TESTIMONY TO CITY PLANNING COMMISSION ON CITY OF YES FOR HOUSING OPPORTUNITY FROM MARK GINSBERG, CHPC PRESIDENT JULY 10, 2024

Thank you for the opportunity to testify today. My name is Mark Ginsberg, and I am the President of Citizens Housing & Planning Council (CHPC) and a partner at Curtis + Ginsberg Architects, with decades of experience in the design of affordable housing.

I am here to testify in very strong support of the proposed citywide text amendments. For many years, CHPC has advocated for zoning reforms to advance affordability, fair housing, equity, sustainability, and housing quality. Our 2022 Onward and Upward report recommended many of the changes DCP has proposed today. These changes would be the biggest and most important single set of zoning reforms since 1961 and are an essential step for New York City to find a way out of our affordable housing crisis. They are, for people who rely on zoning to build housing, the best thing since sliced bread.

I'd like to highlight a couple of the most important changes:

- The step from AIRS (Affordable Independent Residences for Seniors) to UAP (Universal Affordability Preference) is a common-sense expansion of an existing program. It isn't an upzoning but rather a way to create a wider range of affordable housing options for different populations, including housing for seniors and multi generational groups together.
- This proposal puts our society's needs for housing ahead of its needs for vehicle storage. The cost of a structured parking space can add as much as $75,000 or

$100,000 to the cost of an apartment! Under the proposal, we can design buildings with an amount of parking that makes sense based on the building's program, rather than trying to find ways to make a building program work around inflexible zoning requirements.

I would like to applaud the Department for these text amendments and urge the Commission to keep the following principles in mind as you consider potential improvements to them:

- In addition to allowing a bit more housing in every neighborhood, it's important that we not lose any of the new housing that today's regulations would allow.
- Keep it simple – complex regulations can limit design solutions and trip up or delay projects, particularly for affordable housing.
- We need to maintain a long-term perspective – adequate flexibility will enable regulations to be usable in the future as unanticipated changes occur – as they always do – and as the demands placed on individual buildings evolve.
- As we update zoning regulations, let's smooth the path for existing projects to be completed. Delays in the affordable housing pipeline create challenges for the financing and staffing of projects, which can be exacerbated by the volatility of regulations and programs. The proposal can make future-oriented changes without disrupting projects already in progress.

Later today you will also hear testimony from Howard Slatkin, CHPC's Executive Director. We will share in written testimony our complete comments about the proposal and how it can be made most effective.

I urge the Commission to approve the proposed text amendments, with only those changes needed to enable them to be most effective in accomplishing their goals rather than watering them down. Thank you.

TESTIMONY TO CITY PLANNING COMMISSION ON CITY OF YES FOR HOUSING OPPORTUNITY FROM HOWARD SLATKIN, CHPC EXECUTIVE DIRECTOR JULY 10, 2024

My name is Howard Slatkin, and I am Executive Director of Citizens Housing and Planning Council. I am testifying in support of the proposed zoning text amendments, which are an important and sorely needed step forward for zoning in New York City.

Sixty-three years ago, the 1961 Zoning Resolution launched an era of "zoning for scarcity" by cutting the city's housing capacity by an estimated 80 percent. Over decades, with the help of numerous downzonings, this has landed us in a persistent housing shortage.

Zoning for scarcity creates a Hunger Games of unintended consequences that hurts everyone, but most of all those who have the least. Single adults who can't find small apartments band together to occupy housing that could otherwise house families. As affluent residents stave off new housing in their neighborhoods, their children flow to nearby areas along with other housing seekers, kindling gentrification and displacement.

Under zoning for scarcity, we debate whether proposed new housing is the "right" kind of housing. We can make thoughtful choices about how subsidies and programs make housing better meet specific needs, but the only "wrong" kind of housing is no housing at all.

Today's regulations create absurd results:

- We have beautiful neighborhoods that are losing housing units overall because subtractions outnumber additions – not because more people don't want to live there, but because we won't let them.
- You can combine two units into one, but you often can't do the opposite! A family of four can live together in a house, but if the parents separate and want the same

four people to live in separate units – this may trigger impossible parking requirements or require rezoning of the whole block.

- True story: Mrs. Velez, in her 90s, has a two-family house in the Bronx – at least she bought it thinking it was a two-family house – with a downstairs unit she rents to a man who helps her with chores and groceries, and pays $800 a month in rent that supplements her Social Security income. But this is illegal, and cannot be legalized today.

