



# Chartering an Inclusive, Sustainable, Democratic City

In the first installment of its four-part *Erasing Red Lines* series, the Cornell University ILR Buffalo Co-Lab analyzed current and historical data to show that “the same [racialized] neighborhoods that were ‘redlined’ in the 1930s – meaning that they were identified by powerful political, real estate, and financial actors as spaces unfit for investment – are still the most ‘disadvantaged’ parts of [Buffalo, NY, USA] today, nearly a century later.”<sup>1,2</sup> While those findings were specific to just one city in the American Rust Belt, the observation that some neighborhoods get locked into decades-long downward spirals of decline is a much broader phenomenon that affects virtually all places in the prevailing political economy.<sup>3</sup>

Why, despite more than 100 years of government interventions, public policies, and spending programs, have “American reformers...struggled to remedy the problems...in the places where low-income people live”?<sup>4</sup> As this memo asserts, and as history has repeatedly shown,<sup>5</sup> the answer lies in the fact that a more equitable, just, and sustainable society cannot come from making simple adjustments to our most unfair and discriminatory political, legal, and economic institutions.<sup>6</sup> Rather, the path to a better world is one that collectively and continuously re-makes the systems from which inequitable institutions emerge. That is, transformative social change requires us to shift from focusing on *events* – e.g., a destabilizing firm closure in a local community – to understanding and democratically redesigning the *structures* that create them. Systems change, therefore, is the work not of *reformers* tweaking current institutions; but of *re-formers* collectively (re-)imagining and (re-)forming new ones.<sup>7</sup>

This memo grounds and then advances an opportunity for the City of Buffalo – and places like it – to begin *re-forming* its systems of local government and governance to increase community self-determination and participatory democracy. Scores of cases from across the globe have shown that one path toward more inclusive, equitable, and sustainable places is community control over local development and other collective decisions – that is, giving power to ordinary people.<sup>8</sup>

At present, Buffalo, like essentially all “democratic” municipalities in the United States, maintains governing systems in which the roles of everyday citizens are limited to narrow acts like periodic voting, attending public hearings, and other activities that fall under the heading of “allowable remedies.”<sup>9</sup> From this perspective, citizens are given marginally affirmative power to participate in electing their preferred representatives to government positions. However, when it comes to arenas like planning and development, their power is constrained to reacting to (i.e., seeking “remedies” from) the decisions that are imposed on them.

Alternatively stated, communities are almost never active and authentic participants in the matters that collectively affect them.<sup>10</sup> Local residents are generally disempowered subjects left to adjust to the world that developers and other powerholders create for and around them.<sup>11</sup> In cases where citizens do organize to challenge, via their “allowable remedies,” the decisions that are imposed on them, rare victories can lead to better outcomes for those communities; but the systems that created the conflicts are left intact to impose unwanted decisions on other, less organized communities elsewhere and in the future.<sup>12</sup> One strategy for challenging, and beginning to replace, those systems is to formally recognize the rights and powers of communities and ordinary citizens by codifying those rights and powers into a rights-based municipal charter. Creating and adopting such a charter is a tangible opportunity for structural *re-form* in and beyond Buffalo, NY.

## Background

Conventional sources of political and civics education do not prepare ordinary people to act as *re-formers*, or agents of systems change.<sup>13</sup> We instead learn to react to and internalize problems we face as individuals, and to ignore

the systemic forces that create those problems.<sup>14</sup> We are molded, in a hyper-consumerist culture that prioritizes competition and self-interest, to be apathetic toward complex social challenges that are framed for us as inevitable.<sup>15</sup> And, in the U.S., we are taught that the existing political economy is uniquely American and therefore essential to our national identity – implying that our inequitable systems and institutions are too big to fail (or too fundamental to change).<sup>16</sup>

The result is a self-fulfilling prophecy. Ordinary people learn to be disempowered, to regard persistent problems as coming from unstoppable social forces, and to yield to the status quo.<sup>17</sup> We might not like the injustices that we see, but we eventually come to believe in the “societal myth”<sup>18</sup> that “there is no alternative”<sup>19</sup> to current ways of life.

