City of Yes for Economic Opportunity

Zoning Text Amendment Project Description

Contents

I. INTRODUCTION

The New York City Department of City Planning (DCP) proposes a citywide zoning text amendment (the “Proposed Action”) to the New York City Zoning Resolution (ZR) to support economic growth and resiliency in New York City. The Proposed Action, known as City of Yes for Economic Opportunity (COYEO), is a comprehensive overhaul of zoning regulations that would: (1) make it easier for businesses to find space and grow by lifting barriers to enable businesses to locate closer to their customers; (2) support growing industries by reducing impediments for emerging business types; (3) foster vibrant neighborhoods by ensuring businesses contribute to active, safe, and walkable corridors; and (4) create new opportunities for local businesses to open by establishing new zoning tools to boost job growth and business expansion. COYEO would support economic growth and resiliency by allowing existing non-residential space to be repurposed for alternative non-residential uses and by providing businesses with additional flexibility to grow and thrive in New York City (NYC).

The proposed zoning text amendment would primarily update use definitions and use allowances within existing Commercial and Manufacturing zoning districts. These changes would clarify what commercial and industrial uses are allowed and define the circumstances under which they are allowed by amending zoning use definitions. The proposed zoning text amendment would also add or modify discretionary actions that could be pursued in the future, including Special Permits of the Board of Standards and Appeals (BSA), Authorizations and Special Permits of the City Planning Commission (CPC). Lastly, the proposed zoning text would add new Commercial and Manufacturing zoning districts to the Zoning Resolution that could be applied to specific geographies in the future via a separate rezoning action. No new districts would be mapped by the proposed zoning text amendment. Any proposal that seeks discretionary actions created by this proposed zoning text amendment would require environmental review at the time of application. The proposed zoning text amendment would apply to all 59 of the City’s Community Districts.

II. BACKGROUND

New York City’s commercial zoning regulations date to the adoption of the 1961 Zoning Resolution, which created eight distinct commercial districts with varying bulk, parking and loading, and use standards, drawing from a Use Group list that sought to categorize activities into related functional categories. These regulations combine to dictate and constrain where a business can open, what kinds of business activities they can conduct in their space, how big they can be, and myriad other parameters. Most of these regulations remain in place today despite the significant changes to the city’s economy since these regulations were originally written in the late 1950s. As a result, today’s regulations often seem outdated, irrelevant, and complex, defining uses as varied as telegraph offices, typewriter repair, or "shoddy” (wool) manufacturing, but failing to acknowledge common business activities such as cell phone stores, 3-D printing, or laser tag. As a result, many businesses today either cannot locate in commercial areas or face ambiguity associated with their siting ability – resulting in additional regulatory costs, precarious legality, or curtailed business planning.

A commercial zoning framework that has failed to keep pace with the evolution of the NYC economy has real consequences for small businesses and for the city. For individual businesses, the cost may be reflected in the time and money spent navigating regulations, or in finding a suitable site in the city or beyond. For the city, increasing the cost and difficulty of siting businesses may result in fewer business and job opportunities and an increased vacancy or inability to tenant spaces. Furthermore, increased cost and complexity of regulation favors larger businesses with greater resources to absorb higher regulatory costs, while smaller businesses have less ability to risk time and money on complex regulatory hurdles.

The COVID-19 pandemic resulted in a compressed period of business closures, re-openings, and adaptations that underscored the importance of zoning rules that adapt to modern business needs.

RECENT ECONOMIC TRENDS

The Growth and Adaptation of NYC's Economy over the 20th and early 21st century

By early 2020, NYC's economy was comprised of 4.7 million jobs[1] in 280,000 establishments[2] as it experienced peak employment levels following decades of dramatic transformation from a predominantly manufacturing and port city into a global office and services center. Employment across the city grew more than 40% since the late 1960s, with jobs nearly doubling in the boroughs outside Manhattan during this period[3]. From 1969 to 2000, the composition of NYC's employment changed considerably, with a 70% decline in manufacturing-based jobs and an 80% increase in services jobs[4], a trend that continued into the 21st century.

During the decade leading up to the COVID-19 pandemic, NYC's economy and population grew even more rapidly. Between 2008 and 2019, the city gained more than 790,000 private sector jobs[5] and saw investment and employment gains in all five boroughs, with growth across a diverse range of industry sectors[6]. This period of economic expansion supported the lowest unemployment rate in decades as well as rising wages for New Yorkers[7]. The growth also brought higher tax revenue, which the City used to reinvest in services and infrastructure.

[1] New York State Department of Labor (NYS DOL) Current Employment Statistics, Total Nonfarm Employment, Seasonally Adjusted (February 2020)

[2] NYS DOL Quarterly Census of Employment and Wages (QCEW), 2023 Q1 (preliminary).

[3] DCP analysis of U.S. Bureau of Economic Analysis (BEA) County Total full-time and part-time employment by SIC industry (CAEMP25S) and County Total full-time and part-time employment by NAICS industry (CAEMP25N).

[4] DCP analysis of U.S. BEA County Total full-time and part-time employment by SIC industry (CAEMP25S).

[5] NYS DOL QCEW, 2008 and 2019 annual average

[6] DCP, "The Geography of Jobs: Second Edition", October 2019. https://www.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/nyc-geography-jobs2-1019.pdf

[7] New New York Panel, "Making New York Work for Everyone", December 2022. https://edc.nyc/sites/default/files/2023-02/New-NY-Action-Plan_Making_New_York_Work_for_Everyone.pdf

Economic success also came with challenges. The combination of job growth in the Manhattan Central Business Districts (CBDs) and residential growth in the other boroughs constrained CBD-bound transit capacity. The greatest concentration of jobs accessible to workers of all skill levels and educational backgrounds were in the Manhattan core, so workers living in other boroughs and elsewhere in the region often experienced long and sometimes unreliable commutes. At the same time, competition for commercial space created challenges for small businesses seeking to locate and grow in the city. Older and historically more affordable office space—often referred to as Class B and C offices—had become increasingly popular with tech and other industries, and rents for Class B and Class C offices approached or sometimes exceeded rent for newer Class A office space. This further reduced the supply of lower cost space for nonprofits, start-ups, and other companies that could not afford to pay Class A rents.

As the availability of traditional office space became increasingly constrained, a wider range of industries considered operating out of historically industrial areas. For example, life sciences companies that outgrew university labs or incubator space struggled to find lab space in NYC where they could take advantage of the rich labor pool of the city and region and began seeking out the large and often unencumbered floor plates common in industrial loft-style buildings. Emerging job clusters in industrial areas created new economic opportunities, but also increased demand for a largely static supply of space, increasing rents for industrial or other existing businesses, especially in areas with low-density regulations that date to a different era of the NYC economy.

Continual technological advancements and economic evolution were increasingly at odds with land use regulations that were developed in the middle of the 20th century, exacerbating the problem of matching demand for space to supply, leaving buildings underutilized and stifling opportunities for innovation and job growth. For example, modern businesses combining industrial and non-industrial functions struggled to navigate rules that seek to separate uses, requiring small-scale brewpubs or coffee roasters to locate in far flung Manufacturing Districts, rather than in the neighborhoods they aimed to serve.

The COVID-19 Pandemic Highlights the Need for Flexible and Resilient Zoning

The COVID-19 pandemic unleashed enormous disruption and underscored the necessity of zoning that is sufficiently flexible, allowing businesses to adapt to an ever-changing economy. The pandemic required many business owners to change operations practically overnight, such as restaurants adding grocery options, expanding delivery, and repurposing outdoor space. In some instances, use regulations had to be modified or suspended under emergency authority to allow for businesses to adapt. Other businesses sought to modify operations by introducing production or wholesale components, offering more experiential or service-based offerings to draw customers back in, offering less retail and more delivery-based options, or subdividing space to share operations or infrastructure across multiple businesses.

Nevertheless, despite desperate attempts to adapt to extraordinary times, in the first three months of the COVID-19 pandemic, NYC lost 900,000 of its 4.7 million jobs—an unprecedented economic shock[8]. By the second quarter (Q2) of 2020, nearly 12,000 NYC businesses had permanently closed—more than twice the number of permanent closures in Q2 2019, and 20,500 businesses had temporarily closed—nearly six times higher than the number of temporary closures in Q2 2019[9].

Though the total number of jobs in NYC has recovered[10], recovery has been unevenly distributed across the city, and the economic landscape overall looks quite different. Manhattan, particularly Midtown and lower Manhattan, and the Bronx have been slower to recover job losses, with those boroughs at 96% and 98% of pre-COVID employment, respectively, as of Q1 2023[11]. Storefront vacancy sits at approximately 11.6% across the city, up from 10.5% in February 2020[12]. Similarly, while the number of registered businesses in NYC has fully recovered from pandemic losses, there are approximately 3,800 fewer services businesses – like dry cleaners and salons, and 700 fewer hospitality businesses, like restaurants and hotels.[13]

In some cases, once the Emergency Order allowing for some of the operational flexibility expired, businesses, having shifted resources over to a system that was no longer permitted under zoning, no longer had a viable model for operating post-pandemic. Examples of the barber who was serving clients in the backyard of their home, or the florist utilizing the opportunity to serve customers outdoors, found themselves again having to pivot. The City has worked to update regulations to retain the flexibility that worked during the pandemic: NYC now has a permanent outdoor dining program, and components of the City of Yes for Economic Opportunity seek to modify pre-pandemic zoning regulations in a way that better reflect the evolving economy and support small and large businesses.

Changing consumer trends and an evolving economy present challenges and opportunities for neighborhood commercial corridors

Even before the COVID-19 pandemic, the rise of e-commerce delivery drove declines among dry goods retail businesses that historically populated the city's neighborhood commercial corridors. By 2021, NYC had 750 fewer clothing stores than it did in 2008, representing a 20% decline in those businesses. Meanwhile, non-store retailers (i.e., e-commerce) selling a wide range of goods without a brick-and-mortar storefront location, but registered to NYC, grew by 130% in the same period, from 787 businesses to 1,800[14]. DCP has conducted extensive research on storefront vacancy and the health of neighborhood retail corridors, publishing two recent reports: Assessing Storefront Vacancy in NYC: *24 Neighborhood Case Studies* (2019) and *Retail Activity in NYC: COVID Recovery Across 24 Neighborhoods* (2020)[15]. The reports analyzed 10,000 storefronts

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[8] DCP analysis of NYC Office of Management and Budget (OMB) NYC Labor Force Data, Seasonally Adjusted, released October 2023

[9] NYC Economic Development Corporation (EDC), Business Formation and Closure in New York City, February 2023

[10] DCP analysis of NYC OMB NYC Labor Force Data, Seasonally Adjusted, released October 2023

[11] DCP analysis of NYS DOL QCEW Q1 2023 (preliminary) and Q1 2020

[12] DCP analysis of data provided by Live XYZ, retrieved on October 17, 2023

[13] NYS DOL QCEW Q1 2023 (preliminary) and Q1 2020 NAICS 72 and 81

[14] NYS DOL QCEW, 2008 and 2021 annual averages. NAICS 4481 and 454

[15] DCP, Assessing Storefront Vacancy in NYC: 24 Neighborhood Case Studies (2019), https://www1.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/assessing-storefront-vacancy-nyc.pdf?r=1 . DCP, Retail Activity in NYC: COVID Recovery Across 24 Neighborhoods (2020), https://www1.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/retail-activity-nyc-covid-recovery.pdf

across 24 locally- and regionally-serving retail corridors throughout the city to develop a data-driven understanding of retail and storefront uses and how they may be changing. The 2019 report found no geographic or rental cost patterns that could explain vacancy rates but suggested that corridors with zoning regulations that were highly prescriptive or out of step with the economy had greater difficulty leasing spaces, contributing to vacancy rates.

Recent analysis conducted by DCP underscores that the pandemic has exacerbated pre-existing trends in the city's commercial corridors, with notable declines in dry-goods retail businesses. 4,400 fashion, home, and hobby retail businesses opened in NYC storefronts since March 2020, but about 5,900 have also closed[16]. Shifts in consumer spending patterns also led to an accelerated rise in the number of eating and drinking establishments, as well as other types of local services businesses, like pharmacies and personal care stores. Since March 2020, around 12,500 food and beverage and essentials retail businesses – which includes businesses like grocery stores and pharmacies – have opened in storefronts across the city, representing a net increase of 1,800 storefronts since the start of the pandemic[17]. That shift towards food and beverage also represents a longer-term trend. Since 2000, the city's food and beverage jobs increased by 138,500 and food and beverage businesses increased by 10,000, representing a 90% and 80% increase, respectively, over the last two decades, despite the impact of the pandemic[18].

