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***Abstract***

Kathryn M. Ryan’s paper describes New York City’s complex zoning regulations. Its purpose is to condense and explain the most important features of that code in a digestible format. It relies heavily on materials to be found on a variety of the City’s web pages, including that of the Department of City Planning, some of which is presented here verbatim.

***Resource***

**NEW YORK’S SECOND LAND USE SYSTEM:  
 A DESCRIPTION OF NEW YORK CITY LAND USE LAW  
 & HOW IT COMPARES**

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## **I. Introduction**

### **A. OVERVIEW OF TOPICS COVERED**

New York State has a second land use system. It operates in New York City. New York City land use control is so unique that it may be considered a separate system. As the only city in New York State with a population exceeding one million, it does not assume the obligations of the state statutes that apply to other local governments. The city has used its authority with its charter to create its own land use regime.

This paper describes basic land use law in New York City and compares it to that of other local governments in New York State. Part II of the paper explains and compares the origin of authority for local land use control for other cities, towns, and villages and New York City. Part III describes the three basic land use control boards for most local governments and the

nine key participants in New York City land use practice. Part IV is a summary comparison of New York City's handling of the basics of local land use control, including subdivision, site plan, special use permits, and environmental review. Part V contains a step-by-step description and commentary on a unique land use review process in New York City termed the Uniform Land Use Review Procedure. Finally, the paper concludes with a brief overall comparison of the two New York land use systems.

## **B. EVOLUTION OF NEW YORK CITY LAND USE LAW**

New York City enacted the nation's first comprehensive zoning resolution in 1916, in response to overwhelming development in Lower Manhattan.<sup>1</sup> Since then, the structure and processes of New York City government relating to land use control have continuously changed. Under the 1936 charter, New York City's land-use decision making process was mayorally dominated, with three primary agencies involved: the department of city planning, the city planning commission consisting of seven members, and the board of estimate.<sup>2</sup> The 1989 charter expanded the commission to thirteen members.<sup>3</sup> The board of estimate was eliminated in 1990 in response to a U.S. Supreme Court decision declaring the board's structure unconstitutional. That year, the city charter revision commission proposed a new charter which modified the legislative structure and redistributed land-use decision-making powers among the city planning commission and the city council. This is the current structure today. In undertaking the task of reshaping the city's land-use decision making structure, the charter revision commission recognized that

[I]and use regulation is among the most important of New York City's governmental functions. Land use touches many of the central concerns of the City's life: its economic well-being, the vitality or decay of its neighborhoods, the quality of its citizens' lives, and the ability of the government to provide essential services. With respect to essential services, the productive use of land enhances tax revenues. Land is essential to the provision of many government services. Land is scarce and competition for its various private or public uses is often fierce. Through City decisions about land use, communities can be uprooted or preserved, new communities can be created, fortunes can be made or lost, and the power of various political offices or agencies can wax or wane. Added to the day-to-day disputes that arise from the placement or nature of particular projects are the historic structural tensions between planners and politicians, and between advocates of decentralized decision making and those that favor centralized decision making.<sup>4</sup>

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<sup>1</sup> *New York City Zoning* (visited January 12, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/zone.html>>.

<sup>2</sup> Symposium, *One-Hundredth Anniversary of the Charter of the City of New York: Past, Present, and Future, 1898-1998*, 42 N.Y.L. Sch. L. Rev. 775, 853 (1998).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## II. Local Land Use Law - Delegated Authority & Enabling Acts

### A. BASIC LOCAL GOVERNMENTS

Under the New York State Constitution, the State Legislature has the authority to pass laws to protect the public health, safety, morals, and general welfare of the people.<sup>5</sup> Pursuant to this power, the State Legislature has delegated significant authority to regulate land use to the local level.<sup>6</sup> The authority of local governments to enact and enforce land use regulations is essentially provided by the enabling acts.<sup>7</sup> The structure of the enabling acts is similar for all three types of local governments in New York: villages, towns, and cities.<sup>8</sup> Under the enabling acts, local governments are authorized to regulate the development of land,<sup>9</sup> to regulate land use by creating and regulating zoning districts,<sup>10</sup> and to adopt comprehensive plans<sup>11</sup> that the local governments' zoning regulations must follow.<sup>12</sup>

### B. NEW YORK CITY

Article 5-A of the General Cities Law delegates authority to cities to enact and enforce land use regulations. However, General City Law § 81-e states that “[t]he provisions of this article shall not apply to any city having a population in excess of one million.”<sup>13</sup> New York City is the only city in New York State that exceeds that threshold.<sup>14</sup> Therefore, much of New York City's authority to enact and enforce land use regulations is contained in the city charter and carved out under the provisions of its administrative code and zoning regulations.<sup>15</sup> Under Title 25 of its administrative code, New York City has authorized its city planning commission to regulate the development of the land, and to regulate land use by dividing the

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<sup>5</sup> N.Y. CONST. art. III, § 1.

<sup>6</sup> See JOHN R. NOLON & JAYNE E. DALY, NEW YORK LAND USE LAW § 16.5, at 2035 (West).

<sup>7</sup> See *id.* at 2036.

<sup>8</sup> See *id.*

<sup>9</sup> See TOWN LAW § 261 (Looseleaf 1996); GEN. CITY LAW § 20(24)(Looseleaf 19xx); VILLAGE LAW § 7-700 (Looseleaf 1996).

<sup>10</sup> See TOWN LAW § 262; GEN. CITY LAW §§ 20(24), (25); VILLAGE LAW § 7-702.

<sup>11</sup> See TOWN LAW § 272-a; GEN. CITY LAW § 28-a; VILLAGE LAW § 7-722.

<sup>12</sup> See TOWN LAW § 261; GEN. CITY LAW § 20(25); VILLAGE LAW § 7-704.

<sup>13</sup> GEN. CITY LAW § 81-e.

<sup>14</sup> NOLON, *supra* note 6, at 2037.

<sup>15</sup> See *id.*

municipality into districts, within which uniform zoning regulations apply. Section 25-110 of the administrative code provides:

The city planning commission . . . shall have power to regulate and limit the height and bulk of buildings, to regulate and determine the area of yards, courts and other open spaces and to regulate density of population. The commission . . . may divide the city into districts of such number, shape and area as it may deem best suited to carry out such purposes.<sup>16</sup>

The regulations as to height and bulk of buildings, the area of yards, courts and other open spaces and density of population shall be uniform for each class of buildings throughout each district. The regulation in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire and other dangers and to promote the public health and welfare, including, so far as conditions may permit, provisions for adequate light, air and convenience of access.<sup>17</sup>

And § 25-111 further provides:

The city planning commission . . . may regulate and restrict the location of trades and industries and the location of buildings designed for specific uses, and may divide the city into districts of such number, shape and area as it may deem best suited to carry out such purposes.<sup>18</sup>

For each such district, regulations may be imposed designating the trades and industries that shall be excluded or subjected to special regulations and designating the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare.<sup>19</sup>

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<sup>16</sup> N.Y. CITY, N.Y., ADMIN. CODE tit. 25, § 25-110(a) (1985).

<sup>17</sup> Tit. 25, § 25-110(b).

<sup>18</sup> Tit. 25, § 25-111(a).

<sup>19</sup> Tit. 25, § 25-111(b).

The above language is similar to that used in the enabling acts to empower towns, cities, and villages to regulate the development of the land<sup>20</sup> and to create and regulate zoning districts.<sup>21</sup>

In granting the city planning commission the authority to regulate the development of land, the New York City Administrative Code requires the commission to “pay reasonable regard to the character of buildings erected in each district, the value of the land and the use to which it may be put.”<sup>22</sup> As stated in the code, this requirement contemplates the following objectives: 1) the promotion of public health, safety and welfare; 2) the promotion of the most desirable use for which the land of each district may be adapted; 3) the conservation of the value of the buildings; and 4) the enhancement of the value of land throughout the city.<sup>23</sup> In conjunction with its authority to regulate the location of trades and industries and of buildings designed for specific uses, the commission is also required to “give reasonable consideration . . . to the character of the district, its peculiar suitability for particular uses, the conservation of property values, and the direction of building development in accord with a well-considered plan.”<sup>24</sup>

The city planning commission’s authority to regulate the development of land and to create and regulate zoning districts is further limited by the provisions of §§ 197-c, 200, and 201 of the New York City Charter.<sup>25</sup> Pursuant to § 197-c, the city charter requires the commission to follow the Uniform Land Use Review Procedure (ULURP), a standardized process under which most actions affecting the land use of the city must be reviewed publicly.<sup>26</sup> Section 200 of the city charter regulates the adoption and amendment of New York City zoning

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<sup>20</sup> *Cf.* N.Y. TOWN LAW § 261 (Looseleaf 1996) (providing: “[f]or the purpose of promoting the health, safety, morals or the general welfare of the community, the town board is hereby empowered by ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentages of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.”).

