



ONWARD AND UPWARD

**A Technical
Guide to Zoning
and Regulatory
Reform in the
Crisis Era**

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INTRODUCTION

New York City is facing an era of unprecedented circumstances. As the city battles an ongoing global pandemic and the resulting economic fallout, it is also dealing with concurrent crises of housing affordability and homelessness, racial and economic inequality, and climate change. While these issues emerged long before the onset of COVID-19, the pandemic has only made them worse, and the need for solutions even more urgent.

The potential for NYC to resolve these problems, and to emerge and recover from today's crisis era, will depend on its ability to adapt to new circumstances and build on lessons learned. COVID-19 forced the city to function in entirely new ways, revealing aspects of our old systems that are less important, or more flexible and adaptable, than we previously thought. At the same time, the last two years have both highlighted and worsened the impacts of community needs left unmet for too long. Rather than striving to return to pre-pandemic normalcy, the city must leverage the lessons that this crisis has brought to bear towards the creation of a future that is more prosperous, equitable, and sustainable than our past.

Zoning and regulatory reform must play a key role in the advancement of a pathway forward. The rules and regulations governing development in NYC are so complex that there are entire industries built on interpreting them. Many aspects of building design and construction are subject to several different requirements in various codes. Significant parts of the Zoning Resolution have not been updated for several decades and are misaligned with modern-day policy goals. With such an elaborate thicket of regulations in play, the built environment has been unable to keep up with changing circumstances and needs.

While no zoning or code change is a silver bullet, reform is necessary to support the execution of policies and plans that advance a shared vision for the future of NYC. Zoning and regulatory reforms are essential to ensuring that planning efforts can achieve their intended impacts and goals. In a time when the economy is struggling, and public resources are scarce, zoning and regulatory reform can streamline and expedite the development that NYC needs. Finally, creating a more flexible regulatory environment will allow NYC to better respond and adapt to the impacts of future pandemics, climate disasters, recessions, and more.

—CHPC was delighted to hear that the new Adams administration is committed to making NYC the "City of Yes!" By pledging to reform the city's regulatory framework, Mayor Adams helps the city get out of its own way when meeting the challenges of our time. In his words, "Yes in my backyard. Yes on my block. Yes in my borough." This publication serves as a technical guide for how we can say yes to housing affordability, sustainability, equity, and economic recovery.

THIS REPORT IDENTIFIES REFORMS THAT RESPOND TO CHALLENGES FACING
NEW YORK CITY IN A PERIOD DEFINED BY INTERSECTING CRISES

ALL PROPOSED REFORMS ARE MOTIVATED BY ONE OR MORE OF THE FOLLOWING GOALS:

1

AFFORDABLE, HIGH QUALITY HOUSING FOR ALL

Ensuring that all New Yorkers have access to high-quality, affordable housing, requires building significantly more housing at a much faster rate. Job and population growth in New York City have far surpassed the rate of housing production for decades, creating a supply shortage that has in turn contributed to decreasing affordability, increasing homelessness, and other aspects of the housing crisis. With the expiration of the State's eviction moratorium and millions of New Yorkers struggling to get back on their feet, housing needs are greater and more urgent than ever. **Zoning and regulatory reform can streamline the creation of new housing supply and encourage affordable units with less public subsidy.**

2

FAIR HOUSING & RACIAL EQUITY

The housing crisis is not just one of supply and affordability, but also of persistent racial inequality. Zoning and land use regulations played a key role in shaping segregation and unequal access across geography and race. Communities of color still lack equitable access to housing, opportunity, and quality of life. Where we live impacts everything from the level of education that we achieve to our long-term health outcomes. During the pandemic, as the result of inequality across geography and race, low-income neighborhoods of color have suffered from higher rates of COVID-19 cases and deaths.¹ **New York must align zoning with fair housing goals to combat disparities in access to opportunity and quality of life.**

3

ENVIRONMENTAL SUSTAINABILITY

The threat of climate change has only become more urgent over the years that New Yorkers sheltered in their homes throughout the pandemic. The latest report by the Intergovernmental Panel on Climate Change (IPCC) observes that climate-induced hazards will damage infrastructure, disrupt economic activity, displace homes, and increasingly endanger the health and safety of urban Americans.² As we saw with the tragedy of Hurricane Ida, occupants of illegal and substandard housing are more vulnerable to the impacts of extreme weather events. New York City must solve its housing crisis to keep communities safe during disasters that will become more frequent and severe in the years ahead. At the same time, the city must do its part to curb climate change by reducing emissions and resource consumption, even as the city continues to grow. **Land use and development regulations must be leveraged to create a safer and more sustainable city as our futures are increasingly defined by the impacts of climate change.**

4

ECONOMIC RECOVERY

In early 2020, New York City's economy ground to a halt as the majority of New Yorkers sheltered from the novel coronavirus. The three biggest economic sectors in New York City—leisure and hospitality, health care, and business services—were forced to reconsider how they fundamentally operate—if at all. Hotels experienced massive vacancies; restaurants relied on delivery sales and elaborate limited-occupancy arrangements to stay open; professional service companies that could retain employees largely went remote and maintained office leases to house computers and servers. In every sector, outdated zoning and code requirements obstructed the city from seizing on unexpected opportunities or prevented businesses from responding nimbly to new realities. **Zoning and regulatory reforms must support a durable and agile economy.**

SUMMARY OF RECOMMENDATIONS

1 INCREASE OPPORTUNITIES FOR HOUSING & AFFORDABLE HOUSING CITYWIDE, WITH A FOCUS ON MIXED-USE, TRANSIT-ACCESSIBLE NEIGHBORHOODS.

- 1.1 Upzone neighborhoods with strong housing market conditions and good access to jobs and transit to achieve MIH.
- 1.2 Allow for new housing in M1 and C8 districts with fewer industrial uses, while strengthening manufacturing zoning in predominately industrial areas.
- 1.3 Remove the 12 FAR cap from the MDL and modify zoning to allow residential FAR greater than 12, with MIH.
- 1.4 Expand special provisions in zoning for AIRS to all affordable housing.
- 1.5 Eliminate conflicts between VIH, MIH, and AIRS that prevent projects from providing the full amount of FAR allowed.

2 INCREASE HOUSING OPPORTUNITY IN LOW- AND MODERATE-DENSITY RESIDENTIAL AREAS.

- 2.1 Support the passage of state-level accessory dwelling unit legislation.
- 2.2 Analyze and implement changes to bulk and parking requirements in lower-density residential zoning districts to increase opportunities for additional housing supply.
- 2.3 Allow conversions and enlargements in R3-R5 zoning districts without requiring additional parking.

- 2.4 Pass state legislation and take further action where needed to implement CHPC's recommendations for basement and cellar conversions.

3 UPDATE REGULATIONS TO REFLECT MODERN-DAY SUSTAINABILITY GOALS.

- 3.1 Allow up to 100 percent solar panel coverage on roofs.
- 3.2 Eliminate parking minimums for all residential development in the Transit Zone.
- 3.3 Incentivize the removal of paved surfaces or replacement with permeable alternatives.

4 ENABLE A MORE DIVERSE HOUSING STOCK TO COMBAT OVERCROWDING AND PROMOTE AFFORDABILITY.

- 4.1 Eliminate the density factor in R6-R10 zoning districts inside the Transit Zone and Manhattan Core.
- 4.2 Create a regulatory framework for the development and oversight of safe, well-managed single-room occupancy units (SROs).

5 EXPAND OPTIONS FOR CONVERSION OF UNDERUTILIZED HOTEL AND OFFICE SPACE.

- 5.1 Work with the State to allow for the long-term occupancy of hotel rooms without conversion to Class A dwellings.
- 5.2 Liberalize and expand provisions for residential conversions under Article 1, Chapter 5 of the Zoning Resolution.

6 REDUCE REGULATORY BARRIERS TO ENDING THE HOMELESSNESS CRISIS.

- 6.1 Allow NFPISAs to benefit from the same FAR as other Community Facility uses without a Special Permit.**
- 6.2 Ensure that projects with supportive housing can benefit from Inclusionary Housing.**
- 6.3 Exempt homeless and permanent supportive housing projects from ULURP.**

7 STREAMLINE CODES AND THE DEVELOPMENT PROCESS TO REDUCE TIME AND COSTS.

- 7.1 Establish set timelines, comment limits, and clear, consistent requirements for ULURP pre-certification.**
- 7.2 Create a ULURP fast-track for projects that meet certain criteria for public approval and/or policy goals.**
- 7.3 Adopt an Existing Building Code and remove redundant and unnecessary sections of the MDL.**

8 MINIMIZE REGULATORY REDUNDANCY AND OVERLAP TO HELP SMALL BUSINESSES THRIVE AND BETTER MEET COMMUNITY NEEDS.

- 8.1 Simplify and streamline use groups in zoning.**
- 8.2 Establish a streamlined, low-cost regulatory framework for the permanent Open Restaurants program.**
- 8.3 Study and implement changes to parking requirements for commercial spaces.**

KEY ACRONYMS AND DEFINITIONS

- AIRS:** Affordable Independent Residences for Seniors
- AMI:** Area Median Income
- DCP:** NYC Department of City Planning
- DCWP:** NYC Department of Consumer and Worker Protection
- DOB:** NYC Department of Buildings
- DOF:** NYC Department of Finance
- FAR:** Floor Area Ratio
- GHG:** Greenhouse Gases
- HPD:** NYC Department of Housing Preservation & Development
- IRHU:** Income-Restricted Housing Unit
- MDL:** NYS Multiple Dwelling Law
- MIH:** Mandatory Inclusionary Housing
- ULURP:** Uniform Land Use Review Procedure
- SROs:** Single-Room Occupancy Housing
- VIH:** Inclusionary Housing (voluntary program)
- ZQA:** Zoning for Quality and Affordability

1

INCREASE OPPORTUNITIES FOR HOUSING AND AFFORDABLE HOUSING CITYWIDE, WITH A FOCUS ON MIXED-USE, TRANSIT-ACCESSIBLE NEIGHBORHOODS.

IN BRIEF

Ending the housing crisis will require building much more housing at a much faster rate. However, there is not enough capacity for residential development under existing zoning to meet this goal. Increasing the development potential for new housing and affordable housing in walkable, mixed-use, transit-accessible neighborhoods will enable the housing supply that New York City needs while advancing fair housing and climate change goals.

RECOMMENDATIONS:

- 1.1 Upzone neighborhoods with strong housing market conditions and good access to jobs and transit to achieve MIH.**
- 1.2 Allow for new housing in M1 and C8 districts with fewer industrial uses, while strengthening manufacturing zoning in predominantly industrial areas.**
- 1.3 Remove the 12 FAR cap from the MDL and modify zoning to allow residential FAR greater than 12, with MIH.**
- 1.4 Expand special provisions in zoning for AIRS to all affordable housing.**
- 1.5 Eliminate conflicts between VIH, MIH, and AIRS that prevent projects from providing the full amount of FAR allowed.**

Ending the housing and homelessness crisis will require building much more housing, at a much faster rate. Over the last several decades, job and population growth in New York City have far surpassed housing production, creating a supply shortage that has in turn contributed to the drastic rise in housing costs and left tens of thousands of New Yorkers without a place to call home. Between 1980 and 2018, average annual employment increased by 35%, while the housing stock grew by only 19%. In recent years, housing production has fallen even further behind. From 2010 to 2018, average annual employment rose by 22%, compared to a mere 4% growth in the housing stock.³

Contrary to recent speculations around pandemic-driven population loss, the data clearly demonstrate that New York is continuing to grow, even as it strives to recover from COVID-19.⁴ Without the right solutions, the supply shortage and its impacts on housing affordability will only continue to worsen with population increase. The city is projected to surpass 9 million residents by 2040 and may do so much sooner. The citywide population grew by nearly 8% in the last decade, reaching its peak of 8.8 million in the 2020 Census.⁵ The ten-year increase was more than double that which was projected in 2010.⁶ This disparity can be accounted for in part by expanded outreach efforts and the inclusion of previously unidentified addresses in the 2020 Census.⁷

Zoning plays a key role in perpetuating the housing shortage, as it dictates where and how much housing can be built. In 2007, the City estimated that even if every vacant and significantly underdeveloped site were built out to its full potential, New York could only house around 9.5 million people.⁸ Research suggests that overall development capacity is now even further short of what is needed, relative to population projections. Operating under a growth-centric policy agenda, the Bloomberg administration rezoned over 37%

of the city's land area between 2003 and 2012.⁹ However, many of those changes were downzonings and contextual rezonings that offset most of the development potential gained through upzonings during the same period. Between 2003 and 2007, nearly one-fifth of the city's land was rezoned, yet overall residential development capacity increased by less than 2%.¹⁰ Under the de Blasio administration, the pace of rezonings has slowed significantly, while vacant land and potential development sites have become increasingly scarce.

The Citizens Budget Commission reports that, as of 2018, nearly 80% of residentially zoned lots were “already built at or near the maximum density levels allowed in their zoning districts.”¹¹

New York cannot rely on zoning changes alone to meet housing needs. Efforts to increase residential densities and encourage development in different neighborhoods must be aligned with planning and budgeting processes to ensure that community infrastructure and service needs are met. However, the limited capacity for development under existing rules indicates that zoning reforms are a necessary part of the solution.

In addition, zoning can be leveraged to prioritize affordability, and to ensure that development patterns are more equitable and sustainable moving forward. One key strategy to increase supply, combat climate change, and advance fair housing goals is to target walkable, mixed-use, transit-accessible neighborhoods for new development. Allowing more New Yorkers to live in places where they can walk, bike, and take public transit to daily destinations will reduce reliance on cars and related greenhouse gas emissions, while promoting active transportation modes that benefit public health.

Building housing at higher densities leads to lower carbon footprints per capita. Finally, targeting service- and transit-rich neighborhoods for more affordable housing will combat racial segregation and inequality by making these areas more accessible to low-income households and people of color.

Recommendations:

1.1 Upzone neighborhoods with strong housing market conditions and good access to jobs and transit to achieve MIH.

A core objective of all inclusionary zoning programs, including MIH, is to leverage private investment towards meeting the public need for affordable housing. To achieve this goal, the market-rate units developed through an inclusionary zoning program must generate enough revenue to “cross-subsidize”—or offset the lower returns yielded by—the affordable units. In the context of voluntary programs, the ability of market-rate units to cross-subsidize the affordable set-asides plays a key role in determining developer participation. When it comes to required set-aside programs like MIH, if internal cross-subsidy is economically infeasible, development will require additional subsidization.

Despite these inherent elements of program design, MIH has primarily been applied in areas with moderate-to-weak housing market conditions, where the feasibility of projects depends on additional public subsidies. According to a study by the Manhattan Institute, this trend is at least partially responsible for the relatively low number of affordable units created through MIH to date.¹² Even those few units, the study argues, cannot be wholly attributed to MIH, as the City “could have imposed affordability requirements in exchange for subsidies,” independent of the inclusionary zoning requirement.¹³

Applying MIH to higher-income neighborhoods will ensure that market conditions are strong enough for the program to function as it was designed. Higher land costs and levels of housing demand will enable developers to meet affordability requirements without the use of subsidy, creating more affordable units with fewer public dollars.

This strategy will also combat racial inequality and affirmatively further fair housing. Increasing housing opportunities for low-income New Yorkers in amenity-rich areas is a stated fair housing goal of the City of New York.¹⁴ Applying MIH to high-income, high-opportunity neighborhoods will ensure that a share of any new housing in them is accessible to communities of color, who have historically been excluded from their benefits. Meanwhile, absorbing housing demand in areas with strong market conditions will reduce market pressure on neighborhoods and communities that are more vulnerable to rising land costs and the risk of displacement.

