

# Philadelphia's Councilmanic Prerogative

How it works and why it matters

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## About this report

This report was produced by The Pew Charitable Trusts in partnership with PlanPhilly, a news website dedicated to covering design, planning, and development issues in Philadelphia. PlanPhilly is a project of WHYY and NewsWorks. The report was researched and written by journalists Patrick Kerkstra, Jared Brey, and Casey Thomas. It was edited by Matt Golas of PlanPhilly and Larry Eichel of Pew's Philadelphia research initiative, as well as Elizabeth Lowe, Daniel LeDuc, Bernard Ohanian, and Carol Hutchinson of Pew. The report was designed by Kodi Seaton.

## Acknowledgments

In producing this report, the authors interviewed more than two dozen officials from Philadelphia Mayor Michael Nutter's administration, members of Philadelphia City Council and council staffers, for-profit and nonprofit developers in the city, neighborhood organization leaders, development consultants, academics, zoning lawyers, and lobbyists, all of whom spoke on the understanding that they would not be named. Research into the practices of other cities included interviews with about a dozen planning department staff members and veteran journalists in those cities.

John Kromer, a housing and development consultant who served as Philadelphia's director of housing from 1992 to 2001; Joseph P. McLaughlin Jr., director of the Institute of Public Affairs and the Center on Regional Politics at Temple University; and Kenneth Steif, a doctoral candidate in the City and Regional Planning Program at the University of Pennsylvania, were independent reviewers of this report.

## About The Pew Charitable Trusts

The Pew Charitable Trusts is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public, and invigorate civic life. Pew's Philadelphia research initiative provides timely, impartial research and analysis on key issues facing Philadelphia for the benefit of the city's residents and leaders.

After the publication of this report, Pew revised Figure 9 to make it clearer and more accurate. The new version is more precise in diagramming the overall zoning approval process and the sequence of the various steps, including the opportunities for the exercise of councilmanic prerogative.

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The Pew Charitable Trusts is driven by the power of knowledge to solve today's most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and invigorate civic life.

## Overview

Philadelphia's government is built around the concept of a "strong mayor," an elected chief executive with broad powers to make policy, run the city, and administer the budget.

But when a developer wishes to build a skyscraper, a block captain wants to turn a vacant lot into an urban garden, or a nonprofit organization intends to construct low-income housing, the mayor's role is often secondary.

In Philadelphia, the vast majority of land use decisions, small or momentous, are made individually by City Council's 10 members, who represent geographical districts across the city. (The remaining seven members are elected at large.) The practice, which is grounded in legislative tradition rather than law, is known as "councilmanic prerogative." It comes into play largely in the disposition of city-owned properties and in zoning matters, regardless of whether those decisions formally come before City Council as a whole.

Critics contend that the use of councilmanic prerogative, which frequently occurs out of the spotlight, undermines government accountability and transparency. They argue that it too often is used arbitrarily, that it hinders development, that it increases public mistrust of government, that it works to the advantage of the politically connected, and that its exercise sometimes allows narrow concerns to get in the way of citywide goals.

In council's view, however, prerogative appropriately places power over projects involving land use in the hands of elected representatives of the communities that are most directly affected. District council members consider management of development projects to be one of their most basic and important responsibilities. By using prerogative, they say, they can stop or alter projects that are not good fits for neighborhoods, make quality developments even better, and, in some instances, secure funding for neighborhood organizations or initiatives. "Nobody knows a community better than the district council person that represents it," says City Council President Darrell L. Clarke. "It's just the simple reality."

Community groups and developers, the people affected most directly by prerogative, have a more mixed view, dependent largely on outcomes of specific proposals and relationships with individual council members. Some community groups and builders work in concert—much if not all of the time—with district council members and City Planning Commission staff to shape developments in ways that respond to neighborhood concerns. Others consider prerogative an unwelcome intrusion into a process that some think should be apolitical.

This report on councilmanic prerogative is grounded in extensive analysis of city records and interviews with dozens of government officials, developers, political figures, academics, and community advocates.

The analysis revealed that:

- The use of prerogative, when invoked by a district council member, is unfailingly honored by the rest of council, even when the project in question is widely considered to be of citywide importance. There are no recorded cases in recent years of a prerogative vote going against a district council member. In the six years studied for this report, 726 of 730 of those decisions were unanimous, and a total of six dissenting votes were cast.
- Although prerogative is often exercised to block the sale of city-owned land at least temporarily, the lack of available data makes it difficult to determine whether prerogative is a principal factor delaying the pace of those sales. The city's land disposition process rarely moves quickly; even when council approves sales, transactions can take many months or even years to conclude. And there have been relatively few documented cases in recent years of prerogative being used to block land sales permanently.

- The December 2013 legislation that created a land bank, an agency that will oversee disposition of city-owned vacant land, ensures that prerogative will remain a central feature of land disposition in Philadelphia. In addition, the city's new zoning code, adopted in 2012 in an attempt to streamline and simplify development, has not reduced council's involvement in zoning decisions.
- Prerogative is not unique to Philadelphia. Legislative courtesy, as it tends to be called elsewhere, is a relatively common political tradition, particularly in large older cities such as Chicago and New York where representatives are elected by district. The practice is less common where all local representatives are elected at large. Philadelphia has a more robust prerogative tradition than most cities, owing to such factors as decades of one-party rule, a large supply of publicly owned land, and a long legislative tradition of adjusting the zoning code.

Through prerogative, district council members in Philadelphia are empowered to play a large, frequently determinative role in major building projects, enabling them to shape the city's landscape in lasting ways.

Many have used that influence to persuade builders to alter proposed developments—for instance, by reducing scale or adding parking spaces—to make them more pleasing to the residents who live around them and more suitable for the neighborhood. Others employ prerogative as a hedge against rapid gentrification. Some use the leverage to induce developers to offer “community benefits,” such as financial assistance to neighborhood groups.

Much of the exercise of prerogative happens behind the scenes, a practice that some developers and community leaders consider one of its most troubling aspects. When prerogative is used to halt a proposed development at an early stage, there typically is no public record to document and explain what happened. This makes it difficult to gauge the full extent of prerogative in Philadelphia and the degree to which its exercise enhances or suppresses civic engagement. In addition, some developers say, prerogative creates opportunities for unethical behavior and at least the sense that campaign contributions are part of the price of doing business. Although nothing improper happens in the vast majority of cases, it is worth noting that council's control over land use played a role in the cases of all six council members convicted of wrongdoing since 1981.

## Background

Councilmanic prerogative is, at its core, an informal but enduring agreement among district council members that can be summarized as “I won’t mess with your turf if you won’t mess with mine.” On local land use matters, the 10 district and seven at-large council members reliably follow the lead of the member who represents the neighborhood in question.

Prerogative is rooted, albeit distantly, in language within state law and the Philadelphia city charter that grants to the whole of council the authority over the sale of a large percentage of city-owned land, and more limited but still significant power over the zoning code and ordinances related to the physical development of the city.