Despite macroeconomic and local shifts away from dry goods retail toward more service-orientated and experiential businesses along neighborhood commercial corridors, City zoning regulations place restrictions on non-retail businesses in many commercial districts. This forces categories of businesses with growing demand further away from customers and increases competition for space in the zoning districts where those businesses are permitted.

Remote work requires reinvention in Central Business Districts and a recognition of the new role of business in and near homes

NYC has long benefitted from the success of its central business districts (CBDs). Together, Midtown, Midtown South, and Lower Manhattan represent 38% of NYC jobs[19] and 80% of total NYC office space, which as a sector generated 25% of the City's property tax revenues and two-thirds of total Gross Domestic Product[20]. Furthermore, these areas underpin our retail and services economy, housing 40% of the city's local services jobs, including retail, hospitality, and other services[21]. Moreover, our CBDs are designed as regional and global hubs that support a massive influx of workers and visitors, with a combined 28 subway service lines, 25 commuter rail lines, 11 ferry routes, a dense local and regional bus network, and a robust Citi Bike system with over 1,500 stations. These systems connect millions of workers, visitors, and tourists to the activities available in the city's densest areas. For decades, a virtuous cycle of investment,

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[16] Data provided by Live XYZ, current as of August 31, 2023
[17] Ibid.
[18] NYS DOL QCEW, 2000 Q1 and 2023 Q1 (preliminary), NAICS 722
[19] DCP analysis of NYS DOL QCEW, 2023 Q1 (preliminary)
[20] "Making New York Work for Everyone"
[21] DCP analysis of NYS DOL QCEW, 2023 Q1 (preliminary)

economic activity, and job generation has been underpinned by the demand for high-value office jobs to centrally locate in NYC's CBDs.

The pandemic and ensuing wide-scale adoption of remote work has disrupted NYC office demand and, with it, the economic ecosystem of the city's CBDs. The share of NYC residents who reported primarily working from home rose from 6% of the resident labor force in 2019 to 16% of the resident labor force by 2022[22]. That increase was true throughout the city, with especially high gains in Manhattan and North Brooklyn where as many as 30% of residents reported working primarily from home in 2022[23]. New York City, like cities across the country[24], remains only partially "back to the office" – with average office building use at 50% to 75% of pre-COVID visitation levels[25]. As a result, millions of square feet of commercial real estate are underutilized, with space continuing to hit the market and looking for a new purpose.

Consumer spending remains below pre-COVID rates in the city's CBDs[26], and NYC storefront vacancy is among the highest in areas with considerable office footprints[27]. While consumer spending in core CBDs in Manhattan, Downtown Brooklyn, and Long Island City has declined, consumer spending has risen in emerging economic hubs, such as Fordham Plaza, Forest Hills, and St. George / Stapleton across the city[28]. Credit card spending is also up in residential neighborhoods outside of Manhattan, reflecting new patterns of consumer demand as workers spend larger periods of their day in home neighborhoods[29].

At the same time, DCP's 2020 study of locally- and regionally-serving retail corridors across the city reveals that the hits to the CBD's economic ecosystem did not bare out similarly in more locally-serving corridors. *Retail Activity in NYC: COVID Recovery Across 24 Neighborhoods (2020)*[30], conducted during the height of the pandemic, found that locally-serving retail corridors such as Kingsbridge, Jackson Heights, and Hamilton Heights had a higher proportion of open and operating businesses, compared with regional destinations and areas impacted by reduced commuting and tourism, such as Flatiron/Union Square, SoHo/NoHo, and Canal Street, which were found to have the lowest proportion of open businesses. While lacking the scale and scope of business to offset losses to the CBD's economy resulting from the COVID-19 pandemic, the impact of the city's labor force spending more time and money in their home neighborhoods appeared to have substantial implications for local commercial vacancy rates.

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[22] DCP analysis of U.S. Census Bureau Public Use Microdata American Community Survey (ACS) 1-Year Estimates 2019 and 2022
[23] Ibid.
[24] Kastle Systems. "Back to Work Barometer." October 2023. https://www.kastle.com/safety-wellness/getting-america-back-to-work/#workplace-barometer
[25] As of Q2 2023. Kastle Systems "Back to Work Barometer" for low estimate; REBNY's Manhattan Office Building Visitation Data for high estimate, https://www.rebny.com/reports/q2-2023-manhattan-office-building-visitation-report/
[26] NYC Economic Development Corporation (EDC) analysis of Replica Consumer Spend data, September 2023. Represents January to June 2023 consumer spending relative to 2019 consumer spend
[27] Data provided by Live XYZ, current as of August 31, 2023
[28] NYC EDC analysis of Replica Consumer Spend data, September 2023
[29] DCP analysis of Mastercard data. Change in expenditure represents calculated difference in indexed spending from April 2019 to April 2023
[30] DCP, Assessing Storefront Vacancy in NYC: 24 Neighborhood Case Studies (2019), https://www1.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/assessing-storefront-vacancy-nyc.pdf?r=1 . DCP, Retail Activity in NYC: COVID Recovery Across 24 Neighborhoods (2020), https://www1.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/retail-activity-nyc-covid-recovery.pdf

Most evidence suggests that remote work will likely remain in the future[31], with today's levels of activity reflecting a reasonable "new normal". This trend underpins strong desires from property owners and stakeholders in commercial areas to consider all possible strategies to reposition vacant spaces for new kinds of uses and tenant mixes, and the need to make accommodations for workers choosing to work more in and near their residences.

Emerging industries can help accelerate the city's economic growth and create good jobs

As property owners, businesses and the City seek new opportunity to ensure that commercial corridors and office buildings can be re-populated with new and expanding businesses and support the growth of new sectors. NYC is home to several emerging industries that have the potential to support its economic recovery from the pandemic, but sometimes face restrictive or ambiguous zoning regulations that inhibit business location or expansion. In many instances, the city's zoning has not kept up with the needs of emerging industries.

Life Sciences: With nine major research centers, over 50 hospitals, and a highly talented and diverse workforce, NYC has all the resources to be a global leader in the life sciences industry. A 2021 DCP report, "Life Sciences in the NYC Metro," found that the NYC metropolitan region has more than 5,000 life sciences businesses and nearly 150,000 life sciences jobs, and the city has been a growing focal point of the industry[32]. The life sciences industry was critical during the pandemic, when local companies were able to deliver vaccines, therapeutic treatments, diagnostic and testing systems, personal protective equipment, and innovative medical devices such as emergency ventilators. The life sciences industry was critical during the pandemic, when local companies were able to deliver vaccines, therapeutic treatments, diagnostic and testing systems, personal protective equipment, and innovative medical devices such as emergency ventilators. represented by over 5 million square feet of life sciences laboratories currently under construction in the city[33]. While life science labs have certain specific needs, such as for building ventilation systems, they often have otherwise similar space requirements to those of traditional offices. Yet language written into the zoning long ago—–when life science laboratories operated differently than they do today—–limits many of these uses to manufacturing districts and makes it challenging for them to co-locate with other commercial or institutional activities.

Small-scale clean production: Manufacturers of niche products–such as small-batch food, apparel, and furniture–tend to serve local consumers and want to co-locate with retail or service components of their business. In recent years, NYC has seen the growth of maker-based businesses, for instance, experiencing 510% growth in the number of breweries, 140% growth in the number of coffee roasters, and 42% growth in specialty food, fruit and vegetable manufacturing over the last decade[34]. There are also seven times as many distilleries in the city today versus a decade ago, growing from three to 23[35]. As business models change with

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[31] Bloom, Nicholas, Jose Maria Barrero, Steven Davis, Brent Meyer, and Emil Mihaylov. "Survey: Remote Work Isn't Going Away – and Executives Know It." Harvard Business Journal, August 28, 2023

[32] DCP and NYC EDC, "Life Sciences in the NYC Metro." June 2022. https://www.nyc.gov/assets/planning/download/pdf/planning-level/region//nyc-metro-life-sciences.pdf

[33] Ibid.

[34] NYS DOL QCEW, 2010Q1 and 2023Q1 (preliminary). NAICS 3114, 31192, 31212, 31214 (earliest available-2011Q3)

[35] Ibid.

technology, the spectrum between office-based and manufacturing businesses is blurring. For example, a business that uses three-dimensional printing or manufactures custom circuit boards may have operational and space needs resembling those of both office and manufacturing businesses. Small, niche manufacturers, such as artisanal, advanced, and food and beverage manufacturing, are better able to operate in industrial mixed-use buildings and generally (but not always) produce fewer fumes, noise, and truck traffic, which can be a nuisance to other tenants. They also generally do not require as many special mechanical systems and have limited off-street parking and loading needs.

Despite changes in consumer trends and advances in clean production methods, modern businesses combining retail with wholesale or light industrial activities have struggled to locate in commercial areas due to zoning restrictions, often requiring businesses like breweries and coffee roasters, wholesale bakeries, 3-D printers, and distilleries to locate in industrial areas, often far away from their customers.

Film and television production: NYC has long played a vital role in the global film and television industry, and an expansive range of businesses comprise the city's film and television ecosystem, making it one of the largest and most multifaceted in the world. In 2019, the film and television industry in NYC supported approximately 185,000 total jobs, $18.1 billion in total wages, and $81.6 billion in total economic output[36]. Businesses range from motion picture and video production, talent, subscription programming, television broadcasting, advertising and media buying, postproduction and other services, and distribution and consumption. These sectors are mutually reinforcing, and each plays a crucial role in the industry's value chain, from the production of film and television content through to its consumption by viewers and enthusiasts. Over the last 15 years, the industry has added roughly 35,000 direct jobs, growing at an annual rate of 3% and outpacing the citywide job growth over this period[37].

NYC is home to about 60 qualified production facilities—as defined by the Film Production Tax Credit Program—located in all five boroughs and concentrated in Manhattan, Brooklyn, and Queens. These facilities constitute almost two million square feet of production space, and this figure is expected to nearly double in the next few years as existing expansion projects are completed and new facilities open[38]. These facilities also vary in type and size: a handful are very large, multi-stage facilities widely regarded as world-class film and television production hubs; most others are smaller, single- or several-stage facilities. Soundstages are often repurposed industrial buildings, such as warehouses and hangars; as a result, soundstage space is concentrated in formerly industrial areas. The growing presence of production facilities in these neighborhoods has helped revitalize local economies. Between 2001 and 2019, jobs in the motion picture and video production sector grew at an annual rate of 9% in Brooklyn and 8% in Queens (compared to 3% citywide), reflecting in part the expansion of soundstages and production facilities in these two boroughs[39]. This pipeline of projects has revealed significant challenges in zoning rules that make siting new production facilities quite challenging, due to constraints of traditional Manufacturing District zoning with regard to bulk, loading, and parking. Several projects

[36] NYC Mayor's Office of Media and Entertainment (MOME), 2021 Film Industry Economic Impact Study. https://www.nyc.gov/assets/mome/pdf/FilmTV_report_091521.pdf

[37] Ibid.

[38] Ibid.

[39] Ibid.

have come before the City Planning Commission for rezonings and other actions in recent years to facilitate new soundstages[40].

Amusements and experiential retail: Consumer demand for experiential businesses and those in the amusement and recreation industry—such as trampoline parks, virtual skydiving, escape rooms, and virtual reality arcades—are expanding the diversity of business types that desire to locate in commercial areas. The number of amusement and recreation businesses in NYC has increased from 960 in 2010 to 1,400 in 2023[41] – primarily in Coney Island or in manufacturing-zoned areas of the city, as current zoning rules largely prohibit them in commercial areas. Multiple real estate brokerages have written regarding the shift in retail to more experienced based offerings, which are thriving especially in areas like SoHo, where existing mixed-use zoning has been more permissive of these creative offerings.

