



HOT BUTTON LAND USES

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Can a Use Be Prohibited?

- “Exclusionary zoning” – regulations that tend to exclude low- or moderate-income housing via:
 - Large lot or high minimum flood area requirement
 - Excluding multi-family dwellings or manufactured housing
 - *Berenson v. Town of New Castle* (1975)
- Most non-residential uses may be zoned out if the exclusion is supported by the comprehensive plan
 - Exceptions related to First Amendment: religious uses, adult uses, sign content



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Spot Zoning

- Parcel can be rezoned to allow use supported by comprehensive plan
- Zoning changes must be reasonably related to legitimate public purposes

“the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners . . .”

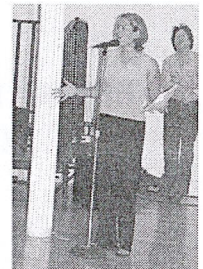
Rogers v. Tarrytown, 302 NY 115, 96 NE2d 731 (1951)

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Inform and Involve

- Unearth controversy early
 - Receptive to change
 - Before the public feels steamrolled
- Potentially controversial projects
 - Hold informational meetings with residents and stakeholders



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Positive Press for Controversial Issues

Bad press is usually a result of missing detail, not bias:

- Inaccurate, or wrong conclusions from facts
- Accurate, but unfavorable tone
- Overly selective or unbalanced reporting
- Blurred lines between fact and opinion



Remedy with non-confrontation

- One spokesperson controls message
- Be prepared to correct false assumptions
- Response plan: phone, press release, news conference

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Community Opposition

Generally not a valid basis for denying most applications—if the use is already permitted by zoning, and requirements are met



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Comprehensive Planning

- Community engagement builds consensus on land use issues
- Reduces controversy
- Legal support for decision-making
- Infrastructure investments
 - Identifies areas for municipal & private investment



Local Governments with Comprehensive Plans:

- 94% of Cities
- 70% of Villages
- 60% of Towns

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Moratoria

Adopt moratorium law to:

- Update comprehensive plan to consider new uses
- Update regulations to prevent:
 - Hasty decisions
 - Unplanned & inefficient growth
 - Construction inconsistent with comprehensive plan



Wrong reasons for moratoria:

- Slow development hoping developer will go away
- Halt development while municipality considers buying land

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HOT BUTTON USE EXAMPLES

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Religious Land Use & Institutionalized Persons Act (RLUIPA)

- Religious uses are not exempt from land use regulations
- Municipalities may not:
 - Place "substantial burden"
 - Zone out of residential districts
 - Prohibit if impact similar to other allowed uses
- May regulate characteristics of physical environment: lot coverage, parking, signage



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Manufactured Homes

NY Ex. Law, Article 21-B, Title 2 (11/20/15) considers manufactured home equal to single family dwelling "Identical Development Specification and Standards"

Can regulate:

- Health, safety, general welfare
- Zoning (lot size, setbacks as part of regulating single-family residential)
- Skirting, as this is an optional installation

Can't regulate:

- Completely exclude as single-family dwelling
- Foundations
- Based upon age if home passes required NYS Uniform Fire Safety and Building Code inspections



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Home Day Care

Enforceable: fire, building and health regulations

Not enforceable: anything beyond underlying residential use such as:

- Minimum lot size
- Minimum floor-space per child
- Off-street parking
- Off-street pickup/drop-off areas
- No outdoor play area after ___ PM

Definitions are important:

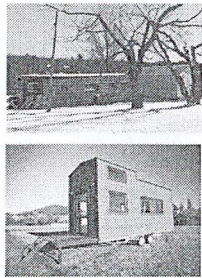
- "Family home day care" and "Group family home day care" allowed by right in single-family and multi-family dwellings
- "Child day care center" and "school age childcare" are different, and fully subject to zoning

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Tiny Homes and Shed “Dwellings”

- **Tiny home “dwelling”:** 400 SF or less excluding a loft, meeting emergency escape/ rescue openings per Residential Code Appendix Q
 - Principal vs. accessory use
 - Permanent vs. temporary
 - Requiring a foundation, wheel removal
 - Connections to utilities (water, sanitation)
- **Shed dwellings:** pre-assembled, low-cost structure converted to tiny homes or permanent additions often without permits
 - Does not meet NYS Uniform Code
 - Not a “dwelling”



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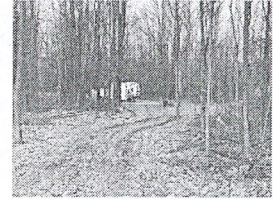
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Recreational Vehicles

RVs, motorhomes, campers, house trailers or travel trailers

Common concerns:

- Storage
- Residential use on vacant or improved lots
- Sewage
- Aesthetics
- Tax Implications



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Is RV Residential Use Legal in NY?