1.2 Allow for new housing in M1 and C8 districts with fewer industrial uses, while strengthening manufacturing zoning in predominantly industrial areas.

New York City’s inadequate housing production is in large part the result of a shortage of sites where housing can be built as-of-right. To expand housing production and opportunity, the city must identify new areas where affordable housing can be a condition of as-of-right residential development, ideally, in underbuilt areas where zoning doesn’t reflect current use. Many areas currently zoned for light manufacturing (M1/M2) and related “heavy commercial” uses (C7/C8) would be suitable for mixed residential development due to the presence of existing housing and the character of adjoining neighborhoods.

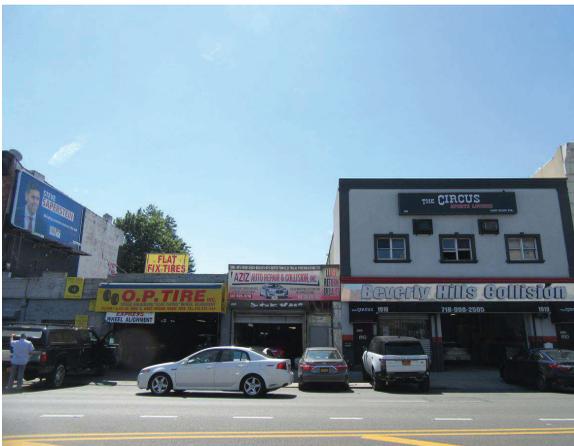
Separation between uses is not as necessary it was when the residential, commercial, and manufacturing use classes were written into the law over 80 years ago.¹⁵ All three categories have experienced significant shifts in the nature of the use that make residential density more compatible with contemporary business and manufacturing. For example, food production has overtaken apparel as the predominant manufacturing sector in New York City, thanks to vertical farming, aeroponics, hydroponics, and other sustainable agricultural practices.¹⁶ This type of manufacturing is easily integrated with housing, unlike early manufacturing uses that were noisy, congested streets, and generated hazardous byproducts.

Coney Island Avenue in Brooklyn is an example of where decades old C8 zoning has created an underdeveloped commercial corridor bisecting vibrant multi-cultural residential neighborhoods.¹⁷ Zoning along the avenue has failed to foster a coherent development pattern. Outdated commercial structures, low-rise storefronts, and patches of mixed-use and walk-up apartment

buildings create the street wall along the four-lane corridor. Already occupied by and adjacent to residential mixed uses, the city should allow these existing uses as-of-right along Coney Island Avenue. Aligning Coney Island Avenue's zoning with current economic activity and community needs, would open a wealth of area for potential housing.

Coney Island Avenue was one of several corridors included in a 2005 study by Baruch College, prepared for the New York City Council and Public Advocate, that demonstrated housing potential by analyzing the hypothetical impacts of rezoning areas that, at that time, were underbuilt under M1, M2, and C8 zoning, and already had existing housing. The authors argued that rezoning areas like these to permit new mixed residential development would enable the creation of large numbers of new housing units, without upzoning adjacent residential districts and while allowing existing uses to remain.¹⁸

In addition to preventing housing and retail development, M1/M2 and C7/C8 zoning often prevent the efficient accommodation of allowable uses due to outdated parking minimums, height



(Above left) Intermittent auto body repair shops along Coney Island Avenue in Brooklyn reflect C8 zoning for heavy commercial use. (Above right) Pedestrian oriented retail, mixed-use, and blocks of low- and mid-rise residential face single-story heavy commercial use on the opposite side of the street. Photo credit: Plaza Realty, LLC zoning application for 1880-1888 Coney Island Avenue.

limits, and other restrictions. Meanwhile, many of the city's older industrial buildings lack the characteristics needed to accommodate modern-day industrial uses, preventing opportunities for occupation.¹⁹

Retaining industrial land to support manufacturing businesses and jobs is a key planning goal. However, preserving outdated zoning does not ensure that land is utilized in ways that serve this objective.

While expanding housing opportunity in strategic M1/M2 and C7/C8 districts is important, it is similarly important to reinforce manufacturing and industrial hubs. Strengthening the city's manufacturing sector through the creation of Industrial Business Zones has been shown to expand job opportunities for area residents and also long-term economic mobility of workers.²⁰ This is especially important given that industrial areas are disproportionately located in communities of color.²¹ The expansion of jobs in the industrial sector, of which half are held by immigrants and 80% by people of color, is essential in meeting the city's economic recovery and equity goals.²² Historically industrial areas should be strengthened by improving site utilization, streamlining regulations to support thriving uses, and by investing in the space and infrastructure to cultivate emerging manufacturing sectors.

Affirmatively furthering fair housing through zoning reform

Implementing the recommended changes to AIRS would help advance strategies set forth in the City's Where We Live plan to affirmatively further fair housing. Where We Live identifies modifying zoning to allow for an increase in density for affordable housing as a key strategy to increase housing opportunities for low-income New Yorkers in amenity-rich neighborhoods. Specifically, the plan calls for zoning changes that allow for preferential FAR to apply to income-restricted housing for all populations, including housing for seniors and special needs populations. Expanding AIRS as recommended by CHPC would achieve both of these outcomes and mark an important step towards our fair housing goals.²³

1.3 Remove the 12 FAR cap from the MDL and modify zoning to allow residential FAR greater than 12, with MIH.

All development, including residential, commercial, community facility, and manufacturing uses, is subject to FAR maximums that vary by zoning district. Unlike other types of development however, residential buildings containing three or more units are also subject to the statewide Multiple Dwelling Law (MDL), which limits the maximum allowable FAR of those buildings to 12.²⁴ Consistent with the MDL, the Zoning Resolution also states that residential FAR may not exceed 12 under any circumstances.²⁵ The only exception to this rule is for residential conversions of commercial buildings erected prior to 1961, or prior to 1977 in Lower Manhattan.²⁶

Currently, there are commercial zoning districts that allow for buildings with FAR significantly higher than 12. Commercial buildings in these districts that were built prior to 1961 (along with pre-1977 commercial buildings in Lower Manhattan) can be converted in their entirety to housing. Yet in those same districts, for both new construction and residential conversions of post-1961 commercial buildings, FAR in excess of 12 must be non-residential.²⁷ This puts residential uses at a disadvantage and artificially restricts the amount of housing that developers can provide without disrupting the scale of local development.

CHPC recommends that the city advocate for State legislation that removes the 12 FAR cap from the MDL. Governor Hochul has already included language towards this end in the proposed 2023 Executive Budget.²⁸ City agencies should work with local NYS representatives to ensure that these measures are included in the final budget or adopted via legislation in 2022.

Once this has been achieved, the City should amend zoning to allow developments that provide residential FARs higher than 12, in exchange for the provision of affordable housing within them. In return for allowing full buildings with higher than 12 FAR to be residential, including both new construction and residential conversions of newer commercial properties, MIH would be required. Another potential requirement to include is the provision of commercial or community facility space in the ground floor, which could help mitigate the risk for residential superblocks and high-density housing in areas lacking sufficient amenities and services.

1.4 Expand special provisions in zoning for AIRS to all affordable housing.

As part of the ZQA text amendment of 2016, “non-profit residences for the elderly” in zoning was replaced with Affordable Independent Residences for Seniors (AIRS). AIRS is defined as affordable units serving New Yorkers ages 62+ who earn less than 80% of AMI. ZQA established special provisions for AIRs to encourage the creation of more affordable senior housing in neighborhoods citywide.²⁹

Generally speaking, AIRS benefits from around 20% greater FAR than what is permitted for other residential development in the same zoning district. Buildings with AIRS may also receive a height increase to accommodate the additional FAR. AIRS are not subject to the dwelling unit factor, which limits the number of units a given building can include. This allows for a wider range of unit sizes and the provision of smaller, more affordable units. AIRS developments that are located inside the Transit Zone are also exempt from parking requirements, and existing or underutilized parking spaces for AIRS may be converted to other uses as-of-right.³⁰

Seniors comprise the fastest growing population in New York City and meeting their affordable housing needs is a key policy goal. While ZQA eased the creation of affordable units reserved specifically for seniors, most older New Yorkers live in housing that is not age-restricted. Like their low- and middle-income neighbors of all ages, seniors living in regular housing are suffering from the overall lack of housing supply and its affordability impacts. In 2016, a survey by LiveOn NY estimated that the waiting list for Section 202 senior housing alone includes upwards of 200,000 low-income older adults.³¹

At the same time, the AIRS program has suffered significant setbacks since its implementation, limiting the amount of affordable senior housing it can produce. Due to fair housing concerns, HPD rescinded its term sheet for Privately Financed Affordable Senior Housing (PFASH) less than two years after the program began accepting applications.³² As a result, AIRS units cannot be included in privately financed, mixed-income developments to fulfill the affordable set-aside requirements of programs like MIH. While AIRS zoning continues to benefit 100% affordable senior housing projects, it does not provide the more widespread advantage for affordable senior housing that it was intended to.

Within this context, CHPC recommends expanding the special provisions for AIRS to include all affordable housing units, rather than those with age restrictions alone. By leveraging the innovative tools created for AIRS to address the broader affordable housing needs of low-income New Yorkers, this change will help older and younger residents alike. Since bulk restrictions for AIRS are already in place, the maximum allowable height and FAR of buildings in most zoning districts would not increase.³³ Instead, more developers and projects would be able to take advantage of the greater maximums that already exist.

Expanding AIRS would complement VIH by providing an affordability incentive for as-of-right projects located outside of VIH designated areas. In most of the city, MIH is only triggered when a developer seeks an upzoning. Depending on market conditions, meeting the affordability requirements of MIH may be economically infeasible or undesirable due to the creation of additional expenses that outweigh the financial benefits of a zoning change. Under such circumstances, developers can either seek public subsidy alongside an upzoning, or build within

the existing zoning, most often at 100% market-rate. Those who choose the latter option might still choose to provide some affordable housing, however, in exchange for an FAR bonus and, in some cases, a height increase. Changing the definition of AIRS to include all affordable housing would facilitate this option.

1.5 Eliminate conflicts between VIH, MIH, and AIRS that prevent projects from providing the full amount of FAR allowed.

While AIRS is intended to be a citywide program, conflicting language in zoning can prevent it from functioning as intended. In zoning districts that have a higher maximum FAR for AIRS than for inclusionary housing, AIRS projects that are subject to MIH or located in a VIH designated area may be prevented from providing the full amount of FAR allowed. This dynamic effectively forces projects into inclusionary housing and undercuts the incentive to build AIRS, resulting in fewer affordable units and fewer units overall.

In VIH designated areas, each zoning district has a base FAR and a maximum FAR. Market-rate projects in VIH designated areas cannot exceed the base FAR for the applicable zoning district, while projects that include affordable housing cannot exceed the maximum FAR for that district. For example, R7A districts in VIH designated areas have a base FAR of 3.45 and a maximum FAR of 4.6. A developer with a site that is zoned R7A and located inside a VIH designated area can build up to 3.45 FAR of market-rate housing. If they choose to include some affordable housing, the project will benefit from 1.25 square feet of additional floor area for every square

foot of affordable floor area provided, up to the maximum FAR of 4.6. The same circumstances would be true if the site were in an MIH Program Area, or if the site had been upzoned and triggered MIH. The major difference in these scenarios is that the developer would be required to provide a portion of affordable housing, rather than having the option to do so.

Zoning also stipulates a maximum FAR for AIRS development in each zoning district. AIRS grants additional floor area in exchange for floor area dedicated to affordable housing for seniors, up to the maximum FAR for AIRS in the applicable district. In the example discussed above, the developer provides enough affordable housing for seniors, then the project should be allowed to provide up to 5 FAR, which is the maximum FAR allowed for AIRS in R7A zoning districts. However, the zoning text for VIH specifically states that projects in VIH designated areas cannot provide exceed the maximum FAR for the applicable zoning district in those areas. Even if the developer builds 100% affordable senior housing, the project cannot provide more than 4.6 FAR. This guarantees that the project will provide less affordable housing and less housing overall.

DCP should review and modify the language in zoning to ensure that AIRS can function citywide, without being undercut by inclusionary housing.

CHPC also recommends that DCP undertake a broader review of the zoning text for VIH, MIH, and AIRS to identify and eliminate potential additional conflicts. This should include the text for MIH Program Areas, Special Districts that are mapped as VIH designated areas, and any other sections of the Zoning Resolution that target specific geographies for affordable housing programs.

2

INCREASE HOUSING OPPORTUNITY IN LOW- AND MODERATE-DENSITY RESIDENTIAL AREAS.

IN BRIEF

For decades, zoning has prevented property owners from creating additional living accommodations on their properties and severely restricted opportunities for new housing within these areas. Increasing flexibility for additional housing supply in low- and moderate-density neighborhoods will combat the housing shortage and affordability crisis, advance fair housing and climate change goals, and provide homeowners with a wider range of options to meet their evolving circumstances and needs.

RECOMMENDATIONS:

- 2.1 Support the passage of state-level accessory dwelling unit legislation.
- 2.2 Analyze and implement changes to bulk and parking requirements in lower-density residential zoning districts to increase opportunities for additional housing supply.
- 2.3 Allow conversions and enlargements in R3-R5 zoning districts without requiring additional parking.
- 2.4 Pass state legislation and take further action where needed to implement CHPC's recommendations for basement and cellar conversions.

Although New York is better known for its skyscrapers, tenements, and brownstones, the city is also home to over 500,000 one- and two-family homes.³⁴ For decades, zoning has prevented property owners from creating additional living accommodations on their properties and severely restricting opportunities for new housing within these areas. A combination of factors including racial discrimination, single-family zoning, parking requirements, density factors, and minimum lot sizes contribute to the persistence of high-cost, low-density, exclusionary neighborhoods.

Many U.S. cities and states, confronted with an affordable housing crisis and enduring inequity, are trying to increase housing opportunity by reforming their zoning and regulatory frameworks. Oregon, California, and Connecticut have adopted reforms that enable the construction of duplexes, triplexes, and contextual multiplexes within low- and moderate-density residential areas.

Minneapolis, MI took a step further by allowing up to two additional dwelling units on every single-family lot citywide in 2019.³⁵ While around 75% of land within the five boroughs is zoned for residential use,³⁶ 15% of residential land—including 25% of Queens and 22% of Staten Island—exclusively allows only one unit per lot.³⁷

Permitting alternative housing typologies expands housing choice by improving access to high-opportunity neighborhoods, diversifying the cost and types of available housing, and subtly allowing more density in low-density districts. Even the federal government has attempted to incentivize “gentle” density increases in single-family neighborhoods. While excluded from the bipartisan

deal subsequently reached in Congress, President Biden’s original infrastructure plan, the American Jobs Act, included \$5 billion in competitive grants for local governments that modified zoning to allow for additional housing supply in single-family neighborhoods.³⁸

In pursuing such changes, lawmakers are seeking to advance goals that single-family zoning is inherently at odds with, such as housing affordability, racial equity, and environmental sustainability. In NYC, these goals are also countered by zoning that nominally allows for two-family or multifamily buildings yet discourages or prevents those typologies from being built. As a result, the issues associated with single-family zoning nationwide are prevalent across an even greater portion of NYC than the areas zoned single-family. Over 60% of the city’s single-family homes exist in R3, R4, and R5 zoning districts, which technically allow for more than one dwelling unit per lot.³⁹

Single-family zoning diminishes affordability by restricting opportunities for new housing supply. In some cases, it pushes new multifamily housing development further away from jobs and transit, making it more difficult for residents of that housing to access important resources. In NYC, zoning that exclusively allows for or heavily favors single-family homes is most prevalent in neighborhoods further away from Manhattan and other job centers. However, this dynamic still plays out on a regional level, depriving some people who work or go to school within the five boroughs of the opportunity to live anywhere inside them.⁴⁰

Historically, single-family zoning was used as a tool to create and enforce racial segregation, as communities of color were denied access to homeownership and, subsequently, to suburban neighborhoods comprised of owner-occupied single-family homes. Today, the restrictive zoning in

such areas often perpetuates racial exclusion and segregation. Neighborhoods without any multifamily housing options are less accessible and affordable to households of color, who have lower incomes and are disproportionately renters.

