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Reimagining Community Input: Past, Present and Future of New York City Community Boards

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REIMAGINING COMMUNITY INPUT: PAST, PRESENT AND FUTURE OF NEW YORK CITY COMMUNITY BOARDS

*Egor Shakhnovskiy**

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Note: any questions about CB history can be asked of Joe Lerner, the first real CB1 member in my opinion (the others were all Wall Street financiers while he was a "regular" citizen.)

INTRODUCTION

New York City (“NYC” or the “City”) community boards represent a somewhat **unique urban institution**. Created nearly 50 years ago, their formation marked the **beginning of a new era in New York City politics, and urban politics around the country**. Namely, **community boards ushered in an era where centralized urban governments lead to decentralized community power**. As New York City public officials were forced to reckon with the effects of mid-century policies — such as highway construction and urban renewal — **people lost trust in their governments**. These community boards were the response. The boards, staffed by residents of neighborhoods they represent, were granted **advisory powers over NYC government functions that impacted their neighborhoods**, such as decisions regarding **land use**. They would exercise these powers by holding public hearings on such

advise the government

functions.¹ No longer would community voices be ignored in city government. Instead, those voices could be channeled to oppose destructive policies and avoid the mistakes of the past.

Fifty years later, the problems faced by New York City have shifted. Debates over where and how many highways to build through dense urban environments have given way to debates over how to efficiently utilize existing roads.² Because previous urban renewal projects violently destroyed homes and neighborhoods, today every zoning decision faces challenges related to gentrification and development.³ In the past, neighborhoods were leveled and raised at the whim of one person;⁴ today, no building is altered without ensuring that many voices are heard.⁵ In the new decentralized and democratic New York City, the predominant challenge is how to build neighborhood consensus when making decisions, and not how to oppose the decisions of bureaucrats.⁶

While the City has adapted, community boards have not kept pace with that change. Instead of becoming engines of consensus, their form and function inherently pushed community boards to continue playing the role of an opponent to citywide decisions.⁷ As funding has stagnated, community boards have increasingly doubled down on their legal power to hold public hearings on issues such as land use, so that these hearings can serve as a forum for concentrated opposition.⁸ Yet this opposition hides the fact that community boards are just as much a part of the structure of New York City government as any other municipal branch or agency.⁹ The legal structure of community boards prioritizes certain community voices, as opposed to the voices of a broader local government; but a different structure can equally prioritize all community voices, including those that wish to work with, rather than against, the local government.¹⁰ A new type of community

1. See *infra* Section I.B.2.

2. Compare *infra* note 35 and accompanying text, and Jennie Rothenberg Gritz, *Where the Religion Meets the Road*, ATLANTIC (Apr. 15, 2010), <https://www.theatlantic.com/national/archive/2010/04/where-the-religion-meets-the-road/39001/> [<https://perma.cc/MG6C-U8GV>].

3. Compare *infra* note 35 and accompanying text, and *infra* note 275 and accompanying text.

4. See *infra* note 33 and accompanying text

5. See *infra* note 238 and accompanying text.

6. See *infra* Part III.

7. See *infra* note 227 and accompanying text.

8. See *infra* note 149 and accompanying text.

9. See *infra* Part I.B and accompanying text.

10. See *infra* Part III.

board can help New York City meet the challenges of the twenty-first century. These new challenges require broad cooperation rather than opposition between the City government and its communities.

This Note explores the history of New York City community boards and how their legal and practical roles have evolved over the last 50 years. Further, it proposes shifting community boards away from their primary role of channeling community opposition, and towards channeling all forms of community input to achieve democratic consensus and economic efficiency. Part I tells the story of community boards through the New York City Charter revisions that defined them.¹¹ Part II provides the theoretical background of local and sub-local government structures and highlights the present-day fight over their role in City government.¹² This includes analyzing how there are some who seek to give a greater voice to community input, and others who seek to weaken them and improve citywide efficiency. Part III proposes a novel and politically feasible improvement to New York City community boards, namely, a charter revision that removes their reactive advisory power on many local planning decisions and replaces that authority with greater funding and power for proactive inputs on citywide decisions.¹³

I. HISTORY OF NEW YORK CITY COMMUNITY BOARDS & NEW YORK CITY COMMUNITY BOARDS TODAY

Community boards in New York City are a formal part of city government and are defined in the City's Charter.¹⁴ However, on the surface, community boards do not cleanly fit into the traditional tripartite division of government that exists at the federal level and is taught in civics class. Rather, they were created to use community input as a "check" on the power of the City's government.

First, this Part provides the background on the local law of New York City, including the City Charter and how it is changed. Then, this Part delves into the history and function of community boards, including: how they came about, how they changed, and what they do today.

11. *See infra* Part I.

12. *See infra* Part II.

13. *See infra* Part III.

14. City Charters are analogous to having city constitutions that lay out the framework of city government. *See* Nestor M. Davidson, *Local Constitutions*, 99 TEX. L. REV. 839, 897 (2021).

A. Sub-local Control in New York City

New York City is the largest city in the United States,¹⁵ and one of the most diverse cities in the world.¹⁶ As such, there is a **long history of local forms of control in New York City**, from the informal power of Tammany Hall in the nineteenth century to the formal power of the City Council today.¹⁷ However, **the scope of this control and procedures New York City must follow to adapt are set by New York State law**.¹⁸ To understand the history of New York City community boards, it is important to understand the foundation of New York City law: the City Charter.

Much like the relationship between the U.S. government and the states, the relationship between New York State and its local governments is defined by the state's constitution and statutes.¹⁹ Relevant to this Note are two specific aspects of this relationship in the **New York's Municipal Home Rule Law**: the **power of a municipality to adopt a city charter**,²⁰ and the **referendum requirement in amending the charter**.²¹

City charters are an optional form of local constitutions designed to **outline the general structure of local governments**.²² For example, the New York City Charter outlines the **broad powers** of the Mayor²³ and City Council.²⁴ City charters can be amended through local laws passed by legislative bodies of municipalities,²⁵ or, more commonly, through **city charter revision commissions** entrusted with conducting research

15. *The 200 Largest Cities in the United States by Population 2023*, WORLD POPULATION REV., <https://worldpopulationreview.com/us-cities> [<https://perma.cc/6GZR-B7ZT>] (last visited Dec. 31, 2022).

16. See Gus Lubin, *Queens Has More Languages than Anywhere in the World – Here's Where They're Found*, BUS. INSIDER (Feb. 15, 2017, 10:55 AM), <https://www.businessinsider.com/queens-languages-map-2017-2> [<https://perma.cc/N9WJ-MXJL>].

17. See generally Leonard Dinnerstein, *The Impact of Tammany Hall on State and National Politics in the Eighteen-Eighties*, 42 N.Y. HIST. 237 (1961). See also Richard Briffault, *The New York City Charter and the Question of Scale*, 42 N.Y.L. SCH. L. REV. 1059, 1065 (1998).

18. N.Y. MUN. HOME RULE LAW §§ 20–28 (McKinney 2022) [hereinafter MUN. HOME RULE].

19. *Id.* § 10; N.Y. CONST. art. IX.

20. MUN. HOME RULE § 33.

21. *Id.* § 23.

22. *Id.* § 33; see Davidson, *supra* note 14, at 841.

23. NEW YORK CITY, N.Y., CHARTER §§ 3–19 (2023) [hereinafter CITY CHARTER].

24. *Id.* § 28.

25. MUN. HOME RULE § 10.

How will Patrick
Kennell amend
Charter?

on and forming proposal for amendments to a city charter.²⁶ City charter revision commissions may be appointed by either the executive or legislative body of a municipality.²⁷ Their findings and proposals must then be submitted to voters in a referendum in order to be adopted.²⁸ The Commission produces these submissions after both internal research by commissions and public hearings conducted by the Commission, where New York City residents voice concerns about the current City Charter or amendments they wish to see in the new one.²⁹

Additionally, certain local laws, whether they are amending the city charter or not, are subject to a referendum by the electors of the municipality before being adopted.³⁰ Most notably, any law that “curtails the power of an elective officer” is subject to a mandatory referendum.³¹ New York Courts have read this language to apply only to laws that transfer or modify powers of elective officers as part of the framework of local government, as opposed to laws that limit, expand or provide clarity on existing powers of elective officers.³²

Combined, this means any attempt to modify the framework of New York City government, either via a local law or a Charter revision, requires a referendum. Further, all these modifications must be added to the City Charter. As a result, any attempt to divest portions of New York City’s local government power to any other new units is a modification of the framework of the City government because it will require the creation of new offices and the transfer of some local officer’s power to the new officers. Such a modification would require a referendum, usually preceded by a formation of a City Charter revision commission.

B. History of New York City Community Boards

The legal history of New York City can, on some level, be characterized as a battle between centralized, citywide control, and

26. *Id.* § 36.

27. *Id.* § 36(2),(4).

28. *Id.*

29. *Id.* §§ 36(5)(a), 36(6)(f).

30. *Id.*

31. *Id.* § 23(2)(f); CITY CHARTER § 38.

32. Mayor of City of N.Y. v. Council of City of N.Y., 9 N.Y.3d 23, 33 (2007) (“For example, a local law limiting the power of New York City’s Mayor to appoint commissioners, or to prepare a budget, or to create or abolish positions within his executive office would require a referendum. But, as a general rule, a law that merely regulates the operations of city government, in collective bargaining or in some other area, is not a curtailment of an officer’s power.”) (citation omitted).

decentralized, neighborhood-level control.³³ In this history, community boards represent an early attempt to combat the harms of a centralized system of local government.³⁴ Over subsequent decades, the formal and informal powers of community boards grew. Because the City Charter created and have changed the boards, the history of community boards is best told through the history of relevant City Charter revisions.

has

1. 1961 Charter Revision: Community Planning Districts

The 1960s were a pivotal decade for urban decentralization in the United States. Prior thereto, highly-centralized local governments, with the help of state and federal governments, pursued two particularly destructive policies for urban communities: urban housing renewal³⁵ and highway construction.³⁶ These policies displaced hundreds of thousands of vulnerable residents from their homes.³⁷ However, this destruction and displacement was put into place by New York City politicians.³⁸ Many of these politicians were elected by broad, citywide coalitions, the majority of whom did not personally experience the harm of these policies.³⁹ Because these broad coalitions represented a majority in city politics of the City, local neighborhoods — who bore the brunt of the harm — had no avenue to oppose these policies by electoral means.⁴⁰ As a result, impacted communities turned to community mobilization as a solution so that these communities could mobilize and formally oppose local decisions.⁴¹ Notably, many of these efforts came in the form of public protests that more effectively highlighted their concerns.⁴²

Against this backdrop of community organization, the 1961 Charter Revision created the community planning districts, an early form of independent administrative decentralization.⁴³ While these districts wielded no formal power, their mandate was to “advise the city

33. See generally Briffault, *supra* note 17, at 1061.

34. See *infra* Section I.B.2 and accompanying text.

35. ROBERT F. PECORELLA, COMMUNITY POWER IN A POSTREFORM CITY: POLITICS IN NEW YORK CITY 70–71 (1994).

36. See *id.* at 71.

37. *Id.*

38. See *id.*

39. See *id.*

40. See *id.*

41. See *id.*

42. See *id.*

43. *Id.* at 124.

planning commission...in respect to any matter within the jurisdiction of the commission relating to its district.”⁴⁴ Their membership was composed partially of City councilmembers and partially of borough president appointees.⁴⁵ However, the formal process around appointments by borough presidents was left unclear, and these districts lacked any real responsibilities.⁴⁶ As a result, they remained largely **toothless**, and, because of the appointment process, were not directly responsive to their communities.⁴⁷ However, these appointments would ultimately form the foundation for community boards during the next City Charter revision.

