

EXHIBIT B

**CPC Report N 190230 ZRY
(Residential Tower Mechanical
Voids)**



IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter for an amendment of Article II, Chapter 3 and related provisions of the Zoning Resolution of the City of New York, modifying residential tower regulations to require certain mechanical spaces to be calculated as residential floor area.

This application (N 190230 ZRY) for a zoning text amendment was filed by the Department of City Planning (DCP) on January 25, 2019 to discourage the use of excessively tall mechanical floors in high-density residential tower districts. The proposal would require that mechanical floors, typically excluded from zoning floor area calculations, would be counted toward the overall permitted floor area on the zoning lot if they are taller than new specified limits or overly concentrated in portions of the building. The proposed floor area requirements would apply to residential towers in non-contextual R9 and R10 Residence Districts and their equivalent Commercial Districts, as well as Special Purpose Districts that rely on underlying floor area and height and setback regulations or that are primarily residential in character. The provision would also apply to non-residential portions of a mixed-use building if the building contains a limited amount of non-residential floor area.

BACKGROUND

The New York City Zoning Resolution allows floor space containing mechanical equipment to be excluded from zoning floor area calculations, reflecting the recognition that these spaces perform important and necessary functions within buildings. The Resolution does not specifically identify a limit to the height of such spaces. In recent years, some developments have been built or proposed that use mechanical or structural floors that are taller than is usually necessary to meet functional needs, to elevate upper-story residential units above the surrounding context so as to improve the views from these units. These spaces have been commonly described as “mechanical voids.”

Following requests from communities and elected officials, DCP conducted a citywide analysis of recent construction to better understand the mechanical needs of residential buildings and to assess when excessive mechanical spaces were being used to inflate their overall height. DCP assessed the residential buildings constructed in R6 through R10 districts and their Commercial District equivalents over the past 10 years and generally found excessively tall mechanical voids to be limited to a narrow set of circumstances.

In R6 through R8 non-contextual zoning districts and their equivalent Commercial Districts, DCP assessed over 700 buildings and found no examples of excessive mechanical spaces. DCP attributes this primarily to existing regulations that generally limit overall building height and impose additional restrictions as buildings become taller through the use of sky exposure planes.

In R9 and R10 non-contextual zoning districts and their equivalent Commercial Districts, residential buildings can penetrate the sky exposure plane through the optional tower regulations, which do not impose an explicit height limit on portions of buildings that meet certain lot coverage requirements. In these tower districts, generally concentrated in Manhattan, DCP assessed over 80 new residential buildings and found that the mechanical floors of most towers exhibit consistent configurations. These typically included one mechanical floor in the lower section of the building located between the non-residential and residential portions of the building. In addition, taller towers tended to have additional mechanical floors midway through the building, or regularly located every 10 to 20 stories. In both instances, these mechanical floors range in height from 10 to approximately 25 feet. Larger mechanical spaces were generally reserved for the uppermost floors of the building in a mechanical penthouse, or in the cellar.

In contrast to these typical scenarios, DCP identified seven buildings characterized by either a single, extremely tall mechanical space, or multiple mechanical floors stacked closely together. The height of these mechanical spaces varied significantly but ranged between approximately 80 feet to 190 feet in the aggregate. In districts where tower-on-a-base regulations apply, these

spaces were often located right above the 150-foot mark, which suggests that they were intended to elevate as many units as possible while also complying with the ‘bulk packing’ rule of these regulations, which requires 55 percent of the floor area to be located below 150 feet. In other districts, these spaces were typically located lower in the building to elevate more residential units, which often also has the detrimental side effect of “deadening” the streetscape with inactive space.

Based on the results of this analysis, DCP is proposing a zoning text amendment for residential towers in R9 and R10 non-contextual zoning districts and their equivalent Commercial Districts, as well as Special Purpose Districts that rely on underlying floor area and height and setback regulations or that are primarily residential in character, to discourage the use of artificially tall mechanical spaces that disengage a building from its surrounding context. The amendment seeks to strike a balance between allowing functionally sized and reasonably distributed mechanical spaces in residential towers while providing enough flexibility to support changing technology and design expressions in these areas.

