

New York Supreme Court

APPELLATE DIVISION—FIRST DEPARTMENT

LANDMARKWEST! INC.,

Petitioner-Appellant,

—against—

CASE NOS.

2021-02808

2021-04423

NEW YORK CITY BOARD OF STANDARDS AND APPEALS,
NEW YORK CITY DEPARTMENT OF BUILDINGS,
EXTELL DEVELOPMENT COMPANY, and WEST 66TH SPONSOR LLC,

Respondents-Respondents.

RECORD ON APPEAL VOLUME IX OF IX (Pages 4857 to 5357)

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[pp. 4857 - 5196]**

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THE COUNCIL

Minutes of the Proceedings for the

STATED MEETING

of

Wednesday, May 12, 2021, 1:39 p.m.

held remotely via video-conference

The Majority Leader (Council Member Cumbo)

presiding as the Acting President Pro Tempore

Council Members

Corey D. Johnson, *Speaker*

Adrienne E. Adams	James F. Gennaro	Bill Perkins
Alicka Ampy-Samuel	Vanessa L. Gibson	Keith Powers
Diana Ayala	Mark Gjonaj	Antonio Reynoso
Inez D. Barron	Barry S. Grodenchik	Kevin C. Riley
Joseph C. Borelli	Robert F. Holden	Carlina Rivera
Justin L. Brannan	Ben Kallos	Ydanis A. Rodriguez
Selvena N. Brooks-Powers	Peter A. Koo	Deborah L. Rose
Fernando Cabrera	Karen Koslowitz	Helen K. Rosenthal
Margaret S. Chin	Bradford S. Lander	Rafael Salamanca, Jr
Robert E. Cornegy, Jr	Stephen T. Levin	Mark Treyger
Laurie A. Cumbo	Mark D. Levine	Eric A. Ulrich
Darma V. Diaz	Farah N. Louis	Paul A. Vallone
Ruben Diaz, Sr.	Alan N. Maisel	James G. Van Bramer
Eric Dinowitz	Steven Matteo	Kalman Yeger
Daniel Dromm	Carlos Menchaca	
Mathieu Eugene	I. Daneek Miller	
Oswald Feliz	Francisco P. Moya	

At the time of this Stated Meeting, there were two vacancies in the Council (22nd District, Queens and 48th District, Brooklyn) pending the swearing-in of the respective certified winners of the November 2, 2021 General Election.

The Majority Leader (Council Member Cumbo) assumed the chair as the Acting President Pro Tempore and Presiding Officer for these virtual proceedings. Following the gaveling-in of the Meeting and the recitation of the Pledge of Allegiance, the Roll Call for Attendance was called by the City Clerk and the Clerk of the Council (Mr. McSweeney).

After consulting with the City Clerk and Clerk of the Council (Mr. McSweeney), the presence of a quorum was announced by the Majority Leader and the Acting President Pro Tempore (Council Member Cumbo).

There were 49 Council Members marked present at this virtual Stated Meeting.

INVOCATION

The Invocation was delivered by Rabbi Gerald Skolnik, spiritual leader of Forest Hills Jewish Center, located at 106-06 Queens Boulevard, Forest Hills, NY 11375.

Thank you so much for granting me this honor.
It's a pleasure to be with all of you.

Ribbono shel Olam!
Sovereign of the universe.
With humility and gratitude,
we invoke the full bounty of your blessings
upon the men and women of the New York City Council
who bear the awesome responsibility
of steering this great metropolis
through unprecedented times of challenge.
Be with them as they deliberate,
guide them as they are called upon
to make difficult and sometimes painful choices
and help them to know and understand
that the physical, social, and emotional wellbeing
of our city's citizens rests in no small measure
on the decisions that they make.
As we gather together this afternoon,
we are intensely aware of how very fragile
all that we hold dear truly is.
Like virtually every great city in the world,
COVID-19 has brought us to our knees
and exacted a terrible and painful price.
So many of us have lost beloved family and friends,
neighbors and colleagues,
and beyond the human losses,
we have had to witness the devastation
that this pandemic has brought to our great city.
Stores and restaurants shuttered,
theaters, movie houses and museums closed,
and children of all ages deprived
of the invaluable education and socialization
that daily school sessions provide,
but as the Psalmist has taught us,
those who sow in tears will harvest in joy.
We are on the cusp, on the very edge
of a great reawakening of our city
as so many of the restrictions
on our daily activities are shortly to be lifted.
The advent of spring brings with it the promise

of seeing our children and grandchildren,
embracing our parents and grandparents,
having a night out or in with friends,
seeing a play, hearing a concert.
The painful isolation of these past 15 or so months
is hopefully about to yield to a rediscovery
of all that makes our lives not only livable, but joyous.
As we contemplate the enormous step back from the abyss,
let us yet again express our gratitude
to those men and women
who we now understand as essential workers,
whose courage in the face of this pandemic
enabled us to continue living;
from those who stock our food source
and made food shopping possible;
to the men and women of the NYPD and NYFD,
they let nothing stop them;
and because of that, we were able to survive.
Let us acknowledge yet again
the incredible bravery and dedication
of nurses, doctors, orderlies, pharmacists,
and all those medical personnel
who battled COVID-19 in a desperate effort
to save our loved ones and ourselves.
Let us once again express our gratitude
to the men and women who labored tirelessly
and at great speed to develop vaccines
that would eventually bring us to this day
and treatments that are saving lives even as we speak.
For all this and so much more, dear God,
we thank you and ask humbly
that you continue to shower your blessings upon us all,
and may I conclude simply by asking
one other humble request
that we all pray for the peace of Jerusalem,
and we say Amen.

Council Member Koslowitz moved to spread the Invocation in full upon the record.

During the Communication from the Speaker segment of this meeting, the Speaker (Council Member Johnson) acknowledged that the number of coronavirus deaths in New York City had reached 32,887 as of May 11, 2021. The Speaker (Council Member Johnson) reiterated again that these statistics were not just numbers but instead represented mothers, fathers, sisters, uncles, cousins, friends, and co-workers who must never be forgotten.

The Speaker (Council Member Johnson) acknowledged the death of a New Yorker who died during the course of his employment: Xing Lin, 37, was killed on April 29, 2021 during his delivery shift at an Astoria restaurant when the driver of a vehicle crashed into his bike. The Speaker (Council Member Johnson) spoke of the dangerous conditions that delivery workers faced each day and noted that the Council would soon be working on additional legislation to offer them more protection.

The Speaker (Council Member Johnson) acknowledged the death of several first responders who had recently passed away from 9/11-related illnesses: retired FDNY Captain John J. Galvin who died on April 29, 2021 at the age of 77; and retired FDNY firefighter Sean D. Kinney who died on May 5, 2021 at the age of 67.

The Speaker (Council Member Johnson) acknowledged the death of former Assembly Member and former Deputy Bronx Borough President Aurelia Greene. She passed away on May 8, 2021 at the age of 86. He noted that she was the first woman to lead the Committee on Banks in the Assembly and was the first African-American woman appointed as Speaker Pro Tempore. He spoke of how she had served as a mentor to Council Member Gibson. He thanked Assembly Member Greene for her decades of service to The Bronx, to the City of New York and to the State of New York.

The Speaker (Council Member Johnson) asked for a Moment of Silence in memory of the individuals named above and in memory of those who had lost their lives to COVID-19.

At this point, a Moment of Silence was observed.

* * *

ADOPTION OF MINUTES

Council Member Powers moved that the Minutes of the Stated Meeting of April 22, 2021 be adopted as printed.

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1101

May 12, 2021

LAND USE CALL-UPS

M-311

By Council Member Treyger:

Pursuant to Rule 11.20(b) of the Council and §197-d(b)(3) of the New York City Charter, the Council resolves that the action of the City Planning Commission on Application Number C 200298 ZSK (West 16th Street Special Permit) shall be subject to review by the Council.

Coupled on Call-up vote.

The Majority Leader and the Acting President Pro Tempore (Council Member Cumbo) put the question whether the Council would agree with and adopt such motion which was decided in the **affirmative** by the following vote:

Affirmative – Adams, Ampry-Samuel, Ayala, Barron, Borelli, Brannan, Brooks-Powers, Cabrera, Chin, Cornegy, D. Diaz, R. Diaz, Dinowitz, Dromm, Eugene, Feliz, Gennaro, Gibson, Gjonaj, Grodenchik, Holden, Kallos, Koo, Koslowitz, Lander, Levine, Louis, Maisel, Menchaca, Miller, Moya, Powers, Reynoso, Riley, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Treyger, Ulrich, Vallone, Van Bramer, Yeager, the Minority Leader (Council Member Matteo), the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **47**.

Present, Not Voting – Levin and Perkins.

At this point, the Majority Leader and the Acting President Pro Tempore (Council Member Cumbo) declared the aforementioned item **adopted** and referred this item to the Committee on Land Use and to the appropriate Land Use subcommittee.

REPORTS OF THE STANDING COMMITTEES

Report of the Committee on Consumer Affairs and Business Licensing

Report for Int. No. 936-A

Report of the Committee on Consumer Affairs and Business Licensing in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to restricting single-use plastic beverage straws, beverage stirrers and beverage splash sticks, and to repeal chapter 4 of title 16 of such code, relating to rechargeable batteries.

The Committee on Consumer Affairs and Business Licensing, to which the annexed proposed amended local law was referred on May 23, 2018 (Minutes, page 1975), respectfully

REPORTS:

I. INTRODUCTION

On May 12, 2021, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Diana Ayala, held a vote on Proposed Introductory Bill Number 936-A (Int. 936-A), in relation to restricting single-use plastic beverage straws, beverage stirrers and beverage splash sticks, and to repeal chapter 4 of title 16 of such code, relating to rechargeable batteries. On June 21, 2018, the Committee held a hearing on this bill and heard from the Department of Consumer and Worker Protection ("DCWP", formerly the Department of Consumer Affairs), business and trade organizations, environmental groups, disability advocates, and other interested stakeholders who provided testimony on the bill. Their feedback has been incorporated into the latest version of the bill. At the vote on May 12, the Committee voted 9 in favor, 1 opposed and 0 abstentions on the bill.

II. BACKGROUND

Cheap production costs, durability and broad functionality mean that plastics are a common feature of our lives. More than 320 million tons of plastic are consumed each year and more plastic has been produced in the last decade than ever before.¹ Additionally, use of plastics is expected to double over the next two decades.² While plastics may last for decades or even centuries,³ plastic is often used to make single-use products. Ninety-five percent of plastic packaging, for example, is only used once, and only 14 percent is collected for recycling.⁴ This means that at least eight million tons of plastic leak into the ocean each year – a figure that is equivalent to dumping a garbage truck of trash into the ocean every minute.⁵ The World Economic Forum predicts that, under a business-as-usual scenario, there will be more plastic in the ocean than fish by 2050.⁶ Followed by Japan and the European Union, the United States is the largest generator of plastic packaging waste on a per-capita basis.⁷

¹ Laurent Lebreton *et al* "Evidence that the Great Pacific Garbage Patch is Rapidly Accumulating Plastic", *Nature*, March 22, 2018 available at: <https://www.nature.com/articles/s41598-018-22939-w>.

² World Economic Forum "The New Plastics Economy: Rethinking the Future of Plastics" January 2016, available at: http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf, p. 6.

³ National Parks Service "Things Stick Around" available at: https://www.nps.gov/teachers/classrooms/things_stick_around.htm.

⁴ World Economic Forum "The New Plastics Economy: Rethinking the Future of Plastics" January 2016, available at: http://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf, p. 7.

⁵ *Id.*

⁶ *Id.*

⁷ The United Nations Environment Programme "Single-use Plastics: A Roadmap for Sustainability", June 2018 available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/25496/singleUsePlastic_sustainability.pdf?sequence=1&isAllowed=y, p. 5.

Most plastics are also less dense than seawater, meaning that pieces of plastic float around the ocean and break down into smaller particles (microplastics)⁸ that are consumed by fish and aquatic birdlife.⁹ The ubiquity of plastics, its buoyancy, and the struggle to properly dispose of it resulted in a land mass, known as the Great Pacific Garbage Patch, floating between the coasts of California and Hawaii. 99.9 percent of this patch, which is twice the size of Texas,¹⁰ is made up of plastic.¹¹

As a single-use product, plastic straws are a common contributor to this debris. Plastic straws can be recycled, but because of their size and lightweight nature, as well as the manner by which they are used, they rarely make it into recycling bins. Instead, they often end up in the ocean and are ranked fifth in terms of the most common types of plastics found in coastal cleanups.¹²

For most people, straws are used for convenience or out of habit more than a necessity.¹³ There are no definitive figures on how many plastic straws are used by consumers in the United States,¹⁴ but comparable data from other countries helps to demonstrate the enormity of the problem. A report by the City of Vancouver, Canada, for example, estimates that 57 million straws are used in Canada each day,¹⁵ while in the United Kingdom, they dispose of an estimated 8.5 billion straws each year.¹⁶

The Movement to Plastic Ban Straws

In February 2011, Milo Cress, a nine year-old boy from Vermont, started an earnest effort to stop retailers in his community from offering plastic straws to their customers, unless they requested them.¹⁷ In the spring of that year, the National Restaurant Association referenced Milo's suggestion of 'offer-first' as the best practice for restaurants. Milo's campaign, Be Straw Free, has since evolved and is now being run through Eco-Cycle, one of the nation's largest non-profit recyclers.¹⁸ After a video that captured a plastic straw being removed from a sea turtle's nose went viral in 2015,¹⁹ numerous companies, cities and institutions have committed to banning single-use plastic straws, and other campaigns to ban plastic straws have been launched.²⁰

⁸ Laurent Lebreton *et al* "Evidence that the Great Pacific Garbage Patch is Rapidly Accumulating Plastic", *Nature*, March 22, 2018 available at: <https://www.nature.com/articles/s41598-018-22939-w>.

⁹ Laura Parker "Ocean Life Eats Tons of Plastic – Here's Why That Matters" *National Geographic*, August 16, 2017 available at: <https://news.nationalgeographic.com/2017/08/ocean-life-eats-plastic-larvaceans-anchovy-environment/>.

¹⁰ Doyle Rice "World's Largest Collection of Ocean Garbage is Twice the Size of Texas", *USA Today*, March 22, 2018 available at: <https://www.usatoday.com/story/tech/science/2018/03/22/great-pacific-garbage-patch-grows/446405002/>.

¹¹ Laurent Lebreton *et al* "Evidence that the Great Pacific Garbage Patch is Rapidly Accumulating Plastic", *Nature*, March 22, 2018 available at: <https://www.nature.com/articles/s41598-018-22939-w>.

¹² Give a Sip "FAQs: Are Straws a Big Part of the Problem?" available at: <https://giveasip.nyc/toolkit>.

¹³ The Committee recognizes that there are people with medical conditions or disabilities that require them to use drinking straws. Exceptions have been made in Int. 936 to accommodate these needs.

¹⁴ A common figure used by the National Parks Service, media outlets and activist groups is that American consumers use 500 million straws each day. However, this data is not grounded in scientific methodology, and has been criticized by some pundits (see: Robert Gearty "NBC Backs off Fishy Statistic About Plastic Straws From Research by 9-year-old Boy", *Fox News*, April 22, 2018 available at: <http://www.foxnews.com/entertainment/2018/04/22/nbc-news-source-for-fishy-statistic-about-plastic-straws-is-research-by-9-year-old-boy.html>). However, some environmental groups report that this figure is very conservative (see: Eco-Cycle "Be Straw Free Campaign: Frequently Asked Questions" available at: <http://www.ecocycle.org/bestrawfree/faqs>).

¹⁵ City of Vancouver "Single-Use Item Reduction Strategy: Policy Report", May 1, 2018, available at: <http://council.vancouver.ca/20180516/documents/pspc2b.pdf>, p. 4.

¹⁶ This figure was originally quoted from a report by research consultants Eunomia (see: "Leverage Points for Reducing Single-use Plastics – Background Research available at: <http://www.eunomia.co.uk/reports-tools/leverage-points-for-reducing-single-use-plastics-background-research/>). The UK Statistics Authority have verified this figure as a credible estimate (see: Ed Humpherson "Statistics on Single-use Plastic Straws", available at: <https://www.statisticsauthority.gov.uk/correspondence/statistics-on-single-use-plastic-straws/>).

¹⁷ Darryl Fears "A Campaign to Eliminate Plastic Straws is Sucking in Thousands of Converts", *Washington Post*, June 24, 2017 available at: https://www.washingtonpost.com/national/health-science/a-campaign-to-eliminate-plastic-straws-is-sucking-in-thousands-of-converts/2017/06/24/d53f70cc-4c5a-11e7-9669-250d0b15f83b_story.html?utm_term=.10976968c89e.

¹⁸ Eco-Cycle "Be Straw Free Campaign" available at: <http://www.ecocycle.org/bestrawfree>.

¹⁹ Darryl Fears "A Campaign to Eliminate Plastic Straws is Sucking in Thousands of Converts", *supra* note 39.

²⁰ For example, in New York the Wildlife Conservation Society has partnered with the New York Aquarium to run the 'Give a Sip' campaign to ban plastic straws. More than 60 businesses have committed to stop using single-use plastic straws (more information is available at: <https://giveasip.nyc/about>). Other campaigns include 'Straw Wars' in the UK (available at: <http://strawwars.org/>) and 'For a Strawless Ocean' in the United States (available at: <https://www.strawlessocean.org/>).

In New York City, zoos in the Bronx, Queens, Central and Prospect parks and the New York Aquarium have all banned plastic straws, as well as cold drink lids and single-use plastic bags.²¹ In 2018, McDonald's in Britain joined a host of other food and hospitality chains to eliminate plastic straws and replace them with paper or other alternatives,²² and several global hotels and airlines have made similar pledges.²³

Other Jurisdictions

At the legislative level, numerous towns, cities and even countries are implementing laws to restrict the availability of single-use plastic straws. In 2018, Vanuatu became the first nation in the world to ban plastic straws (in addition to single-use plastic bags and polystyrene takeaway boxes).²⁴ In the United States, Los Angeles,²⁵ Davis,²⁶ San Luis Obispo²⁷ and San Francisco,²⁸ in California have all enacted laws to prevent businesses from automatically providing single-use plastic straws. In Seattle, Washington, the first city in the Country to begin the process of restricting single-use plastic straws, the law bans straws unless they are made from compostable material.²⁹

Similar approaches have been taken at the international level. In South Australia, the first and only state in Australia to so far enact legislation on single-use plastics, plastic and oxo-degradable³⁰ plastic straws are prohibited,³¹ although businesses may choose to have some on hand to provide to customers who require plastic straws for a medical purpose.³² The law in England is even more stringent – the offer and supply of a single-use

²¹ "WCS Zoos and Aquarium Join Nationwide Effort to Cut Down on Single-Use Plastics", *WCS Newsroom*, July 10, 2017, available at: <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/10252/WCS-Zoos-and-Aquarium-Join-Nationwide-Effort-to-Cut-Down-on-Single-Use-Plastics.aspx>.

²² Katherine Pennington "McDonald's Says It's the Final Straw as Cuts Down on Plastic", *Reuters*, March 28, 2018 available at <https://www.reuters.com/article/us-britain-straws-retailers/mcdonalds-says-its-the-final-straw-as-cuts-down-on-plastic-idUSKBN1H42P8>.

²³ Adam H. Graham "Bans on Plastic Straws Are Growing. But Is the Travel Industry Doing Enough?", *New York Times*, May 1, 2018, available at: <https://www.nytimes.com/2018/05/01/travel/straw-bans-hotels-resorts.html>.

²⁴ Jilda Stem "Vanuatu Walks the Talk – and Becomes First Country to Ban Plastic Straws", *Asia Pacific Report*, May 15, 2018 available at: <https://asiapacificreport.nz/2018/05/15/vanuatu-walks-the-talk-and-becomes-first-country-to-ban-plastic-straws/>.

²⁵ For more information see Ordinance number 186028, available at: http://clkrep.lacity.org/online/docs/2018/18-0053_ORD_186028_04-21-2019.pdf.

²⁶ For more information see "Beverage straw ordinance", available at: <https://www.cityofdavis.org/city-hall/public-works-utilities-and-operations/solid-waste-and-recycling/beverage-straw-ordinance#:~:text=Key%20points%20from%20the%20ordinance,for%20consumption%20on%20its%20premises>.

²⁷ For more information see "Single-use straws", available at: <https://sanluisobispo.municipal.codes/Code/8.09>.

²⁸ For more information see Ordinance number 294-18, available at: <https://sfbos.org/sites/default/files/o0294-18.pdf>.

²⁹ For more information see "Compostable or recyclable food service ware required", available at: https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT21UT_SUBTITLE_IIISOWA_CH21.36SOWACO_SUBCHAPTER_IIISOWACO_21.36.086COREFOSEWARE.

³⁰ The terminology surrounding plastics – 'biodegradable', 'compostable', 'bioplastics', etc. – can be confusing and, although some of the terms are used interchangeably, their different definitions are crucial. Oxo-degradable, for instance, "[w]hile often confused with biodegradable plastics...are a category unto themselves. They are neither a bioplastic nor a biodegradable plastic, but rather a conventional plastic mixed with an additive in order to imitate biodegradation. Oxo-degradable plastics quickly fragment into smaller and smaller pieces, called microplastics, but don't break down at the molecular or polymer level like biodegradable and compostable plastics. The resulting microplastics are left in the environment indefinitely until they eventually fully break down." (See: Green Dot Bioplastics "A straightforward explanation of biodegradable vs. compostable vs. oxo-degradable plastics", available at: <https://www.greendotbioplastics.com/biodegradable-vs-compostable-vs-oxo-degradable-plastics-a-straightforward-explanation/>.)

³¹ For more information see "Single-use and Other Plastic Products (Waste Avoidance) Act 2020", available at: [https://www.legislation.sa.gov.au/LZ/C/A/SINGLE-USE%20AND%20OTHER%20PLASTIC%20PRODUCTS%20\(WASTE%20AVOIDANCE\)%20ACT%202020/CURRENT/2020.27.ATH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/SINGLE-USE%20AND%20OTHER%20PLASTIC%20PRODUCTS%20(WASTE%20AVOIDANCE)%20ACT%202020/CURRENT/2020.27.ATH.PDF).

³² For more information see "Explanatory information: Regulations that implement exemptions under the *Single-use and other plastic products (Waste Avoidance) Act 2020*", available at: https://www.greenindustries.sa.gov.au/Explanatory%20information%20on%20SUP%20Regulations_FINAL.pdf.

plastic straw is an offence, and only businesses such as pharmacies may sell them.³³ In Vancouver, Canada, meanwhile, single-use plastic and compostable plastic straws are prohibited; however, every food establishment must stock “flexible plastic straws, wrapped in paper” that can be provided, upon request, for someone with a medical need.³⁴

None of the jurisdictions listed above mandate signage to alert customers that straws may be available upon request. Only one – Los Angeles, CA – requires a sign, but the purpose is to draw customers’ attention to the environmental impacts of choosing to use a straw, when it is simply being used for convenience.³⁵

The Alternatives

Alternatives to single-use plastic straws do exist; however there is debate over whether their cost, durability and manufacturing process render them unsuitable to replace disposable plastic straws. Aardvark, the company that was established by the creator of the paper straw, Marvin Stone, states that their paper straws are one cent more expensive, per straw, than plastic alternatives.³⁶ Other types of reusable or biodegradable straws that can be made from steel, glass, bamboo, silicon, or sugar cane are often more expensive, although some merchants report that customers request straws less often when alternatives to plastic are provided.³⁷

Some of these alternatives may not be viable for certain individuals who require a straw for medical purposes. According to disability advocates, for example, paper straws can become a choking hazard, metal straws do not serve as a substitute for someone who needs a flexible straw, and re-useable silicon straws can be difficult to clean, and therefore each alternative may pose difficulties consuming food and beverages.³⁸

III. BILL ANALYSIS

Int. No. 936-A would restrict food service establishments from providing single-use plastic straws, stirrers and splash sticks to customers. A “food service establishment” is defined as “a premises or part of a premises where food is provided directly to a person, whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle...[including, but not limited to] full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, bars, nightclubs, grocery stores, vending trucks or carts and cafeterias.” Subdivision b of section 16-401 of the bill would prohibit any food service establishment from providing a single-use plastic stirrer or splash stick to customers. The provision of stirrers and splash sticks made of non-plastic, compostable materials would be permitted.

Subdivision c of section 16-401 concerns restrictions on providing plastic straws. Section 16-401 (c) (1) prohibits food service establishments from providing non-compostable, single-use plastic straws to customers except upon a customer’s request for such plastic straw. Compostable straws that are not made from plastic, such as straws made from paper or other non-plastic compostable material, could be provided to customers without request. Section 16-401 (c) (2) requires all food service establishments to maintain a sufficient supply of single-use plastic straws that are not compostable, to be provided upon customer request. Upon a customer’s request for a non-compostable plastic straw, food service establishments would be required to provide such straw free of charge, without inquiring about the reason for the request. Refusal to provide a non-compostable plastic straw or inquiring about the reason for the request could constitute a violation of the City’s Human Rights Law. For food service establishments that have self-serve stations, section 16-401 (c) (3) requires the establishments to

³³ For more information see “The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020”, available at: <https://www.legislation.gov.uk/ukxi/2020/971/contents/made>.

³⁴ City of Vancouver “Plastic straws”, available at: <https://vancouver.ca/green-vancouver/plastic-straws.aspx#accessibility>.

³⁵ City of Los Angeles “Ordinance number 186028”, available at: http://clkrep.lacity.org/online/docs/2018/18-0053_ORD_186028_04-21-2019.pdf.

³⁶ Aardvark “Frequently Asked Questions: How Much Do They Cost?”, available at: <https://www.aardvarkstraws.com/faq/>.

³⁷ Abha Bhattarai “Paper, Bamboo, Twizzlers: Restaurants Consider Alternatives to the Plastic Straw”, *The Washington Post*, February 2, 2018, available at: https://www.washingtonpost.com/business/economy/paper-bamboo-twizzlers-restaurants-consider-alternatives-to-the-plastic-straw/2018/02/02/9be47608-02ab-11e8-8acf-ad2991367d9d_story.html?utm_term=.2c737a83513b.

³⁸ See: Committee on Consumer Affairs and Business Licensing, Hearing transcript, June 21, 2018, available at: <https://nyc.legistar.com/View.ashx?M=F&ID=6328864&GUID=78B02E58-981A-4322-B220-3F88A829196D>, pp. 62-75.

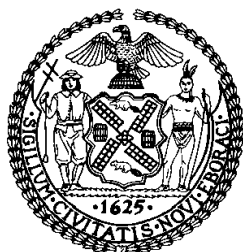
post signs at all such self-serve stations disclosing that plastic straws are available upon request. The Department of Sanitation would be required to provide a downloadable version of the sign on their website. A “self-serve station” is defined in subdivision a of the bill as “a designated area or mechanical dispenser in a food service establishment where consumers may help themselves to eating or drinking utensils such as napkins, cups, knives, forks, straws, stirrers or splash sticks.”

Subdivision d of section 16-401 permits compostable plastic straws to be given out only upon request for a straw, for use on-premises, and if the food service establishment properly disposes of those straws, either through a commercial composting provider or in accordance with section 16-306.1 (c) (1) of the Administrative Code if covered by such section. Food service establishments not subject to such section would be required to maintain separate and properly labeled bins for disposal. Section 16-401 (e) would exempt the provision of single-use straws, stirrers and splash sticks packaged in bulk by a manufacturer and offered for retail sale; as well as pre-packaged straws that are pre-attached to beverages, such as juice boxes.

Subdivision f of section 16-401 would require the Department of Sanitation to conduct outreach and education on the bill’s requirements, and to provide information on compostable straws, stirrers and splash sticks on its website. Subdivision g of such section grants the authority to enforce the bill to the Department of Sanitation, the Department of Health and Mental Hygiene and DCWP. Subdivision h of such section makes food service establishments that violate the provisions of this bill liable for civil penalties. Civil penalties would be \$100 for a first violation, \$200 for a second violation and \$400 for a third and any subsequent violation, except that for the first year after the bill becomes law, food service establishments would receive only a warning for a first violation. This bill would take effect on November 1, 2021.

This bill would also repeal Chapter 4 of Title 16 of the Administrative Code pertaining to the recycling of rechargeable batteries, as Section 27-1811 of the Environmental Conservation Law expressly preempts any local law on the subject.

(The following is the text of the Fiscal Impact Statement for Int. No. 936-A:)



**THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION**

LATONIA MCKINNEY, DIRECTOR

FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO: 936-A

**COMMITTEE: Consumer Affairs and Business
Licensing**

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to restricting single-use plastic beverage straws, beverage stirrers and beverage splash sticks, and to repeal chapter 4 of title 16 of such code, relating to rechargeable batteries.

SPONSOR(S): Council Members Rosenthal, Grodenchik, Levine, Lander, Moya, Ayala, Ampy-Samuel, Rivera, Chin, Powers, Van Bramer, Koslowitz, Gibson, Brannan, Adams, Reynoso, Gjonaj, Kallos, Dromm, Salamanca, Cabrera, Rodriguez, Holden, Vallone, Perkins, Treyger, Cornegy, Eugene, Barron, Maisel, Rose, Menchaca, Koo, Cumbo and Louis.

SUMMARY OF LEGISLATION: Proposed Intro. No. 936-A would restrict food service establishments – such as restaurants, cafes, delis, bars, grocery stores and food trucks – from providing single-use plastic straws, stirrers and splash sticks to customers. Providing single-use plastic stirrers and splash sticks of any kind would be prohibited. Providing non-compostable, single-use plastic straws would be prohibited except upon request. For customers who request a non-compostable plastic straw, food service establishments would be required to provide one free of charge, without inquiring about the reason for the request.

EFFECTIVE DATE: This local law would take effect on November 1, 2021, except that the Commissioner of Sanitation, the Commissioner of Consumer and Worker Protection and the Commissioner of Health and Mental Hygiene could take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such date.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2022

FISCAL IMPACT STATEMENT:

	Effective FY22	FY Succeeding Effective FY23	Full Fiscal Impact FY22
Revenues	\$0	\$0	\$0
Expenditures	\$220,000	\$0	\$0
Net	(\$220,000)	\$0	\$0

IMPACT ON REVENUES: It is estimated that this bill would have no impact on revenues.

IMPACT ON EXPENDITURES: It is estimated that the implementation of the legislation would require additional resources of \$220,000 for the Department of Sanitation to conduct outreach and education as required. Relevant agencies would use existing resources to comply with the enforcement component of this bill.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: General Fund

SOURCE OF INFORMATION: Mayor's Office of Legislative Affairs

ESTIMATE PREPARED BY: Florentine Kabore, Financial Analyst

ESTIMATE REVIEWED BY: Nathaniel Toth, Deputy Director
John Russell, Unit Head
Noah Brick, Assistant Counsel

LEGISLATIVE HISTORY: This legislation was introduced by the Council on May 23, 2018 as Int. No. 936 and was referred to the Committee on Consumer Affairs and Business Licensing (Committee). The Committee heard the legislation on June 21, 2018, and the legislation was laid over. The legislation was subsequently amended, and the amended version, Proposed Int. No. 936-A, will be considered by the Committee on May 12, 2021. Upon a successful vote by the Committee, Proposed Int. No. 936-A will be submitted to the full Council for a vote on May 12, 2021.

DATE PREPARED: May 7, 2021.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 936-A:)

Int. No. 936-A

By Council Members Rosenthal, Grodenchik, Levine, Lander, Moya, Ayala, Ampry-Samuel, Rivera, Chin, Powers, Van Bramer, Koslowitz, Gibson, Brannan, Adams, Reynoso, Gjonaj, Kallos, Dromm, Salamanca, Cabrera, Rodriguez, Holden, Vallone, Perkins, Treyger, Cornegy, Eugene, Barron, Maisel, Rose, Menchaca, Koo, Cumbo, Louis and Gennaro.

A Local Law to amend the administrative code of the city of New York, in relation to restricting single-use plastic beverage straws, beverage stirrers and beverage splash sticks, and to repeal chapter 4 of title 16 of such code, relating to rechargeable batteries

Be it enacted by the Council as follows:

Section 1. Chapter 4 of title 16 of the administrative code of the city of New York is REPEALED and a new chapter 4 of title 16 is added to read as follows:

Chapter 4. SINGLE-USE ITEMS

§ 16-401 Restrictions on providing single-use plastic beverage straws, beverage stirrers and beverage splash sticks.

a. Definitions. As used in this section, the following terms have the following meanings:

Beverage splash stick. The term “beverage splash stick” means a device primarily intended to be used to keep heat and liquid from escaping a lidded cup.

Beverage stirrer. The term “beverage stirrer” means a device primarily intended to be used by a person for the purpose of stirring beverages.

Beverage straw. The term “beverage straw” means a tube primarily intended to be used for transferring a beverage from its container to the mouth of a person.

Compostable. The term “compostable” means: (i) capable of undergoing biological breakdown in an industrial composting process, (ii) degradable into biomass that results in a material that is safe and desirable as a soil amendment and (iii) where applicable, as set forth in rules of the department: (A) compliant with ASTM D6400, ASTM D6868 or successor standards or other applicable standards developed by ASTM or other international standards organizations that specify criteria relating to the degradation of manufactured items into safe and environmentally beneficial material and (B) approved by a third-party field testing organization that has tested the item at issue to ensure that it is degradable into biomass that results in a material that is safe and desirable as a soil amendment.

Food service establishment. The term “food service establishment” means a premises or part of a premises where food is provided directly to a person, whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle. Food service establishment shall include, but not be limited to, full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, bars, nightclubs, grocery stores, vending trucks or carts and cafeterias.

Plastic. The term “plastic” means a synthetic material made from organic polymers, including, but not limited to, polypropylene and polystyrene, that can be molded into shape while soft, and then set into a rigid or slightly elastic form.

Self-serve station. The term “self-serve station” means a designated area or mechanical dispenser in a food service establishment where consumers may help themselves to eating or drinking utensils such as napkins, cups, knives, forks, straws, stirrers or splash sticks.

Single-use. The term “single-use” means designed and intended to be used only once for drinking, eating or to serve a food or beverage.

b. No food service establishment in the city shall provide to any person any single-use beverage stirrer or single-use beverage splash stick made of plastic. Nothing in this chapter shall preclude food service establishments from providing compostable beverage stirrers or compostable beverage splash sticks that are not made from plastic.

c. 1. No food service establishment in the city shall provide to any person a single-use plastic beverage straw that is not compostable except upon request. Nothing in this chapter shall preclude food service establishments from providing compostable beverage straws that are not made from plastic.

2. All food service establishments shall maintain a sufficient supply of single-use plastic beverage straws that are not compostable. If a person specifically requests a plastic beverage straw, such food service establishment shall provide a single-use plastic beverage straw that is not compostable free of charge and shall make no inquiry into the reason for such request. A violation of this paragraph may also violate the reasonable

accommodation provisions of title 8 of this code and be subject to enforcement by the city commission on human rights.

3. All food service establishments that have one or more self-serve stations shall display a sign at each such station that states: "Plastic straws available upon request." Such signs shall be unobstructed in their entirety. Such signs must be at least two inches by seven inches, in no less than 20 point font. A sample sign that satisfies the requirements of this paragraph shall be made available in a downloadable format on the department's website.

d. Notwithstanding subdivision c of this section, food service establishments may provide compostable beverage straws that are made from plastic upon request only if such straws are used by persons on such food service establishments' premises and such food service establishments dispose of all such straws through a commercial composting provider or in accordance with paragraph 1 of subdivision c of section 16-306.1 if such establishments are covered establishments pursuant to such section. Food service establishments that are not covered under section 16-306.1 that provide compostable beverage straws that are made of plastic pursuant to this subdivision shall maintain distinct and clearly labeled bins indicating where such compostable beverage straws that are made from plastic are to be separated for purposes of disposal.

e. This section does not apply to single-use beverage straws, beverage stirrers or beverage splash sticks that are packaged in bulk by a manufacturer and offered for retail sale. This section does not apply to pre-packaged beverage straws attached to individual beverage boxes, including but not limited to juice boxes, by the beverage manufacturer.

f. In consultation with other city agencies, the department shall conduct outreach and education about the requirements of this section. Such outreach and education shall be offered in multiple languages and shall employ best practices for accessibility for people with disabilities. Additionally, the department shall provide information about available compostable single-use beverage splash sticks, beverage stirrers and beverage straws on its website.

g. The department, the department of health and mental hygiene and the department of consumer and worker protection shall have the authority to enforce the provisions of this section.

h. Any person who violates this section or any rule promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner, the commissioner of health and mental hygiene or the commissioner of consumer and worker protection, or in a proceeding before the office of administrative trials and hearings, pursuant to section 1049-a of the charter, or in the case of a food service establishment within the jurisdiction of the commissioner of health and mental hygiene or the commissioner of consumer and worker protection, in a proceeding before the office of administrative trials and hearings pursuant to section 1048 of the charter. Such penalties shall be in the amount of one hundred dollars for the first violation, two hundred dollars for the second violation committed on a different day within a period of twelve months, and four hundred dollars for the third and each subsequent violation committed on different days within a period of twelve months, except that such departments shall not issue a notice of violation, but shall issue a warning for any first violation that occurs before November 1, 2022.

§ 2. This local law takes effect on November 1, 2021, except that the commissioner of sanitation, the commissioner of consumer and worker protection and the commissioner of health and mental hygiene may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such date.

DIANA AYALA Chairperson; MARGARET S. CHIN, PETER A. KOO, KAREN KOSLOWITZ, BRADFORD S. LANDER, BEN KALLOS, JUSTIN L. BRANNAN, CARLOS MENCHACA, KALMAN YEGER, ERIC DINOWITZ; Committee on Consumer Affairs and Business Licensing, May 12, 2021 (Remote Hearing). Other Council Members Attending: Council Members Rose, Levin and R. Diaz.

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Education

Report for Int. No. 1681-A

Report of the Committee on Education in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to school food waste prevention plans.

The Committee on Education, to which the annexed proposed amended local law was referred on August 14, 2019 (Minutes, page 2762), respectfully

REPORTS:**I. INTRODUCTION**

On May 12, 2021, the Committee on Education, chaired by Council Member Mark Treyger, held a vote on Proposed Introduction Number 1681-A, sponsored by Council Member Van Bramer. This legislation was previously heard at a hearing of this Committee on September 18, 2019, at which the Committee received testimony from the Mayor's Office of Food Policy (MOFP) and advocates, experts, and practitioners on food justice, food security, regional farming, urban agriculture, school food, nutrition education, food businesses, fresh food access projects, and food waste. On May 12, 2021, the Committee passed Proposed Introduction Number 1681-A by a vote of 18 in the affirmative, zero in the negative, with zero abstentions.

II. BACKGROUND

On August 1, 2019, New York City Council Speaker Corey Johnson released the report *Growing Food Equity in New York City: A City Council Agenda* ("*Growing Food Equity*").¹ The report outlines budget and legislative proposals to build food equity in the areas of food governance; hunger; food waste; school food and nutrition education; equitable access to healthy food; and urban agriculture. Every person regardless of their income, race, gender, education, age, birthplace, or neighborhood should have equitable access to healthy food, which can come from many sources such as supermarkets, small grocers, non-profit stores, bodegas, restaurants, green carts, farmers' markets, Community Supported Agriculture (CSA) programs, fresh food boxes, and community gardens. Yet many New Yorkers experience food insecurity and food-related illnesses, and there is inequitable access to fresh and healthy food options in many neighborhoods throughout the city, particularly in low-income communities of color.²

There are numerous areas in our food system where more and improved interventions are needed to tackle food inequities. Many low-income areas continue to be underserved by affordable full-service grocery stores, and some gentrifying neighborhoods are losing affordable stores and gaining higher-priced ones. Farm-to-city programs like farmers' markets, CSAs, and food box programs can struggle to compete in the food market with a growing influx of grocery and meal-delivery businesses and without growth in local farm businesses, who are themselves combatting low profit margins as they try to have competitive prices with other food retailers.³ Additionally, our food system has the opportunity to increase access to healthier, fresh, scratch-cooked meals to

¹ New York City Council, "Growing Food Equity in New York City: A City Council Agenda" (August 2019), <http://council.nyc.gov/data/wp-content/uploads/sites/73/2019/08/growing-food-equity-1.pdf>

² Id. at 4-6

³ Kyle Lawson, Membership groups offering farm fresh food on Staten Island struggle with declining participation. Staten Island Live (June 11, 2019), available at <https://www.silive.com/news/2019/06/membership-groups-offering-farm-fresh-food-on-staten-island-struggle-with-declining-participation.html>; Jodi Helmer, Why Are So Many Farmers Markets Failing? Because The Market Is Saturated, NPR (March 17, 2019), available at <https://www.npr.org/sections/thesalt/2019/03/17/700715793/why-are-so-many-farmers-markets-failing-because-the-market-is-saturated>

New York City's 1.1 million school children. School food menus and kitchen and cafeteria infrastructure need significant investments to increase the participation rates and access to healthy food for our school-age children.

Further, New York City continues to face a "meal gap"—the number of missing meals that result from insufficient household resources to purchase food—of nearly 208 million meals.⁴ An estimated 1.09 million New Yorkers are "food insecure," meaning that they had difficulty at some time during the year accessing enough food due to a lack of resources.⁵ New York City's food insecurity rate is 12% higher than the national rate, and 21% higher than New York State's.⁶ While New York City's current rate of food insecurity is declining, it is still higher than prior to the 2008 recession.⁷ From 2015-2017, 18% of all children, almost 9% of working adults, and almost 11% of seniors experienced food insecurity.⁸ Moreover, food insecurity is a significant challenge among college students. A March 2019 survey of 22,000 CUNY students across 19 campuses found almost half (48%) of respondents indicated that they experienced food insecurity in the previous 30 days.⁹

Meanwhile, the inefficiency of our food system is staggering. While almost 41 million Americans do not have enough to eat, we also paradoxically waste food at alarming rates.¹⁰ Approximately 40% of all food grown in the U.S. is thrown away before it is eaten.¹¹ Saving just one-third of food from becoming waste would feed the 41 million Americans who face hunger.¹² On average, a New York City household wastes 8.7 pounds of food every week, despite that six pounds of this food is edible at the time it is thrown out.¹³ Food waste at individual and institutional levels can be curbed. Each year, 11 City agencies serve almost 240 million meals and snacks in a variety of settings, including schools, after school programs, public hospitals, and correctional facilities.¹⁴ Not only is this buying power an opportunity to reduce food waste, but to advance good food purchasing standards that help ensure that city-procured food advances goals that support five value areas: local economies, nutrition, valued workforce, animal welfare, and environmental sustainability.

The City also needs equitable access to green spaces, including through urban agriculture. Urban agriculture in New York City includes a rich history of community gardens, and newer food production and greening models, such as green roofs, and rooftop and vertical farms. Even after decades of existence, some community gardens still face struggles for survival against competing land interests. Urban agriculture spaces are key neighborhood assets in terms of food, education, community development, environmental protection, and improved health and quality of life. They are also one important tool cities have in the fight against climate change and the myriad of public health concerns that follow rising temperatures, such as asthma attacks and heat-related illnesses. Due to the "urban heat island effect," cities are often two to eight degrees warmer than their neighboring suburban and rural areas.¹⁵ This is due to a combination of factors, including tall buildings, dark roofs and pavement that absorb heat, and lack of green space.¹⁶ The heat island effect is exacerbated in low-income communities of color that have long faced disinvestment and have less access to green space.¹⁷

⁴ Food Bank For New York City, Research, Reports and Financials: Fast Facts, available at <https://www.foodbanknyc.org/research-reports>, (last visited September 10, 2019), (hereinafter, Food Bank for New York City, Fast Facts).

⁵ Hunger Free America, The Uneaten Big Apple: Hunger's High Cost in NYC, New York City Hunger Report, 2018, Hunger Free America, available at https://www.hungerfreeamerica.org/sites/default/files/atoms/files/NYC%20and%20NYS%20Hunger%20Report%202018_0.pdf (hereinafter, Hunger Free America, The Uneaten Big Apple).

⁶ Food Bank For New York City, Fast Facts, *supra* note 4.

⁷ Hunger Free America, The Uneaten Big Apple, *supra* note 5.

⁸ *Id.*

⁹ Sara Goldrick-Rab, Vanessa Coca, Christine Baker-Smita and Elizabeth Looker, City University of New York #RealCollege Survey, (March 2019), available at https://hope4college.com/wpcontent/uploads/2019/03/HOPE_realcollege_CUNY_report_final_webversion.pdf.

¹⁰ Feeding America, Food Insecurity in the United States, available at <https://map.feedingamerica.org/> (last visited September 10, 2019).

¹¹ Wasted: How America is Losing Up To 40 Percent of its food Farm to Fork to Landfill, Second Edition of NRDC's Original 2012 Report, National Resource Defense Council, (2017), available at <https://www.nrdc.org/sites/default/files/wasted-2017-report.pdf>.

¹² *Id.*

¹³ NRDC, Estimating Quantities and Types of Food Waste at the City Level, (Oct. 2017), available at <https://www.nrdc.org/sites/default/files/food-waste-city-level-report.pdf>.

¹⁴ NYC Food Policy, Food Metrics Report 2018, <https://www1.nyc.gov/assets/foodpolicy/downloads/pdf/2018-Food-Metrics-Report.pdf>.

¹⁵ Calma, Justine, How New York City Is Tackling Extreme Heat in a Warming World, Grist (July 16, 2018), available at <https://www.wired.com/story/how-new-york-city-is-tackling-extreme-heat-in-a-warming-world/>.

¹⁶ *Id.*

¹⁷ Richard Florida, The Inequality of America's Parks and Green Space, CityLab (Mar. 19, 2019), available at <https://www.citylab.com/equity/2019/03/inequality-parks-and-green-space-income-race-research/585166/>.

Government is uniquely positioned to partner with communities in the fight for a just and fair food system. Policy makers can ensure that systems are designed with food justice goals in mind to protect those most impacted by food inequities, and that more resources are reaching the communities where neighbors are engaged in this work. Government can also coordinate actions across agencies and systems, since we know that policy decisions made in areas like housing, environmental protection, climate change, criminal justice, education, transportation, and more have a direct impact on hunger, healthy food access, food business development, and green space. Yet food and agriculture work being done across many different City agencies continues without a codified, well-resourced office of food policy; a unified, comprehensive food plan with a formal community engagement strategy; or consistent and meaningful tools for measuring the impact of City agencies' efforts to address food issues. Without governance reforms, the impact of City interventions to combat the social and economic food inequities that millions of our city's residents combat each day remain limited.

Growing Food Equity includes tangible steps the City can take to make a difference in how our food system is run and ensure its risks and benefits are shared and not distributed inequitably. Along with budget priorities, *Growing Food Equity* outlines a legislative agenda to improve food equity, combat food insecurity and increase healthy food access for all New Yorkers. The following legislation is highlighted in *Growing Food Equity* and is being considered at today's hearing.

III. LEGISLATION

ANALYSIS OF PROPOSED INT. NO. 1681-A

A Local Law to amend the administrative code of the city of New York, in relation to school food waste prevention plans

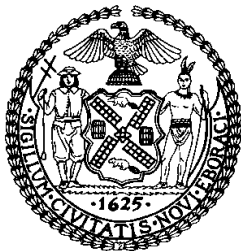
Proposed Int. No. 1681-A would require the Chancellor of the Department of Education (DOE) to work with school sustainability coordinators to develop a plan for reducing food waste. This plan would be submitted to the Department of Sanitation (DSNY) for recommendations, as well as the Speaker of the Council. The bill would require DOE to submit an annual report with information on DOE's actions to implement its food waste prevention plan and the Chancellor's updates to such plan. This local law would now take effect 90 days after it becomes law.

Update to A-Version

The reporting date and the definitional section has changed for consistency to align with Int. No. 1673-A (recently enacted and on the Mayor's desk for signature), which requires food waste plans of all other City agencies.

UPDATE: On May 12, 2021, the Committee passed Proposed Introduction Number 1681-A by a vote of 18 in the affirmative, zero in the negative, with zero abstentions.

(The following is the text of the Fiscal Impact Statement for Int. No. 1681-A:)



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT
PROPOSED INT. NO: 1681-A
COMMITTEE: Education

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

NYSCEF DOC. NO. 87

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/06/2021

1113

May 12, 2021

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to school food waste prevention plans.

SPONSORS: Council Members Van Bramer, Kallos, Ayala, Gibson, and Lander.

SUMMARY OF LEGISLATION: Proposed Int. No. 1681-A would require the Chancellor of the Department of Education (DOE) to develop a plan for reducing food waste. This plan would be submitted to the Department of Sanitation (DSNY) for recommendations no later than October 1, 2021. The bill would also require DOE to submit a report on or before February 1, 2022, which must include, at minimum: a summary of actions taken to implement the food waste prevention plan; a summary of actions that the chancellor proposes be taken to implement such plan; and any updates or changes to any information included in such plan. Information contained in such report would be required to be included in DSNY's March 1, 2022 annual recycling report.

EFFECTIVE DATE: This local law would take effect 90 days after it becomes law.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2022

FISCAL IMPACT STATEMENT:

	Effective FY22	FY Succeeding Effective FY23	Full Fiscal Impact FY22
Revenues	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is anticipated that there would be no impact on revenues resulting from the enactment of this legislation.

IMPACT ON EXPENDITURES: It is anticipated that Proposed Int. No. 1681-A would have no impact on expenditures as DOE could use existing resources to comply with the requirements of this legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division
New York City Department of Education

ESTIMATE PREPARED BY: Chelsea Baytemur, Legislative Financial Analyst

ESTIMATE REVIEWED BY: Stephanie Ruiz, Assistant Counsel, NYC Council Finance Division
Dohini Sompura, Unit Head, NYC Council Finance Division
Regina Poreda Ryan, Deputy Director, NYC Council Finance Division

LEGISLATIVE HISTORY: This legislation was introduced to the full Council as Int. No. 1681 on August 14, 2019 and referred to the Committee on Education (the Committee). A hearing was held by the Committee jointly with the Committee on General Welfare and the Committee on Economic Development on September 18, 2019, and the bill was laid over. The legislation was subsequently amended and the amended version, Proposed Int. No. 1681-A, will be considered by the Committee on May 12, 2021. Upon a successful vote by the Committee, Proposed Int. No. 1681-A will be submitted to the full Council for a vote on May 12, 2021.

DATE PREPARED: May 5, 2021.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 1681-A:)

Int. No. 1681-A

By Council Members Van Bramer, Kallos, Ayala, Gibson, Lander, Louis, Rosenthal, Holden, Cornegy, Riley, Rose, Barron, Brannan, Feliz, Gennaro, Rivera and Yeger.

A Local Law to amend the administrative code of the city of New York, in relation to school food waste prevention plans

Be it enacted by the Council as follows:

Section 1. Subchapter 2 of chapter 3 of title 16 of the administrative code of the city of New York is amended by adding a new section 16-307.3 to read as follows:

§ 16-307.3 School food waste. a. Definitions. As used in this section, the following terms have the following meanings:

Chancellor. The term “chancellor” means the chancellor of the city school district of the city of New York.

Food purchase contract. The term “food purchase contract” means any purchase order or contract entered into by the department of education, the principal purpose of which is to provide food, and the value of which exceeds \$100,000.

School. The term “school” means a school of the city school district of the city of New York.

Surplus food. The term “surplus food” means any food obtained through a food purchase contract that is not used for the purpose for which it was purchased and that would otherwise be discarded.

b. Food waste prevention plan. No later than October 1, 2021, the chancellor shall prepare and submit to the commissioner a food waste prevention plan. Preparation of such food waste prevention plan shall provide school sustainability coordinators designated pursuant to subdivision c of section 16-307.1 an opportunity to offer ideas concerning food waste prevention. Such plan shall conform to all applicable provisions of law and include, but need not be limited to, the following information:

- 1. Guidelines for how to identify surplus food that may be safely donated;*
- 2. Any methods the chancellor has identified to reduce the amount of surplus food in schools;*
- 3. Any procedures the chancellor has identified that would allow the department of education or a school to donate surplus food safely and efficiently; and*
- 4. Any barriers the chancellor has identified that would prevent the safe and efficient donation of surplus food.*

c. Review by commissioner. The commissioner shall review the plan required pursuant to subdivision b of this section within 90 days of its submission and shall submit recommendations on the plan to the chancellor. The commissioner shall simultaneously submit a copy of the chancellor’s plan and the commissioner’s recommendations to the speaker of the council.

d. Report. On or before February 1, 2022, the chancellor shall submit a report to the commissioner. Such report shall include, at a minimum:

- 1. A summary of actions taken to implement the food waste prevention plan;*
- 2. A summary of actions that the chancellor proposes be taken to implement such plan; and*
- 3. Any updates or changes to any information included in such plan.*

e. The department shall include the information contained in the report prepared pursuant to subdivision d of this section as part of the department’s March 1, 2022 annual recycling report required pursuant to subdivision k of section 16-305.

§ 2. This local law takes effect 90 days after it becomes law.

MARK TREYGER, *Chairperson*; YDANIS A. RODRIGUEZ, DANIEL DROMM, BRADFORD S. LANDER, STEPHEN T. LEVIN, DEBORAH L. ROSE, INEZ D. BARRON, ROBERT E. CORNEGY, BEN KALLOS, I. DANEK MILLER, BARRY S. GRODENCHIK, RAFAEL SALAMANCA, Jr., ALICKA AMPRY-SAMUEL, JUSTIN L. BRANNAN, FARAH N. LOUIS, JAMES F. GENNARO, ERIC DINOWITZ, OSWALD FELIZ; Committee on Education, May 12, 2021 (Remote Hearing). *Other Council Members Attending: Council Members Holden, Menchaca and R. Diaz.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Finance

Report for Int. No. 2267

Report of the Committee on Finance in favor of approving and adopting, a Local Law to amend the administrative code of the city of New York, in relation to amending the district plan of the Flatbush Avenue business improvement district to authorize additional services for the district and to change the method of assessment upon which the district charge is based.

The Committee on Finance, to which the annexed proposed local law was referred on April 22, 2021 (Minutes, page 897), respectfully

REPORTS:

I. INTRODUCTION

On April 29, 2021, the Committee on Finance (“Committee”), chaired by Council Member Daniel Dromm, approved Preconsidered Res. 1618-2021, which set the date, time and place for the public hearing on an amendment to the District Plan of the Flatbush Avenue Business Improvement District (“Flatbush Avenue BID”) for May 12, 2021, in the City Council Remote Hearing, Virtual Room 1 at 9:00 a.m.¹

Pursuant to § 25-410(b) of the Administrative Code, a Business Improvement District (“BID”) may make amendments to its District Plan to: 1) provide for additional improvements or services; 2) provide for a change in the method of assessment upon which the district charge is based; or 3) increase the amount to be expended annually for improvements, services, and maintenance by means of the adoption of a local law amending the BID’s district plan. Such a local law may be adopted by the City Council after a determination that it is in the public interest to authorize such change, and that the tax and debt limits prescribed in Section 25-412 of the Administrative Code will not be exceeded. Notice of the hearing on this local law must be published in at least one newspaper having general circulation in the district specifying the time and the place where the hearing will be held and stating the proposed change in the method of assessment upon which the district charge in the BID is based.

¹ Previously, on April 22, 2021, the Council had approved Res. 1605-2021 that set the date of the hearing as May 13, 2021. However, due to a change in the calendar, a new resolution setting May 12, 2021 as the new hearing date needed to be considered by the Committee.

FLATBUSH AVENUE BID*a. Background*

The Flatbush Avenue BID was first established in 1988, and is bounded by properties on both sides of Flatbush Avenue from Parkside Avenue to Cortelyou Road in Brooklyn. The BID was established primarily to address the influx of people that moved to the neighborhood, which increased the need for additional housing.

The BID is currently requesting that the Council approve the following changes to the District Plan:

1. Expanding services to include, but not be limited to: sanitation, public safety, marketing and promotions, holiday lighting, economic development, administration and advocacy; and
2. Changing in the method of assessment authorized to be calculated on a formula applicable to the class of property.

b. Service Expansion

The current district plan already authorizes a range of services required for the enjoyment and protection of the public and the promotion and enhancement of the district, which include security services, holiday and seasonal decorations, promotion services of local retail opportunities, sanitation program services, administration and other additional services.

The amended district plan would authorize the provision of additional services in the district. Such supplemental services would include, but not be limited to: sanitation, public safety, marketing and promotions, holiday lighting, economic development, administration and advocacy. According to the BID, this amendment would bring the district plan into alignment with current district plans in terms of additional services provided as the needs in the district have changed since establishment.

c. Formula Change

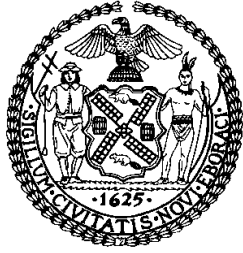
The current method of assessment for the Flatbush Avenue BID is based on the linear front footage for commercial properties. Under the amended district plan, all properties devoted to commercial use, including parking facilities, commercial condominiums or vacant/development sites would be assessed 60 percent on Flatbush-facing linear frontage and 40 percent based on commercial square footage.

Government- and not-for-profit-owned properties devoted to public or not-for-profit use would be exempted from an assessment. All residential properties would be assessed at one dollar (\$1.00) per year.

The amendment to the method of assessment would account changes in the district since its creation in 1988, and provide a fair assessment of district properties. When the Flatbush Avenue BID was first formed, the most prevalent building type was the three-story walk-up, with residential units or storage spaces, above ground floor retail premises, single-story buildings, four-story buildings, and a few larger bank structures and theatres. However, according to the BID, since 1988 the district has changed so that the front-footage method of assessment no longer provides fair assessment of properties.

Of the 190 properties within the Flatbush Avenue BID, 29 properties would pay more under the new assessment formula, with an average increase of \$3,025.44 per year and 161 properties would pay less, with an average decrease of \$544.96 per year. The assessment formula change would shift the burden of assessment from the majority of the small property owners toward the owners with larger commercial square footage, that is, those that have the greater potential for revenues per square footage in their commercial spaces.

(The following is the text of the Fiscal Impact Statement for Int. No. 2267:)



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
 LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT

INTRO. NO. 2267

COMMITTEE: Finance

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to amending the district plan of the Flatbush Avenue business improvement district to authorize additional services for the district and to change the method of assessment upon which the district charge is based.

SPONSOR: Council Member Dromm (by request of the Mayor).

SUMMARY OF LEGISLATION: Business Improvement Districts (BIDs) raise funding, primarily through special assessments, to provide services independent of those already provided by the City. Special assessments are additional charges billed to property owners within a BID that are collected as part of the City's property tax collection system. This legislation would amend the Flatbush Avenue BID district plan to add additional services and change the method of assessment for the district charge.

EFFECTIVE DATE: This local law would take effect immediately and be retroactive to and deemed to have been in effect as of July 1, 2020.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal Year 2021

FISCAL IMPACT STATEMENT:

	Effective FY21	FY Succeeding Effective FY22	Full Fiscal Impact FY21
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES AND EXPENDITURES: There would be no net impact on revenues or expenditures resulting from the enactment of this legislation. The BID assessments are charges separate from the City's property tax levy and do not contribute to the General Fund. The assessments are levied on the businesses located in the impacted BIDs.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division
 Mayor's Office of City Legislative Affairs

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

NYSCEF DOC. NO. 87

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/06/2021

1118

May 12, 2021

ESTIMATE PREPARED BY: Luke Zangerle, Finance Analyst, Finance Division**ESTIMATE REVIEWED BY:** Chima Obichere, Unit Head
Noah Brick, Assistant Counsel

LEGISLATIVE HISTORY: Intro. No. 2267 was introduced to the full Council on April 22, 2021 and referred to the Committee on Finance (Committee). The Committee will consider and vote on the legislation on May 12, 2021. Upon a successful vote by the Committee, the legislation will be submitted to the full Council for a vote on May 12, 2021.

DATE PREPARED: May 11, 2021.*Accordingly, this Committee recommends its adoption.***(The following is the text of Int. No. 2267:)**

Int. No. 2267

By Council Member Dromm (by request of the Mayor).

A Local Law to amend the administrative code of the city of New York, in relation to amending the district plan of the Flatbush Avenue business improvement district to authorize additional services for the district and to change the method of assessment upon which the district charge is based

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 25 of the administrative code of the city of New York is amended by adding a new section 25-435.1 to read as follows:

§ 25-435.1 Flatbush Avenue business improvement district; amendments to the district plan. a. The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize additional services for the Flatbush Avenue business improvement district and to authorize a change in the method of assessment upon which the district charge in the Flatbush Avenue business improvement district is based, and the council having determined further that the tax and debt limitations prescribed in section 25-412 of chapter four of this title will not be exceeded by such change, there are hereby authorized in the Flatbush Avenue business improvement district such changes as set forth in the amended district plan required to be filed with the city clerk pursuant to subdivision b of this section.

b. Immediately upon adoption of this local law, the council shall file with the city clerk the amended district plan setting forth the authorization of additional services and containing the change in the method of assessment authorized by subdivision a of this section.

§ 2. This local law takes effect immediately and is retroactive to and deemed to have been in effect as of July 1, 2020.

STEVEN MATTEO, *Acting Chairperson*; KAREN KOSLOWITZ, JAMES G. VAN BRAMER, ROBERT E. CORNEGY, Jr., LAURIE A. CUMBO, VANESSA L. GIBSON, HELEN K. ROSENTHAL, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, ALICKA AMPRY-SAMUEL, DIANA AYALA, FRANCISCO P. MOYA, KEITH POWERS, FARAH N. LOUIS, DARMA V. DIAZ, JAMES F. GENNARO, SELVENA N. BROOKS-POWERS, OSWALD FELIZ; Committee on Finance, May 12, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for Int. No. 2268

Report of the Committee on Finance in favor of approving and adopting, a Local Law to amend the administrative code of the city of New York, in relation to amending the District Plan of the Queens Plaza/Court Square business improvement district to change the method of assessment upon which the district charge is based.

The Committee on Finance, to which the annexed proposed local law was referred on April 22, 2021 (Minutes, page 898), respectfully

REPORTS:

I. INTRODUCTION

On April 29, 2021, the Committee on Finance ("Committee"), chaired by Council Member Daniel Dromm, approved Preconsidered Res. 1617-2021, which set the date, time and place for the public hearing on an amendment to the District Plan of the Queens Plaza/Court Square Business Improvement District ("Queens Plaza/Court Square BID") for May 12, 2021, in the City Council Remote Hearing, Virtual Room 1 at 9:00 a.m.¹

Pursuant to § 25-410(b) of the Administrative Code, a Business Improvement District ("BID") may make amendments to its District Plan to: 1) provide for additional improvements or services; 2) provide for a change in the method of assessment upon which the district charge is based; or 3) increase the amount to be expended annually for improvements, services, and maintenance by means of the adoption of a local law amending the BID's district plan. Such a local law may be adopted by the City Council after a determination that it is in the public interest to authorize such change, and that the tax and debt limits prescribed in Section 25-412 of the Administrative Code will not be exceeded. Notice of the hearing on this local law must be published in at least one newspaper having general circulation in the district specifying the time and the place where the hearing will be held and stating the proposed change in the method of assessment upon which the district charge in the BID is based.

QUEENS PLAZA/COURT SQUARE BID

a. Background

Located in the Long Island City community in Queens, the Queens Plaza/Court Square BID was first established in 2005 and consists of two sub-districts: the North Sub-District ("NSD") and the South Sub-District ("SSD").

The NSD is the original BID area and is centered around Queens Plaza and Court Square. It generally includes all street-facing property lots extending north along Jackson Avenue on both sides of the street from 45th Avenue/Thomson Avenue (Court Square) to Queens Plaza, and extending west along Queens Plaza North and Queens Plaza South from Northern Boulevard/Jackson Avenue to 21st Street. It also includes Queens Plaza East (the 29-00 block of Northern Boulevard) and additional properties on the 42-00 block of Crescent Street, and the 43-00 block of Queens Street.

The SSD expands south and west from the end of the NSD at 45th Avenue/Thomson Avenue. It generally includes properties facing Jackson Avenue from the terminus of NSD at 45th Avenue/Thomson Avenue south to 51st Avenue, properties facing Vernon Boulevard from Borden Avenue north to 44th Drive, including the

¹ Previously, on April 22, 2021, the Council had approved Res. 1604-2021 that set the date of the hearing as May 13, 2021. However, due to a change in the calendar, a new resolution setting May 12, 2021 as the new hearing date needed to be considered by the Committee.

properties facing 10th Street between 45th Avenue and 44th Drive, and properties facing 44th Drive from Vernon Boulevard east to Hunter Street.

The Queens Plaza/Court Square BID constitutes a major transportation, retail, manufacturing, and retail hub in western Queens. Much of the area accommodates a large daytime working population and, increasingly, a large residential population. Furthermore, one of New York City's largest commuter populations passes through the BID each day via the Ed Koch/Queensboro Bridge and New York City Transit subways and buses, or makes intermodal transfers within the BID.

The Queens Plaza/Court Square BID is currently requesting that the Council approve the change in method of assessment upon which the district charge is based.

b. Formula Change

The current method of assessment for the Queens Plaza/Court Square BID is based on a combination of linear front footage and assessed value. Under the amended district plan, all properties will be assessed based on a specified formula for each applicable class of property within each of the two sub-districts.

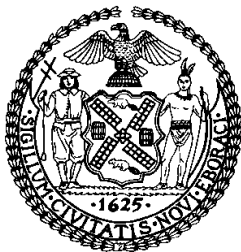
Any property identified as a Class A property devoted to commercial, industrial, or commercial parking uses, including vacant and undeveloped land, will be assessed by assessed valuation and square footage in the service area. Any vacant and undeveloped properties may be reclassified upon the issuance of a temporary certificate of occupancy from the New York City Department of Buildings and be assessed in the same manner as defined within the appropriate classes and formula, as provided in the amended district plan.

Any property identified as a Class B mixed-use property in either of the sub-districts would be assessed at 80 percent of the commercial rate, and the variables used to calculate the formula would be shifted from a combination of front footage and assessed value to a combination of building square footage and assessed value.

Under the amended district plan, all residential properties, including residential condominium units and residential parking lots, devoted in whole to residential uses within the two sub-districts would continue to be assessed at a nominal rate of \$1.00 per annum. Additionally, not-for-profit and government-owned properties devoted in full to public or not-for-profit use would continue to be exempted from assessment. Any not-for-profit or government-owned property devoted in part to commercial uses would be assigned to the appropriate class and the proportion of the property devoted to for-profit uses would be assessed in the same manner as defined within the appropriate class description and assessment formula provided in the amended district plan.

Of the 270 properties in Queens Plaza/Court Square BID, 62 properties would pay more under the new assessment method and 208 properties would pay less. For the 62 properties for which assessments would be increasing, they would increase an average of \$1,130.89 per year. For the 208 properties which assessments would be decreasing, they would decrease on average of \$3,793.96 per year. This is the intended outcome of the formula change because as more properties in the BID are built as mixed-use rentals, more of the overall assessment is borne by fewer commercial properties under the current method of assessment. Under the new proposed formula, mixed-use properties would be assessed at 80 percent of the commercial rate, and the variables used to calculate the formula would be shifted from a combination of front footage and assessed value to a combination of building square footage and assessed value.

(The following is the text of the Fiscal Impact Statement for Int. No. 2268:)



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT

INTRO. NO. 2268

COMMITTEE: Finance

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to amending the District Plan of the Queens Plaza/Court Square business improvement district to change the method of assessment upon which the district charge is based.

SPONSOR: Council Member Dromm (by request of the Mayor).

SUMMARY OF LEGISLATION: Business Improvement Districts (BIDs) raise funding, primarily through special assessments, to provide services independent of those already provided by the City. Special assessments are additional charges billed to property owners within a BID that are collected as part of the City's property tax collection system. This legislation would authorize a change in the method of assessment for the district charge for the Queens Plaza/Court Square BID.

EFFECTIVE DATE: This local law would take effect on June 30, 2021, provided that if it becomes a law subsequent to such day, this local law would take effect immediately and shall be retroactive to and deemed to have been in full force and effect as of June 30, 2021.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal Year 2022

FISCAL IMPACT STATEMENT:

	Effective FY21	FY Succeeding Effective FY22	Full Fiscal Impact FY22
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES AND EXPENDITURES: There would be no net impact on revenues or expenditures resulting from the enactment of this legislation. The BID assessments are charges separate from the City's property tax levy and do not contribute to the General Fund. The assessments are levied on the businesses located in the impacted BIDs.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division

ESTIMATE PREPARED BY: Luke Zangerle, Financial Analyst, Finance Division

ESTIMATE REVIEWED BY: Chima Obichere, Unit Head
Noah Brick, Assistant Counsel

LEGISLATIVE HISTORY: Intro. No. 2268 was introduced to the full Council on April 22, 2021 and referred to the Committee on Finance (Committee). The Committee will consider and vote on the legislation on May 12, 2021. Upon a successful vote by the Committee, the legislation will be submitted to the full Council for a vote on May 12, 2021.

DATE PREPARED: May 11, 2021.

Accordingly, this Committee recommends its adoption.

(The following is the text of Int. No. 2268:)

Int. No. 2268

By Council Member Dromm (by request of the Mayor).

A Local Law to amend the administrative code of the city of New York, in relation to amending the District Plan of the Queens Plaza/Court Square business improvement district to change the method of assessment upon which the district charge is based

Be it enacted by the Council as follows:

Section 1. Chapter 5 of title 25 of the administrative code of the city of New York is amended by adding a new section 25-467.4 to read as follows:

§ 25-467.4 Queens Plaza/Court Square business improvement district; amendment of the district plan. a. The city council having determined, pursuant to subdivision b of section 25-410 of chapter four of this title, that it is in the public interest to authorize a change in the method of assessment upon which the district charge in the Queens Plaza/Court Square business improvement district is based, and the council having determined further that the tax and debt limitations prescribed in section 25-412 of chapter four of this title will not be exceeded by such change, there is hereby authorized in such district such change as is set forth in the amended district plan required to be filed with the city clerk pursuant to subdivision b of this section.

b. Immediately upon adoption of this local law, the council shall file with the city clerk the amended district plan containing the change in the method of assessment authorized by subdivision a of this section.

§ 2. This local law shall take effect on June 30, 2021, provided that if it shall have become a law subsequent to such day, this local law shall take effect immediately and shall be retroactive to and deemed to have been in full force and effect as of June 30, 2021.

STEVEN MATTEO, *Acting Chairperson*; KAREN KOSLOWITZ, JAMES G. VAN BRAMER, ROBERT E. CORNEGY, Jr., LAURIE A. CUMBO, VANESSA L. GIBSON, HELEN K. ROSENTHAL, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, ALICKA AMPRY-SAMUEL, DIANA AYALA, FRANCISCO P. MOYA, KEITH POWERS, FARAH N. LOUIS, DARMA V. DIAZ, JAMES F. GENNARO, SELVENA N. BROOKS-POWERS, OSWALD FELIZ; Committee on Finance, May 12, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for Res. No. 1616

Report of the Committee on Finance in favor of a Resolution approving a Resolution authorizing an increase in the amount to be expended annually in the Madison/23rd/ Flatiron/Chelsea Business Improvement District in the Borough of Manhattan, an extension of the boundaries of such district, and a change in the method of assessment upon which the district charge is based, and setting the date, time and place for the public hearing of the local law authorizing such changes as set forth in the amended District Plan of the Madison/23rd/Flatiron/ Chelsea Business Improvement District.

The Committee on Finance, to which the annexed resolution was referred on April 29, 2021 (Minutes, page 1067), respectfully

REPORTS:

BACKGROUND

Pursuant to the authority granted by chapter 4 of title 25 of the Administrative Code of the City of New York (hereinafter the "Law"), the Mayor and the Council are authorized to establish and extend Business Improvement Districts (hereinafter "BIDs") in New York City and thereafter amend each BID's district plan or authorize an increase in annual expenditures. BIDs, which are specifically established areas, use the City's property tax collection mechanism to approve a special tax assessment with which to fund additional services that would enhance the area and improve local business. The additional services are normally in the areas of security, sanitation, physical/capital improvements (lighting, landscaping, sidewalks, etc.), seasonal activities (Christmas lighting) and related business services (marketing and advertising). The District Management Association of a BID carries out the activities described in the BID's District Plan.

The Madison/23rd/Flatiron/Chelsea BID was first established in 2005 and includes properties in the area generally bounded by 20th Street to the south; 29th Street to the north; Sixth Avenue to the west; and Lexington and Third Avenues to the east.

The current service area and the proposed expansion area have experienced substantial population and employment growth since the BID was established. New mixed-use development in the late 1990s and early 2000s concentrated along Sixth Avenue introduced new demand for retail, hotels, and services in the areas west of and within the current BID. Rapid growth in employment since 2000 contributed to the southward expansion of Midtown office demand as businesses in technology, arts, media, and professional services sought space within the Flatiron BID's historic commercial buildings. Consequently, there is a greater demand for BID services and a need to develop a more cohesive marketing strategy to support area businesses.

The BID is requesting that the Council approve the following changes to the District Plan:

1. extending existing BID boundaries to the west to include more properties on both sides of Sixth Avenue from 24th Street to 31st Street; to the north from 27th Street to 31st Street, and along Park Avenue South to 33rd Street; and to the south by one block to include both sides of 20th Street between Sixth Avenue and Park Avenue South;
2. increasing the BID annual assessment from \$3.25 million to \$6 million; and
3. changing method of assessment on which the district charge is based to create a formula based on use class.

Boundary Expansion

The amended district plan would extend BID boundaries from the south side of 20th street to the north side of 30th street including avenues and mid blocks along Sixth avenue and Broadway, Madison Avenue and Fifth Avenue from 20th Street to 31st Street, Lexington Avenue between 22nd and 26th Street, along 23rd Street from

the west side of Third Avenue to the west side of Sixth Avenue, and along Park Avenue South from the south side of 20th Street to the north side of 31st Street as well as the northeast side of 31st Street and 1 Park Avenue, between 32nd and 33rd streets

The expanded BID boundary would contain over 6,000 businesses, an increase of approximately 1,500 businesses from the 4,500 within the current BID boundary. There is street level retail on every blockfront - restaurants, apparel shops, shoes, sporting goods, boutique fitness, cosmetics, bookstores, dry goods - in every price range. The toy industry, insurance companies, table and home furnishings, and interior design showrooms have been historic commercial uses in the District and are today joined by technology, new media, creative design, publishing, and marketing/advertising/public relations uses, as well as several hotels. The expanded district would also add an additional 3,000 residential units to the approximately 20,000 units in the district today.

Annual Assessment Increase

The current maximum annual assessment for the BID is authorized to be \$3.25 million. The geographic expansion of the BID would provide additional funding and would allow for the expansion of services to new areas and augmentation of services in the existing area. Accordingly, the BID is requesting authorization to increase the annual assessment to \$6 million.

Funding Formula Changes

The main source of BID funding would continue to be an assessment of the properties within the BID. Retail, commercial, professional, parking lots, and mixed-use properties would continue to be assessed using commercial square footage, but subject to the creation of additional assessment classes varying the assessment per commercial square foot according to use class. According to the report issued by the City Planning Commission, approximate assessments by class would be:

- Class A – Commercial properties will be assessed at approximately \$0.16 per square foot of floor area.
- Class A.1 – Commercial properties over 1 million square feet and located on a single block will be assessed at approximately \$0.13 per square foot of floor area.
- Class A.2 – Properties larger than 200,000 square feet containing both residential and commercial uses will be assessed at approximately \$0.16 per square foot of commercial floor area and \$0.07 per square foot of residential floor area.
- Class B – All other residential properties will be assessed at \$1.00 annually.
- Class C – Not-for-profit and government properties will not be assessed.
- Class D – Vacant properties will be assessed at \$1.00 annually.
- Class D.1 – Parking lots with no structures on the property will be assessed at \$0.16 per square foot of lot area.

PRECONSIDERED RES. 1616

This Preconsidered Resolution is required by law to set the public hearing date, time, and place for the consideration of the local law which would amend the district plan of the Madison/23rd/Flatiron/Chelsea BID. The public hearing will be held on May 27, 2021, in the City Council Remote Hearing, Virtual Room 1 at 9:00 a.m. before the Committee on Finance.

Because the proposal involves an amendment to the BID's District Plan that would increase the amount it expends annually and change the method of assessment, Resolution 1616 directs the Flatiron/23rd Street Partnership District Management Association to, not less than ten nor more than thirty days before the date of the public hearing, mail a copy of Resolution 1616 or a summary thereof to each owner of real property within the BID at the address shown on the latest City assessment roll, to such other persons as are registered with the City

to receive tax bills concerning real property within the BID, and to the tenants of each building within the BID. The Preconsidered Resolution also directs Small Business Services to arrange for the publication of a copy of this Resolution or a summary thereof at least once in the City Record or a newspaper in general circulation in the City, the first publication to be not less than ten nor more than thirty days before the date of the public hearing. The Preconsidered Resolution further directs the Flatiron/23rd Street Partnership District Management Association to publish in a newspaper having general circulation in the BID, not less than ten days prior to the public hearing, a notice stating the time and place of the public hearing and stating the increase in the amount to be expended annually in the BID.

Accordingly, this Committee recommends its adoption.

(The following is the text of Res. No. 1616:)

Res. No. 1616

Resolution authorizing an increase in the amount to be expended annually in the Madison/23rd/Flatiron/Chelsea Business Improvement District in the Borough of Manhattan, an extension of the boundaries of such district, and a change in the method of assessment upon which the district charge is based, and setting the date, time and place for the public hearing of the local law authorizing such changes as set forth in the amended District Plan of the Madison/23rd/Flatiron/Chelsea Business Improvement District.

By Council Member Dromm.

WHEREAS, pursuant to the authority granted by chapter 4 of title 25 of the Administrative Code of the City of New York (the "BID Law"), the Mayor, by authorization dated September 30, 2020, provided for the preparation of an amended district plan for the Madison/23rd/Flatiron/Chelsea Business Improvement District (the "District") in the Borough of Manhattan; and

WHEREAS, pursuant to Local Law No. 82 for the year 1990, the City Council assumed responsibility for adopting legislation relating to Business Improvement Districts; and

WHEREAS, pursuant to authority granted by the BID Law, the District was established by Local Law No. 112 for the year 2005; and

WHEREAS, pursuant to Section 25-410(b) of the BID Law, an amendment to the District Plan that provides for additional improvements or services, or any change in the method of assessment upon which the district charge is based, or an increase in the amount to be expended annually, may be adopted by local law, provided that the City Council determines, after a public hearing, that it is in the public interest to authorize such changes and that the tax and debt limits prescribed in Section 25-412 of the Law will not be exceeded by such changes; and

WHEREAS, pursuant to Section 25-410(c) of the BID Law, an amendment to the District Plan that provides for an increase in the total maximum amount to be expended for improvements in the District may be adopted by local law, provided that the City Council determines, after a public hearing, that it is in the public interest to authorize such increase and that the tax and debt limits prescribed in Section 25-412 of the Law will not be exceeded by such increase; and

WHEREAS, the District wishes to increase the amount to be expended annually in the District to \$6,000,000, beginning on June 30, 2021, to extend the District's boundaries, and to change the method of assessment upon which the district charge is based; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, the New York City Department of Small Business Services (“SBS”) submitted an amended District Plan (the “Amended Plan”) for the District to the City Planning Commission (the “CPC”) on November 30, 2020; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, the CPC submitted the Amended Plan to the City Council on December 4, 2020; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, the CPC submitted the Amended Plan to the Council Members representing the council districts in which the District is located on December 4, 2020; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, the CPC submitted the Amended Plan to Manhattan Community Boards 4 & 5 (the “Community Boards”), in which the proposed extended district is located, on December 4, 2020; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, the CPC submitted the Amended Plan to the Manhattan Borough President on December 4, 2020; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, the Community Boards notified the public of the Amended Plan in accordance with the requirements established by the CPC; and

WHEREAS, on December 15, 2020, Community Board 5 voted to approve the extension of the District; and

WHEREAS, on December 21, 2020, Community Board 4 voted to approve the extension of the District; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, the CPC reviewed the Amended Plan, held a public hearing on January 20, 2021, and prepared a report certifying its unqualified approval of the Amended Plan; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, the CPC submitted its report to the Mayor, to the Manhattan Borough President, to the City Council and to the Council Members representing the council districts in which the District is located; and

WHEREAS, pursuant to section 25-405(c) of the BID Law, a copy of the CPC’s report, the original district plan and the Amended Plan were transmitted for filing with the City Clerk on February 24, 2021; and

WHEREAS, pursuant to section 25-406(a) of the BID Law, a copy of the Amended Plan and the CPC’s report are annexed hereto and are made part of this Resolution; and

WHEREAS, pursuant to section 25-406(a) of the BID Law, the Amended Plan is on file for public inspection in the Office of the City Clerk, 141 Worth Street, New York, New York; and

WHEREAS, pursuant to Section 25-406(b) of the BID Law, any owner of real property, deemed benefited and therefore within the proposed extended district, objecting to the Amended Plan must file an objection at the Office of the City Clerk within thirty days of the conclusion of the hearing held by the City Council, notice of which is provided by this Resolution, on forms made available by the City Clerk; and

WHEREAS, pursuant to Section 25-406(b) of the BID Law, if owners of at least fifty-one percent of the assessed valuation of all the benefited real property situated within the boundaries of the District proposed for extension, as shown upon the latest completed assessment roll of the City, or at least fifty-one percent of the owners of benefited real property within the area included in the District proposed for extension, file objections to the

Amended Plan with the City Clerk within the thirty-day objection period, the District will not be extended; now, therefore, be it

RESOLVED, that the Council of the City of New York, pursuant to Section 25-406 of the BID Law, hereby directs that:

(i) May 27, 2021 is the date and the City Council Remote Hearing, Virtual Room 1, is the place and 9:00 a.m. is the time for a public hearing (the "Public Hearing") to hear all persons interested in the legislation that would authorize an increase in the amount to be expended annually in the District, an extension of the District's boundaries, and a change in the method of assessment upon which the district charge in the District is based;

(ii) the Flatiron/23rd Street Partnership District Management Association shall, not less than ten (10) nor more than thirty (30) days before the date of the Public Hearing, mail a copy of this Resolution or a summary thereof to each owner of real property within the proposed extended district at the address shown on the latest City assessment roll, to such other persons as are registered with the City to receive tax bills concerning real property within the proposed extended district, and to the tenants of each building within the proposed extended district;

(iii) SBS shall arrange for the publication of a copy of this Resolution or a summary thereof at least once in the City Record or a newspaper in general circulation in the City, the first publication to be not less than ten (10) nor more than thirty (30) days before the date of the Public Hearing;

(iv) in the event that the Flatiron/23rd Street Partnership District Management Association mails, or SBS arranges for the publication of, a summary of this Resolution, such summary shall include the information required by section 25-406(c) of the BID Law; and

(v) on behalf of the City Council and pursuant to Section 25-410(b) of the BID Law, the Flatiron/23rd Street Partnership District Management Association is hereby authorized to publish in a newspaper having general circulation in the District, not less than ten (10) days prior to the Public Hearing, a notice stating the time and place of the Public Hearing and stating the increase in the amount to be expended annually in the District.

STEVEN MATTEO, *Acting Chairperson*; KAREN KOSLOWITZ, JAMES G. VAN BRAMER, ROBERT E. CORNEGY, Jr., LAURIE A. CUMBO, VANESSA L. GIBSON, HELEN K. ROSENTHAL, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, ALICKA AMPRY-SAMUEL, DIANA AYALA, FRANCISCO P. MOYA, KEITH POWERS, FARAH N. LOUIS, DARMA V. DIAZ, JAMES F. GENNARO, SELVENA N. BROOKS-POWERS, OSWALD FELIZ; Committee on Finance, May 12, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

At this point, the Speaker (Council Member Johnson) announced that the following items had been **preconsidered** by the Committee on Finance and had been favorably reported for adoption

Report for L.U. No. 787

Report of the Committee on Finance in favor of a Resolution approving Seagirt Senior Housing, Block 15810, Lot 30; Queens, Community District No. 14, Council District 31.

The Committee on Finance, to which the annexed preconsidered Land Use item was referred on May 12, 2021 and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:

(The following is the text of a Memo to the Finance Committee from the Finance Division of the New York City Council:)

May 12, 2021

TO: Hon. Daniel Dromm
Chair, Finance Committee
Members of the Finance Committee

FROM: Rebecca Chasan, Senior Counsel, Finance Division
Stephanie Ruiz, Assistant Counsel, Finance Division

RE: Finance Committee Agenda of May 12, 2021 – Resolutions approving a tax exemption for two Land Use items (Council Districts 3 and 31)

Item 1: Seagirt Senior Housing

Seagirt Senior Housing is comprised of 151 residential units, which includes 43 studios and 108 one-bedroom units (inclusive of one unit reserve for the superintendent).

The property had previously received a partial tax exemption on September 15, 1983 (Cal. No. 183) from the Board of Estimate, and it expired by the repayment or refinance of a mortgage used to finance the project. Subsequently, a partial, 30-year Article XI tax exemption was granted by the City Council to Seagirt Senior Housing on May 6, 2009 and is currently set to expire in 2040.

Under the proposed project, Seagirt Housing Development Fund Corp. (HDFC) will retain the fee interest in the building and Seagirt Senior Housing L.P. (Partnership) will be the beneficial owner and will operate the building. The HDFC and the Partnership (collectively, "Owner") will finance the rehabilitation of the building with a mortgage insured by the United States Department of Housing and Urban Development (HUD).

The New York City Department of Housing Preservation and Development (HPD) is requesting that the Council approve a partial, 40-year Article XI tax exemption to support affordable rental housing at Seagirt Senior Housing. The Owner and HPD will enter into a regulatory agreement establishing certain controls would require that all units be leased to households with incomes up to 50 percent of the Area Median Income (AMI). Additionally, the regulatory agreement would require that eligible tenants receive Section 8 rental assistance. Upon execution of the new regulatory agreement, the prior 30-year Article XI tax exemption will expire.

Summary:

- Borough – Queens
- Block 15810, Lot 30
- Council District – 14
- Council Member – Brooks-Powers
- Council Member approval – Yes
- Number of buildings – 1
- Number of units – 151 (including one superintendent unit)
- Type of exemption – Article XI partial, 40 years

- Population – affordable rental housing
- Sponsor – Seagirt Housing Development Fund Corp. and Seagirt Senior Housing L.P.
- Purpose – preservation
- Cost to the city – \$2.6 million
- Housing Code Violations
 - Class A – 4
 - Class B – 2
 - Class C – 2
- AMI target – 50% of AMI

Item 2: Penn South

Mutual Redevelopment Houses, Inc. (“Penn South” or “Housing Company”) is a redevelopment company organized pursuant to Article V of the Private Housing Finance Law. The Housing Company owns and operates the 2,820-unit cooperative housing development commonly known as Penn South. The Housing Company has an agreement with the City (dated July 1, 1987), which amended its original Redevelopment Agreement with the City (dated March 25, 1959), and which has been further amended to date by an eighth Amendatory Agreement.

The Housing Company is seeking to refinance its mortgage insured by HUD for a four-year period, extending the current maturity date from 2052 to 2056, at a lower interest rate. The extended loan will again be insured by HUD. As a precondition to the Housing Company’s obtaining financing, with its reduction in mortgage loan costs, the Housing Company has been advised by its lender to obtain a five-year extension of the City Agreement and Penn South’s current Article V real property tax exemption in order to assure satisfaction of HUD’s requirements for mortgage insurance. These extensions would run from the current expiration date of June 30, 2052 for both the City Agreement and the real property tax exemption, to June 30, 2057, which is one year beyond the extension of the Housing Company’s mortgage financing.

Additionally, HPD is requesting that the City Council approve an amendment to its agreement with Penn South to increase the residential carrying charges paid by tenant-cooperators. which would (1) impose a 9% residential carrying charge increase, effective June 1, 2021, replacing a 10-year capital assessment authorized by the City Council in 2011 (Res. No. 813) that expires on May 31, 2021, and; (2) in consultation with HPD, to implement further carrying charge increases in future years up to a total of 15% if and when as needed to meet operating expenses.

Summary:

- Council District – 3
- Council Member – Johnson
- Council Member approval – Yes
- Borough – Manhattan
- Block/Lot: Block 747, Lot 1; Block 748, Lot 1; Block 749, Lot 1; Block 749, Lot 24; Block 751, Lot 1; Block 752, Lot 1
- Number of Buildings – 1
- Number of Units – 2,820
- Type of Exemption – Article V partial, five-year extension
- Population Served – Co-op
- Sponsor/Developer – Mutual Redevelopment Houses (Penn South)
- Purpose – preservation
- Cost to the City – \$15.1 million
- Housing Code Violations

- Class A – 1
- Class B – 3
- Class C – 0
- Income Limitation: 130% of AMI

(For text of the coupled resolution for L.U. No. 788, please see the Report of the Committee on Finance for L.U. No. 788 printed in these Minutes; for the coupled resolution for L.U. No. 787, please see below:)

Accordingly, this Committee recommends the adoption of L.U. Nos. 787 and 788.

In connection herewith, Council Member Dromm offered the following resolution:

Res. No. 1631

Resolution approving an exemption from real property taxes for property located at (Block 15810, Lot 30) Queens, pursuant to Section 577 of the Private Housing Finance Law (Preconsidered L.U. No. 787).

By Council Member Dromm.

WHEREAS, The New York City Department of Housing Preservation and Development (“HPD”) submitted to the Council its request dated April 21, 2021 that the Council take the following action regarding a housing project located at (Block 15810, Lot 30) Queens (“Exemption Area”):

Approve an exemption of the Project from real property taxes pursuant to Section 577 of the Private Housing Finance Law (the “Tax Exemption”);

WHEREAS, The project description that HPD provided to the Council states that the purchaser of the Project (the “Owner”) is a duly organized housing development fund company under Article XI of the Private Housing Finance Law;

WHEREAS, the Council has considered the financial implications relating to the Tax Exemption;

RESOLVED:

The Council hereby grants an exemption from real property taxes as follows:

1. For the purposes hereof, the following terms shall have the following meanings:
 - a. “Contract Rent Deadline” shall mean three hundred and sixty-five (365) days from the date of the HPD letter requesting the information that HPD needs to calculate the Contract Rent Differential Tax for the applicable tax year.
 - b. “Contract Rent Differential” shall mean the amount by which the total contract rents applicable to the Exemption Area for such tax year (as adjusted and established pursuant to Section 8 of the United States Housing Act of 1937, as amended) exceed the total contract rents which are authorized as of the Effective Date.
 - c. “Contract Rent Differential Tax” shall mean the sum of (i) \$360,618, plus (ii) twenty-five percent (25%) of the Contract Rent Differential; however, the total annual real property tax payment by the Owner shall not at any time exceed the lesser of (A) seventeen percent (17%) of the contract rents in the applicable tax year, or (B) the amount of real property taxes that would otherwise be due in the absence of any form of exemption from or abatement of real

property taxation provided by an existing or future local, state, or federal law, rule, or regulation. Notwithstanding the foregoing, if the Owner fails to provide the contract rents on or before the Contract Rent Deadline, Contract Rent Differential Tax shall mean an amount equal to real property taxes that would otherwise be due in such tax year in the absence of any form of exemption from or abatement of real property taxation.

- d. "Effective Date" shall mean the date that HPD and the Owner enter into the Regulatory Agreement.
 - e. "Exemption Area" shall mean the real property located in the Borough of Queens, City and State of New York, identified as Block 15810, Lot 30 on the Tax Map of the City of New York.
 - f. "Expiration Date" shall mean the earlier to occur of (i) a date which is forty (40) years from the Effective Date, (ii) the date of the expiration or termination of the Regulatory Agreement, or (iii) the date upon which the Exemption Area ceases to be owned by either a housing development fund company or an entity wholly controlled by a housing development fund company.
 - g. "HDFC" shall mean Seagirt Housing Development Fund Corp. or a housing development fund company that acquires the Exemption Area with the prior written consent of HPD.
 - h. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.
 - i. "New Exemption" shall mean the exemption from real property taxation provided hereunder with respect to the Exemption Area.
 - j. "Owner" shall mean, collectively, the HDFC and the Partnership.
 - k. "Partnership" shall mean Seagirt Senior Housing L.P. or any other entity that acquires the beneficial interest in the Exemption Area with the prior written consent of HPD.
 - l. "Prior Exemption" shall mean the exemption from real property taxation for the Exemption Area approved by the New York City Council on May 6, 2009 (Resolution No. 1967).
 - m. "Regulatory Agreement" shall mean the regulatory agreement between HPD and the Owner that is executed on or after March 1, 2021 and that establishes certain controls upon the operation of the Exemption Area during the term of the New Exemption.
2. The Prior Exemption shall terminate upon the Effective Date.
 3. All of the value of the property in the Exemption Area, including both the land and any improvements (excluding those portions, if any, devoted to business, commercial, or community facility use), shall be exempt from real property taxation, other than assessments for local improvements, for a period commencing upon the Effective Date and terminating upon the Expiration Date.
 4. Commencing upon the Effective Date, and during each year thereafter until the Expiration Date, the Owner shall make real property tax payments in the sum of the Contract Rent Differential Tax.
 5. Notwithstanding any provision hereof to the contrary:
 - a. The New Exemption shall terminate if HPD determines at any time that (i) the Exemption Area is not being operated in accordance with the requirements of Article XI of the Private Housing

Finance Law, (ii) the Exemption Area is not being operated in accordance with the requirements of the Regulatory Agreement, (iii) the Exemption Area is not being operated in accordance with the requirements of any other agreement with, or for the benefit of, the City of New York, (iv) any interest in the Exemption Area is conveyed or transferred to a new owner without the prior written approval of HPD, or (v) the construction or demolition of any private or multiple dwelling on the Exemption Area has commenced without the prior written consent of HPD. HPD shall deliver written notice of any such determination to Owner and all mortgagees of record, which notice shall provide for an opportunity to cure of not less than sixty (60) days. If the noncompliance specified in such notice is not cured within the time period specified therein, the New Exemption shall prospectively terminate.

- b. The New Exemption shall apply to all land in the Exemption Area, but shall only apply to a building on the Exemption Area that exists on the Effective Date.
 - c. Nothing herein shall entitle the HDFC, the Owner, or any other person or entity to a refund of any real property taxes which accrued and were paid with respect to the Exemption Area prior to the Effective Date.
 - d. All previous resolutions, if any, providing an exemption from or abatement of real property taxation with respect to the Exemption Area are hereby revoked as of the Effective Date.
6. In consideration of the New Exemption, the owner of the Exemption Area shall, for so long as the New Exemption shall remain in effect, waive the benefits of any additional or concurrent exemption from or abatement of real property taxation which may be authorized under any existing or future local, state, or federal law, rule, or regulation. Notwithstanding the foregoing, nothing herein shall prohibit the granting of any real property tax abatement pursuant to Sections 467-b or 467-c of the Real Property Tax Law to real property occupied by senior citizens or persons with disabilities.

STEVEN MATTEO, *Acting Chairperson*; KAREN KOSLOWITZ, JAMES G. VAN BRAMER, ROBERT E. CORNEGY, Jr., LAURIE A. CUMBO, VANESSA L. GIBSON, HELEN K. ROSENTHAL, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, ALICKA AMPRY-SAMUEL, DIANA AYALA, FRANCISCO P. MOYA, KEITH POWERS, FARAH N. LOUIS, DARMA V. DIAZ, JAMES F. GENNARO, SELVENA N. BROOKS-POWERS, OSWALD FELIZ; Committee on Finance, May 12, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

At this point, the Speaker (Council Member Johnson) announced that the following items had been **preconsidered** by the Committee on Finance and had been favorably reported for adoption

Report for L.U. No. 788

Report of the Committee on Finance in favor of a Resolution approving Penn South, Block 747, Lot 1, Block 748, Lot 1, Block 749, Lot 1, Block 749, Lot 24, Block 751, Lot 1, Block 752, Lot 1; Manhattan, Community District No. 4, Council District 3.

The Committee on Finance, to which the preconsidered annexed Land Use item was referred on May 12, 2021 and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:

(For text of Memo, please see the Report of the Committee on Finance for L.U. No. 787 printed in these Minutes)

Accordingly, this Committee recommends its adoption.

In connection herewith, Council Member Dromm offered the following resolution:

Res. No. 1632

Resolution (1) approving an additional exemption from real property taxes for the properties located at 212-226 9th Avenue (Block 747, Lot 1), 311-351 West 24th Street (Block 748, Lot 1), 250-268 9th Avenue (Block 749, Lot 1), 313 8th Avenue (Block 749, Lot 24), 270-296 9th Avenue (Block 751, Lot 1) and 305 9th Avenue (Block 752, Lot 1) in Manhattan, pursuant to Section 125(1)(a-4) of the Private Housing Finance Law, (2) approving, in addition to any residential carrying charge increases previously authorized by the City Council, (a) authority for the Housing Company to implement a 9% increase in its residential carrying charges, to be effective June 1, 2021, and (b) authority for the Housing Company to implement, in consultation with HPD, further increases in its residential carrying charges by up to a total of 15% in future years, if, as and when needed to meet operating expenses, (3) approving a Ninth Amendatory Agreement to the Contract between the City of New York and Mutual Redevelopment Houses, Inc., and (4) authorizing the Mayor or any Deputy Mayor or the Commissioner of the New York City Department of Housing Preservation and Development to execute the Ninth Amendatory Agreement when approved as to form by the Corporation Counsel and directing the City Clerk to attest to the same and to affix the seal of the City thereto. (Preconsidered L.U. No. 788).

By Council Member Dromm.

WHEREAS, The New York City Department of Housing Preservation and Development (“HPD”) submitted to the Council of the City of New York its request dated April 13, 2021 that the Council of the City of New York approve an additional exemption from real property taxes for the properties located at 212-226 9th Avenue (Block 747, Lot 1), 311-351 West 24th Street (Block 748, Lot 1), 250-268 9th Avenue (Block 749, Lot 1), 313 8th Avenue (Block 749, Lot 24), 270-296 9th Avenue (Block 751, Lot 1) and 305 9th Avenue (Block 752, Lot 1) in Manhattan (“Exemption Area”), pursuant to Section 125(1)(a-4) of the Private Housing Finance Law; and

WHEREAS, The State Legislature, by enactment of Chapter 531 of the Laws of 2014, which added Section 125(1)(a-4) of the Private Housing Finance Law (“Article V Mutual Authorizing Legislation”), has authorized the local legislative body in a city having a population of one million or more to grant an additional tax exemption for a period of up to fifty years to a mutual redevelopment company for which the local legislative body has previously acted to extend the tax exemption for the maximum period provided for Section 125(1)(a-2) of the Private Housing Finance Law; and

WHEREAS, Such Article V Mutual Authorizing Legislation also provides that such grant of an additional tax exemption period shall take effect upon the expiration of the maximum period provided for in Section 125(1)(a-2) of the Private Housing Finance Law; and

WHEREAS, Such Article V Mutual Authorizing Legislation also provides that the amount of taxes to be paid by such mutual redevelopment company during any such period of tax exemption shall be not less than an amount equal to the greater of (i) ten per centum of the annual rent or carrying charges of the project minus

utilities for the residential portion of the project, or (ii) the taxes payable by such company for the residential portion of the project during the tax year commencing July 1, 2000 and ending on June 30, 2001; and

WHEREAS, the Council of the City of New York, the local legislative body of the City of New York, has previously acted, pursuant to Res. No. 2044 of 2001, to extend the tax exemption for properties owned and operated by Mutual Redevelopment Houses, Inc. ("Housing Company") and located in the Exemption Area, pursuant to Section 125(1)(a-2) of the Private Housing Finance Law, for the maximum period provided in Section 125(1)(a-2) of the Private Housing Finance Law; and

WHEREAS, Such tax exemption pursuant to Section 125(1)(a-2) of the Private Housing Finance Law shall expire on June 30, 2022; and

WHEREAS, The City of New York, acting through the HPD Commissioner, ("City") entered into an agreement with the Housing Company, dated as of June 24, 2011 ("Sixth Amendatory Agreement"), which Sixth Amendatory Agreement was approved by the City Council on May 6, 2011 (Res. No. 813 of 2011); and

WHEREAS, In Section 1 of such Sixth Amendatory Agreement, the City and the Housing Company agreed to amend Paragraph 105 of that certain Agreement, dated as of July 1, 1987, between the Housing Company and the City, as amended by an Amendatory Agreement dated as of November, 1990, and further amended by a Second Amendatory Agreement dated as of July 1, 1995, and by a Third Amendatory Agreement dated as of August 22, 2001, and by a Fourth Amendatory Agreement dated as of October 6, 2005, and by a Fifth Amendatory Agreement dated as of January 17, 2006 (collectively, including the Sixth Amendatory Agreement, "City Agreement"), to add a new subparagraph (B) to Paragraph 105 of the City Agreement, to provide, among other things, that, subject to the enactment of the Article V Mutual Authorizing Legislation and the enactment of a resolution by the City Council:

"... the City agrees to and hereby does grant an additional exemption and exempts from local and municipal taxes, all of the value of the portion of the Redevelopment Project owned by the Housing Company which is taxed as residential pursuant to the terms of this Agreement, for the period commencing with the City's tax year July 1, 2022 through June 30, 2023, and continuing through the City's tax year July 1, 2029 through June 30, 2030, provided that the amount of taxes to be paid by the Housing Company during each such tax year shall be an amount equal to the greater of (i) ten per centum of the annual rent or carrying charges of the Housing Company minus utilities for the residential portion of the Redevelopment Project or (ii) the taxes paid by the Housing Company for the residential portion of the Redevelopment Project in the City's tax year July 1, 2000 through June 30, 2001, in the total amount of \$3,477,099.00 (the 'Additional Exemption') ...";

and

WHEREAS, The Article V Mutual Authorizing Legislation has been enacted by the State Legislature; and

WHEREAS, The Council of the City of New York has determined that, given the tremendous growth in real property values in the Exemption Area, which has caused real property taxes to increase beyond the means of the primarily low- and moderate-income tenants who reside therein, it is in the interest of the City to assist the Housing Company in maintaining affordable rents and carrying charges by granting an additional exemption as authorized by Section 125(1)(a-4) of the Private Housing Finance Law; and

WHEREAS, The Council of the City of New York has considered the financial implications relating to the extended partial exemption from real property taxes; and

WHEREAS, The Council acted pursuant to Res. No. 658 of 2015, to approve a Seventh Amendatory Agreement between the Housing Company and the City, executed by the parties on May 8, 2015, which in part provided, "... pursuant to Private Housing Finance Law §125(1)(a-4), [of] an additional exemption from real

property taxes, other than assessments for local improvements, of all of the residential portion of the Exemption Area for a period commencing with the City's tax year July 1, 2022 through June 30, 2023 and continuing through the City's tax year July 1, 2029 through June 30, 2030, provided, however, that the amount of taxes to be paid during such period of tax exemption shall not be less than an amount equal to the greater of (i) ten per centum of the annual rent or carrying charges of the project minus the utilities for the residential portion of the project, or (ii) \$3,477,099.00, the taxes payable by the Housing Company for the residential portion of the project during the tax year commencing July 1, 2000 and ending on June 30, 2001."'; and

WHEREAS, While Chapter 531 of the Laws of 2015 authorized an additional tax exemption for a total of fifty years, the Housing Company only sought and received from the Council in 2015 an extension of eight years, to June 30, 2030. Subsequently, however, as a precondition for providing mortgage insurance on a 35-year loan of approximately \$190,000,000 in 2017 ("2017 Loan"), the Federal Housing Administration of the United States Department of Housing and Urban Development ("HUD") required the Housing Company to secure another extension of its tax exemption, for an additional 22 years from 2030 until June 30, 2052; and

WHEREAS, HUD also required the Housing Company to secure, in addition to any other increases authorized by the City Council, (a) the Housing Company's authority to impose carrying charge increases, at the rate of one (1%) percent per year throughout the term of the 2017 Loan, until 2052 ("1% Carrying Charge Increases"), and (b) HUD's discretionary authority to mandate from time to time and without any further City Council approvals, that the Housing Company increase its carrying charges if necessary for purposes of paying its expenses; and

WHEREAS, The Council acted pursuant to Res. No. 1359 of 2017, to approve an Eighth Amendatory Agreement between the Housing Company and the City, executed by the parties on February 2, 2017, which authorized the amendments to the City Agreement described above; and

WHEREAS, The Housing Company has been experiencing significant economic strains on its financial condition, particularly due to the effects of the COVID-19 pandemic on its commercial rental income. It now has the opportunity to update its HUD-insured mortgage financing, for an extended four-year period from its current maturity in 2052 until 2056, at a significantly lower interest rate than the rate it currently pays; and

WHEREAS, As a precondition to obtaining the financing, the Housing Company is being required by the lender to obtain a 5-year extension of the City Agreement and Penn South's current real property tax exemption in order to assure satisfaction of HUD's requirements for mortgage insurance to run from the current expiration date of June 30, 2052 for both the City Agreement and the real property tax exemption, to June 30, 2057, which is one year beyond the extension of the Housing Company's mortgage financing. The extension of the City Agreement and of Penn South's real property tax exemption would be incorporated into a Ninth Amendatory Agreement to the City Agreement; and

WHEREAS, To further alleviate the economic impact on the Housing Company of the COVID-19 pandemic and to keep the Housing Company on a sound financial basis, the Housing Company is also seeking the Council's authority to increase the residential carrying charges paid by its tenant-cooperators. Specifically, the Housing Company seeks the Council's authority to: (a) impose a 9% residential carrying charge increase, effective June 1, 2021, essentially replacing a ten-year capital assessment authorized by the City Council in 2011 (Res. No. 813) that expires on May 31, 2021, and (b) in consultation with HPD, the Housing Company's supervisory agency, to implement further carrying charge increases in future years up to a total of 15% if, as and when needed to meet operating expenses; and

WHEREAS, HPD, which supervises the Housing Company, recognizes the importance of the preservation of the Exemption Area as an affordable housing development and the tax relief necessary for such preservation. HPD also supports the proposed Ninth Amendatory Agreement; now, therefore, be it

RESOLVED:

The Council of the City of New York hereby:

1. Approves, pursuant to PHFL § 125(1)(a-4), an additional exemption from real property taxes, other than assessments for local improvements, of all of the residential portion of the Exemption Area for the period commencing with the City's tax year July 1, 2052 through June 30, 2053, and continuing through the City's tax year July 1, 2056 through June 30, 2057, provided, however, that the amount of taxes to be paid during such period of tax exemption shall not be less than an amount equal to the greater of (i) ten per centum of the annual rent or carrying charges of the project minus the utilities for the residential portion of the project, or (ii) \$3,477,099.00, the taxes payable by the Housing Company for the residential portion of the project during the tax year commencing July 1, 2000, and ending on June 30, 2001.
2. Approves, in addition to any residential carrying charge increases previously authorized by the City Council, (a) authority for the Housing Company to implement a 9% increase in its residential carrying charges, to be effective June 1, 2021, and (b) authority for the Housing Company to implement, in consultation with HPD, further increases in its residential carrying charges by up to a total of 15% in future years, if, as and when needed to meet operating expenses.
3. Approves, pursuant to PHFL Section 114, the proposed Ninth Amendatory Agreement between the City of New York and the Housing Company in substantially the form submitted, incorporating provisions concerning extension of both the City Agreement and the Housing Company's tax exemption to June 30, 2057, and authorizes the Mayor or any Deputy Mayor or the Commissioner of the Department of Housing Preservation and Development to execute the Ninth Amendatory Agreement, when approved as to form by the Corporation Counsel, and direct the City Clerk or Acting City Clerk to attest to the same and to affix the seal of the City thereto.

STEVEN MATTEO, *Acting Chairperson*; KAREN KOSLOWITZ, JAMES G. VAN BRAMER, ROBERT E. CORNEGY, Jr., LAURIE A. CUMBO, VANESSA L. GIBSON, HELEN K. ROSENTHAL, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, ALICKA AMPRY-SAMUEL, DIANA AYALA, FRANCISCO P. MOYA, KEITH POWERS, FARAH N. LOUIS, DARMA V. DIAZ, JAMES F. GENNARO, SELVENA N. BROOKS-POWERS, OSWALD FELIZ; Committee on Finance, May 12, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Land Use

Report for L.U. No. 753

Report of the Committee on Land Use in favor of approving, as modified, Application Number C 200326 ZSK (Suydam Street Rezoning) submitted by Suydam, Inc. and 3210 Willoughby LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-533 of the Zoning Resolution to waive all required accessory off-street parking spaces for dwelling units in a development within a Transit Zone, that includes at least 20 percent of all dwelling units as income-restricted housing units, in connection with a proposed residential building, on property located at 1250 Willoughby Avenue (Block 3210, Lots 16, 17, 18, 19, 20, and 21), in a M1-5/R7D District, Borough of Brooklyn, Community District 4, Council District 34.

The Committee on Land Use, to which the annexed Land Use item was referred on March 25, 2021 (Minutes, page 784), respectfully

REPORTS:**SUBJECT****BROOKLYN CB-4 - THREE APPLICATIONS RELATED TO SUYDAM STREET REZONING****C 200326 ZSK (L.U. No. 753)**

City Planning Commission decision approving an application submitted by Suydam, Inc. and 3210 Willoughby, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-533 of the Zoning Resolution to waive all required accessory off-street parking spaces for dwelling units in a development within a Transit Zone, that includes at least 20 percent of all dwelling units as income-restricted housing units, in connection with a proposed residential building, on property located at 1250 Willoughby Avenue (Block 3210, Lots 16, 17, 18, 19, 20, and 21), in an M1-5/R7D District, Borough of Brooklyn, Community District 4.

C 200344 ZMK (L.U. No. 754)

City Planning Commission decision approving an application submitted by Suydam, Inc. and 3210 Willoughby, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 13b:

1. changing from an M1-1 District to an R6 District property bounded by Willoughby Avenue; a line 225 feet northeasterly of Irving Avenue, Suydam Street, and a line 200 feet northeasterly of Irving Avenue;
2. changing from an M1-1 District to an M1-5 District property bounded by a line midway between Willoughby Avenue and Suydam Street, a line 400 feet northeasterly of Irving Avenue, Suydam Street and a line 225 feet northeasterly of Irving Avenue;
3. changing from an M1-1 District to an M1-5/R7D District property bounded by Willoughby Avenue, a line 400 feet northeasterly of Irving Avenue, a line midway between Willoughby and Suydam Street, and a line 225 feet northeasterly of Irving Street; and

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4. establishing a Special Mixed Use District (MX-21) bounded by Willoughby Avenue, a line 400 feet northeasterly of Irving Avenue, a line midway between Willoughby and Suydam Street, and a line 225 feet northeasterly of Irving Street;

as shown on a diagram (for illustrative purposes only) dated November 2, 2020, and subject to the conditions of CEQR Declaration E-583.

