



November 29, 2021

Dear Commissioners of the 2021 Racial Justice Commission,

We are writing to you today on behalf of TakeRoot Justice, CAAAV: Organizing Asian Communities, Good Old Lower East Side (GOLES) and Tenants United Fighting for Lower East Side (TUFF-LES).

We urge you to correct a structural defect in the NYC Charter that is a barrier to grassroots community organizations transforming their visions for the future of the City into zoning law that controls the physical development of neighborhoods: the lack of access to technical assistance for the production of environmental review materials.

Next fall, NYC's voters should be presented with the option to change the charter to create an independent Office of Community Planning, distinct from the existing City Planning Commission (CPC) and Department of City Planning (DCP), to provide direct support to community organizations seeking to make changes to land use law. Such an independent office could be housed within the Office of the Public Advocate or it could be its own new stand-alone agency.

We are making this recommendation based on our direct and specific experience as applicants proposing the creation of a new Special Lower East Side and Chinatown Waterfront District, which would include Manhattan's Two Bridges neighborhood. We have been working to transform the vision developed by the Chinatown Working Group between 2008 and 2014¹ into Zoning Text and Map Amendments to the NYC Zoning Resolution since 2017.²

¹ See *The Plan for Chinatown and Surrounding Areas: Preserving Affordability & Authenticity*, developed by the Pratt Center for Community Development & The Collective for Community, Culture and the Environment (December 2013),

<http://www.chinatownworkinggroup.org/2014-01-01%20Pratt%20Report%20to%20CWG.pdf>.

² See e.g. Sadeef Ali Kully, LES Groups Try to Revive Rezoning that De Blasio Admin. Rejected, City Limits (July 24, 2019) (<https://citylimits.org/2019/07/24/two-bridges-lawsuit-rezoning/>).

Because of the specific structural barriers we have encountered, described in detail below, DCP has not yet certified our application as complete and ready for review by our community board, borough president, CPC and the City Council through the Uniform Land Use Review Procedure (ULURP). The preparation of our application has taken so long in large part because it has been so difficult for us as community organizations to meet the requirements of creating environmental review materials on our own.

Background: Who Can Change NYC's Land Use Law?

Community planning with the goal of redressing a history of disenfranchisement of and disinvestment from BIPOC communities frequently results in the production of plans that contain recommendations for how the city's law controlling what property owners can build, the NYC Zoning Resolution, should be changed. Some plans address specific key sites, while others suggest rules that should apply to a whole neighborhood like the Chinatown Working Group plan did.³ These planning suggestions only have two routes to becoming law: they can be taken up by the City Planning Commission and its staff at the Department of City Planning and shepherded through ULURP, or a private applicant can apply for the change.

Where CPC/DCP, under the control of the Mayor, do not take up a community's vision for lack of resources or because it does not align with the priorities of the current administration, community organizations are left with only one option: file an application themselves.

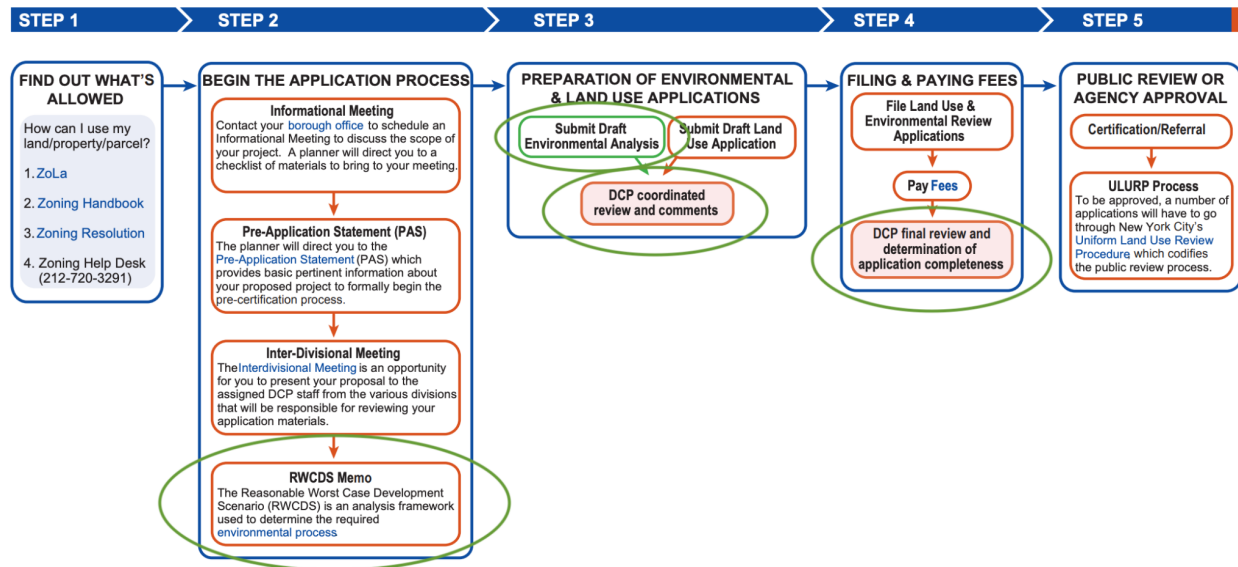
Before an application for a change to the Zoning Resolution Text or Maps can begin ULURP, the applicant must complete environmental review mandated by the the State Environmental Quality Review Act.⁴ This review requires the development of a Reasonable Worst Case Scenario (RWCDs) Memo that DCP staff must approve, and then the performance of an Environmental Assessment based on the RWCDs that focuses on the difference between what current rules allow to be built and what the proposed rules would allow.⁵ The development of the RWCDs Memo and Environmental Assessment Statement (EAS) can take months or even years: DCP staff have the right to wait 90 days before responding to any draft submission and to request as many redrafts as staff determine are needed, at their discretion.⁶

