328 for 2-unit housing (citywide average: \$292,435); \$120,270 for 3-4 unit housing (citywide average: \$342,838); and \$165,805 for 5-or-more unit housing (citywide average: \$361,855). *South Lawndale (Little Village) Neighborhood*, *supra* note 62.

⁶⁶ *Id.*; *Sinai Community Health Survey 2.0: A Look at Little Village*, SINAI URB. HEALTH INST. (2018), https://cct.org/wp-content/uploads/2018/03/SCHS_LittleVillage.pdf (last visited Feb. 25, 2020) [hereinafter *A Look at Little Village*].

⁶⁷ *South Lawndale (Little Village) Neighborhood*, *supra* note 62; *South Lawndale History*, *supra* note 13.

in poverty, 45% lack food security, and half receive federal food stamps.⁶⁸ These statistics reflect an underlying employment and education profile: most employed residents work in lower-wage, labor-intensive industries, and the majority of residents lack a high school diploma.⁶⁹

Low health outcomes reflect limited healthcare access for many Little Village residents, many of whom are not citizens or legal permanent residents, and have low-wage jobs that do not offer health benefits.⁷⁰ In Little Village, 44% of adults report having “fair” or “poor” health, and 34% lack health insurance.⁷¹ Residents identify poverty and low-wage employment as constant obstacles to healthcare coverage.⁷² People also report that their neighborhoods are not safe for exercise.⁷³

Housing insecurity, low income levels, and insufficient healthcare coverage all contribute to environmental stress. Little Village is an especially dense community, with nearly 25,000 people per square mile, over twice the average population density in Chicago.⁷⁴ As a result, the neighborhood has one of the lowest percentages of green space of any neighborhood in Chicago, with only 1% of the land counting for parks and

⁶⁸ *South Lawndale (Little Village) Neighborhood*, *supra* note 62 (describing the poverty rate); *A Look at Little Village*, *supra* note 66 (describing food insecurity).

⁶⁹ Here, labor-intensive industries include construction, extraction, maintenance, production, and material moving. People in Little Village are also less likely to work in management, business, or financial operations. In terms of education, 59% of residents lack a high school diploma compared to 16% of residents citywide. *See South Lawndale (Little Village) Neighborhood*, *supra* note 62.

⁷⁰ Reduced access to diverse and well-paying jobs, education, and job-training programs leaves residents of Little Village with few alternatives to low-wage positions that lack health insurance. Those residents with questionable immigration status are further hampered from accessing social services, out of fear of being asked for documentation and risking immigration enforcement. *Immigration, Wage Suppression and Health in Little Village*, CHI. COMMUNITY TRUST & AFFILIATES (Mar. 4, 2018),

<https://cct.org/2018/03/immigration-wage-suppression-and-health-how-they-connect-in-little-village/>;

South Lawndale History, *supra* note 13.

⁷¹ *A Look at Little Village*, *supra* note 66. Little Village residents show a higher than average prevalence of diabetes—15% of adults, compared to 9% nationally. *Id.* The area also has a 17% child asthma rate.

Mariela Fernandez & Antonio Lopez, *Latino Residents Champion for Green Justice in Little Village*, NAT’L RECREATION & PARK ASS’N (Jan. 31, 2016), <https://www.nrpa.org/parks-recreation-magazine/2016/february/latino-residents-champion-for-green-justice-in-little-village>.

⁷² *A Look at Little Village*, *supra* note 66. When people work in low-wage jobs, they experience greater pressure to ignore the need to take time off from work to visit a doctor. Nearly half of adults report not having routine check-ups in 2018; 10% did not fill needed prescriptions, 25% did not get needed dental care, and 22% did not get needed eyeglasses, all due to cost. Thirty percent of residents also report that they were treated unfairly by a health care professional as a consequence of their race, ethnicity, or color. With low-wage employment, parents can be less available for planning and cooking healthy meals, and less capable of purchasing more expensive but healthy food options. *See generally A Look at Little Village*, *supra* note 66. The American College of Physicians also report that Latinx families in general have more challenges with obtaining prenatal care in the first trimester, and they are more likely to be diagnosed with breast cancer at a later stage—consequences of insufficient health coverage. *South Lawndale History*, *supra* note 13.

⁷³ *A Look at Little Village*, *supra* note 66 (finding that two thirds of residents do not feel safe alone at night and 27% feel unsafe during the day as well).

⁷⁴ *South Lawndale (Little Village) Neighborhood*, *supra* note 13. The exact numbers for population size and density vary depending on the data source. In 2013, Enlace Chicago reported that 80,000 people live in Little Village, with 17,000 per square mile. Enlace Chi., *Little Village Quality-of-Life Plan*, LVEJO P3 (June 2013), http://www.lvejo.org/wp-content/uploads/2015/04/LV-QofL-Plan_Document.pdf.

recreation.⁷⁵ Among Chicago's seventy-seven community areas, Little Village has the second worst air quality and the ninth highest level of lead poisoning in children.⁷⁶ EPA investigations have found high levels of polycyclic aromatic hydrocarbons (PAHs), which have been linked to cancer risk.⁷⁷

After a century of industrial development and racial displacement, Little Village has evolved into a neighborhood significantly and disparately impacted by a variety of interweaving struggles. Beyond the direct and intersecting harms of these struggles, they have the added consequence of reinforcing age-old patterns of political marginalization.⁷⁸

The work of building environmentally safe and sustainable communities requires expanding democratic practices. Numerous organizations devoted to environmental justice place community engagement, democracy, and accessibility at the center of their theories of change.⁷⁹ This emphasis is especially relevant to land use and zoning.⁸⁰ Environmentally oppressive zoning systems have historically placed locally unwanted land uses (LULUs) within or adjacent to low-income neighborhoods and communities of color, and away from

⁷⁵ Enlace Chi., *supra* note 74, at P3. The citywide rate is seven percent. *A Look at Little Village*, *supra* note 66.

⁷⁶ Fernandez & Lopez, *supra* note 71.

⁷⁷ *Id.*

⁷⁸ Interview with Kim Wasserman, Executive Director, LVEJO, in Chicago, Ill. (Apr. 25, 2019) [hereinafter Wasserman Interview]; Emily Bergeron, *Local Justice: How Cities Can Protect and Promote Environmental Justice in a Hostile Environment*, 32 NAT. RESOURCES & ENV'T 8, 10 (2018) ("Although much of environmental justice has addressed distributional disparities like those in East Houston and Warren County, on a larger scale the idea that unequal social, economic, and political power relationships make certain communities more vulnerable applies to threats to health and environment on a much larger scale than the siting of toxic waste facilities.").

⁷⁹ The Deep South Center for Environmental Justice identifies "community and student engagement for policy change" as part of its organizational mission. *Our Story*, DEEP SOUTH CTR. FOR ENVTL. JUST., <http://www.dscej.org/our-story> (last visited Mar. 2, 2020). Caroline Farrell, Executive Director of the Center on Race, Poverty & the Environment, describes full participation of affected communities as a "necessary first step" in remedying uneven environmental burdens. Caroline Farrell, *A Just Transition: Lessons Learned from the Environmental Justice Movement*, 4 DUKE FORUM L. & SOC. CHANGE 45, 51, 55 (2012). LVEJO refers to "self-determination" in its mission, "participatory democracy" in its vision, and "power and agency" in its theory of social change. Mission & Vision Statement, LVEJO, <http://www.lvejo.org/our-mission/mission-vision-statement/> (last visited Mar. 2, 2020). The federal government has incorporated the emphasis on public participation in its own articulation of environmental justice, with the U.S. EPA defining environmental justice as encompassing both the "fair treatment" of all people and their "meaningful involvement" with respect to environmental works. *Environmental Justice*, U.S. EPA, <https://www.epa.gov/environmentaljustice> (last visited Mar. 26, 2020).

⁸⁰ The issue of land use and zoning is a long-standing focus of the environmental justice movement. The first recorded EJ protest took place in 1967, when a group of students at Texas Southern University demonstrated in response to the death of a child in a city-owned garbage dump adjacent to a playground in a majority Black community; the students identified the siting of the dump as racial discrimination. In 1982, a year many consider to be a birthdate for the environmental justice movement, activists marched in response to the state of North Carolina's decision to use the predominantly Black Warren County as a disposal site for toxic waste. HILL, *supra* note 11, at 6–7. Around the same time in Chicago, Hazel Johnson, "the mother of the environmental justice movement", started bringing attention to the "toxic donut" of Altgeld Gardens, a South Side neighborhood surrounded by 50 landfills and 382 industrial facilities, creating the highest concentration of hazardous waste in the United States. Lisen Holmström, *The Mother of Environmental Justice*, Q MAG. (May 23, 2018), <https://q.sustainability.illinois.edu/hazel-johnson-and-the-toxic-doughnut/>.

wealthy white neighborhoods.⁸¹ The challenge of environmental injustice in Little Village reflects this practice, with the Hilco plan as a case in point.

Chicago's current zoning system throws this connection into stark relief: neighborhoods like Little Village have fewer footholds on the decision-making process over the use of local land. Environmental justice requires building a more meaningful role for Little Village residents to participate in government so they can tell their stories and share their visions for their neighborhood. For that role to be a lasting one, City Council must enshrine it through legislative reforms to the zoning code.

II. THE DENIAL OF ENVIRONMENTAL JUSTICE IN CHICAGO ZONING

This part of the Note explores the Chicago Zoning Ordinance's lack of meaningful provisions for preventing and undoing environmental injustice in communities like Little Village. Across the various procedures for rezoning decisions—general rezoning, industrial corridor rezoning, Permanent Manufacturing District rezoning, and Planned Development rezoning—the Chicago's zoning code fails to provide substantial stipulations for community engagement, environmental justice analysis, or basic transparency of information to support environmental justice communities like Little Village. Subpart A highlights the environmental injustices of Chicago's zoning law. Subpart B analyzes how these shortcomings posed significant consequences in the planning and approval process for Hilco's Exchange 55 warehouse that was to be built on the site of the retired Crawford plant. The undemocratic, exclusionary process that Little Village residents faced in fighting the Hilco plan illustrates the importance of legislative reforms to the Chicago Zoning Ordinance. These findings will set the stage for Part III, where the Note advances a proposal for widening and adding structures to the zoning system to promote community engagement, environmental justice analysis, and general transparency with rezoning amendments.

A. *Absence of Environmental Justice Focus in the Chicago Zoning Ordinance*

Chicago City Council needs to reform the process for zoning map amendments in the Chicago Zoning Ordinance to better protect communities of color from environmental burdening and discrimination.⁸² These reforms can come in many varieties; this Note focuses on community engagement, environmental justice analysis, and transparency.

⁸¹ This practice has taken on the name of NIMBY-ism, "not-in-my-backyard." Historically, through NIMBYism, the communities that enjoyed a concentration of economic and political power ensured that LULUs, like hazardous waste industries and other sources of pollution, would be placed in neighborhoods that were economically and politically disenfranchised, through a process Dr. Bullard has referred to as PIBBY—"place-in-Blacks'-backyards." Robert W. Collin, *Environmental Equity: A Law and Planning Approach to Environmental Racism*, 11 VA. ENVTL. L.J. 495, 509–10 (1992); see also Charles Lord & Keaton Norquist, *Cities as Emergent Systems: Race as a Rule in Organized Complexity*, 40 ENVTL. L. 551, 559 (2010).

⁸² The Chicago Zoning Ordinance outlines a process for amending both the text of the ordinance and the zoning map itself. Text amendments are legislative changes to the general law, whereas map changes involve legislative changes to the zoning designation of a given area in the city. The focus of this Note is on map amendments, also known as zoning reclassification amendments, or rezoning amendments. CHICAGO ZONING AND LAND USE ORDINANCE, CHICAGO, ILL., MUN. CODE §§ 17-13-0200, 0300 (2019).

These three areas of reform are foundational because they address significant oversights in the current municipal code on zoning. The Zoning Ordinance does not offer enough mandates for the government to engage with impacted communities over local rezoning proposals. The Zoning Ordinance does not provide any reasonable stipulations for examining and reviewing the environmental justice ramifications of those proposals. Finally, the Zoning Ordinance lacks sufficient requirements for city government to share its findings and the reasons behind its decisions with the general public.

To fully appreciate the gravity of these three issues—lack of community engagement, lack of environmental justice analysis, and lack of transparency—it is important to locate these faults in each of the four zoning amendment processes laid out in the Zoning Ordinance:⁸³ general amendments to the zoning map,⁸⁴ amendments to an industrial corridor,⁸⁵ Permanent Manufacturing District amendments,⁸⁶ and Planned Development amendments.⁸⁷ These four sets of procedures reveal that through all its statutory complexity, the Chicago Zoning Ordinance fails to offer a bulwark of protections for environmental justice communities.