For instance, Chapter 8-205 of the City Charter forbids the Department of Public Property—which owns a majority of the city’s vacant land—from selling or exchanging “any real estate belonging to the City or grant any license, easement, right of way or other interest over or in such real estate without specific authority from the Council so to do.” Similarly, under the state Urban Redevelopment Law of 1945, disposition of land owned by the Philadelphia Redevelopment Authority is subject to council review and approval before it can be sold.

Those powers are the purview of the entire council; neither the charter nor state law mentions council prerogative or gives a district council member veto authority over land use decisions. In recent years, however, both the city code and formal written policies have begun to acknowledge the political reality of district council prerogative, a development that may further cement the practice’s central role in land use decisions. And district council members can exercise prerogative simply by refusing to introduce legislation that would allow a development they oppose.

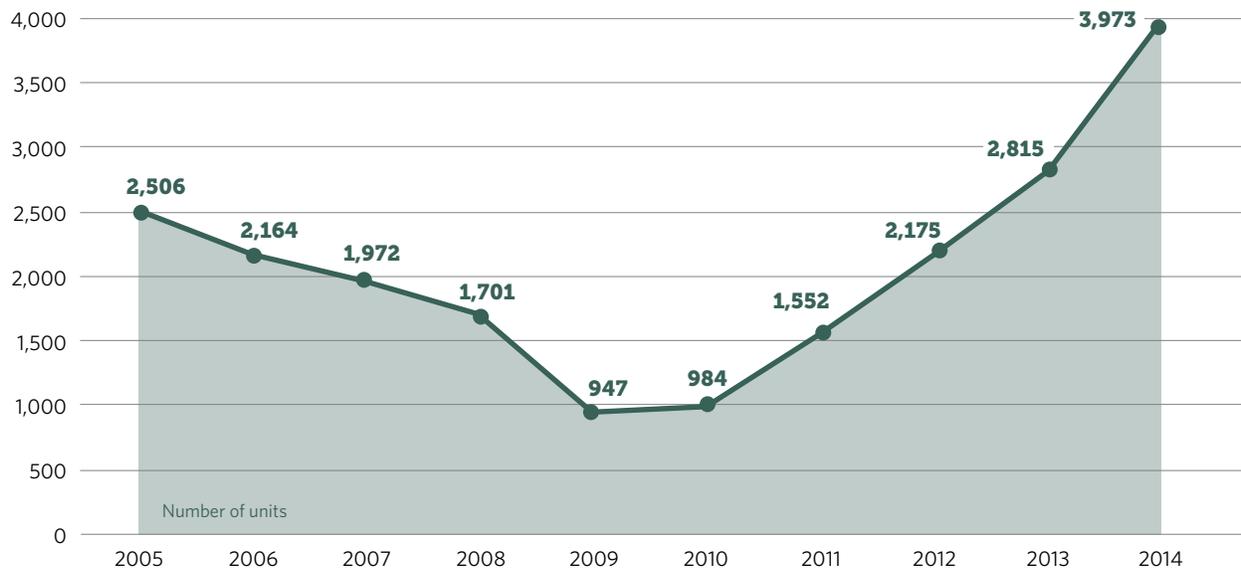
The practice has been an all-but-unquestioned power of Philadelphia’s district council members for as long as the current political class can remember, and council control over land use has been a fixture of city law since at least 1919.<sup>1</sup> Veteran council members consider prerogative to be nothing more than a form of legislative courtesy, which holds that representatives should not seek to thwart the will of their colleagues on matters considered to be strictly local.

Legislative courtesy tends to be strongest in lawmaking bodies where interparty competition is limited, as is the case with Philadelphia’s council. But even in chambers as divided as the U.S. Senate, the practice has survived. For instance, the president must secure the permission of home state senators before appointing federal judges for that state. Although no constitutional language requires the president to do so, there is long-standing tacit agreement among senators not to vote for judicial nominees who lack the support of both home state members.

Even though prerogative is nothing new in Philadelphia, scrutiny of the practice has grown in recent years. Several high-profile controversies involving proposed developments that were scuttled or threatened by prerogative have received extensive news coverage in the past year. The practice has also been thrust into the spotlight by public discussion over major policy reforms—most notably the rewritten zoning code and the new land bank, which will consolidate most publicly owned land under one agency and establish a single process for its disposition.

Council is using prerogative to create sweeping zoning overlays that prohibit common commercial activities in selected areas of the city. The pace of housing construction has surged in recent years; building permits were issued for more units in 2014 than any year since at least 1990. (See Figure 1.) The renewed construction activity increases demand for zoning variances and the sale of city-owned vacant land, the two most common prerogative veto points.

Figure 1  
Residential Building Permits Issued, 2004-14



The growth in construction, as reflected in the big increase in residential building permits since the recession year of 2009, has created greater demand for zoning variances and sales of city-owned vacant land, allowing for more frequent exercise of councilmanic prerogative.

Source: U.S. Census Bureau, "Building Permits." The bureau uses data supplied by the Philadelphia Department of Licenses and Inspections.

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### The Coming of the Land Bank

Philadelphia is the largest U.S. city to have established a land bank, an entity designed to help put thousands of vacant properties to productive use.

The theory is that a single entity with one way of doing business is better positioned to deal with vacant land and empty buildings than are the multiple agencies that have long managed the city's portfolio. Among those agencies are the Philadelphia Redevelopment Authority, the Department of Public Property, and the Philadelphia Housing Development Corp. The land bank ultimately will deal with tax-delinquent properties as well as with those owned by the city.

Land banks are in place in dozens of jurisdictions across the country. Philadelphia's version was created in a unanimous vote by City Council on December 12, 2013, after years of advocacy by members of the Campaign to Take Back Vacant Land and the Philly Land Bank Alliance.

*Continued on next page*

The land bank's strategic plan, approved by council and the City Planning Commission, contains seven core goals:

- Return individual lots and buildings to productive use.
- Promote equitable community development, including affordable and accessible housing.
- Extend private investment.
- Contribute to long-term economic vitality for local businesses on commercial corridors.
- Reinforce open space initiatives and urban agriculture, including existing and new community gardens.
- Support clear and transparent operations of the land bank.
- Actively market vacant bank properties.

As of July 2015, the process of getting the land bank operational was not complete. Work in progress included determining staff and budget needs, conveying properties from city agencies, and persuading council members to permit the transfer of properties in their districts to the bank—something they are not required to do. In addition, the procedures for selling tracts to prospective users, including the exercise of councilmanic prerogative, were still to be developed.

How it all works out remains to be seen. But the strategic planning and transparency measures required in the enabling legislation have the potential to create a level of accountability that often has been missing from vacant-land dispositions in Philadelphia.

A proposal that would have weakened prerogative's role in the new land bank—bypassing a committee that approves most land sales—did not make it to a vote last year, and recent changes may have actually strengthened the practice. For example, council in 2012 enacted an ordinance requiring that it approve any bike lanes that eliminate parking spots or lanes of vehicle traffic. Given prerogative, that approval will effectively fall to the council member representing the neighborhood.