N 200343 ZRK (Pre. L.U. No. 763)

City Planning Commission decision approving an application submitted by Suydam, Inc. and 3210 Willoughby, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article XII, Chapter 3 (Special Mixed Use District) for the purpose of establishing a new Special Mixed Use District and modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area.

INTENT

To grant an approval of the special permit pursuant to ZR 74-533 to waive all required accessory off-street parking spaces to facilitate affordable housing within the Transit Zone; to rezone the Project Area to change the existing M1-1 zoning district to an M1-5 district within a portion of the Project Area consisting of Block 3210, Lots 48 and 51, an MX (R7D/M1-5) District within a portion of the Project Area consisting of Block 3210, Lots 15, 16, 17, 18, 19, 20, and 21; and an R6 zoning district within a portion of the Project Area consisting of Block 3210, part of Lot 1; and amend zoning text to modify Article XII, Chapter 3 to establish a new Special Mixed-Use ("MX-21") and establish a new Mandatory Inclusionary Housing area within Appendix F to facilitate the development of a nine-story, 81,720-square-foot residential building with 95 affordable dwelling units at 1250 Willoughby Avenue and a 14,052-square-foot enlargement of an existing four-story industrial building at 349 Suydam Street in the Bushwick neighborhood of Brooklyn Community District 4.

PUBLIC HEARING

DATE: April 5, 2021

Witnesses in Favor: Five

Witnesses Against: One

SUBCOMMITTEE RECOMMENDATION

DATE: May 11, 2021

The Subcommittee recommends that the Land Use Committee approve the decisions of the City Planning Commission on L.U. Nos. 753, 754 and approve with modifications the decision of the City Planning Commission on Pre. L.U. No. 763.

In Favor:

Moya, Levin, Reynoso, Grodenchik, Ayala, Borelli.

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Against: **Abstain:**
None None

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolutions.

In Favor:

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against: **Abstain:**
None None.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

Approved with Modifications and Referred to the City Planning Commission pursuant to-Section 197-(d) of the New York City Charter.

Report for L.U. No. 754

Report of the Committee on Land Use in favor of approving, as modified, Application Number C 200344 ZMK (Suydam Street Rezoning) submitted by Suydam, Inc. and 3210 Willoughby LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 13b changing from an M1-1 District to an R6 District; changing from an M1-1 District to an M1-5 District; changing from an M1-1 District to an M1-5/R7D District; and establishing a Special Mixed Use District (MX-21) bounded by Willoughby Avenue, a line 400 feet northeasterly of Irving Avenue, a line midway between Willoughby and Suydam Street, and a line 225 feet northeasterly of Irving Street, Borough of Brooklyn, Community District 4, Council District 34.

The Committee on Land Use, to which the annexed Land Use item was referred on March 25, 2021 (Minutes, page 784), respectfully

REPORTS:

(For text of report, please see the Report of the Committee on Land Use for L.U. No. 753 printed in these Minutes)

Accordingly, this Committee recommends its adoption, as modified.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

Approved with Modifications and Referred to the City Planning Commission pursuant to Section 197-(d) of the New York City Charter.

Report for L.U. No. 759

Report of the Committee on Land Use in favor of approving Application No. C 210195 HAX (97 West 169th Street) submitted by the Department of Housing Preservation and Development (HPD), pursuant to Article 16 of the General Municipal Law of New York State and 197 c of the New York City Charter for the designation of an Urban Development Action Area and an Urban Development Action Area Project for such area, and the disposition of such property to a developer to be selected by HPD, for property located at 97 West 169th Street (Block 2519, Lots 27 and 32), Borough of the Bronx, Community District 4, Council District 16.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 951) and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:

SUBJECT

BRONX CB - 4

C 210195 HAX

City Planning Commission decision approving an application submitted by the Department of Housing Preservation and Development (HPD):

- 1) pursuant to Article 16 of the General Municipal Law of New York State for:
 - a) the designation of property located at 97 West 169th Street (Block 2519, Lots 27 and 32) as an Urban Development Action Area; and
 - b) an Urban Development Action Area Project for such area; and
- 2) pursuant to Section 197-c of the New York City Charter for the disposition of such property to a developer to be selected by HPD;

to facilitate an affordable senior housing development containing approximately 104 units, Borough of The Bronx, Community District 4.

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INTENT

To approve the urban development action area designation, project approval, and disposition of city-owned property pursuant to Article 16 of the General Municipal Law to facilitate the development of a new nine-story residential building containing approximately 104 Affordable Independent Residences for Seniors (AIRS) units at 97 West 169th Street in the Highbridge neighborhood of The Bronx, Community District 4.

PUBLIC HEARING**DATE:** April 21, 2021**Witnesses in Favor:** Four**Witnesses Against:** None**DATE:** May 6, 2021**Witnesses in Favor:** None**Witnesses Against:** None**SUBCOMMITTEE RECOMMENDATION****DATE:** May 6, 2021

The Subcommittee recommends that the Land Use Committee approve the decision of the City Planning Commission and the HPD request.

In Favor:

Riley, Koo, Barron, Miller, Treyger.

Against:

None

Abstain:

None

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None.

In connection herewith, Council Members Salamanca and Riley offered the following resolution:

Res. No. 1633

Resolution approving the application submitted by the New York City Department of Housing Preservation and Development (“HPD”) and the decision of the City Planning Commission, ULURP No. C 210195 HAX, approving the designation of an Urban Development Action Area, an Urban Development Action Area Project, and the disposition of property located at 97 West 169th Street (Block 2519, Lots 27 and 32), Borough of the Bronx, Community District 4, to a developer selected by HPD (Preconsidered L.U. No. 759; C 210195 HAX).

By Council Members Salamanca and Riley.

WHEREAS, the City Planning Commission filed with the Council on May 3, 2021 its decision dated April 7, 2021 (the “Decision”), on the application submitted by the New York City Department of Housing Preservation and Development (“HPD”) regarding city-owned and privately-owned property located at 97 West 169th Street (Block 2519, Lots 27 and 32), (the “Project Area”), approving:

- a) pursuant to Article 16 of the General Municipal Law of New York State the designation of Disposition Area as an Urban Development Action Area;
- b) pursuant to Article 16 of the General Municipal Law of New York State an Urban Development Action Area Project for the Disposition Area (the “Project”); and
- c) pursuant to Section 197-c of the New York City Charter the disposition of the Disposition Area to a developer to be selected by the New York City Department of Housing Preservation and Development;

to facilitate the development of a new nine-story residential building containing approximately 104 Affordable Independent Residences for Seniors (AIRS) units at 97 West 169th Street in the Highbridge neighborhood of The Bronx, Community District 4 (ULURP No. C 210195 HAX) (the “Application”);

WHEREAS, the City Planning Commission has certified its unqualified approval of UDAAP pursuant to Article 16 of the General Municipal Law;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

WHEREAS, by letter dated April 16, 2021 and submitted to the Council on April 16, 2021, HPD submitted its requests (the “HPD Requests”) respecting the Application including the submission of the project summary for the Project (the “Project Summary”);

WHEREAS, upon due notice, the Council held a public hearing on the Application and Decision and the HPD Requests on April 21, 2021 and May 6, 2021;

WHEREAS, the Council has considered the land use and financial implications and other policy issues relating to the Application; and

WHEREAS, the Council has considered the relevant environmental issues, including the negative declaration issued December 10, 2020, (CEQR No. 20HPD088X) (the “Negative Declaration”).

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Negative Declaration.

Pursuant to Section 197-d of the New York City Charter, based on the environmental determination and the consideration described in the report C 210195 HAX and incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission and the HPD Requests.

Pursuant to Article 16 of the General Municipal Law of the New York State, based on the environmental determination and the consideration described in the report C 210195 HAX and incorporated by reference herein, the Council approves the Decision of the City Planning Commission and the HPD Requests.

The Council finds that the present status of the Area tends to impair or arrest the sound growth and development of the City of New York and that a designation of the Project as an urban development action area project is consistent with the policy and purposes stated in Section 691 of the General Municipal Law.

The Council approves the designation of the Area as an urban development action area pursuant to Section 693 of the General Municipal Law.

The Council approves the Project as an urban development action area project pursuant to Section 694 of the General Municipal Law and subject to the terms and conditions of the Project Summary.

The Council approves the disposition of the Disposition Area under Section 197-d of the New York City Charter, to a developer to be selected by the New York City Department of Housing Preservation and Development for the development of the Project consistent with the Project Summary.

ATTACHMENT:

PROJECT SUMMARY

- | | | | |
|---------------------------------------|--|-------------|----------------------------------|
| 1. PROGRAM: | SENIOR AFFORDABLE RENTAL APARTMENTS PROGRAM | | |
| 2. PROJECT: | 97 West 169 th Street | | |
| 3. LOCATION: | | | |
| a. BOROUGH: | Bronx | | |
| b. COMMUNITY DISTRICT: | 4 | | |
| c. COUNCIL DISTRICT: | 16 | | |
| d. DISPOSITION AREA: | <u>BLOCKS</u> | <u>LOTS</u> | <u>ADDRESSES</u> |
| | 2519 | 27, 32 | 97 West 169 th Street |
| 4. BASIS OF DISPOSITION PRICE: | Nominal. The sponsor will pay one dollar per tax lot in cash and will deliver an enforcement note and mortgage for the remainder of the appraised value. | | |
| 5. TYPE OF PROJECT: | New Construction | | |

6. APPROXIMATE NUMBER OF BUILDINGS: 1
7. APPROXIMATE NUMBER OF UNITS: 104 dwelling units, plus one superintendents unit
8. HOUSING TYPE: Rental
9. ESTIMATE OF INITIAL RENTS: Tenants with rental assistance will pay up to 30% of their income as rent. Other tenants will pay rents set at up to 30% of 60% of the area median income (AMI) on an annual basis.
10. INCOME TARGETS: Up to 60% of AMI
11. PROPOSED FACILITIES: Community Room and Kitchen, Social Service Offices, Community Facility Space
12. PROPOSED CODES/ORDINANCES: None
13. ENVIRONMENTAL STATUS: Negative Declaration
14. PROPOSED TIME SCHEDULE: Approximately six months from authorization to sale.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 760

Report of the Committee on Land Use in favor of approving Application No. 20215001 HIK [N 210282 HIK] (Harriet and Thomas Truesdell House) submitted by the Landmarks Preservation Commission regarding the landmark designation of the Harriet and Thomas Truesdell House, 227 Duffield Street (Block 146, Lot 15) (List No. 522/LP No. 2645), Borough of Brooklyn, Community District 2, Council District 33.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 952) and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:

SUBJECT

BROOKLYN CB - 2

20215001 HIK (N 210282 HIK)

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May 12, 2021

Designation by the Landmarks Preservation Commission [DL-522/LP-2645] pursuant to Section 3020 of the New York City Charter of the landmark designation of the Harriet and Thomas Truesdell House (Tax Map Block 146, Lot 15), as an historic landmark.

PUBLIC HEARING**DATE:** April 21, 2021**Witnesses in Favor:** Three**Witnesses Against:** None**SUBCOMMITTEE RECOMMENDATION****DATE:** May 6, 2021

The Subcommittee recommends that the Land Use Committee affirm the designation.

In Favor:

Riley, Koo, Barron, Miller, Treyger.

Against:

None

Abstain:

None

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None.

In connection herewith, Council Members Salamanca and Riley offered the following resolution:

Res. No. 1634

Resolution affirming the designation by the Landmarks Preservation Commission of the Harriet and Thomas Truesdell House located at 227 Duffield Street (Tax Map Block 146, Lot 15), Borough of Brooklyn, Designation List No. 522, LP-2645 (Preconsidered L.U. No. 760; 20215001 HIK; N 210282 HIK).

By Council Members Salamanca and Riley.

WHEREAS, the Landmarks Preservation Commission filed with the Council on February 11, 2021 a copy of its designation report dated February 2, 2021 (the "Designation"), designating the Harriet and Thomas

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Truesdell House located at 227 Duffield Street, Community District 2, Borough of Brooklyn, as a landmark and Tax Map Block 146, Lot 15, as its landmark site pursuant to Section 3020 of the New York City Charter;

WHEREAS, the Designation is subject to review by the Council pursuant to Section 3020 of the New York City Charter and Section 25-303 of the Administrative Code of the City of New York;

WHEREAS, the City Planning Commission submitted to the Council on April 9, 2021, its report on the Designation dated April 7, 2021 (the "Report");

WHEREAS, upon due notice, the Council held a public hearing on the Designation on April 21, 2021; and

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Designation.

RESOLVED:

Pursuant to Section 3020 of the City Charter and Section 25-303 of the Administrative Code of the City of New York, and on the basis of the information and materials contained in the Designation and the Report, the Council affirms the Designation.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 761

Report of the Committee on Land Use in favor of approving Application No. 20215020 HAM (Sendero Verde - Amended UDAAP) submitted by the New York City Department of Housing Preservation and Development pursuant to Article 16 of the General Municipal Law for an amendment to a previously approved urban development action area project located at 50 East 112th Street, 60 East 112th Street, 75 East 111th Street (Block 1617, Lots 20, 120, 125, and 140) ("Disposition Area") (Formerly Lots 20, 22, 23, 25, 28, 29, 31, 33, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 50, 51, 52, 53, 54, 121, and 122), Borough of Manhattan, Community District 11, Council District 8.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 952) and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:

SUBJECT

MANHATTAN CB - 11

20215020 HAM

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May 12, 2021

Application submitted by the New York City Department of Housing Preservation and Development pursuant to Article 16 of the General Municipal Law for an amendment to a previously approved urban development action area project located at 50 East 112th Street, 60 East 112th Street, 75 East 111th Street (Block 1617, Lots 20, 120, 125, and 140) ("Disposition Area") (Formerly Lots 20, 22, 23, 25, 28, 29, 31, 33, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 50, 51, 52, 53, 54, 121, and 122), Borough of Manhattan, Community District 11, Council District 8.

INTENT

To approve the Amended Project as an Urban Development Action Area Project pursuant to Section 694 of the General Municipal Law for the construction of two buildings (3 towers) in two phases containing a total of approximately 707 rental dwelling units, plus two units for superintendent staff, approximately 6,213 square feet of commercial space, approximately 87,278 square feet of commercial facility space, a minimum of 18,000 square feet of open space that will be accessible to the public, and also a minimum of 11,450 square feet of Garden Area.

PUBLIC HEARING

DATE: April 21, 2021

Witnesses in Favor: Four

Witnesses Against: None

SUBCOMMITTEE RECOMMENDATION

DATE: May 6, 2021

The Subcommittee recommends that the Land Use Committee approve the requests made by the New York City Department of Housing Preservation and Development.

In Favor:

Riley, Koo, Barron, Miller, Treyger.

Against:

None

Abstain:

None

COMMITTEE ACTION

DATE: May 11, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz Borelli.

Against:
None

Abstain:
None.

In connection herewith, Council Members Salamanca and Riley offered the following resolution:

Res. No. 1635

Resolution approving an Amended Project as an Urban Development Action Area Project pursuant to Section 694 of the General Municipal Law, for property located at 50 East 112th Street, 60 East 112th Street, and 75 East 111th Street (Block 1617, Lots 20, 120, 125, and 140) ("Disposition Area") (Formerly Lots 20, 22, 23, 25, 28, 29, 31, 33, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 50, 51, 52, 53, 54, 121, and 122), Borough of Manhattan, Community District 11 (Preconsidered L.U. No. 761; 20215020 HAM).

By Council Members Salamanca and Riley.

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council April 5, 2021 its request dated April 5, 2021, pursuant to Section 694 of the General Municipal Law, that the Council approve an Amended Project as an Urban Development Action Project (the "Amended Project") for property located at 50 East 112th Street, 60 East 112th Street, and 75 East 111th Street (Block 1617, Lots 20, 120, 125, and 140) ("Disposition Area") (Formerly Lots 20, 22, 23, 25, 28, 29, 31, 33, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 50, 51, 52, 53, 54, 121, and 122), Community District 11, Borough of Manhattan (the "Disposition Area"):

WHEREAS, the request made by the New York City Department of Housing and Development is related to a previously approved City Council Resolution No. 1746 (L.U. No. 778) dated November 30, 2017 (the "Original Resolution");

WHEREAS, upon due notice, the Council held a public hearing on the Amended Project on April 21, 2021; and

WHEREAS, the Council has considered the land use and financial implications and other policy issues relating to the Amended Project.

RESOLVED:

The Council finds that the present status of the Disposition Area tends to impair or arrest the sound growth and development of the municipality and that the proposed Urban Development Action Area Project is consistent with the policy and purposes of Section 691 of the General Municipal Law.

The Council approves the designation of the Disposition Area as an Urban Development Action Area pursuant to Section 693 of the General Municipal Law; and

The Council approves the Amended Project as an Urban Development Action Area Project pursuant to Section 694 of the General Municipal Law.

The Amended Project shall be developed upon the terms and conditions in the Amended Project Summary that HPD has submitted to the Council on April 5, 2021, a copy of which is attached hereto.

ATTACHMENT:**PROJECT SUMMARY**

1. **PROGRAM:** HPD's New Construction Finance Programs
2. **PROJECT:** Sendero Verde
3. **LOCATION:**
 - a. **BOROUGH:** Manhattan
 - b. **COMMUNITY DISTRICT:** 11
 - c. **COUNCIL DISTRICT:** 8
 - d. **DISPOSITION AREA:**

<u>BLOCK</u>	<u>LOT(S)</u>	<u>ADDRESS(ES)</u>
1617	125, 140	
	120	50 East 112 th Street
	20	60 East 112 th Street
		75 East 111 th Street
		(Collectively, formerly Lots 20,22, 23,25,28,29,31,33,35,37,38,39,40,41,42,4 3,45,46,48,50,51,52,53,54,121,122)
4. **BASIS OF DISPOSITION PRICE:** Nominal. Sponsor will pay one dollar per lot and deliver a note and mortgage for the remainder of the appraised value ("Land Debt"), purchase subject to a future property interest retained by the City, or both. For a period of at least thirty (30) years following completion of construction, any Land Debt will be repayable out of resale or refinancing profits. The remaining balance, if any, may be forgiven at the end of the term.
5. **TYPE OF PROJECT:** New Construction
6. **APPROXIMATE NUMBER OF BUILDINGS:** 2 (3 towers anticipated)
7. **APPROXIMATE NUMBER OF UNITS:** 707 dwelling units (plus two superintendent's units)
8. **HOUSING TYPE:** Rental
9. **ESTIMATE OF INITIAL RENTS:** At least 60% of the units will have rents affordable to families with incomes between 27% and 57% of AMI. No more than 40% of the units will have rents affordable to families with incomes up to 130% of AMI. All units will be subject to rent stabilization.

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- 10. INCOME TARGETS:** At least 60% of units between 30% and 60% of AMI
No more than 40% of units up to 165% of AMI
- 11. PROPOSED FACILITIES:** Approximately 6,213 square feet of commercial space
Approximately 87,278 square feet of community facility space
Open space accessible to the public
Garden or passive recreation space
- 12. PROPOSED CODES/ORDINANCES:** None
- 13. ENVIRONMENTAL STATUS:** Environmental Impact Statement
- 14. PROPOSED TIME SCHEDULE:** Approximately 36 months from closing to completion of construction for each phase

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 762

Report of the Committee on Land Use in favor of approving Application No. 20215021 HAM (Sendero Verde - Amended Article XI) submitted by the New York City Department of Housing Preservation and Development for an amendment to a previously approved real property tax exemption for property located at Block 1617, Lot 120 (former Lots 20, 51, 52, 53, 54, p/o Lot 23, and p/o Lot 50), Borough of Manhattan, Community District 11, Council District 8.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 952) and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:

SUBJECT

MANHATTAN CB - 11

20215021 HAM

Application submitted by the New York City Department of Housing Preservation and Development for an amendment to a previously approved real property tax exemption for property located at Block 1617, Lot 120 (former Lots 20, 51, 52, 53, 54, p/o Lot 23, and p/o Lot 50), Borough of Manhattan, Community District 11, Council District 8.

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INTENT

To approve an amendment to a previously approved Tax Exemption which was adopted by the City Council November 30, 2017, Resolution No. 1735; L.U. No. 790, replacing definitions c, e, and j of paragraph 1 and adding a new definition f.1 to paragraph 1 of the Resolution.

PUBLIC HEARING**DATE:** April 21, 2021**Witnesses in Favor:** Four**Witnesses Against:** None**SUBCOMMITTEE RECOMMENDATION****DATE:** May 6, 2021

The Subcommittee recommends that the Land Use Committee approve the requests made by the New York City Department of Housing Preservation and Development.

In Favor:

Riley, Koo, Barron, Miller, Treyger.

Against:

None

Abstain:

None

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None.

In connection herewith, Council Members Salamanca and Riley offered the following resolution:

Res. No. 1636

Resolution approving an amendment to a previously approved Real Property Tax Exemption located at Block 1617, Lot 120 (former Lots 20, 51, 52, 53, 54, p/o Lot 23, and p/o Lot 50), Community District 11, Borough of Manhattan (Preconsidered L.U. No. 762; 20215021 HAM).

By Council Members Salamanca and Riley.

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council on April 5, 2021 its request dated April 5, 2021 that the Council approve an amendment (the "Amended Tax Exemption") to a previously approved real property tax exemption pursuant to Section 577 of the Private Housing Finance Law (City Council Resolution No. 1735; L.U. No. 790, approved November 30, 2017, hereinafter, the "Prior Resolution") for property located at Block 1617, Lot 120 (former Lots 20, 51, 52, 53, 54, p/o Lot 23, and p/o Lot 50), Community District 11, Borough of Manhattan.

WHEREAS, upon due notice, the Council held a public hearing on the Amended Tax Exemption on April 21, 2021; and

WHEREAS, the Council has considered the land use and financial implications and other policy issues relating to the Amended Tax Exemption.

RESOLVED:

The Council approves the amendment of the Prior Resolution by deleting definitions c, e, and j of paragraph 1 thereof and replacing them with the following, and by adding a new definition f.1 to paragraph 1, to read as follows:

- 1.c. "Effective Date" shall mean the later of (i) the date of conveyance of the Exemption Area to the HDPC, or (ii) the date that either (A) HPD and the Owner, or (B) HPD, HDC and the Owner, enter into the Regulatory Agreement.
- 1.e. "Exemption Area" shall mean the real property located in the Borough of Manhattan, City and State of New York, identified as Block 1617, Lot 120 (former Lots 20, 51, 52, 53, 54, p/o Lot 23, and p/o Lot 50) on the Tax Map of the City of New York.
- 1.f.1. "HDC" shall mean the New York City Housing Development Corporation.
- 1.j. "Regulatory Agreement" shall mean the regulatory agreement between either (i) HPD and the Owner, or (ii) HPD, HDC and the Owner, establishing certain controls upon the operation of the Exemption Area during the term of the Exemption.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

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May 12, 2021

Report for L.U. No. 763

Report of the Committee on Land Use in favor of approving, as modified, Application No. N 200343 ZRK (Suydam Street Rezoning) submitted by Suydam, Inc. and 3210 Willoughby LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article XII, Chapter 3 (Special Mixed Use District) for the purpose of establishing a new Special Mixed Use District and modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Brooklyn, Community District 4, Council District 34.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 952), respectfully

REPORTS:

(For text of report, please see the Report of the Committee on Land Use for L.U. No. 753 printed in these Minutes)

Accordingly, this Committee recommends its adoption, as modified.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

Approved with Modifications and Referred to the City Planning Commission pursuant to Section 197-(d) of the New York City Charter.

Report for L.U. No. 770

Report of the Committee on Land Use in favor of approving, as modified, Application No. N 210126 ZRM (Governors Island Rezoning) submitted by Governors Island Corporation d/b/a The Trust for Governors Island, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article XIII, Chapter 4, expanding the Special Governors Island District, and to amend related Sections, Borough of Manhattan, Community District 1, Council District 1.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021, (Minutes, page 954), respectfully

REPORTS:**SUBJECT**

**MANHATTAN CB-1 - TWO APPLICATIONS RELATED TO GOVERNORS ISLAND
REZONING**

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

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N 210126 ZRM (Pre. L.U. No. 770)

City Planning Commission decision approving an application submitted by Governors Island Corporation d/b/a The Trust for Governors Island, and NYC Small Business Services, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify Article XIII, Chapter 4, expanding the Special Governors Island District, and to amend related Sections.

C 210127 ZMM (Pre. L.U. No. 771)

City Planning Commission decision approving an application submitted by Governors Island Corporation d/b/a The Trust for Governors Island and NYC Small Business Services, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 16a:

1. changing from an R3-2 District to a C4-1 District property bounded by a line at angle 92.2 degrees and 2,691 feet northeasterly from the southwesterly point of Governors Island as measured along to said line and bisecting the angle formed by the southwesterly boundary lines of Governors Island, and the southeasterly, southwesterly, westerly, and northwesterly boundary lines of Governors Island; and
2. establishing a Special Governors Island District bounded by a line 2,675 feet northeasterly from the southwesterly point of Governors Island as measured along a line perpendicular to said line and bisecting the angle formed by the southwesterly boundary lines of Governors Island, and the southeasterly, southwesterly, westerly, and northwesterly boundary lines of Governors Island, and including the areas of existing Piers;

as shown on a diagram (for illustrative purposes only) dated October 19, 2020.

INTENT

To approve zoning text amendment of the project area to modify Article XIII, Chapter 4 and other related Sections of Special Governors Island District, and to establish three subareas within the Southern Subdistrict: the Western Subarea, the Eastern Subarea and Open Space Subarea would include bulk controls for lot coverage, height and setback controls, distance between buildings, building lengths, building placement, width and orientation; and amend zoning map to change from an R3-2 District to a C4-1 District and establish a Special Governors Island District bounded by a line 2,675 feet northeasterly from the southwesterly point of Governors Island to facilitate up to 4,275,000 square feet of commercial, educational and community facility development across 34 acres on Governors Island, Manhattan, Community District 1.

PUBLIC HEARING

DATE: April 5, 2021

Witnesses in Favor: Twenty-eight

Witnesses Against: Fifty-seven

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SUBCOMMITTEE RECOMMENDATION**DATE:** May 11, 2021

The Subcommittee recommends that the Land Use Committee approve with modifications the decisions of the City Planning Commission on Pre. L.U. No. 770 and approve Pre. L.U. No. 771.

In Favor:

Moya, Levin, Reynoso, Grodenchik, Ayala, Borelli.

Against:

None

Abstain:

None

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolutions.

In Favor:

Salamanca, Gibson, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

Barron

Abstain:

None.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

Approved with Modifications and Referred to the City Planning Commission pursuant to-Section 197-(d) of the New York City Charter.

Report for L.U. No. 771

Report of the Committee on Land Use in favor of approving, as modified, Application No. C 210127 ZMM (Governors Island Rezoning) submitted by Governors Island Corporation d/b/a The Trust for Governors Island and NYC Small Business Services pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 16a, changing from an R3-2 District to a C4-1 District and establishing a Special Governors Island District, Borough of Manhattan, Community District 1, Council District 1.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 955) and which same Land Use item was coupled with the resolution shown below, respectfully

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May 12, 2021

REPORTS:

(For text of report, please see the Report of the Committee on Land Use for L.U. No. 770 printed in these Minutes)

Accordingly, this Committee recommends its adoption, as modified.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

Approved with Modifications and Referred to the City Planning Commission pursuant to-Section 197-(d) of the New York City Charter.

Report for L.U. No. 772

Report of the Committee on Land Use in favor of approving Application No. N 210061 ZRK (86 Fleet Place Text) submitted by Red Apple Real Estate, pursuant to Section 201 of the New York City Charter for an amendment to the Zoning Resolution of the City of New York, modifying provisions of Article X, Chapter 1 (Special Downtown Brooklyn District), Borough of Brooklyn, Community District 2, Council District 35.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 955) and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:**SUBJECT****BROOKLYN CB - 2****N 210061 ZRK**

City Planning Commission decision approving an application submitted by Red Apple Real Estate, pursuant to Section 201 of the New York City Charter for an amendment to the Zoning Resolution of the City of New York, modifying provisions of Article X, Chapter 1, Section 11 (Special Downtown Brooklyn District).

INTENT

To approve the zoning text amendment to allow all non-residential uses permitted by the underlying zoning district within a portion of the Special Downtown Brooklyn District, applicable to buildings fronting on Myrtle Avenue between Fleet Place and the prolongation of Prince Street in Brooklyn Community District 2.

PUBLIC HEARING

DATE: April 20, 2021

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

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Witnesses in Favor: Two**Witnesses Against:** None**SUBCOMMITTEE RECOMMENDATION****DATE:** May 4, 2021

The Subcommittee recommends that the Land Use Committee approve the decision of the City Planning Commission.

In Favor:

Moya, Levin, Reynoso, Grodenchik, Ayala, Rivera, Borelli.

Against:

None

Abstain:

None

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None.

In connection herewith, Council Members Salamanca and Moya offered the following resolution:

Res. No. 1637

Resolution approving the decision of the City Planning Commission on Application No. N 210061 ZRK, for an amendment of the text of the Zoning Resolution (Preconsidered L.U. No. 772).

By Council Members Salamanca and Moya.

WHEREAS, Red Apple Real Estate, filed an application pursuant to Section 201 of the New York City Charter, for an amendment of the text of the Zoning Resolution of the City of New York, modifying provisions of Article X, Chapter 1, Section 11 (Special Downtown Brooklyn District), Borough of Brooklyn, Community District 2 (ULURP No. N 210061 ZRK) (the "Application");

WHEREAS the City Planning Commission filed with the Council on April 16, 2021, its decision dated April 7, 2021 (the "Decision") on the Application;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on April 20, 2021;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues, including the negative declaration issued December 14th, 2020 (CEQR No. 18DCP155K), which includes an (E) designation to avoid the potential for significant adverse impacts related to noise (E-595) (the "Negative Declaration").

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the (E) Designation (E-595) and Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, N 210061 ZRK, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

Matter underlined is new, to be added;

Matter ~~struck out~~ to be deleted;

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

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

**ARTICLE X
SPECIAL PURPOSE DISTRICTS**

**Chapter 1
Special Downtown Brooklyn District**

*

* *

**101-10
SPECIAL USE REGULATIONS**

101-11

Special Ground Floor Use Regulations

Map 2 (Ground Floor Retail Frontage), in Appendix E of this Chapter, specifies locations where the special ground floor #use# regulations of this Section apply.

#Uses# within #stories# that have a floor level within five feet of #curb level#, and within 50 feet of the #street line#, shall be limited to #commercial uses# listed in Use Groups 5, 6A, 6C, 6D, 7A, 7B, 8A, 8B, 8D, 9, 10, 11, 12A, 12B and 12C, where such #uses# are permitted by the underlying district. Libraries, museums and non-commercial art galleries shall be permitted. In addition, all non-residential #uses# permitted by the underlying district shall be permitted for buildings fronting on Myrtle Avenue between Ashland Place and ~~Fleet Place~~ the continuation of Prince Street. However, this minimum depth requirement may be reduced, to the minimum extent necessary, to accommodate a vertical circulation core, or structural columns associated with upper #stories# of the #building#.

A #building's street# frontage shall be allocated exclusively to such #uses#, except for Type 2 lobby space, entryways or entrances to subway stations provided in accordance with the provisions of Section 37-33 (Maximum Width of Certain Uses). However, loading berths serving any permitted #use# in the #building# may occupy up to 40 feet of such #street# frontage provided such #street# frontage is not subject to curb cut restrictions as shown on Map 5 (Curb Cut Restrictions) in Appendix E of this Chapter.

* * *

Appendix E

Special Downtown Brooklyn District Maps

* * *

Map 2 — Ground Floor Retail Frontage

[EXISTING MAP]



[PROPOSED MAP]



* * *

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 773

Report of the Committee on Land Use in favor of approving Application No. C 200272 ZMQ (68-19 Woodhaven Boulevard Rezoning) submitted by 68-19 Rego Park, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 14b, changing from an R4 District to an R6A District, changing from a C8-1 District to an R6A District, and establishing within the proposed R6A District a C2-3 District, Borough of Queens, Community District 6, Council District 29.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 955) and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:

SUBJECT

QUEENS CB-6 - TWO APPLICATIONS RELATED TO 68-19 WOODHAVEN BOULEVARD REZONING

C 200272 ZMQ (Pre. L.U. No. 773)

City Planning Commission decision approving an application submitted by 68-19 Rego Park, LLC, pursuant to Sections 197-c and 201 of the New York City Charter, for an amendment of the Zoning Map, Section No. 14b:

1. changing from an R4 District to an R6A District property bounded by a line midway between 68th Avenue and 68th Road, Alderton Street, 68th Road, and a line 100 feet northeasterly of Woodhaven Boulevard;
2. changing from a C8-1 District to an R6A District property bounded by a line midway between 68th Avenue and 68th Road, a line 100 feet northeasterly of Woodhaven Boulevard, 68th Road, and Woodhaven Boulevard; and
3. establishing within the proposed R6A District a C2-3 District bounded by a line midway between 68th Avenue and 68th Road, a line 100 feet southwesterly of Alderton Street, 68th Road, and Woodhaven Boulevard;

as shown on a diagram (for illustrative purposes only) dated November 16, 2020, and subject to the conditions of CEQR Declaration E-589.

N 200273 ZRQ (Pre. L.U. No. 774)

City Planning Commission decision approving an application submitted by 68-19 Rego Park, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Appendix F for the purpose of establishing a Mandatory Inclusionary Housing area.

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

NYSCEF DOC. NO. 87

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May 12, 2021

INTENT

To approve the amendment to rezone the project area from C8-1 and R4 zoning districts to R6A and R6A/C2-3; and amend zoning text to modify Appendix F and establish the proposed Project Area as a Mandatory Inclusionary Housing (MIH) designated area to facilitate the development of a seven-story mixed-use building with community facility and commercial uses on the ground floor and approximately 87 residential units on the upper floors at 68-19 Woodhaven Boulevard in the Rego Park neighborhood of Queens, Community District 6.

PUBLIC HEARING**DATE:** April 20, 2021**Witnesses in Favor:** One**Witnesses Against:** None**SUBCOMMITTEE RECOMMENDATION****DATE:** May 4, 2021

The Subcommittee recommends that the Land Use Committee approve the decisions of the City Planning Commission on Pre. L.U. Nos. 773 and 774.

In Favor:

Moya, Levin, Reynoso, Grodenchik, Ayala, Rivera, Borelli.

Against:

None

Abstain:

None.

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolutions.

Pre. L.U. No. 773**In Favor:**

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None

Pre. L.U. No. 774**In Favor:**

Salamanca, Gibson, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr, Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

Barron

Abstain:

None.

In connection herewith, Council Members Salamanca and Moya offered the following resolution:

Res. No. 1638

Resolution approving the decision of the City Planning Commission on ULURP No. C 200272 ZMQ, a Zoning Map amendment (Preconsidered L.U. No. 773).

By Council Members Salamanca and Moya.

WHEREAS, 68-19 Rego Park, LLC, filed an application pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 14b, changing from an R4 District to an R6A District, changing from a C8-1 District to an R6A District, and establishing within the proposed R6A District a C2-3 District, which in conjunction with the related action would facilitate the construction of a seven-story mixed-use building with community facility and commercial uses on the ground floor and approximately 87 residential units on the upper floors at 68-19 Woodhaven Boulevard in the Rego Park neighborhood of Queens, Community District 6 (ULURP No. C 200272 ZMQ) (the "Application");

WHEREAS the City Planning Commission filed with the Council on April 16, 2021, its decision dated April 7, 2021 (the "Decision") on the Application;

WHEREAS, the Application is related to application N 200273 ZRQ (Pre. L.U. No. 774), a zoning text amendment to designate a Mandatory Inclusionary Housing (MIH) area;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on April 20, 2021;

WHEREAS, the Council has considered the land use and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues, including the negative declaration issued November 9th, 2020 (CEQR No. 20DCP155Q), which includes an (E) designation to avoid the potential for significant adverse impacts related to hazardous materials and noise (E-589) (the "Negative Declaration").

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the (E) Designation (E-589) and Negative Declaration.

Pursuant to Section 197-d of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, C 200272 ZMQ, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further changed by the Zoning Map, Section No. 14b:

1. changing from an R4 District to an R6A District property bounded by a line midway between 68th Avenue and 68th Road, Alderton Street, 68th Road, and a line 100 feet northeasterly of Woodhaven Boulevard;
2. changing from a C8-1 District to an R6A District property bounded by a line midway between 68th Avenue and 68th Road, a line 100 feet northeasterly of Woodhaven Boulevard, 68th Road, and Woodhaven Boulevard; and
3. establishing within the proposed R6A District a C2-3 District bounded by a line midway between 68th Avenue and 68th Road, a line 100 feet southwesterly of Alderton Street, 68th Road, and Woodhaven Boulevard;

as shown on a diagram (for illustrative purposes only) dated November 16, 2020, and subject to the conditions of CEQR Declaration E-589, Borough of Queens, Community District 6.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 774

Report of the Committee on Land Use in favor of approving Application No. N 200273 ZRQ (68-19 Woodhaven Boulevard Rezoning) submitted by 68-19 Rego Park, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Queens, Community District 6, Council District 29.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 955) and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

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(For text of report, please see the Report of the Committee on Land Use for L.U. No. 773 printed in these Minutes)

Accordingly, this Committee recommends its adoption.

In connection herewith, Council Members Salamanca and Moya offered the following resolution:

Res. No. 1639

Resolution approving the decision of the City Planning Commission on Application No. N 200273 ZRQ, for an amendment of the text of the Zoning Resolution (Preconsidered L.U. No. 774).

By Council Members Salamanca and Moya.

WHEREAS, 68-19 Rego Park, LLC, filed an application pursuant to Section 201 of the New York City Charter, for an amendment of the text of the Zoning Resolution of the City of New York, modifying Appendix F for the purpose of establishing a Mandatory Inclusionary Housing area, which in conjunction with the related action would facilitate the development of a seven-story mixed-use building at 68-19 Woodhaven Boulevard in the Rego Park neighborhood of Queens Community District 6 (Application No. N 200273 ZRQ) (the “Application”);

WHEREAS, the City Planning Commission filed with the Council on April 16, 2021, its decision dated April 7, 2021 (the “Decision”), on the Application;

WHEREAS, the Application is related to application C 200272 ZMQ (Pre. L.U. No. 773), a zoning map amendment to change an R4 zoning district to an R6A district with a C2-3 commercial overlay, and to change a C8-1 district to an R6A district with a C2-3 commercial overlay;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on April 20, 2021;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues, including the negative declaration issued November 9th, 2020 (CEQR No. 20DCP155Q), which includes an (E) designation to avoid the potential for significant adverse impacts related to hazardous materials and noise (E-589) (the “Negative Declaration”).

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the (E) Designation (E-589) and Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, N 200273 ZRQ, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

Matter underlined is new, to be added;

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

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

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

* * *

APPENDIX F

Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas

* * *

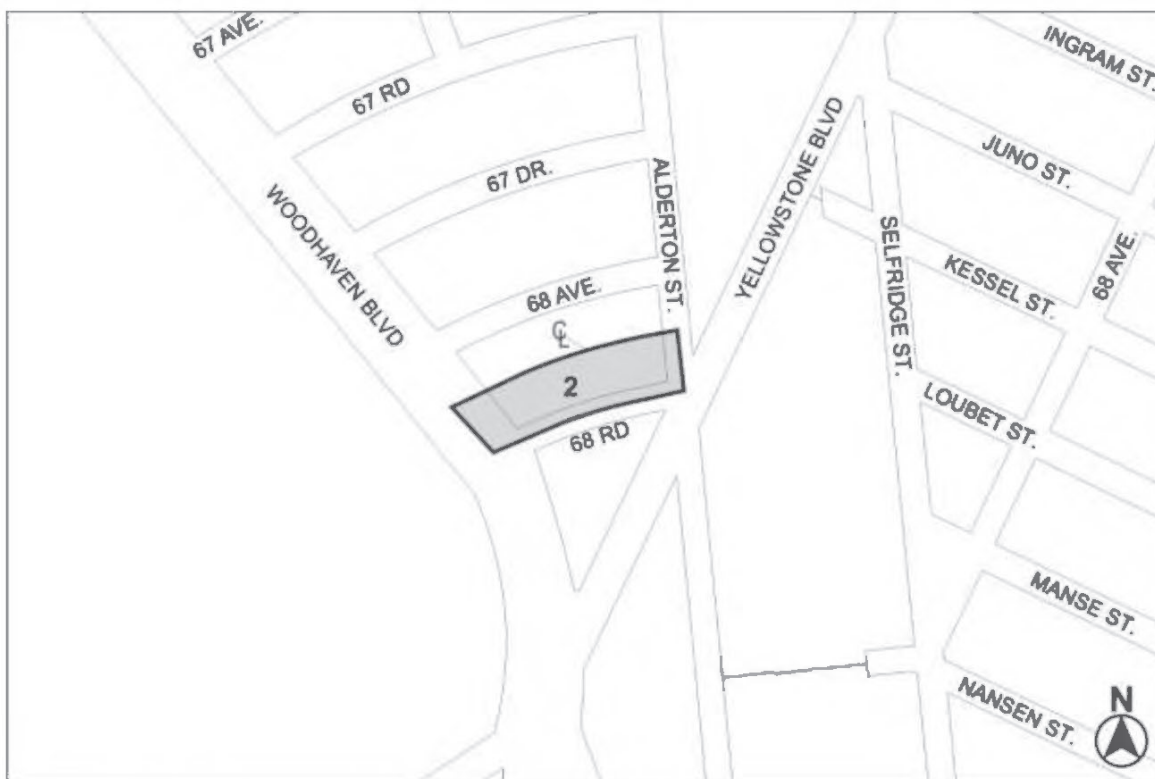
QUEENS

* * *

Queens Community District 6

* * *

Map 2– [date of adoption]



Mandatory Inclusionary Housing Area (see Section 23-154(d)(3))

Area 2 — [date of adoption] — MIH Program Option 1 and Option 2

Portion of Community District 6, Queens

* * *

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

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May 12, 2021

Report for L.U. No. 775

Report of the Committee on Land Use in favor of approving, as modified, Application No. C 200274 ZMX (431 Concord Avenue Rezoning) submitted by Concord Realty, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 6c, by changing from an existing M1-2 District to an R7D District, Borough of the Bronx, Community District 1, Council District 8.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 956), respectfully

REPORTS:

SUBJECT

BRONX CB-1 - TWO APPLICATIONS RELATED TO 431 CONCORD AVENUE REZONING

C 200274 ZMX (Pre. L.U. No. 775)

City Planning Commission decision approving an application submitted by Concord Realty LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 6c, by changing from an existing M1-2 District to an R7D District property bounded by East 145th Street, Concord Avenue, a line 150 feet southerly of East 145th Street, and a line midway between Jackson Avenue and Concord Avenue, Borough of The Bronx, Community District 1, as shown on a diagram (for illustrative purposes only) dated November 2, 2020, and subject to the conditions of CEQR Declaration E-588.

N 200275 (Pre. L.U. No. 776)

City Planning Commission decision approving an application submitted by Concord Realty LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area.

INTENT

To approve the amendment to rezone the project area from an M1-2 District to an R7D District and amend zoning text to designate a Mandatory Inclusionary Housing (MIH) area to facilitate the construction of an 11-story residential development with 88 dwelling units, 22 of which would be permanently affordable, at 431 Concord Avenue in the Mott Haven neighborhood of Bronx, Community District 1.

PUBLIC HEARING

DATE: April 20, 2021

Witnesses in Favor: One

Witnesses Against: None

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

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May 12, 2021

SUBCOMMITTEE RECOMMENDATION**DATE:** May 4, 2021

The Subcommittee recommends that the Land Use Committee approve the decision of the City Planning Commission on Pre. L.U. No. 775 and approve with modifications the decision of the City Planning Commission on Pre. L.U. No. 776.

In Favor:

Moya, Levin, Reynoso, Grodenchik, Ayala, Rivera, Borelli

Against:

None

Abstain:

None.

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolutions.

In Favor:

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

Approved with Modifications and Referred to the City Planning Commission pursuant to-Section 197-(d) of the New York City Charter.

Report for L.U. No. 776

Report of the Committee on Land Use in favor of approving, as modified, Application No. N 200275 ZRX (431 Concord Avenue Rezoning) submitted by Concord Realty, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of the Bronx, Community District 1, Council District 8.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021, (Minutes, page 956), respectfully

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

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May 12, 2021

REPORTS:

(For text of report, please see the Report of the Committee on Land Use for L.U. No. 775 printed in these Minutes)

Accordingly, this Committee has recommended its adoption, as modified.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

Approved with Modifications and Referred to the City Planning Commission pursuant to-Section 197-(d) of the New York City Charter.

At this point, the Speaker (Council Member Johnson) announced that the following items had been **preconsidered** by the Committee on Land Use and had been favorably reported for adoption

Report for L.U. No. 789

Report of the Committee on Land Use in favor of approving Application No. 20215023 HAK (South Portland - Amended Article XI) submitted by the New York City Department of Housing Preservation and Development for an amendment to a previously approved real property tax exemption for property located at Block 2003, Lot 37, Borough of Brooklyn, Community District 2, Council District 35.

The Committee on Land Use, to which the annexed Land Use item was referred on May 12, 2021 and which same Land Use item was coupled with the resolution shown below, respectfully

REPORTS:**SUBJECT****BROOKLYN CB - 2****20215023 HAK**

Application submitted by the New York City Department of Housing Preservation and Development for an amendment to a previously approved real property tax exemption for property located at Block 2003, Lot 37, Borough of Brooklyn, Community District 2, Council District 35.

INTENT

To approve an amendment to a previously approved Tax Exemption which was adopted by the City Council June 28, 2018, Resolution No. 425; L.U. No. 110, replacing paragraph 1, paragraph 2, and provision a of paragraph 3 of the Resolution.

PUBLIC HEARING**DATE:** May 6, 2021**Witnesses in Favor:** Four**Witnesses Against:** None**SUBCOMMITTEE RECOMMENDATION****DATE:** May 6, 2021

The Subcommittee recommends that the Land Use Committee approve the requests made by the New York City Department of Housing Preservation and Development.

In Favor:

Riley, Koo, Barron, Miller, Treyger.

Against:

None

Abstain:

None

COMMITTEE ACTION**DATE:** May 11, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Koo, Levin, Reynoso, Treyger, Grodenchik, Adams, Ayala, R. Diaz Sr., Moya, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None.

In connection herewith, Council Members Salamanca and Riley offered the following resolution:

Res. No. 1640

Resolution approving an amendment to a previously approved Real Property Tax Exemption located at Block 2003, Lot 37, Community District 2, Borough of Brooklyn (Preconsidered L.U. No. 789; 20215023 HAK).

By Council Members Salamanca and Riley.

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") submitted to the Council on April 26, 2021 its request dated April 26, 2021 that the Council approve an amendment (the "Amended Tax Exemption") to a previously approved real property tax exemption pursuant to Section 577 of the Private Housing Finance Law (City Council Resolution No. 425; L.U. No. 110, approved June 28, 2018, hereinafter, the "Prior Resolution") for property located at Block 2003, Lot 37, Community District 2, Borough of Brooklyn.

WHEREAS, upon due notice, the Council held a public hearing on the Amended Tax Exemption on May 6, 2021; and

WHEREAS, the Council has considered the land use and financial implications and other policy issues relating to the Amended Tax Exemption.

RESOLVED:

The Council approves the amendment of the Prior Resolution by deleting paragraph 1, paragraph 2, and provision a of paragraph 3 thereof and replacing them with the following:

1. For the purposes hereof, the following terms shall have the following meanings:
 - a. "Community Facility Space" shall mean those portions of the Exemption Area which the Regulatory Agreement requires to be devoted solely to community facility uses.
 - b. "Company" shall mean South Portland LLC and South Portland LIHTC LLC or any other entities that acquire all or a portion of the beneficial leasehold interests in the Exemption Area with the prior written consent of HPD.
 - c. "Effective Date" shall mean the later of (i) the date of conveyance of the leasehold interest of the Exemption Area to the HDFC, or (ii) the date that either (A) HPD and the Owner, or (B) HPD, HDC and the Owner, enter into the Regulatory Agreement.
 - d. "Exemption" shall mean the exemption from real property taxation provided hereunder.
 - e. "Exemption Area" shall mean the real property located in the Borough of Brooklyn, City and State of New York, identified as Block 2003, Lot 37 on the Tax Map of the City of New York.
 - f. "Expiration Date" shall mean the earlier to occur of (i) a date which is forty (40) years from the Effective Date, (ii) the date of the expiration or termination of the Regulatory Agreement, or (iii) the date upon which the Exemption Area ceases to be owned, leased or controlled by either a housing development fund company or an entity wholly controlled by a housing development fund company.
 - g. "HDC" shall mean the New York City Housing Development Corporation.
 - h. "HDFC" shall mean Hanson Place Housing Development Fund Corporation or a housing development fund company that acquires the leasehold interest in the Exemption Area with the prior written consent of HPD.
 - i. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.
 - j. "Owner" shall mean, collectively, the HDFC and the Company.
 - k. "Regulatory Agreement" shall mean the regulatory agreement between either (i) HPD and the Owner, or (ii) HPD, HDC and the Owner, establishing certain controls upon the operation of the Exemption Area during the term of the Exemption.

2. All of the value of the property in the Exemption Area, including both the land and any improvements (excluding those portions, if any, devoted to business or commercial use other than the Community Facility Space), shall be exempt from real property taxation, other than assessments for local improvements, for a period commencing upon the Effective Date and terminating upon Expiration Date.
- 3.a. The Exemption shall terminate if HPD determines at any time that (i) the Exemption Area is not being operated in accordance with the requirements of Article XI of the Private Housing Finance Law, (ii) the Exemption Area is not being operated in accordance with the requirements of the Regulatory Agreement, (iii) the Exemption Area is not being operated in accordance with the requirements of any other agreement with, or for the benefit of, the City of New York, (iv) any interest in the Exemption Area or in the leasehold interest of the HDPC is conveyed or transferred to a new owner without the prior written approval of HPD, or (v) the construction or demolition of any private or multiple dwelling on the Exemption Area has commenced without the prior written consent of HPD. HPD shall deliver written notice of any such determination to Owner and all mortgagees of record, which notice shall provide for an opportunity to cure of not less than sixty (60) days. If the noncompliance specified in such notice is not cured within the time period specified therein, the Exemption shall prospectively terminate.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, May 11, 2021 (Remote Hearing).

(Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Public Safety

Report for Int. No. 2108-A

Report of the Committee on Public Safety in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to increasing penalties for damaging houses of religious worship.

The Committee on Public Safety, to which the annexed proposed amended local law was referred on October 15, 2020 (Minutes, page 2190), respectfully

REPORTS:

I. INTRODUCTION

On May 12, 2021 the Committee on Public Safety, chaired by Council Member Adrienne Adams, held a vote on Proposed Int. No. 2108-A, in relation to amending the penalty for damages to houses of religious worship, and Reso. No. 1619-2021, a resolution calling upon the United States Congress to pass, and the

President to sign, the COVID-19 Hate Crimes Act (H.R. 1843/S.937), which would facilitate the expedited review of COVID-19 hate crimes. The Committee previously heard Int. No. 2108 on April 28, 2021. Both measures were voted out of committee by a vote of 10-0.

II. BACKGROUND

New York City has seen a sharp increase in hate crimes during the COVID-19 pandemic, particularly in Asian communities, mirroring a nationwide increase. In March, the New York Police Department ("NYPD" or "the Department") recorded over 50 hate crimes, including more than 30 anti-Asian hate crimes. Between January 1 and April 4 of this year, there were 80 hate crimes reported against Asian-Americans and Pacific Islanders ("AAPI"), and 180 hate crimes, total, between January 1 and May 2, marking a 73% increase from the same period last year, according to the NYPD Hate Crimes Task Force.

Hate crimes targeting the Jewish community were the second-highest behind anti-AAPI incidents. In April, four synagogues in the Bronx were targeted and damaged with rocks. To help combat the rise in hate crimes, the Department assembled an Asian Hate Crimes Task Force in March, and an NYPD Hate Crime Review Panel in April.

III. RESO. NO. 1619-2021

The COVID-19 Hate Crimes Act, (H.R. 1843/S.937), sponsored by U.S. Representative Grace Meng and Senator Mazie Hirono would enhance anti-hate crimes efforts at the federal level by: (1) designating an officer or employee of the Justice Department to facilitate expedited review of COVID-19 hate crimes reported to federal, state, and/or local law enforcement; (2) issue guidance for state and local law enforcement agencies to establish online reporting of hate crimes/incidents available in multiple languages, and expand culturally competent and linguistically appropriate public education campaigns, and collection of data and public reporting of hate crimes; and (3) issue guidance describing best practices to mitigate racially discriminatory language in describing the COVID-19 pandemic

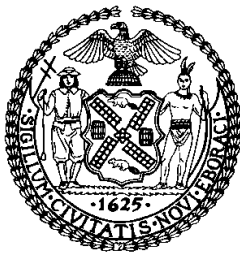
IV. PROPOSED INT. NO. 2108-A

Int. No. 2108-A would amend the Administrative Code by raising the minimum fine for criminal defacement of religious houses of worship from \$500 to \$1,000. The other penalties currently proscribed would remain unchanged; the offense itself would remain a misdemeanor, the maximum fine would remain \$2,500, and the maximum time of incarceration would remain one year.

V. AMENDMENTS TO PROPOSED INT. NO. 2108-A

After the committee's initial hearing of Int. No. 2108, the date the bill becomes effective has been changed from taking effect immediately to taking effect 60 days after it becomes law

(The following is the text of the Fiscal Impact Statement for Int. No. 2108-A:)



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
 LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO. 2108-A
COMMITTEE: Public Safety

TITLE: To amend the administrative code of the city of New York, in relation to increasing penalties for damages to houses of religious worship.

Sponsors: By Council Members Council Members Cabrera, Chin, Yeger, Holden and Vallone.

SUMMARY OF LEGISLATION: Proposed Intro. No. 2108-A would increase the minimum criminal penalty for damaging a house of religious worship or a religious article from \$500 to \$1,000.

EFFECTIVE DATE: This local law would take effect 60 days after becoming law.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2022

FISCAL IMPACT STATEMENT:

	Effective FY22	FY Succeeding Effective FY23	Full Fiscal Impact FY22
Revenues (+)	\$0	\$0	\$0
Expenditures (-)	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: Although this legislation increases a minimum criminal penalty that would be collected by the City, it is not anticipated that this legislation would impact revenues because full compliance with the law is expected.

IMPACT ON EXPENDITURES: It is anticipated that there would be no impact on expenditures as a result of the enactment of this legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division
 Mayor's Office of City Legislative Affairs

ESTIMATE PREPARED BY: Nevin Singh, Financial Analyst

ESTIMATE REVIEWED BY: Eisha Wright, Unit Head
 Rebecca Chasan, Senior Counsel

LEGISLATIVE HISTORY: This legislation was introduced to the Council on October 15, 2020 as Intro. No. 2108 and was referred to the Committee on Public Safety (Committee). The Committee considered the legislation at a hearing held on April 28, 2021 and the legislation was laid over. The legislation was subsequently amended and the amended version, Proposed Intro. No. 2108-A, will be voted on by the Committee at a hearing on May 12, 2021. Upon successful vote by the Committee, Proposed Intro. No. 2108-A will be submitted to the full Council for a vote on May 12, 2021.

DATE PREPARED: May 8, 2021.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 2108-A:)

Int. No. 2108-A

By Council Members Cabrera, Chin, Yeger, Holden, Vallone, Gjonaj, Riley, Feliz, Salamanca, Louis, Rosenthal, Cornegy, Dinowitz, Treyger, Gibson, Barron and Gennaro.

A Local Law to amend the administrative code of the city of New York, in relation to increasing penalties for damaging houses of religious worship

Be it enacted by the Council as follows:

Section 1. Section 10-116 of the administrative code of the city of New York, as amended by local law number 102 for the year 2005, is amended to read as follows:

§ 10-116. Damaging houses of religious worship or religious articles therein prohibited. Any person who [wilfully] willfully and without authority breaks, defaces or otherwise damages any house of religious worship or any portion thereof, or any appurtenances thereto, including religious figures or religious monuments, or any book, scroll, ark, furniture, ornaments, musical instrument, article of silver or plated ware, or any other chattel contained therein for use in connection with religious worship, or any person who knowingly aids, abets, conceals or in any way assists any such person shall be guilty of a misdemeanor punishable by imprisonment of not more than one year or by a fine of not more than [two thousand five hundred dollars] \$2,500 nor less than [five hundred dollars] \$1,000, or both. In addition, any person violating this section shall be subject to a civil penalty of not less than [ten thousand dollars] \$10,000 and not more than [twenty-five thousand dollars] \$25,000. Such civil penalty shall be in addition to any criminal penalty or sanction that may be imposed, and such civil penalty shall not limit or preclude any cause of action available to any person or entity aggrieved by any of the acts prohibited by this section.

§ 2. This local law takes effect 60 days after it becomes law.

ADRIENNE E. ADAMS, *Chairperson*; YDANIS A. RODRIGUEZ, FERNANDO CABRERA, VANESSA L. GIBSON, CARLOS MENCHACA, I. DANEEK MILLER, JUSTIN L. BRANNAN, ROBERT F. HOLDEN, KEITH POWERS, KEVIN C. RILEY; Committee on Public Safety, May 12, 2021 (Remote Hearing). *Other Council Members Attending: Council Member R. Diaz.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Rules, Privileges and Elections

At this point, the Speaker (Council Member Johnson) announced that the following items had been **preconsidered** by the Committee on Rules, Privileges and Elections and had been favorably reported for adoption.

Report for Res. No. 1630

Report of the Committee on Rules, Privileges and Elections in favor of approving a Resolution amending Rule 7.00 of the Rules of the Council in relation to changes in the membership and chairmanships of the Standing Committees of the Council.

The Committee on Rules, Privileges and Elections, to which the annexed preconsidered resolution was referred on May 12, 2021, respectfully

REPORTS:

PRECONSIDERED RES. NO. 1630: By Council Member Karen Koslowitz

SUBJECT: Preconsidered resolution amending Rule 7.00 of the Rules of the Council in relation to changes in the membership and chairmanships of the Standing Committees of the Council.

ANALYSIS: Before the Committee, for its consideration, are proposed changes to the membership and chairmanships of certain Standing Committees, through changes to the Rules of the Council. Pursuant to Chapter 2 § 46 of the New York City Charter, the Council sets the rules of its proceedings at the first Stated meeting of each calendar year. These rules may be amended by a resolution introduced and passed by the Council's Committee on Rules, Privileges and Elections ("Rules Committee") pursuant to Rules 7.00(a) and 7.70(a), followed by a majority vote of all Council Members pursuant to Rules 7.00(a) and 10.20.

See attached for the changes to membership.

(For the related Standing Committees of the Council listing as of May 12, 2021 following the adoption of the resolution below, please refer to the attachments section of [the Res. No. 1630 of 2021 legislative file found on the New York City Council website at https://council.nyc.gov](https://council.nyc.gov))

Accordingly, this Committee recommends its adoption.

(The following is the text of Res. No. 1630:)

Preconsidered Res. No. 1630

Resolution amending Rule 7.00 of the Rules of the Council in relation to changes in the membership and chairmanships of the Standing Committees of the Council.

By Council Member Koslowitz:

RESOLVED, pursuant to Rule 7.00(a) of the Rules of the Council, the Council does hereby consent to the following changes in the membership and chairmanships of certain Standing Committees.

STANDING COMMITTEES**Consumer Affairs and Business Licensing**

[Dinowitz]

Finance

[Feliz]

Fire and Emergency Management

[Levine]

General Welfare

[Feliz]

[Treyger]

Mental Health, Disabilities and Addiction

[Cabrera]

Parks and RecreationCabrera**Veterans**Dinowitz, Chair**Women and Gender Equity**LouisRosenthal

KAREN KOSLOWITZ, *Chairperson*; MARGARET S. CHIN, DEBORAH L. ROSE, MARK TREYGER, PAUL A. VALLONE, ADRIENNE E. ADAMS, KEITH POWERS, THE MINORITY LEADER (STEVEN MATTEO), THE SPEAKER (COUNCIL MEMBER COREY D. JOHNSON); Committee on Rules, Privileges and Elections, May 12, 2021 (Remote Hearing). *Other Council Members Attending: Council Members R. Diaz and Menchaca.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Technology

Report for Int. 1755-A

Report of the Committee on Technology in favor of approving and adopting, as amended, a Local Law in relation to an assessment of the 311 service request intake map.

The Committee on Technology, to which the annexed proposed amended local law was referred on October 17, 2019 (Minutes, page 3396), respectfully

REPORTS:

I. Introduction

On Wednesday, May 12, 2021 the Committee on Technology, chaired by Council Member Robert Holden, held a hearing to consider Int. No. 1755-A, A Local Law in relation to an assessment of the 311 service request intake map. The Committee previously heard the original version of the bill, Int. No. 1755, on September 8, 2020. More information on Int. No. 1755-A and materials from the previous hearing can be accessed online at <https://go.usa.gov/xHA9N>.

II. Background

New York City 3-1-1 (“NYC311” or “3-1-1”) is a Citywide customer service program that provides New York City residents, businesses and visitors with access to non-emergency government services and information.¹ The NYC311 Customer Service Center was previously housed within the Mayor’s Office of Operations (“MOO”), but now is housed within the Department of Information, Technology and Telecommunications (“DoITT” or the “the Department”).²

NYC311 is available 24 hours a day, seven days a week via multiple channels, including telephone, website (“311 Online”), mobile application, and social media.³ According to the NYC Open Data Portal, from May 11, 2020 to May 10, 2021 NYC311 received a total of 2.78 million service requests.⁴ These service requests were organized according to the following categories known as channel types, which indicate how the service request was submitted: “Online” means the service request was submitted through the 311 mobile app; “Phone” means the service request was submitted by a 311 call center agent on behalf of a customer; “Unknown” means NYC311 were unable to determine the source channel type of the service request; and “Other” means the service request was submitted by another city agency or source.⁵ Of those requests, 39% or 1.075 million came from the “Online” channel type; 31% or 856,426 came from the “Phone” channel type; 20% or 568,747 came from a “Mobile” channel type;⁶ and 10% or 283,204 came from the “Unknown” channel type.⁷ Fifty-eight service requests, or less than one percent of total NYC311 service requests, came from the “Other” channel type.⁸

Both the 311 website and the 311 mobile applications have an interactive map functionality or address lookup option. However, these *mapping functionalities do not assist the user well*. For example, it is impossible to select a location on the mobile application unless the exact address is known.

III. ANALYSIS OF INT. NO. 1755-A

The legislation would require the DoITT to conduct an assessment of the interactive map accessible through the 311 website or mobile device application that is used for the intake of 311 service requests and complaints, in order to determine the feasibility of improving the location accuracy of the 311 intake map. The Department would also be required to submit a report of the results of the assessment to the Council. The bill would take effect immediately and be repealed upon the submission of the report.

¹ The Official Website of the City of New York, NYC311, <https://portal.311.nyc.gov> (last accessed May 11, 2021).

² NYC DoITT, About, <https://www1.nyc.gov/site/doitt/about/who-we-are.page> (last accessed May 11, 2021).

³ Mayor’s Office of Operations, Mayor’s Preliminary Management Report, January 2020, p.125, https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2020/2020_pmmr.pdf.

⁴ NYC OpenData, 311 Service Requests from 2010 to Present, May 10, 2021, <https://data.cityofnewyork.us/Social-Services/311-Service-Requests-from-2010-to-Present/erm2-nwe9>.

⁵ *Id.*

⁶ *Id.*; The 311 Service Request Data Dictionary posted on the cited NYC311 Open Data page is from 2018 and does not include a definition for the “Mobile” channel type.

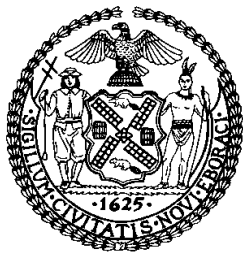
⁷ *Id.*

⁸ *Id.*

Update

On Wednesday, May 12, 2021, the Committee adopted Int. No. 1755-A by a vote of five in the affirmative, zero in the negative, and zero abstentions.

(The following is the text of the Fiscal Impact Statement for Int. No. 1755-A:)



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
 LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT

PROPOSED INTRO. NO: 1755-A
COMMITTEE: Technology

TITLE: A Local Law in relation to an assessment of the 311-service request intake map
SPONSOR(S): Council Members Holden, Gjonaj, Louis, Rosenthal and Riley.

SUMMARY OF LEGISLATION: Proposed Intro. No. 1755-A would require the Department of Information Technology and Telecommunications (DoITT) to conduct an assessment of the interactive map accessible through the 311 website or mobile device application that is used for the intake of 311 service requests and complaints, in order to determine the feasibility of improving the location accuracy of the 311 intake map. The Department would also be required to report to Council the results of the assessment no later than one year after the effective date of this local law.

EFFECTIVE DATE: This local law would take effect immediately and would be deemed repealed upon the submission of the report.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2022

FISCAL IMPACT STATEMENT:

	Effective FY21	FY Succeeding Effective FY22	Full Fiscal Impact FY22
Revenues	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is estimated that this bill would have no impact on revenues.

IMPACT ON EXPENDITURES: It is anticipated that there would be no impact on expenditures resulting from the enactment of this legislation as DoITT would be able to use existing resources to fulfill the requirements of this legislation.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division

ESTIMATE PREPARED BY: Florentine Kabore, Financial Analyst

ESTIMATE REVIEWED BY: Nathan Toth, Deputy Director
John Russell, Unit Head
Noah Brick, Assistant Counsel

LEGISLATIVE HISTORY: This legislation was introduced by the Council on October 17, 2019 as Int. No. 1755 and was referred to the Committee on Technology (Committee). At a hearing by the Committee, joint with the Committee on Fire and Emergency Management on September 8, 2020, the bill was heard and laid over. The bill was subsequently amended, and the amended version, Proposed Int. No. 1755-A, will be heard by the committee on May 12, 2021. Upon successful vote by the Committee on May 12, 2021, the bill will be submitted to the full Council for a vote on May 12, 2021.

DATE PREPARED: May 7, 2021.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 1755-A:)

Int. No. 1755-A

By Council Members Holden, Gjonaj, Louis, Rosenthal, Riley, Barron, Gennaro and Yeger.

A Local Law in relation to an assessment of the 311 service request intake map

Be it enacted by the Council as follows:

Section 1. Assessment of 311 service request intake map. a. Definitions. For the purposes of this section, the following terms have the following meanings:

311 service request intake map. The term “311 service request intake map” means an interactive map accessible through any website or mobile device application used by the 311 customer service center for the intake of 311 requests for service or complaints.

Department. The term “department” means the department of information technology and telecommunications.

b. The department shall conduct an assessment of the 311 service request intake map to determine the feasibility of improving the location accuracy of the 311 service request intake map.

c. No later than one year after the effective date of this local law, the department shall submit to the council a report of the results of the assessment conducted pursuant to subdivision b of this section.

§ 2. This local law takes effect immediately and is deemed repealed upon the submission of the report required pursuant to subdivision c of section 1 of this local law.

ROBERT F. HOLDEN, *Chairperson*; BRADFORD S. LANDER, PAUL A. VALLONE, KALMAN YEGER, ERIC A. ULRICH; Committee on Technology, May 12, 2021 (Remote Hearing). *Other Council Members Attending: Council Members Rose, R. Diaz, Levin and Menchaca.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report of the Committee on Transportation

Report for Int. No. 2061-A

Report of the Committee on Transportation in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to moped share systems.

The Committee on Transportation, to which the annexed proposed amended local law was referred on August 27, 2020 (Minutes, page 1741), respectfully

REPORTS:**INTRODUCTION**

On May 12, 2021, the Committee on Transportation, chaired by Council Member Ydanis Rodriguez, convened to conduct a vote on Int. No. 2061-A, a Local Law to amend the administrative code of the city of New York, in relation to moped share systems. This was the second hearing that the committee has had on this legislative item. The first hearing on Int. No. 2061 was held on October 27, 2020. At that hearing, the committee heard testimony from the New York City (NYC) Department of Transportation (DOT), transportation advocates and other interested parties.

On May 12, 2021, the Committee on Transportation passed Int. No. 2061-A by a vote of 12 in the affirmative, zero in the negative, with zero abstentions.

BACKGROUND**Mopeds**

The New York State Department of Motor Vehicles (DMV) defines “mopeds” or “motor scooters” as limited use motorcycles.¹ As such, the requirements to operate “mopeds” or “motor scooters” on the streets of New York are similar to the State requirements for operating a motorcycle: a valid driver’s license and vehicle registration.² Additionally, the DMV classifies mopeds into three classes of limited use motorcycles with each class having a set of requirements that are determined by its top speed.³ Mopeds that can travel over 30-40 miles per hour fall under the Class A category.⁴ Mopeds that travel over 20-30 miles per hour are considered Class B.⁵ Finally, the Class C designation is for mopeds that travel less than 20 miles per hour.⁶ Below is a chart of the various classes of limited-use motorcycles and their corresponding requirements as listed on the website of the DMV.⁷

¹ The New York State Department of Motor Vehicles, Registration, *Register a Moped*, Available at <https://dmv.ny.gov/registration/register-moped>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* Note: The chart has been slightly modified from its original form for the purposes of this report.

Limited-use motorcycle New York State requirements

REQUIRED?	CLASS A, OVER 30-40 MPH	CLASS B, OVER 20-30 MPH	CLASS C, 20 MPH OR LESS
Driver license / permit	M/MJ ⁸	Any license class	Any license class
Registration	Required	Required	Required
Headlight on when operating	Required	Required	Required
Helmet & eye protection	Required	Required	Recommended
May operate on	Any traffic lane	Right-hand lane or shoulder only (Except when making a left turn)	Right-hand lane or shoulder only (Except when making a left turn)
Insurance	Required	Required	Recommended ⁹
Inspection	Required	Recommended	Recommended

Revel

Mopeds have recently gained traction as an alternative mode of transportation due to their mobility and convenience. In NYC, the company Revel operates an electric moped sharing service, which according to the company's website are throttled at 30 miles per hour for safety reasons.¹⁰ Since mopeds are already allowed on public streets under New York State law, the company did not need any prior city approval to operate.¹¹ In order to rent a moped with Revel, riders need to be at least 21 years of age, have a valid driver's license, and must wear a helmet while riding.¹² Passengers are allowed to ride along on the rear seat of the moped as long as they are at least 18 years old.¹³ The costs associated with renting a Revel include a one-dollar fee to unlock the moped and then forty-nine cents per minute to ride, with a one-dollar charge if an additional passenger rides along.¹⁴ In addition, Revel offers Ride Passes that allows users to pay a flat fee plus tax for unlimited rides for a set amount of time.¹⁵ For NYC, a half-hour pass costs \$11 without tax; a one hour pass costs \$20 without tax; and a day

⁸ According to the New York State Department of Motor Vehicles in order to operate a motorcycle in New York State, you must have a motorcycle operator's license (Class M) or a motorcycle junior operator's license (Class MJ). See <https://dmv.ny.gov/driver-training/motorcycle-manual-motorcycle-licenses-ownership-special-rules>.

⁹ According to the New York State Department of Motor Vehicles, Class C mopeds used as a rental vehicle must be insured. See <https://dmv.ny.gov/registration/register-moped>.

¹⁰ Revel, *Mopeds*, Available at <https://gorevel.com/new-york/rules-of-the-ride/>.

¹¹ Aaron Randle, *Now Crowding New York's Streets: Rented Mopeds Going 30 M.P.H.*, *The New York Times*, August 9, 2019, Available at <https://www.nytimes.com/2019/08/09/nyregion/mopeds-nyc.html>.

¹² Revel, *Mopeds*, Available at: <https://gorevel.com/mopeds/moped>.

¹³ *Id.*

¹⁴ Revel, *Mopeds*, Pricing, *How much does it cost to Revel?*, Available at <https://reveltransit.zendesk.com/hc/en-us/articles/360023871134-How-much-does-it-cost-to-Revel->

¹⁵ *Id.*

pass costs \$39 without tax.¹⁶ Currently, in addition to NYC, Revel operates in Miami, San Francisco, Oakland, Berkeley, Washington, D.C., and Austin, Texas.¹⁷

The growth in popularity of mopeds has also created a number of safety concerns for New Yorkers. Some Revel riders have been accused of speeding, and weaving in and out of traffic.¹⁸ Others have been seen riding their mopeds in bike lanes or on sidewalks, running through red lights, or not wearing the required safety helmets.¹⁹ One local hospital in the Bronx has reported seeing an uptick in the number of patients, both riders and pedestrians, visiting their emergency department due to accidents involving Revel scooters.²⁰

One highly publicized accident involving a Revel rental involved a 26 year-old reporter for CBS News who was killed in July 2020, when she fell off a moped while riding as a passenger after the driver “swerved for an unknown reason.”²¹ It was reported that neither she nor the driver of the moped were wearing helmets at the time.²² Several days after this accident, Revel posted a message on their Twitter account stating that they had shut down their NYC service until further notice to review and strengthen their “rider accountability and safety measures.”²³ On August 27, 2020, NYC issued a press release indicating that Revel was relaunching their service after it agreed to enhance its safety requirements by implementing a new Safety & Rider Accountability Protocol.²⁴ Some of the new protocols included a new mandatory safety training, steps to increase helmet compliance by requiring a “selfie,” and a new community reporting tool that allows the public to report dangerous driving.²⁵

Even with the new enhanced safety protocols, questions remain about moped safety. On September 29, 2020, an 82 year-old senior was killed when she was struck by a Revel scooter while in the crosswalk at the intersection of West 60th Street and Columbus Circle, in Manhattan.²⁶ According to published reports, this is the fourth fatal crash involving Revel scooters and the first since the service was relaunched in August 2020.²⁷

Lime

Recently, the e-scooter company Lime announced that they were launching a moped-share in NYC on April 30, 2021.²⁸ Lime launched with 100 mopeds in Queens, Brooklyn and Lower Manhattan with plans to raise its fleet to 500 vehicles within weeks and possibly expand even more during the summer of 2021.²⁹ Lime currently operates their electric mopeds in Washington, D.C., and Paris, France.³⁰ The electric mopeds rented by Lime

¹⁶ *Id.*

¹⁷ Alicia Lee, “CBS reporter Nina Kapur, 26, dies after rental moped accident in New York,” CNN Business, Updated July 21, 2020, Available at <https://www.cnn.com/2020/07/20/us/cbs2-reporter-nina-kapur-revel-moped-accident-trnd/index.html>.

¹⁸ Post Staff Report, “Electric scooters, mopeds causing more ER injuries in NYC,” The New York Post, July 10, 2020, Available at <https://nypost.com/2020/07/10/electric-scooters-mopeds-causing-more-er-injuries-in-nyc/>.

¹⁹ Matt McFarland, “Safety issues surge as Revel mopeds grow in popularity,” CNN Business, July 22, 2020, Available at <https://www.cnn.com/2020/07/22/tech/revel-moped-safety/index.html>.

²⁰ Post Staff Report, “Electric scooters, mopeds causing more ER injuries in NYC,” The New York Post, July 10, 2020, Available at <https://nypost.com/2020/07/10/electric-scooters-mopeds-causing-more-er-injuries-in-nyc/>.

²¹ Alicia Lee, “CBS reporter Nina Kapur, 26, dies after rental moped accident in New York,” CNN Business, Updated July 21, 2020, Available at <https://www.cnn.com/2020/07/20/us/cbs2-reporter-nina-kapur-revel-moped-accident-trnd/index.html>.

²² *Id.*

²³ See <https://twitter.com/gorevel/status/1288111979219976198?s=21>.

²⁴ “New York City Department of Transportation Announces Revel will Relaunch Today under a New and Strict Safety Protocol,” Official Press Release of the New York City Department of Transportation, August 27, 2020, Available at <https://www1.nyc.gov/html/dot/html/pr2020/pr20-035.shtml#:~:text=IMMEDIATE%20RELEASE%20Press%20Release%20%2320-035%20Thursday%2C%20August%2027%2C,Today%20under%20a%20New%20and%20Strict%20Safety%20Protocol>.

²⁵ *Id.*

²⁶ Morgan Chittum and Clayton Guse, “Manhattan woman, 82, killed by Revel scooter was an immigrant success story, son says,” New York Daily News, October 25, 2020, Available at <https://www.nydailynews.com/new-york/nyc-crime/ny-revel-fatal-crash-columbus-circle-2021025-saj26mho3fhh5p7kjq2h3ly43u-story.html>.

²⁷ “NYPD Investigating New Fatal Revel Crash After Three Others This Summer,” NBC News 4 New York, October 21, 2020, Available at <https://www.nbcnewyork.com/news/nypd-investigating-new-fatal-revel-crash-after-three-others-this-summer/2680721/>.

²⁸ David Meyer “Lime to launch NYC ‘moped-share’ to compete with Revel,” The New York Post, April 29, 2021 Available at <https://nypost.com/2021/04/29/lime-to-launch-nyc-moped-share-to-compete-with-revel/>.

²⁹ *Id.*

³⁰ Andrew Hawkins, “Lime is bringing its electric mopeds to New York City,” The Verge, April 29, 2021, available at <https://www.theverge.com/2021/4/29/22409409/lime-electric-moped-nyc-price-announce>.

can reach a top speed of 28 miles per hour and can travel for up to 87 miles on a single charge.³¹ In order to rent one of their mopeds, riders must be 21 years of age or older and have a valid driver's license.³² Lime charges one-dollar to unlock the moped and then thirty-nine cents per minute.³³

In an effort to address some of the safety concerns, Lime has collaborated with the Motorcycle Safety Foundation to design a multi-chapter rider safety e-course.³⁴ Riders must take the e-course and then pass a test before they can ride one of Lime's mopeds.³⁵ Similar to the safety procedures instituted by Revel last year after several accidents, Lime riders must also take a selfie of themselves wearing a helmet and must wear the helmet at all times while riding the moped.³⁶ Additionally, to ensure helmet wearing compliance, Lime has embedded an infrared sensor in each helmet case to help identify if a rider has removed the helmet from the case and is in use.³⁷

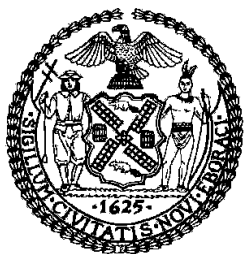
ANALYSIS OF INT. NO. 2061-A

Int. No. 2061-A would prohibit the operation of a moped share system without DOT approval. The bill would require moped share system operators to obtain a permit for each moped in their fleet. The bill would require DOT to promulgate rules on safety and rider compliance with local and state law, including measures to monitor helmet use. The bill would also limit moped share systems to mopeds incapable of exceeding 30 miles per hour, and creates penalties and provides for the impoundment of unauthorized mopeds.

UPDATE

On May 12, 2021, the Committee on Transportation passed Int. No. 2061-A by a vote of 12 in the affirmative, zero in the negative, with zero abstentions.

(The following is the text of the Fiscal Impact Statement for Int. No. 2061-A:)



THE COUNCIL OF THE CITY OF NEW YORK
FINANCE DIVISION
LATONIA MCKINNEY, DIRECTOR
FISCAL IMPACT STATEMENT
PROPOSED INTRO. NO: 2061-A
COMMITTEE: Transportation

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to moped share systems. **SPONSORS:** Council Members Rodriguez and Louis.

SUMMARY OF LEGISLATION: Proposed Intro. No. 2061-A would prohibit the operation of a moped share system without Department of Transportation (DOT) approval. Moped share system operators would be required to obtain a permit for each moped in their fleet. A fee for such permit and for renewals may be established by rule by the Commissioner. The bill would require DOT to promulgate rules on safety and rider compliance with law, including measures to monitor helmet use, vehicle maintenance, rider accountability, community outreach,

³¹ Christina Santucci, "Lime Rolls Out Fleet of Electric Mopeds, Vehicles Now Available in Western Queens," LICPOST, May 4, 2021 Available at <https://licpost.com/lime-rolls-out-fleet-of-electric-mopeds-vehicles-now-available-in-western-queens>.

³² *Id.*

³³ *Id.*

³⁴ See "Introducing the Lime E-moped," January 27, 2021, available at <https://www.li.me/second-street/introducing-the-lime-moped>

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

equity, parking considerations, maintenance of insurance, and data sharing, record keeping and inspection requirements. Under the proposed legislation, violators would be subject to a civil penalty of not more than \$25,000. In addition, any moped found parked on a street and offered to the public as a part of a moped share system that is not authorized by the bill, or does not have a required permit, may be removed and taken to a place of safety by the Department and the police department.

EFFECTIVE DATE: This local law would take effect 120 days after it becomes law, except that the DOT Commissioner must take the necessary measures for the implementation of this local law, which includes the promulgation of rules, before such date.

FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED: Fiscal 2023

FISCAL IMPACT STATEMENT:

	Effective FY22	FY Succeeding Effective FY23	Full Fiscal Impact FY23
Revenues	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0
Net	\$0	\$0	\$0

IMPACT ON REVENUES: It is estimated that there would be not impact on revenues resulting from the enactment of this legislation. While the administering agency is authorized to impose civil penalties on violators of provisions of the legislation, this estimate assumes full compliance with the provisions of the local law.

IMPACT ON EXPENDITURES: It is estimated that there would be no impact on expenditures because the agencies responsible for enforcing the requirements would use existing resources to comply with the provisions of the local law.

SOURCE OF FUNDS TO COVER ESTIMATED COSTS: N/A

SOURCE OF INFORMATION: New York City Council Finance Division
Mayor's Office of Legislative Affairs

ESTIMATE PREPARED BY: John Basile, Senior Financial Analyst

ESTIMATE REVIEWED BY: Nathaniel Toth, Deputy Director
Chima Obichere, Unit Head
Stephanie Ruiz, Assistant Counsel

LEGISLATIVE HISTORY: This legislation was first introduced to the Council as Intro. No. 2061 on August 27, 2020 and referred to the Committee on Transportation (Committee). A hearing was held by the Committee on October 27, 2020 and the bill was laid over. The legislation was subsequently amended and the amended version, Proposed Intro. No. 2061-A, will be considered by the Committee on May 12, 2021. Upon a successful vote by the Committee, Proposed Intro. No. 2061-A will be submitted to the full Council for a vote on May 12, 2021.

DATE PREPARED: May 11, 2021.

Accordingly, this Committee recommends its adoption, as amended.

(The following is the text of Int. No. 2061-A:)

Int. No. 2061-A

By Council Members Rodriguez, Louis, Rosenthal and Gennaro.

A Local Law to amend the administrative code of the city of New York, in relation to moped share systems*Be it enacted by the Council as follows:*

Section 1. Title 19 of the administrative code of the city of New York is amended by adding a new section 19-176.3 to read as follows:

§ 19-176.3 *Moped share systems. a. For the purposes of this section, the following terms have the following meanings:*

Moped. The term "moped" means any limited use motorcycle as defined in section 121-b of the vehicle and traffic law.

Moped share system. The term "moped share system" means a network of self-service and publicly available limited use motorcycles, and any related infrastructure, in which a trip begins or ends on any highway, as defined in section 118 of the vehicle and traffic law.

Person. The term "person" means a natural person, partnership, corporation or other legal entity.

b. 1. It shall be unlawful for any person to operate a moped share system without authorization from the department issued in accordance with this section and the rules of the department. A fee for such authorization and for renewals thereof may be established by rule by the commissioner.

2. The commissioner may require a moped share system to obtain a permit for each moped used in the operation of such system. Where such permits are required, it shall be unlawful for a moped to be used in the operation of a moped share system unless such moped has such a permit issued by the department. A fee for such permit and for renewals thereof may be established by rule by the commissioner.

c. Only class B or class C electric powered limited use motorcycles that are registered in accordance with the vehicle and traffic law may be used in the operation of a moped share system.

d. Applications for authorization to operate a moped share system and, where applicable, permits for mopeds that will be used in the operation of such system, shall be submitted to the department in a form and manner and containing such information as the department shall prescribe in rules. The term of such authorization and, where applicable, the term of such permit, shall be set forth in the rules of the department.

e. Each person operating a moped share system shall comply with this section and rules of the department issued pursuant to this section, including but not limited to rules relating to:

- 1. Safety;*
- 2. Vehicle maintenance;*
- 3. Rider accountability;*
- 4. Rider compliance with local and state law including, but not limited to, requiring riders to provide photographic or other evidence of rider helmet use;*
- 5. Community outreach;*
- 6. Equity;*
- 7. Parking considerations;*
- 8. Maintenance of insurance; and*
- 9. Data sharing, recordkeeping and inspection requirements.*

f. 1. Any person who violates any of the provisions of this section shall be subject to a civil penalty of not more than \$25,000, which may be recovered in a proceeding before an administrative tribunal within the office of administrative trials and hearings in accordance with the rules of such office or in a civil action in a court of competent jurisdiction.

2. Any person who has obtained authorization from the department to operate a moped share system and who is found to violate the provisions of this section or rules of the department promulgated pursuant to this section may, after notice and opportunity to be heard, be subject to the suspension or revocation of such authorization.

3. Any moped found parked on a street and offered to the public as a part of a moped share system that is not authorized pursuant to this section, or that does not have a required permit, if such a permit is required, may be removed and taken to a place of safety by the department or by the police department. The agency that

removes such moped or that has custody of such moped after removal shall provide notice of such removal within 30 days of removal to the registered owner of such moped. Such moped shall not be released until all removal charges and storage fees have been paid or a bond or other security for such amount has been posted. A moped that is not claimed within the time set forth in such notice may be disposed of in accordance with applicable law relating to the disposal of abandoned vehicles.

g. This section may be enforced by the police department, the department of transportation and by any other agency designated by the department of transportation. Any officers and employees of the police department, the department of transportation, or of any agency designated by the department, shall have the power to issue notices of violation, administrative summonses and appearance tickets.

h. Nothing in this local law shall be interpreted to prevent the department from granting approval for the operation of a moped share system through standards imposed pursuant to a procurement and contracting process.

§ 2. Moped share systems in operation on the date of enactment of this local law may continue to operate without the authorization required pursuant to section one of this local law, provided that such authorization is obtained within a period of time to be set forth in the rules of the department; and provided further that such operation does not endanger public safety.

§ 3. This local law takes effect 120 days after it becomes law, except that the commissioner of transportation shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

YDANIS A. RODRIGUEZ, *Chairperson*; FERNANDO CABRERA, PETER A. KOO, STEPHEN T. LEVIN, DEBORAH L. ROSE, MARK D. LEVINE, CARLOS MENCHACA, I. DANEEK MILLER, ANTONIO REYNOSO, RUBEN DIAZ, Sr., ROBERT HOLDEN, SELVENA N. BROOKS-POWERS; Committee on Transportation, May 12, 2021 (Remote Hearing). *Other Council Members Attending: Council Member Rosenthal, D. Diaz and Koslowitz.*

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

GENERAL ORDERS CALENDAR

Report for L.U. No. 765 & Res. No. 1641

Report of the Committee on Land Use in favor of approving, as modified, Application No. N 210095 ZRY (Zoning for Coastal Flood Resiliency) submitted by New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify the flood resiliency provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas), and related Sections, Citywide.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 953) and which same Land Use item was coupled with the resolution shown below and referred to the City Planning Commission April 29, 2021 (Minutes, page 1023), respectfully

REPORTS:**SUBJECT****CITYWIDE****N 210095 ZRY**

City Planning Commission decision approving an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, to modify the flood resiliency provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas), and related Sections.

INTENT

To approve the amendment of Article VI, Chapter 4 and related Sections of the text of the Zoning Resolution, to update and make permanent the provisions in the Flood Resilience Zoning Text adopted in 2013 and Special Regulations for Neighborhood Recovery adopted in 2015.

PUBLIC HEARING

DATE: April 5, 2021

Witnesses in Favor: Eight

Witnesses Against: Two

SUBCOMMITTEE RECOMMENDATION

DATE: April 20, 2021

The Subcommittee recommends that the Land Use Committee approve with modifications the decision of the City Planning Commission on Pre. L.U. No. 765.

In Favor:

Moya, Levin, Grodenchik, Ayala, Rivera, Borelli.

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

NYSCEF DOC. NO. 87

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Against: **Abstain:**
None None

COMMITTEE ACTION**DATE:** April 27, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Deutsch, Koo, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz Sr.,
Moya, Rivera, Riley, Brooks-Powers, Feliz, Borelli.

Against: **Abstain:**
None None.

FILING OF MODIFICATIONS WITH THE CITY PLANNING COMMISSION

The City Planning Commission filed a letter dated May 3, 2021, with the Council on May 6, 2021, indicating that the proposed modifications are not subject to additional environmental review or additional review pursuant to Section 197-c of the City Charter.

In connection herewith, Council Members Salamanca and Moya offered the following resolution:

Res. No. 1641

Resolution approving with modifications the decision of the City Planning Commission on Application No. N 210095 ZRY, for an amendment of the text of the Zoning Resolution (Preconsidered L.U. No. 765).

By Council Members Salamanca and Moya.

WHEREAS, the New York City Department of City Planning filed an application pursuant to Section 201 of the New York City Charter, for an amendment of the text of the Zoning Resolution of the City of New York, to modify the flood resiliency provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas), and related Sections, Citywide (Application No. N 210095 ZRY) (the "Application");

WHEREAS, the City Planning Commission filed with the Council on March 26, 2021, its decision dated March 17, 2021 (the "Decision"), on the Application;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on April 5, 2021;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues, including the positive declaration, issued on May 10, 2019 (CEQR No. 19DCP192Y) and a Final Environmental Impact Statement (FEIS) for which a Notice of Completion was issued on March 5, 2021 which identified significant adverse impacts related to historic and cultural resources, and hazardous material.

RESOLVED:

Having considered the FEIS with respect to the Decision and Application, the Council finds that:

- (1) The FEIS meets the requirements of 6 N.Y.C.R.R. Part 617;
- (2) Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the proposed action, as analyzed, is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable.

The Decision, together with the FEIS constitute the written statement of facts, and of social, economic and other factors and standards that form the basis of this determination, pursuant to 6 N.Y.C.R.R. §617.11(d).

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, N 210095 ZRY, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission with the following modifications:

Matter underlined is new, to be added.

Matter ~~struck out~~ is to be deleted.

Matter ~~double struck out~~ is old, deleted by the City Council;

Matter double-underlined is new, added by the City Council

Matter within # # is defined in Section 12-10 or other, as applicable.

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

* * *

**ARTICLE I
GENERAL PROVISIONS**

* * *

Chapter 1

Title, Establishment of Controls, and Interpretation of Regulations

* * *

11-30

BUILDING PERMITS ISSUED BEFORE EFFECTIVE DATE OF AMENDMENT

* * *

11-33**Building Permits for Minor or Major Development or Other Construction Issued Before Effective Date of Amendment**

* * *

11-339**Post-Hurricane Sandy construction****Building permits issued in the flood zone**

The provisions of this Section shall apply within ~~the~~ #flood zones#. The provisions of this Section are subject to all provisions of Title 28 of the Administrative Code of the City of New York and Appendix G of the ~~Building Code of the City of New York~~ New York City Building Code, or its successors, including those pertaining to expiration, reinstatement, revocation and suspension. Changes in #flood maps# shall be considered an amendment of the Zoning Resolution pursuant to ~~for the purposes of applying~~ the provisions of Section 11-30 (BUILDING PERMITS ISSUED BEFORE EFFECTIVE DATE OF AMENDMENT).

(a) ~~Applications for approval of construction documents approved pursuant to Executive Order 230~~

~~If an application for approval of construction documents has been approved on or before October 9, 2013, pursuant to Executive Order No. 230 (Emergency Order to Suspend Zoning Provisions to Facilitate Reconstruction in Accordance with Enhanced Flood Resistant Construction Standards), dated January 31, 2013, and its successors, including Executive Order No. 427 in effect on October 9, 2013, relating to #Hurricane Sandy# as defined in Section 64-11 of this Resolution, a building permit authorizing such construction may be issued pursuant to the regulations of this Resolution in effect at the time of such approval of construction documents, and such construction may continue until October 9, 2019. After such date, the vesting provisions of Section 11-30 shall apply.~~

~~(b)~~(a) Construction approved pursuant to previous versions of #flood maps#

If, within one year prior to a change in the #flood maps# affecting a property, the Department of Buildings issued ~~an approval of construction documents or issued~~ a building permit for construction on that property pursuant to the previous #flood maps#, the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas), shall be deemed modified so as to substitute the previous #flood maps# for the current #flood maps#, and such construction may continue pursuant to such prior #flood maps# until ~~October 9, 2019~~ two years after the date of adoption of the new #flood maps#. After this date, the vesting provisions of Section 11-30 shall apply.

(c) ~~Provisions applying in the event that Flood Resilience Zoning Text Amendment expires~~

~~This provision shall become effective only upon the expiration of Article VI, Chapter 4, adopted on October 9, 2013. If an application for approval of construction documents has been approved on or before the expiration of Article VI, Chapter 4, a building permit authorizing such construction may be issued pursuant to Article VI, Chapter 4, and such construction may continue until a date six years after~~

~~the expiration of Article VI, Chapter 4. After such date, the vesting provisions of Section 11-30 shall apply.~~

- (b) Provisions applying when Appendix A (Special Regulations for Neighborhood Recovery) of Article VI, Chapter 4 expires

This provision shall become effective only upon the expiration of Appendix A of Article VI, Chapter 4, adopted on July 23, 2015. If a building permit authorizing construction pursuant to Appendix A has been approved on or before the expiration of such Appendix, construction may continue up to two years after the expiration. After such date, the provisions of Section 11-30 shall apply.

* * *

Chapter 2

Construction of Language and Definitions

* * *

12-10

DEFINITIONS

* * *

Base flood elevation

[Note: Existing text to be deleted and replaced by the definition of “flood-resistant construction elevation” in Section 64-11]

~~The “base flood elevation” is the level in feet of the flood having a one percent chance of being equaled or exceeded in any given year, as indicated on the Flood Insurance Rate Map prepared by the Federal Emergency Management Agency.~~

Base plane

The “base plane” is a plane from which the height of a #building or other structure# is measured as specified in certain Sections. For #buildings#, portions of #buildings# with #street walls# at least 15 feet in width, or #building segments# within 100 feet of a #street line#, the level of the #base plane# is any level between #curb level# and #street wall line level#. Beyond 100 feet of a #street line#, the level of the #base plane# is the average elevation of the final grade adjoining the #building# or #building segment#, determined in the manner prescribed by the New York City Building Code for adjoining grade elevation. ~~In either case, in the #flood zone#, either the #base flood elevation# may be the level of the #base plane# or #building# height may be measured from the #flood-resistant construction elevation#, as provided in Article VI, Chapter 4.~~ For the purposes of this definition, #abutting buildings# on a single #zoning lot# may be considered a single #building#. In addition, the following regulations shall apply:

- (a) Within 100 feet of a #street line#:

- (1) The level of the #base plane# for a #building# or #building segment# without a #street wall# shall be determined by the average elevation of the final grade adjoining such #building# or #building segment#.
- (2) Where a #base plane# other than #curb level# is established, the average elevation of the final grade adjoining the #street wall# of the #building# or #building segment#, excluding the entrance to a garage within the #street wall#, shall not be lower than the level of the #base plane#, ~~unless the #base plane# is also the #base flood elevation#.~~
- (3) Where the average elevation of the final grade adjoining the #street wall# of the #building#, excluding the entrance to a garage within the #street wall#, is more than two feet below #curb level#, the level of the #base plane# shall be the elevation of such final grade, ~~unless the #base plane# is also the #base flood elevation#.~~ This paragraph shall not apply to #buildings developed# before June 30, 1989, in R2X, R3, R4 or R5 Districts. Furthermore, this paragraph shall not apply to #buildings# in C1 or C2 Districts mapped within R2X, R3, R4 or R5 Districts, or in C3 or C4-1 Districts, unless such #buildings# are located on #waterfront blocks#.

* * *

Floor area

“Floor area” is the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#. In particular, #floor area# includes:

* * *

- (h) floor space in #accessory buildings#, except for floor space used for #accessory# off-street parking or #accessory# mechanical equipment;

* * *

However, the #floor area# of a #building# shall not include:

* * *

- (8) floor space used for #accessory# mechanical equipment, including equipment serving the mechanical, electrical, or plumbing systems of #buildings# as well as fire protection systems, and power systems such as solar energy systems, generators, fuel cells, and energy storage systems. Such exclusion shall also include the minimum necessary floor space to provide for necessary maintenance and access to such equipment. ~~except that~~ However, such exclusion shall not apply in R2A Districts, and in R1-2A, R2X, R3, R4, or R5 Districts, such exclusion shall be limited to 50 square feet for the first #dwelling unit#, an additional 30 square feet for the second #dwelling unit# and an additional 10 square feet for each additional #dwelling unit#. For the purposes of calculating floor space used for mechanical equipment, #building segments# on a single #zoning lot# may be considered to be separate #buildings#;

* * *

Flood maps

[Note: Existing text moved to Section 64-11 and modified]

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~~“Flood maps” shall be the most recent advisory or preliminary maps or map data released by the Federal Emergency Management Agency (FEMA) after October 28, 2012, until such time as the City of New York adopts new final Flood Insurance Rate Maps. When new final Flood Insurance Rate Maps are adopted by the City of New York superseding the Flood Insurance Rate Maps in effect on October 28, 2012, #flood maps# shall be such new adopted final Flood Insurance Rate, Maps.~~

Flood zone

~~The “flood zone” is the area that has a one percent chance of flooding in a given year, shall include the #high-risk flood zone# and the #moderate-risk flood zone#, as defined in Section 64-11 (Definitions) and as indicated on the effective Flood Insurance Rate Maps, plus any additional area that has a one percent chance of flooding in a given year, as indicated on the #flood maps#.~~

* * *

Designated recovery area

A “designated recovery area” shall be an area which experienced physical or non-physical impacts from a #severe disaster#, in accordance with recovery plans, as applicable.

* * *

Severe disaster

A “severe disaster” shall include any event within any boundary of the City of New York, for which the Mayor proclaims a local state of emergency, or the Governor declares a disaster emergency.

* * *

Chapter 3**Comprehensive Off-street Parking and Loading Regulations in the Manhattan Core**

* * *

13-20**SPECIAL RULES FOR MANHATTAN CORE PARKING FACILITIES**

* * *

13-22**Applicability of Enclosure and Screening Requirements**

* * *

13-221**Enclosure and screening requirements**

(a) #Accessory# off-street parking facilities

All #accessory# off-street parking spaces shall be located within a #completely enclosed building#, with the exception of parking spaces #accessory# to a hospital, as listed in Use Group 4, and as provided in Section 13-45 (Special Permits for Additional Parking Spaces). In addition, such parking facilities shall comply with the following provisions:

(1) Screening

Any portion of an #accessory# off-street parking facility that is located above #curb level# shall comply with the applicable parking wrap and screening provisions set forth in Section 37-35.

(2) Transparency

Portions of ground floor #commercial# and #community facility uses# screening the parking facility in accordance with the provisions of paragraph (a) of Section 37-35 shall be glazed with transparent materials in accordance with Section 37-34.

~~However, for #buildings# where the #base flood elevation# is higher than the level of the adjoining sidewalk, all such transparency requirements shall be measured from the level of the #flood resistant construction elevation#, as defined in Section 64-11, instead of from the level of the adjoining sidewalk.~~

For #zoning lots# with multiple #street wall# frontages, the transparency provisions of this paragraph, (a)(2), need not apply to #street walls# that are located entirely beyond 100 feet of any portion of the #accessory# parking facility, as measured in plan view, perpendicular to such parking facility.

* * *

ARTICLE II RESIDENCE DISTRICT REGULATIONS

* * *

Chapter 2 **Use Regulations**

* * *

22-10 **USES PERMITTED AS-OF-RIGHT**

* * *

22-13**Use Group 3**

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

* * *

A. #Community facilities#Colleges or universities¹, including professional schools but excluding business colleges or trade schoolsCollege or school student dormitories and fraternity or sorority student houses¹

Libraries, museums or non-commercial art galleries

#Long-term care facilities#^{2,3,4}

* * *

Philanthropic or non-profit institutions with sleeping accommodations^{4,5}

#Schools#

B. #Accessory uses#¹ Not permitted in R1 or R2 Districts as-of-right² In R1 and R2 Districts, permitted only by special permit by the City Planning Commission pursuant to Section 74-901 (Long-term care facilities)

³ In Community District 11 in the Borough of the Bronx, Community District 8 in the Borough of Manhattan, ~~Community District 14 in the Borough of Queens~~ and Community District 1 in the Borough of Staten Island, #developments# of nursing homes, as defined in the New York State Public Health Law, or #enlargements# of existing nursing homes that increase the existing #floor area# by 15,000 square feet or more, are permitted only by special permit by the City Planning Commission pursuant to Section 74-901 (Long-term care facilities). However, such special permit may not be applied to #developments# or #enlargements# that are subject to the restrictions set forth in Section 22-16 (Special Regulations for Nursing Homes)

⁴ In #high-risk flood zones#, as defined in Section 64-11 (Definitions), or within the areas set forth in APPENDIX K (Areas With Nursing Home Restrictions), the #development# or #enlargement# of nursing homes and nursing home portions of continuing care retirement communities, as such facilities are defined in the New York State Public Health Law, are subject to the restrictions set forth in Section 22-16 (Special Regulations for Nursing Homes)

^{4,5} The number of persons employed in central office functions shall not exceed 50, and the amount of #floor area# used for such purposes shall not exceed 25 percent of the total #floor area#, or, in R8, R9 or R10 Districts, 25,000 square feet, whichever is greater

* * *

22-16**Special Regulations for Nursing Homes**

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

In all districts, the #development# of nursing homes and nursing home portions of continuing care retirement communities, as defined in the New York State Public Health Law, or the #enlargement# of an existing nursing home that increases such #floor area# by more than 15,000 square feet, shall not be permitted on any portion of a #zoning lot# that is located within the #high-risk flood zone#, as defined in Section 64-11 (Definitions), or within the areas set forth in APPENDIX K (Areas With Nursing Home Restrictions).

In addition, in Community Districts where #long-term care facilities# are allowed only by special permit pursuant to Section 74-901 (Long-term care facilities), such special permit may not be applied to #developments# or #enlargements# of nursing homes and nursing home portions of continuing care retirement communities located in the areas subject to the provisions of this Section.

* * *

22-22**By the City Planning Commission**

* * *

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

#Long-term care facilities#

#Long-term care facilities# in R1 and R2 Districts

#Long-term care facilities# in Community District 11 in the Borough of the Bronx, Community District 8 in the Borough of Manhattan, ~~Community District 14 in the Borough of Queens~~, and Community District 1 in the Borough of Staten Island, #developments# of nursing homes, as defined in the New York State Public Health Law, or #enlargements# of existing nursing homes that increase the existing #floor area# by 15,000 square feet or more

However, such special permit may not be applied to #developments# or #enlargements# that are subject to the restrictions set forth in Section 22-16 (Special Regulations for Nursing Homes)

* * *

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

* * *

23-10

OPEN SPACE AND FLOOR AREA RATIO REGULATIONS

* * *

23-12

Permitted Obstructions in Open Space

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

In the districts indicated, the following obstructions shall be permitted in any #open space# required on a #zoning lot#:

* * *

- (h) Parking spaces, off-street, enclosed, #accessory#, not to exceed one space per #dwelling unit#, when #accessory# to a #single-family#, #two-family# or three-#family residence#, provided that the total area occupied by a #building# used for such purposes does not exceed 20 percent of the total required #open space# on the #zoning lot#. However, two such spaces for a #single-family residence# may be permitted in #lower density growth management areas# and in R1-2A Districts;

- (i) Accessory# power systems, including, but not limited to, generators, solar energy systems, fuel cells, batteries and other energy storage systems, provided that:

- (1) all equipment shall be subject to the following location, enclosure, and screening requirements, as applicable:

- (i) all generators and cogeneration equipment #accessory# to #buildings# other than #single-# or #two-family residences# shall be completely enclosed within a #building or other structure#, except as necessary for mechanical ventilation;

- (ii) all other types of equipment, including generators and cogeneration equipment serving #single-# or #two-family residences#, may be unenclosed, provided that such equipment is located at least five feet from any #lot line#. However, if the area bounding all such equipment, as drawn by a rectangle from its outermost perimeter in plan view, exceeds 25 square feet, such equipment shall be screened in its entirety on all sides. Such screening may be opaque or perforated, provided that where perforated materials are provided, not more than 50 percent of the face is open;

- (iii) where any equipment is located between a #street wall#, or prolongation thereof, and a #street line#, the entire width of such portion of the equipment facing a #street#, whether open or enclosed, shall be fully screened by vegetation; and

- (2) the size of all equipment, including ~~all screening and enclosures containing such equipment,~~ any screening or portions of any #building or other structure# enclosing such equipment, shall not exceed:

- (i) an area equivalent to 25 percent of a required #open space#;

- (ii) in R1 through R5 Districts, a height of 10 feet above the adjoining grade; and

(iii) in R6 through R10 Districts, a height of 15 feet above the adjoining grade.

(j) Ramps or lifts for people with physical disabilities:

~~(i)~~(k) Solar energy systems:

- (1) on the roof of an #accessory building#, limited to 18 inches in height as measured perpendicular to the roof surface; or
- (2) on walls existing on April 30, 2012, projecting no more than 10 inches and occupying no more than 20 percent of the surface area of the #building# wall (as viewed in elevation) from which it projects;

~~(i)~~(l) Swimming pools, #accessory#, above-grade structures limited to a height not exceeding eight feet above the level of the #rear yard# or #rear yard equivalent#;

~~(k)~~(m) Terraces, unenclosed, fire escapes or planting boxes, provided that no such items project more than six feet into or over such #open space#.

* * *

23-40

YARD REGULATIONS

* * *

23-44

Permitted Obstructions in Required Yards or Rear Yard Equivalents

In all #Residence Districts#, the following obstructions shall be permitted within a required #yard# or #rear yard equivalent#:

(a) In any #yard# or #rear yard equivalent#:

* * *

- (14) Parking spaces, off-street, open, within a #front yard#, that are #accessory# to a #building# containing #residences#, provided that:

* * *

However, no parking spaces of any kind shall be permitted in any #front yard# in an R4B, R5B or R5D District. Furthermore, no parking spaces of any kind shall be permitted in any #front yard# on a #zoning lot# containing an #attached# or #semi-detached building# in an R1, R2, R3A, R3X, R4A or R5A District, or in any #front yard# on a #zoning lot# containing an #attached building# in an R3-1 or R4-1 District;

- (15) Accessory# Power systems, including, but not limited to, generators, solar energy systems, fuel cells, batteries and other energy storage systems, provided that:
- (i) all equipment shall be subject to the following location, enclosure, and screening requirements, as applicable:
 - (a) all generators and cogeneration equipment #accessory# to #buildings# other than #single-# or #two-family residences# shall be completely enclosed within a #building or other structure#, except as necessary for mechanical ventilation;
 - (b) all other types of equipment, including generators and cogeneration equipment serving #single-# or #two-family residences#, may be unenclosed, provided that such equipment is located at least five feet from any #lot line#. However, if the area bounding all such equipment, as drawn by a rectangle from its outermost perimeter in plan view, exceeds 25 square feet, such equipment shall be screened in its entirety on all sides. Such screening may be opaque or perforated, provided that where perforated materials are provided, not more than 50 percent of the face is open;
 - (c) where any equipment is located in a #front yard#, the entire width of such portion of such equipment facing a #street#, whether open or enclosed, shall be fully screened by vegetation; and
 - (ii) the size of all equipment, including ~~all screening and enclosures containing such equipment~~, any screening or portions of any #building or other structure# enclosing such equipment, shall not exceed:
 - (a) an area equivalent to 25 percent of a required #yard#, or #rear yard equivalent#, and in addition, in #front yards#, is limited to an area not exceeding 25 square feet. However, for #corner lots#, one #front yard# may be treated as a #side yard# for the purpose of applying such size restrictions;
 - (b) in R1 through R5 Districts, a height of 10 feet above the adjoining grade in #rear yards#, #rear yard equivalents# and #side yards#, or a height of five feet above the adjoining grade in #front yards#; and
 - (c) in R6 through R10 Districts, a height of 15 feet above the adjoining grade.
- (15)(16) Ramps or lifts for ~~persons~~ people with physical disabilities;
- (16)(17) Solar energy systems on walls existing on April 30, 2012, projecting no more than 10 inches and occupying no more than 20 percent of the surface area of the #building# wall (as viewed in elevation) from which it projects;
- (17)(18) Steps, provided that such steps access only the lowest #story# or #cellar# of a #building# fronting on a #street#, which may include a #story# located directly above a #basement#;
- (18)(19) Swimming pools, #accessory#, above-grade structures limited to a height not exceeding eight feet above the level of the #rear yard# or #rear yard equivalent#. #Accessory# swimming pools are not permitted obstructions in any #front yard#;
- (19)(20) Terraces or porches, open;

(20)(21) Walls, not exceeding eight feet in height above adjoining grade and not roofed or part of a #building#, and not exceeding four feet in height in any #front yard#, except that for #corner lots#, a wall may be up to six feet in height within that portion of one #front yard# that is between a #side lot line# and the prolongation of the side wall of the #residence# facing such #side lot line#;

* * *

23-60 HEIGHT AND SETBACK REGULATIONS

* * *

23-63 Height and Setback Requirements in R1 Through R5 Districts

* * *

23-631 General provisions

[Note: Existing text to be deleted and replaced by the definition of “reference plane” in Section 64-11 and Section 64-321 (Measurement of height for flood-resistant buildings)]

Height and setback regulations for R1 through R5 Districts are set forth in this Section. Such maximum heights may only be penetrated by permitted obstructions set forth in Section 23-62.

* * *

R1-2A R2A R2X R3 R4 R4-1 R4A R5A

- (b) In the districts indicated, the height and setback of a #building or other structure# shall be as set forth herein except where modified pursuant to paragraphs (h) and (j) of this Section.

For the purposes of this Section, where #base planes# of different elevations apply to different portions of a #building or other structure#, each such portion of the #building# may be considered to be a separate #building#. Furthermore, for the purposes of this Section, #building segments# may be considered to be separate #buildings# and #abutting semi-detached buildings# may be considered to be one #building#.

