

# Borough President Recommendation

**City Planning Commission**  
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## INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Applications: N190230ZRY

### Docket Description:

The Department of City Planning (DCP) proposes a city-wide Zoning Text Amendment for residential buildings in high-density tower districts to discourage the use of excessively tall mechanical floors that elevate upper-story residential units above the surrounding context. The proposed change would apply to residential towers in non-contextual R9 and R10 Residence Districts and their equivalent Commercial Districts.

COMMUNITY BOARD NO: Citywide

BOROUGH: Manhattan

## RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached



\_\_\_\_\_  
BOROUGH PRESIDENT

March 8 2019

\_\_\_\_\_  
DATE



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**Gale A. Brewer, Borough President**

March 8, 2019

**Recommendation on Non-ULURP Application No. N 190230 ZRY  
Residential Mechanical Voids Zoning Text Amendment  
By the New York City Department of City Planning**

**PROPOSED ACTIONS**

The New York City Department of City Planning (“DCP” or the “Applicant”) is seeking an amendment to the Zoning Resolution (ZR) to change regulations regarding the location and height of mechanical space in residential towers pursuant to ZR § 23-16, § 24-112, and § 35-35. The proposed zoning text aims to discourage the creation of mechanical and unused or inaccessible floors that are over 25 feet in height as well as the clustering of such floors within a tower. The proposed text would apply to residential buildings and mixed-use buildings in R9 and R10 districts and their commercial equivalents as well as certain Special Purpose Districts. However, the text will not apply to the Special Lower Manhattan, Special Hudson Yards, and Special Midtown Districts—all of which are considered central business districts. The Applicant has committed to addressing those districts in a follow-up action that will be announced in the summer of 2019.

In evaluating the proposed zoning text amendment, this office must consider if the proposed language meets the underlying purpose of the Zoning Resolution to promote the general health, safety and welfare of the city and whether the proposed development or developments it would facilitate would be appropriate to the neighborhood and borough.

**BACKGROUND**

In 2017, the City began to see proposed developments that were drastically out of character with their surrounding neighborhoods. These buildings, which were extensively covered in the press, represented a significant departure from the spirit of the local zoning—particularly regarding building height. Some of the first examples of such developments include 432 Park Avenue and 220 Central Park South. In various instances, mechanisms were used to augment the height of buildings beyond what was intended in the zoning. One of the main purposes of achieving a greater height seemed to be the elevation of residential units, which, with higher, unobstructed views, could be sold for more money. Several of these developments were located in zoning districts that are governed by tower regulations. Tower regulations do not impose height limits; rather they use bulk, height, and setback controls to ensure predictable development. Many of the mechanisms used to make buildings taller involved the inclusion of spaces in the building that did not count as floor area and therefore evaded the zoning controls in these districts.

On August 16, 2018, the City Council’s Manhattan Delegation and the Manhattan Borough President sent a letter to the Applicant to request that they address the issue of “zoning

loopholes.” Some of the mechanisms that have been used by developers to augment building heights include:

- *Mechanical Voids*  
Under the Zoning Resolution, mechanical spaces are not counted as floor area. This rule has been exploited in several ways. Developers have proposed a greater number of mechanical floors in new developments and they have also included mechanical floors that are excessively taller than what is customarily seen in residential and commercial construction. In other instances, mechanical floors have been clustered in the lower portion of a building.
- *Structural Voids*  
This example is sometimes referred to as “stilts”—essentially raising a building or the upper floors of a building to achieve greater height without expending floor area. Terraces, which are also excluded from floor area calculations, have been proposed in the middle floors of towers at heights that are excessively taller than typical terraces.
- *Gerrymandered Zoning Lots*  
Some developers have shaped zoning lots by assembling a larger zoning lot (by merging with portions of other lots) in order to obtain maximum floor area and build a taller building. In other instances, developers have “carved out” small, undevelopable portions of zoning lots in order to evade zoning restrictions that aim to encourage contextual developments.
- *Floor-to-Floor Heights*  
There are currently no maximum floor to floor heights in the City of New York. As such, where residential developments once contained 10 to 12 foot floor-to-floor heights, new and proposed developments include floor-to-floor heights that are 20 feet and beyond.