## **How prerogative has worked in Philadelphia**

Councilmanic prerogative is most commonly and potently exercised on matters of land disposition and zoning. But how council members use this power has been largely opaque, even for many of the developers and civic groups most concerned with the practice.

### Prerogative and land disposition

Philadelphia district council members have exercised prerogative most clearly in the sale and disposition of city-owned land, which provides them with multiple opportunities to effectively veto land sales.

By law, nearly all city-owned land needs council's approval to be sold or, under certain circumstances, leased.<sup>2</sup> And prerogative plays a role even in the disposition of lots owned by city agencies over whose transactions council has no formal control.

This is not unusual. In many large cities, council members wield considerable power over the sale of publicly owned land within their districts. What makes Philadelphia different is the size of its inventory of city-owned vacant land. (See Figure 2.)

Figure 2  
**Vacant Municipally Owned Land in Philadelphia and Other Cities**

	City-owned vacant lots	Lots per 100,000 residents	Lots per square mile
<b>Pittsburgh</b>	7,300	2,387	132
<b>Philadelphia</b>	9,614	619	68
<b>Chicago</b>	15,000	556	66
<b>Boston</b>	2,650	410	54
<b>Baltimore</b>	4,000	644	49
<b>Columbus</b>	1,236	157	6
<b>New York</b>	1,577	19	5
<b>Los Angeles</b>	1,229	32	3

Among the eight cities listed here, Philadelphia has the second-highest number of city-owned vacant lots, behind Chicago, and was second-highest in terms of lots per 100,000 residents and per square mile, behind Pittsburgh in both cases.

Sources: Authors’ analysis of data from City of Philadelphia Land Management database and data provided by officials in the other cities

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As of May 2014, Philadelphia city government and its affiliated departments, authorities, and commissions owned 9,614 unused parcels of land (not including land owned by the Philadelphia Housing Authority), according to city data—which means council is frequently involved in development deals and land-use planning.

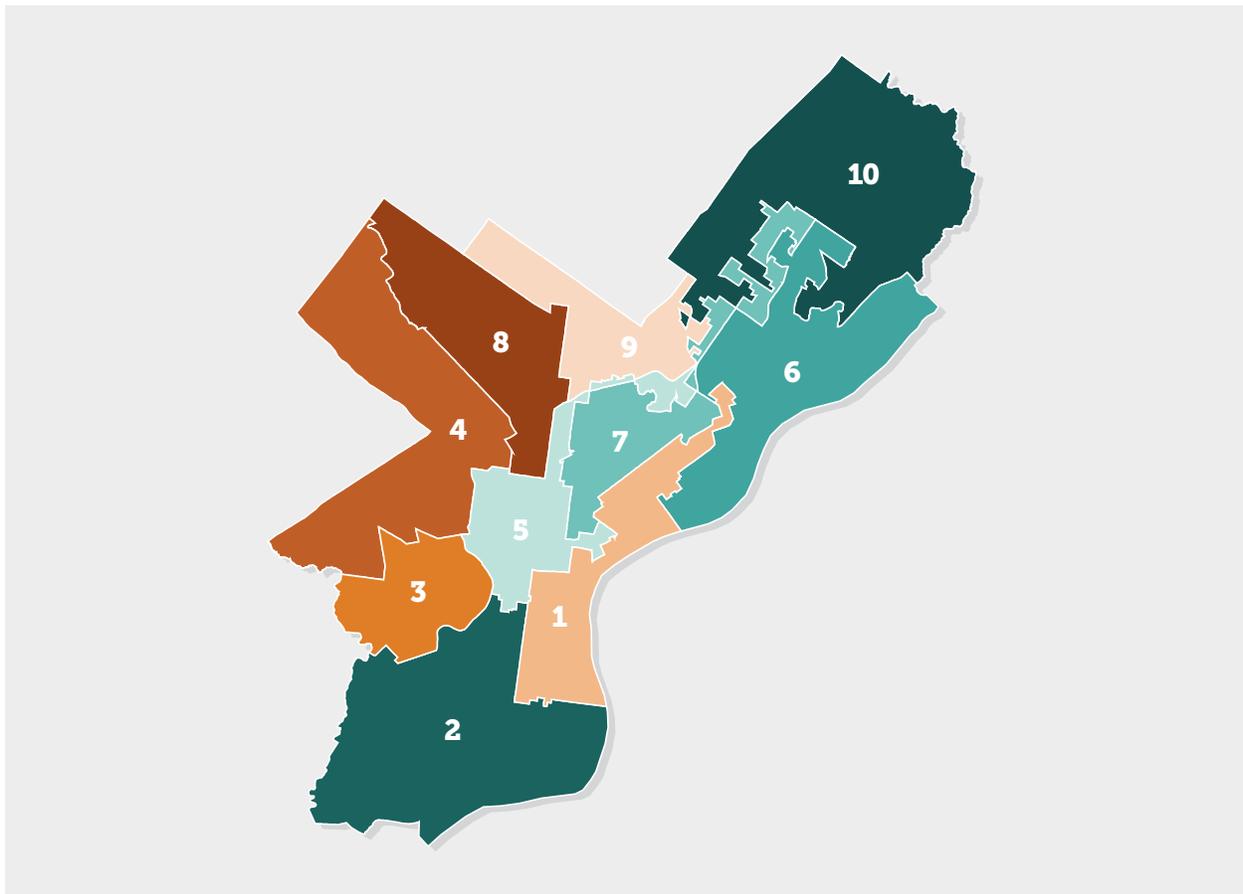
The city acquired its inventory over decades; most of the properties are small, vacant, single-family lots, although there are high-value exceptions. Some had been offered at sheriff sale because of unpaid taxes but had no buyers. Others were claimed through eminent domain during the heyday of urban renewal and then left undeveloped when federal funding evaporated.

The boundaries of the 10 city council districts, as of April 2015, as well as the number of city owned properties in each district are shown in Figure 3.

### Prerogative and process

For years, there have been four keepers of city-owned land, each with a different process for purchasing the land and a different way in which prerogative is used to control or influence outcomes: the Department of Public

Figure 3  
 City-Owned Properties by Councilmanic District



Council district	Properties
1	526
2	771
3	1,227
4	383
5	3,558
6	59

Council district	Properties
7	1,622
8	580
9	730
10	20
<b>No district listed</b>	79

Two-thirds of city-owned properties are located in three councilmanic districts—the 5th, 7th, and 3rd. These numbers do not include the 59 properties owned by the Philadelphia Authority for Industrial Development.

This table represents Philadelphia's councilmanic districts as of April 2015. District boundaries are slated to change slightly in January 2016.

Source: City of Philadelphia Land Management database

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## The Vacant Land Problem

Although the city has many holdings, they represent less than a quarter of its vacant land. Most estimates put the total number of vacant properties at about 40,000.