2. 1975 Charter Revision: The Birth of Modern Community Boards

Throughout the 1960s and into the 1970s, dissatisfaction with New York City government grew.⁴⁸ By 1972, New York City residents were disappointed with the material wellbeing of their neighborhoods,⁴⁹ and felt largely detached and disillusioned with the centralized “juggernaut” of New York City government.⁵⁰ In response to this, the New York State Legislature created a City Charter revision commission.⁵¹ The commission was tasked with addressing concerns relating to material wellbeing and democratic disillusionment, and very early on identified political decentralization as the solution to these problems.⁵²

The Commission’s ultimate recommendation was the creation of community boards, using the community planning districts as a baseline.⁵³ The new Charter mandated that fifty-nine boards with broad advisory power over local matters be established.⁵⁴ **These community boards were to be a new element in New York City government**, and they could be defined by three characteristics: their membership, their powers, and their funding.⁵⁵ The community boards

44. *Id.* (citing NEW YORK CITY, NY, CHARTER § 84 (1963)).

45. *Id.*; see also *infra* Section II.B.3 (describing the New York City Council and borough presidents).

46. See PECORELLA, *supra* note 35, at 124.

47. *Id.*

48. See *id.* at 126–27.

49. *Id.* at 126.

50. *Id.* at 127.

51. *Id.* at 126.

52. *Id.* at 126–27.

53. *Id.* at 127–28.

54. *Id.* at 127.

55. *Id.* at 127–28.

outlined in this revision are largely the same as the ones still in existence today in New York City.

The makeup of community boards was initially the most contentious issue. The first decision the commission had to make was asked which neighborhoods they ought to represent.⁵⁶ The original commission report called for 40 to 50 community districts which would cover populations of at least 100,000 people, with a community board representing each district.⁵⁷ Activists feared that establishing a lot of smaller districts may become prohibitively expensive and complicated, as each board would require staffing and funding.⁵⁸ On the other hand, creating fewer districts with greater populations would risk drowning out some community voices.⁵⁹ The final number, 59, was ultimately larger than the original recommendation by the Commission, and was likely a product of lobbying by various narrow interest groups seeking new channels of access into city decision-making.⁶⁰

Next, the Commission had to decide who would sit on each board. On the one end of the spectrum, a minority of commission members were in favor of direct elections of community board members, arguing that this would make the boards more representative, democratic, and responsive to community needs.⁶¹ A majority of the commission members, however, were in favor of appointed board members, since that would allow them to make necessary decisions, even if they are unpopular.⁶² The ultimate decision proffered that community board members be appointed by borough presidents, with half the appointees to come from councilmember nominations whose districts intersected with community districts.⁶³ The final decision to go with appointed board members represented the view of the Commission that community boards were more about addressing “responsible government” than “participatory democracy.”⁶⁴

Questions over land use also loomed large over the Commission. Prior to the 1975 Charter Revision, the way community input was

56. *Id.* at 129.

57. *Id.* at 130.

58. *Id.*

59. *Id.* at 129.

60. *Id.* at 130.

61. *Id.* at 131–32; STATE CHARTER REVISION COMM’N FOR N.Y.C., PRELIMINARY RECOMMENDATIONS 18 (1975) [hereinafter 1975 PRELIMINARY RECOMMENDATIONS].

62. PECORELLA, *supra* note 35, at 133; 1975 PRELIMINARY RECOMMENDATIONS, *supra* note 61, at 17.

63. 1975 PRELIMINARY RECOMMENDATIONS, *supra* note 61, at 17.

64. PECORELLA, *supra* note 35, at 134.

incorporated into land use questions was rather ambiguous.⁶⁵ The Commission streamlined the process by creating the Unified Land Use Review Procedure (ULURP).⁶⁶ ULURP standardized the land use process through a three-part application whereby land use decisions had to first be approved by the affected community board, then the City Planning Commission (CPC), and then the Board of Estimate (BOE).⁶⁷ Throughout this process, only the BOE wielded binding legal authority over the final determination on land use questions.⁶⁸

Because of this change, the commission had to grapple with the question of exactly how much power community boards should hold within ULURP. Ultimately, the revision mandated that all land use decisions be given a hearing and a vote at their respective community boards, but that this review power was to be strictly advisory.⁶⁹ Additionally, community boards could make their own land use proposals under the new Section 197-(a) of the City Charter, though the process for doing so remained vague.⁷⁰

This revision also granted community boards a host of other responsibilities. These responsibilities included: **providing input on budget priorities for their district, handling neighborhood complaints and disseminate information, and monitoring citywide capital projects and service deliveries in their neighborhoods.**⁷¹ As with land use review, these powers were **strictly advisory.**⁷² Additionally, to complement their oversight over service delivery, all agencies that provided services on the basis of local service districts — such as police department and police precincts — had to ensure that the boundaries of these service districts corresponded to the new community districts.⁷³ This change was supposed to ensure that an agency delivering services in a neighborhood always knew exactly which community board they could go to in order to coordinate the delivery of these services.

65. *See id.* at 128 (“[T]he charter-mandated Uniform Land-Use Review Procedure . . . increased the influence of and standardized the processes for community input into the process of land-use review.”).

66. 1975 PRELIMINARY RECOMMENDATIONS, *supra* note 61, at 11.

67. *Id.*

68. *Id.*

69. STATE CHARTER REVISION COMM’N FOR NEW YORK CITY, FINAL REPORT 11 (1975) [hereinafter 1975 FINAL REPORT]; CITY CHARTER § 197-(c).

70. CITY CHARTER § 197-(a).

71. *See* 1975 PRELIMINARY RECOMMENDATIONS, *supra* note 61, at 17–18.

72. *Id.*

73. *Id.* at 17.

The question of how community boards would pay for their responsibilities would, in the coming decades, become a recurring question. However, the 1975 Charter revision had little to say on the issue of funding for community boards.⁷⁴ In practice, community boards ended up receiving line-item funding for expenses such as rent and office supplies, as well as funding for the full-time salary of one member, the district manager.⁷⁵ No explicit funding was actually set aside for land use review, service delivery, or other functions.⁷⁶ However, this arrangement had the practical implications of giving community boards the legal status of independent municipal agencies within the City's government.⁷⁷

Although the structure of these community boards became iron-clad, some dissenting views of the commission are important to this Note. A substantial majority proposed delegating advisory power to some sort of community districts.⁷⁸ However, some members of the commission proposed extending this delegation even further to the borough level, such that borough boards would be overseen by community districts, and borough boards would oversee street and sewer maintenance.⁷⁹ Finally, a lone dissenter advocated for much stronger community boards, which would have the “power to administer three to five local functions coupled with an equitable formula for allocating funds to districts.”⁸⁰

These dissenting views show that, as with questions of membership, the final revision represented a political compromise, albeit one that leaned away from decentralization. The City sought to appease the residents' desire for more community control, but in a way that did not upset existing political structures and powers.⁸¹ A member of the commission called the final compromise a “centralization with a veneer of localism.”⁸² As a result, the Charter revision granted communities a voice, but left few formal powers that could be exercised without the appropriation of funds.

74. *See id.*; 1975 FINAL REPORT, *supra* note 69 (omitting any mention of funding).

75. PECORELLA, *supra* note 35, at 128.

76. *See* 1975 PRELIMINARY RECOMMENDATIONS, *supra* note 61, at 17–18.

77. PECORELLA, *supra* note 35, at 128.

78. 1975 PRELIMINARY RECOMMENDATIONS, *supra* note 61, at 28.

79. *Id.*

80. *Id.*

81. David Rogers, *Community Control and Decentralization*, in *URBAN POLITICS*, NEW YORK STYLE 143, 168 (Jewel Bellush & Dick Netzer eds., 1990).

82. *Id.*

Ultimately, community boards represented a **watered-down** compromise that **created the appearance of decentralization, but that kept the majority of power in the centralized City government.**⁸³ Nevertheless, community boards endured, and subsequent City Charter revisions revisited the issues of power, funding, and representation over and over again.

3. *1989 Charter Revision and Board of Estimate of New York v. Morris*

In the decade following the 1975 Charter Revision, community boards were seen as a success and were popular among New York City residents.⁸⁴ Additionally, their advisory powers on land use questions proved to **have more teeth than expected — around 90% of community board decisions during ULURP review were accepted by the CPC.**⁸⁵

However, community boards also exhibited problems that would become commonplace in the coming decades. First, there were problems with their membership. For example, community board members were more racially homogenous than the demographic makeup of their community districts they represented.⁸⁶ Additionally, if a community district intersected two separate council districts, borough presidents would sometimes ignore nominations from one councilmember due to political favoritism as a form of petty corruption.⁸⁷

Second, community boards complained about their lack of real power,⁸⁸ and their inability to make full use of their 197-(a) planning power.⁸⁹ The 1975 Charter revision granted community boards the power to make **land use proposals by submitting them to the CPC for review.**⁹⁰ However, in practice during the late 1970s and the 1980s the CPC usually either rejected the community boards' proposals outright, or the community boards were required to conduct expensive and

83. *Id.*

84. PECORELLA, *supra* note 35, at 141 (“[A]n early opinion survey about the boards, board members, community activists, and citizens ‘rated the community boards’ work in land use quite highly.”).

85. *Id.* at 141–46; *see also* Rogers, *supra* note 81, at 171 (“Even if only in a ‘reactive’ role, the boards have had important impacts on developers plans.”).

86. *Cf.* Frederick A. O. Schwarz, Jr. & Eric Lane, *The Policy and Politics of Charter Making: The Story of New York City’s 1989 Charter*, 42 N.Y.L. SCH. L. REV. 723, 823 (1998) (“[S]ome borough president appointments were remarkably monochromatic.”).

87. *Id.* at 823–24.

88. *Id.* at 855.

89. *Id.* at 868.

90. *Id.*

ULURP power success

land use proposal
power failure

unaffordable **environmental impact statements** that the community boards could not afford to conduct.⁹¹

Third, community boards began to, at times, exacerbate inequalities. To start, some community boards, particularly wealthy ones, learned how to secretively use their influence to extract concessions from private developers and the city.⁹² For example, homeless shelters and sanitation department garages were disproportionately placed in poor and minority neighborhoods, where residents did not have the same means to opposes such projects.⁹³ Such inequalities were also highlighted in another situation, whereby residents in wealthier districts were able to spend private funds to finance community board activity, such as urban planning, and as a result more effectively wield their informal advisory power compared to poorer neighborhoods.⁹⁴

As such, community boards were ripe for some amount of review and fixes through a City Charter revision. However, while the 1975 Revision was precipitated by community activism, the subsequent revision of 1989 was brought about by a mandate from the Supreme Court.

To understand the 1989 City Charter Revision, it is important to review the New York City government structure that existed right before that revision. At the top of New York City government were three bodies: the **Mayor, the City Council, and the BOE**.⁹⁵ The Mayor wielded executive power, and was elected citywide, while the City Council was composed of 35 Councilmembers and wielded legislative power.⁹⁶ The BOE, however, was unique: it was composed of the Mayor, two elected citywide officials — the Comptroller and the President of the City Council — and the five Borough Presidents (who are elected representatives from each of the five New York City

91. *Id.*

92. *Id.* at 855.

93. *Id.* at 855–56.

94. *Id.* at 824; PECORELLA, *supra* note 35, at 150.

95. *Cf. Bd. of Estimate of City of N.Y. v. Morris*, 489 U.S. 688, 694–97 (1989) (“New York law assigns to the board a significant range of functions common to municipal governments . . . the board shares legislative functions with the city council with respect to modifying and approving the city’s capital and expense budgets. The mayor submits a proposed city budget to the board and city council . . . a citizen’s total voting power thus aggregates his power through each of his four representatives — borough president, mayor, comptroller, and council president.”).

