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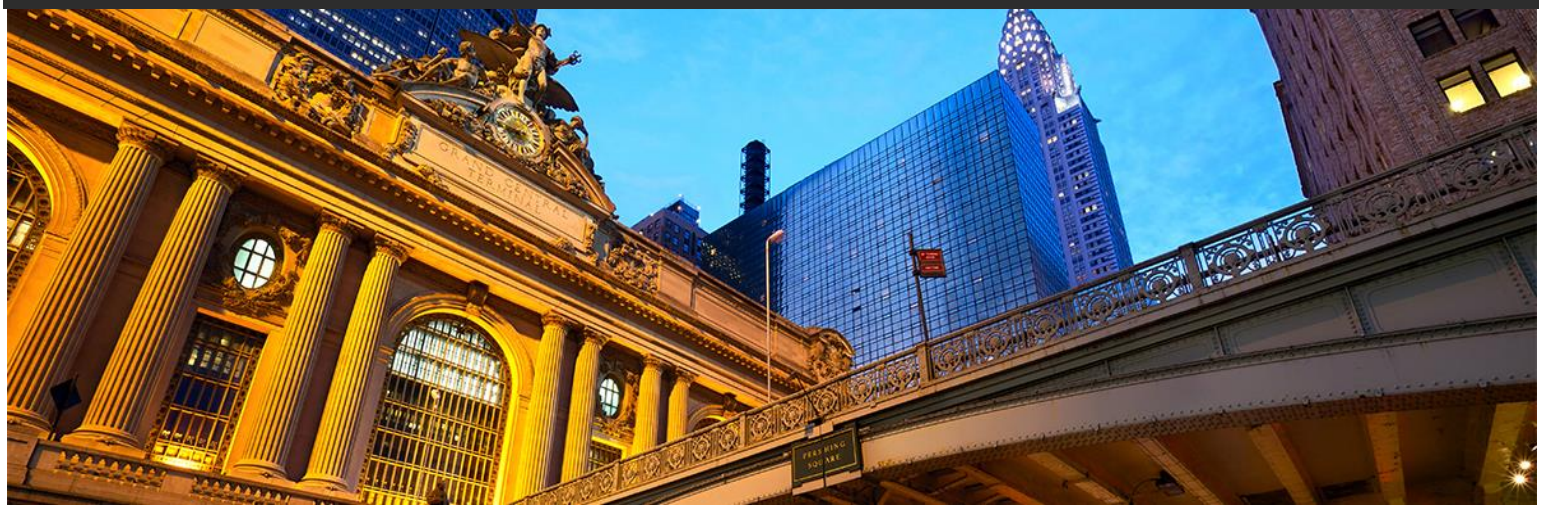

January 2025

NYC Zoning Updates: 'City of Yes' Reshapes Housing Development Rules

Go-To Guide

- New zoning amendment allows conversion of most non-residential buildings built before 1991 to housing across New York City, with fewer restrictions than before.
- New Universal Affordability Preference (UAP) program replaces the previous voluntary inclusionary housing system, potentially allowing more floor area for projects that include affordable housing.
- The amendment increases allowed floor area ratio and building heights in certain districts, while also providing more flexibility for open space and density requirements.
- Parking mandates have been eliminated in the "Inner Transit Zone" and reduced in the "Outer Transit Zone," which may impact development costs and design.
- A new certification process has been created for transferring development rights from landmarks to nearby lots, potentially increasing development potential on receiving sites.

In December 2024, the New York City Council approved "City of Yes for Housing Opportunity," an amendment to the Zoning Resolution to address New York City's housing crisis by updating zoning rules to allow for incremental additional housing in every neighborhood. The amendment provisions are wide-ranging and affect residential, commercial, mixed-use (MX), and other special districts throughout the

City. As summarized below, elements of the amendment particularly important in medium and high-density districts include:

- **Residential Conversions –** Expands the ability to convert non-residential buildings by allowing conversions throughout the City, broadening the universe of eligible buildings to those existing on Dec. 31, 1990, and allowing a wider variety of residential conversions.
- **Universal Affordability Preference (UAP)** – Allows buildings in medium and high-density districts to add at least 20% more affordable housing, which could also be used to qualify for property tax exemptions.
- **Bulk Requirements** – Increases permitted floor area ratio (FAR) and maximum building heights and relaxes open space, density, and other bulk requirements in certain districts.
- **Parking Mandates** – Eliminates required parking in the "Inner Transit Zone" and significantly reduces parking mandates in the "Outer Transit Zone."
- **Landmark TDR Program** – Simplifies and expands the ability to transfer excess development rights from individual landmarked sites to other zoning lots.
- **Vesting** – Although the provisions of the amendment were generally designed to provide greater flexibility, the amendment includes special vesting provisions to allow applications filed with the Department of Buildings (DOB) on or before Dec. 5, 2024 (the amendment's effective date), to be continued under the prior zoning regulations.