<sup>21</sup> *Cf.* VILLAGE LAW § 7-702 (Looseleaf 1996) (stating that “the board of trustees may divide the village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings throughout each district but the regulations in one district may differ from those in another.”).

<sup>22</sup> Tit. 25, § 25-110(c).

<sup>23</sup> *Id.*

<sup>24</sup> Tit. 25, § 25-111(c).

<sup>25</sup> *See* tit. 25, §§ 25-110(a), 25-111(a).

<sup>26</sup> *See* N.Y. CITY, N.Y. CHARTER ch. 8, § 197-c (1996).

provisions.<sup>27</sup> And § 201 governs the process for applications for special permits within the jurisdiction of the city planning commission.<sup>28</sup>

### **III. Local Boards and Agencies**

#### **A. BASIC LOCAL BOARDS**

In most local governments, three boards are primarily involved in the land use decision making processes. They are as follows: 1) the local legislature, such as the village board of trustees, the town board, or the city council; 2) the zoning board of appeals; and 3) the planning board.<sup>29</sup>

##### ***1. Local Legislature***

The elected local legislature plays a vital role in local land use control. Pursuant to state statutes, it has the authority to adopt and amend the zoning law, subdivision and site plan regulations, special permit provisions, wetlands protections, and more.<sup>30</sup> It is also empowered to establish and delegate authority to a planning board and zoning board of appeals.<sup>31</sup> In addition, the local legislature is responsible for adopting and amending significant documents, such as the official map and comprehensive plan, that set forth the local land use policy of the community.<sup>32</sup>

##### ***2. Zoning Board of Appeals***

When the local legislature adopts zoning regulations, it is required by state statute to create a zoning boards of appeals.<sup>33</sup> Such Board may have either three or five members.<sup>34</sup> In villages and towns, members are appointed by the local legislature, and in cities, by the mayor or other duly authorized appointing authority.<sup>35</sup> Pursuant to state law, the zoning board of appeals has appellate authority to grant variances and interpret provisions of the zoning law.<sup>36</sup> In this capacity, it is truly acting as an appeals board. A majority vote of the board is

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<sup>27</sup> See ch. 8, § 200.

<sup>28</sup> See ch. 8, § 201.

<sup>29</sup> See JOHN NOLON, WELL GROUNDED 70 (Pace University School of Law 1999).

<sup>30</sup> See *id.* at 72.

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> See TOWN LAW § 267(2); GEN. CITY LAW § 81(1); VILLAGE LAW § 7-712(2).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> TOWN LAW § 267-a(4); GEN. CITY LAW § 81-a(4); VILLAGE LAW § 7-712-a(4).

required to reverse determinations, orders, or decisions of the administrative official responsible with the enforcement of the zoning law.<sup>37</sup> The zoning board of appeals may also be empowered to issue special use permits. In this capacity, the Board has original jurisdiction.<sup>38</sup>

### **3. Planning Board**

Pursuant to state statute, local legislatures are permitted to create planning boards consisting of five or seven members.<sup>39</sup> Planning board members are appointed by the local legislature in villages and towns, and by the mayor or other duly authorized appointing authority in cities.<sup>40</sup> Planning boards are usually empowered to review and approve site plan and subdivision applications and to issue special permits.<sup>41</sup> State statutes also permit the local legislature to delegate certain advisory functions to the planning board.<sup>42</sup> This can include preparing for the legislature's action on the comprehensive plan, zoning provisions, site plan, and subdivision regulations; and reviewing proposed changes to the official map.<sup>43</sup>

## **B. KEY PARTICIPANTS IN NEW YORK CITY LAND USE PRACTICE**

In New York City a different, more numerous group of entities is involved in New York City land use control. They are as follows: department of city planning, city council, board of standards and appeals, city planning commission, community boards, borough boards, landmarks preservation commission, and the mayor.

### **1. The Department of City Planning**

Section 191 of the New York City Charter provides for the establishment of a department and director of city planning.<sup>44</sup> Pursuant to various sections of the charter, the department of city planning is responsible for the following: 1) the city's physical and socioeconomic planning, including land use and environmental review; 2) preparation of plans and policies; and 3) provision of technical assistance and planning information to government agencies, public officials, and community boards.<sup>45</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> See WELL GROUNDED *supra* note 29, at 70.

<sup>39</sup> See TOWN LAW § 271(1); GEN. CITY LAW § 27(1); VILLAGE LAW § 7-718(1).

<sup>40</sup> *Id.*

<sup>41</sup> WELL GROUNDED *supra* note 29, at 73.

<sup>42</sup> See TOWN LAW § 271(13)-(14); GEN. CITY LAW § 27(13)-(14); VILLAGE LAW § 7-718(13)-(14).

<sup>43</sup> WELL GROUNDED *supra* note 29, at 73.

<sup>44</sup> N.Y. CITY, N.Y. CHARTER ch. 8, § 191

<sup>45</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000)  
<<http://www.ci.nyc.ny.us/html/dcp/html/overview.html>>



The responsibilities of the director of city planning, who, pursuant to the charter, also serves as chair of the city planning commission, include advising and assisting the mayor, the borough presidents, and the city council in regard to all matters related to the development and improvement of the city, as well as assisting the mayor in the preparation of strategic plans that have long-term implications for the city.<sup>46</sup>

The department of city planning is also responsible for land use analysis in support of the commission's review of proposals for zoning map and text amendments; special permits under the zoning resolution; changes in the city map; the acquisition and disposition of city-owned property; the acquisition of office space for city use; site selection for public facilities; urban renewal plans and amendments; landmark and historic district designations; and community-initiated plans under Section 197-a of the city charter.<sup>47</sup>

## **2. City Council**

Under the New York City Charter, the city council is established as the legislative body of the city.<sup>48</sup> It is considered to be a unicameral body with fifty-one members elected from each council district.<sup>49</sup> The city council's primary function is to adopt and amend local laws, resolutions, and regulations.<sup>50</sup> However, unlike most local legislatures, the council is also authorized by §§ 197-c and 197-d of the city charter to review many city planning commission's decisions approving land use proposals.<sup>51</sup>

## **3. The Board of Standards and Appeals**

The board of standards and appeals is created under § 659 of the New York City Charter.<sup>52</sup> It consists of five members each of whom is appointed by the mayor for a term of five years.<sup>53</sup> Pursuant to § 666 of the charter, the board is granted the power to adjudicate most applications for variances and special permits as set forth in the zoning resolution.<sup>54</sup> Its decisions to grant or deny variances may be challenged by the city planning commission pursuant to article 78 of the CPLR.<sup>55</sup> The board of standards and appeals is similar to most

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> See N.Y. CITY, N.Y. CHARTER, ch. 2, § 21.

<sup>49</sup> See *id.* at § 22.

<sup>50</sup> See *id.* at § 28.

<sup>51</sup> See *infra* Part V.B., at 42.

<sup>52</sup> See N.Y. CITY, N.Y. CHARTER, ch. 27, § 659.

<sup>53</sup> *Id.* at § 659(a).

<sup>54</sup> See ch. 27, §§ 666, 668. See *infra* Part IV.C.2.

<sup>55</sup> Ch. 27, § 668(e).

local zoning boards of appeals.<sup>56</sup> However, a significant difference is that the board of standards and appeals has original jurisdiction over the issuance of special use permits and variances, not appellate jurisdiction.<sup>57</sup>

#### **4. City Planning Commission**

Section 192 of the New York City Charter creates a city planning commission consisting of 13 members.<sup>58</sup> The chair and six other members are appointed by the mayor, five members are appointed by borough presidents, and one member is appointed by the city council president.<sup>59</sup> Pursuant to § 192(d) of the charter, the commission is “responsible for the conduct of planning relating to the orderly growth, improvement and future development of the city, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population.”<sup>60</sup> In addition, the city planning commission promulgates and governs the implementation of laws that require environmental review of land use actions,<sup>61</sup> is authorized to issue certain special use permits under the zoning resolution,<sup>62</sup> and reviews and approves land use applications pursuant to the Uniform Land Use Review Procedure (ULURP) as set forth in the charter.<sup>63</sup> The city planning commission in some respects is similar to typical local planning boards, but there are some important differences: it is twice as large as local planning boards, it is multi-appointed, and its authority is more extensive.<sup>64</sup>

#### **5. Community Boards & Borough Boards**

The city charter establishes an elected president<sup>65</sup> and board for each borough.<sup>66</sup> The borough board consists of the borough president, the district council members from such borough, and the chairperson of each community board in the borough.<sup>67</sup> Community

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<sup>56</sup> See *supra* at Part III.A.2.