Nightlife: Live entertainment and nightlife venues, including comedy clubs and dance halls, showcase the vitality and creativity of New Yorkers. A 2019 report from the NYC Mayor's Office of Media and Entertainment (MOME) found that New York City's nightlife industry supports nearly 300,000 jobs and generates $35 billion in economic output[42]. Despite the importance of this industry to the city's recovery and continued economic growth, the city's zoning has not kept up. The zoning includes outdated restrictions holding back certain businesses from locating in many commercial districts of the city, especially in high density and centrally located areas like Midtown Manhattan.

Urban Agriculture: Nineteen million pounds of food are supplied annually to NYC via a complex local and global supply chain. As part of a multi-pronged effort to increase food security, equity, and economic opportunity, the City adopted a goal of increasing urban farming, including the establishment of the first Mayor's Office of Urban Agriculture (MOUA). Today, the city is home to numerous community growers, as well as new commercial growing operations taking advantage of rooftop allowances created by the Zone Green citywide text amendment of 2012[43]. Advances in hydroponic and aquaponic agricultural cultivation present opportunities for vertical indoor urban farms, but zoning regulations prohibit these kinds of businesses from locating in empty office or storefront spaces in Commercial Districts.

Existing Use and Commercial Zoning Regulations

The Zoning Resolution's land use regulations were developed based on NYC's economy of the 1950s and have not kept pace with its evolving economy. The 1961 Zoning Resolution (ZR), itself an update from 1916, reflects how NYC's economy transformed from World War I to an auto-focused, post-World War II era. The ZR largely separates residential, commercial, and industrial

[40] Wildflower Studios, C 210459 ZSQ and N 210457 ZAQ; Kaufman Studios C 000021 PPQ & C 000020 PQQ; York Studios N 230142 ZAX, C 230070 MMX, C 230145 ZSX, Brooklyn Navy Yard C 210462 ZMK, Silvercup West, C 060326 ZSQ

[41] NYS DOL QCEW, 2010 Q1 and 2023 Q1 (preliminary), NAICS 713

[42] NYC MOME. "NYC's Nightlight Economy: Impact, Assets, and Opportunities." https://www.nyc.gov/assets/mome/pdf/NYC_Nightlife_Economic_Impact_Report_2019_digital.pdf

[43] Zone Green citywide text amendment. City Planning Commission report N 120132 ZRY (2012)

uses, requires substantial off-street loading and parking, and significantly limits densities in many commercial and industrial areas.

Use

The 1961 ZR regulates land use according to the activities, or “uses,” contained within delineated zoning districts. The ZR defines use as “any purpose for which a building or other structure or an open tract of land may be designed, arranged, intended, maintained or occupied;” or “any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on an open tract of land” (ZR 12-10).

Uses in the 1961 ZR were based, in part, on the Standard Industrial Code (SIC) classification system that the federal government used in the 1950s to classify businesses. The SIC classification system has since been replaced by the North American Industry Classification System (NAICS), but the ZR has not been updated to reflect the federal government’s adoption of NAICS nearly 30 years ago.

Use Groups

The ZR divides individual uses into 18 “Use Groups” (UGs) based on uses deemed suitable to be contained in similar zoning districts over 60 years ago. Use Groups 1 and 2 are “residential,” while Use Groups 3 and 4 are “community facilities,” like schools, libraries and hospitals. Use Groups 5 through 9 are “local retail and service uses,” 10 through 12 are “regional shopping and large entertainment facilities”, 13 through 15 are “recreation” uses, 16 is “automotive service and semi-industrial", and 17 and 18 are for “manufacturing and other heavy industrial” uses. This Use Group framework has been largely unchanged since 1961.

The Uses within Use Groups themselves may reflect a collection of uses the drafters of the 1961 Zoning Resolution thought made sense together, but do not in practice represent a coherent category of businesses based on building typology or industry sector. For instance, this lack of alignment between Uses and Use Groups results in certain production and entertainment uses appearing in a Use Group alongside retail and services uses. For example, Use Group 6 contains bakeries, dressmaking shops, and eating and drinking establishments with live entertainment. Similar uses are also often listed in multiple Use Groups, such as “Candy or ice cream stores” being listed in Use Group 6, 12, and 14, further confusing business owners, City agencies, and the public. The current Use Group system makes it challenging for users to understand where businesses can and cannot locate, effectively requiring users to read all of the Use Groups to understand the regulations. While many aspects of the 1961 ZR became common in zoning of other cities, the Use Group concept saw little uptake and is quite old-fashioned compared to the zoning rules in other cities. In the last few decades, many other cities, including San Antonio, TX, St. Petersburg, FL, and Tacoma, WA have adopted NAICS for maintaining use classifications of businesses that stay up to date with how business practices and technological changes continue to shape local economies.

Changes in Use Regulations Since 1961

While the original ZR drafters assumed the use regulations would be kept fresh through continual changes to the rules, the difficulties in undertaking citywide zoning changes have greatly limited changes over time. Since 1961, most of the changes to use regulations in the ZR have been applied to select uses or geographies, creating a patchwork update to the existing framework rather than a comprehensive reform.

On a citywide basis, updates to use regulations since 1961 have included minor additions of defined uses such as veterinary medicine (1971), indoor golf centers (1964), and outdoor skateboard parks (1978). Other changes include the addition of clothing rental as a permitted use within Use Group 6 (in C1 zoning districts) in 1970, the reclassification of auto body repair from Use Group 17 to Use Group 16 in 1965 to allow those establishments in C8 zoning districts and allowing shoe repair to occur on the ground floor within 50 feet of the street in C5 zoning districts in 1993. The specificity and limited scope of such citywide use changes are indicative of a use regulation framework that is ill-suited for adaptation and unable to anticipate changes in economic activity.

In other instances, DCP has advanced citywide text amendments to modify use regulations, including those for physical culture establishments (PCEs), live entertainment, and a Special Permit for scientific research and testing laboratories. These text amendments have modernized use regulations for select business types and fit into the existing use framework, rather than provide an overarching framework through which future changes could be applied.

Since 1961, the ZR has also seen the addition of numerous special districts, many of which further specify lists of uses permitted and excluded within a defined geography.

Where zoning has been unable to keep pace with a changing economy, the NYC Department of Buildings (DOB), the Board of Standards and Appeals (BSA), the City Planning Commission (CPC), and the judicial process have served to clarify where certain new or not explicitly defined uses are permitted. Small business owners often need to hire professional expediters, land use attorneys, engineering firms, or consultants to interpret the ZR and the decades-old use restrictions, a process that can cost small businesses months of lost revenue and rent on a storefront not open for business.

For the first decade after 1961, the drafters' view of uses reflecting current industry classifications mostly held as new uses were added to regulate emerging business types. But, as the process of adopting citywide zoning text amendments became more complex, fewer changes occurred in the following decades, and changes that did occur tended to focus on limiting uses, whether new or existing. In fact, no comprehensive update to the current use terms has occurred since their original adoption in 1961—and rarely have new uses been added—to reflect the many changes and additions to businesses in the more than six decades since the ZR's original adoption. Effectively, the work of keeping the overall use framework in line with the city's economy has been put off for multiple decades, resulting in citywide use regulations that are obsolete, inconsistent, or confusing.

Commercial Districts

The ZR contains eight broad categories of commercial "C" zoning districts and allocates Use Groups across these districts. Each category is described below.

C1 and C2 Commercial Districts

The ZR contains two types of similar zoning districts designed for neighborhood commercial corridors: C1 and C2 districts. These districts can be found either as mapped standalone districts in high-density locations in Manhattan or as overlay districts in combination with Residence Districts in residential contexts ranging from R1 to R10.

The ZR classifies C1 districts as "Local Retail Districts" consisting of a "wide range of retail stores and personal service establishments" that can meet "frequently recurring needs". As they were conceived, C1 districts were meant to "promote convenient shopping" and "continuous retail frontage" (ZR 31-11).

In contrast, C2 districts were created in the 1961 ZR as "Local Service Districts" consisting of "a wide range of essential local services not involving regular local shopping." Because of a perception that local services businesses "are less frequently visited by customers" and "tend to break the continuity of retail frontage," the 1961 ZR excluded many local services uses from C1 districts that were found in C2 districts, such as repair and rentals, large gyms, funeral homes, trade schools, medical labs, pawn shops, and dance/theater studios (UG 7B, 8B, and 9A). Also, excluded from C1 districts were small amusements and places of assembly, such as theaters, bowling alleys, billiard halls, and banquet halls (UG 8A); small wholesale establishments (UG 7C and 9B); and auto service, including light installation, rentals, and parking facilities (UG 7D and 8C). Even though the range of uses permitted in C2 districts was far more expansive than those permitted in C1 districts, the uses permitted in C2 districts were ones that "create relatively few objectionable influences for nearby residential areas" and therefore were considered appropriate within a residential neighborhood context.

In practice, however, there are few meaningful distinctions between the types of businesses that exist in C1 and C2 districts. A 1990s DCP examination of businesses across the city found there to be more businesses in UG 7, 8, and 9 in C1 districts than in C2 districts—despite businesses in those use groups not being allowed as-of-right in C1 districts. A DCP examination of existing businesses in 2022 corroborated these earlier findings and found that there are 1,500 businesses in C1 districts in Use Groups 7, 8, and 9, suggesting a wide range of non-conforming uses[44].

Because of the unnecessary and outdated limitations on use within C1 districts, over the last few decades, DCP-led zoning map amendments have changed many C1 districts to C2 districts to facilitate economic development and greater business diversity with the wider range of uses allowed by C2 districts. From 1994 to 2022, the share of C1 districts citywide has decreased from 63% to 51%, resulting in an additional 585 acres of land zoned as C2.

[44] DCP analysis of NYS DOL QCEW, 2022 Q4 (preliminary)

C3 Commercial Districts

C3 districts generally permit waterfront recreational activities, primarily boating and fishing, in areas along the waterfront that are usually adjacent to Residence Districts. In addition to facilities for docking, renting, servicing and storing fishing and pleasure boats, permitted activities include aquatic sports equipment sales and rentals, bicycle shops, ice cream stores and public and private beaches. These waterfront uses are listed in Use Group 14. C3 districts also permit residences and community facilities (Use Groups 1–4). Notably, in C3 Districts Eating or Drinking Establishments require a BSA Special Permit in order to operate, providing an additional hurdle for small business owners seeking to operate in low-margin industries.

C4, C5, and C6 Commercial Districts

The ZR also contains three varieties of commercial districts designed for higher density or more centrally located areas: C4, C5, and C6 districts.

C4 districts, or "General Commercial Districts," were designed in the 1961 ZR for intensive commercial activity drawing on a relatively large service area, such as department stores and other large-scale retail businesses. Some service uses were permitted, but those that can locate elsewhere were not permitted (or were not permitted to locate on the ground floor) to prevent perceived interruption of retail continuity. Consequently, C4 districts placed restrictions on uses like bike repair, exterminators, small contractors, auto tire shops, and custom manufacturing.

C5 districts, or "Restricted Central Commercial Districts," were designated for central office, retail, and wholesale activities of citywide, regional, and national significance. Notably, the C5 district also permitted "custom manufacturing establishments which are generally associated with the predominant retail activities" (ZR 31-15), including apparel design and manufacturing.

To make conditions favorable to the principal activities of C4 and C5 districts (e.g., shopping and offices shopping), zoning excluded a range of service businesses from the ground floor within 50 feet of the street. In general, these are: entertainment uses (billiards and bowling); instructional facilities; production spaces; studios; laboratories; places of assembly (banquet halls/meeting halls); and other local service uses (pawn shops, loan office, clothing rental, catering) and various non-automotive repair uses.

C6 districts, or "General Central Commercial Districts," were designed to provide for the varied and specialized commercial activities requiring a central location. Retail shopping was considered important but was not intended to be a major function of C6 districts. C6 districts included areas with intensive employment on upper floors and ground-floor uses that provide services for those businesses and their employees. On this basis, planners at the time did not place the ground-floor restrictions and use limitations that exist in C4 and C5 districts on C6 districts.

Over time, zoning text changes have allowed additional service uses along the ground floor in C4 and C5 districts, demonstrating subsequent land use rationale for removing the constraints of these provisions. For example, the regulations were changed to allow additional uses on the ground floor, including shoe repair (1993), public auction rooms (1997), television studios in the

Fifth Avenue Subdistrict of the Midtown Special District (1999), and theaters in the Fulton Mall special district (2001). Most notably, changes to the Lower Manhattan Special District in 1998 allowed all C5 uses on the ground floor except on a handful of retail continuity streets, allowed theaters and a few other places of assembly (e.g., billiards, funeral homes), and craft production and repair uses (e.g., appliance repair, construction contractors) that are otherwise prohibited in C5 districts. These changes preceded the transformation of lower Manhattan into a mixed-use area, but facilitated the location of businesses, such as theaters, that were previously restricted as additional residents populated the area.