The simple summary of this long, complex proposal is that it will help reverse zoning for scarcity, so that regulations better align with the housing needs of New Yorkers:

- Softening rising rents and displacement pressures,
- Prioritizing housing over motor vehicle storage,
- Favoring building that provide affordable housing over those that don't,
- Letting homeowners modify their homes to meet their needs and increase the range of housing options in their neighborhoods, and
- Enabling the legalization of safe basement apartments, keeping tens of thousands of vulnerable people housed.

Better zoning must be accompanied by sustained public investment – including the $2B in additional capital for affordable housing provided in this year's final budget – and by other regulatory changes that make it easier to do the right thing. But without these zoning changes, our housing crisis will only get worse.

Our written testimony details a number of important modifications the Commission should make to the proposal to enable it to best address our housing needs. These include:

- Providing a **permanent off-site option everywhere UAP applies**, helping supportive housing and other 100% affordable housing get built in high-cost areas;

- **Vesting** existing Inclusionary Housing development rights and housing currently in the process;

- Closing of loopholes to ensure that the UAP floor area increase is only for affordable housing;

- Fixing **recreation space requirements** to accommodate existing buildings and a wider range of good designs;

- And several more modifications we urge the Commission to make.

Thank you for the opportunity to testify today. I will be happy to answer any questions.

CHPC Comments on City of Yes for Housing Opportunity
PROPOSED MODIFICATIONS TO THE PROPOSAL

A note on scope: Nearly all of the modifications enumerated here can be made "within scope," through Commission modifications to the originally noticed land use application. To the extent that items in this list (in particular, the modification to increase UAP FAR in R10 districts) would not be within the scope of the original application, the preferred approach for the Department and the Commission would be to file and notice a modified text ("A-text"); an alternative would be to commit to a prompt follow-up action to implement the limited changes that are not within the scope of the original application.

1) **Universal Affordability Preference (UAP)**
   Overall, UAP is a significant step forward in promoting affordable housing through zoning, by allowing developments participating in any of a wide range of affordable housing programs to build at a higher FAR than buildings not participating in these programs.

   Note that narrowing income ranges served, or adding layers of complexity (e.g., requiring a band to be affordable at lower incomes) would misconstrue the nature of the program. UAP does not come with funding of its own or other resources that enable deeper affordability; it's "a box to put your program in." Making UAP requirements more stringent would reduce the amount of affordable housing that could be built under zoning, rather than deepen the resulting affordability. Efforts to better serve residents at lower incomes are properly directed toward City and State subsidy programs that provide the resources to achieve this.

   There are several things about UAP that should be modified to ensure that it serves the overall goals of increasing housing and affordable housing production, including in high-cost or exclusive neighborhoods:

   a) **UAP should include an off-site option in all geographies, without a 10-year expiration, in order to support the construction of more publicly subsidized affordable housing. This would add to the equitable production of affordable housing, not detract from it.** An off-site UAP option would not encourage off-site affordability at the expense of on-site affordability – the primary possible reason to restrict the availability of an off-site option – but rather would increase the efficiency and range of subsidized affordable housing possible, particularly in high-cost neighborhoods.

i) **This would not encourage off-site affordability at the expense of on-site.** A developer not using 485x (e.g., a condo developer) would not be able to make UAP work financially with unsubsidized off-site affordable housing at a 1:1 ratio.

ii) **This would aid the production of affordable housing in high-cost areas:** Allowing a development to earn UAP FAR with off-site affordable housing could effectively subsidize the land cost (though not the construction) of affordable housing elsewhere in the same Community District. This would increase the availability of private sites to build under HPD/HDC programs – a primary impediment to affordable housing development in high-cost neighborhoods – and reduce the subsidy per unit required to build using public funding.

iii) **This would support the creation of all types of affordable housing in all neighborhoods.** An off-site option would make possible the construction of supportive housing or other types of housing that cannot be accomplished through a mixed-income model, or require a minimum scale to be cost-effective (e.g., for supportive housing, a population large enough to make on-site service provision cost-effective). Without this option, the only model likely to work in higher-cost areas is mixed-income rental housing.

iv) **This would increase overall production of affordable housing:** Because sites earning UAP FAR through the off-site option would otherwise not utilize UAP, the affordable housing produced through this mechanism would be additive to what is achieved through on-site UAP. And because much of the likely uptake of the off-site program would support publicly financed housing, HPD and HDC can make appropriate underwriting decisions to use UAP-generated revenues to reduce the need for other scarce sources of subsidy. This would increase the city's capacity to produce affordable housing.

v) **This would create/retain a tool for preservation of affordable housing for which other resources are unavailable:** This mechanism can be used to generate funding for the preservation of Mitchell-Lama complexes or other large affordable buildings.

