

City Charter Revision Where Land Use Fits In

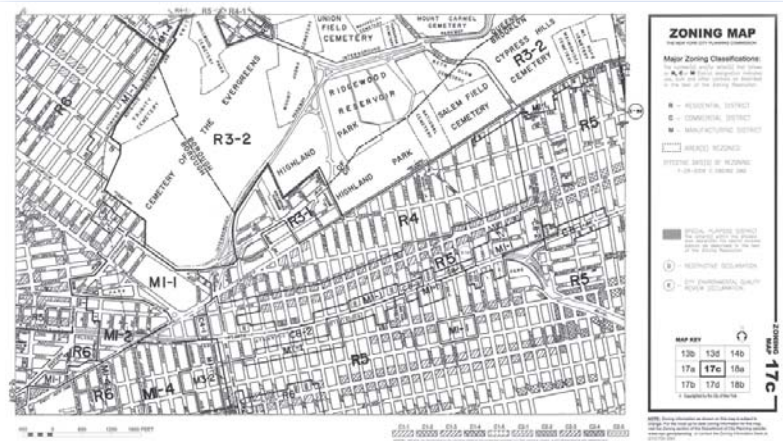
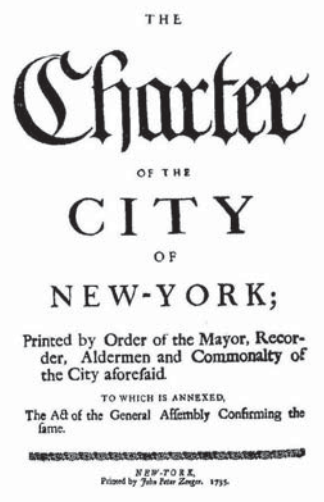
Mayor Bloomberg has announced the appointment of a City Charter revision commission, conducting a wide-ranging review of what is effectively New York City's constitution. While its review of term limits may initially grab the most attention, the commission will be looking at something else just as vital to both the city's future and to the power residents have in developing the vision for that future: land use and the process through which property owners, residents and the government decide what gets built in New York City.

Past commissions have stepped up with bold new ideas for governing land use and development. The 1936 charter, for example, created the City Planning Commission, hoping to establish a "nonpolitical voice promoting the general interest."

The Bloomberg-appointed charter revision commission must now take its own brave step forward. New York City needs a 21st century land use system – a new planning framework that can carry New York City into a sustainable future, and one in which citizens can have a meaningful role and stake in land use decision-making.

This Pratt Center issue brief outlines the major land use challenges the new commission must confront, and suggests approaches for addressing them.

Since 1936, the City Charter has called for an independent commission charged with comprehensive planning for New York City. Today, the City Planning Commission focuses narrowly on zoning changes.



Challenge #1: The City Planning Commission has ceased to plan

The City Planning Commission (CPC) was conceived as an independent body appointed to comprehensively plan and to scrutinize land use in the public interest, above the fray of city politics. But over the years, its role and ambition have diminished. First, in the 1970s, it lost its control over the city's capital budget. Then, with the elimination of the Board of Estimate in 1989, borough presidents lost much of their power over land use decision-making and their appointees to the commission went from being influential deal-makers, whose dissenting views could shake up a land use plan, to a minority with little leverage.

Today, the Department of City Planning (DCP) and City Planning Commission have narrowed their focus to zoning – land use changes in particular areas, as opposed to development of a plan that involves land use and the services and capital investment needed to support that plan, and addresses how the plan for an area fits into the city's overall needs. Recently, the department celebrated 100 rezonings that have taken place in the last eight years.

The commission typically makes modest modifications to zoning proposals generated by the staff of the department. It does not engage in comprehensive long-term planning or the coordination or integration of land use and budget decisions. The CPC can approve, approve with modifications, or disapprove land use proposals put forth by the DCP. In practice, however, the CPC consistently approves DCP proposals, and if it adds modifications they are minor and technical in nature. The 1989 City Charter Revision Commission intended the City Planning Commission to be a check on the mayor's Department of City Planning. But the charter commission ended up giving the mayor a majority of appointments to the planning commission. Because the head of DCP also serves as the chair of CPC, this created a structural alignment as opposed to a check and balance. Instead of an independent planning body, the City Planning Commission became largely an instrument of City Hall. Meanwhile, community boards carry little weight.

The City Planning Commission once again needs to plan strategically for the entire city.