Residential Conversions

In 1981, the Zoning Resolution was amended to add Article I, Chapter 5 (the Chapter), a special set of rules for creating housing by converting non-residential buildings in Manhattan south of 60th Street that existed on Dec. 15, 1961, the effective date of the City's current Zoning Resolution. The Chapter's rules were subsequently extended to portions of the Queens waterfront in Long Island City and Brooklyn's waterfront and downtown neighborhoods.

Now, the Chapter's reach has extended to nearly the entire City, and it has been modified to apply to most non-residential buildings existing on Dec. 31, 1990 (restrictions apply for hotel conversions). In Special Mixed-Use Districts, the rule is more liberal, including buildings existing on Dec. 10, 1997.

- The Chapter's conversion rules remain applicable only in zoning districts where residential use is permitted or where permitted by authorization or special permit.
- The new text has eliminated provisions for special sub-districts, such as the C6-1G district and M-suffix preservation districts between Sixth Avenue and Park between 14th and 23rd Streets that had limited or prevented conversions.
- Historically, the Chapter did not contemplate conversions to any use other than Class A multiple dwellings, as defined in the Multiple Dwelling Law (MDL). Rooming units were prohibited, as were conversions to community facilities containing sleeping accommodations. Both limitations have been removed, although conversions to non-profit institutions with sleeping accommodations (such as certain supportive housing typologies) are limited to those with Class A occupancy.
- The amended zoning text specifically authorizes the conversion of floor space used for mechanical purposes as well as of all the floor area on a zoning lot, even if the result will exceed the maximum floor area the underlying zoning district permits. However, restrictions in Section 26(3) of the MDL

remains, prohibiting conversion of more than 12 FAR in buildings first occupied on or after Jan. 1, 1977, unless certain conditions are met. The principal condition is that the provision of affordable housing be mandated in the converted building.[1] Buildings occupied prior to Jan. 1, 1977, with floor area exceeding 12 FAR may continue to convert in their entirety pursuant to Section 277 of the MDL.

- The number of dwelling units permitted in a converted building will be determined under the general residential density regulations discussed below, with excess floor area divided by the applicable dwelling unit factor (where applicable).
- The Chapter's light and air provisions continue to supersede and replace the Zoning Resolution's requirements for residential uses affecting open space ratio, yards, minimum distance between buildings, and distance between windows and walls.
- All dwelling units created by conversion pursuant to the Chapter, including those constructed between 1977 and 1991, must comply with the Chapter's light and air requirements, which incorporates by reference the standards of Section 277 of the MDL.
- Finally, the Chapter's former requirement for an open space equivalent to be provided on a building's roof are replaced with a general requirement for recreation space for all multi-family buildings. The general rule requires providing recreation space equivalent to a minimum of 3% of the residential floor area of the building. For conversions, if any complying recreation space is provided outdoors, that general requirement is reduced to 2% of the building's residential floor area.

These changes in the Chapter will assist converting existing non-residential buildings to residential use, a result consistent both with the City's objective of creating a little more housing in all neighborhoods, and also in responding to greater vacancy rates in office buildings, particularly older ones, in the wake of the pandemic.

Universal Affordability Preference (UAP)

- The voluntary inclusionary housing program previously available in Inclusionary Housing Designated Areas (IHDAs) and most R10 and R10 equivalent districts has been replaced with the Universal Affordability Preference (UAP) program.
- UAP increases the maximum permitted residential floor area for "standard residences" through the provision of "qualifying affordable housing" or "qualifying senior housing." For instance, in an R6A district, the standard maximum FAR is 3.0 and the maximum for qualifying affordable or senior housing is 3.9, so a development would be allowed 3.0 FAR of market rate floor area and 0.9 FAR of affordable housing. This maximum permitted FAR with affordable housing has increased in most districts. For example, it previously was 3.6 in R6A districts within IHDAs and Mandatory Inclusionary Housing (MIH) Areas.
- Under UAP, qualifying affordable housing must be affordable to households at an average of 60% of area median income (AMI). If on-site, this affordable housing could count toward the requirements for the 485-x tax incentives New York state enacted last year, which require 25% of dwelling units be affordable at 60% AMI.
- The affordable housing may be provided off-site within the same Community Board or a half mile for projects within a former IHDA or R10 District (a "UAP offsite option area"). Certificates may be purchased from affordable housing projects within the applicable area that have vested under the

[1] We interpret this to mean that a conversion that elects to provide affordable housing, obtaining the benefits of RPTL Section 467-m would not qualify for the exceedance. The affordable provided must be mandatory.

provisions discussed below, at the previously applicable ratios. Therefore, there will be a limited pool of certificates for purchase. The option of complying with MIH requirements by providing affordable housing off-site (with a 5% increase) remains.