Yet, this notion that “there is no alternative” overlooks one of the most basic attributes of rules, policies, and other institutions: *they are socially constructed*. People make them (through inequitable exercises of power). People benefit from and are harmed by them (at inequitable rates). People enforce them (inequitably so). And people are sanctioned for breaking them (inequitably so). But, above all, *people can change them*.<sup>20</sup>

Typically, when a sufficient number of everyday people reach their limit with a persistent problem or injustice, they realize that a rule change is needed – and they create or join a field of voices calling on powerholders to make a change.<sup>21</sup> Sometimes, they win. But, even in these cases, successful appeals to powerholders for new or revised rules – no matter how well-intentioned – often fail to bring about a more equitable or sustainable society.<sup>22</sup> The reason is that conventional policy “solutions” generally try to neutralize specific instances of an inequity or injustice, but they do not address root causes.<sup>23</sup>

As an example, consider the case of adequate housing for all. For decades, an expansive constellation of national, state, and local public policies and programs has sought to “affirmatively further fair housing” in the U.S. by taking “proactive steps to address longstanding patterns of segregation, discrimination, and disinvestment.”<sup>24</sup> These policies did not come about by governments acting alone, but because ordinary people, harmed by market fundamentalist housing systems, organized to demand change.<sup>25</sup>

Despite the good intentions of past and present fair/affordable housing policies, though, a recent study found that housing is unaffordable for more than half of all renters in Buffalo (that number jumps to over 70 percent when transportation costs are factored into the equation).<sup>26</sup> The study also uncovered empirical evidence that Buffalo renters are subject to *exploitation* – many pay higher prices than owners for identical housing – and that they are systematically under-served by both the public and private housing provision systems in Buffalo and its home County.<sup>27</sup> At bottom, Buffalo, like so many other cities, has not come close to achieving the policy goal of fair and affordable housing for all.

Acknowledging that the nuances of housing policies are complex and require deeper treatment elsewhere,<sup>28</sup> for illustrative purposes, an oversimplified account of why widespread housing insecurity continues to exist alongside seemingly progressive housing policies and programs is that those policies and programs operate at the surface – not the roots – of housing problems. They seek to, for instance, identify low-income households and offer financial assistance to (some of) those households; but they do not interrupt the processes that lead to increases in the number of low-income households over time. Likewise, they create mechanisms for tenants to register

and litigate complaints about instances of housing discrimination; but they do not attack or dismantle the belief and value systems that normalize discriminatory behavior in our culture and society.<sup>29</sup>

The implication is that, even after successful calls to *reform* them, the rules for housing provision still enable and co-create wildly uneven patterns in which our most marginalized and vulnerable neighbors and neighborhoods experience the lowest degree of housing security.<sup>30</sup>

This observation – that our most pernicious social injustices might be resilient to rule changes – can be disheartening at face value. It feeds directly into the feelings of powerlessness and resignation to the status quo described at the outset of this section. However, this resilience is probably narrow in scope. It arguably applies only to surface-level, *reformist* rule changes that communities get when they appeal to powerholders.<sup>31</sup> When deeper, *re-forming* rule changes target structures and institutions rather than isolated events, they can expand social, racial, economic, and environmental justice in diverse places.<sup>32</sup> The fact that appeals to powerholders almost never result in transformative, *re-forming* rules merely suggests that *communities can and should make these rules for themselves*. In other words, it is not enough to simply change the rules. It is just as necessary to change rule-makers and rule-making processes. These are precisely the lessons being learned by participants in the growing “community rights” movement in the United States.<sup>33</sup>

## Community Rights

A detailed history and description of the community rights movement is beyond the scope of this memo and can be found in the

growing canon of the Community Environmental Legal Defense Fund (CELDF) and its staff.<sup>34</sup> The following, abbreviated narrative is intended merely to ground our proposal to establish a rights-based charter in Buffalo, NY in the broader movement, and to highlight snippets from past experiences that can inform efforts in and beyond Buffalo.

Community rights movements have existed in the United States since the earliest days of the nation to challenge unjust relationships between wealth and power.<sup>35</sup> At their core, they have always been aimed at securing for communities the rights and powers of self-governance and self-determination.<sup>36</sup> The contemporary iteration of the movement, embedded in the political-economic contexts of neoliberalism and racial capitalism,<sup>37</sup> exists in contraposition to the powerful “growth machines”<sup>38</sup> whose policy and investment decisions exert disproportionate control over the fates of neighborhoods and the livelihoods their residents.<sup>39</sup>

Take, for example, the case of Grant Township, Pennsylvania, as told by CELDF organizer Ben Price:

*“In 2014, the people of Grant got wind of a...project related to fracking, the extraction of natural gas by a process involving pumping...toxic chemicals deep into underground rock formations...[In nearby communities, this process had turned] clear, clean drinking water...into a dark-brown smelly brew. [Grant residents] didn’t want that to happen in their township, so they enlisted [CELDF]...to draft a law that would elevate the rights of the community above the corporate property and ban frack waste disposal within the municipality.”<sup>40</sup>*

The resulting ordinance was passed and signed

into law by the Town Board. It was titled the Grant Township “Community Bill of Rights,” and it explicitly “recognized the right of the people of Grant...to clean air and water and a right of local community self-government to protect those rights.”<sup>41</sup> Shortly after the law took effect, the corporation behind the fracking project sued Grant on the grounds that the Township’s Community Bill of Rights violated their (the corporation’s) civil rights, acknowledging their corporate “personhood”.<sup>42</sup> Judges ultimately sided with the corporation, ruling that, because fracking and related operations are permitted under Pennsylvania state law, Grant Township had “no legal authority to protect the community without state permission. At best they could administer...state regulations but could not prohibit what the state permitted.”<sup>43</sup>

Countless stories like this one exist throughout the U.S.<sup>44</sup> and across the globe.<sup>45</sup> Against community objections, corporations seem to have unlimited power to buy, sell, build, demolish, extract, use, and dump what they want, where they want – often with government standing by in support.<sup>46</sup> While the Grant Town Board’s Community Bill of Rights legislation offers an exception to this claim, for the most part governments are all too willing to prioritize corporations over communities.

The reasons why public policies and governmental actions systematically benefit corporations and the wealthy at the expense of communities and the people run deep, going well beyond campaign finance.<sup>47</sup> Among other things, corporations possess a key power move called the *capital strike*. Given how mobile capital has become in today’s global economy, corporations can threaten to close or relocate firms if their demands are not met (i.e., they can withdraw their capital from local markets and places, contributing to place-based job loss and economic downturn).<sup>48</sup> Recognizing this power, governments become subservient to capital

and the corporations that control it. They become champions of business – part of so-called “growth coalitions” or “growth machines” – enacting policies to inspire business confidence and fend off capital strikes. Further efforts to appease capital include the common practice of appointing pro-business individuals to official government advisory commissions and/or regulating bodies. This tactic works to couple favorable (pro-business) policy with lax enforcement of existing or future regulations. Thus, even if progressive *reforms* get enacted, they are often only symbolic: the legislative rule changes are frequently un- or under-enforced by pro-business administrative bodies.<sup>49</sup>

The community rights movement is rising against these powerful, uneven dynamics. Among the lessons learned by the movement’s combatants so far is that neither the moral high ground nor staying in the safe zone of “allowable remedies” (e.g., lawsuits, formal complaints, petitions, etc.) is enough to protect a community from being overrun by the public-private “growth machine”. At present, our political-economic system is built and programmed to generate wealth and profit for those who own property and capital.<sup>50</sup> Outcomes like what happened in Grant Township in 2014 are not examples of a broken system. They are examples of a system functioning exactly as intended. Grant’s success would mean putting a check on profits in an economy where profit-maximization is the system goal. The community might suffer from not blocking corporate actions, but community suffering is simply collateral damage – the cost of doing business.<sup>51</sup>

Fortunately, the story does not end there. Each day, more communities are organizing to demand recognition of their rights to self-government and self-determination.<sup>52</sup> Growth in the movement is sharpening focus on the unjust, unequal power relations in the current

political economy – and that attention is putting pressure on the levers of power. For instance, while overshadowed by the pandemic, ongoing legal action in Grant Township secured a major victory in March 2020. Namely, the Pennsylvania Department of Environmental Protection (DEP) revoked the fracking corporation’s permit for its injection well in Grant. Whereas the DEP had previously sided with the corporation, agreeing with judges that Grant could not create local environmental protections that went farther than state law, the entity changed course last year and explicitly cited Grant’s Community Bill of Rights in its decision. DEP’s letter to the fracking corporation stated that the permit was being revoked on the grounds that operating an injection well in Grant “would violate a local law [the Community Bill of Rights] that is in effect.”<sup>53</sup>