The perimeter walls of a #building or other structure# are those portions of the outermost walls enclosing the #floor area# within a #building or other structure# at any level and height is measured from the #base plane#. Perimeter walls are subject to setback regulations at a maximum height above the #base plane# of:

21 feet	R2A R2X R3 R4A
25 feet	R1-2A R4-1 R4 R5A

26 feet*	R3 R4-1 R4A within #lower density growth management areas#
----------	--

* In R3, R4-1 and R4A Districts within #lower density growth management areas#, where a #base plane# is established at a #base flood elevation# higher than grade, the maximum perimeter wall height shall be 21 feet above such #base flood elevation# or 26 feet above grade, whichever is more

* * *

23-80

COURT REGULATIONS, MINIMUM DISTANCE BETWEEN WINDOWS AND WALLS OR LOT LINES AND OPEN AREA REQUIREMENTS

* * *

23-87

Permitted Obstructions in Courts

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

In all districts, as indicated, the following obstructions shall be permitted within the minimum area and dimensions needed to satisfy the requirements for a #court#:

* * *

- (h) Open terraces, porches, steps, and ramps or lifts for ~~persons~~ people with physical disabilities;
- (i) Accessory# power systems, including, but not limited to, generators, solar energy systems, fuel cells, batteries and other energy storage systems, provided that:
 - (1) all equipment shall be subject to the following location, enclosure, and screening requirements, as applicable:
 - (i) all generators and cogeneration equipment #accessory# to #buildings# other than #single-# or #two-family residences# shall be completely enclosed within a #building or other structure#, except as necessary for mechanical ventilation;
 - (ii) all other types of equipment, including generators and cogeneration equipment serving #single-# or #two-family residences#, may be unenclosed, provided that such equipment is located at least five feet from any #lot line#. However, if the area bounding all such equipment, as drawn by a rectangle from its outermost perimeter in plan view, exceeds 25 square feet, such equipment shall be screened in its entirety on all sides. Such screening may be opaque or perforated, provided that where perforated materials are provided, not more than 50 percent of the face is open;
 - (iii) where any equipment at the ground floor level is located between a #street wall#, or prolongation thereof, and a #street line#, the entire width of such portion of the equipment facing a #street#, whether open or enclosed, shall be fully screened by vegetation; and

(2) the size of all equipment, including ~~all screening and enclosures containing such equipment~~ any screening or portions of any #building or other structure# enclosing such equipment, shall not exceed:

(i) an area equivalent to 25 percent of any #court# containing #legally required windows#;

(ii) in R1 through R5 Districts, a height of 10 feet above the lowest level of such #court#; and

(iii) in R6 through R10 Districts, a height of 15 feet above the lowest level of such #court#.

(j)(i) Recreational or drying yard equipment;

(j)(k) Solar energy systems on walls existing on April 30, 2012, projecting no more than 10 inches and occupying no more than 20 percent of the surface area of the #building# wall (as viewed in elevation) from which it projects.

* * *

Chapter 4

Bulk Regulations for Community Facilities in Residence Districts

* * *

24-30

YARD REGULATIONS

24-33

Permitted Obstructions in Required Yards or Rear Yard Equivalents

In all #Residence Districts#, the following obstructions shall be permitted when located within a required #yard# or #rear yard equivalent#:

(a) In any #yard# or #rear yard equivalent#:

* * *

(10) Accessory# ~~P~~power systems, including, but not limited to, generators, solar energy systems, fuel cells, batteries and other energy storage systems, provided that:

(i) all equipment shall be subject to the following location, enclosure, and screening requirements, as applicable:

(a) all generators and cogeneration equipment shall be completely enclosed within a #building or other structure#, except as necessary for mechanical ventilation;

(b) all other types of equipment may be unenclosed, provided that such equipment is located at least five feet from any #lot line#. However, if the area bounding

all such equipment, as drawn by a rectangle from its outermost perimeter in plan view, exceeds 25 square feet, the entirety of such equipment shall be screened on all sides. Such screening may be opaque or perforated, provided that where perforated materials are provided, not more than 50 percent of the face is open;

- (c) where any equipment is located in a #front yard#, the entire width of such portion of the equipment facing a #street#, whether open or enclosed, shall be fully screened by vegetation; and
- (ii) the size of all equipment, including ~~all screening and enclosures containing such equipment~~, any screening or portions of any #building or other structure# enclosing such equipment, shall not exceed:
 - (a) an area equivalent to 25 percent of a required #yard#, or #rear yard equivalent#, and in addition, in #front yards#, is limited to an area not exceeding 25 square feet. However, for #corner lots#, one #front yard# may be treated as a #side yard# for the purpose of applying such size restrictions;
 - (b) in R1 through R5 Districts, a height of 10 feet above the adjoining grade in #rear yards#, #rear yard equivalents# and #side yards#, or a height of five feet above the adjoining grade in #front yards#; and
 - (c) in R6 through R10 Districts, a height of 15 feet above the adjoining grade.
- ~~(10)~~(11) Solar energy systems, on walls existing on April 30, 2012, projecting no more than 10 inches and occupying no more than 20 percent of the surface area of the #building# wall (as viewed in elevation) from which it projects;
- ~~(11)~~(12) Steps, and ramps or lifts for people with physical disabilities;
- ~~(12)~~(13) Terraces or porches, open;
- ~~(13)~~(14) Walls, not exceeding eight feet in height and not roofed or part of a #building#.

* * *

24-60

COURT REGULATIONS AND MINIMUM DISTANCE BETWEEN WINDOWS AND WALLS OR LOT LINES

24-68

Permitted Obstructions in Courts

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

In all districts, as indicated, the following shall not be considered obstructions when located within a #court#:

* * *

- (h) Accessory# Power systems, including, but not limited to, generators, solar energy systems, fuel cells, batteries and other energy storage systems, provided that:
- (1) all equipment shall be subject to the following location, enclosure, and screening requirements, as applicable:
- (i) all generators and cogeneration equipment shall be completely enclosed within a #building or other structure#, except as necessary for mechanical ventilation;
- (ii) all other types of equipment may be unenclosed, provided that such equipment is located at least five feet from any #lot line#. However, if the area bounding all such equipment, as drawn by a rectangle from its outermost perimeter in plan view, exceeds 25 square feet, the entirety of such equipment shall be screened on all sides. Such screening may be opaque or perforated, provided that where perforated materials are provided, not more than 50 percent of the face is open; and
- (iii) where any equipment at the ground floor level is located between a #street wall#, or prolongation thereof, and a #street line#, the entire width of such portion of the equipment facing a #street#, whether open or enclosed, shall be fully screened by vegetation; and
- (2) the size of all equipment, including ~~all screening and enclosures containing such equipment~~, any screening or portions of any #building or other structure# enclosing such equipment, shall not exceed:
- (i) an area equivalent to 25 percent of any #court# containing #legally required windows#;
- (ii) in R1 through R5 Districts, a height of 10 feet above the lowest level of such #court#; and
- (iii) in R6 through R10 Districts, a height of 15 feet above the lowest level of such #court#; and
- (h)(i) Recreational or yard drying equipment;
- (j) Steps, and ramps or lifts for people with physical disabilities;
- (k) Solar energy systems on walls existing on April 30, 2012, projecting no more than 10 inches and occupying no more than 20 percent of the surface area of the #building# wall (as viewed in elevation) from which it projects;
- (l) Terraces, open, porches or steps.

* * *

ARTICLE III COMMERCIAL DISTRICT REGULATIONS

* * *

Chapter 2
Use Regulations

* * *

32-30
USES PERMITTED BY SPECIAL PERMIT

* * *

32-32
By the City Planning Commission

* * *

C1 C2
 #Long-term care facilities#, in C1 and C2 Districts mapped within R1 and R2 Districts.

C1 C2 C3 C4 C5 C6 C7
 #Long-term care facilities# in Community District 11 in the Borough of the Bronx, Community District 8 in the Borough of Manhattan, ~~Community District 14 in the Borough of Queens~~, and Community District 1 in the Borough of Staten Island, #developments# of nursing homes, as defined in the New York State Public Health Law, or #enlargements# of existing nursing homes that increase the existing #floor area# by 15,000 square feet or more

However, such special permit may not be applied to #developments# or #enlargements# that are subject to the restrictions set forth in Section 22-16 (Special Regulations for Nursing Homes)

* * *

Chapter 3
Bulk Regulations for Commercial or Community Facility Buildings in Commercial Districts

* * *

33-20
YARD REGULATIONS

* * *

33-23
Permitted Obstructions in Required Yards or Rear Yard Equivalents

In all #Commercial Districts#, the following obstructions shall be permitted when located within a required #yard# or #rear yard equivalent#:

(a) In any #yard# or #rear yard equivalent#:

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* * *

- (9) Parking spaces for automobiles or bicycles, off-street, open, #accessory#;
- (10) Accessory# power systems, including, but not limited to, generators, solar energy systems, fuel cells, batteries and other energy storage systems, provided that all equipment shall not exceed a height of 23 feet above #curb level#.
- (~~10~~)(11) Solar energy systems on walls existing on April 30, 2012, projecting no more than 10 inches and occupying no more than 20 percent of the surface area of the #building# wall (as viewed in elevation) from which it projects;
- (~~11~~)(12) Steps, and ramps or lifts for people with physical disabilities;
- (~~12~~)(13) Terraces or porches, open;
- (~~13~~)(14) Walls, not exceeding eight feet in height and not roofed or part of a #building#.

* * *

Chapter 7

Special Urban Design Regulations

* * *

37-30

SPECIAL GROUND FLOOR LEVEL STREETSCAPE PROVISIONS FOR CERTAIN AREAS

37-31

Applicability

Section 37-30, inclusive, specifies #ground floor level# requirements that establish consistent standards for a minimum depth for certain #uses#, a maximum width for certain #uses#, minimum transparency requirements, ~~and~~ parking wrap and screening requirements, and minimum requirements for blank walls that apply in conjunction with requirements set forth for certain #Commercial Districts# in the supplemental #use# provisions of Section 32-40, inclusive, for #Quality Housing buildings# in certain #Commercial Districts# subject to supplemental provisions for #qualifying ground floors#; for certain #Manufacturing Districts# in Section 42-485 (Streetscape provisions); for #zoning lots# subject to the off-street parking regulations in the #Manhattan Core# in Article I, Chapter 3; for #zoning lots# subject to the special provisions for waterfront areas ~~and~~, FRESH food stores, and #flood zones# in Article VI, Chapters 2 ~~and~~, 3, and 4 respectively; and for #zoning lots# subject to the provisions of certain Special Purpose Districts.

* * *

37-36

Special Requirements for Blank Walls

[Note: Consolidated and Modified Text from Sections 87-415, 127-412, 135-12, 138-32, and 142-141]

Where visual mitigation elements are required on a blank wall along the #ground floor level street wall# in accordance with other streetscape provisions in this Resolution, such blank wall shall be covered by one or more of the following mitigation elements set forth in this Section.

37-361

Blank wall thresholds

The height and width of blank walls and the applicable percent coverage of mitigation elements are set forth in this Section. Blank wall surfaces shall be calculated on the #ground floor level street wall# except in the #flood zone#, blank wall surfaces shall be calculated between the level of the adjoining sidewalk and the level of the #first story above the flood elevation# as defined in Section 64-11(Definitions).

The different types of blank walls are established below and the type of blank wall that applies is determined by the provisions of each applicable Section.

(a) Type 1

Where Type 1 blank wall provisions apply, a “blank wall” shall be a #street wall#, or portions thereof, where no transparent materials or entrances or exits are provided below a height of four feet above the level of the adjoining sidewalk, or grade, as applicable, for a continuous width of at least 50 feet.

For such blank walls, at least 70 percent of the surface or linear footage of the blank wall, as applicable, shall be covered by one or more of the options described in Section 37-362 (Mitigation elements).

The maximum width of a portion of such blank wall without visual mitigation elements shall not exceed 10 feet. In addition, where such blank wall exceeds a #street wall# width of 50 feet, such rules shall be applied separately for each 50-foot interval.

(b) Type 2

Where Type 2 blank wall provisions apply, a “blank wall” shall be a #street wall#, or portions thereof, where no transparent materials or entrances or exits are provided below a height of four feet above the level of the adjoining sidewalk, or grade, as applicable, for a continuous width of at least 25 feet.

For such blank walls, at least 70 percent of the surface or linear footage of the blank wall, as applicable, shall be covered by one or more of the options described in Section 37-362. In addition, where such blank wall exceeds a #street wall# width of 50 feet, such rules shall be applied separately for each 50-foot interval.

(c) Type 3 or Type 4

Where Type 3 or Type 4 blank wall provisions apply, a “blank wall” shall be a #street wall#, or portions thereof, where no transparent materials or entrances or exits are provided below a height of four feet above the level of the adjoining sidewalk, or grade, as applicable, for a continuous width of at least 15 feet for Type 3 or for a continuous width of at least five feet for Type 4.

For such blank walls, at least 70 percent of the surface or linear footage of the blank wall, as applicable, shall be covered by one or more of the options described in Section 37-362. In addition, where such blank wall exceeds a #street wall# width of 25 feet, such rules shall be applied separately for each 25-foot interval.

37-362

Mitigation elements

The following mitigation elements shall be provided on the #zoning lot#, except where such elements are permitted within the #street# under other applicable laws or regulations.

(a) Surface treatment

Where utilized as a visual mitigation element the following shall apply:

(1) Wall treatment

Wall treatment, in the form of permitted #signs#, graphic or sculptural art, decorative screening or latticework, or living plant material shall be provided along the #street wall#. Each linear foot of wall treatment shall constitute one linear foot of the mitigation requirement.

(2) Surface texture

Surface texture that recesses or projects a minimum of one inch from the remaining surface of the #street wall# shall be provided. The height or width of any individual area that recesses or projects shall not be greater than 18 inches. Each linear foot of wall treatment shall constitute one linear foot of the mitigation requirement.

(b) Linear treatment

Where utilized as a visual mitigation element the following shall apply:

(1) Planting

Planting, in the form of any combination of perennials, annual flowers, decorative grasses or shrubs, shall be provided in planting beds, raised planting beds or planter boxes in front of the #street wall#. Each foot in width of a planting bed, raised planting bed or planter box, as measured parallel to the #street wall#, shall satisfy one linear foot of the mitigation requirement. Such planting bed, or planter boxes shall extend to a depth of at least three feet, inclusive of any structure containing the planted material. Any individual planted area, including planters spaced not more than one foot apart, shall have a width of at least five feet.

(2) Benches

Fixed benches, with or without backs, shall be provided in front of the #street wall#. Unobstructed access shall be provided between such benches and an adjoining sidewalk or required circulation paths. Each linear foot of bench, as measured parallel to the #street wall#, shall satisfy one linear foot of the mitigation requirement. Any individual bench shall have a width of at least five feet and no more than 20 feet of benches may be used to fulfill such requirement per 50 feet of frontage.

(3) Bicycle racks

Bicycle racks, sufficient to accommodate at least two bicycles, shall be provided in front of the #street wall# as follows. No more than three bicycle racks may be used to fulfill such requirement per 50 feet of frontage.

- (i) Where bicycle racks are oriented so that the bicycles are placed parallel to the #street wall#, each bicycle rack so provided shall satisfy five linear feet of the mitigation requirement.
 - (ii) Where bicycle racks are oriented so that bicycles are placed perpendicular or diagonal to the #street wall#, each bicycle rack so provided shall satisfy the width of such rack, as measured parallel to the #street wall#, of the mitigation requirement.
- (4) Tables and chairs
- In #Commercial Districts# and M1 Districts, fixed tables and chairs shall be provided in front of the #street wall#. Each table shall have a minimum diameter of two feet and have a minimum of two chairs associated with it. Each table and chair set so provided shall satisfy five linear feet of the mitigation requirement.

* * *

ARTICLE IV MANUFACTURING DISTRICT REGULATIONS

* * *

Chapter 3 Bulk Regulations

* * *

43-20 YARD REGULATIONS

* * *

43-23 Permitted Obstructions in Required Yards or Rear Yard Equivalents

In all #Manufacturing Districts#, the following obstructions shall be permitted within a required #yard# or #rear yard equivalent#:

- (a) In any #yard# or #rear yard equivalent#:

* * *

- (9) Parking spaces for automobiles or bicycles, off-street, open, #accessory#;

- (10) Power systems, including, but not limited to, generators, solar energy systems, fuel cells, batteries and other energy storage systems, provided that all equipment shall not exceed a height of 23 feet above #curb level#;
- ~~(40)~~(11) Solar energy systems on walls existing on April 30, 2012, projecting no more than 10 inches and occupying no more than 20 percent of the surface area of the #building# wall (as viewed in elevation) from which it projects;
- ~~(41)~~(12) Steps, and ramps or lifts for people with physical disabilities;
- ~~(42)~~(13) Terraces or porches, open;
- ~~(43)~~(14) Walls, not exceeding eight feet in height and not roofed or part of a #building#.

* * *

ARTICLE VI SPECIAL REGULATIONS APPLICABLE TO CERTAIN AREAS

* * *

Chapter 2 Special Regulations Applying in the Waterfront Area

62-00 **GENERAL PURPOSES**

The provisions of this Chapter establish special regulations which are designed to guide development along the City's waterfront and in so doing to promote and protect public health, safety and general welfare. These general goals include, among others, the following purposes:

- (a) to maintain and reestablish physical and visual public access to and along the waterfront;
- (b) to promote a greater mix of uses in waterfront developments in order to attract the public and enliven the waterfront;
- (c) to encourage water-dependent (WD) uses along the City's waterfront;
- (d) to create a desirable relationship between waterfront development and the water's edge, public access areas and adjoining upland communities;
- (e) to preserve historic resources along the City's waterfront; ~~and~~
- (f) to protect natural resources in environmentally sensitive areas along the shore-; and

- (g) to allow waterfront developments to incorporate resiliency measures that help address challenges posed by coastal flooding and sea level rise.

62-10 GENERAL PROVISIONS

62-11 Definitions

Definitions specially applicable to this Chapter are set forth in this Section. The definitions of other defined terms are set forth in Section 12-10 (DEFINITIONS) and Section 64-11 (Definitions).

Development

For the purposes of this Chapter, a “development” shall also include:

- (a) an #enlargement#;
- (b) any alteration that increases the height or coverage of an existing #building or other structure#;
- (c) an #extension#; or
- (d) a change of #use# from one Use Group to another, or from one #use# to another in the same Use Group, or from one #use# listed in Section 62-21 (Classification of Uses in the Waterfront Area) to another such #use#.

However, a #development# shall not include incidental modifications to a #zoning lot#, including but not limited to, the addition of deployable flood control measures and any associated permanent fixtures, the addition of temporary structures such as trash receptacles, food carts or kiosks, and the incorporation of minor permanent structures such as light stanchions, bollards, fences, or structural landscaped berms and any associated flood gates. All such modifications shall remain subject to any associated permitted obstruction allowances, as applicable.

Tidal Wetland Area

A “tidal wetland area” is an area planted with species tolerant of saline water inundation that is located between the mean low water line and the landward edge of the stabilized natural shore or bulkhead. Such area may be used to satisfy requirements for #waterfront yards#, #shore public walkways# and planting in this Chapter.

* * *

62-30 SPECIAL BULK REGULATIONS

* * *

62-33 Special Yard Regulations on Waterfront Blocks

* * *

62-332

Rear yards and waterfront yards**[Note: Text restructured for clarity]**

~~#Rear yard# regulations shall be inapplicable on #waterfront zoning lots#. In lieu thereof, a #waterfront yard# shall be provided along the entire length of the #shoreline#, bulkhead or stabilized natural shore, whichever is furthest landward, with a depth as set forth in the following table. The minimum depth shall be measured from the landward edge of the bulkhead, landward edge of stabilized natural shore or, in the case of natural #shorelines#, the mean high water line.~~

~~Where a #platform# projects from the #shoreline#, stabilized natural shore, or bulkhead, such #waterfront yard# shall, in lieu of following the shore at that portion, continue along the water edge of such #platform# until it again intersects the #shoreline#, stabilized natural shore, or bulkhead, at which point it shall resume following the #shoreline#, stabilized natural shore, or bulkhead.~~

~~The level of a #waterfront yard# shall not be higher than the elevation of the top of the adjoining existing bulkhead, existing stabilized natural shore or mean high water line, as applicable, except that natural grade level need not be disturbed in order to comply with this requirement. The level of the portion of a #waterfront yard# on a #platform# shall not be higher than the abutting level of the non-platformed portion of the #waterfront yard#, of which it is the continuation, except that the level of a #platform# existing on October 25, 1993 need not be altered in order to comply with this requirement.~~

~~No #building or other structure# shall be erected above the lowest level of a #waterfront yard#. Permitted obstructions in #waterfront yards# in all districts shall include permitted obstructions as listed in Sections 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) and 62-611, except that enclosed #accessory# off street parking spaces and walls exceeding four feet in height shall not be permitted.~~

~~In addition, the following #rear yard# obstructions shall not be permitted except when #accessory# to #single # or #two family residences# in #detached#, #semi detached# or #zero lot line buildings#:~~

~~Balconies, unenclosed;~~

~~Greenhouses, non commercial, #accessory#;~~

~~Parking spaces, off street, open or enclosed, #accessory#;~~

~~Swimming pools, #accessory#;~~

~~Terraces or porches, open.~~

WATERFRONT YARD DEPTH FOR ALL DISTRICTS

Column A

Column B

Districts with 30 Foot Requirement

Districts with 40 Foot Requirement

R1 R2 R3 R4 R5

R6 R7 R8 R9 R10

~~C1 C2 mapped in
R1 R2 R3 R4 R5~~

~~C3~~

~~C1 C2 mapped in
R6 R7 R8 R9 R10~~

~~C1-6 C1-7 C1-8 C1-9
C2-6 C2-7 C2-8
C4 C5 C6 C7 C8
M1 M2 M3~~

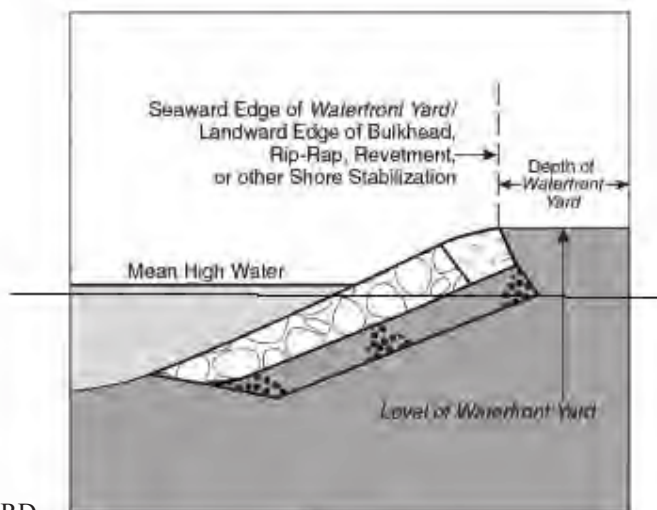
~~The minimum depth set forth in the preceding table may be reduced at the following locations provided no #waterfront yard# is reduced to less than 10 feet:~~

- ~~(a) Along those portions of the landward edge of stabilized shore, bulkhead, natural #shoreline# or along those portions of the water edge of a #platform#, having a lot dimension, measured perpendicular and landward from such edge, that is less than 70 feet in the case of districts in Column A or 80 feet in the case of districts in Column B.~~

~~For such shallow portions of lots, the minimum depth may be reduced by one foot for each foot that the lot dimension measured from such edge is less than 70 or 80 feet, as applicable.~~

- ~~(b) Along those portions of the water edge of a #platform# having a dimension, measured perpendicular from such water edge to an opposite water edge that is less than 100 feet in the case of districts in Column A or 120 feet in the case of districts in Column B.~~

~~For such narrow portions of #platforms#, the minimum depth along each opposite edge may be reduced by one-half foot for each foot that the #platform# dimension is less than 100 or 120 feet, as applicable.~~
~~WATERFRONT YARD AT STABILIZED SHORELINE (62-332b.1) WATERFRONT YARD (62-332b.2)~~



WATERFRONT YARD

SHORELINE
(62-332b.1)

AT STABILIZED

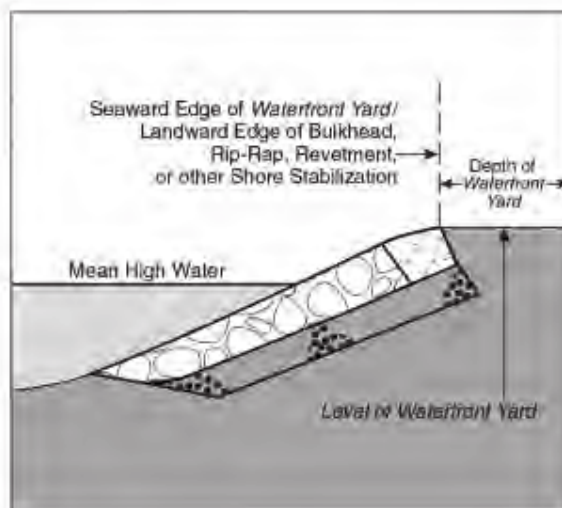
Districts with 30 Foot RequirementR1 R2 R3 R4 R5C1 C2 mapped inR1 R2 R3 R4 R5C3Districts with 40 Foot RequirementR6 R7 R8 R9 R10C1 C2 mapped inR6 R7 R8 R9 R10C1-6 C1-7 C1-8 C1-9C2-6 C2-7 C2-8C4 C5 C6 C7 C8M1 M2 M3

The minimum depth set forth in the preceding table may be reduced at the following locations provided no #waterfront yard# is reduced to less than 10 feet:

- (1) Along those portions of the landward edge of stabilized shore, bulkhead, natural #shoreline# or along those portions of the water edge of a #platform#, having a lot dimension, measured perpendicular to and landward from such edge, that is less than 70 feet in the case of districts in Column A or 80 feet in the case of districts in Column B. For such shallow portions of lots, the minimum depth may be reduced by one foot for each foot that the lot dimension measured from such edge is less than 70 or 80 feet, as applicable.
- (2) Along those portions of the water edge of a #platform# having a dimension, measured perpendicular from such water edge to an opposite water edge that is less than 100 feet in the case of districts in Column A or 120 feet in the case of districts in Column B. For such narrow portions of #platforms#, the minimum depth along each opposite edge may be reduced by one-half foot for each foot that the #platform# dimension is less than 100 or 120 feet, as applicable.

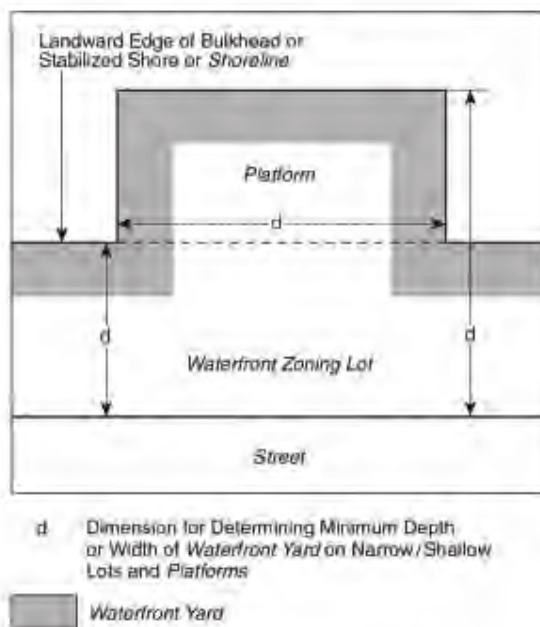
[Note: New text]

- (3) Where a #tidal wetland area# is provided, the depth of the #waterfront yard# may be reduced by a foot for every foot of stabilized natural shore or intertidal planting area beyond the landward edge of the bulkhead, stabilized natural shore or #shoreline# up to seven feet. Such reduction in depth shall not extend along more than 30 percent of the #shoreline# of the #waterfront zoning lot#.



WATERFRONT YARD AT STABILIZED SHORELINE

(62-332a.1)

WATERFRONT YARD(62-332a.2)(b) The level of the #waterfront yard#

The level of required #waterfront yards# shall not be higher than the elevation of the top of the adjoining existing bulkhead, existing stabilized natural shore or mean high water line, as applicable, except that natural grade level need not be disturbed in order to comply with this requirement.

The level of the portion of a #waterfront yard# on a #platform# shall not be more than three feet higher than the abutting level of the non-platformed portion of the #waterfront yard#, of which it is the continuation, except that the level of a #platform# existing on October 25, 1993 need not be altered in order to comply with this requirement.

[Note: Text moved from Section 64-82(a) and modified]

However, the level of the #waterfront yard# may be modified as follows:

(1) For #zoning lots# not required to provide #waterfront public access areas# pursuant to Section 62-52 (Applicability of Waterfront Public Access Area Requirements), the level of #waterfront yards# may be raised either to:

(i) the #flood-resistant construction elevation# or six feet above #shoreline#, whichever is higher; or

- (ii) a higher elevation, provided that the #waterfront yard# complies with the applicable provisions of paragraph (b)(2) of this Section, depending on the condition of the shared #lot line#.
- (2) For #zoning lots# with required #waterfront public access areas# pursuant to Section 62-52, the level of #waterfront yards# may be raised to a higher elevation, provided that such elevated #waterfront yard# complies with the following provisions, depending on the condition of the adjacent #zoning lot# :
 - (i) where a #waterfront yard# adjoins a #street#, #public park#, or #waterfront public access area# on an adjacent #zoning lot#, the level of the #waterfront yard# within 15 feet of the shared #lot line# shall not exceed three feet above the level of the adjoining #street#, #public park# or #waterfront public access area#, and the width of the circulation path at the #lot line# is greater than that required by paragraph (a) of Section 62-62 (Design Requirements for Shore Public Walkways and Supplemental Public Access Areas). However, the elevation of the required circulation path shall be no higher than the grade of the adjacent #street#, #public park#, or #zoning lot# at the #lot line#.
 - (ii) where a #waterfront yard# does not adjoin a #street#, #public park#, or #waterfront public access area# on an adjacent #zoning lot#, the level of the #waterfront yard# at the shared #lot line#, may exceed the level of the adjacent #zoning lot#:
 - (a) up to a maximum of six feet above the #shoreline#; or
 - (b) to a level higher than six feet above the #shoreline#, where the Chairperson of the City Planning Commission certifies, pursuant to Section 62-811 (Waterfront public access and visual corridors) that:
 - (1) the applicant has submitted a plan indicating the proposed level of the #waterfront yard# at the #lot line# of adjacent #zoning lots# and the level of such adjacent #zoning lots# adjacent to the #waterfront yard#; and
 - (2) submitted proof of a legal ~~commitment~~ instrument, executed by the fee owner of any #zoning lot# that is adjacent to the subject #waterfront yard#, and binding upon all necessary parties in interest, that the owner will develop a #waterfront public access area# with a grade that meets that of the adjacent #zoning lots# based on the proposed level of the subject #waterfront yard# as reflected in the submitted plan. Such legal ~~commitment~~ instrument shall run with the land and shall be recorded against all affected parcels of land.
- (c) Permitted obstructions

[Note: Modified text]

No #building or other structure# shall be erected above the lowest level of a #waterfront yard#. Permitted obstructions in #waterfront yards# in all districts shall include permitted obstructions as listed in Sections 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) and 62-611, except that enclosed #accessory# off-street parking spaces and walls exceeding four feet in height shall not be permitted. Where any power systems, including, but not limited to, generators, solar energy systems, fuel cells, batteries and other energy storage systems, are located in a #front yard#, the entire width of the portion of such equipment facing a #street#, whether open or enclosed, shall be fully screened by vegetation.

In addition, the following #rear yard# obstructions shall not be permitted except when #accessory# to #single-# or #two-family residences# in #detached#, #semi-detached# or #zero lot line buildings#:

Balconies, unenclosed:

Greenhouses, non-commercial, #accessory#:

Parking spaces, off-street, open or enclosed, #accessory#:

Swimming pools, #accessory#:

Terraces or porches, open.

* * *

62-50

GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS

* * *

62-51

Applicability of Visual Corridor Requirements

* * *

62-512

Dimensions of visual corridors

The width of a #visual corridor# shall be determined by the width of the #street# of which it is the prolongation but in no event shall be less than 50 feet. #Visual corridors# that are not the prolongations of #streets# shall be at least 50 feet wide. For the purposes of establishing the width, vehicular turnarounds at the terminations of such #streets#, including curved or flanged treatments at intersections, shall be omitted.

~~The lowest level of a #visual corridor# shall be determined by establishing a plane connecting the two points along the #street lines# from which the #visual corridor# emanates at curb elevation with the two points where the prolonged #street lines# intersect the #shoreline#, stabilized natural shore, bulkhead or the #base plane# of a #pier# or #platform#, whichever intersection occurs first. Such plane shall then continue horizontally seaward from the line of intersection. #Visual corridors# that are not prolongations of mapped #streets# shall be determined by establishing a plane connecting the curb elevation at the two points along the #lot line# from~~

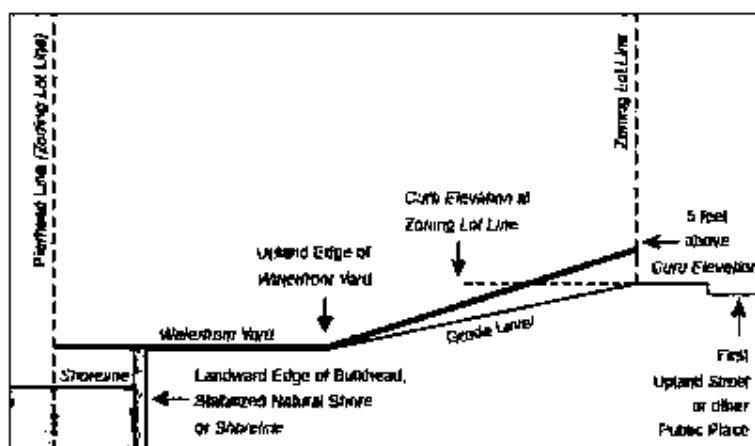
~~which the #visual corridor# emanates with the two points of intersection at the #shoreline#, stabilized natural shore, bulkhead or the #base plane# of a #pier# or #platform#, whichever intersection occurs first.~~

[Note: Text moved from Section 64-82(b) and modified]

~~The level of a #visual corridor# shall be determined by establishing a plane connecting the two points along the #street lines# from which the #visual corridor# emanates at an elevation five feet above curb elevation with the two points where the prolonged #street lines# intersect the #shoreline#, stabilized natural shore, bulkhead, or upland edge of a #waterfront yard#, or the #base plane# of a #pier# or #platform#, whichever intersection occurs first. Such plane shall then continue horizontally seaward from the line of intersection. #Visual corridors# that are not prolongations of mapped #streets# shall be determined by establishing a plane connecting an elevation five feet above curb elevation at the two points along the #lot line# from which the #visual corridor# emanates with the two points of intersection at the #shoreline#, stabilized natural shore, bulkhead, upland edge of a #waterfront yard#, or the #base plane# of a #pier# or #platform#, whichever intersection occurs first.~~

[Note: Text below is a continuation of Section 62-512]

No obstructions are permitted within a #visual corridor#, except as set forth in Sections 62-513 and 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS), inclusive, when a #visual corridor# coincides with an #upland connection#.



— Level of Visual Corridor

LEVEL OF VISUAL CORRIDOR
(62—512)

* * *

Requirements for Shore Public Walkways

- (a) All #waterfront zoning lots# meeting the criteria set forth in Section 62-52 (Applicability of Waterfront Public Access Area Requirements), or #floating structures#, shall provide a #shore public walkway#, which shall comply with the following requirements:
- (1) Such #shore public walkway# shall have a seaward edge contiguous with the seaward edge of the #waterfront yard# as established in Section 62-332 (Rear yards and waterfront yards) with a minimum width measured from such edge as set forth in paragraph (a)(2) of this Section, or for #floating structures#, as set forth in Section 62- 55, unless relocation or modification of width is permitted pursuant to this Section;
 - (2) Such #shore public walkway# shall have a minimum width of 30 feet for #zoning lots developed# with #predominantly community facility# or #commercial uses# in R3, R4, R5 and C3 Districts, and such #uses# in C1 and C2 Districts mapped within R1 through R5 Districts. The minimum width for a #shore public walkway# provided for a #zoning lot developed# with any #use# in all other districts, other than R1 and R2 Districts, shall be 40 feet.
 - (3) The minimum width of the #shore public walkway# set forth in paragraph (a)(2) of this Section may be reduced at the following locations provided no #shore public walkway# is reduced to less than 10 feet:
 - (i) on shallow portions of #zoning lots# that are less than 150 feet in depth, the minimum width of a #shore public walkway# may be reduced by one foot for every two feet that the lot dimension, measured from such edge, is less than 150 feet;
 - (ii) on narrow portions of #platforms# that are less than 150 feet in depth between the water edges located perpendicular to the landward edge of such #platform#, the minimum width of such #shore public walkway# along each opposite edge may be reduced by one foot for every two feet that the #platform# dimension is less than 150 feet;
 - (iii) on #zoning lots# where a #tidal wetland area# is provided, the width of the #shore public walkway# may be reduced by a foot for every foot of #tidal wetland area# along the seaward edge of the #waterfront yard# up to seven feet. Such reduction in depth shall not extend along more than 30 percent of the #shoreline# of the #waterfront zoning lot#.

* * *

62-60**DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS**

#Waterfront public access areas# required pursuant to Section 62-52 (Applicability of Waterfront Public Access Area Requirements) shall comply with the provisions of this Section, inclusive.

62-61**General Provisions Applying to Waterfront Public Access Areas**

- (a) All #waterfront public access areas# shall be unobstructed from their lowest level to the sky, except as set forth in Section 62- 611 (Permitted obstructions). The lowest level of any portion of a #waterfront public access area# shall be determined by the elevation of the adjoining portion on the same or an

adjoining #zoning lot# or the public sidewalk to which it connects. Reference elevations shall be established from the public sidewalks, #waterfront yard# levels and the elevations previously established by adjoining #zoning lots# at #lot line# intersections of a waterfront public access network, as applicable.

- (b) The minimum required circulation path shall be connected and continuous through all #waterfront public access areas# on adjacent #zoning lots#.
- (c) #Waterfront public access areas# shall be accessible to persons with physical disabilities in accordance with the Americans with Disabilities Act and the American National Standards Institute (ANSI) design guidelines.
- (d) All #waterfront public access areas# improved for public access shall meet the following regulations for site grading:

(1) In required circulation paths:

- (i) for cross-sectional grading regulations (perpendicular to the general direction of pedestrian movement), the minimum slope of a required circulation path shall be one and one-half percent to allow for positive drainage and the maximum slope shall be three percent. Steps and stairways accommodating a cross-sectional grade change are only permitted outside of the required circulation path(s).
- (ii) for longitudinal grading controls (parallel to the general direction of pedestrian movement), grade changes shall be permitted along the length of a required circulation path by means of steps or ramps in compliance with the requirements for handicapped accessibility.

(2) In required planting areas, including screening buffers:

Within ~~five~~ three feet of the edge of any planting area, the grade level of such planting area shall be no more than ~~18 inches~~ three feet higher or lower than the adjoining level of the pedestrian circulation path.

* * *

62-611

Permitted obstructions

#Waterfront public access areas# shall be unobstructed from their lowest level to the sky except that the obstructions listed in this Section shall be permitted, as applicable. However, no obstructions of any kind shall be permitted within a required circulation path, except as specifically set forth herein.

- (a) In all areas

* * *

- (7) Structural landscaped berms and associated flood gates, including emergency egress systems that are assembled prior to a storm and removed thereafter, provided the height of such berm does not exceed the #flood-resistant construction elevation# required on the #zoning lot# or five feet above the lowest adjoining grade of the #waterfront yard# established pursuant to Section 62-332 (Rear yards and waterfront yards), whichever is higher;

- (8) Temporary flood control devices and associated permanent fixtures, including emergency egress systems that are assembled prior to a storm and removed thereafter. Permanent fixtures for self-standing flood control devices shall be flush-to-grade, and shall be permitted obstructions within a required circulation path.

* * *

62-62

Design Requirements for Shore Public Walkways and Supplemental Public Access Areas

The design requirements of this Section shall apply to #shore public walkways# and #supplemental public access areas#, except as modified by Section 62-57 (Requirements for Supplemental Public Access Areas).

* * *

(c) Planting

(1) Planting areas

An area equal to at least ~~50-35~~ percent of the area of the #shore public walkway# and #supplemental public access area# shall be planted, ~~except that in R3, R4, R5, C1, C2 and C3 Districts, and in C1 or C2 Districts mapped within R1 through R5 Districts, for #zoning lots# occupied by #predominantly commercial# or #community facility uses#, such area shall be equal to at least 40 percent.~~

In addition, the following conditions shall apply:

- (i) Where a #supplemental public access area# is greater than 1,875 square feet, at least ~~25-15~~ percent of the required planting area of the #shore public walkway# and #supplemental public access area#, combined, shall be provided as lawn;
- (ii) Up to ~~15~~ 30 percent of the required planting area may be ~~located seaward of a #shore public walkway#~~ provided as #tidal wetland area# and shall be measured in plan view and not along the planted slope; or
- (iii) When a dedicated bicycle path is provided within a #supplemental public access area#, a planting area with a width of at least five feet shall be provided between the bicycle path and any paved area for pedestrian use. For the purpose of calculating planting requirements, the area of the bicycle path may be deducted from the combined area of the #shore public walkway# or #supplemental public access area#.

Such planting areas in this paragraph, (c), may be located anywhere within the #shore public walkway# or #supplemental public access area# and shall comply with the standards of Section 62-655.

(2) Screening buffer

- (i) A screening buffer shall be provided within the #shore public walkway# or the #supplemental public access area#, running along the entire upland boundary of such area where it abuts non-publicly accessible areas of the #zoning lot#, except as waived pursuant to paragraph (c)(2)(iii) of this Section. Any screening buffer provided

pursuant to this Section may be used to meet the planting requirements of paragraph (c)(1) of this Section.

- (ii) The minimum width of the screening buffer shall be ~~40~~six feet. On shallow lots where the width of the ~~#shore public walkway#~~ may be reduced pursuant to Section 62-53, the width of the screening buffer may be reduced proportionally but shall not be less than four feet.
- (iii) No screening buffer shall be required:
 - (a) adjacent to a private drive, a ~~#street#~~ or at the entrances to ~~#buildings#~~; or
 - (b) for a ~~#commercial#~~ or ~~#community facility use#~~ within a distance of 15 feet from the sidewalk or ~~#waterfront public access area#~~, that is glazed with windows, transoms or glazed portions of doors in accordance with the provisions of Section 37-34 (Minimum Transparency Requirements).

* * *

62-65

Public Access Design Reference Standards

* * *

62-655

Planting and trees

Within ~~#waterfront public access areas#~~ and parking areas where planting or screening is required, the design standards of this Section shall apply.

A detailed landscape plan prepared by a registered landscape architect shall be submitted to the Department of Parks and Recreation prior to seeking certification by the Chairperson of the City Planning Commission, pursuant to the requirements of Section 62-80. Such plans shall include plants suited for waterfront conditions and include a diversity of species with emphasis on native plants, salt tolerance species that are tolerant of salt, sediment, high seasonal water flow, and high winds, as applicable to the location and the facilitation of sustainable wildlife habitats, where appropriate. No species listed on quarantine or as a host species for any disease listed by the Department of Parks and Recreation at the time of application shall be included.

All landscaped areas shall contain a built-in irrigation system or contain hose bibs within 100 feet of all planting areas.

(a) Planting areas

Wherever a minimum percentage of planting area is specified for a ~~#waterfront public access area#~~, such requirements shall be met only through the provisions of the types of planting areas listed in paragraphs (a)(1) through (a)(~~7~~)(8) of this Section. A curb with a maximum height of six inches is permitted along the perimeter of any planting area. Any edging higher than six inches above adjacent grade shall be considered a retaining wall. Retaining walls shall not exceed ~~60 percent of the perimeter of a planting area~~ or a maximum height of ~~18 inches~~ three feet, as measured from the level of the adjoining adjacent grade or planted area below such wall so that no more than three feet of such retaining wall is visible from the #waterfront public access areas#. At least one continuous length, equal to 40 percent of the planting area's perimeter, shall have a grade level within six inches of the adjacent grade level. Where not specifically

indicated, the minimum planting standard for required planting areas shall be turf grass, other natural grasses or groundcover. All planting areas shall be located on undisturbed subsoil or clean fill.

* * *

(3) Planting beds

Planting beds for turf grass or groundcovers shall have minimum dimensions of two feet in any direction and a minimum depth of two feet. Planting beds for shrubs shall have minimum dimensions of three feet by three feet for each shrub and a minimum depth of 2 feet, 6 inches. Planting beds containing trees shall have a minimum dimension of five feet and a minimum area of 30 square feet for each tree, with a minimum depth of 3 feet, 6 inches. Trees, shrubs or groundcovers may be combined in a single planting bed only if such bed meets the minimum depth required for the largest plant.

Retaining walls are permitted along the perimeter of a planting bed in accordance with the regulations for planting areas in paragraph (a) of this Section.

(4) ~~Raised planting beds~~ Terraced planting area

~~A "raised planting bed" is a planting area with retaining walls along more than 60 percent of its perimeter or a height along any portion greater than 18 inches. A raised planting bed shall comply with the dimensional standards for a planting bed except that the height from the adjacent grade to the top of the retaining wall of a raised planting bed shall be a maximum of 36 inches.~~

A "terraced planting area" is a planting area with two or more planting beds incorporating retaining walls on a slope with a grade change greater than or equal to three feet. A terraced planting area shall comply with the dimensional standards for a planting bed except that the average depth of the individual planting beds between the two retaining walls shall not be less than three feet, as measured perpendicular to the edge of the retaining wall. In addition, for retaining walls between two or more planting beds, their height may exceed three feet, provided that the front of such retaining walls is screened by plant material.

(5) Berms

A "berm" is a planting area with sloped grade stabilized primarily by plant materials rather than retaining walls or other similar built structures. A berm shall comply with the dimensional standards for a planting bed except that the height ~~from the adjacent grade to the top~~ of the berm shall not exceed ~~60 inches~~ the #flood-resistant construction elevation# on the #zoning lot#, or five feet above the lowest adjoining grade of the #waterfront yard# established pursuant to Section 62-332 (Rear yards and waterfront yards), whichever is higher.

* * *

(8) Tidal wetland area

A #tidal wetland area# may satisfy up to 30 percent of the required planting area for #waterfront public access areas#.

1228

May 12, 2021

* * *

62-80**SPECIAL REVIEW PROVISIONS**

* * *

62-81**Certifications by the Chairperson of the City Planning Commission**

* * *

62-811**Waterfront public access and visual corridors**

No excavation or building permit shall be issued for any #development# on a #waterfront block#, or any other #block# included within a Waterfront Access Plan, until the Chairperson of the City Planning Commission certifies to the Department of Buildings or Department of Business Services, as applicable, that:

- (a) there is no #waterfront public access area# or #visual corridor# requirement for the #zoning lot# containing such #development# due to the following:
 - (1) the #development# is exempt pursuant to Sections 62-52 (Applicability of Waterfront Public Access Area Requirements) or 62-51 (Applicability of Visual Corridor Requirements); or
 - (2) the #waterfront public access area# or #visual corridor# requirement has been waived pursuant to Section 62-90 (WATERFRONT ACCESS PLANS);
- (b) a site plan and all other applicable documents ~~has~~ have been submitted showing compliance with the provisions of Sections 62-332 (Rear yards and waterfront yards), 62-50 (GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS)₂ and 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS);

* * *

Chapter 4**Special Regulations Applying in Flood Hazard Areas Flood Zones****64-00****GENERAL PURPOSES**

The provisions of this Chapter establish special regulations which are designed to encourage flood-resilient building practices for new and existing buildings and in so doing to promote and protect public health, safety and general welfare. These general goals include, among others, the following purposes:

- (a) to facilitate the development and alteration of buildings in flood zones consistent with the ~~latest~~ flood-resistant construction standards of ~~the Federal government and the~~ Appendix G of the New York City Building Code;

- (b) to enable buildings to be constructed or retrofitted pursuant to flood-resistant construction standards with a comparable amount of usable interior space to what is generally permitted within the applicable zoning district;
- (c) to allow sea level rise to be incorporated into the design of buildings in flood zones in order to provide longer-term and greater protection from flood risk than what is currently required by Appendix G of the New York City Building Code;
- ~~(e)~~(d) to mitigate the effects of elevated and flood-proofed buildings on the streetscape and pedestrian activity; and
- ~~(d) — to expedite the recovery of neighborhoods that experienced a high concentration of damage to single- and two-family residences from Hurricane Sandy within the Neighborhood Recovery Areas specified in Appendix A of this Chapter; and~~
- (e) to promote the most desirable use of land in accordance with a well-considered plan and thus conserve ~~and enhance~~ the value of land and buildings, and thereby protect the City's tax revenues.

64-10**GENERAL PROVISIONS**

[Note: Existing text to be deleted]

~~The provisions of this Chapter shall be in effect until one year after the adoption by the City of New York of new final Flood Insurance Rate Maps superseding the Flood Insurance Rate Maps in effect on October 28, 2012.~~

64-11**Definitions**

Definitions specifically applicable to this Chapter are set forth in this Section and may modify definitions set forth in Section 12-10 (DEFINITIONS). Where matter in italics is defined both in Section 12-10 and in this Chapter, the definitions in this Chapter shall govern.

Basement

[Note: Existing text to be deleted]

~~For #buildings#, or portions thereof, that comply with #flood-resistant construction standards#, a "basement" is a #story# (or portion of a #story#) partly below #flood-resistant construction elevation#, with at least one half of its height (measured from floor to ceiling) above #flood-resistant construction elevation#.~~

Cellar

[Note: Existing text to be deleted]

~~For #buildings#, or portions thereof, that comply with #flood-resistant construction standards#, a #cellar# is a space wholly or partly below the #flood-resistant construction elevation#, with more than one-half its height (measured from floor to ceiling) below the #flood-resistant construction elevation#.~~

Cottage envelope building

A “cottage envelope building” is a #single-# or #two-family detached residence# located within R1 through R5 Districts, #developed#, #enlarged#, or altered, pursuant to any of the optional provisions of Section 64-33 (Special Regulations for Cottage Envelope Buildings), provided that:

- (a) such #single-# or #two-family detached residence# complies with Section 64-333 (Height and setback regulations for cottage envelope buildings); and
- (b) is located within a #zoning lot# that has a #lot area# that is less than that required by the applicable district; and
 - (1) has a #lot width# that is either:
 - (i) less than that required under the provisions of Section 23-32 (Minimum Lot Area or Lot Width for Residences) in R1, R2, R3-1, R3-2, R3X, R4, R4A, R5, and R5A Districts; or
 - (ii) equal to or less than 30 feet in R3A, R4-1, R4B, R5B, and R5D Districts; or
 - (2) has a depth of less than 95 feet at any point.

All #cottage envelope buildings# shall also be #flood-resistant buildings#.

First story above the flood elevation

[Note: Text substituted “Lowest occupiable floor”]

The “first story above the flood elevation” shall be the finished floor level of the first #story# located at or above the level ~~to~~ at which a #building# complies with #flood-resistant construction standards# and, for #buildings# utilizing the #reference plane#, shall be no lower than the particular level established as the #reference plane#.

Flood map

[Note: Text moved from Section 12-10 and modified]

“Flood map” shall be the most recent map or map data used as the basis for #flood-resistant construction standards#.

Flood-resistant building

A “flood-resistant building” is a #building or other structure#, which complies with all applicable #flood-resistant construction standards#.

Flood-resistant construction elevation

~~The "flood resistant construction elevation" is the greater of:~~

- ~~(a) the "design flood elevation" determined pursuant to Appendix G of the New York City Building Code for a building's structural occupancy category; or~~
- ~~(b) the base flood elevation indicated on the #flood maps#, plus the additional elevation required above base flood elevation for the applicable occupancy category when determining the Design Flood Elevation pursuant to Appendix G of the Building Code.~~

The "flood-resistant construction elevation" shall be the level of flood elevation required by Appendix G of the New York City Building Code for the "Flood design classification" of a #building or other structure# as set forth therein, or a height of two feet above the lowest grade adjacent to the #building or other structure#, whichever is higher.

Flood-resistant construction standards

~~"Flood resistant construction standards" shall:~~

- ~~(a) comply with the standards of Appendix G of the Building Code for "Post FIRM Construction," whether construction voluntarily complies with standards for "Post FIRM Construction" or is required to comply; and~~
- ~~(b) utilize the higher base flood elevation and the more stringent flood hazard area designation, as applicable, of the #flood maps# or the Flood Insurance Rate Maps in effect on October 28, 2012.~~

"Flood-resistant construction standards" are the construction standards set forth in Appendix G of the New York City Building Code for "Post-FIRM Construction" that aid in protecting #buildings or other structures# in #flood zones# from flood damage, and governs both #building or other structures# that are required to comply with such standards and those that voluntarily comply. For #buildings or other structures# utilizing the provisions of this Chapter, #flood-resistant construction standards# shall be applied up to the #flood-resistant construction elevation# or higher.

High-risk flood zone

The "high-risk flood zone" is the area, as indicated on the #flood maps#, that has a one percent chance of flooding in a given year.

Hurricane Sandy

~~"Hurricane Sandy" a severe storm that occurred on October 28, 2012, causing heavy flooding, power outages, property damage, and disruption of public transportation and other vital services.~~

Lowest occupiable floor

[Note: Existing text is deleted and substituted by “First story above the flood elevation”]

The “lowest occupiable floor” shall be the finished floor level of the lowest floor that is not used solely for parking, storage, building access or crawl space, where any space below such #lowest occupiable floor# is wet flood proofed in accordance with #flood resistant construction standards# and used only for parking, storage or building access, or otherwise is not occupiable space.

Lowest usable floor

The “lowest usable floor” of a #building# is the lowest floor of such #building# that contains #floor area#, and may include #basements# and #cellars#, as defined in Section 12-10 (DEFINITIONS).

Moderate-risk flood zone

The “moderate-risk flood zone” is the area, as indicated on the #flood maps#, and not within of the #high-risk flood zone#, that has a 0.2 percent chance of flooding in a given year.

Predominant or predominantly

[Note: Existing text to be deleted]

"Predominant" or "predominantly" shall mean that a #use# or a group of #uses# comprises at least 75 percent of the total #floor area# of the #building# or of the area of the #zoning lot#, as applicable.

Primary street frontage

For the purposes of applying the provisions of Section 64-322(c), a “primary street frontage” shall include:

- (a) in #Commercial Districts#, frontages that meet the criteria for a “primary street frontage” as defined in Section 37-311;
- (b) in M1 Districts paired with #Residence Districts#, frontages along:
 - (1) #wide streets#;
 - (2) #narrow streets# within 50 feet of a #wide street#; and
 - (3) #narrow streets# where an M1 District paired with a #Residence District# is mapped along an entire #block# frontage; and
- (c) frontages where non-#residential uses# are required at the #ground-floor level# pursuant to a Special Purpose District or #waterfront public access area#.

Reference plane

The “reference plane” is a horizontal plane from which the height and setback regulations governing a #building or other structure# may be measured, in accordance with certain provisions of this Chapter. The #reference plane# shall not be located above at or below the #first story above flood elevation#, as applicable.

For #zoning lots# located wholly or partially within the #high-risk flood zone#, the #reference plane# may be established at any level between the #flood-resistant construction elevation# and a height of 10 feet above the #base plane# or #curb level#, as applicable. However, where the #flood-resistant construction elevation# exceeds a height of 10 feet above the #base plane# or #curb level#, as applicable, the #reference plane# may be established at the #flood-resistant construction elevation#.

For #zoning lots# located wholly or partially within the #moderate-risk flood zone#, the #reference plane# may be established at any level between the #flood-resistant construction elevation# and a height of five feet above the #base plane# or #curb level#, as applicable.

64-12

Applicability

The optional provisions of this Chapter shall apply only to #zoning lots# located wholly or partially within the #flood zones#, as follows:

[Note: Existing text in this Section is re-written below]

- (a) ~~Except where otherwise stated, all #buildings#, or portions thereof, shall comply with #flood-resistant construction standards# as a condition of construction pursuant to the following optional provisions, as applicable, inclusive:~~

~~Section 64-10 — GENERAL PROVISIONS~~

~~Section 64-20 — SPECIAL USE REGULATIONS~~

~~Section 64-30 — SPECIAL BULK REGULATIONS~~

~~Section 64-40 — SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012~~

~~Section 64-50 — SPECIAL PARKING REGULATIONS~~

~~Section 64-70 — SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS~~

~~Section 64-80 — MODIFICATION OF SPECIAL REGULATIONS APPLYING IN WATERFRONT AREAS~~

~~Section 64-90 — SPECIAL APPROVALS~~

- (b) ~~The provisions of Section 64-60 (DESIGN REQUIREMENTS) shall apply to all #developments#, all horizontal #enlargements# with new #street walls#, or alterations that increase the height of #street walls#, except that Section 64-65 (Screening Requirements for Parking Within or Below Buildings) shall apply to all #buildings# as provided therein.~~

- (e) ~~Where a #zoning lot# is located partially within a #flood zone#, the regulations of this Chapter shall apply where any portion of a #building# on such #zoning lot# is within such #flood zone#.~~
- (d) ~~In Neighborhood Recovery Areas, shown on maps in Section 64-A80 (NEIGHBORHOOD RECOVERY AREA MAPS) of this Chapter, optional provisions to expedite the vertical elevation or reconstruction of #single # or #two family residences# shall apply. These provisions are set forth in Appendix A and shall supplement, supersede or modify the provisions of this Chapter. The maps are hereby incorporated and made part of this Resolution, for the purpose of specifying locations where special regulations and requirements set forth in the text of this Chapter may apply.~~
- (a) For all #zoning lots# in the #flood zone#
- The provisions of Sections 64-21 (Special Use Regulations for All Buildings), 64-31 (Special Bulk Regulations for All Buildings) and 64-41 (Special Parking Regulations for All Buildings), inclusive, may be applied to all #zoning lots#, regardless of whether #buildings or other structures# on such #zoning lots# comply with #flood-resistant construction standards#.
- (b) For #zoning lots# containing #flood-resistant buildings#
- The provisions of Sections 64-22 (Special Use Regulations for Flood-resistant Buildings), 64-32 (Special Bulk Regulations for Flood-resistant Buildings), 64-42 (Special Parking Regulations for Flood-resistant Buildings), and 64-60 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), inclusive, may be applied only to #zoning lots# containing #flood-resistant buildings#, including #cottage envelope buildings#, as applicable, and Section 64-33 (Special Bulk Regulations for Cottage Envelope Buildings) may additionally be applied exclusively to #zoning lots# containing #cottage envelope buildings#. Where such provisions are utilized, the provisions of Section 64-50 (STREETSCAPE REGULATIONS), inclusive, shall apply.
- (c) For portions of #buildings#
- The following provisions may be applied to portions of #buildings# as follows:
- (1) the provisions of Section 64-311 (Special floor area modifications for all buildings) and 64-313 (Special height and setback regulations for all buildings) may be applied to portions of #buildings#, regardless of whether such portions comply with #flood-resistant construction standards#;
 - (2) the provisions of Section 64-32 (Special Bulk Regulations for Flood-resistant Buildings), inclusive, may be applied to portions of #buildings#, provided that such portions comply with #flood-resistant construction standards# for the entirety of its vertically contiguous segments. Where such provisions are utilized within portions of #buildings#, the provisions of Section 64-50 (STREETSCAPE REGULATIONS), inclusive, shall apply.

64-13

Applicability of District Regulations

The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control.

~~64-131~~~~Measurement of height~~

[Note: Existing text to be deleted and replaced by Sections 64-221 and 64-321]

All measurements of height above ~~#curb level#, #base plane#, #base flood elevation#, grade, or other similar ground-related datum, shall be from the #flood-resistant construction elevation#. This provision shall not apply to #buildings# that are #accessory# to #single-# or #two-family residences#, or to fences, #signs# not affixed to #buildings#, or other structures that are not #buildings#.~~

~~In R3, R4A and R4-1 Districts within #lower density growth management areas#, the maximum perimeter wall height shall be 21 feet above the #flood-resistant construction elevation# or 26 feet above grade, whichever is greater.~~

~~Where different #flood-resistant construction elevations# apply to different portions of a #building#, the highest of such #flood-resistant construction elevations# may apply to the entire #building#.~~

~~For #buildings# located partially within and partially outside of the #flood-zone#, all measurements of height shall be in accordance with only one of the following provisions:~~

- ~~(a) — the #flood-resistant construction elevation# shall apply to the entire #building#;~~
- ~~(b) — the height of the portion of the #building# within the #flood-zone# shall be measured from the #flood-resistant construction elevation#, and the height of the portion of the #building# outside of the #flood-zone# shall be measured from an elevation determined in accordance with the underlying applicable regulations; or~~
- ~~(c) — the elevation of each such portion of the #building# from where height is measured shall be multiplied by the percentage of the total #lot coverage# of the #building# to which such elevation applies. The sum of the products thus obtained shall be the elevation from which the height of the entire #building# is measured.~~

64-20

SPECIAL USE REGULATIONS

The provisions of this Section, inclusive, are optional, and ~~may be applied~~ are only applicable to ~~all~~ #zoning lots# located wholly or partially within #flood zones#.

The provisions of Section 64-21 (Special Use Regulations for All Buildings), inclusive, may be applied to ~~all~~ #zoning lots# regardless of whether #buildings or other structures# on such #zoning lots# comply with #flood-resistant construction standards#.

The provisions of Section 64-22 (Special Use Regulations for Flood-resistant Buildings), inclusive, may be applied to #zoning lots# containing #flood-resistant buildings#, including #cottage envelope buildings#.

64-21

~~Ground Floor Use~~

Special Use Regulations for All Buildings

[Note: Existing text moved to Section 64-222 and modified]

- (a) ~~In all districts, where compliance with the elevation and wet flood-proofing requirements of Appendix G of the New York City Building Code would result in a #lowest occupiable floor# that is above a level required by the Zoning Resolution without the relief provided by this Section, such requirements shall be modified so that the level of such ground floor shall be the lowest level permitted for #uses# other than parking, storage and building access as if it were "Post FIRM Construction," as defined by Appendix G of the Building Code, using elevation and wet flood-proofing techniques.~~
- (b) ~~In C1, C2 and C4 Districts in the Borough of Staten Island, where #flood-resistant construction elevation# is more than 10 feet above #curb level#, the provisions of Section 32-433 (Ground floor use in C1, C2 and C4 Districts in the Borough of Staten Island) shall be modified to allow enclosed parking spaces, or parking spaces covered by a #building#, including such spaces #accessory# to #residences#, on the ground floor within 30 feet of the #street wall# of the #building#, provided that the standards of Section 64-641 (Transparency requirements) are met.~~

The provisions of this Section, inclusive, are optional, and are only applicable to #zoning lots# located wholly or partially within #flood zones#. The provisions of this Section, inclusive, ~~are optional and~~ may be applied to ~~all~~ #zoning lots# regardless of whether #buildings or other structures# on such #zoning lots# comply with #flood-resistant construction standards#. For such #zoning lots#, the underlying #use# regulations shall apply, except where permitted to be modified by ~~the allowances of~~ this Section, inclusive.

64-211

Limitation on floors occupied by commercial uses

C1 C2

For the purposes of this Section, ~~in~~ in the districts indicated, the provisions of Section 32-421 (Limitation on floors occupied by commercial uses) may be modified to allow #commercial uses# listed in Use Group 6, 7, 8, 9 or 14 to occupy the lowest two #stories# of a #mixed building#, provided that such #mixed building# contains no #basement# or #cellar#. In addition, such #uses# listed in Use Group 6, 7, 8, 9 or 14 may occupy the same #story# occupied in whole or in part by #dwelling units#, provided that the #uses# are located in a portion of the #mixed building# that has a separate access to the #street# with no direct access to the #residential# portion of the #building# at any #story#.

64-22

Transparency Requirements

Special Use Regulations for Flood-resistant Buildings

[Note: Existing text to be deleted]

In all districts, as an alternative to #street wall# transparency regulations, the following optional provisions may apply, except where #buildings# are governed by the provisions of Section 64-64 (Design Requirements for Non-residential and Mixed Buildings in Commercial and Manufacturing Districts):

#Street walls# shall be glazed with transparent materials which may include #show windows#, transom windows or glazed portions of doors. Such transparent glazing materials shall occupy at least 50 percent of the surface

~~area of such #street wall#, measured between the level of the first finished floor above #curb level# and a height 12 feet above such level.~~

The provisions of this Section, inclusive, are optional, and are only applicable to #zoning lots# located wholly or partially within #flood zones#. The provisions of this Section, inclusive, ~~are optional and~~ may be applied to #zoning lots# containing #flood-resistant buildings#, including #cottage envelope buildings#. For such #zoning lots#, the underlying #use# regulations shall apply, except where permitted to be modified by ~~the allowances of~~ this Section, inclusive.

64-221

Measurement of height

In all districts, as an alternative to measuring heights from #base plane#, #curb level#, or other applicable datum, all height measurements in #flood zones#, including the number of #stories# permitted, as applicable, may be measured from the #reference plane#. However, this provision shall not apply to #signs# not affixed to #buildings or other structures#.

64-222

Ground floor use

[Note: Text moved from Section 64-21 and modified]

In all districts, any applicable ground floor level requirements of this Resolution including, but not limited to, the location of such ground floor in relation to the adjoining sidewalk level, the height of a #qualifying ground floor#, restrictions of types of #use#, the minimum depth for certain #uses#, maximum width for certain #uses#, minimum transparency requirement, and parking wrap and screening requirements, may be modified as follows:

- (a) In locations of the #flood zone# where #flood-resistant construction standards# prohibit dry-flood-proofing, thereby limiting #uses# other than parking, storage and building access from being located below the #flood-resistant construction elevation#, such ground floor level requirements need not apply.
- (b) In all other locations of the #flood zone#, all regulations of this Resolution restricting the location of a ground floor in relation to the adjoining sidewalk level need not apply, provided that all other ground floor level regulations ~~are~~ shall be applied to the lowest #story# above grade that is not solely used for parking, storage or building access, and further provided that the finished floor level of such #story# ~~is~~ shall be located either at or below the level of the #flood-resistant construction elevation# or five feet above #curb level#, whichever is higher. All associated transparency requirements may be measured from such level of the finished floor instead of the level of the adjoining sidewalk.

64-30

SPECIAL BULK REGULATIONS

The provisions of this Section, inclusive, are optional, and ~~may be applied~~ are only applicable to ~~all~~ #zoning lots# located wholly or partially within #flood zones#.

The provisions of Section 64-31 (Special Bulk Regulations for All Buildings), inclusive, may be applied to ~~all~~ #zoning lots# regardless of whether #buildings or other structures# on such #zoning lots# comply with #flood-resistant construction standards#.

The provisions of Section 64-32 (Special Bulk Regulations for Flood-resistant Buildings), inclusive, may be applied to #zoning lots# containing #flood-resistant buildings#, including #cottage envelope buildings#.

The provisions of Section 64-33 (Special Bulk Regulations for Cottage Envelope Buildings), inclusive, may be applied to #zoning lots# with #cottage envelope buildings#.

64-31

Special Floor Area Regulations

Special Bulk Regulations for All Buildings

The provisions of this Section, inclusive, are optional, and are only applicable to #zoning lots# located wholly or partially within #flood zones#. The provisions of this Section, inclusive, ~~are optional, and~~ may be applied to ~~all~~ #zoning lots# regardless of whether #buildings or other structures# on such #zoning lots# comply with #flood-resistant construction standards#. For such #zoning lots#, the underlying #bulk# regulations shall apply, except where permitted to be modified by ~~the allowances of~~ this Section, inclusive.

64-311

~~Entryways in single and two family residences~~

Special floor area modifications for all buildings

[Note: Existing text is deleted and substituted by Section 64-322 (c)]

For ~~#single # and #two family residences#~~ with enclosed entryways below #flood-resistant construction elevation#, up to 10 square feet of such entryway may be excluded from the definition of #floor area# for each foot of difference between the #lowest occupiable floor# and #curb level#. This area may be excluded from the definition of #floor area# provided it is not greater than the total area of ramps, stairs, lifts and elevators between grade and the first finished floor, plus an initial entry area of no more than 12 square feet.

For all #buildings#, the definition of #floor area# in Section 12-10 (DEFINITIONS) shall be modified in accordance with the provisions of this Section.

- (a) Mechanical equipment

[Note: Existing text moved from Section 64-313]

In R1-2A, R2A, R2X, R3, R4 or R5 Districts, the limitations on exempting #floor area# for mechanical equipment set forth in paragraphs (m) and (8) in the definition of #floor area# in Section 12-10 (DEFINITIONS), shall not apply, provided that all mechanical equipment is located at or above the #flood-resistant construction elevation#.

- (b) Flood control devices

In all districts, for every linear foot of protection by temporary flood control devices and associated fixtures, including emergency egress systems that are assembled prior to a storm and removed thereafter, up to 15 square feet of floor space used for the storage of such devices may be excluded from the definition of #floor area#, provided that in no event shall such exempted floor space exceed 1,000 square feet.

(c) Buildings containing non-residential uses#

In #Commercial# and #Manufacturing Districts#, where the permitted #commercial# or #manufacturing floor area ratio# ~~is~~ does not exceed 1.0 ~~or less~~, up to 500 square feet of floor space may be excluded from the definition of #floor area#, provided that:

- (1) the #building# is used exclusively for #non-residential uses#; and
- (2) such floor space is located at or above the #flood-resistant construction elevation#.

64-312

Entryways in all other buildings

Permitted obstructions in required yards, courts, and open spaces for all zoning lots

[Note: Existing text moved to Section 64-322(a) and modified]

~~For all #buildings# other than #single # and #two family residences#, with enclosed publicly accessible entryways below #flood-resistant construction elevation#, up to 100 square feet of such entryways may be excluded from the definition of #floor area# for each foot of difference between the #lowest occupiable floor# and #curb level#. This area may be excluded from the definition of #floor area# provided it is not greater than the total area at each publicly accessible entryway of ramps, stairs, lifts and elevators plus an initial entry area of no more than 100 square feet for each entryway.~~

The regulations for permitted obstructions in #yards#, #courts# and #open space# shall be modified in accordance with the provisions of this Section.

(a) Mechanical equipment

[Note: Text moved from Section 64-421 and modified]

In all districts, the underlying allowances for #accessory# power systems as permitted obstructions in any #open space#, #yard#, #rear yard equivalent#, or #court#, may be expanded to include all #accessory# mechanical equipment, provided that:

- (1) all equipment shall be subject to the following enclosure and screening requirements, as applicable:
 - (i) all power system equipment shall be enclosed within a #building or other structure#, or screened, as applicable, pursuant to the requirements set forth in the applicable underlying district allowances;
 - (ii) all other types of equipment, including all mechanical, electrical and plumbing equipment, shall be completely enclosed within a #building or other structure#, except as necessary for mechanical ventilation; and

(2) the size and location of all #accessory# mechanical equipment, including all screening and enclosures containing such equipment, shall not exceed the size limitations specified in the underlying allowances, except that, where such equipment is elevated above the #flood-resistant construction elevation#, the permitted size and location of such #accessory# mechanical equipment may be modified as follows:

(i) where any equipment is required to be located at least five feet from any #lot line#, such distance may be reduced to three feet for #zoning lots# that have less than the prescribed minimum #lot area# or #lot width# required by the applicable district regulations;

(ii) the maximum height of such permitted obstructions for the applicable district:

(a) may be measured from the #reference plane# instead of the level of the adjoining grade or #curb level#, as applicable; or

(b) for #zoning lots# containing #residences# and a #lot area# greater than or equal to one and one-half acres, may exceed the applicable height limitations, provided that:

(1) such equipment is contained within a #building or other structure# that is located at least 30 feet from any #legally required window#;

(2) any stack associated with heating, ventilation, and air conditioning (HVAC) systems exhausts at a height at least as tall as the tallest #building# containing #residences# on the #zoning lot#; and

(3) such #building or other structure# complies with one point of the streetscape mitigations set forth in Section 64-52 (Ground floor level mitigation options); and

(iii) the maximum area that such equipment may occupy within a required #side yard#, #rear yard# or #rear yard equivalent#, or any #court# containing #legally required windows# need not apply where the height of such obstructions do not exceed the applicable underlying height allowances, as modified by the provisions of paragraph (a)(2)(ii)(a) of this Section.

(b) Berms

In all districts, structural landscaped berms and associated flood gates, including emergency egress systems that are assembled prior to a storm and removed thereafter, shall be permitted obstructions in any required #open space#, #yard# or #rear yard equivalent# on the #zoning lot#, provided that the height of such berm does not exceed the highest #flood-resistant construction elevation# required on the #zoning lot#, or five feet above the lowest adjoining grade, whichever is higher.

(c) Flood control devices

[Note: Text moved from Section 64-323 and modified]

In all districts, temporary flood control devices and associated permanent fixtures, including emergency egress systems that are assembled prior to a storm and removed thereafter shall be permitted obstructions in #yards# and #rear yard equivalents#, #courts#, #open space#, #public plazas#, #arcades#, pedestrian circulation spaces and all other publicly accessible open spaces. However, permanent fixtures for self-standing flood control devices installed in #publicly accessible open areas#, #arcades#, and pedestrian circulation spaces shall be flush-to-grade.

(d) Steps

In all #Residence Districts#, the provisions of paragraph (a)(17) of Section 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) shall be modified to allow steps within a required #yard# or #rear yard equivalent#, provided that such steps access any #story# located at or below the #first story above the flood elevation#.

64-313**Mechanical systems in low density districts****Special height and setback regulations for all buildings**

[Note: Existing text to be deleted and substituted by Section 64-311(a)]

Floor space used for #accessory# mechanical equipment in R1-2A, R2A, R2X, R3, R4 or R5 Districts may be excluded from the definition of #floor area# without the limitations provided in the definition of #floor area#, paragraphs (m) and (8) in Section 12-10 (DEFINITIONS).

[Note: Text moved from Section 64-331 and modified]

The regulations for permitted obstructions to applicable height and setback regulations shall be modified in accordance with the provisions of this Section.

(a) Bulkheads and mechanical equipment in low-density #Residence Districts#

In R3-2, R4, and R5 Districts, except R4-1, R4A, R4B and R5A Districts, for #buildings# other than #single-# and #two-family residences#, the underlying permitted obstructions regulations governing elevator or stair bulkheads (including shafts, and vestibules not larger than 60 square feet in area providing access to a roof), roof water tanks, and #accessory# mechanical equipment, other than solar or wind energy systems, may be modified as follows:

(1) In R3-2 and R4 Districts, for #buildings#, or portions thereof, subject to the provisions of Article II, Chapter 3, the provisions of Section 23-621 (Permitted obstructions in certain districts) shall be modified to permit such obstructions, provided that:

(i) such obstructions shall be located not less than 10 feet from the #street wall# of a #building#;

(ii) all mechanical equipment shall be screened on all sides;

- (iii) the #lot coverage# of all such obstructions and such screening shall not exceed 250 square feet or 10 percent of the #lot coverage# of the #building#, whichever is greater; and
- (iv) such obstructions are limited to a height of 15 feet above the maximum height of perimeter walls;
- (2) In R3-2 and R4 Districts, for #buildings#, or portions thereof, subject to the provisions of Article II, Chapter 4, the provisions of paragraph (f) of Section 24-51 (Permitted Obstructions) shall apply, except that the maximum #lot coverage# may be increased from 20 percent to 30 percent of the #lot coverage# of the #building#, provided that such obstructions are limited to a maximum height of 25 feet;
- (3) In R5 Districts, the provisions of paragraph (g) of Section 23-62 (Permitted Obstructions), and paragraph (f) of Section 24-51 shall apply, as applicable, except that the maximum #lot coverage# may be increased from 20 percent to 30 percent of the #lot coverage# of the #building#, provided that such obstructions are limited to a maximum height of 25 feet.
- (b) Bulkheads and mechanical equipment in medium- and high-density #Residence Districts#, and #Commercial# and #Manufacturing Districts#

[Note: Text moved from Section 64-332 and modified]

In R6 through R10 Districts, and in all #Commercial# and #Manufacturing Districts#, the underlying permitted obstructions regulations of paragraph (g) of Section 23-62, paragraph (f) of Section 24-51, paragraph (f) of Section 33-42, or paragraph (e) of Section 43-42, as applicable, governing elevator or stair bulkheads (including shafts, and vestibules not larger than 60 square feet in area providing access to a roof), roof water tanks, and #accessory# mechanical equipment, other than solar or wind energy systems, may be modified as follows:

- (1) where the maximum permitted height of a #building#, or portion thereof is less than 120 feet:
 - (i) the maximum #lot coverage# may be increased from 20 percent to 30 percent of the #lot coverage# of the #building#, provided that such obstructions are limited to a maximum height of 25 feet; or
 - (ii) the maximum permitted height of such volume may be increased from 25 feet to 33 feet, provided that the #lot coverage# of all such obstructions does not exceed 20 percent of the #lot coverage of the #building#;
- (2) where the maximum permitted height of a #building#, or portion thereof is 120 feet or greater:
 - (i) the maximum #lot coverage# may be increased from 20 percent to a maximum #lot coverage# of 30 percent of the #lot coverage# of the #building#, provided that such obstructions are limited to a maximum height of 40 feet; or
 - (ii) the maximum permitted height of such volume may be increased from 40 feet to 55 feet, provided that the #lot coverage# of all such obstructions does not exceed 20 percent of the #lot coverage of the #building#.
- (c) Dormers

For #Quality Housing buildings#, or portions thereof, as an alternative to the provisions of paragraph (c) of Section 23-621, dormers may be a permitted obstruction within a required front setback distance above a maximum base height, provided that the aggregate width of all dormers at the maximum base height does not exceed 40 percent of the width of the #street wall# of the highest #story# entirely below the maximum base height. Such dormers need not decrease in width as the height above the maximum base height increases.

64-32

Special Yard Regulations**Special Bulk Regulations for Flood-resistant Buildings**

[Note: Existing text to be deleted]

~~The provisions of this Section shall apply without requiring a #building# to comply with #flood-resistant construction standards# as established in paragraph (a) of Section 64-12 (Applicability).~~

The provisions of this Section, inclusive, are optional, and are only applicable to #zoning lots# located wholly or partially within #flood zones#. The provisions of this Section, inclusive, ~~are optional, and~~ may apply to #zoning lots# containing #flood-resistant buildings#, including #cottage envelope buildings#. For such #zoning lots#, the underlying #bulk# regulations shall apply, except where permitted to be modified by ~~the allowances of~~ this Section, inclusive.

64-321

Level of required yards**Measurement of height for flood-resistant buildings**

[Note: Existing text moved to Section 64-323(a) and modified]

~~Underlying #yard# regulations shall be modified to allow #yards# to be higher than #curb level# but in no event higher than #flood-resistant construction elevation#. In addition, the following regulations shall apply:~~

- ~~(a) in #Residence Districts# and C1 through C6 Districts, #yards# higher than #curb level# shall comply with the following standards:~~
 - ~~(1) final grade shall not penetrate a plane that begins 30 inches above #curb level# at each #lot line# and has a slope extending perpendicular to #lot lines# of one foot vertical for each 2.5 feet horizontal;~~
 - ~~(2) retaining walls shall be permitted above #curb level# in #yards# provided the maximum height of each wall above adjacent grade does not exceed 30 inches; and~~
 - ~~(3) in #front yards# in Residence Districts, portions of fences greater than four feet above #curb level# shall be required to be no more than 50 percent opaque; and~~
- ~~(b) in C7 and C8 Districts and in #Manufacturing Districts#, #yards# shall be permitted to a maximum grade equal to #flood-resistant construction elevation#. However, for portions of #zoning lots# where Sections 33-29 and 43-30 (SPECIAL PROVISIONS APPLYING ALONG DISTRICT BOUNDARIES) apply, #yards# are permitted above #curb level# only pursuant to paragraph (a) of this Section.~~

~~Nothing in this Section shall be construed so as to permit the creation of spaces sub-grade on all sides in a manner inconsistent with Appendix G of the Building Code.~~

[Note: Text to replace Sections 64-131, 64-334, 64-335 and 64-336]

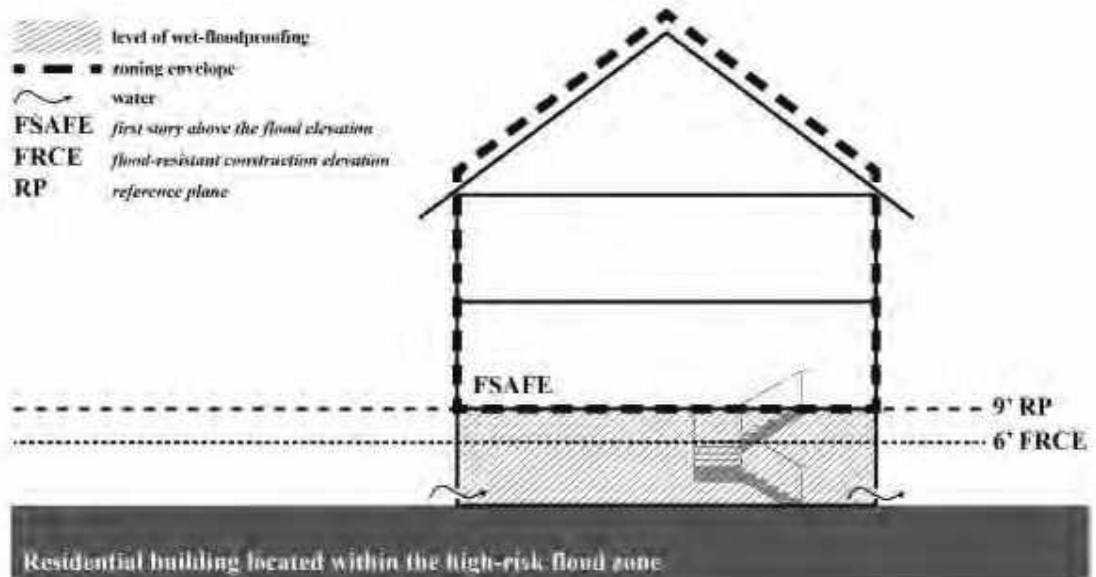
~~In all districts, as an alternative to measuring heights from #base plane# #curb level# or other applicable datum, all height measurements in #flood zones#, including the number of #stories# permitted, as applicable, may be measured from the #reference plane#, except as follows:~~

- ~~(a) for #Quality Housing Buildings#, any minimum base height requirements shall continue to be measured from the #base plane#; and~~
- ~~(b) the provisions of this Section shall not apply:~~
 - ~~(1) to fences or other structures that are not #buildings#; and~~
 - ~~(2) to #buildings# that are #accessory# to #single-# or #two-family residences#, except when mechanical equipment is located within such #building#.~~

Illustrative Examples

~~The following examples, although not part of the Zoning Resolution, are included to demonstrate the application of the optional height regulations available to #zoning lots# in #flood zones#. Specially, the examples illustrate how the defined terms #reference plane#, from which height is measured, relates to the #flood-resistant construction elevation# and the #first story above the flood elevation#. All terms are defined in Section 64-11 (Definitions).~~

EXAMPLE 1

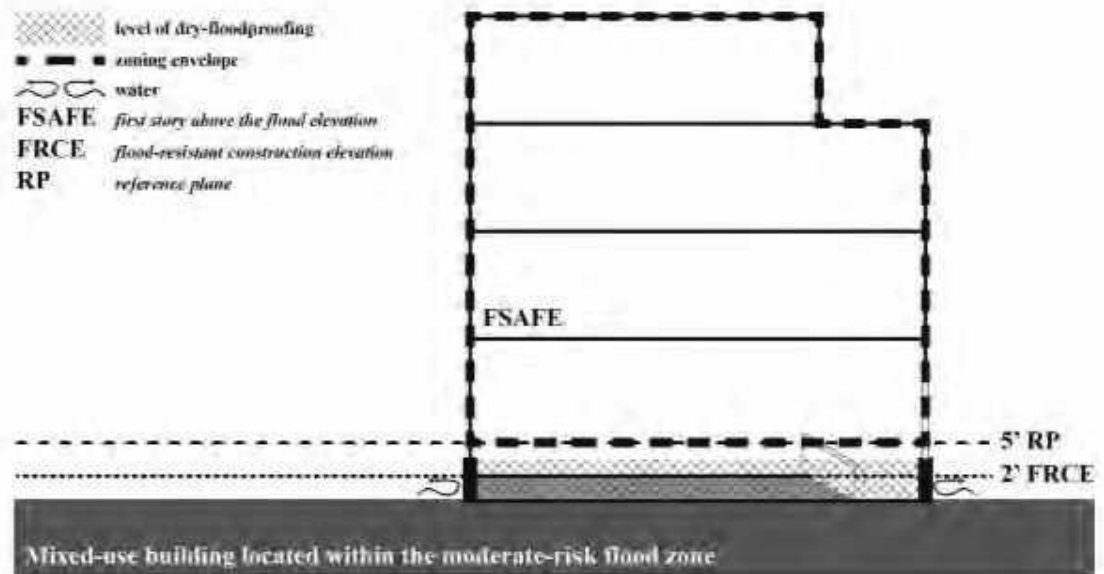


~~A #zoning lot# located within the #high-risk flood zone# has a #flood-resistant construction elevation# (as defined in Section 64-11) that equates to being located six feet above grade (for illustrative purposes). The owner of a #single-family detached residence# would like to elevate the first habitable floor three feet above the #flood-resistant construction elevation# and wet-floodproof the ground floor up to that same level (nine feet above grade) to account for sea level rise projections.~~

~~Pursuant to Section 64-321, height measurements in #flood zones#, including height and setback regulations, may start from the #reference plane#, allowing the owner the necessary flexibility to address long-term climate change. For #zoning lots# located within the #high-risk flood zone#, the #reference plane#, may be established at any level between the #flood-resistant construction elevation# and a height of 10 feet above the #base plane# or #curb level#, as applicable. (Where the #flood-resistant construction elevation# exceeds 10 feet, the #reference plane# may still be established at the #flood-resistant construction elevation#, but that is not the case here.) While there is a level of flexibility built into the #reference plane# definition, the #reference plane# itself must also be located at or below the #first story above flood elevation#.~~

~~Considering the owner of such #single-family detached residence# is proposing to wet-floodproof the ground floor up to nine feet above grade, the #first story above flood elevation# becomes the finished floor level of the first #story# located at or above nine feet, which is, in this case, the second #story#. Therefore, the #reference plane# was able to be situated at that same level (nine feet above grade), but not higher.~~

EXAMPLE 2



~~A #zoning lot# located within the #moderate-risk flood zone# has a #flood-resistant construction elevation# (as defined in Section 64-11) of two feet above the lowest grade~~

adjacent to the #building or other structure#. The owner of a #mixed building# that was flooded during Hurricane Sandy, would like to proactively comply with #flood-resistant construction standards# to be better prepared in the event of a future storm. To realize that, the owner decided to elevate the ground floor with a #commercial use# to the #flood-resistant construction elevation#, and dry-floodproof one foot above that for extra safety.

Pursuant to Section 64-321, height measurements in #flood zones#, including height and setback regulations, may start from the #reference plane#, allowing the owner the necessary flexibility to address long-term climate change. For #zoning lots# located within the #moderate-risk flood zone#, the #reference plane# may be established at any level between the #flood-resistant construction elevation# and a height of five feet above the #base plane# or #curb level#, as applicable. While there is a level of flexibility built within the #reference plane# definition, the #reference plane# must also be located at or below the #first story above flood elevation#.

Considering that the owner of such #mixed building# is proposing to elevate and dry-floodproof the ground floor up to three feet above grade, the #first story above flood elevation# becomes the finished floor level of the first #story# located at or above three feet, which is, in this case, the second #story#. Therefore, the #reference plane# was able to be situated at five feet above the #base plane# or #curb level#, as applicable.

64-322

Permitted obstructions in required yards, courts and open spaces **Special floor area modifications for flood-resistant buildings**

[Note: Existing paragraph (a) is modified in paragraph (b) of Section 64-323]

[Note: Existing paragraph (b) is substituted by Sections 23-12(j), and 23-44(a)(16)]

[Note: Existing paragraph (c) moved to Section 64-312(a) and modified]

- (a) ~~For #single # and #two family residences#, where #flood resistant construction elevation# is five feet or more above #curb level#, roofed porches shall be permitted obstructions in any #open space# required on the #zoning lot# and in #yards#. Balconies for such #residences# may exceed the width and depth standards of Section 23-13 where such balconies are located directly above a porch.~~
- (b) ~~For #single # and #two family residences#, lifts for persons with disabilities shall be permitted obstructions in any #open space# required on the #zoning lot# and in #courts#, #yards# and #rear yard equivalents#, provided that in #front yards#, such lifts are unenclosed.~~
- (c) ~~For all #buildings#, except #single # and #two family residences#, #accessory# mechanical equipment shall be a permitted obstruction in #rear yards# and #rear yard equivalents#, provided that such equipment is:~~
 - (1) ~~located above #flood-resistant construction elevation#;~~
 - (2) ~~enclosed within a #building#, or portion thereof, or within a #structure# that provides screening of such mechanical equipment on all sides by walls consisting of at least 50 percent opaque materials;~~

- (3) ~~in R3, R4 or R5 Districts, limited to a height of 10 feet above #flood-resistant construction elevation#, including the apex of a pitched roof;~~
- (4) ~~in R6, R7, R8, R9 or R10 Districts, limited to a height of 14 feet above #flood-resistant construction elevation#; or~~
- (5) ~~in #Commercial# or #Manufacturing Districts#, limited to a height of 23 feet above #flood-resistant construction elevation#.~~

~~#Accessory# mechanical equipment located in #rear yards# or #rear yard equivalents# and meeting the standards of this Section shall be a permitted obstruction in any #open space# required on the #zoning lot#, provided that the total area occupied by a #building# used for both enclosed parking and such mechanical equipment does not exceed 20 percent of the total required #open space# on the #zoning lot#.~~

~~Decks, parapet walls, roof thickness, skylights, vegetated roofs, and weirs, as set forth in Section 23-62 (Permitted Obstructions), and solar energy systems, limited to 18 inches in height, as measured perpendicular to the roof surface, shall be permitted upon the roof of such #accessory building# within the #rear yard# or #rear yard equivalent#.~~

For all #flood-resistant buildings#, the definition of #floor area# may be modified in accordance with the provisions of this Section.

(a) Entryways

[Note: Text moved from Section 64-312 and modified]

In all districts, for #buildings# other than #residential buildings# with enclosed entryways below the #first story above the flood elevation#, up to 100 square feet of such entryways may be excluded from the definition of #floor area# for each foot of difference between the #first story above the flood elevation# and the level of the adjoining sidewalk, provided such floor space complies with the #flood-resistant construction standards# for dry-flood-proofing up to the #flood-resistant construction elevation# or higher. However, no more than a maximum of 500 square feet may be excluded from the definition of #floor area# for each entryway.

Such exempted floor space shall be considered #floor area# for the purposes of satisfying other ground floor #use# regulations of this Resolution, including, but not limited to, limitations on #floor area# for certain #uses#, parking wrap and screening requirements, and requirements for #floor area# at the ground floor.

(b) Modifications to attic allowances for #residential buildings#

In R2X, R3, R4, R4A, and R4-1 Districts outside of #lower density growth management areas#, the provisions of paragraph (a) of Section 23-142 (Open space and floor area regulations in R1 and R2 Districts with a letter suffix and R3 through R5 Districts) shall be modified to allow the #floor area ratio# set forth in the table of such Section to be exceeded by 20 percent provided that any such increase in #floor area# is located in any portion of a #building# covered by a sloping roof that rises at least three and one-half inches in vertical distance for each foot of horizontal distance.

(c) Flood-proofed ground floors

[Note: Text moved from Section 64-411 and modified]

- (1) For #buildings# along #primary street frontages#, or portions thereof, as defined in Section 64-11, floor space located below the #first story above the flood elevation# and within 30 feet of the #street wall# along such ~~“primary street frontage”~~ #primary street frontage# may be excluded from the calculation of #floor area#, provided that:
- (i) such floor space complies with the #flood-resistant construction standards# for dry-flood-proofing up to the #flood-resistant construction elevation# or higher;
 - (ii) the level of the finished floor of such floor space is located no more than two feet above nor two feet below #curb level#;
 - (iii) such floor space shall be limited to #non-residential uses# other than #accessory# parking or #public parking garages# and subject to the minimum depth requirements set forth in Section 37-32 (Ground Floor Depth Requirements for Certain Uses);
 - (iv) #ground floor level street walls# shall be glazed in accordance with the provisions set forth in Section 37-34 (Minimum Transparency Requirements); and
 - (v) for #developments#, the level of the #first story above the flood elevation# is 13 feet or more above the level of the adjoining sidewalk.

However, such floor space shall be considered #floor area# for the purposes of satisfying other ground floor #use# regulations of this Resolution, including, but not limited to, limitations on #floor area# for certain #uses#, parking wrap and screening requirements, and requirements for non-#residential floor area# at the ground floor.

- (2) In all districts, floor space located below the #first story above the flood elevation# may be excluded from the calculation of #floor area# provided such floor space complies with the #flood-resistant construction standards# for wet-flood-proofing up to the #flood-resistant construction elevation# or higher.

- (d) #Floor area# for existing #buildings#

For #zoning lots# containing #buildings# existing prior to [date of adoption], as an alternative to the #floor area# regulations of this Chapter, the amount of #floor area# allocated to a #basement# or #cellar# in such existing #building# may be determined in accordance with how those terms were defined prior to [date of adoption].

64-323

Flood panels in required yards and open space

Special regulations for required yards and open spaces for zoning lots with flood-resistant buildings

[Note: Existing text moved to Section 64-312(c) and modified]

~~Temporary flood control devices and associated emergency egress systems that are assembled prior to a storm and removed thereafter shall be permitted obstructions in #yards# and #rear yard equivalents#, #courts#, #open space#, #waterfront yards# as defined in Article VI, Chapter 2, #public plazas# and all other publicly accessible open areas during such storm event and for a reasonable period prior to and after such storm event, as determined by the Department of Buildings.~~

For all #zoning lots# with #flood-resistant buildings#, the regulations for #yards# and #open space# shall be modified in accordance with the provisions of this Section.

(a) Level of required yards

[Note: Text moved from Section 64-321 and modified]

In all districts, the underlying #yard# regulations shall be modified to allow the level of a #yard# or a #rear yard equivalent# to be located higher than #curb level#, provided that it does not exceed the #flood-resistant construction elevation#, and the level set forth by the following regulations:

- (1) in #Residence Districts#, the final grade of #front yards# and #side yards# shall not penetrate a plane that begins three feet above #curb level# at each #lot line# and has a slope extending perpendicular to #lot lines# of one foot vertical for each 2 feet 6 inches of horizontal distance;
- (2) in #Commercial# and in #Manufacturing Districts#, for portions of #zoning lots# where Sections 33-29 and 43-30 (SPECIAL PROVISIONS APPLYING ALONG DISTRICT BOUNDARIES) apply, the level of #front yards# and #side yards# may be permitted to exceed #curb level# only pursuant to paragraph (a)(1) of this Section.

Nothing in this Section shall be construed so as to permit the creation of spaces below grade on all sides in a manner inconsistent with #flood-resistant construction standards#.

(b) Permitted obstructions

[Note: Text moved from Section 64-322 (a) and modified]

(1) Covered porches, balconies, and covered access areas

In all districts, a porch or access area covered by a roof or other permanent structure shall be permitted obstructions in any required #open space# or #yard# on the #zoning lot#. Where permanent structures such as balconies are located directly above a porch or access area, such balconies may exceed the width and depth standards of Section 23-13 (Balconies).

(2) Retaining walls

In #Residence Districts#, retaining walls shall be permitted in #front yards# and #side yards# provided any retaining wall parallel to, or within 15 degrees of being parallel to, the #street# shall not exceed a maximum height of three feet, as measured from the level of the adjoining grade or planted area below such wall, so that no more than three feet of such retaining wall is visible from the #street#; and

(3) Fences

In #Residence Districts#, portions of fences located in #front yards# with height greater than four feet above #curb level# shall be required to be no more than 50 percent opaque.

(c) Front yard planting requirement

[Note: Text moved from Section 64-422 and modified]

In R1 through R5 Districts, where the distance between the #street wall# and the #street line# is 10 feet or less, or for #zoning lots# with #front yards# that are shallower than the minimum required pursuant to the applicable district regulations, stairs, ramps or lifts that access the #first story above the flood elevation# shall be exempted from the area of a #front yard# for the purpose of calculating the planting requirements of Section 23-451 (Planting requirement).

64-324**Street wall location for flood-resistant buildings**

[Note: Text to replace Section 64-333]

For all #buildings#, where the #street wall# location regulations of this Resolution require the #street wall# to be located within eight feet of the #street line#, such regulations may be modified to accommodate exterior stairs and ramps for access to the #building#, to comply with the requirements of Section 64-50 (Streetscape Regulations), or to provide temporary flood control devices and associated fixtures, as follows:

- (a) no #street wall# need be located closer to the #street line# than eight feet;
- (b) for #buildings# on #zoning lots# with a #lot width# greater than or equal to 50 feet, up to 50 percent of the #aggregate width of street walls# may be recessed beyond eight feet of the #street line#, provided that any such recesses deeper than 10 feet along a #wide street# or 15 feet along a #narrow street# are located within an #outer court# and the height of such recess shall not be less than the height of the first #story# located completely above the level of the adjoining grade; and
- (c) for #buildings# on #zoning lots# with a #lot width# of less than 50 feet:
 - (1) for the first #story# above the #flood-resistant construction elevation#, or #reference plane#, as applicable, and any #street wall# below such first #story#, the #aggregate width of street wall# may be located anywhere; and
 - (2) for the remaining #aggregate width of street walls# above such #stories#, up to 50 percent of the #aggregate width of street walls# may be recessed beyond eight feet of the #street line#, provided that any such recesses deeper than 10 feet along a #wide street# or 15 feet along a #narrow street# are located within an #outer court#.

For all #buildings# where the aggregate width of exterior stairs, ramps, or elevated platforms in front of a #street wall# exceeds 70 percent or more along the ground floor of the #street wall#, such stairs, ramps, or elevated platforms shall be screened by living plant material or by the provisions of paragraph (b)(1) of Section 64-521 (Options available for all buildings).

64-33**Special Height and Setback Regulations****Special Bulk Regulations for Cottage Envelope Buildings**

[Note: Text moved from Section 64-A30 and modified]

The provisions of this Section, inclusive, are optional, and are only applicable to #zoning lots# located wholly or partially within #flood zones#. The provisions of this Section, inclusive, ~~are optional, and~~ may be applied to

#zoning lots# with #cottage envelope buildings#. For such #zoning lots#, the underlying #bulk# regulations shall apply, except where permitted to be modified by ~~the allowances of~~ this Section, inclusive.

No #building# that utilizes the provisions of this Section shall subsequently be #enlarged# pursuant to Section 73-622 (Enlargements of single- and two-family detached and semi-detached residences).

64-331

Permitted obstructions for multi-family buildings in R3-2 and R4 Districts **Modifications to the attic allowance for cottage envelope buildings**

[Note: Existing text moved to Section 64-313(a) and modified]

~~The provisions of this Section shall apply without requiring a #building# to comply with #flood-resistant construction standards# as established in paragraph (a) of Section 64-12 (Applicability).~~

~~In R3-2 and R4 Districts, for all #buildings#, or portions thereof, subject to Section 23-60 (HEIGHT AND SETBACK REGULATIONS), except #single # and #two family residences#, elevator or stair bulkheads (including shafts, and vestibules not larger than 60 square feet in area providing access to a roof), roof water tanks and #accessory# mechanical equipment (including enclosures), other than solar or wind energy systems, shall be considered permitted obstructions to height and setback regulations, provided that:~~

- ~~(a) — such obstructions shall be located not less than 10 feet from the #street wall# of a #building#;~~
- ~~(b) — all mechanical equipment shall be screened on all sides;~~
- ~~(c) — the #lot coverage# of all such obstructions and screening does not exceed 250 square feet or 10 percent of the #lot coverage# of the #building#, whichever is greater; and~~
- ~~(d) — such obstructions are limited to a height of 15 feet above the maximum height of perimeter walls.~~

[Note: Text moved from Section 64-A312 and modified]

R3 R4A R4-1

In #lower density growth management areas# in the districts indicated, the provisions of paragraph (b) of Section 23-142 (Open space and floor area regulations in R1 and R2 Districts with a letter suffix and R3 through R5 Districts) shall be modified to allow the #floor area ratio# set forth in the table of such Section to be exceeded by 20 percent, provided that any such increase in #floor area# is located in any portion of a #cottage envelope building# covered by a sloping roof that rises at least three and one-half inches in vertical distance for each foot of horizontal distance.

64-332

Permitted obstructions for buildings in medium and high density districts **Special regulations for required yards, courts and open spaces on zoning lots with cottage envelope buildings**

[Note: Existing text moved to Section 64-313 (b) and modified]

~~The provisions of this Section shall apply without requiring a #building# to comply with #flood-resistant construction standards# as established in paragraph (a) of Section 64-12 (Applicability).~~

~~In R5 through R10 Districts, and in all #Commercial# and #Manufacturing Districts#, for all #buildings#, the underlying regulations governing permitted obstructions to height and setback shall be modified to increase the permitted volume for elevator or stair bulkheads (including shafts, and vestibules not larger than 60 square feet in area providing access to a roof), roof water tanks and #accessory# mechanical equipment (including enclosures), other than solar or wind energy systems, from a maximum #lot coverage# of 20 percent of the #lot coverage# of the #building# to a maximum #lot coverage# of 30 percent of the #lot coverage# of the #building#, provided that where the maximum permitted height of a #building# is less than 120 feet, such obstructions are limited to a maximum height of 25 feet, and where the maximum permitted height of a #building# is 120 feet or greater, such obstructions are limited to a maximum height of 40 feet.~~

R1 R2 R3 R4 R5

In the districts indicated, for #zoning lots# containing #cottage envelope buildings#, the following #yards#, #courts# and #open space# regulations may be modified in accordance with the provisions of this Section.

(a) Lot Coverage and Open Space**[Note: Text moved from Section 64-A311 and modified]**

In R1-2A, R2A, R3-1, R3-2, R4, R4-1, and R4A Districts, the #lot coverage# and #open space# regulations need not apply. In lieu thereof, the #yard# requirements of this Section shall apply.

(b) Front Yards**[Note: Text to replace Section 64-A351]**

For #buildings# that are utilizing the provisions of this paragraph, the provisions of paragraphs (b) and (c) of Section 23-45 (Minimum Required Front Yards) need not apply.

For the purpose of this Section, the area between the #street line# and the #street wall line# of adjacent #buildings# containing #residences# on the same or adjoining #zoning lots# fronting on the same #street# shall be considered adjacent #front yards#.

Where an adjacent #front yard# is shallower than the minimum required pursuant to the applicable district regulations, then the #front yard# of the #zoning lot# containing #cottage envelope buildings# may be as shallow as the shallowest adjacent #front yard#.

(c) Side Yards**[Note: Text moved from Section 64-A352 and modified]**

The #side yard# provisions for the applicable district shall apply, except that the required total width of #side yards# for a #zoning lot# may be reduced by four inches for each foot by which the width of a #zoning lot# is less than the minimum widths set forth in the definition of #cottage envelope building#

in Section 64-11 (Definitions). However, in no event shall the required width of a #side yard# be less than three feet.

In addition, for #buildings# utilizing the provisions of this paragraph, the provisions of paragraph (c) of Section 23-461 (Side yards for single- or two-family residences) need not apply, provided such open area does not serve as access or contain #accessory# off-street parking spaces serving existing #buildings# that remain on the #zoning lot#, or an adjoining #zoning lot#.

(d) Rear Yards

[Note Text moved from Section 64-A353 and modified]

- (1) Where an #interior lot# is less than 95 feet deep at any point, the depth of a required #rear yard#, or portion thereof, for such #interior lot#, may be reduced by six inches for each foot by which the depth of a #zoning lot#, or portion thereof, is less than 95 feet. However, in no event shall the minimum depth of a #required rear yard#, or portion thereof, be reduced to less than 10 feet.
- (2) Where a #through lot# is less than 180 feet deep at any point, the depth of a required #rear yard equivalent#, or portion thereof, for such #through lot#, may be reduced by one foot for each foot by which the depth of a #zoning lot#, or portion thereof, is less than 180 feet. However, in no event shall the minimum depth of a required #rear yard equivalent#, or portion thereof, be reduced to less than 20 feet.

(e) Corner Lots

[Note: Text moved from Section 64-A354 and modified]

Where a #corner lot# has a #lot area# equal to or less than 3,000 square feet, only one #front yard# need be provided, and the remaining #front lot line# may be treated as a #side lot line#.

64-333

Street wall location in certain districts

Height and setback regulations for cottage envelope buildings

[Note: Existing text to be replaced by Section 64-324]

~~The provisions of this Section shall apply without requiring a building to comply with flood-resistant construction standards as established in paragraph (a) of Section 64-12 (Applicability).~~

~~In all districts, where underlying street wall location regulations require the ground floor of a street wall to extend along the entire street frontage of a zoning lot and be located on the street line, such regulations are modified as follows:~~

- ~~(a) — recesses, not to exceed five feet in depth from the street line, shall be permitted on the ground floor where required to provide access to the building; and~~
- ~~(b) — up to 30 percent of the aggregate width of street walls may be recessed beyond the street line, provided any such recesses deeper than 10 feet along a wide street, or 15 feet along a narrow street, are located within an outer court. However, no recesses shall be permitted within 30 feet of the intersection of two street lines.~~

[Note: Text moved from Section 64-A36 and modified]

R1 R2 R3 R4 R5

In the districts indicated, all #cottage envelope buildings# shall be subject to the height and setback provisions set forth in paragraph (b) of Section 23-631 (General provisions), except that:

- (a) the maximum height of a perimeter wall of a #cottage envelope building# before setback shall be 21 feet;
- (b) the maximum height of a ridge line shall be 25 feet; and
- (c) all heights may be measured from the #reference plane#.

In addition, the maximum number of #stories# in any #cottage envelope building# shall not exceed two #stories# above the #reference plane#. For the purposes of this Section, attic space providing structural headroom of less than eight feet shall not be considered a #story#.

~~64-334~~

~~Alternative height measurement for single and two family residences~~

[Note: Existing text to be deleted and substituted by Sections 64-221 and 64-321]

R1 R2 R3 R4 R5

~~In the districts indicated, as an alternative to Section 64-131 (Measurement of height), for #single # and #two-family residences# where #flood resistant construction elevation# is between six and nine feet above #curb level#, #building# height may be measured from a reference plane nine feet above #curb level#, provided that at least two mitigating elements are provided from the list in Section 64-61 (Design Requirements for Single and Two family Residences).~~

~~64-335~~

~~Alternative height measurement for other buildings in Residence Districts~~

[Note: Existing text to be deleted and substituted by Sections 64-221 and 64-321]

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

~~In the districts indicated, as an alternative to Section 64-131 (Measurement of height), for all #buildings# other than #single # and #two-family residences#, where #flood resistant construction elevation# is between five and 10 feet above #curb level#, #building# height may be measured from a reference plane 10 feet above #curb level#, and any minimum base height requirements may be measured from #curb level#. Where the provisions of this Section are utilized, the standards of Section 64-622 (Lobby or non-residential use) shall be met.~~

64-336

Alternative height measurement in Commercial and Manufacturing Districts

[Note: Existing text to be deleted and substituted by Sections 64-221 and 64-321]

C1 C2 C3 C4 C5 C6

- (a) — In the districts indicated, as an alternative to Section 64-131 (Measurement of height), for all ~~#residential buildings# other than #single# and #two-family residences#, where #flood-resistant construction elevation# is between five and 10 feet above #curb level#, #building# height may be measured from a reference plane 10 feet above #curb level#, and any minimum base height requirements may be measured from #curb level#. Where the provisions of this Section are utilized, the standards of Section 64-622 (Lobby or non-residential use) shall be met.~~

C1 C2 C3 C4 C5 C6 C7 C8 M1 M2 M3

- (b) — In the districts indicated, as an alternative to Section 64-131, for all ~~#buildings# other than #residential buildings# and #buildings# containing #predominantly# Use Group 16, 17 or 18 #uses#, where #street walls# are within 50 feet of a #street line# and #flood-resistant construction elevation# is between five and 12 feet above #curb level#, #building# height may be measured from a reference plane 12 feet above #curb level#, and any minimum base height requirements may be measured from #curb level#. Where the provisions of this Section are utilized, the standards of Section 64-642 (Transparency requirements for buildings utilizing alternative height measurement) shall be met.~~

64-40

**SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012
SPECIAL PARKING REGULATIONS**

[Note: Existing text to be deleted]

The following provisions shall apply to ~~#buildings# existing on October 28, 2012, and to the reconstruction of such #buildings#.~~

[Note: Text moved from Section 64-50 and modified]

The underlying parking regulations of this Resolution may be modified in accordance with the provisions of this Section inclusive. The provisions of this Section, inclusive, are optional, and ~~may be applied~~ are only applicable to ~~all~~ #zoning lots# located wholly or partially within #flood zones#.

The provisions of Section 64-41 (Special Parking Regulations for All Buildings), inclusive, may be applied to ~~all~~ #zoning lots# regardless of whether #buildings or other structures# on such #zoning lots# comply with #flood-resistant construction standards#.

The provisions of Section 64-42 (Special Parking Regulations for Flood-resistant Buildings), inclusive, may be applied to #zoning lots# containing #flood-resistant buildings#, including #cottage envelope buildings#.

64-41

**Special Floor Area Regulations for Buildings Existing on October 28, 2012
Special Parking Regulations for All Buildings**

The provisions of this Section, inclusive, are optional, and are only applicable to #zoning lots# located wholly or partially within #flood zones#. The provisions of this Section, inclusive ~~are optional and~~ may apply to ~~all~~ #zoning lots# regardless of whether #buildings or other structures# comply with #flood-resistant construction standards#. For such #zoning lots#, the underlying parking regulations shall apply, except where permitted to be modified ~~by the allowances of~~ this Section, inclusive.

64-411

**Floors below the flood-resistant construction elevation
For residential buildings with below-grade parking**

[Note: Existing text moved to Section 64-321(c) and modified]

(a) — Dry flood-proofing

In C1 and C2 Districts mapped within R1 through R6 Districts, and in C3, C4-1, C4-2 and C4-3 Districts, where the level of any finished floor above adjacent grade that existed on October 28, 2012, is below #flood-resistant construction elevation#, such floor space may be exempted from the definition of #floor area# provided that such floor space, as well as any space below such floor space, complies with the #flood-resistant construction standards# for dry flood-proofing. The certificate of occupancy, if required, shall note that such floor space has been dry flood proofed and must comply with the provisions of Appendix G of the New York City Building Code, and that the number of #dwelling units# or #rooming units# shall be limited to no more than the number existing on October 28, 2012.

In addition, the following provisions shall apply:

- (1) — such floor space exempted from the definition of #floor area# shall not exceed 10,000 square feet;
- (2) — such floor space exempted from the definition of #floor area# shall be used for a #community facility use# or #commercial use# permitted by the underlying zoning district;
- (3) — no floor space shall be exempted if parking spaces within such #building# are located within 30 feet of the #street wall#; and
- (4) — the #building# shall contain no more #dwelling units# or #rooming units# than existed on October 28, 2012.

(b) — Wet flood-proofing

This paragraph shall not apply to #buildings# containing non #residential uses# where the #flood-resistant construction elevation# is less than two feet above the level of the first finished floor above #curb level#.

