



Rezoning Process Reforms

Some of the most contentious local politics in New York City involve rezonings, especially those which allow for increased development and density. Changes in allowed land use create important opportunities for new housing and new jobs but provoke concerns about strain on infrastructure, displacement, and the inequitable targeting of neighborhoods for growth. Accordingly, many stakeholders think that the rezoning process should be reworked—in one direction or another—to better account for considerations that they feel are under-valued. These goals include promoting racial equity and minimizing displacement, increasing neighborhood control over local zoning, and streamlining and speeding up the approval process to better accommodate growth. While most reforms to the land use process would require City Council legislation and revision of the city charter, the mayor will play a central role in shaping any change in this area.



Background

Zoning determines everything from what kinds of structures can be built, to how big they can be, to how much parking they must accommodate, and to what they can be used for. Generally, New York City controls its own zoning, although state law imposes certain additional limits, including, notably, a cap on the maximum allowable size of a residential building. Most housing development in New York City is “as-of-right,” meaning that it complies with current zoning and requires no special approvals.¹ But projects that need changes to zoning, or other special approvals, must go through what is termed the “Uniform Land Use Review Process” or ULURP (pronounced you-lurp), a multi-stage review process that takes roughly six months.²

Before formally entering ULURP, an application must be “pre-certified”, which requires the development of an application, meeting with the Department of City Planning and, most importantly, the completion of any necessary environmental review. Under environmental review, the applicant must disclose any projected significant adverse impacts on the environment, including on the social environment of the surrounding community, and how they will mitigate those impacts. Environmental review is meant to inform decisionmakers about the potential environmental impacts of their choices.

Following pre-certification, ULURP requires that (in broad strokes) community boards and borough presidents hold public hearings and offer recommendations on whether or under what conditions a rezoning should be approved, after which the City Planning Commission and the City Council must both approve a rezoning for it to move forward. Applicants usually begin community outreach before the formal ULURP process starts, though this is not required.

THE SIX PHASES OF THE UNIFORM LAND USE REVIEW PROCESS



¹ *Info Brief: How Much Housing Is Built as-of-Right?* NYC Department of City Planning, City of New York, (March, 2019). www1.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/how-much-housing-is-built%20as-of-right.pdf

² *Application Process Overview.* NYC Department of City Planning, City of New York. www1.nyc.gov/site/planning/applicants/applicant-portal/application-process.page



This process was meant to balance public participation with a predictable timeline, while sufficiently disclosing all relevant information about a project so that members of the public and public officials alike can make an informed decision about a potential project. However, many feel that the ULURP process needs reform, albeit in vastly different ways. Critiques contend that ULURP moves too quickly or too slowly; that it is paralyzed by analyses or fails to analyze the most important issues implicated by rezonings. This brief considers some of the leading proposals for how to revise the ULURP process. (Related issues are addressed in the brief “Who Decides,” which focuses on the allocation of land use power between neighborhood, citywide, and regional scales.)

Pre-ULURP Community Engagement

A common criticism of the ULURP process is that the opportunities for public input into, and influence over, rezoning proposals is too limited and comes too late in the process. The mandatory elements of public participation, including hearings at the City Planning Commission, community board, and borough president level, come after a zoning proposal has been substantially crafted. There is commonly extensive public outreach prior to this point—sometimes for years—but it is not officially required. Moreover, sometimes by the point when a project enters ULURP, there have already been substantial negotiations between the applicant (whether a developer or a city agency) and the local City Council member to ensure that the proposal reflects the priorities of the officials who will ultimately vote on the project’s approval. This timeline means that some community members inevitably feel that they are asked to respond to rezoning proposals, but do not have sufficient ability to shape them.

Accordingly, some have suggested that land use changes should involve more opportunities for public engagement before the start of the official ULURP process. This could mean increasing transparency and public hearing opportunities during the pre-certification process, in order to encourage more public input as a project first takes shape. However, moving these early stages of the approval process into the public eye may instead result in the creation of still-earlier rounds of private negotiations: developers and city officials alike may need the space to speak candidly, without public controversy, in order to reach mutually beneficial agreements. More importantly, additional public engagement could further slow down the construction of needed housing by adding to the approval timeline.



In Brooklyn’s Gowanus neighborhood, for example, the current round of neighborhood planning around a proposed rezoning was initiated in 2016, and was preceded by two earlier rounds of planning from 2008-2009 and 2013-2015.³

Another common proposal is to strengthen community-based planning, outside the context of individual rezonings. This would encourage local groups to proactively develop their own land use plans for their neighborhoods, which would then inform subsequent rezoning decisions. The city’s formal process for community-based planning is the 197-a process, which allows for plans sponsored by community boards or borough boards, though there are additional, more informal community-based planning processes sponsored by private organizations or by the city itself. Community-based planning can offer many benefits, from a more holistic look at neighborhood needs to a process that builds community buy-in to future development. However, difficult questions arise when concrete rezoning proposals must be integrated with community-based plans—especially because community-based plans (which reflect the priorities of current residents, rather than future residents or people in other neighborhoods) are often less accommodating of growth than are other perspectives on the city’s land use needs.

