

## Zoning Changes in Midtown Manhattan Have Big Implications

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### Client Advisory

September 15, 2016 by Christopher Rizzo

The New York City Department of City Planning issued its long-awaited Greater East Midtown Rezoning proposal on August 22, 2016 following three years of further review and study since the prior mayor issued (and withdrew) a similar proposal. The complete zoning text is not yet public. But the draft scope of work for the forthcoming environmental impact statement (EIS) provides details about the Rezoning and how it will meet the City's goals for East Midtown.<sup>[1]</sup> It aims to incentivize the construction of new office towers, fund transit improvements and give individual landmarks an enhanced ability to sell unused development rights.

**Bigger Office Buildings.** Current zoning permits commercial buildings with a 12 to 15 floor area ratio (FAR) in much of East Midtown.<sup>[2]</sup> Many office buildings substantially exceed these limits because they were constructed before 1961 when the limits were put in place. Owners thus have little incentive to rebuild more modern office buildings if the replacement structures would contain far less rentable space. The Rezoning would alter the status quo in two ways. First, it would replace the Grand Central Subdistrict with a new Greater East Midtown Subdistrict where as-of-right FAR would be 18 to 27. Second, the Rezoning would relax restrictions on the owners of "grandfathered" buildings to demolish and rebuild.

**Relief for Landmarks.** City-designated individual landmarks have millions of unused square feet of development rights. As protected landmarks, they have little hope of using the rights onsite. The Zoning Resolution does provide two limited ways to transfer development rights but they have proved vastly inadequate for many landmarks. The Rezoning would allow individual landmarks to sell unused development rights anywhere in the new Subdistrict, creating a much wider pool of potential buyers.

**Money for Transit Improvements.** The Rezoning would also create money for transit improvements in the Subdistrict in three ways. New office buildings that seek to utilize the higher as-of-right FAR described above would need to construct specified transit improvements if located in a "transit improvement zone." Grandfathered buildings that already exceed the maximum FAR would be allowed to rebuild provided they pay into a public realm improvement fund. Finally, landmarks that sell unused development rights would need to pay a percentage of the profit into the public realm improvement fund.

These changes are likely to spur substantial new development in Midtown over the next 20 years. Just how much will be the focus of the forthcoming EIS. And the changes are likely to encourage landmark and transit advocates in other neighborhoods to look at adapting these kinds of incentives elsewhere in New York City.

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For more information concerning the matters discussed in this publication, please contact the author **Christopher Rizzo** (212-238-8677, [rizzo@clm.com](mailto:rizzo@clm.com)) or your regular Carter Ledyard attorney.

Endnotes

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[1] The Rezoning encompasses a 78 block area generally bounded by 57<sup>th</sup> Street to the north, midblock between Madison and Fifth to the west, the midblock between Third and Second to the east and 39<sup>th</sup> Street to the south.

[2] FAR is a ratio of a zoning lot's size to permitted floor area. A "12 FAR" indicates that a developer can construct 12 square feet of building space per square foot of zoning lot.

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