1. Community Engagement

Chicago’s process for reviewing and approving zoning reclassifications offer minimal attention to public engagement. Overall, the City is under little to no obligation to hold community meetings or collect public testimony during the decision-making process for zoning amendments. Where those obligations do exist—as discussed below—the language in the ordinance offers no standards for meeting those responsibilities. The silence and vagueness of the ordinance renders environmental justice communities with only the narrowest avenues for influencing the review process for map amendments.

i. Community Engagement for General Rezoning Amendments

Catch-all “general” amendments cover most small-scale rezoning applications. Usually, these rezoning designations are Residential (R), Business (B), Commercial (C), Downtown (D), Manufacturing (M), Parks and Open Spaces (POS), and Transportation (T).⁸⁸ General rezoning involves only two legally mandated public hearings where concerned community members have a chance to deliver testimony: a hearing by the City Council Committee on Zoning, Landmarks and Building Standards (“Zoning Committee”) and a hearing by the full City Council at one of its monthly meetings.⁸⁹

⁸³ The Ordinance also outlines procedures for special use districts, variances, and nonconformities in Chapters 7 and 15 of the Ordinance. These procedures are beyond the scope of this article.

⁸⁴ § 17-13-0300 et seq.

⁸⁵ § 17-13-0400 et seq.

⁸⁶ § 17-13-0700 et seq.

⁸⁷ § 17-13-0600 et seq.

⁸⁸ § 17-13-0300. Most of these categories contain subcategories based on the bulk, floor area ratio, density, height, and specific use of the district. For example, R districts separate small single-family households from large multifamily apartment buildings; C districts separate neighborhood stores from shopping malls; M districts separate light and heavy manufacturing areas. §17-(2-6).

⁸⁹ § 17-13-0306 (describing the Zoning Committee hearing). The Ordinance does not describe the full City Council hearing, but the hearing is inferable by the fact that final zoning decisions take place at full City Council hearings, which are open to the public.

The Zoning Committee hearing occurs in the second phase of the process, the first being the Zoning Administrator's review. The Ordinance says only the following about the hearing:

The City Council Committee on Zoning, Landmarks and Building Standards must hold a hearing on all zoning map amendments. Written, Published and Posted Notice of the [Zoning Committee's] public hearing must be provided in accordance with Sec. 17-13-0107-A, Sec. 17-13-0107-B and Sec. 17-13-0107-C.⁹⁰

While the language here suggests special notice requirements for the Zoning Committee hearing, the listed provisions are insufficient. The notice requirements focus primarily on alerting the public about the filing of an application.⁹¹ Neither written, nor published, nor posted notices need to describe the date, time, and location of a public hearing—let alone who is allowed to submit testimony, how much time a person will receive for testimony, and the manner in which the overall public hearing will take place.⁹² The Ordinance only requires written notice to property owners—not renters—within 250 feet of the subject property.⁹³

Aside from the notice requirements, the Zoning Ordinance provides no specific requirements for where and when public hearings take place. Committee and Council hearings customarily take place at City Hall in the middle of a weekday.⁹⁴ This arrangement disadvantages individuals who reside far away from the downtown area and those who work daytime jobs with limited leeway for missing time from work. Because City Hall serves as both a government building and law enforcement hub, the location is especially hard for those who have non-citizen immigration statuses or who carry trauma from past interactions with police.⁹⁵

The format of the public testimony session creates barriers as well. Attendees are limited to three-minute statements, with no clear schedule for when the zoning issue will come up for discussion, when the public testimony portion will begin, or the order of testifiers. Thus, a person taking time off from work to travel from Little Village to downtown Chicago may spend several hours waiting for the chance to speak for a brief three minutes.⁹⁶ Overall, public hearings benefit those who work near City Hall and those who can afford to miss work to attend a hearing.

⁹⁰ *Id.*

⁹¹ §17-13-0107 (stating that notices must be posted and published around the time of the hearing, and hearings will not be scheduled without proof that the applicable notice requirements were met).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ § 17-13-0306.

⁹⁵ The downtown public hearing also reinforces a power dynamic whereby the community interest is subsumed by the citywide interest. Writes Maantay about zoning decisions in New York City, "According to most of the interviewees, the seriousness with which the CPC treats the recommendations of each community board varies in accordance with the political power of the community, and the recommendations of the more affluent communities are generally accorded more weight than those of the poorer communities." Juliana Maantay, *Zoning Law, Health, and Environmental Justice: What's the Connection?*, 30 J. L., MED & ETHICS 572, 584 (2002).

⁹⁶ Often, when the public testimony portion of the hearing takes place, aldermen habitually leave the room or speak amongst themselves. Witnessed by the author.

The result is a public testimony format that inherently benefits developers. While some organizations like LVEJO have paid staff, most community members are not even paid travel reimbursements to attend these meetings.⁹⁷ In contrast, well-resourced companies like Hilco often hire professional lobbyists for the specific purpose of building relationships with public officials and attending major hearings.⁹⁸

While the Ordinance provides a method for formal protests to decisions, the process is extremely limited and only open to nearby property owners. The provision reads:

[A] valid written protest is one that is signed and acknowledged by:

1. the property owners of 20% of the land proposed to be rezoned;
or
2. the property owners of land immediately touching, or immediately across a street, alley, or public way from at least 20% of the perimeter of the land to be rezoned.

[B] In the case of a valid written protest, approval of a zoning map amendment requires a favorable vote of two-thirds of all Aldermen.

[C] A copy of the written protest must be served by the protester on the applicant and the applicant's agent by certified mail at the address shown on the application.⁹⁹

This process grants power to landowners and disenfranchises renters.¹⁰⁰ Residents most vulnerable to environmental hardship are often renters who cannot afford to own property.¹⁰¹ The process breeds potential corruption—those applying for rezoning may attempt to bribe landowners, some of whom may not even occupy the land they own, to secure their support for the amendment.¹⁰²

The protest power also inexplicably focuses only on those living within or adjacent to the site in question. If publicly owned property immediately surrounds an industrial site, the rezoning applicant is insulated from the protests of landowners living one block away. The restriction of the protest power to those adjacent to the site discounts the expansive

⁹⁷ Staff, LVEJO, <http://www.lvejo.org/about-us/staff/> (last visited Mar. 2, 2020).

⁹⁸ See generally Alexandra Raphael, *Lobbying, Special Interests and “Buying” Influence: What Research Tells Us, and Remaining Unanswered Questions*, JOURNALIST’S RESOURCE (Sept. 4, 2014), <https://journalistsresource.org/studies/politics/finance-lobbying/influence-interest-groups-public-policy-outcomes/> (“Large corporations and groups are more likely to lobby independently than smaller groups, which tend to lobby through trade associations. Some researchers suggest that smaller groups lack the resources to cover the high fixed costs of a lobbying organization.”).

⁹⁹ Here, contiguous refers to land touching or immediately across a street, alley, or public way. § 17-13-0307A.

¹⁰⁰ In the case of the Crawford lot, the vast majority of the perimeter is land owned by the City of Chicago or industrial businesses. The northern perimeter is comprised of mostly small apartment dwellings.

¹⁰¹ Alice Kaswan, *Seven Principles for Equitable Adaptation*, 13 SUSTAINABLE DEV. L. & POL’Y 41, 44 (2012).

¹⁰² Chicago has a history of bribery offenses in the context of zoning. Since 1972, eight elected aldermen have been convicted for taking bribes to exert influence on zoning issues. *A Look at Chicago’s Corrupt Aldermen Through the Years*, CBS CHI. (Jan. 3, 2019), <https://chicago.cbslocal.com/2019/01/03/alderman-burke-chicago-city-hall-corruption/>.

reach of site-specific pollution and the effects of pollution from heightened transit activity to the site in question.

ii. Community Engagement for Rezoning Amendments within Industrial Corridors

The Chicago Zoning Ordinance maintains a special process for rezoning decisions that affect industrial corridors, a designation that the City of Chicago developed in the 1980s and 1990s to preserve areas considered to be vital to the city's industrial interests and the retention of industrial jobs.¹⁰³ The industrial corridor designation makes it harder for rezoning applicants to reclassify a plot of land inside the corridor for residential or retail purposes.¹⁰⁴

In terms of engagement, industrial corridors present only two significant changes from the general procedure. First, nearby property owners do not enjoy a right to force, by written protest, a supermajority City Council voting threshold for the final decision.¹⁰⁵ Second, the ordinance provides an additional public hearing in addition to the two from the general rezoning procedures—this one hosted by the Chicago Plan Commission in advance of the Zoning Committee hearing:

In addition to the hearings required under Sec. 17-13-0300, the Plan Commission must hold a public hearing on requests to rezone land within an industrial corridor from an M, PMD, POS or T zoning district classification to any other zoning district classification and make a recommendation to the City Council before the [Zoning Committee's] public hearing.¹⁰⁶

While a third opportunity to deliver public testimony could prove useful for well-organized environmental justice organizations like LVEJO, the same shortcomings still apply: lack of inclusivity in the location, scheduling, and facilitation of the hearing, and a built-in advantage to well-financed developers. The same notice requirements under the general rezoning procedures apply to the public hearings here; they cater mostly to property owners and offer little guarantee of proper warning of upcoming opportunities for people to deliver public testimony. The language for this hearing mirrors the language for the Zoning Committee hearing in its lack of clarity on the format, rules, and overall purpose of the hearing.

¹⁰³ See SCHWIETERMAN & CASPALL, *supra* note 31, at 133–36; § 17-17-0274; the additional requirements for industrial corridors do not apply if the reclassification proposal involved changing an M district to another M subcategory, a PMD, POS, or T zoning district.

¹⁰⁴ Chicago currently has twenty-four industrial corridors, representing roughly twelve percent of city land; they tend to have real-world boundaries like highways, railroads, and waterways that help to buffer the industrial areas from other activities. CHICAGO DEP'T OF HOUS. AND ECON. DEV., CHICAGO SUSTAINABLE INDUSTRIES: A BUSINESS PLAN FOR MANUFACTURING 20 (2011), https://www.chicago.gov/content/dam/city/depts/zlup/Sustainable_Development/Publications/Chicago_Sustainable_Industries/CSI_3.pdf (last visited May 9, 2019).

¹⁰⁵ See generally § 17-13-0400.

¹⁰⁶ § 17-13-0402.

iii. Community Engagement for Planned Manufacturing District Amendments

The Permanent Manufacturing District (PMD) amendment involves additional procedures that emphasize protection of manufacturing activities. Chicago currently has fifteen PMDs located within industrial corridors.¹⁰⁷ The rezoning procedures for PMDs are similar to the reclassification process for industrial corridors. The key difference is that the City must hold a “Community Meeting” within the actual impacted ward rather than at City Hall:

[A] Before the formal public hearing provided for in Sec. 17-13-0705, the Commissioner of Planning and Development must convene at least one public meeting in the ward in which the proposed PMD is located, for the purpose of explaining and soliciting comments on the proposal.

[B] The Commissioner of Planning and Development must give written notice to the respective Alderman of the time, place and purpose of the meeting and publish notice of the meeting in a newspaper of general circulation.¹⁰⁸

Here, impacted community members have a more substantial outlet for conveying concerns and submitting feedback. The purpose of the meeting is clearly stated in the Zoning Ordinance: to “explain[] and solicit[] comments on the proposal.” The Zoning Ordinance even specifies notice of the meeting, in stark contrast to the ambiguous stipulations for notice before a public hearing.

Still, details on the meeting’s format, its use, and the role of community leaders in planning and facilitation are absent. Nowhere does the language require collaboration with community organizations and neighborhood residents to ensure that those most impacted by an issue have a maximal opportunity to participate. Nor are there specifics for what happens to the comments—for example, whether the Commissioner needs to respond to them, or whether City Council needs to review them before deciding on the proposed amendment. The purpose of “soliciting comments” also lacks clear emphasis on environmental equity and justice.

The other difference is regarding public hearings. Unlike with public hearings for general rezoning and rezoning within industrial corridors, hearings for PMD rezoning have a specific purpose outlined by the ordinance:

The Plan Commission must hold a public hearing on all PMD proposals for the purpose of taking testimony and determining the industrial viability of the district and the need for PMD status.¹⁰⁹

¹⁰⁷ § 17-13-0702-B (listing, among other things, the barriers to non-industrial zoning proposals); § 17-6-0401 (listing the fifteen PMDs).

¹⁰⁸ § 17-13-0703 (entitled “Community Meeting”).

¹⁰⁹ § 17-13-0705.

[The Zoning Committee] must hold a public hearing on all PMD proposals for the purpose of taking testimony and determining the industrial viability of the district and the need for PMD status.¹¹⁰

Neither of these hearings are designed to usher in environmental justice concerns. They focus instead on gauging the industrial viability of the designation and the need for the PMD status.

iv. Community Engagement for Planned Development Amendments

The Planned Development (PD) amendment entered the zoning code in 1957 to provide more flexibility around the design and coordination of massive development projects that usually involve mixed uses and multiple buildings on large portions of land.¹¹¹ Whereas other designations carry a rigid set of rules outlined in the zoning law, PD districts allow developers to negotiate with city government to tailor the rules around the project's needs, from allowed land uses to design requirements.¹¹² The government benefits by gaining broad supervisory control over the project.¹¹³ PDs cover a wide range of project types, including waterway developments, tall buildings, airports, universities, entertainment venues, and large shipping centers like Hilco's Exchange 55, planned for Little Village.¹¹⁴

The process for acquiring a PD designation is similar to the process for rezoning within industrial corridors: no community meetings¹¹⁵ and no formal protest opportunities.¹¹⁶ The only formal engagement opportunities legally required by the ordinance are the three public hearings hosted by the Plan Commission, the Zoning Committee, and the City Council.¹¹⁷

The absence of a formal protest opportunity for adjacent property owners is significant, given that PD projects, which tend to be massive construction undertakings, will often pose larger public health impacts than general zoning reclassifications.¹¹⁸ Neighboring owners enjoy a unique entry point in the decision-making process over an

¹¹⁰ § 17-13-0707.