Zoning that prohibits, discourages, or prevents multifamily housing development promotes sprawl, which produces higher per capita carbon footprints than denser, more compact development. Meanwhile, population densities in single-family neighborhoods are typically insufficient to support infrastructure and services for public transit. These communities are more likely to rely on cars as a result, contributing to higher levels of greenhouse gas emissions and limiting access for residents without a vehicle.⁴¹

Finally, zoning that prohibits, discourages, or prevents multifamily housing or ADUs limits flexibility for owners and residents of existing single-family homes. Many homeowners in New York City could benefit from the ability to create and rent out a secondary unit in their home. For low- and moderate-income homeowners, the supplemental income earned on rent can help keep up with mortgage payments and the cost of housing maintenance. Intergenerational families, single-parent households, and seniors aging in place may use a secondary unit to house an extended family member or a live-in caretaker. Secondary units also add affordable rental housing supply in neighborhoods that typically lack such housing options. Despite their potential benefits, however, these types of conversions are illegal in zoning districts that only permit one dwelling unit per lot, and are often prohibitively difficult and expensive in districts that allow for two- and three-family homes. Increasing flexibility for additional housing supply in low-density neighborhoods will combat the housing shortage and affordability crisis, advance fair housing and climate change goals, and provide homeowners with a wider range of options to meet their needs.

Recommendations:

2.1 Support the passage of state-level accessory dwelling unit legislation.

New York State must pass legislation that would establish a regulatory framework for the creation of safe, lawful Accessory Dwelling Units (ADUs) in municipalities statewide. An ADU is a smaller, secondary home that is located on the same lot as a primary dwelling but acts as an independent unit and includes complete facilities for living. ADUs can be attached or detached, and are often created by converting yard space, garages, basements, or attics.⁴²

ADUs provide for numerous benefits. They create new housing stock in low-density areas without the cost of acquiring land and with minimal impacts on streetscape and neighborhood character. Homeowners can gain extra income and space, as well as a potential home for family members or caretakers. ADUs can help combat racial segregation by providing affordable rental housing options in neighborhoods with exclusionary zoning.

Many other U.S. cities and states have advanced efforts to facilitate these benefits by allowing for and encouraging the creation of ADUs. Washington D.C. revised its zoning in 2016 to permit ADUs as-of-right in most single-family and residential zones.⁴³ In 2019, the State of California passed five different bills to make ADUs more accessible to renters.⁴⁴ This summer, Portland, OR became the first city nationwide to allow for two ADUs on a single property.⁴⁵

Like these other places, New York is struggling with issues of housing supply, affordability, and inequality that ADUs would help solve. However, current state and municipal regulations make it extremely difficult

and expensive to construct a legal accessory unit. Creating a practical path for homeowners to build legal secondary units would help ensure that basic safety standards are met and provide tenants with safety, security, and legal protections.

New Yorkers currently living in existing, unpermitted ADUs are at risk for unsafe living conditions, overcrowding, and arbitrary evictions, yet existing regulations often make it impossible to bring these housing arrangements into safe, lawful use.

During the 2021-2022 New York State legislative session, a bill enabling accessory dwelling units (A4854-A/S4547-A) was introduced in the Assembly and Senate. The bill offered solutions to many of the regulatory barriers that currently exist and would establish the framework necessary for the creation of safe, legal units. ADUs would be exempt from requirements for additional parking and would not count towards FAR, lot coverage, or open space limits. The units could be located anywhere on the lot, as long as a four-foot setback is retained in the rear and side yards. At the same time, the bill preserves broad flexibility for local governments to tailor design and construction rules, height and aesthetic requirements, and safety measures to fit local needs.⁴⁶

A variation on A4854-A/S4547-A was proposed in Governor Hochul's FY 2023 budget along with \$85 million to fund a lending program to assist low- and moderate-income homeowners undertaking a basement conversion. Notably, the ADU legislation included in the budget did not provide meaningful relief from the State's Multiple Dwelling Law except in the case of a New York City-based amnesty

program.⁴⁷ Facing election-year opposition from state legislators representing suburban, predominantly single-family communities, the Governor dropped the state-wide ADU provisions from the budget leaving only the amnesty program. By mid-March 2022, the amnesty program was dropped as well.⁴⁸



(Above) Front door of a basement apartment in the Bronx. The apartment has been continuously rented for over 50 years. Under current parking and FAR requirements, the apartment cannot be made legal. Photo credit: Desiree Rios for the New York Times.

While municipalities would ultimately be responsible for the implementation and much of the regulatory reform required by an ADU bill, the state plays an integral role. Without state-level relief from the Multiple Dwelling Law, ADUs will remain too difficult and costly to undertake for many homeowners. New York City should work with state lawmakers and the wide array of stakeholders who support ADU legislation to address good-faith concerns or necessary modifications to the bill and ensure its passage in either the 2022 or 2023 legislative session. Meanwhile, City agencies should analyze and prepare local design standards to solve for any potential conflicts and expedite the legislation's impacts. Achieving these steps will unlock a source of flexible rental housing supply in New York City, benefiting renters and homeowners alike.

2.2 Analyze and implement changes to bulk and parking requirements in lower-density residential zoning districts to increase opportunities for additional housing supply.

In theory, the NYC Zoning Resolution allows for housing development across a wide range of densities and building types. In practice, however, zoning often restricts new development in lower-density neighborhoods to single-family homes. In R1 and R2 districts, only one dwelling unit is allowed per lot. In R3, R4, and R5 zoning districts bulk regulations (such as controls on FAR, lot coverage, and open space) and parking requirements often serve to discourage or prevent the creation of two-family and, in some cases, multifamily homes that are technically allowed. These obstacles limit opportunities for new housing through both new construction and conversions of existing single-family homes. In districts that allow for two-family dwellings, it can even be impossible for a single-family home that was originally built as two attached units to be converted back into its original form.

DCP should conduct a comprehensive analysis of the issues in zoning that are currently restricting opportunities for additional housing supply in lower-density residential districts. Those findings should then be leveraged to inform zoning changes that will create more opportunities for new supply and increase flexibility for a wider range of building types. These changes help encourage the creation of two-family and multifamily homes in neighborhoods that are already designed to accommodate them.

2.3 Allow conversions and enlargements in R3-R5 zoning districts without requiring additional parking.

As part of efforts to increase opportunities for additional housing supply in low-density areas, the city should allow for conversions and enlargements in R3 through R5 districts without requiring additional parking. Currently, one additional parking space is required for every new dwelling unit that is created in R3, R4, and R5 districts. This rule applies to new construction, conversions, and enlargements alike, and does not account for parking that already exists. For example, even if a single-family home already has two parking spaces, the creation of a third parking space would still be required to convert the home to a two-family dwelling. Exempting conversions and enlargements in R3, R4, and R5 districts from requirements for additional parking would be one way to create more flexibility and options for homeowners and renters in low-density neighborhoods.

Basement apartments are one type of secondary, or accessory, dwelling unit that already serve as a crucial supplement to New York City's housing stock. Basement apartment conversions are uniquely advantageous for many reasons. They create new housing supply without the cost of acquiring land and without altering the size or shape of existing buildings. Basement apartments inherently rent for less than comparable, above-grade units, increasing the supply of deeply affordable rental housing. In New York City, basement apartments provide housing options for multi-generational households, recent immigrants, and other groups that are sorely underserved in the traditional housing market.⁴⁹

Unfortunately, the process for bringing basement apartments into safe and legal use is rife with financial and regulatory barriers that make conversions difficult, expensive, and often impossible for homeowners. As a result, most of the city's basement apartments exist within the informal housing market. These arrangements jeopardize the safety and security of homeowners and occupants, depriving both parties of leasehold rights and creating the potential for unsafe living conditions.⁵⁰

CHPC is one of many housing stakeholders and advocates that have spent years calling for a streamlined pathway for basement apartment conversions. Recent tragedy in the wake of Hurricane Ida has made the need for these changes clearer and more urgent than ever. Of the 13 New Yorkers who lost their lives to Hurricane Ida, at least 11 lived in illegal basement units.⁵¹ Our building and construction codes are intended to keep New Yorkers healthy and safe. As long as those protections exclude basement apartments, tens of thousands of residents already living in them will remain at disproportionate risk.

(Below) Single-family homes in an R3 district of Staten Island with at least two cars are parked at each property. An additional parking spot would be required to add an accessory dwelling unit (ADU) at any of the properties. Photo credit: Google Maps



2.4 Pass state legislation and take further action where needed to implement CHPC’s recommendations for basement and cellar conversions.

Regulatory innovation, even more important in a time of limited financial resources, could enable the creation of safe, legal basement and cellar apartments by reducing the cost and complexity of the conversion process. In December 2020, CHPC released an issue brief describing key policy changes to address some of the most challenging regulatory barriers that homeowners confront when undertaking a conversion. Two of those changes have since been achieved for two-family homes with the passage of NYC Intro 2261-2021. Several other recommendations would be addressed by passage of state-level ADU enabling legislation (see Recommendation 2.1), which is expected to be taken up in a future State legislative session.

CHPC urges the city to ensure the passage of state ADU legislation. This will require clear and full-throated support by the mayoral administration and state officials from the New York City delegation. Though legislative action by the state would offer the most robust ADU program and expedite local law change, the city has the authority to make significant progress on its own. Parking, FAR, density, cellar occupancy, and bureaucratic requirements and process costs are just a few important areas of reform where the city can act unilaterally. CHPC recommends that the city couple support for the state bill with parallel municipal action to achieve all the reforms described in CHPC’s 2020 policy brief.⁵²

(Below) A rally in support of New York State legislation that would create an amnesty program for basement apartments in NYC. The bill, championed here by the Base Campaign, was sponsored by State Senator Kavanagh and Assembly Member Epstein. Photo credit: NYC Base Campaign via Twitter



CHPC Recommendation	NYS Legislation (A4854-A/ S4547-A)	NYC Intro 2261-2021*	Further Action Needed
Allow cellar occupancy	X		
Create a DOB point of contact			X
Permit 7'-0" ceiling height in basement and cellar units	X	X	
Issue a partial certificate of occupancy			X
Regulate glazed area contributing to natural light requirements in aggregate rather than by window		X	
Waive parking requirements for subgrade units	X		
Exclude cellars from FAR when converted into a dwelling unit	X		
Consider a two-family home with a subgrade unit as a private dwelling instead of a multiple dwelling	X		
Exempt new multiple dwellings from adequate adjacent space requirement	X		
Abate property taxes to offset tax increase due to conversion			X
Expand non-metallic piping options for sprinkler systems			X
Embrace water mist sprinkler systems for residential applications			X
Create an amnesty program for work that had previously been done on a subgrade unit without a permit			X

*Int 2261-2021 adopted the recommendation for two-family dwellings. Action still required for three- and four-family dwellings.

3

UPDATE REGULATIONS TO REFLECT MODERN-DAY SUSTAINABILITY GOALS.

IN BRIEF

New York City must address its housing crisis to keep communities safe during disasters that will become more frequent and severe in the years ahead. In particular, occupants of illegal and substandard housing are more vulnerable to the impacts of extreme weather and climate change. Land use and development regulations must be leveraged to create a safer and more sustainable city as our futures are increasingly defined by the impacts of climate change.

RECOMMENDATIONS:

- 3.1 Allow up to 100 percent solar panel coverage on roofs.
- 3.2 Eliminate parking minimums for all residential development in the Transit Zone.
- 3.3 Incentivize the removal or replacement of paved surfaces with permeable alternatives.

Climate change is a crisis that we have known for many decades. The immediacy of its dangers and need for radical and wide-ranging solutions have become clear to New Yorkers as the city grapples with alarming heatwaves, deadly flooding, and increasingly frequent and severe storms. COVID has made the dangers of climate change more acute by forcing many vulnerable residents to choose between unacceptable options—risk exposure to a deadly virus or shelter in a stiflingly hot apartment, or within the confines of an illegal basement unit at risk of flooding, or on the street exposed to extreme weather. Reforming the city’s regulations that govern the built environment is fundamental to protecting New Yorkers from climate-related disasters and reducing greenhouse gas emissions (GHG) driving climate change.

Residential buildings are the biggest contributor to the city’s operational greenhouse gas emissions (32%), more than transportation (31%), commercial buildings (26%), and other sources.⁵³ This is unsurprising given that over 80% of New York City’s housing stock was built before the state or city adopted an energy code.⁵⁴ Like the building stock, the bulk of New York’s regulations date back to an era where climate change was a distant consideration. In recent years, New York City has passed ambitious legislation mandating significant reductions in GHG building emissions, achieved primarily through envelope and mechanical system upgrades, yet has only modestly updated zoning, rules of the Landmarks Preservation Commission, and other regulatory frameworks that intersect with the built environment to mitigate climate change.

Parking is among the regulatory issues that city must confront to address both the climate and housing affordability crises. Parking requirements were comprehensively written into zoning in 1961, following a planning report that had recommended that city adapt to an era in which the automobile

had become “one of the most important influences on the character of residential neighborhoods.” The report’s authors also characterized New York City as one of the nation’s emerging “automobile cities” alongside places like Detroit.⁵⁵ By 1982, concern for urban air quality catalyzed a meaningful reduction in the parking requirements—a change to parking policy on a scale that we have not seen since—by eliminating parking minimums and capping allowable parking for residential development in the Manhattan Core.⁵⁶ Today, road vehicles account for 95% of the city’s transportation-related GHG emissions, and though NYC has committed to historic emissions reductions, most of the city’s land zoned for residential use is still subject to parking requirements stemming from the age of the automobile city.⁵⁷

Parking Reforms & Mode Choice in the Manhattan Core⁵⁶

In 1982, minimum parking requirements for new residential development in the Manhattan Core were replaced with parking allowances, or limits on the maximum amount of parking that can be built. These changes have supported a shift in the travel modes chosen by people entering the Manhattan Core.

On a typical fall business day in 1982, one in three people entering the Manhattan Central Business District (CBD) traveled there by car, while the other two arrived via public transit. On a similar day in 2009, only one in four people drove into the CBD, while the remaining three took public transit. Between 1982 and 2009, the number of people driving into the Manhattan CBD on a typical fall business day decreased by 118,000, even as the overall number of people entering the CBD increased by 364,000.

Source: NYC Department of City Planning (2011). Manhattan Core Public Parking Study.

Zoning and the Landmarks Preservation Commission also govern what can be visible on a residential roof, including important sustainability measures like solar panels. Maximizing renewable energy generation is critically important to New York City’s climate goals and the city’s regulations must be amended to meet the importance and urgency of the moment.

