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*How New York's
Next Mayor can Shape
Land Use and Planning*



Who Decides

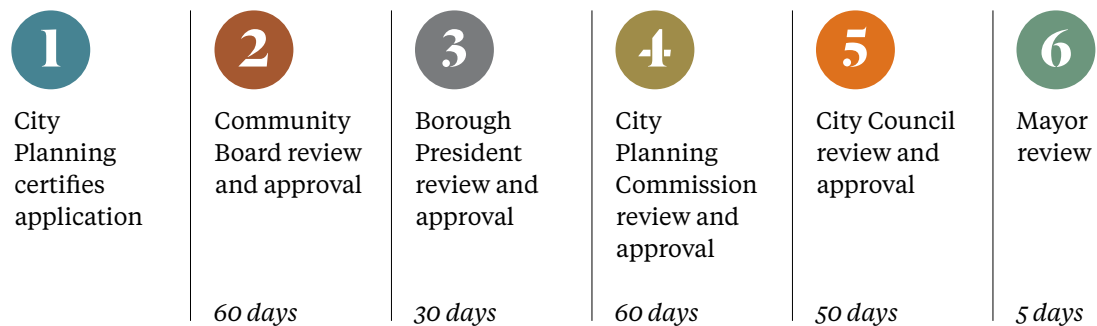
Some of the most important questions in land use policy today concern not what may be built, but who decides. Land use law can shift power to different levels of governance, from the state to the city to the neighborhood. In New York City today, land use decisions are made by city government, but dominated by neighborhood-level politics. Many important policy debates—like proposals to end “member deference” and enact comprehensive planning—concern efforts to transfer existing power from neighborhoods to larger political communities, and thereby prioritize different values in land use decision making. Although outside a mayor’s direct authority, recent efforts by many state legislatures to limit exclusionary zoning similarly involve shifting land use power upwards.



Background

The Uniform Land Use Review Procedure (“ULURP”) process governs land use decision making in New York City. Most housing development in New York City is “as-of-right,” meaning that it complies with current zoning and, as such, requires no special approvals.¹ But projects that need changes to zoning, or other special approvals, must go through ULURP, a multi-stage review process that takes roughly six months; pre-ULURP steps, including environmental review and community engagement, can take much longer.² ULURP was meant to balance neighborhood, borough, and citywide interests. In broad strokes, ULURP gives community boards and borough presidents an advisory role in the rezoning process: with each holding public hearings and offering recommendations on whether or under what conditions a rezoning should be approved. The City Planning Commission—where a majority of members are mayorally-appointed—and the City Council must both approve a rezoning for it to move forward (and the mayor may veto the Council’s action, subject to a Council override).

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



Aldermanic Privilege and Local Control

Especially in recent years, the balance of power within the ULURP process has shifted to individual City Council members. Under an informal practice called “member deference” or “aldermanic privilege,” each Council member decides the fate of projects located in their district; the other 50 members of the Council will almost always honor and defer to the local member’s decision. Aldermanic privilege is not an ironclad rule—and the Council has overruled local members’ decisions in the past—but it is a strong norm, and one which has only gained force as the Council leadership has worked to empower individual members (as compared to centralizing power in the Speaker’s office).

Questions over the proper role of member deference have recently broken out into open debate among members of the City Council and the broader public. In particular, council members took opposing positions over whether the local council member should be permitted to decide the fate of a billion-dollar redevelopment plan for Industry City, on the Brooklyn waterfront. That proposal would have created over one million square feet of new commercial and industrial space, with significant local impacts but also potential job creation affecting workers in much of the city.³ Similar disagreements have arisen over developments in Long Island City and Flushing.⁴

Supporters of member deference cite local officials’ greater ability to represent—and be electorally accountable—to the neighborhood most directly affected by a new development. In contrast, opponents of member deference point to the citywide interests at stake in many developments—like improving housing affordability, reducing residential segregation,⁵ and providing jobs—as well as the interests of the people who would live or