Since the 1960s, the C5 districts have seen little expansion from their original cores in East Midtown and lower Manhattan. Meanwhile, the C6 district, originally centered in western Midtown, has been used as the main tool for higher density commercial business growth, since it permits a wider range of uses than C5. Over the last couple of decades, the C6 district has been used in Hudson Yards, Downtown Brooklyn, and Downtown Jamaica.

C7 Commercial Districts

The C7 district, designated in the ZR as a “commercial amusement” district, was “designed to encourage open commercial amusement parks,” such as Coney Island, and had broad allowances for use. In 1961, C7 districts permitted housing, community facilities, and all commercial uses except UG 11 (custom manufacturing) and UG 16 (automotive and semi-industrial). In the 1970s, permitted uses were restricted to UG 12 through 15 to preserve the unique amusement uses in Coney Island (CP21829).

Currently, C7 districts are mapped only in three locations, and only one currently has amusement uses (Coney Island). The other two locations mapped with a C7 district have uses that do not conform with the district’s use regulations. The Coney Island Special Purpose District effectively overrides the use regulations for the area, providing the possibility of repurposing the C7 designation without materially affecting use allowances in Coney Island.

C8 Commercial Districts

C8 districts, bridging commercial and manufacturing uses, provide for motor vehicle repair and maintenance shops and other heavy commercial services that often require large amounts of land. Typical uses are automobile showrooms and repair shops, warehouses, gas stations and car washes—although all commercial uses (except large, open amusements) as well as certain community facilities are permitted in C8 districts. Housing is not permitted and performance standards are imposed for certain semi-industrial uses (Use Group 11A and 16).

C8 districts are mapped mainly along major traffic arteries, such as Boston Road in the Bronx and Coney Island Avenue in Brooklyn, where concentrations of automotive uses have developed.

Manufacturing Districts

In addition to commercial zoning districts, there are three types of Manufacturing Districts that are distinguishable from each other primarily by the intensity of industrial uses permitted within them, and the range of permitted non-industrial activities allowed. Intensity of industrial activity permitted is partially based on what uses are allowed and partly based on Performance Standards that limit the amount and type of industrial nuisances permitted for a variety of potentially noxious elements including noise, vibration, smoke, odor and fire hazard. Each district type is further subdivided into individual districts characterized by different floor area ratios (FARs) and parking requirements, with increasing intensity of industrial use and density generally indicated by the accompanying increasing numeric suffix. The three Manufacturing Districts categories are:

- **M1 – Light Manufacturing Districts**. M1 Districts allow a range of industrial, commercial, and community facility uses and, in some cases, act as transition zones between residential areas and areas with heavier industrial activity (such as M3 areas). M1 Districts allow Use Groups 4, 6-14 (generally retail and commercial uses) and 16-17 as-of-right and Use Group 5 (hotels) with a Special Permit. It does not permit Use Group 18 uses which are the most intensive industrial uses (such as cement factories). Manufacturing Districts generally do not permit residential but, in some rare instances, allow residential under very specific circumstances (e.g., M1-6D). Unlike M2 and M3 districts, M1 districts can also be paired with other zoning districts, such as residential districts, to create what is sometimes referred to as “MX” districts.
- **M2 – Medium Manufacturing Districts**. M2 Districts have lower performance standards than M1 districts. Although not widely mapped, M2 Districts are usually found in or near waterfront areas. M2 Districts allow Use Groups 6-14 (generally retail and commercial uses) and 16-17 (generally industrial uses) as-of-right. Community facilities and hotels are not allowed in M2 or M3 districts. Certain categories of retail and service uses in Use Groups 6A, 6C, 9A, 10A and 12B are limited in size or not permitted at all. The most intense Use Group 18 industrial activity is not permitted in M2.
- **M3 – Heavy Manufacturing Districts**. Originally designed to accommodate essential heavy manufacturing uses and facilities, such as power plants and foundries, which generate high amounts of noise, truck traffic, or pollutants, M3 Districts today are home to many businesses, including open industrial uses such as recycling facilities and cement production. M3 Districts allow Use Groups 6-14 (generally retail and commercial uses) and 16-18 (generally industrial) as-of-right. Certain categories of retail and service uses in Use Groups 6A, 6C, 9A, 10A and 12B are limited in size or not permitted at all.

Prior to 1961, industrial businesses were relegated to “industrial”, “business” or “unrestricted” areas of the city which allowed a wide range of business uses but ensured their segregation from residential areas. At the time of the adoption of the 1961 zoning regulations, the manufacturing sector was the predominate use in industrial areas, so these industrial districts were renamed “Manufacturing Districts” despite housing and allowing for a wide range of other industrial, commercial, and retail uses.

Before the 1961 ZR, many flexible industrial building typologies were built, commonly in a loft-like style, which resulted in the construction of highly adaptable space that could accommodate a range of tenants. In these loft-style structures, co-location of production, wholesale, office, and retail uses often occurred in the same building or even on the same floor—resulting in a supply of multipurpose space that could accommodate and respond to the needs of growing businesses. Many loft buildings were not purpose-built developments and generally were built without a specific type of business in mind. The characteristics of these buildings—including high ceiling heights, wide column spacing, and large floorplates—has meant that many of these historic loft buildings have been able to adapt, and they remain occupied through economic cycles and changes in tenant demand even more than a century following their original construction.

By the late 1950s, globalization and technological advances in production had started to catalyze NYC's transition away from a manufacturing-based economy. The 1961 ZR reflected planners' thinking of the time that future job intensity would be focused primarily in dense office districts in Midtown or in far-flung low-scale production in more suburban settings. As a result, the 1961 ZR subjected new construction buildings in M districts to single-story or low-density Floor Area Ratio (FAR), infeasible sky exposure plane requirements, high yard requirements, and high parking requirements that assumed predominate car commuting. In many instances, the 1961 ZR prohibited new construction versions of the flexible loft-like buildings that populated the city historically.

These outdated M districts remain largely unchanged. Approximately 70% of buildings in the city's M districts were built before 1961[45], and M districts are home to many tenanted buildings that are larger than what would be allowed under the 1961 ZR. M Districts are also overwhelmingly low density. Approximately 96% of the city's M Districts are zoned for a maximum of 2.0 FAR of commercial, which significantly limits physical vertical business expansion without a costly and time-intensive rezoning process[46]. Additionally, approximately one in five buildings in M districts are above their allowable FAR, preventing many kinds of renovations that businesses may need to continue or expand their operations[47].

New York City needs new M district zoning tools to enable modern loft-like buildings to support and grow businesses in the city's industrial areas. Buildings that can be adaptable and meet the needs of a range of business types and sizes—as the city's loft buildings have historically—will ensure economic resilience for the city in the face of future disruptions and changing economic trends.

Commercial Activity in Residence Districts

The 1961 ZR was created at a time when commercial uses were often separated from residences on the basis that, over time, more New Yorkers would use personal vehicles to drive to corridors or auto-oriented shopping centers in C districts for local goods and services. Indeed, today's zoning still reflects a vision of commercial activity "designed to meet the needs of the automobile shopper," as the 1961 City Planning Commission Rezoning New York City handbook states.

[45] DCP analysis of PLUTO v23.1 dataset 2023. Only includes pure M-Districts (e.g., M1-5) and does not include M-Districts that are paired with another zoning district (e.g., M1-5/R10).

[46] Ibid.

[47] Ibid.

While the drafters of the 1961 ZR mapped Commercial Districts over most of the city's retail corridors, they often placed more-dispersed commercial businesses in Residence Districts. This subjected businesses in R Districts to non-conformance regulations that made it more difficult to maintain their business and precluded reoccupation if the business closed for more than two years. Recognizing the issues this caused in many parts of the City, in the 1970s DCP modified the zoning to allow stores in R5-R7 medium density residence districts to be reoccupied regardless of how long the business was closed. These discontinuance regulations, found in ZR 52-61, have allowed many stores to reopen and fulfill a vital service role in their neighborhood.

Home occupation provisions have been included in the ZR since 1961 and have allowed many small businesses to begin. These rules allow a wide range of business types to operate from a dwelling unit, except they limit some uses such as barbers and nail salons in a very class-based way. In recent special districts, home occupations regulations have been adjusted to allow for these uses, expand the allowable percentage of a dwelling unit associated with a home-based business, and increase the allowable number of employees associated with a home-based business.

Today, outside of Commercial Districts and Commercial Overlays, approximately 630,000 New Yorkers are working at 77,000 private sector businesses located in residentially zoned areas of the city[48]. Those businesses reflect a mix of home-based businesses, community facility-type businesses generally allowed to locate in Residence Districts, such as doctor's offices and daycares, and businesses in historic non-conforming storefronts or loft buildings not typically allowed in areas zoned for residential use. However, the city's zoning has not kept pace with, and often inhibits, business activity and job creation in places not explicitly allowed to allow for such activities. In the City's Historic Districts, discontinuance regulations with a two-year limit on commercial activation contribute to more than 850 vacant storefronts in Historic Districts, 250 of which are in Residence Districts[49]. Since COVID-19, the share of NYC residents working from home rose from around 5% in 2019 to 16% of resident workers in 2022[50]. There are also more than 110,000 New Yorkers who reported that they were self-employed and working from home, underscoring the contribution of home-based businesses to neighborhood and overall city economic vibrancy[51].

Over the last 60 years, much has changed—many New Yorkers travel to shops by walking or taking transit, and hybrid work has further revealed the benefits of having retail options close to home. Many business uses may not only be appropriate in residential neighborhoods but may facilitate beneficial connections between residents and businesses within hyper-local economies, creating jobs and activating existing commercial corridors.

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[48] DCP analysis of NYS DOL QCEW, 2023 Q1 (preliminary).

[49] DCP analysis of Live XYZ data current as of September 6, 2023. Boundaries sourced from the NYC Landmarks Preservation Commission and DCP.

[50] https://s-media.nyc.gov/agencies/dcp/assets/files/pdf/data-tools/census/acs/dcp-nyc-highlights-from-the-2021-acs.pdfDCP analysis of U.S. Census Bureau Public Use Microdata ACS 1-Year Estimates 2019 and 2022.

[51] DCP analysis of U.S. Census Bureau Public Use Microdata ACS 1-Year Estimates 2021

Streetscape rules

The 1961 Zoning Resolution had few regulations focused on the interaction between the sidewalk and ground floors of buildings. Since then, planners have increasingly recognized the importance of this relationship and the ZR has seen the addition of many types of "streetscape" regulations. These rules, unlike use and bulk regulations, do not apply citywide. Instead, different sets of streetscape regulations have been applied in different areas over time (typically through the mapping of special purpose districts). While these regulations differ, they tend to include regulations for design elements like ground floor uses, transparency, and lobby dimensions. DCP has looked to bring more coherence to the various streetscape regulations over time to make them easier to administer and comply with – for example, in 2016, standards were established for measuring transparency and ground floor use depth. While there remain many different sets of streetscape regulations in the ZR today, they apply in a limited portion of the city's commercial corridors, since most of the city is not covered by special purpose districts. This leaves most commercial corridors without any streetscape standards to protect against negative elements like blank walls or at-grade parking lots which can harm the walkable commercial character of a street.

III. PURPOSE AND NEED

New York City's economy has evolved significantly since the zoning rules which govern uses were written. Many of the limitations that the 1961 zoning regulations placed on businesses are not only no longer serving the needs of neighborhoods but are creating significant limitations for businesses trying to find space in the city, constricting economic growth and contributing to vacancy.