Why the change of heart? DEP declined to comment on specifics, citing ongoing litigation. However, at least one factor that changed since Grant first adopted its Community Bill of Rights is that the Township petitioned for and won “home rule” status in Pennsylvania, in order to draft a home rule Town charter.<sup>54</sup> Home rule is a legal doctrine that recognizes the rights of municipalities to “create a form and structure of governance of their choosing, so long as they do not conflict with state or federal law.”<sup>55</sup> According to CELDF:

*“People are beginning to embrace the idea of drafting Home Rule charters as a way to assert in law their communities’ vision for the future, by enumerating the rights of the municipal citizenry, including their right to a certain quality of life, and codifying legal protections of those rights at the local level.*

*[Home rule] is an important vehicle for communities...seeking to challenge the*

*fundamental structure of law which puts the rights of corporations over those of communities; prevents communities from saying “no” to projects that are harmful for workers, the local economy, livability, property values, or the environment; and ultimately prevents municipalities from creating the economically and environmentally sustainable communities they seek.”<sup>56</sup>*

Although home rule does not totally insulate municipalities from state or federal preemption, whereby higher levels of government strike down municipal rules that they deem to conflict with their own laws, it does, in theory, provide localities with more freedom from state interference and more opportunities to make their own rules. Not all states grant local governments home rule provisions. Some fail to offer home rule at all, while others (like Pennsylvania) require municipalities to formally seek and vote for home rule powers. Unlike these states, New York affords municipalities home rule in its Constitution. Cities in New York can therefore draft and adopt home rule charters that reflect their local priorities, values, goals, and aspirations. As such, they have the capacity to enact rights-based charters that reform the structure of their local governments, reserving for communities certain rights and powers of self-government and self-determination. The City of Buffalo can take advantage of this opportunity to set an important precedent for localities throughout New York State.

## Opportunity: Establish a Community Rights-Based Municipal Charter in Buffalo, NY

To date, around 200 municipal and county

governments across twelve states have passed community rights ordinances or adopted rights-based (amendments to their) charters.<sup>57</sup> Whereas different community rights rules reflect the unique priorities, values, visions, and circumstances of their adopting localities, in general they work to advance one or more of the following:

- *“environmental rights*, such as the right to clean air, pure water, and healthy soil;
- *worker rights*, such as the right to living wages and equal pay for equal work;
- *rights of nature*, such as the right of ecosystems to flourish and evolve;
- *democratic rights*, such as the right of local community self-government, and the right to free and fair elections.”<sup>58</sup>

In their template Community Bill of Rights, Thomas Linzey and Jeff Reiman enumerate thirteen specific provisions to advance these four categories of rights by municipal charter:

1. **Right to a Locally-Based Economy**, including “the right to have local monies reinvested locally by lending institutions, and the right to equal access to capital, credit, contracts, incentives, and services for businesses owned by [local] residents.”
2. **Right to Affordable and Safe Housing**, whereby the local government “shall ensure the availability of low-income housing stock sufficient to meet the needs of the low-income housing community. People and families may only be denied renting or buying of a dwelling for non-discriminatory reasons and may only be evicted from their residence for non-discriminatory causes.”
3. **Right to Affordable Preventative Healthcare**, which calls on the local government to “guarantee [healthcare] access by coordinating with area health

care providers to create affordable fee-for-service programs.”

4. **Rights for Nature**, which would give any municipal resident legal standing to enforce the rights of ecosystems and natural communities to exist and flourish.
5. **Rights to Water**, which recognize the rights of all “residents, natural communities and ecosystems...to sustainably access, use, consume, and preserve water drawn from natural water cycles.”
6. **Right to a Sustainable Food System**, including the right “to access, use, consume, produce and distribute foods generated from sustainable farming practices, and to be free of infection, or infestation or drift by any means.”
7. **Right to Affordable and Renewable Energy**.
8. **Right to Constitutional Protections in the Workplace**, which extends state and federal Bill of Rights provisions to the workplace and protect rights to collective bargaining.
9. **Right to Determine the Future of Neighborhoods**, which gives residents control over development decisions, subject to agreed upon decision rules (e.g., majority voting, consensus, etc.). Developers are responsible for obtaining neighborhood consent.
10. **Right to Free, Open, and Accessible Internet**, including the “right to access, use, send, post, receive, or offer lawful content, applications, or services of the user’s choice.”
11. **Right to a Citizen Managed and Accountable Police Force**, which calls for a civilian police chief who (and whose force) is fully accountable to a citizen panel.
12. **Right to Clean and Fair Elections Free from Corporate Interference**, which bans corporate electioneering and lobbying.

