



January 13, 2021

On behalf of the NYU Furman Center, thank you for the opportunity to provide comment on this important legislation.

Ensuring that land use systems promote racial equity is a goal of paramount importance. Since zoning's very inception, land use laws have been used, both intentionally and as a reflection of deep structural racism, to exclude and to entrench racial hierarchy. And still today, our land use system contributes to profound disparities in housing quality and affordability, in health and exposure to environmental risks, in education and access to opportunity. New York City is not exempt from this history, or this present reality. Determining how best to reform our housing and zoning systems to promote racial equity is a question that policymakers must not shy away from.

The NYU Furman Center advances research and debate on housing, neighborhoods, and urban policy. This includes providing essential data and analysis that helps policymakers, community organizations, and many others to examine pressing policy issues. As researchers committed to empirically-informed policymaking, we strongly support this legislation's goal of bringing facts and data to bear in studying and identifying the racial disparities in our land use and housing system. Based on our research on land use law and fair housing, we offer the Council a few suggested principles for how to most effectively assess the relationship of zoning and racial equity and a comparison to other efforts to study the racial impacts of land use. These may suggest avenues for alternative methodologies to the one set forth by this bill.

First, to fully understand the racial impacts of land use decision-making, it is critical to understand the fair housing implications of not only a proposed rezoning, but also any decision *not* to rezone. In many circumstances, a failure to act can produce worse disparities than action. Neighborhoods will still change in the absence of a rezoning. Those changes, which can include sharply rising rents and increased displacement, may be more racially inequitable than the outcomes had a rezoning occurred. The proposed legislation increases scrutiny of proposed rezonings while not measuring the disparities caused by preserving existing zoning. This risks creating a false impression of the racial impacts of land use changes, by spotlighting and quantifying only the harms of action and not the harms of inaction. Where the status quo is itself the source of racial inequity, this could make matters worse by discouraging zoning changes altogether. The Council should consider how to study the racial impacts of maintaining current zoning, whether in a particular project area or in broader geographies, as well as of proposed rezonings. The Council should also consider how land use changes that restrict new development, like downzonings or the designation of historic districts, affect racial equity.

Second, fair housing is a complicated and context-sensitive goal. Thus, under the Obama administration, HUD recognized that fair housing requires a "balanced approach" that includes "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and

balanced living patterns, [and] transforming racially and ethnically concentrated areas of poverty into areas of opportunity.” A racial impact report of land use law should allow for an analysis of each of these aspects of fair housing, as relevant in context.

To offer a few examples, a rezoning predicted to attract businesses that will employ higher-wage workers than the residents of the surrounding neighborhood might be a harbinger of gentrification, but might also be a badly-needed effort to bring better employment opportunities to local residents. A housing development predicted to rent exclusively to low-income households in a low-income neighborhood might be seen as serving existing residents and preventing displacement, but might also be seen as concentrating poverty and entrenching segregation.¹ This legislation, at points, appears to suggest that all new development should be at current neighborhood rents and wages and serve a population with the same racial composition as existing neighborhood residents—but doing so will not always best promote equity.²

A racial disparity analysis which cannot account for the nuances of context, or which suggests that all new development should only be at the rent or wage levels of existing land use, risks distorting the fuller fair housing story and perpetuating the entrenched segregation and disparities that fair housing seeks to redress. Moreover, insofar as this legislation calls out “displacement risk” but not other fair housing issues (like segregation), it further risks identifying one type of harm while implicitly excusing another. The Council should examine whether its legislation could facilitate a broader examination of the racial equity implications of a rezoning, in a manner that allows for different fair housing goals to be brought to bear and weighed in context.

Third, and relatedly, an approach based on comparing the predicted demographics of users of new development to existing neighborhood and citywide demographics will miss other important effects of a rezoning, especially those related to the benefits of increased housing supply. Take, for example, a rezoning expected to create substantial amounts of new luxury housing in a predominantly white and wealthy neighborhood. The new housing might be predicted to serve residents who, like the neighborhood’s existing population, are disproportionately white and high-income. The analysis required by this legislation would have little to say about such a rezoning. But significant research has shown that at the citywide level, an influx of new housing supply can help meet demand pressures and mitigate rent increases. Such a rezoning might be extremely important for racial equity in one sense—as one tool in a broader anti-displacement strategy—that this kind of disparity report is not designed to capture. Once again, a broader look

¹ For example, [Furman Center research](#) has demonstrated the significant benefits to NYCHA residents of living in higher-income neighborhoods, or neighborhoods where incomes are increasing.