The table below lists some of the developments that have submitted plans or published renderings that have proposed or still propose to use zoning loopholes:

**Buildings that Have Proposed to Use Zoning Loopholes**

Address	Status	Proposed Zoning Loopholes	Height (in feet) <sup>1</sup>	Stories <sup>1</sup>
520 Park Avenue	TCO Issued	• Mechanical voids in first 7 floors	725	51
432 Park Avenue	TCO Issued	• Contains 19 floors of mechanical and structural voids	1,396	84
220 Central Park South	TCO Issued	• Mechanical voids in floors 3 through 7	1,031	65
217 West 57 <sup>th</sup> Street	In Construction	• Structural voids 350 feet in height	1,548	88
15 East 30 <sup>th</sup> Street	In Construction	• Mechanical voids totaling 132 feet	843	56

<sup>1</sup> Height and number of stories were obtained from DOB filings and news articles.

50 West 65 <sup>th</sup> Street	In Construction	• Mechanical void totaling 160 feet	775	69
200 Amsterdam Avenue	In Construction	• Gerrymandered zoning lot made up of bits and pieces of tax lots	668	51
249 East 62nd Street	In Construction	• Mechanical voids totaling 150 feet • Structural void that is classified as outdoor space	540	28
111 West 57 <sup>th</sup> Street	In Construction	• Enclosed void at ground level; approximately 58 feet • Excessive floor-to-floor heights	1,400	82
180 East 88 <sup>th</sup> Street	In Construction	• Zoning lot carve-out to avoid zoning restrictions • Enclosed void - 150 feet	524	31
262 Fifth Avenue	In Construction	• Enclosed void - top story is over 70 feet in height	1,043	54
1059 Third Avenue	In Construction	• Excessive floor-to-floor heights of up to 16 feet	466	30
430 East 58 <sup>th</sup> Street	In Construction	• Excessive floor-to-floor heights • Mechanical voids	850	67
394 Third Avenue	In Construction	• Zoning lot carve-out to evade zoning restrictions	191	19
249 Cherry Street	Proposed	• Structural void - approximately 100 feet and located in the lower portion of building	1,008	77
80 South Street	Proposed	• Structural voids	1,436	Not available

## PROPOSED ZONING TEXT AMENDMENT

The proposed zoning text amendment would make the following changes to mechanical floor space requirements in residential buildings in R9 and R10 districts and their commercial equivalents as well as the Special Clinton, Special Lincoln Square, Special Union Square, and Special West Chelsea Districts:

- Any enclosed floor space that is occupied by mechanical equipment or is or becomes unused or inaccessible will be counted as floor area if such floor space is over 25 feet in height.
  - The portion of the floor space that is dedicated to mechanical equipment or is inaccessible must occupy a majority of that floor in order for this provision to apply.
  - The total height of each floor will be divided by 25 and the resultant number will be counted as floor area. For example, a 135 foot floor would count as 5 floors of floor area ( $135 \div 25 = 5.4$ ; rounded down to 5).
- When any given 75-foot segment of a building contains more than one enclosed floor space that is occupied by mechanical equipment or is or becomes unused or inaccessible, all such floors will be counted as floor area.

- The floor area will be calculated based on the number of all such floors or their collective height divided by 25, whichever figure is higher.

These proposed restrictions would apply to new construction as well as building enlargements. Furthermore, the following exemptions are outlined in the proposed text:

- For mixed-use buildings in which commercial floor area encompasses less than 25 percent of the total floor area, the restrictions will apply to only the residential portion of the building.
- Floor height and clustering restrictions would only apply to floors that are below any residential floor area. This provision is intended to accommodate mechanical penthouses, which often house large mechanical equipment with ventilation needs.