13. **Right to Clean Government**, including “the right to a...legislative process free from corporate lobbying and involvement.”<sup>59</sup>

Linzey and Reiman note that these provisions are not utopian, but “based on real laws already passed from the municipal to the national level—from Pittsburgh stripping drilling corporations of Constitutional ‘rights’ to Ecuador including legal rights for nature in its Constitution.” They also write that the list is simply “a framework and a starting point, not necessarily to be used in its entirety.”<sup>60</sup>

As a home rule city, Buffalo has the capacity not only to add these and/or other community rights provisions to its municipal charter (which was the path taken by Pittsburgh, PA, when it became the first American city to pass a Community Bill of Rights<sup>61</sup>); but to draft and adopt an entirely new, *rights-based* city charter, through a democratic, inclusive process, to *reform* the structure of its local government in a way that prioritizes participatory democracy, community control, shared prosperity, and ecological sustainability and resilience.<sup>62</sup> The remainder of this section briefly sketches out why and how residents of Buffalo might demand a rights-based charter.

### ***Some Observations on the Existing Buffalo City Charter***

The City of Buffalo’s current corporate charter appears as Chapter C in the Buffalo Municipal Code.<sup>63</sup> It contains 32 articles with more than 130,000 words that sprawl over 440 pages, reflecting more than two decades’ worth of revisions, amendments, and additions since the last time a Charter Commission overhauled the document in 1999.

Although the length and patched-together nature of the charter are not in and of themselves reasons for drafting a new document, what is concerning is that in this

vast sea of text are barely any mentions of community rights to self-determination, social, racial, economic, and environmental justice, or other pressing community concerns. Instead, reflecting a “dictatorship of property”, or the privileging of property and development interests over community rights,<sup>64</sup> the first substantive article of the charter begins by detailing the City’s powers of eminent domain, property acquisition, and property ownership.<sup>65</sup> To be fair, such powers can enable local governments to obtain and hold property for public purposes that enhance the public good. However, in practice, City property ownership is frequently monopolistic and exercised in service to private development.<sup>66</sup> Often, local governments limit or deny property access to all but the highest bidders, mirroring private sector behaviors of profit-maximization and speculation.<sup>67</sup> Consequently, the tone set by the current charter’s enumeration of powers is more about City agencies possessing monopoly control over land, and (far) less about authentic community control of land for the common good.

In fact, there is little room in the current charter for *any* meaningful control by communities over decisions that affect them. Community rights are largely absent from the document. Even as Article 18 establishes boards and commissions on which citizens can serve, the charter fails to give these entities affirmative powers to change rules or create new ones. The boards and commissions are advisory in nature – citizen members of boards can offer recommendations, but they do not have authority to adopt and implement those recommendations as public policy. Further, membership to the advisory bodies is highly political, with the Mayor and Common Council controlling the overwhelming majority of appointments. Thus, not only do the bodies lack power to implement change, they also tend to lack meaningful degrees of separation or

independence from the City’s elected powerholders.

Yet, it is precisely these unempowered, politically appointed boards to which the charter pins virtually all concerns of racial, social, economic, gender, and environmental justice. In the vast pages of the charter, the *single occurrence* of the phrase “social justice” comes in Article 18 §21 in relation to “Membership of [the Commission on Citizens Rights and Community Relations]”.<sup>68</sup> The referenced Commission, whose charge is to “eliminate prejudice, intolerance, bigotry and discrimination to encourage equality of treatment and prevent discrimination against persons based on race, ethnic background, cultural background, language, religion, gender, sexual orientation, gender identity and expression, disability, nationality and age; and to assure respect for the civil liberties of all citizens,” is to consist of members selected for their “demonstrated commitment to *social justice*.”<sup>69</sup> Expectedly, members are political appointees designated by the Mayor and confirmed by the Council.<sup>70</sup> Similarly, of the fewer than ten explicit references to improving conditions for, and relations among, communities in the City on the basis of “race” or “racial” composition, all but one occur in Article 18 on advisory citizen boards. The upshot is that, in the present charter, social justice, racial justice, racial equity, and related matters are the domain of politically appointed advisory boards that do not possess official rulemaking powers.

