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NYC Mayor Eyes Major Change to Housing Law

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Client Advisory
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The New York State Senate is poised to vote today on a controversial bill to lift the limit on housing densities in New York City.[1] An identical bill is pending in the Assembly. The Mayor has long sought the change to allow New York City to craft its own limits on housing densities to support affordable housing goals.

Section 26(3) of the NYS Multiple Dwelling Law limits residential buildings to a 12.0 floor area ratio (FAR). In other words, a 10,000 square-foot lot may only contain 120,000 square-feet of residential floor area. The State adopted the limit in 1961 to prohibit buildings that were, at the time, considered oversized and harmful to community character. [2] The bills would lift that limit only in New York City. They state: "Except as otherwise provided in the zoning resolution of the city of New York, the floor area ratio (FAR) of any dwelling or dwellings on a lot shall not exceed 12.0…." The City would thus have the ability to lift the 12-FAR limits contained throughout the Zoning Resolution in specific instances. The Senate memo in support of the bill justifies the change by referring to the robust, local public review processes that would apply to any such changes—including the Uniform Land Use Review Process (ULURP) and State Environmental Quality Review Act (SEQRA). The memo does not address, however, how the amendment would affect the Board of Standards and Appeals, which can grant zoning variances without ULURP, or state agencies, which often have authority to override local land use limits.

The 12.0 FAR limit is not an obstacle to constructing large, market-rate residential buildings. By merging adjacent tax lots into one "zoning lot," developers have long been able to buy air rights from underbuilt tax lots and average the densities to comply with the 12 FAR limit. For example, the tax lot for the much-discussed residential tower at 432 Park Avenue has an FAR of over 15. But averaged among tax lots from which the developer acquired air rights, the FAR remains 12. The limit is, however, an impediment to the Mayor's ability to provide large bonuses to affordable housing developers, particularly in Manhattan where the underlying densities are already 12 FAR (i.e., at their limits). The Mayor apparently sees a change to the state law as a necessary step in bringing the "Mandatory Inclusionary Housing Program" to Manhattan.

At the local level, New York City is also considering other changes to floor area. In 2015 City Planning Commission Chairman Carl Weisbrod promised to study changes to Zoning Resolution Section 74-79, through which the Commission can issue a special permit to allow individual landmarks to transfer unused air rights across streets. The special permit is virtually never used because of the limited circumstances under which it applies—leaving many landmarks with unused, valuable and un-saleable development rights. The City is also planning to release the long-awaited East Midtown Rezoning proposal in late 2016, which would create a special district in which landmarks could sell air rights—loosening the current limits that allow sales only to immediate neighbors.

For more information concerning the matters discussed in this publication, please contact the author, Christopher Rizzo (212-238-8677, rizzo@clm.com) or your regular CL&M attorney.

Endnotes

[1] 2016 Senate Bill S 5469, Assembly Bill A 7807.

[2] The l960 legislative memo states that the law was intended to relate "the physical dimensions of the building directly to the lot on which it is erected. This provides a simpler and more direct method of determining height and bulk and in addition serves as a curb on excessive population density within a given area. It will permit greater flexibility in planning and design and insure more adequate light, air and open space."

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