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Issue  
Brief

# City of *Successful* Housing Reform: With Vote, New York City Takes First Step Toward Pro-Housing Zoning

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## Introduction

New York City’s embattled mayor Eric Adams scored a big victory in late 2024, as the city council approved much of the “City of Yes for Housing Opportunity” (COYHO) zoning reform plan, earlier approved by the City Planning Commission. The enactment of COYHO marks NYC’s belated but welcome entry into the nationwide movement for pro-housing zoning reform.

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The council’s biggest modification to the version of COYHO approved by the planning commission was to retain the required off-street parking for new residences in large parts of the city. The council also greatly scaled back the locations where off-street parking would no longer be required for commercial space within new apartment buildings. These and other council changes create financial feasibility hurdles to new housing construction that were not present in the commission’s version. As a result, less new housing will be constructed.

The city’s environmental review consultants estimate that the city council–approved changes could result in as many as 5,500 additional new housing units per year in the period to 2039.<sup>1</sup> That compares with baseline housing production of about 21,250 units, based on historical experience since 2010. The city’s consultants had earlier estimated that the COYHO proposal, as approved by the planning commission, could result in as many as 7,300 additional new housing units each year, compared with the baseline.<sup>2</sup>



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There is considerable uncertainty about this estimate. Much depends on factors beyond the city's control, such as the state of the national economy and the level of interest rates. However, even taking this as a best guess, COYHO is a first step toward dealing with—and not a solution for—New York City's ongoing housing-supply crisis. According to the most recent American Community Survey by the U.S. Census Bureau conducted for 2023, NYC has about 3.7 million housing units.<sup>3</sup> With this increase in housing production, NYC will still be well below the 1%-per-year housing-production goal set in Governor Kathy Hochul's unsuccessful "New York Housing Compact" legislative proposal of 2023.<sup>4</sup> It will be even further from achieving Adams's "moonshot" goal of 500,000 new housing units over 10 years.<sup>5</sup> Some of NYC's peer cities, such as Seattle and Washington, DC, have achieved far higher percentage increases in the housing stock.<sup>6</sup>

Despite its moderate scale, however, the success of COYHO is highly significant. Pro-housing changes to the text of the New York City Zoning Resolution—the underlying rules that describe how various zoning districts work—have been few and far between since 1961. That was the year in which the city was comprehensively rezoned under a far more restrictive framework than the 1916 zoning resolution previously in effect. Changes that made zoning even less friendly to new housing were politically easier and far more common.

COYHO's most notable precedent is the 1987 Quality Housing zoning text amendments, enacted in the mayoral administration of Edward I. Koch.<sup>7</sup> Those amendments, for which I was a member of the project team at the Department of City Planning, created an alternative set of bulk regulations that promoted shorter, squatter apartment buildings reminiscent of pre-1961 buildings. These were far more economically feasible than the "tower-in-the-park" vision of the 1961 zoning. At the time, in a city that was considerably weaker economically, with much less new housing construction, planners estimated that the zoning amendments could result in as many as 3,000 additional new housing units each year, over a 10-year period.<sup>8</sup> However, the city's economy did not become strong enough to support a large increase in housing construction until the late 1990s, at which time the amendments were far more successful than planners had hoped.<sup>9</sup>

In the years after 1987, pro-housing zoning changes focused on the districts mapped in specific areas, rather than changes to the citywide rules. Those changes led to highly visible bursts of construction, in neighborhoods including Hudson Yards and West Chelsea in Manhattan; downtown Brooklyn, Williamsburg, and Greenpoint in Brooklyn; Long Island City in Queens; and Mott Haven in the Bronx.<sup>10</sup>

Those area rezonings, in turn, led to concerns that continued restrictive zoning in some of the city's most affluent and majority-white neighborhoods was allowing those areas to escape the burdens of new development. Less affluent neighborhoods with larger nonwhite concentrations were expected to assume an undue proportion of housing growth.<sup>11</sup>

COYHO's citywide zoning text amendments address this specific problem, aiming to "mak[e] it possible to build a little bit more housing in every neighborhood."<sup>12</sup> At the city council, achieving this objective required that council members overcome multiple barriers that they had created for themselves. The first was a reflexive bias against private for-profit real-estate investment, which had been evident ever since the election in 2013 of Bill de Blasio as mayor and a much more left-wing council. De Blasio had campaigned on—and, once elected, enacted—Mandatory Inclusionary Housing (MIH). This was a zoning requirement that new buildings in rezoned areas provide a specified percentage of their units at rents affordable to low-income households. Despite the take-from-the-rich-and-give-to-the-poor rhetoric surrounding the plan, de Blasio's key appointees understood that developers subject to these requirements would need to be compensated. Thus, the administration also secured from the state legislature a generous tax-exemption program designed to coordinate with MIH, known as Section 421-a.



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The combination of zoning mandates for mixed incomes and compensating tax exemptions worked imperfectly even in areas with high market rents, and not at all in many middle-income neighborhoods of the city where new unsubsidized housing would be financially feasible, absent such mandates.<sup>13</sup> Notwithstanding the economic issues with MIH, de Blasio's administration mostly proposed rezonings in lower-income areas where new housing subject to MIH restrictions would need to be 100% affordable and deeply publicly subsidized. At the end of his tenure, de Blasio's administration pushed through rezonings in two areas—Gowanus in Brooklyn<sup>14</sup> and Soho/NoHo in Manhattan<sup>15</sup>—where market conditions supported “421-a only” MIH developments with no additional cash subsidies.

De Blasio left office at the end of 2021, having left the zoning in most of the city's affluent neighborhoods unchanged, despite the needs of his flagship MIH zoning initiative, which worked without cash subsidies only in strong housing markets. MIH's implementation problems were exacerbated when the 421-a program expired in June 2022. For almost two years, no alternative tax exemption existed for new housing that was primarily market-rate but that included a mandatory low-income component. In the spring of 2024, the legislature enacted a new tax-exemption program, Section 485-x, that was less generous than 421-a. Like 421-a, the Section 485-x tax exemption compensates developers both for the unusually high property-tax rates applied to rental housing and for the cost of providing below-market housing. It does so by eliminating taxes for long periods, even on the market-rate units.<sup>16</sup>

However, for buildings of 100 or more units, 485-x requires payment of “prevailing” (union-scale) wages, meaning that a large share of the tax exemption goes to labor rather than to underwrite the costs of below-market-rent units.<sup>17</sup> That leaves much less subsidy available to offset the cost of providing below-market housing.

Nonetheless, the city council had continued to insist on deploying MIH in rezonings, even where this means new housing construction is impossible without deep public subsidies. In August 2024, for example, the council approved the Bronx Metro-North Area Plan, which ostensibly provides for about 7,000 new housing units around the future locations of Metro-North stations on Amtrak's Northeast Corridor line. A quarter of these units would be permanently restricted to low-income households.<sup>18</sup> Given the moderate level of incomes (and thus market rents) in the rezoned area, the desired mixed-income housing cannot be delivered with tax exemptions alone. The rezoning's ambitions will only be realized slowly, and with copious amounts of public subsidy.