The amendment would require that floors occupied predominantly by mechanical spaces (those that occupy 50 percent or more of a floor) and are taller than 25 feet (whether singly or in combination) be counted as floor area. Taller floors, or stacked floors taller than 25 feet, would be counted as floor area based on the new 25-foot height threshold. A contiguous mechanical floor that is 132 feet tall, for example, would now count as five floors of floor area ($132/25 = 5.28$, rounded to the closest whole number equals 5). The 25-foot height is based on mechanical floors found in recently-constructed residential towers and is meant to allow the mechanical needs of residential buildings to continue to be met without artificially increasing the height of residential buildings. The provision would only apply to floors located below residential floor area. The provision would not apply to mechanical penthouses at the top of buildings where large amounts of mechanical space are typically located or to below-grade mechanical space.

Additionally, any mechanical spaces (those that occupy 50 percent or more of a floor) and are located within 75 feet of one another that, in the aggregate, add up to more than 25 feet in height would similarly count as floor area. This would address situations where non-mechanical floors are interspersed among mechanical floors in response to the new 25-foot height threshold, while still allowing sufficient mechanical space for different portions of a building. For example, a cluster of four fully mechanical floors in the lower section of a tower with a total combined height of 80 feet, even with non-mechanical floors splitting the mechanical floors into separate segments, would count as three floors of floor area, even when each floor is less than 25 feet tall and they are not contiguous. ($80/25 = 3.2$ rounded to the closest whole number equals 3).

The new regulation would also apply to the non-residential portions of a mixed-use building if the non-residential uses occupy less than 25 percent of the building. This would ensure that tall mechanical floors would not be attributed to non-residential uses occupying a limited portion of the building, solely to avoid the proposed regulation. The 25-foot height threshold would not apply to the non-residential portion of buildings with more than 25 percent of their floor area allocated to non-residential use, as the uses in such mixed buildings (for example, offices and community facilities) commonly have different mechanical needs than residential buildings. Finally, the regulations would also apply to floors occupied predominantly by spaces (those that occupy 50 percent or more of a floor) and are unused or inaccessible within a building. The Zoning Resolution already considers these types of spaces as floor area, but it does not provide explicit limits to the height that can be considered part of a single story within these spaces. This change would ensure that mechanical spaces and these types of unused or inaccessible spaces are treated similarly.

The proposal would apply to towers in R9 and R10 Residence Districts and their equivalent Commercial Districts. The proposal would also apply to Special Purpose Districts that rely on underlying tower regulations for floor area as well as height and setback regulations, and sections of the Special Clinton District and the Special West Chelsea District that impose special tower regulations. These Special Districts are:

- Special West Chelsea District: Subdistrict A
- Special Clinton District: R9 District and equivalent Commercial Districts that do not have special height restrictions, as well as C6-4 Districts in the 42nd Street Perimeter Area
- Special Lincoln Square District: C4-7 Districts
- Special Union Square District: C6-4 Districts
- Special Downtown Jamaica District: “No Building Height Limit” area as shown on Map 5 of Appendix A in Article XI, Chapter 5
- Special Long Island City District: Court Square Subdistrict

ENVIRONMENTAL REVIEW

This application (N 190230 ZRY) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 19DCP110Y. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on January 28, 2019. On April 9, 2019, a Revised Environmental Assessment Statement (EAS) was issued which describes and analyzes proposed City Planning Commission modifications to the Proposed Action. The Revised EAS concludes that the proposed CPC modifications would not result in any new or different significant adverse environmental impacts and would not alter the conclusions of the EAS. A Revised Negative Declaration was issued on April 9, 2019. The Revised Negative Declaration reflects the modifications assessed in the Revised EAS and supersedes the Negative Declaration issued January 28, 2019.

PUBLIC REVIEW

This application (N 190230 ZRY) was duly referred on January 28, 2018, to 13 Community Boards (one in the Bronx, 10 in Manhattan, and two in Queens), to Manhattan and Queens Borough Boards, and to the Bronx, Manhattan and Queens Borough Presidents for information and review in accordance with the procedure for referring non-ULURP matters.

Community Board Review

All 13 Community Boards adopted resolutions regarding the proposed zoning text amendment, many of which included comments on the proposal and recommendations for modifications. The complete resolutions received from all Community Boards are attached to this report.