<sup>57</sup> See *id.*

<sup>58</sup> Ch. 8, § 192(a).

<sup>59</sup> *Id.* Cf. *supra* Part III.A.3.

<sup>60</sup> ch. 8, § 192(a).

<sup>61</sup> *Id.* at § 192(e); see *infra* Part IV.D.2.

<sup>62</sup> See *infra* Part IV.C.2.

<sup>63</sup> See *infra* Part V.B.5.

<sup>64</sup> Cf. Part III.A.3. See *supra* at Part IV.B., at 45 (the commission can review city council action).

<sup>65</sup> N.Y. City Charter, § 81.

<sup>66</sup> *Id.* at § 85.

<sup>67</sup> *Id.*

boards are also created by the charter, which states that there must be one community board for each community district.<sup>68</sup> Such community boards will each consist of fifty members appointed by the borough president.<sup>69</sup>

Community boards and borough boards play an active role in New York City land use control. Both boards are authorized by the city charter to conduct public hearings and submit recommendations on land use applications.<sup>70</sup> Additionally, community and borough boards are empowered by the charter to propose “[p]lans for the development, growth, and improvement of the city and of its boroughs and community districts.”<sup>71</sup> Community boards and borough presidents participate in environmental review scoping sessions.<sup>72</sup> Community boards and borough presidents also possess a unique appeal mechanism under ULURP.<sup>73</sup> Acting together, these entities can object to land use applications and initiate city council review of the city planning commission’s approval of such applications.<sup>74</sup> Finally, a borough president can also appeal to the commission in some circumstances for certification of a ULURP application pending for over six months.<sup>75</sup>

## **6. Landmarks Preservation Commission**

Section 3020 of the city charter creates a landmarks preservation commission, which consists of eleven members appointed by the mayor.<sup>76</sup> This commission is charged with protecting the city’s architectural, historic, and cultural resources.<sup>77</sup> Pursuant to the charter, the landmarks preservation commission identifies, designates, and regulates buildings, districts, sites, and interiors; surveys potential landmarks and historic districts; evaluates proposals for landmark designation and regulates alterations to designated sites and structures.<sup>78</sup>

## **7. The Mayor**

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<sup>68</sup> *Id.* at § 2800.

<sup>69</sup> *Id.*

<sup>70</sup> *See infra* Part V.

<sup>71</sup> N.Y. City Charter, § 197-a(a).

<sup>72</sup> *See id.* at § 192(e).

<sup>73</sup> *See infra* Part V.

<sup>74</sup> *See id.*

<sup>75</sup> *See infra* Part V.

<sup>76</sup> N.Y. City Charter, § 3020(1).

<sup>77</sup> *See generally* § 3020.

<sup>78</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000) <<http://www.ci.nyc.ny.us/html/grants/html/sumag.html>>.

The mayor is designated by the charter as the chief executive officer of the city.<sup>79</sup> He appoints a majority of the city planning commission's members, and all of the landmarks preservation commission's members.<sup>80</sup> Relating specifically to land use control, the mayor is authorized by the city charter to act in a number of ways: 1) he can veto city council approvals, but this veto power is subject to a two-thirds council override;<sup>81</sup> 2) he can trigger city council review of city planning commission disapproval of four specific types of applications under ULURP, which are otherwise not appealable;<sup>82</sup> 3) he must issue an annual citywide "statement of needs" relating to city facilities;<sup>83</sup> and 4) he can propose strategic plans "for the development, growth, and improvement of the city and of its boroughs and community districts."<sup>84</sup>

#### **IV. Basic Local Practice**

##### **A. SUBDIVISION**

###### **1. Basic Subdivision Control**

New York villages, towns, and cities are authorized by state statutes to adopt and implement subdivision regulations.<sup>85</sup> Section 32 of the General City Law provides:

For the purpose of providing for the future growth and development of the city and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population, the legislative body of the city may by resolution, authorize and empower the planning board to approve preliminary and final plats of subdivisions showing lots, blocks or sites, with or without streets or highways.<sup>86</sup>

Local subdivision regulations typically require the landowner to submit a plat, which is a map, drawing or rendering of the proposed subdivision that shows the layout and

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<sup>79</sup> N.Y. City Charter, § 3.

<sup>80</sup> *See supra* at 13, 15.

<sup>81</sup> *See infra* Part V.

<sup>82</sup> *See infra* Part V.

<sup>83</sup> *See* N.Y. City Charter, §§ 203, 204.

<sup>84</sup> *Id.* at § 197-a.

<sup>85</sup> *See* VILLAGE LAW §§ 7-728 - 7-730; Town Law §§ 276 - 278; GEN. CITY LAW §§ 32 - 34. The subdivision of land has been defined as "the legal division of a parcel into a number of lots for the purpose of development and sale." WELL GROUNDED *supra* note 29, at 86.

<sup>86</sup> GEN. CITY LAW § 32(1).

approximate dimensions of lots and roads, the topography and drainage, and all proposed facilities at an appropriate scale.<sup>87</sup>

Pursuant to the state statutes, the local legislature may retain the authority to review and approve subdivision regulations, or delegate that authority to the local planning board.<sup>88</sup> If the planning board is delegated the authority to review and approve subdivisions, it may draft and recommend subdivision approval procedures to the legislature for its adoption.<sup>89</sup> In accordance with the state statutes, the typical local subdivision approval process will proceed as follows: 1) a subdivider of land submits a preliminary plat or map of the proposed subdivision; 2) the planning board must hold a public hearing within 62 days of the submission of the preliminary plat; 3) the planning board must make a decision on the preliminary plat within 62 days after the close of the hearing; 4) within six months after an approval of a preliminary subdivision plat, the applicant must submit his final plat for review; 5) where the final plat is in substantial agreement with the approved preliminary plat, the planning board must approve or disapprove the final plat within 62 days of its submission; 6) within five business days of the adoption of the resolution granting approval of the final plat, the plat must be certified by the planning board clerk and filed in that clerk's office, as well as in the office of the municipal clerk.<sup>90</sup>

## ***2. Subdivision of Land in New York City***

Section 202 of the New York City Charter provides, with respect to the subdivision of land, as follows:

No map of a subdivision or platting of land into streets, avenues or public places and blocks within the limits of the city shall be received for filing in the office in which instruments affecting real property are required to be recorded in the county in which the land is situated, unless such map shall have been reviewed and approved pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d. If such map is disapproved, the chair of the city planning commission shall certify such fact in writing upon such map, and such map shall be received only for record without such approval.<sup>91</sup>

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<sup>87</sup> WELL GROUNDED *supra* note 29, at 87. In addition, local regulations usually require “that the subdivision plat show all streets at sufficient width and suitable grade, sanitary sewers and storm drains, water mains and systems, landscaping sidewalks, curbs and gutters, fire alarm signal devices, street lighting, signs, and trees.” *Id.*

<sup>88</sup> See VILLAGE LAW §§ 7-728(1); Town Law §§ 276(1); GEN. CITY LAW §§ 32(1).

<sup>89</sup> VILLAGE LAW §§ 7-718(13); Town Law §§ 271(13); GEN. CITY LAW §§ 17(13).

<sup>90</sup> WELL GROUNDED *supra* note 29 at 89-90. This process may be altered and extended where a draft environmental impact statement is required.

<sup>91</sup> N.Y. CITY, N.Y. CHARTER ch. 8, § 202.

The charter further states that no street, avenue, highway, or public place, the layout of which has not been properly approved shall be accepted by the city.<sup>92</sup> These provisions, rather than Article 3 of the General City Law, govern the subdivision of land in New York City.<sup>93</sup> The above language is similar to that used in Article 3 of the General City Law relating to the filing of subdivision plats with the county clerk or register<sup>94</sup> and the effect of such filing.<sup>95</sup> However, the procedure in the city charter relating to the subdivision of land differs in some respects from that offered by the General City Law.