b) **Avoid or offset an effective downzoning of R10 areas.** Because the new 485x program is likely to have more limited uptake in the highest density areas than its predecessor, 421a, the proposed replacement of Voluntary Inclusionary Housing

with UAP is likely to decrease housing production in R10 districts. This is counter to the core goals of the City of Yes proposal. Ways to ameliorate this include:

i) **Create a permanent off-site affordable option in UAP, to enable developments to add floor area by providing funding for affordable housing nearby.** This would also support the construction of affordable housing in high-cost neighborhoods.

ii) **Increase the maximum FAR for UAP in R10 districts to 13.3.** This would maximize mixed-income housing production through 485x: such a building could build 10 FAR of market-rate housing – the same as a building not using 485x – with all floor area above 10 FAR affordable below 60% AMI.

iii) **Future mapping of R11 and R12 districts in appropriate areas currently zoned R10.** Mapping these districts is not part of the present set of actions, but it is an important step to increase housing production in suitable areas.

c) **Vesting: Previously approved affordable housing plans (affordable units built or preserved through the existing Inclusionary Housing program) should continue to generate development rights consistent with the program as it existed prior to these amendments.** New developments should be able to build additional floor area using the bonus ratios in effect at the time these affordable units were built. This is important not only to enable affordable housing providers to realize the value associated with these rights, but also to support enforceability of the regulatory agreements associated with the affordable units. There is a blank section in the proposed zoning text (27-132) in which this should be specified.

d) **Ensure that additional UAP FAR is only for affordable housing.** The zoning text assigning a maximum FAR to mixed buildings using UAP contains a glitch or loophole that could be used to undermine the premise of UAP. **This loophole should be closed with different language in 24-161 and 35-31.**

These sections dictate that the total FAR for the zoning lot shall not exceed the highest FAR for any use on the zoning lot, except where explicitly stated otherwise (that last phrase an addition). As drafted, the addition of a small amount of UAP (say, 0.1 FAR) sets the maximum residential FAR for the lot at the UAP FAR. But it's possible for most of this floor area to be community facility or commercial rather than affordable housing. The text must be edited to **specify that for the purposes of these sections, the maximum FAR on the zoning lot is increased**

only based on the amount of UAP provided. This would ensure that any additional floor area achieved through UAP is used for affordable housing.

Proposed language for 23-222 to fix this: "the permitted #residential floor area# on a #zoning lot# may be increased by one square foot for every square foot of #qualifying affordable housing# or #qualifying senior housing# on the #zoning lot#, up to the maximum #floor area ratio# specified in the table" in 23-222. The references to maximum residential floor area in 24-161 and 35-31 will then refer to only the amount of residential floor area earned for UAP, not the maximum UAP floor area. Note that the language in 62-361(a) already comes close to this.

In addition, **there needs to be language specifying how floor area increase works when a #UAP site# and a #UAP development# are not on the same zoning lot:** for every square foot of #affordable housing# on the #UAP site#, the #UAP development# may increase its #floor area# by one square foot. This would be true except for #affordable housing# that is part of previously vested Inclusionary Housing, in which case the #UAP development# could increase its floor area as allowed under the Inclusionary Housing program.

And **double-counting needs to be prohibited:** any #affordable housing# on a #UAP site# that is used to increase #floor area# for a #UAP development on a different zoning lot shall not be considered #affordable housing# for a #UAP development# on the same #zoning lot# as the #UAP site#.

2) **Supportive housing**

The zoning should provide a consistent and straightforward set of regulations to accommodate supportive housing, which is sometimes filed as Use Group 2, sometimes as Use Group 3, and sometimes as a combination of both. Because other regulations and programmatic requirements for supportive housing can be complex, **the zoning should treat supportive housing the same way regardless of the use group into which it falls.**

a) **Make it clear that both UG2 and UG3 supportive housing get the full UAP FAR and all other flexibility afforded to supportive housing.** Supportive housing (or any other nonprofit institution with sleeping accommodations) is intended to receive the full UAP FAR and bulk regulations of 23-00, as indicated in the 12-10 definition of "qualifying affordable housing." However, the language in 24-04 and 24-111 implies that all NPISAs are subject to the reduced FARs of 24-111.

The 12-10 definition of "qualifying affordable housing" says that these should be considered residential for the purposes of applying residential bulk regulations. This is helpful, though it could be drafted more clearly, and it is not reflected in the specific language in 24-00 and 23-00.