- RVs don't meet manufacturing requirements for permanent occupancy NYS Uniform Fire Prevention and Building Code
- RVs aren't capable of being well-heated; don't meet NYS Energy Conservation Construction Code
- RVs don't meet US Dept. of Housing and Urban Development (HUD) code regarding manufactured housing

Recommendation:

- Don't give certificates of occupancy to RVs as if they were permanent (like manufactured home)
- Regulate use and storage through local law/ordinance

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Regulating Recreational Vehicles

Usage regulations may include:

- General prohibitions
- Usage on site – limit on # of RVs and # of calendar days, address of sewerage
- Location – only certain zones and on-site restrictions
- Storage regulations
- Registration requirements
- Flood area regulations

Storage regulations include:

- Enclosure and/or screening requirements
- Limits on parking location, time and number stored
- May vary by district (densely settled areas vs. rural lots)
 - Street vs. yard vs. driveway, setbacks, and # of calendar days

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Home Occupations

To meet NYS Residential Code AJ102.5:

- Must be wholly within primary structure, not exceeding 15% floor area
- No more than 1 person not residing there may be employed
- Inventory/supplies not to occupy more than 50% of permitted area
- May not involve any hazardous operation
- Activities exceeding the Residential Code must meet additional nonresidential Uniform Code standards



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Home Occupations

Other Considerations:

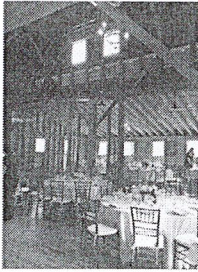
- Signage
- Employees
- Customer parking and traffic
- Residential character of neighborhood
- Critical mass of business in commercial districts
- Percentage of property in zoning permitted for business
- Hours of operation
- Location of business equipment, screening
- Delivery frequency



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"Barn" Event Facilities



May be protected as part of a farm operation if:

- Directly relate to sale/ promotion of products produced on farm (at least 51% on-farm produced livestock and crops including grain, hops, grapes/fruit/juice);
- Incidental and subordinate to retail sale of beverage/product on-site;
- Hosted by farm or farm customers (not outside, unrelated parties); and
- Feature beverage/product produced at the farm

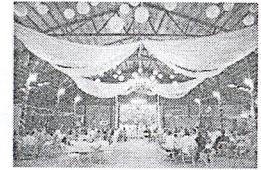
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"Barn" Event Facilities without Ag District Protection

- If barn is not in State Ag District or barn rental revenue exceeds that of food production, municipalities can restrict in zoning:

- Location
- Hours of operation
- Number of events per month
- Prohibit regular rentals of farm buildings for weddings

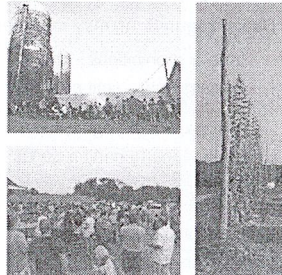


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Farm Breweries, Wineries, Etc. in State Ag District

- State Alcoholic Beverage Control Laws define farm cidery, farm distillery, farm winery and farm brewery
- Although State Liquor Authority license may allow sale of alcoholic beverages not made from crops grown by farm, they are not part of a farm operation
- Production and sale not necessarily protected under AML Article 25AA § 305-a

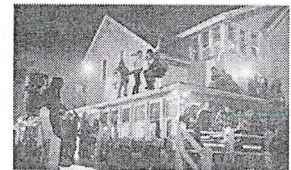


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Short-Term Rentals in NYS

- No requirement for local gov't to acknowledge use; may define, prohibit and/or regulate as they choose
- Definitions vary, but commonly a rental of less than 30 days with permanent provision for living, sleeping, eating, cooking, sanitation