¹¹¹ PD regulations are designed to achieve the following for these various projects:

17-8-0101 ensure adequate public review of major development proposals;

17-8-0102 encourage unified planning and development;

17-8-0103 promote economically beneficial development patterns that are compatible with the character of existing neighborhoods;

17-8-0104 ensure a level of amenities appropriate to the nature and scale of the project;

17-8-0105 allow flexibility in application of selected use, bulk, and development standards in order to promote excellence and creativity in building design and high-quality urban design; and

17-8-0106 encourage protection and conservation of natural resources.

§ 17-8-0100; *see also* SCHWIETERMAN & CASPALL, *supra* note 31, at 45–54.

¹¹² SCHWIETERMAN & CASPALL, *supra* note 31, at 45–54.

¹¹³ *Id.*

¹¹⁴ § 17-8-0500; CHICAGO, ILL., ORDINANCE 2018-6028 (2018).

¹¹⁵ The lack of community meetings distinguishes the PD applications from PMD applications. *See generally* § 17-13-0600.

¹¹⁶ *See generally id.*

¹¹⁷ §§ 17-13-0604-0606.

¹¹⁸ *See generally* § 17-8-100 *et seq.*

application to rezone a residential zone for commercial use, for example.¹¹⁹ In such circumstances, property owners can organize and issue a protest that would raise the bar from a simple majority vote from City Council, to a two-thirds threshold.¹²⁰ But adjacent property owners lose this ability when the zoning application is for the construction of a power plant or an airport.¹²¹

Notably, the Zoning Ordinance provides more instruction on the timing of the hearing by the Plan Commission. The hearing by the Plan Commission must be scheduled within seven days of the receipt of a complete application, and it must take place within thirty days of the scheduling.¹²² Within seven days after the hearing, the Plan Commission “must forward its findings, determination and recommendation to the City Council Committee on Zoning, Landmarks, and Building Standards.”¹²³ The requirement on the Plan Commission to forward its “findings” to the Zoning Committee suggests an expectation that that Plan Commission record concerns voiced at its public hearing, but this expectation is not explicit.

The Ordinance also provides information on the purpose of both the Plan Commission hearing and the Zoning Committee hearing. These purposes are as follows:

0604-C. The Plan Commission must provide a reasonable opportunity for all interested parties to express their opinions under such rules and regulations as the Plan Commission may adopt.¹²⁴

0606. [The Zoning Committee] must hold a public hearing on all planned development proposals for the purpose of reviewing the proposed project and taking testimony.¹²⁵

While both hearings shift the focus away from industrial viability, the purposes remain nondescript. The Ordinance requires a “reasonable opportunity” without providing any guidance on what “reasonable” means—for example, whether it requires scheduling

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ The formal protest provision actually dates back to the 1923 Chicago Zoning Ordinance; it is possible that in subsequent years, as new designations were added to the zoning system, those revising the Ordinance thought it best not to extend the protest feature, in order to make development easier in Chicago. City Council might have calculated that it is easier to reject the extension of a protest provision than it is to remove the provision entirely. The remaining protest provision suggests that its original inclusion had more to do with minor nuisance concerns or disagreements over design and density issues. In other words, adjacent property owners could have the privilege of obstructing a small-scale rezoning change, but they could not tamper with a major planned development. *See* SCHWIETERMAN & CASPALL, *supra* note 31, at 45–54.

¹²² § 17-13-0604-A, D. The Plan Commission may also grant extensions at the applicant’s request, thereby waiving the 30-day requirement. § 17-13-0604-D. Also, whenever practicable, the Plan Commission is expected to hold concurrent public hearings whenever multiple hearings on a single property is required. § 17-13-0604-E.

¹²³ § 17-13-0605.

¹²⁴ § 17-13-0604-C; *see also* Petersen v. Chicago Plan Comm’n of City of Chicago, 707 N.E.2d 150, 155 (Ill. App. Ct. 1998) (where, without defining the phrase “reasonable opportunity, the court stated that the purpose behind this provision was “not to protect individuals from deprivation of property rights, but based on concerns about how best to preserve the environmental, recreational, cultural, historical, community and aesthetic interests and values of Lake Michigan and Chicago’s Lakefront.”).

¹²⁵ § 17-13-0606.

the meeting for a weekend, a specified time duration, or even inclusive accommodations like childcare services and translation assistance. The Ordinance ostensibly offers generous deference to the Plan Commission over these considerations by granting it the power to decide on the “rules and regulations” for the hearing.¹²⁶

Across these different procedures for rezoning, the Chicago Zoning Ordinance offers no consideration for the value of specialized, proactive engagement. Providing public hearings is not enough to counteract a history of targeted environmental burdening.¹²⁷ Chicago’s zoning system obstructs impacted communities like Little Village from accessing and influencing the decision-making process.¹²⁸ This barrier sets up a voluminous political problem, where communities lacking in resources to influence the zoning process rely extensively on local aldermen to act on behalf of their interests.¹²⁹ With one representing each of fifty wards across Chicago, aldermen enjoy enormous “aldermanic prerogative” (also known as “aldermanic privilege”) to dictate the outcomes of even minor zoning issues that solely implicate their ward.¹³⁰ This power dynamic creates a wide range of pressures for impacted households to build political clout with the alderman and attend public hearings to keep the alderman accountable.¹³¹

2. Environmental Justice Analysis

In terms of information gathering and decision-making criteria, the Chicago Zoning Ordinance is not a meaningful and effective legal instrument for addressing environmental justice.¹³² None of the rezoning procedures require an environmental impact analysis, and the few references to environmental protection are vague and limited in scope. The one area of the Ordinance that offers some attention to environmental stressors provides only

¹²⁶ § 17-13-0604-C.

¹²⁷ Besides applications for PMD status, none of the rezoning procedures reviewed here stipulate an obligation for the City to visit the local community and gather residents’ opinions. Anecdotally, members of the public who have participated in public hearings have reported that the public testimony portion of these hearings is an ineffective outlet, especially considering the lack of clarity on when the testimony portion will take place, the three-minute limitation, and the tendency of aldermen to use the testimony time as a respite from the meeting.

¹²⁸ Amy Laura Cahn, *On Retiring Blight as Policy and Making Eastwick Whole*, 49 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 449, 484–88 (2014).

¹²⁹ See Patricia Fron et al., *Aldermanic Prerogative is the Grease that Oils the Machine*, CHI. TRIB. (Feb. 7, 2019), <https://www.chicagotribune.com/opinion/commentary/ct-perspec-aldermanic-prerogative-zoning-political-corruption-0208-20190207-story.html>.

¹³⁰ *Id.*

¹³¹ The dynamic of aldermanic prerogative rewards those well-positioned to contribute to the alderman’s political fund. By donating to the alderman’s reelection campaign, a well-financed developer can secure support for a zoning change against the interests of community members. See *id.* (“Unfettered zoning and permitting power in the hands of aldermen perpetuates segregation, creates disparities in how we invest in communities and invites political corruption.”). In Philadelphia, “councilmanic prerogative” proved useful once an environmental justice community group gained enough political capital to persuade its local councilmember to action. The Councilman for the affected area used his privilege as councilman to postpone a vote on a rezoning amendment and to even call a special hearing for collecting testimony about environmental problems cited by the organization. While this example shows the positive expression of councilmanic prerogative (and can be instructive for the way aldermanic prerogative could prove useful in Chicago), the outcome might have not taken place had the organizing group lacked more political power. Cahn, *supra* note 128, at 479.

¹³² See Bergeron, *supra* note 78, at 11–12. (underscoring the importance of rigorous local action).

an advisory guideline in the context of a long list of other considerations.¹³³ These shortcomings are significant. In its current state, the Chicago Zoning Ordinance permits the City of Chicago to approve rezoning amendments with negligible consideration for the impact those amendments would have on environmentally distressed communities.

i. EJ Analysis for General Rezoning Amendments

For a general rezoning application, the Chicago Zoning Ordinance does not require any environmental review.¹³⁴ Nor does it obligate the Zoning Administrator, the Zoning Committee, or the full City Council to give special attention to data, reports, anecdotes, or any other evidence of environmental injustices posed by a zoning application.¹³⁵ None of these bodies are under obligation to arrange, commission, or initiate scientific analysis on the environmental consequences posed by a zoning application.¹³⁶

When the City of Chicago reviews and decides on applications, the Ordinance offers almost no attention to environmental considerations. While the Ordinance provides no information on the Zoning Administrator's review process, it does list the contents of a typical zoning amendment application—none of which consider environmental and public health risks, demographic analysis, or historical analysis.¹³⁷ The Ordinance also lists a series of disclosures required in a zoning amendment application, focusing on conflict of interest issues.¹³⁸

For the Zoning Committee and the full City Council, Section 17-13-0308 of the Zoning Ordinance outlines a general reference to health concerns:

The act of amending the zoning map is a legislative action that must be made in the best interests of the public health, safety and general welfare, while also recognizing the rights of individual property owners.¹³⁹

The Zoning Ordinance then directs decision-makers to consider only the following five criteria for a zoning application:

[A] whether the proposed rezoning is consistent with any plans for the area that have been adopted by the Plan Commission or approved by the City Council;

¹³³ See Maantay, *supra* note 95, at 586 (discussing the insufficiency of advisory guidelines in New York City's Fair Share Criteria for siting city-owned facilities).

¹³⁴ See generally CHI. MUN. CODE § 17-13-0300 (2019).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ For rezoning amendments, the application must include a development analysis listing the floor area ratio, density, off-street parking, setbacks, and building height. Illustrations and plans must demonstrate various design considerations, such as curb cuts, sidewalks, landscaping, and garbage storage facilities. There is a catchall phrase calling for all of information that is necessary for compliance with the Zoning Ordinance but based on the nature of the listed terms and the standards in the Ordinance, the catchall phrase is unlikely to provide stipulations for environmental analysis in a zoning application. § 17-13-0303-C.

¹³⁸ § 17-13-0304.

¹³⁹ § 17-13-0308.

[B] whether the proposed rezoning is appropriate because of significant changes in the character of the area due to public facility capacity, other rezonings, or growth and development trends;

[C] whether the proposed development is compatible with the character of the surrounding area in terms of uses, density and building scale;

[D] whether the proposed zoning classification is compatible with surrounding zoning; and

[E] whether public infrastructure facilities and city services will be adequate to serve the proposed development at the time of occupancy.¹⁴⁰

While the provisions begin with a straightforward reference to public health, safety and general welfare, and even allude to a potential balancing between them and individual property rights, the specific factors listed for consideration do not reflect a substantial commitment to preserving public health and safety.

Legally, the review and decision-making bodies are free to ignore environmental impacts. The criteria focus primarily on preserving a status quo and continuity with surroundings. The Zoning Ordinance instructs the City Council to reinforce the existing character of a neighborhood and surrounding zoning designations, regardless of whether that character and those zoning designations pose a detriment to the larger community.

ii. EJ Analysis for Amendments within Industrial Corridors

Like the general rezoning process, rezoning within industrial corridors does not require any environmental impact review. Reviewing proposed amendments within industrial corridors build on general rezoning criteria by requiring seven factors “with respect to industrial viability,” in addition to the five criteria in Section 17-13-0308, discussed from above:

[A] the size of the district;

[B] the number of existing firms and employees that would be affected;

[C] recent and planned public and private investments within the district;

[D] the potential of the district to support additional industrial uses and increased manufacturing employment;

[E] the proportion of land in the district currently devoted to industrial uses;

[F] the proportion of land in the district currently devoted to non-manufacturing uses; and

[G] the area's importance to the city as an industrial district.¹⁴¹

Thus, industrial corridors involve two sets of criteria: five factors for determining whether the amendment is generally appropriate, and seven factors for determining whether an amendment will threaten the corridor's industrial viability.

¹⁴⁰ *Id.*

¹⁴¹ § 17-13-0403.

