

February 15, 2024

Honorable Dan Garodnick
Chair and Director,
New York City Planning Commission and Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Email Delivery

Re: Municipal Art Society Comments on City of Yes for Economic Opportunity (CEQR # 24DCP004Y)

Introduction

As a citywide zoning text amendment, COYEO offers wide-sweeping changes, some that are sorely needed, some that may not lead to demonstrable changes, and others that could over time bring large-scale changes to all city neighborhoods. All told, COYEO could be one of the most impactful updates to Zoning Resolution since the 1961 amendment.

MAS recognizes that New York's business landscape has changed considerably since 1961, and even more so in the aftermath of the COVID-19 pandemic, with the prevalence of retail and office space vacancies, hybrid work firmly established as the new paradigm, and the reimagining of traditional central business districts. However, citywide zoning text amendments, like zoning itself, can be a limited tool in addressing the nuanced needs of different neighborhoods – what is desired in one, may not be in another. With these issues in mind, MAS offers the following comments on the goals and key proposals of the text amendment.

Comments

Goal 1: Make it easier for businesses to find space and grow by giving business owners more certainty on where they can locate and what they can do in their space.

Proposal 1: Lift Time Limits to Reactivating Vacant Storefronts.

We support lifting the two-year time limit on allowing vacant pre-existing, non-conforming uses on ground floors to reoccupy. We also support extending this provision to all residential and historic districts. Allowing non-conforming businesses to reoccupy a commercial space regardless of how long the storefront has been vacant will support economic stability and vibrancy.

Proposal 3: Expand Opportunities for Small-Scale Clean Production.

This proposal would allow “clean production” businesses (i.e., breweries, bakeries, 3-D printing shops) in all commercial districts. Based on the size limitations — 5,000 sf in C1 and CS districts and 10,000 sf on ground floor in C4-C7 districts, the proposal could help activate vacant storefronts and office buildings. We understand that applicable clean production businesses would be subject to the City's ABC grading system and “Right to Know” environmental standards to ensure safety and compatibility with nearby

residences and businesses. While we support the intentions of the proposal, we are concerned that allowed production uses (i.e., textile mills, machinery manufacturing, medical equipment, fabricated metal product manufacturing) may not serve the communities in which they are located, instead occupying space that could otherwise be used to serve local needs such as restaurants, grocery stores, and health services. The City needs to ensure that this change does not disproportionately make it more difficult in certain neighborhoods for residents to access goods and services they need.

Proposal 5: Enable Commercial Activity on Upper Floors.

MAS supports zoning changes that help transition our city toward mixed-use and public transit-oriented development that facilitates beneficial connections between residents and businesses within local economies.

The City of Yes will allow commercial and some manufacturing uses on the same floor as a dwelling unit. In some cases, they can be placed above the dwelling unit if there are separate entrances. The text amendment includes requirements to address sound, vibration, and air quality impacts, such as requiring commercial noise-generating uses to be at least 15 feet from a residence. Our primary concern is the potential for conflicts between commercial businesses and residences related to nuisance issues.

- How was the 15-foot rule determined for this zoning change? Has the City conducted ambient noise testing to support the 15-foot rule?
- How will sound, vibration, and air quality measures be reviewed and enforced?

MAS urges the Department of City Planning (DCP) to consider expanding the environmental requirements to mitigate potential conflicts between commercial/industrial uses and residences, assuming these will be enforced. We request that the review include the following:

- Odor attenuation.
- Impacts on neighboring buildings, i.e., sound, glare, and vibration measures.
- Testing smaller commercial uses that have a capacity of fewer than 75 people for environmental impact and compatibility within a residential building and any nearby residential buildings.

Proposal 6: Simplify and Modernize the Way Businesses are Classified in Zoning.

As a welcome, long-overdue change, COYEO modernizes and consolidates antiquated zoning use groups, many of which are vestiges of mid-century business classifications (i.e., telegraph offices and typewriter repair), reducing the number used in zoning from 18 to 10. The changes are consistent with the North American Industry Classification System, the federal standard, and reflect the characteristics of the City's current economy.