Requiring an Analysis of Rezonings’ Effects on Racial Equity

Land use law has, from its inception, been used not only to protect against nuisances and promote good urban design, but also to create and entrench racial hierarchy and racial segregation. Understanding the racial impacts of contemporary city land use policy is an important step towards mitigating those racial inequities. One method proposed for achieving that goal would be to require that, before any rezoning is approved, there must be an analysis of its impact on racial equity. Interest in conducting racial impact analyses of land use decisions has been growing across the country, with Boston among the most significant cities to adopt such a requirement.⁴

³ *What’s Going on In Gowanus?* Center for Urban Pedagogy (CUP), Fifth Avenue Committee, and Pratt Center for Community Development, (2019). http://welcometocup.org/file_columns/0000/1749/cup_whats-going-on-in-gowanus.pdf

⁴ See Boston Zoning Code, Article 80 (requiring an assessment of whether the project affirmatively furthers fair housing).



Policies requiring the completion of racial impact analyses of land use decisions vary in their details. Some proposals, for example, would integrate racial impact analysis into the environmental review process, which already provides for some analyses of socioeconomic impacts and potential displacement. Because private parties can sue over the conduct of environmental review, this would substantially increase citizen oversight and control of the racial impact analysis process, but would also provide another opportunity to slow development through litigation and potentially block it altogether.

Racial impact analyses can also differ in what aspects of racial equity they emphasize. Some proposals, for example, would focus on gentrification and displacement, while others would look more at residential segregation and integration. And some proposed study methodologies would be more quantitative, which can make the analysis more rigorous or more rigid, while others would be more qualitative. These choices must be made carefully, to ensure that an accurate and complete picture of racial impacts guides decisionmakers.

For example, one leading proposal in the New York City Council would require a racial impact analysis to compare the current demographics of a neighborhood to projections of who would use the new developments spurred by a rezoning, with the goal of identifying proposals that would cause significant neighborhood change. It is intended that a study like this could signal to policymakers the need to slow displacement, either by recrafting rezoning proposals or by pairing them with complementary anti-displacement policies, like investments in affordable housing or targeted tenant protection work. However, there are questions whether existing data is sufficient to conduct this kind of study. More fundamentally, to fully capture the racial equity considerations at stake, this methodology might need to expand its scope to examine additional issues like integration and access to economic opportunity.

Any effort to study the racial impacts of rezonings must be careful to also consider the racial impacts of current zoning. Maintaining the status quo can also exacerbate racial disparities, and an analysis which only measures the harms from action may incorrectly conclude that inaction is preferable.

Indeed, any requirement for additional analysis—especially if that analysis can be challenged in court—could provide another hurdle for new development; if that leads to fewer units being built, the policy could, ironically, lead to higher housing costs and more displacement. Finding ways to better understand the racial impacts of land use policy is an essential task. But given the many ways that racial inequities manifest in the land use system, it is a difficult task to perform well.



Streamlined Processes

Each of the above suggestions would increase the requirements for a rezoning and tend to slow the redevelopment process. But many argue that the city should make it easier to get new construction approved. Because ULURP is slow and costly, and its outcomes are always uncertain, developers strive to avoid going through ULURP whenever possible. Streamlining the rezoning process would make land use changes easier, allowing for greater flexibility in the housing market and likely additional development. Overall, increased housing production will mitigate rent increases citywide and provide more opportunities for people to live in New York City and in the neighborhoods of their choice. However, a streamlined process might risk sacrificing procedural safeguards against development that is deemed undesirable, for any number of reasons.

Given the importance of carefully reviewing land use changes, proposals to streamline the ULURP process take many forms. For example, many jurisdictions outside New York (usually as a matter of state law) provide alternative land use approval processes for developments that include affordable housing, in order to promote additional affordable housing construction. Alternatively, the city could streamline rezonings that are consistent with a comprehensive plan. Under these types of comprehensive planning proposals, which are currently being debated in New York City, the city would develop a citywide land use plan, and any individual rezonings consistent with that plan would go through a shorter and simpler review process. This would reduce project-level review, but only for proposals which promote the land use goals agreed to in a more extensive, citywide planning process. (A very different model of comprehensive planning would instead restrict the city's ability to change zoning to instances consistent with the citywide plan or more closely tie rezonings to infrastructure development).

Finally, there may be elements of the existing land use review process which are not working as intended and could be excised, including those which provide well-resourced residents an opportunity to impose costly delays through litigation. For example, California has worked in recent years to reform its environmental review process to promote infill development and to eliminate analyses which perversely discouraged transit, bike and pedestrian transportation. None of these types of proposal is without controversy, however. The land use process empowers neighborhood groups and local elected officials to participate



in land use planning; each step that is streamlined (whether a public hearing, a Council vote, a set of required analyses, or a right to litigate) removes an opportunity for local organizing to reshape or reject a proposal—for better and for worse.

Conclusion

Ultimately at the heart of these debates about the land use process is a question about land use outcomes: how quickly and where should the city's built environment change and grow? Does the city need more procedural protections against changes to zoning, or more flexibility to shift over time, or in response to crises? The next mayor, in thinking through how land use regulations can help shape the city, must think through how the rezoning process shapes those regulations.