This large number has “a devastating impact on the neighborhoods and finances of the City of Philadelphia,” according to a 2010 study commissioned by the Philadelphia Redevelopment Authority.<sup>4</sup> Beyond the financial impact, vacant lots can ruin a neighborhood’s quality of life, becoming magnets for blight and crime.

Redeveloping vacant land—including publicly owned parcels—has been a city priority for years. Progress has been slow, however. One reason is the cumbersome land disposition process, which takes many months to navigate, involves an array of agencies, and includes councilmanic prerogative.

Backers of the new land bank hope that it will simplify the process and speed the disposition of vacant city-owned land for reuse and redevelopment. In time, the city expects that the land bank will own about 8,000 vacant properties. But all transfers into the land bank must be approved by City Council, subjecting that process to prerogative.\*

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\* Claudia Vargas, “Land Bank Open for Business, but Houses Wanted,” *The Philadelphia Inquirer*, Jan. 6, 2015, [http://articles.philly.com/2015-01-06/news/57711008\\_1\\_land-bank-councilwoman-jannie-blackwell-council-members](http://articles.philly.com/2015-01-06/news/57711008_1_land-bank-councilwoman-jannie-blackwell-council-members).

Property, the Philadelphia Redevelopment Authority, the Philadelphia Housing Development Corp., and the Philadelphia Authority for Industrial Development.

City and state law mandate that council approve the sale of land owned by the Department of Public Property and the Philadelphia Redevelopment Authority (PRA), which together control 90 percent of publicly held city land. Sales by the Philadelphia Housing Development Corp. (PHDC) and the Philadelphia Authority for Industrial Development (PAID), agencies that have their own boards, do not require council approval.

Of the 9,614 publicly owned city lots, 6,982 were available for sale as of May 2014.<sup>5</sup> The rest were off the market for a variety of reasons, including councilmanic holds (which are preemptive uses of prerogative), the agency’s own discretion, and uncertainty over the property’s value and ownership. (See Figure 4.)

In 2012, the city adopted a new property-disposition policy and launched an online tool, Philly Landworks, that consolidated most of the available inventory of publicly owned lots into a single listing where would-be buyers could find them. (PAID-owned properties are excluded from the listing and from the city’s land disposition policy.) Unlike the forthcoming Philadelphia Land Bank, the Landworks initiative did not consolidate legal ownership of the land or create a unified process for acquiring land.

Philly Landworks did make it easier for would-be buyers to locate city-owned parcels and to begin the process of acquiring them. It also formalized the role of district council prerogative by codifying it in a written policy.

Figure 4

## Agencies With Title to City-Owned Properties, 2014

	Total properties	Listed as available for sale
<b>Department of Public Property</b>	5,612	4,870
<b>Philadelphia Redevelopment Authority</b>	3,089	1,324
<b>Philadelphia Housing Development Corp.</b>	854	736
<b>Philadelphia Authority for Industrial Development</b>	59	52
<b>Total</b>	<b>9,614</b>	<b>6,982</b>

Most city-owned vacant properties were in the hands of the Department of Public Property and the Philadelphia Redevelopment Authority as of May 2014. Of the 9,614 properties, 73 percent were listed as available for sale.

Source: City of Philadelphia Land Management database

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For instance, in a section addressing the city’s process of reserving lots while qualified buyers secure financing and other approvals, the policy notes that the “applicant must have a letter of support from the District Council Member.” The section on community gardens—operators of which are given five-year licenses to use city-owned lots—notes that such licenses may be renewed at the discretion of both the city and “the respective district Councilperson.”<sup>6</sup>

### Public property and the Vacant Property Review Committee

The city’s Department of Public Property is the largest owner of publicly held lots. To acquire one of these lots, a would-be buyer submits an application that is reviewed by staff members of the Vacant Property Review Committee (VPRC), a 14-member advisory group composed of administration officials, the City Council president (or designee), and the chairman of council’s Committee on Public Property and Public Works.

Although the review committee is staffed by administration officials, it is controlled by council. According to officials in the administration of Mayor Michael Nutter, VPRC staff will not consider an application for any proposed development that does not include a signed letter of support from the relevant district council member. Although some district council staffers say letters are not always provided, there are no reports of properties being forced through the committee against a district council member’s wishes.

The committee’s monthly public meetings are held in council’s City Hall caucus room. The VPRC began posting meeting minutes and agendas on the council home page in January 2014, but its operations follow no written bylaws or guidelines, officials say, and its work gets little public attention.

At the meetings, applicants are sometimes asked to briefly describe their projects, and committee members sometimes ask questions. Yet often the VPRC will approve a transaction without questions or discussion. City and council officials explain the omission by saying that the merits of a purchase are weighed before the public meeting, and undesirable projects are simply not placed on the agenda. When there is a problem with a proposal, the action is usually tabled until the matter is resolved.

After a property clears the committee, the remaining approvals are often a formality, albeit a lengthy one. A council resolution authorizes the transfer of the lot to the PRA, followed, finally, by a vote of the PRA board. The PRA actually sells the land. This process, and those involving other owners of vacant property, is illustrated in Figure 5.

## The Philadelphia Redevelopment Authority

The Philadelphia Redevelopment Authority is the second-largest owner of city land. When a potential buyer expresses interest in a PRA property, authority staff members review the application to assess its merits and the applicant's finances.

By state law, the PRA board must approve land sales at a public meeting.<sup>7</sup> But before a potential deal reaches the board, it is subject to council prerogative.

The PRA once sought official letters of support from the relevant district council office, but now the authority staff often seeks informal district council approval before taking a potential sale to its board. The approvals—or rejections—come by email or phone from district council members' staffs with no formal written record, PRA officials say.

Intense market demand for property changes that process. In those instances, the PRA staff meets privately with the relevant district council member's staff, which reviews the parcels that the PRA would like to sell. Approved parcels are put out for bid by the PRA, and winning bids must be approved by its board.

All PRA sales must be approved by council, which gives it veto power over PRA sales. The tradition of prerogative leads council to follow the lead of the individual district council member and prompts the PRA to consult with district council members early in the process.

## The Philadelphia Housing Development Corp. and the Philadelphia Authority for Industrial Development

The Philadelphia Housing Development Corp., which benefits low-income Philadelphians, and the Philadelphia Authority for Industrial Development, which is designed to spur economic development, are quasi-independent entities established in the 1960s. Neither is legally required to secure council approval to sell parcels, but the Nutter administration has opted to give district council members approval power over the sale of PHDC properties in their districts. In addition, PAID often consults informally with district council members. Its parcels tend to be industrial or sized for large-scale commercial purposes, and the lots are often located far from residential neighborhoods and sold to job-creating businesses, making district council member objections less common.