³ See also e.g. UPROSE's Green Resilient Industrial District Plan, <https://www.uprose.org/the-grid>.

⁴ See <https://www1.nyc.gov/assets/planning/download/pdf/applicants/applicant-portal/dcpprocessmap.pdf>

⁵ See sample documents here: <https://www1.nyc.gov/site/planning/applicants/eas-documents.page>.

⁶ For example, DCP staff did not approve our RWCDs memo until its fifth draft, nearly two years after the submission of our first draft. With each submission, DCP took nearly the full 90-days to provide feedback and request a new draft; thus, we spent 15 months waiting for DCP's various responses. DCP also has the right to review and request redrafts of the EAS, the Draft Scope for the EIS, and the Draft EIS.



NYC DCP, Pre-certification Process Flow Chart from <https://www1.nyc.gov/site/planning/applicants/applicant-portal/application-process.page>, modified to highlight the environmental review and DCP approval elements addressed by our recommendation (elements circled in green).

If the Assessment results in the conclusion that the proposed change may result in a significant adverse impact on the environment, the applicant must then prepare an Environmental Impact Statement (EIS). An EIS is prepared in several phases and includes an opportunity for public input. The applicant must create a Draft Scope of Work that lists what areas the EIS will include and the specific methodology for each.⁷ The public must be given a chance to comment on that Draft both in writing and at a hearing. The applicant will then prepare a Final Scope of Work, including a written response to all comments received, and a Draft EIS. Again, the public will be given a chance to comment on the Draft both in writing and at a hearing; the applicant will subsequently prepare a Final EIS, again including a written response to all comments received.⁸

Costs of Environmental Review for Community Applications

In NYC, the costs of creating the technical aspects of environmental review for private applications must currently be borne by the applicant, no matter who the applicant is or what their posture is in relation to the property.⁹ Applicants seeking a rezoning that will allow them to maximize development potential of, and thus profit from, from property they themselves purchased and seek to develop and community organizations seeking to change zoning laws to restrict what property owners can do or to encourage a particular type of development are

⁷ See sample documents here: <https://www1.nyc.gov/site/planning/applicants/scoping-documents.page>.

⁸ See sample documents here: <https://www1.nyc.gov/site/planning/applicants/eis-documents.page>.

⁹ See NYC DCP, Environmental Review Process, <https://www1.nyc.gov/site/planning/applicants/environmental-review-process.page> (“The applicants themselves, whether public or private entities, are responsible for preparing the environmental analyses in accordance with methodologies set forth in the CEQR Technical Manual”).

treated exactly the same under the current charter. No matter who the applicant is, they must retain and pay for their own technical consultants to develop the RWCDs, the EAS and, if required, the Draft and Final EIS.

These four technical documents must meet specific requirements and often run in the hundreds of pages. They must be produced to meet DCP staff's exacting specifications, and often approved documents are the result of several rounds of drafting and agency feedback. Consultants who have expertise in preparing these documents charge \$20,000-\$150,000 for the RWCDs Memo and EAS, and up to \$500,000 for an EIS, depending on the complexity of the analysis that needs to be performed.

There is no public resource to provide this highly skilled labor.¹⁰ Developers seeking to maximize profit incorporate the costs of experts to produce these documents in their financing plans for the final project, but how do community organizations meet this expense? Some are lucky enough to raise funds from private foundations or their communities (funds that could otherwise go to funding staff and direct services), but most never raise the needed funds at all. The expense of producing environmental review documents is the specific barrier that keeps many communities' visions from moving from planning to execution.