Goal 2: Support growing industries by reducing obstacles for emerging business types.

Proposal 9: Support Nightlife with common-sense rules for dancing and live entertainment.

MAS supports lifting some restrictions on dancing and allowing modern regulations to govern live entertainment venues, for example allowing existing bars to have dancing. However, blending live entertainment and nightlife venues above residential units or within a residential building can conflict with residents when it comes to noise, traffic, parking, sanitation, and crowding. MAS shares these concerns.

- An increase in live entertainment venues in neighborhood commercial districts is expected, so the wellbeing of residents should be prioritized, even if the venues have separate entrances.
- The proliferation of small venues that permit dancing above residential units should be avoided as it goes against the intention of zoning changes that aim to promote harmony between these uses and residential areas.

Proposal 11: Enable Entrepreneurship with modern rules for home-based businesses.

MAS supports modernizing regulations for home-based businesses as working from home has increased the importance of having retail options nearby. However, the text amendment should also include restrictions for operational hours for home-based businesses since the proposal will increase the number of outside employees to three and allowed floor area to 49 percent of the residential unit floor area. This change may also disrupt shared residential spaces within a residential building and affect neighbor relationships due to increased commercial space allowed in a residential unit, leading to housing consolidation, where neighboring units are combined especially if home-based business owners take full advantage of the opportunity. Although not necessarily a negative outcome, this is concerning during a housing shortage.

- Has DCP considered how this zoning change could lead to housing consolidation and exacerbate the city's housing shortage, negating any potential net supply gains from the City of Yes for Housing Opportunity?
- The Department of City Planning (DCP) proposal should consider amending the general provisions in ZR 12-10 to include restrictions on the hours of operation for home-based businesses, ensuring they are good neighbors.

Goal 3: Foster vibrant neighborhoods by ensuring businesses can contribute to active, safe and walkable streets.

Proposal 13: Reduce conflicts between auto repair shops and pedestrians.

We support the proposal to separate auto repair uses into light and heavy categories to reduce pedestrian conflicts on streets and sidewalks. Requiring heavy repair shops to be registered with the New York State DMV, allowing them only in C8 and Manufacturing Districts, and allowing light auto service businesses in commercial districts by BSA Special Permit addresses part of the problem. The primary challenge for the City is enforcing the regulations and holding violators accountable to ensure that pedestrians are truly safe in areas where this change applies.

- The text amendment needs to include specific City enforcement mechanisms to ensure that the new regulations will be enforced for both new applicants *and* existing auto businesses in both categories.

Proposal 14: Encourage safe and sustainable deliveries with micro-distribution.

The safe delivery of goods continues to be a problem in the city, particularly with the increase in e-commerce and home deliveries. With this trend comes the need for more warehousing within proximity to residential areas. COYEA would create a new use for Micro-Distribution Facilities designed to allow delivery activity at a small scale closer to residences and offices. The proposal limits the size of these

facilities to 2,500 sf in C1 and C2 districts, and up to 5,000 sf on ground floors in C4-C7 districts. Spaces larger than these sizes would require a BSA or CPC Special Permit, which provides oversight.

- How would this change help neighborhoods balance the challenges of deliveries on neighborhood streets and supporting a commercial mix a community desires?
- What protections does the text amendment provide to ensure that micro-distribution businesses do not take the place of other businesses that serve local needs and create streets devoid of vibrancy?

Conclusion

COYEO demonstrates a thorough effort by the City to modernize its zoning. It offers a mix of changes that could have lasting impacts on city neighborhoods. Many of the proposals show thoughtful planning insight and are long needed. Others have the potential to transform neighborhoods in unintended ways. Given the ambitiousness of the proposal, we urge the City to consider our comments and recommendations to improve the text amendment.

Yours truly,



Elizabeth Goldstein

President