Where the level of any finished floor above adjacent grade that existed on October 28, 2012, is below #flood-resistant construction elevation#, such floor space may be exempted from the definition of #floor area# provided that such floor space, as well as any space below such floor space, complies with the #flood-resistant construction standards# for wet flood-proofing. The certificate of occupancy, if required, shall note that such floor space has been wet flood proofed and must comply with the provisions of Appendix G of the Building Code.

~~The #floor area# which has been flood-proofed pursuant to the provisions of this Section need not be rebuilt prior to sign-off by the Department of Buildings or issuance of a certificate of occupancy for such alteration to the flood-proofed floor space in order for such #floor area# to be preserved as long as an application for construction documents for the reconstruction of such #floor area# has been approved by the Department of Buildings prior to the issuance of such sign-off or certificate of occupancy for the alteration associated with the flood-proofing. Such construction documents shall acknowledge that the #non-complying floor area# is being preserved and shall depict its use within the same #building# in a manner complying with #flood-resistant construction standards#.~~

[Note: Text moved from Section 64-51 and modified]

R1 R2 R3 R4 R5

In the districts indicated, other than R4B and R5B Districts, where existing below-grade off-street parking facilities within #residential buildings# are eliminated and, in compliance with #flood-resistant construction standards#, are filled in, #accessory# off-street parking spaces may be relocated from such garages to the side or rear of such #buildings#, or to the #front yard# driveway that accessed the former garage, or to a shared driveway along a common #side lot line#, and such relocated parking spaces need not comply with the underlying parking location, curb cut spacing or permitted obstruction regulations that limit parking, provided that:

- (a) no more than two parking spaces may be located in tandem (one behind the other);
- (b) each relocated parking space shall have a dimension that conforms with the minimums set forth in Section 25-62 (Size and Location of Spaces); and
- (c) where eliminated garages were accessed by a driveway less than 18 feet long, such driveway and curb cut shall be eliminated, and the former driveway planted to the extent necessary to comply, or increase compliance, with the provisions of Section 23-451 (Planting requirement) as if the #building# on the #zoning lot# was constructed after April 30, 2008.

Notwithstanding the modifications above, no modification to the maximum number of curb cuts on a #zoning lot# or the minimum or maximum width of a curb cut, shall be permitted.

In the event that there is no way to arrange relocated required parking spaces on the #zoning lot# in compliance with the provisions of this Section, given that #buildings# existing on [date of adoption] will remain, the Commissioner of Buildings may waive the requirement for such spaces.

64-412

Lowest story of a residential building Surfacing

[Note: Existing text to be deleted]

~~In all districts, where the #floor area# of a #single# or #two-family residence# existing on October 28, 2012, did not include the lowest #story# because such #story# complied with the criteria set forth in paragraph (9) of the definition of "floor area" in Section 12-10, any space used for dwelling purposes within such #story# shall continue to be exempt from the definition of #floor area#, notwithstanding such criteria, provided such #story# is elevated or reconstructed at or above the #flood-resistant construction elevation#.~~

[Note: Text moved from Section 64-53 and modified]

R1 R2 R3 R4 R5

In the districts indicated, Section 25-65 (Surfacing) may be modified to allow dustless gravel on all open off-street parking spaces and on portions of driveways beyond the #front lot line# that access #single-# or #two-family residences# on a #zoning lot#.

64-42

Yards, Courts and Open Space for Buildings Existing on October 28, 2012
Special Parking Regulations for Flood-resistant Buildings

The provisions of this Section, inclusive, are optional, and are only applicable to #zoning lots# located wholly or partially within #flood zones#. The provisions of this Section, inclusive, ~~are optional, and~~ may apply to #zoning lots# containing #flood-resistant buildings#.

64-421

Permitted obstructions
Parking modifications

[Note: Existing text moved to Section 64-312(a) and modified]

~~The provisions of this Section shall apply without requiring a #building# to comply with #flood-resistant construction standards# as established in paragraph (a) of Section 64-12 (Applicability).~~

(a) ~~For existing #single # and #two family residences#, and for the reconstruction of such #residences#, mechanical equipment including but not limited to #accessory# heating and cooling equipment and emergency generators, shall be permitted obstructions in #open space# required on the #zoning lot#, in any #side yard#, #rear yard# or #rear yard equivalent#, and in #courts#, provided such equipment is:~~

- ~~(1) — located above #flood-resistant construction elevation#; and~~
- ~~(2) — located at least five feet from any #lot line#; and~~
- ~~(3) — screened on all sides by walls consisting of at least 50 percent opaque materials; and~~
- ~~(4) — in compliance with the standards of either paragraph (a)(5) or (a)(6) of this Section; and~~
- ~~(5) — the mechanical equipment and all structure and screening are located no more than seven feet from the wall of a #building# and limited to a height of no more than 10 feet above #flood-resistant construction elevation#; or~~
- ~~(6) — the mechanical equipment is located within a detached garage or on the roof of a detached garage, provided that:~~
 - ~~(i) — where covered by a sloping roof that rises at least seven inches in vertical distance for each foot of horizontal distance, no portion of the roof shall exceed a height of 14 feet above the adjoining grade, measured to the midpoint of a sloping roof; or~~
 - ~~(ii) — for all other conditions, no portion of the garage, screening or the mechanical equipment shall exceed a height of 12 feet above the adjoining grade.~~

- (b) ~~For existing #buildings#, except #single # and #two family residences#, #accessory# mechanical equipment shall be permitted obstructions in #courts# and #open space#, provided such equipment is:~~
- (1) ~~located above #flood-resistant construction elevation#;~~
 - (2) ~~within a #structure# that provides screening of such mechanical equipment on all sides by walls consisting of at least 50 percent opaque materials;~~
 - (3) ~~limited to a height established in Section 64-322 (Permitted obstructions in required yards, courts and open space), paragraph (c), for mechanical equipment as permitted obstructions in a #rear yard#; and~~
 - (4) ~~located at least 30 feet from any #legally required window#.~~
- (e) ~~For existing #buildings#, except #single # and #two family residences#, lifts for persons with disabilities, where permitted pursuant to provisions of the New York City Building Code, shall be permitted obstructions in #yards#, #courts# and #open space#.~~

[Note: Text moved from Section 64-52 and modified]

R1 R2 R3 R4 R5

In the districts indicated, except R4B and R5B Districts, the provisions of this Section shall apply to #zoning lots# containing #single-# or #two-family residences#. For such #zoning lots#, where off-street parking spaces are required pursuant to Section 25-20 (REQUIRED ACCESSORY OFF-STREET PARKING SPACES FOR RESIDENCES) inclusive, the underlying parking regulations may be modified as follows:

- (a) the regulations governing parking location, curb cut location, or permitted obstruction that limit parking need not apply, provided that all parking spaces are either located beneath the #first story above the flood elevation# within #buildings# or driveways directly in front of a garage opening. Such spaces shall have a dimension that conforms with the minimums set forth in Section 25-62 (Size and Location of Spaces). However, within #lower density growth management areas# the provisions of paragraph (c) of Section 25-632 (Driveway and curb cut regulations in lower density growth management areas) shall continue to apply; and
- (b) the underlying curb cut spacing regulations for #zoning lots# existing on [date of adoption] with a frontage of less than 35 feet along a #street# need not apply, provided that at least four feet of curb space is provided between a new curb cut and an existing curb cut on the same or an adjacent #zoning lot#.

Notwithstanding the modifications above, no modification to the maximum number of curb cuts on a #zoning lot# or the minimum or maximum width of a curb cut, shall be permitted.

All #zoning lots# utilizing this Section shall comply with the provisions of Section 23-451 (Planting requirement) as if the #building# on the #zoning lot# was constructed after April 30, 2008.

64-422

Front yard planting requirement

[Note: Existing text moved to Section 64-322(c) and modified]

R1 R2 R3 R4 R5

~~In the districts indicated, the provisions of Section 23-451 (Planting requirement) are modified for existing #buildings#, where the distance between the #street wall# and the #street line# is six feet or less, to allow stairs, ramps or lifts that access the #lowest occupiable floor# to be counted as planted area for the purposes of fulfilling the requirements of such provisions.~~

~~64-43~~

~~Special Height and Setback Regulations for Buildings Existing on October 28, 2012~~

~~64-431~~

~~For existing single and two family residences~~

[Note: Existing text to be deleted]

~~#Single # and #two family residences# existing on October 28, 2012, may be vertically elevated, or reconstructed to a higher elevation, in order to raise the lowest floor level containing habitable space, located at or above the adjoining grade as of October 28, 2012, to #flood resistant construction elevation#, and in so doing so, may create a #non-compliance# as to height and setback to the extent that such lowest floor level is elevated or reconstructed to #flood resistant construction elevation#.~~

~~Where the elevation requirements of Appendix G of the New York City Building Code apply to the lowest horizontal structural member, #single # and #two family residences# existing on October 28, 2012, may be vertically elevated, or reconstructed to a higher elevation, in order to raise the lowest horizontal structural member supporting the lowest floor containing habitable space, located at or above the adjoining grade as of October 28, 2012, to #flood resistant construction elevation#, and in so doing so, may create a #non-compliance# as to height and setback to the extent that such lowest horizontal structural member is elevated or reconstructed to #flood resistant construction elevation#.~~

~~This Section shall not preclude the construction of complying #enlargements# or other complying structures on the #zoning lot#.~~

~~#Buildings# that were complying on October 28, 2012, and vertically elevated or reconstructed to a higher elevation, pursuant to this Section, shall be considered legal #non-complying buildings#.~~

~~64-432~~

~~Permitted obstructions for certain existing buildings~~

[Note: Existing text to be deleted]

~~The provisions of this Section shall apply without requiring a #building# to comply with #flood resistant construction standards# as established in paragraph (a) of Section 64-12 (Applicability).~~

~~In R5 through R10 Districts, and in #Commercial# and #Manufacturing Districts#, for all existing #buildings#, the regulations for permitted obstructions to height and setback regulations shall be modified to increase the permitted volume for elevator or stair bulkheads (including shafts, and vestibules not larger than 60 square feet in area providing access to a roof), roof water tanks and #accessory# mechanical equipment (including enclosures), other than solar or wind energy systems, as follows:~~

- ~~(a) where the maximum #building# height is less than 120 feet, the maximum permitted~~

height of such volume may be increased from 25 feet to 33 feet, provided that the #lot coverage# of all such obstructions does not exceed 20 percent of the #lot coverage# of the #building#; and

- (b) where the maximum #building# height is 120 feet or greater, the maximum permitted height of such volume may be increased from 40 feet to 55 feet, provided that the #lot coverage# of all such obstructions does not exceed 20 percent of the #lot coverage# of the #building#.

64-44

Special Minimum Distance Regulations for Buildings Existing on October 28, 2012

[Note: Existing text to be deleted]

For #single# and #two-family residences# existing on October 28, 2012, if such #buildings# are elevated, relocated or reconstructed pursuant to Sections 64-131 (Measurement of height), 64-722 (Single and two-family residences in required front yards) and 64-431 (For existing single and two-family residences), the provisions of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) shall not apply.

64-50

SPECIAL PARKING REGULATIONS STREETSCAPE REGULATIONS

[Note: Existing text moved to Section 64-40 and modified]

Sections 64-51 (For Residential Buildings with Below-grade Parking) and 64-52 (For Elevated Buildings) shall apply to #buildings# existing on October 28, 2012, and to the reconstruction of such #buildings#. Section 64-51 shall apply without requiring a #building# to comply with #flood-resistant construction standards# provided in paragraph (a) of Section 64-12 (Applicability).

Section 64-53 (Surfacing) shall apply to all #zoning lots# within the #flood-zone#.

The underlying parking location, curb cut spacing, permitted obstruction and surfacing regulations are modified in accordance with the provisions of this Section.

The provisions of this Section, inclusive, shall apply to #zoning lots# containing #flood-resistant buildings#, as set forth in paragraphs (b) and (c) of Section 64-12 (Applicability), that have a #street wall# within 50 feet of the #street line# in #Residence Districts#, #Commercial Districts# and M1 Districts#. However, the provisions shall not apply to such #buildings# containing #uses# predominantly listed in Use Group 18.

All #buildings# shall provide streetscape mitigations ~~elements~~ in the categories of access or ground floor level, in order to ~~comply with~~ achieve the total points required in the following table. The total points required ~~differs~~ ~~by~~ varies based upon the level of the #first story above the flood elevation#, as measured from #curb level#. The individual mitigation options are set forth in Sections 64-51 (Building Access Mitigation Options) and 64-52 (Ground Floor Level Mitigation Options). Cells marked with an "x" designate mandatory categories to fulfill at least one point out of the total points requirement.

The points awarded for compliance with each individual mitigation are set forth in parentheses after the title to each paragraph describing a mitigation ~~element~~.

For #corner lots#, the total points requirement set forth in this Section shall apply separately along each #street frontage# ~~of a #corner lot#~~, except where the #street wall# width along one of the #street frontages# is 25 feet or less, the requirements need only apply to one frontage.

Where #zoning lots# are required to provide streetscape elements in accordance with other provisions of this Resolution, such elements may also be utilized towards meeting the requirements of this Section, provided that such elements comply with the applicable standard herein.

In addition, all #buildings# shall meet the requirements set forth in Section 64-53 (Screening Requirements for Parking Within or Below Buildings) as applicable.

<u>Level of the #first story above the flood elevation#</u>	<u>Streetscape Mitigation Elements</u>		<u>Total Points Required</u>
	<u>Building Access (Section 64-51)</u>	<u>Ground Floor Level (Section 64-52)</u>	
<u>Below five feet or no #first story above the flood elevation#</u>			1
<u>Five feet or above</u>	x	x	3 ^{1,2}

¹ #Single-# and #two-family residences# on a #zoning lot# less than 25 feet wide with a #first story above the flood elevation# at five feet or above need only satisfy a total of two points instead of the three points set forth in the above table.

² If the requirements of this Section apply to only a portion of the #building# with a #first story above the flood elevation# at five feet or above, and such portion of the #building# does not have a ~~principal entrance#~~primary entrance#, the total points required shall be two, and they need only be satisfied through the ground floor level category.

64-51

For Residential Buildings With Below-grade Parking Building Access Mitigation Options

[Note: Existing text moved to Section 64-411 and modified]

R1 R2 R3 R4 R5

In the districts indicated, other than R4B and R5B Districts, where below-grade garages within #residential buildings# are eliminated in order to comply with Appendix G of the New York City Building Code, #accessory# off-street parking spaces may be relocated from such garages to the side or rear of such #buildings#, or to the #front yard# driveway that accessed the former garage, or to a shared driveway along a common #side lot line#. Where such parking spaces are so relocated, each such space shall have a dimension at least 18 feet long and eight feet wide, and such spaces shall be allowed without regard to underlying parking location, curb cut spacing or permitted obstruction regulations. No modifications of the number of curb cuts on a #zoning lot# or the minimum or maximum width of a curb cut shall be allowed. Where eliminated garages were accessed by a driveway less than 18 feet long, such driveway and curb cut shall be eliminated, and the former driveway planted

to the extent necessary to comply, or increase compliance, with the provisions of Section 23-451 (Planting requirement) as if the #building# on the #zoning lot# was constructed after April 30, 2008.

In the event there is no way to arrange relocated required parking spaces on the #zoning lot# in compliance with the provisions of this Section, given that existing #buildings# will remain, the Commissioner of Buildings may waive such spaces.

64-511

Options available for all #buildings#

The streetscape mitigations options of this Section may be applied to all #buildings#. Where provided as a required streetscape mitigation element, the following shall apply:

- (a) Entrance close to grade
(one point)

The ~~principal~~ #primary entrance# for the principal #use# for the #building# shall be located within two feet of the level of the adjoining sidewalk. However, for #mixed buildings# in #Commercial Districts# the #primary entrance# for the non-#residential use# on the ground floor shall be located within two feet of the level of the adjoining sidewalk, regardless of whether it is the principal #use#.

- (b) Recessed access
(one point)

Recesses in the #street wall# shall accommodate the ~~principal~~ #primary entrance# to the #building#, including stairs or ramps to such entrance. However, recesses shall not exceed 50 percent of the #aggregate width of street wall# for the #building#.

- (c) Wide stairs
(one point)

The ~~principal~~ #primary entrance# to a #building# along the #street wall# shall include stairs:

- (1) with a minimum width of five feet where the #aggregate width of street walls# of the #building# is less than or equal to 25 feet; and
- (2) with a minimum width of eight feet where the #aggregate width of street walls# of the #building# is greater than 25 feet.

In both cases, the run of such stairs shall be oriented perpendicular, or within 15 degrees of being perpendicular, to such ~~principal~~ #primary entrance# for at least 50 percent of the height of such stairs.

- (d) Covered access
(one point)

The ~~principal~~ #primary entrance# to a #building# shall have a porch or access area covered by a roof or other permanent structure, provided that all structural elements shall have a minimum width or depth of

at least three inches. Such roof or other permanent structure shall be located at a minimum height at least eight feet above the finished floor of the ~~principal~~ #primary entrance#. In addition, such covering shall have a depth of at least three feet measured perpendicular to the #street wall# and shall extend along at least 50 percent of the #aggregate width of the street wall#.

64-512**Additional options available for single-family, two-family, or three-family residences**

The streetscape mitigations options of this Section may be applied to all #single-#, #two-#, or three-#family residences#. Where provided as a required streetscape mitigation element, the following shall apply:

- (a) Porch or landing
(one point)

[Note: Text to replace Section 64-61(a)]

The ~~principal~~ #primary entrance# to a building shall have a porch or landing with a depth of at least three feet and a width that is at least 50 percent of the #aggregate width of the street wall#. However, such porch or landing need not exceed a width of 25 feet.

- (b) Stair turn or stair landing
(one point)

[Note: Text moved from Section 64-61(b) and modified]

The ~~principal~~ #primary entrance# shall be accessed by stairs or ramps that, at a point no higher or lower than two feet from the beginning and end of the stair run, respectively, either change direction in plan or incorporate at least one landing.

64-513**Additional options available for all buildings except single- , two-family, or three-family residences**

The streetscape mitigations options of this Section may be applied to all #buildings# except #single-#, #two-#, or three-#family residences#. Where provided as a required streetscape mitigation element, the following shall apply:

- Multiple entrances
(one point)

Multiple entrances into the #building# shall be provided, with at least one entrance per every 50 linear feet of #street frontage#. Fractions equal to or greater than one-half resulting from this calculation shall be considered one entrance.

64-52

~~For Elevated Buildings~~Ground Floor Level Mitigation Options

[Note: Existing text moved to Section 64-421 and modified]

R1 R2 R3 R4 R5

In the districts indicated, except R4B and R5B Districts, the provisions of this Section shall apply to ~~#single # or #two family residences# with a #flood resistant construction elevation# at least nine feet above #curb level#, and to other #single # or #two family residences# utilizing the provisions of Section 64-334 (Alternative height measurement for single and two family residences). For such #residences#, where at least two #accessory# off-street parking spaces are provided beneath the #lowest occupiable floor#, such spaces shall be allowed without regard to the underlying parking location, curb cut spacing or permitted obstruction regulations. However, no modification of the number of curb cuts on a #zoning lot# or the minimum or maximum width of a curb cut shall be allowed.~~

For the purposes of this Section, where there is a reference to a “blank wall,” the following shall apply:

- (a) For #manufacturing buildings#, the provisions of Type 2 blank walls set forth in Section 37-361 (Blank wall thresholds) shall apply.
- (b) For #commercial buildings#, #community facility buildings# and #mixed buildings#, the provisions of Type 3 blank walls set forth in Section 37-361 shall apply.
- (c) For #residential buildings#, the provisions of Type 4 blank walls set forth in Section 37-361 shall apply.

Such blank walls shall be covered by one or more options in Section 37-362 (Mitigation elements) or by options as described in this Section, inclusive. In addition, any surface area of a wall which bounds stairs, ramps, landings, or chair lifts facing a #street# and that exceeds a height and width of four feet shall constitute a blank wall and comply with the standards of Type 3 blank wall. Such blank wall surfaces shall be calculated between the level of the adjoining sidewalk and the level of the #first story above the flood elevation#. In addition, any surface area of a wall which bounds stairs, ramps, landings, or chair lifts facing a #street# and that exceeds a height and width of four feet shall constitute a blank wall and comply with the standards of Type 3 blank wall. Such blank wall surfaces shall be calculated between the level of the adjoining sidewalk and the level of the #first story above the flood elevation#.

64-521

Options available for all #buildings#

The streetscape mitigations options of this Section may be applied to all #buildings#. Where provided as a required streetscape mitigation element, the following shall apply:

- (a) Surface treatment
(one point)

Surface treatment shall be provided for blank walls in the form of wall treatment, surface texture, or any combination thereof, pursuant to the provisions set forth in paragraphs (a)(1) or (a)(2) of Section 37-362 (Mitigation elements).

If the level of the #first story above flood elevation# is greater than 10 feet, surface treatment shall only be required to a height of 10 feet above the level of the adjoining sidewalk.

- (b) Linear treatment
(one or, where noted, two points)

Linear treatment shall be provided for blank walls in the form of planting, pursuant to the provisions set forth in paragraph (b)(1) of Section 37-362, pursuant to one of the following options below, or any combination thereof. Where the options of this Section are utilized, the percentage requirement associated with the applicable type of blank wall set forth in Section 37-36 (Special Requirements for Blank Walls) shall not apply.

- (1) Raised front #yards# and #open space#

[Note: Text moved from Section 64-61 (c) and modified]

For #residential buildings# in #Residence Districts# where the distance between the #street wall# and the #street line# is 10 feet or more, the grade between the #street line# and blank walls, and their prolongations, shall be elevated above the level of the adjoining sidewalk so that the height of such grade that is midway between the #street line# and blank walls and prolongations is at least 18 inches above #curb level# at all points, except for pedestrian ways, vehicular access and off-street parking spaces permitted pursuant to 64-40 (SPECIAL PARKING REGULATIONS). The area with final grade above the level of the adjoining sidewalk shall be greater than 30 percent of the total area between the #street line# and blank walls and their prolongations.

Raised front #yards# and #open spaces# shall be planted in accordance with applicable planting requirements in this Resolution.

This option shall satisfy two points if the area with final grade above #curb level# is greater than 50 percent of the total area between the #street line# and blank walls and their prolongations.

- (2) Terraced front #yards# and #open spaces#

For #residential buildings# in #Residence Districts#, terraced planting areas shall be provided. The retaining walls of such areas shall not be less than an average height of three feet and exceed an average height of six feet, as measured from the level of the adjoining sidewalk below such wall, and the retaining wall closest to the #street line# shall not exceed a height of three feet. The area with the retaining walls shall be greater than 30 percent of the total area between the #street line# and blank walls and their prolongations. Planting shall also be provided for at least 50 percent of the linear footage above and below the retaining walls, through a combination of perennials, annual flowers, decorative grasses or shrubs.

This option shall satisfy two points if the area with the retaining walls is greater than 50 percent of the total area between the #street line# and blank walls and their prolongations.

64-522

Additional options available for single-, two-, or three-family residences ~~#two family#, or three family residences~~

The streetscape mitigations options of this Section may be applied to all #single-#, #two-#, or three#-family residences#. Where provided as a required streetscape mitigation element, the following shall apply:

- (a) Transparency
(one point)

Transparent glazing materials shall occupy at least 20 percent of the surface area of the #street wall# of the ground floor, measured between a height of two feet and 10 feet, or the height of the ground floor ceiling, whichever is higher, as measured from the adjoining sidewalk.

- (b) Additional fenestration
(one point)

In addition to the ~~principal~~/primary entrance#, one or more doors, including garage doors, shall be provided.

64-523

Additional options available for all buildings except single-, two-, or three-family residences

The streetscape mitigations options of this Section may be applied to all #buildings# except #single-family#, #two-family#, or three-family residences. Where provided as a required streetscape mitigation element, the following shall apply:

- (a) Transparency with #use#
(one point)

One or more of the following options may apply:

- (1) Lobby
(one point)

In all districts, a lobby that complies with the standards of Type 1 lobbies set forth in Section 37-33 (Maximum Width of Certain Uses), shall be provided. Transparent glazing materials shall occupy at least 40 percent of the surface area of the #street wall# of the lobby, measured between a height of two feet and 10 feet, or the height of the ground floor ceiling, whichever is higher, as measured from the adjoining sidewalk.

- (2) #Community facilities# and #accessory residential uses#
(one point)

In all districts, for ~~#residential buildings#~~ #buildings# containing #residences# with three or more #dwelling units#, at least 50 percent of the #ground floor level street wall# shall be allocated to #accessory residential uses# other than #accessory# off-street parking, or #community facilities uses#, including, but not limited to, recreation space or bicycle storage, that extends to a minimum depth of 15 feet from the #street wall#. Transparent glazing materials shall occupy at least 40 percent of the surface area of the #street wall# of such #uses#, measured between a height of two feet and 10 feet, or the height of the ground floor ceiling, whichever is higher, as measured from the adjoining sidewalk. Where the spaces for such #uses# need not be fully enclosed, decorative screening or latticework may be substituted for transparent glazing materials.

- (3) Non-#residential uses#
(one point)

In #Commercial Districts#, #uses# on the #ground floor level#, to the minimum depth set forth in Section 37-32 (Ground Floor Depth Requirements for Certain Uses), shall be limited to non-#residential uses#, except for Type 2 lobbies and entrances and exits to #accessory# parking spaces provided in accordance with Section 37-33. Ground floor level #street walls# shall be glazed in accordance with Section 37-34 (Minimum Transparency Requirements) except that the transparent materials may begin higher than 2 feet, 6 inches, above the level of the adjoining sidewalk.

If #group parking facilities# are provided, they shall be wrapped by #floor area#, in accordance with paragraph (a) of Section 37-35 (Parking Wrap and Screening Requirements).

- (b) Transparency close to grade
(one point)

In all districts, transparent materials provided to satisfy #street wall# transparency requirements shall not begin higher than 2 feet, 6 inches above the level of the adjoining sidewalk. The floor level behind such transparent glazing materials shall not exceed the level of the window sill for a depth of at least four feet, as measured perpendicular to the #street wall#.

- (c) Linear treatment
(one point)

Linear treatment shall be provided for blank walls in the form of benches, bicycle racks, tables and chairs, or any combination thereof, as set forth in paragraph (b) of Section 37-362 (Mitigation elements).

Screening Requirements for Parking Within or Below Buildings

[Note: Existing text moved to Section 64-412 and modified]

R1 R2 R3 R4 R5

In the districts indicated, Section 25-65 (Surfacing) shall be modified to allow dustless gravel driveways that access one #single# or #two-family residence# on a #zoning lot#, provided that all portions of such driveway located between the curb and the #front lot line# shall be surfaced with asphaltic or Portland cement concrete, or other hard surfaced dustless material, at least four inches thick, and public sidewalks shall be constructed to Department of Transportation standards.

[Note: Text moved from Section 64-65 and modified]

The provisions of this Section shall apply to all #buildings# other than:

- (a) #single# or #two-family residences#; and
- (b) #buildings# containing predominantly Use Group 18 #uses# in M1 Districts.

Where the #first story above the flood elevation# is five or more feet above #curb level# and the #street wall# of a #building# is within 50 feet of the #street line#, for any level where off-street parking is provided within or below a #building#, such parking shall be either wrapped by #floor area# or screened pursuant to the provisions of Section 37-35 (Parking Wrap and Screening Requirements).

#Buildings# in existence prior to [date of adoption] shall not be altered in any way that will create a new #non-compliance# or increase the degree of #non-compliance# with the provisions of this Section.

64-60**DESIGN REQUIREMENTS****SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS**

[Note: Existing text to be deleted]

The following Sections shall apply to all #developments# and to all horizontal #enlargements# with new #street walls# or alterations increasing the height of #street walls#, or as otherwise referenced within this Chapter:

Section 64-61 — Design Requirements for Single and Two-family Residences

Section 64-62 — Design Requirements for Other Buildings in Residence Districts

Section 64-63 — Design Requirements for Residential Buildings in Commercial Districts

Section 64-64 — Design Requirements for Non-residential and Mixed Buildings in Commercial and Manufacturing Districts

Section 64-65 — (Screening Requirements for Parking Within or Below Buildings) shall apply to any #zoning lot# occupied by a #building#, other than a #single-

~~# or #two-family residence# constructed after October 9, 2013. Any #zoning lot# occupied by a #building# constructed prior to such date shall not be altered in any way that will either create a new #non-compliance# or increase the degree of #non-compliance# with the provisions of Section 64-65.~~

The provisions of this Section, inclusive, are optional, and may be applied to #buildings# with #non-conforming uses#, or to #non-complying buildings or other structures#, as applicable, that are also #flood-resistant buildings#.

64-61

Design Requirements for Single and Two-family Residences Special Provisions for Non-conforming Uses

[Note: Existing text to be deleted and substituted by Section 64-50]

R1 R2 R3 R4 R5 R6

~~In R1, R2, R3, R4 and R5 Districts, for #single # and #two-family residences# that have a #street wall# within 50 feet of the #street line#, and in R6 Districts, for #detached# and #semi-detached single # and #two-family residences# that have a #street wall# within 50 feet of the #street line#, where the level of the #lowest occupiable floor# is five feet or more above #curb level#, at least one of the following visual mitigation elements shall be provided. For such #residences# where the level of the #lowest occupiable floor# is nine feet or more above #curb level#, at least two of the following visual mitigation elements shall be provided.~~

(a) — Porch

~~Where provided as a mitigating element, a porch shall have a finished floor at least six inches below the #lowest occupiable floor# and have a width at least 70 percent of the aggregate width of all #street walls# within 25 feet of the #street line#. The depth of the porch must be at least five feet, and the porch may not be closer to the #street line# than five feet. Open porches shall count as one mitigating element and roofed porches shall count as two mitigating elements, provided that for such roofed porches, all structural elements shall have a minimum width or depth of at least three inches, and such roof shall have a depth of at least five feet measured perpendicular to the #street wall# and extend along at least 70 percent of the width of the #street wall#. A balcony directly above a porch and a trellis or arbor with structural members spaced no further than 30 inches on center that cover such porch may be considered a porch roof for the purposes of this Section.~~

(b) — Stair direction change

~~Where provided as a mitigating element, stairs shall be constructed between grade and the #lowest occupiable floor# or porch, as applicable, which shall change direction at least 90 degrees in plan at a point no lower or higher than two feet from the beginning and end of the stair run.~~

(c) — Raised front yard

~~Where provided as a mitigating element, the grade between the #street line# and #street walls# within 25 feet of the #street line#, and their prolongations, shall be elevated above #curb level# so that a line~~

drawn midway between the #street line# and such #street walls# and prolongations is at least 18 inches above #curb level# at all points, except for pedestrian ways, vehicular access and off street parking spaces permitted pursuant to Section 64-50 (SPECIAL PARKING REGULATIONS). The area with final grade above #curb level# must be greater than 50 percent of the total area between the #street line# and #street walls# within 25 feet of the #street line# and their prolongations. Such raised #yards# shall be planted to comply with Section 23-451.

(d) — Trees or shrubs at least three feet high

Where provided as a mitigating element, trees or shrubs that attain a height of at least three feet shall be provided between the #street line# and #street walls# within 25 feet of the #street line# and their prolongations. Planting beds shall be at least three feet wide in plan, measured parallel and perpendicular to the #street line#. The length of each planted area shall be measured by inscribing each planted area within a rectangle and measuring the longest dimension of such rectangle. The total length of planted areas shall be greater than 60 percent of the #lot width#, and be planted to screen at least 50 percent of the length of the #street wall#.

However, no mitigation shall be required where more than 50 percent of the #street wall# of a #building# is within three feet of the #street line#.

[Note: Text to substitute Section 64-71]

For all #buildings# with #non-conforming uses#, the provisions of Sections 52-20 (REPAIRS OR ALTERATIONS), 52-40 (ENLARGEMENTS OR EXTENSIONS), and 52-50 (DAMAGE OR DESTRUCTION), inclusive, shall be modified to allow a #non-conforming use# to be continued, and a #building# with #non-conforming uses# to be altered, #enlarged#, relocated or reconstructed to comply with #flood-resistant construction standards#, pursuant to the provisions of this Section, inclusive.

Where a #building# with #non-conforming uses# is also #non-complying# with the applicable #bulk# regulations, #non-compliances# may be continued, increased or newly created only in accordance with the provisions of Section 64-612 (Special floor area regulations for buildings with non-conforming uses), Section 64-613 (Special height regulations for buildings with non-conforming uses), and Section 64-614 (Process for establishing non-conforming uses), except that Section 64-622 (Special open area regulations for non-complying buildings) and Section 64-624 (Process for establishing non-compliances) may also apply, ~~if applicable~~.

In addition, damage and destruction provisions set forth in Section 64-611 (Special regulations for damage or destruction provisions for buildings with non-conforming uses) shall apply to such #buildings#.

64-611

Special regulations for damage or destruction provisions for buildings with non-conforming uses

The provisions set forth in Sections 52-53 (Buildings or Other Structures in All Districts) and 52-54 (Buildings Designed for Residential Use in Residence Districts) shall be modified to allow all #buildings# containing #non-conforming uses# to be reconstructed, provided that:

(a) for #non-conforming single-# and #two-family residences# in #Residence Districts# and #Commercial Districts#, except C8 Districts, such reconstruction may exceed 75 percent of the total #floor area# of the #building#;

- (b) for #non-conforming single-# and #two-family residences# in C8 Districts or #Manufacturing Districts#, such reconstruction may exceed 75 percent of the total #floor area# of the #building# provided that 25 percent or more of the aggregate length of the #block# frontage on both sides of the #street# facing each other is occupied by #zoning lots# containing #residential# or #community facility uses#;
- (c) for all other #buildings# with #non-conforming uses#, the extent of reconstructed #floor area# ~~does~~ shall not exceed 75 percent of the total #floor area# of the #building#.

64-612**Special floor area regulations for buildings with non-conforming uses**

The maximum amount of #non-conforming floor area# in the altered, #enlarged#, relocated or reconstructed #building# shall not exceed the amount of #non-conforming floor area# existing prior to the alteration or reconstruction work.

64-613**Special height regulations for buildings with non-conforming uses**

The maximum height of such altered, #enlarged#, relocated or reconstructed #building# with #non-conforming uses#, shall not exceed the maximum height permitted by the applicable district regulations, except that for #non-conforming residences# in C8 Districts or #Manufacturing Districts#, the maximum height of such altered, #enlarged#, relocated or reconstructed #building#, shall comply with one of the following options:

- (a) for #single# or #two-family residences#, a horizontal plane equivalent to a height of 35 feet, and for #buildings# other than #single-# or #two-family residences#, the applicable #sky exposure plane# for the district; or
- (b) for all #residences# a horizontal plane equivalent to the pre-existing height of such #building#, as measured from the top of the #lowest usable floor#, to the highest point of such pre-existing #building#, as measured from the #reference plane#.

64-614**Process for establishing non-conforming uses**

For all #buildings# with #non-conforming uses# utilizing any of the provisions of this Section, the amount of pre-existing #non-conforming floor area# and pre-existing #non-compliances#, as applicable, shall be based either on construction documents for such #building# that were previously approved by the Department of Buildings at the time of construction, #enlargement#, or subsequent alteration, as applicable, of the #building# or, where an approved set of construction documents does not exist for such #building#, an as-built drawing set completed by a professional engineer or architect. The Department of Buildings may request additional information to substantiate proof of #non-conformances# and #non-compliances#, as applicable. Verification by the Department of Buildings of such ~~pre-existing #non-conformances# and built conditions, as well as any pre-~~

~~existing #non-complying# conditions, as applicable, documentation shall be a pre-condition prior to any demolition for reconstruction work, or alteration permit issued by the Department of Buildings for a #zoning lot# altering or reconstructing #buildings# with #non-conforming uses# and #non-compliances#, as applicable, pursuant to the provisions of this Section.~~

64-62

Design Requirements for Other Buildings in Residence Districts Special Provisions for Non-complying Buildings

[Note: Existing text to be deleted and substituted by Section 64-50]

~~R1 R2 R3 R4 R5 R6 R7 R8 R9 R10~~

~~In the districts indicated, for all #buildings#, except #single # and #two-family residences#, where #street walls# are within 50 feet of the #street line#, the provisions of this Section, inclusive, shall apply.~~

[Note: Text to substitute Sections 64-722, 64-723, 64-724, 64-A12, 64-A22, 64-A23]

~~For all #non-complying buildings or other structures#, the provisions of Sections 54-20 (REPAIRS OR ALTERATIONS), 54-30 (ENLARGEMENTS OR CONVERSIONS), and 54-40 (DAMAGE OR DESTRUCTION IN NON-COMPLYING BUILDINGS), inclusive, shall be modified to allow a #non-compliance# to be continued, and such #non-complying building or other structure# to be altered, #enlarged#, relocated or reconstructed to comply with #flood-resistant construction standards#, subject to the permitted thresholds of Sections 54-41 (Permitted Reconstruction) and 54-42 (Use of Alternate Formula), and the provisions of this Section.~~

~~In addition, such altered, #enlarged#, relocated or reconstructed #building or other structure# may create a new #non-compliance# with, or increase the degree of existing #non-compliance# with the applicable #bulk# regulations for the district, subject to the applicable provisions of this Section, inclusive.~~

64-621

Planting requirement Special floor area regulations for non-complying buildings

[Note: Existing text to be deleted and substituted by Section 64-50]

~~Where the level of the #lowest-occupiable floor# is five or more feet above #curb level#, the area between the #street line# and all #street walls# of the #building# shall be planted at ground level, or in raised planting beds that are permanently affixed to the ground. Such planting shall consist of trees or shrubs within six feet of the #street wall# that attain a height of at least three feet. Such planting shall not be required at the entrances to and exits from the #building#, within driveways accessing off-street parking spaces located within, to the side, or rear of such #building#, or between #commercial uses# and the #street line#. Any such planted area shall have a depth of at least three feet. Where ramps or stairs are located parallel to a #street wall# and within six feet of such #street wall#, minimum planting beds shall be provided between such ramps or stairs and the #street line#.~~

~~However, where #street wall# location rules would require a #street wall# to be located such that planting beds would be less than three feet in width, the provisions of this Section shall not apply.~~

For #buildings# with #non-complying floor area#, the maximum amount of #floor area# in the altered, #enlarged#, relocated or reconstructed #building# shall not exceed the amount of pre-existing #floor area#, nor shall it exceed the maximum #floor area# permitted by the applicable district regulations by more than 20 percent. In addition, subsequent to such alteration, #enlargement#, relocation or reconstruction, no #extension# or change of #use# may create a new #non-compliance# or increase the degree of existing #non-compliance# with #floor area#.

64-622

Lobby or non-residential use

Special open area regulations for non-complying buildings

[Note: Existing text to be deleted and substituted by Section 64-50]

~~Where the #flood resistant construction elevation# is ten or more feet above #curb level#, a lobby with a minimum width of 20 feet shall be provided along the #street wall# at the level of the adjoining sidewalk or other publicly accessible open area, with a depth of at least 20 feet. For #buildings# with an #aggregate width of street wall# of more than 65 feet, such lobby width shall be at least 30 percent of the #aggregate width of street wall#, but need not be wider than 35 feet. For #zoning lots# with less than 25 feet of frontage along a #street#, a five-foot wide service corridor may be exempted from the requirements of this Section. Transparent glazing materials shall occupy at least 40 percent of the surface area of the #street wall# of the lobby, measured between a height of two feet above the level of the adjoining sidewalk or other publicly accessible open area and a height ten feet above the level of the first finished floor above #curb level#.~~

~~Any permitted #non residential use#, other than #accessory# off street parking or storage, may be substituted for lobby area required pursuant to this Section, provided that the required width, depth and transparency shall apply to such #use#.~~

~~However, where #flood resistant construction standards# prohibit glazing due to the location of the #building# in a zone subject to wave action as indicated on #flood maps#, the glazing requirements of this Section shall not apply.~~

The following provisions may apply to #non-complying buildings or other structures#.

(a) Relocation allowances

#Non-complying buildings or other structures# may continue an existing #non-compliance#, increase the degree of an existing #non-compliance#, or create a new #non-compliance# with #yards#, #open space#, #open space ratio#, #lot coverage#, #courts#, minimum distances between two or more #buildings#, or minimum distances between #legally required windows# and walls or #lot lines#, in order to relocate or alter the footprint of the #building#, provided that:

- (1) the resulting #lot coverage# shall be less than or equal to that of the pre-existing #building or other structure# as it existed prior to the alteration, #enlargement#, relocation or reconstruction work or the amount permitted by the district, as applicable, whichever is greater, except that, where the provisions of paragraph (b) of this Section are utilized, the #first story above the flood elevation# and any #stories# below, may be exempted from such calculation;

- (2) a new or increased #non-compliance# into an open area shall not exceed a horizontal distance of five feet, as measured perpendicular to the outermost edge of the #non-complying building or other structure#, as it existed prior to the alteration, #enlargement#, relocation or reconstruction work, except that such limitation shall not apply:
- (i) where the pre-existing #building or other structure# is located either partially or entirely seaward of the #shoreline#, and such #building or other structure# will be altered, #enlarged#, relocated or reconstructed to be repositioned landward of the #shoreline# on the same #zoning lot#; or
 - (ii) where additional distance is necessary to accommodate access, including stairs, ramps or lifts in a required #yard#, provided that any additional encroachment is limited to the depth of such access;
- (3) any new or increased #non-compliance# shall not result in an open area of:
- (i) less than five feet between the wall of a #building or other structure# and a #rear lot line#;
 - (ii) less than three feet between the wall of a #building or other structure# and a #front lot line#, in districts with #front yard# requirements; and
 - (iii) three feet between the wall of a #building or other structure# and a #side lot line# for #detached buildings# in districts that do not allow #zero lot line buildings#; and
- (4) the height of #buildings or other structures# within #non-complying yards# or #open space#, as measured from the #reference plane#, shall not exceed the height set forth in paragraph (a) of Section 64-623 (Special height regulations for non-complying buildings).
- (b) Allowances for horizontal expansions

The #first story above the flood elevation# and #stories# located below such #story#, may create a new #non-compliance# with, or increase the degree of existing #non-compliance# with the applicable #rear yards#, #open space#, #open space ratio#, or #lot coverage# regulations for the district, provided that:

- (1) the increased #lot coverage# does not exceed an additional 20 percent of such #lot coverage# permitted by the underlying regulations in R1-2A, R2A, R3-1, R3-2, R4, R4B, R5, R5B, and R5D Districts;
- (2) the increased #lot coverage# does not exceed an additional 20 percent of the maximum footprint permitted by applying the applicable district #rear, side and front yard# regulations in R2X, R3A, R3X, R4-1, R4A, and R5A Districts;

- (3) for #single-# or #two-family residences#, the encroachment into a #rear yard# does not result in a #rear yard# with a depth of less than 20 feet; and
- (4) in all districts, the encroachment into a required open area does not exceed a height of 15 feet, as measured from the #first story above the flood elevation#.

Nothing in this Section shall affect the permitted obstruction allowances set forth by the district regulations.

64-623

Special height regulations for non-complying buildings

For #buildings or other structures# that are #non-complying# with the applicable district height and setback regulations, the maximum height of such altered, #enlarged#, relocated or reconstructed #building or other structure#, shall not exceed the height permitted pursuant to either paragraph (a) or (b) of this Section, as applicable. An alteration, #enlargement#, relocation or reconstruction pursuant to this Section may continue an existing #non-compliance#, increase the degree of an existing #non-compliance#, or create a new #non-compliance# with height and setback regulations, and may continue or increase a #non-compliance# with other #bulk# regulations associated with such #non-complying# height, subject to the limitations of this Section. All permitted obstruction allowances shall be measured with respect to the modified envelopes of this Section.

- (a) For pre-existing #buildings or other structures# that do not exceed the overall permitted height

Where the height of a pre-existing #building or other structure# does not exceed the overall height permitted by the applicable district regulations, as measured from the top of the #lowest usable floor# to the highest point of such pre-existing #building#, the height of such altered, #enlarged#, relocated or reconstructed #building or other structure# shall not exceed:

- (1) the applicable #sky exposure plane#, for #buildings# governed by #sky exposure planes# as measured from the #reference plane#; or
- (2) a horizontal plane equivalent to the maximum #building# height permitted by the applicable district for all other #buildings# as measured from the #reference plane#.

- (b) For pre-existing #buildings or other structures# that exceed the overall permitted height

Where the height of a pre-existing #building or other structure# exceeds the overall height permitted by the applicable district regulations, as measured from the top of the #lowest usable floor# to the highest point of such pre-existing #building#:

- (1) the height of such altered, #enlarged#, relocated or reconstructed #building or other structure# as measured from the #reference plane# shall not exceed a horizontal plane equivalent to the pre-existing height of such #building#, as measured from the top of the #lowest usable floor#, to the highest point of such pre-existing #building#, provided also that such height shall not exceed the overall height permitted by the applicable district regulations by 10 percent, or 10 feet, whichever is less; and

- (2) for #single# or #two-family residences# in R1-2A, R2A, R2X, R3, R4, R4-1, R4A, or R5A Districts, where the degree of the alteration or reconstruction exceeds 75 percent of the #floor area#, the height of a perimeter wall of such altered, #enlarged#, relocated or reconstructed #building or other structure# as measured from the #reference plane# shall not exceed the higher of the maximum perimeter wall height for the district, or the pre-existing height of such perimeter wall, as measured from the top of the #lowest usable floor# to the highest point in such pre-existing #building# before setback.

However, the height allowances of this Section shall not apply to #single# or #two-family residences# that are not #non-complying# with #floor area# requirements, or where the provisions of paragraph (b) Section 64-622 (Special open area regulations for non-complying buildings) are utilized.

64-624

Process for establishing non-compliances

For all #non-complying buildings or other structures# utilizing any of the provisions of this Section, the amount of pre-existing #non-compliances# shall be based either on the construction documents of such #building or other structure# previously approved by the Department of Buildings at the time of construction, #enlargement#, or subsequent alteration of such #building or other structure#, as applicable, or, where an approved set of construction documents does not exist for such #building or other structure#, an as-built drawing set completed by a professional engineer or architect. The Department of Buildings may request additional information to substantiate proof of #non-compliances#. Verification by the Department of Buildings of such ~~pre-existing #non-complying# conditions~~ documentation shall be a pre-condition prior to any demolition for reconstruction work, or alteration permit issued by the Department of Buildings for a #zoning lot# altering or reconstructing #non-compliances# pursuant to the provisions of this Section.

~~64-63~~

~~Design Requirements for Residential Buildings in Commercial Districts~~

[Note: Existing text to be deleted and substituted by Section 64-50]

~~C1 C2 C3 C4 C5 C6~~

~~In the districts indicated, and in #Special Mixed Use Districts#, for all #residential buildings#, except #single # and #two family residences#, where #street walls# are within 50 feet of the #street line#, and where the level of the #lowest occupiable floor# is five feet or more above #curb level#, the provisions of Section 64-62 (Design Requirements for Other Buildings in Residence Districts) shall apply.~~

~~64-64~~

~~Design Requirements for Non-Residential and Mixed Buildings in Commercial and Manufacturing Districts~~

~~64-641~~

~~Transparency requirements~~

[Note: Existing text to be deleted and substituted by Section 64-50]

C1 C2 C3 C4 C5 C6 C7 C8 M1 M2 M3

In the districts indicated, the provisions of this Section shall apply to all #buildings#, other than:

(a) — #residential buildings#; and

(b) — in #C8 Districts# and #Manufacturing Districts#, other than #Special Mixed Use Districts#, #buildings# containing #predominantly# Use Group 16, 17 or 18 #uses#.

Where #street walls# are within 50 feet of the #street line#, and where #flood-resistant construction elevation# is ten feet or more above #curb level#, a portion of the #street wall# with a minimum of 20 feet in width shall provide transparent glazing materials occupying a minimum of 50 percent of the surface area of such #street wall# portion, measured between a height of two feet above the level of the adjoining sidewalk or other publicly accessible open area and a height 12 feet above the level of the first finished floor above #curb level#. The floor level behind such transparent glazing materials shall not exceed the level of the window sill for a depth of at least four feet, as measured perpendicular to the #street wall#. For #buildings# with an #aggregate width of street wall# of more than 65 feet, such transparent portion of the #street wall# shall be at least 30 percent of the #aggregate width of street wall#, but need not be wider than 35 feet.

However, where #flood-resistant construction standards# prohibit glazing due to the location of the #building# in a zone subject to wave action as indicated on #flood maps#, the glazing requirements of this Section shall not apply.

64-642

Transparency requirements for buildings utilizing alternative height measurement

[Note: Existing text to be deleted and substituted by Section 64-50]

C1 C2 C3 C4 C5 C6 C7 C8 M1 M2 M3

In the districts indicated, for all #buildings# utilizing the provisions of Section 64-346 (Alternative height measurement in Commercial and Manufacturing Districts), paragraph (b); #street walls# shall be glazed with transparent materials which may include #show windows#, transom windows or glazed portions of doors. Furthermore, such transparent glazing materials shall occupy at least 50 percent of the surface area of such #street wall#, measured between a height of two feet above the level of the adjoining sidewalk or other publicly accessible open area and a height of 12 feet above the level of the first finished floor above #curb level#. The floor level behind such transparent glazing materials shall not exceed the level of the window sill for a depth of at least four feet, as measured perpendicular to the #street wall#.

64-65

Screening Requirements for Parking Within or Below Buildings

[Note: Existing text moved to Section 64-53 and modified]

The provisions of this Section shall apply to all #buildings#, other than:

(a) — #single# or #two-family residences#; and

(b) ~~in C8 Districts and #Manufacturing Districts#, other than #Special Mixed Use Districts#, #buildings# containing #predominantly# Use Group 16, 17 or 18 #uses#.~~

~~#Buildings# in existence prior to October 9, 2013, shall not be altered in any way that will create a new #non-compliance# or increase the degree of #non-compliance# with the provisions of this Section.~~

~~Where the #flood resistant construction elevation# is five or more feet above #curb level# and the #street wall# of a #building# is within 50 feet of the #street line#, for any level where off street parking is provided within or below a #building#, such parking shall be screened from the #street line# with a #street wall# that is at least 50 percent opaque. Each one foot square portion of such #street wall# shall comply individually with this requirement.~~

~~In case of a conflict between the provisions of this Section and the provisions of another Chapter, the more restrictive provisions shall apply.~~

64-70

~~SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS~~

[Note: Section 64-70 to be deleted and substituted by Section 64-60]

64-71

~~Non-Conforming Uses~~

64-711

~~Reconstruction of buildings damaged more than 50 percent~~

[Note: Existing text to be deleted and substituted by Section 65-21 (a)]

~~Section 52-53 (Buildings or Other Structures in All Districts), inclusive, shall be modified to allow the reconstruction of a #non-conforming use# where a #building# containing such #use# is damaged to the extent of 50 percent or more due to the effects of #Hurricane Sandy#, provided such reconstruction is the subject of an application for approval of construction documents that has been approved by the Department of Buildings no later than one year following the City's adoption of new final Flood Insurance Rate Maps that supersede the Flood Insurance Rate Maps in effect on October 28, 2012. Construction pursuant to such approval may continue until a date six years after the adoption of such superseding Flood Insurance Rate Maps. After such date, the vesting provisions of Section 11-30 (Building Permits Issued Before Effective Date of Amendment) shall apply as if the change in #flood map# were a change in provisions of the Zoning Resolution.~~

~~However, this provision shall not apply to #non-conforming residences# in C8 Districts or #Manufacturing Districts#, or to #non-conforming manufacturing uses# located in #Residence Districts# or #Commercial Districts# other than C8 Districts.~~

64-712

~~Single and two-family buildings~~

[Note: Existing text to be deleted and substituted by Section 64-61]

~~For #non-conforming single# and #two family residences#, except #non-conforming residences# in C8 Districts or #Manufacturing Districts#, reconstruction shall be permitted, provided such reconstruction is the subject of an application for approval of construction documents that has been approved by the Department of Buildings no later than six years following the City's adoption of new final Flood Insurance Rate Maps that supersede the Flood Insurance Rate Maps in effect on October 28, 2012. Construction pursuant to such approval may continue until a date ten years after the adoption of such superseding Flood Insurance Rate Maps. After such date, the vesting provisions of Section 11-30 (Building Permits Issued Before Effective Date of Amendment) shall apply as if the change in #flood map# were a change in provisions of the Zoning Resolution.~~

~~64-72~~

~~Non-Complying Buildings~~

~~64-721~~

~~Reconstruction of buildings damaged more than 75 percent~~

[Note: Existing text to be deleted and substituted by Section 65-21 (b)]

~~Section 54-40 (DAMAGE OR DESTRUCTION IN NON-COMPLYING BUILDINGS) shall be modified to allow the reconstruction of a #non-complying building# where such #building# is damaged to the extent of 75 percent or more due to the effects of #Hurricane Sandy#, provided such reconstruction is the subject of an application for approval of construction documents that has been approved by the Department of Buildings no later than one year following the City's adoption of new final Flood Insurance Rate Maps that superseded the Flood Insurance Rate Maps in effect on October 28, 2012. Construction pursuant to such approval may continue until a date six years after the adoption of such superseding Flood Insurance Rate Maps. After such date, the vesting provisions of Section 11-30 (Building Permits Issued Before Effective Date of Amendment) shall apply as if the change in #flood map# were a change in provisions of the Zoning Resolution.~~

~~64-722~~

~~Single and two family residences in required front yards~~

[Note: Existing text to be deleted and substituted by Section 64-62]

~~The provisions of Article V, Chapter 4, shall be modified in order to accommodate stair access in a #front yard#. #Single# and #two family residences# with #non-complying front yards# existing on October 28, 2012, may be relocated or reconstructed in a location further from the #front lot line# on the same #zoning lot#, and thereby create or increase an encroachment in a #side yard#, #rear yard# or #rear yard equivalent#, provided that:~~

- ~~(a) — any encroachment or further encroachment into a required #side# or #rear yard# or #rear yard equivalent# at the rear of the original #building# location is limited to a depth equal to the reduction of encroachment of the #building#, excluding stairs in the #front yard#;~~
- ~~(b) — a distance of at least eight feet shall be maintained between the rear wall of the #building# and all other #residences# on the same or adjoining #zoning lots#; and~~
- ~~(c) — at least four feet of a #rear yard# shall be free of any encroachment, measured perpendicular to the #rear lot line# or, in a #rear yard equivalent#, at least eight feet shall be free of encroachment.~~

~~64-723~~~~Non-complying single and two family residences~~

[Note: Existing text to be deleted and substituted by Section 64-62]

- (a) ~~The provisions of Article V, Chapter 4, shall be modified to permit #single # and #two family residences# that are #non-complying# and existing on October 28, 2012, to be vertically elevated, or reconstructed to a higher elevation in order to raise the lowest floor level containing habitable space that was located at or above the adjoining grade as of October 28, 2012 to #flood resistant construction elevation#.~~

~~Where the elevation requirements of Appendix G of the New York City Building Code apply to the lowest horizontal structural member, the provisions of Article V, Chapter 4, shall be modified to permit #single # and #two family residences# that are #non-complying# and existing on October 28, 2012, to be vertically elevated, or reconstructed to a higher elevation, in order to raise the lowest horizontal structural member supporting the lowest floor containing habitable space that was located at or above the adjoining grade as of October 28, 2012, to #flood resistant construction elevation#.~~

~~Such vertical elevation or reconstruction may create a new #non-compliance# as to height and setback, or increase any existing #non-compliance# as to height and setback, required #open space# and #yard# regulations to the extent that such lowest floor level is elevated or reconstructed to #flood resistant construction elevation#. However, all other provisions of Article V, Chapter 4, shall apply without modification.~~

~~This Section shall not preclude the construction of complying #enlargements# or other complying #buildings or other structures# on the #zoning lot#.~~

~~Furthermore, the provisions of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) shall not apply to such elevated, relocated or reconstructed #buildings#.~~

- (b) ~~For #non-complying single # and #two family residences#, reconstruction shall be permitted, provided such reconstruction is the subject of an application for approval of construction documents that has been approved by the Department of Buildings no later than six years following the City's adoption of new final Flood Insurance Rate Maps that supersede the Flood Insurance Rate Maps in effect on October 28, 2012. Construction pursuant to such approval may continue until a date ten years after the adoption of such superseding Flood Insurance Rate Maps. After such date, the vesting provisions of Section 11-30 (Building Permits Issued before Effective Date of Amendment) shall apply as if the change in #flood map# were a change in provisions of the Zoning Resolution.~~

~~64-724~~~~Special provisions for other buildings within flood zones~~

[Note: Existing text to be deleted and substituted by Section 64-62]

~~#Non-complying buildings# may be elevated or reconstructed to an increased height, which at all points does not exceed the difference between #flood resistant construction elevation# and the applicable datum from which height is measured pursuant to the underlying regulations. Such elevation or reconstruction may create a new #non-compliance# or increase the degree of an existing #non-compliance#.~~

~~64-80~~~~MODIFICATION OF SPECIAL REGULATIONS APPLYING IN WATERFRONT AREAS~~~~[Note: Existing text to be deleted]~~~~The following regulations shall apply in #flood zones# and shall modify regulations set forth in Article VI, Chapter 2 (Special Regulations Applying in Waterfront Areas).~~~~64-81~~~~Modification of Waterfront Public Access and Visual Corridor Regulations for Substantially Damaged Buildings~~~~[Note: Existing text to be deleted and substituted by Section 65-21]~~~~Sections 62-50 (GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS), inclusive, and 62-811 shall not apply to the reconstruction of #buildings# that sustained substantial damage, as defined in Appendix G of the New York City Building Code, due to the effects of #Hurricane Sandy#, provided that:~~

- ~~(a) — such #buildings# had no more than 20,000 square feet of #floor area# prior to October 28, 2012;~~
- ~~(b) — the dimensions of the #building# footprint are no greater than the footprint that existed on October 28, 2012;~~
- ~~(c) — if such #building# is repositioned on the #zoning lot#, such repositioning does not newly encroach, or further encroach into a required #yard#, #rear yard equivalent#, #visual corridor# or existing #public access area#, as defined in Article VI, Chapter 2; and~~
- ~~(d) — the reconstruction does not result in a change of #use# from that existing on October 28, 2012.~~

~~The provisions of this Section shall apply to #buildings# that are the subject of an application for approval of construction documents that has been approved by the Department of Buildings no later than one year after the adoption of new final Flood Insurance Rate Maps that supersede the maps in effect on October 28, 2012. Construction pursuant to such approval may continue until a date six years after the adoption of such superseding Flood Insurance Rate Maps. After such date, the vesting provisions of Section 11-30 (Building Permits Issued Before Effective Date of Amendment) shall apply as if the change in #flood map# were a change in provisions of the Zoning Resolution.~~~~64-82~~~~Modification of Waterfront Regulations Relating to Level of Yards, Visual Corridors and the Ground Floor~~~~[Note: Existing text to be deleted]~~~~The provisions of paragraphs (a) and (b) of this Section shall apply to all #zoning lots#, without requiring a #building# to comply with #flood-resistant construction standards# as established in paragraph (a) of Section 64-12 (Applicability).~~~~Within the area that has a one percent chance of flooding in a given year, as determined by the Federal Emergency Management Agency (FEMA) in #flood maps# or by earlier adopted Flood Insurance Rate Maps,~~

certain provisions regarding ~~#waterfront yards#~~ and ~~#visual corridors#~~, as defined in Section 62-11, and ~~ground floor #uses#~~, are modified as follows:

(a) ~~—#Waterfront yards#~~

[Note: Existing text moved to Section 62-332 and modified]

Section 62-332 (Rear yards and waterfront yards) shall be modified to allow the level of a ~~#waterfront yard#~~ to be raised above the elevation of the top of the adjoining existing bulkhead, existing stabilized natural shore or mean high water line, as applicable, provided that:

- (1) ~~—where a #waterfront yard# terminates at a #lot line#, the grade of the #waterfront yard# shall be no higher than the grade of the adjacent #street# or #zoning lot#, except that natural grade need not be disturbed to comply with this requirement;~~
- (2) ~~—for #zoning lots# without a #shore public walkway#, as defined in Section 62-11, the maximum grade of the #waterfront yard#, measured parallel to the #shoreline#, shall not exceed three percent; and~~
- (3) ~~—for #zoning lots# with a #shore public walkway#, as defined in Section 62-11, the maximum grade shall be determined by the maximum permitted grade of the circulation path and the provisions of Section 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS).~~

(a) ~~—#Visual corridors#~~

[Note: Existing text moved to Section 62-512 and modified]

Section 62-512 (Dimensions of visual corridors) shall be modified so that the lowest level of a ~~#visual corridor#~~ shall be determined by establishing a plane connecting the two points along the ~~#street lines#~~ from which the ~~#visual corridor#~~ emanates at an elevation three feet above ~~#curb level#~~ with the two points where the prolonged ~~#street lines#~~ intersect the ~~#shoreline#~~, stabilized natural shore, bulkhead, upland edge of a ~~#waterfront yard#~~ raised pursuant to the provisions of paragraph (a) of this Section, or the ~~#base plane#~~ of a ~~#pier#~~ or ~~#platform#~~, whichever intersection occurs first. Such plane shall then continue horizontally seaward from the line of intersection. ~~#Visual corridors#~~ that are not prolongations of mapped ~~#streets#~~ shall be determined by establishing a plane connecting an elevation three feet above ~~#curb level#~~ at the two points along the ~~#lot line#~~ from which the ~~#visual corridor#~~ emanates with the two points of intersection at the ~~#shoreline#~~, stabilized natural shore, bulkhead, upland edge of a ~~#waterfront yard#~~ raised pursuant to the provisions of paragraph (a) of this Section, or the ~~#base plane#~~ of a ~~#pier#~~ or ~~#platform#~~, whichever intersection occurs first.

(e) ~~—Ground floor #uses#~~

[Note: Existing text to be deleted]

Section 62-341 (Developments on land and platforms), paragraph (e)(6), shall be modified so that “ground floor level” shall mean the lowest level permitted for habitable use as if it were “Post-FIRM Construction” as defined by Appendix G of the New York City Building Code, using elevation and wet flood proofing techniques, provided that where such lowest permitted level would be less than five feet above the finished level of the adjacent sidewalk, such level need not be lower than five feet above the finished level of the adjacent sidewalk.

64-90 SPECIAL APPROVALS**64-91****Modification of Certain Certification Requirements in the Special South Richmond Development District**

[Note: Existing text to be deleted]

The provisions of this Section shall apply without requiring a #building# to comply with #flood-resistant construction standards# as established in paragraph (a) of Section 64-12 (Applicability).

In the #Special South Richmond Development District#, Sections 107-22 (Designated Open Space), inclusive, and 107-23 (Waterfront Esplanade) shall not apply to the reconstruction or repair of #buildings# that were damaged due to the effects of #Hurricane Sandy#, provided that:

- (a) — the dimensions of the #building# footprint are no greater than the footprint that existed on October 28, 2012; and
- (b) — there is no increase in impervious surfaces on the #zoning lot#.

In addition, the provisions of Section 107-22, inclusive, shall not apply to a #site alteration# that is not a #development# or #enlargement# where the Commissioner of Buildings determines it is the minimum necessary to enable the reconstruction of a #building#.

These provisions shall not affect the terms of a certification previously made by the City Planning Commission. The provisions of this Section shall apply to #buildings# that are the subject of an application for approval of construction documents that has been approved by the Department of Buildings no later than one year after the adoption of new final Flood Insurance Rate Maps that supersede the maps in effect on October 28, 2012. Construction pursuant to such approval may continue until a date six years after the adoption of such superseding Flood Insurance Rate Maps. After such date, the vesting provisions of Section 11-30 (BUILDING PERMITS ISSUED BEFORE EFFECTIVE DATE OF AMENDMENT) shall apply as if the change in #flood map# were a change in provisions of the Zoning Resolution.

64-92**Special Permit for Modification of Certain Zoning Regulations**

[Note: Existing text moved to Section 73-71 and modified]

In order to allow for the alteration of existing #buildings# in compliance with #flood-resistant construction standards# and for #developments# and #enlargements# in compliance with #flood-resistant construction standards#, the Community Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the #bulk# regulations of Sections 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON CONFORMING USES AND NON COMPLYING BUILDINGS), as well as all other applicable #bulk# regulations of the Zoning Resolution, except #floor area ratio# regulations, provided the following findings are made:

- (a) ~~that there would be a practical difficulty in complying with #flood resistant construction standards# without such modifications, and that such modifications are the minimum necessary to allow for an appropriate #building# in compliance with #flood resistant construction standards#;~~
- (b) ~~that any modification of #bulk# regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from #flood resistant construction elevation#, whichever is less; and~~
- (c) ~~the proposed modifications will not alter the essential character of the neighborhood in which the #building# is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with #flood resistant construction standards#.~~

~~The Community Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.~~

Appendix A **Special Regulations for Neighborhood Recovery**

[Note: Appendix A to be deleted, unless otherwise noted]

64-A00 **GENERAL PROVISIONS**

~~The provisions of this Resolution shall apply as modified by this Chapter and by the special regulations set forth in this Appendix. The provisions of this Appendix are optional, but when utilized, shall be applied in their entirety. This Appendix shall be in effect until July 23, 2020, at which time it shall automatically expire.~~

64-A01 **Applicability of Special Regulations for Neighborhood Recovery**

~~The provisions of this Appendix shall only be applicable to #buildings# containing #residential use# whose vertical elevation or reconstruction will result in a #single # or #two family residence# that complies with #flood resistant construction standards#, where such #building# is located in a Neighborhood Recovery Area (Section 64-A80), inclusive.~~

64-A02 **Special Requirements for Application**

~~Prior to the approval of any application to the Department of Buildings pursuant to this Appendix, an applicant shall submit the following documents in order to establish that there was a #building# on the subject lot that contained a #residential use# on October 28, 2012:~~

- (a) ~~an aerial photograph taken up to one year prior to October 28, 2012, establishing that a #building# existed on the subject lot on October 28, 2012; and~~
- (b) ~~a 2012 tax bill or assessment roll for the subject lot stating that such #building# contained a #residential use#.~~

~~Where the documents specified in this Section are unavailable or inconclusive, the Department of Buildings may accept alternative documentation to satisfy the requirements of paragraphs (a) or (b).~~

64-A03

Zoning Lots in Neighborhood Recovery Areas

~~The definition of #zoning lot# set forth in Section 12-10 (DEFINITIONS) shall apply in this Appendix. However, as an option, where a tax lot contained one or more #buildings# on October 28, 2012, or where a #building# or #buildings# occupied more than one tax lot on October 28, 2012, such tax lot may be provisionally considered a #zoning lot# for the sole purpose of demonstrating compliance with the #bulk# requirements of this Resolution, and shall be referred to as a #zoning lot# in this Appendix, provided that the proposed application will not affect compliance with any applicable provisions of the New York City Building Code or Fire Code with respect to access to the same or other #zoning lots# on the same #block#, unless a waiver or modification is obtained from the Department of Buildings or the Fire Department, respectively.~~

64-A10

SPECIAL REGULATIONS FOR ESTABLISHING NON-CONFORMANCE AND NON-COMPLIANCE

64-A11

Special Regulations for Establishing Non-conformance of Residences

~~In all #districts#, for a #zoning lot# that contained two or more #dwelling units# on October 28, 2012, and does not have lawful documentation indicating that more than one #dwelling unit# existed on the #zoning lot# on such date, the Community Board of Standards and Appeals may permit the vertical elevation or reconstruction of #buildings# containing such #dwelling units# and may establish #non-conformance# of such #buildings#, pursuant to Section 64-A71 (Special Permit for Establishing Non-conformance).~~

64-A12

Special Regulations for Establishing Non-compliance of Existing Buildings

~~In all districts, a #building# containing #residences#, and any other structure that is attached to such #building#, including porches, stairs, terraces or balconies, that existed both on October 28, 2012, and on the date of application for a building permit, may be considered #non-complying# for the purpose of utilizing the applicable provisions of Article V, Chapter 4 and Article VI, Chapter 4 of this Resolution relating to #non-complying buildings or other structures# provided that:~~

- (a) ~~a survey, prepared by a licensed land surveyor, specifying the location and height of such #building# and any other structures that are attached to such #building#, is submitted as documentation of such #non-compliance#; and~~
- (b) ~~such #building# shall either be vertically elevated in compliance with the #bulk# provisions of Section 64 A20 (SPECIAL BULK REGULATIONS FOR THE VERTICAL ELEVATION OF EXISTING BUILDINGS), or be reconstructed in compliance with the #bulk# provisions of Section 64 A30 (SPECIAL BULK REGULATIONS FOR THE RECONSTRUCTION OF BUILDINGS EXISTING ON OCTOBER 28, 2012).~~

~~Upon completion and sign-off of work completed pursuant to the provisions of this Appendix, the #building# shall be considered #non-complying#.~~

64-A20

SPECIAL BULK REGULATIONS FOR THE VERTICAL ELEVATION OF EXISTING BUILDINGS

~~The provisions of this Section shall apply to the vertical elevation of #buildings# containing #residences# that existed on October 28, 2012. Except as specifically modified by the provisions of this Section, inclusive, the applicable #bulk# regulations of this Chapter, the regulations of Article V of this Resolution and the applicable zoning district shall remain in effect.~~

~~No #building# that is vertically elevated pursuant to this Section shall subsequently be #enlarged# pursuant to paragraph (b) of Section 54-313 (Single or two family residences with non-complying front yards or side yards) or Section 73-622 (Enlargements of single and two family detached and semi-detached residences).~~

64-A21

Special Regulations for Rebuilt Portions of Vertically Elevated Buildings

~~A portion of a #building# that is being vertically elevated pursuant to this Appendix may be rebuilt, provided that:~~

- (a) ~~the rebuilt portion does not exceed 75 percent of the existing #floor area# of such #building#; and~~
- (b) ~~except as specifically allowed by this Chapter, no new #non-compliance# shall be created, nor shall the degree of any existing #non-compliance# be increased beyond that established pursuant to Section 64-A10 (SPECIAL REGULATIONS FOR ESTABLISHING NON-CONFORMANCE AND NON-COMPLIANCE).~~

~~If the rebuilt portion of a #building# exceeds 75 percent of the existing #floor area# of the #building#, such #building# shall be subject to the regulations of 64-A30 (SPECIAL BULK REGULATIONS FOR THE RECONSTRUCTION OF BUILDINGS EXISTING ON OCTOBER 28, 2012).~~

64-A22

Special Regulations for Space Partially Below Grade

~~For a #building# where the lowest floor containing habitable space is partially below adjoining grade, and at least one half of the floor to ceiling height of such floor is above adjoining grade, such #building# may be vertically elevated in order to raise the lowest floor containing habitable space to the #flood-resistant construction elevation#, provided that:~~

- ~~(a) — the elevated #building# does not exceed two #stories#, except that attic space providing structural headroom of less than eight feet shall not be considered a #story# for the purposes of this Section; and~~
- ~~(b) — the height of such elevated #building#, including the apex of a pitched roof, does not exceed 25 feet, as measured from the #flood-resistant construction elevation#.~~

~~Any floor space that becomes #floor area# in excess of the maximum permitted #floor area ratio# for such #zoning lot#, as a result of the vertical elevation, shall be considered #non-complying floor area#. Such vertical elevation may increase any existing #non-compliance# with respect to required #open space# and #yard# regulations to the extent that such #non-compliance# results from the elevation of the lowest floor to the #flood-resistant construction elevation#. All other provisions of Article V, Chapter 4 (Non-complying Buildings), shall apply without modification.~~

~~The level of the adjoining grade shall be the average elevation of the grade adjoining the building, before it is elevated, determined in the manner prescribed by the Building Code of the City of New York for adjoining grade elevation.~~

64-A23

Special Regulations for Existing Buildings Located Over Water

~~For a #building# that will be vertically elevated and is located either partially or entirely seaward of the #shoreline#, such #building# may be relocated landward of the #shoreline# on the same #zoning lot#. Such relocation may create a new #non-compliance# or increase the degree of any existing #non-compliance# as to #side yards#, waterfront yards, #rear yards# or #rear yard equivalents#, provided that:~~

- ~~(a) — an open area of at least three feet shall be maintained between the exterior wall of the #building# and any #lot line#; and~~
- ~~(b) — except as specifically allowed by this Chapter, no new #non-compliance# shall be created, nor shall the degree of any existing #non-compliance# be increased, beyond that established pursuant to Section 64-A12 (Special Regulations for Establishing Non-compliance of Existing Buildings).~~

64-A24

Permitted Obstructions in Required Open Space, Yards and Courts

~~The provisions of Sections 23-12 (Permitted Obstructions in Open Space), 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) and 64-421 (Permitted obstructions) shall be modified such that:~~

- ~~(a) — mechanical equipment including, but not limited to, #accessory# heating and cooling equipment, fuel oil tanks and emergency generators shall be permitted obstructions in #open space# required on the~~

~~#zoning lot#, in any #side yard#, #rear yard# or #rear yard equivalent# and in #courts#, provided such equipment is:~~

- ~~(1) — located at least three feet from any #lot line#;~~
- ~~(2) — screened on all sides by walls consisting of at least 50 percent opaque materials; and~~
- ~~(3) — in compliance with the standards of either of the following provisions:~~
 - ~~(i) — all structures and screening are located no more than 10 feet from the wall of a #building# and limited to a height of no more than 12 feet above #flood-resistant construction elevation#; or~~
 - ~~(ii) — is located on the roof of a #building or other structure#, provided that the height of such equipment and screening does not exceed six feet, as measured from the finished level of a flat roof or, for a sloping roof, as measured from the midpoint of such roof. Such equipment shall be located not less than 15 feet from any #street wall# of a #building or other structure#.~~
- ~~(b) — visual mitigation elements, provided pursuant to Section 64 A50 (SPECIAL DESIGN REQUIREMENTS) shall be permitted obstructions in any #open space# required on the #zoning lot#, in any #yard# and in #courts#.~~

64 A30

SPECIAL BULK REGULATIONS FOR THE RECONSTRUCTION OF BUILDINGS EXISTING ON OCTOBER 28, 2012

[Note: Existing text moved to Section 64-33 and modified]

~~The #bulk# regulations of this Section shall apply only to the permitted reconstruction of a #building# that existed on October 28, 2012, and results in a #single # or #two family detached residence#. Except as specifically modified by the provisions of this Section, inclusive, the #bulk# regulations of this Chapter and the applicable zoning district shall remain in effect. #Buildings# reconstructed pursuant to this Section shall not be considered #developments# or #enlargements#.~~

~~No #building# that is reconstructed pursuant to this Section shall subsequently be #enlarged# pursuant to paragraph (b) of Section 54-313 (Single or two family residences with non-complying front yards or side yards) or Section 73-622 (Enlargements of single and two family detached and semi-detached residences).~~

64 A31

Special Regulations for Minimum Required Open Space, Maximum Lot Coverage and Maximum Floor Area

64-A311**Lot coverage and open space**

[Note: Existing text moved to Section 64-332 (a) and modified]

R1-2A R2A R3-1 R3-2 R4 R4-1 R4A

In the districts indicated, for ~~zoning lots~~ that do not meet the required minimum ~~lot area~~ or ~~lot width~~ of the applicable district, ~~lot coverage~~ and ~~open space~~ shall be governed by the ~~yard~~ requirements set forth in Section 64-A35 (Special Yard Regulations).

64-A312**Floor area**

R2X R3 R4 R4-1 R4A

In the districts indicated, the ~~floor area ratio~~ set forth in Section 23-142 (Open space and floor area regulations in R1 and R2 Districts with a letter suffix and R3 through R5 Districts) may be increased by 20 percent provided that any such increase in ~~floor area~~ is located in any portion of a ~~building~~ covered by a sloping roof that rises at least seven inches in vertical distance for each foot of horizontal distance.

64-A313**Special open space, lot coverage and floor area regulations for small lots**

R1 R2 R3 R4 R5 R6

In the districts indicated, for ~~zoning lots~~ with a ~~lot area~~ of less than 1,800 square feet, ~~open space~~, ~~lot coverage~~ and ~~floor area ratio~~ regulations shall not apply. In lieu thereof, the ~~yard~~ requirements set forth in Section 64-A35 (Special Yard Regulations) and the height and setback requirements of Section 64-A36 (Special Height and Setback Regulations) shall govern.

64-A32**Special Regulations for Maximum Number of Dwelling Units and Minimum Size of Dwelling Units****64-A321****Maximum number of dwelling units**

R1 R2 R3 R4 R5 R6

In the districts indicated, the provisions of Section 23-22 (Maximum Number of Dwelling Units) shall not apply. In lieu thereof, not more than one ~~single family detached residence~~ or, where permitted in the applicable zoning district pursuant to Section 22-12 (Use Group 2), one ~~two family detached residence~~, may be reconstructed. However, any ~~two family detached residence~~ may only be reconstructed if such ~~zoning lot~~ contained two or more ~~dwelling units~~ on October 28, 2012, as indicated on the certificate of occupancy or

~~upon approval by the Community Board of Standards and Appeals pursuant to Section 64-A71 (Special Permit for Establishing Non-conformance).~~

64-A322

Minimum size of dwelling units

R3 R4-1 R4A

~~In the districts indicated, the minimum size of a #dwelling unit# as set forth in paragraph (b) of Section 23-23 shall not apply to the permitted reconstruction of a #two-family detached residence#.~~

64-A33

Special Regulations for Minimum Lot Area or Lot Width for Residences

~~In all districts, including #lower density growth management areas#, either one #single family detached residence# or, where permitted in the applicable zoning district pursuant to Section 22-12 (Use Group 2) one #two-family detached residence#, may be reconstructed upon a #zoning lot# that:~~

- ~~(a) — has less than the prescribed minimum #lot area# or #lot width# as required by the applicable district regulations; and~~
- ~~(b) — if reconstructed as a #two-family detached residence#, either:~~
 - ~~(1) — complies with the maximum number of #dwelling units# requirement of the applicable zoning district; or~~
 - ~~(2) — such #zoning lot# contained two or more #dwelling units# on October 28, 2012, as indicated on the certificate of occupancy or upon approval by the Community Board of Standards and Appeals pursuant to Section 64-A71 (Special Permit for Establishing Non-conformance).~~

64-A34

Permitted Obstructions in Required Open Space, Yards and Courts

~~The provisions of Sections 23-12 (Permitted Obstructions in Open Space), 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) and 64-421 (Permitted obstructions) shall be modified as follows:~~

- ~~(a) — mechanical equipment, including, but not limited to, #accessory# heating and cooling equipment, fuel oil tanks and emergency generators, shall be permitted obstructions in any #open space# required on the #zoning lot#, in any #side yard#, #rear yard# or #rear yard equivalent# and in #courts#, provided that such equipment is:~~
 - ~~(1) — located at least three feet from any #lot line#;~~
 - ~~(2) — screened on all sides by walls consisting of at least 50 percent opaque materials; and~~

(3) ~~in compliance with the standards of either of the following provisions:~~

- (i) ~~all structures and screening are located no more than 10 feet from the wall of a #building# and limited to a height of no more than 12 feet above #flood-resistant construction elevation#; or~~
 - (ii) ~~is located on the roof of a #building# or other structure, provided that the height of such equipment and screening does not exceed six feet, as measured from the finished level of a flat roof or, for a sloping roof, as measured from the midpoint of such roof. Such equipment shall be located not less than 15 feet from any #street wall# of a #building or other structure#.~~
- (b) ~~eaves, gutters or downspouts shall be permitted obstructions in any #open space# required on the #zoning lot#, in any #yard# and in #courts#, provided that such eave, gutter or downspout does not project further than 16 inches into such required #open space#, #yard# or #court#.~~
- (c) ~~visual mitigation elements, provided pursuant to Section 64 A50 (SPECIAL DESIGN REQUIREMENTS) shall be permitted obstructions in any #open space# required on the #zoning lot#, in any #yard# and in #courts#.~~

64 A35

Special Yard Regulations

64 A351

Special provisions for front yards

[Note: Existing text to be deleted and substituted by Section 64-332(b)]

R1 R2 R3 R4 R5

- (a) ~~In the districts indicated, the #front yard# provisions of the applicable district shall apply, except that in R4 and R5 Districts, a #front yard# may have a depth of any dimension equal to or exceeding 10 feet.~~
- (b) ~~In the districts indicated, where an enclosed garage fronts upon a #street#, there shall be an unobstructed area at ground level, between the garage door and the #street line#, which is at least eight and one half feet in width by 18 feet in depth, except no such space shall be required in R5D Districts. Where an unenclosed #accessory# off-street parking space is provided in an open area on a #zoning lot#, or provided beneath an elevated #building#, an unobstructed area at ground level which is at least eight and one half feet in width by 18 feet in depth shall be provided between the #street line# and such space.~~
- (c) ~~For #buildings# that are reconstructed pursuant to this Section 64 A30, inclusive, the provisions regulating the depth of #front yards# in relation to adjacent #buildings#, set forth in paragraphs (b) and (c) of Section 23-45, shall not apply.~~

64-A352**Special provisions for narrow lots**

[Note: Existing text moved to Section 64-332(c) and modified]

R1 R2 R3 R4 R5 R6

- (a) ~~In the districts indicated, the #side yard# provisions of the applicable district shall apply, except that the required total width of #side yards# for a #single # or #two-family detached residence# may be reduced by four inches for each foot by which the width of a #zoning lot# is less than that required under the provisions of Section 23-32 (Minimum Lot Area or Lot Width for Residences). In no event shall the required width of a #side yard# be less than three feet. For #zoning lots# with less than 21 feet in #lot width#, the required total width of #side yards# shall be six feet.~~
- (b) ~~In the #Special South Richmond Development District#, the provisions of Sections 107-42 (Minimum Lot Area and Lot Width for Residences) and 107-462 (Side yards) shall not apply. In lieu thereof, the regulations of the applicable underlying #Residence District# shall apply pursuant to Section 23-32 (Minimum Lot Area or Lot Width for Residences) and Section 23-46 (Minimum Required Side Yards) and may be modified, as applicable, by the regulations of this Appendix.~~
- (c) ~~For the permitted reconstruction of #detached buildings# the provisions of paragraph (c) of Section 23-461 (Side yards for single- or two-family residences) shall not apply, provided such open area does not serve as access to required #accessory# off-street parking.~~

64-A353**Special provisions for shallow lots**

[Note: Existing text moved to Section 64-332(d) and modified]

R1 R2 R3 R4 R5 R6

~~In the districts indicated, if at any point the depth of a #zoning lot# is less than 95 feet, the depth of a required #rear yard# or waterfront yard may be reduced by six inches for each foot by which the mean lot depth is less than 95 feet. In no event shall the required depth of a rear yard be less than 10 feet.~~

64-A354**Special provisions for corner lots**

[Note: Existing text moved to Section 64-332(e) and modified]

~~For #corner lots# in R1-2 Districts, if one #front yard# has a depth of 20 feet, then the other #front yard# may have a depth of 15 feet. For #corner lots# in R3 Districts, if one #front yard# has a depth of 15 feet, then the other #front yard# may have a depth of 10 feet.~~

~~In all districts, for #corner lots# with less than the minimum #lot area# required pursuant to the applicable district regulations, the following provisions shall apply:~~

- (a) ~~one #front yard# shall be provided along the full length of either #front lot line#;~~

- (b) ~~the remaining #front lot line# shall be treated as a #side lot line#; and~~
- (c) ~~any #side lot line# that is parallel to, or within 45 degrees of being parallel to the #front lot line# selected pursuant to paragraph (a) of this Section, shall be treated as a #rear lot line# and a #rear yard# shall be provided along the full length of such #lot line#.~~

~~The #rear# and #side yards# provided pursuant to this Section may be reduced pursuant to Sections 64-A352 (Special provisions for narrow lots) and 64-A353 (Special provisions for shallow lots).~~

64-A36 **Special Height and Setback Regulations**

[Note: Existing text moved to Section 64-333 and modified]

R1 R2 R3 R4 R5 R6

~~In the districts indicated, the height and setback regulations of the applicable district shall not apply. In lieu thereof, all #buildings# shall be subject to the height and setback provisions set forth in paragraph (b) of Section 23-631 (General provisions), except that the maximum height of a perimeter wall before setback shall be 19 feet, the maximum height of a ridge line shall be 25 feet and all heights shall be measured from the #flood-resistant construction elevation#. In no event shall any #building# exceed two #stories#, except that attic space providing structural headroom of less than eight feet shall not be considered a #story# for the purposes of this Section.~~

64-A40 **SPECIAL PARKING PROVISIONS**

64-A41 **Waiver of Requirements for Certain Zoning Lots**

R1 R2 R3 R4 R5 R6

~~In the districts indicated, the requirements set forth in Section 25-22 (Requirements Where Individual Parking Facilities Are Provided) shall be waived for a #single # or #two family residence# on an #interior zoning lot# that has a #lot width# along a #street# of less than 25 feet, and where the #flood-resistant construction elevation# is less than six feet above #curb level#.~~

64-A42 **For Elevated Buildings**

~~The provisions of Section 64-52 (For Elevated Buildings) shall be modified to allow the #accessory# off street parking spaces, required pursuant to that section, to be located anywhere on the #zoning lot#.~~

64-A50**SPECIAL DESIGN REQUIREMENTS**

R1 R2 R3 R4 R5 R6

~~In the districts indicated, the provisions of Section 64-61 (Design Requirements for Single and Two family Residences) shall apply, except as expressly modified by this Section. Visual mitigation elements shall be required unless more than 50 percent of the #street wall# is within 18 inches of the #street line#.~~

64-A51**Special Regulations for Corner Lots**

~~The design requirements set forth in Section 64-61 shall apply separately along each #street frontage# of a #corner lot#, except as modified below:~~

- ~~(a) For #corner lots#, where the level of the #lowest occupiable floor# is nine feet or more above #curb level#, and more than 50 percent of the #street wall# of a #building# is within six feet of a #street line#, only one visual mitigation element shall be required along such #street# frontage.~~
- ~~(b) For #corner lots#, where trees or shrubs are provided as visual mitigation elements along both #street frontages# pursuant to paragraph (d) of Section 64-61, the required total length of planted areas shall be reduced to a minimum of 45 percent of the aggregate length of #street walls#, provided that the planting bed is continuous for the minimum required length, measured along such #street walls#, and at least six feet of planting bed is provided facing each #street#.~~

64-A52**Special Regulations for Narrow Lots**

~~For #interior zoning lots# that have a #lot width# less than 25 feet, the design requirements of paragraph (d) of Section 64-61 shall be modified to require the total length of planted areas to be greater than 40 percent of the #lot width# and to be planted to screen at least 40 percent of the length of the #street wall#.~~

64-A53**Special Regulations for Zoning Lots With Shallow Yards**

~~For #zoning lots# where more than 50 percent of the #street wall# of a #building# is located within six feet of a #street line#, one or more of the following visual mitigation elements may be provided in lieu of paragraph (d) of Section 64-61:~~

- ~~(a) Climbing vines~~

~~Where provided as a visual mitigation element, climbing vines shall be planted along 40 percent of the aggregate width of #street walls# in a planting bed that is at least 18 inches in width, measured perpendicular to the #street wall# and allows a soil depth of at least two feet. A framework for the~~

~~climbing vines shall be provided for the full length of the planting bed to a height of at least four feet. Such framework may be freestanding or attached to the #building#.~~

(b) ~~Green wall~~

~~Where provided as a visual mitigation element, a green wall or landscaped fence shall extend along 40 percent of the aggregate width of #street walls# to a height of at least four feet. Hanging plants, potted plants or plant material shall be distributed along the entire length of such green wall or landscaped fence. The supporting structure may be freestanding or attached to the #building# and shall be considered a permitted obstruction in any required #yard#, #court# or #open space#.~~

(c) ~~Planter box or raised planting bed~~

~~Where provided as a visual mitigation element, planter boxes or raised planting beds may be used in place of planting beds at grade. The top of such planter boxes shall be located between 18 and 36 inches above adjacent grade. Raised planting beds shall be at least 18 inches in height and shall not exceed 36 inches above adjacent grade. For planter boxes and raised planting beds, the minimum soil width shall be at least one foot, measured perpendicular to the street line, and the minimum soil depth shall be 18 inches. The planted area may be comprised of any combination of groundcover, perennials, annuals, shrubs, trees or other living plant material, and must attain a height of at least six inches. Planter boxes may be freestanding or attached to the #building#.~~

64-A60

NON CONFORMING AND NON-COMPLYING BUILDINGS

64-A61

Special Regulations for Non-conforming Single or Two-family Residences in Manufacturing Districts

[Note: Existing text to be deleted and substituted by Section 64-61]

~~The provisions of Section 64-712 (Single and two family buildings), shall be modified to allow the vertical elevation or reconstruction of a #non-conforming single # or #two-family residence# in a #Manufacturing District#. Reconstructions of such #residences# shall utilize the applicable #bulk# regulations of an R4-1 District, as modified by Section 64-A30 of this Appendix.~~

64-A70

SPECIAL APPROVALS

~~The special permit and variance provisions of this Resolution shall apply to properties in the Neighborhood Recovery Areas.~~

64-A71**Special Permit for Establishing Non-conformance**

In all districts, for a ~~#zoning lot#~~ that contained two or more ~~#dwelling units#~~ on October 28, 2012, and does not have a certificate of occupancy, or other lawful documentation, indicating that more than one ~~#dwelling unit#~~ existed on the ~~#zoning lot#~~ on such date, the Community Board of Standards and Appeals may permit the vertical elevation or reconstruction of up to two ~~#dwelling units#~~ on such ~~#zoning lot#~~ in accordance with this Appendix, and all applicable requirements of the New York City Construction Codes, provided that the Community Board of Standards and Appeals determines that more than one ~~#dwelling unit#~~ existed on the site on October 28, 2012, based on evidence submitted to the Community Board of Standards and Appeals, which may include, but shall not be limited to, Department of Finance tax records, utility bills or an affidavit from a licensed architect or engineer that documents an on site inspection of the ~~#zoning lot#~~ performed under the auspices of a governmental agency.

Such ~~#buildings#~~ which are vertically elevated shall comply with the ~~#bulk#~~ provisions of Section 64-A20, and such ~~#buildings#~~ that are reconstructed shall comply with the ~~#bulk#~~ provisions of Section 64-A30.

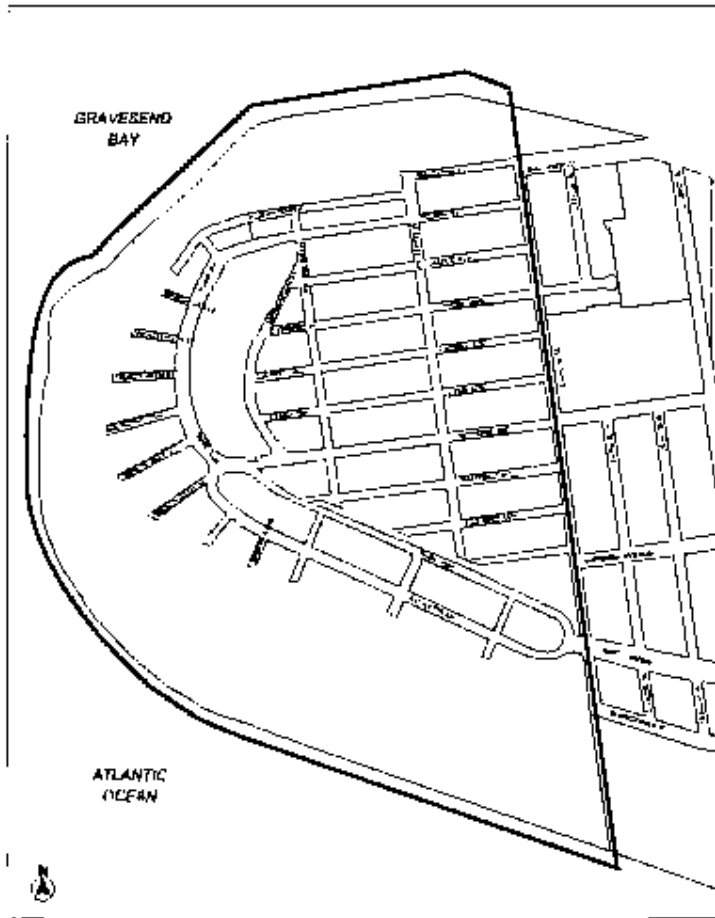
Upon completion and sign-off of work completed under the provisions of this Appendix, such ~~#building#~~ shall be considered ~~#non-conforming#~~.

64-A80**NEIGHBORHOOD RECOVERY AREA MAPS**

Neighborhoods that experienced a high concentration of damage to ~~#single#~~ and ~~#two family residences#~~ from ~~#Hurricane Sandy#~~ are defined as Neighborhood Recovery Areas.

64-A81**Neighborhood Recovery Areas in Brooklyn**

(a) — within Community District 13

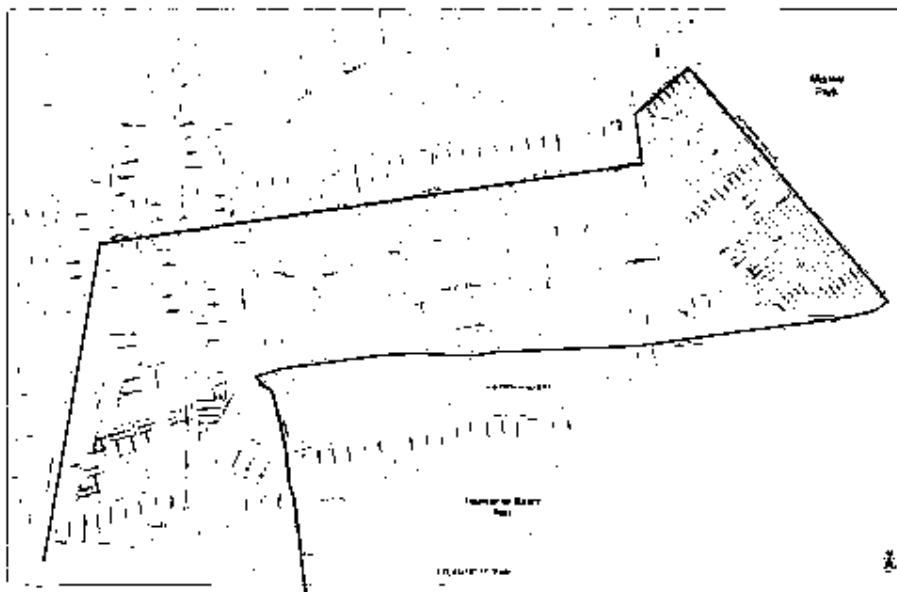


Neighborhood Recovery Area Blocks within Community District 13:

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7000, 7001, 7002, 7003, 7024, 7025, 7026, 7027, 7028, 7029, 7030, 7031, 7032, 7033, 7034, 7035, 7036, 7037,
7038, 7039, 7040, 7041, 7042, 7043, 7044.

(b) within Community Districts 13 and 15



~~Neighborhood Recovery Area Blocks within Community Districts 13 and 15:~~

~~7220, 7222, 7223, 7224, 7239, 7242, 7243, 7244, 7245, 7260, 7261, 7262, 7263, 7264,~~

~~7430, 7431, 7433, 7434, 7435, 7436, 7437, 7438, 7439, 7440, 7441, 7442, 7443, 7444, 7445, 7446, 7447, 7449,
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7472, 7473, 7474, 7475, 7476, 7477, 7478, 7479, 7481,~~

~~8590, 8661, 8662, 8663, 8664, 8665, 8666, 8667, 8668, 8669, 8670, 8671, 8672, 8673, 8674, 8675, 8676, 8677,
8678, 8679, 8680, 8682, 8683, 8684, 8685, 8686, 8687, 8688, 8689, 8690, 8691, 8692, 8693,~~

~~8700, 8701, 8702, 8703, 8704, 8705, 8706, 8707, 8709, 8711, 8712, 8714, 8715, 8716, 8717, 8718, 8720, 8721,
8722, 8723, 8725, 8761, 8762, 8763, 8764, 8765, 8766, 8767, 8768, 8769, 8770, 8771, 8772, 8773, 8774, 8775,
8776, 8777, 8778, 8779, 8780, 8781, 8782, 8783, 8784, 8785, 8786, 8787, 8788, 8789, 8790, 8791, 8792, 8793,
8794, 8795, 8796, 8797, 8798, 8799,~~

~~8800, 8801, 8802, 8803, 8804, 8805, 8806, 8807, 8808, 8809, 8810, 8811, 8812, 8813, 8815, 8830, 8833, 8834,
8835, 8837, 8839, 8840, 8841, 8842, 8843, 8844, 8845, 8856, 8866, 8876, 8883, 8885, 8891, 8896,~~

~~8900, 8907, 8914, 8923, 8925, 8932, 8939, 8946, 8955,~~

(c) within Community District 18



Neighborhood Recovery Area Blocks within Community District 18:

8012, 8029, 8030, 8031, 8032, 8033, 8034, 8035, 8036, 8037, 8038, 8039, 8040, 8041, 8043, 8044, 8046, 8047, 8048, 8049, 8050, 8051, 8052, 8053, 8054, 8055, 8056, 8057, 8058, 8059, 8060, 8061, 8062, 8063, 8064, 8065, 8066, 8067, 8068, 8069, 8070, 8071, 8072, 8073, 8074, 8075, 8076, 8077, 8078, 8079, 8080, 8081, 8082, 8083, 8084, 8085, 8086, 8088, 8089, 8090,

8217, 8218, 8219, 8220, 8221, 8222, 8224, 8225, 8226, 8227, 8228, 8229, 8230, 8231, 8232, 8233, 8234, 8235, 8236, 8237, 8238, 8239, 8240, 8241, 8242, 8243, 8244, 8245, 8246, 8247, 8248, 8249, 8250, 8251, 8252, 8253, 8255, 8256, 8257, 8258, 8259, 8260, 8261, 8262, 8263, 8264, 8265, 8266, 8267, 8268, 8269, 8270, 8271, 8272, 8273, 8274, 8275, 8277, 8278, 8279, 8280, 8281, 8282, 8283, 8284, 8285, 8286, 8287, 8288, 8289, 8290, 8291, 8293, 8294, 8295, 8296, 8297, 8298, 8299,

8300, 8301, 8302, 8303, 8304, 8305, 8306, 8307, 8308, 8309, 8310, 8312, 8316, 8317, 8318, 8321, 8322, 8323, 8324, 8326, 8327, 8328, 8329, 8330, 8331, 8334.

64-A82

Neighborhood Recovery Areas in Queens

(a) within Community District 10

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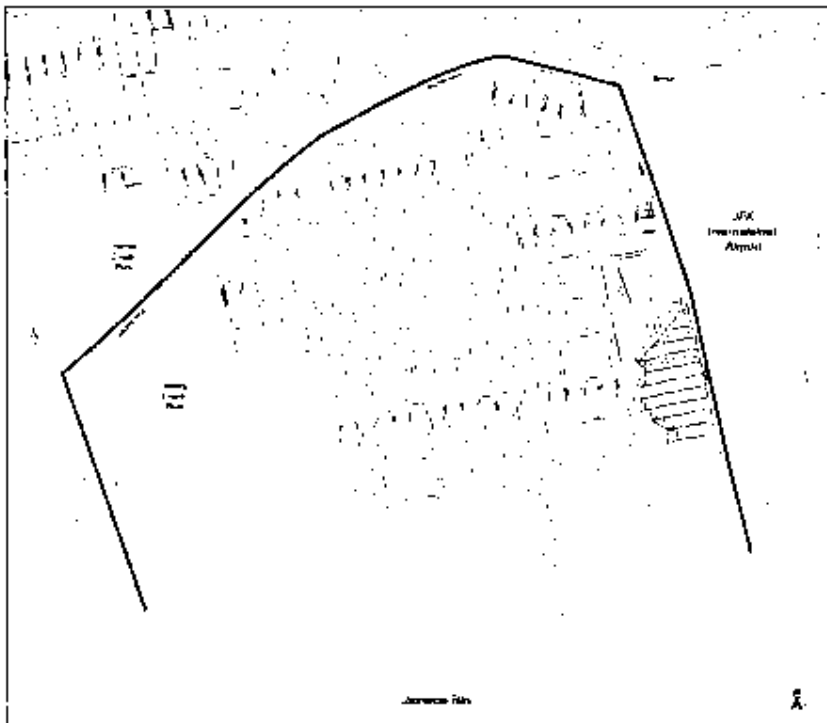
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~~Neighborhood Recovery Area Blocks within Community District 10:~~

~~11469, 11472,~~

~~11572, 11583, 11588, 11589, 11590, 11591,~~

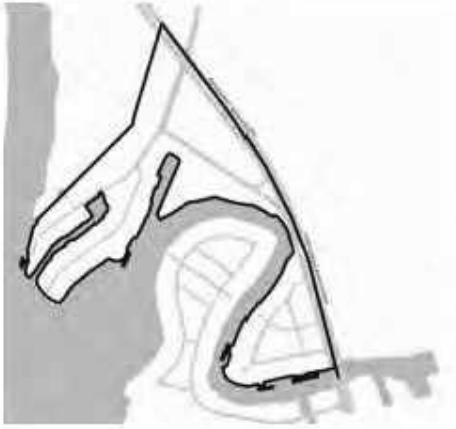
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13983, 13984, 13985, 13986, 13987, 13988, 13989, 13990, 13991, 13999,~~

~~14000, 14001, 14002, 14003, 14004, 14005, 14006, 14007, 14008, 14009, 14010, 14011, 14012, 14013, 14016,
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14238, 14239, 14240, 14241, 14242, 14243, 14244, 14245, 14246, 14247, 14248, 14249, 14250, 14251, 14252,
14253, 14254, 14255, 14260,~~

~~(b) within Community District 13~~



~~Neighborhood Recovery Area Blocks within Community District 13:~~

~~13895, 13910, 13911, 13912, 13913, 13914, 13921, 14260.~~

~~(e) within Community District 14~~



Neighborhood Recovery Area Blocks within Community District 14:

15100,

15300, 15301, 15302, 15303, 15304, 15305, 15306, 15308, 15311, 15312, 15313, 15314, 15315, 15316, 15317,
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64-A83**Neighborhood Recovery Areas in Staten Island**

~~In Staten Island, any areas designated by New York State as part of the NYS Enhanced Buyout Area Program located within #Special Coastal Risk District# 3, as established in the Appendix to Article XIII, Chapter 7, are excluded from a Neighborhood Recovery Area.~~

(a) ~~within Community District 2~~

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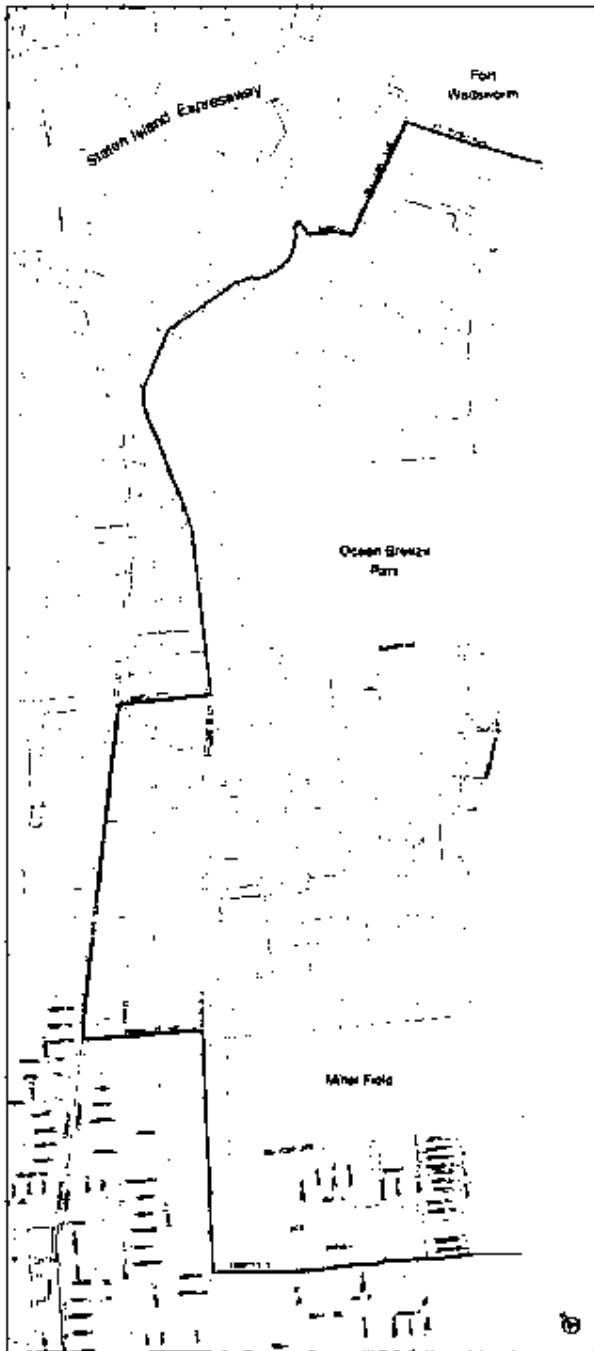
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Neighborhood Recovery Area Blocks within Community District 2:

3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3125, 3128,

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~~3603, 3604, 3605, 3608, 3609, 3610, 3613, 3614, 3615, 3650, 3651, 3652, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, 3672, 3673, 3674, 3679, 3680, 3681, 3682, 3683, 3684, 3685, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3696, 3697, 3698, 3699,~~

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(b) — within Community District 3

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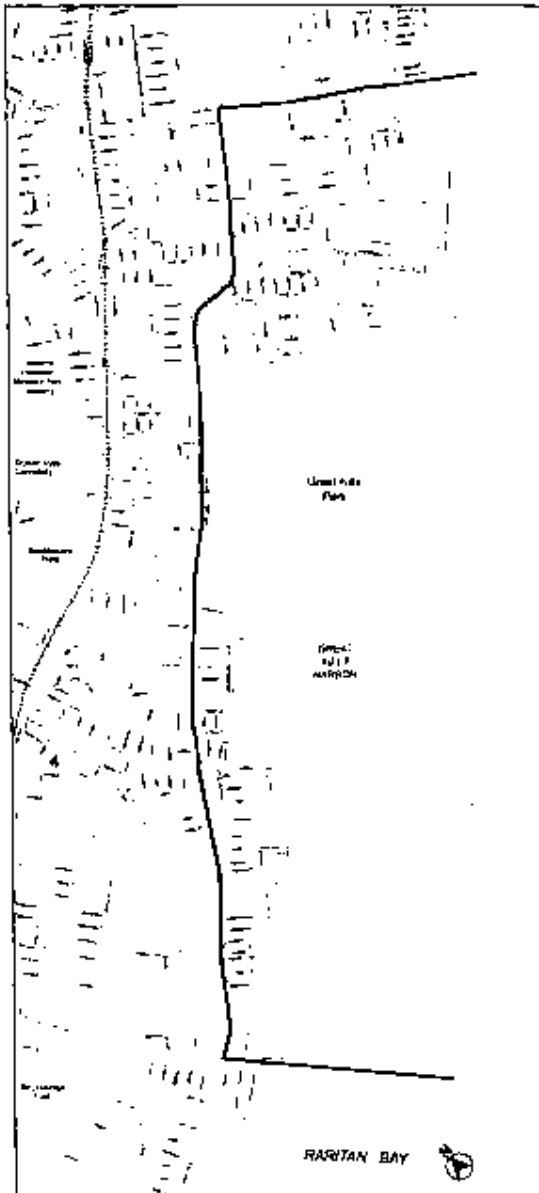
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Neighborhood Recovery Area Blocks within Community District 3:

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4105, 4108, 4130, 4131, 4160,

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4689, 4690, 4691, 4692, 4693, 4694, 4695,

~~4717, 4718, 4719, 4720, 4721, 4722, 4723, 4724, 4725, 4726, 4728, 4736, 4737, 4738, 4739, 4740, 4746, 4754, 4758, 4759, 4760, 4761, 4762, 4767, 4768, 4772, 4773, 4774, 4775, 4776, 4781, 4782, 4785, 4787, 4788, 4791, 4792, 4793,~~

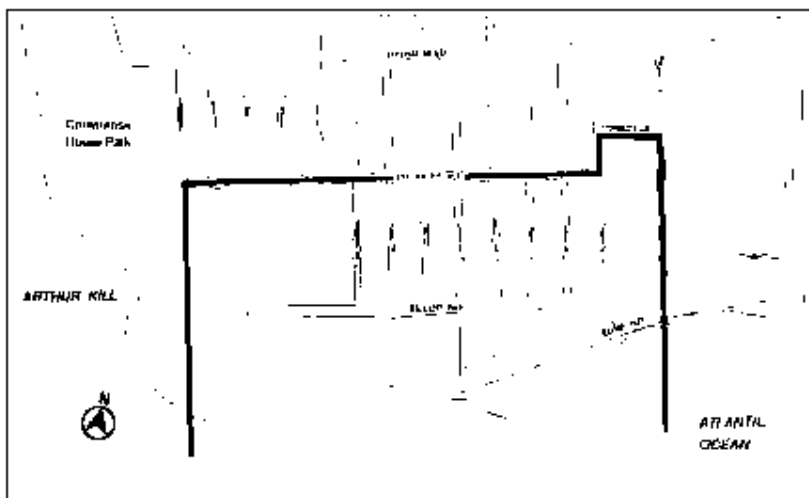
~~4802, 4803, 4805, 4994,~~

~~5067, 5190, 5195, 5200, 5201, 5202, 5203, 5204, 5205, 5206, 5207, 5208, 5209, 5212, 5298, 5299,~~

~~5302, 5303, 5306, 5307, 5308, 5309, 5310, 5311, 5312, 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321, 5322,~~

~~5409, 5410, 5411, 5412, 5415, 5418.~~

~~(c) within Community District 3~~



Neighborhood Recovery Area Blocks within Community District 3:

7722,

7857, 7858, 7859, 7860, 7861, 7862, 7863, 7880, 7881, 7883, 7884, 7885,

7905, 7906.

* * *

Chapter 5

Special Regulations Applying in Designated Recovery Areas

65-00**GENERAL PROVISIONS**

The provisions of this Resolution shall apply as modified by this Chapter and by the special regulations set forth herein. The provisions of this Chapter establish optional special regulations which are designed to facilitate, on a temporary basis, the recovery of areas impacted by a severe disaster and in so doing promote and protect public health, safety and general welfare. These general goals include, among others, the following purposes:

- (a) to expedite the recovery of neighborhoods that have experienced physical or non-physical impacts from a severe disaster;
- (b) to enable the reconstruction and alteration of buildings damaged by a severe disaster, by removing disincentives; and
- (c) to promote the most desirable use of land in accordance with a well-considered plan and thus conserve the value of land and buildings, and thereby protect the City's tax revenues.