An important difference is New York City's unusual review and approval process for the mapping of subdivisions and platting of land. Pursuant to § 197-c(a) of the city charter, the mapping of subdivisions and the platting of land into streets, avenues, or public places is subject to a public review process under ULURP.<sup>96</sup> But this procedure does not exclusively regulate the subdivision of land. Instead, it governs ten other land use actions.<sup>97</sup> This aspect alone makes New York City subdivision regulations unique. Most local governments enact very specific regulations relating solely to the subdivision of land. And the regulations typically compose a substantive chapter in the local code, with detailed provisions on purpose; definitions; policy; design standards; and procedures relating to sketch plans, preliminary approvals, public hearings, and final plat approvals.<sup>98</sup> On the other hand, New York City's ULURP process is silent as to these details of subdivision applications. Nowhere in the city charter, the administrative code, or the zoning resolution does it state the elements that should be included on a subdivision map or plat application. In fact, the department of city planning has even noted on its Internet web site that the section of ULURP relating to the mapping of subdivision and platting of land has not been used since 1976.<sup>99</sup>

Another difference in New York City "subdivision regulations" involves the delegation of review and approval authority. Under the ULURP review process, the city council, which is New York City's local legislature, may elect to review "final" subdivision approvals of the city

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<sup>92</sup> *See id.*

<sup>93</sup> *See Dibasi v. City of New York*, 19 A.D.2d 323, 326 242 N.Y.S.2d 942, 946 (2d Dep't 1963) (concluding that the City of New York has had its own statutory scheme of map establishment since the original charter, which, in 1901 provided for the approval and acceptance of private subdivision maps.).

<sup>94</sup> *Cf.* GEN. CITY LAW § 34(1) (providing that "[n]o plat of a subdivision of land showing lots, blocks, or sites shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats.").

<sup>95</sup> *Cf.* GEN. CITY LAW § 34(3) (stating that "[a]fter such plat is approved and filed, the streets, highways and parks shown on such plat shall be and become part of the official map or plan of the city.").

<sup>96</sup> *See infra* Part. IV.E. for an extensive step-by-step description of ULURP.

<sup>97</sup> *See infra* Part V.

<sup>98</sup> *See* WELL GROUNDED *supra* note 29, at 90.

<sup>99</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/ulpro.html>>.

planning commission.<sup>100</sup> However, this sharing of subdivision approval authority is not permitted in all other cities, towns, and villages; once the local legislature has granted subdivision approval authority to the planning board, it cannot also reserve final authority to review and approve subdivision plats to itself.<sup>101</sup>

But there are some important similarities to note. Like most local subdivision regulations, ULURP requires public hearings,<sup>102</sup> specific time periods within which decisions must be made,<sup>103</sup> and coordination of all applications with an environmental review process.<sup>104</sup> In addition, ULURP does broadly require a certification step where the department of city planning must determine that the applications for any of the land use actions subject to ULURP include all forms, plans, and supporting documents that are necessary to address all issues related to the application.<sup>105</sup> During this certification process, the department of city planning probably ensures that subdivision maps and plats contain the necessary elements and information that most other local subdivision regulations require.

Finally, § 25-113 of the New York City Administrative Code provides for the filing of subdivision maps and recording of deeds of subdivided property. Section 25-113(a) of the administrative code states:

Every map referred to in section two hundred two of the charter shall be prepared, approved and certified and shall be filed as follows: one copy thereof in the office in which conveyances of real estate are required to be recorded in the county in which the land shown upon is situated; one copy thereof in the office of the corporation counsel; one copy thereof in the office of the president of the borough in which the land shown on the map is situated; one copy thereof in the office of the secretary of the board of estimate; one copy thereof in the office of the department of city planning; one copy thereof in the office of the department of buildings for the county in which the land shown thereon is situated.<sup>106</sup>

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<sup>100</sup> See *infra* Part IV.E.

<sup>101</sup> See *Woodhall Associates v. Bd. of Trustees of the Incorporated Village of Northport*, 63 A.D.2d 677, 404 N.Y.S.2d 670 (2d Dep't 1978).

<sup>102</sup> See *infra* Part IV.E. (requiring public hearings at each step of review) *Cf.* GEN. CITY LAW § 32(2) (requiring public hearings on preliminary plats and final plats).

<sup>103</sup> See *infra* Part IV.E. (each body involved in ULURP process has fifty days to review applications). *Cf.* GEN. CITY LAW § 32 (planning board has sixty-two days to make decisions at each level of the process).

<sup>104</sup> See *infra* Part IV.E. (ULURP applications will not be certified until either a DEIS has been issued, or neg dec., or). *Cf.* GEN CITY LAW § 32(5)(b) (providing for the coordination of local subdivision procedures with the state environmental quality review process).

<sup>105</sup> See *infra* Part IV.E.

<sup>106</sup> N.Y. CITY, N.Y., ADMIN. CODE tit. 25, § 25-113(a) (1985).

And § 25-113(b) further provides:

The register or county clerk . . . shall refuse: 1. To receive for filing any such subdivision map unless the commission or the department of buildings has certified that the subdivision does not result in the violation of any applicable zoning laws. 2. To accept for recording any deed or other instrument affecting real property which has a map attached thereto or made a part thereof, unless it shall have endorsed thereon the certification of the secretary of the board of estimate to the effect that the same has been approved pursuant to section two hundred two of the charter and unless the commissioner of the department of buildings has certified that such subdivision does not result in the violation of any applicable zoning laws.<sup>107</sup>

The language contained in these two provisions is similar but much more extensive than the language contained in Article 3 of the General City Law relating to the filing<sup>108</sup> and recording of final subdivision plats.<sup>109</sup>

## **B. SITE PLAN**

### ***1. Standard Site Plan Regulations***

Villages, towns and cities have been expressly authorized by state statute to adopt and implement site plan regulations.<sup>110</sup> The General City Law defines a “site plan” as a “rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable ordinance or local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land.”<sup>111</sup> Generally, site plan regulations are adopted by the local legislature as part of the zoning law or as a separate set of regulations.<sup>112</sup> In accordance with the delegating state statute, the local site plan

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<sup>107</sup> Title 25, § 25-113(b). Even though the Board of Estimate was abolished in 1990, the provisions of § 25-113 have not been amended accordingly.

<sup>108</sup> *Cf.* GEN. CITY LAW § 32 (11) (providing that “[t]he owner shall file in the office of the county clerk or register such approved final plat within sixty-two days from the date of final approval.”).

<sup>109</sup> *Cf.* GEN. CITY LAW § 34(1) (stating that “[n]o plat of a subdivision of land showing lots, blocks or sites shall be filed or recorded in the office of the county clerk or register until it has been approved by a planning board which has been empowered to approve such plats.”).

<sup>110</sup> *See* VILLAGE LAW § 7-725-a; TOWN LAW § 274-a; GEN. CITY LAW § 27-a.

<sup>111</sup> GEN. CITY LAW § 27-a(1).

<sup>112</sup> Well Grounded at 98.



regulations should contain the required elements that the site plan drawing must include and the standards that it must meet.<sup>113</sup> For example, the General City Law provides:

The ordinance or local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the local law or ordinance may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the legislative body in such zoning ordinance or local law.<sup>114</sup>

Typically, the local legislature delegates site plan approval authority to the local planning board or other administrative body.<sup>115</sup> The procedure for site plan approval in most local governments is somewhat similar to the typical procedure already described in Part IV.A. for subdivision applications.<sup>116</sup> Local communities usually require public hearings, county or regional review, and specific time periods by which site plan approval decisions must be made.<sup>117</sup> In addition, site plan approval procedures must be coordinated with the procedures of the state environmental quality review act.<sup>118</sup>

## ***2. Site Plans in New York City***

The provisions of the General City Law regarding site plan review and approval are not applicable to New York City, since its population exceeds one million.<sup>119</sup> However, where New York City has enacted its own statutory scheme for the regulation of the development of land, the creation and regulation of zoning districts, and the subdivision of land through the provisions of its administrative code and city charter,<sup>120</sup> it has failed to adopt formal site plan regulations. In fact, the city charter and administrative code are completely silent with respect to site plans.

Article VII of the Zoning Resolution briefly discusses site plan, but only with respect to applications for special use permits. It states:

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<sup>113</sup> *Id.*

<sup>114</sup> GEN. CITY LAW § 27-a(2).

<sup>115</sup> WELL GROUNDED *supra* note 29 at 100.

<sup>116</sup> *See supra* Part IV.A.1.

<sup>117</sup> GEN. CITY LAW § 27.

<sup>118</sup> *Id.* at § 27-a(11).

<sup>119</sup> *Id.* at § 27-a(13).

<sup>120</sup> *See supra* Parts I.B. & II.A.