Residential Bulk Requirements

Floor Area

- New R11 and R12 zoning districts allowing a maximum FAR of 15 and 18, respectively, may be mapped through future rezonings pursuant to ULURP. The change relies on the MDL provisions noted above, which allow more than 12 FAR of residential floor area if the underlying zoning includes a mandatory affordable housing requirement.
- All new or converted residential buildings with nine or more dwelling units must provide 3% of their residential floor area as recreation space for building residents (or, for conversions, 2% if any complying outdoor recreation space is provided).
- Up to 5% of the residential floor area of a building may be exempted from floor area if allocated to residential amenities, including recreation space, co-working areas, library or reading rooms, music practice rooms, package or storage rooms, laundry facilities, or pet-related facilities.

Height and Setback

- In certain districts, maximum building heights have increased. For example, in an R7A district, the basic maximum building height has increased from 80 to 85 feet, and the maximum building height where affordable housing is provided has increased from 95 feet to 115 feet.

Density

- The dwelling unit factor has been eliminated within the Manhattan Core (Community Districts 1-8) and the Special Downtown Brooklyn District. In the rest of the City, the dwelling unit factor is now 680. Unit size would continue to be regulated by any applicable requirements in the MDL, the New York City Building Code, and the New York City Housing Maintenance Code.
- The prohibition on “rooming units” (i.e., homes with shared kitchens or restrooms) has been eliminated, which is intended to create more affordable housing options for individuals and smaller households who might struggle to find suitable apartments in the current market.

Open Space

Applicable yard, court, and other open area regulations, such as minimum distance between buildings requirements, have been updated to provide additional flexibility for new developments and infill projects. These changes include, but are not limited to:

- On zoning lots with a lot width of at least 40 feet, the basic rear yard requirement has been reduced from 30 feet to 20 feet for portions of buildings up to a height of 75 feet. A 30-foot rear yard is still required above a height of 75 feet and the City Council has modified the text to maintain a required rear yard of 30 feet at all heights for most buildings on zoning lots with less than 40 feet of lot width. Reduced rear yard depths are available in all districts to certain lots with a depth of less than 95 feet.
- On through lots, the requirement to provide a “rear yard equivalent” (typically required midway, or within 10’ feet of midway, between the through lot’s two street lines) has been reduced, from 60 to 40

feet, for portions of buildings up to a height of 75 feet (a 60-foot rear yard equivalent would still be required above 75 feet). Reduced depths are available in all districts to certain through lots with a depth of less than 190 feet.

- "Large sites," a new term describing a zoning lot or set of zoning lots under single fee ownership or alternate ownership arrangements that are contiguous (or would be contiguous but for their separation by a street) and having a lot area of at least 1.5 acres, would be exempted from rear yard equivalent requirements.
- In all districts, the area and dimensional requirements for inner courts with facing legally required windows have been reduced for portions of buildings up to a height of 75 feet, to a minimum area of 800 square feet (previously 1,200 square feet) and a minimum dimension of 20 feet (previously 30 feet). Above 75 feet, such inner courts would still be required to have 1,200 square feet of area and a minimum dimension of 30 feet.
- Simplified lot coverage regulations would apply in all districts (replacing open space regulations previously applicable in low density districts). Typical multiple dwellings in all districts now have a maximum lot coverage of 80% for interior lots and through lots and may cover 100% of corner lots (i.e., lots or portions thereof within 100 feet of the intersection of two streets). Lower maximum lot coverages would apply for certain eligible sites (including "large sites," zoning lots with a lot area of at least 30,000 square feet, and certain irregularly shaped sites) that utilize maximum building height increases available to such eligible sites.
- For multiple dwellings in all districts, there is now a mechanism for adjoining public parks to be considered streets for light and air purposes, pursuant to a determination by the Commissioner of the Department of Parks and Recreation.