When housing can be produced only with generous tax exemptions or deep cash subsidies, ramping up production is next to impossible. Even increases in subsidies will be eaten up by cost inflation and inefficiencies dictated by public processes and the demands of politically influential construction unions. Any citywide initiative hoping to ramp up housing production needs to be outside the MIH framework.

The council could have considerably derailed COYHO by linking all its benefits to the provision of below-market-rate housing. Such demands were heard in the public review process and among dissenting members of the City Planning Commission.<sup>19</sup> In a welcome outbreak of pragmatism, however, the council did not do that. For the first time since de Blasio took office, the mayor and the council have agreed on more permissive zoning that allows private developers to build any type of housing they want, including market-rate condominiums. There is an incentive to include below-market units in new developments, but the incentive is voluntary, not mandatory. It's all a throwback to the once-hated (by leftists) “neoliberalism” of the Michael Bloomberg mayoral administration.<sup>20</sup> As a key land-use policymaker in that era, who has more recently used my Manhattan Institute platform to advocate for these very changes, I'm pleased to see this.



Another self-created barrier to meaningful zoning reform at the council has been “aldermanic privilege,”<sup>21</sup> the practice of deferring to local council members in land-use matters affecting their districts. I wrote in 2020 that this practice got out of control under de Blasio, who served on the council before becoming mayor and seemed to approve of giving legislators a veto over zoning changes affecting their districts:

It’s an inversion of the framework envisioned in every major City Charter revision since 1936, when the City Planning Commission was created.

The commission, a majority of whose members are appointed by the mayor, is supposed to represent a citywide interest in well-planned growth that transcends local anti-growth politics. The mayor needed to use the considerable powers of his office to assemble legislative majorities. This framework never worked perfectly, but it worked well enough under previous mayors....

[T]he next mayor needs to put together a political coalition on the council in favor of sensible investment and renewed growth. That coalition can threaten a councilmember who demands too much without conceding anything.<sup>22</sup>

Amazingly, this sort of coalition came together for COYHO. Zoning will be liberalized significantly, even in the districts of council members who voted in opposition. That this has been achieved is a great credit to the leadership in both the Adams administration and the council.

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## Analyzing COYHO as Adopted

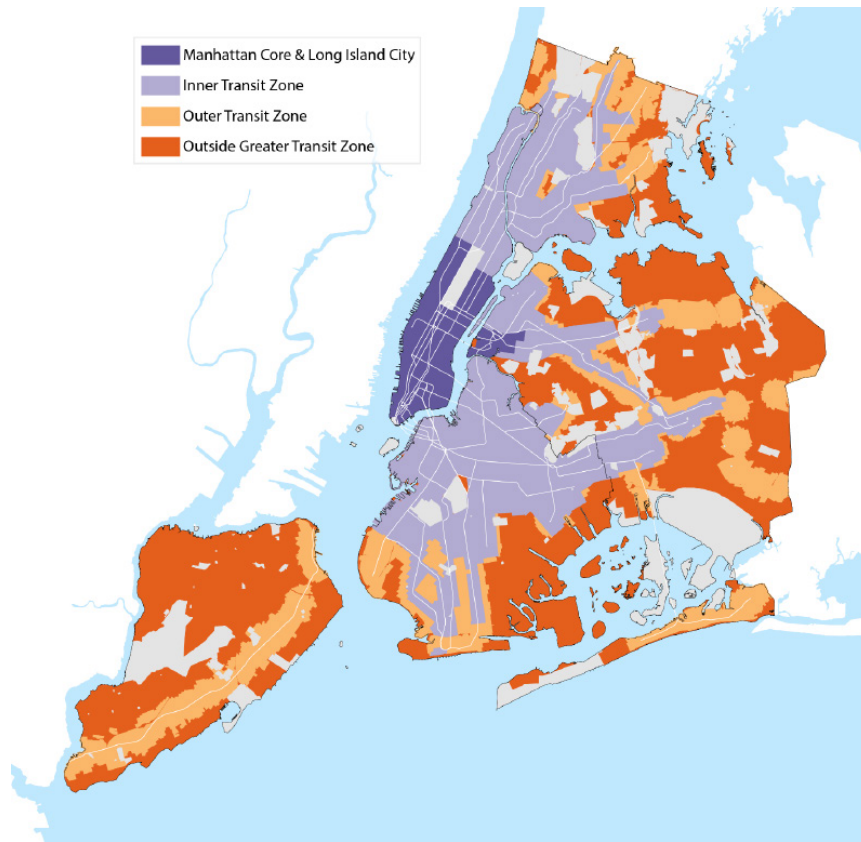
The following examples demonstrate how the council’s COYHO zoning changes play out on selected potential development sites. To understand the impact of the changes, compare two maps.

**Figure 1** shows the off-street parking geographies approved by the planning commission. The commission did not require off-street parking for residences anywhere in the city. (Previously, this was true only in the dark-purple area.) Moreover, in the light-purple area, labeled the “inner transit zone,” the commission did not require off-street parking for commercial space within apartment buildings. In the “outer transit zone,” shown in light orange, and the remainder of the city, shown in dark orange, off-street parking for commercial space within apartment buildings would be waived only for lots of 10,000 and 5,000 square feet, respectively. At typical NYC apartment-building densities, off-street parking must usually be provided in a garage, which is costly to construct and requires high parking fees to be profitable. Where the commission eliminated the requirement for off-street parking, it left the determination of whether to provide parking to individual developers, who will provide parking where it would be profitable to do so. In this way, the commission ensured that new housing construction would not be made financially infeasible by the need for residential rents or sales prices to subsidize unprofitable parking.



