

United States General Accounting Office

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GAO

**Briefing Report to the Honorable
Frank R. Lautenberg
United States Senate**

September 1986

HEIGHT LIMITATIONS

D.C. Government's Authority to Amend Building Height Limitations



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Washington, D.C. 20548

General Government Division

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September 19, 1986

The Honorable Frank R. Lautenberg
United States Senate

Dear Senator Lautenberg:

This briefing report responds to your January 22, 1986, letter requesting that we interpret the meaning and objectives of the Home Rule Act relating to the District government's authority to amend building height limitations. Our July 18, 1986, report to you (GAO/GGD-86-105BR) addressed the other issues your letter requested we explore, namely (1) current laws limiting building heights in the Nation's Capital, (2) the administrative apparatus in place to implement building height limitations, and (3) comments from federal and District officials on whether the current laws and regulations satisfactorily protect the federal interest with respect to security and to the architectural and aesthetic character of the Nation's Capital as well as the Federal Enclave.

Attention has been drawn to the building heights issue by the controversy over the construction of the Metropolitan Square Project. This project, as a result of a D.C. Council amendment to the Schedule of Heights of Buildings Adjacent to Public Buildings (the Schedule of Heights), exceeds previously established height limitations for that area.

As noted in our July report, the Building Height Act of 1910 and the Schedule of Heights govern private sector maximum building heights in the District of Columbia. The 1910 act, as amended (D.C. Code, section 5-405), essentially limits the maximum height of commercial buildings to 130 feet and residential structures to 90 feet. The Schedule of Heights, required by the 1910 act, was established by the Board of Commissioners of the District of Columbia and places further limitations on the height of buildings adjacent to federal buildings within the parameters outlined in the 1910 act.

In 1979, the D.C. Council approved, and the Mayor signed, the Schedule of Heights Amendment Act (D.C. Law 3-43) to allow construction of Metropolitan Square, a 130 foot high commercial building (bounded by 15th, 14th, F, and G Streets, N.W.) which overlooks both the Treasury Building and the White House. Before the Council's action, commercial buildings at that location were restricted by the Schedule of Heights to 95 feet. Questions arose over the District's authority, under provisions of the Home Rule Act, to amend the Schedule of Heights.

In our opinion, the D.C. Council was not prohibited by provisions of the Home Rule Act from promulgating the Schedule of Heights Amendment Act of

1979 (D.C. Law 3-43) which allowed construction of the Metropolitan Square Project to a height of 130 feet. Section 602 (a)(6) of the Home Rule Act states that the D.C. Council shall have no authority to "enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, section 5-405), and in effect on the date of enactment of this Act." It has been argued that when section 602 (a)(6) of the Home Rule Act was written, the drafters believed that all building height limitations in effect in the District were contained in section 5-405 of the D.C. Code and could not be amended by the D.C. Council. We believe this to be unlikely, however, because even a cursory reading of section 5-405 of the D.C. Code suggests that height limitations, such as the Schedule of Heights or zoning regulations, exist elsewhere.

Because the height limitations set out in the Schedule of Heights are not contained in section 5-405 of the D.C. Code, the D.C. Council is not prohibited from amending the Schedule as long as the amendments do not allow any increase beyond the overall height limits set forth by the Building Height Act of 1910, as amended. This position is consistent with that of the District of Columbia Corporation Counsel.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days after its issue date. At that time, we will send copies to other interested parties. Copies will also be available to others upon request.

If there are any questions regarding the contents of this report, please call me on 275-8387.

Sincerely yours,



Gene L. Dodaro
Associate Director

(426840)

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