NPISAs (e.g., UG 3 supportive housing) are given access to 23-23 floor area deductions and other provisions via 24-04(c)(3), but it's not clear how they access the floor area regulations for #qualifying affordable housing# or #qualifying senior housing# in 23-222. The applicability of 24-00 seems to limit them to the community facility FAR, which would be the lower number in 24-11 (per 24-111) for CFs with sleeping accommodations.

The applicability language of 23-01 and 24-04 should be amended as needed to make it clear that UG3 NPISAs that are subject to an #affordable housing regulatory agreement# are eligible for 23-00 bulk regulations, including UAP FAR.

b) **Give the same flexibility to UG2 and UG3 supportive housing under UAP.** The UAP program grants additional flexibility to supportive housing to avoid potentially problematic provisions (e.g., 27-16(b) exempts supportive housing units from the distribution requirements for IH/UAP), but it is unclear whether this applies to both UG2 and UG3 supportive housing. **The 27-112 definitions of "supportive housing project" and "supportive housing unit" should clearly recognize supportive housing that is UG2 as well as UG3.**

3) **Flexibility for existing buildings**

The proposal provides broad flexibility for the modification and reuse of existing buildings, particularly with the Residential Retrofit provisions of 54-53. It is vital that any modifications that may be made to these provisions retain the ability to do the following:

a) **Residential conversion should be allowed for any building used for emergency shelter** or under construction for such purpose before the effective date of the zoning text amendment, regardless of any bulk noncompliance, as long as residential use is permitted under zoning. In the long term, the City's housing policy should be oriented toward providing permanent housing rather than temporary shelter. Land use regulations that prevent conversion of shelters to

housing will impede this goal. While permitted under 54-53, it may be clearer and more straightforward to add flexibility for such conversion to 15-00.

b) **Allow as-of-right changes to previously provided rooftop recreational space to accommodate retrofits:** 15-12 removes rooftop recreation requirements for new Article I, Chapter 5 conversions. Some previously converted buildings will need to reduce the size of previously provided rooftop recreation areas to accommodate rooftop infrastructure for LL97 upgrades or other green retrofits. These buildings are unlikely to be able to set aside new indoor recreation space, and existing space may not satisfy the requirements of 23-63.

c) **Conversion of an existing building or portion thereof into an ancillary dwelling unit without creating a new noncompliance with floor area, height and setback, yard, or parking regulations.** A wide range of spaces, including cellars, porches that have been enclosed, and the ground floors of small homes that contain garages, do not currently count as floor area. Many of these have long been occupied as living space. These spaces should be able to be occupied as living space without creating a zoning noncompliance that hampers other improvements to the building.

d) **Allowing latitude for buildings to be reconfigured and reused over time, and the number of units in a building to be increased or decreased as permitted by other applicable regulations**, rather than just changed in one direction, as today's zoning often allows reduction but not an increase in the number of units in a building. This can be supported by allowing the same allowances (for height, coverage, etc.) for detached ADUs, sheds, and garages. After all, people who stop using their garage to park are using it as a shed!

e) **Small increases in permitted obstructions in yards or open space, etc.** on buildings constructed prior to the date of this amendment. This should include installation of curbs around window wells (including but not limited to those for basement apartments) within a yard

As with other provisions, the proposal **should not eliminate flexibility that exists under zoning today.** For example, the BSA special permit for modest alterations to existing buildings in 73-621 is proposed to be eliminated, presumably because many of the changes allowed under this special permit would be allowed as-of-right (including via 54-53). Some changes allowed under this permit would not be allowed under the proposal, however. This includes enlargements of pre-1961 residential

buildings to exceed permitted FAR by no more than 10 percent. 73-621 is the only avenue available, for instance, to achieve a small enlargement of an existing coop apartment in an overbuilt building (of which many exist). A peculiarity of 73-621 is that there are no findings cited for the BSA to make other than the general findings of 73-03. If this is regarded as a shortcoming, it should be addressed, rather than eliminating the entire permit. **The proposal should retain the 73-621 permit for any modifications to buildings that would not be allowed as-of-right under the proposal.**

4) **Conversions**

The extension of Article I, Chapter 5 conversion to all buildings constructed prior to December 31, 1991 provides beneficial flexibility for the residential reuse of buildings that may no longer be suited to their original purpose. However, this policy needs to avoid converting large anchor buildings that play an important role in the city's long-term residential growth should be excluded from this provision.