96. N.Y.C. CHARTER REVISION COMM’N, SUMMARY OF FINAL PROPOSALS 9 (1989) [hereinafter 1989 FINAL REPORT], https://www.nyc.gov/assets/charter/downloads/pdf/1989_final_report.pdf [<https://perma.cc/XZ5X-U36T>].

boroughs.).⁹⁷ The BOE had many powers such as conducting final review of land use decisions, negotiating and approving of contracts, among other assorted powers.⁹⁸

In 1989 the Supreme Court ruled in *Board of Estimate of City of New York v. Morris*⁹⁹ that the BOE violated the Equal Protection Clause because the least populous borough had the same representations on the Board as the most populous borough.¹⁰⁰ The practical implication of the decision was that the BOE had to be abolished, and all powers formerly held by it had to be reallocated throughout the New York City government. Faced with this challenge, the City swiftly created a Charter Revision Commission, and the Commission's 1989 City Charter revision was passed by voters that same year.¹⁰¹

The bulk of the 1989 revision dealt with redistributing powers previously held by the BOE to the City Council.¹⁰² The Council was granted discretion over the City budget,¹⁰³ and land use decisions made by the Planning Commission and reviewed by community boards were now reviewed by the City Council rather than by the BOE.¹⁰⁴ To account for this increased power, the City Council became more democratic. Specifically, the 1989 Revision increased the number of council districts from 35 to 51.¹⁰⁵ On the surface, community boards occupied a small fraction of the final Charter Revision. But, because the areas in which the BOE and community boards exercised power overlapped,¹⁰⁶ some changes to community boards were inevitable. As such, the Charter Revision Commission was given an opportunity to alter community boards as a response to the issues they faced in their first decade and a half of existence.¹⁰⁷

First, the revision expanded community board power, particularly surrounding their relationship with the CPC. The revision required the

balance democracy
with power

97. Bd. of Estimate of City of N.Y. v. Morris, 489 U.S. 688, 694 (1989).

98. *Id.* at 694 n.4.

99. *Id.* at 688.

100. *Id.* at 690.

101. Alan Finder, *The 1989 Elections: Charter; Overhaul of New York City Charter Is Approved, Polls Show*, N.Y. TIMES (Nov. 8, 1989), <https://www.nytimes.com/1989/11/08/nyregion/1989-elections-charter-overhaul-new-york-city-charter-approved-polls-show.html> [<https://perma.cc/78HX-66YB>].

102. PECORELLA, *supra* note 35, at 146–49.

103. 1989 FINAL REPORT, *supra* note 96, at 10.

104. *Id.*

105. Notably, however, the boundaries of the council districts were very different from the boundaries of community board districts. *Id.* at 9.

106. Compare Section I.B.2, with *supra* notes 65–70.

107. See generally 1989 FINAL REPORT, *supra* note 96.

CPC to review Community Board 197-(a) proposals that met certain minimum requirements, and required the City to pay for any environmental review.¹⁰⁸ Additionally, the revision required community board involvement in the pre-approval meetings at the CPC so that they were not blindsided by developers at the community board hearing.¹⁰⁹ Combined, the changes were meant to ensure that while community board powers remained advisory, they were at least entitled to a fair chance to participate in the land use process, rather than being shut out by entities with more power. Furthermore, community boards were given funds to hire “professional staff and consultants, including planners and other experts” who would help community boards fulfill their Charter obligations.¹¹⁰

Next, there was a major change to their membership in order to address concerns around diversity and representation of community boards. First, councilmembers were allotted varying amounts of nominations to community boards whose boundaries overlapped with their districts, and which were proportional to the population of the community district that intersected with their council district.¹¹¹ Second, borough presidents were directed to consider the diversity of their nominees, as measured against the demographics of the community districts they represent.¹¹²

City Council and CBs are
the local powers

In sum, the 1989 City Charter Revision arguably had a greater impact on the place of community boards in the City’s government, rather than their explicit powers. Before the revision, they were the only truly sub-local government entity in the City, and the only formal voice for community input in decision-making. With the new City Council, the City had another entity representative of neighborhoods and responsible for reviewing local land use decisions.

4. 2005 and 2010 Charter Revision Reports

Between 1989 and 2018, the City saw five separate City Charter revision commissions grapple with issues raised by the *Morris* decision.

108. *See id.* at 48.

109. *See id.* at 47.

110. *Id.*

111. *Id.*

112. *Id.*

The 1999,¹¹³ 2001,¹¹⁴ and 2002¹¹⁵ Commissions focused on a wide scope of questions and all three were virtually silent on community boards, apart for some public comments that were not given serious consideration. The 2005 and 2010 Commissions, however, returned once more to community boards and their role in the City government. Even if these commissions did not yield City Charter revisions pertaining to community boards, they offer valuable insights into the debate surrounding community boards.

The 2005 Charter Revision Report was the first since 1989 to revisit the issue of community boards, albeit in a limited manner. The Report acknowledged the reality that without additional funding, community boards could not fulfill their true role regarding land use issues.¹¹⁶ Further, the report considered a broader look at land use and community board powers, despite leaving the details of such a review open-ended and provided little beyond an acknowledgement that the issues required further review.¹¹⁷

The 2010 Charter Revision, which again lacked actual solutions to problems faced by community boards, did present an opportunity for those problems to be heard. Chief among them was the lack of funding for community boards, which led them to rely on their unequal access to volunteer professional expertise.¹¹⁸ While some members advocated for additional funding to be spent on urban planners, the Commission ultimately rejected this as a “one-size-fits-all” solution because not every community board required the use of an urban planner.¹¹⁹

The relationship between the CPC and community boards during ULURP review continued to receive attention, whereby community boards were often shut out and ignored by the CPC during the

113. *See generally* N.Y.C. CHARTER REVISION COMM’N, FINAL REPORT (1999), https://www.nyc.gov/assets/charter/downloads/pdf/reports-ballot-issues/crc_final_report_9.1.1999.pdf [<https://perma.cc/2ENY-G9KE>].

114. *See generally* N.Y.C. CHARTER REVISION COMM’N, FINAL REPORT (2001), https://www.nyc.gov/assets/charter/downloads/pdf/2001_final_report.pdf [<https://perma.cc/23EA-3NSG>].

115. *See generally* N.Y.C. CHARTER REVISION COMM’N, FINAL REPORT (2002), https://www.nyc.gov/assets/charter/downloads/pdf/2002_final_report.pdf [<https://perma.cc/8NDC-23GJ>].

116. N.Y.C. CHARTER REVISION COMM’N, FINAL REPORT 71 (2005), https://www.nyc.gov/assets/charter/downloads/pdf/final_report_2005.pdf [<https://perma.cc/479P-VBAJ>].

117. *Id.* at 72.

118. N.Y.C. CHARTER REVISION COMM’N, FINAL REPORT 89 (2010), https://www.nyc.gov/assets/charter/downloads/pdf/final_report_of_the_2010_charter_revision_commission_9-1-10.pdf [<https://perma.cc/UT84-YQXV>].

119. *Id.*

review.¹²⁰ Consequently, this encouraged community boards to take an obstructionist position in order to gain attention and compromise.¹²¹ Similarly, community boards complained that the CPC moved too slowly on review of their 197-(a) plans and argued in favor of expanding mandatory review of 197-(a) proposals.¹²² As with calls for greater funding, however, the issue of power was acknowledged but ultimately ignored because there appeared insufficient political consensus to put any solution up to the voters.¹²³

5. 2018–19 Charter Revisions

The 2018 and 2019 City Charter revisions presented the first set of changes to community boards in thirty years. Chief among them were changes to address the representation of community boards. First, term limits were imposed on community board members to promote turnover in community board membership and encourage younger individuals to join their community boards.¹²⁴ The application process was modified to be more public and transparent; borough presidents were formally required to take race, ethnicity, gender, age, disability status, sexual orientation, and language of community board applicants into account when appointing them.¹²⁵ Combined, these changes sought to make community boards more accurately resemble the community districts they represented.¹²⁶

Additionally, requests for greater resources for community boards were finally answered with the creation of a new City agency, the Civic Engagement Commission (CEC).¹²⁷ Among other things, the CEC's mission was explicitly to collaborate with community boards and help them meet their charter obligations.¹²⁸ One way that they could accomplish this is by helping community boards acquire urban planners.¹²⁹ These changes were followed up in 2019 with another revision that granted community boards more power to review

120. *Id.* at 97.

121. *Id.*

122. *Id.* at 103.

123. *See id.* at 83–86.

124. N.Y.C. CHARTER REVISION COMM'N, FINAL REPORT 75–76 (2018), <https://www.nyc.gov/assets/charter/downloads/pdf/final-report-20180904.pdf> [<https://perma.cc/K8PN-BTC2>].

125. *See id.* at 78–79.

126. *See id.* at 75.

127. *Id.* at 80.

128. *See id.*

129. *See id.*

ULURP proposals.¹³⁰ The 2019 revisions granted community boards an additional 30 days to review ULURP proposals and required the CPC to submit a pre-certification notice to community boards.¹³¹ Combined, these changes were designed to grant community boards more power to exercise their review of ULURP proposals.¹³²

While it is too early to precisely judge the success of these changes, early initiatives provide some insight. Collaboration with the CEC has resulted in improved training for new community board members, better language access, and a directory of land use professionals to help community boards find — though not pay for — professional help for urban planning.¹³³ Meanwhile, some Borough Presidents have responded to the diversity requirements by collecting more data on prospective community board nominees and using that data to select nominees who more accurately reflect their community district.¹³⁴

C. Current Legal and Practical Function

Today, community boards continue to function as a key neighborhood-based government entity in New York City. While land use remains one of the most utilized and debated powers community boards wield,¹³⁵ they also retain power over a variety of other city functions.¹³⁶ These powers are granted through delegation in the City Charter, state and local laws granting them additional power, and other

130. NEW YORK CITY CHARTER REVISION COMM'N, FINAL REPORT 82, 84 (2019), <https://www.nyc.gov/assets/charter/downloads/pdf/reports-ballot-issues/final-report-20190802.pdf>.

131. *Id.*

132. *See id.*

133. *See* N.Y.C. CIVIC ENGAGEMENT COMM'N, 2021 ANNUAL REPORT (2021), https://www.nyc.gov/assets/civicengagement/downloads/pdf/CEC_Annual_Report_09292021.pdf [<https://perma.cc/PDS5-H5RZ>].

134. *See* Clifford Michael, *Hub for Gig Workers, Community Board Diversity Top Manhattan BP To-Do List*, CITY (Feb. 3, 2022, 7:44 PM), <https://www.thecity.nyc/2022/2/3/22916996/hub-gig-workers-community-board-diversity-manhattan-bp> [<https://perma.cc/Z87U-EEK2>]; Bill Parry, *Queens Borough President's Demographic Report Shows 'Historic' Diversity among First-Time Community Board Memberships*, QNS (July 25, 2022), <https://qns.com/2022/07/borough-president-diversity-community-board/> [<https://perma.cc/Z7QB-VZ3M>].

135. *See, e.g.,* N.Y.C. Community Boards Usually Oppose New Housing. Not This One., N.Y. TIMES (Dec. 15, 2022), <https://www.nytimes.com/2022/12/15/nyregion/manhattan-community-board-housing.html>.

136. *See infra* notes 146–53.

more informal methods relating to these entities mobilizing and expressing opinions on matters impacting their communities.¹³⁷

The City Charter sets certain broad requirements on community board meetings. The main set of requirements relate to accessibility of community board resources and meetings. By way of example, community boards must hold a public hearing at least once a month, with adequate notice given to community members,¹³⁸ make their documents public,¹³⁹ maintain a publicly-facing website,¹⁴⁰ broadcast their meetings,¹⁴¹ and make those meetings available.¹⁴² Each community board must also elect a chair; however, the exact processes of election and powers of the chair are unclear.¹⁴³ While community board members themselves are not paid for their work, they are classified as public servants under applicable state and local law.¹⁴⁴ Finally, while not mandated by the charter, each community board will often adopt internal rules — known as bylaws — to serve their own internal “constitution.”¹⁴⁵

Additionally, community boards are sometimes granted statutory power by state and local laws where “community input” is seen as a policy goal. For example, a New York City local law requires a community board hearing before the installation of a bike lane in a neighborhood.¹⁴⁶ At the state level, entities who apply for a liquor license must notify their local community board of the application.¹⁴⁷ While both powers are advisory, community board opposition to applications can have a massive impact on such developments and applications.¹⁴⁸

137. *See infra* notes 146–53 and accompanying text.