The proposed COYEO citywide zoning initiative would make it easier to locate or grow a business in NYC while reducing the number of the city's current storefront and office vacancies by modernizing and clarifying the city's zoning, allowing a wider variety of activities and uses that would create vibrancy on commercial streets, and lowering the cost and time of starting or opening a new business. This initiative falls broadly into four key categories:

A. 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. This zoning text amendment represents the first comprehensive update of use regulations since 1961, and updating and simplifying use regulations citywide would remove confusion and ambiguity that exists in the current zoning, enabling small business owners, property owners, City and State officials, and other community stakeholders to more easily understand where businesses can locate and what they can do in their space. Doing so would also allow for vacant spaces to be more easily activated, alleviating storefront vacancy while creating more vibrancy along the city's commercial corridors. Allowing existing spaces to be repurposed will support economic recovery and resiliency, enabling the city to be more responsive to changing economic conditions. This clarity should also lower the time and cost of establishing or growing a business in New York City.

B. Support growing industries by reducing zoning impediments for emerging business types. Certain industries face unique restrictions or ambiguity in how they are currently regulated in zoning. The Proposal would address these situations to enable the growth of these industries to thrive across the city, catalyzing the city’s economic recovery.

C. Foster vibrant neighborhoods by ensuring businesses contribute to active, safe, and walkable streets. The proposal would establish clear and consistent streetscape regulations citywide. In doing so, zoning would prioritize the public realm of commercial streets with spaces designed to be attractive and activate city sidewalks, fostering economic vibrancy and activity along the city’s commercial corridors.

D. Create new opportunities for local businesses to open by establishing new zoning tools to boost job growth and business expansion. In many situations, current zoning regulations can inhibit the development of new commercial and industrial spaces, holding back opportunities for creating jobs that are close to where people live and serve the city’s communities. The proposal would ease pathways to create spaces that can support job growth across the city, especially in transit-accessible locations in all five boroughs.

DESCRIPTION OF PROPOSED LAND USE ACTION

DCP is proposing a zoning text amendment to multiple sections of the ZR amending the underlying regulations applicable in all zoning districts throughout the City. These include amendments of the ZR’s use regulations, loading regulations, urban design requirements, the creation of several new discretionary actions, and the creation of new zoning districts for future mapping. The Proposed Action would not increase the allowable floor area ratio (FAR) in any existing zoning district, nor would it modify (increase or decrease) the loading requirements applicable within any zoning district for the construction of new buildings.

COYEO includes a compendium of zoning reforms that are intended to address the following goals. These are described in further detail below.

A. Make it easier for businesses to find space and grow

COYEO proposes to update existing use regulations in the ZR to allow for a wider range of appropriate activities to occur in many commercial areas.

1. **Lift time limits to reactivating vacant storefronts**
2. **Simplify rules for business types allowed on commercial streets**
3. **Expand opportunities for small-scale clean production**
4. **Modernize loading dock rules so buildings can adapt over time**
5. **Enable commercial activity on upper floors**
6. **Simplify and modernize how businesses are classified in zoning**

1. Lift time limits to reactivating vacant storefronts

This proposal would allow nonconforming vacant storefronts in residence and historic districts to legally re-tenant their space in locations where it is not already allowed.

Today, many residential areas of the city have non-conforming stores, such as corner grocery stores or bodegas, whose commercial use pre-dates current zoning that would not allow for commercial use. These stores can remain active in perpetuity, but there is limited protection for continued operation of these storefronts as retail in the event of prolonged vacancy, as occurred in the recent pandemic. Current regulations for non-conforming commercial uses in Residence Districts allow for the reoccupation of a vacant commercial storefront via Section 52-61 of the ZR, provided that the commercial use does not close for more than two years. However, provisions applicable in R5-R7 districts (except Historic Districts) allow vacant commercial spaces to be reopened regardless of the amount of time vacant. Non-conforming stores can serve vital roles in areas with limited retail availability, and the provisions of 52-61 unduly restrict the continued use of these neighborhood assets in certain areas, and adding additional uncertainty about if businesses can operate long-term can make it harder for businesses to obtain loans.

COYEO would ease regulations on the reactivation of vacant retail spaces by expanding the applicability of Section 52-61 to all Residence Districts as well as Historic Districts. This change to the ZR will support the economic stability of neighborhoods, while promoting walkability and access to local goods and services.

2. Simplify rules for business types allowed on commercial streets

This proposal would simplify zoning regulations to permit the same range of commercial businesses on similar commercial street types – consolidating use differences between the two kinds of zoning districts for neighborhood commercial corridors and local streets (C1 and C2 districts) and consolidating the use differences among the four kinds of zoning districts meant for centrally located areas and Central Business Districts (C4, C5, C6, and C7 districts).

Today, zoning restricts many kinds of local services uses that are allowed in C2 Commercial Districts from locating in C1 Commercial Districts, despite C1 and C2 districts or overlays being mapped in similar contexts and—in many instances—being mapped along the same street or across the street from each other. Similarly, today's zoning restricts many kinds of commercial uses that are allowed in C6 Commercial Districts from locating in C4 Commercial Districts and C5 Commercial Districts, despite similar contexts and mapping locations for all three districts. Furthermore, today zoning places limitations within C4 and C5 districts on certain uses, including instructional facilities, dance studios, and clothing rental establishments, from locating within 50 feet of the street wall if located on the ground floor of a building. Uses subject to this prohibition were perceived to be detrimental to commercial corridor by virtue of having less foot traffic (e.g., an art studio) or for classist perceptions of occupants (e.g., billiard parlors). The current rules effectively bar these uses, which are allowed in the district, from ground floor tenancy and can exacerbate vacancy while also unnecessarily restricting small businesses from locating in spaces that could be suitable but for the zoning restriction.

COYEO would simplify the arbitrary distinctions between these zoning districts to allow the same range of uses in C1 and C2 districts, effectively enabling some additional uses within C1 districts. These uses include business services, bike rental and repair, and theaters (i.e., some uses found in current Use Groups 7, 8, 9 and 14). COYEO would also broaden the range of uses allowed in C4 and C5 districts to match those currently allowed in C6 districts—uses including small-scale service and repair, wholesale, and custom manufacturing businesses, as well as amusements like movie theaters and places of assembly (i.e., some uses found in current Use Groups 7, 8, 11, and 12). In C4, C5, and Special Purpose Districts with existing limitations on use from locating within 50 feet of the street wall if located on the ground floor of a building, COYEO would remove this distance from streetwall restrictions.

3. <u>Expand opportunities for small-scale clean production</u>

This proposal would provide additional location options for small-scale, clean production space and other light industrial activities.

The ZR currently limits many production activities to M districts, however notable exceptions exist based on retail-production hybrid businesses common at the time of its adoption in 1961. For example, bakeries, dressmaking, tailoring, and hat-making are all permitted uses in any commercial district (UG 6), printing shops are permitted in C2, C4-C6 (UG 9), and custom manufacturing of books, ceramics, clothing, hair products, jewelry, medical or dental instruments, musical instruments, orthopedic or medical appliances, printed products, and watchmaking are permitted in C5 or C6 districts (UG 11).

However, the existing commercial district allowances for production activities are limited by their specificity and preclude many kinds of production activities that are broadly seen as appropriate and desirable uses to occur in certain commercial districts, including 3D printing, woodworking shops, and small-scale food and beverage manufacturing such as microbreweries and coffee roasters. Additionally, the current zoning restricts some production uses to a small amount of on-site production space for retail activities (e.g., a small baking area in a bakery).

COYEO proposes to allow certain additional production activities to occur in commercial districts. These production uses align with light industrial uses currently permitted in special mixed use (MX) districts and include but are not limited to ice cream shops, bakeries, brewpubs, pottery stores, woodworking shops, 3-D printers, and apparel makers. These production uses are defined according to industries within the North American Industry Classification System (NAICS).

The proposal would allow these small-scale production uses up to 5,000 square feet (SF) on the ground floor in C1 and C2 districts, allowing activities compatible in size with other retail and service storefronts commonly found in these zoning districts. In C4, C5, C6, and C7 districts, clean production activities would be allowed up to 10,000 SF on the ground floor—with no size restrictions above the ground floor.

In all instances, to be able to operate in Commercial Districts, clean production uses would be subject to environmental requirements already required in Special Mixed Use Districts that stipulate the business must certify that a production or manufacturing activity will not have emissions that exceed the “ABC” standard found in NYC Administrative Code 24-153, or would generate a “right to know” filing with the City for storing or using potentially hazardous substances. Failure to follow environmental standards could result in DOB zoning violations, DEP enforcement, and potential closure.

Additionally, to avoid potential air quality effects for residences, uses must design any required emission stacks to vent at the highest tier of the building or above the height of the immediately adjacent buildings, whichever is higher.

4. Modernize loading dock rules so buildings can adapt over time

The proposal would remove the possible requirement of providing additional loading berths for a change of use in an existing building.

Loading berths or docks are used to efficiently transfer goods between a vehicle and a building. Sections 36-60 and 44-50 of the ZR specify the minimum number of loading berths a building should have based on the use that is occupying the building. Loading requirements are distinct from how zoning treats parking requirements, in that the loading requirements apply to new developments, enlargements, and changes of use, whereas additional parking is not required for a change of use. As a result, when an existing building changes from one use to another, loading rules would require building owners to add loading berths to reflect the new use – a costly physical retrofit the building user may not want or need. In effect, these regulations discourage the tenanting of space to certain businesses, make full occupancy harder for larger industrial buildings, and make it harder for the city’s building stock to evolve and stay occupied over time.

Recognizing the constraints of the current loading regulations, Special Districts such as the Gowanus Special District and the Flushing Waterfront Special District provide businesses with additional flexibility for tenanting by not requiring additional loading berths for a change of use in an existing building.

COYEO would allow buildings to more easily evolve over time by not requiring additional loading berths for a change of use in an existing building. While new buildings will continue to be required to provide loading berths according to the uses intended to occupy the space, this proposal will allow existing buildings to evolve their tenant mix over time without adjusting the number of loading berths.

In addition, the Proposal would update the dimensions of required loading berths to bring them in line with recent changes in special purpose districts and the Manhattan Core. The dimensions for box trucks listed in the current text (33') does not match contemporary standards (37') and compliance with the rule can lead to trucks onto the sidewalk. To better ensure loading does not impact the streetscape, these would be made consistent citywide.

5. Enable commercial activity on upper floors

The Proposal would update the location of use rules in mixed buildings (buildings with residences).

In C1, C2, and C3 districts, the Proposal would allow commercial uses on the second story of all mixed buildings.

Today, in high density C1 and C2 districts and in the floodplain, commercial uses can occupy the second story of buildings containing residences. In addition, several Special Purpose Districts, including Bay Street Corridor, Clinton, Downtown Brooklyn, Downtown Far Rockaway, Inwood and Jerome Special Districts, as well as transit easements, allow for commercial uses to occupy the lowest two floors of a mixed use building. However, these provisions are not consistent across all C1, C2, and C3 districts, limiting options for new construction as well as changes in use from Community Facilities to commercial uses.

In C1, C2, and C3 districts, the Proposal would allow commercial uses on the second story of all mixed buildings (today this is already permitted in high density areas and the floodplain). These commercial uses can be on the second story with residences as long as there is no access between them. In these districts, commercial uses would not be able to locate over residences.

For example, in C1 and C2 commercial overlays mapped within low-density Residence Districts, such as R3-2, R4, and R5, commercial uses are allowed up to 1.0 FAR, but Community Facility uses are allowed up to between 1.6 and 2.0 FAR depending on the exact district. This means that doctors' offices and other kinds of medical uses (classified as Community Facility) are allowed above the ground floor, but these same spaces cannot be utilized by other kinds of neighborhood-serving offices or other appropriate neighborhood commercial uses. Current zoning also makes many buildings built before 1961 with commercial uses on the second-floor non-complying, making it harder for building owners to renovate or find new tenants.

COYEO would enable the adaptive reuse of commercial spaces in low-density commercial overlay districts by allowing the same FAR for Community Facility and Commercial uses in these districts. The Proposal would also allow commercial uses in C1, C2, and C3 districts to be on the second story of all mixed buildings and on the same story as with residences as long as there is no access between them. In these districts, commercial uses would not be able to locate over residences.

In low-density Commercial Overlay Districts, the Proposal would allow commercial uses on the second story of all mixed buildings.

Today, businesses seeking to fill an empty doctor's office on the second story of a mixed-use building might not be allowed to do so because of outdated zoning rules that differentiate Community Facility and Commercial FAR in certain low-density Commercial overlay districts.