Exclude commercial buildings of over 400,000 sf outside the Manhattan Core from Article I, Chapter 5. The conversion of large, anchor office buildings in the secondary Central Business Districts of Downtown Brooklyn and Long Island City would be detrimental to the economic development goal of sustaining secondary CBDs, which is in turn necessary to support residential growth. While the conversion of unviable office buildings in the Manhattan Core can cull often-vacant space without detracting from the area's vitality as a business district (and in fact enhancing it), the same is not true for emerging business districts where decades of planning and public subsidy have been devoted to establishing a critical mass of downtown employment, which hangs by a more slender thread in today's environment. These secondary CBDs not only bring jobs closer to residents of the boroughs outside Manhattan; they also support shorter commutes and reverse commutes that increase the amount of housing and employment that can be supported by the transit network.

The zoning should exclude commercial buildings of over 400,000 square feet that are located outside the Manhattan Core in order to support these planning imperatives while preserving the option of conversion for the large majority of smaller office buildings.

5) **Recreation space requirements**

The 23-231 floor area deduction of up to 5% for amenities is a straightforward and helpful simplification, though modifications are required to avoid unintended restrictions on housing and allow flexibility for good design:

a) **Recreation spaces should only be required in existing buildings when they are undergoing major changes.** The proposed language for 23-63 requires not only developments but also enlargements, extensions, or conversions of multiple dwellings that contain 9 or more units to provide required recreation space. Many existing buildings, particularly those with ground-floor nonresidential use not designed for roof access, are not configured in a way that enables compliance with this new requirement without great cost or disruption. As written, the proposal would have the undesired effect of deterring the modest modifications to existing buildings that other provisions of the proposal (particularly Section 54-53, "Residential Retrofits") seek to accommodate.

    i) For instance, the reconfiguration of even a small quantity of excess garage space as residential storage, retail, or lobby space would be an #enlargement# under zoning. Reconfiguring the boundary between back-of-house retail space and residential space may be a #conversion# or #extension#.

    ii) This requirement would exacerbate the highly problematic one-way ratchet on unit count that exists because of other regulations. Increases in the number of #rooming units# or #dwelling units# in a building are also #conversions#. So, for example, a coop in which two units have previously been combined would be unable to restore them as two separate units without the often impractical step of creating a new recreation space.

    iii) In addition, it appears that this provision would apply to extension or enlargement of nonresidential portions of the building – so the addition of a trash room at the rear of a ground-floor retail space would trigger the requirement for a residential recreation area. In, say, a tenement building with full-coverage ground-floor retail, where second-floor apartments overlook the ground floor roof, this would be impossible to accommodate.

    The applicability of 23-63 should be modified so that recreation space requirements are applied to existing buildings only when there is a significant residential enlargement, extension, or conversion, comprising 20 percent or more of the existing residential floor area in the building (or a comparable standard for significance).

b) **The new recreation space requirements of 23-63 should be more flexible, including to a greater allowance for covered outdoor spaces.** It makes little sense to have requirements for outdoor recreation space be 90%+ open to the sky when the same space could also be enclosed with only a window requirement. There are solutions such as double-height outdoor spaces that could be desirable, and when provided as rooftop space, shading, a trellis, or a caged active recreation space might be welcome. For instance, a solar PV pergola may be utilized to maximize solar efficiency along with rooftop access; limiting this to 10% of an occupied roof may be too restrictive. **The proposal should be modified to allow more flexibility for outdoor recreation spaces (potentially: no more than 10% of the space may be covered by a solid-roofed structure with a clearance of less than 12 feet).** Criteria for these spaces should be simple and flexible enough to allow a wide range of recreation spaces without inviting bad-faith compliance.

c) As a product of accessibility and code requirements, mail rooms are becoming very large. In addition, package rooms are an important amenity in the e-commerce era. Some allowance should be made for deductible amenity space to include a package room and perhaps accommodation for the mail room.

d) DCP should examine whether the window requirements for indoor recreation space are flexible enough. Even in high-end condos it can be common to locate a fitness room at locations that have limited access to natural light, such as building interior corners.

e) It would be helpful to clarify what counts and what does not count toward the amenity deduction. The residential lobby can become quite large in large scale projects. Could an open lounge in the lobby be deducted?

6) **Special districts / particular geographies**

On the Greenpoint-Williamsburg Waterfront (Waterfront Access Plan BK-1), the drafting of the proposed changes is ambiguous and may make it less likely that affordable housing is constructed. **The proposal should retain existing provisions for setting the maximum FAR on a zoning lot and maximum tower heights.**

Under current zoning, a mixed-use project in an R8 district may increase from the base FAR to 6.5 FAR only by providing 20% of the housing as affordable (at or below 80% AMI). The way the proposed changes are drafted, it appears that a development could achieve the maximum FAR of 6.5 in an R8 district by mixing a small amount of UAP with a larger amount of community facility and commercial – e.g.: 5.42 FAR of

market-rate residential + 0.1 FAR of UAP + 0.48 FAR of commercial + 0.5 FAR of community facility.