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Short-Term Rental Housing

Pros

- Supplemental income to owners
- Adds tourism infrastructure; often less expensive lodging easier for families/groups
- Interesting tourist experience for guests
- Potential improvement of blighted properties

Cons

- Commercial use in residential district
- Transient guests
- Excessive noise
- Increased traffic
- Unfair competition to hotels
- Lost lodging tax revenue
- Inflated costs/loss of long-term housing

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NYS Short-Term Rental Law

- Established rental registry to be administered by counties; information shared with municipalities and NYS
 - Stay dates, number of guests and fees charges
- Counties can pass a local law before December 31, 2025 to opt out or collaborate with other counties on registries
- In those that don't opt out, either host or hosting service will have to register with the county
 - If they don't register, county will be able to impose fines on host and booking agency with assistance of attorney general
- Those that opt out will receive sales taxes but not occupancy taxes for STRs
- Law includes some fire safety and emergency requirement and additional insurance

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Short-Term Rental Sample Restrictions

Quantitative	Operational
- Clearly define - Restrict by zoning district - Cap total annual number of rental nights - Cap number of permits - Restrict by proximity	- Advertisements, signage - Rental period & frequency - Noise, trash disposal - Emergency access - Mandatory designated representatives - Occupancy Limits - Parking

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Pet Facilities and Uses

- Provide clear definitions to distinguish uses: shelter, kennel, day care, grooming, breeding, veterinarian, hospitals etc.
- Potential regulations:
 - Number of animals
 - Overnight vs. daycare only
 - Increased setbacks; minimum lot size
 - Address noise – buffer, setbacks for outside activity areas, hours outside on run
 - Emergency response plan



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Pet Facilities – Kennels

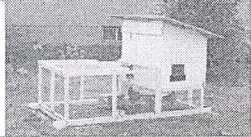
- Not defined or regulated by NYS Ag & Markets (they only “protect” livestock, not dogs or cats)
 - Ag & Markets regulates pet dealers (sellers and breeders)
 - Determines thresholds for retail and wholesale, requires dog licensing, etc.
- Municipalities can restrict kennels and pet dealers but can't be so restrictive as to completely ban breeding and sale of dogs and cats
 - Municipal regulations cannot be less restrictive than Ag & Markets Law § 407

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Backyard Chickens

- Personal use increasingly popular in residential and urban areas
- Regulations can mitigate concerns
- Personal use exempts state licensing and inspection requirements
- State regulations for avian diseases apply to all chicken owners



Consider regulating:

- ✓ Number of birds based on yard area
- ✓ Gender
- ✓ Setbacks for coops and pens
- ✓ Feed storage location
- ✓ Fences
- ✓ Cage size, height, materials

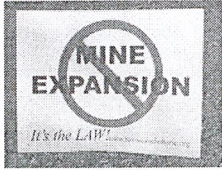
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Mining

Regulate with zoning:

- Restrict to districts or municipal-wide
- Setbacks from:
 - Property boundaries
 - Public R-O-W
- Special use permit with conditions:
 - Ingress & egress
 - Truck routes
 - Reclamation as determined by DEC



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DEC Mining Permit Process

- Activity removing more than 750 cubic yards of material in a twelve period requires a Mined Land Reclamation Permit from NYS DEC
- Municipalities may submit recommendations to NYS DEC as part of review process
 - Setbacks
 - Dust and noise control
 - Hours of operation
 - Barriers restricting access
 - Truck routes and trips per day




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Drones (Unmanned Aircraft Systems)

- Federal Aviation Administration (FAA) regulates airspace; all aircraft need FAA approval
- State and local laws regulate:
 - Location on ground to launch, operate, and land
 - Their own agency's drone flight operations (gov't pilots may operate under FAA's Part 107 or federal Certificate of Authorization)
- Attempts to regulate aircraft under FAA jurisdiction were unsuccessful when challenged



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FAA CFR Part 107: Small UAS (less than 55lbs)

Commercial use

- Must use below 500 ft/under 100 mph
- Must use within "line of sight"
- Must only be operated during day
- Must pass FAA's Aeronautical Knowledge Test for Remote Pilot Certificate

Recreational use

- Should use below 400 ft/under 100 mph
- Must use within "line of sight"
- Must use FAA's recreational model aircraft rules (should not use within 5-mile radius of airport; should not be operated recklessly)
- Must pass The Recreational UAS Safety Test (TRUST)

