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Should the next mayor permit more distant transfers of unused development rights to support the development of affordable housing?

In a very dense city with a significant need for affordable housing, unused development rights are an important potential source of additional capacity. At least one mayoral candidate has proposed allowing wider transfer of development rights to support the development of affordable housing. Many communities, however, fear the increased density that additional transfers would create.

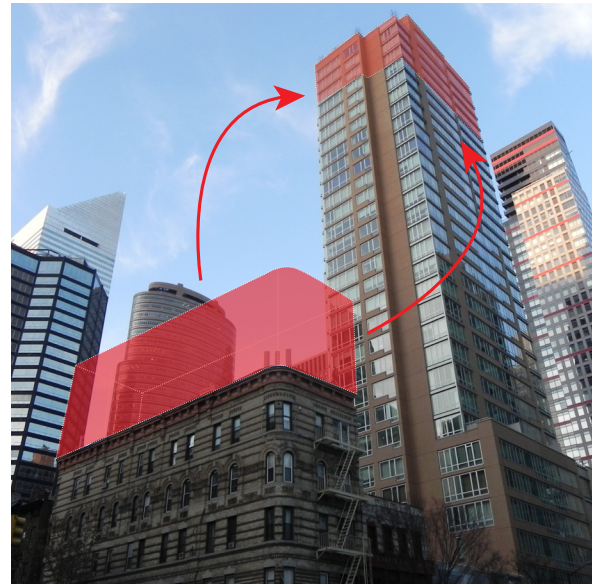


THE BASICS

New York City's Zoning Resolution uses floor area ratio (FAR) as the primary determinant of how much an owner can build on a given parcel. For example, if a building has a FAR of five, an owner can build a structure with a floor area equal to five times the land area of the lot. If the existing building is smaller than the maximum floor area permitted on the lot, the owner may be able to transfer the unused development rights to another lot through one of the city's transferable development rights (TDR) programs.

The city allows property owners to transfer development rights in three ways:

1. Zoning lot mergers permit an owner to transfer development rights, as of right, to adjacent properties on the same block. Zoning lot mergers are the primary way that development rights are transferred in the city.
2. Landmark transfers, which require a special permit, allow the owners of landmarks to transfer unused development rights to



Source: Furman Center for Real Estate and Urban Policy

adjacent parcels on the same block, across the street, or, if the landmark is on a corner, to any lot on another corner that touches the same intersection.

TABLE 1: Unused Development Rights by Community District, Manhattan Community Districts 1-6 and Brooklyn Community Districts 1-2, 2013

<i>Community District</i>	<i>Borough</i>	<i>Unused Development Capacity (square feet)</i>
Greenpoint/Williamsburg	Brooklyn	86,948,150
Fort Greene/Brooklyn Heights	Brooklyn	46,652,705
Financial District	Manhattan	21,664,998
Greenwich Village/Soho	Manhattan	12,460,943
Lower East Side/Chinatown	Manhattan	20,230,060
Clinton/Chelsea	Manhattan	45,958,441
Midtown	Manhattan	52,099,066
Stuyvesant Town/Turtle Bay	Manhattan	21,416,120

Source: Furman Center analysis of New York City Department of City Planning Data and publicly recorded property records



3. Special transfer programs have been created by the Department of City Planning as part of larger planning projects, such as the Special West Chelsea District (the High Line), the Hudson Yards District, and the Theater Subdistrict. Some of these programs—like West Chelsea and Hudson Yards—have linked additional density or TDR transfers to the development of affordable housing.

Between 2003 and 2011, property owners transferred more than 6.8 million square feet of development rights in New York City to properties owned by others. More than 5.4 million of those square feet were transferred through 327 zoning lot mergers, a vast majority of which were below 59th Street in Manhattan. There were also 11 Theater District transfers, 16 West Chelsea transfers, 4 other transfers, and only 2 landmark transfers.¹