Figure 5  
How City-Owned Property Has Been Purchased in Recent Years



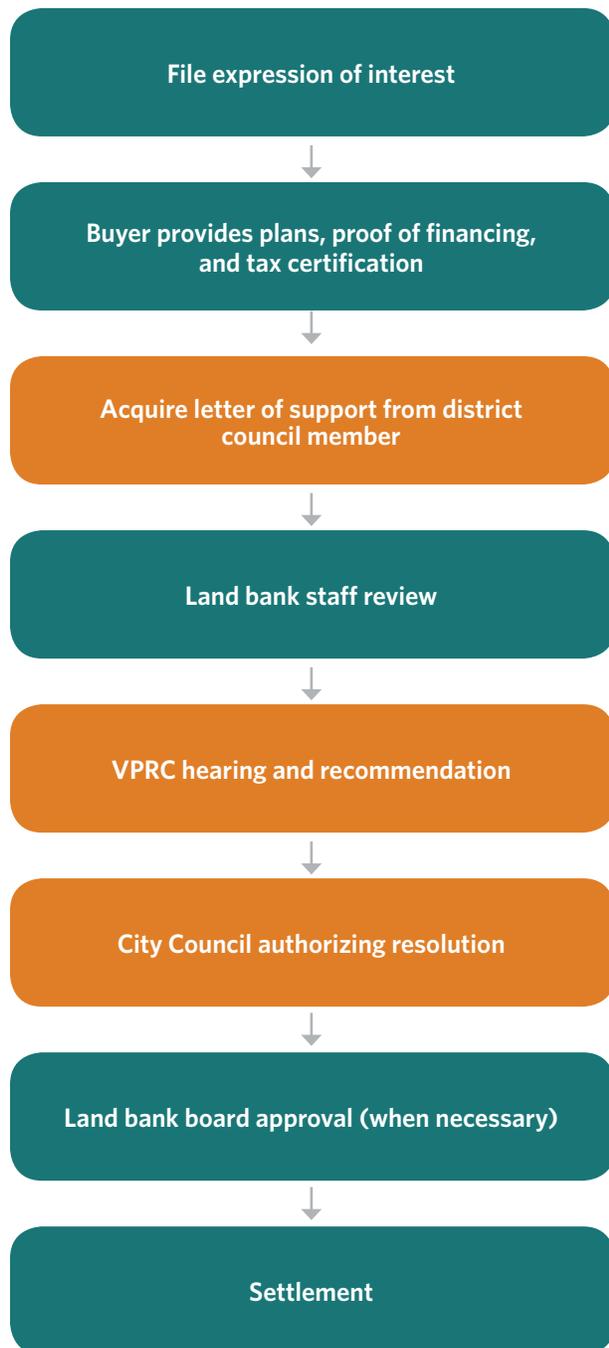
■ Represents steps that involve City Council members

Administration officials who oversee the VPRC staff say a letter of support from a district council member is required before a property can be placed on the committee's agenda. Some council members say that is not always the case.

Sources: Diagram is based on conversations with city officials.

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Figure 6  
Likely Land Bank Sale Process



■ Represents steps that involve City Council members

Source: Diagram is based on chart provided by the Philadelphia Land Bank

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## The land bank process

The goal of the new land bank is to simplify these processes and make it easier for developers and residents to acquire vacant publicly owned land. Still, councilmanic prerogative will remain in place. The land bank is not operating yet, so its procedures could change. But Nutter administration officials and council staffers said they expect that any potential buyers will have to document support from the district council member. (See Figure 6.)

When the land bank was created, some small developers and neighborhood groups argued for abolishing the Vacant Property Review Committee, but council rejected the idea.<sup>8</sup> So the VPRC will review all proposed land bank transactions, which may expand prerogative by giving the council-dominated committee a say in virtually all city land transactions, including parcels now owned by the PRA and PHDC.

The land bank’s authorizing legislation requires that the VPRC post its agenda, meeting schedule, and meeting minutes publicly, a policy that may give the committee more transparency.<sup>9</sup> But district council members will still be able to exercise prerogative with potential vetoes at three points in the sale process: the initial letter of support, the VPRC vote, and the full council vote.

## Holds

District council members can preemptively exercise prerogative by placing “holds” on city-owned land in their districts, effectively taking properties off the market. Although this power is nowhere to be found in city ordinances, it is a fact of life in the disposition of city land.

In recent years, the Philadelphia Redevelopment Authority, which manages the database that tracks city-owned land, has tried to record which properties have been placed on hold and for what reason.

In May 2014, for instance, about 3,300 city-owned properties were unavailable for sale, according to the city’s database. Although the database listed general reasons for the unavailability of about half the

properties (such as “on hold,” “sale pending,” and “unknown—research pending”), no classification was given for the rest of the unavailable properties. City officials said that even those for which reasons were given may have been classified incorrectly.

Despite those limitations, the data suggest that city-owned property classified as “councilmanic holds” made up a relatively small slice of the total inventory: only 115 properties, or just over 1 percent of the total inventory of city-owned vacant land. The number of holds also is small compared to the number of transactions given the green light by individual council members in recent years. (See Figure 7.)

Figure 7

## Councilmanic Holds and Authorized Land Transactions

Council district	Current council member	Recorded holds (2014)	Council-authorized land transactions (2008-14)
5th	Darrell Clarke	49	602
3rd	Jannie Blackwell	41	194
1st	Mark Squilla	11	76
7th	Maria Quiñones-Sánchez	7	226
4th	Curtis Jones Jr.	3	43
8th	Cindy Bass	2	86
9th	Marian Tasco	1	4
2nd	Kenyatta Johnson	1	135
6th	Bobby Henon	0	1
10th	Brian O’Neill	0	1

City Council President Clarke, who represents the 5th District, and 3rd District council member Jannie Blackwell together accounted for 90 of the 115 property holds in 2014. Their districts contained the largest and third-largest numbers of city-owned properties, respectively. Along with 7th District council member Maria Quiñones-Sánchez, whose district had the second-largest quantity of city-owned properties, Clarke and Blackwell also authorized the most land transactions. Some of these transactions have not been completed for reasons unrelated to council action.

This chart excludes votes on 150 resolutions between Jan. 1, 2008, and June 12, 2014, in which the property mentioned in the resolution did not match an address in the Office of Property Assessment database or in which a single property appeared in multiple resolutions. In the case of the 1st, 2nd, 6th, and 8th districts, the current council members took office in January 2012 and thus were not responsible for all of their districts’ authorizations.

Source: City of Philadelphia Land Management database

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The actual number of council holds almost certainly was larger, considering the incompleteness of the data. Even so, the data suggest that council members are not using prerogative to preemptively exclude large numbers of properties from sale.

As Figure 8 indicates, however, district council members tend to place holds on properties that stimulate higher-than-normal levels of market interest. On a per-property basis, parcels that council has placed on hold have received more than twice as many expressions of interest as have all city-owned properties.

## Prerogative and zoning

Zoning is the most basic and essential tool of land use planning. City zoning codes such as Philadelphia’s define an array of property uses—such as single-family homes, commercial enterprises, and heavy industry—and sort those uses into a classification system. Each city parcel is mapped, or given a zoning classification, and that classification comes with limits such as parking requirements, setback from the street, and maximum building height. Property owners often seek exceptions to the regulations, and those exceptions face council prerogative.