For example, in C1 and C2 commercial overlays mapped within low-density Residence Districts, such as R3-2, R4, and R5, commercial uses are allowed up to 1.0 FAR, but Community Facility uses are allowed up to between 1.6 and 2.0 FAR depending on the exact district. This means that doctors' offices and other kinds of medical uses (classified as Community Facility) are allowed above the ground floor, but these same spaces cannot be utilized by other kinds of neighborhood-serving offices or other appropriate neighborhood commercial uses. Current zoning also makes many buildings built before 1961 with commercial uses on the second-floor non-complying, making it harder for building owners to renovate or find new tenants.

COYEO would enable the adaptive reuse of commercial spaces in low-density commercial overlay districts by allowing the same FAR for Community Facility and Commercial uses in these districts. The Proposal would also allow commercial uses in these districts to be on the second story of all mixed buildings and on the same story as with residences as long as there is no access between them. In these districts, commercial uses would not be able to locate over residences.

<u>In C4, C5, and C6 districts, the Proposal would allow commercial uses occupy separate parts of the same story or to locate above residences</u>

In C4, C5, and C6 districts, commercial uses are already allowed to be on multiple stories. They can only be located below residences, except many special purpose districts already allow them to locate on the same story as residences if there is no access between them. For instance, many Special Purpose Districts, such as East Harlem, Gowanus, Inwood, Long Island City, Lincoln Square, Battery Park City, Forest Hills, Harlem River, Willets Point, Southern Hunters Point, Flushing West, St. George, and Coney Island have implemented regulations for new construction that allow for residences and commercial uses to occupy the same level of a building, provided that: (a) no access exists between such uses at any level containing dwelling units, and (b) no commercial uses are "directly located" over any dwelling units. This inconsistent application of when residences and commercial uses, such as offices, are allowed to occupy the same floor, limits options for building conversions to other uses and limits options for new buildings that contain both residences and non-residential uses.

The 1961 ZR did not anticipate changes in work culture, workplace amenities, or remote work that would necessitate live/work/play Central Business Districts. As a result, zoning creates unnecessary prohibitions on commercial uses above the ground floor in residential buildings, restricting business activity that workers, residents, and visitors can enjoy. The East Midtown Special District allows for a handful of arts, entertainment, and recreational uses at or above stories with residences, provided that no access exists between the residential use and non-residential use. This East Midtown allowance permits upper story restaurants, and observation decks, where they would not otherwise be permitted. Outside of East Midtown, Coney Island, Southern Roosevelt, MX, Southern Roosevelt, Article 1 Chapter V allow non-residential uses to locate above residential uses. Outside of these allowances, current zoning rules prohibit commercial uses above residences in any building as-of-right, though a few Special Districts include a discretionary path by CPC authorization.

Consistent with recommendations in New New York: Making New York Work for Everyone (2022) action plan, COYEO will allow for more flexibility that can support the City's goals to reimagine New York's business districts as vibrant 24/7 destinations. COYEO would allow commercial uses and residential uses on the same floor citywide, including the requirements for separate direct access points or entrances for commercial and residential uses. These reforms would make it easier to allow for new construction buildings that contain both residences and commercial uses. This change would also enable easier adaptive reuse of buildings, particularly in Manhattan's Central Business Districts.

In addition, the Proposal would allow commercial uses to be located above residences in these districts to promote active rooftop spaces. This is already permitted for conversions of older existing buildings. COYEO would allow commercial uses to be located over dwelling units provided that sufficient separation of residential uses from commercial uses exists within the building. This proposal would not result in new permitted floor area but would create additional flexibility in where commercial uses can locate in mixed-use buildings.

When locating above the ground floor, production uses (see Proposal #3) or commercial uses that have a rated capacity (e.g. Eating or Drinking Establishments, Theaters, etc.) that are permitted on the same story as a residential use, or on a story higher than that occupied by residential uses, when adjacent to residential must either separate from residences or attenuate high noise-generating uses:

- **Separate:** Provide separation of the noise-generating portion of uses from residential units by a 15-foot vertical or horizontal buffer use distance which must include at least one partition wall. Buffer uses are uses other than residential living unit or noise-generating portion of a use. Buffer may include portions of a noise-generating use such as lobbies, offices, storage, or any other non-noise generating portions of that use.

- **Attenuate:** Provide floor, ceiling, or partition wall attenuation certified by a licensed architect or engineer to the Department of Buildings such that no activity shall create a sound level in excess of ambient sound levels when measured inside a receiving residential unit.

6. Simplify and modernize the way businesses are classified in zoning

The proposal would re-organize Use Groups and update use terms to better reflect modern commercial and industrial activities.

The Proposal would reorganize Use Groups to better reflect land use categories in New York City

Today's Use Groups consist of 18 somewhat unrelated uses that were believed in 1961 to be appropriate in individual commercial districts. The current Use Groups lead to unnecessary confusion or ambiguity for individuals seeking to understand how a particular use is regulated.

COYEO would reorganize the current uses in the 18 "Use Groups " into 10 categories that better reflect the land use activities that occur in the city (e.g., housing, retail/service, storage, production, etc.). While this change would not, on its own, change any zoning regulations, it would make it easier to understand what rules apply. Outlined below is an overview of the proposed Use Groups:

- UG 1: Agriculture and Open Uses
- UG 2: Residential Uses
- UG 3: Community Facilities
    - 3A: Community Facility with Sleeping Accommodations
    - 3B: Community Facility without Sleeping Accommodations
- UG 4: Public Service Facilities and Infrastructure
    - 4A: Public Service Buildings
    - 4B: Utility Infrastructure

    - 4C: Renewable Energy and Green Infrastructure
- UG 5: Transient Accommodations
- UG 6: Retail and Services
- UG 7: Offices and Laboratories
- UG 8: Recreation, Entertainment, and Assembly Spaces
- UG 9: Storage
    - 9A: General Storage
    - 9B: Specialized Storage
    - 9C: Vehicle Storage
- UG 10: Production

The proposal would update use terms to make it easier to understand what uses are permitted in which zoning districts.

Most uses defined in the ZR today are copied from a 1950s classification of businesses that understandably did not anticipate changing technologies and resulting changes in business activity. Consequently, the ZR contains antiquated uses while not including many uses commonplace in today's economy. Many industries and job-generating economic activities found in New York City today were not in widespread existence when the ZR was adopted in 1961. Over the last six decades, advances in technology and changing business trends have meant the creation of new types of businesses, many of which are not mentioned in current zoning. This lack of clarity can make it difficult for business owners to know where they can locate and what they can do in their space. For example, the ZR clearly defines telegraph offices, but does not have a clear designation for cell phone repair stores. Furthermore, the ZR is inconsistent in the level of detail with which it defines uses across different sectors. For example, the ZR provides great specificity for manufacturing uses while excluding entire categories of personal care services like nail salons and tattoo parlors.

COYEO would update the list of retail/service (Use Group 6) and production (Use Group 10) uses to reflect the current range of activities in these categories. This would remove some of the ZRs most outdated terminology (telegraph office, shoddy manufacturing, etc.). The uses within these two categories would be assigned to zoning districts and parking categories based on the current rules today.

COYEO would rationalize existing retail, service, and manufacturing uses by creating a new framework for use in the ZR based on the nationally recognized North American Industry Classification System (NAICS), which is maintained and updated by the federal government every five years. The NAICS system provides increasing granularity in describing individual sectors, ranging from 2-digit codes which categorize broad sectors for example Code 54 "professional, scientific and technical services to 6-digit codes which categorizes small sub-industries for example Code 541213 "Tax Preparation Services". This proposal would target the 3- or 4- digit level of sector specificity. Doing so would strike a balance of allowing enough specificity to differentiate between types of retailers and manufacturers (and thereby toggle on and off size, open use, environmental, and other restrictions), while being broad enough to consolidate some closely related uses together.

This proposed use framework would update the retail/service and manufacturing definitions to better reflect the range of uses that exist in the city today, while also providing flexibility to respond to the city's continuously changing economy with a framework can easily accommodate new uses in the future. This rationalized use classification would also enable business owners the ability to more easily understand where they can locate throughout the city. While not all the NAICS sectors will be assigned to a Use Group structure, doing so for retail, services, and manufacturing will help to organize the Zoning Resolution's most specific categories.

The Proposal would update inconsistent rules for certain uses

In addition to the changes described above, several uses require unique treatment to reflect both the overall goals of the proposal and particular land use characteristics of these uses. COYEO would modify zoning to update these uses should be regulated as part of the overall use reforms.

- **Prisons:** Currently, Prisons (Use Group 8D) are allowed in C2, C4, C6, C8, or M1, M2, or M3 districts. COYEO would restrict Prisons from C2 districts.

- **Variety stores:** Currently, variety stores, such as "dollar" stores, are treated in zoning differently than how other similar retail uses, such as department stores and clothing stores, are treated. COYEO would create consistency between these similar retail uses, by limiting their size to 10,000 SF in M1 districts. As is the case today, these uses would be limited to 10,000 SF in C1 and C2 districts, and no size restriction would be placed on variety stores in C4, C5, C6, C7, and C8 districts, and these uses would not be permitted in M2 and M3 districts.

- **Distilleries:** Currently, distilleries are treated separately from other alcohol producers and subject to performance standards that effectively mean they are only allowed in M3 districts. Existing regulations can be difficult for prospective businesses to meet and are not reflective of advances in technology that lower or eliminate unwanted effects of these uses. In Gowanus and Brooklyn Navy Yard Special Purpose Districts, the ZR was amended to enable location of distillery uses in all M districts in those geographies subject to requirements in the fire code. The Proposal would exempt alcoholic beverage manufacturing from the performance standards regulating fire. These standards have been superseded by FDNY requirements. This would allow these uses in the broader range of M districts.

- **Wholesale uses:** Wholesale businesses (which sell goods in large quantities to be sold to others) are treated in zoning differently than other similar uses in that this use has a size restriction on the amount of interior storage space that can be allowed within the overall establishment. The current interior storage requirement is difficult to determine and results in ambiguous interpretation. COYEO would reclassify wholesale businesses and define these businesses based on overall size rather than an interior storage component, making it easier to regulate these businesses. COYEO would allow wholesale uses in C1 and C2 districts up to 2,500 SF, and in C4, C5, and C6 districts up to 5,000 SF on the ground floor with no restriction on upper floors if that storage is related to business storage. COYEO would not meaningfully change the ways these uses are regulated but would make existing regulations easier to understand and comply with.

The proposal would modernize and seek to maintain consistency between current and future use framework

As the changes described above seek to simplify and modernize the terms used to classify businesses, the proposal would make updates in zoning that intend to rationalize and maintain general consistency between other zoning regulations related to current and proposed uses.

The Proposal would make changes to the organizational structure of the parking and loading requirements to make them easier to understand. These changes would not affect the rules themselves. The primary change would be to switch the Parking Requirement Categories (PRCs) from a framework based on a confusing mix of uses to one based on the calculation method for parking. Doing this would make it easier to find and understand the requirements for different uses. It would also allow the parking requirement to more easily be included in the use group charts in Article II, Chapter II. The Proposal would also create Loading Requirement Categories (LRCs), similar to the new PRCs for parking. This would create a framework based on the calculation method for loading, rather than based on a confusing mix of uses.

There are Special Purpose Districts with use terms that do not appear in the underlying zoning or have antiquated use terms dating back to the creation of the Special Purpose District. The Proposal would update Special District rules to refer to these new classifications and other adjustments that bring proposal into alignment with Special Districts as described above.

B. Support Growing Industries

7. **Clarify rules to permit indoor agriculture**
8. **Give life sciences companies more certainty to grow**
9. **Support nightlife with common-sense rules for dancing and live entertainment**
10. **Create more opportunities for amusements to locate**
11. **Enable entrepreneurship with modern rules for home-based businesses**

7. Clarify rules to permit indoor agriculture

The proposal would clarify enclosure rules for Commercial Districts on what activities can occur outdoors and indoors.

The proposal would specify that some uses can have outdoor components.

Zoning requires commercial activity to be indoors in Commercial Districts, with exceptions for situations like table service, serving windows, and agriculture, which is required to be outdoors. Current zoning can make it difficult for businesses to understand or to comply with enclosure requirements. For example, florists and plant shops face ambiguity on whether they can have an outdoor component of their business within the zoning lot.

COYEO would remove ambiguity or confusion by clarifying that florists and lawn and garden retailers are permitted to have open portions of their use.

The proposal would allow indoor agriculture in Commercial districts.