An application to the City Planning Commission for the grant of a special permit respecting any of the uses specified in this Chapter shall include a site plan showing the location and proposed use of all buildings or other structures on the site; the location of all vehicular entrances and exits and off-street parking spaces; and such other information as may be required by the Commission.<sup>121</sup>

Another document that substantively discusses site plans is not really a binding provision of law; rather, it is a “Land Use Review Application” form distributed by the department of city planning.<sup>122</sup> According to the general instructions on this form, all land use actions subject to the ULURP process require a set of attachments.<sup>123</sup> Included with the application form is an “Attachment Check List” that specifies which attachments are required for each type of action.<sup>124</sup> And a detailed description of each attachment follows the check list.<sup>125</sup> Pursuant to the list, a site plan is an attachment that is required for the following land use actions: zoning special permits, zoning authorizations, specific actions for zoning certifications, public facilities, restricted or negotiated dispositions of housing sites or designated sites in URA’s, urban development action areas, specific actions for urban renewal projects, major concessions, revocable consents, and landfills.<sup>126</sup> The land use review application form further provides the following description of site plan:

To the extent relevant to the requested action, the site plan must be fully dimensioned, showing the size and location of all existing and proposed development and open spaces. Required information will depend upon the action requested but may include buildings (indicating height and number of stories), parking and loading areas, vehicular entrances and driveways, distances from buildings or other structures to lot lines, distances between buildings on the site, the proposed use of all buildings (if application includes actions relating to the use of buildings), size of courts, required yards and screening, location and design of plazas.

Site plans for landfill applications must delineate the area of landfill and show existing and proposed bulkheads, breakwaters, wharves, marginal streets, docks and dry docks or slips and the mean high water line.

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<sup>121</sup> N.Y. City Zoning Resolution at § 74-20.

<sup>122</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/ulpro.html>>; See Form GI of the department of city planning.

<sup>123</sup> *Land Use Review Application*, Form GI at 1.

<sup>124</sup> *Id.* at 3.

<sup>125</sup> *Id.* at 4.

<sup>126</sup> *Id.* at 3.

Site plans for special permits, authorizations or certifications must be signed and sealed by a NYS registered architect (RA) or professional engineer (PE).<sup>127</sup>

Although the above description is not an ordinance, law, or statute, the language is similar to that contained in the General City Law authorizing local governments to enact site plan regulations.<sup>128</sup> In addition, the requested information is needed to evaluate applications for the many land use actions subject to city review. Thus, if an applicant submitting a particular land use application does not include the required site plan attachment with the necessary elements in accord with the description above, that application will probably not survive the certification step in the ULURP process and will be thrown out.<sup>129</sup>

New York City derives the authority to require site plan attachments for most land use review applications from the provisions of § 25-110(a) of its administrative code which delegates authority to the city planning commission to regulate the height and bulk of buildings, areas of yards, courts, and open spaces and density of population.<sup>130</sup>

## **C. SPECIAL USE PERMITS**

### ***1. Traditional Regulations***

Pursuant to state statutes, local legislatures are authorized to approve certain land uses by special use permit.<sup>131</sup> The General City Law defines a special use permit as an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.<sup>132</sup>

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<sup>127</sup> *Id.* at 4.

<sup>128</sup> *Cf.* GEN. CITY LAW § 27-a(1) (stating that a “site plan shall mean a drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable ordinance or local law, which shows the arrangement, layout and design of the proposed use.”); GEN. CITY LAW § 27-a(b) (requiring local regulations to “specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the local law or ordinance may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the legislative body in such zoning ordinance or local law.”).

<sup>129</sup> *See infra* Part V., at 38 (certification requires that all applications be complete with all required documents).

<sup>130</sup> *See supra* Part I.B.

<sup>131</sup> *See* VILLAGE LAW § 7-725-b; TOWN LAW § 274-b; and GEN. CITY LAW § 27-b.

<sup>132</sup> GEN. CITY LAW § 27-b(1).

Examples of land uses that are subject to special use permit approval are: adult homes, day care centers, professional offices, group homes, swimming pools, nursing homes, churches, shopping centers, convenience stores, video arcades, drive-in establishments and gas stations.<sup>133</sup> The local legislature typically declares these special uses to be compatible with specific districts.<sup>134</sup> For example, a church is generally considered compatible with a single-family residential neighborhood.<sup>135</sup> Thus, a church in a residential district is a special use which should be allowed in that district, subject to conditions that may be imposed to mitigate any negative impact on surrounding properties.<sup>136</sup>

The state statutes allow the local legislature to authorize the planning board or other local administrative body to grant special use permits as set forth in the local zoning law.<sup>137</sup> If the local legislature does not reserve special use permit authority, it must provide standards in the zoning law to guide the issuance of special use permits.<sup>138</sup> Under state statutes, the reviewing agency must comply with the following procedure for special use permit applications: 1) there must be a public hearing within sixty-two days of receipt of the application; 2) public notice must be printed; 3) the agency must decide upon the application within sixty-two days of the hearing; 4) the decision must be filed within five business days after it is rendered and a copy mailed to the applicant; 5) referral must be made to a county or regional planning agency in some instances; and 6) there must be compliance with the state environmental quality review act.<sup>139</sup>

## **2. Development by Special Permit in New York City**

The General City Law stipulates that the provisions of § 27-b regarding approval of special use permits do not apply to any city having a population of more than one million.<sup>140</sup> New York City has enacted its own special use permit regulations under its city charter and zoning resolution. These regulations vary somewhat from the traditional special use permit regulations. One distinctive aspect is that New York City divides special use permit review and approval authority between two administrative agencies: the city planning commission and the board of standards and appeals.

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<sup>133</sup> See WELL GROUNDED *supra* note 29 at 106.

<sup>134</sup> See *id.*

<sup>135</sup> See *id.*

<sup>136</sup> See *id.*

<sup>137</sup> See, e.g., GEN. CITY LAW § 27-b(2).

<sup>138</sup> See WELL GROUNDED *supra* note 29 at 106.

<sup>139</sup> See GEN. CITY LAW § 27-b(6). This procedure will be much more extensive where a draft environmental impact statement is required.

<sup>140</sup> See *id.* at § 27-b(12).

First, § 666 of the New York City Charter provides that “the board [of standards and appeals] shall have the power . . . [t]o issue such special permits as the board is authorized to issue under the zoning resolution.”<sup>141</sup> Article VII of the New York City Zoning Resolution states:

In harmony with the general purpose and intent of this Resolution and in accordance with the provisions set forth in this Chapter, the Board of Standards and Appeals may, in an appropriate case: (a) grant special permits for specified uses in specific districts . . . (b) permit specified modifications of the use or bulk regulations of this Resolution . . . .”<sup>142</sup>

And § 73-03 of the zoning resolution further provides:

The Board of Standards and Appeals shall have the power, as authorized by Section 73-01 (a) or (b), and subject to such appropriate conditions and safeguards as the Board shall prescribe, to grant special permit uses or modifications of use, parking, or bulk regulations as specifically provided in this Chapter, provided in each case:

(a) The Board shall make all findings required in the applicable sections of this chapter with respect to each such special permit use or modification of use, parking, or bulk regulations and shall find that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use or modification of use, parking or bulk regulations at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit. In each case, the Board shall determine that the adverse effect, if any, on the privacy, quiet, light, and air in the neighborhood of such special permit use or modification of use, parking or bulk regulations will be minimized by appropriate conditions governing the location of the site, design, and method of operation.<sup>143</sup>

The above requirements contained in the New York City Zoning Resolution are extremely similar to those requirements provided in the General City Law. Both sets of laws permit a local administrative agency to grant a special use permit subject to appropriate conditions and safeguards,<sup>144</sup> but only upon certain specific findings set forth in the zoning law. In general, both agencies must make the findings required in relation to the proposed use and

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<sup>141</sup> N.Y. CITY, N.Y. CHARTER ch. 27, § 666.

<sup>142</sup> N.Y. City Zoning Resolution, § 73-01.

<sup>143</sup> *Id.* at § 73-03. Note that further requirements are set forth in the zoning resolutions, but are much too extensive to repeat in full.

<sup>144</sup> *Cf.* GEN. CITY LAW § 27-b(4) (providing that: “[t]he authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit.”).

both agencies are required to make findings which relate generally to the impact of the proposed use upon the neighborhood of its proposed location.<sup>145</sup>

However, unlike the General City Law,<sup>146</sup> New York City has vested similar special use permit review and approval authority in a second administrative agency: the city planning commission. Section 74-01 of the New York City Zoning Resolution provides:

In harmony with the general purpose and intent of this Resolution and in accordance with the provisions set forth in this Chapter, the City Planning Commission may, after public notice and hearing, grant special permits in specific districts for the uses listed in this Chapter, whose location or control requires special consideration or major planning factors, or for specified modifications of the use or bulk regulations of this Resolution provided that in each specific case the requirement for findings as set forth in this Chapter shall constitute a condition precedent to the grant of such special permit.<sup>147</sup>

The city planning commission is also authorized to “prescribe such conditions and safeguards to the grant of special permits as it may deem necessary in the specific case, in order to minimize the adverse effects of such special permit upon other property and the community at large.”<sup>148</sup> Again, this authority is similar to that provided by the General City Law, and also the New York City Zoning Resolution relating to the board of standards and appeals.<sup>149</sup> Finally, the New York City Zoning Resolution requires the city planning commission to make specific findings relating to the proposed use and to its impact upon the surrounding neighborhood. The language used in this provision is practically identical to that in the provision requiring the same of the board of standards and appeals.<sup>150</sup>

There are two significant differences between the special use permit review and approval authority of the city planning commission and the board of standards and appeals: 1) the types of special use permits that each review; and 2) the procedures to be followed in deciding whether to grant the application. “In general, projects that have greater land use

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<sup>145</sup> Cf. GEN. CITY LAW § 27-b(1) (stating: “the term “special use permit” shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.).