² Communities recognize these complexities. In its [most recent statement of district needs](#), for example, Bronx Community District 4 called for preserving and building affordable housing for low-income families, but also highlighted the need to invest in housing for moderate- and middle-income households to achieve “economic diversity,” foster “prosperity and growth,” and ensure that upwardly mobile community members remain in the district.

at racial impact—broader in geography, time, and in mechanisms for addressing or exacerbating racial inequities—is important.

Fourth, the effects of land use development are dynamic. The use of a building changes over time. This legislation’s suggested strategy for producing a racial disparity report requires predicting the rent levels of future residential development and the type of tenant for non-residential development, with a fair degree of precision. Land use law and real estate markets do not lock in uses in such a prescriptive way—even where initial tenant mix can be predicted, which is not always possible, especially in the non-residential context. As a result, it may prove exceedingly difficult to produce a disparity report that relies on such predictions with sufficient accuracy, especially over the long periods the new zoning may remain in effect.

Finally, a racial impact analysis should use easily-accessible and reliable data. An important aspect of the Obama administration’s “affirmatively furthering fair housing” planning process was the provision of such data to local governments, and it is no coincidence that the Trump administration moved quickly to take down those data. If the data are not readily available, applicants will spend their time and money on assembling the facts rather than analyzing or addressing them—or simply may not be able to generate the required analysis at all. The impact analysis could turn into a slow and costly exercise that serves as precisely the kind of process barrier to development—development of all kinds—that the City’s Where We Live report recently identified as a major barrier to fair housing in the city. Here, the specific breakdowns of data that the bill currently calls for analyzing are not reliably available at the granular geography required by the legislation. Most likely, the smallest geography feasible to produce these metrics with reasonably small margins of error is the community district level.³

These concerns are not a reason for inaction. No effort to predict the effects of land use policies on racial equity can be perfect. Mere imprecision must not be an excuse not to strive to understand, as best as possible, how our land use system can be made a tool to reduce disparities and promote justice. But if a racial impact analysis risks masking or downplaying important mechanisms by which land use generates racial inequities, while simultaneously adding additional cost and delay to the development process, that analysis will not achieve its critical goal, and may even make matters worse.

Other models of analyzing land use law through a fair housing lens may be helpful in identifying paths to improving this legislation. The federal “affirmatively furthering fair housing” process, and New York City’s own attempt to comply with its obligations through the Where We Live report, provides one model. That process does not attempt to study racial impacts at the level of individual rezonings, but rather to identify issues more strategically and holistically so as to

³ We further note that projecting the income of residents—much less their race—based on a distribution of rents is a methodologically complex undertaking that would require some technical refinement from the process contemplated by the current bill.

include the multiple aspects of fair housing, the impacts related to both action and inaction, and the impacts of development both on-site and off-site. The Council (which has already taken steps to require such analysis, such as the enactment of Local Law 133 of 2018) may consider whether this approach could be expanded in the land use context.

New York City may also consider studying the approach taken in Boston, which recently enacted a requirement that large-scale residential projects go through a fair housing assessment. That approach, which shares the potential pitfalls of any analysis limited to the individual project level, nevertheless takes a different approach to the required analysis, studying both displacement and integration as fair housing issues and including more open-ended questions and less extensive data collection. This approach has its advantages and disadvantages, but may highlight the choices available for consideration.

New York City faces immense inequities in its housing system: in who is evicted; in who is unsheltered; in who must double up in crowded housing; in whose homes have mold and pests; in access to good schools, good jobs, and good transit. As researchers, we believe strongly in the importance of information to address those inequities, and have worked to help generate that information about New York City's land use system. But to be useful in guiding land use policy, that information must encompass the full breadth of racial equity issues implicated by our land use system.

An analysis of racial equity in land use should include the costs of inaction; the importance of integration, neighborhood revitalization, and other fair housing issues, as well as the risk of displacement; and the ways that rezonings interact systemically rather than in isolation, including through their effects on citywide housing supply. We hope our suggestions related to this proposal can help the Council to consider how to most effectively identify and address housing disparities and avoid unintended consequences.

Thank you again for the opportunity to submit testimony. We would be happy to provide any additional analysis or information that would be helpful to the Council.



Matthew Murphy
Executive Director



Noah Kazis
Legal Fellow



Mark A. Willis
Senior Policy Fellow