

We Say 'YES' to the 'City of Yes' for Economic Opportunity

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The authors discuss New York's "City of Yes" zoning amendments pertaining to carbon neutrality.

What do cellphones, the internet, lithium-ion batteries, 3D printers, virtual reality, rideshare technology and delivery apps have in common? To start, they were all invented after 1961, the year the City's Zoning Resolution was enacted. And while these inventions fundamentally transformed how we live, work, and interact with the built world, the Zoning Resolution has simply not kept up: large portions have not been updated since 1961, now 63 years ago! Moreover, in the past four years alone the COVID-19 pandemic has reshaped the very fabric of how we live, work, socialize, shop, travel, and commute.

Luckily, this Administration recognizes that the Zoning Resolution needs a revamp. Over a year ago, Mayor Eric Adams revealed his City of Yes initiatives, a trio of legislative packages which aim to: (1) promote sustainability (the City of Yes for Carbon Neutrality, which passed in December 2023); (2) update the City's zoning tools to support economic growth and resiliency (the City of Yes for Economic Opportunity (COYEO) currently in public review); and (3) spur on the development of affordable housing (the City of Yes for Housing Opportunity, which has yet to enter into public review).

In October 2023, the Department of City Planning (DCP) initiated the public review process for COYEO. Community boards completed their review last month, and on March 6th, the City Planning Commission (CPC) voted to approve COYEO (11 to 1) with modifications (see CPC Report). COYEO will now make its way to the City Council for a final vote. COYEO is comprised of 18 proposals.

Helping Businesses Find Space:

1. Allowing legal non-conforming commercial uses in specified residential and historic districts to reoccupy spaces that have been vacant for over two years. (Currently, non-conforming uses are prohibited from reoccupying upon a two-year discontinuance of such non-conforming use.)
2. Easing certain commercial district limitations by permitting the same uses in low-density commercial districts, expanding uses permitted in medium- to high-density commercial districts, and allowing certain uses to occupy the ground floor in specific commercial districts that previously only permitted such uses above the ground floor.
3. Allowing small-scale clean production (such as microbreweries, ceramic shops, apparel makers, and food producers), which are currently only permitted in manufacturing districts, to operate in most commercial districts, subject to square footage limitations and environmental/emissions requirements.

4. Removing loading dock requirements for changes of use in existing buildings, which are impediments to expanding existing businesses and tenating new businesses since providing additional loading docks in existing buildings is often impossible or impractical.
5. Allowing certain commercial uses on the second story of mixed-use buildings in low-density commercial and overlay districts, and allowing businesses to operate in residential buildings on the same floor as or above residential units in medium- to high-density commercial districts subject to square footage limitations. Notably, existing residential use will not be allowed to be converted to commercial use.
6. Defining new uses, updating existing use terms and reorganizing all uses into new Use Groups that better reflect land use categories, as follows: (I) agriculture and open uses; (II) residential uses; (III) community facilities; (IV) public service facilities and infrastructure; (V) transient accommodations; (VI) retail and services; (VII) offices and laboratories; (VIII) recreation, entertainment and assembly spaces; (IX) storage; and (X) production.

Boosting Growing Industries

1. Authorizing indoor agriculture in all commercial districts and removing ambiguity around enclosure requirements for uses with passive outdoor spaces, such as florists and lawn and garden retailers.
2. Allowing life science businesses to locate in commercial districts while retaining safety requirements, and allowing laboratories to co-locate within hospitals and universities in commercial districts and on Community Facility campuses via a CPC special permit.
3. Modifying regulations governing nightlife businesses by consolidating and clarifying distinctions between categories of eating and drinking establishments based on capacity instead of use, thereby allowing dancing and entertainment in bars and restaurants in certain commercial districts, which currently is prohibited in many instances.
4. Allowing amusement uses indoors in low-density commercial districts, subject to square footage limitations, and allowing amusement uses indoors (and outdoors via a Board of Standards and Appeals (“BSA”) special permit) without square footage limitations in most medium- to high-density commercial districts. Amusement uses would also be permitted indoors or outdoors without square footage limitations in the highest-density commercial district and in manufacturing districts.
5. Modernizing regulations around home-based businesses by allowing home-based businesses to expand in size to 49% of the floor area of a residential unit or 1,000 square feet (whichever is less), with the ability to hire up to 3 employees.