Parking Mandates

- The parking provisions for the Manhattan Core (Community Districts 1 – 8) and Long Island City are generally maintained. Increases in existing parking facilities by up to 15 parking spaces could be sought by authorization of the City Planning Commission.
- Required parking for residential developments and enlargement varies across the City, with the amount required determined by geographic location:
  - In the "Inner Transit Zone" (Community Districts 9 – 11 in Manhattan, Community Districts 1 – 3, 7, 8, and part of 6 in Brooklyn, and Community Districts 1, 2, and parts of 3 and 4 in Queens), the residential parking requirement is eliminated.
  - In the "Outer Transit Zone" (within a half mile of transit stations, a quarter mile of the LIRR and the Metro-North, and certain areas of the outer boroughs as identified in this map), the parking requirements are significantly reduced, with opportunities for residential parking to be completely waived as-of-right if the required parking is below certain thresholds depending on the zoning district. For example, in an R6 zoning district, residential parking is now required at a rate of 25% and is waived if the required parking is 15 spaces or fewer (the previous requirement for an R6 zoning district was 50% or 70% depending on whether the dwelling units were created pursuant to the Quality Housing Program).
  - For "Beyond the Greater Transit Zone" (the remainder of the City), the parking requirements generally remain the same.
- There is no residential parking requirement for conversions from non-residential to residential.

- The maximum permitted number of parking spaces is twice the number of dwelling units.
- For existing residential buildings, removal of parking spaces required under the prior regulations requires an authorization (if in the Inner Transit Zone) or a special permit (if outside of the Inner Transit Zone) from the City Planning Commission.

Simplification and Expansion of the Landmark TDR Program

The ability of designated individual landmarks to transfer unused development rights (TDRs) to nearby zoning lots has been expanded and the process for doing so has been simplified so as not to require a ULURP action in many cases.

Previously, landmark TDR transfers to sites that were not immediately adjacent to the landmark building's zoning lot, or that required the receiving site to obtain bulk relief to accommodate the additional floor area, could only be done through a CPC special permit (which is subject to ULURP, requiring a lengthy public review process and City Council approval), and such transfers were limited to adjacent zoning lots or lots across a street or intersection from the landmark building.

A new certification has been created authorizing the CPC Chair to allow transfers of TDRs from individual landmarks of up to 20% of the maximum floor area on a receiving lot, or by up to 30% in commercial or manufacturing districts where the non-residential FAR is 15 or greater. The owners of the granting lot and the receiving lot must jointly apply for certification. The certification expands the potential receiving sites to all zoning lots on the block on which the landmark building is located, as well as all zoning lots across a street or street intersection from the landmark building's block. The certification is a ministerial action requiring only that the CPC Chair find that certain conditions have been met, generally related to the amount of floor area transferred, LPC approval of a plan for continuing maintenance of the landmark building, and recordation of legal documents to evidence the transfer and maintenance obligations.

A new CPC authorization action has also been created to allow receiving sites to obtain certain bulk relief, including an increase of up to 25% of the applicable maximum building height. The authorization is subject to CPC discretion regarding certain required findings regarding the surrounding context, but is not subject to ULURP.

The existing special permit for landmark TDRs would still be available for transfers in excess of 30% of the receiving lot's maximum floor area in commercial or manufacturing districts where the non-residential FAR is 15 or greater, or for any transfers requiring additional bulk relief (other than FAR) beyond what the new authorization permits.

Vesting

- An application for a development, enlargement, or change of use to the DOB to authorize construction under the applicable rules in effect prior to City of Yes for Housing Opportunity's adoption may be continued and construction may commence or continue if (i) the application was filed with DOB on or before Dec. 5, 2024, and (ii) DOB has approved the application based on a complete zoning analysis on or before Dec. 5, 2025. An application may be amended one or more times prior to Dec. 5, 2025, provided the complete zoning analysis associated with the amended application is approved before Dec. 5, 2025. The Zoning Resolution's general vesting provisions also apply.
- The special vesting provisions are particularly relevant to applications filed for projects in the Special Midtown District and Special Lower Manhattan District, where previously the FAR could increase

from 10 to 12 by providing complying recreation space. Today, such increase in residential FAR requires the provision of affordable housing.

- If, on or before Dec. 5, 2025, (i) an application for a certification has been filed with the Department of City Planning, (ii) an application for an authorization or special permit has been certified or referred by the City Planning Commission, or (iii) an application for a project has been filed with the Board of Standards and Appeals (BSA), such application may be pursuant to the rules in effect on the date it was filed, certified, or referred, as applicable (the filing date). If granted, the certification, authorization, special permit, or BSA project may start or continue, according to the terms thereof (or as subsequently modified), pursuant to the regulations in effect on the applicable filing date.
- Any certification, special permit, authorization, or BSA application granted prior to Dec. 5, 2024, may start or continue, according to the terms thereof, or as subsequently modified, pursuant to the regulations in effect on the granting date.

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