Figure 8  
Properties With Active Expressions of Interest, 2014

	Total properties	Total with active expressions of interest	Percentage with active expressions of interest
All city-owned properties	9,590	2,995	31%
City-owned but not available	1,614	339	21%
Held by City Council	115	78	68%

As this data indicate, holds exercised by district council members, while rare, tend to be applied to properties that have received expressions of interest by prospective buyers or users.

Source: City of Philadelphia Land Management database

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## The new zoning code

In August 2012, Philadelphia adopted a new zoning code for the first time in more than 50 years.<sup>10</sup> Written over the course of four years with significant community engagement, the code was intended to modernize the city’s approach to land planning, simplify the process for developers, and reduce the number of instances in which property owners sought exceptions.

In the year after the new code was enacted, the Zoning Board of Adjustment, which hears appeals on zoning decisions made by the Department of Licenses and Inspections, was asked to review one of every four rulings.<sup>11</sup> In the previous year under the old code, one of three decisions was appealed. Nutter administration officials said they expect even fewer appeals when new zoning maps—which designate every parcel with a classification

from the new code—are completed. Property owners who develop land within the bounds established by the zoning code do not need to seek district council approval for their projects, though many do so in the interest of maintaining good relationships.

Council prerogative enters the picture when a proposed project exceeds the limits or uses allowed by the zoning designation. For instance, a developer might want to construct an apartment building with ground-floor retail on a parcel zoned for residential use, which would require a use variance. Developers can seek those waivers through City Council or the Zoning Board of Adjustment. Prerogative plays a key role in both. (See Figure 9.)

## The Zoning Board of Adjustment

In theory, the Zoning Board of Adjustment (ZBA), whose members are appointed by the mayor, serves as a check on district council power on questions of zoning. It hears appeals from property owners seeking to build projects that the Department of Licenses and Inspections has determined do not follow the code. When weighing an appeal, the ZBA considers not just a district council member's view of the project but also the recommendation of the City Planning Commission and opinions of affected community organizations and neighbors. Developers have the right to appeal even if they do not have the support of the district council member.

The sections of the city code that establish the criteria by which the ZBA should weigh appeals—§14-303(7) and (8)—do not mention City Council, and board members are free to vote against a district council member's prerogative decision. As a practical matter, however, board members rarely vote against the member's wishes. Historically, the ZBA has been filled with politically active members who are sensitive to the concerns of district council members. District council members commonly send staffers to ZBA meetings, and they make their positions on zoning appeals clear.

When interviewed for this report, ZBA members were unable to recall a single project approval in recent years that was opposed by the district council member and community groups.

## Registered Community Organizations

The 2012 zoning code formalized the key role that community groups have long played in ZBA hearings. The code created a class of city-recognized Registered Community Organizations (RCOs) that are granted special status to review all significant developments and many smaller projects within their geographical boundaries.<sup>12</sup>

Council has twice amended the regulation of the RCOs. The latest iteration of the RCO law embeds the role of the district council office into every step of the project review process. Developers seeking special zoning approvals must notify both the RCOs and the district council office. District council members have the authority to pick a "coordinating RCO" whenever a development site is located within a community group's boundaries.<sup>13</sup>

If there is no RCO, the district council member can act as a de facto RCO. Developers are required to participate in at least one community meeting coordinated by the lead RCO. The law also states that district council members "may convene additional meetings." And it gives district council members the authority in some circumstances to designate the community representative on the Civic Design Review Committee, an advisory group composed of seven mayoral appointees and one member from the neighborhood affected by the project.

## Zoning through council

In some cases, district council members bypass the Zoning Board of Adjustment altogether by introducing zoning legislation.

Figure 9  
 Role of Councilmanic Prerogative in Zoning Changes



■ Represents steps that involve City Council members

When a proposed development is not in compliance with the zoning code, a zoning variance or exception is required and can be secured through two paths. The usual route, labeled the standard zoning process here, involves seeking approval from the Zoning Board of Adjustment. The alternative is to get zoning legislation passed by City Council. In both cases, as the chart shows, councilmanic prerogative is involved.

Sources: Diagram is based on conversations with city officials.

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There are instances—particularly involving large developments—in which a proposed project requires zoning approvals that are beyond the power of the ZBA. In these cases, zoning legislation is the only way a project can proceed; only council, for instance, has the legal authority to amend lot lines. The bigger the project, the more legislation that is typically needed. (An example is the ordinance authorizing Liberty Property Trust to build and maintain a concourse under a public street as part of the Comcast Tower development.) Because of the prerogative tradition, these zoning decisions are made not by the entire council but by a single district council member.

It is also common for district council members to bypass the ZBA and introduce legislation in instances where the board does have sufficient authority. Instead of taking a chance with the ZBA, developers who have strong relationships with their district council members frequently secure approval with zoning ordinances voted on in council. Critics say this approach subverts the planning process and leads to a cluttered, patchwork zoning code that ultimately makes development more difficult.

Council members can also exert power with a zoning overlay, which creates a special zoning district where developers are subject to the overlay requirements and limits in addition to those in the base zoning. Overlays can be used to restrict certain business activities—a number of the city’s commercial corridors are covered by overlays prohibiting activities such as pawnshops and nail salons, for instance—or to require that developers meet stringent standards, as in the case of the Central Delaware Riverfront overlay.

Used judiciously and thoughtfully, and in concert with the city’s professional planning staff and community organizations, overlays can help ensure high-quality developments that are in keeping with a neighborhood’s character. When overused, though, overlays create a mishmash zoning effect that can undermine the usefulness of the base zoning code.

Although prerogative is most often associated with land use decisions, it also extends to other issues. District members have used it to:

- Change some parking requirements on streets within their districts.
- Propose authorizing legislation for sidewalk cafes so restaurateurs in their districts can avoid the Department of Licenses and Inspections.
- Reject proposed bike lanes that require eliminating a lane of vehicle traffic.

## Analyzing prerogative’s reach

Assessing the full reach and impact of prerogative is not possible with the available data. The city has only recently begun to keep records of prerogative’s role in the disposition of its land, and those records are far from comprehensive. There are no data on how often prerogative is used in zoning decisions or on projects abandoned by builders who were in effect turned down because they never received a definitive answer from a district council member. However, some conclusions can be drawn from the data that are available.

### Prerogative votes are frequent and unanimous

A review of more than 1,342 ordinances voted on by City Council from 2008 through April 2014 found that more than half were related to land use and zoning and were subject to prerogative.<sup>14</sup>

As a rule, council tends to work out its differences over most legislation in committees, and controversial bills often are pulled or substantially modified before making it to the floor for a vote. Indeed, only one ordinance in the period studied was voted down on the council floor.

Even by that standard, the unanimity of council votes on prerogative bills is striking. (See Figure 10.)