Creating a city-funded resource that can provide community organizations with access to technical experts to produce materials would overcome this structural barrier, making it possible for any community organization with a vision for the future of development to propose its vision as a change in law and subject it to the democratic ULURP process, no matter how little access to private and philanthropic funding the organization has. A City-funded office of community planning is key to democratizing land use regulation in the City of New York. Without such public infrastructure, the proposing of zoning changes will remain the exclusive domain of property owners who stand to make immense profit from those changes, and the occasional well-heeled resident organization.¹¹

Conflicts of Interest

Even where a group is able to raise the funds needed to address the requirements of environmental review, actually securing technical assistance when the application seeks to regulate what third-party property owners can do is another hurdle.

Since most firms providing environmental review services rely on the developer community for the bulk of their work, taking on a project that has as its goal the regulation of members of that community is treated by most as a conflict of interest; whether the conflict is specific - e.g. a community seeking to add zoning rules that will impact a property owned by a long-standing

¹⁰ For ULURP applications where the CPC, with DCP as staff, is the applicant, DCP staff either develops the environmental review materials itself or spends public funds to hire one of the consulting firms that regularly works in this area to produce them.

¹¹ See e.g. East River 50s Alliance Anti-Superscraper Zoning Change Proposal Wins Unanimous Approval of Community Board 6 (June 28, 2017), <https://benkallos.com/press-release/east-river-50s-alliance-anti-superscraper-zoning-change-proposal-wins-unanimous>.

client - or more generalized - e.g. a firm not wanting to be associated with restricting what property owners can do - the result is the same. Even when community organizations are able to raise the funds needed to hire experts to produce environmental review materials, finding such experts is not an easy task.

A case in point is our own experience retaining experts to work on the development of environmental review materials for our proposed Special District. After raising funds for the creation of Environmental Assessment documents over a year, our team reached out to nearly two dozen firms that provide technical environmental review services before being able to secure a consultant. Most of the firms with whom we connected were not able to take our project on because what we are proposing to do is add rules, via the Special District mechanism, to properties belonging to four of the most active developers building in NYC today; firms were clear with us that they could not take the risk of being associated with a rezoning proposal designed to regulate clients they hoped to one day secure or their colleagues.¹²

Creating an independent office to provide professional services for the preparation of environmental review materials when a community group seeks to change the zoning rules *for property it does not itself own or seek to develop based on the rules it proposes to change* would eliminate the structural barrier that prevents communities from pursuing zoning as a strategy for making their visions for the future reality. Such an independent office, no matter where it is situated, would resolve the conflict of interest quagmire we confronted head on.

Where to Locate the New Office of Community Planning

Our recommendation builds on and underlines the recommendation to create an Office of Community Planning made by the Inclusive City working group in January 2018.¹³

As the Group stated then, this Office “should also be independent enough to allow work to be driven by communities.” What we have learned through our experience as applicants since the publication of those working group recommendations in 2018 shapes our recommendation that the Office either be housed in the Public Advocate’s Office or be a “standalone entity, similar to New York City’s Independent Budget Office,” as the working group suggested.

Since DCP staff are in the gatekeeping role for private rezoning applications pre ULURP certification, we don’t believe that creating a division within DCP or within the Mayor’s office, two locations that the working group recommended in 2018, would result in an Office that is

¹² We did eventually retain the services of George Janes, <http://www.georgejanes.com/>, and Environmental Studies Corp., <http://environmentalstudiescorp.com/> and are now developing our Environmental Assessment materials.

¹³ Offices of Manhattan Borough President Gale Brewer, Council Member Antonio Reynoso and Regional Plan Association, *Inclusive City Strategies to achieve more equitable and predictable land use in New York City* (Jan. 2018), available at <https://takerootjustice.org/wp-content/uploads/2019/07/Inclusive-City-NYC.pdf> (CAAAY, Good Old Lower East Side and TakeRoot Justice, then the Community Development Project at the Urban Justice Center, all participated in the working group convened by the authors to develop recommendations).

independent enough to overcome the imbalance of power over the built environment that we have inherited from our history of redlining and disinvestment.

Minimal Requirements to Overcome Structural Barriers

While Inclusive City identified several responsibilities that the Office of Community Planning could be designed to take on, the minimum that it must do to overcome the structural barriers to participation in the crafting of regulations for the use of land in NYC is that the Office should “Provide technical assistance for community groups and community boards that engage in planning initiatives,” as the report identified. Such technical assistance must include developing the RWCDs; Environmental Assessment; and, where required, scoping, drafting, revising and finalizing an EIS.

Thank you so much for taking the time to engage with our recommendation and to consider its centrality to reversing centuries of inequity in how the City has been designed and built. Please do not hesitate to reach out with any questions about our recommendation.

Best,

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