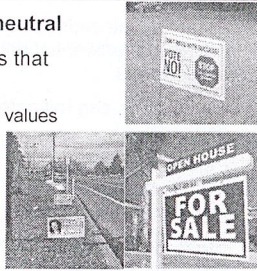
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Temporary Signs

Regulations should be content-neutral

- Regulate physical characteristics that impact:
 - Traffic safety, aesthetics, property values
 - Size, height & location:
 - Ban all signs on public property
 - Permits: apply to all signs
 - Duration: apply evenly
 - Fees: relate to administrative costs



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Digital Signs

- More popular because they are less cost prohibitive

Potential issues:

- Can be aesthetically incompatible
- Brightness and changing copy can be distracting
- Once approved, difficult to enforce



Potential Regulations:

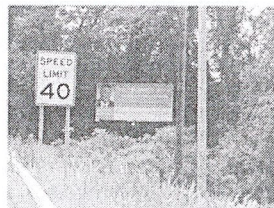
- Restrict location, number and size
- Require copy to be static and cap the number of changes, examples:
 - Must remain static for a least 8 seconds
 - No more than one copy change per 24 hours
- Regulate brightness/light trespass requiring automatic dimming based on ambient light and cap nits differentiating daylight and after dark
- Require signage to be turned off after business closes or 9 PM

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Billboards

- A form of "off-premises" sign
- Can't regulate content (1st Amendment protection)
- Regulate size & location:
 - State Uniform Code
 - Zoning
 - Site Plan Review
 - Local Permit
- NYS DOT regulates signs along interstate & primary highways
 - Municipality may be more restrictive than DOT



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Junk

- Require junkyards to be licensed
- Limit locations through zoning
- Adopt junk storage regulations to address household debris, not just abandoned vehicles

OR ENFORCE

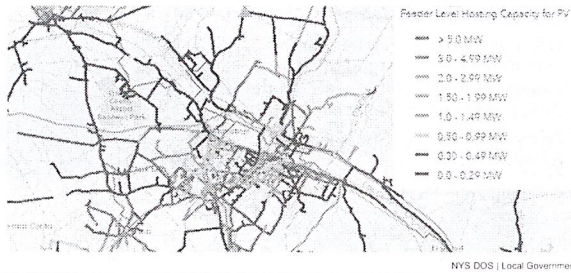
- NYS Motor Vehicle Junkyard Law (General Municipal Law § 136)
- NYS Uniform Fire Prevention Building Code (§ 302.8 Motor vehicles)



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Utility Hosting Capacity Maps



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Climate Leadership and Community Protection Act (CLCPA)

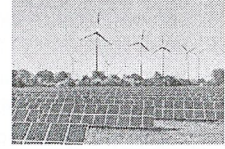
Reduce Greenhouse Gas emissions

- 70% renewable electricity by 2030
- 100% zero-emission electricity by 2040
- 40% reduction in statewide GHG emissions from 1990 levels by 2030
- 85% reduction in statewide GHG emissions from 1990 levels by 2050
- Net zero emissions statewide by 2050

Increase renewable sources to 70% by 2030

Develop or support:

- 10 GW of solar by 2025; and
- 3000 MW of energy storage capacity by 2030
- 9000 MW of offshore wind by 2035

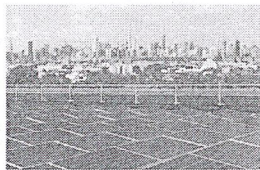


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Renewable Action Through Project Interconnection and Deployment Act (RAPID), April 2024

- ORES to Department of Public Service for administrative and organizational efficiency and subjects any new rulemaking by ORES to approval by NYS Public Service Commission
- Consolidates ORES's siting process and NYPSC transmission siting process into Public Service Law Article VIII regime
- ORES Becomes the Office of Renewable Energy Siting and Electric Transmission



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RAPID Act

- Expedites the environmental review and permitting of major renewable energy facilities and electric transmission facilities
- Creates uniform standards and conditions for the siting, design, construction and operation of major renewable energy facilities (MREF)
- Requires that municipalities receiving notice of an application filing submit a statement to ORES indicating whether the proposed project is designed in compliance with local laws and regulations regarding the environment and public safety