All 730 prerogative bills in the review period passed, 726 of them unanimously. On the other four, only six dissenting votes were cast. Four of those votes came in 2011 from at-large members Bill Green and W. Wilson Goode Jr.; both voted against two bills related to construction of a small, city-owned power plant in Northeast Philadelphia.<sup>15</sup> In 2013, Goode opposed creation of a small, tax increment financing district intended to benefit a new hotel in Center City.<sup>16</sup> In both instances, taxpayer dollars were involved.

Figure 10  
Votes in City Council, 2008-14

	All council bills	Prerogative bills	Nonprerogative bills
<b>Bills passed</b>	1,342	730	612
<b>Bills passed without opposition</b>	1,271	726	545
<b>Bill unanimity rate</b>	94.7%	99.5%	89.1%
<b>Bills defeated</b>	1	0	1
<b>Total votes cast</b>	22,196	12,081	10,115
<b>Total "aye" votes</b>	22,029	12,075	9,954
<b>Total "nay" votes</b>	167	6	161

In Philadelphia City Council, most bills are passed without dissent. When councilmanic prerogative is involved, nearly all of the votes are unanimous.

Source: Authors' analysis of city council records

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The other "nay" vote, also by Goode, was on a 2012 ordinance that would have permitted a large digital billboard to be placed at a performance venue.<sup>17</sup> The ordinance passed, Mayor Nutter vetoed the bill, and the district council member involved, Mark Squilla, decided not to attempt a veto override. The episode is the only instance of a district council-backed land use bill failing to become law during the period studied.

The same dynamic applies in the Vacant Property Review Committee. Not a single "nay" vote was recorded on the more than 880 motions approved by the VPRC over the past eight years, and fewer than 10 abstentions and recusals were recorded, according to the committee's minutes.

### Prerogative is used sparingly to limit the sale of city-owned land

From 2011 through May 2014, the Philadelphia Redevelopment Authority processed over 6,300 expressions of interest in city-owned parcels. Of those, only 26 applicants were classified as having been rejected through

district council member vetoes or inaction, according to information from the city's land management database provided for this report in answer to a right-to-know request. In 1,161 cases, the reason for rejection was "property not available," a heading that probably includes at least some instances of City Council rejections, according to city officials.

## Prerogative and the pace of sales of city-owned land

Since Mayor Nutter took office in 2008, the city has struggled to reduce its inventory of city-owned land. Sales of such land reached their lowest levels in at least a dozen years in 2012. There are a variety of reasons for this, but there is no evidence that prerogative has been a significant factor.

An analysis of city ordinances found that from January 2008 to June 2013, City Council authorized the sale of more than 1,150 parcels. But as of June 2014, nearly half of those lots had not changed hands, according to public records.

In the cases of properties that were sold, a median of 316 days elapsed after council authorization before the sale was completed. The VPRC process, which the new land bank will largely adopt, took 355 days, and PRA-owned properties took 144 days. Some properties have remained in the city's inventory for three years or more after receiving council authorization.

## Prerogative in action

Some district council members rarely use prerogative, letting most land sales pass through their offices with negligible review and taking their cues on zoning legislation from the planning commission and neighborhood organizations. Other district offices conduct robust evaluations of each potential transaction, reaching out to community organizations and block captains to gauge neighborhood sentiment.

District council members say they use prerogative most often in response to neighborhood concerns. When there is significant opposition to a project that requires city-owned land or special zoning legislation, council members typically use the power of prerogative to stop the development outright or to secure changes that make it more palatable to neighborhood groups. But neighborhood sentiment is not always unanimous, and it is not uncommon for council members to support one organization's view over another's.

Some council members have other uses for prerogative. One common practice is to use it to secure "community benefit agreements" among developers, community organizations, and the city. The benefits can include commitments by developers to hire local residents, make streetscape improvements, and provide direct financial assistance to community organizations.

A less common use of prerogative is applying councilmanic holds in gentrifying areas of the city in order to preserve some parcels for future use as potential low- to moderate-income housing sites. And there are developers—both for-profit and nonprofit—who say privately that some council members use prerogative to reward political supporters, punish political enemies, and generate campaign contributions. Although prerogative is often employed without public knowledge or debate, the use or threat of a prerogative veto has made it into the spotlight in a number of cases. Most have involved large-scale projects of citywide interest. Frequently, the projects are given the green light after the council member has obtained benefits for residents of the surrounding neighborhood. The delays have other impacts, including cost increases for the projects.

One such instance occurred in the mid-1990s, when Temple University temporarily scrapped its plans to build a basketball arena and multipurpose center on Broad Street. The reason, university officials said, was that John

Street, then the district council member for the area and the City Council president, wanted Temple to make a \$5 million donation for low-income housing before he would introduce needed zoning changes. Eventually, the university agreed to make the donation, Street introduced the legislation, and the building, now known as the Liacouras Center, was built.

From 2004 to 2007, council member Jannie L. Blackwell used the power of prerogative to block construction of a \$110 million Juvenile Justice Services Center in her West Philadelphia district, saying she was worried that the city was not addressing the concerns of the neighbors. She also wanted a new public school. In the end, Blackwell withdrew her opposition after getting a commitment for a \$12 million community center, which has not yet been built.<sup>18</sup>

In 2007, a lame duck at-large council member introduced bills that would have allowed the construction of the city's first casino, SugarHouse.<sup>19</sup> But nothing happened with the legislation because the district council member who represented the area, Frank DiCicco, opposed the project, reflecting the views of some of his constituents. Two years later, after losing several legal and administrative challenges, DiCicco yielded and the project moved forward.

More recently, Drexel University in the spring of 2014 faced opposition from Blackwell, the district's representative, on a \$1 billion redevelopment project that included the purchase of a vacant high school property. Resident groups were worried that the plan was simply too big for the surrounding neighborhood. Blackwell gave the go-ahead after securing modifications to Drexel's site plans as well as a community benefits agreement that included provisions such as employment of West Philadelphia residents in the construction.<sup>20</sup>

Council member Curtis Jones Jr. has used prerogative to attempt to stop construction of 48 homes in the city's Roxborough section that some of the neighbors do not want. The builder had all the necessary permits and approvals but needed permission to pave an unpaved road to make the development possible. To get that, he needed legislation, which meant he needed Jones' approval, and Jones declined to give it. This became public when the builder sued the city and won; the city is appealing the judge's ruling, which came in the summer of 2014.<sup>21</sup>

In the past two years, district council members have extended the reach of prerogative with new exclusionary zoning overlays that prohibit certain commercial uses in wide swaths of the city.

In 2013, council enacted legislation that requires all new medical offices and drug-treatment facilities seeking to do business in Northeast Philadelphia's 6th and 10th council districts to get zoning variances.<sup>22</sup> The bill, which was designed largely to prevent the opening of methadone clinics, was vetoed by Mayor Nutter. Council overrode the veto by a vote of 15-1, with Green, the outgoing at-large council member, dissenting.

That same year, council member Bobby Henon, who represents the 6th District, introduced a bill that would prohibit certain businesses—including pawnshops, group day care centers, and beer distributors—from setting up shop in the Mayfair section.