Recommendations:

3.1 Allow up to 100 percent solar panel coverage on roofs in appropriate areas.

The City of New York has a goal of reducing city-wide GHG emissions by 80% (from 2005 levels) by 2050. However, the city is trailing far behind when it comes to solar panel installation, despite the enormous benefit of solar energy in reducing GHG emissions. The city currently ranks thirty-seventh in the nation among cities on a per capita basis.⁵⁸ To reach the city’s urgent climate goals, the city must remove zoning barriers for producing solar energy.

Several measures have gone into effect over the last decade that expand solar technology. Perhaps the most influential regulatory measure was Zone Green, which passed in 2012, allowing solar energy systems up to four feet in height as a permitted obstruction on a building roof.⁵⁹ In higher density residential districts from R6 to R10, taller solar energy systems up to 15 feet high were permitted provided that the systems covered no more than 25% of the lot coverage of the roof. These and other climate measures helped the city quadruple its solar capacity between 2013 and 2016, from 25 megawatts (MW) to 92 MW in 2016.⁶⁰ Despite the success of the zoning reforms and the ever increasing urgency of the climate crisis, current regulations continue to limit solar panel coverage on roofs.

Permitting full roof coverage for solar panels citywide is expected to increase the wattage generated by 290%.⁶¹ As noted in “Zoning for Solar,” a policy brief jointly issued by CHPC and NYSFAFH, boosting generation capacity is critical as the city moves to electrify its buildings. Importantly, the addition of local capacity diminishes the load on transmission lines that connect the city to power stations upstate.⁶² To maximize power generation, the city should allow 100% solar panel roof coverage in appropriate areas. Further, by increasing the permitted height of trellises and canopies supporting solar energy systems from 15 feet to 20 feet, solar panels could more easily clear competing roof uses like mechanical and plumbing equipment, fire access, and other obstructions typical on large developments.

CHPC recommends that the city amend the Zoning Resolution to allow for 20-foot solar trellises on all multifamily developments and 100% roof coverage to the extent possible. These zoning reforms would critically contribute to meeting the city’s ambitious climate goals.

3.2 Eliminate parking minimums for all residential development in the Transit Zone.

A quarter of NYC’s GHG emissions stem from road vehicles, yet the city’s decades-old parking minimums prescribed in the Zoning Resolution incentivize unsustainable transit choices and contribute to the housing supply shortage and affordability crisis.⁶³ Paved parking areas increase the volume of runoff, contributing to the pollution of the waterbodies and the demand on the city’s



(Above) Neighbors in Park Slope organized a group solar purchasing project with Brooklyn SolarWorks. The solar installations depicted are coordinated around skylights and mechanical equipment and cover only a portion of the residential roofs. On the far right, a raised solar trellis allows access across the whole roof. Photo credit: Misbrenner, Kelsey, et al. "Solar and the City: Creative Solutions Can Grow Solar in NYC." Solar Power World, 11 Feb. 2021.

stormwater infrastructure. Residential parking also contributes to localized flooding of subgrade spaces, which can have devastating consequences during an extreme rain event.

Research suggests that, given the choice, developers would build less off-street parking for new housing than is currently required.⁶⁴ Forcing developers to build more parking can reduce the amount of space available for housing, resulting in the creation of fewer units. It also increases the overall cost of development, further stifling supply and diminishing affordability for all residents, regardless of their parking needs.⁶⁵

The cost to construct parking varies considerably from site to site, but it is enough to have a significant impact on housing affordability. This is especially true in denser parts of the city, where sites often lack sufficient space to accommodate the required amount of parking in a surface lot, obligating developers to build structured parking

facilities. Structured parking can cost as much as \$30,000 to \$50,000 per space to construct.⁶⁶ To recoup these expenses, households must pay an additional \$200-\$300 in rent per month, an increase that could easily make units unaffordable to low- and moderate-income residents.⁶⁷

Fortunately, the 2016 ZQA text amendment produced analysis and initial reforms that provide a useful foundation for a strategic, proactive approach to changes in parking minimums. ZQA established the Transit Zone, an area of the city generally defined as being within one-half mile of a subway station, except for certain outermost parts of the Bronx, Brooklyn, and Queens.⁶⁸ The text amendment also eliminated off-street parking requirements for new affordable housing and new affordable senior housing within the designated Transit Zone. These changes were based on data and analysis indicating disproportionately low rates of vehicle ownership among senior New Yorkers and residents of affordable housing.⁶⁹

Building upon the foundation laid by ZQA, CHPC recommends that the City eliminate off-street parking requirements for all residential development, including market-rate housing, within the Transit Zone. This change would promote affordability and create more opportunities for badly needed housing supply in areas with strong access to public transit. NYC has already eliminated parking minimums in large swaths of Manhattan, Downtown Brooklyn, and Long Island City. The Transit Zone can be used to expand those changes to more parts of the city without diminishing mobility for communities that have no choice but to rely on cars.

Zoning changes at this scale always require a significant political lift, yet there is already a growing foundation of support to build from. Nine members of the NYC Council and Brooklyn Borough President Antonio Reynoso recently called upon the City to end parking minimums in transit-rich areas through a comprehensive text amendment. In the meantime, the group urged DCP and housing developers to add a Special Permit to waive parking requirements to all residential projects in transit-rich areas that are subject to rezoning.

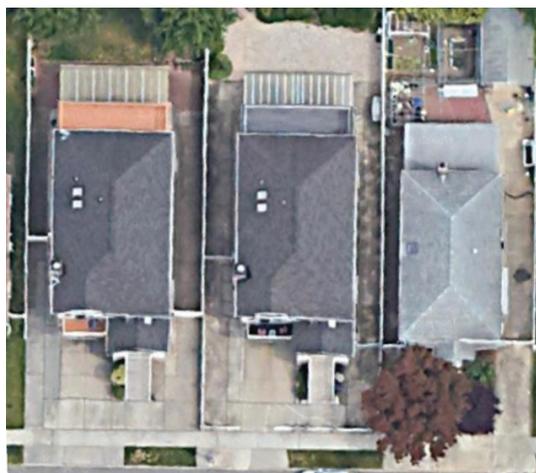
3.3 Incentivize the removal of paved surfaces or replacement with permeable alternatives.

Climate change has made hurricanes and extreme rain events increasingly common. Storms of a severity that had the probability of occurring once every 100 years are now likely to occur almost twice as often.⁷⁰ Sea level rise makes New York City's 520 miles of coastline vulnerable to flooding and extensive storm damage. Hurricane Sandy, which battered the city's shores in October of 2012, resulted in the deaths of 44 city residents and damaged 69,000 residential units largely in waterfront communities.⁷¹ More recently, Hurricane Ida claimed the lives of 13 New Yorkers, 11

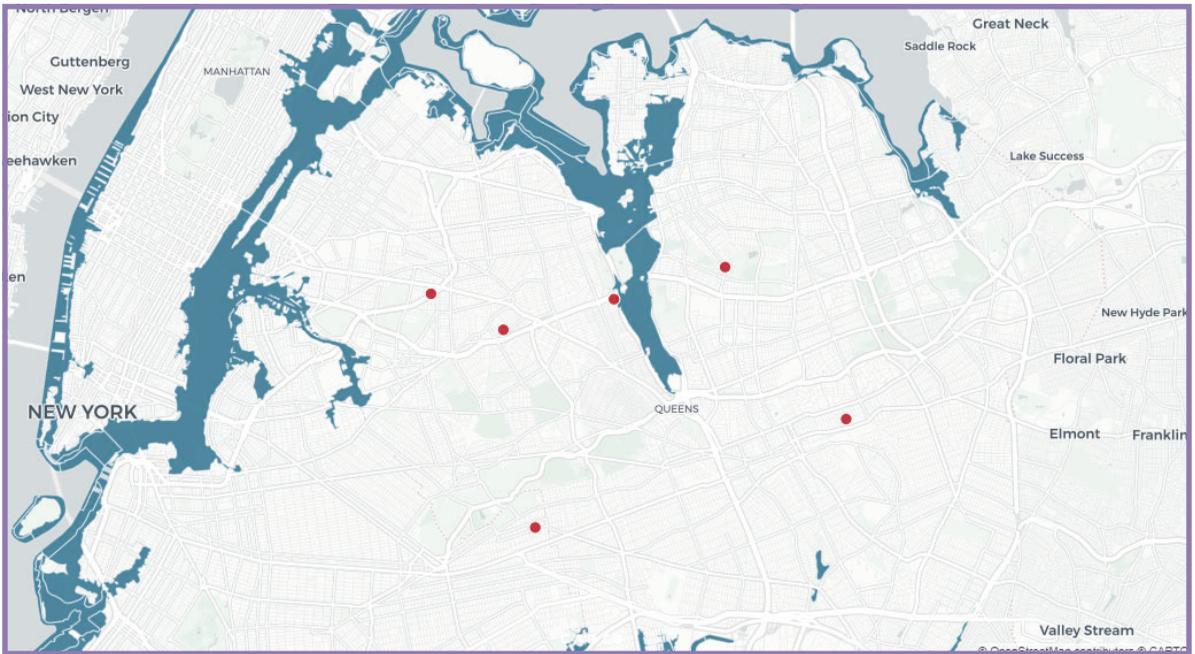
of whom lived in unregulated cellar apartments. Unlike Sandy, Ida's damage was concentrated inland—far from the coast and codified floodplains. Ida's deadly flooding was the result of heavy rains that quickly overwhelmed the ground and drainage's ability to absorb the stormwater.

(Opposite) Locations of NYC Hurricane Ida fatalities. Notably all but one fall outside of the coastal flood zones shown here in blue. Map created by CHPC using FEMA coastal flood hazard zones.

(Below) Aerial view of three lots in a NYC neighborhood hard hit by Ida. Close to 100% of these lots are covered by impervious surfaces. At least one property housed an informal basement apartment. Credit: Google Maps



Urban areas are vulnerable to flash flooding during heavy rains because buildings, streets, sidewalks, and parking areas prevent absorption of rain into the ground, increasing runoff 2 to 6 times above what would occur on undeveloped terrain.⁷² Impervious surfaces cover more than 70% of New York City, creating runoff that can easily overwhelm the city's outdated combined sewer infrastructure and dangerously collect in low-lying areas like basements and subway stations.⁷³ Despite the devastating consequences of flash flooding, the city has not offered a comprehensive plan to address stormwater across more than 115 square miles (about 40% of the city's land) of New York City's privately owned properties under 50,000 sf.⁷⁴



Laudably, the city has made important advances in its storm modeling and continues to invest in sewer improvements and green public infrastructure like rain gardens, green roofs, cisterns, bioswales, and subgrade detention systems to manage stormwater. A few resiliency programs are available to private property owners, but eligibility criteria exclude around 80% of private residential property.⁷⁵ Little has been done to incentivize stormwater management on smaller properties, particularly in residential areas where major rain events have had the most devastating consequences. In fact, the city still prioritizes off-street accessory parking in these neighborhoods which adds considerably to the volume of stormwater runoff.

While there are several on-site measures that property owners could employ to manage stormwater, removal of impervious surfaces or replacement with permeable alternatives is a simple and effective way to help mitigate inland flooding and the heat island effect. The Zoning Resolution currently allows permeable paving for off-street parking where the Buildings Commissioner

“determines that such materials are appropriate.”⁷⁶ Rather than merely allowing permeable pavement in certain circumstances, permeable surfacing options like porous asphalt, pervious concrete, porous pavers, and grid pavement should be allowed as-of-right or even required.

Updated zoning and design guidelines should be coupled with incentive programs that encourage participation. Cities across the country including Palo Alto, San Diego, Milwaukee, and Philadelphia are providing technical assistance, rebates, grants, and other credits to residential property owners who reduce impervious area on their lots.⁷⁷ To maximize impact of an incentive program, New York City should engage with its community-based organizations, boards, and City Council representatives to increase program awareness and solicit homeowner participation. A pavement replacement program is an important element of a resiliency plan, the impact of which depends on neighbors’ collective action.

4

ENABLE A MORE DIVERSE HOUSING STOCK TO COMBAT OVERCROWDING AND PROMOTE AFFORDABILITY.

IN BRIEF

There is a significant mismatch between New York City's housing stock and its housing needs, which contributes to decreased affordability, overcrowding, informal arrangements, and other negative impacts on quality of life. The city's regulatory framework helps perpetuate these issues by discouraging housing typologies that are better suited to household configurations outside of the nuclear family including single adults, multi-generational families, and other household types.

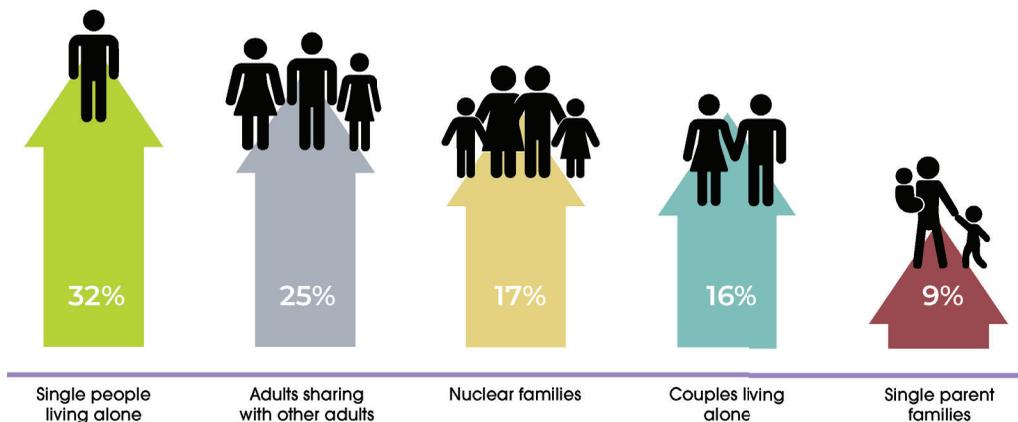
RECOMMENDATIONS:

- 4.1 Eliminate the density factor in R6-R10 zoning districts inside the Transit Zone and Manhattan Core.
- 4.2 Create a regulatory framework for the development and oversight of safe, well-managed single-room occupancy units (SROs).

Although only 17% of New York City households consist of a married couple and their children, virtually all of the city’s housing stock was designed with the “Leave it to Beaver” archetype of a nuclear-family household in mind.⁷⁸ As a result, there is a significant mismatch between the housing stock and housing needs, which contributes to decreased affordability, overcrowded living conditions, and other quality of life issues. The city’s regulatory framework perpetuates these issues by encouraging housing for nuclear families and prohibiting housing typologies that are better suited to serve single adults, multi-generational families, and other household types.

Meanwhile, as more and more two-, three-, and four-bedroom apartments have been rented to groups of single adults, the prices of those units have also increased, beyond what most families with children can afford.

(Below) CHPC’s “Making Room” analysis of NYC Housing and Vacancy Survey data shows how the city’s population is grouping itself into households. Single people living alone, and adults sharing their homes with other adults, account for most households in New York City. Watson, S. “Making Room.” Citizens Housing and Planning Council (CHPC). 2018.



The inflexible, one-size-fits-all approach of current housing regulations negatively impacts New Yorkers in all household types. Zoning disincentivizes and prevents the creation of smaller units, exacerbating the shortage of housing for single adults, who comprise 32% of households citywide.⁷⁹ With the demand for studios and one-bedrooms having far outstripped supply, the prices of those units have risen to levels that are unaffordable for most single people, driving many to combine incomes in shared apartments with roommates. Yet most of these shared arrangements are non-compliant with zoning and building codes due to their outdated assumptions about how New Yorkers live, making it harder for occupants to exercise leasehold rights and disrupting access to tenant protections.