Today, R8 towers participating in the VIH program are allowed additional height (increasing from 230' to 300' or 300' to 400') if they provide at least 20% affordable housing. Under the proposal as drafted, it appears that R8 towers would be allowed these height increases if there is any amount of UAP associated with them.

To continue to advance development that achieves the original affordable housing objectives of the 2005 rezoning and subsequent private rezonings, the current zoning mechanisms for setting the maximum FAR and tower heights on a zoning lot should be retained.

In addition, to remain consistent with plans to accommodate multiphase developments of large waterfront parcels, within which floor area can be shifted as if the parcel were a single zoning lot, **the provisions of 27-16 governing the location of #UAP sites# and #UAP developments# should be modified within this geography to allow these to be located within the same parcel, rather than the same #zoning lot#.**

7) **Low-density zoning**
   a) **12-10 definition of "qualifying residential site": Close community facility loophole; avoid conditioning permanent floor area allowances on ephemeral use conditions.** Under paragraph (b), all that's necessary for a lot of any size in an R1 to R5 district in the Greater Transit Zone to be a "qualifying residential site" is to contain a #community facility use#. Filing with the indication that a ground floor would contain a day care would make this a UG III #school#. The planting of a single fruit-bearing tree anywhere on the lot would presumably qualify as a UG I agricultural use (community facility)! Not clear what the intention of this section is, but offering a floor area bonus of 67%-100% as proposed would encourage sham or unintended outcomes, and create a strong incentive to disrupt predominantly residential streets with nonresidential use. **Eliminate this provision, or if there is a specific category of community facility-residential developments anticipated, tailor it to more specific criteria.** The resulting provisions should not invite speculative development of (nominally) community facility space as a magic key that unlocks different building types in residential areas.

b) **23-424 (bulk regulations for qualifying residential sites) should not include a minimum base height for low-density building types.** Minimum base heights are a characteristic of a higher-density built environment and are poorly suited to application here. In low-density areas, it is common to have enclosed porches, a one-story garage that completes the street wall on a corner lot, or other configurations that would not meet this requirement. Prohibiting these is unnecessary and would limit the range of architectural solutions to fit "gentle density" into the character of these neighborhoods.

8) **Parking**

a) **Retain the ability to remove parking for buildings built between 1950 and 1961.** Section 25-21 requires parking provided for buildings built post 7/20/1950 to be retained, but it allows parking to be removed for buildings built between 7/20/1950 and 12/15/1961 if it would not be required under the regulations now in effect. **This text amendment should not make it more difficult to remove unnecessary existing parking, or more difficult to build new housing. It should be modified to retain the ability to remove parking for buildings built between 1950 and 1961 if current regulations do not require parking.** This will make it possible in more cases to remove unnecessary parking and provide more housing, and will ensure that the proposal does no harm to housing production.

b) **Retain discretionary actions to remove parking.** 25-232 requires a CPC authorization for removal of existing parking. But today, parking for income-restricted housing units or affordable independent residences for seniors can be removed by BSA special permit (73-433 and 73-434). **This proposal should not make it more difficult or administratively complex to remove parking for IRHUs or AIRS. Modifications can restore this discretionary action (and potentially other decisions about parking removal) to the BSA.** Generous vesting should be allowed for applications under these existing discretionary actions.

c) **Wherever possible, avoid basing regulations on the number of dwelling units in the building, which can and will change over time.** 25-621(c) prohibits front yard parking for buildings containing three or more dwelling units. Basing this requirement on the number of units in the building, rather than the number of parking spaces provided, creates an obstacle to the addition of an ancillary dwelling unit to a two-family house: a two-family house can have a parking space in the garage and one in the driveway leading to it. If converting this to a three-family house, the driveway space would no longer be allowed. This is especially

problematic if the garage itself were to become the ADU! **This provision should be modified so that applicability is based on the number of parking spaces provided, rather than the number of units in the building.**

d) **There should not be a floor area exemption for low-density parking in the 12-10 definition of #floor area#. Parking should be allowed, but count as floor area. This will promote streetscape quality and avoid creating new incentives for illegal residential conversion.** This aspect of the proposal encourages unenclosed parking over enclosed parking. New buildings maximize their floor area by providing unenclosed parking and earning a 300 sf floor area bonus. A building that does not provide a curb cut and nominal unenclosed parking area must be 300 sf smaller.