**Figure 1**

**COYHO Off-Street Parking Geographies Approved by Planning Commission**



Source: Screenshot from NYC Dept. of City Planning (DCP), from Final Environmental Impact Statement (FEIS), Project Description

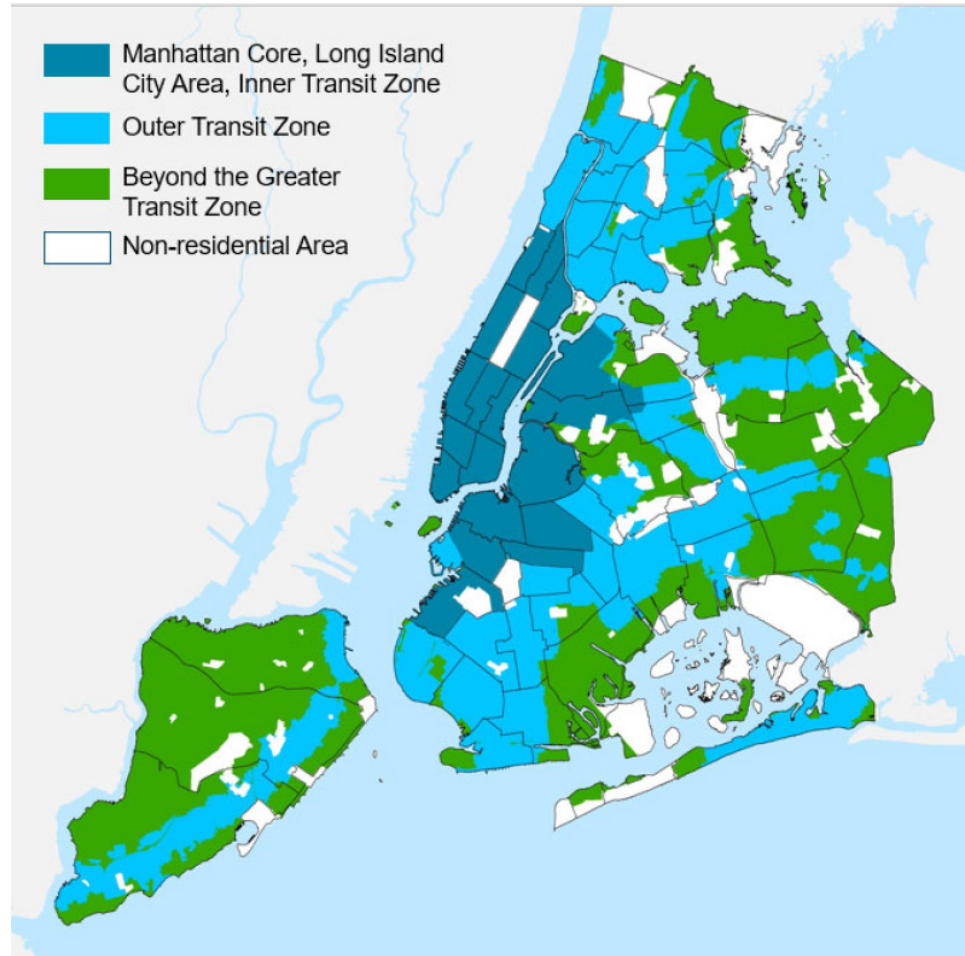
**Figure 2** shows COYHO off-street parking geographies as approved by the council. The council greatly scaled back the inner transit zone and increased the size of the outer transit zone. In the outer transit zone, the council imposed a reduced off-street parking requirement for new market-rate residences, compared with the pre-COYHO zoning. High requirements, though not as high in some cases as before, are imposed both for market-rate and affordable housing outside the two transit zones (known collectively as the “greater transit zone”).

For commercial space within new apartment buildings, the council retained the classifications used by the planning commission; but because the geography changed, the effect also changed. In total, many more lots are subject to off-street parking requirements both for residential and commercial space in new apartment buildings. These changes apply in large areas of the city where new residents can easily access both mass transit and neighborhood services as pedestrians. There are options to waive these requirements, but these create inefficiencies in construction that impair the developer’s financial return. Some prospective developments may not be able to overcome the hurdles placed on them by the council’s changes. Thus, the city council’s changes may deter private investment in new housing that the planning commission would have facilitated.



**Figure 2**

**COYHO Off-Street Parking Geographies Approved by the City Council**



Source: Screenshot from VHB, Technical Memorandum 002, p. 23

Where COYHO was left largely intact, as in Example 1 below, its effects will be strongly pro-housing. As shown in Examples 2 and 3, the council-imposed parking requirements will, at best, encourage inefficient lot subdivisions to trigger small-lot parking waivers. At worst, they will deter new housing investment in the very places where it should be encouraged. Other changes also make building housing more complicated, as shown in Examples 4 and 5, often without commensurate benefits.

**Example 1: Block 554, Astoria, Queens (Community District 1)**

This 112,000-square-foot city block, at the intersection of Broadway and 21st Street, consists of one-story retail stores and a parking lot, all in common ownership (**Figure 3**). The block is surrounded by dense apartment buildings and is a short walk from the 31st Street/Broadway subway station (N, W trains) and the Steinway Street subway station (M, R trains). The block has failed to redevelop under the pre-COYHO zoning, perhaps because the retail stores, if rebuilt as part of new apartment buildings, would have had to provide large amounts of parking for what would likely be largely a walk-in clientele. Additional parking would have needed to be provided for the residential units.<sup>23</sup>



**Figure 3**

**Block 554, Astoria, Queens**



Source: NYC DCP, Cyclomedia Street Map, Aug. 10, 2024

Approximately 31,100 square feet of the block are in an R7A zoning district. The remainder (80,900 s.f.) is in an R6B district. As approved, COYHO would allow about 274,000 square feet of new housing in a development that includes no affordable housing, the same as the pre-COYHO zoning. Such a development could be entirely condominiums, which are subject to favorable property-tax treatment and are commonly built in the neighborhood without tax incentives. This potential amount of residential floor area would likely be reduced by the provision of ground-floor retail space, replacing that lost in the demolition of the shopping center.<sup>24</sup> However, under an incentive known as the Universal Affordability Preference (UAP), if the development includes below-market units, it can qualify for an additional 64,000 square feet of floor area.<sup>25</sup> UAP floor area must be affordable to households at an income of 60% Area Median Income (AMI).<sup>26</sup>

No off-street parking would be required, either for the residences or the retail space.<sup>27</sup> The developer could build, likely in a below-grade garage, whatever quantity of off-street parking is viewed as profitable.

Utilizing the UAP floor area would qualify the development for additional height. The maximum building height in an R7A district has increased from 95 to 115 feet, and in R6B districts from 55 to 65 feet.

Use of the incentive floor area would also help qualify the development for tax incentives under the 485-x program. If the developer intends a rental development, use of the tax exemption is necessary for financial feasibility.

However, 485-x, while necessary, is not always sufficient. If the developer constructs residential buildings with a count that exceeds 100 units, the building would be eligible for a tax exemption under 485-x Option A, which requires that 25% of rental units be affordable at a weighted average of 80% AMI<sup>28</sup> and which institutes prevailing-wage requirements for construction. Property taxes are 100% exempt for a construction period of up to three years and 35 years post-construction.

That might not pencil out, however. Our developer could decide to escape the prevailing-wage requirements by constructing multiple buildings of 99 or fewer units. Each of those buildings would be eligible for 485-x Option B (which requires that 20% of rental units be affordable at an average of 80% AMI), would have no prevailing-wage provisions, but would exempt full property taxes for only 25 years (an additional 10 years of exemption applies only to the affordable units).<sup>29</sup>

Smaller buildings would result in smaller, and perhaps less profitable, ground-floor retail spaces and more elevators and stair cores, which produce no income. Thus, the developer would face a complicated calculation. However, this block represents COYHO's most promising potential.