Agriculture is a permitted use in any zoning district, but in Residence and Commercial districts Use Group 4B agriculture is subject to an open use requirement that precludes completely enclosed (i.e. indoor) operations. The rise of vertical farming and hydroponic and aquaponic agriculture create the potential for more localized food production in neighborhood contexts.

COYEO would clarify enclosure rules to enable indoor urban agriculture uses in Commercial districts.

8. Give life sciences companies more certainty to grow

The proposal would simplify the use definition for a laboratory and expand geographic applicability of the current Scientific Research and Development Facility Special Permit.

The Proposal would simplify the use definition for a laboratory to codify its current interpretation.

The ZR currently permits laboratories in most commercial districts (UG 9A), while laboratories that are producing high volumes of products for commercial sale, or have the potential for environmental hazards, are limited to industrial areas (UG 17). However, the existing UG 9A definition of a laboratory is outdated and narrowly defined as being for “medical or dental laboratories for research or testing, or the custom manufacture of artificial teeth, dentures or plates …" creating ambiguity to what extent laboratory activities not explicitly mentioned are permitted. The existing UG 17 terminology of “Laboratories, research, experimental or testing” only serves to add to the confusion as to whether experiments are permitted in Commercial Districts. In 2016, the City sought to clarify with a “Life Sciences in Commercial Zoning Districts” memo that the UG 9 version of a laboratory also includes “the synthesis and manipulation of chemical substances, biological matter, and animal models” as “integral activities in commercial medical laboratories devoted to research and testing”, as referenced in ZR 32-18, and that “activities in these laboratories may also include the assembly of medical technologies, diagnostic devices, and research instrumentation for use in prototype experimentation, pre-clinical studies or clinical testing.”[52]

The Proposal would update the terminology for laboratories in Commercial Districts, clarifying the extraneous terminology in the current "medical or dental laboratory" definition to make the ZR up to date with the City’s interpretation that laboratories of all types are permissible in Commercial Districts subject to environmental conditions. The Proposal would similarly simplify the terminology for laboratories in Manufacturing Districts to remove ambiguity that exists in the current use term.

[52] ”Life Sciences in Commercial Zoning Districts,” City of New York, December 13, 2016. https://edc.nyc/sites/default/files/filemanager/Programs/LifeSci_NYC/ClarificationMemo-LifeSciences-CommercialZoningDistricts.pdf

The proposal would retain the requirement that laboratories in Commercial Districts are ones "not involving any danger of fire or explosion nor offensive noise, vibration, smoke or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects." All laboratories must be certified and designed by licensed professionals as not conducting operations that could pose danger of objectionable effects, and must follow other City, State, and Federal regulations in their operations.

The proposal would allow commercial laboratories to co-locate with hospitals and universities

Non-profit research laboratories within hospitals or universities can operate today using community facility regulations, but many commercial laboratories, which have relationships to and benefit from proximity to hospitals and universities, lack zoning allowances to operate and co-locate these facilities in areas not designated as Commercial Districts. Currently, a Scientific Research and Development Facility Special Permit may enable the location of a commercial laboratory and provides bulk modifications that are useful for the construction of such facilities, but the Special Permit is limited by its narrow geographic applicability of C6 and C2-7 districts.

The Proposal would update the existing scientific research and development facility permit to reflect changes to the underlying laboratory use and to create more opportunities for the permit's usage. While the current permit is limited to C6 and C2-7 districts, the Proposal would update this to apply in all Commercial Districts, as well as community facility campuses. This would allow for commercial laboratory opportunities on a greater range of sites. The permit's requirements would be updated to reflect this broadened applicability. The Special Permit is a discretionary action that would require environmental review analysis, Community Board review, and City Council approval at the time of application and would not be available as-of-right as a result of this proposal. These changes would create pathways that enable expansion in the locations where new laboratories are permitted.

9. Support nightlife with common-sense rules for dancing and live entertainment

The proposal would clarify the distinction between "eating or drinking establishments," and "eating or drinking establishments with entertainment that has cover charges or specified showtimes," while removing zoning's role in regulating the act of dancing.

Despite the repeal of the City's Cabaret Law in 2017, current zoning distinguishes between eating and drinking establishments with live music, and those where patrons also dance, restricting the latter category in most commercial areas. Furthermore, other forms of live scheduled entertainment such as comedy and open mic nights face varying restrictions on their ability to occur within eating or drinking establishments. In today's zoning, there are five separate uses for entertainment within eating or drinking establishments, each with their own regulations on the type, location, and size of the entertainment, creating ample confusion for business operators and communities alike.

- Today, Eating or Drinking Establishments are allowed without a zoning-defined capacity limitation as-of-right in C1, C2, C4, C5, C6, C8, and M1-M3 districts (current Use Group 6A). These bars or restaurants are allowed to have music, live or pre-recorded, for which there is no cover charge or specified showtime. Commonly, this form of music takes the form of background music for bar or restaurant patrons to enjoy. Zoning is ambiguous as to whether incidental or spontaneous dancing is permitted.

- Any bar or restaurant is permitted to host *musical* entertainment with a cover charge or specified showtime, provided the capacity of the business is limited to 200 persons or fewer (current Use Group 6C). Zoning specifies that dancing is not permitted.

- Eating or drinking establishments hosting *non-musical* entertainment, such as live comedy or open mic nights, are limited in zoning today to a capacity of 200 persons or fewer and limited as-of-right to C1-5:9, C2-5:8, C4, C6, C8, and M1-M3 (except M1-5B). Businesses seeking to locate in C1-1:4, C2-1:4, C3, C5, or M1-5B have to apply for a BSA Special Permit in order to locate (current Use Group 6C). Zoning specifies that dancing is not permitted.

- Bars or restaurants within hotels may host entertainment and dancing without capacity limitation in C4, C5, C6, C8, M1-M3 districts (current Use Group 10A).

- Eating or drinking establishments with a capacity of more than 200 persons may host entertainment or dancing in C4, C6, C7, C8, and M1-M3 (except M1-5B, M1-6M). In C4 and in C6-1:4 districts, these businesses are required to meet additional standards for minimum lobby size and distance from Residential Districts. C2, C3, C4*, C6-4**, M1-5B, M1-5M and M1-6M Districts, the Special Hudson Square District and the Special Tribeca Mixed Use District, a business can obtain a Special Permit from the BSA to operate. (current Use Group 12A).

Questions have been raised about the continued regulation of the act of dancing, performing, or other personal acts of expression given the discriminatory history of the Cabaret Law in New York City.

COYEO would seek to consolidate and clarify the distinctions between categories of eating or drinking establishments based primarily on capacity rather than use. Eating and drinking establishments without cover charges or specified showtimes would continue to operate without occupancy limitation as they do today, and this existing use would be made as-of-right in C3 districts. Eating or drinking establishments with forms of scheduled entertainment such as music, comedy, or dancing, that have cover charges or specified showtimes, would be consolidated from the existing UG 6C, 10A, and 12A categories into one use. In C1-C3 districts, these businesses would be limited to the pre-existing UG 6C capacity limitation of 200 persons or fewer. This change would allow small venues that host concerts to permit patrons to dance without violating the zoning. Venues over 200 people would be newly allowed in C5 districts, enabling larger nightlife and entertainment businesses as a key component of the economic recovery of the city’s Central Business Districts in Midtown and Lower Manhattan.

The proposed changes would allow modern regulations governing live scheduled entertainment to better reflect the ways in which these uses interact with surrounding businesses and residences, allowing these activities in appropriate zoning districts while ensuring quality of life.

10. <u>Create more opportunities for amusements to locate</u>

The proposal would consolidate existing amusements uses into categories based on whether the business operates in a building or outside.

Amusements are a type of experiential retail business that is a growing source of jobs and entertainment for New Yorkers and visitors alike and generally are uses well-suited to reusing under-utilized storefront and office space, particularly in places like Midtown Manhattan. Amusements uses range from children's arcades, bowling alleys, mini golf, outdoor driving ranges, and virtual reality (VR) gaming establishments. Current zoning categorizes these uses differently according to factors such as whether they are indoor or outdoor, but also with arbitrary factors such as the number of bowling lanes provided. In C2, C4, C6, C8, and M1-M3 districts, certain small indoor amusements such as billiard parlors, model hobby car centers, and bowling alleys are permitted, but the latter is limited to 16 lanes (current Use Group 8A). In C4, C6-C8, and M1-M3 districts, certain indoor amusements are permitted without size restriction, including bowling alleys, billiard parlors, indoor golf, and skating rinks. However, in C5 districts, indoor amusements like theaters, bowling alleys, and small auditoriums are not permitted in C5 districts today despite being allowed in similar densities and contexts in C6 districts. Outdoor amusements are permitted in C7, C8, and M districts. This list of certain and particular amusement and recreation uses has failed to keep up with changes in consumer trends, and new types of experiential and immersive businesses often struggle to know under which existing zoning use they might be regulated. Because of the ambiguity in current zoning, many businesses are effectively relegated to C7 and M districts, which are more generally permissive of all amusement types regardless of whether they are specifically defined.

COYEO would create new opportunities for amusement businesses to locate and grow across the city by distilling the current inconsistent and specific lists of amusement use applicability into two new uses terms defined in zoning: “amusement or recreation facilities” and “amusement parks.” An “amusement of recreation facility” would replace several outdated, specific uses listed throughout the current use groups like table tennis halls and model car hobby centers and is meant to broaden the range of amusement and recreation uses considered by the ZR. This use would be limited to 10,000 SF in C1 and C2 districts and must be indoors in C1-C6 districts. Open versions of the use would require a BSA permit in those districts. An “outdoor amusement park” would be a new term meant to reflect a broad range of current outdoor amusement uses found in the ZR, and includes uses like "amusement parks", but also outdated concepts like "freak shows" and "dodgem scooters.” The use would be restricted from C1-C6 districts and would be limited to 10,000 SF in C7, C8, and M districts.

11. <u>Enable entrepreneurship with modern rules for home-based businesses</u>

The proposal would modernize regulations for home-based businesses (referred to as Home Occupations in the ZR).

Home businesses are a critical way that New Yorkers can make a living. ZR 12-10 defines home occupation in a way that allows many kinds of business to occur in the home while establishing physical limitations that limit the impact of businesses on their neighbors, such as prohibiting signage or the sale of goods not produced on-site. The ZR also allows many types of home occupations, such as law offices and music instruction, while explicitly restricting others, such as barber shops, interior decorators' offices, or advertising or public relations agencies. Home occupations are limited to 25% of the size of a dwelling unit or 500 square feet, whichever is less. Home-based businesses are prohibited from selling items not produced on-site, having exterior displays or displays of goods visible from the outside, or storing materials or products outside of the home. Furthermore, home businesses must not produce any noise, smoke, dust, particulate matter, odor, or any other nuisance—and violations can be reported to the NYC Department of Buildings.

Several Special Districts, including the SoHo-NoHo Mixed Use Districts, the Tribeca Mixed Use District, the Queens Plaza Subdistrict, and the Special Mixed Use District (MX), as well as the regulations in Article I Chapter V for Residential Conversions, have modernized home business regulations in the ZR to allow for a wider range of home-based businesses, expansion of the percentage of the dwelling unit allowed for accessory business activity, and allowances for up to 3 employees registered to the home business. However, the underlying rules for home-based businesses outside of these geographic exceptions have not been changed to reflect the realities of remote work in a post-Covid-19 world, and are holding back many entrepreneurs, freelancers, and other self-employed New Yorkers from being to make a living or grow their business from home.

COYEO would remove outdated limits on uses and size restrictions so that zoning is not getting in the way of entrepreneurs conducting limited business activities in their homes. The proposal would modernize home business regulations by eliminating the list of non-permitted uses and allow home businesses to expand in size to 49% of floor area and 3 employees. Per the general provisions noted above in ZR 12-10, home businesses would continue to be subject to rules that ensure they are good neighbors.

C. Foster Vibrant Neighborhoods

12. **Introduce corridor design rules that ensure buildings contribute to surroundings**
13. **Reduce conflicts between auto repair shops and pedestrians**
14. **Encourage safe and sustainable deliveries with micro-distribution**

12. <u>Introduce corridor design rules that ensure buildings contribute to surroundings</u>

The proposal would activate the city's commercial corridors by establishing clear and consistent streetscape regulations.