In sum:

- the current charter’s main vehicles for citizen participation and community control over public decision-making are advisory committees that lack any real authority – and that are inaccessible to most people

given the requirements that they be filled by political appointees; and

- outside of these undersupplied, difficult-to-access vehicles, the vast complex of rules and administration outlined in the charter offer virtually no pathways for expanding community rights and community self-determination.

One way to resolve these concerns is to replace the current charter with one that is rights-based, in which ultimate authority resides with the people.<sup>71</sup>

### ***Revising City Charters in New York***

The Municipal Home Rule Law (MHRL) in New York State (NYS) establishes three paths by which a municipality can change its corporate charter:

- charter commission;
- ballot initiative;
- direct legislative action.<sup>72</sup>

The latter of these is the most straightforward, though it is usually the least advisable. Namely, under §10 of the NYS MHRL, the Buffalo Common Council possesses the power to, through its internal committees, undertake a charter revision process and put the result of that process up for a vote in a citywide referendum. The referendum, a requirement under the MHRL, adds a degree of democracy to the process; however, insofar as the new (or amended) charter would be created through a political body, presumably without ample public input, this path is inconsistent with broader goals and ends of advancing community rights.

The second of the three options listed above – charter revision through ballot initiative – is somewhat more appealing on the grounds that proposed charter changes come by way of coalitions organizing and engaging in signature drives to elevate their proposal to the ballot.<sup>73</sup>

One possible drawback of this method, though, is that ballot initiatives do not automatically reflect community priorities or aspirations. Corporations and interest groups spend excessive amounts of money on influencing and controlling messaging in initiative campaigns.<sup>74</sup> As a general matter, the interests and entities that most benefit from current (inequitable) rules have the most resources at their disposal with which to protect and defend those rules. As such, authentic, grassroots community rights initiatives that aim to shift power away from corporations and developers and toward residents should expect aggressive, well-funded counter-campaigns that try to discredit and neutralize them.<sup>75</sup> While this observation does not mean that coalitions should avoid attempting to change rules and power structures through ballot initiatives, it does suggest that this path to a new charter requires exceptional levels of organization and discipline.

Finally, the first option listed above calls for a dedicated commission to systematically review the existing charter and draft a new or revised document. Unlike a typical advisory committee, the charter commission does not make recommendations to elected officials or public administrators in the hope that they (the officials or administrators) will act. Rather, the commission’s work product goes directly to the citizens, in the form of a referendum, to be voted up or down. Like the ballot initiative path to charter revision just described, a referendum election is subject to interference and counter-campaigning by the wealthy and elite interests that benefit from the current rules. However, as expanded on in the next section, there are potentially more opportunities to drown out misinformation in the charter commission option, as opposed to the ballot initiative option.

## ***A Path for Creating a Rights-Based Charter by Commission***

To begin, note that the NYS MHRL provides three methods for creating a charter commission: (1) by local law, as passed by the Common Council; (2) by Mayoral order; or (3) by ballot initiative.

In the absence of substantial interference by corporate and other outside interests, a ballot initiative that calls on the City to empanel an inclusive, representative, culturally competent commission of residents whose appointments are subject to community approval (and/or recall) seems well-suited to the advancement of community rights. To the extent that such a ballot initiative might double as a citywide public education campaign – to build individual and collective understanding and capacity in the areas of community rights and participatory democracy – it would be well-positioned to create transformative change. Namely, at the same time the initiative seeks signatures to put the charter commission question on the ballot, the campaign can raise awareness (person-to-person, community-to-community) about the benefits of community self-determination and how self-governance becomes possible under a rights-based charter.

In this way, the campaign can invest in building core civic capacities and skills that are needed if people and communities are to eventually embrace the complex roles of *re-formers*, making [decisions about] the rules that affect them. If the ballot initiative proves successful, then, by the time the charter commission gets empaneled, many residents from the public education campaign will already have greater awareness of and interest in the charter revision process.