A block that contains no housing and is largely given over to car parking would become much more attractive as a site for hundreds of new housing units, and possibly 20% or more at below-market rents. Unfortunately, the greatest benefits of the COYHO zoning change are limited to sites like this one, which is within the residual inner transit zone preserved by the city council, much smaller than that approved by the planning commission.

### Example 2: Block 2088, Queens (Community District 6)

This block (**Figure 4**) represents another failure of the 1961 zoning. Sitting immediately adjacent to the 63rd Drive local stop on the Queens Boulevard subway line (M, R trains) in the Rego Park neighborhood, it comprises three lots totaling about 41,200 square feet and is developed just as it was in the early 1960s. On the corner of Queens Boulevard and 63rd Road (Lot 22) is a one-story gas station and auto-repair business; immediately adjacent on the Queens Boulevard frontage is a one-story row of small stores (Lot 18); and behind both is a two-story retail and office building (Lot 1).

**Figure 4**

### Block 2088, Queens (Rego Park Neighborhood)



Source: NYC DCP, Zoning and Land Use Map, aerial imagery, December 2024

The block is zoned C4-2 and allows apartments above a commercial base.<sup>30</sup> **Figure 5** shows a 15-story building at 37-20 Prince Street in nearby Flushing, Queens, in the same C4-2 zoning district, completed in 2008. That building has 72 dwelling units and four floors of commercial and community facility space. A similar building could have been constructed under the pre-COYHO zoning on the Rego Park site.



**Figure 5**

**37-20 Prince Street, Flushing, Queens (Typical New Mixed-Use Building in C4-2 Zoning District)**



Source: NYC DCP, Cyclomedia Street View, Aug. 23, 2024

What has perhaps held back such development for six decades at the Rego Park block is the high off-street parking requirement.<sup>31</sup> With plentiful parking across the street in the Rego Park Mall, potential developers might see more parking, which would need to be in a costly below-grade garage, as a money-loser.

COYHO, as passed by the City Planning Commission, would have eliminated all off-street parking requirements for both residences and nonresidential space. This would have allowed a developer that assembled the Rego Park block to determine the most profitable number of parking spaces to provide, based on market demand and the costs of garage construction.

The developer can still build the above-grade building permitted by the pre-COYHO zoning, and the residential component could be market-rate condominiums. However, the plan as passed by the planning commission offered enticing new possibilities. Under the UAP,<sup>32</sup> the residential floor area can increase by up to 60%. The commercial and community facility floor area would be diminished, and the overall size of the building would not change.<sup>33</sup>

However, this additional floor area comes with additional requirements. About 28% of the maximum residential floor area<sup>34</sup> is required to be affordable to low-income households at an average income of 60% AMI. Furthermore, condominiums are effectively precluded. Also, the building would be subject to a more restrictive height limit of 125 feet, about 12 stories, reducing the premium that renters might pay for a view from a high floor.<sup>35</sup>

At this point, our developer needs to make some financial calculations. If the developer constructs a single building on the block, the residential unit count will likely exceed 100 units. That would make the building eligible for a tax exemption under 485-x Option A. However, that is not the only possibility. Our developer could decide to split the block into two mixed-use buildings, perhaps one building on Lot 1 and one encompassing Lots 18 and 22. Each of those buildings would be 99 or fewer units and eligible for 485-x Option B. Since fewer affordable units are required for the tax benefit, the developer would likely reduce the UAP residential floor area and add commercial or community facility space.



The developer would be giving up some market benefits with two buildings. For one thing, a retail store, like a large supermarket, could no longer take advantage of the full size of the block. For another, an additional building lobby, and perhaps more stairs and elevators, would be necessary.

It is not clear which of these options would have provided the best bottom line. The city council, however, introduced additional restrictions, making the developer's calculations even more complicated. The council was not so willing, as in the case of the Astoria site, to allow market forces to decide how much parking to provide. In this location, immediately adjacent to a subway station, the council reinstated off-street parking requirements, for both residential and nonresidential uses. For the residential component of a mixed-use building, the council's changes would require off-street parking for 25% of market-rate units. No off-street parking would be required for affordable units. A waiver would exist where 15 or fewer spaces are required.<sup>36</sup> For nonresidential uses in mixed-use buildings that include residences, off-street parking would be required for any "zoning lot"<sup>37</sup> with over 10,000 square feet of floor area, at the very high ratios that existed in the pre-COYHO zoning.

If the provision of a below-grade parking garage is not economically feasible, our developer is forced to divide the site into five zoning lots, each under 10,000 square feet. Each of those zoning lots would have its own apartment building, with its own lobby, elevator, and stair cores. Ground-floor retail spaces would be small storefronts.

In real-estate development in NYC, off-street parking is either a profit center—in which case, it will be provided regardless of whether zoning requires it—or an uneconomic use of space that must be cross-subsidized by residential or commercial rents or sales prices. Thus, the city council's changes can act only as a drain on potential returns to a developer. On this site, if neither the one- or two-building configurations with a below-grade parking garage nor the multiple-building configuration with parking waived provides an acceptable financial return to a developer, the benefits of the UAP and 485-x incentives are negated. We are left with what we have had for the past 60 years: a service station, some stores and office space, and no housing.

### **Example 3: 1707 Avenue U, Brooklyn (Community District 15)**

This single-story retail building, mostly occupied by a discount store (**Figure 6**), dates from 1928. Pre-COYHO zoning combined limited residential floor area and a high parking requirement<sup>38</sup> to preserve the present use, despite the presence of a subway station a block away (Avenue U, Q local). Large apartment buildings abound in the neighborhood that were constructed in more fortunate days of liberal zoning. Just up the adjoining street, for example, a six-story, 59-unit building stands at 2050 East 18th Street (**Figure 7**). As is true for many older buildings in the neighborhood, the residents of this attractive art deco building have managed for decades without onsite parking.



**Figure 6**

**1707 Avenue U, Brooklyn**



Source: NYC DCP, Cyclomedia Street View, Aug. 21, 2024

**Figure 7**

**2050 East 18th Street, Brooklyn**



Source: NYC DCP, Cyclomedia Street View, Aug. 17, 2024

COYHO, as passed by the City Planning Commission, designates 1707 Avenue U as eligible for “Town Center” zoning. In this location, a building could be four or five stories, with retail on the ground floor and residential above.<sup>39</sup> The commission would also have eliminated off-street parking for both residential and nonresidential uses. The combination makes this an attractive development site for an apartment building with 25–30 new residential units and ground-floor retail space.

The city-council changes continue to waive off-street parking for residences<sup>40</sup> but limit the waiver of off-street parking for the retail component to zoning lots with an area of less than 10,000 square feet. That would require a developer to construct a costly underground parking garage for a new mixed-use building, which is unlikely to be profitable, or to subdivide the lot into two smaller zoning lots, each under 10,000 square feet. That, in turn, would require two lobbies and an additional elevator and stair core, perhaps making the development infeasible. Retail spaces



would also be small and unsuited for some potential users. As in Example 2, by reinstating parking requirements, the council may have negatively affected the benefits of COYHO and ensured that no change would happen at this site.