On the one hand, focusing on how a zoning reclassification supports industrial development makes sense for an industrial corridor. Yet the largescale impact of industrial corridors on surrounding communities raises the importance of employing special consideration to environmental issues. How, for example, might a zoning change trigger a worsening environmental risk profile around the corridor? This analysis is entirely missing from the Chicago Zoning Ordinance, despite the long history of industrial development in close proximity to communities of color and working-class neighborhoods.

iii. EJ Analysis for PMD Amendments

Procedures for reclassifying a zone as a PMD involve the same sets of criteria as industrial corridors: the five-part test for general appropriateness, and the seven-part test for protecting industrial viability.¹⁴² PMD classifications also require a three-part test for whether PMD status is needed—further extending the trend of catering to industry interests.¹⁴³ The review bodies and decision-making bodies—the Plan Commission, the Zoning Committee, and the full City Council—are under no obligation to carry out an environmental impact analysis.

iv. EJ Analysis for PD Amendments

Consideration for environmental justice is also absent from the criteria for reviewing and deciding on PD applications. The Zoning Ordinance requires review bodies and decision-making bodies to consider only three factors: compliance with standards and guidelines, compatibility with the surrounding area, and feasibility of public infrastructure and city services for the new development.¹⁴⁴ Standards and guidelines for PDs include a wide range of stipulations, from floor area ratio standards to parking.¹⁴⁵

The guidelines advise that planned developments adhere to green design, with an emphasis on environmental protection. The green design section of the Zoning Ordinance says that planned developments should minimize human exposure to noxious elements, conserve energy and materials, minimize ecological impacts, employ sustainably harvested materials, protect and restore features of the natural environment, and support alternatives to fossil-fuel vehicles.¹⁴⁶ The section also notes that planned developments should strive to reduce storm water runoff and contamination.¹⁴⁷ To be sure, these provisions create an avenue for environmental justice advocates to lobby review bodies and decision-making

¹⁴² § 17-13-0710-A.

¹⁴³ The three-part test is as follows:

With respect to the need for planned manufacturing district status, review and decision-making bodies must consider the following factors:

1. evidence of conflict with or encroachment on industrial uses by nonindustrial uses;
2. demand for zoning changes or use conversions which may be incompatible with the character of the manufacturing district; and
3. continuing industrial viability of the area in accordance with Sec. 17-13-0710-A.

Notably, this three-part test is essentially a two-part test, since the third factor simply repeats the industrial viability determination. § 17-13-0710-B.

¹⁴⁴ § 17-13-0609.

¹⁴⁵ § 17-8-0900 (providing a full list of guidelines).

¹⁴⁶ § 17-8-0908-A.

¹⁴⁷ § 17-8-0908-B.

authorities to consider the environmental hazards of a proposal, especially with regard to “minimiz[ing] human exposure to noxious materials.”¹⁴⁸

This avenue, however, is narrow and does not necessarily involve a focused consideration of environmental *justice*—an intersectional and longitudinal analysis of environmental detriment to specific populations and communities over time. For example, on its face, a planned development may appear to pose no significant exposure risks to people; but after accounting for the proximate community’s history of disinvestment, poverty, housing scarcity, and political disadvantage, exposure and susceptibility to environmental harms can rise dramatically.

The green design section is also structurally insufficient. Rather than including environmental standards as a standalone criterion, environmental protection is a sub-point of a green design section, which itself is brief and situated alongside twelve other sections to consider for planned development guidelines. An applicant for a PD designation could use renewable energy technologies to compensate for its use of noxious materials, even though the renewable technologies do not actually offset the pollution that arises from those materials. An applicant could also focus on the other twelve sections of the guidelines to meet the expectations of review bodies, while paying little interest to green design considerations. Finally, the provisions of the guidelines are only advisory. A review body or decision-making body has ample flexibility to rationalize that a proposal meets the standards and guidelines for planned developments.

None of the rezoning procedures in the Chicago Zoning Ordinance provide any requirement for environmental analysis. Without any stipulations for environmental and public health studies, or for consideration of environmental justice when reviewing map amendment requests, Chicago’s zoning system ignores a critical connection between zoning and environmental health. City officials lack the legal mandate to gather data, consider cumulative stressors, and factor environmental justice concerns into the metric for rezoning applications. Beyond the harms posed during specific zoning decisions, the absence of environmental analysis undermines the city’s overarching role in protecting public health and general welfare. To execute this role properly, the city needs to expand its efforts to collect data and track sources of environmental hazards. The Chicago Zoning Ordinance denies the City of Chicago a critical tool for fulfilling this responsibility.

3. Transparency

Transparency is an important component of any strategy to foster environmental justice. Access to information over time makes for a more inclusive decision-making process while also building trust and accountability structures between environmental justice communities and government.¹⁴⁹ The EPA launched multiple initiatives to expand public access to information systems in pursuing environmental justice goals.¹⁵⁰ The Community Cumulative Assessment Tool, for example, was designed to provide community health advocates and environmental justice groups with access to EPA data on local environmental conditions.¹⁵¹

¹⁴⁸ § 17-8-0905-A(1).

¹⁴⁹ Wasserman Interview, *supra* note 78.

¹⁵⁰ See generally David W. Case, *The Role of Information in Environmental Justice*, 81 MISS. L.J. 701 (2012).

¹⁵¹ *Id.* at 732 (citing U.S. EPA: OFFICE OF ENVTL. JUSTICE, Plan EJ 2014, at 116 (2011)).

Yet local zoning decisions in Chicago offer no express commitment to information access, despite the importance of zoning in effecting environmental equity. The Chicago Zoning Ordinance does not require city government to share its findings from public hearings or its reasons for any specific decisions. Where access to information does exist, the onus is on the affected residents to acquire this information through a cumbersome, time-consuming process.

i. Transparency for General Rezoning Amendments

The Zoning Ordinance establishes a general rezoning application process that involves multiple stages of information review. These stages include the recommendation by the Zoning Administrator, findings and final reporting by the Zoning Committee, testimony gathered at public hearings, assessments based on decision-making criteria, responses to formal protests, and supporting explanations for the City Council's final decision.¹⁵² Across these stages, the Zoning Ordinance never obligates city government to publish or share information with the general public.¹⁵³

The rationale for final decisions is especially important, given the clear set of criteria outlined by the Zoning Ordinance that the City Council must utilize when determining whether to approve an application.¹⁵⁴ Yet when the City Council arrives at a decision, it customarily produces no explanation for its decision overall, let alone for each criterion.¹⁵⁵ The public has no guaranteed way of learning how City Council applies the proper criteria. The same holds true regarding the recommendations of the Zoning Committee.

Where transparency does take place, the access points are cumbersome. Chicago's online Legislative Information Center (known as Legistar) provides access to agendas, notes, ordinances, and resolutions from City Council meetings.¹⁵⁶ Documents often span hundreds of pages and use procedural jargon for their titles and descriptions, making the notes for a specific issue or motion difficult to find.¹⁵⁷

¹⁵² See generally § 17-13-0300.

¹⁵³ *Id.*

¹⁵⁴ § 17-13-0308.

¹⁵⁵ The video of the City Council hearing for the final decision on the Hilco rezoning application reveals a swift passage of the zoning map amendment, as part of a bundle of rezoning amendments, with no discussion of the criteria. No explanations were published on the Legislative Information Center website, either. This is typical of how final zoning decisions take place. See generally Periodic Videos, *City Council Meeting—September 20, 2018*, CHI. CITY COUNCIL (Sep. 20, 2018), http://chicago.granicus.com/MediaPlayer.php?view_id=2&clip_id=880; see generally Chi., Ill., Office of the City Clerk, *Legislative Information Center*, City Council Meeting of September 20, 2018, Meeting Details (Sep. 20, 2018), <https://chicago.legistar.com/MeetingDetail.aspx?ID=618207&GUID=19133539-0518-4F34-B14E-55164653CD0F&Options=info&Search=>. [hereinafter City Council Meeting Details from September 20, 2018].

¹⁵⁶ Chi., Ill., Office of the City Clerk, *Legislative Information Center*, <http://chicago.legistar.com/legislation>.

¹⁵⁷ The Hilco plan, for example, involved a 195-page ordinance for a zoning reclassification carrying the barcode "O2018-6028", the application number 19766, and the title "Zoning Reclassification Map No. 8-J at 3412-3700 S Pulaski Rd, 3317-3459 S Hamlin Ave and 3747-3757 W 35th St—App No. 19766." The Ordinance is listed on the agenda for two separate Zoning Committee hearings, neither of which list proposed ordinances in order of barcode or application number, but rather, in order of ward number. The downloadable "Summary" provided does not list the Ordinance at all; for those items that are listed, the Summary does not report out any decisions or discussion notes. The summary merely lists the purpose of

The complexities involved in retrieving notes from a public hearing are especially important to the conversation on environmental justice, where impacted communities may have less information, less time to acquire the information, and less specialized knowledge on legal and technical considerations.¹⁵⁸ Proper, thorough, and proactive dissemination of information to impacted communities is critical to addressing systemic inequalities.¹⁵⁹

ii. Transparency for Amendments within Industrial Corridors

The same pattern of inaccessibility to information permeates the procedures for rezoning within industrial corridors. In addition to a recommendation by the Zoning Administrator and a determination by the Zoning Committee, procedures for industrial corridors also include a recommendation by the Plan Commission. Here, too, the Zoning Ordinance does not require public dissemination.¹⁶⁰ While the Zoning Ordinance requires them to “consider” certain criteria, neither the Plan Commission, the Zoning Committee, nor City Council need to share their findings on general appropriateness or preservation of industrial viability.¹⁶¹

Transparency is especially important in this context, for the sake of informing the public on the state of industrial activity in a given corridor, the importance of that activity to the city, and whether the government has reason to believe that any diminishment of that activity could hurt the general welfare of the city. In particular, the public stands to benefit substantially from an explication by the Plan Commission on the “potential of the [rezoned] district to support additional industrial uses and increased manufacturing employment”¹⁶² and “the area’s importance to the city as an industrial district.”¹⁶³ Both of these factors are included in the test for preserving industrial viability.¹⁶⁴

iii. Transparency for PMD Amendments

The same patterns of lack of transparency with rezoning in industrial corridors also surface with rezoning for PMDs. Here the procedure also involves assessing the necessity of PMD status. The Chicago Zoning Ordinance does not require the city government to share its analysis and findings regarding “evidence of conflict with or encroachment on

each agenda item without any indication of the Committee’s official decision. The Summary does not list the Committee’s decision on page 12 of a 20-page agenda, which lists ordinances not in order of application number or barcode but in order of ward number. *See generally* CHICAGO, IL., ORDINANCE 2018-6028 (2018); COMMITTEE ON ZONING, LANDMARKS & BUILDING STANDARDS, MEETING AGENDA (July 24, 2018); SUMMARY OF A MEETING, COMMITTEE ON ZONING, LANDMARKS & BUILDING STANDARDS (July 24, 2018).

¹⁵⁸ LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 109 (2001).

¹⁵⁹ Bernard A. Weintraub, *Access to Information*, in THE LAW OF ENVIRONMENTAL JUSTICE: THEORIES AND PROCEDURES TO ADDRESS DISPROPORTIONATE RISKS 265, 265 (Michael B. Gerrard & Sheila R. Foster eds., 2d ed. 2008) (citing ELENA PETKOVA ET AL., CLOSING THE GAP: INFORMATION, PARTICIPATION, AND JUSTICE IN DECISION-MAKING FOR THE ENVIRONMENT (2003)).

¹⁶⁰ § 17-13-0402.

¹⁶¹ § 17-13-0403.

¹⁶² § 17-13-0403-D.

¹⁶³ § 17-13-0403-G.

¹⁶⁴ § 17-13-0403.

industrial uses by nonindustrial uses”—even though this very evidence may easily form the basis for the City’s dismissal of environmental justice concerns.¹⁶⁵

Transparency issues also arise in the Ordinance’s provisions on community meetings. As discussed earlier, the process for acquiring a PMD map amendment uniquely involves at least one community meeting within the affected ward, hosted by the Commissioner of Planning and Development.¹⁶⁶ While the Zoning Ordinance states that the purpose of the meeting is partially to solicit comments on a proposed PMD, the Ordinance does not require the City to record these comments, share them, or share any responses or determinations that the City might have reached regarding those comments.

Notably, while the Zoning Ordinance unequivocally requires the Plan Commission to at least record its findings from a public hearing and forward them to the Zoning Committee, the Zoning Ordinance is silent on any responsibilities for findings gathered at community meetings.¹⁶⁷ Lack of transparency undermines the value of the meetings for the attendees and for those who are not able to attend. Those who give comments at a community meeting have no guarantee that the Commissioner of Planning and Development will memorialize their input and save it for future reference.

iv. Transparency for PD Amendments

PD zoning arguably requires the highest standard of transparency of any rezoning procedure. By definition and purpose, PDs enjoy enormous flexibility with zoning rules and restrictions to allow for open negotiations between the City of Chicago and the prospective developers. These negotiations likely take place in advance of a submitted application for PD zoning, which means that environmental justice communities are potentially locked out of the process until the parties decide on the details and host a public hearing to review them.¹⁶⁸ Thus, information sharing to the public takes place only in the final stages of the application cycle, where the map amendment has likely gained momentum for final passage by the City Council.¹⁶⁹ Not only does this undermine the standing of impacted parties, it also perpetuates a disservice to the PD application itself. Sharing information early on would give city planners the chance to accommodate and address public concerns over the course of negotiations.

Factors for reviewing and deciding on PD proposals include matters of great concern for the community. The Zoning Ordinance requires that a proposal comply with a set of standards and guidelines,¹⁷⁰ including safety and efficiency with transportation and traffic,¹⁷¹ maintaining safe walkways for pedestrians,¹⁷² minimized human exposure to noxious materials,¹⁷³ and protection of local air and water.¹⁷⁴ Despite the justifiably strong interest of community residents in these issues, the Zoning Ordinance does not require the publishing of any explanation for how a PD application satisfies each of these factors.