That appetite for change stands to grow even larger once the commission’s work gets

underway. Generally, a commission tasked with a complete charter revision and/or re-write will “schedule its work over at least a full year.”<sup>76</sup> During that time, one of the most important aspects of the commission’s work is a public education program.<sup>77</sup> The goals of effective public education are not just to inform residents about the process, explain the functions of a charter, and hold mandatory public hearings. Rather, a charter commission’s public education and outreach programs can be made to be truly *prefigurative* – that is, they can be designed to assemble residents in community forums, where residents build skills in facilitation, group decision-making, and visioning, among others.<sup>78</sup> As groups across the City build these capacities, their roles begin to transform from simply providing *input* to the charter commission (in the vein of a traditional public hearing); to authentically *collaborating* with the charter commission to write the new document. Through these collaborations, the rights-based charter will reflect and be imbued with rich local knowledge. As part of these generative processes, community forums can eventually grow into the “neighborhood assemblies” to which decision-making powers can be conferred in the new, rights-based charter.<sup>79</sup>

The theory of change explicated above comes down to the following key steps:

- Form and organize a local grassroots coalition around community rights to:
- Draft a ballot question that calls on the City to create a charter revision commission. The text of the ballot question should specify that communities will have the power to appoint and recall charter members (note that the coalition will need to decide, democratically, how to define “community” and procedures for

“appointment” and “recall” in the text of the question). Then:

- Design and carry out a combined signature drive/public education campaign, over a full election cycle, to qualify the question for the next general election ballot, and to build individual and collective understanding of community rights, local control, and rights-based charters throughout the City. Then:
- Voters pass the ballot measure, and a democratically appointed, inclusive, representative charter commission begins a year-long process (or longer) to facilitate widespread public education and conduct legal review and analysis.
- The commission designs the public education program in a way that helps to establish and expand the community forums and neighborhood assemblies to which the rights-based charter gives decision-making power. Those emerging institutions play active roles in ultimately (co)authoring the new charter with the commission. Next:
- The thoroughly community-vetted draft of the rights-based charter appears on the next general election ballot. Then:
- The rights-based charter is adopted by voters, and the structure of government is *re-formed* to grant the City’s new and expanded neighborhood assemblies meaningful powers of local self-determination. Finally:
- The flexibility built into the rights-based charter allows communities and neighborhoods to adapt to changing circumstances and resolve issues sustainably, justly, and, above all, *collectively*.

While this theory of change is specific to the ballot initiative method for creating a charter

commission – note that the initiative path has the outward advantage of two rounds of public education, over two consecutive years/election cycles, such that the charter commission’s campaign builds on and reinforces the ballot initiative campaign – the end result of a rights-based charter is still attainable through the two remaining methods for creating a charter commission: (1) via local law, and (2) by mayoral order.