Enabling More Business-Friendly Streetscapes

1. Establishing consistent street scape design requirements citywide to create attractive street level conditions that activate neighborhoods and provide a safe pedestrian environment.
2. Consolidating the range of auto servicing uses into two categories, light and heavy vehicle repair and maintenance shops, which will permit light auto servicing uses to be located in most commercial districts via a BSA special permit, and light and heavy repair uses in the highest-density commercial district and in manufacturing districts as-of-right.
3. Encouraging safe and sustainable deliveries by allowing micro-distribution facilities in most commercial districts, subject to square footage requirements.

New Opportunities for Businesses

1. Creating a CPC authorization to allow NYCHA and other large-scale residential sites the opportunity to allow commercial uses, subject to square footage limitations, in residential districts.
2. Creating a new CPC authorization to allow corner stores in residential districts, subject to square footage limitations.
3. Creating a new BSA and CPC special permit, as well as a CPC authorization to allow business to modify size, enclosure or other zoning requirements that are impediments to businesses occupying certain spaces and expanding existing businesses.
4. Creating four new job-intensive manufacturing districts, increasing the permitted floor area to encourage multi-story buildings, and moving away from low-scale industrial buildings.

The need for these changes cannot be overstated. The rise of e-commerce, macroeconomic and local shifts from brick and mortar retail to experiential businesses, coupled with the effects of the pandemic, resulting in a drop in consumer spending rates (which today, remain below pre-pandemic rates), has exacerbated the proliferation of commercial storefront vacancies.

Additionally, the rise of remote work has permanently changed office building visitation rates, which are down to 50% to 75% of what they were pre-pandemic, resulting in millions of existing and underutilized commercial floor area.

But it is not all doom and gloom: new industries have emerged that will help to accelerate the city's economic growth, create new jobs and transform our home-neighborhoods in response to the ways we now live and work. Yet, zoning regulations curtail the ability to do so, that is, until now.

To be clear, COYEO is not a panacea to all zoning problems, and while we believe it is a significant step in the right direction, COYEO is not making everyone happy: only 21 of the city's 59 community boards support these changes, with stronger support in areas of the Bronx, Manhattan, North Brooklyn and Western Queens, and general opposition in Staten Island, Eastern Queens and South Brooklyn.

Some of the 18 proposals garner more criticism than others. Great debates ensued at the community board meetings on topics such as corner store regulations and urban agriculture regulations, which some fear will result in the proliferation of illegal marijuana stores in residential neighborhoods and/or the cultivation of marijuana, and cause safety and quality of life issues.

Certain community boards also voiced concerns over changes to nightlife regulations, home occupation regulations, and regulations that propose to allow commercial uses on the same floor as, or above, residential uses of mixed-use buildings, all citing noise, safety and quality of life concerns. A number of community boards also raised concerns surrounding the new auto repair and amusement regulations, citing pollution and other environmental, safety, and quality of life concerns.

While CPC almost unanimously voted to approve COYEO, they made several modifications in response to community board feedback (instituting square footage and other limitations on certain proposals), around half of the commissioners voted yes with reservations, voicing concerns regarding home-occupation and regulations and regulations that will allow commercial uses on the same floor as, or above, residential uses of mixed-use buildings.

Recognizing their concerns were outside zoning, they implored City Council to use their legislative power to ensure the safety and quality of life of residents

With the community board review process complete and the CPC vote in, the ball is now in City Council's court. If all goes smoothly, COYEO could go into effect as early as April or May of 2024. And let us hope that it does.

Jane Jacobs put it best: "Dull, inert cities, it is true, do contain the seeds of their own destruction and little else. But lively, diverse, intense cities contain the seeds of their own regeneration, with energy enough to carry over for problems and needs outside themselves." New York City, it's time to regenerate.

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