¹⁶⁵ § 17-13-0710-B(1).

¹⁶⁶ § 17-13-0703-A.

¹⁶⁷ § 17-13-0706 (compared to § 17-13-0703).

¹⁶⁸ See SCHWIETERMAN & CASPALL, *supra* note 31, at 45-54.

¹⁶⁹ *Id.*

¹⁷⁰ § 17-13-0609-A.

¹⁷¹ § 17-8-0904-A.

¹⁷² § 17-8-0905-A(1).

¹⁷³ § 17-8-0908-A(1).

¹⁷⁴ § 17-8-0908-A(5).

The procedures for rezoning amendments likewise show a total neglect for the value of transparency. With regard to the findings gathered at public hearings and determinations reached with respect to the decision-making criteria, the Chicago Zoning Ordinance does not legally require open communication with the public. Without clear transparency guidelines, the Zoning Ordinance leaves it to the discretion of the City, including the Plan Commission, the Zoning Committee, and the full City Council. The portal for obtaining and reviewing official meeting documents offers insufficient access to meeting notes and summaries, given the convoluted titles and descriptions of documents and the technical language generally used throughout. Information and knowledge are fundamental building blocks for environmentally just policymaking and administering. To address environmental justice in zoning, the City of Chicago needs to amend its zoning code to provide a more promising avenue for public information gathering.

B. Planning the Future of the Crawford Lot: A Manifestation of Environmental Injustice in Chicago's Zoning Law

The recent dilemma over the Crawford lot brings to life many of these problems from the previous section—on the topics of community engagement, environmental justice analysis, and transparency of process and information.

The dilemma placed community activists against Hilco Redevelopment Partners over the future use of the Crawford lot, located within the Little Village Industrial Corridor and zones as an M3-3 Heavy Industry District.¹⁷⁵ Hilco, as the owner of the lot, applied for a rezoning amendment to switch the district from a general manufacturing (M) designation to a PD designation.¹⁷⁶ City Council approved the rezoning amendment in September 2018, paving the way for a massive diesel-intensive facility in one of the most heavily burdened environmental justice neighborhoods in Chicago.¹⁷⁷

1. Lack of Meaningful Community Engagement

The Hilco dilemma showcases all the problems arising from the Chicago Zoning Ordinance's inattention to community engagement. These problems emanated throughout the process of reviewing and approving Hilco's PD rezoning application.

Prior to Hilco's purchase of the Crawford lot in December 2017, LVEJO enjoyed a strong role in planning for the lot's future.¹⁷⁸ Following the 2012 closure of the Crawford and Fisk power plants, the Chicago Mayor's Office invited LVEJO to join the Fisk and Crawford Reuse Task Force, convened by the Delta Institute.¹⁷⁹ Together with other task force members—unions, community groups, aldermen, city officials, and current owners

¹⁷⁵ § 17-5-0104; City of Chicago, Ordinance 2018-6028; *Zoning and Land Use Map*, Dep't of Plan. & Dev., CITY OF CHI., <https://gisapps.cityofchicago.org/ZoningMapWeb/?liab=1&config=zoning> (last visited Apr. 1, 2019).

¹⁷⁶ § 17-5-0104.

¹⁷⁷ *Id.*

¹⁷⁸ Wasserman Interview, *supra* note 78.

¹⁷⁹ *Id.*; Julie Wernau, *Closure of Chicago's Crawford, Fisk Electric Plants Ends Coal Era*, CHI. TRIB. (Aug. 30, 2012), <https://www.chicagotribune.com/business/ct-xpm-2012-08-30-chi-closure-of-chicagos-crawford-fisk-electric-plants-ends-coal-era-20120830-story.html>; FINAL REPORT, FISK AND CRAWFORD REUSE TASK FORCE, *supra* note 9, at iv.

of the lot—LVEJO shaped a set of nine guiding principles for the lot’s future use.¹⁸⁰ Several of these principles emphasized environmental health and safety. Others focused on stakeholder input and standards for future land use.¹⁸¹ The owners also agreed to comply with various public health recommendations, to minimize pollution, and to increase community engagement, living wage jobs, opportunities for public space, and water access.¹⁸²

As a task force member, LVEJO successfully blocked the City’s own proposal to build a “green casino” on the lot.¹⁸³ As an alternative, LVEJO advanced an overarching vision of just, non-extractive development that would have reflected neighborhood interests.¹⁸⁴ Through its own community engagement efforts, LVEJO identified a keen local desire for green energy job training for a decentralized energy system, and urban agriculture to support local food production, consumption, and business.¹⁸⁵ LVEJO’s ultimate proposal involved using the plant itself for vertical farming, largescale commercial kitchens, and an indoor produce market.¹⁸⁶

¹⁸⁰ Wasserman Interview, *supra* note 78; FINAL REPORT, FISK AND CRAWFORD REUSE TASK FORCE, *supra* note 9, at iv.

¹⁸¹ The guiding principles were as follows:

1. The Fisk and Crawford sites provide opportunities as useful community assets that can enhance the ability of local residents and businesses to live, work and play in a healthy environment.
2. Broad-based stakeholder input on the redevelopment of the sites should be encouraged, building upon existing forums and agreements, but including new parties as the project evolves. Such collaboration is likely to lead to the best outcome for all involved.
3. As sites are redeveloped and used in the future, pollution and waste should be minimized, with an emphasis on sustainability.
4. Located in industrial corridors with ongoing operation of grid infrastructure at both locations and a peaking plant at Fisk, the sites are not suitable for residential development.
5. Redevelopment provides an opportunity to create quality, living wage jobs for residents of these communities.
6. Redevelopment of each site may include parceling the sites for more than one use, owner or occupant.
7. Neither site is intended to be used entirely as a park or open space; however, where feasible there should be public access to the river and canal.
8. Potential sources of public and private resources for reclamation and redevelopment should be identified early and actively pursued.
9. Parties involved in future redevelopment should be aware that the communities prefer clean, advanced light manufacturing, and not large-scale retail, for the sites.

FINAL REPORT, FISK AND CRAWFORD REUSE TASK FORCE, *supra* note 9, at 7.

¹⁸² Wernau, *supra* note 179. The Task Force specifically rejected “big box retailers” that could threaten the sustainability of small local businesses. Julie Wernau, *Redevelopment Ahead for Chicago’s Two Coal Plant Sites*, CHI. TRIB. (Dec. 1, 2014), <https://www.chicagotribune.com/business/ct-crawford-fisk-sites-1130-biz-20141126-story.html>; FINAL REPORT, FISK AND CRAWFORD REUSE TASK FORCE, *supra* note 9, at 7.

¹⁸³ Wasserman Interview, *supra* note 78.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Central to this vision was the notion that Little Village could be a self-sufficient food system. Little Village’s 26th Street is the second highest grossing street in Chicago in tax revenue dollars, largely due to a massive food-based cash economy. The neighborhood is home to over 160 restaurants and most of the city’s street-based food vendors. Most of the people who migrate or immigrate to the Little Village

As soon as Hilco purchased the land, community engagement ended entirely.¹⁸⁷ In contravention of the guiding principles from 2012, and Hilco proceeded with a plan for a one million-square-foot distribution center called Exchange 55, housing 176 diesel trucks.¹⁸⁸ The plan contravened several of the principles, including the minimization of pollution, the promise of living wage jobs, and the preferability of clean, light manufacturing over largescale retail. LVEJO publicly rejected the plan on these grounds.¹⁸⁹

In the face of palpable community resistance, Hilco had the advantage of a zoning system that minimized the possibility of community engagement. On July 18, 2018, Hilco filed an application for rezoning the lot located at 3501 South Pulaski.¹⁹⁰ For a PD rezoning within an industrial corridor, the foregoing process would require at least one public hearing hosted by the Plan Commission and one hosted by the Zoning Committee—but no community meetings. Thus, Hilco had no legal obligation to hold an in-ward community meeting. In contrast to PMD rezoning, where the Zoning Ordinance instructs the Commissioner of the Department of Planning and Development to convene the community meeting, Hilco was able to host meetings itself on its own terms, without any government oversight and regulation.¹⁹¹

Hilco proceeded to hold two community meetings that provided insufficient opportunities for residents of Little Village to voice their concerns.¹⁹² Hilco made no efforts to consult with LVEJO on the format of the meetings and instead worked through the local

neighborhood come from agricultural backgrounds, but upon arrival in Chicago, find little to no outlet for their farming skills. Using the Crawford lot for urban agriculture would harness the potential of a farming community-in-waiting. *Id.* See also Antonio Lopez, *The Struggle for a Just Transition of the Crawford Coal Plant in Little Village Continues*, Blog, UNION OF CONCERNED SCIENTISTS, (Oct. 10, 2017), <https://blog.ucsusa.org/guest-commentary/chicago-coal-plant-closure>.

¹⁸⁷ Wasserman Interview, *supra* note 78. When the Crawford plant closed in August 2012, it belonged to Midwest Generation. In December 2012, Midwest Generation filed for bankruptcy, and a company called NRG Energy purchased the land. At the end of 2017, after previously indicating it would abide by the wishes of the Task Force, NRG concluded an intensive search for a buyer and accepted an offer for the Crawford site from Hilco Redevelopment Partners, which is a subsidiary of Hilco Global, a company based in suburban Northbrook, Illinois. Hilco agreed to remediate the land before redeveloping it. At the announcement of the \$100 million purchase, and with the local alderman representing Little Village, Ricardo Munoz, in attendance, Hilco stated its plan to develop the site for logistics and warehousing. *Redevelopment Ahead for Chicago's Two Coal Plant Sites*, *supra* note 195; Hilco Redevelopment Partners, *Hilco Redevelopment Partners Acquires Former Crawford Power Generating Station Site*, CISION PR NEWSWIRE (Feb. 6, 2018), <https://www.prnewswire.com/news-releases/hilco-redevelopment-partners-acquires-former-crawford-power-generating-station-site-300594012.html>; *Crawford Power Plant Site Changes Hands, Set for Remediation and Redevelopment*, RE J. (Feb. 6, 2018), <https://www.rejournals.com/crawford-power-plant-site-changes-hands,-set-for-remediation-and-redevelopment>.

¹⁸⁸ Jay Koziazar, *City Commission Approves Little Village Logistics Complex Despite Air Quality Protests*, CURBED CHI. (Sept. 13, 2018), <https://chicago.curbed.com/2018/9/13/17856202/little-village-development-hilco-warehouse-pollution>; Wasserman Interview, *supra* note 78.

¹⁸⁹ Wasserman Interview, *supra* note 78; FINAL REPORT, FISK AND CRAWFORD REUSE TASK FORCE, *supra* note 9, at 7.

¹⁹⁰ Chi., Ill. Zoning Reclassification Map, Ordinance #SO2018-6028 (2018), <https://chicago.legistar.com/LegislationDetail.aspx?ID=3583755&GUID=C8730CE6-B162-47F0-BF4D-943DB605A70B&Options=&Search=>.

¹⁹¹ See generally CHICAGO, ILL., MUN. CODE § 17-13-0600 (2019).

¹⁹² Wasserman Interview, *supra* note 78.

alderman, who had long resisted the closure of the Crawford plant.¹⁹³ Both meetings occurred on the same week, substantially limiting the potential attendance for the meeting.¹⁹⁴ The first event took the form of an open house, with separate presentations around the room, no chairs, and no portion of time for people to collectively ask questions, submit feedback, and take part in meaningful dialogue.¹⁹⁵ The second event retained the walkthrough format but included a portion of time at the very end for questions.¹⁹⁶ People stood in a line that stretched out the door, waiting to voice concerns.¹⁹⁷

At both events, Hilco hired security guards to monitor the event, which many attendees interpreted as a sign that Hilco viewed them as prone to violence and disorder.¹⁹⁸ Others felt unsafe in their presence and uncomfortable with delivering their candid, oppositional input to Hilco.¹⁹⁹ Given the large immigrant community in Little Village, the guards made the space feel especially inaccessible for anyone with a questionable immigration status.²⁰⁰

After these meetings, the public hearings took place in rapid succession, leaving LVEJO and other concerned residents with minimal opportunity to influence the decision-making.²⁰¹ At a hearing on September 13, 2018, the Plan Commission voted in favor of the warehouse plan despite significant pushback and protest by the community.²⁰² The Zoning Committee then held a hearing six days later and voted in favor of the plan.²⁰³ On the next day, September 20, the full City Council voted unanimously to approve the plan.²⁰⁴

The rapidity of the hearings demonstrates the low regard held for public testimony. LVEJO and other community organizers had little chance to organize their testimony, leverage the news media, or mobilize attendance from affected members of the community.²⁰⁵ Because the public notice provisions of the Zoning Ordinance focus on notifying property owners, many concerned residents may have missed the alert for the hearings. The language to describe the rezoning application created a challenge of its own; a concerned community member would have had to know the exact barcode or application number to find the proposed rezoning on the City of Chicago's online Legislative

¹⁹³ Hilco did meet with LVEJO on roughly four separate occasions individually, but these meetings proved unproductive, and they did not cover the topic of format for a community meeting. *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*; LVEJO Response to Hilco, Little Village Env'tl. Justice Org., *Little Village's Fight for the Right to Breathe* (Apr. 1, 2019), <http://www.lvejo.org/wp-content/uploads/2018/09/LVEJO-Response-to-Hilco.pdf> (also noting how Hilco used a presentation style that, according to LVEJO, "was specifically designed to diminish dialogue and prevent the cultivation of open conversation amongst the room at large").