<sup>146</sup> Section 27-b of the General City Law allows the legislative body to authorize the planning board *or* other such administrative body that it shall designate to grant special use permits as set forth in the zoning law.).

<sup>147</sup> N.Y. City Zoning Resolution , § 74-01.

<sup>148</sup> N.Y. City Zoning Resolution, § 74-21.

<sup>149</sup> *See supra* Part IV.C.1.

<sup>150</sup> *See id.*

impacts or involve significant planning issues are under the jurisdiction of the city planning commission.”<sup>151</sup> Thus, the city planning commission is authorized to review special permit applications for amusement establishments, drive-in theaters, racetracks, public parking lots, transportation facilities, and many other uses that involve substantial planning factors.<sup>152</sup> These uses “occupy more ground, attract more persons, and generate more vehicular traffic, and consequently involve a broader impact on the community plan.”<sup>153</sup>

On the other hand, the board of standards and appeals reviews more localized issues.<sup>154</sup> For example, the board of standards and appeals is empowered to review special permit applications for gasoline stations, colleges, universities, certain clubs, camps, riding academies, commercial beaches, and the establishment of public utility installations in all residential districts.<sup>155</sup> These uses are thought “to involve special problems of accommodation to residential or commercial neighborhoods.”

The procedure for special use permit approval by each agency is also different. Under the New York City Charter, special use permits within the jurisdiction of the city planning commission are subject to the ULURP review process.<sup>156</sup> Section § 201(b) of the charter provides: “[a]pplications for special permits within the jurisdiction of the city planning commission under the zoning resolution may be filed by any person or agency. All such applications for the issuance of special permits shall be subject to review and approval pursuant to section one hundred ninety-seven-c and section one hundred ninety-seven-d.”<sup>157</sup> Section 197-c, which is the ULURP review process, has similar characteristics as traditional special use permit approval procedures, such as required public hearings, prescribed time periods, and coordination with environmental review.<sup>158</sup>

The board of standards and appeals follows a special use permit approval procedure somewhat different from ULURP.<sup>159</sup> Pursuant to § 668 of the New York City Charter, community boards and borough boards have the authority to review and recommend

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<sup>151</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/zonetod.html>>.

<sup>152</sup> 2 PATRICIA SALKIN, *NEW YORK ZONING LAW AND PRACTICE* at § 30:08 (3d ed. 2000); Zoning Resolution, City of New York § 74 - (2000, as amended).

<sup>153</sup> *Id.* at § 30-03.

<sup>154</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/zonetod.html>>.

<sup>155</sup> SALKIN, *supra* note 152 at § 30-03.

<sup>156</sup> *See infra* Part V.

<sup>157</sup> N.Y. City Charter § 201(b).

<sup>158</sup> *Cf. supra* Part IV.C.1.

<sup>159</sup> *See* N.Y. City Charter, § 668; *see also* City Planning Commission’s ULURP Rules § 2-08.

applications for special permits within the jurisdiction of the board of standards and appeals. The charter mandates the following process: 1) an application is filed with the board of standards and appeals; 2) the board must then forward a copy within five days to the community board within which district the site is located, or, in the case of an application involving a site located within two or more districts, to the community boards for such districts and to the borough board for the appropriate borough;<sup>160</sup> 3) such community board or community boards and a borough board must notify the public, conduct a public hearing, and prepare and submit a written recommendation or waiver to the board of standards and appeals within sixty days;<sup>161</sup> 4) the receipt of such a recommendation or waiver from every community or borough board involved, or the expiration of the time allowed for such boards to act, constitutes an authorization to the board of standards and appeals to review the application;<sup>162</sup> 5) coordination must be made with environmental review;<sup>163</sup> 6) the board of standards and appeals must conduct a public hearing and make a decision;<sup>164</sup> 7) copies of a decision of the board of standards and appeals and copies of any recommendation of the affected community board or borough board must be filed with the city planning commission; 8) copies of the decision must also be filed with the affected community or borough boards.<sup>165</sup>

Thus, like ULURP,<sup>166</sup> the procedure that the board of standards and appeals must follow to review special permit applications is much more extensive than the procedure provided by the General City Law, since it involves review and recommendation by the community and borough boards. But the essential characteristics of each procedure are the same. All three procedures provide for mandated public notice and hearings, prescribe time periods, and coordination with environmental review.<sup>167</sup>

## **D. ENVIRONMENTAL REVIEW**

### **1. *The State Environmental Quality Review Act***

New York's State Environmental Quality Review Act (SEQRA) sets forth the procedures and requirements for the environmental review of local land use actions.<sup>168</sup> SEQRA applies to all

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<sup>160</sup> N.Y. City Charter, § 668(1).

<sup>161</sup> *Id.* at § 668(a)(2)-(3).

<sup>162</sup> *Id.* at § 668(a)(4).

<sup>163</sup> *Id.* at § 668(a)(6)-(7).

<sup>164</sup> *Id.* at § 668(b).

<sup>165</sup> NY City Charter, § 668(c).

<sup>166</sup> *See infra* Part V.

<sup>167</sup> *Cf. supra* Part IV.C.1. (brief description of traditional special permit approval procedure).

<sup>168</sup> Environmental Conservation Law, Article 8.



agencies of the state.<sup>169</sup> This includes local agencies such as legislatures, planning boards, zoning boards of appeals, city planning commissions, and boards of standards and appeals which are authorized to review land use actions.<sup>170</sup> SEQRA applies to most local land use actions such as subdivision and site plan review, rezoning, and the issuance of special permits.<sup>171</sup> Throughout the SEQRA process, the local reviewing agency is usually referred to as the “lead agency,” and a development approval, the adoption of a plan or enactment of land use regulations, are called “actions.”<sup>172</sup> Pursuant to SEQRA, the lead agency must first determine whether an action may have a significant adverse environmental impact.<sup>173</sup> If the agency decides that a proposed action may have such an impact, then SEQRA requires the agency to prepare an environmental impact statement before making a decision on that land use action.<sup>174</sup> The lead agency must then review the statement under SEQRA’s environmental standards.<sup>175</sup> Until the environmental impact statement is deemed to be complete by the lead agency, the underlying land use application is not considered complete, and the prescribed time periods applying to that approval process do not begin to run.<sup>176</sup>

## **2. City Environmental Quality Review**

New York City’s local agencies must also abide by the requirements of SEQRA. Accordingly, the city has provided for compliance with SEQRA in all of its land use regulations, such as subdivision approval and the issuance of special use permits.<sup>177</sup> In addition, New York City has established its own rules of procedures for environmental review of proposed actions. Under § 192 of the New York City Charter, the city planning commission was required to promulgate these rules:

The city planning commission shall oversee implementation of laws that require environmental reviews of actions taken by the city. The commission shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law. Such rules shall include procedures for (1) selection of the city agency or agencies that will be responsible for determining whether an environmental impact statement is required in connection with a

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<sup>169</sup> Environmental Conservation Law, § 8-0105(3).

<sup>170</sup> WELL GROUNDED *supra* note 29 at 160.

<sup>171</sup> *See id.* at 162.

<sup>172</sup> *See id.* at 161.

<sup>173</sup> *See id.* at 160.

<sup>174</sup> *See id.*

<sup>175</sup> *See* WELL GROUNDED *supra* note 29 at 160.

<sup>176</sup> *See id.*

<sup>177</sup> *See supra* Part IV.A.2, Part IV.C.2.

proposed action and for preparation and filing of any such statement required by law, (2) participation by the city in environmental reviews involving agencies other than city agencies and (3) coordination of environmental review procedures with the land use review procedures set forth in this charter. The director of city planning and the commissioner of the department of environmental protection shall assign from the staffs of such departments an office of environmental coordination, which shall provide assistance to all city agencies in fulfilling their environmental review responsibilities.<sup>178</sup>

Pursuant to this provision, the city planning commission established and adopted rules of procedures in 1991 called City Environmental Quality Review, also known as CEQRA. The CEQRA process redefines lead agencies within the city, sets forth public scoping procedures for lead agencies to follow when an environmental impact statement is to be prepared, and provides for an Office of Environmental Coordination to assist lead agencies and other participants in the process.<sup>179</sup> Other local governments in New York are allowed to adopt their own regulations under SEQRA but few have done so.