138. *See* CITY CHARTER, *supra* note 23, at § 2800(h).

139. *Id.* at § 2800(d)(7).

140. *Id.* at § 2800(d)(22).

141. *Id.* at § 2800(h).

142. *See id.*

143. *Id.* at § 2800(f).

144. *See* *People v. Kruger*, 452 N.Y.S.2d 78, 79 (App. Div. 1982).

145. *See, e.g.*, MANHATTAN CMTY. BD. SIX, BYLAWS (2019), <http://cbsix.org/wp-content/uploads/2020/06/CB6-Bylaws.pdf> [<https://perma.cc/FDS5-5XV8>].

146. *See, e.g.*, Eve Kessler, *Upper East Side Community Board Votes for Crosstown Bike Lanes*, STREETS BLOG NYC (Sept. 22, 2022), <https://nyc.streetsblog.org/2022/09/22/upper-east-side-community-board-votes-for-crosstown-bike-lanes/> [<https://perma.cc/ZX32-S4S4>]; *see also* NEW YORK CITY, N.Y., CODE S 19-187.

147. N.Y. ALCOHOLIC BEVERAGE CONTROL LAW § 110–b (McKinney 2022).

148. Noah M. Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, 106 IOWA L. REV. 2339, 2355 (2021) (“As one council member has complained, “[i]t’s a self-imposed obstacle . . . [B]ike lanes literally get delayed for years over community

In fact, community board opposition to installation of bike lanes and liquor licenses demonstrates the practical role community boards play in land use decisions. Community boards can serve as a locus point for opposition to a particular ULURP application, and fear of such opposition can lead to concessions from developers who are seeking to avoid difficult public hearings.¹⁴⁹ This hearing process can sometimes become contentious, with some even ending in threats and verbal abuse.¹⁵⁰

Finally, community boards are not limited to advisory review of other citywide decisions and can directly assist their community members in other ways. Community boards provide help on compliance with the City's rules and regulations,¹⁵¹ compile newsletters for their residents,¹⁵² and implement other initiatives community board members feel are valuable. However, these initiatives are limited by the line-item funding community boards receive.¹⁵³

D. The Predominance of Land Use Review and Frequent Problems Faced By Community Boards

Ultimately, fifty years of charter revisions and statutes have granted community boards a wide array of responsibilities and powers. Some, such as land use review, are reactive in nature and are designed to allow community input on certain decisions New York City makes. Others, such as 197-(a) land use proposals, are more proactive and are designed to allow community boards to “speak up” and offer their own solutions to problems faced by the communities. Given their limited funding however, community boards have generally had more success wielding

board opposition, and the [Department of Transportation] puts aside safety for anecdotes and personal experiences.”).

149. See generally Richard Bass & Cuz Potter, *A Tale of Three Northern Manhattan Communities: Case Studies of Political Empowerment in the Planning and Development Process*, 31 FORDHAM URB. L.J. 285 (2004).

150. See Aliya Schneider, *Chaos Ensues as CB11 Just Home Public Hearing Leaves Little Room for Disagreement*, BRONX TIMES (Oct. 6, 2022), <https://www.bxtimes.com/just-home-public-hearing-chaos> [<https://perma.cc/G9U9-J8BD>].

151. See generally MANHATTAN CMTY. BD. SEVEN, MANUAL FOR SIDEWALK CAFE APPLICANTS, https://www.nyc.gov/assets/manhattancb7/downloads/pdf/sidewalk_cafe_guide.pdf [<https://perma.cc/MQ8Q-TDUZ>] (last visited Mar. 5, 2023).

152. See, e.g., *Newsletter*, BROOK. CMTY. BD. 4, <https://www.nyc.gov/site/brooklyn4/news/newsletter.page> [<https://perma.cc/2MYQ-9UU7>] (last visited Jan. 2, 2023).

153. See *supra* note 75 and accompanying text.

their power of review than their more proactive powers such as making 197-a proposals.¹⁵⁴

Among these powers, review of land use decisions under ULURP has become the dominant issue for community boards and Charter revisions. This also reflects the nature of land use decisions: more than any other over which community boards wield power, land use provisions have immediate, direct, and keen impacts on neighborhoods.¹⁵⁵

Finally, when land use review and other powers were scrutinized during City Charter revisions, three types of discussions frequently arose: discussions about the power of community boards, discussions about the financing of community boards, and discussions about how community board members can best reflect their community districts. While each charter revision sought to address these disputes, community boards saw little change in their form and function in the 50 years since their creation.

II. THE DISPUTE AROUND NYC COMMUNITY BOARDS AND COMMUNITY INPUT

The question of what role community boards play in New York City government remains unresolved. On one hand, proponents of community boards view them as a key force for amplifying community voices in the face of forces such as gentrification.¹⁵⁶ On the other hand, opponents view them as a reactionary force opposing vital developments the City needs.¹⁵⁷ At the core of this disagreement is that while their role in the City Charter has more or less remained the same, their role on the ground has a great deal.

Community boards adapted. They were created as a check on an overly centralized New York City government, and their powers appropriately reflected this goal. By contrast, today they find themselves as one of the first places where debates between community activists, private developers, and local politicians play out. Despite this, their legal framework is poorly suited to effectively facilitate these debates. This Part outlines some of the theoretical underpinning of the debate around local and sub-local power

154. Compare *supra* note 85, with *supra* notes 118, 122.

155. PECORELLA, *supra* note 35, at 141 (“[L]and-use review ‘may offer the boards their most direct opportunity to shape the futures of their districts because of the relatively immediate and highly visible economic and social consequences of land-use decision.’”).

156. See *infra* Section II.A.

157. See *infra* Section II.B.

generally. Then, it explores two competing visions for the role community boards should play in today's New York City.

A. The Theory of Sub-local Control

The legal theory behind local and sub-local control is, in many ways, a logical extension of traditional federalism.¹⁵⁸ Just as the federal government is divided into 50 states, so too are the states divided into local governments, or municipalities. In many states, these local governments are already numerous and serve populations small enough that there is no need for further subdivision into smaller units of government. In some cases, and particularly in dense cities, a local government represents too many people. Thus, local governments will often subdivide themselves into even smaller sub-local governments. This Section explores these governments and addresses: why local governments seek to create such small subdivisions, the impact of local governments on economic efficiency and democratic participation, and what pitfalls of small local and sub-local government may be impacted.

1. *Economic Efficiency, Democratic Participation, and the Tiebout Model*

The federal political hierarchy in the United States mandated by the Constitution involves the federal government, the states, and municipalities, with varying powers delegated to each political unit.¹⁵⁹ While the relationship between the federal government and the states is one of the oldest and most debated issues in United States law,¹⁶⁰ states are more flexible in mirroring this type of relationship by creating local municipalities and delegation of power to them.¹⁶¹ Indeed, municipalities can sometimes further delegate their powers to smaller, sub-local units of governments.¹⁶² As such, municipalities in some jurisdictions have a great degree of flexibility in creating these smaller units of government if they see them as desirable, as long as

158. See Richard Briffault, *Our Localism: Part I – the Structure of Local Government Law*, 90 COLUM. L. REV. 1, n.1 (1990).

159. See *id.* at 7.

160. See, e.g., *McCulloch v. Maryland*, 17 U.S. 316 (1819).

161. See, e.g., MUN. HOME RULE § 31 (exempting New York City from certain home rule requirements).

162. See, e.g., *supra* note 100 and accompanying text (describing the New York City Board of Estimate, a sub-local delegation of power, as violating the Federal Constitution).

this does not conflict with any state law limiting the delegation of power by local governments.¹⁶³

The Tiebout Model, the dominant theory behind local governance, sees the creation of smaller units of local government as desirable because it promotes economic efficiency and democratic participation.¹⁶⁴ This approach states that residents of municipalities are akin to consumers in a private market; their needs and wants are so varied that no single municipality could provide them all with their desired services.¹⁶⁵ There is no “one-size-fits-all” local government, and providing many such local governments in geographic proximity to each other would allow people to self-sort into their preferred municipalities, as if they are consumers shopping for a new car or phone. By “voting with their feet,” economic efficiency and democratic participation are maximized.¹⁶⁶

In the Tiebout Model, economic efficiency is achieved through something akin to market competition, decentralization, and specialization.¹⁶⁷ On one hand, local governments will “compete” for residents by efficiently spending tax-payer dollars.¹⁶⁸ On the other, as individuals self-sort into municipalities that fit their desires, those same municipalities can specialize in services that their residents desire, and ignore those that they do not.¹⁶⁹ In the simplest example, a geographic area might have a mix of parents willing to pay higher taxes in exchange for better public schools, and parents who would rather see their tax dollars invested elsewhere. In this scenario, the most efficient outcome is to provide everyone with two municipalities: one with higher taxes and better funded schools and one that allocates resources differently.

163. What exactly this state law is and how it limits municipalities far exceeds the scope of this Note. For a good starting point, *see generally* Briffault, *supra* note 158.

164. *See* Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 503 (1997).

165. *Id.* at 503–04 (“A metropolitan area, thus, functions as a kind of ‘marketplace’ in which, due to interlocal mobility, residents are more likely to have their preferences satisfied by local government offerings than if comparable public goods and services were offered by higher levels of government.”).

166. *See* Nadav Shoked, *The New Local*, 100 VA. L. REV. 1323, 1332 (2014) (“Any decision by a micro-local government has to be more efficient and more democratic than a local or state decision.”).

167. *See* Briffault, *supra* note 164, at 504 (“Like-minded people will be drawn to localities whose packages they find appealing while local dissenters relocate to other places where their tastes are more likely to be accommodated . . . ‘rivalry among local governments is analogous to rivalry among firms’ in promoting efficient government operations.”).

168. *See id.*

169. *Id.*

In addition to efficiency, the Tiebout Model arguably promotes democratic participation in local government.¹⁷⁰ The argument that supporting decentralization improves democratic participation is somewhat intuitive: by bringing government “down” closer to the people, the people are more likely to engage with the government.¹⁷¹ This appeal to democracy is rooted in the American tradition of federalism.¹⁷² For local governments such as New York City — whose population exceeds most States¹⁷³ — there is an intuitive desire for sub-local governments, because the local government is unable, on its own, to effectively engage every citizen.

2. *Assumptions and Problems in the Tiebout Model*

The Tiebout Model is not self-fulfilling however, as it relies on several assumptions. These assumptions are: “borders [] affect the scope of services and regulation, [there is] autonomy within those borders, and [there is] financing from sources within those borders”¹⁷⁴ and that these local governments are economically efficient for the entire country only if they do not generate excessive negative externalities outside their border.¹⁷⁵ When they do generate these externalities, local governments are inefficient, as they have the power to benefit their residents at a greater cost that is borne by residents of other localities.¹⁷⁶ Accordingly, when sub-local governments are

170. Shoked, *supra* note 166, at 1332.

171. *Id.* at 1378.

172. *Id.* at 1377.

173. *Compare Quick Facts: New York City, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/newyorkcitynewyork> [https://perma.cc/K9B6-8VQJ] (last visited Feb. 17, 2023), with U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR THE UNITED STATES, REGIONS, STATES, DISTRICT OF COLUMBIA AND PUERTO RICO: APRIL 1, 2020 TO JULY 1, 2022 (2022), <https://www2.census.gov/programs-surveys/popest/tables/2020-2022/state/totals/NST-EST2022-POP.xlsx> [https://perma.cc/E795-FGBT].

174. Briffault, *supra* note 164, at 526.

175. *Id.* at 527 (“[L]ocal government will be efficient only when locally supplied public services ‘exhibit no external economies or diseconomies between communities.’”).