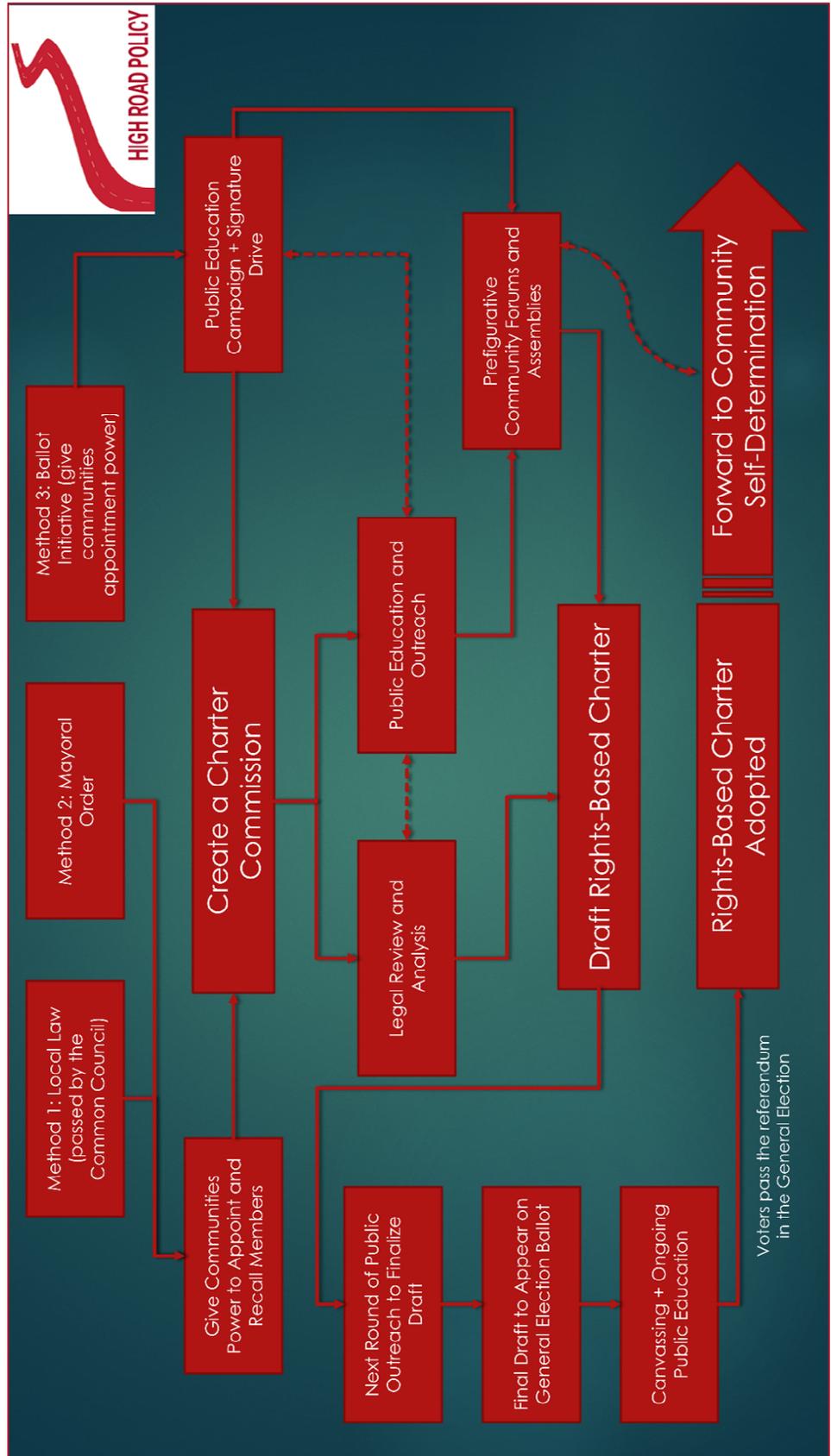
One disadvantage with these two methods is that they do not outwardly require the same degree of investments into public education as the ballot initiative. Perhaps the larger matter, however, is that both methods put control over commission appointments in the hands of elected powerholders. In the first case, the Council’s law would need to specify both the size of the desired charter revision commission and the method for making appointments to it. In the latter case, New York State law gives the Mayor the power to appoint all members to the commission, though the size of the body under this option would be limited to between nine and fifteen City residents.<sup>80</sup>

The above suggests that there are reasons to be hesitant about pursuing a charter commission through local law or mayoral order. However, as evidenced by the growing community rights movement and cases like the Grant Township and Pittsburgh Community Bills of Rights,<sup>81</sup> more and more elected officials are coming into office to change power dynamics and to get serious about *re-forming* local government. One way to demonstrate seriousness to that commitment in Buffalo would be for the Common Council or Mayor to (1) exercise their power to establish a charter revision commission, but (2) then cede their power to make appointments to that commission to the people. That is, once they establish the commission, elected officials can and should create mechanisms to give

communities the abilities (1) to make locally adaptive rules about whom to appoint to the commission to represent their interests, and (2) to then make appointments to the commission and recall and replace their appointees, if needed, using agreed-upon democratic decision-making processes.

The figure to the right depicts the abridged versions of these two paths to a rights-based charter, alongside an abstract representation of the third, higher effort path via ballot initiative. None of the work that is illustrated in the figure and/or described throughout this article is easy, quick, perfectly linear, or guaranteed to succeed. But, after more than a century of *reforms* to nowhere, it seems like an opportune time to experiment with forward-looking *re-forms* to the structures of governance that have, over time, sustained and reinforced the unjust outcomes and power relations against which the community rights movement is presently rising.

**Figure.** Creating a Rights-Based Charter (solid lines indicate direct relationships; dashed lines indicate indirect relationships and/or feedback effects)



## Notes

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## About High Road Policy

*High Road Policy* is a quarterly issue memorandum published by the Cornell University School of Industrial Labor Relations (ILR) through its Buffalo Co-Lab. It aims to contribute actionable insights to contemporary policy and political discourses in and beyond the regions and communities of Upstate New York. Content for memoranda comes in part from the Co-Lab's Data for Equitable Economic Development and Sustainability (Good DEEDS) program, which democratizes local and regional data for the purposes of: empowering residents and institutions; informing public policy debates; and providing an empirical basis for ensuring that change and development in Upstate communities follows the High Road to shared prosperity for all residents, from the present to all future generations.