³ Alec Schierenbeck, *End the Council’s Land-Use Veto: The Path to a More Affordable, Fairer New York*. New York Daily News, (October 22, 2019). www.nydailynews.com/opinion/ny-end-the-councils-land-use-veto-20191022-3mfmgfdbmfaflgmgtnovvbitdq-story.html; Carlos Menchaca and Jimmy Van Bramer, *How Development Should Be Decided in New York City*. Gotham Gazette, Citizens Union Foundation, (August 13, 2020). www.gothamgazette.com/opinion/9679-how-development-should-be-decided-new-york-city-council; Rebecca C. Lewis, *Industry City and the Future of Member Deference*. City and State NY, (September 16, 2020). www.cityandstateny.com/articles/politics/new-york-city/industry-city-and-future-member-deference.html

⁴ Sadeef Ali Kully, *City Council Delays Flushing Waterfront Project Vote, As Lawmakers Raise Concerns*. City Limits, (November 20, 2020). citylimits.org/2020/11/20/city-council-delays-flushing-waterfront-project-vote-as-lawmakers-raise-concerns/

⁵ Jon Lentz, Jumaane Williams: *Too Much Member Deference Can Be a Bad Thing*. City and State NY, (November 17, 2017). www.cityandstateny.com/articles/policy/housing/jumaane-williams-too-much-member-deference-can-be-a-bad-thing.html



work in a new development but aren't *yet* part of that community. As fights over rezonings prove increasingly controversial, elected officials in City Hall and the Council will have to navigate how much to defer to local council members' land use decisions.

This fight over aldermanic privilege is a microcosm of larger debates about “community control” and neighborhood power in the zoning process. Local control manifests itself in many different ways (with different implications). For example, public hearings tend to be dominated by a project's immediate neighbors (and by project opponents rather than a representative cross-section of the neighborhood), and those same neighbors can also use legal actions to challenge or delay a zoning decision.⁶ And reflecting the many ways that local control manifests in the city's land use system, the next mayor will have a plethora of tools and opportunities to give relatively more or less deference to neighborhood-level land use preferences. These include formal powers like appointments to the City Planning Commission and control over the Department of City Planning, to informal uses of their political power.

This over-arching question of land use policy implicates important values. Many believe that the community immediately surrounding potential development sites should decide what can be built there: whether because they will be most directly affected by changes to the neighborhood, because they have deeper insights into the way the neighborhood functions and its needs, or because they have some right to local self-determination. But devolving power to the most local scale also risks parochialism. Neighborhood groups frequently prioritize their own hyperlocal needs and concerns—like views or parking—over citywide needs like affordable housing. Neighborhood empowerment may also have distributional consequences. There is evidence from California that citywide officials allow more housing to be built, but concentrate that housing in low-income Black and Latino neighborhoods.⁷ Privileged communities, in other words, may be able to control development in their neighborhoods with or without formal local control, while historically disempowered communities cannot.

⁶ Katherine Levine Einstein, David M. Glick, and Maxwell Palmer, *Neighborhood Defenders*. Cambridge Core, Cambridge University Press, (November, 2019). www.cambridge.org/core/books/neighborhood-defenders/0677F4F75667B490CBC7A98396DD527A

⁷ Michael Hankinson and Asya Magazinnik, *The Supply–Equity Trade-off: The Effect of Spatial Representation on the Local Housing Supply*. Michael Hankinson, (February 20, 2021). mhankinson.com/documents/supply_equity_working.pdf



Comprehensive Planning and Citywide Interests

In this context, many—most notably City Council Speaker Corey Johnson—have called for New York City to adopt a comprehensive planning process. Comprehensive planning would require the creation of a single citywide plan that sets out a vision for both land use regulation and infrastructure investment.⁸ Individual zoning decisions would then be made consistent with that overarching plan. Comprehensive planning means many different things to different people.⁹ Some intend comprehensive planning to be a ceiling on growth, with individual rezonings subjected to additional scrutiny if not part of the larger plan. Others intend it to serve as a floor for growth and a mechanism for allocating needed development across the city. Some imagine it as adding new opportunities for neighborhood input and additional process before a rezoning; others see it as a way to streamline actions consistent with the plan. Some emphasize comprehensive planning as a technical exercise, meant to coordinate the city’s many different housing and infrastructure-related investments and plans, while others see it as a political process in which citywide interests can better organize. The details of the comprehensive planning process matter tremendously in determining which of these visions would become reality.