65-01**Applicability of Article VI, Chapter 5**

The provisions of this Chapter shall apply based on the type of impacts caused by each #severe disaster#, and such applicability shall be determined at the time such provisions are added to the Chapter's applicability. #Designated recovery areas# shall be determined based on the extent of the impacts caused by the #severe disaster# and recovery plans, as applicable. For each of the #designated recovery areas#, applicable recovery provisions will be set forth in this Chapter based on the type of impacts caused by the #severe disaster#. The #designated recovery areas# shall be listed in Appendix A of this Chapter, and the applicable time duration shall be set forth in the following table.

<u>#Designated Recovery Area# Number and #severe disaster#</u>	<u>Effective Date</u>	<u>Applicable Sections</u>								<u>Time Duration (after effective date)*</u>
		<u>65-11</u>	<u>65-12</u>	<u>65-13</u>	<u>65-21</u>	<u>65-31</u>	<u>65-41</u>	<u>65-42</u>	<u>64-51</u>	
<u>1: COVID-19</u>	<u>[date of adoption]</u>		<u>x</u>	<u>x</u>						<u>2 years</u>

* Such time duration limitation may be modified by the specific provision located in this Chapter

The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control.

65-10**SPECIAL TIME-BASED PROVISIONS**

The modifications to time limits associated with this Resolution and set forth in this Section, inclusive, may be applied to #zoning lots# within #designated recovery areas#, as set forth in Section 65-01 (Applicability of Article VI, Chapter 5).

65-11**Vesting Provisions**

In all districts, the provisions of Section 11-30 (BUILDING PERMITS ISSUED BEFORE EFFECTIVE DATE OF AMENDMENT), inclusive, and any other provision that requires a building permit to be submitted, or a particular amount of construction to be completed within a certain timeframe, shall be suspended. Subsequent to the expiration of the applicable time duration as set forth in Section 65-01 (Applicability of Article VI, Chapter 5), the time period established by the applicable provisions of this Resolution shall be resumed, and the remaining time associated with submitting a building permit, or completing a particular amount of construction shall be the amount existing prior to the #severe disaster#.

65-12**Authorizations or Special Permits Granted by the City Planning Commission**

In all districts, for special permits or authorizations granted by the City Planning Commission where substantial construction has not taken place and such approval would lapse after a total of 10 years within the applicable time duration set forth in Section 65-01 (Applicability of Article VI, Chapter 5), the provisions of Section 11-42 (Lapse of Authorization or Special Permit Granted by the City Planning Commission Pursuant to the 1961 Zoning Resolution) and 11-43 (Renewal of Authorization or Special Permit) shall be modified to allow the renewal of such authorization or special permit without public hearing, for one additional three-year term, provided that the Commission finds that the facts upon which the authorization or special permit was granted have not substantially changed. An application for a renewal of authorization or special permit shall be filed with the Commission before it lapses.

65-13**Discontinuance Provisions**

In all districts, where a #non-conforming use# has been discontinued, the time limits associated with restoring active operations of such #use# to retain its #non-conforming# status shall be suspended. Subsequent to the expiration of the applicable time duration as set forth in Section 65-01 (Applicability of Article VI, Chapter 5), the time period established by the applicable provisions of this Resolution shall be resumed, and the remaining time associated with restoring active operations shall be the amount existing prior to the #severe disaster#.

65-20**SPECIAL DAMAGE AND DESTRUCTION PROVISIONS**

The following modifications to damage and destruction provisions associated with this Resolution may be applied to #zoning lots# within #designated recovery areas#, as set forth in Section 65-01 (Applicability of Article VI, Chapter 5).

65-21

Reconstruction Provisions

In all districts, where the provisions of this Section are utilized, the provisions of Article V, Chapters 2 (Non-Conforming Uses) and 4 (Non-Complying Buildings) shall be modified to allow the reconstruction of #buildings or other structures# containing #non-conforming uses# and #non-complying buildings or other structures#, that were damaged due to the effects of the #severe disaster#, as follows:

[Note: Text moved from Sections 64-711 and 64-721 and modified]

- (a) Section 52-53 (Buildings or Other Structures in All Districts), inclusive, shall be modified to allow the reconstruction of a #non-conforming use# where a #building or other structure# containing such #use# is damaged to the extent of 50 percent or more due to the effects of a #severe disaster#. In addition, for the purpose of this paragraph, the provisions of Section 52-60 (DISCONTINUANCE) shall not apply to such damaged #building or other structure# with #non-conforming uses#; and
- (b) Section 54-40 (DAMAGE OR DESTRUCTION IN NON-COMPLYING BUILDINGS) shall be modified to allow the reconstruction of a #non-complying building or other structure# where such #building or other structure# is damaged to the extent of 75 percent or more due to the effects of a #severe disaster#.

For the purpose of applying waterfront and parking regulations, #buildings# reconstructed pursuant to this Section shall not be considered #developments# or #enlargements#.

65-30

SPECIAL USE REGULATIONS

The following modifications to #use# regulations set forth in this Section, inclusive, may be applied to #zoning lots# within #designated recovery areas#, as set forth in Section 65-01 (Applicability of Article VI, Chapter 5).

65-31

Temporary Uses

In all districts, where the provisions of this Section are utilized, the #use# provisions of this Resolution, including any supplemental use regulations and provisions regulating size limitations, change of #non-conforming uses#, #enlargement# or #extension# of #non-conforming uses#, shall be modified to allow a temporary #non-conforming use# to be created, and a #non-conforming use# to be #enlarged# or #extended#, on a temporary basis, to aid in the immediate restoration and recovery of an area adversely impacted by a #severe disaster#.

The creation of a new #non-conforming use# shall be subject to the following limitations:

<u>#Severe Disaster#</u>	<u>District</u>	<u>Use Group of permitted new #non-conformance#</u>	<u>Time Duration (if different from Section 65-01)</u>

Subsequent to the expiration of the applicable time duration as set forth in this Section, any #non-conforming use# that was created, or any portion of a #non-conforming use# that was #enlarged# or #extended# on a #zoning lot#, shall be terminated and, thereafter, such #zoning lot# shall be ~~reinstated~~ restored to its pre-existing degree of #non-conformity#, or used only for a conforming #use#.

65-40

SPECIAL BULK REGULATIONS

The following modifications to #bulk# regulations set forth in this Section, inclusive, may be applied to #zoning lots# within #designated recovery areas#, as set forth in Section 65-01 (Applicability of Article VI, Chapter 5).

65-41

Reconstruction and Alteration of Disaster-Damaged Buildings

In all districts, where the provisions of this Section are utilized, the #bulk# provisions of this Resolution, and the provisions regulating the reconstruction, #enlargement# and alteration of #buildings# with #non-conforming uses# and #non-complying buildings or other structures# shall be modified to allow the reconstruction, #enlargement#, relocation and alteration of #buildings or other structures# that were damaged due to the effects of the #severe disaster#, including #non-conformances# to be continued, and #non-compliances# to be created, continued, or increased, provided the #building or other structure# is subject to the following provisions, as applicable:

(a) Floor area

The maximum amount of #floor area# shall not exceed the amount of pre-existing #floor area# as it existed prior to the reconstruction, #enlargement#, relocation or alteration work or the amount permitted by the district, whichever is greater. Furthermore, no #extension# or change of #use# may create a new #non-conformance# or a new #non-compliance#, or increase the degree of existing #non-conformance# or #non-compliance# with #floor area#.

(b) Building footprint

The resulting #lot coverage# shall be less than or equal to that of the pre-existing #building or other structure# as it existed prior to the reconstruction, #enlargement#, relocation or alteration work or the amount permitted by the district, as applicable, whichever is greater. Furthermore, a #building or other structure# may continue an existing #non-compliance#, increase the degree of an existing #non-

compliance#, or create a new #non-compliance# with respect to open areas required through regulations for #yards#, #open space#, #open space ratio#, #lot coverage#, #courts#, and minimum distance between #buildings#, in order to relocate or alter the footprint of the #building or other structure#, provided that:

- (1) a new or increased #non-compliance# into an open area shall not exceed a horizontal distance of five feet, as measured perpendicular to the outermost edge of the #non-complying building or other structure#, as it existed prior to the reconstruction, #enlargement#, relocation or alteration work; and
- (2) any new or increased #non-compliance# shall not result in an open area of:
 - (i) less than five feet between the wall of a #building or other structure# and a #rear lot line#;
 - (ii) less than three feet between the wall of a #building or other structure# and a #front lot line#, in districts with #front yard# requirements; and
 - (iii) less than three feet between the wall of a #building or other structure# and a #side lot line# for #detached buildings# in districts that do not allow #zero lot line buildings#.

Nothing in this Section shall affect the permitted obstruction allowances set forth by the district regulations.

(c) Building height

The resulting height and setback may continue an existing #non-compliance#, provided that the height of such reconstructed, #enlarged#, relocated or altered #building or other structure# as measured from #curb level#, #base plane# or other applicable underlying datum, does not exceed the pre-existing height of such #building#, as measured from the top of the lowest floor that contains #floor area#, to the highest point of such pre-existing #building#. All permitted obstruction allowances shall be measured with respect to the modified height and setback regulations set forth in this Section.

For the purpose of applying waterfront and parking regulations, #buildings or other structures# reconstructed pursuant to this Section shall not be considered #developments# or #enlargements#.

65-42

Properties with Disaster-Damaged Buildings

[Note: Text moved from Section 64-A03 and modified]

In all districts, the definition of #zoning lot# set forth in Section 12-10 (DEFINITIONS) may be modified to allow a tax lot containing one or more #buildings# that were damaged by the #severe disaster#, or where a #building# or #buildings# that were damaged by the #severe disaster# occupied more than one tax lot on the date of the #severe disaster#, to be provisionally considered a #zoning lot# for the sole purpose of demonstrating compliance with the #bulk# requirements of this Resolution, including the provisions of Section 65-31 (Reconstruction and Alteration of Disaster-Damaged Buildings), as applicable.

65-50**SPECIAL DOCUMENTATION PROVISIONS**

The following modifications to documentation procedures may be applied to #zoning lots# within #designated recovery areas#, as set forth in Section 65-01 (Applicability of Article VI, Chapter 5).

65-51**Documentation Provisions**

For #buildings or other structures# that were damaged due to the effects of the #severe disaster# and do not have a certificate of occupancy, construction documents, or other lawful documentation filed with the Department of Buildings indicating the existence of such #building or other structure# prior to the #severe disaster# and the presence and extent of #non-conforming uses# or #non-compliances# as to #bulk#, as applicable, in order to receive a building permit to reconstruct, #enlarge#, relocate or alter #buildings or other structures# pursuant to the provisions of this Resolution, inclusive of this Chapter, the Commissioner of Buildings may determine alternate and appropriate documentation necessary to substantiate proof of such #non-conformances# or #non-compliances#, as applicable.

Appendix A**Designated Recovery Areas**

The boundaries of each #designated recovery area# are described in this Appendix, and are subject to the temporary provisions of this Chapter, as specified in Section 65-01 (Applicability of Article VI, Chapter 5).

Designated Recovery Area 1: COVID-19 [date of adoption]

The #designated recovery area 1# shall include all #zoning lots# located within the City of New York.

* * *

**ARTICLE VII
ADMINISTRATION**

* * *

Chapter 3**Special Permits by the Community Board of Standards and Appeals**

* * *

73-00**SPECIAL PERMIT USES AND MODIFICATIONS**

* * *

73-20

~~THEATERS~~ ADDITIONAL SPECIAL PERMIT USES

* * *

73-201

~~In~~ Theaters in C1 Districts

73-202

~~In~~ Theaters in M1-5A or M1-5B Districts

* * *

73-24

Eating or Drinking Places

* * *

73-242

In C3 Districts

In C3 Districts, the Community Board of Standards and Appeals may permit eating or drinking establishments (including those which provide outdoor table service or musical entertainment but not dancing, with a capacity of 200 persons or less, and including those which provide music for which there is no cover charge and no specified showtime) for a term not to exceed ~~five~~ 10 years, provided that the following findings are made:

- (a) that such #use# is so located as not to impair the essential character or the future use or development of the nearby residential neighborhood; and
- (b) that such #use# will generate a minimum of vehicular traffic to and through local #streets# in residential areas.

The Community Board may modify the regulations relating to #signs# in C3 Districts to permit a maximum total #surface area# of 50 square feet of non-#illuminated# or #illuminated# non-#flashing signs#, provided that any #illuminated sign# shall not be less than 150 feet from the boundary of any #Residence District#.

For eating and drinking establishments for which special permits have previously been granted, the term may exceed 10 years at the discretion of the Community Board.

The Community Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, including requirements for shielding of floodlights or adequate screening.

* * *

73-60**MODIFICATIONS OF BULK REGULATIONS**

* * *

73-62**Modification of Bulk Regulations for Buildings Containing Residences**

* * *

73-622**Enlargements of single- and two-family detached and semi-detached residences**

The Community Board of Standards and Appeals may permit an ~~#enlargement#~~ of an existing ~~#single-#~~ or ~~#two-family detached#~~ or ~~#semi-detached residence#~~, except #cottage envelope buildings# as such term is defined in Section 64-11 (Definitions), utilizing the provisions of Section 64-33 (Special Bulk Regulations for Cottage Envelope Buildings), within the following areas:

* * *

73-70**LAPSE OF PERMIT****SPECIAL PERMITS IN THE FLOOD ZONE**

[Note: Existing text moved to 73-80]

~~A special permit for a specified #use# or for a modification of the #use# or #bulk# regulations granted under the provisions of this Resolution shall automatically lapse if substantial construction, in accordance with the plans for which such permit was granted, has not been completed within four years from the date of granting such permit by the Community Board of Standards and Appeals or, if judicial proceedings have been instituted to review the Community Board's decision, the four year lapse period shall commence upon the date of entry of the final order in such proceedings, including appeals.~~

The following Sections shall apply to #zoning lots# located wholly or partially within the #flood zone#.

73-71**Special Permit for Modification of Certain Zoning Regulations**

[Note: Text moved from Section 64-92 and modified]

In #flood zones#, for all districts, the Community Board of Standards and Appeals may permit modification of the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), and any other applicable ground floor #use#, supplementary #use#, #bulk#, and parking regulations of the Zoning Resolution, provided that the conditions of paragraph (a) of this Section, and the findings of paragraph (b) are met.

For the purposes of this Section, defined terms include those in Section 12-10 and those in Section 64-11.

(a) Conditions

All applications shall be subject to the following conditions:

- (1) the #building# complies with #flood-resistant construction standards#;
- (2) any modification of height and setback regulations related to increasing the permitted overall height shall not exceed the maximum height permitted by the applicable underlying district regulations by 10 percent, or 10 feet, whichever is greater, as measured from the #reference plane#; and
- (3) any increase in the amount of permitted #floor area# shall be limited to no more than 20 percent of the #floor area# permitted on the #zoning lot#, and in no event more than 10,000 square feet of #floor area#. However, such restriction shall not apply to #non-complying buildings# with #non-complying floor area#, provided that the total #floor area# of the altered, #enlarged#, relocated, or reconstructed #building#, does not exceed the amount of existing #floor area# of such pre-existing #building#.

(b) Findings

In order to grant the special permit, the Community Board shall find that:

- (1) there would be a practical difficulty in complying with #flood-resistant construction standards# without such modifications, and that such modifications are the minimum necessary to allow for an appropriate #building# in compliance with #flood-resistant construction standards#;
- (2) any modification related to an increase in the amount of permitted #floor area# is the minimum necessary to address practical difficulties in retaining pre-existing habitable space;
- (3) any modification related to parking regulations to permit a reduction in the number of #accessory# off-street parking spaces and the change in location of #accessory# off-street parking spaces, will:
 - (i) facilitate an improved site plan;
 - (ii) not cause traffic congestion; and
 - (iii) not have undue adverse effects on residents, businesses or #community facilities# in the surrounding area, as applicable, including the availability of parking spaces for such #uses#; and
- (4) the proposed modifications will not alter the essential character of the neighborhood in which the #building# is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with #flood-resistant construction standards#.

The Community Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

73-72

Special Permit for Ground Floor Uses in Residence Districts

In all #Residence Districts#, for #buildings# containing #residential uses#, the Community Board of Standards and Appeals may permit offices, as listed in Use Group 6B, provided that the conditions of paragraph (a) of this Section, and the findings of paragraph (b) of this Section are met:

(a) Conditions

All applications shall be subject to the following conditions:

- (1) the #building# complies with #flood-resistant construction standards#;
- (2) the office #use# is located on the lowest #story# above grade within the #building#;
- (3) access to such office #use# is from a separate entrance than that serving the #residential# portion of the #building#;
- (4) the #floor area# associated with such office #use# shall be considered as #community facility use# for the purposes of determining compliance with the applicable district #floor area ratio# regulations, and amount of #floor area# attributed to such office #use# shall not exceed 10,000 square feet;
- (5) the office #use# complies with the #accessory# off-street parking regulations for ambulatory diagnostic or treatment health care facilities, as listed in Section 22-14 (Use Group 4), in accordance with Article II, Chapter 5 (Accessory Off-Street Parking and Loading Regulations); and
- (6) such office #use# complies with #accessory signs# regulations for #buildings# containing #residences#, as set forth in Section 22-32 (Permitted Non-Illuminated Accessory Signs).

(b) Findings

In order to grant the special permit, the Community Board shall find that:

- (a) such office #use# will generate a minimum of vehicular traffic to and through local #streets# and will not create traffic congestion;
- (b) such office #use# will not produce objectionable effects; and
- (c) such office #use# will not alter the essential character of the neighborhood in which the #building# is located.

The Community Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

73-80

LAPSE OF PERMIT

[Note: Text moved from Section 73-70 and not edited]

A special permit for a specified #use# or for a modification of the #use# or #bulk# regulations granted under the provisions of this Resolution shall automatically lapse if substantial construction, in accordance with the plans for which such permit was granted, has not been completed within four years from the date of granting such permit by the Community Board of Standards and Appeals or, if judicial proceedings have been instituted to review the Community Board's decision, the four-year lapse period shall commence upon the date of entry of the final order in such proceedings, including appeals.

* * *

Chapter 4
Special Permits by the City Planning Commission

74-00
POWERS OF THE CITY PLANNING COMMISSION

* * *

74-90
USE AND BULK MODIFICATIONS FOR CERTAIN COMMUNITY FACILITY USES

* * *

74-901
Long-term care facilities

The City Planning Commission may permit #long-term care facilities# in locations where they are not permitted as-of-right, in accordance with paragraph (a) or (b) of this Section.

* * *

(b) In certain Community Districts

The Commission may permit the #development# of nursing homes, as defined in the New York State Public Health Law, or #enlargements# of existing nursing homes that increase the existing #floor area# by 15,000 square feet or more, in Community District 11 in the Borough of the Bronx, Community District 8 in the Borough of Manhattan, ~~Community District 14 in the Borough of Queens~~, and Community District 1 in the Borough of Staten Island, provided that the Commission finds that the #development# of additional nursing home beds will not unduly burden such community district. However, such special permit shall not apply to #developments# or #enlargements# that are subject to the restrictions set forth in Section 22-16 (Special Regulations for Nursing Homes).

Where such #use# is permitted by the Commission, it may be eligible for #bulk# modification, pursuant to the provisions of Section 74-902 (Certain community facility uses in R1 and R2 Districts and certain Commercial Districts), or Section 74-903 (Certain community facility uses in R3 to R9 Districts and certain Commercial Districts), as applicable.

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

* * *

74-96

Modification of Use, Bulk, Parking and Loading Regulations in Industrial Business Incentive Areas

* * *

74-962

~~Floor area increase and public plaza modifications in Industrial Business Incentive Areas~~

~~In Industrial Business Incentive Areas, the City Planning Commission may increase the maximum #floor area ratio# on a #zoning lot# in accordance with the Table in this Section.~~

* * *

~~(a) Application requirements~~

~~All applications for a special permit pursuant to this Section shall include the following:~~

- ~~(1) site plans and elevations which shall establish distribution of #floor area#, height and #setback#, sidewalk widths, primary business entrances, including parking and loading, #yards# and #public plazas#, signage and lighting;~~
- ~~(2) floor plans of all floors which shall establish the location, access plan and dimensions of freight elevators and loading areas and the location of #floor area# dedicated to #required industrial uses# and #incentive uses#;~~
- ~~(3) drawings that show, within a 600 foot radius, the location and type of #uses#, the location, dimensions and elements of off site open areas including #streets#, waterfront and #upland# parcels, elements of a Waterfront Access Plan, as applicable, and the location of #street# trees and #street# furniture and any other urban design elements. The plans shall demonstrate that any #public plaza# provided meets the requirements of paragraph (b)(5) of this Section; and~~
- ~~(4) for #zoning lots# in #flood zones#, flood protection plans, which shall show #base flood elevations# and advisory #base flood elevations#, as applicable, location of mechanical~~

~~equipment, areas for storage of any hazardous materials and proposed structural or design elements intended to mitigate the impacts of flood and storm events.~~

Application requirements

All applications for a special permit pursuant to this Section shall include the following:

- (a) site plans and elevations which shall establish distribution of #floor area#, height and #setback#, sidewalk widths, primary business entrances, including parking and loading, #yards# and publicly accessible open space, signage and lighting;
- (b) floor plans of all floors which shall establish the location, access plan and dimensions of freight elevators and loading areas and the location of #floor area# dedicated to #required industrial uses# and #incentive uses#;
- (c) drawings that show, within a 600-foot radius, the location and type of #uses#, the location, dimensions and elements of off-site open areas including #streets#, waterfront and #upland# parcels, elements of a Waterfront Access Plan, as applicable, and the location of #street# trees and #street# furniture and any other urban design elements. Where applicable, for applications in Industrial Business Incentive Area 1, the plans shall demonstrate that any publicly accessible open space provided meets the requirements of paragraph (f) of Section 74-965 (Conditions); and
- (d) for #zoning lots# in #flood zones#, flood protection plans, ~~which shall show #base flood elevations# and advisory #base flood elevations#, as applicable,~~ location of mechanical equipment, areas for storage of any hazardous materials and proposed structural or design elements intended to mitigate the impacts of flood and storm events.

* * *

~~(b) — Conditions~~

* * *

~~(1) — Ground floor design~~

- ~~(i) — The ground floor level #street walls# and ground floor level walls fronting on a #public plaza# of a #development# or horizontal #enlargement# shall be glazed in accordance with the provisions of Section 37-24 (Minimum Transparency Requirements), with transparent materials which may include #show windows#, transom windows or glazed portions of doors. Such transparent materials shall occupy at least 50 percent of the surface area of such #street wall#, measured between a height of two feet above the level of the adjoining sidewalk or #public plaza# and a height of 12 feet above the level of the first finished floor above #curb level#. The floor level behind such transparent materials shall not exceed the level of the window sill for a depth of at least four feet, as measured perpendicular to the #street wall#. The ground floor transparency requirements of this paragraph (b)(4)(i) shall not apply to #uses# listed~~

~~in Use Groups 11, 16, 17 and 18, or to #accessory# loading berths or garage entrances; or provided that any portion of the #ground floor level street wall# without transparency shall be subject to the provisions for Type 1 blank walls set forth in Section 37-361 (Blank wall thresholds), and any #street wall# exceeding the particular thresholds set forth in such Section shall provide visual mitigation elements in accordance with the provisions of paragraphs (a) or (b)(1) of Section 37-362 (Mitigation elements).~~

~~(ii) For #zoning lots# within flood hazard areas, in lieu of the requirements of paragraph (b)(4)(i) of this Section, the provisions of Section 64-22 (Transparency Requirements) shall apply; and~~

~~(iii) For any #street wall# greater than 40 feet in width that does not require glazing, as specified in paragraphs (b)(4)(i) or (b)(4)(ii) of this Section, as applicable, the facade, measured between a height of two feet above the level of the adjoining sidewalk and a height of 12 feet above the level of the first finished floor above #curb level#, shall incorporate design elements, including lighting and wall art, or physical articulation.~~

74-965 Conditions

In Industrial Business Incentive Areas, applications for #floor area# increases pursuant to Section 74-963 (Permitted floor area increase) and modifications pursuant to Section 74-964 (Modifications in conjunction with a floor area increase), are subject to the following conditions:

* * *

(e) Ground floor design

In all Industrial Business Incentive Areas, the following shall apply:

~~(1) the ground floor level #street walls#, and ground floor level walls fronting on a publicly accessible open space of a #development# or horizontal #enlargement# provided pursuant to paragraph (f) of this Section, shall be glazed in accordance with the provisions of Section 37-34 (Minimum Transparency Requirements), with transparent materials which may include #show windows#, transom windows or glazed portions of doors. Such transparent materials shall occupy at least 50 percent of the surface area of such #street wall#, measured between a height of two feet above the level of the adjoining sidewalk or publicly accessible open space and a height of 12 feet above the level of the first finished floor above #curb level#. The floor level behind such transparent materials shall not exceed the level of the window sill for a depth of at least four feet, as measured perpendicular to the #street wall#. The ground floor transparency requirements of this paragraph (b)(4)(i) (e)(1) shall not apply to #uses# listed in Use Groups 11, 16, 17 and 18, or to #accessory# loading berths or garage entrances; or provided that any portion of the #ground floor level street wall# without transparency shall be subject to the provisions for Type 1 blank walls set forth in Section 37-361 (Blank wall thresholds), and any #street wall# exceeding the particular thresholds set forth in such Section~~

shall provide visual mitigation elements in accordance with the provisions of paragraphs (a) or (b)(1) of Section 37-362 (Mitigation elements).

- ~~(2) for #zoning lots# within flood hazard areas, in lieu of the requirements of paragraph (e)(1) of this Section, the provisions of Section 64-22 (Transparency Requirements) shall apply; and~~
- ~~(3) for any #street wall# greater than 40 feet in width that does not require glazing, as specified in paragraphs (e)(1) or (e)(2) of this Section, as applicable, the facade, measured between a height of two feet above the level of the adjoining sidewalk and a height of 12 feet above the level of the first finished floor above #curb level#, shall incorporate design elements, including lighting and wall art, or physical articulation.~~

* * *

ARTICLE VIII SPECIAL PURPOSE DISTRICTS

* * *

Chapter 4 Special Battery Park City District

84-00 GENERAL PURPOSES

* * *

84-02 General Provisions

In harmony with the general purpose and intent of this Resolution and in order to achieve the purpose of the #Special Battery Park City District#, a special set of regulations is established for the #Special Battery Park City District# controlling #use#, #bulk#, #accessory# off-street parking facilities and #accessory# off-street loading facilities. Such regulations are contained in this Chapter and in other provisions of this Resolution incorporated in this Chapter by cross-reference.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 7 Special Harlem River Waterfront District

1324

May 12, 2021

* * *

87-00
GENERAL PURPOSES

* * *

87-01
Definitions

For purposes of this Chapter, matter in italics is defined in Sections 12-10, 62-11 or 64-11, or within this Section.

Ground floor level

The “ground floor level” shall mean the finished floor level of the first #story# that is within five feet of an adjacent public sidewalk or any other #publicly accessible open area#, ~~or the finished floor level of the #lowest occupiable floor# pursuant to the provisions of Section 64-21 (Ground Floor Use), whichever is lower.~~

* * *

87-04
Applicability of District Regulations

* * *

87-043
Applicability of Article VI, Chapter 4

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4, shall control, ~~except as expressly modified by this Chapter.~~

* * *

87-40
SPECIAL REGULATIONS FOR GROUND FLOOR LEVEL

* * *

87-41
Streetscape Requirements in the Core and South Subdistricts

1325

May 12, 2021

* * *

87-412**Transparency requirements in the Core and South Subdistricts**

In the Core and South Subdistricts, for non-#residential uses# located at the #ground floor level#, any portion of a #ground floor level street wall# that is subject to the #floor area# requirements of paragraph (b) of Section 87-411 (Ground floor uses) shall be glazed in accordance with the transparency requirements for designated retail streets set forth in Section 37-34 (Minimum Transparency Requirements), except that:

- (a) in the South Subdistrict, where the #ground floor level street wall# is occupied by #uses# in Use Groups 16, 17 or 18, up to 50 percent of the length of such #ground floor level street wall# may be exempt from such transparency requirements, provided that any #street wall# width exceeding 50 feet ~~with no transparent elements on the #ground floor level#~~ shall provide planting or screening ~~(a) or (e) of Section 87-415 (Special streetscape provisions for certain blank walls) for at least 75 percent of such blank wall in accordance with the provisions of (a)(1) or (b)(1) of Section 37-362 (Mitigation elements) pursuant to the provisions for Type 1 blank walls set forth in Section 37-361 (Blank wall thresholds); and~~
- (b) in #flood zones#, for #buildings# utilizing the provisions of ~~paragraph (a) of Section 64-21 (Ground Floor Use) Section 64-222 (Ground floor use), where no transparent materials or #building# entrances or exits are provided on the #ground floor level street wall# below a height of four feet above the level of the adjoining sidewalk for a continuous width of at least 25 feet; visual mitigation elements shall be provided in accordance with paragraph (a) of Section 87-415 for such blank wall the provisions for Type 2 blank walls set forth in Section 37-361, except that only paragraph (b)(1) of Section 37-362 shall apply to such blank wall.~~

For the purposes of applying the provisions of Section 37-34, locations subject to the provisions of paragraph (b) of Section 87-411 shall be considered designated retail streets.

* * *

87-414**Special provisions applicable within the flood zone**
Special streetscape provisions for certain blank walls

[Note: Existing text to be deleted]

~~In the Core and South Subdistricts, the provisions of Section 64-336 (Alternative height measurement in Commercial and Manufacturing Districts) shall be modified so that where the #flood resistant construction elevation# is between four feet and 12 feet above #curb level#, #building# height may be measured from a reference plane 12 feet above #curb level#, and any minimum base height requirements may be measured from #curb level#. The requirements of Section 64-642 (Transparency requirements for buildings utilizing alternative height measurement) shall apply to #buildings# utilizing these alternative height measurement provisions.~~

[Note: Text moved from 87-415 and modified]

The provisions of this Section shall apply to a #ground floor level building# frontage, or any portion thereof, facing a #street#, #shore public walkway#, #upland connection#, or fire apparatus access road provided pursuant to the provisions of Section 87-61 (Special Provisions for Certain Fire Apparatus Access Roads), where visual

mitigation elements shall be provided in accordance with the provisions for Type 2 blank walls set forth in Section 37-361 (Blank wall thresholds).

87-415

Special streetscape provisions for certain blank walls

Special open area provisions

[Existing text to be deleted and substituted by Section 37-36]

The provisions of this Section shall apply to a #ground floor level building# frontage, or any portion thereof, facing a #street#, #shore public walkway#, #upland connection#, or fire apparatus access road provided pursuant to the provisions of Section 87-61 (Special Provisions for Certain Fire Apparatus Access Roads), where no transparent materials or entrances or exits are provided on the #ground floor level# below a height of four feet above the level of the adjoining sidewalk, or grade, as applicable, for a continuous width of at least 25 feet. For the purpose of this Section, such a #building# wall, or portion thereof, shall be referred to as a “blank wall” and visual mitigation elements shall be provided in accordance with this Section.

At least 50 percent of the linear footage of any blank wall on a #ground floor level building# frontage shall be treated by one or more of the visual mitigation elements specified in this Section. Where a #building# wall fronts upon a #street#, such visual mitigation elements shall be provided on the #zoning lot#, except that the depth of an area containing such elements within the #zoning lot# need not be greater than three feet, when measured perpendicular to the #street line#. Where a blank wall exceeds a #street wall# width of 50 feet, at least 25 percent of such #street wall# width shall be planted in accordance with the provisions of paragraph (a) of this Section, and where a blank wall exceeds a height of 10 feet, as measured from the level of the adjoining grade, for a width of more than 25 feet, at least 50 percent of such #street wall# width

shall provide wall treatments in accordance with the provisions of paragraph (e) of this Section.

The maximum width of a portion of the #ground floor level# blank wall without visual mitigation elements shall not exceed 10 feet. However, such blank wall limitation shall not include portions of #street walls# occupied by entrances or exits to #accessory# off-street parking facilities and #public parking garages#, where permitted, entryways to required loading berths, where permitted, or doors accessing emergency egress stairwells and passageways.

Visual mitigation elements:

(a) — Planting

Any combination of perennials, annuals, decorative grasses or shrubs shall be provided in planting beds, raised planting beds or planter boxes in front of the #street wall#. Each foot in width of a planting bed, raised planting bed or planter box, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirement. Such planting bed shall extend to a depth of at least three feet, inclusive of any structure containing the planted material. Any individual planted area shall have a width of at least five feet, and the height of such planting, inclusive of any structure containing the planted materials, shall be at least three feet.

(b) — Benches

~~Fixed benches with or without seatbacks shall be provided in front of the #street wall#. Unobstructed access shall be provided between such benches and an adjoining sidewalk or required circulation paths. Each linear foot of bench, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirement. Any individual bench shall have a width of at least five feet, and no more than 20 feet of benches may be used to fulfill such requirement per 50 feet of frontage.~~

~~(c) — Bicycle racks~~

~~Bicycle racks, sufficient to accommodate at least two bicycles, shall be provided in front of the #street wall#, and oriented so that the bicycles are placed parallel to the #street wall#. Each bicycle rack so provided shall satisfy five linear feet of frontage mitigation requirement. No more than three bicycle racks may be used to fulfill such requirement per 50 feet of frontage.~~

~~(d) — Tables and chairs~~

~~Fixed tables and chairs shall be provided in front of the #street wall#. Each table shall have a minimum diameter of two feet, and have a minimum of two chairs associated with it. Each table and chair set so provided shall satisfy five linear feet of frontage mitigation requirement.~~

~~(e) — Wall treatment~~

~~Wall treatment, in the form of permitted #signs#, graphic or sculptural art, rustication, decorative screening or latticework, or living plant material, shall be provided along the #street wall#. Each linear foot of wall treatment shall constitute one linear foot of frontage mitigation requirement. Such wall treatment shall extend to a height of at least 10 feet, as measured from the level of the adjoining sidewalk or grade, and have a minimum width of 10 feet, as measured parallel to the #street wall#.~~

[Text moved from Section 87-416]

- (a) For Parcels 1, 2, 3 and 4, as shown on Map 1 in the Appendix to this Chapter, the open area between the #street wall# of a #building# fronting on the #Major Deegan Expressway street line# and the western edge of such Expressway, shall be subject to the provisions of Section 28-23 (Planting Areas), whether the ground floor is occupied by #residential uses# or non- #residential uses#. Such provisions shall be modified by the provisions of this Section.

(1) Primary circulation path

A circulation path, with a width of at least 13 feet or the width of such open area, whichever is less, and the western edge of such path shall be provided within five feet of a #street wall# facing the #Major Deegan Expressway street line#. Such circulation path shall extend along the entire frontage of the #zoning lot#, and shall be constructed in accordance with Department of Transportation standards for sidewalks.

(2) Planting

At least 20 percent, but not more than 50 percent of the required open area shall be planted with any combination of perennials, annuals, decorative grasses, shrubs or trees in planting beds,

raised planting beds or planter boxes. Such planting bed shall extend to a depth of at least three feet, inclusive of any structure containing the planted material, and any individual planted area shall have a width of at least five feet. For planting located east of the circulation path required pursuant to this paragraph (a), the maximum linear length of any individual planting bed shall not exceed 50 feet.

(3) Other amenities

The remainder of the open area may contain any combination of:

- (i) streetscape amenities including, but not limited to, benches or tables and chairs
- (ii) entertainment amenities including, but not limited to, water features, playgrounds, dog runs, game tables, courts or skateboard parks; and
- (iii) streetscape-enhancing amenities including, but not limited to, trees in tree pits, and lighting, or sculptural artwork.

All streetscape and entertainment amenities provided in accordance with paragraphs (a)(3)(i) and (a)(3)(ii) of this Section shall be connected to the primary circulation path required by paragraph (a) of this Section through secondary circulation paths, paved with permeable materials, each with a minimum width of six feet. Any planting associated with an amenity including, but not limited to, playgrounds and dog runs, as applicable, may exceed the amount set forth in paragraph (b) of this Section.

Any open area not otherwise allocated to amenities or secondary circulation paths shall also be paved with permeable materials. The minimum clear space between any planted areas required by paragraph (b) of this Section, any amenity provided under this paragraph, or any combination thereof, shall be six feet.

(4) Fencing

In no event shall chain link fencing or barbed or razor wire be permitted in any open area provided pursuant to this Section. No fences may exceed a height of four feet.

(b) In the event that Parcel 1 is #developed# with #mixed buildings#, sidewalks shall be provided on such parcel as follows:

- (1) Sidewalks with a width of at least 15 feet shall be provided along the entire Exterior Street and East 149th Street frontage of a #zoning lot#.
- (2) In locations where the width of the sidewalk within the #street# is less than 15 feet, a sidewalk widening shall be provided on the #zoning lot# such that the combined width of the sidewalk within the #street# and the sidewalk widening equals at least 15 feet. However, existing #buildings# remaining on the #zoning lot# need not be removed in order to comply with this requirement.

All sidewalks and sidewalk widenings shall be constructed or improved to Department of Transportation standards and shall connect at grade to the adjoining public sidewalks.

87-416

Special open area provisions

[Existing text moved to Section 87-415]

(a) — For Parcels 1, 2, 3 and 4, as shown on Map 1 in the Appendix to this Chapter, the open area between the ~~#street wall#~~ of a ~~#building#~~ fronting on the ~~#Major Deegan Expressway street line#~~ and the western edge of such Expressway, shall be subject to the provisions of Section 28-23 (Planting Areas), whether the ground floor is occupied by ~~#residential uses#~~ or non-~~#residential uses#~~. Such provisions shall be modified by the provisions of this Section.

(1) — Primary circulation path

A circulation path, with a width of at least 13 feet or the width of such open area, whichever is less, and the western edge of such path shall be provided within five feet of a ~~#street wall#~~ facing the ~~#Major Deegan Expressway street line#~~. Such circulation path shall extend along the entire frontage of the ~~#zoning lot#~~, and shall be constructed in accordance with Department of Transportation standards for sidewalks.

(2) — Planting

At least 20 percent, but not more than 50 percent of the required open area shall be planted with any combination of perennials, annuals, decorative grasses, shrubs or trees in planting beds, raised planting beds or planter boxes. Such planting bed shall extend to a depth of at least three feet, inclusive of any structure containing the planted material, and any individual planted area shall have a width of at least five feet. For planting located east of the circulation path required pursuant to this paragraph (a), the maximum linear length of any individual planting bed shall not exceed 50 feet.

(3) — Other amenities

The remainder of the open area may contain any combination of:

- (i) — streetscape amenities including, but not limited to, benches or tables and chairs
- (ii) — entertainment amenities including, but not limited to, water features, playgrounds, dog runs, game tables, courts or skateboard parks; and
- (iii) — streetscape-enhancing amenities including, but not limited to, trees in tree pits, and lighting, or sculptural artwork.

All streetscape and entertainment amenities provided in accordance with paragraphs (a)(3)(i) and (a)(3)(ii) of this Section shall be connected to the primary circulation path required by paragraph (a) of this Section through secondary circulation paths, paved

~~with permeable materials, each with a minimum width of six feet. Any planting associated with an amenity including, but not limited to, playgrounds and dog runs, as applicable, may exceed the amount set forth in paragraph (b) of this Section.~~

~~Any open area not otherwise allocated to amenities or secondary circulation paths shall also be paved with permeable materials. The minimum clear space between any planted areas required by paragraph (b) of this Section, any amenity provided under this paragraph, or any combination thereof, shall be six feet.~~

(4) — Fencing

~~In no event shall chain link fencing or barbed or razor wire be permitted in any open area provided pursuant to this Section. No fences may exceed a height of four feet.~~

(b) — ~~In the event that Parcel 1 is #developed# with #mixed buildings#, sidewalks shall be provided on such parcel as follows:~~

(1) — ~~Sidewalks with a width of at least 15 feet shall be provided along the entire Exterior Street and East 149th Street frontage of a #zoning lot#.~~

(2) — ~~In locations where the width of the sidewalk within the #street# is less than 15 feet, a sidewalk widening shall be provided on the #zoning lot# such that the combined width of the sidewalk within the #street# and the sidewalk widening equals at least 15 feet. However, existing #buildings# remaining on the #zoning lot# need not be removed in order to comply with this requirement.~~

~~All sidewalks and sidewalk widenings shall be constructed or improved to Department of Transportation standards and shall connect at grade to the adjoining public sidewalks.~~

* * *

87-70

HARLEM RIVER WATERFRONT ACCESS PLAN

* * *

87-71

Special Public Access Provisions

The provisions of Section 62-50 (GENERAL REQUIREMENTS FOR VISUAL CORRIDORS AND WATERFRONT PUBLIC ACCESS AREAS) shall apply to #developments#, as modified in this Section. For the purpose of this Section, “development” shall be as defined in Section 62-11. To “develop” shall mean to create such #development#. In addition, the #lot area# allocated to fire apparatus access road pursuant to the provisions of Section 87-60, inclusive, may count towards any required #supplemental access area# required pursuant to the provisions of Section 62-57 (Required Supplemental Public Access Areas).

* * *

(d) #Visual Corridors#

#Visual corridors# shall be located within Parcels 4, 9, 10, 11, 12 and 13, and mapped parkland, as indicated on Map 4 (Waterfront Access Plan: Visual Corridors) in the Appendix to this Chapter. For all required #visual corridors#, the provisions of Section 62-512 (Dimensions of visual corridors) shall be modified to allow the lowest level of a #visual corridor#, at its seaward points, to be measured to a height as set forth in Section 62-512 ~~two feet above #base flood elevation#~~ or a height equal to the Oak Point Rail Link train track bed elevation, whichever is higher.

The Oak Point Rail Link shall be a permitted obstruction for #visual corridors#.

* * *

Chapter 8
Special Hudson Square District

88-00
General Purposes

* * *

88-02
General Provisions

In harmony with the general purposes and intent of this Resolution and the general purposes of the #Special Hudson Square District#, the provisions of this Chapter shall apply within the #Special Hudson Square District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4, shall control.

* * *

Chapter 9
Special Hudson River Park District

89-00
GENERAL PURPOSES

* * *

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89-01**General Provisions**

The provisions of this Chapter shall apply within the #Special Hudson River Park District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4, shall control.

* * *

**ARTICLE IX
SPECIAL PURPOSE DISTRICTS**

* * *

Chapter 1**Special Lower Manhattan District****91-00****GENERAL PURPOSES**

* * *

91-01**General Provisions**

Except as modified by the express provisions of the #Special Lower Manhattan District#, the regulations of the underlying zoning districts shall remain in effect.

* * *

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4, shall control.

* * *

Chapter 2**Special Park Improvement District**

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92-00**GENERAL PURPOSES**

* * *

92-02**General Provisions**

Except as modified by the express provisions of this Chapter, the regulations of the underlying district remain in effect.

For the purposes of this Chapter, Duke Ellington Circle, located at the intersection of Fifth Avenue and East 110th Street, shall be considered a separate #street#.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 3**Special Hudson Yards District****93-00****GENERAL PURPOSES**

* * *

93-02**General Provisions**

The provisions of this Chapter shall apply within the #Special Hudson Yards District#. The regulations of all other chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 4**Special Sheepshead Bay District****94-00****GENERAL PURPOSES**

* * *

94-02**General Provisions**

In harmony with the general purposes of the #Special Sheepshead Bay District# and in accordance with the provisions of this Chapter, certain specified regulations of the districts on which the #Special Sheepshead Bay District# is superimposed are made inapplicable and special regulations are substituted therefor. The City Planning Commission, by special permit, may grant certain #uses# and may authorize #bulk# modifications within the Special District as set forth in this Chapter. Except as modified by the express provisions of this Special District, the regulations of the underlying zoning districts remain in effect.

In the #waterfront area#, the provisions of the #Special Sheepshead Bay District# are modified in accordance with the provisions of Section 62-13 (Applicability of District Regulations).

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 5**Special Transit Land Use District****95-00****GENERAL PURPOSES**

* * *

95-02**General Provisions**

#Special Transit Land Use Districts# are mapped in the vicinity of existing or proposed subway stations. Except as modified by the express provisions of this Chapter, the regulations of the underlying district remain in effect.

Whenever this Special District overlaps another Special District and imposes contradictory regulations, the provisions of the #Special Transit Land Use District# shall apply. Nothing contained in this regulation shall be understood to supersede Landmark or Historic District designations of the New York City Landmarks Preservation Commission.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 6
Special Clinton District

96-00
GENERAL PURPOSES

* * *

96-02
General Provisions

Except as modified by the express provisions of this Chapter, the regulations of the underlying districts, or as modified by the #Special Midtown District#, remain in effect.

The #Special Midtown District# and its regulations, where applicable in the #Special Clinton District#, shall also apply and shall supplement or supersede regulations as set forth in this Chapter pursuant to Section 96-22 (Special Regulations for Eighth Avenue Perimeter Area). In the event of any conflict or discrepancy between the regulations, the more restrictive regulations shall apply in accordance with Section 11-22 (Application of Overlapping Regulations). This portion of the Special Purpose District is designated on the #zoning map# by the letters "CL-MiD."

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 8
Special West Chelsea District

98-00
GENERAL PURPOSES

* * *

98-02
General Provisions

The provisions of this Chapter shall apply to any #zoning lot#, or portion thereof, within the #Special West Chelsea District#, except that the provisions of Sections 98-11 (Special Regulations for Developments and Enlargements Above, Beneath or Adjacent to the High Line) and 98-16 (Air Space Over a Railroad or Transit Right-of-way or Yard) shall also apply to any #zoning lot# south of the #Special West Chelsea District# over which the #High Line# passes. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

ARTICLE X SPECIAL PURPOSE DISTRICTS

* * *

Chapter 3 **Special Planned Community Preservation District**

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103-10 **GENERAL PROVISIONS**

In harmony with the general purpose and intent of this Resolution and the general purposes of the #Special Planned Community Preservation District#, no #development#, #enlargement#, or substantial alteration of landscaping or topography, shall be permitted within the Fresh Meadows, Harlem River Houses and Parkchester areas, except by special permit of the City Planning Commission, pursuant to Sections 103-11 (Special Permit for Bulk and Parking Modifications) and 103-12 (Special Permit for Landscaping and Topography Modifications).

No demolition of #buildings# shall be permitted within the Fresh Meadows, Harlem River Houses and Parkchester areas, unless it is an unsafe #building# and demolition is required pursuant to the provisions of Chapter 26, Title C, Part I, Article 8, of the New York City Administrative Code, or its successor, except that such demolition may be permitted pursuant to a development plan for which a special permit has been granted under the provisions of Sections 103-11 and 103-12.

In a C8-4 District, however, a demolition permit may be issued for any #building# that is less than 10,000 square feet and was constructed after December 31, 1955, but prior to July 18, 1974. Special regulations for the Sunnyside Gardens area are set forth in Section 103-20, inclusive.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4, shall control.

* * *

Chapter 4 **Special Manhattanville Mixed Use District**

104-00
GENERAL PURPOSES

* * *

104-02
General Provisions

In harmony with the general purposes and content of this Resolution and the general purposes of the #Special Manhattanville Mixed Use District#, the regulations of this Chapter shall apply within the Special District. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

104-30
Special Height and Setback Requirements

In the #Special Manhattanville Mixed Use District#, the height and setback regulations of the underlying C6 Districts shall not apply. In lieu thereof, the height and setback provisions of this Section, inclusive, shall apply in C6 Districts. In Subdistrict B, special height regulations for the underlying M1-2 District are set forth in Section 104-31, et seq.

In Subdistrict A, the height of all #buildings or other structures# shall be measured from the #base plane#. However, the provisions for establishing #base planes# set forth in Section 12-10 (DEFINITIONS) shall not apply. In lieu thereof, #base planes# are specified for each Parcel as shown on Map 5 (Parcel Designation and Maximum Building Heights) in Appendix A of this Chapter. The level of the #base plane# is designated for each such Parcel in Appendix B of this Chapter. ~~However, in #flood zones#, the level of the #base plane# shall be the #flood-resistant construction elevation#.~~

Wherever a #mandatory widened sidewalk line# is shown on Map 3 (Widened Sidewalk Lines) in Appendix A of this Chapter, such line shall be used instead of the #street line# for all purposes of Section 104-30, et seq.

The City Planning Commission may modify, by special permit, the special height and setback requirements of this Section pursuant to Section 104-60 (MODIFICATION OF SPECIAL BULK REQUIREMENTS AND TRANSFER OF FLOOR AREA BY SPECIAL PERMIT).

* * *

Chapter 5
Special Natural Area District

105-00
GENERAL PURPOSES

* * *

105-02
General Provisions

In harmony with the general purpose and intent of this Resolution and the general purposes of the #Special Natural Area District#, the regulations of the districts upon which this Special District is superimposed are supplemented or modified in accordance with the provisions of this Chapter, in order to protect outstanding #natural features# described herein. Except as modified by the express provisions of this Chapter, the regulations of the underlying district remain in effect. The provisions of this Chapter shall apply to:

* * *

When a #zoning lot# existing on the effective date of the Special District designation is subdivided into two or more #zoning lots#, an application shall be submitted to the Commission for review and approval pursuant to Section 105-90 (FUTURE SUBDIVISION).

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4, shall control.

* * *

Chapter 6
Special Coney Island Mixed Use District

106-00
GENERAL PURPOSES

* * *

106-01
General Provisions

In harmony with the general purpose and intent of this Resolution and the general purpose of the #*Special Coney Island Mixed Use District*#, and in accordance with the provisions of this Chapter, regulations of the #*Special Coney Island Mixed Use District*# shall replace and supersede the existing district regulations. In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 7
Special South Richmond Development District

107-00
GENERAL PURPOSES

* * *

107-02
General Provisions

In harmony with the general purpose and intent of this Resolution and the general purpose of the #Special South Richmond Development District#, the regulations of the districts upon which this Special District is superimposed are supplemented or modified in accordance with the provisions of this Chapter. Except as modified by the express provisions of this Chapter, the regulations of the underlying districts remain in effect. In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control. Additional provisions applicable in #flood zones# are set forth in Section 107-092 (Applicability of Article VI, Chapter 4).

* * *

107-09
Applicability of Article VI, ~~Chapter 2~~

~~The Chairperson of the City Planning Commission may, by certification, modify or waive a required #visual corridor#, as defined in Section 62-11, with respect to #developments#, including minor modifications thereto, that contain #designated open space# and a portion of the #waterfront esplanade#, where such #development# is conditioned upon a restrictive declaration that includes a site plan for such #development#, including provisions for public access to such #designated open space# and #waterfront esplanade#, provided that at least one required #visual corridor# continues to be provided pursuant to the restrictive declaration.~~

107-091
Applicability of Article VI, Chapter 2

[Note: Text moved from Section 107-09]

The Chairperson of the City Planning Commission may, by certification, modify or waive a required #visual corridor#, as defined in Section 62-11, with respect to #developments#, including minor modifications thereto, that contain #designated open space# and a portion of the #waterfront esplanade#, where such #development# is conditioned upon a restrictive declaration that includes a site plan for such #development#, including provisions for public access to such #designated open space# and #waterfront esplanade#, provided that at least one required #visual corridor# continues to be provided pursuant to the restrictive declaration.

107-092**Applicability of Article VI, Chapter 4**

[Note: Text to substitute paragraph (b) of Section 64-A352]

For #zoning lots# in #flood zones# with #single-# or #two-family detached residences# utilizing the provisions for #cottage envelope buildings#, as defined in Section 64-11 (Definitions), the provisions of this Chapter pertaining to minimum #lot area#, #lot width#, and minimum sizes of #front yards# and #side yards# shall not apply, and in lieu thereof, the underlying district regulations shall apply for the purposes of determining the applicability of the definition of #cottage envelope buildings#, and the particular amount of relief permitted pursuant to Section 64-33 (Cottage Envelope Buildings), inclusive.

* * *

Chapter 8**Special Hunts Point District****108-00****GENERAL PURPOSES**

* * *

108-01**General Provisions**

In harmony with the general purposes and content of this Resolution and the general purposes of the #Special Hunts Point District#, the provisions of this Chapter shall apply to all #developments# and #enlargements# within the #Special Hunts Point District#. The regulations of all other Chapters of this Resolution are applicable except as modified, supplemented or superseded by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4, shall control.

1341

May 12, 2021

* * *

ARTICLE XI SPECIAL PURPOSE DISTRICTS

* * *

Chapter 1 **Special Tribeca Mixed Use District**

111-00 **GENERAL PURPOSES**

* * *

111-02 **General Provisions**

The provisions of this Chapter shall apply to all #developments, enlargements, extensions#, alterations, #accessory uses#, open and enclosed and changes in #uses# within the Special District.

Except as modified by the express provisions of the District, the regulations of the underlying districts remain in effect. In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 2 **Special City Island District**

112-00 **GENERAL PURPOSES**

* * *

112-02 **General Provisions**

In harmony with the general purposes of the #Special City Island District# and in accordance with the provisions of this Chapter, certain specified regulations of the districts on which the #Special City Island District# is superimposed are made inapplicable and special regulations are substituted therefor. Except as modified by the express provisions of the Special District, the regulations of the underlying

zoning districts remain in force. In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4, shall control.

* * *

Chapter 3
Special Ocean Parkway District

113-00
GENERAL PURPOSES

* * *

113-01
General Provisions

In harmony with the general purposes of the #Special Ocean Parkway District# and in accordance with the provisions of this Chapter, certain specified regulations of the districts on which the #Special Ocean Parkway District# is superimposed are made inapplicable and special regulations are substituted therefor. Except as modified by the express provisions of the Special District, the regulations of the underlying districts remain in force. #In flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 4
Special Bay Ridge District

114-00
GENERAL PURPOSES

* * *

114-01
General Provisions

In harmony with the general provisions and intent of this Resolution and the general purposes of the #Special Bay Ridge District#, the regulations of the districts upon which this Special District is superimposed are supplemented or modified in accordance with the provisions of this Chapter. The provisions of this Chapter shall apply to all #buildings#.

Except as modified by the provisions of this Chapter, the regulations of the underlying districts remain in effect.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 6 **Special Stapleton Waterfront District**

116-00 **GENERAL PURPOSES**

* * *

116-02 **General Provisions**

In harmony with the general purposes and content of this Resolution and the general purposes of the #Special Stapleton Waterfront District#, the provisions of this Chapter shall apply to all #developments#, #enlargements# and changes of #use# within the #Special Stapleton Waterfront District#. The regulations of all other Chapters of this Resolution are applicable except as modified, supplemented or superseded by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control, ~~except in Subarea E of this Chapter.~~

Within the #Special Stapleton Waterfront District#, the regulations of the underlying R6, C2-2, C4-2A and M2-1 Districts shall apply, as modified in this Chapter.

* * *

116-05 **Applicability**

In Subareas A, B and C, the #Esplanade#, #Pier Place# and the #Cove#, the provisions of Article VI, Chapter 2 (Special Regulations Applying in the Waterfront Area), shall not apply. In lieu thereof, the special #use#, #bulk#, #accessory# off-street parking, public access and urban design regulations of Sections 116-10 through 116-50 shall apply.

In Subarea D, the provisions of Article VI, Chapter 2 shall apply pursuant to the underlying M2-1 District regulations.

In Subarea E, the underlying provisions of Article VI, Chapter 2 shall apply, except as modified in Section 116-60 (SPECIAL REGULATIONS IN SUBAREA E), inclusive. In addition, the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), shall not apply. In lieu thereof, the provisions of Section 116-623 (Height and setback regulations), shall apply.

~~#Lower density growth management area#~~ regulations shall not apply in the ~~#Special Stapleton Waterfront District#~~.

* * *

116-221

Special floor area regulations for mixed buildings

For ~~#buildings#~~ containing ~~#residences#~~, the area in such ~~#buildings#~~ occupied by non-~~#residential uses#~~ on the ground floor, or within two feet of the as-built level of the adjoining sidewalk, shall be excluded from the calculation of permitted ~~#floor area#~~ in the ~~#building#~~. However, the area occupied by non-~~#residential uses#~~ on the ground floor shall be included as ~~#floor area#~~ for other purposes including calculating:

- (a) requirements for ~~#accessory#~~ off-street parking spaces;
- (b) ~~#accessory#~~ off-street loading berths; and
- (c) limitations on ~~#floor area#~~ occupied by certain ~~#uses#~~.

~~In #flood zones#, the #floor area# exclusion permitted by this Section shall also apply to the area occupied by non-#residential uses# on the #lowest occupiable floor#, as defined in Section 64-11.~~

* * *

Chapter 7

Special Long Island City Mixed Use District

117-00

GENERAL PURPOSES

* * *

117-02

General Provisions

In harmony with the general purposes and content of this Resolution and the general purposes of the #Special Long Island City Mixed Use District#, the regulations of this Chapter shall apply within the #Special Long Island City Mixed Use District#. The regulations of all other Chapters of this Resolution are applicable, except as modified, supplemented or superseded by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article V, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 9
Special Hillside Preservation District

119-00
GENERAL PURPOSES

119-02
General Provisions

In harmony with the general purpose and intent of this Resolution and the general purposes of the #Special Hillside Preservation District#, the regulations of the districts upon which this Special District is superimposed are supplemented or modified in accordance with the provisions of this Chapter. Except as modified by the express provisions of this Chapter, the regulations of the underlying districts remain in effect.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

ARTICLE XII
SPECIAL PURPOSE DISTRICTS

* * *

Chapter 3
Special Mixed Use District

* * *

123-10**GENERAL PROVISIONS**

The provisions of this Chapter shall apply within the #Special Mixed Use District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 4**Special Willets Point District****124-00****GENERAL PURPOSES**

* * *

124-01**General Provisions**

The provisions of this Chapter shall apply within the #Special Willets Point District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

124-10**SPECIAL USE REGULATIONS****124-14****Retail Continuity**

The following regulations shall apply within Area A, as shown on Map 1 in the Appendix to this Chapter, to all portions of #buildings# with frontage on 126th Street, the #primary retail street#, #retail streets#, #connector streets# and, in the event that a utility easement is retained on the #block# bounded by Roosevelt Avenue and 126th Street, along the frontage of the publicly accessible open space required by paragraph (d) of Section 124-42.

- (a) Ground floor #uses#

~~#Uses#~~ within ~~#stories#~~ on the ground floor or with a floor level within five feet of ~~#base flood elevation#~~ ~~the #base plane#~~ shall be limited to ~~#commercial uses#~~ permitted by the underlying district, except ~~#uses#~~ listed in Use Groups 6B, 6E, 8C, 8D, 9B, 10B or 12D. A ~~#building's#~~ frontage shall be allocated exclusively to such ~~#uses#~~, except for Type 2 lobby space or entryways, provided in accordance with Section 37-33 (Maximum Width of Certain Uses), parking pursuant to Section 124-50, inclusive, and vehicular access pursuant to Section 124-53 (Curb Cut Restrictions). Such ~~#uses#~~ shall have a minimum depth of 50 feet measured from any ~~#street wall#~~ facing 126th Street, the ~~#primary retail street#~~ or ~~#connector streets#~~.

* * *

(d) Transparency

For any ~~#building#~~, or portion thereof, ~~#developed#~~ or ~~#enlarged#~~ after November 13, 2008, each ground floor ~~#street wall#~~ shall be glazed in accordance with Section 37-34 (Minimum Transparency Requirements).

~~However, in locations where such ground floor #street wall# above the level of the adjoining sidewalk or public access area is below #base flood elevation#, the required glazed area shall occupy an area measured from #base flood elevation#.~~

124-15

Modification of Sign Regulations

~~The height of all #signs# shall be measured from #base flood elevation#.~~ The underlying ~~#sign#~~ regulations shall apply, except as set forth in this Section.

* * *

124-30

MANDATORY IMPROVEMENTS

124-31

Standards for Streets and Blocks

* * *

124-312

New streets

The provisions of this Section shall apply to all private streets constructed after November 13, 2008.

* * *

(f) ~~#Service streets#~~

All newly constructed #streets#, other than those listed in paragraphs (a) through (e) of this Section, shall be improved as a #service street#. A minimum of 50 percent of the #uses# within #stories# on the ground floor or with a floor level within five feet of ~~#base flood elevation#~~ the #base plane# fronting a #service street# shall contain non-#residential uses#. #Service streets# shall be provided, as follows:

* * *

Chapter 5

Special Hunters Point District

125-00

GENERAL PURPOSES

* * *

125-01

General Provisions

In harmony with the general purpose and intent of this Resolution and the general purposes of the #Special Southern Hunters Point District#, the regulations of this Chapter shall apply within the #Special Southern Hunters Point District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 6

Special College Point District

126-00

GENERAL PURPOSES

* * *

126-01

General Provisions

The provisions of this Chapter shall apply within the #Special College Point District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a

conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 7
Special Flushing Waterfront District

127-00
GENERAL PURPOSES

* * *

127-05
Applicability of District Regulations

* * *

127-055
Applicability of Article VI, Chapter 4

The provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones) shall apply. In the event of a conflict between the provisions of this Chapter and Article VI, Chapter 4, the provisions of Article VI, Chapter 4 shall control.

* * *

127-40
DISTRICT PLAN ELEMENTS

* * *

127-41
Special Streetscape Regulations

* * *

127-412
Special provisions for blank walls

The blank wall provisions of paragraph (a)(7)(ii) of Section 62-655 (Planting and trees) shall not apply. In lieu thereof, the visual mitigation elements shall be provided in accordance with the provisions for Type 2 blank walls set forth in Section 37-361 (Blank wall thresholds). ~~provisions of this Section, inclusive, shall apply.~~

~~Along all frontages, where no transparent materials or #building# entrances or exits are provided on the #ground floor level street wall# lower than a height of four feet above the level of the adjoining sidewalk for a continuous width of at least 25 feet, at least 75 percent of the linear footage of any such portions of a #ground floor level street wall# shall be treated by one or more of the following visual mitigation elements which shall be provided on the #zoning lot#, except where such elements are permitted within the #street# under other applicable laws or regulations.~~

(a) — Planting

Any combination of perennials, annuals, decorative grasses or shrubs shall be provided in planting beds, raised planting beds or planter boxes in front of the #street wall#. Each foot in width of a planting bed, raised planting bed or planter box, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirements. Such planted area shall extend to a depth of at least three feet, inclusive of any structure containing the planted material. Any individual planted area shall have a width of at least five feet, and the height of such planting, inclusive of any structure containing the planted materials, shall be at least three feet.

Where a blank wall exceeds a #street wall# width of 50 feet, at least 25 percent of such #street wall# width shall be planted in accordance with the provisions of this paragraph.

(b) — Benches

Fixed benches with or without backs shall be provided in front of the #street wall#. Unobstructed access shall be provided between such benches and an adjoining sidewalk or required circulation paths. Each linear foot of bench, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirement. Any individual bench shall have a width of at least five feet, and no more than 20 feet of benches may be used to fulfill such requirement per 50 feet of frontage.

(c) — Bicycle racks

Bicycle racks, sufficient to accommodate at least two bicycles, shall be provided in front of the #street wall#, and oriented so that the bicycles are placed parallel to the #street wall#. Each bicycle rack so provided shall satisfy five linear feet of frontage mitigation requirement. No more than three bicycle racks may be used to fulfill such requirement per 50 feet of frontage.

(d) — Tables and chairs

Fixed tables and chairs shall be provided in front of the #street wall#. Each table shall have a minimum diameter of two feet, and have a minimum of two chairs associated with it. Each table and chair set so provided shall satisfy five linear feet of frontage mitigation requirement.

(e) — Wall treatment

Wall treatment, in the form of permitted #signs#, graphic or sculptural art, rustication, decorative screening or latticework, or living plant material, shall be provided along the #street wall#. Each linear foot of wall treatment shall constitute one linear foot of frontage mitigation requirement. Such wall treatment shall extend to a height of at least 10 feet, as measured from the level of the adjoining sidewalk or grade, and have a minimum width of 10 feet, as measured parallel to the #street wall#.

* * *

Chapter 8
Special St. George District

128-00
GENERAL PURPOSES

* * *

128-02**General Provisions**

In harmony with the general purpose and intent of this Resolution and the general purposes of the #Special St. George District#, the regulations of this Chapter shall apply within the #Special St. George District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

**ARTICLE XIII
SPECIAL PURPOSE DISTRICTS**

* * *

Chapter 1**Special Coney Island District****131-00****GENERAL PURPOSES**

* * *

131-01**General Provisions**

The provisions of this Chapter shall apply within the #Special Coney Island District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

131-40**HEIGHT AND SETBACK REGULATIONS**

* * *

131-42**Coney East Subdistrict**

* * *

131-421**Coney East Subdistrict, south side of Surf Avenue**

The following regulations shall apply along the south side of Surf Avenue and along those portions of #streets# intersecting Surf Avenue located north of a line drawn 50 feet north of and parallel to the northern #street line# of Bowery and its westerly prolongation.

(a) #Street wall# location

The #street wall# of a #building# shall be located within five feet of the #street line# and extend along the entire frontage of the #zoning lot#, except that:

- (1) a sidewalk widening shall be required at the intersection of Surf Avenue and West 10th Street, extending from a point on the Surf Avenue #street line# 125 feet west of West 10th Street to a point on the West 10th Street #street line# 20 feet south of Surf Avenue. Such area shall be improved as a sidewalk to Department of Transportation standards, be at the same level as the adjoining sidewalks, and be accessible to the public at all times. Such sidewalk widening line shall be considered a #street line# for the purposes of applying the #use# and height and setback regulations of this Chapter;
- ~~(2) ground floor level recesses up to three feet deep shall be permitted for access to #building# entrances. However, for #building# entrances providing direct access to the lowest #story# located above the #base flood elevation#, such recesses shall be permitted to have a depth of up to 10 feet provided the width of such recesses does not exceed 20 feet and the height of such recessed area is not less than 15 feet at any point as measured from the #base flood elevation#;~~
- ~~(3)~~(2) to allow for corner articulation, the #street wall# may be located anywhere within an area bounded by intersecting #street lines# and lines 15 feet from and parallel to such #street lines#;
- ~~(4)~~(3) to allow for portions of towers to rise without setback from grade, a portion of a #building# base below a tower may be set back 10 feet from the #street line#, provided the width of such setback area is not greater than 40 percent of the width of the #street wall# of the tower, and provided such setback area complies with the provisions of Section 131-47 (Design Requirements for Ground Level Setbacks).

* * *

131-423**Along all other streets**

The following regulations shall apply along Wonder Wheel Way, Bowery, and all other #streets#, and portions thereof, located south of a line drawn 50 feet north of and parallel to the northern #street# line of Bowery and its westerly prolongation.

(a) #Street wall# location

The #street wall# of the #building#, or portion thereof, shall be located within five feet of the #street line#. However, for #building# entrances providing direct access to the lowest #story# located above the #base flood elevation#, a recess shall be permitted to have a depth of up to 10 feet as measured from the #street line#, provided the width of such recess does not exceed 20 feet and the height of such recessed area is not less than 15 feet at any point as measured from the #base flood elevation#;

* * *

131-43

Coney West Subdistrict

* * *

131-431

Coney West District, Surf Avenue

The regulations of this Section shall apply along Surf Avenue. The #street wall# location provisions of paragraph (a) of this Section shall also apply along #streets# intersecting Surf Avenue within 50 feet of Surf Avenue, and the #building# base regulations of paragraph (b) of this Section shall also apply along #streets# within 100 feet of Surf Avenue.

(a) #Street wall# location

The #street wall# of a #building# base shall be located on the Surf Avenue #street line# and extend along the entire Surf Avenue frontage of the #zoning lot#, except that:

~~(1) ground floor level recesses up to three feet deep shall be permitted for access to #building# entrances, except that for #building# entrances providing direct access to the lowest #story# located above the #base flood elevation#, such recesses shall be permitted to have a depth of up to 10 feet provided the width of such recess does not exceed 20 feet and the height of such recessed area is not less than 15 feet at any point as measured from the #base flood elevation#;~~

~~(2)~~(1) to allow for corner articulation, the #street wall# may be located anywhere within an area bounded by intersecting #street lines# and lines 15 feet from and parallel to such #street lines#; and

~~(3)~~(2) to allow for portions of towers to rise without setback from grade, a portion of a #building# base below a tower may be set back 10 feet from a #street line#, provided the width of such setback area is not greater than 40 percent of the width of the #street wall# of the tower and provided such setback area complies with the provisions of Section 131-47 (Design Requirements for Ground Level Setbacks).

* * *

131-432**Along all other streets, other than Riegelmann Boardwalk**

The following regulations shall apply along all other #streets# in the Coney West Subdistrict, except within 70 feet of Riegelmann Boardwalk.

(a) #Street wall# location

The #street wall# of a #building# base, or portion thereof, beyond 50 feet of Surf Avenue, shall be located within eight feet of the #street line# except that, to allow portions of towers to rise without setback from grade, a portion of a #building# base below a tower may be set back 10 feet from the #street line#, provided the width of such setback area is not greater than 40 percent of the width of the #street wall# of the tower. ~~In addition, for #street walls# facing Ocean Way, #building# entrances providing direct access to the lowest #story# located above the #base flood elevation# may be recessed up to a depth of 10 feet as measured from the #street line#, provided the width of such recess does not exceed 20 feet and the height of such recessed area is not less than 15 feet at any point as measured from the #base flood elevation#.~~

The entire area of the #zoning lot# between the #street line# and all #street walls# of the #building# and their prolongations shall be planted at ground level, or in raised planting beds that are permanently affixed to the ground, except that such plantings shall not be required at the entrances to and exits from the #building#, within driveways accessing off-street parking spaces located within, to the side, or rear of such #building#, or between #commercial uses# and the #street line#. No #zoning lot# shall be altered in any way that will either create a new non-compliance or increase the degree of non-compliance with the provisions of this Section.

* * *

131-44**Coney North Subdistrict**

* * *

131-441**Coney North Subdistrict, Surf Avenue**

The regulations of this Section shall apply along Surf Avenue. The #street wall# location provisions of paragraph (a) of this Section shall also apply along #streets# intersecting Surf Avenue within 50 feet of Surf Avenue, and the #building# base regulations of paragraph (b) of this Section shall also apply along #streets# within 100 feet of Surf Avenue.

(a) #Street wall# location

The #street wall# of a #building# base shall be located on the Surf Avenue #street line# and extend along the entire Surf Avenue frontage of the #zoning lot#, except that:

- (1) ~~ground floor level recesses up to three feet deep shall be permitted for access to #building# entrances. However, for #building# entrances providing direct access to the lowest #story# located above the #base flood elevation#, such recesses shall be permitted to have a depth of~~

~~up to 10 feet provided the width of such recess does not exceed 20 feet and the height of such recessed area is not less than 15 feet at any point as measured from the #base flood elevation#;~~

- (2)(1) to allow for corner articulation, the #street wall# may be located anywhere within an area bounded by intersecting #street lines# and lines 15 feet from and parallel to such #street lines#; and
- (3)(2) to allow for portions of towers to rise without setback from grade, a portion of a #building# base below a tower may be set back 10 feet from a #street line#, provided the width of such setback area is not greater than 40 percent of the width of the #street wall# of the tower and provided such setback area complies with the provisions of Section 131-47 (Design Requirements for Ground Level Setbacks).

* * *

131-443

Mermaid and Stillwell Avenues

Within 100 feet of Mermaid Avenue and within 100 feet of Stillwell Avenue, except within 100 feet of Surf Avenue, all portions of a #building or other structure# shall comply with the height and setback regulations of a C2 District mapped within an R7A District, except that the #street wall# of a #building# shall be located on the #street line# and rise without setback to a minimum height of 40 feet or the height of the #building#, whichever is less, except that:

- (a) ~~ground floor level recesses up to three feet deep shall be permitted for access to #building# entrances. However, for #building# entrances providing direct access to the lowest #story# located above the #base flood elevation#, such recesses shall be permitted to have a depth of up to 10 feet provided the width of such recess does not exceed 20 feet and the height of such recessed area is not less than 15 feet at any point as measured from the #base flood elevation#;~~
- (b)(a) to allow for corner articulation, the #street wall# may be located anywhere within an area bounded by intersecting #street lines# and lines 15 feet from and parallel to such #street lines#; and
- (c)(b) above the level of the second #story#, up to 30 percent of the #aggregate width of street walls# may be recessed, provided no recesses are located within 15 feet of an adjacent #building# or within 30 feet of the intersection of two #street lines#, except where corner articulation is provided as set forth in paragraph (b) of this Section.

* * *

131-45

Mermaid Avenue Subdistrict

All portions of a #building or other structure# shall comply with the height and setback regulations of a C2 District mapped within an R7A District, except that on Mermaid Avenue, and on intersecting #streets# within 50 feet of Mermaid Avenue, the #street wall# of a #building# shall be located on the #street line# and rise without setback to a minimum base height of 40 feet or the height of the #building#, whichever is less, except that:

- (a) ~~ground floor level recesses up to three feet deep shall be permitted for access to #building# entrances. However, for #building# entrances providing direct access to the lowest #story# located above the #base flood elevation#, such recesses shall be permitted to have a depth of up to 10 feet, provided the width~~

~~of such recess does not exceed 20 feet and the height of such recessed area is not less than 15 feet at any point as measured from the #base flood elevation#;~~

- ~~(b)~~(a) to allow for corner articulation, the #street wall# may be located anywhere within an area bounded by intersecting #street lines# and lines 15 feet from and parallel to such #street lines#; and
- ~~(e)~~(b) above the level of the second #story#, up to 30 percent of the #aggregate width of street walls# may be recessed, provided no recesses are located within 15 feet of an adjacent #building# or within 30 feet of the intersection of two #street lines#, except where corner articulation is provided as set forth in paragraph (b) of this Section.

* * *

131-49

Authorization for Exterior Ramps

The City Planning Commission may authorize modifications of the #street wall# location provisions of this Chapter to allow exterior ramps for access from the public sidewalk to the lowest #story# above the ~~#base flood elevation#~~ #flood-resistant construction elevation#, as defined in Section 64-11 (Definitions), provided the Commission finds that the design of such ramps:

- (a) maximizes visibility of interior ground floor space within the #building# from the public sidewalk;
- (b) incorporates amenities such as seating and planting as the Commission may find appropriate; and
- (c) relates harmoniously with the design and materials of the adjacent #building# and the surrounding streetscape.

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

* * *

Chapter 5

Special Bay Street District

135-00

GENERAL PURPOSES

* * *

135-04

Applicability

* * *

135-044**Applicability of Article VI, Chapter 4**

Notwithstanding the general provisions of Section 135-01, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

135-10**SPECIAL USE REGULATIONS**

* * *

135-11**Ground Floor Use Regulations**

For the purposes of applying to this Chapter the special #ground floor level# streetscape provisions set forth in Section 37-30, any portion of a #ground floor level street# frontage along Bay Street, as well as any #street# frontage within 50 feet of Bay Street, shall be considered a #primary street frontage#. A #ground floor level street# frontage along any other #street# shall be considered a #secondary street frontage#. For the purposes of this Section, inclusive, defined terms shall include those in Sections 12-10 and 37-311.

The provisions of this Section shall apply to #developments# or #ground floor level enlargements#.

(a) Along #primary street frontages#

For #buildings#, or portions thereof, with #primary street frontage#, #uses# on the #ground floor level#, to the minimum depth set forth in Section 37-32 (Ground Floor Depth Requirements for Certain Uses), shall be limited to non-#residential uses#, except for Type 1 lobbies and entrances and exits to #accessory# parking spaces provided in accordance with the applicable provisions of Section 37-33 (Maximum Width of Certain Uses). #Group parking facilities# located on the #ground floor level# shall be wrapped by #floor area# in accordance with the provisions of paragraph (a) of Section 37-35 (Parking Wrap and Screening Requirements). #Ground floor level street walls# shall be glazed in accordance with the provisions set forth in Section 37-34 (Minimum Transparency Requirements).

For #zoning lots# with a #lot area# of less than 5,000 square feet existing both on June 26, 2019 and on the date of application for a building permit, the provisions of this paragraph (a) shall not apply. In lieu thereof, the provisions of paragraph (b) of this Section shall apply.

In #flood zones#, ~~where no transparent materials or #building# entrances or exits are provided on the #ground floor level street wall# below a height of four feet above the level of the adjoining sidewalk for a continuous width of at least 15 feet,~~ visual mitigation elements shall be provided in accordance with Section 135-12 (Special Streetscape Provisions for Blank Walls) for such blank wall the provisions for Type 3 blank walls set forth in Section 37-361 (Blank wall thresholds).

* * *

135-12**Special Streetscape Provisions for Blank Walls
Physical Culture or Health Establishments****[Existing Text to be deleted and substituted by Section 37-36]**

~~Where visual mitigation elements are required on a blank wall along the ground floor level street wall pursuant to the provisions of Section 135-11 (Ground Floor Use Regulations), at least 75 percent of the linear footage of any such blank wall shall be treated by one or more of the following visual mitigation elements:~~

~~(a) — Planting~~

~~Where utilized as a visual mitigation element, any combination of perennials, annuals, decorative grasses or shrubs shall be provided in planting beds, raised planting beds or planter boxes in front of the street wall. Each foot in width of a planting bed, raised planting bed or planter box, as measured parallel to the street wall, shall satisfy one linear foot of frontage mitigation requirement. Such planting bed shall extend to a depth of at least three feet, inclusive of any structure containing the planted material. Any individual planted area shall have a width of at least five feet, and the height of such planting, inclusive of any structure containing the planted materials, shall be at least three feet.~~

~~Where a blank wall exceeds a street wall width of 50 feet, at least 25 percent of such street wall width shall be planted in accordance with the provisions of this paragraph.~~

~~(b) — Benches~~

~~Where utilized as a visual mitigation element, fixed benches with or without backs shall be provided in front of the street wall. Unobstructed access shall be provided between such benches and an adjoining sidewalk or required circulation paths. Each linear foot of bench, as measured parallel to the street wall, shall satisfy one linear foot of frontage mitigation requirement. Any individual bench shall have a width of at least five feet, and no more than 20 feet of benches may be used to fulfill such requirement per 50 feet of frontage.~~

~~(c) — Bicycle racks~~

~~Where utilized as a visual mitigation element, bicycle racks, sufficient to accommodate at least two bicycles, shall be provided in front of the street wall, and oriented so that the bicycles are placed parallel to the street wall. Each bicycle rack so provided shall satisfy five linear feet of frontage mitigation requirement. No more than three bicycle racks may be used to fulfill such requirement per 50 feet of frontage.~~

~~(d) — Tables and chairs~~

~~Where utilized as a visual mitigation element, fixed tables and chairs shall be provided in front of the street wall. Each table shall have a minimum diameter of two feet, and have a minimum of two chairs associated with it. Each table and chair set so provided shall satisfy five linear feet of frontage mitigation requirement.~~

~~(e) — Wall treatment~~

~~Where utilized as a visual mitigation element, wall treatment, in the form of permitted signs, graphic or sculptural art, rustication, decorative screening or latticework, or living plant material, shall be provided along the street wall. Each linear foot of wall treatment shall constitute one linear foot of frontage mitigation requirement. Such wall treatment shall extend to a height of at least 10 feet, as measured from the level of the adjoining sidewalk or grade, and have a minimum width of 10 feet, as measured parallel to the street wall.~~

~~All visual mitigation elements shall be provided on the zoning lot, except where such elements are permitted within the street under other applicable laws or regulations.~~

[Text moved from Section 135-13]

Within the #Special Bay Street Corridor District#, a #physical culture or health establishment# shall be permitted as-of-right in #Commercial Districts#. For the purposes of applying the underlying regulations to such #use#, a #physical culture or health establishment# shall be considered a Use Group 9 #use# and shall be within parking requirement category PRC-B.

* * *

135-13

~~Physical Culture or Health Establishments~~ Breweries

[Existing Text moved to Section 135-12]

~~Within the #Special Bay Street Corridor District#, a #physical culture or health establishment# shall be permitted as-of-right in #Commercial Districts#. For the purposes of applying the underlying regulations to such #use#, a #physical culture or health establishment# shall be considered a Use Group 9 #use# and shall be within parking requirement category PRC-B.~~

[Text moved from Section 135-14]

Within the #Special Bay Street Corridor District#, breweries, as listed in Use Group 18A, shall be permitted in Commercial Districts provided that:

- (a) the size of such brewery does not exceed 30,000 square feet; and
- (b) any brewery #developed# or #enlarged# after June 26, 2019, shall contain an #accessory# eating or drinking establishment.

For the purposes of applying the underlying regulations, such brewery shall be considered a Use Group 11A #use# and shall be within parking requirement category PRC-F. The performance standards for an M1 District set forth in Section 42-20, inclusive, shall apply to such breweries.

* * *

135-14**Breweries****Modification of Supplemental Use Provisions****[Existing Text moved to Section 135-13]**

~~Within the #Special Bay Street Corridor District#, breweries, as listed in Use Group 18A, shall be permitted in Commercial Districts provided that:~~

- ~~(a) — the size of such brewery does not exceed 30,000 square feet; and~~
- ~~(b) — any brewery #developed# or #enlarged# after June 26, 2019, shall contain an #accessory# eating or drinking establishment.~~

~~For the purposes of applying the underlying regulations, such brewery shall be considered a Use Group 11A #use# and shall be within parking requirement category PRC-F. The performance standards for an M1 District set forth in Section 42-20, inclusive, shall apply to such breweries.~~

[Text moved from Section 135-15]

In Subdistricts A, B and C, the underlying provisions of Section 32-421 (Limitation on floors occupied by commercial uses) shall be modified as follows:

- (a) For #mixed buildings#, offices, as listed in Use Group 6B, shall be permitted on the lowest two #stories# of a #building#, provided that no access exists between such offices and any #residential uses#;
- (b) For #commercial buildings#, the provisions restricting the location of #uses# listed in Use Group 6A, 6B, 6C, 6F, 7, 8, 9 or 14 to two #stories#, shall not apply; and
- (c) Any brewery #developed# or #enlarged# in accordance with the provisions of Section 135-14, shall be subject to the provisions of Section 32-421.

* * *

135-15**Modification of Supplemental Use Provisions****[Existing Text moved to Section 135-14]**

~~In Subdistricts A, B and C, the underlying provisions of Section 32-421 (Limitation on floors occupied by commercial uses) shall be modified as follows:~~

- ~~(a) — For #mixed buildings#, offices, as listed in Use Group 6B, shall be permitted on the lowest two #stories# of a #building#, provided that no access exists between such offices and any #residential uses#;~~
- ~~(b) — For #commercial buildings#, the provisions restricting the location of #uses# listed in Use Group 6A, 6B, 6C, 6F, 7, 8, 9 or 14 to two #stories#, shall not apply; and~~
- ~~(c) — Any brewery #developed# or #enlarged# in accordance with the provisions of Section 135-14, shall be subject to the provisions of Section 32-421.~~

1361

May 12, 2021

* * *

135-20
SPECIAL BULK REGULATIONS

* * *

135-24
Special Street Wall Location Regulations

The underlying #street wall# location provisions are modified by the provisions of this Section.

(a) Along Bay Street

Along Bay Street, and along #streets# within 50 feet of their intersection with Bay Street, the following #street wall# regulations shall apply:

- (1) At least 70 percent of the #aggregate width of street walls# of a #building# shall be located within eight feet of the #street line#, and shall rise without setback up to at least the minimum base height specified in Section 135-25 (Special Height and Setback Regulations), or the height of the #building#, whichever is lower. Pursuant to Section 135-31 (Special Visual Corridor Requirements), required visual corridors shall be considered #streets#.
- (2) For #developments# or horizontal #enlargements# of #buildings#, or portions thereof, within the #flood zone# where no transparent materials are provided on the #ground floor level street wall# below a height of four feet above the level of the adjoining sidewalk, pursuant to the provisions of Sections 135-11 (Ground Floor Use Regulations) and 37-34 (Minimum Transparency Requirements) for a continuous distance of more than 25 feet, such #street wall# shall be located at least three feet beyond the #street line#. Such #street wall# shall not be located beyond five feet of the #street line#, ~~except as permitted pursuant to Section 64-333 (Street wall location in certain districts).~~ Such #street wall# shall provide visual mitigation elements in accordance with the provisions of ~~Section 135-12 (Special Streetscape Provisions for Blank Walls)~~ for Type 2 blank walls set forth in Section 37-361 (Blank wall thresholds), and any area between the #street wall# and the sidewalk that does not contain any planting material pursuant to the provisions of ~~paragraph (a) of Section 135-12~~ Section 37-362 (Mitigation elements) shall be improved to Department of Transportation standards for sidewalks.

* * *

Chapter 6
Special Downtown Far Rockaway District

136-00
GENERAL PURPOSES

* * *

136-01
General Provisions

The regulations of this Chapter shall apply within the #Special Downtown Far Rockaway District#. The regulations of all other Chapters of this Resolution are applicable except as modified, supplemented or superseded by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

Chapter 7
Special Coastal Risk District

* * *

137-10
GENERAL PROVISIONS

The provisions of this Chapter shall apply in the #Special Coastal Risk District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4 shall control, except as specifically modified in this Chapter.

* * *

137-40
SPECIAL APPLICABILITY OF ARTICLE V

In #Special Coastal Risk District# 3, the provisions of Article V, Chapter 2 (Non-conforming Uses) shall be modified as set forth in this Section. In addition, the provisions of Article VI, Chapter 5 (Special Regulations

Applying in Designated Recovery Areas) and Section 64-61 (Special Provisions for Non-conforming Uses) shall not apply.

#Non-conforming uses# may not be #enlarged# or #extended#. In addition, should 50 percent or more of the #floor area# of a #building# containing a #non-conforming use# be damaged or destroyed after September 7, 2017, the #building# may be repaired, #incidentally altered# or reconstructed only for a #conforming use#.

~~However, the provisions of this Section shall not apply to any #building# that was damaged to the extent of 50 percent or more due to the effects of #Hurricane Sandy#, as defined in Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas). The special regulations for #non-conforming buildings# of Section 64-70 shall apply to such #buildings#.~~

* * *

137-50

SPECIAL REQUIREMENTS FOR DEVELOPMENTS AND ENLARGEMENTS

In #Special Coastal Risk District# 3, no #development# or horizontal #enlargement# shall occur, except where authorized by the City Planning Commission pursuant to Sections 137-51 (Authorization for Development of Single Buildings and Enlargements) or 137-52 (Authorization for Development of Multiple Buildings), as applicable. In addition, the provisions of Article VI, Chapter 5 (Special Regulations Applying in Designated Recovery Areas) and Section 64-60 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS) shall not apply.

For the purposes of determining which authorization shall be applicable, the #zoning lot# upon which the #development# shall occur shall be considered to be a tract of land that existed under separate ownership from all adjoining tracts of land on April 24, 2017.

For the purposes of such authorizations, the alteration of any existing #building# resulting in the removal of more than 75 percent of the #floor area# and more than 25 percent of the perimeter walls of such existing #building#, and the replacement of any amount of #floor area#, shall be considered a #development#.

~~The provisions of Section 137-50, inclusive, shall not apply to the reconstruction of any #building# that was damaged to the extent of 50 percent or more due to the effects of #Hurricane Sandy#, as defined in Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas), or to the reconstruction of a garage #accessory# to a #single-family residence# or #two-family residence#.~~

The provisions of Section ~~64-92-73-71~~ (Special Permit for Modification of Certain Zoning Regulations) shall be inapplicable to a #building# that is #developed# pursuant to this Section, inclusive.

* * *

Chapter 8

Special East Harlem Corridors District

138-00**GENERAL PURPOSES**

* * *

138-01**General Provisions**

The provisions of this Chapter shall apply within the #Special East Harlem Corridors District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control.

In #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

138-20**SPECIAL BULK REGULATIONS**

* * *

138-22**Street Wall Regulations**

All #developments# and #enlargements# within the #Special East Harlem Corridors District# shall comply with the #street wall# regulations of Section 35-651 (Street wall location), as specified and modified in this Section. Where M1 Districts are paired with R9 or R10 Districts, #developments# and #enlargements# within such districts shall comply with the provisions of paragraph (b) of this Section. The applicable provisions of Section 35-651 are specified and modified as follows:

(a) Along #wide streets# other than Park Avenue

Along all #wide streets# other than Park Avenue, and along #narrow streets# within 50 feet of an intersection with such #wide street#, the provisions of paragraph (b) of Section 35-651 shall apply, except that the minimum base height shall be 60 feet, or the height of the #building#, whichever is less.

(b) Along Park Avenue

Along Park Avenue and along #narrow streets# located within 100 feet of Park Avenue, the provisions of paragraph (a) of Section 35-651 shall apply, except that the minimum base height shall be 40 feet, or the height of the #building#, whichever is less.

(c) Along all other #streets#

Along all #streets# not subject to the provisions of paragraph (a) or (b) of this Section, the provisions of paragraph (a) of Section 35-651 shall apply, except that the minimum base height shall be 60 feet, or the height of the #building#, whichever is less.

(d) Within #flood zones#

For #buildings# within the #flood zone#, the provisions of paragraphs (a), (b) and (c) of this Section, as applicable, shall be modified as follows:

- (1) for #developments# or horizontal #enlargements#, or portions thereof, where no transparent materials are provided on the #ground floor level street wall# below a height of four feet above the level of the adjoining sidewalk pursuant to the provisions of Section 37-34 (Minimum Transparency Requirements), for a continuous distance of more than 25 feet, such #street wall# shall be located at least three feet beyond the #street line#; and
- (2) ~~for portions of #developments# and #enlargements# where the provisions of paragraph (a) of this Section apply, such #street wall# shall not be located beyond five feet of the #street line#, except that such #street wall# may be located beyond such distance pursuant to the applicable provisions of paragraph (b) of Section 35-651 or of Section 64-333 (Street wall location in certain districts); and~~
- (3) the area between such #street wall# and the sidewalk, or portions thereof, that do not contain any planting pursuant to the provisions of ~~paragraph (a) of Section 138-32 (Special Streetscape Provisions for Blank Walls)~~ paragraph (b)(1) of Section 37-362 (Mitigation elements) for at least 70 percent of the linear footage, shall be improved to Department of Transportation standards for sidewalks, be at the same level as the adjoining public sidewalk and be accessible to the public at all times. In addition, such area shall provide visual mitigation elements in accordance with the provisions of ~~Section 138-32~~ Section 37-362 for at least 70 percent of the linear footage of such area per 50 feet of frontage.

* * *

138-30 STREETSCAPE REQUIREMENTS

* * *

138-31 Ground Floor Use Regulations

The special #ground floor level# streetscape provisions set forth in Section 37-30, shall apply to Second Avenue, Third Avenue, Lexington Avenue, Park Avenue and East 116th Street, within the #Special East Harlem Corridors District# which, for the purposes of applying such provisions, shall be considered designated retail streets, and any portion of a #ground floor level street# frontage along the designated retail streets, as well as any #narrow street# frontage within 50 feet of such #streets#, shall be considered #primary street frontages#. A #ground floor level street# frontage along any other #street# shall be considered a #secondary street frontage#. For the purposes of this Section, defined terms shall also include those defined in Section 37-311 (Definitions).

(a) Along #primary street frontages#

For #buildings#, or portions thereof, with #primary street frontage#, #uses# on the #ground floor level#, to the minimum depth set forth in Section 37-32 (Ground Floor Depth Requirements for Certain Uses), shall be limited to non-#residential uses#, except for Type 2 lobbies and entrances and exits to

#accessory# parking spaces provided in accordance with the applicable provisions of Section 37-33 (Maximum Width of Certain Uses). #Group parking facilities# located on the #ground floor level# shall be wrapped by #floor area# in accordance with the provisions of paragraph (a) of Section 37-35 (Parking Wrap and Screening Requirements). #Ground floor level street walls# shall be glazed in accordance with the provisions set forth in Section 37-34 (Minimum Transparency Requirements), except that:

- (1) in M1-6 Districts paired with an R9 or R10 District, where the #ground floor level# is occupied by #uses# in Use Groups 16, 17 and 18, up to 50 percent of the #ground floor level street wall# width may be exempt from such regulations, provided that ~~any #street wall# width exceeding 50 feet with no transparent elements on the #ground floor level# shall provide~~ planting or screening in accordance with the provisions of paragraphs (a) or (e) of Section 138-32 (Special Streetscape Provisions for Blank Walls) for at least 75 percent of such blank wall (a)(1) or (b)(1) of Section 37-362 (Mitigation elements) is provided pursuant to the provisions for Type 1 blank walls set forth in Section 37-361 (Blank wall thresholds); and
- (2) in #flood zones#, ~~where no transparent materials or #building# entrances or exits are provided on the #ground floor level street wall# lower than a height of four feet above the level of the adjoining sidewalk for a continuous width of at least 15 feet, visual mitigation elements shall be provided in accordance with Section 138-32 for such blank wall~~ the provisions for Type 3 blank walls set forth in Section 37-361.

* * *

138-32

Special Streetscape Provisions for Blank Walls

Off-street Relocation or Renovation of a Subway Stair

[Note: Existing text to be deleted and substituted by Section 37-36]

~~Where visual mitigation elements are required on a blank wall along the #ground floor level street wall# pursuant to the provisions of Section 138-31 (Ground Floor Use Regulations), at least 75 percent of the linear footage of any such blank wall shall be treated by one or more of the following visual mitigation elements which shall be provided on the #zoning lot#, except where such elements are permitted within the #street# under other applicable laws or regulations. Such features, when utilized as visual mitigation elements, shall include:~~

(a) — Planting

~~Any combination of perennials, annuals, decorative grasses or shrubs shall be provided in planting beds, raised planting beds or planter boxes in front of the #street wall#. Each foot in width of a planting bed, raised planting bed or planter box, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirements. Such planting bed shall extend to a depth of at least three feet, inclusive of any structure containing the planted material. Any individual planted area shall have a width of at least five feet, and the height of such planting, inclusive of any structure containing the planted materials, shall be at least three feet.~~

~~Where a blank wall exceeds a #street wall# width of 50 feet, at least 25 percent of such #street wall# width shall be planted in accordance with the provisions of this paragraph.~~

(b) — Benches

~~Fixed benches with or without backs shall be provided in front of the #street wall#. Unobstructed access shall be provided between such benches and an adjoining sidewalk or required circulation paths. Each linear foot of bench, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirement. Any individual bench shall have a width of at least five feet, and no more than 20 feet of benches may be used to fulfill such requirement per 50 feet of frontage.~~

~~(c) — Bicycle racks~~

~~Bicycle racks, sufficient to accommodate at least two bicycles, shall be provided in front of the #street wall#, and oriented so that the bicycles are placed parallel to the #street wall#. Each bicycle rack so provided shall satisfy five linear feet of frontage mitigation requirement. No more than three bicycle racks may be used to fulfill such requirement per 50 feet of frontage.~~

~~(d) — Tables and chairs~~

~~Fixed tables and chairs shall be provided in front of the #street wall#. Each table shall have a minimum diameter of two feet, and have a minimum of two chairs associated with it. Each table and chair set so provided shall satisfy five linear feet of frontage mitigation requirement.~~

~~(e) — Wall treatment~~

~~Wall treatment, in the form of permitted #signs#, graphic or sculptural art, rustication, decorative screening or latticework, or living plant material, shall be provided along the #street wall#. Each linear foot of wall treatment shall constitute one linear foot of frontage mitigation requirement. Such wall treatment shall extend to a height of at least 10 feet, as measured from the level of the adjoining sidewalk or grade, and have a minimum width of 10 feet, as measured parallel to the #street wall#.~~

[Note: Text moved from Section 138-33]

Where a #development# or #enlargement# is constructed on a #zoning lot# of at least 5,000 square feet that fronts on a portion of sidewalk containing a stairway entrance or entrances into the 116th Street Station of the Lexington Avenue subway line, such #development# or #enlargement# shall be subject to the regulations of Section 37-40 (OFF-STREET RELOCATION OR RENOVATION OF A SUBWAY STAIR).

~~138-33~~

~~Off-street Relocation or Renovation of a Subway Stair~~

[Note: Existing text moved to Section 138-32]

~~Where a #development# or #enlargement# is constructed on a #zoning lot# of at least 5,000 square feet that fronts on a portion of sidewalk containing a stairway entrance or entrances into the 116th Street Station of the Lexington Avenue subway line, such #development# or #enlargement# shall be subject to the regulations of Section 37-40 (OFF-STREET RELOCATION OR RENOVATION OF A SUBWAY STAIR).~~

**ARTICLE XIV
SPECIAL PURPOSE DISTRICTS**

* * *

Chapter 2
Special Inwood District

142-00
GENERAL PURPOSES

* * *

142-01
General Provisions

The provisions of this Chapter shall apply within the #Special Inwood District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter (Special Regulations Applying in ~~Flood Hazard Areas~~ Flood Zones), the provisions of Article VI, Chapter 4 shall control.

* * *

142-10
SPECIAL USE REGULATIONS

* * *

142-14
Ground Floor Level Requirements

For the purposes of applying the special #ground floor level# streetscape provisions set forth in Section 37-30 to this Chapter, any portion of a #ground floor level street# frontage along #streets# designated on Map 2 (Ground Floor Use and Curb Cut Regulations) in the Appendix to this Chapter shall be considered #primary street frontages#, and shall consist of Type 1, Type 2 and Type 3 #primary street frontages#. A #ground floor level street# frontage along any other #street# shall be considered a #secondary street frontage# except for frontages located within Subdistrict F. For the purposes of this Section, defined terms shall include those in Sections 12-10 and 37-311.

The provisions of this Section shall apply to #developments# or #ground floor level enlargements#.

(a) Along #primary street frontages#

(1) Type 1 #primary street frontages#

For #buildings#, or portions thereof, with Type 1 #primary street frontage#, #uses# on the #ground floor level#, to the minimum depth set forth in Section 37-32 (Ground Floor Depth Requirements for Certain Uses), shall be limited to non-#residential uses#, except for Type 1 lobbies and entrances and exits to #accessory# parking spaces provided in accordance with the applicable provisions of Section 37-33 (Maximum Width of Certain Uses). Group parking facilities located on the #ground floor level# shall be wrapped by #floor area# in accordance with the provisions of paragraph (a) of Section 37-35 (Parking Wrap and Screening Requirements). #Ground floor level street walls# shall be glazed in accordance with the provisions set forth in Section 37-34 (Minimum Transparency Requirements).

(2) Type 2 #primary street frontages#

For #buildings#, or portions thereof, with Type 2 #primary street frontage#, all #uses# permitted by the underlying district shall be permitted on the #ground floor level#, provided that group parking facilities located on the #ground floor level# shall be wrapped by #floor area# in accordance with the provisions of paragraph (a) of Section 37-35.

(3) Type 3 #primary street frontages#

For #buildings#, or portions thereof, with Type 3 #primary street frontage#, the following regulations shall apply to the #ground floor level# to a depth of 30 feet from the #street line#:

- (i) the maximum #street wall# width of a bank or loan office, as listed in Use Group 6C, shall not exceed 25 feet.

However, in Subarea A1 or B1, as shown on Map 1, for #buildings# containing predominantly commercial or public utility vehicle storage, including #accessory# fuel pumps, as listed in Use Group 16C, the screening provisions of paragraph (b) of Section 37-35 may be utilized as an alternative to such wrapping requirement and any transparency requirements need not apply.

(b) Along #secondary street frontages#

For #buildings#, or portions thereof, with #secondary street frontage#, all #uses# permitted by the underlying district shall be permitted on the #ground floor level#, provided that any off-street parking spaces on the #ground floor level# shall be wrapped or screened in accordance with Section 37-35. Entrances and exits to accessory parking facilities shall be subject to the provisions of paragraph (b) of Section 37-33.

(c) For blank walls

In #Commercial Districts# or #Manufacturing Districts#, except for portions of #zoning lots# located within Subdistrict F, ~~any #street wall# width exceeding 50 feet with no transparent elements on the #ground floor level# shall provide~~ planting or wall treatment in accordance with the provisions of Section 142-141 (Special Streetscape Provisions for Blank Walls) paragraphs (a)(1) or (b)(2) of Section 37-362 (Mitigation elements) shall be provided pursuant to the provisions for Type 1 blank walls set forth in Section 37-361 (Blank wall thresholds).

The level of the finished floor of such ground floor shall be located not higher than five feet above nor lower than five feet below the as-built level of the adjoining #street#.

In C4-5D Districts, and in C2 Districts mapped within R7D Districts, the provisions of Section 32-434 (Ground floor use in C4-5D and C6-3D Districts and in certain C2 Districts) shall not apply. In lieu thereof, the provisions of this Section shall apply.

~~142-141~~**Special Streetscape Provisions for Blank Walls****[Note: Existing Text to be deleted and substituted by Section 37-36]**

~~Where visual mitigation elements are required on a blank wall along the #ground floor level street wall# pursuant to the provisions of Section 142-14 (Ground Floor Level Requirements), at least 75 percent of the linear footage of any such blank wall shall be treated by any of the following visual mitigation elements, or both:~~

~~(a) — Planting~~

~~When planting is provided as a visual mitigation element, any combination of perennials, annuals, decorative grasses or shrubs shall be provided in planting beds, raised planting beds or planter boxes in front of the #street wall#. Each foot in width of a planting bed, raised planting bed or planter box, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirement. Such planting bed shall extend to a depth of at least three feet, inclusive of any structure containing the planted material. Any individual planted area shall have a width of at least five feet, and the height of such planting, inclusive of any structure containing the planted materials, shall be at least three feet. At least 25 percent of such #street wall# width shall be planted in accordance with the provisions of this paragraph.~~

~~(b) — Wall treatment~~

~~When a wall treatment is provided as a visual mitigation element, permitted signs, graphic or sculptural art, rustication, decorative screening or latticework, or living plant material, shall be provided along the #street wall#. Each linear foot of wall treatment shall constitute one linear foot of frontage mitigation requirement. Such wall treatment shall extend to a height of at least 10 feet, as measured from the level of the adjoining sidewalk or grade, and have a minimum width of 10 feet, as measured parallel to the #street wall#.~~

* * *

APPENDIX K: Areas with Nursing Home Restrictions

The areas shown on the maps in this APPENDIX, in addition to any portion of a #zoning lot# that is located within the #high-risk flood zone# as defined in Section 64-11 (Definitions), are subject to the restrictions set forth in Section 22-16 (Special Regulations for Nursing Homes).

These areas include:

the following islands located within the Bronx Community District 10, and Manhattan Community Districts 1, 8, and 11, respectively:

City Island;

Governors Island;

Roosevelt Island; and

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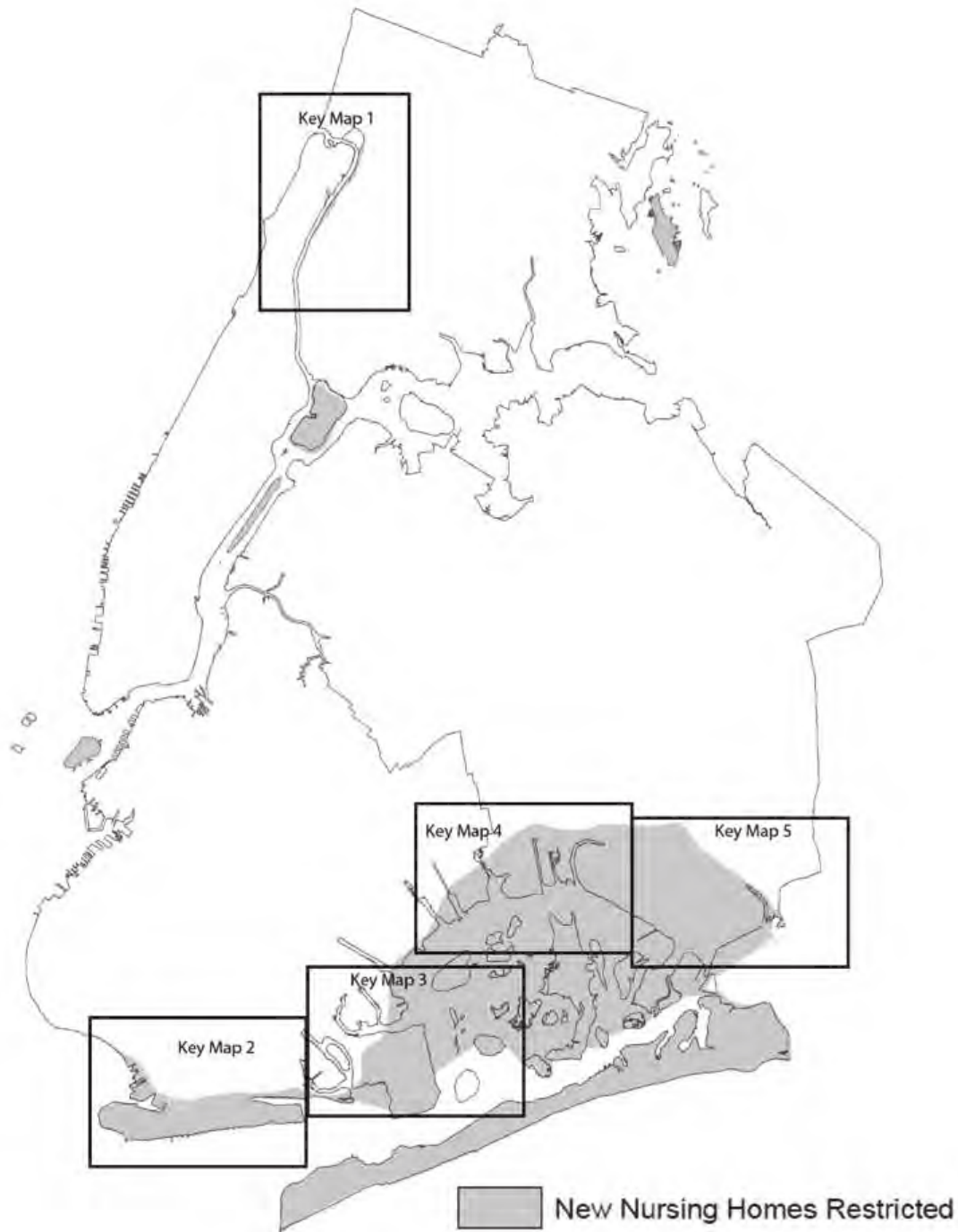
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Randall's Island.all of Queens Community District 14;portions of the Bronx Community Districts 1, 4, 5, and 7;portions of Brooklyn Community Districts 11, 13, 15 and 18;portions of Queens Community Districts 10 and 13;Portions of Community Districts located within areas with nursing home restrictions are shown on Maps 1 through 5 in this APPENDIX.

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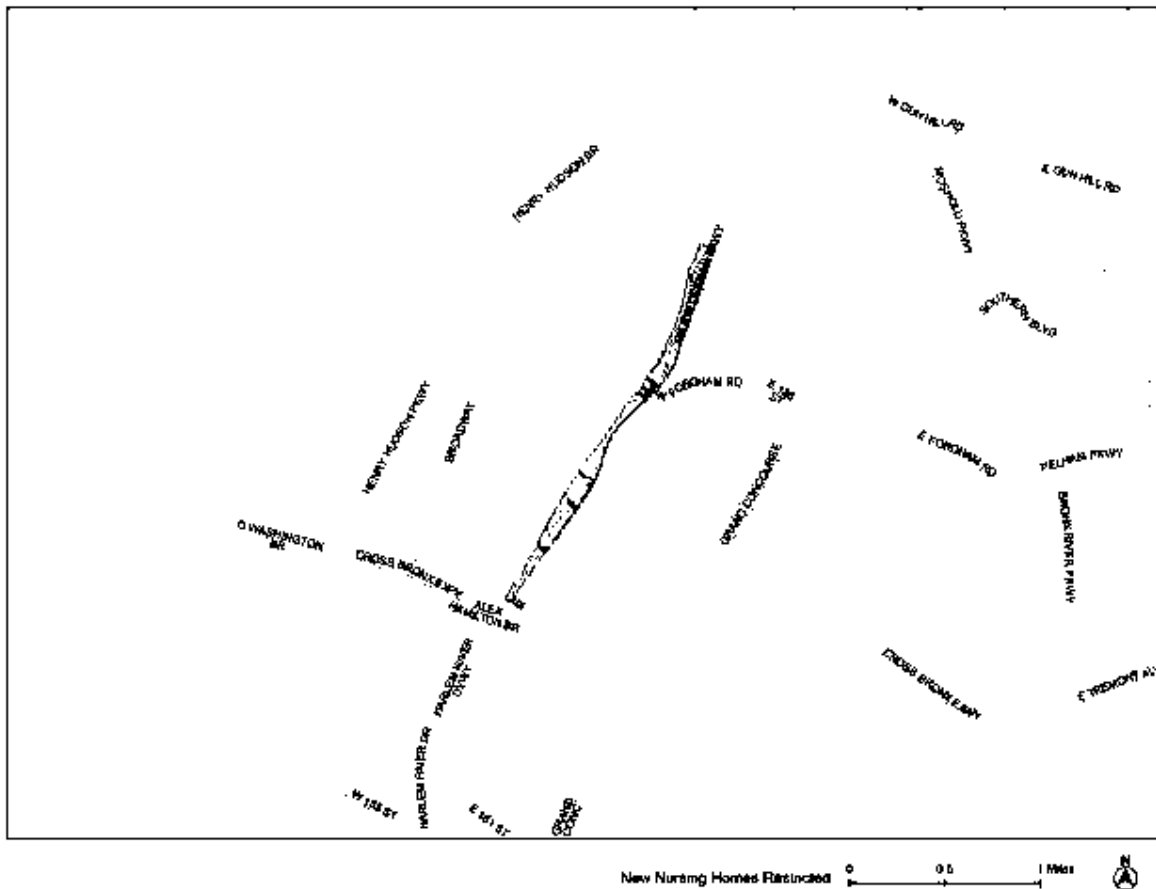
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Map 1 – the Bronx, Community District 5 and 7

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Map 2 – Brooklyn, Community District 11, 13, 15 and 18

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Map 3 – Brooklyn, Community District 18

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Map 4 – Queens, Community District 10

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 766 & Res. No. 1624

Report of the Committee on Land Use in favor of approving Application No. C 210130 ZMK (Resilient Neighborhoods: Gerritsen Beach) submitted by NYC Department of City Planning pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 29a, eliminating from within an existing R4 District a C1-2 District, eliminating from within an existing R4 District a C2-2 District, changing from an R4 District to an R4-1 District, changing from a C3 District to an R4-1 District, changing from an R4 District to a C3A District, changing from a C3 District to an C3A District, establishing within an existing R4 District a C2-3 District, and establishing a Special Coastal Risk District, Borough of Brooklyn, Community District 15, Council District 46.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 953) and which same Land Use item was coupled with the resolution shown below that was laid over by the Council on April 29, 2021 (Minutes, page 1024), respectfully

REPORTS:

SUBJECT

BROOKLYN CB-15 - TWO APPLICATIONS RELATED TO RESILIENT NEIGHBORHOODS: GERRITSEN BEACH

C 210130 ZMK (Pre. L.U. No. 766)

City Planning Commission decision approving an application submitted by New York City Department of City Planning, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 29A:

1. eliminating from within an existing R4 District a C1-2 District bounded by:
 - Gerritsen Avenue, Bijou Avenue, Aster Court, and Allen Avenue;
 - Gerritsen Avenue, Devon Avenue, Aster Court, and Channel Avenue; and
 - Gerritsen Avenue, Bartlett Place, a line 100 feet southwesterly of Gerritsen Avenue, Florence Avenue, Aster Court, and Everett Avenue;
2. eliminating from within an existing R4 District a C2-2 District bounded by Gerritsen Avenue, Everett Avenue, Aster Court, and Devon Avenue;
3. changing from an R4 District to an R4-1 District property bounded by Aster Court, Florence Avenue, a line 100 feet southwesterly of Gerritsen Avenue, Bartlett Place, Abbey Court, Seba Avenue and its northeasterly centerline prolongation, a southwesterly and northerly boundary line of Brooklyn Marine Park, the centerline of Shell Bank Creek and its southeasterly prolongation, the centerline of Canal and its southwesterly prolongation, Knight Court and its southeasterly centerline prolongation, Everett Avenue, a line midway between Ira Court and Joval Court, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, Devon Avenue, a line midway between Fane Court and Garland Court, a line midway between Channel Avenue and Devon Avenue, a line midway between Ebony Court and Fane Court, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the

intersection of Ebony Court and Channel Avenue, Channel Avenue, Dictum Court, Bijou Avenue, Ebony Court, and Allen Avenue;

4. changing from a C3 District to an R4-1 District property bounded by:
 - Dictum Court, Channel Avenue, a line midway between Dictum Court and Ebony Court, and Bijou Avenue;
 - Channel Avenue, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, and a line midway between Ebony Court and Fane Court; and
 - Devon Avenue, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, and a line midway between Ira Court and Joval Court;
5. changing from an R4 District to a C3A District property bounded by:
 - a. a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, a line midway between Ebony Court and Fane Court, and a line midway between Channel Avenue and Devon Avenue;
 - b. a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, a line midway between Fane Court and Garland Court, and Devon Avenue; and
 - c. a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, a line midway between Ira Court and Joval Court, and Everett Avenue;
6. changing from a C3 District to an C3A District property bounded by Allen Avenue, Ebony Court, Bijou Avenue, a line midway between Dictum Court and Ebony Court, Channel Avenue, a line midway between Ebony Court and Fane Court, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, Devon Avenue, a line midway between Ira Court and Joval Court, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, Knight Court and its southeasterly centerline prolongation, the centerline of Canal and its southwesterly prolongation, the centerline of Shell Bank Creek and its northerly prolongation, Avenue X, Knapp Street, and Allen Avenue;
7. establishing within an existing R4 District a C2-3 District bounded by:
 - a. Gerritsen Avenue, Bijou Avenue, a line midway between Gerritsen Avenue and Aster Court, and Allen Avenue; and
 - b. Gerritsen Avenue, Bartlett Place, a line 50 feet southwesterly of Gerritsen Avenue, Florence Avenue, a line midway between Gerritsen Avenue and Aster Court, and Channel Avenue; and
8. establishing a Special Coastal Risk District bounded by Aster Court, Florence Avenue, a line 100 feet southwesterly of Gerritsen Avenue, Bartlett Place, Abbey Court, Seba Avenue and its northeasterly

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centerline prolongation, a southwesterly and northerly boundary line of Brooklyn Marine Park, the centerline of Shell Bank Creek and its southeasterly and northerly prolongations, Avenue X, Knapp Street and Allen Avenue;

as shown on a diagram (for illustrative purposes only) dated October 19, 2020, Community District 15, Borough of Brooklyn.