Bronx

On March 6, 2019, Community Board 4 voted to recommend approval.

Manhattan

On February 26, 2019, Community Board 1 voted 37 in favor, 1 opposed and 0 abstention on a resolution to recommend approval with conditions.

On February 26, 2019, Community Board 2 voted unanimously on a resolution to disapprove with conditions.

On February 27, 2019, Community Board 3 voted on a resolution to recommend approval, with recommendations.

On March 7, 2019, Community Board 4 voted 37 in favor, 0 opposed and 1 abstention on a resolution to recommend disapproval with conditions.

On February 15, 2019, Community Board 5 voted 26 in favor, 0 opposed and 1 abstention on a resolution to recommend disapproval with conditions.

On February 15, 2019, Community Board 6 voted 32 in favor, 0 opposed and 1 abstention on a resolution to recommend approval with recommendations.

On March 5, 2019, Community Board 7 voted 38 in favor, 1 opposed and 0 abstention on a resolution to recommend approval with conditions.

On February 22, 2019, Community Board 8 voted 39 in favor, 0 opposed and 1 abstention on a resolution to recommend approval with recommendations.

On February 21, 2019, Community Board 10 voted 25 in favor, 0 opposed and 0 abstention on a resolution to recommend approval.

On February 21, 2019, Community Board 11 voted 31 in favor, 0 opposed and 1 abstention on a resolution to recommend approval.

While this application was not referred out to Community Board 12, the Board passed a resolution on the matter on February 28, 2019 and voted 38 in favor, 0 opposed and 0 abstention to recommend approval.

Queens

On March 8, 2015, Community Board 2 voted 29 in favor, 0 opposed and 0 abstentions to recommend approval.

On March 20, 2019, Community Board 12 voted 35 in favor, 0 opposed and 0 abstentions on a resolution to recommend approval.

Most Community Boards expressed support for the proposed approach to limiting mechanical voids but maintained that more could be done to restrict their size and frequency within buildings. Around one-third of Community Boards voted to approve with conditions or

recommendations that encouraged a stricter mechanical space height limit of 12 to 15 feet (versus 25 feet) and a more restrictive clustering interval of 100 to 200 feet (versus 75 feet). Some Community Boards called for additional restrictions to establish a percentage limit on the total amount of mechanical space permitted in a building. Three Community Boards indicated that the regulation should apply more broadly, to all zoning districts, mixed-use buildings, and commercial buildings. About half of the Community Boards indicated that the regulation should also apply to unenclosed voids (including, stilts, outdoor spaces, and terraces). Seven Community Boards, including those that denied with conditions, called for an expansion of the geographic scope of the regulation to include Central Business Districts and other Special Purpose Districts. Overall, these Boards were supportive of the proposal but wanted more limitations on mechanical spaces as part of a broader concern for building heights, as evidenced by discussion by some members about limiting floor to ceiling heights and amenity spaces.

Borough Board Review

This application (N 190230 ZRY) was referred to the Manhattan and Queens Borough Boards. The Manhattan Borough Board held a public hearing on February 21, 2019, to discuss the proposal but did not adopt a resolution. The Queens Borough Board did not adopt a resolution.

Borough President Review

This application (N 190230 ZRY) was referred to the Bronx, Manhattan, and Queens Borough Presidents. This application was considered by the Manhattan Borough President, who issued a letter dated March 8, 2019, recommending approval of the application with conditions to:

- Increase the clustering threshold to 90 feet from 75 feet.
- Remove the rounding provision for calculating the floor area for mechanical spaces that exceed the 25-foot threshold.
- Expand the applicability of the application to unenclosed voids.
- Expand the geographic scope to include the block bounded by West 56th Street, south side of West 58th Street, Fifth Avenue, and Sixth Avenue.

The Bronx and Queens Borough Presidents did not issue recommendations.

City Planning Commission Public Hearing

On February 27, 2019 (Calendar No. 1), the City Planning Commission scheduled a public hearing on this application (N 190230 ZRY) for March 13, 2019. The hearing was duly held on March 13, 2019 (Calendar No. 40). There were 23 speakers in favor of the application and 18 speakers in opposition.