Unable to compete with households comprised of multiple breadwinners, families have lost access to many of the larger apartments that were supposedly built for them.

The shortage of options for non-nuclear family households, and in particular single adults, has created a domino effect that hurts single New Yorkers and families alike.

Recommendations:

4.1 Eliminate the density factor in R6-R10 zoning districts inside the Transit Zone and Manhattan Core.

The dwelling factor in zoning (colloquially referred to as the “density factor”) is one of the greatest impediments to housing options for single adults. Each zoning district has a specified density factor that is used to determine the maximum number of units permitted in a building or on a lot (ZR §23-20). Because the calculation is made relative to residential floor area, it impacts not just the number of units in a building, but also unit size and type. In effect, the density factor favors larger units over smaller ones, discouraging the creation of housing options for single adults.

While density controls are necessary to ensure good living conditions, they can also hinder the ability to provide the types of housing that are needed. Prior to ZQA, Quality Housing regulations required residential units to contain an area of at least 400 square feet, a much larger minimum unit size than is required by most other cities in the U.S.⁸⁰ Policymakers recognized that this rule was interfering with the provision of smaller units and preventing buildings from serving a diverse range of household types.⁸¹ As a result, it was eliminated from zoning as part of ZQA.⁸²

ZQA also exempted AIRS from the dwelling unit factor. Because affordable senior housing is typically comprised of smaller units, the dwelling unit factor had often acted as an artificial limit on the ability to construct the full amount of floor area allowed in those buildings.⁸³ While this issue no longer affects

affordable senior housing, it persists for all other types of residential development. Developers are forced to provide more large units and fewer small ones in order to build out the full amount of allowable floor area, while also complying with density controls. The Building Code, Housing Maintenance Code, and Multiple Dwelling Law include minimum room sizes that limit density.⁸⁴ For example, with the requirement for one habitable room of at least 150 square feet, a small studio with a kitchen and bathroom is a minimum of around 300 square feet.

CHPC recommends eliminating the dwelling unit factor in R6 through R10 zoning districts inside the Transit Zone. This change would allow for a greater variety of unit sizes in centrally located neighborhoods and enable the creation of more studio and one-bedroom apartments in areas like Williamsburg, Astoria, Chelsea, and Harlem, where residents benefit from good access to public transit, proximity to job centers, and mix of uses within walking distance.

R6 through R10 districts already allow for more units per floor area than lower-density residential districts. Even modest increases in the maximum number of units allowed could address the shortage of housing for single adults without triggering significant increases in population density. This is especially true given that smaller units tend to house fewer people per square foot. A 300-square foot studio apartment is likely to house one or two people, while a 600-square foot two-bedroom apartment may house two, three, or even four people.

SIDEBAR: A BRIEF HISTORY OF SROs in NYC

Beginning in 1955, the City implemented a slew of policy changes directly aimed at eliminating SROs from the housing stock. These policies were driven in part by legitimate concerns around the health and safety of living conditions in SRO units. They were also informed, however, by social prejudices and class biases that helped shift attention away from the root causes of health and safety issues (e.g., illegal subdivision, landlord negligence, lack of affordable housing, and low wages), and towards the so-called moral and cultural failings of SRO tenants – a group that, by the end of the 1940s, included not just working-class single adults, but also increasing numbers of immigrant families.⁸⁵

Policy reforms to eliminate SROs included:

- A ban on the creation of new rooming units, as SROs are defined in the City Administrative Code,⁸⁶
- A rule prohibiting children under 16 from living in SROs, thereby excluding families from SRO occupation,⁸⁷
- A 1967 mandate that all SROs in tenements be converted to traditional apartments within the next ten years,⁸⁸
- Amendments to the Building Code and Zoning Resolution to discourage the creation of SROs,⁸⁹
- Tax incentives for landlords who converted SROs into traditional, higher-rent apartments.⁹⁰

More than two decades after launching a war on SROs, the city began to realize that it had made a mistake. Eliminating SROs was intended to force low-income families, immigrants, and other vulnerable New Yorkers to assimilate to the archetypal middle-class American lifestyle.⁹¹ What it achieved instead was stripping those communities of what had long been their sole source of affordable housing. By the early 1980s, 75% of existing SROs had been destroyed, and homelessness was growing rapidly as a result.⁹² One 1980 survey of single men entering shelters found that half of respondents had previously lived in SROs.⁹³

In a radical change of course, the city ended tax incentives for SRO conversions in the early 1980s. It also issued a new moratorium on demolitions and alterations of the 52,000 SRO units that remained.⁹⁴ The damage, however, had largely been done. The moratorium was overturned by the Supreme Court in 1989, at which point market forces were driving demolitions and conversions without the need for government incentive.⁹⁵

A BRIEF HISTORY OF SROs in NYC CONT.

The 1989 ruling marked a critical juncture: the fate of the last SROs was no longer in government hands. Policymakers publicly lamented this loss and continued making attempts to rebuild and preserve existing units. In 1990, the City pledged to build at least 5,000 new residential hotel rooms for single adults.⁹⁶ By 1993, it had issued \$300 million in loans to non-profit organizations interested in restoring and operating residential hotels.⁹⁷ In 1996, HPD commissioned a special study to explore the history of SRO housing and its implications for the small number of units that remained.⁹⁸ Yet none of these efforts solved for the regulatory barriers that had been put into place specifically to prevent the creation of SROs.

More recently, the city has advanced pilot projects to explore alternative housing typologies for single adults. In 2012, Mayor Bloomberg launched adaptNYC to examine the potential for efficiency units that are complimented by extra communal space. The initiative resulted in the construction of “Carmel Place,” a building of 260-360 square-foot “micro-units” located on East 27th Street.⁹⁹ In 2019, the de Blasio administration selected three winning proposals for ShareNYC, a pilot program to develop “shared housing” typologies similar to SROs.¹⁰⁰

While these efforts are rooted in an understanding of the need for deeply affordable housing for single adults, they have not been followed up with the reforms needed to enable the creation of more projects of a similar nature.

(Right) An excerpt from a 1964 New York Times article describing how SROs, or “establishments of unsavory character,” are impacting the neighborhood and family life. Credit: Huxtable, Ada Louise. “600 Acres of Trouble; Morningside, City’s Top Renewal Area, Is a Crucible of Crime and Creativity.” The New York Times. Sept. 30, 1964.

600 Acres of Trouble

*Morningside, City’s Top Renewal Area,
Is a Crucible of Crime and Creativity*

The highest-priority item, which the city plans to attack in the first phase of its program, is housing. Substandard conditions have come about through congestion, age and that real-estate phenomenon known as Single Room Occupancy, which generally denotes the highly profitable breakup of old apartments by slum landlords into one-room units.

Family Life Affected

It also invites the breakdown of family life and a pattern of transient occupancy with a large percentage of the socially incompetent or undesirable.

Single Room Occupancy, or S.R.O., has, in addition, become a euphemism for assorted establishments of unsavory character or purpose. Morningside Heights, Inc., a nonprofit organization that represents the institutions in the area, spends \$100,000 a year for private street patrols.

Crowding and crime have wrought a change in the community’s social fabric, which was once predominantly white, middle income and middle class. It is now a mixed, noncohesive group with an influx of what welfare spokesmen call the “socially weak,” consisting of the poorer and less privileged ele-

4.2 Create a regulatory framework for the development and oversight of safe, well-managed single-room occupancy units (SROs).

Single-room occupancy housing (SROs) is a type of housing in which individuals rent out private quarters for living and sleeping but share bathroom and kitchen facilities with other building occupants. Up until the mid-20th century, SROs were a core component of New York City's housing stock. Back then, SRO housing came in all different forms: residential hotels, dorm-style lodging houses,¹⁰¹ boarding houses operated out of single-family homes, and tenement apartment buildings, to name a few. In addition to being uniquely low-cost, SROs were often available to rent on a monthly, weekly, or even nightly basis, making them a key source of flexible and affordable housing for working-class singles, recent immigrants, and other groups.

Despite their many benefits, the city's housing policy has ensured that relatively few SROs have been created or preserved since the mid-1950s. Most of the units that previously existed have been demolished or converted to other uses as the result of federal urban renewal programs, local tax abatements, and economic pressures that incentivized replacement of SROs with market-rate real estate.¹⁰² In 1950, New York was home to at least 200,000 SROs that accounted for more than 10% of the overall housing stock.¹⁰³ While exact data is lacking, the Furman Center estimates that only around 30,000 of those units remained in 2014.¹⁰⁴

SROs were deliberately expunged as the result of policy decisions that, in hindsight, were clearly misguided. The detrimental impacts of those decisions became increasingly apparent as SROs disappeared. While none of New York City's laws explicitly prohibit the creation of SROs, requirements

imposed by zoning, the Housing Maintenance Code (HMC), and financing guidelines have effectively banned the units. New York has meanwhile continued to suffer from crises of homelessness, overcrowding, and illegal housing, all of which are driven in part by the lack of affordable housing for single adults. These problems are the result not only of past policy decisions, but of the decades-long failure to reverse them.

While the Zoning Resolution allows for the creation of new rooming units (as SROs are classified), the NYC Housing Maintenance Code severely restricts opportunities for such housing to be built. Under the HMC, new rooming units may exclusively exist as specialized housing that is owned and operated by a non-profit, such as supportive housing for formerly homeless individuals who require on-site supportive services.¹⁰⁵ While supportive housing is essential to the homelessness infrastructure of care, it requires large amounts of public subsidy and is not appropriate to address the broader shortage of affordable housing for single adults who do not require on-site services. Aside from specialized non-profit housing, the HMC only allows for the creation of new rooming units with explicit sign-off from the HPD Commissioner.¹⁰⁶ While this exception has scarcely been utilized, it does provide a pathway for demonstration projects such as the ongoing ShareNYC initiative. Though pilot projects are a useful means to this end, they cannot solve the problem in isolation. There must be a system in place to monitor and evaluate the regulatory conflicts and overlap that will undoubtedly arise. Those findings must then be used to craft measures for broader reform.

Ultimately, CHPC recommends amending the HMC to add a new regulatory category for the development, oversight, and enforcement of a new generation of high-quality shared suites that meet contemporary health and safety standards. The regulations should include requirements for their operation and design following best practices seen in the private, informal market.¹⁰⁷

5

EXPAND OPTIONS FOR THE CONVERSION OF UNDERUTILIZED HOTEL AND OFFICE SPACE.

IN BRIEF

COVID-19 fundamentally changed how New Yorkers use and occupy space. In this change, policymakers saw an opportunity to create permanent affordable and supportive housing in hotel and commercial spaces made fallow by the abrupt drop in demand. Despite the availability of funding, regulatory barriers made it impossible to seize the opportunity to create housing even more urgently needed in a period of crisis.

RECOMMENDATIONS:

- 5.1 Work with the State to allow for the long-term occupancy of hotel rooms without conversion to Class A dwellings.
- 5.2 Liberalize and expand provisions for residential conversions under Article 1, Chapter 5 of the Zoning Resolution.

C OVID-19 transformed fundamental aspects of how New Yorkers use and occupy space. Hundreds of thousands of people began working from home after shelter-in-place mandates were issued in March 2020. Central Business Districts (CBDs) that were previously some of the most bustling areas in the city suddenly turned quiet as office buildings cleared out. With cultural destinations and tourist attractions indefinitely closed, and strict travel restrictions in place, thousands of hotel rooms temporarily or permanently shuttered. Others were used as temporary housing for college students living in dorms, residents of the City’s congregate homeless shelters, and healthcare workers from across the U.S. assisting with crisis response.

Amidst the fallout in demand for hotel and office space and a worsening housing crisis, many government leaders have expressed interest in the potential to convert vacant and distressed hotels and office buildings into housing. Opportunities for conversions are currently limited, however, due to the many regulatory barriers involved. Increasing regulatory flexibility for conversions will help ensure that the built environment can adapt to changing circumstances and needs.

Impacts of COVID-19 on Hotels

New York City hotels have been hit especially hard by the pandemic. Tourism is not expected to return to pre-pandemic levels until at least 2025.¹⁰⁸ Reduced business travel, which is likely here to stay, is also contributing to a slower recovery for hotels in New York City than in many other places across the U.S. Business travel typically drives more overnight hotel visitation than leisure during half the year.¹⁰⁹ Decreased demand is further complicated by the recent and ongoing growth in hotel supply. The number of hotel rooms in New York City has more than doubled over the last 15 years.¹¹⁰ Another 22,000 rooms were in the pipeline in June 2021, representing an additional 13% increase in supply.¹¹¹

Hotels fared far better this past year than during the early stages of the pandemic. In the summer of 2020, only 30% of hotel rooms were occupied citywide, and two-thirds of those were being rented by the City for use as temporary housing.¹¹² By July 2021, 63% of rooms in open hotels, and 50% of rooms overall, were occupied. While these figures are important signs of progress, they remain far behind the average occupancy rate of 90% during the summers of 2018 and 2019.¹¹³

Leisure and hospitality saw higher rates of employment loss from COVID-19 than any other sector in New York State,¹¹⁴ and regaining jobs in the hotel industry is key to an inclusive recovery. At the same time, some hotel closures will be unavoidable. The Hotel Association of New York City projects that up to one in five hotel rooms citywide will permanently close due to COVID-19.¹¹⁵ In some cases, demolition and redevelopment of the site is the most economical option to address vacant and distressed former hotels. Yet under the right circumstances, residential hotel conversions can provide a cheaper and faster pathway to creating more housing supply than new construction.

Potential for Residential Hotel Conversions

Residential hotels were once a key source of affordable housing in New York City. Up until the mid-20th century, hotel rooms were often rented out by the week and month, as well as the night, allowing for short- and long-term stays by guests. Today, our housing policies and codes prohibit occupation of a hotel room for more than 30 days. The city often utilizes hotels as a supplementary source of temporary housing and emergency shelter. However, with a few rare exceptions, hotels must be converted to permanent housing to allow for long-term residential occupation.



(Above) A New Yorker sleeping under the awning of a Westin shuttered by the pandemic. Photo credit: Chang W. Lee for The New York Times.

Residential hotel conversions are often prohibitively difficult and expensive due to the numerous regulatory barriers involved. Converting a building of Class B units in Use Group 5 to Class A dwellings in Use Group 2 triggers a multitude of code restrictions that require costly, invasive procedures to meet. Hotel rooms rarely provide full kitchen facilities, which must be added to comply with requirements for residential apartments.¹¹⁶ The New York City Building Code subjects housing to more stringent accessibility provisions than hotels, and conversions of older hotels may trigger stricter accessibility requirements under the Fair Housing Act). Compliance with these regulations calls for substantial renovations that involve modifying walls, plumbing, hallways, and unit layouts.¹¹⁷ Hotel rooms are smaller than apartments on average, meaning that units may need to be combined and/or enlarged to comply with density restrictions and minimum room sizes.¹¹⁸

Adding kitchens, enlarging units, and other such changes can increase the cost of conversion by millions of dollars, and may reduce the number of apartments that are created, working against housing policy goals.¹¹⁹ Zoning use regulations further limit opportunities for residential hotel conversions. 28% of hotels and 20% of hotel rooms citywide are located in manufacturing districts, where residential uses are not allowed.¹²⁰

Impacts of COVID-19 on Office Demand

Like hotels, commercial real estate has suffered staggering setbacks from COVID-19. Office vacancy rates skyrocketed during the pandemic, causing asking rents and market values to decline. In Manhattan, which is home to nearly 11% of office space in the nation,¹²¹ office vacancy reached an unprecedented 21% in the first quarter of 2022. Vacancy rates in several submarkets were even higher, peaking at around 22%.¹²² Despite improving demand, office vacancy rates continued to creep higher as new supply came on-line, making the total vacant office area in Manhattan hit a historic high of 86 msf.¹²³ However, the future of the market rests largely on work patterns that are still in flux.