## **V. New York City's Uniform Land Use Review Procedure**

### **A. OVERVIEW**

The Uniform Land Use Review Procedure (ULURP) was adopted in 1976, and its establishment reflected two trends underway in the 1950's and 1960's: 1) the increasing involvement of the city's community boards in the development of the city; and 2) a substantial increase in community participation in many aspects of government.<sup>180</sup> In his introduction of the proposal for New York City's current land use review structure under ULURP, Frederick A. O. Schwarz, Jr., Chairman of the 1989 Revision Commission stated:

"This is a matter which, . . . if you use an image of a balloon, . . . is something where as one pushes at one part of the process, it affects one's analysis of another part of the process. Our effort has been to find a way to appropriately balance the interests of local perspectives, the interests of Citywide perspectives, to appropriately balance the opportunities and procedures for review by the City Council . . ."<sup>181</sup>

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<sup>178</sup> N.Y. City Charter, § 192(e).

<sup>179</sup> *City Environmental Quality Review* (visited May 1, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/ceqra.html>>.

<sup>180</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/ulpro.html>>.

<sup>181</sup> Symposium, *supra* note 2, at 866.

The following boards and agencies have reviewing roles in the ULURP process: the department of city planning, community boards, borough boards, borough presidents, the city planning commission, the city council; and the mayor.<sup>182</sup>

Section 197-c of the Charter states that “applications by any person or agency for changes, approvals, contracts, consents, permits or authorization thereof, respecting the use, development or improvement of real property subject to city regulation shall be reviewed pursuant to a uniform review procedure.”<sup>183</sup> Under § 197-c (a), the following actions are subject to ULURP: 1) changes to the city map; 2) mapping of subdivisions or platting of land into streets, avenues, or public places; 3) designation or change of zoning districts; 4) special permits within the zoning resolution requiring approval of the city planning commission; 5) site selection for capital projects; 6) revocable consents, requests for proposals, and other solicitations for franchises, and major concessions; 7) improvements in real property the costs of which are payable other than by the city; 8) housing and urban renewal plans and projects pursuant to city, state, and federal laws; 9) sanitary or waterfront landfills; 10) disposition of city owned property; and 11) acquisition of real property by the city.<sup>184</sup>

## **B. THE ULURP REVIEW PROCESS**

### ***Step 1: Application is Filed with the Department of City Planning***

The applicant must file with the department of city planning a standardized Land Use Review Application and all required accompanying documentation, including environmental impact statement related materials.<sup>185</sup> The planning department must then submit a copy of all materials to each “affected” borough president, borough board, or community board within five days after receiving an application.<sup>186</sup> A borough president or community board is “affected” under the charter if the land included in a land use plan or application is located in their respective borough or community; a borough board is “affected” when a plan or application includes land within the borough the board represents.<sup>187</sup>

### ***Step 2: Certification***

The department of city planning is responsible for certifying that the application is complete, and ready for public review through the ULURP process.<sup>188</sup> It is important to note that the

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<sup>182</sup> For a brief description of each body, see *supra* Part III.B.

<sup>183</sup> See N.Y. City Charter, ch. 8, § 197-c.

<sup>184</sup> See *id.* at § 197-c (a).

<sup>185</sup> See *id.* at § 197-c (b).

<sup>186</sup> See *id.* at § 197-c (b). According to the Charter, the department of planning must do so regardless of whether the application has been certified as complete. This ensures that the affected community groups are put on notice of an application early on in the ULURP process, instead of withholding it from them until after certification, which can take a very long time.

<sup>187</sup> See ch. 8, § 196.

<sup>188</sup> See ch. 8, § 197-c (c).

ULURP procedure and “clock” does not officially start until the application has been certified.<sup>189</sup> Minimum standards for the certification of applications have been established by the city planning commission pursuant to § 197-c (i) of the city charter.<sup>190</sup> These standards are contained in the commission’s ULURP Guidelines (§ 2-02), and basically provide that an application cannot be certified until the department of city planning determines that the application includes all forms, plans, and supporting documents that are necessary to address all issues related to the application.<sup>191</sup> If the particular application is subject to environmental review, a negative declaration or a conditional negative declaration or a notice of acceptance of a draft environmental impact statement must be issued before an application can be certified.<sup>192</sup>

Neither the city charter nor the ULURP Guidelines mandate a time period by which the certification review must be completed. Thus, certification has often been characterized as an unnecessarily prolonged process.<sup>193</sup> However, if the planning department has not certified a ULURP application within six months from the date of filing, § 197-c (c) of the Charter permits applicants or the affected borough president<sup>194</sup> to appeal to the city planning commission for certification.<sup>195</sup> After an appeal is filed, the city planning commission has sixty days to either: 1) certify the application;<sup>196</sup> or 2) state in writing what further information is necessary to complete the application. The affirmative vote of seven members of the commission (a majority vote) is required for certification;<sup>197</sup> but, if an affected borough president brings the appeal, the affirmative vote of five members shall suffice.<sup>198</sup>

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<sup>189</sup> *See id.*

<sup>190</sup> *See* City Planning Commission ULURP Guidelines § 2-02 (1990).

<sup>191</sup> *See* ULURP Guidelines § 2-02(a)(5).

<sup>192</sup> *Id.*

<sup>193</sup> *See* Symposium, *supra* note 2, at 869-70.

<sup>194</sup> The affected borough president shall have to the right to appeal “if the land use proposed in an application is consistent with the land use policy or strategic policy statement of the affected borough president.” N.Y. CITY, N.Y. CHARTER ch. 8, § 197-c (c) (1996).

<sup>195</sup> *See* ch. 8, § 197-c (c).

<sup>196</sup> *See id.* It is significant to note that “[u]nder the State Environmental Quality Review Act and the City Environmental Quality Review, an application cannot be certified as complete until the ‘lead agency’ deems the draft Environmental Impact Statement complete. Thus, if the lead agency has not issued a Notice of Completion for the DEIS, the Commission lacks the power to certify the ULURP application. Since the DEIS is the principal cause of pre-certification delays, the appeal mechanism’s effectiveness in stemming delays seems doubtful.” Edward N. Costikyan & Lesze U. Cornfield, *New York City’s New Charter: Land Use Regulations*, N.Y.L.J., March 14, 1990, available in LEXIS, News Group File, at \*4.

<sup>197</sup> *See* City Planning Commission ULURP Guidelines § 2-02(a)(4) (1990).

<sup>198</sup> *See id.*; ch. 8, § 197-c (c).

Certified applications must be sent within nine days to the affected community board, borough president, the city council, and if appropriate, to the borough board.<sup>199</sup>

### ***Step 3: Community Board Review***

At this step in the process, the ULURP clock begins to run. Within sixty days of receiving the certified application, the affected community board must accomplish two tasks: 1) notify the public of the application in accordance with the procedure specified in § 2-03(c) of the city planning commission's ULURP Guidelines;<sup>200</sup> and 2) conduct a public hearing and adopt and submit a written recommendation to the city planning commission, applicant, borough president, and when appropriate, the borough board.<sup>201</sup> The community board must comply with the ULURP guidelines relating to the notice and conduct of a community board public hearing, and the quorum, vote, and content requirements for a community board recommendation.<sup>202</sup> According to the ULURP Guidelines, if the affected community board fails to act within its time limit or waives its right to act, the application proceeds to the next level of review.<sup>203</sup>

### ***Step 4: Borough President Review***

Within thirty days of receiving a community board recommendation or within thirty days of the expiration of the community board's review period if the community board fails to act, the borough president must submit a written recommendation or waiver thereof to the city planning commission.<sup>204</sup> If an application involves land located in more than one community district, the Borough Board *may*, within thirty days, hold a public hearing and submit a recommendation to the city planning commission.<sup>205</sup> If the Borough President fails to act with the time limit, the application proceeds to the city planning commission.<sup>206</sup>

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<sup>199</sup> See ULURP Guidelines § 2-02 (b).

<sup>200</sup> Pursuant to § 197-c (i) of the City charter, the city planning commission is required to “establish rules providing guidelines, minimum standards, and procedural requirements for community boards, borough presidents, borough boards and the commission in the exercise of their duties and responsibilities” under § 197-c; see City Planning Commission ULURP Guidelines (1990).

<sup>201</sup> See ch. 8, § 197-c (e); ULURP Guidelines § 2-03(f)(4). These two provisions must be read together for a full understanding of the proper procedure.