¹⁹⁶ Wasserman Interview, *supra* note 78.

¹⁹⁷ *Id.*

¹⁹⁸ LVEJO Response to Hilco, *supra* note 195.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Wasserman Interview, *supra* note 78.

²⁰² Koziarz, *supra* note 188. Though debatable, the Ordinance did not explicitly require the Plan Commission to hold two public hearings—one mandated by the industrial corridor procedure to assess industrial viability, and another mandated by the PD application procedure to assess the proposal based on PD-specific criteria. Ostensibly, based on how events transpired, the Plan Commission held a single public hearing for both purposes.

²⁰³ *Hilco's Crawford Station Plan Wins Key Approval*, CONNECT CHI. COM. REAL ESTATE NEWS (Sept. 18, 2018), <https://www.connect.media/hilcos-crawford-station-plan-wins-key-approval/>.

²⁰⁴ Pena & Cherone, *supra* note 10.

²⁰⁵ Wasserman Interview, *supra* note 78.

Information Center.²⁰⁶ The tight schedule gave residents hardly any opportunity to voice concerns and lobby aldermen. At the hearings, Hilco enjoyed the built-in advantage of actually presenting the plan itself for a lengthy period of time and engaging in discussion with aldermen, while opposing community members waited for the public testimony portion to begin.²⁰⁷

The Chicago Zoning Ordinance not only countenances this power disparity; it actively fosters it. Hilco was able to use the vague, generous language of the Zoning Ordinance to its advantage, presenting photographs of community meetings without any independent parties to fact-check its version of the events and findings.²⁰⁸ The mere fact that Hilco held more than one community meeting may have expedited the passage of its rezoning application. Lacking a meaningful engagement component, the procedures in the Zoning Ordinance were heavily biased in favor of Hilco and against the concerns of environmental injustice in Little Village.

2. Lack of Environmental Justice Analysis in Review and Decision-making

Equally apparent from the Hilco dilemma were the consequences of a system lacking any environmental justice analysis. When Hilco presented its plan for Exchange 55, the City of Chicago had no obligation to consider the cumulative impacts on the local community. LVEJO had to perform its own analysis to compensate for the shortcomings of the zoning system.²⁰⁹

An environmental justice analysis was conspicuously absent throughout the rezoning application process. Hilco, as the applicant, ostensibly followed the loose procedural stipulations of the Zoning Ordinance even though it provided no provisions in its application addressing whether the plan was environmentally safe and how the plan might impact the local environment.²¹⁰ When Little Village residents voiced reasonable concerns about the introduction of 176 diesel trucks, the Ordinance did not require the Zoning Administrator or the Plan Commission to authorize environmental analysis.²¹¹ In the face of massive protests over the Hilco plan and the well-known history of environmental damage brought on by the Crawford plant, the Plan Commission, the Zoning Committee, and the full City Council approved the amendment without holding a hearing to receive testimony from environmental scientists, public health experts, healthcare providers, social workers, or families and individuals suffering from respiratory problems and other medical issues.²¹²

One glaring issue with the Zoning Ordinance is the absence of any requirements for traffic studies. While traffic issues do come up in the advisory guidelines for PDs, the

²⁰⁶ The Hilco plan involved a 195-page ordinance for a zoning reclassification carrying the barcode “O2018-6028”, the application number 19766, and the title “Zoning Reclassification Map No. 8-J at 3412-3700 S Pulaski Rd, 3317-3459 S Hamlin Ave and 3747-3757 W 35th St—App No. 19766”. Those that did not know the barcode or application number would have needed to know the format for addresses in rezoning applications; searching for the application based on the specific address of the Crawford plant would have resulted in no results. CHI. MUN. CODE § 2018-6028 (2018).

²⁰⁷ *Id.*

²⁰⁸ From author’s own observations.

²⁰⁹ Wasserman Interview, *supra* note 78.

²¹⁰ *See generally* (“§” or “Ordinance”) 2018-6028.

²¹¹ *See generally* CHI. MUN. CODE § 17-13-0600 (2019).

²¹² Witnessed by the author.

Zoning Ordinance does not create a mandate for actual investigations.²¹³ Traffic considerations are especially pertinent to the future use of the Crawford lot, which is located in the middle of an industrial corridor that features multiple major warehouses and facilities.²¹⁴ Truck activity is frequent in the area, with semi-trucks entering and leaving the corridor throughout the day via one of the several major roads connecting the corridor to the residential heart of Little Village.²¹⁵ The largest of these roads is Pulaski Road, which also serves as a bridge over the canal and runs contiguous to the Crawford lot.²¹⁶ Two blocks north of the lot at the intersection of Pulaski and 31st Street is a bus depot, where multiple bus lines reach the end of their lines.²¹⁷ Within one mile of the corridor are twenty-five schools and over 14,000 students.²¹⁸ Despite the major traffic-related health concerns in this vicinity, the Chicago Department of Transportation has not completed a traffic study on the southwest side of Chicago in over twenty-five years.²¹⁹

In the absence of an objective traffic study commissioned by the City, Hilco designed its own study, placing pressure on the community to respond with a study of its own.²²⁰ Defending the Hilco plan to the public and promoting it to City Council colleagues, the local alderman leaned on Hilco's industry-sponsored research, which showed only one truck per ten minutes crossing the intersection of 31st Street and Pulaski Road.²²¹ Rather than take the alderman at his word, members of LVEJO researched, trained for, and organized their own truck-counting study and found up to four trucks per minute crossing the same intersection, plus more than one truck per minute in another nearby intersection.²²² LVEJO treated this as necessary to expose the questionability of the industry findings.²²³ Despite these efforts, City Council had no obligation under the zoning law to take community research seriously. While Hilco enjoyed the opportunity to give a thorough presentation of its findings at the public hearing, LVEJO had to wait for the public testimony session to present their data.²²⁴

Lack of support from the Zoning Ordinance has left LVEJO and Little Village residents to plead for more environmental consideration from both Hilco and city officials. At the open houses hosted by Hilco, community members asked for more information on traffic impacts, whether the street infrastructure and viaducts can handle the new fleet of trucks, and whether Hilco would consider alternatives to diesel fuel-dependent vehicles.²²⁵ LVEJO has repeatedly highlighted the original guiding principles from the task force to explain that the Hilco plan is not aligned with the goals of environmental health and

²¹³ *Id.*; see also §17-8-0904.

²¹⁴ Wasserman Interview, *supra* note 78.

²¹⁵ Witnessed by the author.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Wasserman Interview, *supra* note 78.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*; I have also personally witnessed this dynamic in City Council hearings where Hilco provided special presentations and LVEJO was limited to two-minute testimony.

²²⁵ *Id.*; LVEJO Response to Hilco, *supra* note 195.

safety.²²⁶ At public hearings, members have shared testimony on their experiences of respiratory issues and other medical ailments.²²⁷ They have had to take these actions and share personal stories to make up for the lack of information gathering by the City.

Regardless of the outcome of a zoning amendment, the Zoning Ordinance's lack of specific requirements for environmental analysis and environmental justice decision-making criteria leads to multiple process-related issues. The system favors potential misinformation from industry-sponsored studies and pressures low-income communities to provide their own community-science findings. This approach is inequitable and fails to foster trust and reliability between the general public and their governing bodies. It also reveals, once again, the strong position of the local alderman, whose traditional prerogative on zoning matters keeps city agencies like the Department of Transportation and the Department of Public Health from independently engaging with the neighborhood and conducting local investigations.²²⁸ The prerogative also thwarts the political likelihood of other aldermen from questioning industry-sponsored results and calling for independent environmental justice research and analysis. Thus, instead of acting as a tool for environmental justice work, the Chicago Zoning Ordinance perpetuates more injustice against impacted communities.

3. Lack of Transparency

To conclude this part, it is worth noting the scope of the transparency problem with regard to the Hilco dilemma—a problem brought on by the Chicago Zoning Ordinance.

In terms of the actual decision-making process, LVEJO and other community residents did not have clear access to the findings and determinations of the Zoning Administrator, the Plan Commission, the Zoning Committee, and the full City Council.²²⁹ Hearings and decisions by the Commission, Committee, and Council all took place within one week; the fast pace of the process makes it doubtful that any of them reviewed the application according to the specific tests and criteria listed in the Zoning Ordinance.²³⁰ If they did, the specific explications for each criterion—including the advisory guideline for minimized exposure to noxious materials—were not made public, nor were they included in the video recording or notes from the City Council hearing.²³¹

LVEJO and community residents have not had access to documentation of the public testimony delivered at these hearings or official responses from the City of Chicago.²³² A transcript of the testimony might not have been useful for preventing approval at the time; however, the record remains useful in other ways. It provides a historical resource for the public to understand the full scope of considerations surrounding the application. It serves as a source of potential evidence for future litigation and may even help to build more trust

²²⁶ Wasserman Interview, *supra* note 78; *From Coal to Diesel, the Little Village that Can*, LVEJO, <http://www.lvejo.org/our-accomplishments/coal-plant-shutdown/de-carbon-a-diesel-la-villita-que-si-puede/> (last visited May 9, 2019).

²²⁷ Wasserman Interview, *supra* note 78.

²²⁸ *Id.*; NAT'L ACAD. OF PUB. ADMIN., ADDRESSING COMMUNITY CONCERNS: HOW ENVIRONMENTAL JUSTICE RELATES TO LAND USE PLANNING AND ZONING 147 (July 2003).

²²⁹ Wasserman Interview, *supra* note 78.

²³⁰ See generally *City Council Meeting—September 20, 2018*, *supra* note 155; City Council Meeting Details from September 20, 2018, *supra* note 155.

²³¹ *Id.*

²³² Wasserman Interview, *supra* note 78.

in the zoning system and more faith in the available, albeit narrow, democratic processes affecting government decisions.

Finally, LVEJO and community residents remain in the dark about much of what will happen with the Hilco plan.²³³ Hilco has touted its plans for renewable energy features, including solar panels and electric vehicle charging stations, to counter any environmental concerns with Exchange 55; however, it has not provided details for the plan, reasons for choosing to deploy diesel trucks, or information on the trucks' expected environmental impact.²³⁴

For such a consequential project that directly negates the community's own vision for the land and the agreed-upon guiding principles of the task force, Hilco and the City of Chicago have not faced much in the way of transparency requirements. LVEJO and Little Village began this process with the sudden news that Hilco had purchased the land; before that, they operated with little knowledge of what would become of the task force's recommendations; still before that, they had limited information on the health damages of the Crawford plant.²³⁵

In short, Little Village's residents have endured a history of disadvantage when it comes to information and knowledge that directly touches on their interests. Far from mitigating this information inequity, the Chicago Zoning Ordinance compounds the inequity; it represents a major disservice to Little Village and other environmental justice communities across Chicago.

III. PROPOSAL FOR A CHICAGO ENVIRONMENTAL JUSTICE ZONING AMENDMENT

While the struggle over the Hilco plan reveals a multitude of problems, legislative reforms to the Chicago Zoning Ordinance will provide wide-range structural changes for environmental justice communities like Little Village.²³⁶ The following proposed alterations to the Chicago Zoning Ordinance address an overarching problem of undemocratic zoning and environmental discrimination.²³⁷ These suggested changes do not aim to address any specific environmental problems in Little Village nor do they promise equitable results on all future rezoning amendments. At a basic level, they seek to create and expand the infrastructure of governing institutions, granting fair and reasonable opportunities for environmental justice advocates and communities to advance their interests and interact with the zoning process.²³⁸

²³³ Hilco has not addressed concerns about worker wages at the warehouse, whether undocumented immigrants will have access to jobs, and how many of each type of job will likely be available to the local community. *Id.*

²³⁴ *Id.* (on file with author).

²³⁵ Wasserman Interview, *supra* note 78.

²³⁶ It is worth noting that not all of the procedural problems reflect a faulty zoning system. The City failed to hold the lot in a land bank or land trust, or through a protective zoning overlay (e.g. an environmental justice overlay) at the behest of community residents. Political representation was also a problem; the former alderman representing Little Village showed lackluster interest in preserving the lot for the community. A different alderman may have used aldermanic prerogative to thwart Hilco's rezoning application.

²³⁷ See generally Cahn, *supra* note 128 (describing the value of local control over land use decisions and allowing the community to have a say on what happens to the community).

²³⁸ For the sake of an organized approach, this section enlists the same three-piece approach to environmental justice issues: community engagement, environmental justice analysis, and transparency.