## COMMUNITY BOARD RESOLUTIONS

The Application was referred to ten of Manhattan's Community Boards: 1, 2, 3, 4, 5, 6, 7, 8, 10, and 11. Of those ten Community Boards, nine passed resolutions regarding the application. Manhattan Community Board 10 did not receive a presentation from the Applicant and as such did not pass a resolution on the matter. Additionally, although the Application was not referred to Manhattan Community Board 12, that board passed a resolution on the matter.

Seven Manhattan Community Boards voted in favor of the Application, while three voted against it. Of the Boards that passed resolutions, a majority—eight Boards—included conditions or comments regardless of whether they voted to recommend approval or disapproval of the proposed text amendment. Below are some of the conditions that Community Boards have set forth:

- Expand the application of the proposed zoning text to limit the use of unenclosed spaces, which include terraces and outdoor spaces and have also been called structural voids and stilts (requested by seven Community Boards).
- Expand the application of the proposed zoning text to include a broader geography. Although this request varied depending on the Board, it generally pointed the Applicant to districts that did not meet the proposed geographic criteria but were nonetheless likely to see out-of-context development that could employ tactics like mechanical voids to achieve a greater height (requested by five Community Boards).
- Expand the application of the proposed zoning text to include amenity spaces and accessory uses (requested by four Community Boards).
- Make changes to the 25 foot and 75 foot thresholds to make the provisions more restrictive (requested by three Community Boards).

## **BOROUGH BOARD HEARING**

On February 21, 2019, the Manhattan Borough Board held a public hearing on the proposed text amendment. In addition to Community Board members, the hearing was attended by local preservation groups.

Much of the discussion was in relation to the Applicant's decision to allow mechanical and unused or inaccessible floors to be up to 25 feet in height and setting a clustering threshold of 75 feet. Many of those present at the hearing noted that the "formula", as currently proposed, was not restrictive enough. In response, the Applicant recognized that during its study of residential development, it found that mechanical floors were at a minimum 9 stories—or roughly 90 feet—apart. Nonetheless, they noted that they did not want to preclude a development's ability to locate "evenly distributed" mechanical spaces in a manner that would allow mechanical equipment to be closer to the residential units that they serve. There were also comments regarding the geographic application of the proposed text—particularly on soft sites that are expected to soon see large scale development.

Given the 30 day referral period for the Application, the Borough Board did not vote on the Application.

## **BOROUGH PRESIDENT'S COMMENTS**

The issue of zoning loopholes, which includes mechanical voids, continues to be of great concern. My office has been working with elected officials for over a year to push for changes to the Zoning Resolution that ensure development that is in keeping with the spirit of the zoning and the context of our neighborhoods. In response to our request, DCP assessed over 700 buildings in order to draft its amendment to the Zoning Resolution.<sup>2</sup>

While I am thankful that the Department of City Planning was responsive to my concerns and the concerns of others and has undertaken its study in an effort to provide a solution to the problem of mechanical voids, I am concerned that the current proposal does not go far enough.

### *Formula*

The Application notes that an analysis of more than 80 buildings in higher density districts found that "taller towers tended to have additional mechanical floors midway through the buildings, or regularly located every 10 to 20 stories". Given this finding, I believe the 75 foot threshold, which is roughly equivalent to 7 stories; does not adequately address our concerns.

I also believe that the formula should not allow any rounding when calculating the floor area of excessively tall mechanical floors. In the example provided in this recommendation, a mechanical floor 135 feet in height would be 5.4 times taller than the 25 foot threshold proposed by the Applicant but would nonetheless count as only 5 floors of floor area. Plenty of zoning

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<sup>2</sup> The Applicant studied over 700 buildings in R6 through R8 non-contextual zoning district and their equivalent commercial districts. Of those 700 buildings, 80 were in R9 and R10 non-contextual districts and their commercial equivalents.

districts in Manhattan allow floor area ratios that have decimals. There is no valid reason why this figure should be rounded.