<sup>202</sup> ULURP Guidelines § 2-03.

<sup>203</sup> See *id.* at § 2-03(f)(4); ch. 8, § 197-c (j).

<sup>204</sup> See ch. 8, § 197-c (g); ULURP Guidelines § 2-04.

<sup>205</sup> See ch. 8, § 197-c (f); ULURP Guidelines § 2-05; see also ch. 8., § 197-c (m) (providing that any community or borough board *may* review a ULURP application at any time prior to the city planning commission's decision on the application if in the board's judgment the application might “significantly affect” the welfare of its community or borough. However, “[t]his does not deem a community or borough board ‘affected’ for purposes of the land use review procedures.” Costikyan, *supra* note 196, at \*6).

<sup>206</sup> See ch. 8, § 197-c (j).

### ***Step 5: City Planning Commission Review***

Pursuant to § 197-c (h) of the city charter, the city planning commission must conduct a public hearing and approve, approve with modifications, or disapprove the application within sixty days of the expiration of the borough president's review period.<sup>207</sup> This requires an affirmative vote of seven commissioners.<sup>208</sup> However, the affirmative vote of nine commissioners is required if the affected borough president has recommended against an application for site selection, disposition of city owned property or acquisition and has recommended an alternative site pursuant to the fair share provisions of § 204 of the charter.<sup>209</sup> The city planning commission must file its decision with the city council and the affected board president.<sup>210</sup> In most cases, disapproval of an application by the city planning commission is final and terminates ULURP.<sup>211</sup> Generally, the commission's failure to act on an application within sixty days is deemed a denial.<sup>212</sup>

### ***Step 6: City Council Review***

The city council does not automatically review all ULURP actions that are approved by the city planning commission. Rather, the city charter requires the council to review certain actions, some only under special circumstances, and makes provision for the council to elect to review other actions.<sup>213</sup> First, under § 197-d of the charter, the city council has mandatory review of the city planning commission's approval or approval with modifications of the following ULURP actions: 1) designation or change of zoning districts; 2) housing and urban renewal plans; and 3) the disposition of residential buildings, except to non-profit companies for low-income housing.<sup>214</sup> New York State law also requires the city council to automatically

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<sup>207</sup> See ch. 8, § 197-c (h) (amended 1996); ULURP Guidelines § 2-06.

<sup>208</sup> See *id.*

<sup>209</sup> See *id.*

<sup>210</sup> See ch. 8, § 197-d; ULURP Guidelines § 2-06(g)(4).

<sup>211</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/ulpro.html>>. But see N.Y. GEN. MUN. LAW § 505(3)(b) (McKinney 1986) (providing that under state law, applications for housing and renewal plans are automatically reviewed by the city council, regardless of the commission's vote. Pursuant to this state law provision, the council can reverse the commission's disapproval of a plan only by a three-fourths vote. See *infra* Part III.B. *Step 6: Council Review.*); N.Y. CITY, N.Y. CHARTER ch. 8, § 200(b) (providing that disapproved applications for CPC special permits and zoning districts designations are subject to review by city council, *but only if* the Mayor has filed a certificate of necessity. See *infra* Part III.B. *Step 7: Mayoral Review.*).

<sup>212</sup> Costikyan, *supra* note 196, at \*8.

<sup>213</sup> *The Uniform Land Use Review Procedure* (visited March 22, 2000) <<http://www.ci.nyc.ny.us/html/dcp/html/ulpro.html>>.

<sup>214</sup> See ch. 8, § 197-d (b)(1).

review the commission's disapproval of housing and urban renewal plans;<sup>215</sup> the charter however is silent on this point.

Second, the city council is provided with a majority call-up mechanism that allows it to review what a majority wants. The council may elect by majority vote to review the city planning commission's approval or approval with modifications of the following ULURP matters: city map changes; maps of subdivisions or plattings; zoning special permits; revocable consents, franchise RFP's, and major concessions; non-city public improvements; sanitary and waterfront landfills; disposition of commercial or vacant property; disposition of residential buildings to nonprofit companies for low-income housing; acquisition of real property; and site selection.<sup>216</sup> In order to utilize this review option, the council must do so within twenty days after the commission has filed its decision.<sup>217</sup>

Finally, an affected borough president can initiate city council review under special circumstances. Under this mechanism, any ULURP application that is subject to city council elective review must be reviewed by the council if that application was approved or approved with modifications by the city planning commission and: 1) that application received an unfavorable recommendation by *both* an affected community board *and* affected borough president; and 2) the affected borough president files a written objection to the commission's approval with the council and the commission within five days of receiving a copy of the commission's decision.<sup>218</sup> This process became known as the "triple no" and it "created opportunities for useful negotiation among affected groups by using potential council review as an incentive for negotiations."<sup>219</sup>

Within fifty days of receiving the city planning commission's report on applications subject to mandatory review, majority call-up, or "triple no", the city council must conduct a public hearing, and approve, approve with modifications, or disapprove the decision of the commission.<sup>220</sup> A majority vote is generally required to overrule the commission's approval.<sup>221</sup> If the council fails to act, or fails to act by the required majority vote, the council is deemed to have approved the decision of the commission.<sup>222</sup>

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<sup>215</sup> *See supra* note 211.

<sup>216</sup> *See id.* at § 197-d (b)(3).

<sup>217</sup> *See id.*

<sup>218</sup> *See* ch. 8, § 197-d (b)(2); ULURP Guidelines § 2-07.

<sup>219</sup> Symposium, *supra* note 2, at 861.

<sup>220</sup> *See* ch.8, § 197-d (c).

<sup>221</sup> *See id.*

<sup>222</sup> *See id.*

If the council decides to approve an application with modification, the following process must be followed: 1) the council files the proposed modification with the city planning commission; 2) within fifteen days, the commission must indicate whether the modification is of such significance that additional environmental review is necessary or that additional review pursuant to ULURP is required.<sup>223</sup> The fifty-day time period for council action is tolled during the commission's fifteen-day review.<sup>224</sup> If the commission decides that additional review is needed, then the council cannot approve its own modification.<sup>225</sup> If no additional review is needed then the council can adopt the application with the modification.<sup>226</sup> According to one commentator, the approval with modification process reflects the city planning commission's substantial legislative-like powers under the charter:

[I]n effect, the commission can not only bar the council from altering the commission's approvals or approvals with modification by finding that the council's modification would require further ULURP or environmental review, but it can apparently bar the council from adopting the proposal that the council desires to adopt. This is so because there is no provision for the council to submit the proposed modification to a second ULURP review, although we suppose the applicant could resubmit a second ULURP application, including the modification, and start all over again. Absent such a resubmission, the Council's modification is barred. Thus, in effect, the new charter enables the *commission* to decide whether a *legislative* modification should be adopted - like a non-overridable veto.<sup>227</sup>

In any case, all decisions of the council must be filed with the mayor prior to the expiration of their applicable review period.<sup>228</sup> Actions of the council are final unless vetoed by the mayor in accordance with § 197-d (e-g) of the city charter.<sup>229</sup>

### ***Step 7: Mayoral Review***

The mayor can veto any city council action within five days after the council has filed its decision.<sup>230</sup> The mayor can also veto applications that were approved by the city planning commission that the Council failed to act on within the required time.<sup>231</sup> Finally, the mayor

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<sup>223</sup> See ch. 8, § 197-d (d).

<sup>224</sup> See *id.*

<sup>225</sup> See *id.*

<sup>226</sup> See *id.*

<sup>227</sup> Costikyan, *supra* note 196, at \*10.

<sup>228</sup> See ch. 8., § 197-d (e).

<sup>229</sup> See *id.*

<sup>230</sup> See *id.*

<sup>231</sup> See *id.* at § 197-d (f).



can veto ULURP applications that are not subject to city council review under the charter by filing a written objection to such decision of the commission.<sup>232</sup> But, the council, by a two-thirds majority, can override any mayoral veto.<sup>233</sup>

## **VI. Brief Summary Comparison**

Local land use control in New York City truly constitutes a completely separate and unique land use system. As shown above, its governmental structure and distribution of power among agencies is different from the basic structure and processes of other local governments in the state. And it even handles the basics of land use quite differently. While barely finding the need to utilize its basic local subdivision regulations, it has not even adopted formal site plan regulations, relying in both instances on the specialized procedures and requirements of ULURP. Additionally, special uses are of such significance in New York City that it takes two local agencies to review and approve different types of special use permit applications. Finally, the extensive and participatory ULURP review process makes New York City land use control unique in itself.

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<sup>232</sup> *See id.* at § 197-d (g). *See supra* note 211.

<sup>233</sup> *See* ch. 8, § 197-d (e-g).