N 210131 ZRK (Pre. L.U. No. 767)

City Planning Commission decision approving an application submitted by the New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article XIII, Chapter 7 (Special Coastal Risk District) to establish the Gerritsen Beach Special Coastal Risk District.

INTENT

To approve zoning map amendment to eliminate from within an existing R4 District a C1-2 District, eliminate from within an existing R4 District a C2-2 District, change from an R4 District to an R4-1 District, change from a C3 District to an R4-1 District, change from an R4 District to a C3A District, change from a C3 District to an C3A District, establish within an existing R4 District a C2-3 District, and amend zoning text to establish a Special Coastal Risk District designation to improve flood resiliency that will limit the scale of future development and allow for adaptation over time, affecting all or portions of 20 blocks of the Gerritsen Beach neighborhood in Community District 15, Brooklyn.

PUBLIC HEARING

DATE: April 5, 2021

Witnesses in Favor: One

Witnesses Against: None

SUBCOMMITTEE RECOMMENDATION

DATE: April 20, 2021

The Subcommittee recommends that the Land Use Committee approve the decision of the City Planning Commission on Pre. L.U. Nos. 766 and 767.

In Favor:

Moya, Levin, Grodenchik, Ayala, Rivera, Borelli.

Against:

None

Abstain:

None

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COMMITTEE ACTION**DATE:** April 27, 2021

The Committee recommends that the Council approve the attached resolutions.

In Favor:

Salamanca, Gibson, Barron, Deutsch, Koo, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz Sr., Moya, Rivera, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None.

In connection herewith, Council Members Salamanca and Moya offered the following resolution:

Res. No. 1624

Resolution approving the decision of the City Planning Commission on ULURP No. C 210130 ZMK, a Zoning Map amendment (Preconsidered L.U. No. 766).

By Council Members Salamanca and Moya.

WHEREAS, the New York City Department of City Planning filed an application pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 29a, eliminating from within an existing R4 District a C1-2 District, eliminating from within an existing R4 District a C2-2 District, changing from an R4 District to an R4-1 District, changing from a C3 District to an R4-1 District, changing from an R4 District to a C3A District, changing from a C3 District to an C3A District, establishing within an existing R4 District a C2-3 District, and establishing a Special Coastal Risk District, which in conjunction with the related action which will affect all or portions of 20 blocks in the neighborhood of Gerritsen Beach in Brooklyn, Community District 15 (ULURP No. C 210130 ZMK) (the "Application");

WHEREAS the City Planning Commission filed with the Council on March 26, 2021 its decision dated March 17, 2021 (the "Decision") on the Application;

WHEREAS, the Application is related to application N 210131 ZRK (Pre. L.U. No. 767), a zoning text amendment (Article XIII, Chapter 7) to designate a new Special Coastal Risk District;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on April 5, 2021;

WHEREAS, the Council has considered the land use and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues, including the negative declaration issued October 19th, 2020 (CEQR No. 21DCP051K) (the "Negative Declaration");

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, C 210130 ZMK, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 29a:

1. eliminating from within an existing R4 District a C1-2 District bounded by:
 - Gerritsen Avenue, Bijou Avenue, Aster Court, and Allen Avenue;
 - Gerritsen Avenue, Devon Avenue, Aster Court, and Channel Avenue; and
 - Gerritsen Avenue, Bartlett Place, a line 100 feet southwesterly of Gerritsen Avenue, Florence Avenue, Aster Court, and Everett Avenue;
2. eliminating from within an existing R4 District a C2-2 District bounded by Gerritsen Avenue, Everett Avenue, Aster Court, and Devon Avenue;
3. changing from an R4 District to an R4-1 District property bounded by Aster Court, Florence Avenue, a line 100 feet southwesterly of Gerritsen Avenue, Bartlett Place, Abbey Court, Seba Avenue and its northeasterly centerline prolongation, a southwesterly and northerly boundary line of Brooklyn Marine Park, the centerline of Shell Bank Creek and its southeasterly prolongation, the centerline of Canal and its southwesterly prolongation, Knight Court and its southeasterly centerline prolongation, Everett Avenue, a line midway between Ira Court and Joval Court, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, Devon Avenue, a line midway between Fane Court and Garland Court, a line midway between Channel Avenue and Devon Avenue, a line midway between Ebony Court and Fane Court, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, Channel Avenue, Dictum Court, Bijou Avenue, Ebony Court, and Allen Avenue;
4. changing from a C3 District to an R4-1 District property bounded by:
 - Dictum Court, Channel Avenue, a line midway between Dictum Court and Ebony Court, and Bijou Avenue;
 - Channel Avenue, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, and a line midway between Ebony Court and Fane Court; and

- Devon Avenue, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, and a line midway between Ira Court and Joval Court;
5. changing from an R4 District to a C3A District property bounded by:
 - a. a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, a line midway between Ebony Court and Fane Court, and a line midway between Channel Avenue and Devon Avenue;
 - b. a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, a line midway between Fane Court and Garland Court, and Devon Avenue; and
 - c. a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, a line midway between Ira Court and Joval Court, and Everett Avenue;
 6. changing from a C3 District to an C3A District property bounded by Allen Avenue, Ebony Court, Bijou Avenue, a line midway between Dictum Court and Ebony Court, Channel Avenue, a line midway between Ebony Court and Fane Court, a line connecting two points- the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, Devon Avenue, a line midway between Ira Court and Joval Court, a line connecting two points - the first at the midpoint of the intersection of Everett Avenue and Knight Court and the second at the midpoint of the intersection of Ebony Court and Channel Avenue, Knight Court and its southeasterly centerline prolongation, the centerline of Canal and its southwesterly prolongation, the centerline of Shell Bank Creek and its northerly prolongation, Avenue X, Knapp Street, and Allen Avenue;
 7. establishing within an existing R4 District a C2-3 District bounded by:
 - a. Gerritsen Avenue, Bijou Avenue, a line midway between Gerritsen Avenue and Aster Court, and Allen Avenue; and
 - b. Gerritsen Avenue, Bartlett Place, a line 50 feet southwesterly of Gerritsen Avenue, Florence Avenue, a line midway between Gerritsen Avenue and Aster Court, and Channel Avenue; and
 8. establishing a Special Coastal Risk District bounded by Aster Court, Florence Avenue, a line 100 feet southwesterly of Gerritsen Avenue, Bartlett Place, Abbey Court, Seba Avenue and its northeasterly centerline prolongation, a southwesterly and northerly boundary line of Brooklyn Marine Park, the centerline of Shell Bank Creek and its southeasterly and northerly prolongations, Avenue X, Knapp Street and Allen Avenue;

as shown on a diagram (for illustrative purposes only) dated October 19, 2020, Community District 15, Borough of Brooklyn.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA,

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CARLINA RIVERA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, April 27, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 767 & Re. No. 1625

Report of the Committee on Land Use in favor of approving Application No. N 210131 ZRK (Resilient Neighborhoods: Gerritsen Beach) submitted by the New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article XIII, Chapter 7 (Special Coastal Risk District) to establish the Gerritsen Beach Special Coastal Risk District, Borough of Brooklyn, Community District 15, Council District 46.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 953) and which same Land Use item was coupled with the resolution shown below that was laid over by the Council on April 29, 2021 (Minutes, page 1030), respectfully

REPORTS:

(For text of report, please see the Report of the Committee on Land Use for L.U. No. 766 printed above in the General Orders Calendar section of these Minutes)

Accordingly, this Committee recommends its adoption.

In connection herewith, Council Members Salamanca and Moya offered the following resolution:

Res. No. 1625

Resolution approving the decision of the City Planning Commission on Application No. N 210131 ZRK, for an amendment of the text of the Zoning Resolution (Preconsidered L.U. No. 767).

By Council Members Salamanca and Moya.

WHEREAS, the New York City Department of City Planning filed an application pursuant to Section 201 of the New York City Charter, for an amendment of the text of the Zoning Resolution of the City of New York, modifying Article XIII, Chapter 7 (Special Coastal Risk District) to establish the Gerritsen Beach Special Coastal Risk District, which in conjunction with the related action which will affect all or portions of 20 blocks in the neighborhood of Gerritsen Beach in Brooklyn, Community District 15 (ULURP No. N 210131 ZRK), (the "Application");

WHEREAS, the City Planning Commission filed with the Council on March 26, 2021, its decision dated March 17, 2021 (the "Decision") on the Application;

WHEREAS, the Application is related to application C 210130 ZMK (Pre. L.U. No. 766), a zoning map amendment to rezone all or portions of 20 blocks;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

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WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on April 5, 2021;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues, including the negative declaration issued October 19th, 2020 (CEQR No. 21DCP051K) (the "Negative Declaration");

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, N 210131 ZRK, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

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 XIII

SPECIAL PURPOSE DISTRICTS

* * *

Chapter 7

Special Coastal Risk District (CR)

* * *

137-11

District Plan and Maps

The District Maps are located in the Appendix to this Chapter and are hereby incorporated and made part of this Resolution. They are incorporated for the purpose of specifying locations where special regulations and requirements set forth in this Chapter apply.

- Map 1 #Special Coastal Risk District# 1 (CR-1), in Broad Channel, Community District 14, Borough of Queens
- Map 2 #Special Coastal Risk District# 2 (CR-2), in Hamilton Beach, Community District 10, Borough of Queens
- Map 3 #Special Coastal Risk District# 3 (CR-3), encompassing New York State Enhanced Buyout Areas in Graham Beach and Ocean Breeze, Community District 2, Borough of Staten Island
- Map 4 #Special Coastal Risk District# 3 (CR-3), encompassing New York State Enhanced Buyout Areas in Oakwood Beach, Community District 3, Borough of Staten Island.
- Map 5 #Special Coastal Risk District# 4 (CR-4), in Gerritsen Beach, Community District 15, Borough of Brooklyn.

137-12

Applicability of Special Regulations

The special #use# and #bulk# regulations of this Chapter shall apply in the #Special Coastal Risk District# as set forth in the following table:

SPECIAL REGULATIONS

#Special Coastal Risk District#	#Residential Use# (137-21)	#Community Facility Use# (137-22)	Modified #Bulk# Requirements (137-31)	Modifications to Article V (137-40)	Special Requirements (137-50)
CR-1 (Broad Channel, Queens)	x	x			
CR-2 (Hamilton Beach, Queens)	x	x	x		
CR-3 (buyout areas, Staten Island)	x	x		x	x

CR-4 (Gerritsen Beach, Brooklyn)	<u>X</u>	<u>X</u>	<u>X</u>		
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137-20**SPECIAL USE REGULATIONS**

The special #use# regulations of this Section 137-20, inclusive, shall apply in the #Special Coastal Risk Districts# as set forth in the table in Section 137-12 (Applicability of Special Regulations).

137-21**Residential Use**

In #Special Coastal Risk Districts# 1 and 3, #residential uses# shall be limited to #single-family detached residences# ~~and #accessory uses# as set forth in Section 22-11 (Use Group 1).~~

In #Special Coastal Risk District# 2, #residential uses# shall be limited to #single-# or #two-family detached residences# ~~and #accessory uses# as set forth in paragraphs A. and B. of Section 22-12 (Use Group 2).~~

In #Special Coastal Risk District# 4, #residential uses# shall be permitted as follows:

- a) for #zoning lots# with a #lot area# of less than 3,000 square feet, #residential uses# shall be limited to #detached# or #semi-detached single-family residences#; and
- b) for #zoning lots# with a #lot area# of 3,000 square feet or more, #residential uses# shall be limited to #detached# or #semi-detached# #single-# or #two-family residences#.

The inclusion of #accessory residential uses# shall not be precluded by the provisions of this Section.

* * *

137-30**SPECIAL BULK REGULATIONS**

* * *

137-32**Height and Setback Regulations**

[Note: Proposed Section 64-333 is part of a separate land use application: Zoning for Coastal Flood Resiliency (N 210095 ZRY)]

In #Special Coastal Risk District# 4, all #detached# or #semi-detached# #single-# or #two-family residences# shall be subject to the height and setback provisions set forth in Section 64-333 (Height and setback regulations for cottage envelope buildings).

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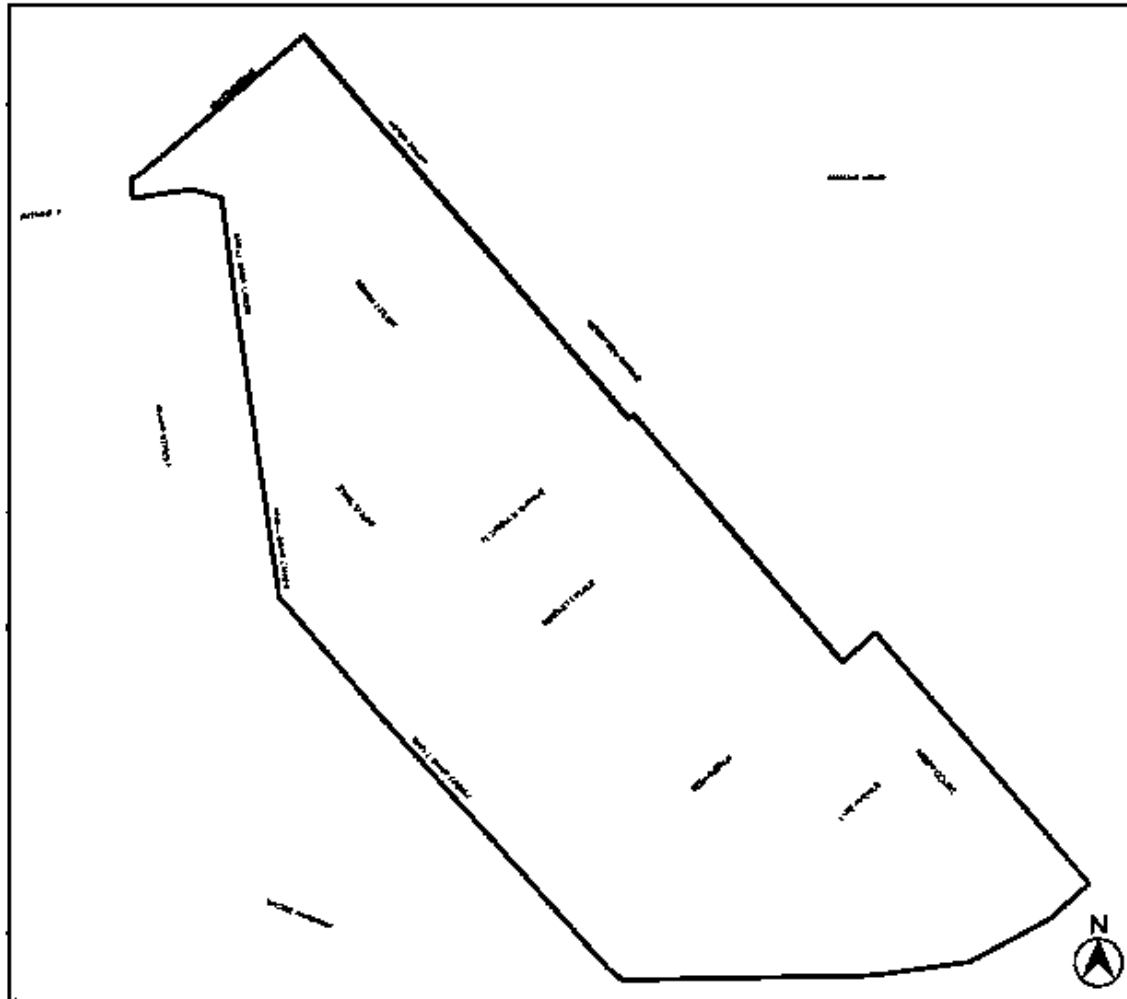
SPECIAL APPLICABILITY OF ARTICLE V

* * *

APPENDIX

Special Coastal Risk District Plan

Map 5 – Special Coastal Risk District 4, in Gerritsen Beach, Community District 15, Borough of Brooklyn [date of adoption]

PROPOSED MAP

 District boundary

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, April 27, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

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Report for L.U. No. 768 & Res. No. 1626

Report of the Committee on Land Use in favor of approving Application No. N 210132 ZRK (Resilient Neighborhoods: Special Sheepshead Bay District) submitted by the New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article IX, Chapter 4 (Special Sheepshead Bay District) to facilitate flood-resilient construction and open space design, Borough of Brooklyn, Community District 15, Council District 48.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 954) and which same Land Use item was coupled with the resolution shown below that was laid over by the Council on April 29, 2021 (Minutes, page 1035), respectfully

REPORTS:**SUBJECT****BROOKLYN CB - 15N 210132 ZRK**

City Planning Commission decision approving an application submitted by the New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article IX, Chapter 4 (Special Sheepshead Bay District) to facilitate flood-resilient construction and open space design.

INTENT

To approve an amendment of the zoning text to establish design requirements for plazas that help activate the public realm, such as planting, seating, and maintenance standards, while incorporating resilient design features, such as salt-tolerant planting; eliminate the Arcade Bonus; and eliminate the sidewalk widening requirement for developments that provide a plaza, as such requirement is onerous and unnecessary given the width of Emmons Avenue, to improve resiliency in Special Sheepshead Bay District (SSBD) public open spaces through flood-resilient and quality open space design standards, which will affect all or portions of 21 blocks in the Sheepshead Bay neighborhood of Brooklyn, Community District 15.

PUBLIC HEARING**DATE:** April 5, 2021**Witnesses in Favor:** One**Witnesses Against:** None**SUBCOMMITTEE RECOMMENDATION****DATE:** April 20, 2021

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

NYSCEF DOC. NO. 87

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/06/2021

1391

May 12, 2021

The Subcommittee recommends that the Land Use Committee approve the decision of the City Planning Commission.

In Favor:

Moya, Levin, Grodenchik, Ayala, Rivera, Borelli.

Against:

None

Abstain:

None

COMMITTEE ACTION

DATE: April 27, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Deutsch, Koo, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz Sr., Moya, Rivera, Riley, Brooks-Powers, Feliz, Borelli.

Against:

None

Abstain:

None.

In connection herewith, Council Members Salamanca and Moya offered the following resolution:

Res. No. 1626

Resolution approving the decision of the City Planning Commission on Application No. N 210132 ZRK, for an amendment of the text of the Zoning Resolution (Preconsidered L.U. No. 768).

By Council Members Salamanca and Moya.

WHEREAS, the New York City Department of City Planning filed an application pursuant to Section 201 of the New York City Charter, for an amendment of the text of the Zoning Resolution of the City of New York, modifying Article IX, Chapter 4 (Special Sheepshead Bay District) to facilitate flood-resilient construction and open space design, in the Sheepshead Bay neighborhood of Brooklyn Community District 15 (Application No. N 210132 ZRK) (the "Application");

WHEREAS, the City Planning Commission filed with the Council on March 26, 2021, its decision dated March 17, 2021 (the "Decision"), on the Application;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on April 5, 2021;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

NYSCEF DOC. NO. 87

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/06/2021

1392

May 12, 2021

WHEREAS, the Council has considered the relevant environmental issues, including the negative declaration issued October 19th, 2020 (CEQR No. 21DCP050K) (the “Negative Declaration”).

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, N 210132 ZRK, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

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 IX**SPECIAL PURPOSE DISTRICTS**

* * *

Chapter 4**Special Sheepshead Bay District (SB)****94-00****GENERAL PURPOSES**

The “Special Sheepshead Bay District,” established in this Resolution, is designed to promote and protect public health, safety, general welfare and amenity. These general goals include, among others, the following specific purposes:

- (a) to promote and strengthen the unique character of the “Special Sheepshead Bay District” area as a prime location for waterfront-related commercial and recreational development and to help attract a useful cluster of shops, restaurants and related activities, which will complement and enhance the area as presently existing;
- (b) to encourage the provision of housing with appropriate amenities in areas suitable for residential development;
- (c) to improve vehicular and pedestrian circulation patterns by requiring limited curb cuts and uniform sidewalk widening, and encouraging the provision of public open space and other amenities as a related part of new development;
- (d) to provide an incentive for redevelopment of the area in a manner consistent with the foregoing objectives which are integral elements of the Comprehensive Plan of the City of New York; ~~and~~
- (e) to facilitate flood-resilient construction and open space design to reduce the potential for property damage and disruption from regular flood events; and
- ~~(e)~~(f) to promote the most desirable use of land in this area and thus to conserve the value of land and thereby protect the City's tax revenues.

* * *

94-07

Mandatory Provisions

* * *

94-071

Sidewalk extension area

All #developments# which are located on a #zoning lot# with frontage along Emmons Avenue, Sheepshead Bay Road, Ocean Avenue, Bedford Avenue or Nostrand Avenue shall contain a sidewalk extension area, which complies with the following requirements:

- (a) has a minimum depth of five feet, measured perpendicular to such #street lines#;
- (b) extends the full length of the #zoning lot# along such #street lines#, except for existing #buildings# within five feet of the #street line#;
- (c) is open and unobstructed from its lowest level to the sky;

- (d) maintains continuity with the established sidewalk, to which it shall be immediately adjacent throughout its entire length;
- (e) is available for public use at all times; and
- (f) has a paved surface which complies with standards as established by the New York City Department of Transportation.

No sidewalk extension area shall be required along any portion of a #street line# where a plaza is provided in accordance with the provisions of Sections 94-072 (Special plaza provisions) or 94-081 (Plaza bonus).

94-072

Special plaza provisions

In Areas A, C and E, all #developments# that are located on a #zoning lot# with frontage along Emmons Avenue, except for a #zoning lot# of less than 8,000 square feet that was in existence as of November 1, 1972, shall provide and maintain a plaza for public use which complies with the following requirements:

- (a) The plaza shall #abut# the Emmons Avenue #street line# along the full length of such #lot line# or for a distance of at least 50 feet, whichever is less.
- (b) The plaza shall be directly accessible to the public at all times from Emmons Avenue ~~or an #arcade#~~ or a plaza.
- (c) The size of the plaza shall be at least 4,000 square feet in one location ~~and shall not at any point be more than two feet below or five feet above #street# level,~~ with a minimum dimension of 35 feet, ~~and shall comply with the provisions of Section 94-20 (DESIGN REQUIREMENTS FOR PLAZAS). At least 15 percent of the plaza area shall be landscaped and planted with trees, except, when a #zoning lot abutting# both Dooley Street and Emmons Avenue is #developed#, such landscaping shall be at least 75 percent of the total plaza area provided with such #development#.~~
- (d) ~~The plaza shall contain lighting, pedestrian walks and sitting areas.~~
- (e) ~~No portion of a plaza area shall be used for parking or driveways.~~
- (f) ~~A plaza may include as permitted obstructions, sculptures, kiosks, or open cafes occupying in the aggregate not more than 30 percent of the total plaza area. Ice skating rinks are also allowed as permitted obstructions within such plazas only for the months from October through March, provided the minimum area of such plaza is 7,500 square feet. Exterior wall thickness, awnings and other sun control devices, pursuant to Section 37-726, shall also be allowed as permitted obstructions.~~

94-08

Special Floor Area Bonus Provisions

* * *

94-081

Plaza bonus

~~In Areas A, C, D or E, any #development# on a #zoning lot# with a minimum area of 20,000 square feet which complies with the mandatory provisions of Section 94-07 (Mandatory Provisions) shall be eligible for a #floor area# bonus at the rate of 3.5 square feet of #floor area# for every square foot of plaza area.~~

In Areas A, C, D, E and F, any #development# on a #zoning lot# which provides and maintains a plaza for public use shall be eligible for a #floor area# bonus, in accordance with the following provisions:

- (a) the #development# shall contain a minimum area of 20,000 square feet;
- (b) the plaza shall comply with the following minimum area requirements:
 - (1) in Areas A, C, D and E, the plaza shall be at least 4,000 square feet in one location, with a minimum dimension of 35 feet;
 - (2) in Area F, the plaza shall be at least 5,000 square feet in one location, with a minimum dimension of 50 feet;
- (c) the plaza shall not be located within 30 feet of the Leif Ericson Drive service road;
- (d) the plaza shall comply with the provisions of Section 94-20 (DESIGN REQUIREMENTS FOR PLAZAS); and
- (e) the #development# shall be eligible for a #floor area# bonus as follows:
 - (1) in Areas A, C, D, and E, the #floor area# bonus shall be at a rate of 3.5 square feet of #floor area# for every square foot of plaza area;
 - (2) in Area F, the #floor area# bonus shall be at a rate of one square foot of #floor area# for every two square feet of plaza area.

94-082

~~Arcade bonus~~

Special parking bonus

[Note: Existing text to be deleted]

~~In Areas A, C, D or E, any #development# located on a #zoning lot# with a #lot line# which coincides with any of the following #street lines#: Sheepshead Bay Road, Ocean Avenue or Emmons Avenue, shall be eligible for a #floor area# bonus at the rate of three square feet of #floor area# for every square foot of #arcade# space, as defined in Section 12-10, except that:~~

- (a) ~~#arcades# shall be allowed only along the #street lines# described above and plazas;~~
- (b) ~~the #arcade# may project or set back from the facade of a #building#;~~
- (c) ~~the #arcade# shall not be less than 10 feet or more than 15 feet in depth;~~
- (d) ~~the #arcade# shall be suitably heated for the months from October through March; and~~
- (e) ~~no #signs# may be affixed to any part of the #arcade# or #building# columns, except on a parallel to the #building# wall projecting no more than 12 inches therefrom.~~

[Note: Text moved from Section 94-083]

In Areas C, D or E, any #development# on a #zoning lot# with a minimum area of 20,000 square feet shall be eligible for a #floor area# bonus at the rate of one square foot of #floor area# for every square foot of #accessory commercial# parking space above the minimum amount required by the underlying district regulations and made available for daily long-term parking.

To be eligible for a #floor area# bonus under the provisions of this Section, there shall be at least five additional parking spaces provided and the size of each parking space shall be at least 300 square feet. In no event shall the dimension of any parking stall be less than 18 feet long and 8 feet, 6 inches wide.

94-083

Special parking bonus

[Note: Existing text moved to Section 94-082]

~~In Areas C, D or E, any #development# on a #zoning lot# with a minimum area of 20,000 square feet shall be eligible for a #floor area# bonus at the rate of one square foot of #floor area# for every square foot of #accessory commercial# parking space above the minimum amount required by the underlying district regulations and made available for daily long term parking.~~

~~To be eligible for a #floor area# bonus under the provisions of this Section, there shall be at least five additional parking spaces provided and the size of each parking space shall be at least 300 square feet. In no event shall the dimension of any parking stall be less than 18 feet long and 8 feet, 6 inches wide.~~

94-084

Usable open space bonus

[Note: Existing text moved to Section 94-081 and modified]

~~In Area F, any #development# on a #zoning lot# with a minimum area of 20,000 square feet shall be eligible for a #floor area# bonus at the rate of one square foot of #floor area# for every two square feet of usable open space. The minimum size of such usable open space on a #zoning lot# shall be 5,000 square feet with a minimum dimension of 50 feet. The usable open space shall be suitably maintained and shall contain landscaping, planting, lighting, sitting areas and, where appropriate, play areas for children. Such usable space shall be located no more than two feet below or five feet above the #curb level#. No portion of the usable open space shall be provided within 30 feet of the Leif Eriksen Drive service road, and no portion of the usable open space shall be used for parking or driveways.~~

* * *

94-11

Special Parking Provisions

* * *

94-113

Treatment of parking areas

Any parking facilities in the Special District that are not completely enclosed shall be screened by shrubbery at least three feet high at the time of planting and expected to form a year-round dense screen at least five feet high within three years. When roof parking is provided, it shall be screened where it is visible from a #street#, or plaza ~~or public usable open space~~.

* * *

94-115**Location of commercial parking spaces**

In Area F, #accessory# off-street parking spaces for #commercial uses# may be located outside the commercially zoned area but within 600 feet of the #building# to which it is #accessory#, only if an area equal to the #lot area# occupied by the parking in the #residential# area is provided as a #public plaza# plaza in the commercially zoned area to which the parking is #accessory#.

* * *

94-20**DESIGN REQUIREMENTS FOR PLAZAS**

Where a plaza within the #Special Sheepshead Bay District# is provided in accordance with the provisions of this Chapter, such plaza shall comply with the applicable minimum design standards set forth in this Section.

(a) Design criteria**(1) Basic design criteria**

Plazas shall comply with the standards set forth in paragraphs (a) and (b) of Sections 37-715 (Requirements for major portions of public plazas), 37-716 (Requirements for minor portions of public plazas), and 37-718 (Paving).

(2) Access and circulation

Plazas shall meet the requirements set forth in Section 37-721 (Sidewalk frontage), and Sections 37-723 (Circulation paths) through 37-726 (Permitted obstructions), inclusive. Hours of access shall be governed by Section 37-727 (Hours of access). Accessibility for persons with disabilities shall be provided in compliance with Section 37-728 (Standards of accessibility for persons with disabilities).

Plazas shall be located no lower than #curb level#.

(3) Kiosks and open air cafes

Kiosks or open air cafes shall meet the operational and service requirements as set forth in paragraphs (a) and (b) of Section 37-73 (Kiosks and Open Air Cafes), as applicable. In addition, kiosks may be placed on plazas upon certification by the Chairperson of the City Planning Commission as set forth in paragraph (c) of Section 37-73.

(4) Seating

Seating shall meet the minimum and maximum dimensional standards set forth in paragraphs (1) through (7) of Section 37-741 (Seating).

(5) Planting and trees

Plazas shall provide planting areas in compliance with Section 37-742 (Planting and trees). All planted areas shall consist of salt-tolerant species recommended by the Department of Parks and Recreation.

(6) Lighting and electrical power

All plazas shall provide lighting and electrical power pursuant to the standards set forth in Section 37-743 (Lighting and electrical power).

(7) Litter receptacles

All plazas shall provide litter receptacles pursuant to the standards set forth in Section 37-744 (Litter receptacles).

(8) Bicycle parking

All plazas shall provide bicycle parking pursuant to the standards set forth in Section 37-745 (Bicycle parking).

(9) Drinking fountains

A minimum of one drinking fountain shall be provided in all plazas.

(10) Signs

All plazas shall provide entry and information plaques that contain the words "Open to the public" and information regarding the hours of access. Prohibition and accessory signage may be provided pursuant to the standards set forth in Sections 37-752 (Prohibition signs) and 37-753 (Accessory signs).

(b) Maintenance

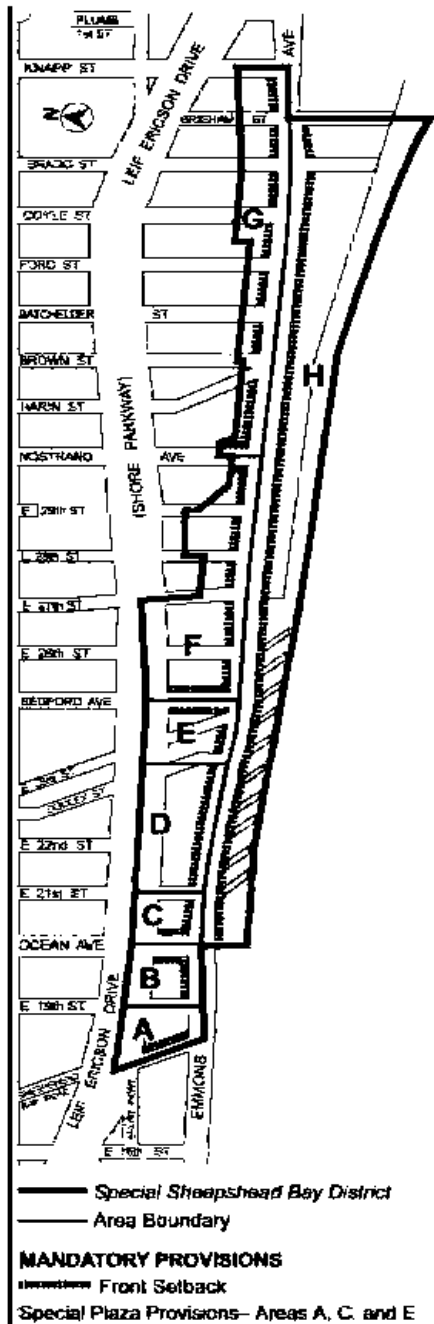
The owner shall be responsible for the maintenance of all plazas, including, but not limited to, litter control, management of pigeons and rodents, maintenance of required lighting levels, and the care and replacement of furnishings and vegetation within the #zoning lot#.

(c) Compliance

Plazas shall be governed by the compliance requirements of Section 94-13 (Certification).

Appendix A
Special Sheepshead Bay District Map

[EXISTING MAP]



May 12, 2021

[PROPOSED MAP]



* * *

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, April 27, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

Report for L.U. No. 769 & Res. No. 1627

Report of the Committee on Land Use in favor of approving Application No. C 210133 ZMQ (Resilient Neighborhoods: Old Howard Beach) submitted by the Department of City Planning pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 18b, changing from an R3-1 District to a R3X District, changing from an R3-2 District to an R3X District, and changing from an R3-2 District to an R3-1 District, Borough of Queens, Community District 10, Council District 32.

The Committee on Land Use, to which the annexed Land Use item was referred on April 22, 2021 (Minutes, page 954) and which same Land Use item was coupled with the resolution shown below that was laid over by the Council on April 29, 2021 (Minutes, page 1046), respectfully

REPORTS:

SUBJECT

QUEENS CB - 10

C 210133 ZMQ

City Planning Commission decision approving an application submitted by the New York City Department of City Planning, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 18b, by:

1. changing from an R3-1 District to a R3X District property bounded by:
 - a. 157th Avenue, a southwesterly boundary line of the NYC Transit Authority Railroad Right-Of-Way (Rockaway Beach Division), 159th Avenue, 102nd Street, a line 370 feet northerly of 160th Avenue, a line midway between 101st Street and 102nd Street, 160th Avenue, 102nd Street, a line 100 feet southerly of 160th Avenue, the northerly prolongation of the U.S. Pierhead and Bulkhead Line of Hawtree Basin (westerly portion), 160th Avenue, 95th Street, 164th Avenue, the U.S. Pierhead and Bulkhead Line of Shellbank Basin (easterly and northerly portions), and the southerly prolongation of the westerly street line of 94th Street; and
 - b. 164th Avenue, the U.S. Pierhead and Bulkhead line of Hawtree Basin (westerly portion), the northerly boundary line of a park (F.M. Charles Memorial Park), the U.S. Pierhead and Bulkhead line of Shellbank Basin (easterly portion), 165th Avenue, and a line midway between 95th Street and 96th Street;
2. changing from an R3-2 District to an R3X District property bounded by 155th Avenue and its northwesterly centerline prolongation, a line midway between Lahn Street and Huron Street, 156th

Avenue, a line midway between Huron Street and Bridgeton Street, 155th Avenue, a southwesterly boundary line of the NYC Transit Authority Railroad Right-of-Way (Rockaway Beach Division), 157th Avenue, 94th Street, 156th Avenue, and a line 100 feet northwesterly of Killarney Street; and

3. changing from an R3-2 District to an R3-1 District property bounded by 155th Avenue, a line midway between Huron Street and Bridgeton Street, 156th Avenue, and a line midway between Lahn Street and Huron Street;

as shown on a diagram (for illustrative purposes only) dated October 19, 2020.

INTENT

To approve the zoning amendment to replace the project area from R3-1 and R3-2 to R3X and R3-2 to R3-1 zoning districts to bolster resiliency in a flood-prone area by limiting future development to detached and semi-detached buildings in the Old Howard Beach neighborhood of Queens, Community District 10.

PUBLIC HEARING

DATE: April 5, 2021

Witnesses in Favor: One

Witnesses Against: None

SUBCOMMITTEE RECOMMENDATION

DATE: April 20, 2021

The Subcommittee recommends that the Land Use Committee approve the decision of the City Planning Commission.

In Favor:

Moya, Levin, Grodenchik, Ayala, Rivera, Borelli.

Against:

None

Abstain:

None

COMMITTEE ACTION

DATE: April 27, 2021

The Committee recommends that the Council approve the attached resolution.

In Favor:

Salamanca, Gibson, Barron, Deutsch, Koo, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz Sr., Moya, Rivera, Riley, Brooks-Powers, Feliz, Borelli.

Against:
None

Abstain:
None.

In connection herewith, Council Members Salamanca and Moya offered the following resolution:

Res. No. 1627

Resolution approving the decision of the City Planning Commission on ULURP No. C 210133 ZMQ, a Zoning Map amendment (Preconsidered L.U. No. 769).

By Council Members Salamanca and Moya.

WHEREAS, the New York City Department of City Planning filed an application pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 18b, changing from an R3-1 District to a R3X District, changing from an R3-2 District to an R3X District, and changing from an R3-2 District to an R3-1 District, in the Old Howard Beach neighborhood of Queens, Community District 10 (ULURP No. C 210133 ZMQ) (the "Application");

WHEREAS the City Planning Commission filed with the Council on March 26, 2021, its decision dated March 17, 2021 (the "Decision") on the Application;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on April 5, 2021;

WHEREAS, the Council has considered the land use and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues, including the negative declaration issued October 19th, 2020 (CEQR No. 21DCP052Q);

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, C 210133 ZMQ, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is hereby amended by changing the Zoning Map, Section No. 18b:

1. changing from an R3-1 District to a R3X District property bounded by:

- a. 157th Avenue, a southwesterly boundary line of the NYC Transit Authority Railroad Right-Of-Way (Rockaway Beach Division), 159th Avenue, 102nd Street, a line 370 feet northerly of 160th Avenue, a line midway between 101st Street and 102nd Street, 160th Avenue, 102nd Street, a line 100 feet southerly of 160th Avenue, the northerly prolongation of the U.S. Pierhead and Bulkhead Line of Hawtree Basin (westerly portion), 160th Avenue, 95th Street, 164th Avenue, the U.S. Pierhead and Bulkhead Line of Shellbank Basin (easterly and northerly portions), and the southerly prolongation of the westerly street line of 94th Street; and
 - b. 164th Avenue, the U.S. Pierhead and Bulkhead line of Hawtree Basin (westerly portion), the northerly boundary line of a park (F.M. Charles Memorial Park), the U.S. Pierhead and Bulkhead line of Shellbank Basin (easterly portion), 165th Avenue, and a line midway between 95th Street and 96th Street;
2. changing from an R3-2 District to an R3X District property bounded by 155th Avenue and its northwesterly centerline prolongation, a line midway between Lahn Street and Huron Street, 156th Avenue, a line midway between Huron Street and Bridgeton Street, 155th Avenue, a southwesterly boundary line of the NYC Transit Authority Railroad Right-of-Way (Rockaway Beach Division), 157th Avenue, 94th Street, 156th Avenue, and a line 100 feet northwesterly of Killarney Street; and
 3. changing from an R3-2 District to an R3-1 District property bounded by 155th Avenue, a line midway between Huron Street and Bridgeton Street, 156th Avenue, and a line midway between Lahn Street and Huron Street;

as shown on a diagram (for illustrative purposes only) dated October 19, 2020, Community District 10, Borough of Queens.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA, KEVIN C. RILEY, SELVENA N. BROOKS-POWERS, OSWALD FELIZ, JOSEPH C. BORELLI; Committee on Land Use, April 27, 2021 (Remote Hearing).

On motion of the Speaker (Council Member Johnson), and adopted, the foregoing matter was coupled as a General Order for the day (see ROLL CALL ON GENERAL ORDERS FOR THE DAY).

ROLL CALL ON GENERAL ORDERS FOR THE DAY
(Items Coupled on General Order Calendar)

- | | |
|----------------------------|--|
| (1) Int 936-A - | Restricting single-use plastic beverage straws, beverage stirrers and beverage splash sticks, and relating to rechargeable batteries. |
| (2) Int 1681-A - | School food waste prevention plans. |
| (3) Int 1755-A - | Assessment of the 311 service request intake map. |
| (4) Int 2061-A - | Moped share systems. |
| (5) Int 2108-A - | Increasing penalties for damaging houses of religious worship. |
| (6) Int 2267 - | District Plan of the Flatbush Avenue Business Improvement District to authorize additional services for the district and to change the method of assessment upon which the district charge is based. |
| (7) Int 2268 - | District Plan of the Queens Plaza/Court Square Business Improvement District to change the method of assessment upon which the district charge is based. |
| (8) Res 1616 - | Increase in the amount to be expended annually in the Madison/23rd/ Flatiron/Chelsea Business Improvement District in the Borough of Manhattan, an extension of the boundaries of such district and a change in the method of assessment upon which the district charge is based, and setting the date, time and place for the public hearing of the local law authorizing such changes. |
| (9) Res 1630 - | Rule 7.00 of the Rules of the Council in relation to changes in the membership and chairmanships of the Standing Committees of the Council. |
| (10) L.U. 759 & Res 1633 - | App. C 210195 HAX (97 West 169th Street) Borough of the Bronx, Community District 4, Council District 16. |

- (11) L.U. 760 & Res 1634 - **App. 20215001 HIK [N 210282 HIK] (Harriet and Thomas Truesdell House)** Borough of Brooklyn, Community District 2, Council District 33.
- (12) L.U. 761 & Res 1635 - **App. 20215020 HAM (Sendero Verde - Amended UDAAP)** Borough of Manhattan, Community District 11, Council District 8.
- (13) L.U. 762 & Res 1636 - **App. 20215021 HAM (Sendero Verde - Amended Article XI)** Borough of Manhattan, Community District 11, Council District 8.
- (14) L.U. 765 & Res 1641 - **App. N 210095 ZRY (Zoning for Coastal Flood Resiliency)** Zoning Resolution of the City of New York, to modify the flood resiliency provisions.
- (15) L.U. 766 & Res 1624 - **App. C 210130 ZMK (Resilient Neighborhoods: Gerritsen Beach)** Borough of Brooklyn, Community District 15, Council District 46.
- (16) L.U. 767 & Res 1625 - **App. N 210131 ZRK (Resilient Neighborhoods: Gerritsen Beach)** Borough of Brooklyn, Community District 15, Council District 46.
- (17) L.U. 768 & Res 1626 - **App. N 210132 ZRK (Resilient Neighborhoods: Special Sheepshead Bay District) Brooklyn, Community District 15, Council District 48.**
- (18) L.U. 769 & Res 1627 - **App. C 210133 ZMQ (Resilient Neighborhoods: Old Howard Beach)** Borough of Queens, Community District 10, Council District 32.
- (19) L.U. 787 & Res 1631 - Seagirt Senior Housing, Queens, Community District No. 14, Council District 31.
- (20) L.U. 788 & Res 1632 - Penn South, Manhattan, Community District No. 4, Council District 3.

- (21) L.U. 772 & Res 1637 - **App. N 210061 ZRK (86 Fleet Place Text)** Borough of Brooklyn, Community District 2, Council District 35.
- (22) L.U. 773 & Res 1638 - **App. C 200272 ZMQ (68-19 Woodhaven Boulevard Rezoning)** Borough of Queens, Community District 6, Council District 29
- (23) L.U. 774 & Res 1639 - **App. N 200273 ZRQ (68-19 Woodhaven Boulevard Rezoning)** Borough of Queens, Community District 6, Council District 29.
- (24) L.U. 789 & Res 1640 - **App. 20215023 HAK (South Portland - Amended Article XI)** Borough of Brooklyn, Community District 2, Council District 35.

The Majority Leader and Acting President Pro Tempore (Council Member Cumbo) put the question whether the Council would agree with and adopt such reports which were decided in the **affirmative** by the following vote:

Affirmative – Adams, Ampry-Samuel, Ayala, Barron, Borelli, Brannan, Brooks-Powers, Cabrera, Chin, Cornegy, D. Diaz, R. Diaz, Dinowitz, Dromm, Eugene, Feliz, Gennaro, Gibson, Gjonaj, Grodenchik, Holden, Kallos, Koo, Koslowitz, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Powers, Reynoso, Riley, Rivera, Rose, Rosenthal, Salamanca, Treyger, Ulrich, Vallone, Van Bramer, Yeger, the Minority Leader (Council Member Matteo), the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **47**.

Present, Not Voting – Perkins and Rodriguez.

The General Order vote recorded for this Stated Meeting was 47-0-0 as shown above with the exception of the votes for the following legislative items:

The following was the vote recorded for **Int. No. 936-A**:

Affirmative – Adams, Ampry-Samuel, Ayala, Barron, Brannan, Brooks-Powers, Cabrera, Chin, Cornegy, D. Diaz, R. Diaz, Dinowitz, Dromm, Eugene, Feliz, Gennaro, Gibson, Grodenchik, Holden, Kallos, Koo, Koslowitz, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Powers, Reynoso, Riley, Rivera, Rose, Rosenthal, Salamanca, Treyger, Ulrich, Vallone, Van Bramer, the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **43**.

Negative – Borelli, Gjonaj, Yeger, and the Minority Leader (Council Member Matteo) – **4**.

Present, Not Voting – Perkins and Rodriguez.

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The following was the vote recorded for **L.U. No. 773 & Res. No. 1638 and L.U. No. 774 & Res. No. 1639:**

Affirmative – Adams, Ampy-Samuel, Ayala, Borelli, Brannan, Brooks-Powers, Cabrera, Chin, Cornegy, D. Diaz, R. Diaz, Dinowitz, Dromm, Eugene, Feliz, Gennaro, Gibson, Gjonaj, Grodenchik, Holden, Kallos, Koo, Koslowitz, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Powers, Reynoso, Riley, Rivera, Rose, Rosenthal, Salamanca, Treyger, Ulrich, Vallone, Van Bramer, Yeger, the Minority Leader (Council Member Matteo), the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **46.**

Negative – Barron – **1.**

Present, Not Voting – Perkins and Rodriguez.

The following Introductions were sent to the Mayor for his consideration and approval:

Int. Nos. 936-A, 1681-A, 1755-A, 2061-A, 2108-A, 2267, and 2268.

RESOLUTIONS*Presented for voice-vote*

The following are the respective Committee Reports for each of the Resolutions referred to the Council for a voice-vote pursuant to Rule 8.50 of the Council:

Report for voice-vote item Res. No. 1619

Report of the Committee on Public Safety in favor of approving a Resolution calling upon the United States Congress to pass, and the President to sign, the COVID-19 Hate Crimes Act (H.R. 1843/S.937), which would facilitate the expedited review of COVID-19 hate crimes.

The Committee on Public Safety, to which the annexed resolution was referred on April 29, 2021 (Minutes, page 1074), respectfully

REPORTS:

(For text of report, please see the Report of the Committee on Public Safety for Int. No. 2108-A printed in the Reports of the Standing Committees section of these Minutes)

Accordingly, this Committee recommends its adoption.

(The following is the text of Res. No. 1619:)

Res. No. 1619

Resolution calling upon the United States Congress to pass, and the President to sign, the COVID-19 Hate Crimes Act (H.R. 1843/S.937), which would facilitate the expedited review of COVID-19 hate crimes.

By Council Members Koo, Chin, Cornegy, Levin, Salamanca, Rivera, Lander, Ayala, Van Bramer, Treyger, Brannan, Vallone, Adams, Powers, Brooks-Powers, Moya, Ampy-Samuel, Dromm, Reynoso, Menchaca, Maisel, Cumbo, Miller, Gjonaj, Holden, Yeger, Cabrera, Feliz, Louis, Koslowitz, D. Diaz, Levine, Gennaro, Rose, Grodenchik, Dinowitz and Ulrich.

Whereas, The COVID-19 pandemic has seen a sharp increase in the number of reported hate crimes and bias incidents against Asian Americans in New York City and nationwide; and

Whereas, According to a recent *New York Times* article, activists and police officials believe many potential hate crimes and bias incidents against Asian Americans in New York City have gone underreported or were not classified as hate crimes; and

Whereas, This underreporting and lack of recognition is due to various reasons, including the way hate crimes and bias incidents are designated; and

Whereas, Even with the underreporting, New York City has seen 35 anti-Asian crimes reported so far this year—including a recent attack against a 65-year-old Filipino woman near Times Square—compared to 28 during all of 2020, which itself was a jump from just 3 in 2019, according to New York Police Department (“NYPD”) statistics; and

Whereas, The spike in crimes against Asian Americans in New York City mirrors a nationwide increase, with Stop AAPI Hate—an initiative that tracks violence and harassment against Asian-Americans and Pacific Islanders—recording more than 3,000 reported incidents in the United States since the start of the pandemic, with at least 260 placed in New York City; and

Whereas, While the NYPD has created an Anti-Asian Hate Crimes Task Force to address this increase in bias-based crimes, the COVID-19 Hate Crimes Act, (H.R. 1843/S.937), sponsored by U.S. Representative Grace Meng and Senator Mazie Hirono, respectively, would enhance such efforts at the federal level by: (1) designating

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an officer or employee of the Justice Department to facilitate expedited review of COVID-19 hate crimes reported to federal, state, and/or local law enforcement; (2) issue guidance for state and local law enforcement agencies to establish online reporting of hate crimes/incidents available in multiple languages, and expand culturally competent and linguistically appropriate public education campaigns, and collection of data and public reporting of hate crimes; and (3) issue guidance describing best practices to mitigate racially discriminatory language in describing the COVID-19 pandemic; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Congress to pass, and the President to sign, the COVID-19 Hate Crimes Act, (H.R. 1843/S.937), which would facilitate the expedited review of COVID-19 hate crimes.

ADRIENNE E. ADAMS, *Chairperson*; YDANIS A. RODRIGUEZ, FERNANDO CABRERA, VANESSA L. GIBSON, CARLOS MENCHACA, I. DANEEK MILLER, JUSTIN L. BRANNAN, ROBERT F. HOLDEN, KEITH POWERS, KEVIN C. RILEY; Committee on Public Safety, May 12, 2021 (Remote Hearing). *Other Council Members Attending: Council Member R. Diaz.*

Pursuant to Rule 8.50 of the Council, the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) called for a voice vote. Hearing no objections, the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) declared the Resolution to be adopted.

Adopted unanimously by the Council by voice-vote.

INTRODUCTION AND READING OF BILLS

Int. No. 2300

By Council Members Ampry-Samuel, Rosenthal, Brooks-Powers, Kallos, Cornegy, Chin, Adams, Gibson, Koslowitz and Louis.

A Local Law in relation to the establishment of a Marshall plan for moms task force to develop and issue recommendations on how to support working mothers and caregivers, particularly in light of the issues that have become more acute due to the COVID-19 pandemic

Be it enacted by the Council as follows:

Section 1. Marshall plan for moms task force. a. Definitions. For purposes of this local law, the following terms have the following meanings:

City. The term “city” means the city of New York.

COVID-19. The term “COVID-19” means the 2019 novel coronavirus or 2019-nCoV.

Task force. The term “task force” means the Marshall plan for moms task force.

b. There shall be a Marshall plan for moms task force. Such task force shall study, develop and issue proposals and recommendations on how to support working mothers and caregivers, particularly in light of the issues that have become more acute due to the COVID-19 pandemic. Such proposals and recommendations shall include, but not be limited to, the following:

1. The benefits of providing recurring direct cash payments to moms and other caregivers and of a comprehensive paid family leave policy for all employers in the city and any barriers to the implementation of such policies;

2. How to best revitalize and restore the role of mothers in the workforce through the COVID-19 pandemic and following recovery;

3. The biggest contributors to and solutions for addressing the lack of family-supportive workplaces;

4. Access to rent relief, public assistance and financial support for mothers and caregivers in the workforce, including with regard to addressing barriers to such relief and assistance;

5. Rebuilding and stabilizing the childcare industry, including with regard to addressing the lack of care infrastructure and with regard to improving support for individuals working in the childcare industry;

6. Access to culturally sensitive, affordable and quality healthcare for women and families, regardless of job status; and

7. Access to mental health support for mothers and other caregivers, which is essential to maintaining the health of the family.

c. Membership. 1. The task force shall be composed of the following members:

(a) The executive director of the commission on gender equity or such executive director’s designee, who shall serve as chair;

(b) The executive director of the office for economic opportunity or such executive director’s designee;

(c) The commissioner of citywide administrative services or such commissioner’s designee;

(d) The commissioner of the office of labor relations or such commissioner’s designee;

(e) The commissioner of the department of social services or such commissioner’s designee;

(f) Three members appointed by the mayor who shall be individuals with expertise in gender pay disparity or economic self-sufficiency, including individuals who do advocacy work or research in such topics; and

(g) One member appointed by the speaker of the council who shall be an individual with expertise in gender pay disparity or economic self-sufficiency, including individuals who do advocacy work or research in such topics.

2. All appointments required by this section shall be made no later than 90 days after the effective date of this local law.

3. Each member of the task force shall serve at the pleasure of the officer who appointed the member. In the event of a vacancy on the task force, a successor shall be selected in the same manner as the original appointment. All members of the task force shall serve without compensation.

d. Meetings. 1. The chair shall convene the first meeting of the task force no later than 30 days after the last member has been appointed.

2. The task force may invite relevant experts and stakeholders to attend its meetings and to otherwise provide testimony and information relevant to its duties.

3. The task force shall meet no less than once each quarter to carry out the duties described in section three. The task force shall hold at least one public hearing before submitting the report required by section six.

4. The meeting requirement of subdivision c shall be suspended when the task force submits its report as required by section six.

e. Report. 1. No later than one year after the first meeting of the task force, the task force shall submit a report to the mayor and the speaker of the council setting forth its recommendations for legislation, policy and best practices relating to supporting working mothers, particularly in light of the issues that have become more acute due to the COVID-19 pandemic. The report shall include a summary of information the task force considered in formulating its recommendations.

2. The commission on gender equity shall publish the task force's report electronically on its website no later than 30 days after its submission to the mayor and the speaker of the council.

f. Agency support. Each agency affected by this local law shall provide appropriate staff and resources to support the work of such agency related to the task force.

g. Termination. The task force shall terminate 180 days after the date on which it submits its report, as required by section six.

§ 2. This local law takes effect immediately.

Referred to the Committee on Women and Gender Equity.

Int. No. 2301

By Council Members Barron, Rodriguez and Ampry-Samuel

A Local Law in relation to requiring the commissioner of transportation to study safety risks posed by the coexistence of bicycle lanes and school bus routes on city streets

Be it enacted by the Council as follows:

Section 1. Definitions. For purposes of this local law, the term "commissioner" means the commissioner of transportation.

§ 2. Study. The commissioner shall study whether and to what extent the coexistence of bicycle lanes and school bus routes on city streets poses safety risks to bicyclists, children who ride school buses or both. The commissioner shall conduct the study in consultation with staff from relevant city agencies, including but not limited to the department of education. The commissioner shall consider whether changes to school bus design, school bus lanes or bicycle lanes would address any safety risk identified or other potential risk.

§ 3. Report. a. No later than 270 days after the effective date of this local law, the commissioner shall submit a report to the mayor and the speaker of the council setting forth its findings, as well as recommendations for legislation and policy to address any safety risks and other identified challenges. The report shall include a summary of information considered in formulating any conclusions or recommendations.

b. The commissioner shall publish the report electronically on the department of transportation website no later than 10 days after submission to the mayor and the speaker of the council.

§ 4. Agency support. Each agency affected by this local law shall provide appropriate staff and resources to support the work of such agency related to the study.

§ 5. Effective date. This local law takes effect immediately.

Referred to the Committee on Transportation.

Res. No. 1628

Resolution calling upon the United States Congress to pass, and the President to sign, the Marshall Plans for Moms of 2021 (H.Res. 121), which would revitalize and restore mothers in the workforce.

By Council Members Cumbo, Brooks-Powers, Kallos and Cornegy.

Whereas, Women, and working mothers in particular, have been disproportionately impacted by the economic fallout of the COVID-19 pandemic; and

Whereas, This is due to existing social barriers and policy failures that have been exacerbated by enduring racism and gender injustices; and

Whereas, This includes the lack of a care infrastructure, which has led to high child care costs and child care deserts; the lack family-supportive workplaces, which could include flextime and lactation support; the lack of a national paid leave policy, which would allow employees meet their personal and family health care needs; and gender and racial pay inequities; and

Whereas, While January 2020 saw women holding more payroll jobs than men for the first time in United States (U.S.) history, by April 2020, following the COVID-19 outbreak in March, women's participation in the workforce had all but reversed course; and

Whereas, Since the beginning of the COVID-19 pandemic, an estimated 5.4 million women have lost their jobs, which is nearly a million more than men; while Black and Latina women have suffered the greatest, with unemployment within the demographic up to 50 percent higher than the national average, per U.S. Bureau of Labor Statistics data; and

Whereas, Additionally, according to U.S. Census Bureau data, around 10 million U.S. mothers living with their own school-age children were not actively working in January 2021, 1.4 million more than in January 2020; and

Whereas, Studies have shown that compared to previous years, more women have been forced to cut back on work hours or leave their jobs entirely, experienced more pandemic-related stress, taken on the brunt of their families' mental load and struggled with more postpartum depression over the past year; and

Whereas, An analysis of U.S. Census data has revealed that some of the disproportionate impact on women was driven by the need to care for children during the pandemic, a situation that is often not reflected in the official unemployment rate, which accounts only for people actively seeking work; and

Whereas, Moreover, while the economy has improved from the worst months of job loss last spring, significantly fewer Black and Hispanic women are working now than any other demographic, and women trail men across race and ethnicity; and

Whereas, Women's wages are key to their families' economic security and survival yet, according to the National Women's Law Center, they are overrepresented in low-wage jobs and underrepresented in high-wage jobs, making up two-thirds of minimum wage earners; and

Whereas, In New York City ("NYC" or "City"), the pandemic forced 52 percent of women who provide care for children to reduce their paid working hours, women were more likely than men to need to take time off to care for children and, among women of color, 36 percent did so compared with 29 percent of white women, according to a poll conducted by the City Comptroller; and

Whereas, The poll, which surveyed more than 1,200 New Yorkers, also found that women of color were also "less likely to have paid leave available to them, indicating a great lack of access to safe, affordable child care options and an urgent need for emergency leave rights"; and

Whereas, H.Res. 121, sponsored by U.S. Rep. Grace Meng, also known as the "Marshall Plans for Moms," a reference to the recovery program the U.S. launched to stimulate economic growth in a despondent and nearly bankrupt post-World War II Europe, seeks to institute a robust paid leave plan, which would include emergency paid leave policies for paid sick, family and medical leave to help parents with additional caregiving responsibilities; rebuild and restabilize the child care industry, with a vision toward universal child care and

early learning; make major investments in U.S. education systems, including in efforts to safely reopen schools and campuses, narrow the digital divide and offer mental health resources for students, families and staff; improve access to nutritious food as a health and human right; implement child poverty reduction tools; create an expanded unemployment insurance program; raise the Federal minimum wage to \$15 per hour or higher for all minimum wage workers; and increase access to mental health support for mothers, which is essential for maintaining the health of the family; and

Whereas, Comprehensive relief and long-term recovery from the COVID-19 recession must recognize, rebuild, and return mothers to the workforce; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Congress to pass, and the President to sign, the Marshall Plans for Moms of 2021 (H.Res. 121), which would revitalize and restore mothers in the workforce.

Referred to the Committee on Women and Gender Equity.

Res. No. 1629

Resolution calling on the Senate of the United States to pass, and the President to sign into law, H.R. 2153, the Keeping Girls in School Act.

By Council Member D. Diaz.

Whereas, Globally, there are 129.2 million girls who are not currently enrolled in school, including 32.3 million girls of primary school age, 29.9 million girls of lower secondary school age, and 67 million girls of upper secondary school age, according to a United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics 2019 fact sheet; and

Whereas, According to the World Bank, poverty is one of the most important factors for determining whether a girl can access education, as poor families lack resources to pay for schooling and associated costs for textbooks, uniforms, school supplies, and transportation; and

Whereas, Additionally, children in conflict-affected countries are more than twice as likely to be out of school compared with those in countries not affected by conflict, according to the Global Partnership for Education; and

Whereas, Further, adolescent girls are more than two-thirds more likely to be out of school, due to barriers such as child marriage, pregnancy, domestic violence, and responsibilities like household chores, taking care of sick parents or babysitting siblings; and

Whereas, The World Bank asserts that educating girls is a strategic priority for developing nations, as better educated women are more likely to participate in the formal labor market and earn higher incomes, and tend to be more informed about nutrition and healthcare, marry at a later age, have fewer children, and have healthier children; and

Whereas, The United States Global Strategy to Empower Adolescent Girls, published in March 2016, brought together the Department of State, the United States Agency for International Development (USAID), the Peace Corps, and the Millennium Challenge Corporation, as well as other agencies and programs such as the President's Emergency Fund for AIDS Relief (PEPFAR), to address the range of challenges preventing adolescent girls from attaining an inclusive and equitable quality education leading to relevant learning outcomes; and

Whereas, According to the United States Global Strategy to Empower Adolescent Girls, which is the first foreign policy document in the world solely dedicated to the rights and empowerment of girls globally, "[w]hile the Millennium Development Goals improved outcomes for girls in primary education, they also highlighted the need for a targeted focus on adolescents and young adults, particularly regarding the transition to and completion of secondary school"; and

Whereas, H.R.2153, the *Keeping Girls in School Act* (“the Act”) introduced by Congresswoman Lois Frankel in April 2019, and passed by the House of Representatives on January 28, 2020, seeks to advance that targeted focus on adolescent girls’ completion of secondary school; and

Whereas, Specifically, H.R.2153 authorizes USAID to enter into acquisition, assistance, or financing agreements to address societal, cultural, health, and other barriers that adolescent girls face in accessing quality secondary education; and

Whereas, Under H.R. 2153, USAID shall seek to ensure that such activities meet various requirements related to monitoring and evaluating outcomes, data collection, and adherence to gender equality promotion policies; and

Whereas, This legislation would also require the Department of State to periodically update and report to Congress a publicly available U.S. global strategy to empower adolescent girls, and the U.S. Global Strategy to Empower Adolescent Girls, issued in March 2016, may serve as the initial version of the strategy; and

Whereas, Additionally, under H.R. 2153, USAID shall periodically report to Congress on the activities initiated under this Act and efforts to monitor and evaluate such activities; and

Whereas, The goal of U.S. government efforts under this strategy is to ensure adolescent girls are educated, healthy, economically and socially empowered, and free from violence and discrimination, thereby promoting global development, human rights, security, and prosperity; and

Whereas, According to the U.S. Global Strategy to Empower Adolescent Girls, “[a] concerted effort to address the challenges faced by adolescent girls, to safeguard their rights, and to promote their participation in their societies and economies is critical to advancing U.S. foreign policy and security objectives and development priorities”; and

Whereas, Further, New York City is a global hub that is home to approximately 3 million immigrants who comprise about 36 percent of the city’s population and 43 percent of its workforce, according to the Mayor’s Office of Immigrant Affairs Annual Report for 2020; and

Whereas, Many of these immigrants are, or were, adolescent girls, thus New York City will directly benefit from efforts to enhance girls’ access to equitable, quality education across the globe; and

Whereas, H.R.2153 seeks to advance access to quality secondary education for adolescent girls throughout the world in order to promote global development, security, and prosperity; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the Senate of the United States to pass, and the President to sign into law, H.R. 2153, the Keeping Girls in School Act.

Referred to the Committee on Education.

Int. No. 2302

By Council Members Dromm, Rosenthal and Yeger.

A Local Law to amend the administrative code of the city of New York, in relation to education and outreach regarding solar and green roof requirements

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 28 of the administrative code of the city of New York is amended by adding a new section 28-103.37 to read as follows:

§ 28-103.37 Education and outreach on solar and green roof requirements. *No later than January 31, 2022, and by January 31 every five years thereafter, the department shall conduct targeted outreach to notify and educate building owners about the requirements of section 1511 of the New York city building code. Notices and educational materials distributed pursuant to this section shall include, but not be limited to, information regarding the requirements of section 1511 of the New York city building code and notice as to which buildings such requirements apply. Such notices and educational materials shall be prepared in plain language using*

words with common everyday meanings and made available in all of the designated citywide languages, as defined in section 23-1101. Such notices and educational materials shall also be made available on the department's website.

§ 28-103.37.1 Reporting. *No later than May 31, 2022, and by May 31 every five years thereafter, the department shall submit to the speaker of the council a report describing the methods of targeted outreach used to comply with this section.*

§ 2. This local law takes effect immediately.

Referred to the Committee on Environmental Protection.

Int. No. 2303

By Council Members Dromm, Rosenthal, Kallos and Yeger.

A Local Law to amend the administrative code of the city of New York, in relation to the department of information technology and telecommunications updating 311 complaint types and reporting on such updates

Be it enacted by the Council as follows:

Section 1. Chapter 3 of title 23 of the administrative code of the city of New York is amended by adding a new section 23-307 to read as follows:

§ 23-307 Updating 311 complaint types. a. By no later than the effective date of any local law that involves a request for service, the commissioner of information technology and telecommunications shall add the associated complaint type to the 311 customer service center website and mobile device platforms, and notify the 311 customer service center call takers of such complaint type.

b. For the purposes of subdivision a of this section, a local law involves a request for service if such local law:

- 1. Requires the department of information technology and telecommunications to implement the capability to file a complaint on the 311 customer service center website and mobile device platforms;*
- 2. Establishes a program or requires an agency to provide information or services to the public;*
- 3. Establishes or expands a right or a protection for a business or person; or*
- 4. Prohibits conduct by an agency, business or person.*

c. Report. No more than 180 days after the effective date of the local law that added this section, and semiannually thereafter, the commissioner of information technology and telecommunications shall report to the mayor and the speaker of the council on updating complaint types on the 311 customer service center website and mobile device platforms. Such report shall be posted on the website of the department of information technology and telecommunications and the 311 customer service center and shall include:

1. Data regarding the updating of complaint types on the 311 customer service center website and mobile device platforms after the enactment of a local law that involves a request for service, including, but not limited to, the number of complaint types that the department of information technology and telecommunications added by such local law's effective date;

2. A list of the local laws enacted during the reporting period that involve a request for service, along with (i) the complaint type that each local law added, (ii) when such complaint type was added to the 311 customer service center website and mobile device platforms and (iii) an explanation of any delays, if applicable, in adding the complaint type to the 311 customer service center website and mobile device platforms; and

3. Any challenges that the department of information technology and telecommunications faced in timely updating the complaint types on the 311 customer service center website and mobile device platforms and any efforts to address such challenges.

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§ 2. This local law takes effect 60 days after it becomes law.

Referred to the Committee on Technology.

Int. No. 2304

By Council Member Holden.

A Local Law to amend the administrative code of the city of New York, in relation to revising criteria for enforcement of civil and criminal offenses for specified unlawful acts, and to repeal and replace section 14-155 of such code in relation thereto

Be it enacted by the Council as follows:

Section 1. Section 14-155 of the administrative code of the city of New York is REPEALED and a new section 14-155 is added to read as follows:

§ 14-155 Enforcement criteria. a. The department shall review and revise as appropriate its guidance regarding the determination of whether to use civil or criminal enforcement for specified unlawful acts, in accordance with the requirements of this section. Such guidance shall recommend that criminal enforcement be used for specified unlawful acts unless certain criteria specified by the department are met for the use of civil enforcement.

b. The department shall provide such guidance to its uniformed officers and make such guidance publicly available.

c. Nothing in this section or in the administration or application thereof shall be construed as creating a right to be subject to civil or criminal enforcement or prosecution in connection with any alleged specified unlawful act, or as creating a private right of action on the part of any person or entity against the city of New York, the department or any official or employee thereof.

§ 2. This local law takes effect 180 days after it becomes law, except that the police department shall take such measures as are necessary for the implementation of this local law before such date.

Referred to the Committee on Public Safety.

Int. No. 2305

By Council Member Holden.

A Local Law to amend the administrative code of the city of New York, in relation to conducting a feasibility study on a digital identification program

Be it enacted by the Council as follows:

Section 1. a. Definitions. For the purposes of this section, the following terms have the following meanings:
Financial institution. The term “financial institution” means a company with expertise in technology and financial services.

Digital identification program. The term “digital identification program” means a program providing digital identification that is verified and authenticated across digital platforms, that is unique and is established with individual consent and that protects user privacy and control over personal data.

b. Feasibility study and report. By October 1, 2021, the mayor shall designate an agency to conduct a study to assess and determine the feasibility of a pilot program to establish a digital identification program. The designated agency, in consultation with at least one financial institution, shall issue a report on such study, which the designated agency shall submit to the mayor and speaker of the council and post on the agency’s website on

or before July 31, 2022. Such study and report shall include, but need not be limited to:

1. The pilot program's design, including, but not limited to, the scope, the technology, the staffing and the rationale for such design;
 2. Information on participation in the pilot program, including, but not limited to, the criteria to participate and the number of participants;
 3. The plan to ensure the privacy of the participants, including, but not limited to, ensuring that their personal information is secure and confidential;
 4. The plan to administer and conduct outreach on the pilot program;
 5. The plan to use the digital identification program to determine eligibility for public benefits and access to city services;
 6. The estimated cost of the pilot program; and
 7. The metrics used to evaluate the pilot program.
- § 2. This local law takes effect immediately and expires and is deemed repealed upon the issuance of the report required by section one of this local law.

Referred to the Committee on Technology.

Int. No. 2306

By Council Member Kallos

A Local Law to amend the administrative code of the city of New York, in relation to the electronic submission of documents to the department of buildings

Be it enacted by the Council as follows:

Section 1. Article 103 of title 28 of the administrative code of the city of New York is amended by adding a new section 28-103.24.1 to read as follows:

§ 28-103.24.1 Electronic submission format and review. *No later than the ninetieth day after the effective date of the local law that added this section, the department shall accept the electronic submission of documents in open file formats created by computer-aided design software that are computer readable and all structural and architectural plans shall be submitted in such file formats. No later than the one hundred eightieth day after the effective date of the local law that added this section, the department shall use automated plan review software to review all electronic document submissions submitted pursuant to this section for compliance with applicable regulations and laws and provide feedback in as close to real time as possible.*

§ 2. This local law takes effect immediately.

Referred to the Committee on Housing and Buildings.

Int. No. 2307

By Council Members Kallos, Rosenthal and Yeger.

A Local Law to amend the administrative code of the city of New York, in relation to smart city technology programs and a smart city technology working group

Be it enacted by the Council as follows:

Section 1. Subchapter 1 of chapter 1 of title 3 of the administrative code of the city of New York is amended by adding a new section 3-119.3 to read as follows:

§ 3-119.3 *Smart city technology programs and working group. a. Definitions. For the purposes of this section, the following terms have the following meanings:*

Administering agency. The term "administering agency" means the office or agency designated by the mayor, pursuant to subdivision e of this section, to administer the provisions of this section.

Smart city technology. The term "smart city technology" means information and communications technology, including connected devices such as smart sensors and meters, applied to increase efficiency of public services and operations and to improve public health, safety, welfare and quality of life.

b. The administering agency, in consultation with the smart city technology working group established pursuant to subdivision d of this section and other relevant agencies, shall plan and coordinate the implementation of smart city technology programs in the city. Such programs shall, to the extent feasible, include the following:

1. Smart streetlights fitted with light sensors, pedestrian traffic sensors, parking spot monitors, air quality monitors, gunshot detectors, replacement indicators, tip sensors and other appropriate sensors;

2. Location beacons that support navigation for blind and visually impaired individuals by indicating public transit, traffic signal changes, city agency buildings and other physical locations;

3. Automated real-time public transit ridership and traffic data integration to scale services and adjust routes to meet immediate needs;

4. Smart water meters that monitor water usage and quality in real time and track and alert of potential leakage, automated testing of potable water supply for contaminants such as lead and wastewater for COVID-19, and real-time water supply management;

5. Smart power meters for dwelling units and buildings connected to smart power grids to regulate and track power production and usage in real time, and smart meters for solar, cogeneration and other off-grid power sources to track community power and reduce power in real time;

6. Smart gas meters for dwelling units and buildings that monitor gas usage in real time and track and alert of pressure and potential leakage to prevent explosions;

7. Smart trash and recycling receptacles fitted with sensors that detect trash level and transmit alerts when full; and

8. Any additional smart city technologies as recommended by the smart city technology working group.

c. The administering agency shall ensure that the implementation of the smart city technology programs as set forth in subdivision b of this section incorporates data privacy tools including, but not limited to, privacy standards and practices, notice and consent, local storage, data minimization, vendor management and de-identification of personally identifiable information.

d. 1. The administering agency shall convene a smart city technology working group. The smart city technology working group shall be comprised of the following members:

(a) The head of the administering agency or such head's designee, who shall serve as chair;

(b) The comptroller or the comptroller's designee;

(c) The commissioner of information technology and telecommunications or such commissioner's designee;

(d) The commissioner of transportation or such commissioner's designee;

(e) The commissioner of environmental protection or such commissioner's designee;

(f) The commissioner of sanitation or such commissioner's designee;

(g) The commissioner of citywide administrative services or such commissioner's designee;

(h) The chief privacy officer or such officer's designee;

(i) The heads of any other offices or agencies, or their designees, as designated by the mayor;

(j) Two city council members, or such members' designees, as designated by the speaker of the council;

(k) Four members appointed by the mayor, which shall include individuals with experience or expertise in smart city technologies; and

(l) Three members appointed by the speaker of the council, which shall include individuals with experience or expertise in smart city technologies.

2. All appointments required by this section shall be made no later than 90 days after the effective date of the local law that added this section.

3. Each member of the working group shall serve at the pleasure of the officer who appointed the member. In the event of a vacancy on the working group, a successor shall be selected in the same manner as the original appointment. All members of the working group shall serve without compensation.

4. The working group shall invite representatives of the metropolitan transportation authority, the New York city transit authority, the port authority of New York and New Jersey, the public service commission and utility companies whose service area includes a portion of the city to participate as non-voting members.

5. The working group shall meet at least once every six months and shall hold at least one public meeting annually.

6. The working group shall consult with and, upon request of the mayor or any agency, advise the mayor or such agency on any matter related to the smart city technology programs as set forth in subdivision b of this section.

7. No later than 12 months after the final member of the working group is appointed, and annually thereafter, the working group shall submit to the mayor and the speaker of the council, and post on the city's website, a report containing the following information:

(a) A review of the implementation progress and status of each of the smart city technology programs as set forth in subdivision b of this section;

(b) Any issues or challenges in implementing the smart city technology programs as set forth in subdivision b of this section, and recommendations for addressing such issues or challenges;

(c) Recommendations related to the development and implementation of additional smart city technologies, including a feasibility assessment of such smart city technologies and actions that the city could take in connection with such recommendations; and

(d) Any other activities undertaken by the working group during the preceding year.

e. The mayor shall designate one or more offices or agencies to administer the provisions of this section and may, from time to time, change such designation.

§ 2. This local law takes effect 120 days after it becomes law.

Referred to the Committee on Technology.

Int. No. 2308

By Council Members Kallos and Rosenthal (in conjunction with the Brooklyn Borough President).

A Local Law to amend the administrative code of the city of New York, in relation to the provision of financial grants to public school applicants to be used for city university of New York application fees

Be it enacted by the Council as follows:

Section 1. Chapter 4 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-414 to read as follows:

§ 21-414 Application grants for city university of New York. a. Definitions. For the purpose of this section, the following terms have the following meanings:

Financial grant. The term “financial grant” means the provision of money to an individual or entity without an obligation of repayment.

Public school applicant. The term “public school applicant” means any student of a high school in the city school district of the city of New York, including a charter school, projected to graduate in the current school year or any student who has received a high school diploma from such school.

b. In consultation with the department of education, and any other agency the commissioner deems necessary, the department shall establish and operate a program, subject to appropriation, to annually provide financial grants for the purpose of paying the application fee of all public school applicants applying for admission to any two or four-year degree program at the city university of New York.

c. The commissioner shall establish criteria and procedures for the disbursement of grants pursuant to this section. Such criteria and procedures shall be made publicly available on the department's website.

§ 2. This local law takes effect 90 days after it becomes law, provided that the commissioner of youth services may take all actions necessary for its implementation, including the promulgation of rules, before such effective date.

Referred to the Committee on Youth Services.

Int. No. 2309

By Council Members Kallos, Rivera, Rosenthal, Reynoso and Gibson.

A Local Law to amend the administrative code of the city of New York, in relation to requiring registration for short-term rentals and booking services

Be it enacted by the Council as follows:

Section 1. Title 26 of the administrative code of the city of New York is amended by adding a new chapter 30 to read as follows:

*CHAPTER 30
REGISTRATION REQUIREMENTS FOR SHORT-TERM RENTALS
AND BOOKING SERVICES*

§ 26-3001 Definitions.

§ 26-3002 Short-term rental registration.

§ 26-3003 Posting and advertising requirements.

§ 26-3004 Registration verification system.

§ 26-3005 Booking service registration.

§ 26-3006 Exemptions.

§ 26-3007 Penalties; revocation and suspension of registrations.

§ 26-3001 Definitions. As used in this chapter:

Administering agency. The term “administering agency” means the office of special enforcement, as established under executive order number 96 for the year 2006, or such other agency as the mayor may designate by executive order.

Booking platform. The term “booking platform” means one or more online, computer or application-based platforms that individually or collectively can be used to (i) list or advertise offers for short-term rentals and (ii) either accept such offers, or reserve or pay for such rentals.

Booking service. The term “booking service” shall have the meaning ascribed to such term by section 26-2101, as added by local law number 146 for the year 2018.

Directly or indirectly. The term “directly or indirectly” shall have the meaning ascribed to such term by section 26-2101, as added by local law number 146 for the year 2018.

Dwelling unit. The term “dwelling unit” shall have the meaning ascribed to such term by section 26-2101, as added by local law number 146 for the year 2018.

§ 26-3002 Short-term rental registration. a. It shall be unlawful for a person to offer, manage or administer a short-term rental at a dwelling unit or housing accommodation, or part thereof, in the city unless such person has been issued a short-term rental registration, including a unique short-term rental registration number, for such unit or accommodation pursuant to this section.

b. A person shall apply for a short-term rental registration for a dwelling unit or housing accommodation before such unit or accommodation, or part thereof, is advertised or otherwise offered for short-term rental.

c. The form and manner of applying for a short-term rental registration or renewal thereof shall be established by rules of the administering agency, except that no short-term rental registration or renewal thereof may be issued for such unit or accommodation unless:

1. The applicant has established to the satisfaction of the administering agency that:

(a) The amount that may be charged and collected as rent for such unit is not regulated by the emergency tenant protection act of 1974, the rent stabilization law of 1969, the local emergency housing rent control act of 1962 or any other law or rule or an agreement with a governmental entity;

(b) Such applicant is the lawful occupant of such unit or accommodation;

(c) Such applicant is the owner of such unit or accommodation or has the written consent of such owner to apply for a short-term rental registration for such unit or accommodation and to subsequently offer, manage or administer a short-term rental at such unit or accommodation;

(d) Such applicant is not prohibited by the terms of a lease or other agreement from applying for a short-term rental registration for such unit or accommodation and from subsequently offering, managing or administering a short-term rental at such unit or accommodation;

(e) Such applicant has described, in a form acceptable to the administering agency, any parts of the premises containing such unit or accommodation that a person occupying a short-term rental at such unit or accommodation will be allowed to occupy or use;

(f) For each part of such premises described pursuant to subparagraph (e), such applicant (i) is the owner of such part or has the written consent of the owner of such part to allow a person occupying a short-term rental at such unit or accommodation to occupy or use such part and (ii) is not prohibited by the terms of a lease or other agreement from allowing a person occupying a short-term rental at such unit or accommodation to occupy or use such part;

2. The applicant has submitted a signed and notarized certification in a form acceptable to the administering agency attesting that there are no outstanding hazardous or immediately hazardous violations of the housing maintenance code or rules promulgated pursuant thereto, major or immediately hazardous violations of the New York city construction codes or rules promulgated pursuant thereto, violations of the New York city fire code or rules promulgated pursuant thereto or violations of such other law or rule as the administering agency may identify by rule, relating to (i) such unit or accommodation or any part of such premises described pursuant to subparagraph (e) of paragraph 1 or (ii) such premises in a manner that would reasonably be expected to affect the health or safety of a person occupying a short-term rental at such unit or accommodation;

3. The applicant has submitted a certification from (i) a person licensed and registered to practice the profession of architecture under the education law, (ii) a person licensed and registered to practice the profession of engineering under the education law or (iii) a person approved pursuant to rules promulgated by the administering agency to conduct inspections and issue certifications pursuant to this paragraph, attesting that such unit or accommodation and each part of such premises described pursuant to subparagraph (e) of paragraph 1 meet the requirements of all applicable city, state, and federal laws, rules and regulations; provided that nothing in this chapter shall be deemed to authorize the city to conduct an inspection of such unit or accommodation or a part of such premises described pursuant to subparagraph (e) of paragraph 1 without the consent of the owner or occupant thereof, in the absence of a warrant duly issued by a court of competent jurisdiction; and

4. The applicant has paid an application or renewal fee in an amount to be established by rule of the administering agency.

d. A short-term rental registration or renewal thereof shall be valid for a period of one year from the date of issuance unless terminated sooner.

e. A short-term rental registration or renewal thereof is not transferable.

f. If the information provided by an applicant in connection with an application for a short-term rental registration or renewal thereof changes before expiration of such registration or renewal thereof, such applicant shall submit such changes to the administering agency in a time, form and manner established by the administering agency.

g. The administering agency shall by rule establish a process for an applicant who is denied a short-term rental registration or renewal thereof to appeal such denial, including (i) an opportunity to be heard with respect to such denial and (ii) the time, form and manner in which such applicant may after such denial re-apply for a short-term rental registration or renewal thereof.

h. A person who offers, manages or administers a short-term rental at a dwelling unit or housing accommodation, or part thereof, in the city shall create and maintain, for at least seven years after such short-term rental, a written or electronic transaction record for each such short-term rental including:

1. The date or dates of such short-term rental;

2. *A copy of the short-term rental registration for such unit or accommodation;*
3. *The short-term rental registration number for such unit or accommodation;*
4. *The physical address of such unit or accommodation, including the street name, street number, apartment or unit number, borough or county, and zip code; and*
5. *The rent charged and collected for such short-term rental.*

§ 26-3003 *Posting and advertising requirements.* a. *A person who offers, manages or administers a short-term rental at a dwelling unit or housing accommodation, or part thereof, in the city shall, in a form and manner established by the administering agency, conspicuously post and maintain within such unit or accommodation, during each short-term rental thereof, (i) a diagram indicating normal and emergency egress routes from such unit or accommodation and the premises containing such unit or accommodation and (ii) a copy of the short-term rental registration for such unit or accommodation.*

b. *Such person shall include in any advertisement or other offer for short-term rental of such unit or accommodation, or part thereof, the short-term registration number for such unit or accommodation.*

§ 26-3004 *Registration verification system.* a. *The administering agency shall create and maintain an electronic system that a booking service may use to (i) verify whether a short-term rental registration has been issued for a dwelling unit or housing accommodation in the city and (ii) obtain a unique confirmation number reflecting that such verification has occurred.*

b. *The administering agency may by rule establish a fee to charge and collect from a booking service for use of such system.*

§ 26-3005 *Booking service registration.* a. *It shall be unlawful for a booking service to charge, collect or receive a fee from a person for the use of a booking platform directly or indirectly provided by such booking service, or for provision of any service, in connection with a short-term rental at a dwelling unit or housing accommodation, or part thereof, in the city unless (i) such booking service has been issued a booking service registration pursuant to this section, (ii) such person provides such booking service with a copy of the short-term rental registration, including the short-term rental registration number, for such unit or accommodation and (iii) such booking service has used the system established pursuant to section 26-3003 to verify such short-term rental registration number and has obtained a unique confirmation number reflecting that such verification has occurred.*

b. *The form and manner of applying for a booking service registration or renewal thereof shall be established by rules of the administering agency.*

c. *A booking service registration or renewal thereof shall be valid for a period of two years from the date of issuance unless terminated sooner.*

d. *A booking service registration or renewal thereof is not transferable.*

e. *If the information provided by an applicant in connection with an application for a booking service registration or renewal thereof changes before expiration of such registration or renewal thereof, such applicant shall submit such changes to the administering agency in a time, form and manner established by the administering agency.*

f. *The administering agency shall by rule establish a process for an applicant who is denied a booking service registration or renewal thereof to appeal such denial, including (i) an opportunity to be heard with respect to such denial and (ii) the time, form and manner in which such applicant may after such denial re-apply for a booking service registration or renewal thereof.*

g. 1. *For each transaction in which a booking service charges, collects or receives a fee, directly or indirectly, for activity described in the definition of booking service in relation to a short-term rental, such booking service shall create and maintain, for at least seven years after the date on which such transaction is executed, an electronic transaction record that includes:*

(a) *The date of such transaction;*

(b) *A copy of the short-term rental registration for the dwelling unit or housing accommodation associated with such short-term rental;*

(c) *The short-term rental registration number for such unit or accommodation;*

(d) *The unique confirmation number obtained by such booking service for verifying such short-term rental registration number using the system established pursuant to section 26-3003;*

(e) *The physical address of such unit or accommodation, including the street name, street number, apartment or unit number, borough or county, and zip code; and*

(f) The amount of such fee.

2. In each month, or less frequently as determined by the administering agency, and in a time, manner and form established by rules of the administering agency, such booking service shall electronically submit to the administering agency each electronic transaction record associated with a transaction that occurred during the preceding reporting period.

§ 26-3006 Exemptions. The provisions of this chapter shall not apply to short-term rental of a dwelling unit or housing accommodation, or part thereof, within a class B multiple dwelling on the list published pursuant to section 26-2103, as added by local law number 146 for the year 2018.

§ 26-3007 Penalties; revocation and suspension of registrations. a. 1. For each short-term rental that a person offers, manages or administers at a dwelling unit or housing accommodation, or part thereof, in violation of subdivision a of section 26-3002 or for which such person fails to create and maintain a written or electronic transaction record pursuant to subdivision h of such section, such person shall be liable to the city for a civil penalty of not more than \$15,000 or, if such person has not violated such subdivision in the five years preceding such violation, not more than \$7,500; provided that if such person can establish the duration of such short-term rental and the total rent charged and collected for such short-term rental, such civil penalty shall be not more than the greater of (i) \$500 for each day of such short-term rental or three times such rent or (ii) if such person has not violated such subdivision in the five years preceding such violation, \$250 for each day of such short-term rental or 1.5 times such rent.

2. A person who fails to provide information changes in compliance with subdivision f of section 26-3002 shall be liable to the city for a civil penalty of not more than \$250 or, if such person has not violated such subdivision in the five years preceding such violation, not more than \$125.

b. 1. For each transaction in which a booking service charges, collects or receives a fee, directly or indirectly, for activity described in the definition of booking service in relation to a short-term rental in violation of subdivision a of section 26-3005 or for which such booking service fails to create, maintain or submit an electronic transaction record for such transaction pursuant to subdivision g of such section, such booking service shall be liable to the city for a civil penalty of not more than \$1,500; provided that if such booking service can establish the amount of such fee, such civil penalty shall be not more than three times such fee.

2. If a booking service fails to provide information changes in compliance with subdivision e of section 26-3005 relating to an application for a booking service registration or renewal thereof, such booking service shall be liable to the city for a civil penalty of not more than the greater of \$10,000 or two times the applicable fee for such registration or renewal thereof.

c. The civil penalties established by this section may be recovered in a proceeding before the office of administrative trials and hearings or a court of competent jurisdiction.

d. The administering agency shall by rule establish a process for (i) suspending and subsequently restoring a short-term registration or booking service registration for a person or booking service who intentionally, recklessly or repeatedly violates the requirements of this chapter, (ii) revoking the short-term registration or booking service registration of, and barring further issuance of such a registration to, a person or booking service who continues to intentionally, recklessly or repeatedly violate the requirements of this chapter after previously being subjected to a suspension pursuant to this subdivision and (iii) appealing such a suspension or revocation, including an opportunity for such person or booking service to be heard with respect to such suspension or revocation.

§ 2. This local law takes effect 180 days after it becomes law, except that the head of the administering agency, as such term is defined in section 26-3001 as added by this local law, shall take such actions as are necessary for its implementation, including the promulgation of rules, before such date.

Referred to the Committee on Housing and Buildings.

Preconsidered Res. No. 1630

Resolution amending Rule 7.00 of the Rules of the Council in relation to changes in the membership and chairmanships of the Standing Committees of the Council.

By Council Member Koslowitz:

RESOLVED, pursuant to Rule 7.00(a) of the Rules of the Council, the Council does hereby consent to the following changes in the membership and chairmanships of certain Standing Committees.

STANDING COMMITTEES

Consumer Affairs and Business Licensing

[Dinowitz]

Finance

[Feliz]

Fire and Emergency Management

[Levine]

General Welfare

[Feliz]

[Treyger]

Mental Health, Disabilities and Addiction

[Cabrera]

Parks and Recreation

Cabrera

Veterans

Dinowitz, Chair

Women and Gender Equity

Louis

Rosenthal

Adopted by the Council (preconsidered and approved by the Committee on Rules, Privileges and Elections).

Int. No. 2310

By Council Members Levine, Rosenthal and Kallos.

A Local Law in relation to a report on suitable locations for installing public bathrooms

Be it enacted by the Council as follows:

Section 1. Report. No later than June 1, 2022, the department of transportation shall coordinate with the department of parks and recreation to submit to the mayor and to the speaker of the council a report identifying

at least 1 location in each zip code in the city where a public bathroom facility may be installed. The department of transportation and department of parks and recreation shall consider input from community boards and the public when determining such locations for public bathroom facilities. In addition to identifying appropriate locations for installing public bathroom facilities, such report shall include, but need not be limited to, the following information:

- a. The factors considered in determining such locations are appropriate for installing public bathroom facilities;
- b. Any safety measures necessary for installing and maintaining public bathroom facilities, including compliance with accessibility requirements;
- c. The costs associated with installing and maintaining public bathroom facilities and implementing necessary safety measures;
- d. Any challenges associated with installing and maintaining public bathroom facilities, including any community opposition; and
- e. Recommendations for installing public bathroom facilities and implementing necessary safety measures for each location identified to address any challenges associated with such installation.

§ 2. This local law takes effect immediately.

Referred to the Committee on Transportation.

Int. No. 2311

By Council Members Powers, Rosenthal, Kallos, Ayala and Lander.

A Local Law to amend the administrative code of the city of New York, in relation to data on orders placed through third-party food delivery services

Be it enacted by the Council as follows:

Section 1. Section 20-845 of the administrative code of the city of New York, as amended by local law number 88 for the year 2020, is amended by adding a new definition in alphabetical order to read as follows:

Customer data. The term "customer data" means the following information provided by a customer of a third-party food delivery service who is not known by a third-party food delivery service to be less than 16 years of age and who has placed an online order:

- i) *Customer's name;*
- ii) *Customer's telephone number;*
- iii) *Customer's e-mail address;*
- iv) *The delivery address of the online order; and*
- v) *The contents of the online order being requested to be fulfilled by a food service establishment.*

§ 2. Subchapter 22 of chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-848 to read as follows:

§ 20-848 Customer data. a. Third-party food delivery services shall share all customer data applicable to an online order with the food service establishment fulfilling such online order. Customer data shared pursuant to this subdivision shall be made available in a machine-readable format at the time an online order is placed. Third-party food delivery services shall not limit the ability of food service establishments to download and retain such data, or limit their use of such data for marketing or other purposes outside the third-party food delivery service website, mobile application or other internet service.

b. This section does not apply to telephone orders.

§ 3. Section 20-848 of the administrative code of the city of New York, as amended by local law number 51 for the year 2020, is renumbered section 20-849, and subdivision a of such section is amended to read as follows:

- a. Any person that violates any provision of section 20-846 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed \$1,000 per violation. Any person that violates any provision of section 20-847 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed

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\$500 per violation. *Any person that violates any provision of section 20-848 or any rule promulgated pursuant thereto shall be subject to a civil penalty that shall not exceed \$100 per violation.* Violations under this subchapter shall accrue on a daily basis for each day and for each food service establishment charged a fee *or to which customer data is not provided* in violation of this subchapter or any rule promulgated pursuant to this subchapter. A proceeding to recover any civil penalty authorized pursuant to this subchapter may be brought in any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings.

§ 4. This local law takes effect 60 days after it becomes law.

Referred to the Committee on Consumer Affairs and Business Licensing.

Int. No. 2312

By Council Members Riley, Powers, Treyger and Rosenthal.

A Local Law to amend the administrative code of the city of New York, in relation to limiting fees associated with vacating a premises

Be it enacted by the Council as follows:

Section 1. Title 26 of the administrative code of the city of New York is amended by adding a new chapter 30 to read as follows:

*CHAPTER 30
FEES ASSOCIATED WITH VACATING A PREMISES*

§ 26-3001 Definitions. As used in this chapter, the following terms have the following meanings:

Duty to mitigate damages. The term “duty to mitigate damages” means the duty of a landlord to mitigate damages pursuant to section 227-e of the real property law.

Mitigated damages. The term “mitigated damages” means the amount of damages that a landlord may collect where such landlord has a duty to mitigate damages and where a tenant vacates a premises in violation of the terms of a lease.

§ 26-3002 Limitation of fees. Where a landlord has a duty to mitigate damages, and where a tenant vacates a premises in violation of the terms of a lease, any payment, fee or charge resulting from such violation shall be limited to mitigated damages.

§ 2. This local law shall take effect immediately

Referred to the Committee on Housing and Buildings.

Int. No. 2313

By Council Members Rodriguez, the Speaker (Council Member Johnson), Feliz, Kallos and Lander (in conjunction with the Brooklyn Borough President).

A Local Law to amend the New York city charter, in relation to the establishment of an office of ethnic and community media and requirements regarding agency spending on advertising

Be it enacted by the Council as follows:

Section 1. The New York city charter is amended by adding a new chapter 77 to read as follows:

CHAPTER 77
OFFICE OF ETHNIC AND COMMUNITY MEDIA

§ 3300. *Office of ethnic and community media; executive director.* There shall be an office of ethnic and community media. Such office may, but need not, be established in the executive office of the mayor and may be established as a separate office, within any other office of the mayor or within any department, the head of which is appointed by the mayor. Such office shall be headed by an executive director of ethnic and community media who shall be appointed by the mayor or, if the office is established within a department, designated by the head of such department.

§ 3301. *Definitions.* As used in this chapter, the following terms have the following meanings:

Agency. The term “agency” means any agency under the jurisdiction of the mayor. It does not include the department of education, the New York city health and hospitals corporation and the New York city housing authority.

Ethnic and community media. The term “ethnic and community media” means any print or digital publication or television or radio outlet that is created for communities of people based on native language, race, color, gender, national origin, ethnicity, religion, sexual orientation, disability or immigrant status; targets a discrete neighborhood, geographic region or population that may or may not typically receive information from mainstream publications because of their exclusive use of a language other than English; or falls within a specifically tailored subject matter as determined by the mayor or the mayor’s designee.

Executive director. The term “executive director” means the executive director of ethnic and community media.

Television or radio outlet. The term “television or radio outlet” means any television or radio outlet with five or fewer staff members.

§ 3302. *Deputies.* The mayor or the mayor’s designee may appoint deputies and staff within available appropriations. One of these positions may be a citywide marketing director who shall report to the executive director.

§ 3303. *Powers and duties.* The executive director shall have the power and duty to perform the following functions related to ethnic and community media:

a. Advise and assist the mayor in coordinating the communication of government-related information to the public.

b. Ensure, along with the citywide marketing director as appropriate, that agencies, as well as the department of education, the New York city health and hospitals corporation and the New York city housing authority, deliver a unified message to the public.

c. Ensure that agencies distribute advertising resources pursuant to section 3304.

d. Work with the department of education, the New York city health and hospitals corporation and the New York city housing authority to ensure that advertising resources are distributed equitably across the city’s diverse communities.

e. Develop and maintain a list of ethnic and community media outlets that promote and exemplify the city’s many interconnected communities.

f. Promulgate guidelines regarding the issuing of waivers pursuant to section 3304.

g. Beginning one year after the effective date of this chapter and annually thereafter, prepare and submit to the mayor and the speaker of the council a report on annual advertising of each agency and the department of education, the New York city health and hospitals corporation and the New York city housing authority. Such report shall include, but need not be limited to, the total amount each entity spent on advertising, the total amount each entity spent on ethnic and community media and any waiver granted pursuant to section 3304.

h. Hold at least one annual training for city officers and employees responsible for purchasing advertising.

i. Coordinate among agencies and minority- and women-owned ethnic and community media outlets to improve agencies’ ability to contract with such media outlets on projects including, but not limited to, media campaigns and special projects tailored to specific ethnic communities or groups.

§ 3304. *Advertising spending.* a. Each agency shall ensure that at least 50 percent of its annual advertising spending for print and digital publications and television and radio outlets goes toward ethnic and community media outlets, except that agencies may apply to the executive director for a waiver from such requirement.

b. To the extent that these requirements conflict with an agency's requirement to comply with legal and statutory notices that require posting or distribution in publications or media pursuant to local, state or other applicable law, such notices are exempt from the requirements of this section. For the purposes of this exemption, an agency may subtract the publication cost of such legally required notices from its total advertising budget before calculating its required ethnic and community media spending pursuant to subdivision a.

c. When purchasing advertising, an agency shall give priority to local, minority- and women-owned ethnic and community media outlets whenever practicable.

§ 2. This local law takes effect 45 days after it becomes law.

Referred to the Committee on Governmental Operations.

Int. No. 2314

By Council Members Salamanca and Kallos.

A Local Law to amend the New York city charter, in relation to posting estimated wait times to vote at polling places during elections

Be it enacted by the Council as follows:

Section 1. Chapter 46 of the New York city charter is amended by adding a new section 1057-h to read as follows:

§ 1057-h. Requirement to post estimated voting wait times.

a. Definitions. As used in this section, the following terms have the following meanings:

Early voting. The term "early voting" means voting in the manner authorized by title VI of article eight of the election law.

Early voting period. The term "early voting period" means the period during which early voting is permitted pursuant to subdivision 1 of section 8-600 of the election law.

b. Posting wait times required. For any primary, general or special election, including during an early voting period, the New York city board of elections shall post on its website the estimated current wait times to vote at each polling place in the city. Such estimated wait times shall be posted beginning from the time that a polling place opens each day until the time of closing, and shall be updated every 30 minutes.

§ 2. This local law takes effect 60 days after it becomes law.

Referred to the Committee on Governmental Operations.

Int. No. 2315

By Council Member Salamanca.

A Local Law in relation to a feasibility study on reimbursement for use of personal devices by city agency employees working remotely during the COVID-19 emergency

Be it enacted by the Council as follows:

Section 1. Feasibility study on reimbursement of personal device use for city agency employees working remotely during the COVID-19 emergency. a. Definitions. For the purposes of this section, the following terms have the following meanings:

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Agency. The term “agency” has the same meaning as such term is defined in section 1150 of the New York city charter and shall include the offices of the borough presidents, the comptroller and the public advocate.

City. The term “city” means the city of New York.

COVID-19 emergency. The term “COVID-19 emergency” means the local state of emergency declared by the mayor in emergency executive order number 98, issued on March 12, 2020, as extended.

Department. The term “department” means the department of citywide administrative services.

b. The department, in consultation with the department of information technology and telecommunications, shall conduct a study on the feasibility of reimbursing the use of personal devices, including but not limited to mobile devices and computers, by city agency employees in performing work for the city remotely during the COVID-19 emergency. Such study shall, at a minimum, assess potential barriers to such reimbursement, including but not limited to collective bargaining, and assess the estimated costs of providing such reimbursement at varying levels. The department shall submit to the mayor and the speaker of the council a report of such study detailing its findings and recommendations no later than 90 days after the effective date of this local law.

§ 2. This local law takes effect immediately.

Referred to the Committee on Governmental Operations.

Int. No. 2316

By Council Members Salamanca and Holden.

A Local Law to amend the New York city charter, in relation to city agency attendance at council hearings

Be it enacted by the Council as follows:

Section 1. Section 29 of the New York city charter is amended by adding a new subdivision c to read as follows:

c. In any case in which an officer or employee of a city agency testifies at a council committee hearing open to the public, at least one officer or employee of such agency shall remain in attendance for the entirety of the hearing. In this subdivision, the term “city agency” means an agency established by the charter and any other agency designated by the mayor.

§ 2. This local law takes effect immediately.

Referred to the Committee on Governmental Operations.

Preconsidered L.U. No. 787

By Council Member Dromm:

Seagirt Senior Housing, Block 15810, Lot 30; Queens, Community District No. 14, Council District 31.

Adopted by the Council (preconsidered by the Committee on Finance).

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

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Preconsidered L.U. No. 788

By Council Member Dromm:

Penn South, Block 747, Lot 1, Block 748, Lot 1, Block 749, Lot 1, Block 749, Lot 24, Block 751, Lot 1, Block 752, Lot 1; Manhattan, Community District No. 4, Council District 3.

Adopted by the Council (preconsidered by the Committee on Finance).

Preconsidered L.U. No. 789

By Council Member Salamanca:

Application No. 20215023 HAK (South Portland - Amended Article XI) submitted by the New York City Department of Housing Preservation and Development for an amendment to a previously approved real property tax exemption for property located at Block 2003, Lot 37, Borough of Brooklyn, Community District 2, Council District 35.

Adopted by the Council (preconsidered and approved by the Committee on the Committee on Land Use and the Subcommittee on Landmarks, Public Sitings and Dispositions).

L.U. No. 790

By Council Member Salamanca:

Application number C 190118 ZMX (909 Castle Hill Avenue Rezoning) submitted by 510 East Realty Inc., pursuant to Section 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 7a, changing from an R3-2 District to an R6B and establishing within the proposed R6B District a C1-3 District, Borough of the Bronx, Community District 9, Council District 18.

Referred to the Committee on Land Use and the Subcommittee on Zoning & Franchises.

L.U. No. 791

By Council Member Salamanca:

Application number N 210096 ZRX (909 Castle Hill Avenue Rezoning) submitted by 510 East Realty Inc., pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of the Bronx, Community District 9, Council District 18.

Referred to the Committee on Land Use and the Subcommittee on Zoning & Franchises

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L.U. No. 792

By Council Member Salamanca:

Application number C 200298 ZSK (West 16th Street Special Permit) submitted by Bedford Carp Realty III, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 106-32(a) of the Zoning Resolution to allow a commercial use (Use Group 16 use) not permitted by the provisions of Section 106-31 (Special Provisions for As-of-Right New Buildings for Use Group M or Commercial Use) to facilitate the development of a 2-story commercial warehouse building, on property located 2706 West 16th Street (Block 6995, Lot 74), in an M1-2 District, within the Special Coney Island Mixed Use District, Borough of Brooklyn, Community District 13, Council District 47.

Referred to the Committee on Land Use and the Subcommittee on Zoning & Franchises.

NEW YORK CITY COUNCIL**ANNOUNCEMENTS****NEW YORK CITY COUNCIL
FISCAL YEAR 2022
EXECUTIVE BUDGET HEARINGS**

Please be advised of the following scheduled Council Agency Hearings relative to the Fiscal Year 2022 Executive Budget to be held remotely as follows:

Friday, May 14, 2021

Time	Agency Testifying	Finance Committee jointly with Council Committee
10:00-12:00	HPD	Housing & Buildings
12:00-1:00	Sanitation	Sanitation & Solid Waste Management
1:00-2:00	Small Business Services	Small Business

Wednesday May 19, 2021

Time	Agency Testifying	Finance Committee jointly with Council Committee
9:00-11:00	Education	Education
11:00-1:00	School Construction Authority	Education jointly with Subcommittee on Capital Budget
1:00-2:00	Health & Mental Hygiene	Health jointly with the Committee on Mental Health, Disabilities and Addiction
2:00-3:00	Housing Authority	Public Housing

[Subcommittee on Zoning & Franchises](#)

Francisco Moya, Chairperson

See Land Use Calendar

Remote Hearing (Virtual Room 1).....10:00 a.m.

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Thursday, May 20, 2021

Time	Agency Testifying	Finance Committee jointly with Council Committee
10:00-11:00	Finance	Finance
11:00-12:00	Information Technology and Telecommunications	Land Use jointly with the Committee on Technology and the Subcommittee on Capital Budget
12:00-2:00	Parks and Recreation	Parks and Recreation
2:00-3:00	Corrections	Criminal Justice

Friday May 21, 2021

Time	Agency Testifying	Finance Committee jointly with Council Committee
10:00-11:00	Environmental Protection	Environmental Protection
11:00-12:00	Health and Hospitals	Hospitals
12:00-1:00	City University of New York	Higher Education
1:00-2:00	Board of Elections	Governmental Operations
2:00-3:00	Campaign Finance Board	Governmental Operations

Monday May 24, 2021

Time	Agency Testifying	Finance Committee jointly with Council Committee
10:00-1:00	Office of Management & Budget	Finance jointly with Subcommittee on Capital Budget
1:00-2:00	Comptroller	Finance
2:00-3:00	Independent Budget Office	Finance

Tuesday, May 25, 2021

Time	Agency Testifying	Finance Committee
Begins 10:00*	Public*	Finance

[Committee on Land Use](#)

Rafael Salamanca, Jr., Chairperson

All items reported out of the Subcommittees**AND SUCH OTHER BUSINESS AS MAY BE NECESSARY**

Remote Hearing (Virtual Room 1)..... 11:00 a.m.

Thursday, May 27, 2021

Committee on Finance

Daniel Dromm, Chairperson

Int 2291 - By Council Member Dromm (by request of the Mayor) - **A Local Law** to amend the administrative code of the city of New York, in relation to authorizing an increase in the amount to be expended annually in the Madison/23rd/ Flatiron/ Chelsea business improvement district, an extension of the Madison/23rd/Flatiron/Chelsea business improvement district, and a change in the method of assessment upon which the district charge in Madison/23rd/Flatiron/Chelsea business improvement district is based.
Remote Hearing (Virtual Room 1).....9:00 a.m.

Stated Council Meeting (Virtual Room 1)..... Agenda –1:30 p.m.

The following comments were among the remarks made by the Speaker (Council Member Johnson) during the Communication from the Speaker segment of this meeting:

The Speaker (Council Member Johnson) acknowledged that Laura Popa, the Council's Deputy Chief of Staff for Legislation and Policy, was leaving the Council to join the De Blasio administration. Ms. Popa had been with Council for about twenty-one years. The Speaker (Council Member Johnson) spoke of how she had been a trusted advisor to every Speaker since Peter Vallone, Sr. He praised Ms. Popa's work as having an enormous impact on policy and legislation in the Council. The Speaker (Council Member Johnson) noted that she was the architect behind the paid sick law, the young women's initiative, and the plans to close Rikers Island. He added that she was also responsible for much of the Council's work on the environment, on homelessness, and on food policy. He further noted that Ms. Popa had shaped criminal justice reform which included legislation and punishment for petty crimes and littering. Ms. Popa's greatest legacy, he continued, may be all the young attorneys that she had mentored over the years. The Speaker (Council Member Johnson) thanked Ms. Popa for her service to the New York City Council and to New York City and wished her the best of luck in her new position. He asked the participants of the remote meeting to give Ms. Popa a big round of applause.

The Speaker (Council Member Johnson) also acknowledged that Finance analyst Sarah Gastelum was leaving the Council to work for the Mayor's team. He noted that she had done a tremendous amount of work over the years especially in covering HPD and NYCHA issues. The Speaker (Council Member Johnson) thanked Ms. Gastelum for her contributions to the Council and congratulated her on her future endeavors.

The Speaker (Council Member Johnson) acknowledged that July was Asian American and Pacific Islander Heritage Month when the history and achievements of the Asian American and Pacific Islander community are celebrated. He noted that there had been a tremendous and unacceptable increase in violence and harassment against Asian American New Yorkers. He spoke of a Council resolution on that day's Stated Meeting Agenda that was designed to address such hate crimes (*Editor's Note: please see the voice-vote Resolutions section for Res. No. 1619 printed in these Minutes*).