176. *See* Shoked, *supra* note 166, at 1357–58 (“For example, when aggressive policing in area A reduces crime in an independent area B, the added benefit to area B does not make area A more attractive to potential residents, and thus area A has no incentive to increase its investment in policing. In this case a service is socially underproduced since its positive external effects are not taken into account by the providing government. The counter scenario unfolds when the service generates negative external effects and is therefore overproduced. For example, when extensive use of area A’s water infrastructure damages the natural environment of an independent area B, area A is not less attractive to potential residents due to these effects, and hence it lacks the incentive to cut back on water use.”).

granted power, that power cannot allow those sub-localities to generate negative externalities¹⁷⁷ if efficiency is desired.

Furthermore, even an idealized collection of sub-local governments can produce and exacerbate inequalities. This is true even if overall economic efficiency is increased. The self-sorting of the Tiebout model can reflect not just different preferences but the different socioeconomic backgrounds, wealth, and skills of residents.¹⁷⁸ For example, wealthy individuals might choose to move to a wealthy neighborhood, leaving poor individuals in poor neighborhoods, in turn, fracturing the city along economic lines. While these rich and poor localities might then provide different services, this reflects a wealth disparity rather than preferences of its residents.¹⁷⁹ Even proponents of the Tiebout Model recognize this undesirable outcome as a flaw of the model, as the framework operates under the assumption that there are no transaction costs associated with moving, an assumption that does not always hold up in the real world.¹⁸⁰

Finally, the term “economic efficiency” can have several different meanings. In a municipality, efficiency simultaneously refers both to the amount of goods and services produced in that locality and the ways in which those goods and services are allocated to people within the locality.¹⁸¹ These are known as productive and allocative efficiency.¹⁸² In a city, productive efficiency may be defined by how many roads the city can pave given a fixed tax income. On the other hand, allocative efficiency might consider whether those roads are actually built in neighborhoods where people want to drive.

177. A negative externality is an economic term, whereby the benefits of an activity is borne by one party, while the costs are borne by a third party; this cost on the third party is the negative externality. The undesirable effect of this is that the party performing the activity has no incentive to stop, even if the costs to the third party vastly outweigh any benefit, thereby making society in the aggregate worse off. Climate change is a classic example: an individual polluter benefits from the burning of fossil fuels, while the costs of climate change is borne by every person on the planet. No individual polluter feels the need to stop, because they do not acutely feel the cost of the pollution, even if the acidity in the aggregate is harmful. *See generally id.*

178. Briffault, *supra* note 164, at 528.

179. *Id.* (“[T]he rise of sublocal institutions could extend another unattractive feature of the Tiebout model—interlocal service inequalities—into the cities. The Tiebout model assumes that differences in local public actions are primarily a reflection of the differences in the preferences of residents.”).

180. *Id.*

181. *See* Shoked, *supra* note 166, at 1359. Productive efficiency refers to how efficient a system is in converting inputs into outputs. *See id.* Allocative efficiency refers to how efficient a system is in meeting people’s subjective desires with those outputs. *See id.*

182. *See id.*

Generally, larger cities are more productively efficient than small cities because they benefit from economies of scale and residents with diverse skillsets.¹⁸³ It follows that the Tiebout Model would predict a loss in productive efficiency, but that any such loss would be offset by an even greater increase in allocative efficiency.¹⁸⁴ Thus, economic efficiency increases even as localities get less “efficient” in another facet of their operations. This line of thinking does seem to suggest that failure is more likely than not. Further decentralization of localities could result in loss of economic efficiency.

In sum, the dominant legal and economic view of sub-local governments argues that dividing large cities into separate governmental units, with control over priorities and services within their borders, promotes economic efficiency and democratic participation. Those sub-localities can then more efficiently meet the needs of their residents and engage them politically. However, any such subdivision risks can introduce negative externalities into city operations and increase inequalities between those localities.

3. *Non-sovereign and Micro-local Powers*

Having established the theory underlying many local and sub-local governments, it is also important to recognize the challenges in applying this theory to real-world examples.

Traditional legal analysis tends to focus and recognize the largest and most formal government structures, those defined in constitutions, statutes, and court opinions.¹⁸⁵ This kind of analysis goes a long way when looking at federal and state governments, where constitutions, statutes and court opinions are so numerous that one can learn a lot about the powers and structures of governments just by reading these texts.

However, descending further down the pyramid of government towards local and sub-local governments, this kind of formal analysis becomes less complete. First, while sub-local governments might lack sovereignty over specific legal domains in their neighborhood, local

183. *Id.* at 1360.

184. For example, if the localities became so fragmented that the loss in productive efficiency would surpass the gain in allocative efficiency. *Id.* at 1359.

185. *Cf.* Shoked, *supra* note 166, at 1329–30 (“As a form of local government it is both more ‘local’ in the traditional sense of the term ‘local’ and less ‘government’ in the traditional sense of the term ‘government.’ This fact has consistently been overlooked by prior efforts to analyze governments operating on a level smaller than the local. Existing works assume that such governments must replicate the governmental structure of traditional local governments, simply on a smaller scale.”).

and sub-local governments may still exercise real and important power deserving of scholarly recognition.¹⁸⁶ Second, sub-local governments exist in a wide variety of forms that escape clear classification.¹⁸⁷ What unites sub-local governments is not formal law, but a set of ideas rooted in the American tenet that “small is beautiful.”¹⁸⁸ Building upon the theory of the Tiebout Model, the intuitive belief that a large number of small, local governments is desirable is also backed up by the claims that these governments promote economic efficiency and democratic participation.¹⁸⁹

In this case, New York City community boards are an example of this belief, and a real-world application of the Tiebout Model. New York City, faced with disastrous economic decisions and falling democratic participation, created community councils as the geographic units of sub-local government.¹⁹⁰ Community boards were the institution overseeing these boundaries.¹⁹¹ They were granted certain powers over their geographic domains, but they simultaneously exercised informal powers to extract concessions from the City where community boards lacked sovereignty.¹⁹² As such, even though the Tiebout Model does not explicitly appear in the history of community boards, its lessons and predictions are applicable.¹⁹³

The rest of this Part explores the debates surrounding the role community boards should play in New York City government, and the broader political fight over the role of community input across all levels of government. While this debate will rarely make explicit references to the theory of the model, the arguments, and critiques of both sides of the debate closely mirror that theory, and provide a helpful framework.

B. Proponents of Community Boards and Community Input

One side of the debate can be broadly categorized as proponents of community input in decision-making, and by extension proponents of community board input in New York City decision-making. This side not only supports community boards, but also advocates for expanding

186. See generally Heather K. Gerken, *Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 33–44 (2010).

187. See Shoked, *supra* note 166, at 1335.

188. *Id.* at 1331–32.

189. *Id.* at 1332.

190. See *supra* Section I.B.2.

191. See *supra* Section I.B.2.

192. See *infra* note 92 and accompanying text.

193. See Shoked, *supra* note 166, at 1378.

community boards' power in order to increase the scope of community input in New York City politics. Specifically, proponents of community boards argue that their main problem community is that they lack binding legal power, the financial and intellectual resources to fulfill their mandate, and the diversity to represent their communities.¹⁹⁴ This is underscored by the Tiebout Model and sees benefits in local and sub-local governments.

1. “Federalism All The Way Down”

Support for stronger community boards in New York City is a manifestation of what has been dubbed “federalism-all-the-way-down.”¹⁹⁵ Traditionally, the word “federalism” invokes the idea of states retaining power and sovereignty over the federal government.¹⁹⁶ It is a form of “vertical” checks and balances, rather the traditional “horizontal” ones.¹⁹⁷ While states are subservient to the federal government, they retain sovereignty that they can use to restraint unwanted intrusions.¹⁹⁸ As the country has grown, this verticality first extended to localities such as cities, who could check the power of the state, and the sub-localities, such as entities like community boards.¹⁹⁹ Community boards could then check the power of its municipality.²⁰⁰ Additionally, these sub-localities need not retain any level of sovereignty and can exercise power through other means.²⁰¹

“Federalism all the way down” inevitably leads to, and promotes, minority power.²⁰² At a national or state level, minorities can wield little to no power; but at a sufficiently local level, national minorities can become local majorities and begin to exercise power.²⁰³ This is a feature, not a bug, as proponents of this type of federalism argue that minority power begets both normatively good outcomes and

194. See *infra* Sections II.B.1–B.2.

195. Gerken, *supra* note 186, at 6.

196. See *id.* at 33.

197. See *id.*

198. See *id.*

199. See *id.* 38–40.

200. See *id.*

201. See *id.* at 40.

202. See *id.* at 11–12 (“Federalism is an idea that depends on, even glories in, the notion of minority rule. It involves decentralized governance and a population that is unevenly distributed across two levels of government, something that allows national minorities to constitute local majorities. Minority rule, in turn, is thought to promote choice, competition, experimentation, and the diffusion of power.”).

203. *Id.*

democratic participation.²⁰⁴ On one hand, minority power allows those same minorities to oppose federal, state and local decisions that disproportionately impact those minorities.²⁰⁵ Additionally, providing avenues for power also creates avenues for participation for communities traditionally shut out of the democratic process. Shutting out others is undemocratic, as democracies should strive to make the dissenters feel as much a part of society as the majority.²⁰⁶

Unlike federal and state institutions, local and sub-local institutions escape easy classification. There is one federal government and fifty state governments; by comparison, there are over eighty-nine thousand local governments in the United States.²⁰⁷ These sub-local entities are so informal and varied that they would be impossible to enumerate. Nevertheless, the theoretical underpinnings of this type of decentralization and “federalism all the way down” are intuitive and appealing to proponents of “community control” in New York City, such as those who push for stronger and more democratic community boards.

2. *Community Control in New York City*

In New York City politics, proponents of the “federalism all the way down” decentralization often use the word “community” as shorthand for this type of advocacy, especially when used in the phrases “community control” or “community power.”²⁰⁸ Indeed, the creation of community boards signified the start of granting minority rights to individuals in poor neighborhoods of color so they could begin

204. *Id.* at 44, 46–47 (“Federalism scholars don’t just dwell on the technocratic or policymaking benefits of decentralization; they also emphasize the role it plays in shaping identity, promoting democratic debate, and diffusing power . . . [W]e should be open to the possibility that at this stage in our history, minority rule — and not just minority rights — represents a tool for combating discrimination and promoting democracy.”).

205. *Id.* at 46 (“[T]he insider’s ‘voice’ isn’t confined to speech. It includes the power to act — the ability to tweak, adjust, even resist federal policy by virtue of the role minorities play in administering that policy.”).

206. *Id.* at 47 (“While local resistance surely has its costs, minority rule at the local level generates a dynamic form of contestation, the democratic churn necessary for an ossified national system to change.”).

207. Press Release, U.S. Census Bureau, Census Bureau Reports There Are 89,004 Local Governments in the United States (Aug. 30, 2012), <https://www.census.gov/newsroom/releases/archives/governments/cb12-161.html> [<https://perma.cc/7XUD-VPB2>].

208. *See, e.g.*, Peter Marcuse, *To Control Gentrification: Anti-displacement Zoning and Planning for Stable Residential Districts*, 13 N.Y.U. REV. L. & SOC. CHANGE 931, 943 n.31 (1985).

opposing harmful policies²⁰⁹ and promoting democratic engagement.²¹⁰ For these advocates, community boards represent just one part of a broader fight for greater community control in city government. Land use and housing are particularly important subjects, as advocates of community control view community boards as a valuable tool in fighting displacement, gentrification, and other land use issues.²¹¹ Mirroring the history of the City Charter revisions, there are three types of arguments regarding community board power: (1) arguments in favor of greater community board power, (2) arguments in favor of greater funding for community boards, and (3) increased diversity of community boards.

Regarding community board power, supporters of community boards have largely eschewed calling for community boards to have binding power to affect land use proposals.²¹² Instead of calling for greater *reactive* power to veto land use decisions, proponents have advocated for greater *proactive* powers to make their own binding land use proposals in the form of stronger 197-(a) proposals.²¹³ In many ways, this argument mirrors the debates surrounding the 1989 City Charter Revision, as it argues that community boards still lack sufficient power to have a voice in land use decisions.²¹⁴

However, calls for greater powers dwarf in comparison to the other practical concern of community boards: insufficient funding.²¹⁵

209. See *supra* Section I.B.1.

210. See *supra* Section I.B.1.

211. See Marcuse, *supra* note 208, at 943 n.31; Dianisbeth Acquie, “Sunset Park Is Not for Sale”: Gentrification, Rezoning, and Displacement in Brooklyn’s Sunset Park, 38 CHICANA/O-LATINA/O L. REV. 53, 84 (2022).