**Example 4: Bayside Manor Park Apartments, Bayside, Queens (Community District 11)**

This development of three-story apartment buildings (**Figure 8**), spread over several city blocks, is a short walk from the Bayside Long Island Rail Road station and the Q12 and Q13 bus service on Northern Boulevard to the Flushing Main Street subway station. It has copious open areas and rows of one-story garages where additional residential buildings could be located.

**Figure 8**

**Bayside Manor Park Apartments, Bayside, Queens**



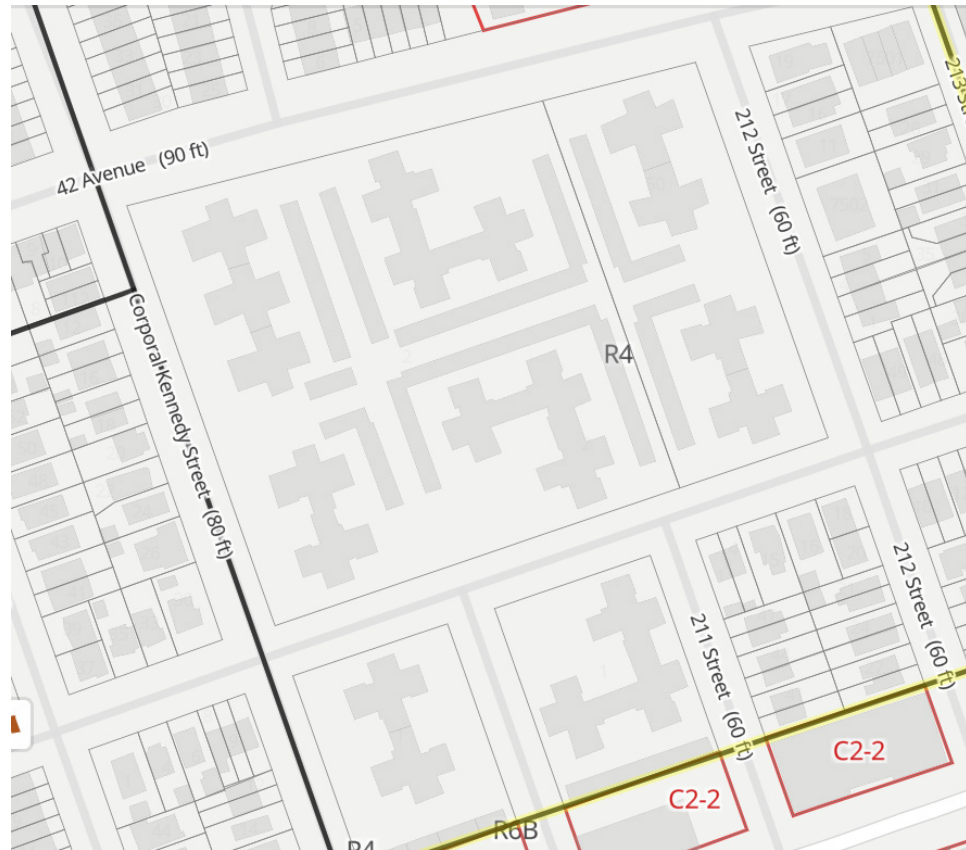
Source: NYC DCP, Cyclomedia Street View, Aug. 23, 2024

The pre-COYHO R4 zoning, however, was likely too low-density to facilitate new housing construction, and one additional parking space would have been required for each new unit. As passed by the City Planning Commission, COYHO provides extra floor area in an R4 district on “qualifying sites,” which must be within the designated “transit zone,” over 5,000 square feet in size, and fronting on a “wide street” or the short dimension of a block.<sup>41</sup> All the lots within the Bayside Manor Park Apartments qualify under these criteria (see map in **Figure 9**).



**Figure 9**

**Bayside Manor Park Apartments**



Source: Screenshot from NYC DCP, Zoning and Land Use Map. The Bayside Manor Park Apts. are bounded by Corporal Kennedy St. (a “wide street”), 42nd Ave. (also “wide”), 212th St., 43rd Ave., 211th St., and the southern boundary of the R4 zoning district.

In addition, the Bayside Manor Park Apartments qualify under commission-passed COYHO as a “large site”<sup>42</sup> that gets additional height. New buildings could be as tall as 55 feet (about five stories).<sup>43</sup> Allowing taller buildings facilitates a smaller building footprint. That allows a greater separation from existing buildings.

In terms of off-street parking, as throughout the city, COYHO as passed by the planning commission requires no off-street parking for residences. The existing off-street parking would continue to be required and would have to be replaced if new buildings were constructed where it is currently located. However, the parking could be removed by authorization of the City Planning Commission.<sup>44</sup> The sum of the new rules is that 100 or more new units could be added to the Bayside Manor Park Apartments campus, which currently has 408 units.

The city council’s changes would make the task of inserting “infill” housing more challenging, but probably not impossible. The council changes prohibit building new housing on portions of the site that include recreational amenities unless those amenities are replaced. The open areas on this site, however, do not include such amenities. Furthermore, the council changes require that new buildings be at least partially within 100 feet of a street; that would not be a problem.



The council also reduces the maximum height of new buildings to 45 feet, or about four stories.<sup>45</sup> This will have the effect of reducing the distance between new buildings and existing buildings but should still allow the increased floor area to be utilized.

Three added provisions create more difficulties for a developer. First, any “qualifying site” with more than 50 units must provide 20% of the units at rents affordable to households with incomes below 80% AMI.<sup>46</sup> The developer can comply with this requirement and be compensated for the below-market rents by building rental housing that obtains a Section 485-x tax exemption. Alternatively, the developer can divide the apartment complex into several “qualifying sites,” each with not more than 50 new units. That allows the developer to build condominiums.

Second, the council changes impose a requirement that “qualifying sites” with more than 75 units in R4 districts provide off-street parking equal to 35% of new market-rate units.<sup>47</sup> If the parking does not make economic sense, the developer can, similarly, subdivide the apartment complex into several “qualifying sites” and waive out of parking.