This would encourage sham filing of space as parking even if it won't be provided or used as parking in reality. The incentive is to file that parking will be provided in an open area, create a curb cut, and then use what would otherwise be an on-street space for the public as a private on-street parking space for the owner (the only one allowed to park on-street in their own curb cut). In other words, the incentive is not to create off-street parking, but rather to privatize an on-street parking space. This is not beneficial.

Previous incentives for provision of parking were limited to detached garages in the side lot ribbon, because these couldn't easily be converted to living space. Allowing a floor area deduction for a garage that's integrated within a small home invites sham compliance, and makes it more attractive to create an illicit ADU (as has been done with many buildings to date) than a lawful one. The proposal can avoid an incentive for illegal conversion by **counting garage space as floor area and providing sufficient floor area to all buildings to accommodate a garage.**

25-62(a)(4) allows single- and two-family homes to provide parking spaces in an area of less than 300sf. This is fine if there's a reasonable expectation that spaces will be designed so as to fit a car. But this provision provides yet another incentive to earn the 300sf floor area exemption for the provision of parking through sham compliance.

The proposal should provide sufficient floor area for buildings, whether or not they provide parking, and the amount of floor area allowed should not depend on the amount of parking indicated on plans. This could be accomplished by

just allowing 300sf of additional floor area on each lot, or a suitable increment of FAR.

e) **Allow community facility parking to be shared with residents, as commercial parking can be.** 25-42 ("Use of Space Accessory to Permitted Non-Residential Uses") is largely unchanged, and does not allow accessory community facility parking to be shared with residents. This is a missed opportunity. Not only religious institutions but other community facilities can (and do) share their parking with parking for residents and their visitors. This is a useful strategy in combination with the elimination of dedicated residential parking.

f) **Changes to the 12-10 definition of "floor area," presumably intended to allow a group parking facility for apartment buildings in low-density districts, are unnecessarily broad.** The proposed changes would allow a two-family house (or a zoning lot containing more than one house) to build a group parking facility of several stories (lowest floor no more than 23 feet in height) and exempt it from floor area. **This exemption from floor area should be limited to group parking for multiple dwellings.**

g) **Limitations on parking in open space.** It appears that the deletion of 25-64 ("Restrictions on Use of Open Space for Parking") allows parking to fill 100 percent of open areas on lots, where today it is generally restricted (e.g., to 50 percent). This may have undesirable effects on open space.

9) Vesting

While most elements of the proposal would be more permissive than existing zoning, there are several (e.g., recreation space requirements) that are more prescriptive. For projects at an advanced stage of planning, there is little reason to mandate compliance with the new regulations – if compliance with the new regulations puts a project at risk, there is little lost by allowing them to complete under the old regulations. **Projects that seek to build under the previous regulations should be allowed to do so for a reasonable period of time.** In particular, the following categories of buildings require specific attention:

a) **Vesting provisions should accommodate not only buildings for which permits have been previously issued, but also affordable housing developments in the HPD pipeline.** For some buildings, constructing under previously approved plans rather than refiling under the new zoning provisions could expedite closing. There

is no major public policy goal sacrificed by allowing these projects to construct under the old regulations; any detriments are outweighed by the benefits of sustaining and speeding affordable housing production. Projects are experiencing multiyear delays in the pipeline, and should not be further delayed by this zoning change.

b) **Projects that aim to complete construction under the extension of the 421-a program should be allowed to complete**.

c) **Affordable housing plans under the Inclusionary Housing program** for which a complete filing has been made with HPD by the date of the amendment (or similar standard) should be vested under the program, enabling them to generate additional floor area at the rates specified in the IH program (rather than for UAP). This will prevent the zoning change from undermining the financing of active projects in the pipeline.

d) See UAP above for critical considerations in the vesting of development rights generated by previously constructed/preserved affordable housing under the **Inclusionary Housing program**.

e) Some buildings in construction may be able to repurpose as-yet unoccupied space currently required to be provided for parking. **For buildings vesting under previous zoning, compliance with previous parking requirements should be optional.** This would further the purpose of the proposed changes, would not take parking away from any existing users, and could help alleviate complications caused by the new streetscape regulations under the recently adopted City of Yes for Economic Opportunity proposal.

10) Miscellaneous and technical comments:

a) The 12-10 definition of "qualifying affordable housing" has drafting issues and should be corrected:

i) Proposed text: "For the purposes of applying the #bulk# regulations of this Resolution to #buildings# subject to an #affordable housing regulatory agreement# that are #community facility uses#, the #residential# #bulk# regulations applicable to #qualifying affordable housing# may be applied, or the applicable #community facility# #bulk# regulations may be applied. Where the #residential# #bulk# regulations are applied, such #community facility uses# shall be considered #residential#, and the term #dwelling unit# shall include "dwelling units" and "rooming units", as set forth in the Housing Maintenance Code."