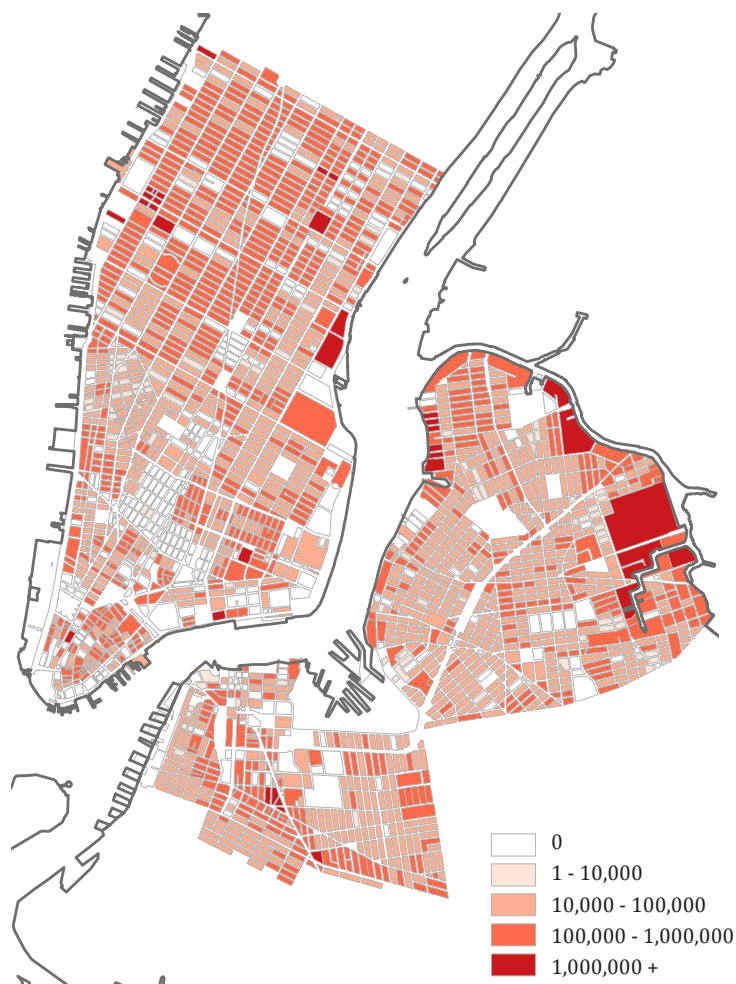
As Table 1 and Figure 1 show, millions of additional square feet of unused development rights exist just in the areas of the city where TDR transfers have historically taken place (Manhattan below 59th Street and Downtown and Northwest Brooklyn).

QUESTIONS & CONSIDERATIONS

Currently, owners of the vast majority of properties are not permitted to transfer

¹ All of the data about development rights transfers are from Furman Center analysis of publicly recorded property records.

FIGURE 1: Square Feet of Privately Owned Unused Development Rights by Block, Manhattan Community Districts 1-6 and Brooklyn Community Districts 1-2, 2013



Source: Furman Center analysis of New York City Department of City Planning Data and publicly recorded property records

development rights beyond the property's home block. Only landmarks or properties located in a small number of designated special districts have the ability to transfer off the block. By allowing owners to transfer TDRs farther, as long as the purchaser of the development rights included affordable housing in the building using the TDRs, the city could accomplish three goals: 1) making the development rights more valuable to owners; 2) encouraging new development to help



accommodate demand and support economic growth; and 3) encouraging construction of new affordable housing.

Some worry, however, that wider transfers could overwhelm certain neighborhoods with additional density. Allowing additional density on the lot adjacent to the underbuilt property is unlikely to make much of a difference to the neighborhood, because the neighbors that enjoy the benefit of the smaller building transferring the TDRs will also bear any burdens created by the larger building that is enabled by the transfer. But if the additional density is transferred farther away, the neighbors of the underbuilt site and the neighbors of the building using the TDRs will be different.

There are a number of checks on new development that would remain in effect even if owners were allowed to transfer TDRs more freely. While TDR transfers permit buildings to exceed their FAR, there are other regulations limiting a building's size that are not affected by the transfer. These include height limits and set-back, open space, and sky-exposure requirements. Unless explicitly modified, they would remain a limiting factor on any new development that uses TDRs. Further, new development enabled by TDR transfers would not be allowed in the city's many historic districts.

The next administration would need to answer a number of questions before it could implement a new TDR program linked to affordable housing. First, how far would owners

be permitted to transfer TDRs: would transfers be limited to a specific radius, confined within the boundaries of the community district, or allowed anywhere within the city? As the transfer distance grows, so too will the complexities of ensuring that the resulting density on the receiving site is appropriate.

Second, how much affordable housing would be required in exchange for the transfer? Would the program require that affordable housing be built on the receiving site? Or would the purchasing developer be permitted to develop the affordable housing elsewhere or instead contribute to a fund for the development of affordable housing?

Third, what kind of discretionary review, if any, would the city insist upon for transfers? Would the city require transfers to go through the public land use review process (ULURP)? ULURP allows for oversight and input from the community and city leaders, but also adds time, uncertainty, and expense that might limit the take-up of a new program.

Harnessing unused development rights to promote the construction of affordable housing could be a creative strategy, but candidates need to provide additional detail about how they would structure the program to obtain sufficient affordable housing and protect areas receiving the additional development the transfers make possible.