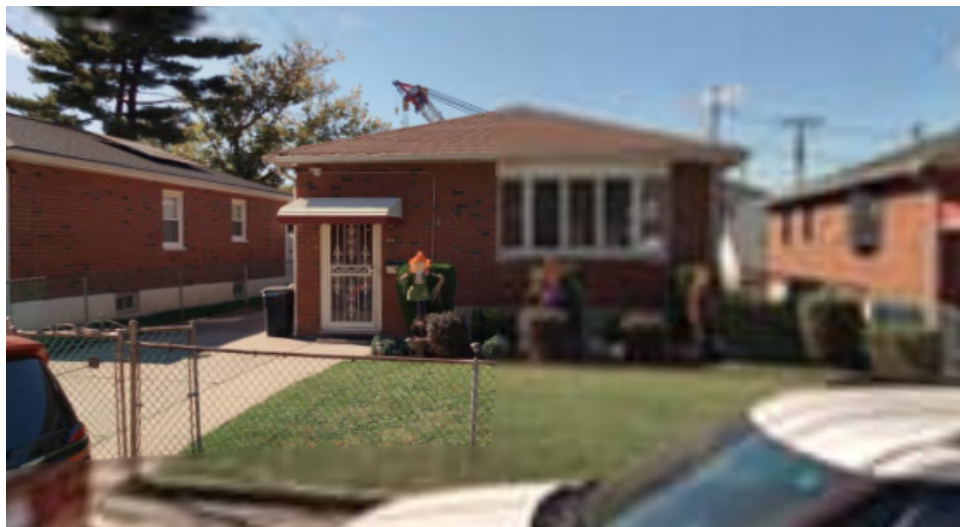
Third, the council changes the authorization to remove existing required parking to a special permit, which inserts the council in the process, adds costs for the applicant, and makes the removal of parking much more uncertain. That makes building housing on the location of existing parking less likely, unless that parking is relocated onsite.

### **Example 5: 28 Pelton Avenue, West New Brighton, Staten Island (Community District 1)**

This one-story single-family house, built in 1955, on a lot of about 4,000 square feet, is in an R3X zoning district (**Figure 10**). While it is outside the “greater transit zone” designated under COYHO as approved, it is a short walk to a bus stop on Richmond Terrace, where the S40 bus provides frequent, roughly 15-minute service to the Manhattan ferry terminal.

**Figure 10**

### **28 Pelton Avenue, West New Brighton, Staten Island**



Source: NYC DCP, Cyclomedia Street View, Oct. 10, 2024



Pre-COYHO zoning allowed a two-family house on this lot of up to about 2,400 square feet with two dwelling units. Three parking spaces were required. Under COYHO, as approved by the planning commission, the allowable floor area was increased to 3,000 square feet. A new house could be taller and cover more of its lot. If a developer were to acquire this house and its similar neighbors, 32 and 36 Pelton Avenue, the three houses could be replaced with four. Moreover, each two-family house could have an additional “accessory dwelling unit” (ADU) as large as 800 square feet located in the rear yard in a separate building. The ADU could be two stories and cover 50% of the rear yard.<sup>48</sup> No off-street parking would be required for any of the new units.

The council’s changes reinstate required off-street parking (two spaces for the two units in the primary building).<sup>49</sup> This would not be a problem for 28 Pelton Avenue, since the parking spaces already exist. The ADU in the rear yard would not require parking but is limited to one story and can cover only 33% of the lot. This effectively limits an ADU at 28 Pelton Avenue to about 400 square feet, a studio unit or, at most, a small one-bedroom. Moreover, to get a certificate of occupancy, the home would need to be owner-occupied.<sup>50</sup> The ADU could also be connected to the primary building, but that would implicate the requirements of the state Multiple Dwelling Law (MDL) for residential buildings of three or more units. MDL compliance would increase the cost of constructing all three units.<sup>51</sup> The city had sought state legislation to amend the MDL to exempt buildings in which one of the three units is an ADU, but thus far has not been successful.

The council changes make building an ADU less attractive and, thus, less likely to occur. A small ADU will generate less rental income. An investor could still acquire a lot like 28 Pelton Avenue and obtain a building permit to construct three new units, including an ADU, which would then be sold before occupancy to a new owner intending to live in the primary house. However, that would be riskier, since, if sale conditions were unfavorable at the time of completion (for example, because of a spike in interest rates), the developer would not be able to obtain a certificate of occupancy and therefore, none of the three units, including the ADU, could be offered for rent.

However, of the council’s changes, I am most sympathetic to limiting the size of backyard ADUs. The council retained the floor area bump-up for the zoning district, so the primary residence can be increased in size. That outcome is likely to be perceived by neighbors as a lesser impairment of the quality of adjoining open areas in rear yards.

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## Next Steps for “City of Yes”

New York City now moves into a political season, with the Democratic mayoral primary in June 2025 and the general election in November. All the seats on the city council are also up for election. It is not a time in which controversial zoning changes are likely to get proposed and enacted.

That kicks the COYHO zoning follow-up to 2026 and thereafter. With the current mayor unpopular and indicted, that year may well see a new person in the office, likely the winner of the Democratic primary.

The state government operates on a different schedule, with gubernatorial and legislative elections in 2026. Governor Kathy Hochul, also unpopular, likely faces strong challenges both in the Democratic primary and, if she wins, in the general election. The competitive House seats in the NYC suburbs and upstate are also once again in play. New York State is never a fount of innovation; even so, the outlook for aggressive pro-housing actions over the next two years is not promising.



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There is nonetheless much to do. The elected officials of NYC and New York State should want, once and for all, to end the downstate metropolitan area housing crisis. That would allow the state's population and labor force to grow more rapidly, attract business investment, and enable the state and city governments to enhance public services while reducing the state's top-ranking state and local tax burden.<sup>52</sup> Young adults who were not fortunate enough to attend selective colleges and obtain high-paying jobs would no longer be forced to move to more accommodating states to find housing that they can afford on the incomes that they can earn.

The city needs to amend its zoning to allow housing growth far more aggressively than it did in COYHO.<sup>53</sup> NYC zoning now has an agreed-upon "greater transit zone" geography, which comprises areas deemed by the planning commission and city council to have good transit access. Within this zone, six-story apartment buildings should be allowed everywhere that multifamily housing is allowed by COYHO.<sup>54</sup> Additionally, COYHO permits multifamily housing on designated low-density commercial streets outside the greater transit zone.<sup>55</sup> These commercial districts should also all allow six-story apartment buildings. Finally, the Department of City Planning needs to carefully examine the areas within the greater transit zone where no new housing is allowed. These include manufacturing (M) zones and C8 commercial districts. Many of these areas are appropriate for rezoning. In his recent housing plan, New York State Senator Zellnor Myrie, a candidate in the Democratic mayoral primary, cites two: Ravenswood in western Queens; and East Williamsburg in Brooklyn.<sup>56</sup> It is good to see a mayoral candidate thinking along these lines, and the winner in 2025 should follow up accordingly and rezone even more areas.

During next year's hiatus, NYC's Department of City Planning can study appropriate locations for zoning map changes. The department also needs to study how to reconcile the requirements of the MIH program with the level of subsidy effectively provided by the 485-x tax-exemption program. With the less generous 485-x, a broader range of MIH projects is probably not financially feasible, in comparison with the expired 421-a. The legislature is unlikely to reconsider 485-x in the life of its 10-year term. However, it should reconsider: there should be an economically feasible option for mixed-income housing of more than 100 units outside the strongest-market neighborhoods. Whatever actions the legislature takes, the city planning department should, after the election, propose MIH revisions that accommodate the economics of real-estate development under current state law, to ensure that rezoned areas do not become entirely dependent on scarce and expensive public cash subsidies.