Amidst ongoing uncertainty around the future of the virus and newly emerging variants, back-to-the-office plans have been proceeding slower than anticipated. The building securities company Kastle Systems reports that 38% of employees in the New York metro area swiped into the office the first week of May 2022, compared to 43% of workers nationwide.¹²⁴ A recent survey of major Manhattan employers found that only 38% of employees were back at the workplace by mid-April 2022, despite predictions made six months earlier that over three-quarters of employees would have returned, at least part-time, by January 2022. The same survey found that a mere 8% of workers are in the office five days a week.¹²⁵ While it is impossible to predict exactly how work patterns will continue to evolve, many experts expect to see some degree of lasting change. The Federal Reserve Bank of New York estimates that 16% of work in the New York/New Jersey area will be performed remotely after the pandemic is over, double the pre-pandemic amount.¹²⁶

Rather than choosing between remote and in-person work, many companies are adopting a hybrid approach, which could soften impacts on the market in the long term. A survey of large companies in the U.S. by CBRE found that just 9% of employers were expecting to significantly shrink their office portfolios in June, compared to 39% last September. Meanwhile, the share of companies anticipating “modest” reductions in space increased from 45% in September to 72% in June.¹²⁷ While hybrid models require employers to retain some office space, they still create the potential for significant cutbacks. For instance, JPMorgan Chase, the city’s largest private office tenant, put up 800,000 square feet of Manhattan office space for sublease in March 2021.¹²⁸ JPMorgan has since implemented a rotational model for in-person work, projecting that “for every 100 employees, we may need seats for only 60 on average.”¹²⁹

Potential for Office Conversions

Office buildings are typically more difficult and expensive than hotels to convert into housing, as they are not designed for habitation and may lack more of the necessary features. For instance, zoning stipulates that there must be a window within at least 30 feet of any given point in an apartment.¹³⁰ While most hotels already include a window in every room, this requirement can be difficult to meet in office buildings, many of which have large floor plates and windowless interior rooms.¹³¹ FAR restrictions are another common barrier. Older office buildings may be more attractive for conversion relative to newer ones due to lower demand. Yet many commercial properties that were built prior to 1961 include higher FAR than what is allowed in zoning. In some Community Districts, the excess FAR in overbuilt older buildings is allowed to be converted into housing, but that housing is subject to minimum unit size requirements that can make the conversion economically infeasible.¹³²

Given the uncertainty around post-pandemic work patterns and their impacts on office demand, policy changes to ease or encourage conversions should be carefully weighed. The office sector is a vital source of municipal tax revenue, raising more in property taxes than any other property type, including single-family homes, multifamily rental buildings, condos and co-ops, and retail properties.¹³³ Preempting conversions when the future of commercial real estate is still unclear could have negative consequences down the line. Some property owners have suggested that easier and less drastic changes, such as bringing Class B office space up to Class A, would be a better focus for post-pandemic recovery efforts.¹³⁴

At the same time, if New York does see a substantial and permanent loss of demand for office space, office conversions could be an important tool for recovery. Office workers are the lifeblood of thousands of small businesses and jobs. The absence of workers throughout this pandemic has already devastated local retail in neighborhoods like Midtown Manhattan. In early October, 30% of storefronts in Midtown East and around Grand Central were vacant, while retail vacancy in the area typically ranges from 10% to 15%.¹³⁵ Depending on how work patterns continue to progress, offering more regulatory flexibility around office conversions could help historically office-dependent neighborhoods bounce back from this crisis.

Recent Legislative Proposals

Since the onset of COVID-19, several legislative proposals have emerged to expand opportunities for residential office and hotel conversions, either through the allocation of government funds, the provision of regulatory relief, or a mix of both.

2022 NY State Executive Budget Proposal

Early drafts of the 2022 New York State budget included a bill that would have temporarily exempted residential conversions of certain commercial buildings from local zoning laws, as long as a portion of the new housing created was affordable to low-income households.¹³⁶

Senate Bill S4937/Assembly Bill A6262

Legislation introduced in February 2021 sought to amend Section 301 of the Multiple Dwelling Law (MDL) to allow for the permanent occupancy of Class B hotel rooms without conversion to Class A dwellings or residential Use Group 2. Hotel rooms operated as permanent housing would be reserved for low- and moderate-income households.¹³⁷

Housing Our Neighbors with Dignity Act (HONDA)

The Housing Our Neighbors with Dignity Act (HONDA) set aside \$100 million for New York State to fund the acquisition and conversion of distressed hotels and commercial properties to affordable housing by non-profit organizations.¹³⁸

HONDA was the only legislative proposal for office and hotel conversions that passed in 2021. Although regulatory changes similar to those proposed in S4937/A6262 were also included in earlier drafts of the HONDA bill, this language was omitted from the act before it passed. The final version of HONDA did not provide any regulatory relief. Conversely, the bill includes additional requirements for kitchen and bathroom facilities that exceed those mandated by the City's construction codes.

SIDEBAR: OFFICE CONVERSIONS & THE REVITALIZATION OF LOWER MANHATTAN

Previous expansions of ZR-1500 helped revitalize Lower Manhattan after a decade of economic decline, followed by 9/11. In the early 1990s, in response to job loss, increased vacancies, and declining property values downtown, the City enacted a Plan for the Revitalization of Lower Manhattan by encouraging the conversion of underutilized office buildings in the area to housing.¹³⁹ In 1995, ZR-1500 was modified to provide additional regulatory relief for conversions of pre-1961 buildings in commercial districts with an R10 equivalent in Lower Manhattan.¹⁴⁰ A second text amendment in 1996 expanded those provisions to include properties in the same zoning districts and area built before 1977.¹⁴¹

A few years later, the 9/11 attacks destroyed nearly 15 million square feet of office space. Many New Yorkers feared that downtown Manhattan would never be the same. Conversely, the area has since transformed into a thriving, mixed-use neighborhood that has retained its significance as a commercial and financial hub but is also home to twice as many residents as in 2001. This evolution was made possible in part by the earlier changes to facilitate office conversions. Around 19.7 million square feet of office space has been converted into housing in Downtown Manhattan since 1995, with 76% of those conversions occurring after 9/11.¹⁴²

Recommendations:

5.1 Work with the State to allow for the long-term occupancy of hotel rooms without conversion to Class A dwellings.

Since the drafting of this report, the New York State legislature has passed bill S4937/A6262. It was signed into law by Governor Hochul on June 7, 2021, codifying the hotel conversion reforms championed by CHPC and described here in recommendation 5.1.

While HONDA will fund and facilitate a limited number of residential conversions, regulatory reform is needed to enable conversions on a meaningful scale. Non-profit housing providers estimate that HONDA only has the potential to create a few thousand units.¹⁴³ To ensure that additional opportunities for desperately needed affordable housing are not missed, policymakers must find ways to make the conversion process easier, more efficient, and more cost-effective.

CHPC recommends that the city work with State lawmakers to implement the regulatory reforms included in previous iterations of HONDA. This would involve amending the MDL to allow City agencies and non-profit affordable housing providers to operate Class B hotel rooms as permanent affordable housing, without the need for conversion to Class A dwellings or residential Use Group 2.

A new Certificate of Occupancy would not be required, and many of the costly, invasive renovations that are often needed to convert a hotel to housing could be avoided. All permanently occupied units would be reserved for low-income households and subject to rent-stabilization laws and a regulatory agreement with HPD. To ensure that the housing is safe, high-quality, and well-run, the operation of hotels as permanent affordable housing would be subject to HPD approval.

These recommendations had largely been included in the legislation drafted in conjunction with Governor Hochul’s first executive budget. The proposed “Creating Housing Opportunities through Build Conversion Act” would allow for the conversion of Class B hotels into permanent housing if they are located either inside or within 800 feet of a residential zone.¹⁴⁴ Notably, the conversions would not necessitate a new Certificate of Occupancy, which CHPC believes is central to any hotel conversion policy and would require sign-off by a collective bargaining representative if any current hotel workers belong to a union. All dwelling units created under the program would be subject to a regulatory agreement and rent stabilization, although specific affordability levels were not prescribed within the bill. Ultimately, the legislature dropped the proposal from the enacted budget legislative package.¹⁴⁵

The proposed changes would solve for many of the regulatory barriers that currently exist and provide a faster, cheaper way for City agencies and non-profit housing providers to leverage vacant hotels to meet affordable and supportive housing needs. A similar pathway for hotel conversions to supportive housing partially exists, since supportive housing is classified in the Zoning Resolution as a community facility, rather than a residential use. Supportive housing projects may include shared bathroom and kitchen facilities in lieu of individual ones, are exempt from the dwelling unit factor and, in some zoning districts, from parking requirements. However, supportive housing units are still required to include fully adaptable bathrooms and one habitable room of at least 150 square feet.

Prior drafts of HONDA also included provisions to override local zoning and make hotels within 800 feet of a residential zoning district eligible for occupancy as permanent housing, regardless of the underlying zoning on the site. This element of reform was met with concern by some policymakers, as it would allow for the creation of permanent housing in manufacturing districts. CHPC believes that the reforms discussed in this section could have a meaningful impact even without zoning overrides, and that these steps should be pursued first and foremost.



5.2 Liberalize and expand provisions for residential conversions under Article 1, Chapter 5 of the Zoning Resolution.

Article I, Chapter 5 of the Zoning Resolution (ZR 15-00) provides an easier pathway for the residential conversion of older commercial buildings in some parts of the city. ZR 15-00 was added to zoning in 1981 in response to increasing numbers of older loft buildings being illegally converted into housing. Many of buildings predated the 1961 Zoning Resolution and could not realistically be modified to meet zoning requirements that had been designed for new construction. Recognizing the need for a pathway to lawful conversion that would allow for government oversight, the city enacted a special set of standards in ZR 15-00 to govern residential conversions of commercial buildings in certain Community Districts that were built prior to 1961.¹⁴⁶

While ZR 15-00 provides important regulatory relief for residential conversions, its application is restricted to certain buildings, locations, and types of housing. In some cases, buildings that can benefit from ZR 15-00 still face regulatory obstacles that make conversions prohibitively difficult and expensive. There are several ways in which the provisions of ZR-1500 could be expanded or liberalized to increase opportunities for conversions of underutilized commercial buildings to housing.

These include:

- **Including more buildings that were built after 1961**
- **Allowing conversions to Use Group 2 rooming units and Use Group 3 supportive housing**
- **Eliminating the dwelling unit factor for conversions**
- **Exempting conversions from parking requirements**
- **Removing geographic restrictions**

*(Opposite) The formerly shuttered Phoenix Hotel in Sunset Park, Brooklyn, was considered for conversion into permanent affordable housing under the Housing Our Neighbors with Dignity Act (HONDA) in 2021. Because the property is located just outside a residential zone within a light manufacturing district, the hotel was ineligible under HONDA. Legislation S4937/A6262, passed in June 2022, addresses this and other regulatory barriers to conversion. Photo credit: Brand, David. "After a Year of Missed Opportunity, New York Revises Sputtering Hotel-to-Housing Plan." *City Limits*, 10 June 2022.*

6

REDUCE REGULATORY BARRIERS TO ENDING THE HOMELESSNESS CRISIS.

IN BRIEF

Every extra hurdle or delay in the process to develop temporary and permanent housing means that individuals and families must spend another night, week, or month living in shelter or on the street. Regulatory and administrative reform is especially important when it comes to housing resources for New Yorkers experiencing homelessness.

RECOMMENDATIONS:

- 6.1 Allow NFPISAs to benefit from the same FAR as other Community Facility uses without a Special Permit.**
- 6.2 Ensure that projects with supportive housing can benefit from Inclusionary Housing.**
- 6.3 Exempt homeless and permanent supportive housing projects from ULURP.**

Homelessness has reached peak levels in recent years, with over 60,000 New Yorkers sleeping in shelters on any given night. Temporary shelter, permanent supportive housing, and permanent housing for homeless households who do not require on-site services are all crucial to ending the homelessness crisis. However, these resources are classified differently in the Zoning Resolution, which subjects each to a different set of rules. Healthcare and social service facilities that may offer the same types of on-site services as supportive housing, but do not have sleeping quarters attached, fall into yet another use category in zoning with a unique set of regulations attached.

With so many different regulations in play, the creation of housing resources for the homeless is often less efficient and effective than it needs to be. Code, zoning, and land use restrictions can add unnecessary time, expense, and difficulty to the development process. This is true for all types of development, including all types of housing, but it is particularly harmful in the context of housing for the homeless. Every extra hurdle or delay in the process to develop temporary and permanent housing means that individuals and families must spend another night, week, or month living in shelter or on the street. Eliminating unnecessary regulatory barriers and streamlining the development process is especially important when it comes to housing resources for New Yorkers experiencing homelessness.

Need for Emergency Shelter

Emergency shelter is crucial to the homelessness infrastructure of care. Getting New Yorkers who are experiencing homelessness into permanent, stable, affordable housing is the ultimate goal. However, it cannot be achieved for more than 60,000 people overnight, especially during a housing shortage and a worsening affordability crisis. Individuals and families still need a place to sleep during the transition back into stable housing.

New York is also subject to a unique legal requirement known as Right to Shelter. Unlike many other cities and states in the U.S., the City of New York is legally obligated to provide shelter to all residents who need it.¹⁴⁷ Within this framework, providing both temporary and permanent housing options for people experiencing homelessness is a key policy goal.

Need for Permanent Supportive Housing

Supportive housing is a proven and cost-effective solution for chronically homeless individuals and people experiencing homelessness with mental or physical disabilities, substance use disorders, and more. Placement into supportive housing increases long-term housing stability, with only 5% of tenants returning to homelessness.¹⁴⁸ Supportive housing also reduces the use of emergency public services, such as temporary shelter and emergency healthcare, and related expenditures. The NY/NY Agreements for supportive housing construction in New York City have yielded savings from service cost reductions nearly equivalent to the cost of building, operating, and providing services for the housing built.¹⁴⁹

Recommendations:

6.1 Allow NFPIAs to benefit from the same FAR as other Community Facility uses without a Special Permit.

Supportive housing is typically classified in the Zoning Resolution as a community facility, rather than a residential use. While regular housing falls under Residential Use Groups 1 and 2, supportive housing is defined as a non-profit institution with sleeping accommodations (NFPIA), which is classified as Community Facility Use Group 3.¹⁵⁰ Generally speaking, community facility uses benefit from higher FARs than residential uses in the same district.¹⁵¹

NFPISAs, however, are subject to a special set of FAR restrictions that are mostly equivalent to the maximum FARs for residential uses.¹⁵² As a result, although supportive housing is technically a community facility use, it cannot benefit from community facility FARs as-of-right, and is instead restricted to the lower FAR maximums that govern regular housing development.

