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MAJOR REZONING COULD BRING MUCH NEEDED HOUSING TO MIDTOWN SOUTH

There is a lot of talk about New York City's housing shortage, but it would probably come as a surprise to many that new housing is not allowed in a large area of midtown Manhattan. But, the heart of Manhattan is actually a desirable place to "live, work, and play," as the expression goes. It has ample public transportation and is close to the many jobs, services and attractions that are located in our City's commercial core.

So why can't new housing be built? Because of the zoning!

Land use in New York City is controlled by the New York City Zoning Resolution, the current version of which was first enacted in 1961. The Zoning Resolution divides the City into zoning districts. A property's zoning district determines what uses a property may have and what may be built on a property. There are three general types of zoning districts:

Residence Districts, which allow residential and community facility uses (i.e., schools, medical offices, hospitals, houses of worship); Commercial Districts, which generally allow commercial, residential, and community facility uses; and Manufacturing Districts, which allow manufacturing, commercial, and a few community facility uses, but not residential uses.

When the Zoning Resolution was first enacted in 1961, large areas of midtown were zoned as Manufacturing Districts. This was done primarily to stabilize the declining garment manufacturing that had historically been prevalent in the area. The Manufacturing Districts were



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generally located between 23rd Street and 31st Street between 5th Avenue and 7th Avenue, and between 35th Street and 40th Street between 5th Avenue and 6th Avenue and Broadway and 8th Avenue, an area generally known as Midtown South. Within these Manufacturing Districts, with limited exceptions, no new housing can be created, despite the recent enactment of "City of Yes for Housing Opportunity" that, among other things, is intended to facilitate more office to

residential conversions.

The City's Department of City Planning (DCP) has reported that only 1.4% of NYC apartments are available for new tenants, the lowest vacancy rate since 1968. This is driven, in part, by the fact that the growth of the City's housing stock has not kept pace with its job creation. Average annual employment has increased 35% since 1980 and 21% since 2010, but housing supply has only increased by 24% since 1980 and 9% since 2010, according to DCP.

In response to the demand for more housing, DCP has proposed rezoning those Midtown South Manufacturing Districts to "mixed-use" districts that would allow for the conversion of commercial space into housing and for the construction of new multi-family residential buildings. This proposed rezoning along with other zoning changes to the area are called MSMX, for the Midtown South Mixed-Use Plan. In late January, after

over a year of DCP-led development, including the required environmental review, the City Planning Commission (CPC) began the public review process for MSMX.

This public review process is the Uniform Land Use Review Procedure, or ULURP, which was established under the City Charter for land use actions in New York City. It requires review and recommendations by the affected Community Board(s) and Borough President, and approval by both the CPC and New York City Council. ULURP, with its requirements for community input and multi-stage levels of review and approval, was implemented in response to the Robert Moses era. The period for each stakeholders' review and recommendation or votes is set by the City Charter and totals approximately seven months, so MSMX, if enacted, would go into effect this summer. MSMX is subject to change as it goes through ULURP, with the City Council having the final say.

MSMX would establish a new Special Midtown South Mixed-Use District, which would allow a mix of housing, commercial, manufacturing, and community facility uses. Most significantly, MSMX would permit residential uses at a floor area ratio or "FAR" of 18 throughout much of the area. This means that if a property is 10,000 square feet, 180,000 square feet of residential use would be permitted.

The 18 FAR would be the highest FAR zoning district mapped in the City to date, which is the result of the State's elimination last year of the "12 FAR cap" for residential use. Non-residential use would be permitted up to 12 FAR or 15 FAR throughout the MSMX. Newly developed or converted housing will be required to comply with "Mandatory Inclusionary Housing," which would mandate that 20% to 30% of the residences be permanently set aside for income-restricted affordable housing. DCP projects that MSMX would create around 9,700 homes, including up to 2,900 income-restricted homes.

Developers, property owners, the community, and other stakeholders will be closely watching as MSMX proceeds through the public review process, as this ambitious plan has the potential to reshape a large area of midtown Manhattan. Stay tuned—we will keep you posted.

Dan Egers, a shareholder of Greenberg Traurig, LLP, focuses his practice on New York City land use and zoning. The views expressed are his own.

Ed Wallace, Co-Chair of the New York Office of the law firm Greenberg Traurig, served as the last Manhattan City Councilmember at-Large and Chief of Staff to the City Council President. He has represented Columbia, Fordham and NYU in obtaining land use approvals. He is Counsel to the Citizens Budget Commission.