Speakers in favor included the Manhattan Borough President; the Manhattan District 5 Council Member; a representative of the Manhattan District 6 Council Member; a representative of the State Assembly Member for District 67; representatives from Manhattan Community Board 5 and 7; Manhattan neighborhood associations; landmark and cultural groups; community groups; Manhattan preservation groups; and Manhattan residents.

Speakers in opposition included industry practitioners such as engineers and architects; attorneys from land use law firms; representatives of industry associations; representatives of an Upper West Side Jewish congregation; and a Manhattan preservation group.

Both speakers in favor and those opposed expressed the sentiment that the overuse of mechanical space to create excessive voids of 80 to 190 feet is egregious and inappropriate. All speakers agreed that the issue of excessive voids could and should be addressed. Elected officials, Community Board representatives, neighborhood associations, and community groups supported the goal of this application but expressed that it could go further in limiting mechanical space, expanding applicability across the city, implementing an overall percentage cap on mechanical space, and including unenclosed voids. Many speakers expressed concern that the application would still provide opportunities for excessive mechanical voids and offered recommendations to reduce the 25-foot threshold to 12 feet, and to increase the clustering threshold from 75 feet to between 100 and 200 feet. A few stated that, based on the study data DCP provided, most mechanical spaces in existing buildings averaged 12 feet in height. Some community members stated that there was not

enough justification for the 25 feet of mechanical height per 75 feet of building height provision in the application and therefore felt that the proposed regulations would not be restrictive enough to address the issue.

Industry professionals, including architects and engineers, said that they did not support excessive mechanical voids used solely to raise the height of buildings but many of them expressed concern that the proposed thresholds do not align with industry best practices. Experts stated that the 25-foot threshold would be too limiting for efficient mechanical equipment needs and that oftentimes mechanical space needs compete with occupiable space needs. They stated that the 25-foot threshold would further strain the ability to ensure adequate space for mechanical equipment. One speaker from the Department of Buildings Mechanical Code Committee indicated that the NYC Energy Code requirements are moving toward greater building efficiency and energy conservation. He noted that for efficient use of heating and cooling systems, a building's heat recovery system requires large heat exchangers that transfer heat and moisture from the exhaust to the supply air. He and other speakers indicated that the ductwork and piping required for these systems could exceed 25 feet in height. Engineers who spoke also noted that traditionally mechanical spaces would only be located in the cellar or on the roof of buildings, but that industry practices are moving toward locating mechanical equipment throughout the building for better flood resiliency and energy efficiency. Speakers noted that high-efficiency boiler plants, fire protection water tanks, and stormwater recovery tanks are all examples of mechanical equipment that could require space taller than 25 feet. The majority of professionals, when asked, estimated that 30 to 35 feet would be a more reasonable threshold.

Some individuals who spoke in opposition indicated that the 30-day referral period was too short and that the Commission should take more time to engage with industry experts before moving forward with the text amendment. Further, representatives from an industry association expressed concern over the lack of a grace period or grandfathering provision for existing, ongoing projects. Representatives indicated that this proposal should take into consideration projects that would be affected in the midst of their development, having based their plans and investments on the

mechanical space and floor area provisions in the Zoning Resolution today. A supplemental written testimony from this association stated that existing developments with mechanical voids have consistently complied with the Zoning Resolution as affirmed by Department of Buildings (DOB) interpretations and the Board of Standards and Appeals (BSA) decisions. The testimony also referenced a letter from DCP to BSA, confirming that the Zoning Resolution does not explicitly regulate the heights of mechanical space, in response to a specific building proposal before the BSA in 2017. The association further stated that ongoing and proposed development projects have appropriately relied on this precedent and should not be disrupted by this proposal.

The City Planning Commission received over 100 written comments and testimonies echoing support, concerns, and comments in line with those raised at the public hearing.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

This application was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 18-161.

This action was determined to be consistent with the policies of the WRP.

CONSIDERATION

The City Planning Commission believes that this application for a zoning text amendment (N 190230 ZRY), as modified herein, is appropriate.