In zoning districts where these rules apply, the only way for supportive housing to benefit from the higher FAR for community facilities is to obtain a special permit from the City Planning Commission.¹⁵³ Getting a special permit adds significant time and costs to the development process, delaying the creation of desperately needed housing for some of the most vulnerable New Yorkers, and shouldering overwhelmingly non-profit supportive housing providers with additional headache and expense. Leading affordable housing practitioners report that acquiring a special permit can easily add \$500,000 in costs and an extra year or two to the development process. Providers are forced to choose between taking on this immense burden and building fewer units, despite the dire need for more supportive housing.

CHPC recommends removing language from zoning that prevent NFPISAs from benefiting from community facility FARs as-of-right. Provisions and requirements for the special permit option in Section 74-703 should also be removed. These changes will make it easier to find sites for supportive housing projects, allow providers to build more units, and streamline the development process so that New Yorkers in need can obtain housing sooner.

6.2 Ensure that projects with supportive housing can benefit from Inclusionary Housing.

The voluntary Inclusionary Housing program in zoning (VIH) allows residential developments in R10 districts and VIH designated areas to receive a floor area bonus in exchange for the provision of affordable housing. In R10 districts outside of VIH designated areas, an additional 1.25 to 3.5 square feet of overall floor area is granted for every square foot of affordable floor area provided, up to the maximum 12 FAR.¹⁵⁴ In VIH designated areas, an extra 1.25 square feet of floor area is permitted for every square foot of affordable floor area, up to the maximum allowable FAR for VIH projects in the applicable zoning district.¹⁵⁵

The zoning text specifically indicates that supportive housing qualifies as affordable floor area in the context of VIH.¹⁵⁶ In practice, however, supportive housing developments are often excluded from the benefits of VIH due to conflicting paperwork and requirements at HPD. For example, HPD's Architect's Affidavit for VIH uses language that prevents community facility floor area from counting towards the total affordable floor area in a project.¹⁵⁷ Per the affidavit, 100% supportive housing projects in R10 districts and VIH designated areas would not be granted any additional floor area for VIH. Meanwhile, projects in VIH areas that are comprised of a mix of affordable and supportive housing would only benefit from a portion of the bonus floor area that is due.

The general purpose of inclusionary housing is to incentivize developers who would otherwise build 100% market-rate housing to provide some affordable units. In this context, it makes sense that HPD is primarily focused on ensuring that private developers meet the affordability requirements. Unfortunately, however, this approach has inadvertently put providers of supportive housing at a disadvantage in areas mapped for VIH. Given that supportive housing serves individuals with chronic disabilities, it is crucial from both an ethical and legal standpoint to ensure that these housing resources are not unduly excluded.

CHPC recommends that DCP and HPD undertake a coordinated review of the VIH program, including the zoning text, the language used in required documents, and other elements of the implementation process, to ensure that projects with supportive housing can benefit from VIH. Expanding the special provisions in AIRS to include all affordable and supportive housing, as previously recommended in this report, would obviate the need to address existing issues in the VIH program. Yet until those changes are achieved, the city must ensure that supportive housing projects can reap the benefits of VIH.

6.3 Exempt homeless and permanent supportive housing projects from ULURP.

Community input via Uniform Land Use Review Procedure (ULURP) is an invaluable part of the land use decision-making process. When it comes to housing for the homeless, however, ULURP is often exploited by stably housed residents to prevent the creation of desperately needed housing resources. Upon notification of a new shelter or supportive housing development being proposed in their neighborhood, communities often respond with efforts to prevent the project from being built. Opponents frequently argue that the building's presence in their neighborhood will damage local quality of life by driving up crime, drug use, loitering, and vandalism, and that these issues will cause the value of their homes to decrease. Yet these concerns tend to be grounded in fear, rather than fact, as temporary and permanent housing resources do not cause such problems in the surrounding area.¹⁵⁸

While not all projects face difficulties, and while some have even been welcomed by area residents,¹⁵⁹ community opposition has played a significant role in shaping how, where, and when temporary and permanent housing resources are built in New York City. In particular, highly resourced, transit rich neighborhoods—areas where shelter residents could have better access to job opportunities and other services—are disproportionately underrepresented when it comes to shelter placement.¹⁶⁰ At least one in three new emergency shelters that were built or announced between 2017 and 2019 faced some type of backlash from local residents.¹⁶¹ Opponents have delayed project approvals for months or years

pending the outcome of litigation, and even forced the City to change sites and restart the design and approval processes from the beginning.¹⁶² During COVID-19, the City temporarily relocated residents of congregate shelters to individual rooms in vacant hotels. These efforts received such fierce push back from some community members that it prompted others to launch new advocacy groups with the sole purpose of welcoming and supporting the new neighbors, such as Upper West Side Open Hearts.¹⁶³

ULURP adds time and expense to any project, and there is no guarantee that a ULURP will be successful. Applicants always bear the risk that resources spent on the process will not provide any type of return. ULURP is generally designed with the idea that these expenditures and potential risks are justified by the value of community input. It seems reasonable that developers who stand to benefit financially from land use decisions should also bear the burden and expense of facilitating public feedback on them.

The dynamic changes drastically in the context of temporary and permanent housing. City agencies and overwhelmingly non-profit providers of permanent and supportive housing have finite resources at their disposal to address the homelessness crisis. Any extra time and money spent on ULURP detracts from their overall capacity for impact. A longer and costlier ULURP for one project might prevent another project from happening at all. When a ULURP is unsuccessful, it is not just the housing providers, but also tens of thousands of homeless New Yorkers, who lose.

CHPC recommends exempting homeless and permanent supportive housing projects from ULURP. The current system has proven itself to be unethical and damaging, both to New Yorkers experiencing homelessness and the city as a whole. An alternative review framework would be needed for government agencies to make and enforce decisions about zoning at the project level. For instance, CPC and/or DCP should still be able to determine the appropriate density for a project that is seeking an upzoning. However, these decisions clearly should not be made through formal public review. NYC cannot afford to waste more public resources battling stably housed residents in court while 60,000 New Yorkers are sleeping in shelters.



*(Above) In 2018, a coalition of neighbors surrounding "Billionaires Row" in Midtown Manhattan waged a campaign against placement of a men's shelter on W 58th Street. Spending nearly \$400,000 on advertising and lobbying services alone, former Department of Social Services Commissioner, Steve Banks, called the campaign "the longest and most well-funded litigation" ever against a shelter. Credit: Heinrichs, Audra. ["The Homeless Shelter on Billionaires' Row."](#) *The Nation*, 27 Jan. 2022.*

7

STREAMLINE CODES AND THE DEVELOPMENT PROCESS TO REDUCE TIME AND COSTS.

IN BRIEF

The city's ability to create and preserve housing is directly related to the complexity of its regulatory framework. Eliminating time-consuming, expensive, and redundant aspects of the design and development process can help create the housing that the city needs at a time when financial resources are scarce and New Yorkers cannot afford to wait.

RECOMMENDATIONS:

- 7.1 Establish set timelines, comment limits, and clear, consistent requirements for ULURP pre-certification.**
- 7.2 Create a ULURP fast-track for projects that meet certain criteria for public approval and/or policy goals.**
- 7.3 Adopt an Existing Building Code and remove redundant and unnecessary sections of the MDL.**

For decades, New York City has relied heavily on government subsidy to meet its goals for affordable housing production. Despite the incredible amount of resources that have been spent, the city is still facing a shortage of housing supply and a worsening affordability crisis. Over the last eighteen months, COVID-19 has both increased housing needs and reduced the amount of government resources that are available. Many more New Yorkers today are out of a job, behind on rent, or facing unmanageable healthcare bills than in 2019. Meanwhile, the city is still recovering from the loss of billions of dollars in tax revenue during the pandemic. Even with the recent influx of cash from federal aid and stimulus funding, the balance between competing priorities and needs could leave fewer resources to spend on housing production.

Policymakers must find new ways to encourage housing development, using fewer public dollars, in the years ahead.

New York is already lacking enough housing supply and cannot let the rate of housing production slow down even further. Streamlining the process by which housing gets built is one strategy that can help meet these goals. Eliminating time-consuming, expensive, and unnecessary aspects of the development process can help create the housing that the city needs at a time when subsidy is scarce and New Yorkers cannot afford to wait.

Recommendations:

7.1 Establish set timelines, comment limits, and clear, consistent requirements for ULURP pre-certification.

While ULURP is already a long and costly endeavor, the process leading up to formal public review adds even more time and expense. Project applications must be reviewed and certified by DCP before ULURP can begin. During this process, which is known as ULURP pre-certification, agency staff can request edits and modifications to the proposal as they see fit.

Pre-certification should be clear and objective, ensuring that all necessary documents have been submitted, the scope of the proposed project has been adequately defined, and land use issues have been identified. Yet in practice, the process lacks a reasonable level of consistency or predictability. Inefficiencies, inconsistencies, and unnecessary delays make for a longer pre-development period and higher development costs. Improving the pre-certification process could speed up the rate of housing production and lower the overall cost of development, without the need for legislative reform.

CHPC engaged a group of leading architects, developers, and lawyers in the affordable housing industry to better understand how pre-certification could be improved. Based on their feedback, CHPC recommends establishing set timelines for each phase of the pre-certification process, a scope and limits for review, and clear, consistent application standards.

Set Timelines

Pre-certification can take an extraordinarily long time. Housing practitioners estimate that the process was designed to take around 300 days, from application to certification, if all internal deadlines and timelines are met. In practice, it often takes at least two, and in some cases three years to achieve certification. Unnecessarily protracted pre-development times only add to the already lengthy development process, further delaying the creation of affordable housing that thousands of New Yorkers need today.

Although DCP has made efforts internally to establish timelines for pre-certification, little external information has been given about what those timelines are, or about whether the agency has been successful in meeting them. CHPC recommends creating set timelines for each phase of the process that all parties are aware of and accountable for, such as is the case with ULURP. DCP should incorporate these timelines into its internal metrics and implement a system to track and address reasons for delays on an ongoing basis.

Scope of Review & Comment Limits

Throughout the review process, applicants receive numerous rounds of comments and requests for edits from many different offices and teams. This feedback is often inconsistent, ranging from generic comments to extremely detailed and tangential ones. New comments may contradict those given in a previous round. Elements of an application that have not been changed since the initial filing may be brought up for the first time after several rounds of comments and edits have already been made. Recommendations and decisions made by one team earlier in the process may be second-guessed or reversed by another team later on.

Housing practitioners strongly believe that establishing a clear scope of review before the pre-certification process begins would help housing get built faster, even if that scope varies from project to project, depending on size, location, and other criteria. For example, rezonings that do not require special permits could be exempt from design review. There should also be a limit on the number of rounds of comments and revisions that will occur. This would hopefully encourage more consistent, coordinated comments that will allow for a more efficient process.

Clear & Consistent Requirements

The content and format requirements for proposals are another common point of inconsistency and confusion. Housing practitioners report receiving conflicting advice from various teams about the information that is required and the way that it should be presented. For example, the standards for graphics and drawings change seemingly arbitrarily – what is acceptable for one project may not be for another.

DCP should create simplified, clear, and consistent requirements for graphics, drawings, and other common proposal elements. These should be made available on the online portal so that applicants can understand what is expected from the outset. During the review process, applicants who have met the requirements listed online should not be asked to make revisions that exceed or diverge from them.

7.2 Create a ULURP fast-track for projects that meet certain criteria for public approval and/or policy goals.

The length and complexity of the ULURP process act like a deterrent—developers hope to devise projects that do not trigger the review process. That dynamic can be harnessed to help reach local and citywide goals. Allowing projects that meet certain criteria to be fast-tracked through a condensed version of ULURP could help incentivize the type of projects that are needed the most, while also reducing and prioritizing the time and resources spent on land use review.

Periodically, an authorized body could assess city needs and establish land use priorities for a given geography whether it is citywide, by borough, or by community board. Projects that address those priorities and meet certain characteristics could then be exempt from ULURP or from subject to a fast-tracked process. For example, priorities could include housing for homeless New Yorkers, creating a condensed ULURP process for projects that set aside at least 15% of units for the homeless. A similar approach can be taken to incentivize projects providing deep affordability or that were selected through the participatory budgeting process. One could imagine a set of priorities and desired project characteristics that would enable a 100-unit, 100% affordable, zoning-compliant project owned by a non-profit developer to avoid the ULURP process altogether.

A fast-tracked ULURP process could take several forms. The existing process could be modified by reducing the duration of the input period for each reviewing body (e.g. community boards would have 30 days instead of 60 days), consolidating the input periods so that the clock starts at the same time for all reviewing bodies (e.g. community boards, borough president, and City Planning Commission concurrently review and jointly hold a public hearing), or bypass a step altogether. The ULURP pre-certification process within the Department of City Planning itself is protracted and opaque adding time and uncertainty to the development process. This phase could also be expedited by tightening internal response times, publishing response metrics, and offering early person-to-person comprehensive design reviews to ensure that expectations are clear and do not result in multiple rounds of comments with conflicting guidance between agencies.¹⁶⁴ Alternatively, new processes that function as a ULURP equivalent could be adopted. For example, if the RFP process for city-owned land was reformed to include more public participation and a Community Board representative was included on the selection committee, perhaps the process would have an equivalent impact.

Process reform of this kind would encourage more substantive community input on policy goals as well as create a more efficient path for getting projects done. These measures would be made even stronger by streamlining CEQR, which would help to further reduce the costs and encumbrance of land use review.

7.3 Adopt an Existing Building Code and remove redundant and unnecessary sections of the MDL.

The city's ability to create and preserve housing is directly related to the complexity of its regulatory framework. In addition to the Zoning Resolution, Building Code, and Housing Maintenance Code, the New York State Multiple Dwelling Law (MDL) is yet another set of rules that governs what can and can't be built in New York City. Often, these various regulations overlap with one another in ways that render few benefits for building quality and safety yet cause extraneous headache and expense for developers and create conflict with policy goals.

The MDL regulates many aspects of development that are already governed by local zoning and construction codes. This type of overlap can hinder the goals of municipal regulations by undercutting them with different versions of the same rules. It also deprives DOB and other local agencies of the ability to vary from regulations when there is a practical reason to do so. In some cases, a variance may allow for more affordable housing, or help advance another policy goal, without detracting from the health and safety of the units. Under these circumstances, if the regulation in question is included in the MDL, a variance cannot be granted by local decision-makers and the opportunity to create more housing must be foregone.

The MDL can also discourage certain types of development by over-regulating some projects relative to others. For example, because the MDL is triggered at a threshold of three units, the rules for adding a unit to a two-family building are much stricter than for converting a single-family home to two units. The MDL leverages an extra layer of rules onto the development of assisted living facilities but does not affect the construction of senior housing. The MDL prohibits residential FAR from going above 12, although zoning already regulates the FAR of all new buildings in the city. These are just a few of the ways in which the MDL duplicates and conflicts with local regulations, creating an additional level of administrative burden for anyone trying to build or improve a building.

DOB is currently leading an interagency process to develop and adopt an Existing Building Code (EBC) for New York City that will render many sections of the MDL redundant and superfluous. The new code, which will specifically address alterations to existing buildings, is being modeled on the International Existing Building Code (IEBC) and developed with the support of the International Code Council.¹⁶⁵ The EBC will implement international standards for health and safety that have been tailored to the unique conditions and building typologies in New York City.

Sections of the MDL that must be retained because they regulate buildings and typologies not addressed in the IEBC will be additionally incorporated into the Code. For example, language in the MDL governing tenement buildings will be duplicated within the New York City EBC. Once the EBC has been adopted, those sections of the MDL will no longer need to exist. Other municipalities in New York are already subject to a statewide EBC and do not require duplicate regulations in the MDL.