A. *Inviting More Community Engagement*

1. Community Meetings

For rezoning amendments, the Chicago Zoning Ordinance should require community meetings within the neighborhoods most affected by a rezoning amendment.²³⁹ The meetings should be facilitated by an independent entity and designed and organized through a collaboration between community stakeholders and the Mayor's Office of Public Engagement.²⁴⁰ Had these meetings been in place during the review process for Hilco's rezoning application, LVEJO and other community groups and residents could have ensured that the meetings were accessible and culturally sensitive to a working-class, immigrant, Latinx population. They also could have ensured the City preserved the issues raised and lessons learned at the meetings for the Plan Commission, the Zoning Committee, and the City Council to consider.

The downsides with the meetings are the burdens they place on the city and the community, as well as the difficulty of ensuring that the meetings take place in a manner that maximizes their openness and accessibility for a wide range of interested parties.²⁴¹ For those concerned with the government resources, community meetings require significant commitments of time and planning from municipal officials and administrators, which could hamper their other responsibilities—some of which may be critically important to impacted populations.

For those concerned with the community's resources, community meetings may place more work on a struggling neighborhood than on the municipal government. While community members and organizers take time—sometimes without pay—to plan logistics, boost attendance, prepare testimony, and facilitate the meeting itself, city government may only need to commit several hours of work for a handful of municipal employees. This imbalance reinforces the need for crafting a meeting model that does not overly burden the very people seeking relief.

²³⁹ The meetings should be required for PMD rezoning and PD rezoning; they should be available upon petition for general zoning amendments and rezoning within industrial corridors.

²⁴⁰ The City should ensure that the facilitator does not have any conflicts of interest with developers and real estate management companies. Salient community stakeholders, especially those strongly resistant to a plan, should have a say on the timing, location, logistics, accommodations, format, and recording of the meetings—along with report—out of information gathered at the meetings. Rules for when a meeting should end due to disruptions or lack of decorum ought to be clear and mutually agreed-upon. The premature end of a meeting should require that another meeting be arranged. For an example of how excluding communities in meeting arrangement and notification plans see Cahn, *supra* note 128, at 477. The purpose of the Mayor's Office of Public Engagement for the City of Chicago "is connecting community members to resources across City government to help them serve and celebrate their communities; and collaborating with neighborhood and civic organizations, nonprofits, policy advisory groups and various city agencies to inform and engage citizens for the betterment of their communities and the city at large." Press Release, Office of the Mayor, City of Chicago, Mayor Emanuel Creates New Office of Public Engagement (June 23, 2012), https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2012/june_2012/mayor_emanuel_createsnewofficeofpublicengagement.html.

²⁴¹ See Amy Widman, *Replacing Politics with Democracy: A Proposal for Community Planning in New York City and Beyond*, 11 J. L. & POL'Y 135, 182 (2002).

While these meetings can prove highly labor-intensive, they are not unprecedented.²⁴² In Philadelphia—albeit not for rezoning applications but for other types of applications, like variances and special exceptions—Registered Community Organizations (RCOs) within the geographical boundaries of an applicant’s property have the power to coordinate and hold official neighborhood meetings.²⁴³ Besides choosing when and where the meetings take place, RCOs are in charge of documenting the meeting and submitting a meeting summary for public distribution and use in the final review process.²⁴⁴

2. Community Right to Protest

Community members living near a site in question for rezoning should have the ability to submit a formal protest to City Council with a stated, bona fide reason for opposing a map amendment.²⁴⁵ When the protest includes a certain number of genuine signatures, the threshold for passing an amendment in City Council should increase from a simple majority to a two-thirds majority.²⁴⁶ A delegate of the protesting group should have ample time, as much as the developer-applicant, to explain the group’s position at the public hearing.

The benefits of this measure are meaningful. With this right to protest, City Council may have better appreciated the extent of community resistance to Hilco’s PD application. The protest power creates a valuable check on aldermanic prerogative by casting political coverage for other aldermen to vote against a measure. This reform acknowledges the special interests and high vulnerability of renting households, which often bear the greatest brunt of environmental stress. Extending the protest power of general rezoning applications to PD applications is sensible, given the potentially large impact of PD projects on surrounding neighborhoods. The power also incentivizes an applicant to genuinely consider local viewpoints and modify the rezoning application accordingly.

The risk with this reform is lack of efficacy in passing rezoning applications, fraudulent signatures, and the laborious work of reviewing the protest submissions. Landowners may argue that short-term tenants have invested fewer resources in the community and therefore have less stake in zoning decisions. For pro-environment rezoning applications (i.e. turning a Manufacturing district into a Parks and Open Space

²⁴² Far beyond community meetings, the Illinois Environmental Protection Agency previously conducted “living room” public hearings in the early 2000s to reach people who were not comfortable with attending public hearings or even community meetings. NAT’L ACAD. OF PUB. ADMIN, *supra* note 228, at 21.

²⁴³ PHILADELPHIA, PA., ZONING CODE §§ 14–303(12)(e)(.1), (12)(a). Registered Community Organizations (RCOs) are community groups that are concerned with the physical development of their community. *Registered Community Organizations (RCOs)*, CITY OF PHILA., <https://www.phila.gov/programs/registered-community-organizations-rcos/> (last visited Aug. 25, 2019).

²⁴⁴ §§ 14–303(12)(e)(.2–.4).

²⁴⁵ This tool would function similarly to the formal protest power of property owners for general rezoning, except that it would apply for other types of rezoning amendments. Also, it would not be limited to property owners within or contiguous to the area in question for rezoning. The City Council could factor in the likelihood of exposure for each protesting individual in assessing the merits of the protest—for example, how close the protesters are to the site, whether they live downwind in the case of air pollution, and whether they live along a major road to the site in case of traffic pollution.

²⁴⁶ To ensure the protest power is respected, there may also be a requirement that the reason for the protest is bona fide and facially legitimate.

district), an industry actor looking to preserve the manufacturing designation could launch a protest of its own.²⁴⁷

Generally, however, the expanded protest power is useful for ensuring a more informed decision on zoning, with strong interests gathering credence in the process. Washington, D.C. offers a model for how the protest could function: third parties are allowed to apply for standing before the D.C. Zoning Commission, with environmental impact on a person or a person's property being a justifying factor.²⁴⁸ This third party individual can then partake in the proceedings of a rezoning decision with special status.²⁴⁹ Formal protest power for a community can function in a similar manner and create a new platform for environmental justice concerns to be heard.

3. Organized Public Testimony Sessions

The Plan Commission, Zoning Committee, and full City Council need to implement format changes to their hearings to better accommodate public testimony sessions.²⁵⁰ The sessions need to have a starting time that the convening body aims to maintain.²⁵¹ Testimony ought to be recorded and transcribed, with opportunities for aldermen to respond or raise additional questions that do not impinge on time constraints for the speaker.²⁵² Discussions by the convening body should not take place until after the public testimony portion. If the person delivering testimony asks for it, the convening body should be responsible for formally addressing the concern. Additionally, for rezoning procedures, public hearings should not be allowed to take place on consecutive days since doing so creates the risk of an unfairly rushed process. Had public testimony sessions operated in this fashion, residents of LVEJO would have been able to communicate with the convener more effectively.²⁵³ The public hearings would have granted a more serious and equitable platform for public comments.

One potential drawback to this consideration is the lack of any guarantee that such "procedural equity" measures will actually lead to equitable outcomes.²⁵⁴ Whether public testimony is an effective channel for influencing legislative bodies is an important question beyond the scope of this Note. Procedural equity is tied to political accountability: a more organized and equitable process for testimony could raise the likelihood of persuading an

²⁴⁷ Keith H. Hirokawa, *Making Sense of a "Misunderstanding of the Planning Process": Examining the Relationship Between Zoning and Rezoning Under the Change-or-Mistake Rule*, 44 URB. LAW. 295, 325, 342 (2012).

²⁴⁸ D.C. Mun. Regs. tit. 11-Z § 404 (2018). This chapter discusses how a person can request a party status, a process that may involve, pursuant to 404.1(h)(4), a written statement setting forth the environmental impacts likely to affect that person and/or that person's property. The explanation for this must identify how the person's interests "would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public. § 404.1(h)(5). Section 404.14 states that the Zoning Commission shall grant party status only if the request satisfies 404.1(h)(5).

²⁴⁹ D.C. Mun. Regs. tit. 11-Z § 404.14 (2018).

²⁵⁰ For a range of ideas on how to construct a fair and effective public hearing, see William H. Baker et al., *Critical Factors for Enhancing Municipal Public Hearings*, 65 PUB. ADMIN. REV. 490 (2005).

²⁵¹ Maantay, *supra* note 95, at 586.

²⁵² *Id.*

²⁵³ Cahn, *supra* note 128, at 477–78 (showcasing an example of how public testimony can shape discussions and compel governing bodies to be more transparent).

²⁵⁴ See Maantay, *supra* note 95, at 587.

alderman to switch positions, and it places the actions and statements of an alderman under greater public oversight and scrutiny. Small modifications, or even documents listing tips for delivering public testimony, can lead to more effective participation in the decision-making process. The City of Portland and the City of Boise, for example, each have a resource on their websites to help people prepare for meaningful engagement at public hearings for each city’s planning process.²⁵⁵

Critics may contend that political accountability is unrealistic in a single public hearing. For example, City Council can delay contentious issues, especially during an election year. In that case, a more robust public testimony session merely slows down the legislative process. The consequences are notable—delaying other business items, generally tying up City Council’s ability to support impacted neighborhoods in other ways, wasting taxpayer dollars and resources, and ultimately accomplishing nothing more than a suspension of the inevitable. Even so, advocates may likely argue that “having your voice heard” is psychologically important to impacted communities, as is the intrinsic value of exhausting all available participatory channels.

Regardless of the ability to actually persuade aldermen to change their minds, enhanced procedural equity generates strategic options for an impacted community, such as bringing protest into public view, creating a public record of dissent, leveraging the media, and organizing community members around the spectacle of public testimony. Slowing down a legislative process raises the possibility of at least staving off harms or forcing developers to offer concessions in order to speed up the process. A slow-down might even prompt a developer to abandon a project if time becomes a large enough opportunity cost.

B. Incorporating an Environmental Justice Analysis

1. Cumulative Environmental Impact Reviews

For all rezoning amendments, the Zoning Ordinance should require a cumulative environmental impact review for rezoning amendments.²⁵⁶ The review must consider historical burdens and the compilation of various risk factors and social determinants of public health outcomes. These reviews would have better ensured a rigorous consideration for the environmental safety of the Hilco plan, giving City Council a clear source of data

²⁵⁵ Amanda Fritz, *How to Make a Difference at a Planning Commission or City Council Hearing*, CITY OF PORTLAND COMMUNITY & CIVIC LIFE, <https://www.portlandoregon.gov/civic/article/510782> (last visited May 9, 2019); *Providing Testimony at a Public Hearing*, CITY OF BOISE PLAN. & DEV. SERV., <https://pds.cityofboise.org/media/39984/testimony.pdf> (last visited May 9, 2019).

²⁵⁶ Environmental impact reviews are assessments of the environmental consequences of an action—in this case, a zoning change—on the people who live in that environment. Although these reviews can focus only on environmental issues, they can also encompass wide environmental justice ramifications. The requirement could apply to all rezoning amendments or amendments identified as raising potential environmental setbacks. The City Council, the Mayor, the local alderman, and the Departments of Planning and Development, of Transportation, and of Public Health could have the authority to order cumulative impact reviews. Based on the results of the review, the Departments of Transportation and of Public Health should also have the authority to publish recommendations on zoning applications (or even to veto them outright). In general, the Departments of Transportation and of Public Health need to be more integrated in zoning procedures, given the relevance of their specialized expertise, insights, and initiatives. If the Department of the Environment is reestablished, it should also have the responsibility of ordering an environmental review.

and analysis not sponsored by industry interests or the applicant. This reform would place a significant responsibility on the City of Chicago for commissioning costly and time-consuming reviews, but the measures nonetheless play an important role in improving public health. The impact reviews would need to be designed in a manner that does not create state or federal preemption issues and harnesses all the special insights and capacities for outreach and action that come from local government.²⁵⁷

Examples of this approach in other parts of the United States include Fulton County, Georgia, which requires Environmental Site Analysis for all rezoning petitions and Environmental Impact Reports for industrial zoning applications.²⁵⁸ In New Jersey, the Camden City Sustainability Ordinance requires Environmental Impact and Benefits Assessments for all new developments in the city.²⁵⁹ Newark similarly requires submission of an environmental checklist for development applications, per its Cumulative Impacts Ordinance.²⁶⁰

2. Community Impact Statements

The Zoning Ordinance should include a provision allowing residents to submit formal Community Impact Statements (CIS) and requiring decision-making bodies to give the statements special consideration.²⁶¹ This tool gives impacted people the chance to submit their own assessment of the risks their community would face as a result of a rezoning amendment. A CIS provision would have given LVEJO the opportunity to organize a formal study of environmental issues on the terms of the community, with assurance that the statement would have legal authority under the framework of the Zoning Ordinance.