## What happens in other cities

In city councils around the country, local representatives routinely look to one another for guidance on land use decisions that affect one area of the city or another. In many cases, the practice of legislative courtesy, also known as reciprocity, is a matter of common sense and efficiency and ignites no controversy. The research done for this report indicates that the extent to which councilmanic prerogative holds sway in Philadelphia is matched in few other cities.

To put Philadelphia's tradition of prerogative in perspective, we looked at Chicago, Houston, and New York, large cities whose councils have widely different levels of authority in land use decision-making. We also examined San Francisco and Boston, which have experienced decades of sustained development pressure, and Pittsburgh and Baltimore, Rust Belt cities at different stages of revitalization that are dealing with problems of vacant property similar to Philadelphia's. These comparisons are intended to be illustrative rather than exhaustive. To make the comparisons, we reviewed academic literature and news reports and conducted background conversations with journalists in other cities.

## Chicago

Of the cities examined for this report, Chicago's tradition of privilege is the most similar to Philadelphia's. The city has 50 wards, and each one elects an alderman to the City Council. Each alderman represents about 54,000 residents; there are no at-large members.

The process of applying for a zoning change in Chicago involves a number of administrative steps, including review by the zoning administrator and the city Department of Planning and Development. But, as in Philadelphia, the most important step is the introduction of the measure in City Council by the local alderman and its approval by the alderman's colleagues. Aldermanic privilege also affects zoning,<sup>23</sup> streets planning,<sup>24</sup> and other aspects of development in Chicago.

As in Philadelphia, there is a lack of transparency surrounding aldermanic privilege. Chicago aldermen sometimes kill proposed zoning changes in their wards simply by refusing to put them on the council's agenda, preempting any discussion by the public or the council itself.<sup>25</sup>

## Houston

Compared with their peers in other big cities, Houston City Council members have little control over land use decisions.

Houston has no zoning code, and the mayor has strong powers over development. To the extent that individual council members wield power over land use, that power flows from their relationships with the mayor. District council members have no formal role in the land disposition process.

## New York

In New York, zoning and land use matters pass through several levels of review before being considered by the City Council, which can weigh in only on amendments to the zoning maps and certain other actions.

Since the mid-1970s, development proposals in New York have been subject to a process called the Uniform Land Use Review Procedure.<sup>26</sup> This process requires review by the Community Board, one of more than 50 constituent liaison groups with members appointed partially by City Council; then by the Borough Board and borough president; and finally by the City Planning Commission—a process that can take up to 150 days.

After the Planning Commission makes a decision, the City Council is required to review certain proposals, such as changes to the zoning map and the text of the zoning code, and has the option to review other types of applications as well. But historically, council members have not been the primary influencers of land use decisions. Nonetheless, such decisions are a focal point of district council member activity—and of ethical questions.

## San Francisco

All 11 members of the Board of Supervisors, San Francisco's legislative body, represent districts. But development issues tend to be considered on a citywide basis, and the Planning Commission has substantial authority to review applications and grant development permits. There is little tradition of supervisorial prerogative.

## Boston

The Boston City Council historically has been perceived as having little power on development issues. So even though all members represent districts, there is little opportunity for the exercise of prerogative.

## Baltimore

In Baltimore, most of the decisions involving development, zoning, and planning are driven by the mayor's office, though the City Council has some sway over major projects. Council members tend to defer to the local member on issues that affect individual districts. On issues of citywide impact, they do not always defer.

## Pittsburgh

Pittsburgh established a land bank in 2014 after the proposal was nearly defeated because of some council members' concerns about maintaining control of district property.<sup>27</sup> The final bill gave council veto power over land sales for at least the first two years of the land bank's operation, after which the council will vote on whether to keep that power.<sup>28</sup>

On land use decisions, regardless of whether they go through the land bank, council members often show deference to the representative of a particular district, but that deference is not absolute. Recently, the council voted 5-4 to approve a special zoning district for a riverfront development project despite the opposition of the member representing the area.<sup>29</sup>

## Conclusion

Councilmanic prerogative is an exercise in individual discretion. At its best, it is a way for residents, acting through their elected representatives, to have a meaningful voice in determining what gets built in their neighborhoods and how. Although the Philadelphia City Planning Commission staff often consults community groups, City Council members—whose jobs are on the line every four years—are beholden to the neighborhoods they serve in ways that professional planners and bureaucrats are not.

Councilmanic prerogative can serve as a powerful check against profit-driven builders who might otherwise ignore local concerns; it can force developers to alter projects in ways that make them better fits for neighborhoods.

One problem with prerogative, developers say, is its inconsistent application from district to district (and occasionally within a district). Some council members are focused on ensuring that a project includes ample economic opportunities for the residents they represent; others are more focused on design details. In some cases, having a relationship and past experience with a developer is most important in a council member's decision.

And prerogative is almost always exercised outside of public view. Buyers' bids are often rejected without explanation. Developers' requests for zoning changes are sometimes ignored. This can leave them perplexed and perhaps less likely to attempt to do business in the city in the future.

The lack of transparency creates opportunities for unethical behavior. Although nothing improper happens in the overwhelming majority of situations, council's control over land use has played a central role in the cases of each of the six members convicted of wrongdoing since 1981. The persistent concerns expressed by some developers and community groups that prerogative can be used for political favoritism is due in part to prerogative's lack of transparency.

The long-standing existence of the practice has given city officials and builders ample opportunity to adjust to it. City development officials, including those within the Nutter administration, generally consider prerogative to be a fact of life. Few officials in the city's land use agencies object to it as a general practice (though they do, from time to time, privately take issue with the decisions of individual council members). Similarly, many of the city's veteran developers have learned how to satisfy district council members.

The city's new land bank has made "clear and transparent" operations one of the seven central goals in its strategic plan and is committed to creating "a strong process for public input during its decision making process."<sup>30</sup> It remains unclear, however, how that process will impact prerogative. Ethics advocates and leaders of community organizations say the mayor and council could enact reforms to shed more light on prerogative's use:

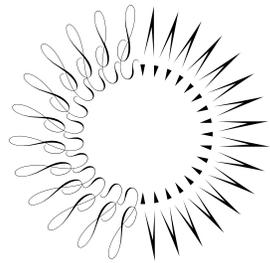
- Make council members disclose why they reject bids to buy city-owned land.
- Require the new land bank to publicly classify holds on property, as the Philadelphia Redevelopment Authority now does.
- Require the land bank to post online all expressions of interest filed by would-be buyers of city-owned property, thereby enabling real-time review of potential deals.
- Require the Zoning Board of Adjustment to post online meeting minutes and letters of support or opposition filed by district council members and registered community organizations.

Any proposal to change prerogative is sure to face stiff opposition within City Council, which considers the practice as fundamental a duty as passing an annual budget, holding public hearings on major new legislation, or helping constituents to navigate the municipal bureaucracy. It is not going away anytime soon. The question is whether prerogative can be made a more open process so that the public can better examine the way it is used and its impact on Philadelphia's future.

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