CHPC recommends that the city complete the process to adopt a local EBC and then work with the State to remove unnecessary sections from the MDL. Completing this process will create a much simpler regulatory framework, allowing developers who wish to improve or alter an existing building to follow a single EBC, rather than navigating both the MDL and the assortment of older City building codes that currently exist. It will also restore flexibility at the local level to assess the need for variances and grant them, ensuring a pathway to responsible renovations that can better advance policy goals.

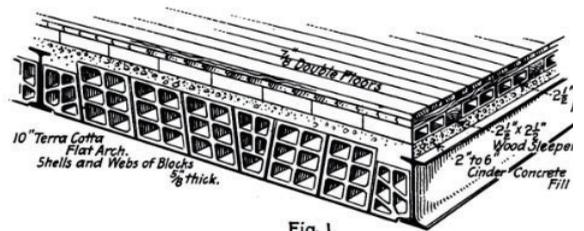


Fig. 1.
Typical Terra Cotta Floor Arch.
 (In the Lower Floors the Terra Cotta Fill was Omitted and the Cinder Concrete Carried up to the Floor Boards.)

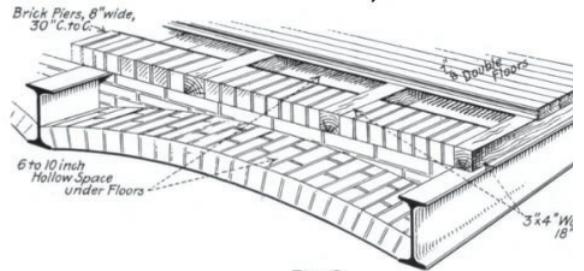
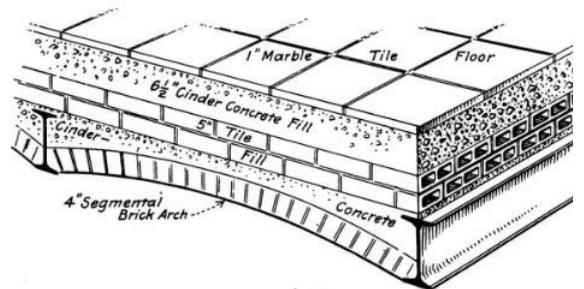


Fig. 2.
Brick Arch, Upper Stories
 (Cedar St. Side of Building.)



The Existing Building Code is intended to make the reuse and rehabilitation of existing, particularly historic, buildings easier and more consistent with other applicable standards. (Above) Examples of floor systems common in NYC construction during the late 19th and early 20th century. As Ciro Cuono, PE, noted in Structure Magazine, "Since cinder concrete arches are no longer used, it would seem an 'archaic' structure. In NYC, however, they are so ubiquitous that a working knowledge of their design and construction is a prerequisite to engaging in renovation work." Image credits: Friedman, Don. "Construction History: The Phoenix." Old Structures Engineering, 8 May 2020.

8

MINIMIZE REGULATORY REDUNDANCY AND OVERLAP TO HELP SMALL BUSINESSES THRIVE AND BETTER MEET COMMUNITY NEEDS.

IN BRIEF

Even before the pandemic, zoning requirements, permitting processes, and other administrative burdens often made it unnecessarily difficult and expensive for small business owners to lease and occupy suitable space. Addressing regulatory obstacles can help retail and small businesses thrive and better meet local needs.

RECOMMENDATIONS:

- 8.1 Simplify and streamline use groups in zoning.**
- 8.2 Establish a streamlined, low-cost regulatory framework for the permanent Open Restaurants program.**
- 8.3 Study and implement changes to parking requirements for commercial spaces.**

Supporting small businesses and maintaining a healthy retail environment are key to ensuring an efficient and inclusive recovery from COVID-19. Retail space provides opportunities for entrepreneurs to launch and grow small businesses, which comprise 98% of businesses in New York City and employ over half the private sector workforce.¹⁶⁶ In addition to providing a crucial source of employment and municipal tax revenue, storefront businesses ensure that communities have access to the goods and services they need. Neighborhood shopping corridors help create a walkable environment that allows local residents and workers to rely less on cars. Last summer, frontline workers in grocery stores, laundromats, bodegas, and other essential businesses bore disproportionate risk of exposure to COVID-19 so that millions of other New Yorkers could shelter in place.

Concerns about the future of storefront business in New York City were brewing long before the pandemic began. Trends such as increases in online shopping, shifting consumer preferences, and rising commercial rents have been changing the face of brick-and-mortar spending for at least the past decade.¹⁶⁷ Between 2007 and 2017, the citywide retail vacancy rate rose from 4% to 5.8%, with the highest increases occurring outside the Manhattan Core. During the same period, the amount of vacant retail space in the city nearly doubled, rising from 5.6 million to 11.8 million square feet.¹⁶⁸

The pandemic greatly exacerbated these challenges, creating even more precarious and difficult circumstances. Storefront vacancies citywide increased by 17% between December 2019 and June 2020.¹⁶⁹ In some neighborhoods and corridors, retail vacancy rates have remained elevated at historic highs for the past eighteen months.¹⁷⁰ In July 2020, the Partnership for New York City estimated that as many as one-third of the city's small businesses would never reopen.¹⁷¹

While exact data on permanent closures to date is lacking, nearly half of small businesses citywide were still closed as of February 2021.¹⁷² That same month, the Brooklyn Chamber of Commerce estimated that one in five small businesses in the borough were gone for good.¹⁷³ Meanwhile, many of the small businesses that have managed to stay open throughout this crisis are struggling to survive. In March 2021, four out of five small businesses statewide were reportedly still suffering financially from COVID-19 due to COVID-19.¹⁷⁴

Eliminating regulatory obstacles to maintaining healthy retail is one strategy to help small businesses thrive and meet community retail and service needs. Even before the pandemic, zoning requirements, permitting processes, and other administrative burdens often made it unnecessarily difficult and expensive for small business owners to lease and occupy suitable space. A 2019 study by the NYC Comptroller found that delays in the process to receive a liquor license, and to obtain an alteration permit, were significant driving factors of retail vacancy.¹⁷⁵ DCP has identified outdated zoning rules and historic district regulations as reasons for higher vacancy rates in some major retail corridors.¹⁷⁶

The pandemic has complicated matters even further. Small businesses have been forced to implement new systems and practices that the regulatory framework is not designed to serve.

Emergency programs have helped reduce regulatory conflict for the time being, but more permanent provisions are needed to support storefront businesses moving forward. Meanwhile, previously existing administrative burdens should be reduced as much as possible so that small businesses can get back on their feet.

Recommendations:

8.1 Simplify and streamline use groups in zoning.

Commercial use classifications in zoning are largely outdated and misaligned with the types of businesses that exist today. Many of the uses in zoning are also extremely specific, rendering them somewhat arbitrary. For example, Use Group 6 consists of retail and personal service establishments such as barber shops, post offices, and grocery stores. However, Use Group 6 also includes uses such as frozen food lockers, millinery shops, telegraph offices, and typewriter stores.¹⁷⁷

Because so many of the uses in zoning are out of date, many of the distinctions between different Use Groups are also irrelevant in the modern-day context. Bicycle sales fall under Use Group 6, but bicycle repair is in Use Group 7. Radio studios are in Use Group 10, but photography studios are in Use Group 6, and studios for art, music, dancing, and theater comprise a single use listed in Use Group 9. Eating and drinking establishments that have live music may fall into different use groups depending on whether or not there is a cover charge.¹⁷⁸

Overly specific, antiquated use regulations often force small businesses seeking to occupy a space to change the Certificate of Occupancy, even when no physical changes are needed. The process to change or obtain a new Certificate of Occupancy costs tens of thousands of dollars and requires hiring an architect and/or other professional consultants. The process can also take many months to complete, during which time business owners are spending money on rent without the ability to use the space.

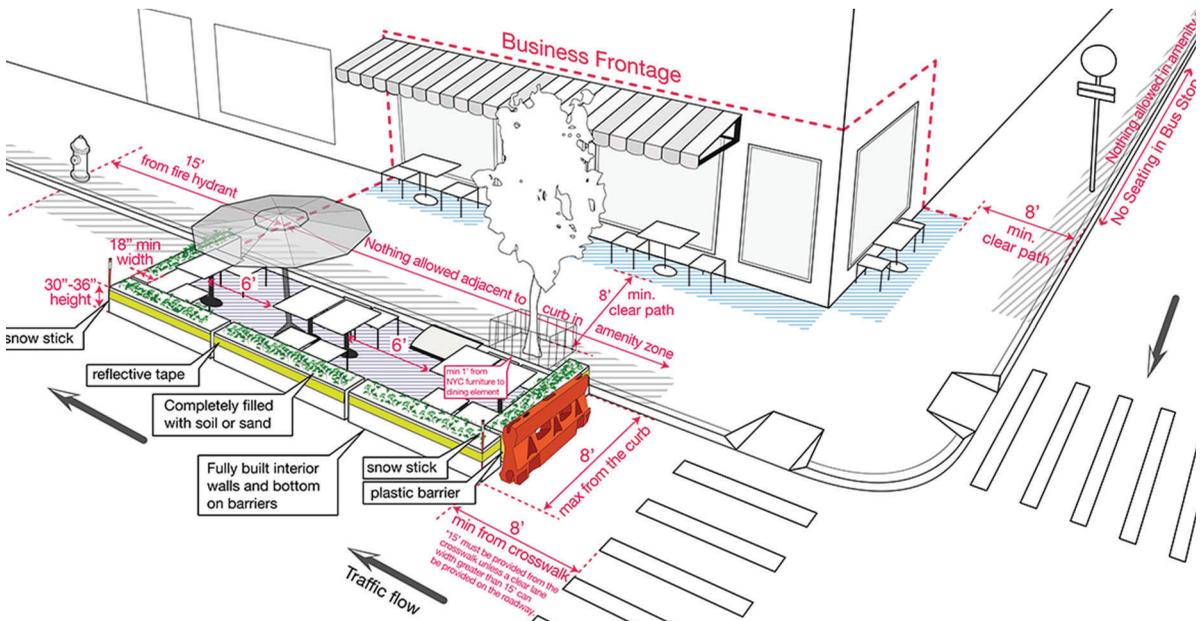
CHPC recommends drastically simplifying use groups defined within the Zoning Resolution according to how a building is used rather than by specific sector and aligning them to the extent feasible with occupancy classes defined within the Building Code. For example, many of the retail and service establishments in Use Groups 6 through 9 could be combined into one Local Retail group. These changes will reduce the administrative and financial burdens on small businesses looking to occupy space and ensure that vacant storefronts can get filled faster. It will also minimize the time and resources that city agencies have to spend reviewing and approving changes to Certificates of Occupancy.

8.2 Establish a streamlined, low-cost regulatory framework for the permanent Open Restaurants program.

Restaurants and bars were hit especially hard by the economic fallout from COVID-19. Employment in the restaurant industry dropped 64% between the first and second quarters of 2020.¹⁷⁹

During the summer of 2020, the city enacted an emergency Open Restaurants program to help these businesses weather the crisis.

Over 11,500 restaurants have participated to date, including 2,500 businesses that would have been ineligible for outdoor seating under the current regulatory framework. The program is credited with saving an estimated 100,000 jobs.¹⁸⁰



(Above) A draft diagram depicting outdoor dining specifications for sidewalk and roadway seating. "Outdoor Dining Area Siting Requirements." NYC Department of Transportation. 2021.

In response to this success, DCP and DOT are now leading an interagency process to create a permanent version of Open Restaurants, which will replace the existing regulatory framework for Sidewalk Cafes and provide a more accessible and efficient pathway for restaurants to create and operate dining outdoors.

Under the current regulatory framework, restaurants may or may not be eligible for outdoor seating depending on the location of the business, street, and sidewalk conditions. Zoning allows for three different types of Sidewalk Cafes, each of which are subject to different geographic restrictions and various locational and physical criteria. Such criteria include everything from clear path and clearance regulations to structural requirements governing café ceilings and walls. If a business cannot meet these criteria within the context of the sidewalk area, they must obtain a Special Permit from the City Planning Commission before applying for a café license from the NYC Department of Consumer and Worker

Protection (DCWP). Meanwhile, some businesses are wholly ineligible for outdoor seating because they are located outside the areas in zoning where sidewalk cafés are allowed.¹⁸¹ With a year-round citywide program, all New York communities will have the benefit of safe outdoor dining options.

The process to establish a permanent Open Restaurants program involves a few key steps. First, the city must pass a zoning text amendment to remove Article 1, Chapter 4 (Sidewalk Café Regulations) and other language enabling sidewalk cafes from the Zoning Resolution. The City Council overwhelmingly approved this Zoning text amendment this past February 2022. Then the city must transfer control of sidewalk cafes from DCWP to DOT and establish revised design requirements, new clear path requirements, and a streamlined process for design review. Finally, the city must enact legislation to create a Roadway Café program that will operate in tandem with the new Sidewalk Café program.

COVID-19 has demonstrated that zoning is not the best tool to regulate outdoor dining in New York City. Achieving the steps to create a permanent Open Restaurants program will get zoning out of the way and establish a unified framework for outdoor dining that is operated by a single City agency. The new system should provide for reduced financial and administrative burdens on small businesses and let more restaurants and neighborhoods benefit from outdoor dining. In particular, the city should target under-resourced communities in the expansion of the Open Restaurant program, which has seen stronger participation levels in whiter, high-income neighborhoods.¹⁸² Though there has been some financial and technical assistance provided to business-owners of color, more needs to be done to make the Open Restaurants and Open Streets programs more equitable.¹⁸³ For example, the design guidelines should be clear and straightforward enough that small businesses will not need to hire consultants, like an architect, to interpret the requirements.

CHPC recommends that the city complete the process to make Open Restaurants permanent and maintain the strong focus on interagency coordination throughout. Creating streamlined, low-barrier procedures for café applications, approval, and design review should be a core goal of the rulemaking process.

8.3 Study and implement changes to parking requirements for commercial spaces.

Like housing, zoning often requires commercial development to be accompanied by the creation of new off-street parking spaces. In some cases, parking minimums for smaller commercial spaces can be waived. However, commercial parking requirements vary considerably depending on the geographic location, use group, and zoning district. These complex and restrictive requirements are difficult and expensive to interpret and can even prevent small businesses from occupying a vacant storefront that meets their needs.

For example, changing the use group of an existing commercial space may trigger a requirement for additional parking. If a prospective new tenant cannot afford to build the parking, or if the site in question cannot physically accommodate it, the business may be forced to find a different storefront altogether. This dynamic makes it more difficult for small businesses to find and lease a space that meets their needs. It also contributes to higher rates of retail vacancy and deprives communities of access to goods and services that their neighborhoods might currently lack.

Commercial parking requirements can also limit opportunities to create new housing through mixed-use development. While NYC has focused on the creation of mixed-use neighborhoods as a core planning goal, many lower-density commercial corridors in the city are still home to older, one-story retail buildings that only serve a single use. Alleviating commercial parking requirements could create more opportunities to redevelop those buildings with a mix of new housing and ground-floor retail space.

CHPC recommends that DCP analyze and implement changes to commercial parking requirements that will lower the regulatory burden on small businesses, reduce retail vacancy rates and support healthy retail corridors, and create more opportunities for mixed-use development in lower-density neighborhoods. To ensure that it meets all these goals, the process to identify and enact commercial parking reform should be undertaken in close coordination with HPD, SBS, and other government agencies whose work involves supporting small businesses and the growth of vibrant, mixed-use neighborhoods.

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