The 1961 ZR did not address streetscape or urban design regulations directly, and instead urban design considerations were addressed by different use allowances and prohibitions on ground floors as part of "use" restrictions. Since 1961, Special Purpose Districts created throughout the city have created a patchwork of streetscape regulations to ensure an active and safe ground-floor pedestrian experience and help support retail corridors. However, this patchwork of regulations has been inconsistent and therefore difficult to enforce and for businesses to conform with. In some instances, the regulations have not been effective or have not necessarily been able to account for every lot configuration.

In current zoning, certain zoning districts and Special Purpose Districts have ground-floor design requirements to improve the quality of the streetscape and promote a lively and engaging pedestrian experience. Currently, streetscape rules vary greatly across special districts. For instance, some Special Purpose Districts allow only specific uses on the ground floor. In other cases, streetscape rules such as transparency, lobby width, ground floor depth, parking wrap or screening, curb cuts, and blank walls exist, but at varying degrees that do not relate to the stated purpose of the Special District. This lack of consistency makes it hard to understand what types of rules exist and where they should be applied.

Across the city today, auto-oriented uses, such as drive-throughs, and street-facing parking negatively impact the quality of a commercial streetscape by inhibiting pedestrian activity and walkability. Additionally, blank walls lack visual interest and can affect pedestrian feelings of safety. Curb cuts and open parking tend to attract vehicular activity at the expense of pedestrians. On commercial streets, where walkability should be the priority, the impact of these uses is exacerbated. In addition, inactive ground-floor uses, such as residential dwelling units and long lobbies, can be detrimental to surrounding retail activity and street character.

To ensure the success of commercial corridors and ease the regulatory process for small businesses to comply with streetscape rules, the proposal would also create consistent ground-floor design requirements to ensure that retail and commercial streets remain active and attractive. COYEO would establish a tiered approach to streetscape regulations, with rules that are responsive to pedestrian street character, increasing in regulatory strength in areas with stronger existing active commercial context.

For **new buildings**, COYEO would create a tiered approach to streetscape regulations, with rules that intend to respond to local street character. Rules generally would apply cumulatively and aim to strike a balance that prevents the worst streetscape outcomes relative to the context, while also being simple enough that they are not cost-prohibitive for small businesses and building owners.

The three tiers are described below.

- **Tier A** consists of streets in C1-C2, C4-C7, and MX Districts. In these areas, parking lots must be placed to the side or rear of a building. For in-building parking, screening must be provided. No drive-throughs permitted, except by BSA permit. Blank wall mitigations must be provided. Rules would not apply to areas near highway entrances or large shopping centers that are far from transit.

- **Tier B** consists of streets in C1-C2, C4-C7, and MX Districts within the Transit Zone. In these areas, Tier A rules apply and the following additional streetscape regulations come into effect:

    - Active uses with transparency required at grade

    - Max lobby length of 50'.

- Parking must be within a completely enclosed building.
- No curb cuts for parking or loading berths if there is also frontage on another street.

For zoning lots with few active ground floors in the surrounding area, or those adjacent to or across from Residence or Manufacturing districts or infrastructure, only parking wrap/location and blank wall rules will apply.

- **Tier C** applies along designated streets in Special Purpose Districts and special geographies (*C Districts mapped in or with a RDE of an R9 or R10 District & C1, C2 and C4s in Staten Island). In these geographies, Tier A and Tier B rules apply, along with additional rules for lobby areas. Doing so would improve ground floor use regulations by bringing more consistency to the range of permitted active uses and cover a more robust list of building elements through ground floor streetscape regulation. In addition, unique rules in some Special Purpose Districts, such as those covering establishment sizes for ground floor uses or special building elements, would be maintained.

13. Reduce conflicts between auto repair shops and pedestrians

Today, auto installation, service, and repair uses are mostly restricted to C8, M1, M2, and M3 districts (current UG16B), with notable exceptions for auto glass shops, repair for auto seat covers or convertible tops, and tires replacement, which are today allowed in C2 and C6 districts (current UG 7D). Auto repair is an important source of employment and jobs and provides a local service in commercial areas but can frequently create pedestrian conflicts as auto use migrates to sidewalks and curb lanes. In practice, conflicts are indistinguishable in stores currently permitted under the UG 7 vs. UG 16 regulations.

COYEO would consolidate the range of auto servicing uses into two zoning-defined categories: “light” or “heavy” motor vehicle repair and maintenance shops. “Heavy” forms of vehicle repair shops would reference NY state licensing requirements for heavier forms of vehicle repair shops. New businesses that are required to register with the DMV could locate in C8 and M districts, mirroring regulations in UG 16 today. Those repair uses that are not required to register with the DMV would be considered “light” motor vehicle repair and maintenance and would be able to locate in most Commercial Districts with a BSA special permit to ensure new businesses can open, but with an increased ability to ensure oversight of land use conflicts caused by auto operations in pedestrian areas.

14. Encourage safe and sustainable deliveries with micro-distribution

As the city grows and with it the rise of e-commerce and home delivery of goods has increased, creating increased truck traffic and congestion, the city has established policies of encouraging alternative freight deliveries including having the “last mile” of delivery performed by pedestrian or bicycle. Zoning, however, is not able to accommodate delivery activity within indoor spaces in Commercial Districts except for online grocery order fulfillment per a 2022 Department of

Buildings zoning bulletin (2022-011)[53]. As a result, delivery activity often occurs only on sidewalks and streets, exacerbating truck congestion and leading to conflicts with pedestrians and cyclists.

To better reflect this goal and the need for small-scale distribution centers in commercial areas, the Proposal would include a new use called a ”Micro-Distribution Facility”. The use would be restricted to 2,500 sf in C1 and C2 districts. In C4-C7, it would be allowed up to 5k sf on the ground floor and up to 10k above. Larger establishments in these districts would require a discretionary action. This new use would replace the small-scale "moving or storage office" that was identified by DOB as the most similar use to the online grocery microfulfillment centers recently seen in the city.

D. Create Opportunities for Future Growth

COYEO proposes to create new discretionary zoning tools to unlock future development, grow jobs and foster inclusive economic growth.

15. **Facilitate local commercial space on residential campuses**
16. **Create process for allowing corner stores in residential areas**
17. **Rationalize waiver process for business adaptation and growth**
18. **Create new kinds of zoning districts for future job hubs**

15. Facilitate local commercial space on residential campuses

Many large-scale residential campuses, such as NYCHA, are zoned as Residence Districts, so local retail, services, and maker-spaces cannot easily locate. No zoning tools exist to allow commercial uses on residential campuses other than a full area-wide rezoning, which may be too costly, time-consuming, or not appropriate for many locations.

The Proposal would allow the City Planning Commission to approve larger-scale commercial spaces in Residence Districts on campus sites. The use would be subject to size restrictions (15,000 SF) and locational restrictions. The authorization would be subject to both environmental review and Community Board approval, with conditions that stipulate approval only if development would not create traffic congestion or environmental concerns.

16. Create process for allowing corner stores in residential areas

The proposal would create a pathway for a new neighborhood-serving business to locate in a Residence District.

In most Residence Districts there is no path to allow a new neighborhood store. The Zoning for Coastal Food Resiliency (ZCFR) citywide text amendment (2021) created a BSA Special Permit to allow new, small professional offices in Residence Districts in the floodplain, but areas not

[53] NYC Department of Buildings Zoning Bulletin (2022-011), https://www.nyc.gov/assets/buildings/bldgs_bulletins/bb_2022-011.pdf

along the city's coastline do not have a similar discretionary pathway that could allow for the creation of new locally-serving spaces.

COYEO would create a new CPC Authorization to allow for up to 2,500 SF of retail, service, or office uses to locate in a Residence District, provided that the commercial storefront is located within at least 100 feet from an intersection.

17. Rationalize waiver process for business adaptation and growth

The Proposal would rationalize and supplement existing discretionary zoning tools to address gaps that prevent businesses a path to expand or adapt.

The Proposal would give commercial businesses pathways to expand or adapt their business without having to relocate

Many growing businesses run into physical constraints of zoning that are incompatible with business expansion plans. For instance, a clothing store may be so successful that it wants to take over the next storefront, but discovers it is size-limited in many C districts. Today, these businesses have no paths forward. For uses that have existing BSA Special Permit pathways available, term lengths vary inconsistently between 3-, 5- and 10-year renewals, making the process of seeking a BSA Special Permit more confusing.

The Proposal would create a new permit for retail / service, amusement, and production uses that would allow the BSA to modify the size, enclosure, and other requirements for permitted uses. This would provide limited flexibility for uses to make modifications to the underlying regulations. The permit would not have applicability if other permits for a specific use exist, or if the use is not permitted in a specific zoning districts. The BSA would be limited to doubling the maximum size of a use. Beyond that, a similar new CPC permit would be required. This extends the typical framework where the BSA can permit uses only up to a certain point, after which CPC review is required. The Proposal would also add requirements for how long the BSA could grant use special permits for. A first term could be for a maximum of 10 years and the length for renewals would be at the Board's discretion. This is consistent with recent changes made to permits during the Zoning for Coastal Flood Resiliency project. The Proposal would also make clear that the BSA could revoke a use permit if the use is not operating pursuant to the requirements the BSA set for the permit.

The Proposal would create a new discretionary zoning tool to allow the City Planning Commission to waive limited bulk rules

Many growing businesses run into physical constraints of zoning that are incompatible with the shape of their building. For instance, a soundstage requires high walls, which in many districts conflict with zoning limitations on maximum street-wall heights. Today these businesses would have no path except a rezoning to be able to build.

The Proposal would allow the City Planning Commission to approve changes to the building envelope controls to permit a loft-like building form, allowing businesses to seek limited bulk relief to construct new buildings that exceed current setback and yard requirements. The authorization would be available in Manufacturing Districts and most Commercial Districts. The envelope would be limited to what is proposed for the new C7 Commercial District at the applicable density.

18. <u>Create new kinds of zoning districts for future job hubs</u>

The proposal would create new zoning districts that for use in future mapping actions.

While numerous new zoning districts have been built in recent decades to update the physical forms presented by the 1961 zones, these have focused on residence districts or commercial districts where residences are permitted. Districts not permitting residences have seen no new innovations since 1961. Consequently, zoning options available for job-intensive zoning purposes have gaps in density and height options, are hampered by outdated bulk regulations, and are relatively uniform in their approach to use mixes (excepting environmental standards). The maximum allowable FAR of M districts goes from 1.0 to 2.0 to 5.0 to 10.0. However, many loft buildings that pre-date the 1961 ZR are built at densities between these thresholds, include 3-4 FAR and 6-8 FAR. These are the type of buildings that can help the city meet the needs of a range of business types and sizes—as the city's loft buildings have historically—that will ensure economic resilience for the city in the face of future disruptions and changing economic trends.

As a result of the city's limited job-intensive zoning districts offerings, area-wide rezonings have relied on special district mechanisms to manufacture a better range of bulk, height and use options (most recently, the Gowanus Special District), while many individual developments have applied for rezonings using M1-5, one of the only higher density non-residential zoning options. Several projects in Brooklyn and Queens have utilized the Industrial Business Incentive Area (IBIA) which seeks to address some of these bulk issues while linking the production of commercial space to industrial space via special permit.

COYEO proposes to create a range of new job-intensive, non-residential zoning options to enable job growth. These new districts will range from 2-15 FAR, address longstanding bulk and physical challenges, and come in several use-mix options:

- **New M3A "Core" districts** at 2 and 3 FAR which will be designed to allow for industrial expansion while preserving core industrial areas by introducing limited additional FAR, addressing bulk challenges, and restricting non-industrial uses;
- **New M2A "Transition" districts**, ranging from 2 to 5 FAR, which will encourage redevelopment while providing higher FAR preference for industrial uses;
- **New M1A "Growth" districts**, ranging from 2 to 15 FAR, which will mimic the use mix of today's M1 districts while addressing bulk and physical limitations of development; and
- **New C7 districts**, ranging from 2 to 15 FAR, which would permit all Commercial uses except Use Group 16, and permit Community Facility uses without sleeping accommodations. This district would repurpose the existing amusement focused C7, mapped in few locations.

The creation of new Manufacturing Districts is included in a separate land use application that is meant to proceed through public review concurrently with the rest of the zoning changes in the Proposal.