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Utility Use Variance Standard

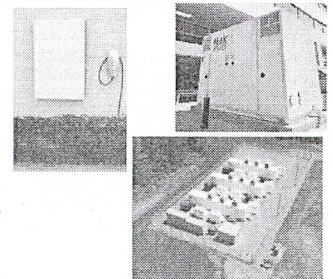
- Consolidated Edison v. Hoffman (1978): hardship becomes inability to provide service without relief "the utility must show...a public necessity...and that there are compelling reasons, economic or otherwise, which make it more feasible to modify the plant..."
- Cellular One v. Rosenberg (1993): established criteria for private utility to be entitled to lower variance standard
- Freeport Solar v. T of Athens ZBA (2022): Appellate Court directed ZBA to grant variance for solar facility, found the ZBA had erred in its finding that there was no public necessity for this project. Cited CLCPA.

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Battery Energy Storage

- Lithium ion: minimal maintenance, low cost, efficient
- Accessory for residential, commercial or utility scale
- Make renewables more viable and help with peak demand

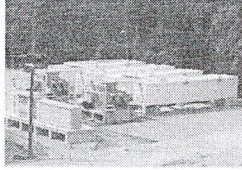


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Battery Energy Storage

- Batteries can last up to 20 years
- Important to buy from reliable sources because lower quality products can catch fire
- Uniform Code requires Battery Management Systems
- Cold water can be used to extinguish BESS fires
- No toxic gas or runoff. Noise is from cooling equipment

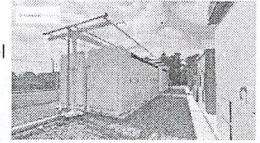


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Battery Energy Storage Regulation

- NYSEDA's Guidebook for Battery Energy Storage Systems
- Tier 1: Accessory to residential, commercial, encouraged to be exempt from site plan review, Model BESS permit in guidebook
- Tier 2: Utility scale. Special use permit
 - Signage with 24-hour emergency contact information; 10 feet clearance of combustible vegetation; 60 dba from outside walls; 7 ft fence



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Data Centers

- Building that houses computing infrastructure
- (a)...central housing of server racks that are used for the interconnection and operation of information technology and network telecommunications equipment for the provision of data storage, data processing, or data transport services; and (b) all related facilities and infrastructure for power distribution, environmental control, cooling....
- Moratorium on new hyper-scale data centers in NYS



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Data Centers

- Corporate; colocation data centers; telecom data centers; hyperscale data centers, AI
- Different from crypto processing but similar impacts: structure, heat, energy and water consumption
- Challenges: high energy consumption; cooling systems (which require energy and potentially water); constant operation often with noise; small number of jobs
- Benefits: property tax revenue; limited traffic and land impacts



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Data Centers

- Building that houses computing infrastructure
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- Corporate; colocation data centers; telecom data centers; hyperscale data centers, AI



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Data Centers

Challenges

- High energy consumption
- Cooling systems often require significant amounts of water
- Noise from operation and potential on-site energy production using fossil fuels
- Potential air pollution
- Heat
- Small number of permanent jobs

Benefits

- Property tax revenue
- Reuse of brownfields and other underutilized properties and buildings
- Limited traffic compared to some other industrial uses
- Opportunity to negotiate host community benefits

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Data Centers

	Building Area	Energy Usage	Comparable Household Energy Use	Water Use	Comparable Household Water Use
Micro / edge data centers	Up to a few 1,000 SF	100-150kW	80-120 avg. households		
Enterprise size / Colocations	50,000-600,000 SF; 150,000 SF Avg.	5-10 MW	4,000-8,000 avg. households	300,000 gallons per day	1,000 households
Hyperscale	100,000s - 1 Million SF	50-100 MW	40,500 - 81,000 avg. households	Up to 5 million gallons per day	Municipality of 10-15,000 people

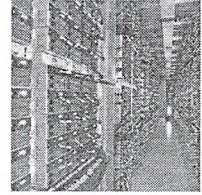
Source: "The Physical Footprint of Artificial Intelligence," *Zoning Practice*, American Planning Association October 2025

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Governor's Moratorium on Data Centers