Working with the Department of City Planning, **CPC needs to get back to its original mission of comprehensive city planning** – proactively setting a framework for the shape of growth in New York City. In its earlier incarnations, the commission put forth planning agendas and citywide development policies that formed a framework for its individual zoning actions. It was also required to develop a master plan for the city (only to see voters reject its efforts). For example, as recently as the 1980s, CPC sought to create a process for balancing the interests of artists, businesses and residents around the conversion of Manhattan industrial lofts to residences and it also used zoning rules and tax incentives to encourage growth on Manhattan's West Side, which lagged behind the East Side.

Fewer than a dozen 197-a plans have been approved, and few have had an impact.

The City Planning Commission once again needs to plan strategically for the entire city, rather than serving as an enabler of developer-driven projects. Piecemeal zoning changes create a void that invites real estate speculation and uncertainty for residents and businesses. They have enabled a wave of downzonings of neighborhoods with political pull, many of which conflict with City sustainability policies encouraging development in areas well-served by mass transit. And without a planning framework to follow, community boards seeking to develop

their own feasible plans have no road map – no way to make sure that they're heading in a direction that will serve the community's and city's needs well.

Indeed, many of the city's own land use decisions are being made without consideration of community needs, prompting increasing distress in affected neighborhoods. Rezoning supporting major new development projects have moved forward without adequate provision for public school seats, transit capacity, and other essential supports. They also neglect to take account of, or mitigate, negative economic impacts on existing businesses.

The next City Charter should recognize the need for comprehensive planning, as opposed to master planning, that provides a framework for future changes based on an assessment of present and future conditions and needs, vest responsibility for its preparation in the City Planning Commission, and require approval by the City Council. It should ensure that analysis of zoning changes include the extent to which they further or undermine implementation of the framework. And the framework, including periodic updates, must be developed with strong, ongoing public participation. Once the framework is in place, it should serve as a foundation for community-based planning that sets planning goals neighborhood by neighborhood.

Challenge #2: The City Charter's aspiration to community-based planning has not been fulfilled

Community involvement should be an asset to New York City's planners, not an obstacle to be overcome. It helps the Department of City Planning's professional staff understand a community's needs, values and vision – a connection to eyes and ears and brains on the ground that can help figure out what it takes to make a neighborhood thrive and to help evaluate the potential impacts of proposed changes. Meaningful participation in a process typically builds support for its results, and will help discourage confrontation and litigation.

City residents who want to participate in planning currently have two avenues for involvement. One is the creation of community-based plans that give stakeholders an opportunity to take stock of neighborhood needs and assets, set long term priorities and strategies, integrate land use with services and capital projects, and inform city

government's efforts. The second is during review of zoning and development proposals, under the Uniform Land Use Review Procedure (ULURP).

The 1975 charter revision sought to give communities a central role in the planning process by adding Section 197-a, which allows community boards, the CPC, and borough presidents to submit "plans for the development, growth, and improvement of the city and of its boroughs."

Fair share rules have forced accountability about siting of public facilities. They now need to require assessment of data on environmental quality.

Since then, fewer than a dozen 197-a plans have made it all the way through from community board inception to Department of City Planning approval. Some – notably in Morrisania and Chelsea – have helped shape planning, zoning and development. But in Williamsburg and Greenpoint, the Department of City Planning's rezonings did not reflect the plans developed by Brooklyn Community Board 1. And the city-approved expansion plans for Columbia University contradict much of the 197-a plan developed by Manhattan's Community Board 9.

Several factors have blunted the impact of 197-a. First, community boards lack adequate resources to bring their residents together, to research issues and strategies, and to draft specific recommendations. Second, even when successful in reaching consensus, they face the gatekeepers of DCP who can decide that the community's plan doesn't conform to procedural standards, staff's vision for a neighborhood, or even the role or scope of planning. Third, if a plan clears these hurdles and is passed, there is no mechanism to enforce it, and city actions can conflict with the approved plan.

The Campaign for Community-Based Planning has advocated that reform take place on multiple fronts, with strong support from the City Charter. The City Planning Commission must create a citywide planning framework. Community boards need access to planning expertise, so they can develop plans that conform with CPC requirements and advance community objectives. Community boards should reflect the diversity of their districts' residents. And perhaps most important, the charter needs to introduce mechanisms through which 197-a plans' recommendations have direct impact on city land use and service decisions.

The second opportunity for community participation under the current charter comes during the ULURP process, when community boards have an opportunity to review specific zoning proposals and to recommend changes. However, their advisory role is so limited as to rarely impact on subsequent review by the CPC. The lack of weight attached to community board analysis and recommendations has often forced them to take obstructionist positions to get attention and compel a compromise. The advisory nature of the community boards and the lack of attention shown to them encourage polarization, which is a no-win situation for the residents, the developers and the city.

New York needs to look to successful community-based planning models used in other cities, which give communities a proactive and constructive role in articulating local goals within a city- or even region-wide planning framework. Portland, Vancouver, Seattle and London provide promising examples.