DCP's proposal is to limit the practice of constructing artificially tall mechanical spaces that disengage residential buildings from their surrounding context while also maintaining the flexibility needed to support reasonably sized and distributed mechanical spaces. The Commission

agrees these are worthy goals and notes that even many who have raised concerns about the proposal have been supportive of its overall intent and approach. DCP undertook a yearlong study to review and analyze existing building conditions to inform this application. Therefore, the Commission finds that the proposal addresses community concerns while also recognizing the importance of design flexibility and architectural expression.

A primary issue raised by the Community Boards and members of the public, and echoed in written testimony, was that the proposed regulation does not fully address concerns that buildings may use mechanical spaces to be taller. Many called for stricter provisions and an overall cap on the percentage of mechanical space allowed in a building. The Commission notes that mechanical space is essential to the functionality of a building and requires flexibility based on a building's size and use. To implement a more restrictive or prohibitive rule to control the dimension or quantity of mechanical space would unduly hinder a building's capacity to operate and support occupants. The Commission finds that the approach to discourage excessive voids by providing a height and clustering threshold above which mechanical space will count as floor area is an appropriate mechanism to limit the nonproductive use of voids while allowing the flexibility to address mechanical needs. The Commission notes that this provision is not an outright prohibition on excessively tall mechanical space, rather it is an effective disincentive.

Many community groups and neighborhood associations called for a reduction of the 25-foot threshold of mechanical space excluded from floor area to 12 to 15 feet and an increase in the permitted 75-foot clustering interval to 90 to 200 feet. The Commission recognizes that the 25/75-foot thresholds were recommended by DCP based on industry expert consultations and extensive review of over 700 buildings permitted or constructed within the past 10 years. Overall, this study found that the thresholds offer reasonable flexibility while still addressing the excessive mechanical voids concern. The Commission also notes that the tallest voids, found in seven proposed or existing buildings in Manhattan, have heights ranging from 80 to 190 feet. The Commission recognizes that testimony by several engineers and an architectural association confirmed that it is highly unlikely that a residential building would need mechanical space that is

more than around 30 to 35 feet tall. Therefore, the Commission does not find harm in limiting the opportunity to exempt artificially tall mechanical spaces. DCP also reviewed City-led affordable housing projects as an example of reasonable mechanical space clustering, finding that a 90-foot interval was used for building efficiency purposes rather than for increased building heights. The Commission therefore believes that the 75-foot interval clustering threshold would provide sufficient flexibility and is appropriate.

The Commission also heard testimony submitted by industry practitioners (including architects and engineers, industry associations, and a cultural and design organization) that indicated that the proposed 25-foot threshold was too restrictive. Practitioners noted that industry best practices for future energy conservation, resiliency, and sustainability require flexible mechanical space. The Commission heard that mechanical equipment needed for energy conservation practices may require more than 25 feet in height and that the engineering industry already competes for mechanical space within buildings. The Commission notes that practitioners do not support the overuse of mechanical space solely to artificially raise building heights, nor do they take issue with the proposed clustering threshold. However, the Commission recognizes the industry's concerns regarding the 25-foot threshold as too constraining for mechanical needs. The Commission also heard suggestions from practitioners and associations that a 30- to 35-foot threshold would allow reasonable flexibility for mechanical needs both today and in the future. The Commission believes that it is important that this text amendment not hinder a resilient or energy efficient building, and recognizes the need to maintain flexibility so that changes to NYC Energy or Building Code requirements are not impeded by this text amendment.

The Commission therefore modifies the proposed zoning text amendment to increase the 25-foot threshold to 30 feet before counting mechanical space toward floor area. This change will allow appropriate flexibility to meet energy efficient and resiliency standards without requiring a building to equally offset important occupiable space. The Commission notes that the zoning text amendment does not prohibit the use of mechanical space beyond 30 feet if necessitated by unique building circumstances. Mechanical space of any height is still permitted, though it will be counted

as floor area when exceeding the threshold. The preceding considerations account for this modification from 25 to 30 feet.