The Speaker (Council Member Johnson) wished a blessed *Eid Mubarak* to our Muslim friends and neighbors following their month of fasting and prayers.

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Whereupon on motion of the Speaker (Council Member Johnson), the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) adjourned these virtual proceedings to meet again for the Stated Meeting on Thursday, May 27, 2021.

MICHAEL M. McSWEENEY, City Clerk
Clerk of the Council

Editor's Local Law Note: Int. Nos. 888-A, 901-A, 1529-A, and 2050-A, all adopted by the Council at the April 29, 2021 Stated Meeting, were signed into law by the Mayor on May 11, 2021 as, respectively, Local Law Nos. 51 to 54 of 2021.

**Exhibit D to Sheynker Affirmation-
Notice of Completion of the Final Environmental Impact Statement, dated
March 5, 2021
[pp. 5197 - 5242]**

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DEPARTMENT OF CITY PLANNING
CITY OF NEW YORK

ENVIRONMENTAL ASSESSMENT AND REVIEW DIVISION

Marisa Lago, *Director*
Department of City Planning

March 5, 2021

**NOTICE OF COMPLETION OF
THE FINAL ENVIRONMENTAL IMPACT STATEMENT
Zoning For Coastal Flood Resiliency**

Project Identification

CEQR No. 19DCP192Y
ULURP No. N210095 ZRY

Lead Agency

City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271

SEQRA Classification: Type I

Contact Person

Olga Abinader, Director (212) 720-3493
Environmental Assessment and Review Division
New York City Department of City Planning

Pursuant to City Environmental Quality Review (CEQR), Mayoral Executive Order No. 91 of 1977, CEQR Rules of Procedure of 1991 and the regulations of Article 8 of the State Environmental Conservation Law, State Environmental Quality Review Act (SEQRA) as found in 6 NYCRR Part 617, a Final Environmental Impact Statement (FEIS) has been prepared for the action described below. The proposal involves an action by the City Planning Commission and Council of the City of New York. Copies of the FEIS are available for public inspection at the office of the undersigned as well as online at the Department of City Planning website: www.nyc.gov/planning. A public hearing on the Draft Environmental Impact Statement (DEIS) for the proposal was held on February 3, 2021. Written comments from the public were requested and received by the Lead Agency through February 16, 2021. The FEIS addresses all substantive comments made on the DEIS during the public hearing and subsequent comment period.

A. PROJECT IDENTIFICATION

Introduction

The New York City Department of City Planning (DCP) is proposing a zoning text amendment to update the Special Regulations Applying in Flood Hazard Areas (Article VI, Chapter 4) of the New York City Zoning Resolution (ZR), which includes the "Flood Resilience Zoning Text" (ULURP No. N130331(A)ZRY, CEQR No. 13DCP135Y) (the "2013 Flood Text") and "Special Regulations for Neighborhood Recovery" (ULURP No. N150302ZRY, CEQR No. 15DCP133Y) (the "2015 Recovery Text"). These temporary zoning rules were adopted on an emergency basis to remove zoning barriers that were hindering the reconstruction and retrofitting of buildings affected by Hurricane Sandy and to help ensure that new construction there would be more resilient. The 2013 Flood Text provisions are set to expire with the adoption of new and final Federal Emergency Management Agency (FEMA) Flood Insurance Rate

Zoning for Coastal Flood Resiliency

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Maps (FIRMs), which is anticipated to occur within the next few years. Applicability of the 2015 Recovery Text expired in July 2020. Therefore, DCP is proposing a citywide zoning text amendment, "Zoning for Coastal Flood Resiliency" (the "Proposed Action"), to improve upon and make permanent the relevant provisions of the existing temporary zoning rules of the 2013 Flood Text and 2015 Recovery Text. In addition, the Proposed Action includes special provisions to help facilitate the city's long-term recovery from the COVID-19 pandemic and its associated economic effects by providing more time for existing non-conforming uses to reopen and for builders to undertake certain construction projects. The Proposed Action also includes updates to other sections of the ZR, including the Special Regulations Applying in the Waterfront Area (Article VI, Chapter 2) and provisions within various Special Purpose Districts. To help the City prepare for or respond to other disasters, select provisions in the Proposed Action regarding power systems and other mechanical equipment, ramps and lifts, vulnerable populations, and disaster recovery rules, would be applicable citywide.

The Proposed Action would provide those homeowners, business owners, and practitioners who live and work in the city's floodplain the option to design or otherwise retrofit buildings to: (a) reduce damage from future coastal flood events, (b) be resilient in the long-term by accounting for climate change, and (c) potentially save on long-term flood insurance costs. In addition, it would allow resiliency improvements to be more easily incorporated on waterfront sites at the water's edge and in public spaces, as well as provide zoning regulations to help facilitate the city's long-term recovery from the COVID-19 pandemic and other future disasters. Overall, implementation of the Proposed Action would improve the ability of the city to withstand and recover quickly from future storms or other disaster events.

The Proposed Action would mostly affect New York City's current 1% annual and 0.2% annual chance floodplains, as illustrated in the FEIS. However, select provisions of the Proposed Action would be applicable citywide (discussed in detail below), affecting all five boroughs and the city's 59 Community Districts.

The Proposed Action was drawn from lessons learned and initiatives implemented through New York City's recovery efforts after Hurricane Sandy and was developed based on analysis of resilient construction in the floodplain, through widespread coordination with partner City agencies, and community feedback received during an extensive public engagement process as laid out in Zoning For Resiliency: Community Outreach Summary, released in 2018.

Features of the Proposed Action include:

1. **An expanded geography:** Buildings and lots in both the city's 1% and 0.2% annual chance floodplains would be able to pursue resiliency improvements to partially meet, fully meet, or exceed flood-resistant construction standards, even when these standards are not required by FEMA or Appendix G of the New York City Building Code.
2. **An enhanced building envelope:** Zoning allowances coupled with revised design requirements would allow building owners to more effectively factor projected sea level rise when designing new buildings or retrofitting existing ones, without creating incongruous and uninviting streetscapes. This would increase the building's and its content's safety and allow flood insurance costs to be reduced, while ensuring an accessible design that maintains an inviting streetscape.
3. **Alternatives for the relocation of equipment:** Building owners would have additional zoning flexibility to relocate mechanical, electrical, and plumbing (MEP) equipment or install backup systems, such as generators, above projected flooding heights on roofs or in new, separate structures that would elevate a site's MEP equipment.
4. **A zoning framework that facilitates recovery from future disasters:** A regulatory structure would be established to facilitate the recovery from potential future disasters. Given the

present COVID-19 pandemic, selective provisions would be included to facilitate the present recovery. The Proposed Action would also limit the growth of nursing homes and other similar facilities in flood prone areas. This would increase the safety of particularly vulnerable populations and allow the City to more effectively assist impacted areas.

In the long term, the Proposed Action, in conjunction with coastal protection strategies and infrastructure improvements that are being pursued by the City and other state and federal agencies, would help to fully realize the vision of a more resilient New York City.

Finally, the Proposed Action also includes related local actions intended to address neighborhood-specific resiliency challenges (described in further detail below). These actions will be subject to separate land use applications and environmental reviews but are moving in parallel with this citywide zoning text amendment.

As described in detail below, the Proposed Action is not expected to cause a significant change in the overall amount, type, or location of development. The Proposed Action is not expected to induce development where it would not have otherwise occurred absent the Proposed Action.

It should be noted that in December 2020, after completion and publication of the Zoning for Coastal Flood Resiliency DEIS and Notice of Completion, the New York City Mayor's Office of Environmental Coordination (MOEC) issued a revised *City Environmental Quality Review (CEQR) Technical Manual*. As such, this FEIS has been revised as necessary to reflect the updated methodology of the 2020 *CEQR Technical Manual*.

Background

The City's Coastal Flood Risk

With 520 miles of shoreline, there is no denying that New York City is a coastal city. Its large natural harbor, where the Hudson River meets the Atlantic Ocean, is one of the reasons that the city has become a center of commerce and culture. However, due to its extensive and varied shoreline, New York City is vulnerable to coastal flooding.

While there are many sources of flooding that pose issues in New York City, including flooding from severe rain storms or due to impaired infrastructure, coastal storms present the most significant flood risk in terms of compromising human safety, property damage, and business disruption. Therefore, in 1983, the City joined the National Flood Insurance Program (NFIP) allowing homeowners to purchase flood insurance and receive assistance following flood events. This program, administered by FEMA, is a voluntary program based on an agreement between the federal government and local communities. FEMA identifies areas at risk of flooding through the development of flood-risk maps. Local authorities adopt these maps to implement and enforce floodplain management regulations. In exchange, local communities get access to federally backed flood insurance, which is made available to property owners and renters throughout the floodplain. The rates for this flood insurance vary depending on the property's location, height above sea level and general building characteristics. These rates can be substantially reduced when subgrade spaces, such as basements and cellars are filled in residential buildings, and when living spaces are elevated above the base flood elevation (BFE).

Table 1: Number of Lots and Buildings in New York City's Floodplain

	1% Annual Chance (FIRM + PFIRM)	0.2% Annual Chance (FIRM + PFIRM)	TOTAL
Total Number of Lots (without Parks)	65,582	36,718	102,300
<i>Built</i>	<i>58,927</i>	<i>35,435</i>	<i>94,362</i>
<i>Vacant</i>	<i>6,655</i>	<i>1,283</i>	<i>7,938</i>
<i>% Built</i>	<i>90</i>	<i>97</i>	<i>92</i>
<i>% Vacant</i>	<i>10</i>	<i>3</i>	<i>8</i>
Total Number of Buildings	80,907	44,632	125,539

Source: NYC DCP; Utilizing 2007 FIRM and 2015 PFIRM numbers, the most recently available data from FEMA.

Areas at risk of a 1% or 0.2% annual chance of flood are commonly known as the floodplain and are currently designated on FEMA's FIRMs and Preliminary FIRMs (PFIRMs). New York City's 1% annual chance floodplain, illustrated in the FEIS, covers approximately 15 percent of the city's land area, touching 50 of the city's 59 Community Boards and 45 of its 51 Council Districts. This vast geography contains over 80,900 buildings housing 434,500 residents that are currently at high risk of flooding by coastal storms. In commercial areas, the floodplain contains roughly 14,500 private businesses that employ approximately 270,000 people. In industrial areas, roughly 3,600 private businesses that employ approximately 87,000 people are located in the floodplain. The city's 0.2% annual chance floodplain, shown in the FEIS, encompasses an additional four percent of the city's land area, which includes approximately 44,600 buildings that are at moderate risk of being flooded today and houses an additional 348,000 residents. Combined, there are a total of 125,500 buildings and 782,800 residents in the city's floodplain (see **Table 1**).

No single flood event has made New York City's vulnerability clearer than Hurricane Sandy in 2012. This event created a historic storm surge that flooded neighborhoods well beyond the 1% annual chance floodplain, inundating approximately half of the lots in the 0.2% annual chance floodplain, and illustrating how these areas are at risk today and will continue to be at risk in the future.

The City's Regulatory Framework in the Floodplain

The need to quickly recover from Hurricane Sandy revealed several regulatory conflicts between the construction standards in Appendix G of the NYC Building Code, which are overseen by the New York City Department of Buildings (DOB) as a requirement of the NFIP, and zoning regulations located within the ZR, which is administered by DCP and enforced by DOB. Within the 1% annual chance floodplain, Appendix G currently requires all habitable spaces of new construction, and existing buildings that were substantially damaged or are undertaking substantial improvements, to be raised above the Design Flood Elevation (DFE). All spaces below the DFE must be either wet-floodproofed, if the building is used solely for residential use, or dry-floodproofed, if the building contains non-residential uses. Spaces that are wet-floodproofed only can be used as crawl space, or for parking, storage and building access, and spaces that are dry-floodproofed can be used for non-residential uses. Additionally, residential buildings are not allowed to provide spaces, such as basements and cellars, below grade and mechanical equipment must be located above the DFE.

These requirements have, at times, posed conflicts with certain zoning regulations, as they change the way that most buildings in New York City are structurally designed and internally configured. In New York City, aside from land use, zoning also establishes limits on the size and shape of buildings, with a range of zoning districts mapped to reflect their varying density and character of waterfront areas. These limits include height and floor area restrictions, which may hinder buildings from elevating their spaces to comply with Appendix G.

Historically, the ZR generally did not take into account the issues caused by coastal flooding. The floodplain was first introduced to the ZR as part of the Lower Density Contextual Zoning (ULURP No. N890552ZRY)

text amendments adopted in 1989 when architects and residents of waterfront communities raised concerns about achieving permitted height and floor area in the floodplain. As a result, underlying zoning regulations now allow for buildings in the floodplain to measure building perimeter wall, roof and cellar heights from the BFE rather than from the adjoining grade.

After Hurricane Sandy in October 2012, the Mayor signed Executive Order No. 230, suspending height and other restrictions to the extent necessary to allow buildings to be rebuilt to the Appendix G requirements. The Executive Order was by its nature an interim measure that needed to be codified by a zoning text amendment. As a result, the City had to adopt two zoning text amendments—the 2013 Flood Text (ZR Article VI, Chapter 4) and the 2015 Recovery Text (ZR Article VI, Chapter 4, Appendix A)—on an emergency basis, and for a finite period. These were intended to remove regulatory barriers that would hinder or prevent the reconstruction of storm-damaged properties and to enable new and existing buildings to comply with new, higher flood elevations issued by FEMA, and to new requirements in the New York City Building Code.

In removing regulatory obstacles from the ZR, the 2013 Flood Text allowed buildings within the 1% annual chance floodplain to meet the requirements of Appendix G by, for example, allowing height to be measured from the DFE (rather than from grade). The subsequent 2015 Recovery Text simplified the process to document non-compliances, and established new rules to allow the reconstruction of damaged homes located on narrow and small lots.

Both 2013 and 2015 zoning changes also supported the City's land use strategy for the floodplain. With such a vast and populous area subject to varied risks of flooding, it is evident that the city cannot simply retreat from the entire shoreline. Therefore, the City's local land use policies across the 1% and 0.2% annual chance floodplains vary based on the degree of flood risk that exists in different parts of the city. As an example, in 2017, the City established Special Coastal Risk Districts in Broad Channel and Hamilton Beach, Queens to limit future density in these areas due to their exceptional vulnerability to coastal storms and projected daily tidal flooding due to sea level rise. On a citywide level, the City's land use strategy has aimed to maintain prevailing land uses and the planned density across neighborhoods in the floodplain while encouraging buildings and neighborhoods of all types to become resilient in the long-term.

In addition, the two text amendments were adopted on a temporary, emergency basis and were not subject to environmental review, as determined to be Type II per New York Codes, Rules, and Regulations (NYCRR) Part 617.5 (33): "*adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list.*" The zoning changes are set to expire in the next few years: the 2013 Flood Text expires within one year of the adoption of new FIRMs, which are expected to be revised by FEMA in the next few years, while applicability of the 2015 Recovery Text expired in July 2020. As described in the Analytic Framework in Section F below, the environmental analysis assumes a future scenario in which both the 2013 Flood Text and the 2015 Recovery Text have expired. However, illustrations of scenarios with the 2013 Flood Text regulations are provided in the FEIS to compare what exists today with what the Proposed Action is modifying and improving.

Description of the Proposed Project Area

The Proposed Action would be applicable to all lots located wholly or partially within both the current 1% and 0.2% annual chance floodplains (the latter serving as a proxy for the projected 2050s 1% annual chance floodplain). This contrasts with the 2013 Flood Text and 2015 Recovery Text, which have a more limited geography as they only apply to buildings located wholly or partly within the 1% annual chance floodplain. However, to help the city prepare for or respond to other disasters, select provisions in the Proposed Action would be applicable throughout the city.

1% Annual Chance Floodplain

As illustrated in the FEIS, the 1% annual chance floodplain encompasses a significant portion of land coverage in New York City, including approximately 65,600 lots and 80,900 buildings across the city's five boroughs.

0.2% Annual Chance Floodplain

As also shown in the FEIS, the 0.2% annual chance floodplain encompasses a large portion of land in New York City, including approximately 36,700 lots and 44,600 buildings across the city's five boroughs.

B. PURPOSE AND NEED

The Proposed Action would provide those homeowners, business owners, and practitioners who live and work in the city's floodplain the option to design or otherwise retrofit buildings to: (a) reduce damage from future coastal flood events, (b) be resilient in the long-term by accounting for climate change, and (c) potentially save on long-term flood insurance costs. In addition, it would allow resiliency improvements to be more easily incorporated on waterfront sites at the water's edge and in public spaces, as well as provide zoning regulations to help facilitate the city's long-term recovery from the COVID-19 pandemic and other future disasters. Overall, implementation of the Proposed Action would improve the ability of the city to withstand and recover quickly from future storms or other disaster events.

The Proposed Action builds upon the 2013 Flood Text and the 2015 Recovery Text which were approved in the aftermath of Hurricane Sandy. These temporary zoning rules, adopted on an emergency basis, removed many of the zoning barriers hindering the reconstruction and retrofitting of buildings affected by the storm and helped ensure that new construction in these locations would be more resilient. The 2013 Flood Text provisions are set to expire with the adoption of new and final FEMA Flood Insurance Rate Maps, anticipated to occur in the next few years. Applicability of the 2015 Recovery Text expired in July 2020. If these rules are not made permanent, it would limit the ability of owners to protect existing vulnerable buildings from flooding and would disincentivize more resilient construction in the floodplain.

Therefore, the Proposed Action would make permanent the temporary zoning rules of these previous actions, but also improve upon them based on lessons learned since their original implementation through DCP's analysis of resilient construction in the floodplain, coordination with partner City agencies, and community feedback received during public engagement since Hurricane Sandy.

Most critically, the 2013 Flood Text and the 2015 Recovery Text focused on modifying zoning regulations so that buildings could be constructed or modified to meet minimum requirements set forth in Appendix G of the Building Code. However, the city's flood risk will continue to increase with climate change, since sea level rise will increase the potential height of storm surges. For that reason, current building code standards that are tied to today's storm surge projections may not be sufficient to protect buildings from being damaged by future storms. In addition to increasing the potential height of storm surges, sea level rise will also cause the floodplain to expand over time.

To supplement and inform future flood risk, the City relies on the findings of the New York City Panel on Climate Change (NPCC). The NPCC is a group of scientists and private sector experts that provides climate change projections for the city. NPCC's most recent report, released in early 2019, provides the latest estimates for sea level rise (SLR) in the city. The projections take into account different climate change scenarios and inputs to arrive at high- and low-range SLR projections for the 2020s, 2050s, 2080s, and 2100. The NPCC projects that the city could experience 28 inches of sea level rise at the 90th percentile of its estimation in the 2050s. The City conservatively uses the NPCC's high-range sea level rise projections for the 2050s as its actionable data to inform land use and capital planning considerations, including the

Zoning for Coastal Flood Resiliency

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Proposed Action. The high-end projections for the 2050s are roughly equivalent to the mid-range projections (the likely rate of sea level rise) in the 2080s and 2100s. Employing this standard helps to ensure a high degree of safety and resiliency for buildings throughout their full life cycles. Moreover, it should be noted that these projections are not a fixed number, but rather a large range, particularly as one looks beyond the 2050s. The City continues to monitor the NPCC's projections as they evolve over time because the science and underlying data are not static and will continue to advance.

Based on data provided by the NPCC, the 1% annual chance floodplain is projected to cover one-quarter of the city's total landmass by the 2050s. This area, which closely overlaps today's 0.2% annual chance floodplain (whose full geographic extent includes the area of the 1% annual chance floodplain), currently contains twice the number of residents as today's 1% annual chance floodplain: approximately 780,000 residents and 122,100 buildings. As a result, current zoning rules need to be modified to take into consideration future flood risk, so that long-term adaptation can be achieved across the city's entire floodplain.

Beyond this, there are other issues that need to be addressed to ensure that the zoning regulations applicable in the floodplain allow for all types of buildings in neighborhoods across the city to be resilient in the long term. Each neighborhood in the floodplain faces different challenges to adapt to climate change. For instance, most of the floodplain is characterized by low-density communities that contain a prevalence of single- and two-family homes that are highly vulnerable to flooding but are also easier to retrofit since they often can be physically elevated. There are also medium- and high-density neighborhoods in the floodplain, which contain larger multi-family structures that make it more difficult and more expensive to fully comply with resiliency standards but can be protected over time through incremental resiliency improvements. The floodplain also hosts different types of commercial corridors and industrial areas that need to be protected. These areas play an important role in providing services to residents in the floodplain, and in serving critical functions that support the city's overall population and economy. However, businesses face challenges to incorporate resiliency improvements while keeping a functional operation that largely depends on being at grade. These uses will therefore have to explore incremental resiliency improvements and creative solutions to increase the building's safety over time.

Through its public outreach efforts and analyses, DCP has identified that the current zoning regulations are predominantly focused on low-density residential areas – which were heavily impacted by Hurricane Sandy – and they less effectively address the wider variety of conditions found in the city's floodplain. This makes it less likely that other areas, such as retail corridors, can become resilient over time. In addition, some of the regulations themselves have been found to be not always well calibrated, sometimes hampering the ability to conduct resiliency improvements while at other times leading to buildings out of scale with their surroundings or with unwelcoming blank walls at street level. These inconsistencies sometimes even occur along the same streets. This is an outcome of the necessarily fast-paced nature of the response to the 2012 hurricane, with DCP and other agencies making their best attempt to create zoning regulations to address situations never before seen in the city. With more than seven years of experience under the current floodplain regulations, some of these inconsistencies have become clear and must be addressed so that buildings and, by extension, neighborhoods in the city's floodplain can become resilient.

It will take time for New York City's building stock to adapt to climate change because only a small portion of these buildings currently meet the requirements of Appendix G of the Building Code. Nevertheless, the City believes that resilient construction should become the new normal in the floodplain. By making the current regulations permanent and addressing the various identified issues with them, the Proposed Action would facilitate this goal and make for more resilient neighborhoods, since places with a resilient building stock would be able to bounce back more quickly from a coastal flood event. In conjunction with coastal protection strategies and infrastructure improvements that are being pursued by the City collectively with other state and federal agencies, this will help the City to fully realize the vision of a more resilient New York City.

Finally, the city's experience recovering from Hurricane Sandy and the current COVID-19 pandemic makes

clear that zoning should include rules that can help facilitate long-term disaster recovery. While the storm pointed out the need for provisions that make it easier to reconstruct damaged buildings after a disaster like a hurricane, there is also a need for zoning regulations to address the associated economic effects from disasters like the pandemic, even if they do not cause physical damage. All rules should be able to be made applicable quickly after a disaster strikes the city, as with the COVID-19 pandemic, but should last no longer than necessary to facilitate the recovery. These regulations under the “Disaster Recovery Rules” were drawn from the 2015 Recovery Text and the Emergency Executive Orders that have been issued to address the pandemic. Beyond this, the city can be made less susceptible to future disasters by undertaking zoning changes that keep vulnerable populations in nursing homes out of harm’s way and by allowing for a more resilient energy grid.

Goals of the Proposed Action

Given the issues currently facing New York City’s coastal neighborhoods under the existing zoning framework and the possibility for future disasters beyond the floodplain, DCP has developed the following core goals to assist the city and its residents to be resilient over the long-term.

Goal 1. Encourage resiliency throughout the current and future floodplains.

All building owners in areas subject to flood risk should have the option to proactively incorporate resiliency standards into their buildings, even when these standards are not required by FEMA and Appendix G of the New York City Building Code.

Goal 2. Support long-term resilient design of all building types.

Zoning rules in the floodplain should facilitate protection from coastal flooding for all buildings, independent of their age, typology or specific location.

Goal 3. Allow for adaptation over time through incremental retrofits.

Building owners should be able to incrementally incorporate resiliency improvements into all buildings and waterfront sites, including existing structures that are not able to fully meet Appendix G.

Goal 4. Facilitate future recovery by reducing regulatory obstacles.

Zoning rules should assist vulnerable populations and the recovery process after a future storm or other type of disaster, including the ongoing COVID-19 pandemic.

While the Proposed Action includes a range of zoning changes to meet these four goals, it would continue the overarching goal of the 2013 Flood Text to maintain prevailing land uses and the planned density in neighborhoods across the floodplain, while helping buildings and neighborhoods of all types to be resilient in the long-term. The following section gives an overview of the proposed text amendment, categorized by the four goals outlined above.

C. DESCRIPTION OF THE PROPOSED ACTION

Like the 2013 Flood Text and the 2015 Recovery Text, the Proposed Action would generally provide optional zoning rules in the floodplain for buildings to fully incorporate “flood-resistant construction standards,” but also for those who may want to incorporate incremental resiliency improvements to protect their buildings against flooding over time, as described in more detail below. Given the scale and variety of the city’s floodplain, the Proposed Action necessarily includes modifications to many existing zoning regulations. These changes generally allow habitable spaces and other building support features to be better

protected and raised out of harm's way and address the effect these elevated spaces can have on the city's streetscape. The Proposed Action also includes provisions with applicability beyond the floodplain to help address a wider variety of situations.

Goal 1. Encourage resiliency throughout the current and future floodplains.

The Proposed Action would modify zoning regulations to allow building owners throughout the floodplain to proactively incorporate resiliency improvements in their buildings by expanding the applicability of the optional rules.

Expanding Beyond the Current 1% Annual Chance Floodplain

The Proposed Action would greatly expand the current availability of optional regulations to allow more building owners to design or retrofit their buildings to meet "flood-resistant construction standards" proactively. The existing 2013 Flood Text only applies in the 1% annual chance floodplain. As a result, for buildings in the 0.2% annual chance floodplain, there are no zoning regulations to facilitate or encourage resiliency improvements. While most uses in this area are not required to comply with Appendix G, the current 0.2% annual chance floodplain will become more vulnerable to flooding in the future as sea-level rise projections show flood risk increasing over time. To address this, the Proposed Action would apply to both the 1% annual chance floodplain and the 0.2% annual chance floodplain. The City believes that the 0.2% annual chance floodplain geography is a valid proxy for the projected 1% annual chance floodplain in the 2050s and that this geographic expansion is a sensible precautionary approach that would allow the city to proactively adapt to future flood risk. Eligibility within these two geographies would be determined at the time of a building permit application.

Expanding to Lots

The Proposed Action would simplify the design process and encourage more building owners to proactively meet "flood-resistant construction standards" by determining applicability based on their zoning lot. The 2013 Flood Text provisions are currently applicable only to buildings located wholly or partially within the 1% annual chance floodplain. For example, in a residential campus with multiple buildings where only some of which are in the 1% annual chance floodplain, the 2013 Flood Text zoning allowances and flood protection standards cannot be applied to all buildings, making the design process more complex—and ultimately costly—since each building would have to follow different zoning rules. Along streets, this standard produces inconsistent results where only some specific buildings touch the floodplain edge. By determining eligibility based on whether the zoning lot is both wholly or partially within the floodplain, the Proposed Action would produce a more consistent outcome and be more in line with applicability requirements in the rest of the ZR.

Goal 2. Support long-term resilient design for all building types.

The Proposed Action would include optional zoning regulations that better enable building owners to make their buildings more resilient by physically elevating habitable spaces and other building support features above expected flood elevations. These would generally modify existing regulations for building envelopes and ground floors, as well as address more unique situations. When these allowances are used, buildings would have to comply with "flood-resistant construction standards" and a new set of streetscape requirements meant to improve the relationship between the raised building and its surroundings.

Accommodating Current and Future Flood Risk in the Building Envelope

The Proposed Action includes optional modifications of various building envelope regulations to better allow habitable spaces to be raised above flood levels.

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Flood-Resistant Construction Elevation

The Proposed Action would continue to provide additional building height where building owners are required or are opting to meet Appendix G floodproofing standards.

All zoning districts have height and setback regulations that govern the size and shape of buildings. Their heights are measured from different starting points depending on the type of building and the zoning district. For example, the maximum height of a single-family residence in a lower-density contextual Residence District (typically 35 feet) is measured from the “base plane,” which is generally located between the elevation of the curb and the average natural grade along the building facade.

Since 1989, in the 1% annual chance floodplain, required heights in the ZR can be measured from the BFE to allow building owners to construct habitable space above the elevations which FEMA projects would be inundated by flooding without losing buildable space. However, it has been identified that pre-1989 buildings could utilize this extra height for enlargements without providing any floodproofing, as long as the improvement did not trigger compliance with Appendix G.

In the aftermath of Hurricane Sandy, DOB changed the Building Code to require that buildings in the 1% annual chance floodplain locate all living spaces at or above the DFE which, depending on building type, requires an extra one or two feet above the BFE as an extra measure of safety. The 2013 Flood Text embedded this rule into the ZR by allowing heights in all zoning districts to be measured from the “flood-resistant construction elevation” (FRCE), which is generally synonymous with the DFE in the current rules. The underlying building envelope associated with building types and zoning districts did not change; the only change was to the height from where the envelope was measured. With this modification, building owners can meet the requirements of Appendix G without sacrificing living space.

The Proposed Action would continue to allow building envelopes across all zoning districts to be measured from the FRCE. In addition, such term would be revised to add certain clarifications. The FRCE will be required to not be lower than two feet above lowest adjacent grade to ensure a minimum level of floodproofing. In the 0.2% floodplain, where compliance with Appendix G is voluntary and no DFEs exist, this two-foot minimum level of protection would also apply. Coupled with required compliance with the “flood-resistant construction standards,” this would mean that no living space would be located below the FRCE, and below grade basements and cellars would not be built in residences. In addition, essential facilities (such as hospitals) would be able to measure height from the 500-year flood elevation, which is required by Appendix G. Finally, the allowance to measure height from the BFE would be removed to ensure a consistent framework and any additional height would be tied to flood-resistant improvements.

Reference Plane

The Proposed Action would include a consistent framework for additional building height to encourage building owners to address long-term climate change, lower insurance costs and provide usable spaces at grade.

Acknowledging that there may be situations where the FRCE height could result in spaces with awkward heights that could deleteriously impact the streetscape, the 2013 Flood Text allows the reference point at which heights are measured to be adjusted upwards to create more practical and viable ground floor spaces. This alternate reference plane is available in areas where the BFE equals or exceeds four feet, and the plane’s maximum height (ranging from 9 to 12 feet) is dependent on the zoning district and building use.

While the notion of an alternative reference plane has proven sensible, there are issues with the specific ways it is applied. First, varying the reference point based on the building type and zoning district creates a highly complex framework that benefits some buildings more than others. This leads to inconsistent outcomes, sometimes even along the same street due to minor changes in the topography. Additionally, the

BFE height necessary to use the reference plane limits its applicability since most of the buildings in the 1% annual chance floodplain are subject to a lower BFE. This means that most building owners in the floodplain can only measure building height from the FRCE, whose lower height only encourages compliance with the minimum construction standards set forth in Appendix G, making it difficult for building owners to over-elevate their buildings without sacrificing living space. This means that building owners cannot easily incorporate sea level projections into their building design (the NPCC projects that New York City would be subject to approximately 30 inches of sea level rise by the 2050s) or maximize their flood insurance reduction (which is generally achieved when the first occupiable floor is placed four feet above the BFE).

To create a consistent framework for height measurement that addresses these issues, the Proposed Action would allow building heights to be measured from a new “reference plane” that is up to 10 feet above the base plane or curb level (as applicable within the underlying zoning district) in the 1% annual chance floodplain and up to five feet in the 0.2% annual chance floodplain. To ensure that the additional height is tied to actual improvement in the building’s resiliency, the building would have to comply with “flood-resistant construction standards” and its “first story above the flood elevation” (FSAFE) would have to be located at or above the chosen “reference plane” height. The FSAFE would be defined as the level of the finished floor of the first story located at or above the level to which the building complies with “flood-resistant construction standards.” In areas where the FRCE is higher than 10 feet, the higher FRCE could continue to be used.

Other Envelope Modifications

To help offset the effects of the proposed additional height that would allow construction at or above the FRCE, the Proposed Action would include several allowances intended to break down the building massing in the upper portions of buildings.

For lower-density residential areas, the Proposed Action would continue to encourage sloped roof design in areas where that type of roof is the prevailing context. However, there would be a minor modification to the existing “attic allowance,” which allows a 20 percent floor area bonus in exchange for a sloped roof in R2X, R3, R4, R4A and R4-1 Districts. The current regulations require that the additional floor area be located directly under the roof, which often results in taller roofs and building heights to accommodate a usable attic. If these rules were applied to the floodplain, the height of these buildings could be exacerbated, as building heights would be measured from the FRCE or the “reference plane.” To address this, the Proposed Action would instead allow the additional floor area to be located in any portion of the building which would encourage a lower roof slope and overall building height. In Lower Density Growth Management Areas (LDGMA) the rule would not change, since the ability to locate the additional floor area is already permitted (albeit with a steeper roof pitch). However, “cottage envelope” buildings, described below, would be able to use the lower pitch in LDGMAs since it is more reminiscent of bungalow homes.

In medium- and high-density contexts, the Proposed Action would make two modifications to promote lower building scale. First, while maximum base heights and overall heights in Quality Housing buildings may be measured from the FRCE or the “reference plane,” the Proposed Action would allow minimum base heights to continue to be measured from the base plane. This would allow setbacks in buildings to be made closer to the ground and keep the base heights lower. The provision was adopted as part of the 2013 Flood Text and would be maintained in the Proposed Action. Additionally, the Proposed Action would modify the underlying dormer allowances to provide an alternative that could break up the bulk in the upper portion of the building. The underlying dormer allowance permits 60 percent of the width of the building as a permitted obstruction in the building setback above the maximum base height, but this must diminish in width as the building rises. The Proposed Action would allow a dormer that extends up to 40 percent of the building width without any diminishing.

Accommodating "Flood-Resistant Construction Standards" on Ground Floors

The Proposed Action includes a series of regulations intended to incentivize the floodproofing of ground floors, encourage active uses to be kept at the street level to promote more resilient neighborhoods, and encourage internal building access. These regulations build on the standards included in the 2013 Flood Text but aim to provide more consistent outcomes throughout the floodplain. These are described below under five categories: wet-floodproofed spaces, dry-floodproofed spaces, cellars, street wall location, and ground floor use requirements.

Wet-Floodproofed Spaces

The Proposed Action would provide a consistent floor area exemption for wet-floodproofed ground floor spaces for all buildings to promote long-term resiliency improvements.

"Flood-resistant construction standards" require the ground floor of residential buildings to be wet-floodproofed, thereby limiting the use of this ground floor space solely to parking, storage and/or building access. While accessory parking is generally not counted toward zoning floor area calculations, spaces used for storage or building access typically count and therefore can act as a severe disincentive to floodproofing. The 2013 Flood Text addressed this by allowing all existing structures to fully exempt a wet-floodproofed ground floor. For new buildings, the exemptions are limited to entryway areas used for enclosed ramps and stairs to encourage access to be kept within the building.

The Proposed Action would provide the full ground floor exemption for wet-floodproofed spaces to new and existing buildings. This would provide more consistent results and incentivize internal access at grade, while encouraging living spaces to be elevated above the FRCE in new and existing buildings, including those that cannot be physically elevated.

Dry-Floodproofed Spaces

To promote a safe and lively pedestrian environment, the Proposed Action would encourage active dry-floodproofed ground floor spaces along the City's retail corridors.

"Flood-resistant construction standards" allow non-residential ground floor uses to be dry-floodproofed. While this method allows active uses to be kept close to grade, which is beneficial in maintaining retail continuity along the city's commercial streets, this method has proven to be quite costly. The 2013 Flood Text attempted to incentivize dry-floodproofing by allowing up to 10,000 square feet of non-residential uses in existing buildings to be exempted from floor area calculations if they are dry-floodproofed. However, this provision has seen limited use to date due to both the high cost of dry-floodproofing as well as existing restrictions on the use of relocated space that make the resiliency investment less viable. But if the 2013 provision was utilized, the large size of the floor area exemption could lead to out-of-scale development on small lots. For new buildings, the exemptions are limited to entryway areas used for enclosed ramps and stairs, to encourage access to be located within the building.

The Proposed Action would modify these incentives to better encourage dry-floodproofed spaces in appropriate locations. The provision would be available for both new and existing buildings facing "primary street frontages" (as defined in the ZR) in Commercial Districts and M1 Districts paired with Residence Districts. The floor area exemption would only be available for the first 30 horizontal feet of the non-residential floor space as measured from the street wall of the building, since this is the most critical space to maintaining retail continuity. It does not preclude uses from going deeper than 30 feet. The exemption would come with design requirements to ensure quality ground floors. For new developments, the level of the first story located above the flood elevation has to be placed 13 feet or more above the level of the adjoining sidewalk. For new and existing buildings, the ground floor level would be required to be within two feet of the adjacent sidewalk and follow transparency requirements. In addition, the Proposed Action

would maintain the existing floor area exemption for access, to encourage ramps and stairs be located within the building.

Cellars

The Proposed Action would ensure that floor area exemptions are given only when buildings are floodproofed and remove incentives to build low-quality ground-floors.

The 2013 Flood Text included some limited modifications to the definition of “cellar” to help ensure that buildings with moderate and high FRCE levels (especially those that equal or exceed four and a half feet above grade) can achieve their fully permitted floor area. However, this provision has unexpectedly resulted in low-quality spaces, since it encourages low ground floor heights to obtain the floor area exemption, and the outcome can be out of scale with the neighborhood context, since an entire floor can be discounted from floor area calculations even when the space is used for active uses. In addition, where allowed, this provision has also encouraged the construction of sunken retail ground floors. While these floors would have to be dry-floodproofed, they could become vulnerable as sea levels rise, making it harder to further retrofit these buildings in the future.

The Proposed Action would limit these exemptions by not allowing the FRCE to be used as the measurement threshold for cellars and basements. In addition, as noted in the “flood resistant construction elevation” section above, the Proposed Action would modify the “base plane” definition to remove references to the BFE. Taken together, this would restrict the owners of buildings subject to a high BFE from taking significant floor area exemptions for these low-quality below-grade spaces. With this proposed change, floor area exemptions would only be tied to the floodproofing of the building. However, existing buildings would have the option to determine floor area calculations using either the definition prior to or after the change to ensure that significant new non-compliances are not caused for these sites.

Street Wall Location

The Proposed Action would include limited street wall modifications when access or flood protection measures are provided outside of the building.

Many zoning districts have street wall location provisions that ensure new development will be constructed close to the property line to reflect the character of their area. While these regulations promote best practices in streetscape design, they can conflict with the ability to provide sufficient outdoor access from the sidewalk into buildings in the floodplain since stairs and ramps can occupy considerable space and may not fit in the permitted area.

The 2013 Flood Text provided street wall modifications in the highest-density Commercial Districts to allow stairs and ramps in recesses that occupy up to 30 percent of the street wall width. However, this allowance is not applicable to buildings in lower-density districts and does not fully accommodate stairs and ramps serving narrow buildings, or buildings with high flood elevations, because of the limited recess percentage allowance. The 2013 Flood Text also did not provide any street wall location modifications for installing flood protection measures, which has been identified by practitioners as hampering flood resiliency. While the Proposed Action is particularly intended to facilitate interior entrances to improve the streetscape around flood-resilient buildings there are situations where exterior access may be necessary and existing street wall location provisions may make this impossible. Provisions governing these types of locations may also hamper the implementation of flood protection measures such as flood gates.

The Proposed Action would instead allow sufficient space to accommodate exterior stairs and ramps, as well as flood panels, in all zoning districts that require street walls be located on or near the street line. To incorporate these measures, street walls could be located up to eight feet from the property line and, to allow ramps that run perpendicular to the street, up to 50 percent of the street wall could be located beyond

eight feet. In acknowledging the access challenges for narrow lots (less than 50 feet), the Proposed Action would allow the remaining 50 percent of the street wall to be recessed at the ground floor level. The possible visual impact of the access measures would be limited by requiring planting if the access extended along 70 percent or more of the street wall.

Ground Floor Level Requirements

The Proposed Action would accommodate resilient buildings and raised first floors by addressing conflicts with existing ground floor level zoning requirements.

To promote walkability and enliven retail corridors, some zoning districts have ground floor use regulations that typically require non-residential uses (i.e., commercial and community facility) on the ground floor level in close proximity to the sidewalk level (often between two and five feet), and that the building facade adjoining these uses would be transparent to promote the feel of shopping districts with large show windows. In the floodplain, that ground floors and transparency be located close to the sidewalk level would often preclude floodproofing strategies, which could become extremely onerous in areas with a high FRCE. In addition, Commercial and Manufacturing Districts include accessory signage regulations to promote businesses on the lot that include size and height limitations measured from grade which may lead to impractical outcomes in the floodplain given the need to sometimes elevate these uses.

To address issues in applying these rules at the sidewalk level in the floodplain, the 2013 Flood Text allowed these ground floor measures to be elevated to the FRCE so that buildings could comply with Appendix G. For example, if the FRCE of the building was five feet above grade, the measurement elevation for required non-residential uses could be elevated to the FRCE along with associated transparency rules. Accessory signage could also be measured from this elevation. With these changes, owners can consider a wide variety of resilient design strategies including ground-floor elevation, dry-floodproofing, or the creation of wet-floodproofed "show pits."

The Proposed Action would continue to allow this, with small additions. In all areas, any blank walls created along retail corridors would now be subject to streetscape rules and would need to be addressed by adding elements such as planting, street furniture, or artwork. Additionally, in V zones and Coastal A zones identified by FEMA, ground floor use regulations would be made optional because dry-floodproofing is prohibited and FRCEs are often extremely high above the sidewalk.

Improving Streetscape in the Floodplain

The Proposed Action would require buildings using any of the regulations provided to comply with "flood-resistant construction standards" to also comply with streetscape requirements meant to help ensure flood-resistant buildings contribute to their surroundings.

Leading up to the 2013 Flood Text, there were concerns that elevating buildings and restricting the use of ground floor space would have deleterious effects on the neighborhood streetscape. To address this, the 2013 Flood Text included ground level design requirements for those buildings that utilized its zoning regulations. These requirements are dependent on the height of the FRCE, the building's use and the applicable zoning district. They require that a minimum number of elements be incorporated into the building's design from a small menu of options. For instance, single- and two-family homeowners that elevate their first occupiable floor five feet above grade must incorporate one of four design treatments, including front yard plantings or a front porch.

While this system laudably attempts to provide design flexibility while ensuring an appropriate level of streetscape consideration, its workability has proven challenging in practice. This has mainly been due to the requirements and thresholds being overly focused on residential buildings, particularly in low-density areas. For example, buildings in Commercial Districts are rarely required to meet any streetscape

requirements because their applicable flood elevation threshold is so high, while many buildings in Residence Districts are required to comply because the thresholds there are lower. In addition, the actual design options in the menu are rather limited, particularly for buildings other than single- and two-family residences. For example, while these buildings have four design options to choose from, multi-family buildings typically have only one. In addition, practitioners have identified that some of the options are inadvertently restricted by unrelated zoning regulations, further limiting the number of available design features.

The Proposed Action would continue to require design features to address concerns about building elevation and blank walls but would address the issues raised with the current rules. Specifically, this would create a more consistent framework of requirements, with more design options, to better address the wide variety of building conditions found in the floodplain.

The framework would include a points system, like the 2013 Flood Text. Points would now be available in two broad categories: Building Access and Ground Floor Level. Building Access would be focused on how users reach the building's elevated first story, while Ground Floor Level would be focused on the design of the ground floor itself. Generally, for buildings with a "first story above the flood elevation" (FSAFE) that is less than five feet above grade, one point would be required and may be fulfilled within either category. Where the building's FSAFE is five feet or higher, the building would have to meet a total of three points, with at least one point coming from each of the two categories. These requirements would be applicable in all zoning districts other than M2 and M3 districts. Additionally, in M1 Districts, they would not apply to heavy industrial uses. A much-expanded menu of design options would be available for each category to better address different building types and scales found in the floodplain. For example, the Building Access category would include nine options such as front porches, stair turns, entrances close-to-grade, and multiple entrances along a facade. The Ground Floor Level category would include 14 options, including planting and raised yards (included in the 2013 Flood Text), as well as wall treatments such as decorative latticework, street furniture, and ground floor level transparency. This expanded menu would give designers the toolkit to better reflect conditions found in the floodplain, such as locations along commercial corridors or in higher-density residential neighborhoods.

In addition, the Proposed Action would ensure that these design options can be more easily utilized. It would classify steps and covered porches as permitted obstructions in front yards and modify the maximum height of retaining walls to three feet to address those practical construction constraints caused by the previous maximum height of two and a half feet. In low-density Residence Districts, the Proposed Action would also exempt buildings on narrow lots from existing front yard planting requirements that inadvertently limit the use of the other available design options. Finally, for all buildings subject to these provisions, all group parking facilities provided on the ground floor level would be required to be either wrapped by usable building space, or screened by treatments such as latticework, vertical plantings, or artwork.

Accommodating Current and Future Flood Elevations in Special Conditions

The Proposed Action includes more tailored zoning regulations to address special situations found in the city's floodplain, including small or narrow lots, as well as for existing buildings that do not meet current zoning requirements. While these conditions exist throughout the floodplain, they are often concentrated in certain neighborhoods, such as the bungalow communities often found along the water's edge.

Substandard Lots (Cottage Envelope)

The Proposed Action would expand the availability of the popular cottage envelope option, first created in the 2015 Recovery Text, to small lots throughout the floodplain. This would allow for the construction of resilient buildings that better match their surroundings and accommodate better layouts.

Following the 2013 Flood Text, many neighborhoods with a prevalence of small, high-lot coverage bungalow homes on substandard zoning lots had concerns about the taller heights of recently constructed flood-resistant buildings. This issue was partially a result of zoning regulations that were designed with larger lots in mind. For instance, when traditional yard regulations were applied on narrow and/or shallow lots, the resulting building footprint was extremely small and forced the permitted floor area into a taller building than would have otherwise been expected. To make matters worse, the interiors of these narrow homes were also undesirable and inefficient, so both neighbors and the homeowners themselves were often dissatisfied with the outcome.

To better reflect the scale of surrounding buildings, the 2015 Recovery Text provided an alternative cottage envelope option for single- and two-family detached residences reconstructed in the special Neighborhood Recovery Areas. This envelope came with decreased yard requirements and increased permitted lot coverages on substandard lots, in exchange for a shorter overall building height. The resulting building form mimics the wider and deeper bungalow homes and has provided homeowners the opportunity to create a more practical design and interior layout. While this provision has been well received, it was limited to reconstructions in the specific recovery areas.

The Proposed Action would expand the 2015 Recovery Text provisions by allowing all new and existing single- and two-family detached residences in R1 through R5 Districts in the floodplain to use the cottage envelope option when the building is designed to “flood-resistant construction standards.” Specifically, the maximum permitted building height would be reduced to 25 feet, as measured from the “reference plane,” instead of the typical maximum height of 35 feet. In exchange for this reduction, the applicable yard and lot coverage requirements would be modified: the minimum front yard would be reduced to the depth of neighboring homes, while minimum side and rear yards would be reduced at a rate proportional to the narrowness and shallowness of the lot (up to a minimum of three and 10 feet respectively). In addition, any applicable lot coverage and open space requirements would not apply because the modified yard regulations effectively control the building’s footprint. Corner lots would be able to consider one of their front yards a (narrower) side yard to allow for a more contextual corner building.

Parking on Narrow Lots

The Proposed Action would continue to encourage single- and two-family residences on narrow lots to have parking be located below the building.

Several low-density Residence Districts restrict the location of parking spaces and curb cuts on a property. For instance, in many contextual districts, parking is only allowed within the side lot ribbon on lots less than 35 feet wide, and curb cuts must be at least 16 feet from other curb cuts on the same or an adjoining zoning lot. While the combination of these regulations works well to preserve the streetscape in many neighborhoods, they may be particularly difficult to comply with in the floodplain due to the prevalence of narrow lots found there and the inability to use ground floors for habitable spaces.

To address these issues, the 2013 Flood Text included modified curb cut spacing and parking location requirements, particularly for narrow lots. These have allowed narrow residences to be elevated and parking to be located below the building provided that at least two parking spaces are located there. The Proposed Action would maintain these allowances, with small modifications to better align the number of parking spaces that may locate under an elevated building to what is required by the zoning district (which may be less than two spaces) and to only allow the curb cut spacing for narrow lots. Specifically, in providing parking spaces beneath the building single and two-family residences in R1 through R5 districts (except R4B and R5B districts) would be able to disregard underlying parking location and curb cut location rules to allow parking spaces be located under the building. On existing zoning lots with widths of less than 35 feet, the curb cut spacing regulations would become optional if four feet of curb space is provided between the new and existing curb cuts. In either case, the site would have to comply with the underlying front yard planting requirements.

Non-Complying and Non-Conforming Buildings

The Proposed Action would promote resiliency for the large number of existing buildings and land uses that do not adhere to the zoning rules that are currently applicable.

These conditions exist because the buildings or uses were constructed before zoning existed or because they were legally built under the provisions in effect at the time and the regulations have since changed. These non-complying buildings or non-conforming uses can stay in place but there are limits on their reconstruction, enlargement or alteration. Most importantly, if these buildings or uses are demolished or damaged, such that more than a specified amount of floor area is removed — (75 percent for most non-compliances, 50 percent for most non-conformances) — they cannot be put back, although single- and two-family residences located in districts that permit them can be fully demolished and replaced. This longstanding policy was intended to ensure that properties comport with the applicable zoning regulations over time.

However, these restrictions became immediately problematic in the aftermath of Hurricane Sandy. The drafters of the ZR in 1961 did not anticipate the significant destruction of non-conforming uses or non-complying buildings caused by the storm, which meant that many uses and buildings could not be rebuilt since they were damaged beyond the applicable thresholds. Nor did the drafters anticipate that these buildings would need to be elevated to become more resilient, therefore potentially creating, or increasing, non-compliance with several bulk regulations.

To ensure that building owners could rebuild and get their properties out of harm's way, the 2013 Flood Text allowed non-conforming uses and non-complying buildings damaged in Hurricane Sandy beyond the applicable thresholds to be reconstructed while still retaining their previous non-conformances or non-compliances. It also encouraged buildings to be elevated or reconstructed up to the FRCE by permitting new and increasing existing non-compliances. Subsequently, the 2015 Recovery Text created two additional allowances to address situations that building owners encountered when rebuilding their homes. First, it permitted non-conforming two-family residences in single-family Residence Districts and single- and two-family residences in Manufacturing Districts to rebuild or vertically enlarge if they were in Neighborhood Recovery Areas, neither of which had been permitted under the 2013 Flood Text. Additionally, it allowed all habitable space in existing single- and two-family residences, including space in basements, to be elevated above the FRCE and accommodated all associated non-compliances.

These special rules have facilitated reconstruction of properties damaged by Hurricane Sandy, but building owners and practitioners have identified issues that deterred some owners from making their buildings more resilient. For example, the non-compliance allowances only permitted buildings to be elevated to the FRCE, which limited the ability to over-elevate to lower insurance premiums or plan for projected sea level rise. Additionally, buildings being elevated have to keep within their existing footprint to maintain existing yard and open space non-compliances, which has proven to be challenging for those on small or awkwardly configured lots. Finally, many of the provisions were only applicable in the Neighborhood Recovery Areas for a limited time period, even though similar issues are found throughout the floodplain.

In response, the Proposed Action would allow nearly all non-conforming uses and non-complying buildings to be elevated, retrofitted, or reconstructed to meet "flood-resistant construction standards" and measure height from the "reference plane" while retaining existing non-conformances and non-compliances. This allowance would come with the condition that less than 75 percent of the floor area be damaged or demolished (single- and two-family residences in districts that permit them would maintain their higher threshold). Relief beyond this threshold would be available for non-conforming uses and non-complying buildings damaged in any future disaster, as described in the "Disaster Recovery Rules" section of Goal 4 below.

In addition, non-compliances could be created or increased as long as the change to the building does not

exceed specified parameters. For example, it would be possible to retain and relocate non-complying floor area (often located in basements) above the “reference plane”, provided that the floor area does exceed the maximum allowed in the applicable zoning district by 20 percent. Similarly, it would be possible to increase the height of a building with non-complying height (as measured from the lowest floor to the highest point of the roof), provided that the elevated building does not exceed the maximum height allowed by the applicable zoning district by 10 percent or 10 feet, whichever is less, as measured from the “reference plane”. Non-compliances could also be created or increased for open areas (yards, courts, and open spaces, including minimum distance between buildings) to accommodate resiliency measures on constrained sites. For instance, a building’s previous footprint could be shifted or altered provided that the building’s lot coverage is not increased and that any new encroachment into required yards does not get too close to surrounding lot lines (five feet from the rear lot line and three feet from the front and side lot lines).

Building on the provisions of the 2015 Recovery Text, the Proposed Action would also allow non-conforming residential buildings in heavy Commercial (C8) Districts and in all Manufacturing Districts throughout the floodplain to be elevated, retrofitted, or reconstructed to meet “flood-resistant construction standards” and measure height from the “reference plane” as long as the buildings are located within predominantly residential areas in these districts. In addition, the residential floor area in these buildings could not be increased and the maximum height for single- and two-family residences would be 35 feet (multi-family buildings, generally rare in these areas, would be able to use the applicable zoning district height).

Providing Discretionary Actions to Address Special Situations

The Proposed Action would modify the existing special permit that can be granted by the New York City Board of Standards and Appeals (BSA) to facilitate resiliency improvements in unique conditions and also create a new BSA special permit to allow alternative uses on ground floors in Residence Districts.

BSA Resiliency Special Permit

The Proposed Action would expand upon the existing BSA special permit to allow it to better fulfill its original mission of promoting compliance with Appendix G. The Proposed Action would also move the text to ZR Section 73-71.

There are often building or site conditions that cannot be fully addressed by modifications to zoning regulations and therefore require review on a case-by-case basis. The 2013 Flood Text recognized this by including a resiliency special permit (ZR Section 64-81, “Special Permit for Modification of Certain Zoning Resolutions”) whereby the BSA could modify zoning regulations (predominantly related to the building envelope) if it found that the existing rules created practical difficulty in complying with Appendix G. While this special permit has proven necessary in many situations, some of the limits placed on the possible modifications available have made it difficult to undertake resiliency improvements. For example, maximum height regulations could not be increased by more than 10 percent or 10 feet (whichever is lower), which proved inconsequential in many low-density zoning districts given their low maximum height. Additionally, regulations for use, parking or floor area were not available for modification even though these were found to be necessary in many situations, particularly through the City’s *Build It Back* program.

The modifications in the Proposed Action would change the maximum height limitations to 10 percent or 10 feet (whichever is higher) to help accommodate different retrofitting needs, which often require a building’s ground floor to be evacuated and the floor space relocated to the top of the structure. While continuing to allow yard and permitted obstruction modifications, a wider range of zoning regulations could also be modified through the special permit. For example, floor area regulations could be modified to encourage below-grade spaces (typically exempted from floor area calculations) to be raised above the FRCE (where they would not be exempted). This allowance would be limited to a maximum increase of 20 percent above what is permitted in the zoning district or 10,000 square feet, whichever is less. In addition,

some parking and use regulations could also be requested. For all these modifications, the BSA would have to find that there would be practical difficulty in meeting “flood-resistant construction standards” absent the modifications. The special permit would also be moved to ZR Section 73-71.

BSA Ground Floor Use Special Permit

The Proposed Action would create a new discretionary action to permit ground floor offices in Residence Districts, where appropriate, to encourage dry-floodproofing and benefit the streetscape in these areas.

While the Proposed Action includes strategies to encourage buildings to become more resilient, public input has noted the limited options available for residential buildings, since Appendix G requires their ground floors to be wet-floodproofed and therefore limited solely to parking, storage or access. This is a particular issue in Residence Districts, where the only permitted option for dry-floodproofed ground floors are community facility uses.

The Proposed Action would therefore create a separate BSA special permit for buildings located in Residence Districts in the floodplain. This special permit would allow office uses (Use Group 6B) on the ground floor if the space is dry-floodproofed and meets certain conditions focused on ensuring that the use fits into its residential context. Parking and signage regulations typically applicable to doctor’s office would apply to the use. The new special permit would be found in ZR Section 73-72, “Special Permit for Ground-Floor Uses in Residence Districts.”

Goal 3. Allow for adaptation over time through incremental retrofits.

While the proposal is primarily focused on encouraging all buildings in the floodplain to fully meet “flood-resistant construction standards,” there are situations where specific conditions, such as regulatory obstacles or cost constraints, may prevent a building from reaching that level of resiliency. The Proposed Action includes optional modifications that would encourage buildings to become more resilient over time without having to comply with those standards. These modifications, which would also be available to buildings that meet flood-resistant construction standards, include provisions to facilitate location of mechanical equipment and other critical spaces above the flood-resistant construction elevation (FRCE), allowances for some specific flood protection measures, and parking design modifications in low-density Residence Districts.

Locating Mechanical Equipment Above Flood Elevation

The Proposed Action would help protect mechanical equipment from flood damage by facilitating its elevation above flood levels, which is often the first and most cost-effective resiliency strategy for existing buildings since it requires few changes to the building’s structure or floor elevations.

The 2013 Flood Text allowed mechanical equipment, typically found in basements and cellars, to be relocated to other areas within buildings or in required open areas. In some instances, these have been found to be insufficient and have therefore hampered resiliency improvements. For example, owners of residential campuses who are looking to construct a new separate structure to house mechanical equipment above expected flood levels have been hindered by zoning regulations that require minimum distances between buildings. The Proposed Action would improve upon these existing 2013 Flood Text provisions for mechanical equipment by promoting an expanded set of resiliency improvements.

Within and On Top of Buildings

The Proposed Action would facilitate the relocation of mechanical equipment from basements and cellars to locations higher in or on top of buildings.

The 2013 Flood Text included allowances for larger bulkheads on the top of multi-family buildings and for existing commercial or manufacturing buildings. It also included modifications in lower-density Residence Districts to facilitate the relocation of equipment from below-grade spaces to elsewhere within the building. Bulkheads were already considered permitted obstructions and permitted to extend above any required maximum heights or sky exposure planes if they remained within certain size limitations. The 2013 Flood Text increased these dimensions in the floodplain to encourage mechanical equipment to be moved onto roofs where they are more protected from flooding. For example, for buildings in R5 through R10 districts, and in Commercial and Manufacturing Districts, these changes permitted a 10 percent increase in bulkhead coverage. Alternatively, for existing buildings, it allowed an approximately 30 percent increase of their permitted height. Bulkheads in R3 and R4 Residence Districts were permitted smaller increases given their smaller scale. Screening was required for all bulkheads. The Proposed Action would maintain these provisions, while increasing their applicability for all new and existing buildings in Residence, Commercial and Manufacturing Districts. While there are no prohibitions on locating mechanical equipment in the cellars of non-residential structures, in the long-term it is safer to locate such equipment above the flood level.

In addition, the 2013 Flood Text also exempted buildings in the floodplain from limitations on interior mechanical space found in many lower-density Residence Districts, as this tended to force mechanical equipment into basements and cellars. This exemption would continue in the Proposed Action to ensure that mechanical equipment can be placed above the FRCE.

In Open Areas

The Proposed Action would also facilitate the placement of mechanical equipment above the FRCE outside of buildings to address situations where the structures cannot physically sustain additional loads or where centralizing this equipment in a single structure would be more efficient.

The 2013 Flood Text included allowances for mechanical equipment in various open areas regulated by zoning. The equipment can be considered permitted obstructions within yards, courts and other open areas if it stays within certain coverage and height limitations. These measures offered alternative locations for necessary mechanical equipment in lieu of basements and cellars. The provisions are available for existing single- and two-family residences as well as all other new and existing buildings.

The Proposed Action would consistently apply these allowances to all buildings regardless of whether they are new or existing. It would also modify some of the dimensional limitations to provide more rational standards to address various design challenges that have been identified since 2013. Mechanical equipment would have to be placed a minimum of five feet from property lines (though this could be reduced to three feet for substandard lots). Coverage would be limited to 25 percent of the minimum required open space, but the coverage would be restricted to 25 square feet if the equipment is located between the building and the front lot line, to minimize its effect on the street. The height would be limited to certain heights above the "reference plane" depending on the zoning district (10 feet in low-density Residence Districts, 15 feet in other Residence Districts, and 23 feet in Commercial and Manufacturing Districts). All equipment would be required to be screened by vegetation when located in front yards or between the street line and the street wall and when placed in other locations, if more than one piece of equipment is provided, it would have to be screened by materials that are at least 50 percent opaque.

Finally, to allow for the construction of new utility structures on larger campus-style housing sites, the Proposed Action would permit buildings used predominantly for mechanical equipment to be considered permitted obstructions on properties larger than 1.5 acres. The structure's coverage would similarly be limited to 25 percent of the minimum required open space, and it would be required to be located at least 30 feet from any legally required windows with the exhaust stacks located above adjacent residential buildings. The structures would be subject to underlying height and setback controls.

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Locating Important Spaces Out of Harm's Way

Beyond mechanical equipment, there are some situations where elevating key support spaces would improve the long-term resiliency of buildings and their uses. The Proposed Action therefore includes modifications to address three of these situations.

Many retail stores rely on basement and cellar space to support their at-grade retail, but zoning regulations often restrict these spaces from being located on the second floor, which limits the stores' ability to become more resilient. The Proposed Action would therefore include two modifications to address this issue. In low- and medium-density C1 and C2 local Commercial Districts, where underlying zoning regulations limit commercial uses to the first story in mixed-use buildings, the Proposed Action would allow commercial uses on the second story in buildings in the floodplain. This would give businesses an opportunity to move key spaces out of basements or cellars. The space within the second floor would still be counted towards floor area regulations.

In Commercial and Manufacturing Districts with a low maximum floor area ratio (FAR), buildings may have little available floor area to raise key spaces above the flood elevation. To remedy this, the Proposed Action would add a floor area exemption of up to 500 square feet to provide businesses the option of elevating important spaces, such as offices or storage rooms, above the FRCE in Commercial and Manufacturing Districts where the permitted commercial or manufacturing FAR is less than or equal to 1.0. Lastly, existing residential buildings in low-density Residence Districts are often hindered by underlying zoning regulations when attempting to fill in their basements or cellars and relocate the required parking found there to other portions of their lot. The 2013 Flood Text included provisions to address this. The Proposed Action would similarly allow below-grade parking in existing residential buildings in R1 through R5 districts (except R4B and R5B districts) to be relocated to front, side or rear yards. To be granted this allowance, below-grade spaces would have to be removed and filled, in compliance with "flood-resistant construction standards." In addition, the Proposed Action would continue to allow parking spaces and driveways to be covered with dustless gravel for all single- and two-family residences in R1 through R5 districts.

Flood Protection Measures

The Proposed Action would allow more flood protection measures as permitted obstructions to accommodate their installation when required for compliance with "flood-resistant construction standards" and in situations where alternate flood protection strategies may be warranted.

The 2013 Flood Text allowed several flood protection measures, such as flood barriers and associated emergency egress, as permitted obstructions in various required open areas in recognition that they are required in front of building entrances. However, practitioners and other City agencies have subsequently identified additional viable measures that are not included and have noted the difficulty in finding on-site storage within buildings for temporary measures such as flood panels, both of which have limited the use of these measures.

The Proposed Action would therefore maintain the existing flood protection measures listed as permitted obstructions but add items which were not previously listed: landscaped berms and their associated floodgates. The Proposed Action would also allow space used for the storage of temporary flood panels to be exempted from floor area calculations, up to a maximum exemption of 15 square feet for each linear foot of protection and no more than 1,000 square feet of exemption per zoning lot. These standards account for the space that panels, trolleys and deployable access take up in a typical building configuration).

Accommodating Current and Future Flood Elevations on Waterfront Sites

The Proposed Action would modify provisions applicable in waterfront areas to better allow for coastal

flood resilient design.

In 1993 DCP enacted comprehensive waterfront rules that, at their core, required developments on the waterfront to provide public access in the form of esplanades and ancillary spaces. The zoning text set forth minimum amounts and dimensions for these spaces and stipulates necessary amenities that must be provided, including circulation paths, planting, seating, lighting, and several other elements to help ensure that these are successful public spaces.

However, practitioners have noted how some of these requirements make it difficult, if not impossible, to integrate contemporary resiliency measures into the waterfront spaces and address sea level rise. The 2013 Flood Text provided some limited allowances for the grading of waterfront yards and visual corridors to increase flood resilience, but practitioners have identified other rules that could also be improved. These include limits on site grading and height for waterfront yards, open spaces and paths.

The Proposed Action would permit the construction of bi-level esplanades that facilitate waterfront public access both close to the shoreline at the water level and at a higher elevation to meet flood design elevations at the building level. To facilitate these bi-level designs, the Proposed Action would also allow for increased retaining wall heights (generally up to three feet), provide new planting design options (including terraced planting), and provide slight reductions to the minimum required planting areas, and screening buffers so that access requirements can be satisfied.

The Proposed Action would facilitate the elevation of waterfront public access areas while maintaining visual connectivity to the water by raising the required level of visual corridors on upland streets from three feet above curb level to five feet. In addition, flood protection measures such as temporary flood control devices and associated permanent fixtures, structural landscaped berms, flood gates, and associated emergency egress systems would be permitted as obstructions in both waterfront yards and visual corridors subject to dimensional limitations (up to the FRCE or five feet above the lowest adjacent grade, whichever is higher).

Finally, to encourage waterfront sites to include soft shorelines (such as natural aquatic grasses) as a resiliency measure, the Proposed Action would allow the width of the required waterfront yard and shore public walkway to be reduced for soft shorelines by up to seven feet along up to 30 percent of the shoreline length of such yard.

Goal 4. Facilitate future recovery by reducing regulatory obstacles.

The Proposed Action would include modifications to expedite future recovery processes. Hurricane Sandy showed that areas affected by the storm went beyond the floodplain and that the regulations which would facilitate recovery would be useful for other types of disasters. Thus, these select rules would be applicable citywide. Topics addressed in this section include mechanical equipment, vulnerable populations, as well as zoning rules available after a disaster occurs.

Power Systems and Other Mechanical Equipment

The Proposed Action would allow appropriately scaled power systems on lots throughout the city to make it easier to provide back-up energy, especially in the event of a disaster by considering these types of equipment as permitted obstructions in required open areas. Recovery efforts from Hurricane Sandy also identified issues with existing zoning regulations for mechanical equipment both within and outside of the floodplain. As described below, both of these issues extend beyond the floodplain and therefore modifications to address them are required on a citywide basis.

The 2012 hurricane caused a wide array of power system disruptions well beyond the floodplain, and the city's power grid has seen other recent disruptions through events like blackouts. Allowing power systems

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to be more easily located around the city would help support back-up energy needs and the overall energy grid. The 2013 Flood Text took the first step by allowing back-up systems, such as emergency generators, to be considered permitted obstructions in the required yards and open spaces for single- and two-family residences in the floodplain.

The Proposed Action would expand this approach citywide in a more consistent fashion. Power systems (including, but not limited to, generators, solar energy systems, fuel cells, batteries, and other energy storage systems) would be added as a permitted obstruction, subject to dimensional limitations, that could encroach in any required open area in all zoning districts citywide. Similar to the limitations for the broader mechanical equipment category in the floodplain, power systems would have to be placed a minimum of five feet from property lines. Coverage would be limited to 25 percent of the minimum required open space, although the coverage would be restricted to 25 square feet if the equipment is located between the building and the front lot line to minimize its effect on the street. The height would be limited to certain heights above adjoining grade, or the “reference plane” for lots in the floodplain, depending on the zoning district (10 feet in low-density Residence Districts, 15 feet in other Residence Districts, and 23 feet in Commercial and Manufacturing Districts). Exempted equipment would be subject to requirements for enclosure or screening, depending on the equipment type and applicable zoning district.

In addition, recovery efforts after Hurricane Sandy have highlighted shortcomings with the floor area exemptions provided for mechanical equipment in the ZR that have hampered resiliency projects. Space used for mechanical equipment is exempted from floor area calculations in all zoning districts citywide. However, it has not been clear whether the space necessary for routinely accessing and servicing the equipment is also exempted, which has led to inconsistent outcomes. This has also, in some situations, made it difficult to retrofit buildings in the floodplain by moving mechanical equipment from below-grade locations, where they are fully exempted from floor area calculations, to upper areas where they may not be. To address this situation in a comprehensive manner across the city, the Proposed Action would clarify that the floor area exemption for mechanical equipment applies to mechanical, electrical, plumbing equipment, as well as to fire protection and power systems, and necessary maintenance and access areas. This is consistent with the general practice at the Department of Buildings but would ensure that buildings across the city would be treated consistently.

Ramps and Lifts

The Proposed Action would provide rules for accessible design that are consistent throughout the city.

The 2013 Flood Text classified ramps and lifts as permitted obstructions in various forms of required open areas to help facilitate the elevation of living spaces. But in areas beyond the floodplain, these elements are permitted in required open areas in a piecemeal fashion. For example, lifts are classified as permitted obstructions in residential courts, yet they are not considered permitted obstructions in required yards. While DCP has been gradually adding them to the ZR as permitted obstructions through different text amendments, the Proposed Action would provide full consistency across the city by classifying steps, ramps and lifts as permitted obstructions in all required open areas.

This allowance is particularly important for existing buildings, many of which were constructed prior to ADA legislation. Since they are often built right up to the particular district lot coverage allowances or, in the case of many pre-1961 building, exceed them, subjecting new ramps or stairs to lot coverage limits would severely deter needed adaptation.

Vulnerable Populations

The Proposed Action would limit the growth of vulnerable populations in nursing homes in high-risk areas of the floodplain.

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Hurricane Sandy and other storms across the nation have exposed the difficulties facing nursing home residents in high-risk areas. Nursing homes are licensed to house populations that require continual medical care, but research shows that this dependency can be strained whether nursing homes shelter in place or evacuate prior to a coastal storm event. While all nursing homes in hurricane evacuations zones in the city are subject to mandatory evacuations during a declared emergency, the City believes it would be appropriate to limit the growth of nursing homes in high-risk areas to lessen the health consequences and logistical challenges of evacuating the residents of these facilities.

The Proposed Action would therefore prohibit the development of new nursing homes and restrict the enlargement of existing facilities within the 1% annual chance floodplain and other selected geographies likely to have limited vehicular access because of the storm event. The modification would restrict the enlargement of existing nursing homes in this geography to a maximum of 15,000 square feet to allow for improvements, including those related to resiliency. These restrictions would also apply to the nursing home portions of Continuing Care Retirement Communities (CCRCs). The CPC special permit (ZR Section 74-901) that permits nursing homes in areas where they are not allowed as-of-right (i.e., R1 and R2 districts and certain community districts) would not be available in this geography.

Disaster Recovery Rules

The Proposed Action would include rules that could be made available to facilitate the recovery process from future disasters, some of which would be implemented now to help address the COVID-19 pandemic and its associated economic effects.

The need to adopt the 2013 Flood Text and 2015 Recovery Text as temporary zoning rules on an emergency basis after Hurricane Sandy demonstrated that a lengthy process to update zoning regulations can present obstacles to the necessarily fast-paced disaster response. In addition, while the Mayor can issue Emergency Orders to temporarily remove legislative obstacles to facilitate recovery efforts, including rules from the ZR, that process is limited in time (the duration of the disaster), which may not be enough for a longer-term recovery. That became clear post-Sandy and now during the COVID-19 pandemic disaster response.

Given this, the Proposed Action would include a series of disaster recovery provisions that could be made available through a text amendment when a disaster occurs. Adding these provisions to the ZR would offer a useful roadmap for the public, planners, and decision-makers when working to recover from a disaster. Applicable recovery provisions would be selected based on the issues caused by the disaster and would be available for a limited time period (set at the time of the text amendment). The provisions could be limited to designated recovery areas whose extent would be determined based on the disaster's impacts and the City's recovery plans.

The recovery provisions would include a range of rules that could facilitate the recovery process from disasters which cause physical impacts. The 2013 Flood Text and the 2015 Recovery Text included a set of rules that facilitated the reconstruction and retrofit of Hurricane Sandy-damaged buildings, and therefore could also be useful after any other disasters that lead to a concentration of physical damage in the city. The Proposed Action would build upon this set of provisions and include modifications to the damage and destruction thresholds set forth in the underlying zoning rules to allow the reconstruction of non-complying buildings and non-conforming uses. It would also include modifications to building envelope rules to allow non-compliances to be increased, or even created, in the event new regulations would require damaged buildings be replaced in a slightly different shape and form. (For example, after Hurricane Sandy, new Building Code regulations were adopted and required buildings to elevate beyond the minimum level required prior to the storm.) These provisions would also include an allowance for property owners to use their tax lot as their zoning lot when applying zoning rules, which was found necessary in many waterfront communities. Lastly, it would allow the documentation process for obtaining DOB permits to be simplified for disaster-damaged buildings.

The recovery provisions would also facilitate the recovery process from a wider range of disasters including those that do not involve physical impacts, such as pandemics. This set of provisions is mostly drawn from the lessons learned during the COVID-19 pandemic response. The provisions would provide a framework to allow uses in zoning districts where they are not typically permitted to better respond to the situation then at hand. This framework would also allow possible relief from zoning rules that require permits to be sought with a specific timeframe, and those that require a certain level of construction and operation be completed to vest a project. It would also include possible relief from provisions that only allow non-conforming uses to remain inactive for a limited period of time (generally two years) before they can no longer legally reopen.

The Mayor's Executive Order No. 98 (March 12, 2020), which provided short-term relief from regulations hindering the pandemic recovery effort, included relief from construction timeframe and non-conforming use provisions. However, these allowances will cease when the Executive Order expires. Consistent with the general intent of the disaster recovery rules and the Mayor's Executive Order, the Proposed Action would extend the available timeframe for non-conforming uses to reactivate by an additional two years. In addition, the Proposed Action would allow for the extension of the timeframe required for substantial construction to take place under City Planning Commission special permits and authorizations for an additional term. These changes would provide greater certainty to residents, business and building owners, and therefore support the city's recovery from the ongoing pandemic. It should be noted that pending an ongoing emergency, mayoral and state executive orders would nevertheless remain in effect under the Proposed Action.

Uses in Waterfront Recreation Districts

Lastly, the Proposed Action would modify the zoning requirements that have made it difficult for eating or drinking establishments in some lower-density waterfront areas from making long-term resiliency improvements.

In C3 and C3A Waterfront Recreation zoning districts, which are mapped along the city's waterfront in limited locations, these businesses are required to obtain a BSA special permit to operate, renewable every five years. Local elected officials and business owners have noted how this short timeframe adds uncertainty that makes it difficult for these establishments to invest in resiliency. Therefore, the Proposed Action would extend the initial special permit term from five to 10 years for new applicants. Additionally, for existing establishments with a previously approved special permit, the permit would allow the BSA to determine the required term moving forward.

Overlap with Special Districts

While special purpose districts cater to a range of locally specific conditions, the 2013 Flood Text allowed the optional provisions in the 1% annual chance floodplain to supersede their special regulations and further modified select special purpose district rules that overlap with the floodplain. The Proposed Action would allow the optional provisions to supersede regulations applicable in all areas within any special purpose district that geographically overlaps with the 1% and 0.2% annual chance floodplains. Additionally, select provisions in these special purpose districts would be modified to align with the Proposed Action's ground floor use, street wall, and building envelope regulations, as well as the proposed streetscape rules. This would allow all buildings in the floodplain to have a consistent zoning framework for resiliency.

Related Actions

In addition to the proposed citywide zoning recommendations, DCP would be proposing neighborhood-specific zoning text and map changes in three neighborhoods that were recommended as part of DCP's Resilient Neighborhoods Initiative. These related actions would be in public review concurrent with the Proposed Action and their effects are analyzed as part of separate environmental reviews. These specific

actions are intended to address resiliency challenges that are specific to the conditions in these areas. These three neighborhoods are:

Brooklyn: Gerritsen Beach

Gerritsen Beach is a low-lying residential community originally developed as a neighborhood of summer bungalows. During Hurricane Sandy, the neighborhood was almost entirely inundated as the tidal surge rose up to seven feet above grade. Less severe but more frequent storms also cause flooding to Gerritsen Beach's constrained roadways (some streets are as narrow as 15 feet wide). This area is proposed to be designated as a Special Coastal Risk District (SCRD) to limit future density, by allowing two-family residences only on large lots. The SCRD would also limit building heights to 25 feet, as opposed to the 35 feet currently allowed by the underlying zoning district. This height restriction would be measured above the "reference plane" in alignment with the cottage envelope in the Proposed Action. This lower height would best match the area's neighborhood character while enabling existing buildings to retrofit. In addition, Gerritsen Beach's residential and waterfront areas would be remapped to more contextual districts, to prevent the construction of attached buildings, as the existing non-contextual districts do not reflect the existing character of the area and attached buildings are more difficult to retrofit in the future. Additionally, the proposal would expand use options for commercial establishments along Gerritsen Avenue to allow for a wider range of local services, which are key in providing support year-round for the community.

Brooklyn: Sheepshead Bay

Sheepshead Bay is a mixed-use neighborhood with a working and recreational waterfront, commercial corridors, and residential areas that have a wide range of building types, from small bungalows to large apartment buildings. During Hurricane Sandy, small businesses in the area experienced flood levels as high as six feet above grade, resulting in their temporary closure. Within the Special Sheepshead Bay District (SSBD), businesses located in cellar spaces below grade experienced severe flooding and, in some cases, have been unable to return following Hurricane Sandy. In consultation with the community, DCP proposes to update the existing SSBD so that regulations align with the Proposed Action to ensure that buildings are encouraged to floodproof in the long term. Additionally, public space regulations in the SSBD would be updated to include requirements for resiliency – such as a prohibition on below-grade plazas – and to promote the creation of well-designed, inviting spaces that support the commercial vibrancy of Emmons Avenue.

Queens: Old Howard Beach

Old Howard Beach is a waterfront neighborhood with predominantly detached houses, an active commercial corridor, and a community that enjoys easy access to the waterfront. During Hurricane Sandy, flooding inundated basements in residential buildings and ground floor commercial uses. Old Howard Beach is characterized by its location within a low-lying area, with BFEs ranging from four to six feet above grade, with analysis suggesting that projected sea level rise will affect the neighborhood primarily through tidal inundation on low-lying streets. As sea levels rise, Old Howard Beach is projected to see a gradual increase in vulnerability to flooding from daily and monthly spring high tides. Portions of Old Howard Beach are proposed to be rezoned to limit permitted residential uses to single- and two-family detached residences, enabling building owners to retrofit existing buildings and, as may be necessary, elevate to the "reference plane." Building to these higher standards will reduce vulnerability to future floods.

The Draft Scope of Work described an additional local action for New Dorp Beach. Based on further analysis of existing conditions in the New Dorp Beach neighborhood, recent capital commitments by the

New York City Department of Environmental Protection (DEP) and New York City Department of Transportation (DOT) to upgrade sewer and street infrastructure in the surrounding area, and progress being made by the U.S. Army Corps of Engineers on the Line of Protection, DCP is no longer pursuing a local rezoning for this area at this time. The proposed Zoning for Coastal Flood Resiliency initiative would provide zoning regulations to allow property owners the ability to make proactive investments in resiliency.

D. ANALYTICAL FRAMEWORK AND REASONABLE WORST-CASE DEVELOPMENT SCENARIO

Consistent with 2020 *CEQR Technical Manual* guidance, the Proposed Action is analyzed as a “generic action” because there are no known developments that are projected at this time. According to the *CEQR Technical Manual*, generic actions are programs and plans that have wide application or affect a range of future alternative policies and, for such actions, a site-specific description or analysis is not appropriate. As described in the *CEQR Technical Manual*, generic analyses are conducted using the following methodology:

- **Identify Typical Cases:** Provide several descriptions similar to those in a localized action for cases that can reasonably typify the conditions and impacts of the entire proposal.
- **Identify a Range of Conditions:** A discussion of the range of conditions or situations under which the action may take place, so that the full range of impacts can be identified. As detailed below, this includes existing conditions, a future scenario without the Proposed Action, and a future scenario with the Proposed Action.

Due to the broad applicability of the Proposed Action, it is difficult to predict the sites where development would be facilitated. In addition, the Proposed Action is not in-and-of-itself expected to induce development where it would not otherwise have occurred absent the Proposed Action. Although the Proposed Action may allow developments and existing buildings to retrofit to resilient standards, the overall amount, type, and location of construction within the affected area is not anticipated to change. Owing to the generic nature of this Proposed Action, there are no known or projected as-of-right development sites identified as part of the action’s Reasonable Worst-Case Development Scenario (RWCDs). To produce a reasonable analysis of the likely effects of the Proposed Action, 14 representative prototypical sites containing either new developments, infill, reconstructions, or retrofits of existing buildings in the city’s 1% and 0.2% annual chance floodplains have been identified to demonstrate the wide range of proposed regulations for sites that would be able to develop as-of-right in the future with the Proposed Action.

Additionally, Conceptual Analysis sites were identified for those conditions where development would require discretionary action in the future With-Action condition. This Conceptual Analysis will serve as a means of disclosing the potential impacts of the proposed discretionary actions.

Development affected by the Proposed Action is projected based on trends between 2012 and 2019. Although projections are typically modeled after trends of the previous decade, this analysis focuses on development data since Hurricane Sandy in 2012, during which there is more data available for resilient construction. Accordingly, unless otherwise noted, development assumptions in the future without and with the Proposed Action would mirror recent development patterns. The Proposed Action is not expected to change the rate of construction in the floodplain, which is controlled primarily by local real estate conditions.

Prototypical Analysis

To assess the possible effects of the Proposed Action, a RWCDs was developed for the future without the Proposed Action (No-Action condition) and the future with the Proposed Action (With-Action condition)

for a 10-year period in both the 1% annual chance and 0.2% annual chance floodplains. Although the Proposed Action's provisions are similar for these two geographies, there is a difference in the permitted height of the "reference plane." As discussed below, RWCDs developments in the 0.2% annual chance floodplain generally follow the development rationale for the 1% annual chance floodplain, unless the lower "reference plane" height in the 0.2% annual chance floodplain does not allow for it. In addition, as the city's Building Code are applied differently in these two areas, the No-Action conditions will vary. To capture the varying conditions, the incremental difference between the No-Action and With-Action conditions for both the 1% annual chance and 0.2% annual chance floodplains will serve as the basis for assessing the potential environmental impacts of the Proposed Action. Furthermore, the No-Action condition reflects a scenario where the 2013 Flood Text and 2015 Recovery Text have both expired. The incremental difference does not consider the effects of these two prior texts because they were adopted on a temporary basis with sunset (expiration) dates, and given the urgent nature of these provisions, there was no environmental review conducted. As illustrated in **Table 2**, 14 sites were selected as prototypes for environmental analysis for the No-Action and With-Action scenarios.

Table 2: Prototypical Site Selection

ID	Zoning District	Building Typology	Construction Type	Lot Area (sf)	Width (feet)	Depth (feet)
1	R3-1	Single-family detached residence	Retrofit	4,000	40	100
2	R3-1	Single-family semi-detached residence	New Construction	2,500	25	100
3	R4 (Infill)	Two-family attached residence	Reconstruction	2,000	20	100
4	R5 (Infill)	Low-rise multi-family building	Retrofit	2,500	25	100
5	R7A	High-rise multi-family building	New Construction	10,000	100	100
6	R6	Campus-style housing	Retrofit	50,000	500	100
7	C1-2/R5	Low-rise mixed-use building	New Construction	12,000	120	100
8	C1-2/ R7A	High-rise mixed-use building	Retrofit	2,500	25	100
9	C1-2/ R3-1	Commercial building	Retrofit	10,000	100	100
10	M1-1	Industrial building	Retrofit	10,000	100	100
11	R4	Single-family detached residence	New Construction	2,500	25	100
12	R3A	Single-family detached residence (non-compliant)	Retrofit	2,500	25	100
13	R3X	Two-family detached (non-conforming/non-compliant)	Retrofit	2,000	20	100
14	C2-4/R8	Waterfront site	Site Modification	50,000	250	200

Note: Refer to **Appendix A** for illustrative renderings and descriptions of the Prototypical Analysis Sites.

In addition, as discussed above, the Proposed Action would also have provisions that would be applicable citywide, such as the allowance for power systems to be considered permitted obstructions in required open areas. Other citywide provisions would be a series of disaster recovery rules that could be made available in the event of a future disaster through a zoning text amendment (and requisite environmental review). However, two of those provisions would be made available upon adoption of the Proposed Action to facilitate the city's long-term recovery from the COVID-19 pandemic and its associated economic effects. These two provisions would provide more time for existing non-conforming uses to reopen and for builders to undertake certain construction projects.

To determine the No-Action and With-Action conditions, standard methodologies have been used pursuant to the *CEQR Technical Manual*. These methodologies have been used to identify the amount and location of future development, as discussed below.

Most provisions for the Proposed Action would affect the 1% and 0.2% annual chance floodplains, which include 14 building types in a total of 97 zoning districts, including 34 Residence Districts, 48 Commercial Districts, and 15 Manufacturing Districts. It would also allow for resiliency improvements in the open areas on sites subject to waterfront regulations. In this overall area, approximately 102,300 lots in New York City would be potentially affected by the Proposed Action. The characteristics listed below were analyzed to create the hypothetical sites where the effects of the Proposed Action could be assessed (i.e., Prototypical Analysis Sites). These sites are not necessarily representative of a specific lot, but rather reflect prevalent conditions as a basis for analysis. These Prototypical Analysis Sites were then analyzed for their respective recent development trends to determine the development scenario to be assessed. To assess the effect of the Proposed Action, the characteristics considered in identifying the Prototypical Analysis Sites are described below.

Range of Building Typologies

- The sites are representative of the building types located in the 1% annual chance and 0.2% annual chance floodplains. Although all building types are in the floodplain, the prototype list mirrors the data showing a prevalence of single- and two-family buildings.
- The sites are based on building types and site conditions that can demonstrate specific provisions and
- The sites reflect varied vulnerability and ability to retrofit buildings, without repeating similar outcomes. Distinction was made between low-rise and high-rise buildings based on the number of floors, as they have different likelihoods of being fully retrofitted to meet “flood-resistant construction standards.” Low-rise buildings are four floors and below; high-rise buildings are five floors and above.

Range of Zoning Districts

- To determine the zoning districts for the prototypical sites, the overall most prevalent zoning districts were considered in both the 1% and 0.2% annual chance floodplains. The top two most prevalent zoning districts by building typology were considered in both the 1% and 0.2% annual chance floodplains and zoning districts which permit a reasonable range of building typologies and development scenarios were selected to evenly distribute the actions across different densities and district types.

Lot Characteristics

- These were based on the median lot area, width, and depth of all lots within a selected prototype zoning district. Although there is a prevalence of small lots across all building types, some lot sizes for future developments reflect current trends of aggregate development.

Base Flood Elevation

- To determine the flood elevation, the average and median flood levels by building typology were considered in the 1% annual chance floodplain. The average flood level is moderate across the City with three to four feet of base flood elevation. However, depending on the building typology, some averages were low, with two feet of base flood elevation, and some averages were high, with five feet of base flood elevation. One of these two thresholds has been applied to each scenario based on the building type and data analysis.

Development Assumptions

Consideration of the development and retrofit typology, including size and location of buildings and the layout of required parking, was determined through analysis indicating the median lot coverage, floor area, and building height throughout various neighborhoods within the existing 1% and 0.2% annual chance floodplains and analysis of recent construction in the floodplain through applications filed to DOB. It was also determined through the use of aerial and street view photography.

Type of Construction

The percentage of unbuilt lots within a given zoning district was used to approximate the areas where future development is most likely to occur. Generally, the percentage of unbuilt lots is low in the 1% and 0.2% annual chance floodplains with low-density (R1 through R5 districts having the highest percentage, illustrating more new construction for single- and two-family residences.

The percentage of built lots within a given zoning district was used to approximate the areas where retrofit of existing buildings is most likely to occur.

Because the Proposed Action has implications for both new developments and existing buildings, assumptions are made for the existing, no-action, and with-action conditions.

Existing Condition

Based on 2019 conditions, existing conditions for the Prototypical Analysis Sites do not meet Appendix G, as only a small fraction of the city's floodplain currently meets these standards, largely as a result of the post-Hurricane Sandy recovery efforts. Also, these existing buildings typically do not meet Appendix G because of the smaller floodplain geography that was designated by FEMA's FIRMs, which was in effect from when the city joined the NFIP program in 1983 until PFIRMs were issued in 2013.

For this analysis, it is assumed that the existing buildings would maximize their development potential under the permitted building envelope. This provides a baseline for analysis of the effect of the Proposed Action.

No-Action Condition

Two No-Action scenarios were identified for each Prototypical Analysis Site to illustrate conditions in both the 1% annual chance floodplain and the 0.2% annual chance floodplain. The No-Action condition assumed that the 2013 Flood Text and 2015 Recovery Text have both expired at some point during the 10-year analysis period, and that new development has continued in the city's floodplain without the benefit of special zoning regulations in the floodplain.

- New developments would be required to meet the requirements of Appendix G for buildings in the 1% annual chance floodplain, but not in the 0.2% annual chance floodplain. Existing buildings, in general, only need to meet Appendix G if they are substantially damaged or substantially improved, or if the building is conducting a horizontal enlargement. However, in certain instances these buildings could potentially pursue resilient improvements, to demonstrate a more conservative analysis, the No-Action scenario assumed that an existing building does not get retrofitted or reconstructed. Recent development trends also indicate that it is unlikely that the existing buildings will invest in resiliency, especially in the absence of special zoning regulations to assist buildings to comply with "flood-resistant construction standards" without needing to lose existing floor space.

For this analysis, it was assumed that each Prototypical Analysis Site would maximize their development

under the permitted building envelope. This provides a baseline for analysis of the effect of the Proposed Action.

With-Action Condition

Two With-Action scenarios were identified for Prototypical Analysis Sites 1 to 13 to illustrate the impact of the Proposed Action in both the 1% and 0.2% annual chance floodplain. Site 14 has one With-Action scenario to illustrate the impact of the Action on waterfront sites. The With-Action conditions assumed that the 2013 Flood Text and 2015 Recovery Text have been superseded by the Proposed Action and that most building owners would then incorporate future flood risks when making resiliency investments.

New developments would meet “flood-resistant construction standards,” exceeding the minimum flood elevation requirements of Appendix G, for buildings in both the 1% and 0.2% annual chance floodplains by elevating habitable spaces to the permitted “reference plane.”

Existing buildings would be retrofitted to either meet “flood-resistant construction standards” or the minimum flood elevation requirements of Appendix G, depending on the cost and structural feasibility of construction for both the 1% and 0.2% annual chance floodplains.

In addition, prototype scenarios that only show incremental resiliency improvements do not need to meet the “flood-resistant construction standards” while a prototype scenario of the waterfront site does not show changes to the building and only focuses on proposed modifications specific to waterfront regulations in open areas.

For this analysis, it was assumed that the Prototypical Analysis Sites would maximize their development under the Proposed Action. Developments in the 0.2% annual chance floodplain generally follow the development rationale for the 1% annual chance floodplain, unless the lower “reference plane” height in the 0.2% annual chance floodplain does not allow for it.

Detailed descriptions and illustrative renderings of the existing, No-Action, and With-Action conditions on each of the 14 Prototypical Analysis Sites in the 1% and 0.2% annual chance floodplains are provided in the FEIS.

Conceptual Analysis

Under the State Environmental Quality Review Act (SEQRA), a conceptual analysis is warranted if a proposal creates new discretionary actions that are broadly applicable, even when projects seeking those discretionary actions will trigger a future, separate environmental review. SEQRA's goal is to incorporate environmental considerations into the decision-making process at the earliest possible opportunity, and so it is the lead agency's obligation to consider all possible environmental impacts of the new discretionary actions at the time it creates them, at least on a conceptual basis.

As the Proposed Action would modify and create new discretionary actions, including BSA special permits, an assessment of the potential environmental impacts that could result from these actions within the City's 1% and 0.2% annual chance floodplains is warranted. While these discretionary approvals would trigger environmental review at the time they are sought, the environmental effects of these approvals were analyzed conceptually, as a means of disclosing future potential significant adverse impacts. However, because it is not possible to predict whether a discretionary action would be pursued on any one site in the future, the RWCDs for the Proposed Action does not include consideration of specific development that would seek these actions. Instead, a Conceptual Analysis was conducted and is provided in the FEIS, to understand how the new discretionary actions could be utilized and to generically assess the potential environmental impacts that could result. Nevertheless, all potential significant adverse impacts related to these future discretionary actions would be disclosed through environmental review at the time of

application.

It should be noted that, where relevant, any future discretionary actions resulting from the Proposed Action would be submitted to the New York City Landmarks Preservation Commission (LPC) for review on a case-by-case basis. These actions would be reviewed by LPC under the terms of the *CEQR Technical Manual*.

Analysis Year

The *CEQR Technical Manual* notes that for some actions where the build-out depends on market conditions and other variables, the build year cannot be determined with precision. In these cases, a 10-year build year is generally considered reasonable, as it captures a typical cycle of market conditions and generally represents the outer timeframe within which predictions of future development and retrofit work may usually be made without speculation. Therefore, an analysis year of 2029 has been identified for this environmental review.

E. PRINCIPAL CONCLUSIONS OF ENVIRONMENTAL ANALYSES

Land Use, Zoning, and Public Policy

A detailed assessment of land use, zoning, and public policy concluded that no significant adverse impacts on land use, zoning, or public policy would occur in the future with the Proposed Action. The Proposed Action would not directly displace any land uses, nor would it generate land uses that would be incompatible with existing land uses, zoning, or public policy in the city's floodplains. The Proposed Action would not result in land uses or structures that would be substantially incompatible with the underlying zoning or conflict with public policies applicable to the city's floodplains. The Proposed Action would include a zoning text amendment to update the Special Regulations Applying in Flood Hazard Areas (ZR Article VI, Chapter 4) to provide homeowners, business owners, and practitioners living and working in the city's floodplains the option to design or otherwise retrofit buildings to: (a) reduce damage from future coastal flood events, (b) be resilient in the long-term by accounting for climate change, and (c) potentially save on long-term flood insurance costs. In addition, it would allow resiliency improvements to be more easily incorporated on waterfront sites at the water's edge and in public spaces, as well as provide zoning regulations to help facilitate the city's long-term recovery from the COVID-19 pandemic and other future disasters. The Proposed Action also includes updates to other sections of the ZR, including the Special Regulations Applying in the Waterfront Area (Article VI, Chapter 2) and provisions within various Special Purpose Districts. Overall, implementation of the Proposed Action would improve the ability of the city to withstand and recover quickly from future storms and other disaster events. The Proposed Action would not result in significant adverse impacts to zoning in the city's floodplains, but rather, would provide enhanced zoning allowances and design requirements in order to help building owners to better accommodate projected sea level rise when designing new buildings or retrofitting existing ones, without creating incongruous and uninviting streetscapes.

Additionally, given the health consequences and logistical challenges of evacuating nursing home residents, the Proposed Action would limit the development of new nursing homes and restrict the enlargement of existing facilities within the 1% annual chance floodplain and selected geographies with limited vehicular access after a storm (illustrated in the FEIS). Nevertheless, this action is not expected to substantially alter land use trends in these areas. Existing nursing homes in the specified geographies would not be displaced as a result of the Proposed Action, and nursing homes would continue to be permitted in all other areas of the city under With-Action conditions. As such, no significant adverse impacts to land use would occur. Moreover, the Proposed Action would not hinder any New York City Waterfront Revitalization Program (WRP) policies, but rather, is anticipated to promote a number of the city's WRP policies. As detailed in the WRP Consistency Assessment Form (CAF) provided in the FEIS, the Proposed Action would support

and facilitate commercial and residential redevelopment in areas well-suited to such development (WRP Policy 1); incorporate consideration of climate change and sea level rise into the planning and design of waterfront industrial development and infrastructure (Policy 2.5); minimize loss of life, structures, infrastructure, and natural resources caused by flooding and erosion, and increase resilience to future conditions created by climate change (Policy 6); preserve, protect, maintain, and enhance physical, visual, and recreational access to the waterfront (Policy 8.1); and protect and improve visual quality associated with New York City's urban context and the historic and working waterfront (Policy 9.1).

Socioeconomic Conditions

A preliminary screening determined that the Proposed Action would not result in significant adverse impacts related to socioeconomic conditions. As noted above, the Proposed Action would allow developments and existing buildings to retrofit to resilient standards, but the overall amount, type, and location of development within the affected area is not anticipated to change. The following summarizes the conclusions for each of the five CEQR areas of socioeconomic concern.

Direct Residential Displacement

Analysis of the Prototypical Analysis Sites shows that no existing residential uses or residents would be displaced as a result of the Proposed Action. As such, no significant adverse impacts related to direct residential displacement would occur as a result of the Proposed Action.

Direct Business/Institutional Displacement

Assessment of the Prototypical Analysis Sites shows that no existing business or institutional uses would be displaced as a result of the Proposed Action. Therefore, no significant adverse impacts related to direct business or institutional displacement would occur as a result of the Proposed Action.

Indirect Residential Displacement

The Proposed Action would not generate new residential dwelling units (DUs) or residents as compared to No-Action conditions. As such, no significant adverse impacts related to indirect residential displacement would occur as a result of the Proposed Action.

Indirect Business/Institutional Displacement

The Proposed Action would generate a negligible number of incremental workers on several of the Prototypical Analysis Sites as compared to No-Action conditions. As the Proposed Action would introduce less than 200,000 sf of incremental commercial development, it would not result in substantial new development that is markedly different from existing uses and development, and would not create or add to a retail concentration. Therefore, it is unlikely that the Proposed Action would introduce a new trend or population that could alter existing economic patterns, and no significant adverse impacts related to indirect business or institutional displacement would occur as a result of the Proposed Action.

Adverse Effects on Specific Industries

The Proposed Action would not directly displace any businesses, or result in significant indirect business displacement due to increased rents. The Proposed Action would not result in an adverse impact on a particular industry or category of business, and would not substantially reduce employment or impair economic viability in an industry or category of business. As such, no significant adverse effects on specific industrial would occur as a result of the Proposed Action.

Community Facilities and Services

Direct Effects

A preliminary screening determined that the Proposed Action would not result in any significant adverse direct effects on community facilities or services. The Proposed Action would not displace or otherwise directly affect any public schools, child care centers, libraries, or police or fire protection service facilities. Additionally, the Proposed Action, including the restriction of nursing home development in certain geographies detailed above, would not result in significant adverse direct effects to health care facilities.

Indirect Effects

Based on the *CEQR Technical Manual* screening methodology, detailed analyses of public elementary, intermediate, and high schools, public libraries, publicly funded child care centers, outpatient health care facilities, and police and fire protection services are not warranted for the Proposed Action. The Proposed Action would not result in any significant adverse indirect effects on community facilities or services.

Open Space

A preliminary screening determined that the Proposed Action would not result in any significant adverse impacts on open space resources. The Proposed Action would not physically displace any open space resources, and would not result in increased noise or air pollutant emissions, odors, or shadows on public open spaces that would significantly affect their usefulness. Additionally, as the Proposed Action would not generate new residents, and would result in the introduction of a negligible amount of workers on three of the Prototypical Analysis Sites, it would not diminish the ability of any open spaces to adequately serve users.

Shadows

A detailed assessment of shadows concluded that the Proposed Action would not result in significant adverse shadow impacts. In accordance with the methodology outlined in the *CEQR Technical Manual*, a detailed shadow analysis was conducted to assess the extent and duration of incremental shadows resulting from the Proposed Action. The Proposed Action would generate limited shadows on small, peripheral areas of sunlight-sensitive resources in the immediate vicinity of the Prototypical Analysis Sites. All affected resources would continue to receive direct sunlight throughout the day, and no natural resources are expected to be permanently shaded to a degree that would impact public use and enjoyment or plant and animal survival. The Proposed Action would not result in changes to development that would substantially reduce or completely eliminate direct sunlight exposure. Therefore, significant adverse impacts related to shadows are unlikely to occur as a result of the Proposed Action.

Historic and Cultural Resources

Archaeological Resources

A detailed assessment of historic and cultural resources concluded that the Proposed Action could potentially result in significant adverse impacts on archaeological resources. The Proposed Action would alter the permitted bulks, footprints, and mechanical, electrical, and plumbing (MEP) equipment location requirements in the city's floodplains. As such, additional in-ground disturbance may occur where archaeological remains exist in the future with the Proposed Action.

The extent of effects on archaeological resources are unknown because the Proposed Action is generic, and it is therefore not possible to know exactly where and to what extent additional in-ground disturbance may

occur in the future with the Proposed Action. As such, the possibility of effects on archaeological resources cannot be eliminated.

On sites owned or controlled by the City, or sites that require discretionary approvals, LPC would review any potential impacts to archaeological resources, and would require that these impacts be mitigated to the fullest extent possible pursuant to the *CEQR Technical Manual*. However, on privately owned sites that do not require discretionary actions, the anticipated in-ground disturbances would occur as-of-right without LPC oversight. It is anticipated that these effects would be limited; however, there is no mechanism for the City to enforce archaeological testing prior to construction. Therefore, these potential archaeological impacts would be unmitigated.

Architectural Resources

Indirect (Contextual) & Shadows Impacts

A detailed assessment of historic and cultural resources concluded that the Proposed Action would not result in indirect contextual or shadows impacts to historic architectural resources. The Proposed Action in-and-of-itself is not expected to induce development where it would not otherwise have occurred absent the Proposed Action. Although some retrofits to the buildings on the Prototypical Analysis Sites could minimally alter the setting and visual context of potential surrounding historic resources, none of these changes would be significant or adverse as compared to No-Action conditions. Additionally, although views of surrounding historic resources could be partially obstructed as a result of the Proposed Action, more proximate and significant views of these historic resources would remain. Therefore, it is unlikely that the Proposed Action would result in development that would diminish the qualities that make surrounding historic architectural resources historically and/or architecturally important.

Furthermore, the Proposed Action would change permitted height and bulk and MEP equipment regulations. Therefore, the Proposed Action does have the potential to generate shadows. As detailed in **Chapter 6, "Shadows,"** although the Proposed Action may increase shadows cast on some historic architectural resources, the increases are likely to be limited in duration and coverage, and would therefore not be significant or adverse.

Direct (Physical) Impacts

In the With-Action condition, privately-owned properties that are New York City Landmarks (NYCLs) or in New York City Historic Districts would continue to be protected under the New York City Landmarks Law, which requires LPC review and approval before any new construction, enlargement, alteration, or demolition can occur. Therefore, any as-of-right changes to LPC-designated or calendared resources in the future with the Proposed Action would require approval before changes to the historic structure were made. The Proposed Action would not change this well-established framework. This approval process would ensure that development under the Proposed Action would not have an adverse impact on these resources. However, NYCL-eligible historic resources do not have these same protections.

Similarly, historic resources that are listed on the State and National Registers of Historic Places (S/NR) are given a measure of protection from the effects of federally-sponsored or federally-assisted projects under Section 106 of the National Historic Preservation Act, and are similarly protected against impacts resulting from state-sponsored or state-assisted projects under the New York State Historic Preservation Act. Although preservation is not mandated, federal agencies must attempt to avoid adverse impacts on such resources through a notice, review, and consultation process. However, privately-owned properties using private funds that are S/NR-listed can be altered or demolished without review.

It is possible that Prototypical Analysis Sites may contain privately owned LPC-eligible, S/NR-listed, or S/NR-eligible historic architectural resources. Therefore, direct impacts to these historic resources through

as-of-right alterations or demolitions in the future with the Proposed Action cannot be ruled out. As such, the Proposed Action has the potential to result in significant adverse direct impacts to privately owned NYCL-eligible, S/NR-eligible, or S/NR-listed buildings.

Construction-Related Impacts

As discussed above, the Proposed Action would not induce development as compared to the No-Action scenarios. However, retrofits/reconstructions of existing buildings are expected to occur on eight of the 14 Prototypical Analysis Sites in the future with the Proposed Action. Due to their generic nature, it is not known whether any of these sites would be located within close proximity to any NYCL-eligible and/or S/NR-eligible historic resources. For conservative analysis purposes, it was assumed that the Prototypical Analysis Sites would be located within 90 linear feet of NYCL-eligible and/or S/NR-eligible historic resources. Therefore, the Proposed Action has the potential to result in construction-related impacts to eligible resources.

These eligible resources would continue to be afforded limited protection under New York City Department of Buildings (DOB) regulations applicable to all buildings located adjacent to construction sites. However, as the resources are not S/NR-listed or NYCL-designated, or calendared for designation, they would not be afforded the added special protections under DOB's Technical Policy and Procedure Notice (TPPN) #10/88. Additional protective measures afforded under DOB's TPPN #10/88 would only become applicable if the eligible resources are calendared or designated in the future prior to the initiation of construction work. If the eligible resources are not calendared or designated, however, they would not be subject to TPPN #10/88, and may therefore be adversely impacted by adjacent retrofitting work resulting from the Proposed Action.

On sites located within 90 linear feet of eligible historic resources that are owned or controlled by the City, or that require discretionary approvals, LPC would review any potential construction-related impacts to architectural resources and would require that construction on sites incorporates Construction Protection Plans pursuant to the *CEQR Technical Manual* in order to avoid significant adverse construction-related impacts. However, on privately owned sites that do not require discretionary actions within 90 linear feet of eligible historic resources, there is no mechanism for the City to enforce added special protections under DOB's TPPN #10/88, and potential construction-related impacts would be unmitigated.

Urban Design and Visual Resources

A detailed assessment of urban design and visual resources concluded that the Proposed Action would not result in significant adverse impacts on urban design or visual resources, but rather, is expected to enhance the pedestrian experience in the city's 1% annual and 0.2% annual chance floodplains. The Proposed Action includes zoning allowances coupled with enhanced design requirements that would allow building owners to better accommodate projected sea level rise when designing new buildings or retrofitting existing ones, without creating incongruous and uninviting streetscapes. Although the Proposed Action would result in a notable change in the design character of the floodplains as compared to No-Action conditions, this change would not constitute a significant adverse urban design impact in that it would not alter the arrangement, appearance, or functionality of the city's floodplains such that the alteration would negatively affect a pedestrian's experience of the area. Rather, the changes in development anticipated in the With-Action conditions would improve the pedestrian experience by ensuring accessible ground-level design, particularly for buildings with lower-level commercial uses, in order to make the streetscapes in the floodplains more inviting, while ensuring preparedness to better accommodate projected sea level rise in New York City's floodplains.

The proposed floor area exemptions would continue to incentivize buildings to floodproof and encourage uses to be kept at street level. The Proposed Action would allow a small floor area incentive for active uses to be kept at grade and dry-floodproofed. The first 30 feet of floor area as measured from the street wall of

a building when facing primary streets would be exempted from total floor area calculations, as these are the areas in which retail continuity is key for the success of the street. This allowance would incentivize buildings to dry-floodproof as opposed to elevating active uses, improving the pedestrian experience. Additionally, to ensure quality ground floors, this floor-area exemption would come with design controls, such as the condition that the ground floor level may not be higher than two feet above nor two feet below the level of the adjacent streets. This incentive would encourage well-designed commercial and community facility uses to be kept at grade, helping enhance the streetscape experience and retail continuity in the city's floodplains.

Additionally, as detailed above, the Proposed Action would require buildings in Residence Districts, Commercial Districts, and M1 Districts, utilizing the optional provisions in Article VI, Chapter 4 of the ZR, to meet designated points outlined in the streetscape mitigation regulations and would extend design requirements to all residential, commercial, and mixed-use buildings as well as buildings containing community facilities and light manufacturing buildings in the floodplain. These improvements would help attenuate elevated access and potential blank walls at the street level caused by resiliency needs. The Proposed Action would also provide a wider range of options to comply with the requirements, in order to better accommodate different neighborhood contexts, lot conditions, and ground-floor uses. For example, front porches, stair turns, entrances close-to-grade, and multiple entrances along a façade would be option, as well as treatments such as decorative latticework, street furniture, and ground floor level transparency. This expanded menu would give designers the toolkit to better reflect conditions found in the floodplain, and the Proposed Action would ensure that these design options can be more easily utilized, classifying steps and covered porches as permitted obstructions and exempting buildings on narrow lots in low-density Residence Districts from existing front yard planting requirements inadvertently limiting the use of other available design options. These design requirements in the future with the Proposed Action would enhance the pedestrian experience and help activate the streetscapes of residential and commercial communities in the city's floodplains. In addition to these requirements, the Proposed Action would continue to provide flexibility for all buildings that have transparency requirements for ground floor levels.

The Proposed Action would not entail any major changes to block shapes, street patterns or hierarchies, land uses, building densities, topography, or wind conditions in the 1% annual or 0.2% annual chance floodplains. The Proposed Action would not change existing land uses or generate new land uses that would be incompatible with the existing built character of the city's floodplains. The Proposed Action would provide enhanced building envelopes for new developments and existing building retrofits and reconstructions in the floodplains in order to better accommodate projected sea level rise in building design. As detailed in **Chapter 7** of the FEIS, "**Historic & Cultural Resources**," the Proposed Action could alter existing visual resources such as properties eligible for designation as New York City Landmarks (NYCLs) or for listing on the State/National Registers of Historic Places (S/NR). However, as detailed in **Chapter 5** of the FEIS, "**Open Space**," and **Chapter 9** of the FEIS, "**Natural Resources**," the Proposed Action would not result in any significant changes to open spaces or natural resources that are considered significant visual resources in the city's floodplains. Additionally, increased heights and bulks on the Prototypical Analysis Sites would not obstruct any significant viewsheds in the area, or negatively alter the pedestrian experience in the vicinity of the sites.

The Proposed Action would permit an elevated waterfront yard on Prototypical Analysis Site 14 that could alter existing view corridors. Although views of the waterfront or other visual resources could be partially obstructed as a result of the Proposed Action, none of these views would be unique, as more proximate and significant view corridors would remain throughout the city's floodplains, including vantage points in public parks, esplanades, and at street ends adjacent to the waterfront, as well as private waterfront properties that provide public waterfront access. Moreover, it should be noted that some waterfront properties, such as Prototypical Analysis Site 14, would continue to be subject to discretionary review, which requires urban design review and would further encourage the waterfront resiliency measures of the Proposed Action. Additionally, the proposed modifications to elevated visual corridors would help accommodate a broader range of site grade changes and design flood elevations utilized across the waterfront site and building, better reflecting a pedestrian's eye level and thus improving the pedestrian

experience. Therefore, no significant adverse impacts to visual resources would occur as a result of the Proposed Action.

Natural Resources

A preliminary screening determined that the Proposed Action would not result in any significant adverse impacts to natural resources. Future development as projected with the prototypical sites would not adversely affect floodplains, or increase flooding on the Prototypical Analysis Sites or the adjacent properties. All development is also required to comply with New York City Building Codes for construction within the 1% annual and 0.2% annual chance floodplains, and the Proposed Action would not affect that requirement.