212. See, e.g., Marcuse, *supra* note 208, at 943 n.31.

213. See generally Tom Angotti, *Charting a Better Way for Planning and Community Boards*, GOTHAM GAZETTE (July 6, 2010), <https://www.gothamgazette.com/index.php/development/555-charting-a-better-way-for-planning-and-community-boards> [<https://perma.cc/XBU2-8JF5>]; Memorandum from Tom Angotti, Professor of Urban Affairs and Planning, Hunter College/CUNY on Land Use and the New York City Charter to the New York City Charter Comm’n 28 (Aug. 10, 2010) [hereinafter Memorandum from Tom Angotti], <https://www.hunter.cuny.edu/ccpd/repository/files/charterreport-angotti-2.pdf> [<https://perma.cc/PLS6-XQTC>]; *Panel Four: Will the Structure of City Government be Able to Meet the Next Generation’s Demands*, 42 N. Y. L. SCH. L. REV. 1041, 1050 (1988) [hereinafter *Panel Four*] (quoting Ruth Messinger: “Second, we should increase the actual, as opposed to the advisory, role of community boards by setting up a new system; community boards should not get money but should be able to negotiate for certain municipal services to experiment with in their jurisdictions”).

214. See *supra* notes 88–91 and accompanying text.

215. See *Panel Four*, *supra* note 213 (“[Y]ou cannot expect community boards to fulfill their current Charter roles, much less do more to bring issues to the attention of their communities or speak for their communities, if you continue to cut their

Regardless of any binding or advisory power community boards may have, community boards cannot effectively utilize those powers without money. 197-(a) proposals require, at a minimum, professional and full-time urban planners, an expense that community boards currently cannot afford.²¹⁶ As a result, the majority of community boards do not make 197-(a) proposals,²¹⁷ and the ones that have tend to be wealthier community boards with sufficient private wealth to finance such proposals.²¹⁸ This inequality between community boards and board members also highlights the third main concern with community boards: their lack of diversity.

In this case, diversity is defined as the extent to which a community board represents the demographic makeup of its community district. This concern dates back to the dissenting proposals of the original 1975 City Charter Revision,²¹⁹ and it has developed through the 1989 Revision and its directive to borough presidents to consider candidate diversity.²²⁰ The ultimate term limit and diversity requirements in the 2018 City Charter Revision represent the most expansive solutions to the problems of diversity.²²¹ If community boards are meant to grant minority rights to people traditionally underrepresented in government, then the concern is that lack of diversity on community boards can lead to the empowerment of traditionally-overrepresented

budgets.”); Memorandum from Tom Angotti, *supra* note 213, at 15–16; David S. Yassky, *Learning from Washington: A New Approach to Analyzing the Structure of New York City’s Government*, 58 N.Y.L. SCH. L. REV. 71, 81 (2014) (“[W]e would make budgets independent of the current legislative process. Also, we should provide community boards with full-time community planners so that they can participate more fully in the land use review process and therefore empower local communities and the Borough Presidents.”).

216. See Yassky, *supra* note 215.

217. See Memorandum from Tom Angotti, *supra* note 213.

218. See Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999, 2034 (2007) (“Over the years, the better off and more politically connected Black professional and business people have predominated on the [Manhattan community] Board, along with white property owners and the white graduate students concentrated in the southern end of the district near Columbia’s main campus. As of 2007, the Manhattan community board included only two representatives of the growing, mainly working poor Dominican community that is the most vulnerable to gentrification.”); Amy Widman, *Replacing Politics with Democracy: A Proposal for Community Planning in New York City and Beyond*, 11 J.L. & POL’Y 135, 148 (2002) (“These problems are exacerbated in low-income or politically marginalized neighborhoods.”).

219. See *supra* Section I.B.

220. See *supra* Section I.B.

221. See *supra* Section I.B.

groups.²²² Some advocates continue calling for direct elections of community board members as a way to ensure greater diversity on the Boards.²²³ Overall, the 2018 City Charter Revision represents the latest effort in combatting this problem, and future solutions depend on the effectiveness of these solutions.

C. Opponents of Excessive Community Input and Community Boards

As with proponents of community boards, it would be hard to classify any one group as being unified in “opposition of community boards.” Rather, there are loosely-defined groups of individuals who are opposed to a certain *types* of community control in urban communities. Most of the time, this opposition is due to the fact that they see community boards as ineffective and unnecessary impediments to important developments.²²⁴ This argument sees two problems with community control: first, that decentralization that has gone too far and become too difficult to produce things such as housing and infrastructure.²²⁵ Second, that are community control centers public opposition in an open setting, which is not an effective way of including all community voices in a decision.²²⁶

1. Opposition to Community Input’s Impact on Government Capacity

Opponents of community boards exist on the spectrum of opposition to community control more broadly. One group of opponents are those that view current levels of community input as an undesirable block on the government’s capacity to build and provide services.²²⁷

222. Rachel Holliday Smith & Ann Choi, *Does Your Community Board Reflect You and Your Neighbors? Find Out*, CITY (Jan. 29, 2020, 10:05 AM), <https://www.thecity.nyc/government/2020/1/29/21210566/does-your-community-board-reflect-you-and-your-neighbors-find-out> [https://perma.cc/63L6-RFJP].

223. See Acquie, *supra* note 211, at 85 (“It would be more powerful to have Community Boards elected rather than appointed; this might lend greater credence to the idea that they represent the community’s wishes.”).

224. See *infra* note 227 and accompanying text.

225. See *infra* Section III.C.1.

226. See *infra* Section III.C.2.

227. See Shoked, *supra* note 166, at 1359–62; Aaron Gordon, *Thank You for Your Feedback*, VICE (Nov. 14, 2022, 10:46 AM), <https://www.vice.com/en/article/n7z5jm/thank-you-for-your-feedback> [https://perma.cc/4XSX-RK92]; Jerusalem Demas, *Community Input Is Bad, Actually*, ATLANTIC (Apr. 22, 2022), <https://www.theatlantic.com/ideas/archive/2022/04/local-government-community-input-housing-public-transportation/629625> [https://perma.cc/XHS2-CM8B].

These concerns are often centered around a lack of new affordable housing and mass, green transit construction, and opponents believe local governments have a key role to play in building these things.²²⁸ For this group, community input prevents these government's from maximizing their ability to produce these necessities, and that the costs of community input outweigh the benefits.²²⁹

At the core of this argument is the trade-off between decentralization and efficiency. Every additional layer of community input in citywide decisions inevitably slows down enactment of those decisions.²³⁰ Applying the Tiebout Model to this problem, this reduction in government's capacity can be framed as the point at which sub-localism has led to lower economic efficiency because (1) the loss in productive efficiency exceeds the gains in allocative efficiency,²³¹ and (2) the current level of sub-localism is producing too many negative externalities.²³²

The first argument, the loss in productive efficiency, relates to the scale of the problems this group wants governments to address. Large projects incur large costs, and thus, those projects need to benefit from economies of scale in order to be worth it for governments. However, community input inherently decentralizes the process, as the government needs to receive input — and potentially consent — from

228. *Contra* Ezra Klein, *What America Needs Is a Liberalism That Builds*, N.Y. TIMES (May 29, 2022), <https://www.nytimes.com/2022/05/29/opinion/biden-liberalism-infrastructure-building.html> [<https://perma.cc/M2TC-FYAC>]; Gordon, *supra* note 227 (“The community feedback process . . . is the all-too-often crude and cruel tool at the heart of America’s urban productivity crisis, our widespread inability to efficiently and cost-effectively build new transportation and housing.”); Demas, *supra* note 227 (“Deference to community input is a big part of why the U.S. is suffering from a nearly 3.8-million-home shortage and has failed to build sufficient mass transit, and why renewable energy is lacking in even the most progressive states.”); Samar Khurshid, *Manhattan Borough President Adds Affordable Housing Focus to Community Board Appointment Process*, GOTHAM GAZETTE (Dec. 8, 2022), <https://www.gothamgazette.com/city/11713-manhattan-borough-president-affordable-housing-community-boards> [<https://perma.cc/53W7-AE8R>] (describing a “lack of affordable housing in Manhattan to be a full blown crisis” and the “[Manhattan Borough President] changing the community board application to ensure that proponents of affordable housing development are well represented in community boards”).

229. *See supra* note 227 and accompanying text.

230. *See* Briffault, *supra* note 17, at 1066 (“More powerful community-based governments would certainly add to the already protracted process of approving certain contracts and zoning changes, and would probably make it more difficult for the city government to take action.”).

231. *See supra* Section II.A.2.

232. *See supra* Section II.A.3.

every single sub-locality impacted by these projects.²³³ If the value of these projects is high, as this group believes,²³⁴ then the loss in productive efficiency is high and more substantial than any other benefit.

The second argument, the existence of negative externalities, looks quite similar to the first. It is inevitable that any large project imposes costs on certain groups. Often, public works projects produce highly localized costs and very broad benefits — such as the classical example of governments using eminent domain to seize private homes.²³⁵ If the benefits outweigh the costs — as this group proffers²³⁶ — then the ability of a sub-locality to impede such projects produces a negative externality. Namely, the sub-locality has prevented a small cost to it, but at an even greater costs to others.

In New York City, this has manifested in the form of community boards effectively opposing and slowing down building cycling infrastructure²³⁷ and affordable housing,²³⁸ where local community boards effectively opposed and slowed down such projects. Development of new housing is an illustrative example. Because of the ULURP review process, developers of new housing must seek approval from the local community board where the housing is to be built.²³⁹ Firstly, the community board review process reduces productive efficiency, as developers are required to seek approval from any one of the fifty-nine boards, rather than just a single city agency or administration. Second, because the costs of housing construction are local in nature (the locals impacted by construction and the influx of new residents) and the benefits are dispersed (anyone in the whole country who wants to and can afford the new housing), local neighborhoods can minimize their own costs and inflict greater costs on the city as a whole.

233. See, e.g., *supra* note 148 and accompanying text.

234. See *supra* note 228 and accompanying text.

235. See, e.g., *Kelo v. New London*, 545 U.S. 469 (2005).

236. See *supra* Section II.C.1.

237. See *Kazis*, *supra* note 148.

238. See Greg David, *NYC's Affordable Housing Crisis Puts Deference to City Council and Local Opposition Under Scrutiny*, CITY (Sept. 27, 2022, 11:05 AM), <https://www.thecity.nyc/2022/9/27/23373855/affordable-housing-crisis-city-council-eric-adams-throgs-neck><https://www.thecity.nyc/2022/9/27/23373855/affordable-housing-crisis-city-council-eric-adams-throgs-neck> [https://perma.cc/F44W-Q2E6].

239. See *supra* Section II.B.2, B.5.

2. *Opposition to the Undemocratic Nature of Community Input*

Other opponents have raised more fundamental opposition to the kind of community input that community boards exemplify, arguing that it does little to actually promote democratic participation, the other of the two core tenets of sub-localism.²⁴⁰ Firstly, public hearings of the kind that community boards hold when reviewing zoning decisions can be inaccessible to many community members, thus giving an illusion of community input.²⁴¹ Second, this kind of process tends to prioritize community members negatively impacted by a decision, while deprioritizing those that benefit from them.²⁴² These opponents range from arguing against community input altogether,²⁴³ to reframing community input as “community consensus,”²⁴⁴ which does not view public hearings as the final determination of community input.²⁴⁵

3. *Opposition To Community Input Through the Lens of the Tiebout Model*

These two categories of complaints also map neatly onto the two things that sub-localism is supposed to improve: economic efficiency and democratic participation. Economic efficiency is decreased because community input prevents cities from acting on policies that are economically desirable for the city as a whole, but opposed by a minority of the population who are empowered through the community input process. Meanwhile, democratic participation sees little improvement because of the incredibly narrow definition of “participation” in the type of community input that community boards exemplify, whereby residents must attend public hearings only specific issues, or not be heard at all. Considering this, opponents of community input would reduce the role it would play in the operation of local government.²⁴⁶

240. See Shoked, *supra* note 166, at 1376–400 (analyzing the problems in participation stemming from excessive sub-localism).