The Commission received written testimony and heard from some industry representatives who called for exempting structural support features, such as beams, braces, and trusses, that can be located within mechanical spaces. The Commission notes that these features can vary widely from building to building, and that exempting them could incentivize the use of larger support structures solely to inflate building heights. The Commission also notes that a typical floor height is measured from the top of a floor slab to the top of the floor slab above, whereas the mechanical space height in the proposed text amendment will be measured from the top of a floor slab to the bottom of a floor slab above. This allows for a clear 30-foot (formerly 25-foot) threshold that does not include portions of the floor slab above, which could reduce the amount of space available for mechanical equipment. The Commission therefore believes that the proposed mechanical space height measurement is appropriate and allows for optimal space to incorporate mechanical equipment and support structures without the need to create additional exemptions. Further, in response to suggestions from the Department of Buildings and practitioners, DCP has recommended a series of technical clarifications to the text amendment so that it more clearly meets the stated intent. The Commission agrees that these modifications are appropriate.

Some industry representatives expressed concern over the proposed formula for calculating the mechanical space in excess of the 30-foot threshold counted towards floor area. Representatives stated that the proposed text is too strict when counting mechanical space toward floor area by not allowing the first 30 feet to be excluded. The Commission believes that the formula as modified – to include the first 30 feet when a mechanical space exceeds the threshold, divided by 30 feet and rounded to the nearest integer – provides an appropriate disincentive to discourage any excessive contiguous set of mechanical floors. For example, if the mechanical space were 60 feet tall (30 feet above the threshold), which would be considered excessive based on DCP’s study, the total number of floors to be counted as floor area is two under the proposed formula ($60 \text{ feet} / 30 = 2$ floors). However, if the first 30 feet were excluded from the total contiguous space of 60 feet, the

total number of floors to be counted would be one (60 feet - 30 feet/30 = 1). The Commission believes that excluding the first 30 feet would run counter to the goals of this proposal by reducing the disincentive to use artificially tall mechanical spaces. The Commission therefore supports the current proposal to count the first 30 feet when a mechanical floor exceeds the threshold.

Some industry practitioners and organizations expressed concern over the 30-day public referral period, deeming it too short to thoughtfully consider the details of this proposal. The Commission notes that all 13 Community Boards received presentations on the proposal and submitted resolutions. In addition, the Commission received over 100 written comments and testimony following the public hearing. The Commission notes that the development of this proposal involved significant public engagement with community groups and elected officials to understand the extent of the mechanical voids issue beginning in late 2017. DCP staff also met with industry associations and experts to understand the technical needs for mechanical spaces throughout the yearlong study period to inform the proposal. In addition to public outreach, the mechanical voids issue garnered significant attention through press coverage from late 2017 to the present. DCP also received over 200 letters during the year regarding mechanical voids and the proposed text amendment. The extensive public awareness and participation throughout the yearlong process made for an engaged referral period and therefore, the Commission believes that the 30-day referral period was appropriate.

In written testimony, a representative from an industry association called for a grace period or grandfathering provision to accommodate pre-development and ongoing projects that may contain mechanical spaces exceeding the proposed threshold. The testimony argues that these projects have relied on existing zoning regulations, DOB interpretations, and BSA decisions. The testimony also references a 2017 DCP letter to BSA. While previous interpretations did not prohibit the seven examples of excessive mechanical voids found in DCP's study, the Commission, upon analysis, finds this practice to serve no purpose other than to artificially elevate residential units above surrounding context in a way that is inconsistent with the intended purpose of excluding necessary mechanical space from floor area calculations. The Commission believes that the proposed zoning

text amendment addresses this practice in an appropriate way. Due to the extended period of engagement prior to the referral period as discussed above, land owners and practitioners have been aware of and informed that changes to the Zoning Resolution regarding mechanical space were imminent. The Commission therefore believes that a grace period or grandfathering provision is not necessary for this proposal.