- Executive Order 62
- NYS Dept. of Public Service to study impacts in a SEQRA Generic Environmental Impact Statement (GEIS)
- One-year moratorium on issuing NYS DEC permits for "hyperscale" data centers of 50+ megawatts
 - Facilities that use uninterruptable power supplies, and specialized cooling systems designed for high computer loads for data storage, cloud computing on a continuous cycle
- Exception: Facility used for manufacturing, research, education, or medical care for institutions not limited to accredited colleges and universities

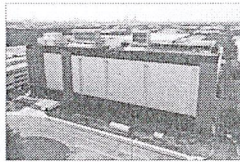


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Regulatory Considerations

- Data center infrastructure needs:
 - Land and/or buildings for adaptive reuse
 - Energy – transmission line capacity and power source
 - Water unless it's a closed-loop system
 - Fiber optic network
- Tools to off-set costs
 - Higher water rates for use of public water systems
 - Require fiber optics to be installed throughout community
 - Host community benefit agreements for other infrastructure or amenities
 - Potential to capture heat and recycle for use in nearby buildings



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Possible Regulatory Approaches

- Principal use vs. ancillary
- Permit with special use permit in areas with nonproductive land or underutilized sites, compatible uses
- Consider land consumption – allowing height can reduce land need
- Setbacks and screening
- Noise limits
- Require evidence that adequate power supply exists for size of facility
- Regulate water-based cooling needs for both consumption and discharge
- Regulate battery back-up power supplies
- Require a decommissioning plan
- Incorporate host community benefit agreements

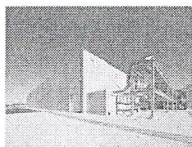


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Data Centers – Proposed State Regulations

- S6394A, in Senate Environmental Conservation Committee
- To regulate energy consumption by data centers; require annual disclosure reporting; prohibit incentives in fossil fuel power purchase agreements with utilities; direct the public service commission to establish a data center surcharge and discount plan for residential users.
- Focus is on energy consumption impacts



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NYS Adult (21+) Use Cannabis

Marijuana Regulation and Taxation Act

- Expands NY's existing medical marijuana program
- May possess, display, purchase, obtain or transport up to 3oz of flower, 24g of concentrated cannabis
- Smoking cannabis permitted in public wherever tobacco is allowed (subject to local restrictions)
- Consumption not allowed in schools, federal lands, workplaces, or vehicles

Two types of retail sites:

- Dispensaries:** storefronts to buy product for home consumption
- Adult use consumption sites:** lounge-like locations for purchase and use on-site

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Cannabis, Retail Dispensary Location Regulations	
School	Can't be on same road and within 500 ft from the entrance of a school on the same street
House of Worship	Can't be within 200 ft of the entrance of a building on the same street used exclusively as house of worship
Town, city, or village with pop. over 20,000	Can't be within 1,000 ft of another retail dispensary, microbusiness retail location, or ROD retail co-location
Town, city, or village with pop. under 20,000	Can't be within 2,000 ft of another retail dispensary, microbusiness retail location, or ROD retail co-location

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Cannabis, Municipalities May Not...

- Opt-out of legalization
- Opt-out of grow, testing or packaging facilities
- Deny approved business operational before establishment of school, house of worship, or public youth facility
- Impose special fee specific to cannabis businesses
- Set indoor ventilation/odor control unless also applicable to all indoor business allowing tobacco smoking or vaping



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Cannabis, Municipalities May Regulate

- Reasonable zoning, hours of operation (not 2 AM-8 AM or less than 70 hours/week)
- Visual/architectural integrity in historic districts
- Traffic control (pedestrian and vehicular)
- Odor
- Noise
- Distance requirements; measurement thereof



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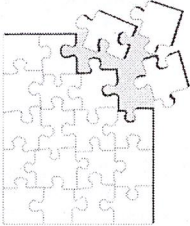
DEFENDING YOUR DECISIONS

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The Record

Materials in the record tell the story of the application and typically include:

- Application & supporting documentation
- Newspaper notices
- Meeting minutes
- SEQR materials
- Public hearing testimony
- Written submissions from public
- Expert opinion
- Decision, conditions, findings



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Findings

- Describe application's reasons for denial or approval
 - May support why conditions imposed
 - May support decision if challenged in court
- Conclusory statements (i.e., "standards were not met") aren't "findings"
- Decision based on conclusory statements not supported by factual information in record will be struck down in courts

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