241. See Widman, *supra* note 218, at 144 (“[P]ublic hearings take place at ten o’clock on Wednesday mornings, making the hearings inaccessible to those with daytime obligations such as work or family, and calendar notices and subscriptions are available at a large fee.”).

242. See Demas, *supra* note 227 (“[T]he perception of who counts as part of an affected local community tends to include everyone who feels the negative costs of development but only a fragment of the beneficiaries.”).

243. *Id.*

244. See Widman, *supra* note 218, at 202.

245. See *id.* at 148.

246. See generally Demas, *supra* note 227 and accompanying text.

III. PROPOSAL FOR PROACTIVE COMMUNITY BOARDS

The 2018–2019 City Charter Revision did little to either fully embrace or reduce the role of community boards in New York City government.²⁴⁷ They have been granted neither an increased role through binding review, nor have they been sidelined from the process entirely. In fact, it could be argued that the current framework maximizes the problems raised by opponents of community input, while doing little to truly uplift community input into the sort of real power that proponents advocate for. Additional revisions to their role are needed in order to clearly delineate their role in New York City government.

However, any potential revision should not only address this issue, but be politically feasible, as these changes would be subject to a referendum.²⁴⁸ As such, the solution requires a political and realistic compromise, rather than a strict appeasement of one side. This Part proposes a novel role for community boards: a community-based administrative branch of New York City government. The branch would lack the power to oppose decisions made by other agencies and branches of government, but equally also provide real power and resources so members can participate in meaningful ways in city decision making.

A. Problems with Community Boards

Surprisingly, both opponents and proponents of community control, and by extension community boards, are actually aligned in their ultimate goals. First, both sides strive for some form of economic efficiency achieved through political processes, even if they define efficiency in different terms. Second, both sides see democratic participation and legitimacy as worthwhile end goals. Again, they merely differ in their analysis of the problem rather than in their end goals.

The core difference is the subjective value that both sides place on outcomes they want to achieve. Proponents of community control place a greater value on minority power and the needs of individual neighborhoods, while opponents place greater value on majority power and the needs of cities as a whole. However, this is a mutually exclusive choice only if we assume that the needs of neighborhoods is always in conflict with the needs of the city. While this may have been true fifty

247. *See supra* Section I.B.5.

248. *See supra* Section I.A.

years ago,²⁴⁹ this is not necessarily true today. This Part argues that a form of community boards that promote cooperation, rather than confrontation, between New York City government and its neighborhoods is appealing to both sides of the debate.

1. *Productive and Allocative Efficiency*

For proponents of community control, the end goal is not just about possessing a veto on federal, state, and local actions that have detrimental impacts on their communities. Rather, it is about positioning these communities to more holistically analyze the real costs and benefits of decisions on a local level, and incorporate them into decision-making that leaves all parties better off (both sub-local communities and larger localities).²⁵⁰ For example, in New York City, the policies of massive highway construction and urban renewal that were opposed by local communities on the basis of local harm²⁵¹ ultimately did end up being harmful to New York City as a whole.²⁵² Opponents of community control do not disagree about the harm of those decisions, but rather how to best address them.²⁵³

The disagreement on the question of efficiency comes down to a tradeoff between allocative and productive efficiency. Productive efficiency in a city is the size of the economic “pie” that it is producing goods and services, while allocative efficiency is how the city is distributing that “pie.”²⁵⁴ The disagreement is over which one to prioritize.

Another way of looking at the arguments of proponents of community control is as prioritizing allocative efficiency over productive efficiency. When community input is strengthened, those communities have a greater say in how goods and services are allocated to that community. Even if community input comes with an additional administrative burden that reduces the quantity of goods and services the city can provide, that burden is acceptable because they prioritize

249. See *supra* notes 48–52 and accompanying text.

250. See *supra* notes 35–43 and accompanying text; *infra* note 270.

251. See *supra* notes 35–43 and accompanying text.

252. See generally ROBERT A. CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* (1974).

253. See Demas, *supra* note 227 (“American cities still display the scars of highways that razed marginalized communities.”); Gordon, *supra* note 227 (“By the mid-to-late 1970s, it was clear U.S. cities were in crisis, and the big, flashy urban renewal projects . . . and tearing down neighborhoods to build highways not only didn’t help but probably made things worse.”).

254. See *supra* notes 181–84 and accompanying text.

distribution over production. The economic “pie” is big enough, and we should worry more about how it is allocated. Meanwhile, the position of opponents of community control can be best summarized as prioritizing productive efficiency. For them, the economic “pie” is too small, in part because we spend too much time arguing over how it is allocated. Thus, it is better to remove the aforementioned burden on production, even if it comes at some cost to how things are allocated.

As such, a proposal that increases both allocative and productive efficiency in New York City is a proposal that would gain support from both sides of the debate. Once more, this is a mutually exclusive choice only if we assume that New York City cannot simultaneously produce more goods and services, while at the same time improving in how they are allocated.

2. Representation and Diversity

More so than with the question of efficiency, opponents and advocates of community control and community boards have similar critiques of community boards, but differ in their prescription. Both sides are critical of community board representation, and in particular, the persistent problem with diversity in community board members.²⁵⁵ For example, community board members in the borough of Queens are older and whiter than the borough of Queens as a whole, and homeowners are overrepresented compared to renters.²⁵⁶

Advocates might be concerned with the racial makeup of community boards²⁵⁷ because it undermines the principle of minority power in those neighborhoods. While community boards allow underrepresented groups to form regional majorities in neighborhoods, lack of diversity on community boards would dilute those majorities and limit their input.²⁵⁸ Meanwhile, opponents might be concerned with the fact that homeowners are overrepresented on community boards because policies that harm homeowners will face a

255. See *supra* notes 219–23, 240–45 and accompanying text.

256. Compare OFF. OF QUEENS BOROUGH PRES., QUEENS COMMUNITY BOARD DEMOGRAPHIC REPORT 5–8 (2022), <https://queensbp.org/wp-content/uploads/2022/07/2022-Queens-Community-Board-Report-lores.pdf> [<https://perma.cc/KJ3D-Q3CT>], with *Quick Facts: New York City, New York*, *supra* note 173.

257. See Schwarz & Lane, *supra* note 86, at 856.

258. See *supra* notes 218–22 and accompanying text.

disproportionate level of opposition at community boards,²⁵⁹ even if those policies are broadly popular in the city.²⁶⁰

In either case, both groups would readily welcome proposals that improve community board diversity and make them more accurately reflect the neighborhoods they represent. Even more so than with question of efficiency, it is possible to improve diversity on community boards based on many different demographic lines, and thus gain support from both sides.

B. A Proposal For Collaborative and Proactive Community Boards

Because community boards are a fundamental part of the structure of New York City government outlined in the City Charter, any changes to them must best backed up by popular support, most likely through a City Charter Revision.²⁶¹ As such, any proposal to change them must, first and foremost, be politically feasible. That means gaining widespread support for those changes from a wide variety of people, even if the proposal must sacrifice pieces of “optimal” solutions.

The proposal outlined in this Part achieves this by addressing the major concerns of both sides of the argument: it argues in favor of greater resources and proactive powers for community boards in exchange for the removal of supervisory powers of community boards, as well as fundamental fixes to their diversity problem. Fundamentally, this Note proposes a version of community boards that reflect a version of community input that is collaborative with City government, rather than one that is confrontational with it. Right now, the City Charter pushes community boards towards reacting to decisions made by other parts of city government, which inevitably centers opposition to any such decision.²⁶² Instead, this Note proposes broad, but politically neutral changes that would encourage community boards to be proactive in city government and collaborate with city agencies.

1. Aligning Community Boards with the Executive Branch

One core pillar of this proposal is placing community boards firmly within the Mayoral and administrative branch of New York City government, akin to a city department with a defined delegation of power. Unlike many municipalities in the country, New York City has

259. See Shoked, *supra* note 166, at 1398–99.

260. See *supra* notes 235–39 and accompanying text.

261. See *supra* notes 22–26 and accompanying text.

262. See *supra* note 85; see also *supra* note 242 and accompanying text.

a government structure like the traditional tripartite division of legislative, executive and judicial branches. The City Council possesses the legislative power by passing local laws,²⁶³ the Mayor wields the executive power,²⁶⁴ and state and federal courts enforce the local laws.²⁶⁵ City agencies are headed by Commissioners who are appointed by the mayor, but are regularly granted power by the City Council to carry local laws into effect.²⁶⁶

Compared to this setup, community boards seem like an entity out of time, being a wholly separate and distinct branch of New York City government. Historically, this peculiarity made sense because community boards were created more than a decade before modern New York City government took shape.²⁶⁷ They were created in response to an overly powerful executive,²⁶⁸ and so it would make little sense to place them under the command of the same branch of government they were meant to constrain. But it is not a coincidence community boards grew out of an agency division;²⁶⁹ their role is best described as community-based executive control. They do not pass binding laws on their community members, nor do they adjudicate disputes between community members. Rather, they assist the city government in executing its laws at a sub-local level, by providing sub-local expertise.²⁷⁰ The dissenting opinion in the City Charter revision that created community boards clearly show that its drafters understood community boards to be a vertical separation of purely executive power.²⁷¹

This proposal would require one final City Charter amendment with two key changes. First, the current language that strictly limits community boards' power²⁷² should be replaced with a broad grant of power to review executive actions that impact their communities and propose their own plans for the improvement.²⁷³ This change would

263. CITY CHARTER § 28(a).

264. *Id.* § 3.

265. N.Y. CONST. art. VI, § 7.

266. *See, e.g.*, New York City, N.Y., Code §§ 27–2090 (granting the Department of Housing Preservation and Development the powers to enforce the housing code).

267. *See supra* notes 53, 101.

268. *See supra* notes 48–52 and accompanying text.

269. *Supra* notes 43–37 and accompanying text.

270. *See supra* Section I.B.2.

271. *See supra* notes 78–80 and accompanying text.

272. CITY CHARTER § 2800(d).

273. For example, the Department of Housing Preservation and Development is vested the power over “all functions of the city relating to the rehabilitation, maintenance, alteration and improvement of residential buildings and privately owned

enable the City Council to more liberally pass laws that alter community board functions through a single local law, rather than subjecting community board changes to the lengthy City Charter Revision process. This change would help community board more effectively adapt to the changing demands on city government structure.

The role and importance of community input, like any other political issue, changes over the years. Whereas 50 years ago the main issue affecting communities in New York was the destruction of housing,²⁷⁴ today the main concern is housing construction and its effects.²⁷⁵ New Yorkers cannot tell what the main issue will be fifty years from today, and it is important to ensure the structures of city government allow the city to respond to these changes. Because City Charter Revision Commissioners lack broad political capital, they will often punt on the most important and controversial issues facing community boards, and avoid taking strong positions that leave them in legal limbo.²⁷⁶ By comparison, the City Council is the best body to address such questions and wields far more political capital to make those decisions. Thus, they are more responsive to the political will of NYC residents and they respond quicker to those wishes.

Second, the power to nominate community board members should be moved from the borough presidents into the hands of a commissioner, most likely the Commissioner for the Mayor's Community Affairs Unit, which already works closely with community boards.²⁷⁷ City councilmembers should retain the ability to nominate at least fifty percent of community board members. Because borough presidents are elected directly by voters and act independently of the Mayor,²⁷⁸ there is currently little political incentive for borough presidents to steer community boards towards cooperation with the Mayor.

housing.” CITY CHARTER § 1802. Community Boards can be granted powers in similar language.

