

**MAS Comments on City of Yes: Zoning for Carbon Neutrality (ULURP N 230113 ZRY, CEQR 23DCP135Y)**

The Municipal Art Society of New York (MAS) finds Zoning for Carbon Neutrality, the first of three zoning text amendments being introduced under the Adams Administration's City of Yes plan, to be a practical and sensible incremental step toward increased sustainability and citywide decarbonization.

However, while MAS applauds the removal of obstacles and the clarifications the text provides, zoning is a limited tool. The potential benefits afforded by Zoning for Carbon Neutrality will be predicated on whether benchmarks of Local Laws 97 and 154 can be met on a comprehensive scale sufficient to achieve the targeted 80 percent reduction in carbon emissions by 2050. Taken as a smaller piece of a much larger effort, there is room for strengthening the text amendment in areas of buildings, energy, transportation, waste and water to maximize and incentivize participation and push for higher standards of applicable sustainable practices.

Given the level of work the City has committed to the provisions of the text amendment, we find much of the data supporting the revisions and possible effects on the public realm have not been clearly conveyed to the public. With efficacy and transparency in mind, MAS has outlined specific concerns below and encourages the administration to take larger and innovative steps toward addressing the climate change crisis for New York City.

***Buildings***

MAS is keenly aware of how zoning regulations lacking clarity can be interpreted and exploited in ways not consistent with the intent of zoning. The text amendment would remove two clauses (k and l) in Section 12-10, striking language that defines floor space as space that is or becomes unused or inaccessible within a building and floor space that has been eliminated from the volume of an existing building in conjunction with the development of a new building or in the case of a major enlargement of another building on the same zoning lot. It is not clear how these changes would support the intent of the text amendment. We are also concerned that the change would open a loophole allowing developers to close off portions of buildings then reuse the closed off floor area in another building on the same lot. As such, we do not support changing the definition of floor area under the text amendment.

Another concern is the change in the definition of "accessory use" under the text amendment is exceedingly broad and could open the door to varying interpretations and unintended consequences. While we support expanding items that specifically intend to increase decarbonization, for example, energy equipment or bicycle parking, we urge the City to amend the language to more narrowly define accessory uses specific to the intent of the text amendment.

MAS supports increasing efficiency in building construction and retrofits and modernizing the Zone Green Amendments ("Zone Green") to achieve the city's sustainability goals. However, from a decarbonization perspective, the environmental review documents do not provide

information on how additional wall thickness (from 8 to 12 inches) permitted under the text amendment translates to increased energy efficiency. Furthermore, in terms of urban design, further clarification is needed on how additional wall thickness allowed to intrude over the lot line onto public streets will impact the facades of buildings and the streetscapes. Since streets and sidewalks are public, there is also concern about the cumulative impact of allowing exterior wall thickness to encroach into public space throughout the city. Again, these issues are magnified when considering impacts on historic buildings and districts.

While MAS supports allowing rooftop greenhouses on commercial buildings as-of-right throughout the city, with 100 percent roof coverage to reduce heat island effect and energy demand, more information is needed to adequately assess the visual impacts on buildings and the city's streetscapes. Furthermore, it is not clear if the City sought input from FDNY or DOB regarding safety and accessibility of allowing full roof coverage, i.e., risk of water leaks, fire, and an existing roof's ability to bear additional weight of solar canopies, particularly with consideration of rain, snow, and ice.

Another issue is how to ensure that space approved for rooftop greenhouses, which would be permitted up to 25 feet in height, will be used for the permitted purpose for the life of the structure, particularly since floor area and height would be exempted. The text amendment does not include information about how rooftop greenhouses will be regulated once approval is in place.

### ***Energy***

The text amendment would allow commercial solar and most commercial energy storage systems (ESS) as permitted rooftop obstructions in every zoning district and commercial and accessory solar canopies to cover 100 percent of a building's roof. It would also change use and bulk regulations to allow commercial solar systems and most ESS as-of-right. While MAS supports an increase in solar installations citywide generally, the text amendment would allow space for solar arrays and ESS on rooftop bulkheads to increase by 170 percent (up to a height of 35 feet) for buildings under 120 feet in height and by 144 percent (up to a height of 55 feet) on buildings over 120 feet. Given the magnitude of allowing facilities of this size, what is the rationale for allowing so much space? In addition, the Environmental Assessment Statement (EAS) does not provide information on how these dimensions were arrived at or adequately address the potential impacts large solar arrays and ESS would have on urban design and streetscapes, including visual clutter and shadows.

When it comes to the equitable distribution of energy generated by new solar and ESS, more clarity is needed. Currently, solar and ESS located in residential districts must be accessory, serving the building(s) on the zoning lot. This configuration primarily provides the benefits of these systems to the users of the lot, usually tenants. Because the text amendment would allow commercial solar and most ESS throughout the city, mechanisms need to be in place to ensure that new systems will also benefit tenants, particularly those in environmental justice communities, rather than only power companies and property owners.

### ***Transportation***

Expanding electric vehicle (EV) charging stations and next-gen fueling stations throughout the city is another commendable provision of the text amendment. We also support the effort to promote a modal shift from passenger vehicles to other forms of micro-mobility (i.e., public e-bike and e-scooter docking and charging stations) by addressing shortcomings in current zoning regulations. Our primary concern on this matter is safety. In 2021, there were 104 reported fires stemming from batteries for electric scooters, leading to four deaths. By early December 2022, the FDNY attributed 202 fires, 142 injuries, and six deaths to such batteries.

With public safety in mind, we are aware that FDNY reviews and approves the installation of ESS systems. Would this oversight apply to charging and fueling stations and the interior storage of e-batteries?

### ***Waste & Water***

Minimizing landfill waste is an excellent way to reduce carbon emissions. We point to the success of the recent pilot project sponsored by the Department of Sanitation for curbside organic waste pickup in Queens. The program diverted almost 13 million pounds of organic waste that would have ended up in landfills. We are pleased the program will be expanded throughout the five boroughs over the next year. Sustainable benefits notwithstanding, the program highlights the need for safe and sanitary storage of waste containers and potential incentives for property owners who would have to dedicate space in buildings for waste storage.

MAS supports sustainable stormwater management practices, i.e., larger tree pits, permeable pavement, bioswales, and other green infrastructural approaches to manage, minimize, and filter stormwater runoff and reduce heat island effect. Wide expanses of conventional impermeable surfaces such as large commercial parking lots generate substantial polluted stormwater runoff that ends up in our waterways. The City has not successfully incentivized property owners to use permeable pavement in such parking areas and the text amendment merely allows owners to use permeable pavement, without any mandates or incentives. We strongly urge the City to incentivize the use of permeable pavement for certain uses by providing tax benefits or floor area bonuses to property owners who chose this option.

### ***Conclusion***

Zoning for Carbon Neutrality demonstrates a commitment by the City to modernize zoning regulations as part of an overall effort to achieve net carbon neutrality. While the changes under the text amendment may ultimately lead to incremental advances towards the decarbonization goals of Local Laws 97 and 154, we urge the City to strengthen its provisions to maximize renewable energy production, increase energy efficiency, and push for higher standards of sustainable practices in the city's built environment while at the same time providing clarity to the public on the data and methodologies used and anticipated outcomes.

Yours truly,



Elizabeth Goldstein  
President