Outside of New York City, comprehensive planning has had mixed results. In California, for example, the state has for decades required that comprehensive plans include an element detailing precisely how each municipality will achieve a mandated level of affordable housing production. Yet the preparation of these plans has had little correlation to actually creating housing; planning, on its own, will not mechanically overcome the political barriers standing in the way of housing production and affordability. At the same time, the comprehensive planning process has provided opportunities for elevating citywide interests in the land use process. In Minneapolis, for example, a recent comprehensive planning process laid the groundwork for sweeping land use changes intended to improve housing affordability, reduce racial segregation and fight climate change—including by legalizing multi-family housing citywide, promoting transit-oriented development, eliminating

⁸ *Planning Together: A New Comprehensive Planning Framework for New York City*. New York City Council, (December 16, 2020). council.nyc.gov/news/2020/12/16/planning-together/

⁹ *Testimony of Vicki Been** Before the New York City Council’s 2019 Charter Revision Commission. NYU Furman Center, (March 21, 2019). furmancenter.org/files/testimonies/Been_testimony_to_charter_revision_revised.pdf



parking mandates, and implementing inclusionary zoning.¹⁰ Observers believe that these changes were only possible through a citywide process, in which no neighborhood felt singled out, and in which interest groups like labor unions, environmental organizations, and the AARP, which do not generally get involved in individual rezonings, made their voices heard.¹¹ Even in California, the state legislature has recently used the state’s previously-ineffective planning process as the foundation for important new land use reforms.¹² Overall, comprehensive planning can be a paper exercise that slows the land use process without promoting different or better outcomes, or it can be a mechanism for allowing citywide interests to be better balanced with neighborhood interests.

State Zoning Reforms and Regional Planning

Sometimes, though, even municipal boundaries are too narrow to capture the full range of interests at stake in land use planning. After all, housing markets and commute patterns are regional. Moreover, outside large cities like New York City, many municipalities are as small as (or smaller than) a city neighborhood. As such, an increasing number of states are becoming involved in zoning reform. In the last few years, for example, California has (among other things) legalized “accessory dwelling units” (ADUs) and sped up the approval process for affordable housing developments; Oregon has essentially eliminated single-family zoning; and Massachusetts has required local governments to allow multi-family housing near rail stations.¹³ These efforts are intended to promote housing affordability, integration, economic growth and environmental outcomes. At the same time, many oppose state involvement in overseeing residential zoning, either because they oppose the substance of these proposals or on the grounds that home rule and local control outweigh those statewide interests. These debates are likely to come to New York in upcoming years, and the next mayor will play an important, if indirect role, in how they proceed. While no

¹⁰ Richard D. Kahlenberg, *How Minneapolis Ended Single-Family Zoning*. The Century Foundation, (October 24, 2019). www.tcf.org/content/report/minneapolis-ended-single-family-zoning/?agreed=1

¹¹ Id.

¹² Paavo Monkkonen, Christopher Elmendorf, Moira O’Neill, and Eric Biber, *A New Approach to the Housing Element Update*. UCLA Lewis Center for Regional Policy Studies, (January, 2021). www.lewis.ucla.edu/research/new-approach-housing-element-update/

¹³ Noah Kazis, *Ending Exclusionary Zoning in New York City’s Suburbs*. NYU Furman Center, (November 9, 2020). www.furmancenter.org/files/Ending_Exclusionary_Zoning_in_New_York_Citys_Suburbs.pdf



New York state statute currently limits exclusionary zoning, legislation to legalize ADUs was recently introduced, and more legislation is likely to follow. For its part, the De Blasio Administration has recognized the regional nature of our housing crisis, creating a new office dedicated to regional planning with the Department of City Planning. The next mayor will have to continue thinking regionally, and face questions of how to react to possible state interventions in what is currently an area of primarily local control.¹⁴

Conclusion

As this brief indicates, who decides about land use is a critical and hotly contested question, and one that can greatly alter the ultimate outcomes of the land use process. The immediate neighbors, the larger neighborhood, and the city as a whole each have a different perspective, and a different stake, in how and whether an area grows. None of those perspectives can be ignored, but the question of how to balance them has taken on new urgency in recent years. The next mayor will no doubt be confronted with this issue repeatedly and pressingly.

¹⁴ That said, New York State already intervenes in local zoning: prohibiting residential buildings larger than 12 FAR, and preempting local zoning for specific uses like in-home daycares, group homes, and energy infrastructure