The department also needs to continue to argue for relief from off-street parking requirements, particularly within the greater transit zone. The next city council might not be as timid as the current one. A new effort should address both commercial and residential off-street parking requirements.

The state legislature, for its part, can be helpful to the city without going beyond the limits of already-enacted zoning. It can amend the MDL in two important ways. One is to extend the building eligibility date for special office-to-residential conversion rules<sup>57</sup> from those existing in 1977 to those built as recently as 1990, to be consistent with COYHO zoning changes.<sup>58</sup> A second change would exempt three-unit buildings in which one unit is an ADU from the requirements of the law.<sup>59</sup>

Additionally, the zoning amendment process mandated by state environmental law is so long and expensive that it serves as an extra impediment to solving the city's housing crisis. Each mayoral term can see only one ambitious citywide zoning amendment because of the time the review process entails. Currently, state law exempts residential developments of up to three units from environmental review. The legislature should exempt building any number of housing units in cities of 1 million or more (e.g., only NYC). That will enable the next mayor to move much more quickly in implementing a housing plan. Outside the city, but in the downstate suburbs, the legislature should exempt all housing below a reasonable threshold, perhaps 200 units, from environmental review. That will facilitate housing development in communities willing to undertake significant rezonings.



## Conclusion

COYHO represents a major achievement in pragmatically liberalizing New York City's heretofore unduly restrictive zoning to facilitate new housing. In the coming months, property owners and real-estate developers will begin to find ways to use the new rules to build housing that had not been permitted under the old zoning.

Without losing sight of the significance of this achievement, New Yorkers should understand that it is only a first step toward meaningful relief from the city's chronic housing crisis. Zoning will need to be liberalized much more, and affordable-housing mandates that constrain new housing even where neighborhoods have been purportedly upzoned for substantial new construction need to be made economically workable. At the state level, tax policies need to be consistent with the city's development goals, and not another constraint on housing production. Other state laws also should support the city's development goals embodied in zoning, rather than being a second level of super-regulation.

The goal is a New York City, and downstate region, that can grow its population, attract new business investment, improve its tax base without raising taxes, and be a global beacon of opportunity. It is what other states do, enabling them to become wealthier, more economically competitive, and more politically influential in Washington. For decades, New York's land-use politics have been mired in parochial interests while statewide and citywide needs have been neglected. That the mayor and the city council overcame local concerns and agreed on far-reaching citywide changes is a heartening achievement. One hopes that it is a harbinger of much more to come.



## Endnotes

- <sup>1</sup> VHB, “City of Yes for Housing Opportunity Technical Memorandum 002,” Nov. 27, 2024.
- <sup>2</sup> VHB with BJH Advisors, *City of Yes for Housing Opportunity Final Environmental Impact Statement* (FEIS), Sept. 13, 2024, “Growth-Inducing Aspects of the Proposed Action,” p. 25-2.
- <sup>3</sup> U.S. Census Bureau, American Community Survey, table DP04, “Selected Housing Characteristics, 2023 One-Year Estimates Data Profiles,” New York City, New York.
- <sup>4</sup> I discussed the “New York Housing Compact” proposal in Eric Kober, “Hochul’s Land-Use Planning Revolution: No Little Plans for New York,” Manhattan Institute, Mar. 7, 2023.
- <sup>5</sup> I discussed the “moonshot” in Eric Kober, “What Would New York City’s Housing ‘Moonshot’ Look Like?” Manhattan Institute, Sept. 3, 2024.
- <sup>6</sup> See Eric Kober, “How Large Cities Can Grow Denser and Flourish: What the 2020 Census Reveals About Urban Sprawl,” Manhattan Institute, Jan. 20, 2022.
- <sup>7</sup> NYC City Planning Commission, N870197(A)ZRY and N870385(A)ZRY, June 17, 1987.
- <sup>8</sup> See Anthony Depalma, “‘Quality Housing’ Zoning Nearing a Vote,” *New York Times*, July 12, 1987.
- <sup>9</sup> See Citizens Budget Commission, “Strategies to Boost Housing Production in the New York City Metropolitan Area,” fig. 1, for a graphic depiction of the takeoff in building permits at that time.
- <sup>10</sup> A 2019 NYC Dept. of City Planning (NYC DCP) brief found that 47,900 units, 28% of the total completed in 2010–18, were in areas that had been rezoned since 2000: NYC DCP, “How Much Housing Is Built As-of-Right?”
- <sup>11</sup> I wrote about this issue in Eric Kober, “How to Solve New York City’s Housing Crisis: Building New Housing in Restricted High-Opportunity Neighborhoods,” Manhattan Institute, June 1, 2022.
- <sup>12</sup> NYC DCP, “City of Yes for Housing Opportunity.”
- <sup>13</sup> I wrote about the shortcomings of Mandatory Inclusionary Housing in Eric Kober, “De Blasio’s Mandatory Inclusionary Housing Program: What Is Wrong, and How It Can Be Made Right,” Manhattan Institute, Jan. 16, 2020.
- <sup>14</sup> NYC DCP, “Gowanus Neighborhood Plan.”
- <sup>15</sup> NYC DCP, “Soho/Noho Neighborhood Plan.”
- <sup>16</sup> I discussed the tax legislation in Eric Kober, “Hochul’s Housing Deal Will Help New York’s Affordable Housing Crisis, but Not Solve It,” Manhattan Institute, May 29, 2024.
- <sup>17</sup> *Ibid.*, table 1.