Challenge #3: Attempts to promote "fair share" of burdens have fallen short

The 1989 charter introduced "fair share" – a framework within which the Department of City Planning must report to borough presidents and community boards on plans to open and close city facilities in each community district. This information was intended to identify where certain districts might be subject to an excess of unwanted facilities, or where they had too few desired and needed ones. The fair share analysis emerged after many low- and moderate-income communities complained that they received an excess of unwanted social service facilities.

Fair share has forced a new level of accountability from City Hall about the siting of planned facilities, which it must report in an annual Statement of Needs. But it has fallen far short of relieving low-income neighborhoods, especially as they've contended with growing environmental burdens.

The fair share rules issued by the CPC give the city great latitude to rationalize burdensome siting decisions as appropriate, without an appeals process. The guidelines actually encourage the siting of facilities in low-income communities, because the city is allowed to use costs as a deciding factor. Judges have generally deferred to the city's analysis when community groups have challenged fair share reviews. Perhaps most problematically, fair share also applies only to government-owned or contracted facilities. It does not cover a whole range of private facilities that

have come to support essential city functions, including waste transfer stations, power plants, and truck depots.

Fair share must be updated to include private facilities. In addition, the City Charter can take advantage of modern data analysis and **require fair share assessment of environmental burdens to be based on actual measurement of indicators**, such as air quality. The City Planning Commission can set and enforce minimum acceptable levels, as well as LEED-style targets for environmental quality in each community district.

Challenge #4: Side agreements to land use decisions have proliferated without disclosure or enforcement

In the face of mayoral control of the Department of City Planning and City Planning Commission, the City Council is often faced with a narrow choice. It can veto a proposal, as it recently did in rejecting the redevelopment of the Kingsbridge Armory, a power that remains rarely used. More typically, the City Council approves the proposed change in exchange for commitments from the mayor to provide community benefits, such as job training opportunities or affordable housing. The Pratt Center has been involved in shaping many such agreements in Willets Point, Williamsburg/Greenpoint, Coney Island and elsewhere, and supports the principle that the land use process is an appropriate venue for mitigating the impacts of rezonings and ensuring they mesh with and meet neighborhood needs.

However, the final agreements are generally not part of the public record. Their terms are not memorialized in the ULURP council resolution or the land use record filings with the County Clerk. If the agreements are not made public, residents and other stakeholders cannot know if they've been fulfilled or breached. Unlike the zoning itself, which if violated provides the basis for legal action by an aggrieved community stakeholder, the side agreements that accompany land use decisions come with no mechanism for enforcement.

After a similar wave of murky agreements between community boards and the Board of Estimate, the 1989 charter revision commission required their disclosure. The same principle must apply to all agreements made in connection with land use decisions. **The charter commission has to reckon with the reality that land use in the 21st century has moved beyond mere zoning.** Its review must include consideration of the impacts on employment, affordable housing, open space, and other essential community needs – with explicit measures for addressing them as an open, acknowledged and enforceable part of the land use process.

What's more, the city planning process itself must recognize these side agreements as a byproduct of broader failures in city planning and development policy. The agreements have become necessary precisely because planning does not take a look at citywide needs, forcing the City Council to address local needs or mitigate impacts project by project. Side deals are also no substitute for strong citywide standards promoting affordable housing and good jobs. A citywide planning framework, in the context of such standards and with a mandate to take into account neighborhood needs, would go a long way toward rendering side agreements unnecessary.

What's Next

At the root of many of these challenges is the current charter's imbalance of power between the mayor and other decision-makers. The charter weighs so heavily in the mayor's favor on land use that other key actors must simply tag along for the ride or attempt, often unsuccessfully, to stand in opposition. Neither is a healthy way to plan for the city and its neighborhoods. An independent and representative body must once again be front and center in planning for New York City and its neighborhoods, advancing a transparent and accountable planning framework with a strong mechanism for community input.

The charter-enabled deficiencies in New York City's planning process collectively widen and deepen inequality. Affluent and well-connected neighborhoods can muster the resources to navigate dysfunctional processes and cut deals that protect their interests; low-income neighborhoods are largely shut out. Comprehensive and accountable planning are not only a necessity for good government, but key tools for promoting a more equitable city.

Over the coming months, New Yorkers will have the opportunity to help revise the city charter to support an inclusive land use process that supports sustainable development, accountability for government actions, and public participation. To make it happen, citizens and communities will have to organize to demand land use reform as an essential part of the package.

[This issue brief is one in a series periodically published by the Pratt Center to provide in-depth information and new perspectives on an emerging challenge or opportunity for New York City.](#)