#### *Unenclosed Floor Area*

Other spaces, such as terraces, are not counted as floor area. However, the proposed text will only apply to “enclosed” floor area. As a loophole mechanism, there is very little difference between mechanical floors and terraces that have excessive heights. The language should be modified to similarly include terraces and other unenclosed floor spaces in the overall calculation of floor area.

#### *Geographic Applicability*

I am also concerned about certain areas of Manhattan in which the proposed text amendment will not apply but which nonetheless contain soft sites that will soon see new development. In particular, the blocks bounded by West 56<sup>th</sup> Street, the southern portion of West 58<sup>th</sup> Street, and Fifth and Sixth Avenues is concerning. West 57<sup>th</sup> Street, which has been nicknamed “Billionaire’s Row”, has seen several out-of-character buildings that employ zoning loopholes. Furthermore, in the first week of February 2019, just two weeks after the Application was certified, developers filed for demolition on two sites within this area<sup>3</sup>. While I recognize that this area, which is located within the Special Midtown District, may be included in the follow-up action that the Applicant will submit to encompass the City’s Central Business Districts, this block is facing an imminent threat and may see exactly the kind of development that this Application intends to prevent if no action is taken at this juncture.

#### *Enforcement of New Provisions*

I believe strongly that if the proposed zoning text is to be effective, stronger, and more transparent, inter-agency coordination is essential. A task force comprised of the Department of City Planning and the Department of Buildings (DOB) should be formed in order to ensure that the text is applied effectively as soon as it is adopted by the City Council. Plan reviewers at the DOB need to be aware of these new restrictions and need to receive training on how to identify excessively tall mechanical and unused or inaccessible floors. This agency framework would also be crucial in determining which developments are vested and should be tasked with inspecting construction sites and certifying those developments that will be grandfathered.

#### *Public Review Process*

DCP commenced a study in 2018 with the goal of delivering a proposal before the end of 2018. However, the Application was not certified and made publicly available until January 28, 2019, when, thankfully, a forthcoming follow-up action was also announced. All ten Community Boards in Manhattan, along with my office, were given a 30 day review period. This timeline did not allow for an extensive public review process or a Borough Board resolution. Additionally, while I am pleased that DCP made its study available, including that study in the original application materials would have allowed for a more robust public debate. It should also be noted that due to the timeline, one Community Board was not able to discuss the application at its Land Use Committee meeting.

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<sup>3</sup> DOB job numbers 123673355, 123659585, 123659594, 123659576, 123675656, and 123675665

I understand the need and agree with the Applicant's decision to prioritize and address the issue of mechanical voids in a timely manner. However, I expect that with its follow-up action, the Applicant will allow ample time for a robust public review process, as we often must live with zoning text changes for 50 years or more.

### **BOROUGH PRESIDENT'S RECOMMENDATION**

I therefore recommend **approval of the application with conditions**. The Applicant must amend the proposed zoning text (i.e. submit an "A-text") so that it does the following:

- Raise the clustering threshold from 75 feet to 90 feet;
- Eliminate the rounding provision for calculating the floor area of mechanical or inaccessible floors that exceed 25 feet;
- Expand the application to include unenclosed spaces; and
- Expand the application to include the block bounded by West 56<sup>th</sup> Street, the southern side of West 58<sup>th</sup> Street, Fifth Avenue, and Sixth Avenue.

Finally, a DCP and DOB task force should be established to:

- Ensure that the DOB is prepared to enforce the new requirements with new building and building enlargement applications; and
- Certify any buildings that are vested and are therefore grandfathered from any new zoning provisions.

I also fully expect that the Applicant will proceed with changes that will address other zoning loopholes, including excessive floor-to-floor heights and gerrymandered zoning lots and that they will expand the areas to which those provisions will apply. The point of addressing loopholes is to ensure that there are no openings left for developers to exploit.



Gale A. Brewer

Manhattan Borough President