The risk of this device is that it may encumber the rezoning process while providing an advantage only to well-resourced community organizations that have the fundraising or grant-application capacity to develop their own environmental analysis. Admittedly, a provision that requires City Council to review a CIS still does not address the limited capacity of low-income and working-class neighborhoods to finance and conduct a CIS. While few cities offer formal opportunities to submit CIS's, Washington, D.C. provides a similar mechanism for communities in the form of an Advisory Neighborhood Commission (ANC) Report.²⁶² The D.C. Zoning Commission is required to give "great

²⁵⁷ While an opponent to this plan may stress that such reviews already take place by federal and state authorities such that a local level review would create needless redundancy, the U.S. EPA-commissioned report on environmental justice and land use has made it abundantly clear that local level governments have a crucial role in environmental protection. Local governments may have insights and capacities for outreach that cannot be easily replicated by state or federal government actors. Also, if the federal or state authorities shift policies on environmental protection, the local government becomes the stalwart of ensuring a continued promise of protections for local EJ communities. Local environmental reviews reflect this fact. NAT'L ACAD. OF PUB. ADMIN, *supra* note 228; *see generally* Bergeron, *supra* note 78, at 8.

²⁵⁸ Fulton, Ohio County Zoning Resol. § 28.4.3 (2004).

²⁵⁹ Ordinance Approving Sustainability Requirements for the City of Camden (2015).

²⁶⁰ NEWARK, N.J., Environmental Justice and Cumulative Impact Ordinance § 16-0803 (2016).

²⁶¹ The Plan Commission, Zoning Committee, and City Council should be required to accept these statements, review them, and thoroughly respond to them to ensure due attention is given to the on-the-ground analysis of local residents who will bear the environmental burden of a proposed change, use, or development. NAT'L ACAD. OF PUB. ADMIN, *supra* note 228.

²⁶² D.C. Mun. Regs., tit. 11-Z, § 406 (2018).

weight” to these reports, which can function as a local community-driven account of environmental justice challenges with a rezoning application.²⁶³

3. Environmental Justice Criterion for Zoning Decisions

The Zoning Ordinance should be amended to require review- and decision-making bodies to consider the environmental justice profile of the areas surrounding a site in question for all rezoning amendments. This measure should consider whether the rezoning amendment would substantially impact community residents and the history of environmental degradation and injustice in the area.²⁶⁴ If the rezoning amendment will likely perpetuate disproportionately negative impacts on low-income households and communities of color, the decision-making body should strongly lean toward rejecting the amendment.²⁶⁵

The problem with this criterion is enforcement, making sure that City Council genuinely and meaningfully addresses the criteria in its review process. This concern is easily assuaged by creating or affirming a cause of action for affected parties that contend that the review and decision making bodies did not follow the statutory criteria for decisions. As it stands, Chicago’s zoning system lags behind in this area; other cities have, at the very least, a criterion concerning negative impacts on surrounding areas—a workable placeholder for more explicit reference to “environmental justice.” As an example, the City of Philadelphia requires a commission to consider “[w]hether the impacts of the ordinance on areas surrounding the land affected by the ordinance will be positive and whether any negative impacts are unavoidable or will be mitigated to the extent reasonable.”²⁶⁶ The City of Baltimore disallows its Board and Planning Commission from recommending adoption of a proposed zoning reclassification “unless they find that the adoption of the change is in the public interest and not solely for the interest of an applicant.”²⁶⁷ Such considerations are virtually nonexistent in the Chicago Zoning Ordinance.

C. Implementing Transparency Obligations

1. Findings Reports

The Chicago Zoning Ordinance should require cataloguing and public availability of all substantive information gathered over the course of a rezoning application process. Such information would include determinations by the Zoning Administrator, the Plan Commission, and the Zoning Committee; findings from public hearings and community

²⁶³ *Id.*

²⁶⁴ The EJ criterion has useful effects on other components of the processes behind a zoning change. It gives the applicant an unequivocal understanding of what to expect and how to prepare proposals in a manner that is sensitive to EJ concerns. It provides the ultimate endpoint for organizing Community Meetings and community meeting reports. It offers political cover and legitimacy to the decision-making body’s determination against a proposal, making it easier for political officials to reject a proposal. Finally, it can influence the work of other City agencies in developing comprehensive plans for sustainability, environmental protection, and land use regulation.

²⁶⁵ Alternatively, the body could use this criterion to request more information, shifting the burden on the applicant to explain why the proposal is not environmentally unjust.

²⁶⁶ PHILADELPHIA, PA., ZONING CODE § 14-304(3)(d)(4).

²⁶⁷ BALTIMORE, MD., ZONING CODE § 16-305(b) (2015) (“Change to be in the public interest”).

meetings; and reports and recommendations submitted to the review bodies.²⁶⁸ This exercise in transparency helps build trust and correct historical power imbalances that have left impacted communities with limited information and access to information. Applied to the Hilco dilemma, findings reports would have provided a body of knowledge about zoning decisions to members of the general public, including community residents who deal with healthcare and socioeconomic issues and lack the capacity to lobby for information from elected officials. The work would be especially tedious. Guidance would be needed on what types of information does or does not need to be catalogued and what needs to remain concealed for confidentiality purposes.

2. Reports on Decision Rationale

Another important reform to the Chicago Zoning Ordinance would be a requirement for the Plan Commission, the Zoning Committee, and the City Council to publish its full rationale for decisions on rezoning applications. The rationale should cover each pertinent criterion listed in the Zoning Ordinance.²⁶⁹ Required publication of full explanations under each criterion will prompt the governing bodies to thoroughly, explicitly, and transparently utilize the guiding factors in the Ordinance, which will have the effect of creating a more organized, grounded, and statute-based approach to rezoning amendments. Applicants and their opponents alike will be able to use the criteria to prepare their arguments for why City Council should or should not approve the zoning reclassification. With this practice in place, the people of Little Village might have been able to draw attention to the green design guidelines in the Zoning Ordinance to argue that the Hilco plan would fail to minimize exposure to noxious materials.²⁷⁰

Undoubtedly, requiring agencies to publish their decision rationales would generate substantial work for aldermen and members of the Plan Commission, and it could breathe life into the non-environmental criteria, particularly those that focus on industrial vitality. Regardless, faithfully enforcing these factors for decision making would keep rezoning decisions within a legal framework and checking improper uses of aldermanic prerogative. In some cases, Chicago aldermen have taken initiative to publish decision rationale themselves.²⁷¹ The City of Charlotte serves as an example, requiring the City Council to adopt a statement describing why it approved a rezoning petition and how the action is reasonable, in the public interest, and consistent with applicable land use requirements.²⁷²

²⁶⁸ This point underscores the importance of requiring community meetings organized by the community and the City of Chicago, with a clear and mutually agreed-upon plan for recording and retention of information. Because Hilco convened its own community meetings and retained control of the information gathered, attendees were left without any knowledge as to how their feedback would be used. LVEJO Response to Hilco, *supra* note 195.

²⁶⁹ Criteria include the appropriateness test for general rezoning, the test for preservation of industrial viability in industrial corridors, the test for necessity of PMD status, and the additional tests for PDs. For PDs, the explanation should address the standards and guidelines, most notably the green design factors involving the protection of human health.

²⁷⁰ They could also cite to a new EJ criterion, which would provide stronger protections than the human health point in the guidelines, which, as discussed earlier, is only advisory. *See supra* Part III(B)(3), at 399.

²⁷¹ *See, e.g.*, Alderman Joe Moore, *Recent Significant Zoning Decisions*, <https://www.ward49.com/zoning-development/recent-zoning-decisions/> (last updated May 9, 2019).

²⁷² Charlotte, N.C. Zoning Ordinance § 6.111(6).

3. Online Resource Bank

Finally, perhaps the most useful change to the Zoning Ordinance would be the authorization of a new online resource bank for tracking rezoning decisions. The Office of the Zoning Administrator currently has a resource for tracking decisions by the Zoning Appeals Board. This new bank would be a more organized and streamlined extension, providing easy access to applications, schedules for upcoming meetings and hearings, specific meeting notices, findings, determinations, records of testimony, records of decisions, and their accompanying rationale. The Ordinance should specify that the bank should operate under the guiding principle of layperson access, meaning that the titles and descriptions of files must be clear and non-technical. The obvious issue with this reform is the new responsibility on the Office of the Zoning Administrator for regularly updating the bank, which may prove costly. Nevertheless, services like these provide the building blocks for public participation in local decisions—at a time when wider platforms for public participation are sorely needed.

CONCLUSION

Few areas of local government demand community participation more forcefully than zoning. While other cities realized this reality and undertook the difficult work of correcting course and reforming their laws, Chicago fell behind. Its antiquated zoning law caters heavily to industry actors and affluent property owners; it does not reflect awareness of historical and ongoing environmental discrimination. To bring environmental justice to communities like Little Village, the City of Chicago must commit itself to the task of reforming its zoning law.

This Note focused on the larger structural aspects of rezoning amendment procedures, none specifically tailored for Little Village, but all designed to support Little Village. For community engagement, the Zoning Ordinance should authorize community meeting requirements, community protest powers, and a new approach to public hearings. For environmental justice analysis, the Zoning Ordinance should authorize cumulative environmental impact reviews, community impact statements, and EJ-based requirements for rezoning decisions. To increase transparency, the Zoning Ordinance should authorize findings reports, reports on rationale for decisions, and an online resource bank for ongoing rezoning applications. These reforms will bring much-needed procedural equity to Chicago zoning, and in many cases bring Chicago up to standards already in force in other cities across the country.

This analysis is inevitably a limited one, requiring further study on a multitude of issues. This Note grapples only with rezoning procedures, and not with procedures for special uses, variances, and administrative adjustments. Nor does this Note advance recommendations on how to resolve specific environmental justice challenges through performance standards or overlay districts, for example.²⁷³ The Note develops its proposals based largely on the lack of procedural justice in the case of Little Village, but more community narratives may help to shine a light on how to rectify history and revise land use designations.

²⁷³ For a study of different types of local environmental justice policies, *see* TISHMAN ENV'T AND DESIGN CTR., LOCAL POLICIES FOR ENVIRONMENTAL JUSTICE: A NATIONAL SCAN, NRDC (2019).

These limitations notwithstanding, the hope of this Note is that Chicago's municipal government will heed the call for a more democratic, equitable, and inclusive approach to rezoning decisions. The Hilco dilemma is merely the latest of a long line of controversies showing what happens when a city does not zone for environmental justice.

The results of inaction are in plain sight to any visitor to Little Village. Near the center of Little Village stands Joseph E. Gary Elementary School, where a group of parents came together to fight against toxic exposure to the students.²⁷⁴ The parents organized and forced the school to change its plan.²⁷⁵ In the process, they formed LVEJO.²⁷⁶ Standing outside the school, a person can look south and see the Crawford plant two blocks away, situated against the banks of the Sanitary and Shipping Canal. Crawford station is also a testament to the power of people and bottom-up organizing. It was that same group of parents, worried for their children, that brought the coal plant into retirement—and they did it by organizing the community.

Kim Wasserman, Executive Director of LVEJO, describes community organizing as a tradition of Latinx history and culture; it is a way of life and a way of survival.²⁷⁷ It is an expression of the basic underlying desire of many Little Village residents: self-determination.²⁷⁸ This desire lies at the core of LVEJO's work. The organization's grassroots organizing model is grounded, in part, on the theory that “those directly affected have the solutions to solve their own problems.”²⁷⁹ Let Little Village decide for Little Village.

With a new mayor and City Council, Chicago's city government now has a unique political opportunity to affect democratic reforms and structural change in the local zoning regime. Little Village has a new alderman, and the new Mayor has voiced strong commitment to undoing aldermanic prerogative in zoning.²⁸⁰ Meanwhile, officials are discussing the recommission of a department devoted to environmental protection,²⁸¹ and the Department of Public Health has a new health equity plan focusing on social determinants of health risks and data-based collaborative efforts to address them.²⁸²

The new elected officials ought to bear in mind that the people of Little Village are also the people of Chicago. People of Chicago are fighting for clean air. People of Chicago are calling for self-determinism. With regards to zoning amendments, people of Chicago are asking for more seats at the table. The environmental justice zoning reforms listed in this Note are designed to do just that: to expand the table so that more people have a greater say on what happens in their community.

²⁷⁴ LVEJO History, *supra* note 7.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ Wasserman Interview, *supra* note 78.

²⁷⁸ *Id.*

²⁷⁹ *Mission & Vision Statement*, LVEJO, <http://www.lvejo.org/our-mission/mission-vision-statement/> (last visited May 9, 2019).

²⁸⁰ Paul Caine, *Lightfoot Takes Aim at Aldermanic Prerogative*, WTTW (Apr. 29, 2019), <https://news.wttw.com/2019/04/29/lightfoot-takes-aim-aldermanic-prerogative> (last visited May 9, 2019).

²⁸¹ Brett Chase, *Key Chicago Alderman, Two Mayoral Finalists Want a Separate Environmental Agency*, CHI. SUN-TIMES (Mar. 22, 2019), <https://chicago.suntimes.com/2019/3/22/18313766/key-chicago-alderman-two-mayoral-finalists-want-a-separate-environmental-agency>.

²⁸² *Healthy Chicago 2.0*, CITY OF CHI. DEP'T OF PUB. HEALTH, <https://www.chicago.gov/city/en/depts/cdph/provdrs/healthychicago.html> (last visited May 9, 2019).