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- <sup>18</sup> See NYC DCP, “Bronx Metro-North Station Area Study.”
- <sup>19</sup> See Eric Kober, “City of Weakness,” *City Journal*, Oct. 8, 2024.
- <sup>20</sup> See, e.g., Dan Steinberg, “Planning the Neoliberal City,” *New Politics*, Winter 2012.
- <sup>21</sup> “Aldermanic privilege” is a term that came into common usage in Chicago, a city notorious for the corruption scandals that this practice produced. See *Encyclopedia of Chicago*, “Aldermanic Privilege.”
- <sup>22</sup> Eric Kober, “Broken Zoning Rules Are Crippling NYC’s COVID Recovery,” *New York Post*, Aug. 5, 2020.
- <sup>23</sup> Required off-street parking for retail in the C1-3 commercial overlay zoning district pre-COYHO was generally one per 400 s.f. of floor area, but a new supermarket to replace the one that currently exists required one per 300 s.f. For residences, parking was required at a ratio of 0.5 spaces per unit.
- <sup>24</sup> Under zoning, the floor space permitted for housing is reduced by the amount of retail space on a 1:1 basis.
- <sup>25</sup> Floor Area Ratio (FAR) is a common measure of the size of new buildings that zoning allows. It is the ratio of floor area in the building to the area of the lot. The “base” or market-rate FAR is 4.0 in R7A and 2.0 in R6B. The UAP FARs are 5.01 and 2.4, respectively. FEIS, Project Description, pp. 1-14–15.
- <sup>26</sup> AMI is an income standard set by the U.S. Dept. of Housing and Urban Development. “60% AMI” for 2024 was \$83,880 for a family of three, and maximum affordable rent was \$2,097 for a two-bedroom apartment. NYC Dept. of Housing Preservation and Development (NYC HPD), “Area Median Income.” The council’s changes require “income averaging” so that some units are affordable to households at an income of 40% AMI, while others may be affordable at income levels higher than 60% AMI, to maintain the average level of affordability at 60% AMI.
- <sup>27</sup> FEIS, Project Description, pp. 1-50, 52–53.
- <sup>28</sup> Since this is a higher income threshold than required by zoning, the zoning requirement would be binding.
- <sup>29</sup> Since under Option A, the prevailing wage must be paid today (during construction) and the extra 10 years of tax exemption on the market-rate units happen in the future, the developer’s comparison hinges on the discount rate applied to the tax benefit to calculate the tax benefit’s net present value (NPV). That, in turn, depends on interest rates at the time. With borrowing costs high, as at the end of 2024, the NPV is lower.
- <sup>30</sup> For a development comprising this block, the amount of floor area can be maximized by a building that has an FAR of 4.8 (e.g., about 197,760 s.f.). The maximum residential FAR is 2.43, the maximum commercial FAR is 3.4, the maximum community facility FAR is 4.8, and the maximum FAR for all uses combined is also 4.8. A new mixed-use building would consist of 2–4 floors of commercial and community facility space, topped by a residential tower of about 11–13 stories. Community facilities are a special category in zoning that includes day care and medical offices as common uses in such mixed-use buildings.



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- <sup>31</sup> The development described in the previous note would require, under the pre-COYHO zoning, parking for 70% of residential units and generally one space per 300 s.f. of retail space (one per 200 s.f. for supermarkets). Medical offices would require one space for every 400 s.f., although this requirement could be halved by application to the Board of Standards and Appeals. In total, at least 200 off-street parking spaces would be required for a block adjacent to a subway station entrance.
- <sup>32</sup> FEIS, Project Description, p. 1-14.
- <sup>33</sup> The maximum residential floor area would be 3.9. The maximum commercial FAR, community facility FAR, and overall maximum FAR for a mixed-use building would be as described in n. 30 above.
- <sup>34</sup> 1.1 of 3.9 FAR. The “base,” or market-rate residential FAR, is 3.0 within 100 feet of a “wide street” and 2.2 otherwise. A “wide street” must be 75 feet wide. The Rego Park site is bounded by two “wide streets” (Queens Blvd. and 63rd Rd.) and two “narrow” streets (63rd Dr. and 97th St.), necessitating a complicated weighted-average calculation.
- <sup>35</sup> FEIS, Project Description, p. 1-26, table 1-6.
- <sup>36</sup> VHB, Technical Memorandum 002, p. 26, table 6.
- <sup>37</sup> A “zoning lot” must comply with all the provisions of the Zoning Resolution separately from any other lot. It can consist of a single lot, or multiple “tax lots,” which are recordkeeping units for assessing property taxes.
- <sup>38</sup> The lot is 14,700 s.f. in area, and fully built out with retail space (e.g., 1 FAR). The maximum residential FAR was 1.65 (R5 district, rules for a “predominantly built-up area”), and this additional floor area was not enough of an incentive to tear down the retail building. An enlargement to accommodate a residential second floor would have triggered required off-street parking (two spaces for every three units), and there is no location onsite for this parking.
- <sup>39</sup> FEIS, Project Description, pp. 1-40–41.
- <sup>40</sup> VHB, Technical Memorandum 002, p. 24.
- <sup>41</sup> FEIS, Project Description, pp. 1-43–46. The permitted FAR would be 1.5, compared with 0.9 under the previous zoning.
- <sup>42</sup> A “large site” has 1.5 acres of land, either on a single block, or, like this site, separated only by streets.
- <sup>43</sup> FEIS, Project Description, pp. 1-47–48.
- <sup>44</sup> *Ibid.*, p. 1-54.
- <sup>45</sup> New York City Council, “Summary of NYC Council’s City for All Investments and Modifications to Zoning for Housing Opportunity (ZHO) Citywide Text Amendment” (Summary of Council Mods), November 2024, p. 6.
- <sup>46</sup> *Ibid.*, p. 2.
- <sup>47</sup> VHB, Technical Memorandum 002, p. 26.



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- <sup>48</sup> In technical terms, COYHO would increase the permitted FAR from 0.6 to 0.75, maximum perimeter wall height from 21 to 25 feet, and decrease required rear yard depth from 30 to 20 feet; FEIS, Project Description, pp. 1-32–38, 48–49.
- <sup>49</sup> VHB, Technical Memorandum 002, p. 27.
- <sup>50</sup> Summary of Council Mods, p. 2.
- <sup>51</sup> E.g., a multiple dwelling would require sprinklers. The NYC building code exempts one- and two-family detached homes that are three or fewer stories and have separate means of egress for each dwelling from providing sprinklers; NYC Dept. of Buildings, “Buildings Bulletin 2023-017.”
- <sup>52</sup> Calculated by the Tax Foundation as a share of state income—most recently, for the 2022 fiscal year: “Facts & Figures 2024: How Does Your State Compare?” Apr. 3, 2024.
- <sup>53</sup> I wrote about the measures that need to be taken to meet Mayor Adams’s “moonshot” goal of 500,000 new units over 10 years, in Kober, “What Would New York City’s Housing ‘Moonshot’ Look Like?”
- <sup>54</sup> The areas where multifamily housing is limited to fewer than six stories are shown in VHB, Technical Memorandum 002, fig. 3, p. 18.
- <sup>55</sup> These streets, as approved by the planning commission, are shown in FEIS, Project Description, p. 1-42, fig. 1-8. Those streets outside the greater transit zone, as approved, can be determined by comparing this map with that in the previous note. The city council subsequently modified the fig. 1-8 map to exclude commercial districts on a single, isolated block, or those where the block is mostly developed with one- or two-family homes. While no updated map is available at the time of writing, the change does not affect a large number of areas; VHB, Technical Memorandum 002, p. 17.
- <sup>56</sup> Zellnor for NYC, “Rebuild NYC: A Mandate for One Million Homes,” December 2024, p. 12.
- <sup>57</sup> MDL §277.
- <sup>58</sup> FEIS, Project Description, pp. 1-27–28.
- <sup>59</sup> MDL §4, definition of “multiple dwelling”