(1) Issue: #Buildings# can contain #uses#, but they are not themselves uses, and they often contain multiple uses
(2) Issue: "Or" means and/or. This seems to allow mixing and matching of CF and res bulk regulations, which is an unmanageable headache.

ii) **Proposed modifications**: "Where #community facility uses# with sleeping accommodations are subject to an #affordable housing regulatory agreement#, either the #residential# #bulk# regulations shall be applied to the #building# or portion thereof containing such #qualifying affordable housing#, or the applicable #community facility# #bulk# regulations shall be applied. Where the #residential# #bulk# regulations are applied, such #community facility uses# shall be considered #residential# for the purposes of this Resolution, and the term #dwelling unit# shall include "dwelling units" and "rooming units" as such terms are set forth in the Housing Maintenance Code." [note: for clarity, the definition of "residence"/"residential" should cross-reference this definition]

b) [Note that this comment would be obviated by the changes proposed above to the UAP offsite option.] There are drafting errors in the text governing the off-site UAP option that make it even less expansive than it appears to be intended. The proposed 27-16(a) says that "Outside of #UAP offsite option areas#, a #UAP site# must be located within the #UAP zoning lot#." This language restricts affordable housing locations (UAP sites) to areas in which the VIH bonus is currently available (R10 districts and Appendix F geographies). It should instead restrict the location of sites using the increased floor area (#UAP zoning lots#) to such areas: "**However, the provisions of this paragraph (a) shall only apply if the #UAP zoning lot# is located within a #UAP offsite option area#.**"

11) <u>Important non-zoning actions to complement to the proposal</u>

a) **Launch a citywide basement and cellar apartment legalization program.** The proposal appears to provide the key zoning relief necessary to legalize basement and cellar apartments: allowing an additional unit, as "ancillary dwelling unit" or otherwise; relief from parking requirements; ensuring that conversion of cellar space or other non-floor area to living space will not create a floor area noncompliance.

In addition to zoning changes, **a local law is needed to establish a legalization program that:**

i) Provides relief from construction code requirements that impede the safe, cost-effective legalization of basement and cellar apartments
ii) Incorporates appropriate restrictions on the use of subgrade space in areas at risk or flooding from a moderate storm based on projections for the 2050s
iii) Provides relief from Multiple Dwelling Law requirements in the 15 Community Districts where State legislation has provided the City with authority to do so
iv) Provides relief from fees or violations for buildings registering to legalize, so that tenants and owners do not need to fear forced eviction or loss of income

It is also important for the City to:

v) Set up an administrative structure to the legalization program that ordinary homeowners can access
vi) Provide technical assistance, including through community-based groups, for homeowners to navigate this process
vii) Opt into the ADU tax incentive program authorized by the State in this year's budget bill, so homeowners don't incur steep property tax increases
viii) Provide financial support for homeowners who cannot afford to make upgrades (e.g., expand the Plus One ADU program)
ix) Streamline other obstacles to addition of a unit, such as by allowing prefabricated units, preapproved plans, or other mechanisms

b) **Stormwater management strategies.** Particularly in low-density areas with poor drainage, steps should be taken to enhance neighborhood stormwater management capacity, both on public land and rights-of-way and on private land, to preserve infrastructure capacity and reduce risks to basements and cellars. This may include
i) further "cloudburst planning" improvements for areas of flood risk
ii) a pricing mechanism that values stormwater management – e.g., a stormwater charge on sewer bills that is refundable for properties that build and maintain stormwater management features.
iii) Funding for implementation of best management practices or protections in buildings and on sites (e.g., installation of backwater valves)
iv) Investments in hard infrastructure improvements, with prioritization factoring in the demands of growth

c) Laws and programmatic support should target the **prevention of exploitive practices and inequitable outcomes in communities of color.** While today the

only way for many homeowners to realize the value of their properties is to sell or borrow against them, City of Yes for Housing Opportunity will open more options for these homeowners to alter their homes, create ADUs, and supplement their income. Nonetheless, it remains important to push back on exploitation of vulnerable and low-income homeowners. Vehicles to accomplish this may include the creation of additional Cease and Desist areas, new interventions to prevent deed theft, or other protections.

d) Amendments to the Housing Maintenance Code and other applicable laws should support the implementation of a wider range of **shared housing** models. This includes establishing a regulatory framework for allowing suite-style, non-"dwelling unit" living arrangements other than supportive housing, enabling property managers and residents to resolve conflicts among residents while affording residents sufficient protections.