The public also raised concerns about the proposal's geographic scope. Testimony and Community Board resolutions indicated that the text amendment should apply to residential and mixed-use buildings in currently excluded Special Purpose Districts, namely those that are considered central business districts. Other testimony and resolutions went further, recommending that the proposed regulation apply to non-residential buildings and other lower-density residential zoning districts. The Commission notes that DCP is evaluating residential buildings in central business districts throughout the city. The Commission further notes that the earlier study and consultations with industry experts confirmed that non-residential buildings include uses that vary widely, which requires a differing range of mechanical equipment needs that affect the size of mechanical floors in mixed-use buildings where residential uses are not the most prevalent use. Therefore, the Commission believes that this proposal is not appropriately applied to non-residential buildings. DCP's study focused on medium- to high-density residential zoning districts and their commercial equivalents, including R6 to R10 districts. The study found no use of excessive mechanical voids in R6 through R8 districts due to applicable existing bulk controls in the Zoning Resolution, including the sky exposure plane and lot coverage requirements. The Commission recognizes that, due to existing bulk limitations in R6 through R8 zoning districts, the construction of excessive mechanical spaces is highly unlikely, obviating a need to extend the proposal to these districts.

During the public review process, requests were submitted for the proposed regulation to include unenclosed voids. Mechanical spaces are captured by the basic definition of "floor area" and are then subject to a specific exclusion from floor area in the current Zoning Resolution, based on their mechanical function. The proposed text amendment effectively limits the terms of the specific exclusion for mechanical spaces. Unenclosed spaces – volumes that are not part of a building –

are not considered floor area under any circumstances. An effort to count unenclosed spaces as “floor area” would represent a fundamental shift in the concept of floor area, which is one of the most basic and consequential definitions in the Zoning Resolution. Unenclosed spaces exist in myriad shapes and configurations, serving a range of purposes including providing light, air, and open space. Unenclosed spaces have been used over the past century to enhance building design, as occurs in the Manhattan Municipal Building loggia, the landmarked Citicorp and Sony buildings, the recent buildings at the Domino site in Brooklyn, and many others. The Commission notes that changes intended to address concerns about tall unenclosed spaces would draw in a wide range of other, important considerations, and are beyond the scope of the proposed action.

Community Boards and community groups expressed concerns, outside the purview of this proposal, regarding tall building heights as a result of large floor-to-ceiling heights in residential units and amenity spaces, and through zoning lot mergers. The Commission notes that this proposal is not about building height; rather it addresses the recent practice of constructing artificially tall mechanical spaces in a manner that was never intended by the Zoning Resolution. The Commission agrees that mechanical voids are an appropriate issue to address through the Zoning Resolution by counting them as floor area over a specified threshold. However, residential units and amenity spaces are already regulated by floor area in the Zoning Resolution. The Commission does not believe it appropriate to regulate the heights of occupiable spaces within buildings that are already counted as floor area.

The Commission has carefully considered the recommendations and comments received during the public review of the application for the zoning text amendment (N 190230 ZRY), and believes that the proposed zoning text, as modified, is appropriate.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant adverse impact on the environment; and be it further

RESOLVED that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter underlined is new, to be added;

Matter ~~struck-out~~ is to be deleted;

Matter within # # is defined in Section 12-10;

* * * indicates where unchanged text appears in the Zoning Resolution.

**ARTICLE II
RESIDENCE DISTRICT REGULATIONS**

**Chapter 3
Residential Bulk Regulations in Residence Districts**

* * *

**23-10
OPEN SPACE AND FLOOR AREA REGULATIONS**

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

* * *

Special #open space# and #floor area# provisions are set forth in Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) for standard tower and tower-on-a-base #buildings# in R9 and R10 Districts, as well as for certain areas in Community District 7 and Community District 9 in the Borough of Manhattan, and Community District 12 in the Borough of Brooklyn. Additional provisions are set forth in Sections 23-17 (Existing Public Amenities for Which Floor Area Bonuses Have Been Received) and 23-18 (Special Provisions for Zoning Lots Divided by District Boundaries or Subject to Different Bulk Regulations).

* * *

23-16

Special Floor Area and Lot Coverage Provisions for Certain Areas

The #floor area ratio# provisions of Sections 23-14 (Open Space and Floor Area Regulations in R1 Through R5 Districts) and 23-15 (Open Space and Floor Area Regulations in R6 Through R10 Districts), inclusive, shall be modified for certain areas, as follows:

- (a) For standard tower and tower-on-a-base #buildings# in R9 and R10 Districts
- (1) In R9 Districts, for #zoning lots# where #buildings# are #developed# or #enlarged# pursuant to the tower-on-a-base provisions of Section 23-651, the maximum #floor area ratio# shall be 7.52, and the maximum #lot coverage# shall be 100 percent on a #corner lot# and 70 percent on an #interior lot#.
- (2) In R9 and R10 Districts, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 23-65 (Tower Regulations), inclusive, any floor space used for mechanical equipment provided pursuant to paragraph (8) of the definition of #floor area# in Section 12-10 (DEFINITIONS), and any floor space that is or becomes unused or inaccessible within a #building#, pursuant to paragraph (k) of the definition of #floor area# in Section 12-10, shall be considered #floor area# and calculated in accordance with the provisions of this Section, provided that such floor space:
- (i) occupies the predominant portion of a #story#;
- (ii) is located above the #base plane# or #curb level#, as applicable, and below the highest #story# containing #residential floor area#; and

(iii) exceeds an aggregate height of 30 feet in #stories# located within 75 vertical feet of one another within a #building#.

For the purpose of applying this provision, the height of such floor space shall be measured from the top of a structural floor to the bottom of a structural floor directly above such space. In addition, the number of #stories# of #floor area# such space constitutes within the #building# shall be determined by aggregating the total height of such floor spaces, dividing by 30 feet, and rounding to the nearest whole integer.

* * *

Chapter 4

Bulk Regulations for Community Facilities in Residence Districts

* * *

24-10

FLOOR AREA AND LOT COVERAGE REGULATIONS

* * *

24-112

Special floor area ratio provisions for certain areas

The #floor area ratio# provisions of Section 24-11 (Maximum Floor Area Ratio and Percentage of Lot Coverage), inclusive, shall be modified for certain areas as follows:

- (a) in R8B Districts within Community District 8, in the Borough of Manhattan, the maximum #floor area ratio# on a #zoning lot# containing #community facility uses# exclusively shall be 5.10; ~~and~~
- (b) in R10 Districts, except R10A or R10X Districts, within Community District 7, in the Borough of Manhattan, all #zoning lots# shall be limited to a maximum #floor area ratio# of 10.0; and
- (c) in R9 and R10 Districts, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 23-65 (Tower

Regulations), inclusive, the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (1) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (2) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

* * *

**ARTICLE III
COMMERCIAL DISTRICT REGULATIONS**

**Chapter 5
Bulk Regulations for Mixed Buildings in Commercial Districts**

* * *

**35-35
Special Floor Area Ratio Provisions for Certain Areas**

* * *

**35-352
Special floor area regulations for certain districts**

In C1 or C2 Districts mapped within R9 and R10 Districts, or in #Commercial Districts# with a residential equivalent of an R9 or R10 District, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 35-64 (Special Tower Regulations for Mixed Buildings), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (a) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (b) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

* * *

**ARTICLE IX
SPECIAL PURPOSE DISTRICTS**

* * *

**Chapter 6
Special Clinton District**

* * *

**96-20
PERIMETER AREA**

* * *

**96-21
Special Regulations for 42nd Street Perimeter Area**

* * *

(b) #Floor area# regulations

* * *

(2) #Floor area# regulations in Subarea 2

* * *

(3) Additional regulations for Subareas 1 and 2

In Subareas 1 and 2, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 35-64 (Special Tower Regulations for Mixed Buildings), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (i) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (ii) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

* * *

**Chapter 8
Special West Chelsea District**

* * *

**98-20
FLOOR AREA AND LOT COVERAGE REGULATIONS**

* * *

**98-22
Maximum Floor Area Ratio and Lot Coverage in Subareas**

* * *

**98-221
Additional regulations for Subdistrict A**

In Subdistrict A, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 98-423 (Special Street wall location, minimum and maximum base heights and maximum building heights), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (a) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (b) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

* * *

The above resolution (N 190230 ZRY), duly adopted by the City Planning Commission on April 10, 2019 (Calendar No. 11), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, Esq., *Vice-Chairman*

**DAVID BURNEY, ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO, III,
MICHELLE R. de la UZ, JOSEPH I. DOUEK, RICHARD W. EADDY, HOPE KNIGHT,
ANNA HAYES LEVIN, LARISA ORTIZ, RAJ RAMPERSHAD**, *Commissioners*

ORLANDO MARIN, *Commissioner*, VOTING NO