274. *See supra* notes 35–42.

275. Eric Adams, N.Y. City Mayor, Address on New York City's Affordable Housing Crisis (Dec. 8, 2022), <https://www.nyc.gov/office-of-the-mayor/news/896-22/transcript-mayor-eric-adams-delivers-address-new-york-city-s-affordable-housing-crisis-and> [<https://perma.cc/5AV7-XWZZ>].

276. *See supra* notes 116–23 and accompanying text.

277. N.Y.C. MAYOR'S CMTY. AFFAIRS UNIT, COMMUNITY BOARDS, <https://www.nyc.gov/site/cau/community-boards/community-boards.page> [<https://perma.cc/QC68-WQUA>].

278. *See supra* notes 45–46.

Fundamentally, this approach would push the relationship between the New York City executive and community boards away from an adversarial one and towards a cooperative one. On one hand, one of the most frequent complaints of advocates of community boards is that City agencies have not cooperated with community boards on their own initiatives.²⁷⁹ On the other hand, opponents of community boards complain that they needlessly slow down infrastructure development.²⁸⁰ This change would create greater cooperation between the executive and the community boards, whereby each one helps rather than hinders the other, because the Mayor would have a direct line and interest in community board members.

An immediate counterargument to this proposal is that community boards are supposed to be adversarial to the centralized power of the City Council and Mayor and are meant to be a check on their power.²⁸¹ Therefore, making community boards entirely beholden to them would defeat their original intent. However, while it is true that their original intent was to check central city power, this power was weak from the start and was never sufficient to be a proper check.²⁸² At any rate, the *Morris* decision and the creation of the modern City Council instituted a much more powerful and effective check on mayoral power.²⁸³ For example, the City Council wields binding veto power over ULURP decisions,²⁸⁴ and councilmembers enjoy strong aldermanic privileges over land use decisions on their district.²⁸⁵ As such, community boards power to check mayoral power exceeds what is required in modern-day New York, and should be eliminated.

2. *Increased Funding to Make 197-(a) Proposals and Other Functions*

History has shown that as things stand today, community boards have the power to develop and submit 197-(a) land use proposals, but

279. *See supra* notes 91, 120–23 and accompanying text.

280. *See supra* notes 237–39 and accompanying text.

281. *See supra* notes 50–55 and accompanying text.

282. *See supra* Section I.B.2.

283. *See supra* Section I.B.3.

284. *Supra* note 104 and accompanying text.

285. NOAH KAZIS ET AL., NYU FURMAN CENTER 302.6: WHO DECIDES (2021), https://furmancenter.org/files/publications/302.6_Who_Decides_-_Final.pdf [<https://perma.cc/EVX6-XWHD>] (“Under an informal practice called ‘member deference’ or ‘aldermanic privilege,’ each Council member decides the fate of projects located in their district; the other 50 members of the Council will almost always honor and defer to the local member’s decision.”).

lack the money to do so.²⁸⁶ The process requires expertise, such as professional urban planners, and expertise requires financing. Currently, community boards simply cannot afford to submit well-developed 197-(a) plans that can pass the Department of City Planning's review process.²⁸⁷ Additionally, this funding should not be strictly tied to hiring urban planners: community boards should be allowed to spend this additional money on whatever projects they believe best serves their community. Some may indeed wish to hire urban planners, but other districts who have pressing zoning needs may instead focus that money on service delivery and outreach or use the money to support other community-run projects.²⁸⁸ Since community boards are better positioned to determine the best use of funds than Charter Revision Commissioners, they should not have their hands tied when deciding how to allocate the money.

Although money allocation is a significant objection to the 197-(a) proposal, the main objection is purely practical: the City cannot afford to spend millions of dollars, *and* providing more money presents too much opportunity for corruption and abuse.²⁸⁹ On the first point, it is an inescapable conclusion when looking at the history of community boards that their main bottleneck is money, and that they lack the funds to execute their existing powers, let alone any additional powers.²⁹⁰ The City has no problem coming up with millions of dollars for dubious private contracts to fulfill basic functions;²⁹¹ it can spare some of that money for community involvement in city life. On the second point, there is no greater risk of corruption with community

286. See *supra* notes 88–91, 116 and accompanying text (explaining how community boards were granted the power to make 197-(a) land use proposals, but rarely used those powers because of insufficient funding for urban planners and expensive requirements imposed on them by City agencies).

287. See N.Y.C. CHARTER REVISION COMM'N, *supra* note 116 and accompanying text.

288. N.Y. CITY DEP'T TRANSP., OPEN STREETS PROGRAM APPLICATION, <https://survey123.arcgis.com/share/25f86e16a93148bbb75bc42e09b720f9> [<https://perma.cc/AQ2V-HWW2>] (last visited Jan. 2, 2023) (“NYC DOT works with community-based organizations, educational institutions, and groups of businesses to execute Open Streets citywide.”).

289. See, e.g., Claudia Irizarry Aponte, *Williamsburg Community Board Manager Cashes Out After 45 Years and a Free SUV*, CITY, <https://www.thecity.nyc/brooklyn/2022/10/3/23383993/williamsburg-community-board-gerald-esposito-retires-suv> [<https://perma.cc/V2Q3-62Q2>] (last visited Feb. 17, 2023).

290. See, e.g., *supra* note 286 and accompanying text.

291. See, e.g., Ginia Bellafante, *Our Garbage, Ourselves*, N.Y. TIMES (Oct. 7, 2022), <https://www.nytimes.com/2022/10/07/nyregion/new-york-city-trash-mckinsey.html> [<https://perma.cc/PH6D-4KN7>].

boards than any other NYC agency.²⁹² Such concerns can be further alleviated by subjecting community boards expenditure to audits by the City Comptroller, who already audits expenditures by other entities, such as City agencies.²⁹³

3. *Removing Their Advisory Power*

Finally, community boards should have their supervisory hearing power over ULURP land use decisions, as well as other agency decisions such as installation of bike lanes,²⁹⁴ removed. Removing their supervisory hearing power would address the concern of opponents of community input, as it would increase the productive efficiency of New York City government.

The way community boards currently promote community input is through in-person, public hearings.²⁹⁵ However, such public hearings are a relic of a previous era, where they really were the best form of community input. Fifty years ago, perhaps the best option for neighborhood organizers in New York City who opposed locally damaging projects was a public protest,²⁹⁶ so it made sense to enshrine that power in the form of a public hearing. Today, however, New Yorkers have many other ways of being heard. For example, they can reach out to their elected representatives, such as City Councilmembers or the new Office of the Public Advocate.²⁹⁷ Others might choose more indirect routes and voice their concerns through various social media platforms. Even those who wish to express their concerns in a physical, public space may instead mobilize through other community organizations and meet at a time and place more convenient to them than a time set by their community board. Accordingly, it is a disservice to the principles of community input to relegate it to a monthly public hearing at a community board.

292. See, e.g., Michael Rothfeld et al., *Eric Adams Confidant Is among New York's Highest Paid Public Employees*, N.Y. TIMES (Sept. 30, 2022), <https://www.nytimes.com/2022/09/30/nyregion/eric-adams-pearson-salary-nyc.html> [<https://perma.cc/N647-CX2W>].

293. CITY CHARTER § 93(c).

294. See Kessler, *supra* note 146 and accompanying text.

295. See CITY CHARTER § 26.

296. See PECORELLA, *supra* note 35.

297. The Office of the Public Advocate, while wielding no formal binding powers, serves as a sort of ‘ombudsman’ for city government and in practice wields the power of the ‘bully pulpit,’ allowing them to advocate directly on behalf of the citizens. See *Duties of the Public Advocate's Office*, OFF. PUB. ADVOC., <https://www.pubadvocate.nyc.gov/about#duties-of-the-office> [<https://perma.cc/2J4G-KAYW>] (last visited Feb. 17, 2023).

Opponents of this proposal would certainly balk at stripping community boards of their strongest power, even if the power is advisory. However, this power is not being stripped in a vacuum. Rather, it is being replaced with additional funding that community boards can proactively use in whichever way they see fit, including submitting 197-(a) plans as a way to have a voice in city land use issues. Indeed, this is reflecting the fact that community board proponents have repeatedly asked for more funding rather than to be given binding power of review.

4. *Improve Diversity and Accessibility*

Of all the criticisms directed at community boards, their lack of diversity is arguably the criticism that sees the widest support,²⁹⁸ and the one that has been hardest to address.²⁹⁹ Additionally, the recent Charter Revision focused the most on fixing the question of diversity through the institution of term limits and diversity monitoring in the nomination process.³⁰⁰ As such, while it is prudent to wait and see the impacts of those changes before making any further radical changes to improve diversity, more minor changes are possible and desirable.

The first change would be to explicitly allow community board hearings to be attended and conducted virtually, and providing financial and administrative support from city agencies to procure any necessary equipment needed for virtual meetings and any technical training required for community board members make this possible. While community boards are required by New York State Law to conduct the meetings in person, community boards have successfully operated remotely under a temporary exception during the COVID-19 pandemic.³⁰¹ This exception should be made permanent,³⁰² and this is widely supported by New York State Senators and Borough Presidents.³⁰³

298. *See supra* Section II.B.2.

299. *See supra* Section II.B.2.

300. *See supra* Section I.B.5.

301. N.Y. PUB. OFF. LAW § 103; Gabriel Sandoval, *COVID-Concerned Community Boards Ready to Break State Law to Keep Online Meetings*, CITY (Aug. 20, 2021, 8:05 PM), <https://www.thecity.nyc/2021/8/19/22633235/nyc-community-boards-break-law-to-keep-zoom-meetings> [<https://perma.cc/EL32-QVGY>].

302. N.Y. PUB. OFF. LAW § 103 (McKinney 2022).

303. Mark Levine & Brad Hoylman, *Let New Yorkers Attend Community Board Meetings Virtually*, N.Y. DAILY NEWS (Mar. 16, 2022, 5:00 AM), <https://www.nydailynews.com/opinion/ny-oped-nyc-community-board-remote-20220316-3nt556t3hjf4li4dajjxez4qnu-story.html> [<https://perma.cc/DSG9-MZZQ>]; Paul Liotta, *All 5 BPs Call For Permanent Virtual Option at NYC Community Board*

Because community board members are volunteering their free time and energy to participate in this process, this inevitably makes participation harder for people with full-time jobs, child-care responsibilities, or other large time commitments. It is vital that these individuals are represented on community boards because excluding them means excluding the political preferences of those without the time and money to freely volunteer at the community board. Doing this required the removal of as many barriers as possible to their involvement. As such, making participation in community boards more accessible would in turn encourage more people to apply for positions on them.

A more radical proposal would be to pay community board members a wage. Indeed, New York City already pay most of its other public servants for their work, such as local councilmembers³⁰⁴ and the Mayor.³⁰⁵ This would bring community board members — who are treated as public servants under the law³⁰⁶ — in line with that. By paying community members, the City can provide a greater incentive for people to join them, and this incentive would be most felt by those who can least afford to do unpaid work. This wage need not be large, and can be tied to the expected number of hours community board members usually spend on their duties. Thus, it can still be affordable for the city while having an impact on the diversity of community boards.

CONCLUSION

Fifty years ago, in the face of destructive urban policies and dropping faith in city administrations, New York City created community boards as a way to introduce community input in city government. Today, New York City faces problems far different from the ones it faced 50 years ago, and it therefore deserves a form of community input that is positioned to properly help the city address these problems. By moving community boards away from a reactive and confrontational relationship with city government, and instead towards a proactive and collaborative one, New York City can have its cake and eat it too: preserve community input in city government while improving its capacity to make decisions and address challenges of the new century.

Meetings, SI LIVE (Mar. 29, 2022, 9:21 AM), <https://www.silive.com/news/2022/03/all-5-bps-call-for-permanent-virtual-option-at-nyc-community-board-meetings.html> [<https://perma.cc/4XTN-QBVR>].

304. CITY CHARTER § 26.

305. *Id.* § 4.

306. *See id.* § 26.