The Proposed Action and associated RWCDs would not induce development or otherwise affect the many natural areas and parkland located in the floodplain. Development projected under the RWCDs with the Proposed Action is expected to occur exclusively on the Prototypical Analysis Sites, resulting in the disturbance of sites previously developed with commercial and residential uses including structures, paved roads/paths, domestic lawns with trees, or urban yard habitats. The conditions of the Prototypical Analysis Sites within the built environment of the floodplain provide limited habitat for vegetation and wildlife apart from the species common to the city's built environments. It is therefore concluded that the Proposed Action and the related potential changes in land cover would not result in any significant adverse impacts to the natural environment or populations of plant and wildlife species in New York City or the metropolitan region.

Therefore, it is concluded that no further analysis is warranted and there would be no potential for significant adverse natural resource impacts with the Proposed Action.

Hazardous Materials

A detailed assessment of hazardous materials concluded that the Proposed Action could potentially result in significant adverse hazardous materials impacts. In accordance with the methodology outlined in the *CEQR Technical Manual*, a hazardous materials assessment of the Prototypical Analysis Sites was conducted. The Proposed Action could result in increased in-ground disturbance in areas where hazardous materials may be present. The assessment analyzed the potential impacts of hazardous materials as they pertain to the Proposed Action and compared the differences between the No-Action and With-Action scenarios on the Prototypical Analysis Sites.

The extent of the effects of hazardous materials are unknown because of the generic nature of the Proposed Action and because it is not possible to determine exactly where and to what extent additional ground disturbance may occur in the future with the Proposed Action. Without an assessment of specific development sites, the absence of hazardous materials cannot be definitively demonstrated. As such, the possibility of impacts related to hazardous materials cannot be eliminated. The extent of potential impacts is expected to be limited. However, as development resulting from the Proposed Action on the Prototypical Analysis Sites would be as-of-right, there would be no mechanism for the City to conduct or require a program to test for hazardous materials contamination or to mandate the remediation of such materials. Therefore, any such impact would remain unmitigated.

Water and Sewer Infrastructure

A preliminary screening determined that the Proposed Action would not result in significant adverse impacts on water and sewer infrastructure. To determine the need for water and sewer impact assessments, a screening analysis was performed for the Proposed Action that compares the development of Prototypical Analysis Sites under the No-Action and With-Action scenarios. The *CEQR Technical Manual* states that a preliminary infrastructure analysis is needed if a project (1) would result in an exceptionally large demand

for water (e.g., those that are projected to use more than one million gallons per day such as power plants, very large cooling systems, or large developments); or (2) is located in an area that experiences low water pressure (e.g., areas at the end of the water supply distribution system such as the Rockaway Peninsula and Coney Island). The results of the screening analysis indicate that the Proposed Action would not result in significant adverse impacts on water and sewer infrastructure, and detailed analyses are not warranted.

Water Supply

The Proposed Action would not result in significant adverse impacts on water supply. The preliminary screening concludes that the effects of the Proposed Action would not be great enough to warrant a detailed analysis of water supply.

Wastewater Treatment, Stormwater & Drainage Management

The Proposed Action would not result in significant adverse impacts on wastewater or stormwater conveyance or treatment, or drainage management. The preliminary assessment shows that the incremental development that may occur at any one Prototypical Analysis Site would fall below the CEQR guidance thresholds.

Solid Waste and Sanitation Services

A preliminary assessment determined that the Proposed Action would not result in any significant adverse impacts on solid waste or sanitation services. In accordance with the methodology outlined in the 2020 *CEQR Technical Manual*, a preliminary assessment was conducted to assess the potential of the Proposed Action to affect demand for solid waste and sanitation services. As the Proposed Action is a generic action, there are no known potential or projected development sites. To produce a reasonable analysis of the likely effect of the Proposed Action, representative Prototypical Analysis Sites were developed. The analysis found that none of the 14 Prototypical Analysis Sites would result in a net increase of more than 50 tons of solid waste per week. As such, the Proposed Action would not result in significant adverse solid waste and sanitation services impacts, and detailed analysis is not warranted.

Energy

A preliminary assessment determined that the Proposed Action would not result in significant, adverse impacts on the generation or transmission of energy. The energy screening analysis for the Proposed Action considers the projected operational energy consumption for the Prototypical Analysis Sites in the future with the Proposed Action as compared to the No-Action conditions. Based on the incremental change in energy use at each Prototypical Analysis Site, the Proposed Action would not have a substantial impact on the City's energy systems.

Transportation

A preliminary assessment determined that the Proposed Action would not result in significant adverse impacts on the transportation network. The Prototypical Analysis Sites would be distributed throughout the city's floodplains. Incremental development for both the 1% annual and 0.2% annual chance floodplains at each of the Prototypical Analysis Sites would not exceed the minimum development densities for DUs or commercial uses detailed in Table 16-1 of the *CEQR Technical Manual*. Therefore, further transportation-related analysis is not warranted, and the Proposed Action would not result in significant adverse impacts related to traffic, pedestrians, transit, or parking.

Air Quality

Based on the preliminary assessment, it is concluded that the Proposed Action would not result in any significant adverse air quality impacts. The Proposed Action would not exceed the thresholds referenced in the *CEQR Technical Manual* for mobile source analyses during any traffic peak period. Therefore, based on *CEQR Technical Manual* guidance, no additional mobile source analysis is required for the Proposed Action. As the relevant thresholds are not exceeded, the Proposed Action is therefore not expected to result in any significant adverse air quality impacts due to mobile sources. Additionally, based on the modeling analysis of stationary sources performed for Prototypical Analysis Sites 3, 5, and 11, the Proposed Action would also not result in any impacts with respect to stationary source air emissions. Therefore, it is concluded that the Proposed Action would not result in any air quality impacts.

Greenhouse Gas Emissions and Climate Change

A preliminary screening determined that the Proposed Action would not result in significant adverse impacts related to GHG emissions or climate change, but rather, is expected to promote climate change resiliency in the city. A screening analysis for GHG emissions and climate change was conducted for the Proposed Action by comparing the development of Prototypical Analysis Sites in the No-Action and With-Action scenarios. The Proposed Action would not involve other energy-intense projects or result in incremental development greater than 350,000 square feet on any of the Prototypical Analysis Sites.

In fact, the Proposed Action would promote sustainability and resiliency in the city's floodplains. The Proposed Action would provide homeowners, business owners, and practitioners living and working in the city's floodplain the option to design or otherwise retrofit buildings to: (a) reduce damage from future flood events, (b) be resilient in the long-term by accounting for climate change, and (c) potentially save on long-term flood insurance costs. In addition, it would allow resiliency improvements to be more easily incorporated on waterfront sites at the water's edge and in public spaces, as well as provide zoning regulations to help facilitate the city's long-term recovery from the COVID-19 pandemic and other future disasters. Overall, implementation of the Proposed Action would improve the ability of the city to withstand and recover quickly from future storms or other disaster events.

Noise

A preliminary screening determined that the Proposed Action would not result in any significant adverse impacts related to noise. The Proposed Action would not result in any significant changes in transportation of travel patterns that would affect ambient noise. The Prototypical Analysis Sites would be distributed throughout the city's floodplains. Incremental development for both the 1% annual and 0.2% annual chance floodplains at each of the Prototypical Analysis Sites would not exceed the minimum development densities for DUs or commercial uses requiring a detailed transportation analysis or have the resulting effects on ambient noise conditions from mobile sources. Additionally, any changes in building configuration in the future with the Proposed Action would not affect exposure to emission from surrounding noise generators. For these reasons, it is concluded that no further analysis is needed and the Proposed Action would not result in significant adverse noise impacts.

Public Health

A preliminary assessment determined that the Proposed Action would not result in significant adverse public health impacts. The Proposed Action would not result in unmitigated significant adverse impacts in the following technical areas that contribute to public health: air quality, water quality, operational noise, or construction. However, as discussed in **Chapter 10, "Hazardous Materials,"** the Proposed Action could potentially result in significant adverse impacts related to hazardous materials because of increased in-ground disturbance in the future with the Proposed Action. Therefore, a preliminary assessment of public health was conducted, which concluded that, although the Proposed Action could result in significant

adverse unmitigated impacts related to hazardous materials, the potential for these impacts to occur is expected to be limited and would not significantly affect public health. Therefore, no significant adverse public health impacts are expected as a result of the Proposed Action.

Neighborhood Character

A preliminary assessment determined that the Proposed Action would not result in significant adverse impacts on neighborhood character. Land use, zoning, public policy, socioeconomic, open space, shadows, historic and cultural resources, urban design, visual resources, transportation, and noise conditions in the future with the Proposed Action would not negatively affect the neighborhood character of the 1% annual of 0.2% annual chance floodplains as compared to No-Action conditions. Rather, in the case of urban design, the Proposed Action would likely improve the pedestrian experience and therefore the neighborhood character of the city's floodplains. Although significant adverse impacts would occur with respect to historic and cultural resources in the future with the Proposed Action, these impacts would not result in a significant change to one of the determining elements of neighborhood character. As such, no significant adverse neighborhood character impacts would occur as a result of the Proposed Action.

Construction

A preliminary construction assessment determined that the Proposed Action has the potential to result in construction-related impacts to eligible historic resources.

The 14 Prototypical Analysis Sites are independent sites and would not require construction that exceeds two years. Although it is possible that a site could be developed or redeveloped in close proximity to other sites, the Proposed Action in-and-of-itself would not induce development or cause a significant change in the overall amount, type, or location of development. Additionally, due to the broad geographic area across which Prototypical Analysis Sites would be located, there are unlikely to be clustering implications associated with geographic or temporal overlap of construction activities.

However, retrofits/reconstructions of existing buildings are expected to occur on eight of the 14 Prototypical Analysis Sites in the future with the Proposed Action. Due to their generic nature, it is not known whether any of these sites would be located within close proximity to any NYCL-eligible and/or S/NR-eligible historic resources. For conservative analysis purposes, it was assumed that the Prototypical Analysis Sites would be located within 90 linear feet of NYCL-eligible and/or S/NR-eligible historic resources. Therefore, the Proposed Action has the potential to result in construction-related impacts to eligible resources.

These eligible resources would continue to be afforded limited protection under DOB regulations applicable to all buildings located adjacent to construction sites. However, as the resources are not S/NR-listed or NYCL-designated, or calendared for designation, they would not be afforded the added special protections under DOB's TPPN #10/88. Additional protective measures afforded under DOB's TPPN #10/88 would only become applicable if the eligible resources are calendared or designated in the future prior to the initiation of construction work. If the eligible resources are not calendared or designated, however, they would not be subject to TPPN #10/88, and may therefore be adversely impacted by adjacent retrofitting work resulting from the Proposed Action.

On sites located within 90 linear feet of eligible historic resources that are owned or controlled by the City, or that require discretionary approvals, LPC would review any potential construction-related impacts to architectural resources and would require that construction on sites incorporates construction protection plans pursuant to the *CEQR Technical Manual* in order to avoid significant adverse construction-related impacts. However, on privately owned sites that do not require discretionary actions within 90 linear feet of eligible historic resources, there is no mechanism for the City to enforce added special protections under DOB's TPPN #10/88, and potential construction-related impacts would be unmitigated.

Mitigation

The Proposed Action would result in significant adverse impacts related to historic and cultural resources and hazardous materials. As discussed below and in the FEIS, no feasible mitigation measures have been proposed due to the generic nature of the analysis, resulting in the potential for unavoidable significant adverse impacts.

Historic & Cultural Resources

Archaeological Resources

As detailed in **Chapter 7, “Historic & Cultural Resources,”** the Proposed Action could potentially result in significant adverse impacts on archaeological resources. The Proposed Action would alter the permitted bulks, footprints, and MEP equipment location requirements in the city’s floodplains. As such, additional in-ground disturbance may occur where archaeological remains exist in the future with the Proposed Action. The extent of effects on archaeological resources are unknown because the Proposed Action is generic, and it is therefore not possible to know exactly where and to what extent additional in-ground disturbance may occur in the future with the Proposed Action. As such, the possibility of effects on archaeological resources cannot be eliminated.

On sites owned or controlled by the City, or sites that require discretionary approvals, LPC would review any potential impacts to archaeological resources, and would require that these impacts be mitigated to the fullest extent possible pursuant to the *CEQR Technical Manual*. However, on privately owned sites that do not require discretionary actions, the anticipated in-ground disturbances would occur as-of-right without LPC oversight. It is anticipated that these effects would be limited; however, there is no mechanism for the City to enforce archaeological testing prior to construction. Therefore, these potential archaeological impacts would remain unmitigated in the future with the Proposed Action.

Architectural Resources

Direct (Physical) Impacts

As detailed in **Chapter 7, “Historic & Cultural Resources,”** the Proposed Action could potentially result in significant adverse direct impacts on architectural resources. The Proposed Action in-and-of-itself is not expected to induce development where it would have not occurred absent the Proposed Action. It is possible that Prototypical Analysis Sites may contain privately owned LPC-eligible, S/NR-listed, or S/NR-eligible historic architectural resources. Therefore, direct impacts to these historic resources through as-of-right alterations or demolitions in the future with the Proposed Action cannot be ruled out. As such, the Proposed Action has the potential to result in significant adverse direct impacts to privately owned NYCL-eligible, S/NR-eligible, or S/NR-listed buildings. As there is no mechanism for the City or State to enforce LPC and/or New York State Historic Preservation Office (SHPO) review of these as-of-right alterations, enlargements, or demolitions prior to construction, these potential impacts would remain unmitigated in the future with the Proposed Action.

Construction-Related Impacts

As detailed in **Chapter 7, “Historic & Cultural Resources”** and **Chapter 20, “Construction,”** the Proposed Action has the potential to result in construction-related impacts to eligible historic resources. The Proposed Action is not expected to induce development as compared to the No-Action scenarios. However, retrofits/reconstructions of existing buildings are expected to occur on eight of the 14 Prototypical Analysis Sites in the future with the Proposed Action that could be located within 90 linear feet of NYCL-eligible and/or S/NR-eligible historic resources. These eligible resources would continue to be afforded limited protection under DOB regulations applicable to all buildings located adjacent to construction sites.

However, as the resources are not S/NR-listed or NYCL-designated, or calendared for designation, they would not be afforded the added special protections under DOB's TPPN #10/88. Additional protective measures afforded under DOB's TPPN #10/88 would only become applicable if the eligible resources are calendared or designated in the future prior to the initiation of construction work. If the eligible resources are not calendared or designated, however, they would not be subject to TPPN #10/88, and may therefore be adversely impacted by adjacent retrofitting work resulting from the Proposed Action.

On sites located within 90 linear feet of eligible historic resources that are owned or controlled by the City, or that require discretionary approvals, LPC would review any potential construction-related impacts to architectural resources and would require that construction on sites incorporates Construction Protection Plans pursuant to the *CEQR Technical Manual* in order to avoid significant adverse construction-related impacts. However, on privately owned sites that do not require discretionary actions within 90 linear feet of eligible historic resources, there is no mechanism for the City to enforce added special protections under DOB's TPPN #10/88, and potential construction-related impacts would be unmitigated.

Hazardous Materials

The Proposed Action could potentially result in significant adverse hazardous materials impacts, as the Proposed Action could result in increased in-ground disturbance in areas where hazardous materials may be present. As detailed in **Chapter 10** of the FEIS, "**Hazardous Materials**," the extent of the effects of hazardous materials are unknown because of the generic nature of the Proposed Action and because it is not possible to determine exactly where and to what extent additional ground disturbance may occur in the future with the Proposed Action. Without an assessment of specific development sites, the absence of hazardous materials cannot be definitively demonstrated. As such, the possibility of impacts related to hazardous materials cannot be eliminated. The extent of potential impacts is expected to be limited. However, as development resulting from the Proposed Action on the Prototypical Analysis Sites would be as-of-right, there would be no mechanism for the City to conduct or require a program to test for hazardous materials contamination or to mandate the remediation of such materials. Therefore, any such impact would remain unmitigated.

Alternatives

No-Action Alternative

The No-Action Alternative assumes that the Proposed Action is not implemented. Conditions under this alternative are similar to the "Future without the Proposed Action (No-Action Condition)" described in the EIS chapters. Although the No-Action Alternative would potentially eliminate the adverse effects of the Proposed Action, the goals and objectives of the Proposed Action would not be met, nor would the associated benefits be realized. In the No-Action Alternative, the city's flood risk will continue to increase with climate change, since sea level rise will increase the potential height of storm surges. The New York City Building Code standards that are tied to today's storm surge projections may not be sufficient to protect buildings from being damaged from future storms under the No-Action Alternative. The No-Action Alternative would not provide clear and simple rules that treat all buildings in the floodplains as similarly as possible; would not guide long-term resilient design across New York City's 1% and 0.2% annual chance floodplains; and would not prepare the city's neighborhoods to withstand future storms.

No Unmitigated Significant Adverse Impacts Alternative

The No Unmitigated Significant Adverse Impacts Alternative examines a scenario in which components of the Proposed Action are changed in order to specifically avoid unmitigated significant adverse impacts associated with the Proposed Action. The potential for unmitigated significant adverse impacts is attributed to an increase in in-ground disturbance on eight of the 14 Prototypical Analysis Sites in the future with the

Proposed Action, as well as as-of-right alterations to potential NYCL-eligible or privately owned S/NR-eligible or S/NR-listed historic architectural resources during retrofitting in the future with the Proposed Action.

As detailed in **Chapter 7** of the FEIS, “**Historic & Cultural Resources**,” and **Chapter 10** of the FEIS, “**Hazardous Materials**,” the Proposed Action could lead to incremental in-ground disturbances on eight of the Prototypical Analysis Sites (Nos. 1, 2, 3, 6, 9, 11, 12, and 13). This as-of-right development could occur on sites where archaeological resources or hazardous materials may be present. As such, potential significant adverse impacts with respect to archaeological resources and hazardous materials cannot be eliminated on these sites.

Conceptual Analysis

As detailed in **Chapter 23** of the FEIS, “**Conceptual Analysis**,” the Proposed Action would not result in any significant adverse impacts to any CEQR technical area. The anticipated retrofitting work on the two Conceptual Analysis Sites would require special permits subject to BSA approval. Detailed and site-specific analyses of the potential effects of the anticipated With-Action projects pursuant to the *CEQR Technical Manual* would be made at the time of the special permit applications in order to make an impact determination. In its reviews, BSA would be required to conclude that the proposed buildings meet flood-resistant construction standards and determine that the other required findings of the special permits are met. These future special permit applications, if determined to meet the findings, thereby would not result in significant adverse impacts to any CEQR technical area pursuant to *CEQR Technical Manual* guidance.

Unavoidable Significant Adverse Impacts

According to the *CEQR Technical Manual*, unavoidable significant adverse impacts are those that would occur if a proposed project or action is implemented regardless of the mitigation employed, or if mitigation is infeasible. The Proposed Action could result in significant adverse impacts with respect to historic architectural resources, archaeological resources, and hazardous materials, as detailed above. However, as also discussed above, no practicable mitigation measures were identified that would reduce or eliminate these impacts. Therefore, the Proposed Action would result in the potential for unavoidable adverse impacts with respect to historic architectural resources, archaeological resources, and hazardous materials.

Growth-Inducing Aspects of the Proposed Action

The term “growth-inducing aspects” generally refers to “secondary” impacts of a proposed action that trigger further development outside the directly affected area. The *CEQR Technical Manual* indicates that an analysis of the growth-inducing aspects of a proposed action is appropriate when the project: (1) adds substantial new land use, residents, or new employment that could induce additional development of a similar kind or of support uses, such as retail establishments to serve new residential uses; and/or (2) introduces or greatly expands infrastructure capacity (e.g., sewers, central water supply).

As detailed above, the Proposed Action is a generic action with no defined development sites. The Proposed Action in-and-of-itself is not expected to induce development or cause a significant change in the overall amount, type, or location of development. The development assumptions in the No-Action and With-Action scenarios mirror recent development patterns based on trends between 2012 and 2019. The Proposed Action is not expected to change the rate of growth in the city’s floodplains, which is controlled primarily by the supply of developable land and by the local supply of skilled professionals in the construction industry. The Proposed Action is not expected to have a substantial effect on the development potential of sites, nor is it expected to modify the current housing development rate within the city’s floodplains. As such, the Proposed Action would not add substantial new land uses, new residents, or new employment that could induce additional development of a similar kind or of support uses.

Additionally, the Proposed Action is not expected to negatively affect or impact the marketability of a building in any single zoning district over another and thus would not alter general market forces within any single neighborhood. Furthermore, the Proposed Action would not greatly expand infrastructure. Therefore, the Proposed Action would not result in any secondary impacts.

Irreversible and Irretrievable Commitments of Resources

As detailed in the 2020 *CEQR Technical Manual*, an irreversible or irretrievable commitment of resources refers to impacts on or losses to resources that cannot be recovered or reversed. Examples include permanent conversion of wetlands and loss of cultural resources, soils, wildlife, agricultural production, or socioeconomic conditions. Irreversible is a term that describes the loss of future options. It applies primarily to the impacts of use of non-renewable resources, such as minerals or cultural resources, or to those factors, such as soil productivity, that are renewable only over long periods of time. Irretrievable is a term that applies to the loss of production, harvest, or use of natural resources. For example, if farmland is used for a non-agricultural event, some or all of the agricultural production from an area of farmland is lost irretrievably while the area is temporarily used for another purpose. The production lost is irretrievable, but the action is not irreversible.

Several resources, both natural and built, would be expended in the construction and operation of any retrofitting work that may result from the Proposed Action. These resources include building materials used in construction; energy in the form of natural gas, petroleum products, and electricity consumed during construction and operation of buildings; and the human effort required to develop, construct, and operate various components of any potential development. These resources are considered irretrievably committed because their reuse for some other purpose would be impossible or highly unlikely. However, these short-term losses would result in long-term gains, as the building stock of the city's floodplains would become more resilient to future sea level rise and storm surges.

As discussed above, the Proposed Action is a generic action with no defined development sites. The Proposed Action would not significantly change or increase the rate of growth in the city's floodplains, which is controlled primarily by the supply of developable land and by the local supply of skilled professionals in the construction industry. Any development pursuant to that consistent rate of growth would require consumption of resources. However, with the implementation of the Proposed Action, it is expected that future development in the floodplains would result in increased building resiliency in response to the increasing threats of sea level rise and storm surges. As such, the short-term consumption of resources associated with development would result in long-term resiliency gains in the city's floodplains.

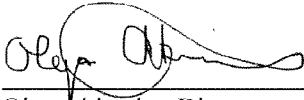
Therefore, it was concluded that, while the Proposed Action constitutes an irreversible and irretrievable commitment of potential development sites as a land resource, thereby rendering land use for other purposes infeasible.*

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City Planning Commissioners	Farah Mahjabeen
All Borough Presidents	Erick Gregory
All Community Boards	Allan Zaretsky
Raju Mann, City Council	Michael Marella
Hilary Semel, OEC	Brendan Pillar
Terrell Estes, DEP	Ryan Jacobs
David Cuff, DPR	Manuela Powidayko
Emily Humes, DPR	Jean You
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Allison McCabe	Susan Wong
Alison Brown	Thomas Smith
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Exhibit E to Sheynker Affirmation-
Community Outreach Summary
[pp. 5243 - 5255]

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Public workshops across New York City

Since Hurricane Sandy, the NYC Department of City Planning (DCP) has been engaging with coastal communities to provide helpful information and learn about their experiences rebuilding after the storm. For the past several years, the focus of our outreach has been to collaborate with community members on how the City's zoning could be updated so that buildings in the floodplain can be better prepared for future floods and contribute to neighborhood character. Recognizing that zoning is only one of many tools in New York City's strategy to build multiple lines of defense to prepare for increasing flood risks, we also sought to engage communities in a variety of ways and share information to help inform discussions.

Through this process, DCP staff have met with over 2,500 New Yorkers in all five boroughs at more than 110 public meetings and events where we presented an overview of the current Flood Resilience Zoning rules that were put in place immediately after Sandy, and solicited feedback on some initial ideas for its improvement. We hosted thirteen workshops with residents and architects to discuss these issues and others in finer detail. Several additional City agencies and organizations joined DCP planners at many of these events to share relevant information on flood insurance, coastal protection projects, and other resiliency issues. To help communities better understand the role of zoning in supporting resiliency, we shared resources at events and online, including a

and two-page handouts on , and , and

This document summarizes the input we heard from stakeholders—

residents, Community Boards, civic and homeowners associations, non-profit organizations, property owners, businesses, architects, and elected officials—about the ways that zoning can help support resiliency investments, whether it's a new building that will meet all flood-resistant construction standards or an existing building making small improvements to protect critical building equipment from flooding.

What we heard through these conversations is that many different stakeholders in floodplain communities are looking for more flexibility to support a wider range of options for designing resilient buildings. Many residents in particular want to be able to retrofit their homes to be more resistant to flooding without losing the usable space they had in their basement or cellar. Property owners and architects voiced support for zoning flexibility that would allow them to design buildings of the same internal size that are elevated to higher flood elevations expected in the future because of climate change. Businesses expressed interest in zoning incentives that would help offset the cost of investing in a floodproofed commercial space that can be accessed directly and easily from the sidewalk. Many stakeholders emphasized the need for straightforward rules that can be used by ordinary homeowners to build in a timely and predictable manner.

While voicing support for this additional zoning flexibility, many stakeholders shared concerns about how elevated buildings or large, blank floodproofed walls would affect neighborhood character. They were interested in seeing a greater variety of design options made available through zoning to improve the aesthetics of both residential and commercial resilient buildings.

Zoning was the focus of this outreach process. However, stakeholders raised concerns about other resiliency issues that are also summarized in this document. For example, many participants conveyed that it is often difficult for property owners to support the costs of proactive resiliency investments to their buildings without financial assistance.

This document summarizes the feedback we heard on issues and priorities, broken down by the following categories:

- Low-density residential neighborhoods
- Medium and high-density residential neighborhoods
- Commercial corridors
- Partial flood risk mitigations
- Areas beyond the 1% annual chance floodplain
- Recovery from future storms

This is followed by a summary of feedback we heard on other resiliency issues, and a description of next steps as the Department incorporates this feedback into a draft proposal for updates to flood resilience provisions of zoning. We invite you to review this outreach summary, and for additional background on this work, and write to us with your ideas to help shape a set of rules that can better support investments in resilient buildings in New York City.

Outreach Highlight: Video



DCP created this short video to explain special zoning regulations that apply to the floodplain. This video is part of an extensive public campaign to share information on flood risk and flood resistant construction requirements. The goal of this outreach is to generate input on how to modify zoning rules to remove regulatory barriers to resiliency investments and make neighborhoods more resilient.

Since Hurricane Sandy in 2012, DCP has led several initiatives to advance zoning and land use strategies to reduce flood risks and support the city's vitality and resiliency. This work is part of the City's **PlaNYC**, which includes numerous strategies to make the city more resilient through multiple lines of defense. In addition to coastal protection, infrastructure investment, and emergency preparedness, which are all important aspects of resiliency, building and retrofitting homes and businesses to more resilient standards ensures that neighborhoods can recover more quickly from a storm.

To ensure that there is a pathway for homes, businesses, and neighborhoods throughout the coastal area to meet the newest federal flood-resistant

construction standards, DCP developed special zoning regulations to advance flood resiliency that apply in the 1% annual chance floodplain. The goal of these rules was to promote resiliency by aligning zoning regulations with the demands of flood resilient construction standards, which are required through NYC's Building Code for any new or substantially improved buildings in the floodplain.

The Flood Resilience Zoning Text Amendment was adopted on a temporary, emergency basis in 2013, to support post-Sandy reconstruction. At this time, DCP expressed the intent to pursue a second text amendment to make provisions permanent and address additional issues encountered after these provisions were adopted.

Since then, DCP has undertaken several neighborhood and citywide studies to understand specific issues relating to resiliency improvements to buildings in residential, commercial and industrial areas. Coupled with lessons learned from homeowners and practitioners during the recovery and rebuilding process, this research has helped DCP identify opportunities to improve zoning regulations so they can better enable and encourage a more resilient building stock.

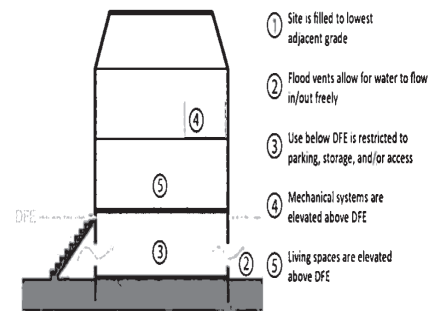
To learn more about all of DCP's resiliency initiatives visit

Flood Resilient Construction Standards

Flood resilient construction reduces potential damages from flooding and can lower flood insurance premiums. New buildings in the floodplain are required to meet flood resilient construction standards, which are set by FEMA and defined in the NYC Building Code in Appendix G. Existing buildings that are substantially improved are required to meet these standards as well. Existing buildings also have the option of reducing their risk by proactively retrofitting or rebuilding to meet these standards, or investing in short-term measures to address safety concerns. There are a wide range of flood resilient construction practices that can enable buildings to better withstand floods. The most common methods are wet floodproofing, which enables water to pass underneath the building with minimal damage, and dry floodproofing, which utilizes materials and construction that seals the building from water. Dry floodproofing is only available for non-residential buildings.

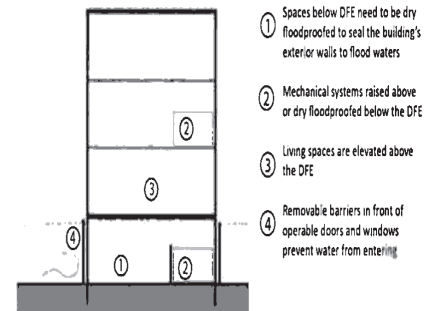
1 Wet Floodproofing

Elevating the lowest floor and mechanical equipment to above the DFE, and limiting uses below this level to parking, building access, and minor storage. This allows water to move in and out of the lower portions of the building with minimal damage.



2 Dry Floodproofing

Sealing the exterior of the building to make it water-tight and using removable barriers at entrances below the DFE in mixed-use and non-residential buildings.



Terms to Know

1% annual chance floodplain	Also referred to as the "flood zone," or the 100-year floodplain, it is the area that has a 1% chance of flooding in any given year and is designated on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs).
Base Flood Elevation (BFE)	The elevation to which floodwater is anticipated to rise during a 1% annual chance storm as shown on FEMA's FIRMs (measured from a vertical control datum, not from ground level).
Design Flood Elevation (DFE)	The minimum elevation to which a structure must be elevated or floodproofed, determined by adding freeboard (additional height for safety, either 1 or 2 feet depending on building type) to the BFE.
Substantial Damage	Damage to a building for which the total cost of repairs is 50 percent or more of the building's current market value before the disaster occurred, regardless of the cause of damage.
Substantial Improvement	Any repair, reconstruction, rehabilitation, addition, or improvement with a cost equaling or exceeding 50 percent of the current market value of the building.

Flood Resilience Zoning

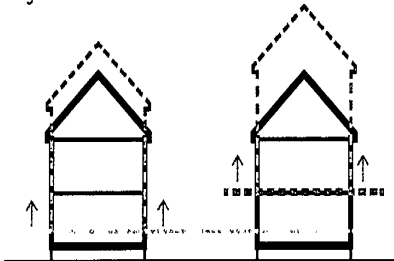
In 2013, the Flood Resilience Zoning Text Amendment was adopted on a temporary, emergency basis to remove regulatory barriers that hindered or prevented the reconstruction of storm-damaged properties. These zoning provisions enable buildings to comply with NYC Building Code and also require certain design elements

to soften the visual effect of elevated buildings that may have large, blank walls. These zoning provisions are available to buildings located entirely or partially within the 1% annual chance floodplain, as designated on either the 2007 Flood Insurance Rate Maps (FIRMs) or the 2015 Preliminary Flood Insurance Rate Maps (PFIRMs).

Under the current zoning, utilizing the following rules requires full compliance with NYC Building Code's flood resilient construction standards as defined in Appendix G.

Zoning Provisions for Development in the Floodplain

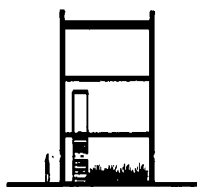
1 Height Allowances



Buildings can measure their maximum allowable height from the DFE, instead of from the ground, to ensure they can fit the permitted floor area above the flood elevation.

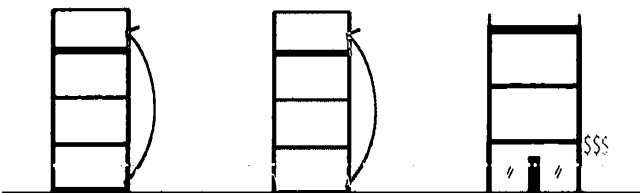
Where the DFE is moderate (between 5 and 12 feet above curb level, depending on the zoning district), a few feet of additional height above the DFE is allowed to provide for parking, minor storage, or access.

2 Streetscape Regulations



Certain design elements, such as front porches or plantings, are required when the DFE is moderate (between 5 and 12 feet above curb level) in order to improve the way elevated buildings are perceived from the sidewalk level.

3 Incentives for Floodproofing



Commercial spaces in existing buildings located in low-density commercial areas are encouraged to retrofit using dry floodproofing methods. Dry-floodproofed ground-floor space can be exempted from the amount of floor area allowed, and an equivalent amount of space can be constructed elsewhere on the site.

Existing buildings containing only residential uses, are encouraged to retrofit using wet floodproofing methods. Wet-floodproofed ground-floor space can be exempted from the amount of floor area, and an equivalent amount of space can be constructed elsewhere on the site.

Where flood elevations are high, ground floors can be exempted from floor area calculations if kept close to grade, as to offset the high cost of floodproofing. This applies to both existing and new buildings.

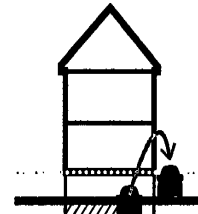
DFE
== Zoning Envelope

Zoning Provisions for Partial Mitigations

There are also provisions within the current zoning that do not require full compliance with Appendix G of the NYC Building Code. These provisions provide flexibility for property owners to make smaller resiliency investments.

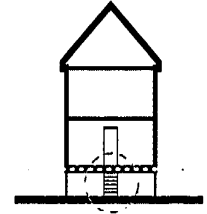
Additional background on the flood resiliency rules within zoning can be found at

1 Off-Street Parking



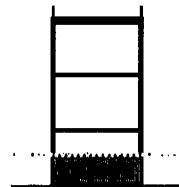
To assist in places where parking was previously located below ground level, flexibility is provided to accommodate off-street parking elsewhere on the property.

2 Access



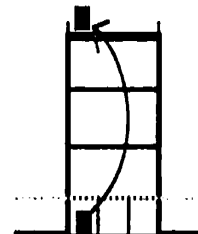
In order to allow for access to elevated spaces, stairs, ramps, and entry areas are allowed flexibility to locate in yards instead.

3 Flood Panels



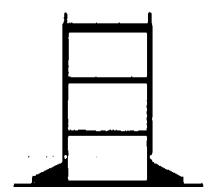
Temporary flood panels used during a storm event are allowed to be deployed within yards and open space.

4 Mechanical Systems



Property owners looking to relocate their mechanical equipment above the flood elevation can move these systems to other locations such as higher up in the building, on roofs or in yards, courts, and open space.

5 Retaining Walls



Property owners who elevate their yards above the existing grade are allowed to do so with the use of retaining walls.

Special Regulations for Neighborhood Recovery

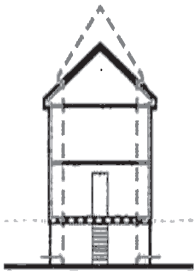
During the recovery effort to rebuild and elevate homes after Sandy, the City deemed it necessary to provide relief from documentation requirements for existing buildings undergoing retrofitting. Large numbers of homeowners with damaged buildings lacked clear documentation that their residences were legally non-conforming or non-complying with existing zoning. This made it difficult to reconstruct or elevate portions of existing structures that did not meet current zoning requirements. Because this was hampering the pace of neighborhood recovery, DCP, working with the Mayor's Office of Housing Recovery Operations, introduced an amendment to provide temporary exemption from these documentation requirements for buildings affected by Sandy. This amendment to the zoning text, called **Special Regulations for Neighborhood Recovery**, was adopted in 2015. In addition to simplifying the documentation process, it established a "cottage envelope" to allow lower, high-coverage buildings on certain narrow and shallow lots, where previous regulations were producing incongruous, tall and narrow "candlestick" structures. Since these regulations were intended to address the recovery process in heavily-impacted neighborhoods, they apply to limited areas in Brooklyn, Queens, and Staten Island, and are set to expire in 2020.

Additional Issues Identified

Since the adoption of Flood Resilience Zoning Text Amendment and Special Regulations for Neighborhood Recovery, DCP has been conducting analysis and outreach through citywide and neighborhood-specific resiliency studies to better understand how effective these temporary regulations have been in supporting the recovery and rebuilding process. This process has affirmed many ways in which the zoning is supporting flood resilient construction, but also several key areas where the rules do not fully support, or may contribute to discouraging resiliency investments in buildings (whether to make them fully compliant with Appendix G or to make smaller improvements). As part of DCP's recent outreach efforts, the additional issues we initially identified were presented to community audiences in areas that were the subject of neighborhood resiliency studies as

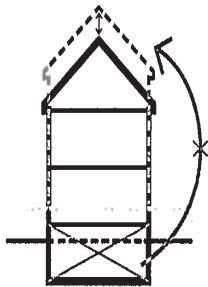
well as in other neighborhoods with a substantial area within the floodplain. This effort was intended to confirm and refine the Department's understanding of challenges faced by residents, property owners and businesses, and to identify additional issues. Examples of initial issues shared with communities are described below, and in more detail later in this document.

1 Old Homes on Small Lots



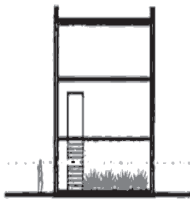
Property owners of older homes located on small lots may need more flexibility to rebuild or retrofit in the future, as they are often constrained by existing zoning regulations such as yard requirements.

2 Potential Loss of Space



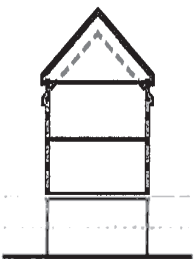
Property owners may not be able to replace lost subgrade spaces when retrofitting and filling in basements and cellars.

3 Improving the Streetscape



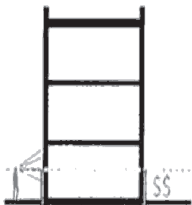
Opportunities exist to improve the options for streetscape-improving elements, including front porches or plantings, that are required for elevated buildings to mitigate potential negative effects from the street level, provide flexibility for a range of building types, and promote quality urban design.

4 Building for Future Risk



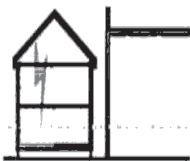
Property owners may be unable to elevate as high as they would like in order to account for future flood risk and higher flood elevations, or to reduce flood insurance costs.

5 Quality Ground Floors

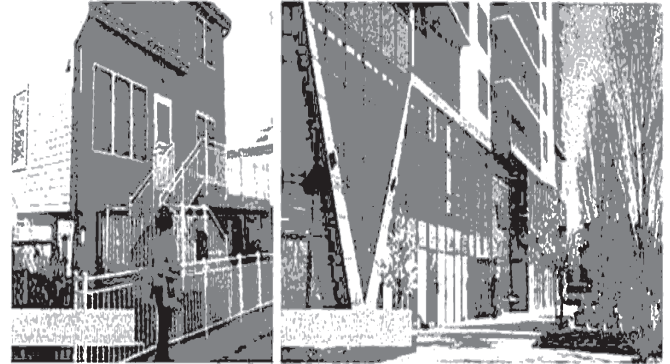


Current zoning incentives for commercial buildings that were intended to keep active uses and access to the building at the sidewalk level may not be sufficient to help offset the high cost of dry-floodproofing.

6 Residential Buildings in Manufacturing Districts



Existing homes located in Manufacturing Districts (M1, M2 and M3) and Heavy Commercial Districts (C8) are non-conforming, and thus are not able to significantly retrofit. If damaged extensively by a storm, they would be unable to rebuild as residential because zoning restricts the reconstruction of non-conforming buildings.



City Planning staff on site visits and tours

Other Issues

In discussions with other agencies and nonprofit groups, DCP also identified other concerns that are not addressed in the current flood resiliency zoning rules, including:

- buildings in campus-style housing complexes lack the flexibility needed to incorporate small resiliency improvements
- buildings situated outside the floodplain often cannot make proactive resiliency investments
- the need for an administrative approach towards implementing temporary regulations to help aid recovery following storms

The outreach process was designed to engage stakeholders—residents, Community Boards, civic and homeowners associations, non-profit organizations, property owners, businesses, architects, other City agencies, and elected officials—throughout NYC's floodplain by:

- Partnering with stakeholders to promote awareness of flood risk and resiliency issues
- Explaining zoning tools that relate to resiliency
- Exploring unique neighborhood issues through in-depth public dialogue
- Incorporating community feedback into the Zoning for Flood Resiliency text update

This outreach process, which began in 2016, included a range of activities:

- **Public Presentations** at Community Board meetings, civic group meetings, and other community events, to share an overview of DCP's climate resilience work and preliminary ideas for what can be addressed through a future zoning text update

in each borough, in partnership with local organizations and other agencies; these included facilitated conversations to collect feedback on zoning approaches to enable resilient buildings, as well as urban design strategies that complement neighborhood character

- **Technical workshops** with practitioners who regularly design resilient buildings; to understand the zoning issues they commonly face when designing new buildings and retrofitting existing buildings to be climate resilient
- **Stakeholder conversations** with non-profit and advocacy organizations, elected officials, and City, State, and Federal agencies to share ideas and learn from their experience working on climate resiliency projects

- **Sharing resources online**, including an animated informational video that was promoted on social media and advertisements throughout the city, two-page handouts on relevant topics in seven languages, a newsletter to answer common questions heard during the outreach process, and an online form for the public to share feedback if they were unable to attend presentations and workshops

This outreach effort included over 110 meetings with Community Boards, civic groups, business owners, technical experts, and residents, all of whom provided input and contributed to DCP's understanding of resilient building challenges in different neighborhood contexts.

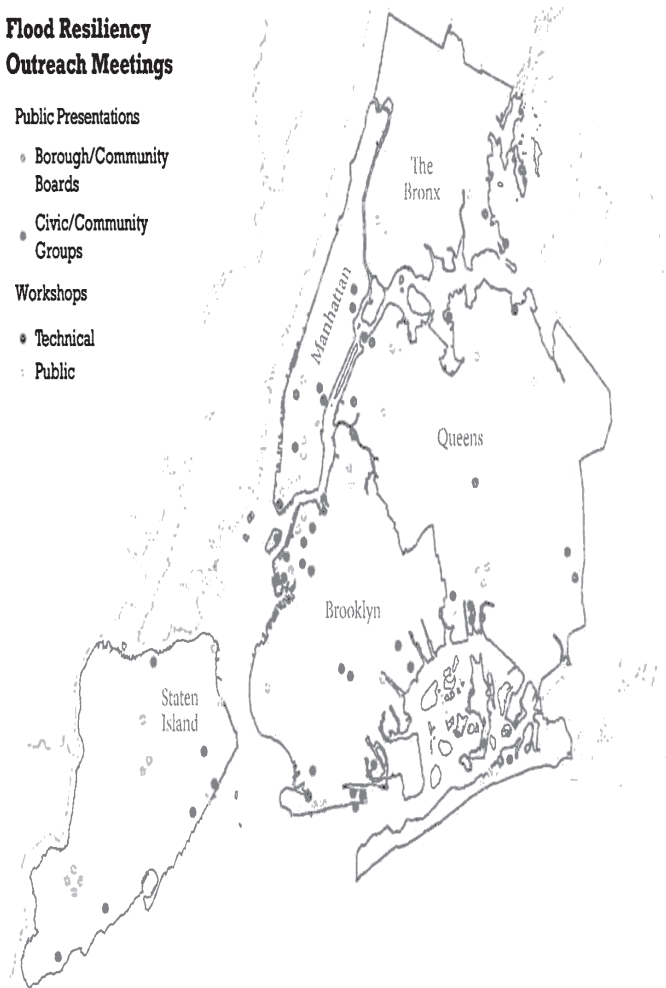
Flood Resiliency Outreach Meetings

Public Presentations

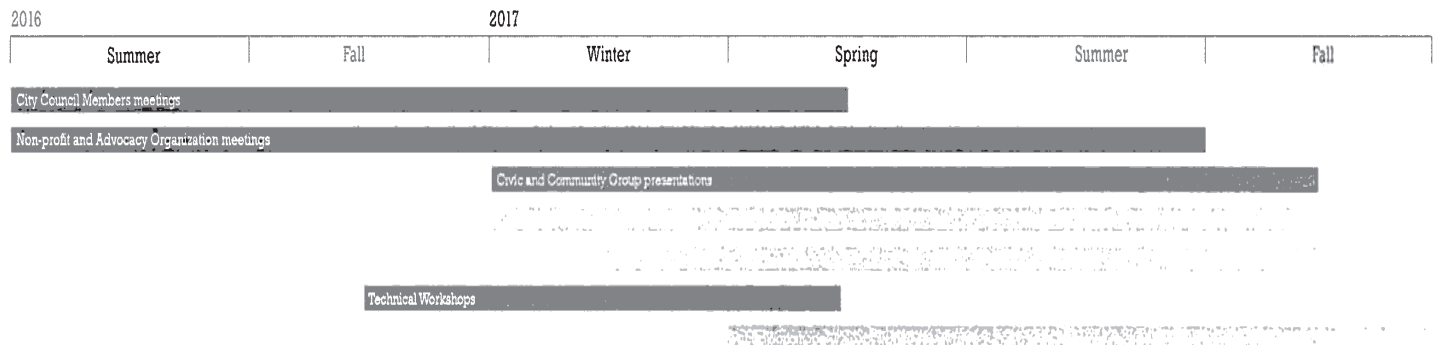
- Borough/Community Boards
- Civic/Community Groups

Workshops

- Technical
- Public



Outreach Timeline



Outreach Highlight: Public Workshop

In order to gain insights into the challenges of resilient construction in different neighborhoods, DCP hosted seven public workshops across the city with the support and assistance of community groups and other agencies. These workshops were held in Red Hook, Brooklyn; Rockaway, Queens; Midland Beach, Staten Island; Howard Beach, Queens; Coney Island, Brooklyn; Throgs Neck, the Bronx; and Lower Manhattan.

The main goals of the workshops included:

- Giving participants an overview of DCP's climate resiliency work, with a focus on how zoning can enable neighborhoods become to more resilient to flooding
- Sharing information, by providing both data on flood risk and an opportunity for relevant non-profits and agencies to communicate their ongoing resiliency work with participants
- Facilitating conversations and collecting feedback on resiliency challenges, zoning strategies, and urban design priorities to enable and encourage resilient buildings.

Facilitated conversations and feedback were the primary focus of these events, which were centered around a table activity where participants designed their own resilient buildings. Participants were asked to examine and discuss challenges of their design choices and compare them to what is allowed under existing zoning.

Workshop zoning discussions explored, but were not limited to:

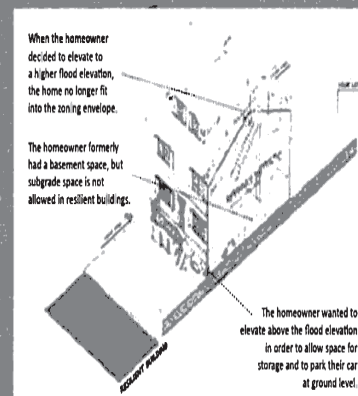
- Addressing loss of subgrade space by providing extra height for property owners to replace lost basement or cellar space elsewhere within the building
- Supporting long-term planning by allowing extra height for building owners that construct to higher flood elevations
- Promoting active retail streets by offering floor area incentives for commercial buildings that floodproof to keep entrances close to sidewalk level

- Strengthening neighborhood fabric by identifying a range of design strategies to mitigate the effects of elevated buildings.

Participants also shared challenges they faced when making their workshop buildings more resilient, as well as preferences for different design options. These workshops allowed for in-depth discussion on nuanced zoning issues, which provided DCP with insight into participants' primary concerns and ideas for fostering a more resilient building stock. Comments shared at these intensive hands-on workshops, summarized here, will continue to shape DCP's development of a proposal for Zoning for Flood Resiliency.

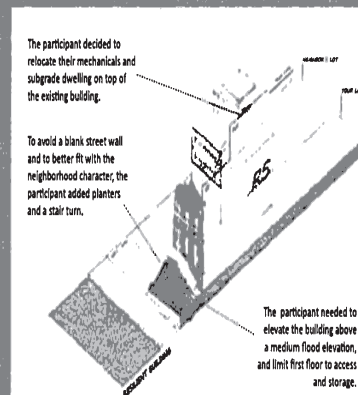
Examples of Participant-developed Resilient Buildings

Detached Residential



A participant at our Zoning for Flood Resiliency Workshop decided to elevate their example home above the flood elevation. Though they were able to add parking and additional storage space, the change in height made the home exceed the envelope allowed by current zoning regulations.

Attached Residential



A participant chose a multi-family building for the workshop. They decided to fill in the basement and relocate the dwelling above the flood elevation.

Furthermore, they identified a number of urban design strategies, such as adding vegetation in front of the elevated stair turn, to mitigate the effects of elevated buildings on neighborhood character.

Workshop Exercise: Construct Your Own Resilient Building



1 Place a building in your neighborhood. It can be the place you live, work, or are interested in.



2 Build the existing conditions of your building with available cut-out cards.



3 Place your flood elevation on the building.



4 Retrofit your building to become more resilient by using available cards.



5 Add the zoning envelope that reflects your neighborhood's zoning above the flood level.



6 Check if there are any zoning conflicts. Does the retrofitted building fit within the envelope?

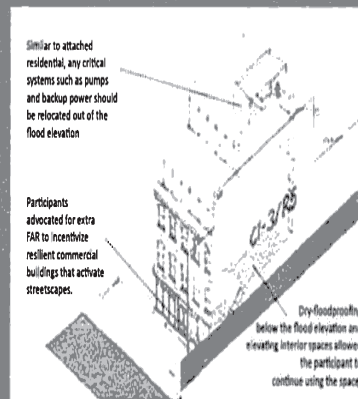


7 Add your building to the wall and imagine how your neighborhood could look like!



8 What do you think about the results? Add a post-it with your thoughts on the wall!

Commercial/Mixed Use



A participant that worked in a mixed-use art gallery and apartment complex chose to workshop a similar building. They chose to dry-floodproof and relocate storage for the gallery and mechanicals from the basement to a higher floor to avoid damage and utility outage in the event of a storm.



Public workshops across New York City

Resiliency Zoning Feedback

Low-Density Residential Neighborhoods

Participants from low-density communities across the city's floodplain frequently voiced a desire for increased zoning flexibility to support and encourage resilient design. Residents supported allowing homes to be elevated above today's flood levels by permitting extra height beyond what is allowed under existing zoning. They saw various benefits to this approach: preparation for future flood risk due to climate change or floods caused by larger storms like Sandy, additional savings on flood insurance premiums, and the ability to create new space underneath the home for parking or to relocate storage that was previously in the basement or cellar.

Architects noted that adding extra elevation to a home already undergoing a retrofit represents a relatively small additional cost overall, and yields the benefits of lower risk of flood damage, lower insurance premiums, and additional space for storage or parking. Architects and residents both expressed interest in having the option of basing the building's elevation on future, higher flood levels, to better protect their homes from the anticipated effects of climate change.

While participants in these sessions frequently expressed support for extra height allowances to support resiliency, some residents expressed concern that taller homes would conflict with existing neighborhood character. While these residents recognized that some of this is an unavoidable consequence as homes are elevated above flood levels over time, they were concerned that allowing taller homes would change the current visual experience of their street.

During the workshops in particular, many participants said that they would be interested in retrofitting their homes only if they were able to ensure that they could recoup their lost basement or cellar space elsewhere in the building. This concern was one we also heard from other City agencies and architects working with homeowners in the flood zone, who described homeowners shelving plans to retrofit their homes to flood resistant construction standards. In some instances, homeowners enrolled in the City's housing recovery program, Build It Back, withdrew after learning that zoning restrictions meant their basement or cellar space could not be relocated, declining an opportunity to make their home resilient.

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Finally, in workshops for low-density residential areas, we heard feedback regarding design strategies, such as stair turns and front porches, that help soften the visual effect of elevated buildings. Residents saw value in having flexible design parameters for elevated buildings that enable a range of aesthetically pleasing design solutions that fit different owners and neighborhoods. Some workshop participants requested that there be a wider range of design options available, beyond what is provided under zoning today.



Participants discussing resilience strategies at the Community Zoning Workshop in Eastern Bronx, October 2017

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In neighborhoods characterized by bungalow-style homes on small lots, participating residents expressed resounding support for making the "cottage envelope" available throughout the floodplain. The "cottage envelope" is an optional, alternative set of height and setback regulations that was created under the Special Regulations for Neighborhood Recovery, a temporary zoning provision that applies to a limited number of neighborhoods that were heavily impacted by Hurricane Sandy. These regulations relax certain yard requirements for homes on small, narrow or shallow lots that are otherwise highly constrained by underlying zoning, provided that the building meets a lower overall height limit. Residents have noted that homes rebuilt utilizing the cottage envelope provision have achieved better interior layouts and better fit with existing neighborhood character.

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Overall, the feedback we received about zoning was primarily related to the constraints faced when designing resilient buildings, how greater flexibility for height, yards, and floor area can make this easier, and how

building design can enhance rather than detract from the vibrancy of neighborhoods. Many stakeholders were also interested in learning about topics other than zoning, such as flood insurance, stormwater management,

and sources of financial assistance for retrofitting homes. This feedback is summarized and organized by topic area. For the full list of all the meetings we held, visit

Medium and High-Density Residential Neighborhoods

In medium and high-density residential communities, feedback was mostly related to the construction of new buildings or resiliency investments in existing buildings that do not involve physically elevating the building. (It is difficult to elevate larger buildings because of their size or structural type, especially when they share a wall with a neighbor.) Participants in these sessions generally supported additional zoning flexibility, such as allowing more height to accommodate the relocation of basement or cellar space, or exempting certain types of floodproofed space from floor area calculations. However, some residents suggested that incentives should be crafted carefully so as to avoid offering too many benefits to developers.

Residents expressed support for changes that would allow space used for lobbies and internal stairs to be exempted from the maximum allowed floor area. They felt this approach would result in better design by keeping entrances at sidewalk level and stairs within the building, as compared to locating ramps and stairs outside of the building, which would force the building to be more set back from the sidewalk. Some suggested that if parking is located beneath an elevated building, it should not count against the maximum allowed building height, although some raised concerns that parking on the ground floor will become more prevalent in resilient buildings and diminish the quality of the streetscape, and therefore should be mitigated with design elements. In general, architects and residents shared an interest in urban design strategies that help soften the stark visual impact of blank walls along the sidewalk but are flexible enough to work for a range of buildings and contexts.

Participants in the East Shore Staten Island Community Zoning Workshop, June 2017, discussed the importance of maintaining the character of the neighborhood while allowing for necessary changes to the zoning code. They emphasized the need for clear communication and collaboration between the community and the government.

Participants in the Red Hook Community Zoning Workshop, June 2017, discussed the importance of maintaining the character of the neighborhood while allowing for necessary changes to the zoning code. They emphasized the need for clear communication and collaboration between the community and the government.

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Participant selecting their favorite incentives and urban design strategies for a mixed-use high density neighborhood, November 2017



DCP held over 110 public presentations, including the Community Zoning Workshop in East Shore Staten Island, June 2017



Participant learning about base flood elevations at the Community Zoning Workshop in Red Hook, June 2017

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Commercial Corridors

Residents, business owners, property owners, and architects shared a variety of perspectives on ways to ensure that commercial corridors in the floodplain are both vibrant and resilient. There was consistent agreement among participants in workshops and at public meetings that buildings in commercial corridors best serve businesses and the community when the business can be accessed at the sidewalk level, which is most directly achieved through dry floodproofing. Stakeholders noted that dry floodproofing storefronts may add substantial upfront costs to the construction, especially when transparent, flood-resistant glass is utilized. To address this challenge, they expressed support for providing incentives for dry floodproofing through zoning, such as increasing floor area allowances for buildings with dry floodproofed spaces. An incentive for the dry floodproofing of some existing commercial buildings was created in the Flood Resiliency Text Amendment, but has not been extensively utilized. Architects noted an unintended consequence of current zoning provisions: buildings are encouraged to provide less desirable ground-floor retail space with "squished" floor-to-ceiling heights, because a first floor that is more than 50% below the DFE is considered a "cellar" rather than a "basement," and is not considered floor area.

Participants in the Manhattan Retail Workshop, November 2017, discussed the importance of maintaining the character of the neighborhood while allowing for necessary changes to the zoning code. They emphasized the need for clear communication and collaboration between the community and the government.

Participant reviewing the Flood Resiliency Text Amendment at the Manhattan Retail Workshop, November 2017

The less costly approach of elevating a commercial space can disconnect pedestrians both physically and visually from the goods or services being offered, which hurts businesses and can disrupt the continuity of commercial streets that rely on foot traffic. In the event commercial uses are elevated from the sidewalk level, stakeholders favored design techniques that mitigate the negative effects of elevated buildings and reflect neighborhood characteristics. In general, people favored design elements that help activate the street-level space with areas for people to meet, gather, and sit, rather than visual elements such as wall art that are difficult to maintain.

Workshop participants shared insights about businesses that depend on cellar spaces for operational functions such as storage, mechanical equipment, or small offices. At the Manhattan Retail Workshop, participants discussed

whether these operational functions could relocate if more commercial space were available elsewhere in the building. Utilizing the second floor for commercial space, which is typically not permitted in most parts of the city, was discussed as an option for either relocating operational functions that were formerly in the basement or renting the space to other tenants to offset the cost of dry floodproofing. However, some workshop participants expressed concern that a second floor commercial tenant may be too disconnected from the sidewalk level to be a successful business, aside from limited retail uses that may be able to survive on the second floor. In addition, business owners noted the challenge of making resiliency investments, such as relocating storage from their cellar to a second story, if they rent their space and do not own the building.

Participants in the Manhattan Retail Workshop, November 2017, discussed the importance of maintaining the character of the neighborhood while allowing for necessary changes to the zoning code. They emphasized the need for clear communication and collaboration between the community and the government.



Active discussion about storage space in commercial buildings at the Manhattan Retail Workshop, November 2017

Partial Flood Risk Mitigations

Property owners and other stakeholders pointed out that not all existing buildings will be able to fully meet flood resistant construction standards set by Building Code, either because of physical obstacles or because of financial constraints. In light of these limitations, participants at workshops also discussed the option of small improvements that can partially mitigate damage from a flood, whether at today's flood levels or higher levels in the future due to climate change. In general, stakeholders expressed a desire for zoning to allow for a wider variety of small improvements, or partial mitigations, to enable a less expensive, as-of-right approach for making their buildings more resilient.

While the current zoning allows additional latitude for mechanical equipment to be relocated from the basement to the top of the building or a rear yard, architects and property owners highlighted some limitations of these allowances. Though some flexibility exists for mechanical equipment, the space used to access the equipment is counted as floor area, which can pose difficulties for existing buildings that are trying to reconfigure and relocate building systems. Similarly, a number of residents participating in sessions requested more flexibility for locating their mechanical equipment, and owners of small homes expressed interest in being able to expand spaces to accommodate amenities such as minor storage or laundry appliances, along with the mechanical space. We also heard concerns from architects and elected officials about being able to locate emergency power generators within yards and rooftops without zoning barriers, not just within the floodplain, but within other areas of the city that may be impacted by power outages.



City Planning staff discussing Community District 13 floodplain boundaries at the Community Zoning Workshop in Southern Brooklyn, October 2017



Participant discussing resilience strategies for mixed use high-density buildings at the Manhattan Retail Workshop, November 2017

Areas Beyond the 1% Annual Chance Floodplain

Participants in outreach meetings, especially residents and architects, expressed concern that zoning does not provide additional flexibility to incorporate resiliency measures into buildings located outside the 1% annual chance floodplain, even though these areas may flood from more extreme storms or become part of the 1% annual chance floodplain in the future. In many such neighborhoods, particularly in southern Brooklyn, existing buildings may not be able to elevate above future flood levels, without bumping up against zoning height limits.

Participants also expressed concern that zoning does not provide additional flexibility to incorporate resiliency measures into buildings located outside the 1% annual chance floodplain, even though these areas may flood from more extreme storms or become part of the 1% annual chance floodplain in the future.

Recognizing the risks of an expanding floodplain due to climate change, stakeholders suggested that zoning should not restrict proactive resiliency investments in buildings that could be affected by storms that cause flooding beyond the 1% annual chance floodplain. Many recalled that Sandy flooded areas not mapped as 1% annual floodplain at the time, and at flood levels higher than indicated on the map in many areas of the floodplain. Even though buildings in these areas are not currently required to meet flood resilient construction standards, and building owners will not necessarily voluntarily forego basement or cellar space, a number of residents and practitioners participating in these sessions expressed concern that those buildings do not have a reasonable option to prepare for future flood risks.

Recovery from Future Disasters

The many initiatives undertaken by DCP to support and expedite rebuilding after Sandy, including the initial Flood Resiliency Zoning Text Amendment and Special Regulations for Neighborhood Recovery, helped ensure that underlying zoning regulations did not conflict with the NYC Building Code's flood resilient construction standards, and provided relief for buildings that are non-conforming or non-complying. These efforts were undertaken on a temporary, emergency basis, with the support of community residents and leaders. While this issue was not a specific focus of this recent public outreach process, feedback from many meeting participants reflected the importance of supporting timely rebuilding in the wake of unforeseen events, and quickly putting in place appropriate regulations when needed.

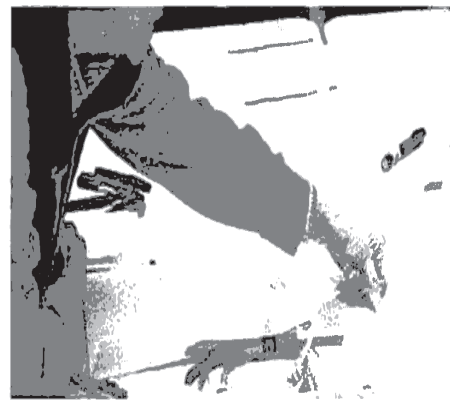
Participants also expressed concern that zoning does not provide additional flexibility to incorporate resiliency measures into buildings located outside the 1% annual chance floodplain, even though these areas may flood from more extreme storms or become part of the 1% annual chance floodplain in the future.

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City staff on a site visit at Sheepshead Bay, Brooklyn



Participant identifying the floodplain in her neighborhood at the Community Zoning Workshop in Howard Beach, October 2017



Participant discussing resilience strategies for attached residential buildings at the Community Zoning Workshop in Southern Brooklyn, October 2017

Additional Resiliency Feedback

Zoning is of course only one of the factors influencing the resiliency of buildings and neighborhoods, and many comments from stakeholders related to resiliency issues that go beyond zoning. The most commonly voiced concerns were about the high cost of retrofitting buildings, the challenges of supporting rising flood insurance premiums, and a desire to see coastal protection improvements. While these issues go beyond what zoning can directly affect, DCP has collected this feedback and shared it with agency partners, to inform future City activities and decision making.

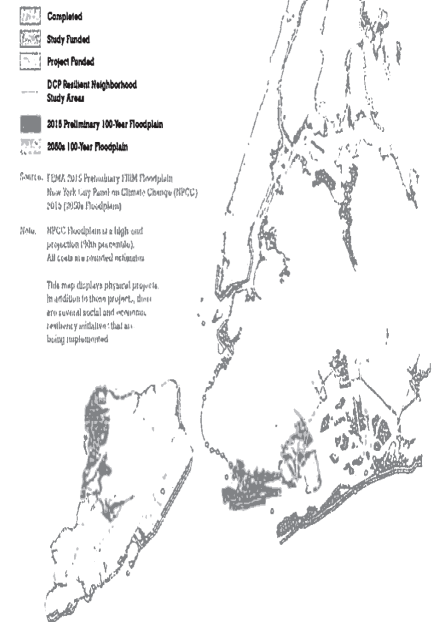
could trigger reassessment of their homes and result in higher property taxes. A homeowner with a rental unit in their basement, which would be is vulnerable to flooding and raise flood insurance premiums, would not want to lose this source of income unless there were some means of replacing the unit (or the income) elsewhere. These factors—construction costs, insurance premiums, property taxes, and potential lost income—all act as deterrents to resiliency improvements.

Owners of buildings with retail and community facility spaces stated their preference to dry floodproof in order to keep these commercial uses at sidewalk level, but they noted that the costs of doing this can be high, and that technical and material specifications, regulations, and operational and maintenance needs for these systems are often misunderstood. They expressed hope that advances in technology can make a greater array of dry floodproofing materials available at lower cost in the future.

Residents in some neighborhoods were particularly interested in learning about how the City advocates for changes to the National Flood Insurance Program and how this could help them reduce their premiums through partial mitigation measures or income-based premium relief. In some areas of the city, there were requests for investments in shoreline protection or government buy-out of properties that are especially vulnerable. In neighborhoods that experience non-coastal flooding, residents raised questions about stormwater management improvements, especially green infrastructure solutions where they can help absorb rainwater.

Finally, at some meetings, residents requested additional enforcement of regulations for elevated homes to ensure that space below the flood elevation adheres to use restrictions and is not converted to living space or other use.

A Resilient New York City: 2018 Progress Coastal Protection Project Status



Across the city, both residents and elected officials expressed that there is a gap between property owners' willingness to make proactive resiliency investments to their buildings and their ability to make these investments without financial assistance. While retrofitting their homes would not only better prepare them for a future flood but also reduce their flood insurance costs, many homeowners lack access to the capital necessary to make these investments.

In addition, as a result of changes to the National Flood Insurance Program, flood insurance premiums are increasing. While FEMA's intent is to encourage homeowners to make resiliency improvements, homeowners expressed concern that this rising cost will reduce the value of their homes, and thereby limit their ability to take out a home equity loan to help them pay for resiliency improvements. In addition, some homeowners expressed concerns that making resiliency improvements



City Planning staff on a site visit in Rosedale, Queens

OneNYC Progress Report

In 2015, New York City created a strategic plan to address challenges of population growth, aging infrastructure, increasing inequality, and climate change called *One New York: The Plan for a Strong and Just City*, also known as OneNYC. The City is using four guiding visions — 1. Our Growing, Thriving City; 2. Our Just and Equitable City; 3. Our Sustainable City; and 4. Our Resilient City, to shape inclusive growth and climate action.

Vision 4, Our Resilient City, ties directly into City Planning's work to mitigate flood risk at the building and neighborhood scale. In 2018, the Mayor's Office published their third progress report, where latest data shows the square footage of buildings upgraded against flood risk increasing from about 7.7 million in 2017 to over 21.5 million in 2018. City Planning, along with the Office of Recovery and Resiliency and the Housing Recovery Office, has been working with coastal communities hit by Hurricane Sandy and encouraging flood-resilient building construction and retrofits. In addition, the City launched a public education campaign with [FloodSmartNYC.org](#) offering free flood risk information and services. This work is augmented supporting preparedness efforts of community and faith-based organizations, investments in protecting critical infrastructure systems, and supporting numerous coastal protection projects that span across New York City's shoreline, seen in the map above.

For the full report and past progress reports, visit [https://www1.nyc.gov/about/one-nyc](#)



The 2,500 stakeholders in communities across the floodplain who participated in DCP's outreach events provided important input on strategies that can support resilient building design, whether it involves making small investments to protect critical assets, retrofitting an existing home or business to meet full resilient standards, or designing a new resilient building.

The Department is actively incorporating this feedback into the process of drafting a proposal for Zoning for Flood Resiliency, which we plan to release publicly in Fall 2018, with a plain-language description of proposed zoning changes. This draft proposal will take into account what we have learned through the process of supporting Sandy recovery, the recommendations generated from our recent resiliency studies, including the [redacted] and [redacted] studies as well as [redacted] studies, and of course what we heard during our public outreach process. As we further develop the zoning proposal, we will continue to engage with communities and other stakeholders in advance of beginning the formal public review process, which will include a full environmental review and will provide opportunities for Community Boards, Borough Presidents, and the public at large to provide comments or feedback before the City Planning Commission and City Council consider and vote on the proposed changes.

If you didn't have the opportunity to attend one of our outreach meetings, we invite you to share your feedback on the issues covered in this summary. Have you encountered zoning issues when making resilient investments in your building? Do you have ideas about how resilient buildings can also ensure a vibrant neighborhood? Are there any zoning issues related to enabling resilient construction you think we have missed? Write to us at:

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Exhibit F to Sheynker Affirmation-
Hearing Transcript, dated April 27, 2021
[pp. 5256 - 5270]

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RECEIVED NYSCEF: 08/06/2021

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CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON LAND USE

----- X

April 27, 2021
Start: 11:11 a.m.
Recess: 11:25 a.m.

HELD AT: Remote Hearing (Virtual Room 1)

B E F O R E: Rafael Salamanca
CHAIRPERSON

COUNCIL MEMBERS:
Adrienne Adams
Diana Ayala
Inez Barron
Joseph Borelli
Selvena Brooks-Powers
Chaim Deutsch
Ruben Diaz, Sr.
Vanessa Gibson
Barry Grodenchik
Peter Koo
Stephen Levin
I Daneek Miller
Francisco Moya
Kevin Riley
Antonio Reynoso
Carlina Rivera
Mark Treyger

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

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A P P E A R A N C E S (CONTINUED)

1 COMMITTEE ON LAND USE 3

2 SERGEANT-AT-ARMS: PC recording has

3 started.

4 SERGEANT-AT-ARMS: Cloud recording has

5 started.

6 SERGEANT-AT-ARMS: Backup is rolling.

7 SERGEANT-AT-ARMS: Sergeant Polite, you may

8 begin with your opening statement.

9 SERGEANT-AT-ARMS: Thank you. Good morning

10 and welcome to the remote hearing on land use votes.

11 While Council members and staff please turn on their

12 video at this time? Thank you. To minimize

13 disruption, please place all cell phones and

14 electronics to vibrate. You may send your testimony

15 to land use testimony@Council.NYC.go. Once again,

16 that is land use testimony@council.nyc.gov. Chair,

17 we are ready to begin.

18 CHAIRPERSON SALAMANCA: All right. Thank

19 you, Sergeant-at-arms. Good morning. I am Council

20 member Rafael Salamanca. I am the Chair of the

21 Committee on Land Use. I am joined remotely today by

22 Council members. We are joined by Council members

23 Grodenchik, Adams, Ayala, Barron, Borelli, Brooks-

24 Powers, Deutsch, Diaz Senior, Council member Feliz,

25 Gibson, Koo, Reynoso, Chair Riley, Rivera, and

1 COMMITTEE ON LAND USE 4
2 Treyger. Today, we will vote on applications
3 referred out from both of our subcommittees, but
4 before we begin, I would like to recognize the
5 committee counsel to review the remote meeting
6 procedures.

7 COMMITTEE COUNSEL: Thank you, Chair
8 Salamanca. I am Julie Lubin, Counsel to this
9 committee. Council members who would like to ask
10 questions or make remarks should use the zoom raise
11 hand function. The raise hand button should appear
12 at the bottom of the participant panel. I will
13 announce council members who have questions or
14 remarks in the order that they raise their hands.
15 Chair Salamanca will then recognize members to speak.
16 We ask that you please be patient if any technical
17 difficulties arise today. Chair Salamanca will now
18 continue with today's agenda items.

19 CHAIRPERSON SALAMANCA: Thank you, Council.
20 From our zoning subcommittees, we will vote to
21 approve LU 764, the 135th-137th Bedford Avenue
22 rezoning proposal relating to property in Council
23 member Levin's district in Brooklyn. The proposal
24 seeks a zoning map amendment to establish a C1-4
25 overlay district to an existing R6A and R6B

1 COMMITTEE ON LAND USE 5
2 districts. On the east side of Bedford Avenue
3 between North Ninth and North 10th Streets. The
4 proposed rezoning would mirror an existing commercial
5 overlay district across the street and facilitate a
6 new mixed use development with ground floor
7 commercial use and residential units on the upper
8 floors. We will also vote to approve three separate,
9 but related proposals by the Department of City
10 Planning on Resilient Neighborhoods Initiative.
11 These proposals are all intended to facilitate
12 resilient development in areas vulnerable to
13 flooding. We will vote to approve LU 766 and 767,
14 the Gernison Beach Resilient Neighborhood Proposal
15 related to property in Council member Maisel's
16 district in Brooklyn. The proposal seeks a zoning
17 map amendment to change an existing R4, C3, and C2-2
18 districts to R4-1, C3A, and C2-3 districts and a
19 related zoning text amendment to establish a new
20 special coastal risk district. We will vote to
21 approve LUs 768, the Sheepshead Bay Resilient
22 Neighborhood proposal related to property in Council
23 member Deutsch's district in Brooklyn. The proposal
24 seeks a zoning text amendment to align existing
25 relations of the special Sheepshead Bay district with

1 COMMITTEE ON LAND USE 6
2 flood resilient buildings and design standards. We
3 will vote to approve LU 769, the Old Howard Beach
4 Resilient Neighborhood proposal related to property
5 in Council member Ulrich's district in Queens. The
6 proposal seeks a zoning map amendment to replace
7 existing R3-1 and R3-2 districts with an R3X and an
8 R3-1 district to more closely match the existing
9 building context. And we will vote to approve, with
10 modifications, LUs 765, the Department of City
11 Planning Zoning for Coastal Flood Resilient proposal.
12 This is a citywide zoning text amendment to update
13 temporary provisions adopted in an emergency basis
14 after Hurricane Sandy and is intended to facilitate
15 flood resilient design measures to provide better
16 protection from flood risk in vulnerable areas,
17 support public access to waterfront sites through
18 resilient open space design, and help New Yorkers
19 recover quickly from other future disasters. The
20 modifications will include clarifications applicable
21 of the proposed flood plan regulations and
22 clarification to certain bulk regulations. These
23 clarifications will address floor area rules and
24 provide obstruction rules for accessory mechanical
25 equipment. From the landmark subcommittee, we will

1 COMMITTEE ON LAND USE 7
2 vote to approve LU 752 , the 69 Adams Street project.
3 This is an application submitted by the Department of
4 Citywide Administrative Services pursuant to a
5 section 197C of the New York City charter for the
6 disposition of city owned property located at the
7 west side of Parole Street between York and Front
8 Streets at block 52, Lot 15 and 17 in the Dumbo
9 neighborhood of Brooklyn represented by Member Levin.
10 This action will facilitate the transfers of 98,446
11 square feet of commercial development rights, also
12 known as the air rights, to an adjacent property
13 privately owned site so as to include commercial
14 office space in a 25 story mixed-use building. We
15 will also vote to approve LU 757, then new Penn
16 Development One. This application was submitted by
17 the Department of Housing Preservation and
18 Development pursuant to article 16 of the General
19 municipal Law and charter section 197 for the
20 designation of an urban development action area,
21 approval of an urban development action area project,
22 and a disposition of city owned property. The
23 property is located at 306 Pennsylvania Avenue, 392,
24 and 426 Wyoma Street, and 467 Vermont Street in the
25 East New York neighborhood of Brooklyn. These

1 COMMITTEE ON LAND USE 8

2 approvals will facilitate the development of three

3 new building with 46 affordable rental units, eight

4 of which will be affordable, independent residences

5 for seniors. We will also vote to approve LU 758,

6 the new Penn Development Two, UDAP. This application

7 was submitted by HPD pursuant to article 16 of the

8 General Municipal law for approval of an urban

9 development action project and a waiver of the area

10 designation requirements, as well as a waiver of

11 section 197C and 197D of the New York City Charter.

12 The property is located at 791 Saratoga Avenue, 792

13 Rockaway Avenue, 429 Newport Street, 303 Hinsdale

14 Street, 461 New Jersey Avenue, 432 Wyoma Street, and

15 510 Vermont Street, also East New York neighborhoods

16 in Brooklyn. This application will facilitate the

17 construction of seven buildings containing

18 approximately 25 rental dwelling units plus one unit

19 for our superintendent. Both new Penn projects are

20 located in Council member Barron's district. Members

21 of the committee and members representing affected

22 districts who have questions or remarks about today's

23 items should use the raise hand button now. Counsel,

24 will you announce the members in order that their

25 hands were raised?

1 COMMITTEE ON LAND USE 9

2 COMMITTEE COUNSEL: Yes. I don't see
3 any hands raised, Chair Salamanca. Oh. Council
4 member Barron.

5 CHAIRPERSON SALAMANCA: Council member
6 Barron, you have the floor. You are muted, Council
7 member.

8 COUNCIL MEMBER BARRON: Thank you very much
9 to the Chair and to the Chairs of the subcommittees.
10 I just briefly want to call attention to the New Penn
11 project which is in my district. It is bringing
12 housing that is affordable to the people who
13 presently live there so as to come that any attempts
14 at gentrification or displacement of the people who
15 live there. They are designed to be able to-- I
16 think it is 60 percent of the AMI is 80% of the
17 project. They also have 10% for homeless and there
18 are ARES apartments for seniors in the development.
19 It is going to be contextually consistent with the
20 façade that exists in our community which is brick,
21 for the most part. And I just want to encourage all
22 of my colleagues to vote for the New Penn Project.
23 Thank you very much.

24

25

1 COMMITTEE ON LAND USE 10

2 CHAIRPERSON SALAMANCA: Thank you, Council
3 member Barron. Counsel, is there anyone else with
4 their hands up?

5 COMMITTEE COUNSEL: No. No one else
6 has their hands raised.

7 CHAIRPERSON SALAMANCA: All right. Seeing
8 none, I will now call for a vote in accordance with
9 the recommendations of the subcommittees and the
10 local members to approve LUs 752, 757, 758, 764, 766,
11 767, 768, and 769 and to approve with modifications
12 as I described LUs 765. Will the clerk please call
13 the roll?

14 COMMITTEE CLERK: Good morning. Matthew
15 De Stephano, Committee Clerk. Roll call vote
16 Committee on Land Use. Chair Salamanca?

17 CHAIRPERSON SALAMANCA: Aye on all.

18 COMMITTEE CLERK: Gibson?

19 COUNCIL MEMBER GIBSON: Good morning. Aye
20 on all.

21 COMMITTEE CLERK: Barron?

22 COUNCIL MEMBER BARRON: I vote aye on all
23 with the exception of 752 on which I am voting no.
24 thank you.

25 COMMITTEE CLERK: Deutsch?

1 COMMITTEE ON LAND USE 11

2 COUNCIL MEMBER DEUTSCH: Aye on all.

3 COMMITTEE CLERK: Koo?

4 COUNCIL MEMBER KOO: Aye.

5 COMMITTEE CLERK: Miller? Council member

6 Miller? Okay. We'll go back. Reynoso?

7 COUNCIL MEMBER REYNOSO: I vote aye on

8 all.

9 COMMITTEE CLERK: Treyger?

10 COUNCIL MEMBER TREYGER: Aye.

11 COMMITTEE CLERK: Grodenchik?

12 COUNCIL MEMBER GRODENCHIK: Aye.

13 COMMITTEE CLERK: Adams?

14 COUNCIL MEMBER ADAMS: I vote aye on all.

15 COMMITTEE CLERK: Ayala? Council member

16 Ayala? All right. We'll come back. Ruben Diaz

17 Senior?

18 COUNCIL MEMBER DIAZ SR.: Si en todo.

19 COMMITTEE CLERK: Moya?

20 COUNCIL MEMBER MOYA: I vote aye on all.

21 COMMITTEE CLERK: Rivera?

22 COUNCIL MEMBER RIVERA: I vote aye.

23 COMMITTEE CLERK: Riley?

24 COUNCIL MEMBER RILEY: I vote aye on all.

25 COMMITTEE CLERK: Brooks-Powers?

1 COMMITTEE ON LAND USE 12

2 COUNCIL MEMBER AYALA: Hi. Did you call

3 me?

4 COMMITTEE CLERK: Yes. council member

5 Ayala. Go ahead. I'm sorry?

6 COUNCIL MEMBER AYALA: I vote aye. Sorry

7 about that.

8 COMMITTEE CLERK: Okay. Council member

9 Brooks-Powers?

10 COUNCIL MEMBER BROOKS-POWERS: I vote

11 aye on all.

12 COMMITTEE CLERK: Feliz? Council member

13 Feliz? All right. We'll come back. Borelli?

14 COUNCIL MEMBER BORELLI: I vote aye.

15 COMMITTEE CLERK: Council member Miller?

16 COUNCIL MEMBER MILLER: I vote aye.

17 COMMITTEE CLERK: Council member Feliz?

18 UNIDENTIFIED: [inaudible 00:11:31]

19 CHAIRPERSON SALAMANCA: He was on. I don't

20 see him on anymore.

21 COMMITTEE CLERK: Okay. I'm going to call

22 the vote for now. Land use applications have been

23 approved 17 in the affirmative, zero in the negative,

24 and no abstentions with the exception of LU 752 which

25

1 COMMITTEE ON LAND USE 13

2 was approved 16 in the affirmative, one in the
3 negative, and no abstentions.

4 CHAIRPERSON SALAMANCA: I would like to
5 thank the members of the public and my colleagues,
6 Council and land use staff, for attending today's
7 hearing. We're going to leave the roll open for five
8 minutes to get the Council member that were not here
9 an opportunity to vote. Thank you all.

10 COMMITTEE CLERK: Council member Feliz,
11 are you there?

12 COUNCIL MEMBER FELIZ: Yes. I'm having
13 some Wi-Fi issues. Can everybody hear me well?

14 COMMITTEE CLERK: Yes. This is a
15 continuation of roll call vote Committee on Land Use.

16 COUNCIL MEMBER FELIZ: Oh, yes. I vote
17 yes.

18 COMMITTEE CLERK: Thank you. The vote now
19 stands at 18 for approval, zero in the negative, and
20 no abstentions with the exception of LU 752 which is
21 17 in the affirmative, one negative, no abstentions.

22 CHAIRPERSON SALAMANCA: All right. I would
23 like to thank the members of the public, Counsel and
24 land use staff for attending today's hearing. It is
25 hereby adjourned.

FILED: NEW YORK COUNTY CLERK 08/06/2021 04:38 PM

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date May 30, 2021

**Corrected Exhibit B to Sheynker Affirmation-
March 17, 2021 City Planning Commission Report for Application
#N 210095 ZRY
(Reproduced herein at pages 4441 to 4856)**

**Affirmation of Good Faith of Pamela A. Koplik in Support of Application
for Adjournment, dated August 26, 2021
[pp. 5272 - 5274]**

FILED: NEW YORK COUNTY CLERK 08/26/2021 05:05 PM

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RECEIVED NYSCEF: 08/26/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of the Application of

LANDMARKWEST! INC.,

Petitioners,

For a judgment pursuant to CPLR Article 78

- against -

NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, NEW YORK CITY DEPARTMENT OF
BUILDINGS, EXTELL DEVELOPMENT COMPANY, AND
WEST 66TH SPONSOR LLC,

,

Respondents.

-----X

**AFFIRMATION OF
GOOD FAITH IN
SUPPORT OF
APPLICATION FOR
AN ADJOURNMENT**

Index No. 160565/2020

PAMELA A. KOPLIK, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under penalty of perjury, pursuant to Rule 2106 of the New York Civil Practice Law and Rules:

1. I am an Assistant Corporation Counsel in the office of GEORGIA M. PESTANA, Corporation Counsel for the City of New York, attorney for Respondents, NEW YORK CITY BOARD OF STANDARDS AND APPEALS (“BSA”) and NEW YORK CITY DEPARTMENT OF BUILDINGS (“DOB”), (collectively “City Respondents”). I am familiar with the facts and circumstances of the instant proceeding based upon records and files maintained by agencies of the City of New York, and upon communications with employees of those agencies.

2. I make this affirmation in support of City Respondents’ application for a thirty-five (35) day adjournment of this matter to provide additional time to respond to the Petitioner’s motion to renew.

3. In this motion Petitioner seeks leave to renew its article 78 proceeding pursuant to CPLR 2221(e), which was denied and dismissed by the Court's Decision and Order dated May 4, 2021, and upheld the BSA's January 28, 2020 Resolution filed on November 6, 2020 ("BSA Resolution") affirming the issuance of a permit by DOB to proceed with construction of a proposed building at 36 West 66th Street in the Special Lincoln Square District ("Special District").

4. On August 23, 2021, I left a telephone message for Petitioner's counsel to discuss a needed adjournment of the August 27, 2021 return date of this matter in the Submissions Part, Room 130 of the Courthouse located at 60 Centre Street, New York, New York, 10007. I also sent an e-mail to Petitioner's counsel to discuss the needed adjournment. See August 23, 2021 through August 24, 2021 e-mail exchange annexed hereto as Exhibit A.

5. I initially requested an adjournment until September 24, 2021 to respond to the motion based upon the upcoming September holidays and the start of school. See Exhibit A. Petitioner's counsel would only agree to provide an adjournment until September 20, 2021 to respond to his renewal motion. I consented to that amount of time and prepared a stipulation with the dates requested by Petitioner's counsel and e-mailed same to all parties for execution. See Exhibit A and copy of proposed stipulation annexed hereto as Exhibit B.

6. Thereafter, Petitioner's counsel mandated that the response of EXTELL DEVELOPMENT COMPANY and WEST 66TH SPONSOR LLC ("Extell Respondents") be due on September 3, 2021, prior to and at a different time than the City Respondents' response. See Exhibit A. In a subsequent telephone conversation between me and Petitioner's counsel, Petitioner's counsel would only grant me the adjournment if the Extell Respondents' response was submitted at an earlier date. During that telephone conversation, Petitioner's counsel

mentioned that he would give Extell Respondents until September 10, 2021, but never memorialized that in an e-mail and would not give the Extell Respondents the same courtesy of the adjournment as they would give to me. In subsequent e-mails, Petitioner's counsel proposed that responses of all Respondents be due September 13, 2021, but that is not enough time for City Respondents.

7. It does not make sense for the Respondents to have different dates to submit opposition to Petitioner's renewal motion. Notably, Extell Respondents objected on the same basis.

8. This is City Respondents' first request for an adjournment of this matter.

9. In order to respond to this petition, City Respondents need to thoroughly review the new material annexed to the renewal motion. Additionally, the responsive papers will need to be thoroughly reviewed by representatives from different City agencies – BSA and DOB. Due to factors related to the recent and ongoing situation surrounding COVID-19, remote working conditions, September holidays and the start of school, Respondents respectfully request an initial adjournment for both City Respondents and Extell Respondents to respond to the renewal motion by September 24, 2021, with the return date in room 130 to be adjourned to **October 1, 2021**.

Dated: New York, New York
August 26, 2021

/s/

Pamela A. Koplik
Attorney for City Respondents
Assistant Corporation Counsel
New York City Law Department
100 Church St.
New York, NY 10007
(P) 212.356.2187
pkoplik@law.nyc.gov

**Exhibit A to Koplik Affirmation-
Various Email Correspondence
[pp. 5275 - 5282]**

From: [Mikhail Sheynker](#)
To: [Koplik, Pamela \(Law\)](#); [Jason Cyrulnik](#)
Subject: [EXTERNAL] Re: LandmarkWest!
Date: Tuesday, August 24, 2021 1:07:11 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

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--Misha



**KLEIN
SLOWIK**
PLLC

Mikhail Y. Sheynker, Esq.

Mail: 90 Broad Street, Suite 602
New York, NY 10004
Email: msheynker@buildinglawnyc.com
Phone: (212) 564-7560 ext. 111
Mobile: (917) 7153060
Fax: (866) 934-0434 *temporary*
Website: <http://www.buildinglawnyc.com>

From: "Koplik, Pamela (Law)" <pkoplik@law.nyc.gov>
Date: Tuesday, August 24, 2021 at 12:56 PM
To: Mikhail Sheynker <MSheynker@buildinglawnyc.com>, Jason Cyrulnik <jcyrulnik@cf-llp.com>
Subject: RE: LandmarkWest!

It absolutely makes no sense to have two separate dates for opposition. I also conferred with Jason about how much time I needed prior to drafting the stipulation. Please sign the stipulation as originally drafted. Thanks.

Pamela A. Koplik
Senior Counsel
New York City Law Department
Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157

New York, NY 10007
Phone: (212) 356-2187
Fax: (212) 356-2019
pkoplik@law.nyc.gov

From: Mikhail Sheynker <MSheynker@buildinglawnyc.com>
Sent: Tuesday, August 24, 2021 12:48 PM
To: Jason Cyrulnik <jcyrulnik@cf-llp.com>; Koplik, Pamela (Law) <pkoplik@law.nyc.gov>
Subject: [EXTERNAL] Re: LandmarkWest!

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Jason, you wanted 2 weeks, right?-- you got them. Pamela needed more time—she got it. I am not pushing the return date outside September 27.

--Misha



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Fax: (866) 934-0434 *temporary*
Website: <http://www.buildinglawnyc.com>

From: Jason Cyrulnik <jcyrulnik@cf-llp.com>
Date: Tuesday, August 24, 2021 at 12:40 PM
To: Mikhail Sheynker <MSheynker@buildinglawnyc.com>, "Koplik, Pamela (Law)" <pkoplik@law.nyc.gov>
Subject: Re: LandmarkWest!

I don't think it makes any sense to have two separate opp dates. You could have the time you need for reply.

Jason Cyrulnik
 Partner
 Cyrulnik Fattaruso LLP
 55 Broadway, Third Floor
 New York, NY 10006
 (m) 917.353.3005
 (@) jcyrulnik@cf-llp.com

From: Mikhail Sheynker <MSheynker@buildinglawnyc.com>

Sent: Tuesday, August 24, 2021 12:33:17 PM

To: Koplik, Pamela (Law) <pkoplik@law.nyc.gov>; Jason Cyrulnik <jcyrulnik@cf-llp.com>

Subject: Re: LandmarkWest!

Pamela, I've amended the dates for Extell. Because Jason this past Friday told me he could get me his opp in 2 weeks' time and that I would negotiate separate dates with you, I set his opp deadline for Sep. 3, which will allow me more time for the reply. Your dates I kept as discussed. If that is fine with everyone, you can file it.

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From: "Koplik, Pamela (Law)" <pkoplik@law.nyc.gov>

Date: Tuesday, August 24, 2021 at 9:28 AM

To: 'Jason Cyrulnik' <jcyrulnik@cf-llp.com>

Cc: Mikhail Sheynker <MSheynker@buildinglawnyc.com>

Subject: RE: LandmarkWest!

Mikhail,

Please return executed copy as soon as possible for e-filing. Thanks so much.

Pamela A. Koplik
Senior Counsel
New York City Law Department
Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157
New York, NY 10007
Phone: (212) 356-2187
Fax: (212) 356-2019
pkoplik@law.nyc.gov

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Sent: Monday, August 23, 2021 2:24 PM
To: 'Jason Cyrulnik' <jcyrulnik@cf-llp.com>
Cc: Mikhail Sheynker <MSheynker@buildinglawnyc.com>
Subject: RE: LandmarkWest!

Apologies,

Stipulation with updated firm information attached.

Pam

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Cc: Mikhail Sheynker <MSheynker@buildinglawnyc.com>
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THIS MESSAGE IS FROM AN EXTERNAL SENDER

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Pamela, my firm info is updated in my signature line below.

Jason Cyrulnik
Partner
Cyrulnik Fattaruso LLP
55 Broadway, Third Floor
New York, NY 10006
(m) 917.353.3005
(@) jcyrulnik@cf-llp.com

On Aug 23, 2021, at 2:05 PM, Koplik, Pamela (Law) <pkoplik@law.nyc.gov> wrote:

Attached is the stipulation with the below dates. Please sign and scan back to me.
Thanks,

Pamela A. Koplik
Senior Counsel
New York City Law Department
Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157
New York, NY 10007
Phone: (212) 356-2187
Fax: (212) 356-2019
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Cc: jcyrulnik@cf-llp.com

Subject: [EXTERNAL] Re: LandmarkWest!

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I can consent to a 30-day adjournment to September 27th. You can have until September 20th for opp and my reply will be due on the return date, the 27th.

--Misha

<[image002.png](#)>

Mikhail Y. Sheynker, Esq.

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New York, NY 10004

Email: msheynker@buildinglawnyc.com

Phone: (212) 564-7560 ext. 111

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Fax: (866) 934-0434 *temporary*
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Date: Monday, August 23, 2021 at 12:24 PM
To: Mikhail Sheynker <MSheynker@buildinglawnyc.com>
Cc: "jcyrulnik@cf-llp.com" <jcyrulnik@cf-llp.com>
Subject: Re: LandmarkWest!

I need the time because I am swamped with other matters and September is crazy with holidays and the start of school. How long will you consent to?

Thanks,

Pam

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Cc: jcyrulnik@cf-llp.com <jcyrulnik@cf-llp.com>
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So, the adjournment date would have to go beyond 30 days?! I cannot consent to is as I am about to perfect he appeal and I want the renewal motion to be decided as soon as possible.

--Misha

<[image003.png](#)>

Mikhail Y. Sheynker, Esq.

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New York, NY 10004
Email: msheyarker@buildinglawnyc.com
Phone: (212) 564-7560 ext. 111
Mobile: (917) 7153060
Fax: (866) 934-0434 *temporary*
Website: <http://www.buildinglawnyc.com>

From: "Koplik, Pamela (Law)" <pkoplik@law.nyc.gov>
Date: Monday, August 23, 2021 at 11:59 AM
To: Mikhail Sheynker <MSheyarker@buildinglawnyc.com>
Cc: "jcyrulnik@cf-llp.com" <jcyrulnik@cf-llp.com>
Subject: Re: LandmarkWest!

I am asking for one month to September 24 to respond to your motion.

Pamela A. Koplik
Senior Counsel
New York City Law Department
Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157
New York, NY 10007
Phone: (212) 356-2187
Fax: (212) 356-2019
pkoplik@law.nyc.gov

From: Mikhail Sheynker <MSheyarker@buildinglawnyc.com>
Sent: Monday, August 23, 2021 11:52 AM
To: Koplik, Pamela (Law) <pkoplik@law.nyc.gov>
Cc: jcyrulnik@cf-llp.com <jcyrulnik@cf-llp.com>
Subject: [EXTERNAL] Re: LandmarkWest!

THIS MESSAGE IS FROM AN EXTERNAL SENDER

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How much time do you need to put in your opp/by what date would you have it available?

[<image009.png>](#)

Mikhail Y. Sheynker, Esq.

Mail: 90 Broad Street, Suite 602
New York, NY 10004
Email: msheynker@buildinglawnyc.com
Phone: (212) 564-7560 ext. 111
Mobile: (917) 7153060
Fax: (866) 934-0434 *temporary*
Website: <http://www.buildinglawnyc.com>

From: "Koplik, Pamela (Law)" <pkoplik@law.nyc.gov>
Date: Monday, August 23, 2021 at 11:51 AM
To: Mikhail Sheynker <MSheynker@buildinglawnyc.com>
Cc: "jcyrulnik@cf-llp.com" <jcyrulnik@cf-llp.com>
Subject: LandmarkWest!

Hello Mikhail,

I just left you a telephone message. I am seeking an adjournment to respond to your motion to renew. Please let me know if you consent to a one month adjournment. I have been out of the office for approximately two weeks and now I'm swamped with other pending matters. If you do consent, I will prepare a stipulation. Thanks so much,

Pamela A. Koplik
Senior Counsel
New York City Law Department
Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157
New York, NY 10007
Phone: (212) 356-2187
Fax: (212) 356-2019
pkoplik@law.nyc.gov

<LandmarkWest - Stipulation of Adjournment - (# Legal 11369752_1)(36352 KB).DOC>

**Exhibit B to Koplik Affirmation-
Stipulation of Adjournment, dated August 23, 2021
[pp. 5283 - 5284]**

FILED: NEW YORK COUNTY CLERK 08/26/2021 05:05 PM

NYSCEF DOC. NO. 94

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/26/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
LANDMARKWEST! INC.,

- against -

Petitioner

**STIPULATION OF
ADJOURNMENT**

Index No. 160565/2020

NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, NEW YORK CITY DEPARTMENT OF
BUILDINGS, EXTELL DEVELOPMENT COMPANY AND
WEST 66TH SPONSOR LLC,

Respondents.

----- X

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for all parties in the above-captioned proceeding that Respondents' time to answer or otherwise respond to Petitioner's motion to reargue/renew shall be extended to and until September 20, 2021, that Petitioner's reply, if any, shall be served on or before September 27, 2021, and that the Petition shall be returnable in Room 130 on September 27, 2021, or as soon thereafter as counsel may be heard.

IT IS FURTHER STIPULATED AND AGREED that facsimile signatures are deemed to be originals for the purposes of this stipulation.

Dated: New York, New York
August 23, 2021

KLEIN SLOWIK, PLLC
Attorneys for Petitioner
90 Broad Street, Suite 602
New York, New York 10004
(917) 715-3060

GEORGIA M. PESTANA
Corporation Counsel of the
City of New York
Attorney for Municipal Respondents
100 Church Street
New York, New York 10007
(212) 356-2187

By: _____
Mikhail Y. Sheynker, Esq.

By: _____
Pamela A. Koplik, Esq.

FILED: NEW YORK COUNTY CLERK 08/26/2021 05:05 PM

NYSCEF DOC. NO. 94

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/26/2021

CYRULNIK FATTARUSO LLP
Attorneys for Extell Respondents
55 Broadway, Third Floor
New York, NY 10006
(m) 917.353.3005

By: _____
Jason Cyrulnik, Esq.

Corrected Exhibit A to Koplik Affirmation-
Various Email Correspondence
[pp. 5285 - 5292]

FILED: NEW YORK COUNTY CLERK 08/26/2021 05:53 PM

NYSCEF DOC. NO. 95

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/26/2021

From: [Mikhail Shevner](#)
To: [Koplik, Pamela \(Law\)](#); [Jason Cyrulnik](#)
Subject: [EXTERNAL] Re: LandmarkWest!
Date: Tuesday, August 24, 2021 1:07:11 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

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Then, submit your request for adjournment to Room 130.

--Misha



**KLEIN
SLOWIK**
PLLC

Mikhail Y. Sheynker, Esq.

Mail: 90 Broad Street, Suite 602
New York, NY 10004
Email: msheynker@buildinglawnyc.com
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Fax: (866) 934-0434 *temporary*
Website: <http://www.buildinglawnyc.com>

From: "Koplik, Pamela (Law)" <pkoplik@law.nyc.gov>
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To: Mikhail Sheynker <MSheynker@buildinglawnyc.com>, Jason Cyrulnik <jcyrulnik@cf-llp.com>
Subject: RE: LandmarkWest!

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Pamela A. Koplik
Senior Counsel
New York City Law Department
Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157

FILED: NEW YORK COUNTY CLERK 08/26/2021 05:53 PM

NYSCEF DOC. NO. 95

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/26/2021

New York, NY 10007
Phone: (212) 356-2187
Fax: (212) 356-2019
pkoplik@law.nyc.gov

From: Mikhail Sheynker <MSheynker@buildinglawnyc.com>
Sent: Tuesday, August 24, 2021 12:48 PM
To: Jason Cyrulnik <jcyrulnik@cf-llp.com>; Koplik, Pamela (Law) <pkoplik@law.nyc.gov>
Subject: [EXTERNAL] Re: LandmarkWest!

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To: Mikhail Sheynker <MSheynker@buildinglawnyc.com>, "Koplik, Pamela (Law)" <pkoplik@law.nyc.gov>
Subject: Re: LandmarkWest!

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Jason Cyrulnik
Partner
Cyrulnik Fattaruso LLP
55 Broadway, Third Floor
New York, NY 10006
(m) 917.353.3005
(@) jcyrulnik@cf-llp.com

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Cc: Mikhail Sheynker <MSheynker@buildinglawnyc.com>

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FILED: NEW YORK COUNTY CLERK 08/26/2021 05:53 PM

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Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157
New York, NY 10007
Phone: (212) 356-2187
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Pamela, my firm info is updated in my signature line below.

Jason Cyrulnik
Partner
Cyrulnik Fattaruso LLP
55 Broadway, Third Floor
New York, NY 10006
(m) 917.353.3005
(@) jcyrulnik@cf-llp.com

FILED: NEW YORK COUNTY CLERK 08/26/2021 05:53 PM

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RECEIVED NYSCEF: 08/26/2021

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New York, NY 10007
Phone: (212) 356-2187
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Sent: Monday, August 23, 2021 12:28 PM

To: Koplik, Pamela (Law) <pkoplik@law.nyc.gov>

Cc: icyrulnik@cf-llp.com

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--Misha

[<image002.png>](#)

Mikhail Y. Sheynker, Esq.

Mail: 90 Broad Street, Suite 602
New York, NY 10004

Email: msheynker@buildinglawnyc.com

Phone: (212) 564-7560 ext. 111

FILED: NEW YORK COUNTY CLERK 08/26/2021 05:53 PM

NYSCEF DOC. NO. 95

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/26/2021

Mobile: (917) 7153060
Fax: (866) 934-0434 *temporary*
Website: <http://www.buildinglawnyc.com>

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<p align="center">THIS MESSAGE IS FROM AN EXTERNAL SENDER</p> <p align="center">Use caution when clicking on links or attachments and never provide your username or password. Not sure? Report this email to phish@cyber.nyc.gov.</p>
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--Misha

<[image003.png](#)>

Mikhail Y. Sheynker, Esq.

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Cc: "jcyrulnik@cf-llp.com" <jcyrulnik@cf-llp.com>

Subject: Re: LandmarkWest!

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Senior Counsel
New York City Law Department
Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157
New York, NY 10007
Phone: (212) 356-2187
Fax: (212) 356-2019
pkoplik@law.nyc.gov

From: Mikhail Sheynker <MSheynker@buildinglawnyc.com>

Sent: Monday, August 23, 2021 11:52 AM

To: Koplik, Pamela (Law) <pkoplik@law.nyc.gov>

Cc: jcyrulnik@cf-llp.com <jcyrulnik@cf-llp.com>

Subject: [EXTERNAL] Re: LandmarkWest!

<p align="center">THIS MESSAGE IS FROM AN EXTERNAL SENDER</p> <p>Use caution when clicking on links or attachments and never provide your username or password. Not sure? Report this email to phish@cyber.nyc.gov.</p>

How much time do you need to put in your opp/by what date would you have it available?

FILED: NEW YORK COUNTY CLERK 08/26/2021 05:53 PM

NYSCEF DOC. NO. 95

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/26/2021

<image009.png>

Mikhail Y. Sheynker, Esq.

Mail: 90 Broad Street, Suite 602
New York, NY 10004
Email: msheynker@buildinglawnyc.com
Phone: (212) 564-7560 ext. 111
Mobile: (917) 7153060
Fax: (866) 934-0434 *temporary*
Website: <http://www.buildinglawnyc.com>

From: "Koplik, Pamela (Law)" <pkoplik@law.nyc.gov>
Date: Monday, August 23, 2021 at 11:51 AM
To: Mikhail Sheynker <MSheynker@buildinglawnyc.com>
Cc: "jcyrulnik@cf-llp.com" <jcyrulnik@cf-llp.com>
Subject: LandmarkWest!

Hello Mikhail,

I just left you a telephone message. I am seeking an adjournment to respond to your motion to renew. Please let me know if you consent to a one month adjournment. I have been out of the office for approximately two weeks and now I'm swamped with other pending matters. If you do consent, I will prepare a stipulation. Thanks so much,

Pamela A. Koplik
Senior Counsel
New York City Law Department
Administrative Law & Regulatory Litigation Division
100 Church Street, Room 5-157
New York, NY 10007
Phone: (212) 356-2187
Fax: (212) 356-2019
pkoplik@law.nyc.gov

<LandmarkWest - Stipulation of Adjournment - (# Legal 11369752_1)(36352 KB).DOC>

**Affirmation of Mikhail Sheynker, for Petitioner, in Opposition
to Application for Adjournment, dated August 26, 2021
[pp. 5293 - 5295]**

FILED: NEW YORK COUNTY CLERK 08/26/2021 11:55 PM

NYSCEF DOC. NO. 96

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/26/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
LANDMARKWEST! INC.

Index No.: 160565/2020

--against--

Affirmation in Support

NEW YORK CITY BOARD OF STANDARDS
AND APPEALS, NEW YORK CITY DEPARTMENT
OF BUILDINGS, EXTELL DEVELOPMENT
COMPANY AND WEST 66TH SPONSOR LLC
-----X

MIKHAIL SHEYNKER, ESQ., an attorney duly admitted to
practice law before the Courts of the State of New York, hereby
affirms and states under penalty of perjury pursuant to CPLR
2106:

1. I am associated with Klein Slowik PLLC, attorneys of
record for Petitioner LandmarkWest!, Inc. (LW!) and
respectfully submit this Affirmation in Opposition to the
request of corporation counsel for an adjournment of the
return date of the motion to renew for more than 30 days.
2. Therefore, I request that if an adjournment is granted,
the return date is adjourned up to 30 days to September
27, 2021, and that I receive at least 2 weeks for a
reply.
3. Although I would usually not be hesitant to consent to
adjournment on a first-time basis (and when the petition
was initially filed, I consented to a 60-day adjournment

when Corporation Counsel requested), the underlying situation here is serious.

4. This proceeding opposes construction of a skyscraper that will destroy the urban character of the Upper West Side neighborhood.
5. Recently, the developer has restarted construction and is trying to beat the clock and moot this motion to renew and the related appeal that is in the process of being perfected by constructing the structure and creating "the facts on the ground."
6. That is why I request that the adjournment be limited to 30 days to September 27, 2021, and that the opposition be due no later than September 13, 2021, with reply due on or before September 27, 2021.
7. This motion was efiled on August 6, 2021. By September 13, 2021, Respondents will have had 38 days to prepare opposition. That is more than enough time under the circumstances. I understand that we are still in midst of the pandemic, kids are returning to school and the season of religious holidays is upon us, but none of these

FILED: NEW YORK COUNTY CLERK 08/26/2021 11:55 PM

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considerations have slowed down the pace of construction
of the subject mega monstrosity.

Dated: Brooklyn, New York
August 26, 2021

KLEIN SLOWIK, PLLC

Mikhail Sheynker

By Mikhail Sheynker, Esq.
90 Broad Street, Suite 602
New York, New York 10004
Phone: 917-715-3060 (temp)
msheynker@buildinglawnyc.com

Request for Adjournment Referee Application, filed August 31, 2021**FILED: NEW YORK COUNTY CLERK 08/31/2021 11:36 AM**

NYSCEF DOC. NO. 97

INDEX NO. 160565/2020

RECEIVED NYSCEF: 08/31/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LANDMARKWEST! INC.,

Plaintiff(s),

Index No.: 160565-2020

Date: August 31, 2021

- against -

Motion Seq. No.: **002**NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, NEW YORK CITY DEPARTMENT OF
BUILDINGS, EXTELL DEVELOPMENT COMPANY
AND WEST 66TH SPONSOR LLC,Defendant(s).

**Request for Adjournment
Referee Application****The Adjournment Application is:** Granted in Part (see dates below).Opposition Due: September 20, 2021.Reply Due: September 29, 2021.Motion Return Date: September 30, 2021.**Please Note:** Dates may include adjustments made for court calendar scheduling needs.

For e-filing purposes only.

FILED: NEW YORK COUNTY CLERK 08/31/2021 02:40 PM

INDEX NO. 160565/2020

NYSCEF DOC. NO. 98

RECEIVED NYSCEF: 08/31/2021

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

*Justice*In the Matter of the Application of
LANDMARKWEST! INC.,INDEX NO. 160565/2020
MOTION DATE
MOTION SEQ. NO. 2
MOTION CAL. NO.

Petitioner,

For a judgment pursuant to CPLR Article 78

- against -

NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, NEW YORK CITY DEPARTMENT OF
BUILDINGS, EXTELL DEVELOPMENT COMPANY, AND
WEST 66TH SPONSOR LLC,

Respondents.

The following papers, numbered 1 to ____ were read on this motion for/to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...


Answer — Affidavits — Exhibits _____

Replying Affidavits

PAPERS NUMBERED

Cross-Motion: Yes ☐ No ☒

The new briefing schedule is as follows: Respondent shall file opposition on or before September 27, 2021; Petitioner shall file a reply on or before October 18, 2021. The motion will be marked fully submitted on October 19, 2021.

Dated: August 30, 2021


EILEEN A. RAKOWER, J.S.C.

**Affirmation of Pamela A. Koplik, for City Respondents, in Opposition
to Motion for Leave to Renew, dated September 24, 2021
[pp. 5298 - 5299]**

FILED: NEW YORK COUNTY CLERK 09/24/2021 01:51 PM

NYSCEF DOC. NO. 99

INDEX NO. 160565/2020

RECEIVED NYSCEF: 09/24/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

LANDMARKWEST! INC.,

Petitioner,

-against-

NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, NEW YORK CITY DEPARTMENT OF
BUILDINGS, EXTELL DEVELOPMENT COMPANY,
AND WEST 66TH SPONSOR LLC,

**AFFIRMATION IN
OPPOSITION TO
PETITIONER'S MOTION
FOR LEAVE TO RENEW**

Index No. 160565/2020

Respondents.

----- x

PAMELA A. KOPLIK, an attorney admitted to practice before the Courts of the State of New York, affirms the following to be true upon information and belief, under penalty of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules ("CPLR"):

1. I am an Assistant Corporation Counsel in the office of GEORGIA M. PESTANA, Corporation Counsel of the City of New York, attorney for NEW YORK CITY BOARD OF STANDARDS AND APPEALS ("BSA") and NEW YORK CITY DEPARTMENT OF BUILDINGS ("DOB")("City Respondents"). I make this affirmation to submit to the Court various documents referenced in City Respondents' Memorandum of Law in Response to Petitioner's Motion for Leave to Renew.

2. A true and accurate copy of the July 22, 2021 Decision and Order of the Appellate Division, First Department, in *The City Club of New York v. New York City Board of Standards and Appeals, et al.* (Index No. 161071/2019) is annexed hereto as Exhibit A.

FILED: NEW YORK COUNTY CLERK 09/24/2021 01:51 PM

NYSCEF DOC. NO. 99

INDEX NO. 160565/2020

RECEIVED NYSCEF: 09/24/2021

3. A true and accurate copy of this Court's May 4, 2021 Decision and Order in the instant proceeding and the transcript upon which it was based, is annexed hereto as Exhibit B.

4. A true and accurate copy of a March 17, 2021 City Planning Commission Report for Application #N 210095 ZRY is annexed hereto as Exhibit C.

Dated: New York, New York
September 24, 2021

/s/
PAMELA A. KOPLIK
Assistant Corporation Counsel

**Exhibit A to Koplik Affirmation-
Decision and Order of the Appellate Division, First Department, in
The City Club of New York v. New York City Board of Standards
and Appeals, et al., Index No. 161071/19
[pp. 5300 - 5307]**

FILED: NEW YORK COUNTY CLERK 09/24/2021 01:51 PM

INDEX NO. 160565/2020

NYSCEF DOC. NO. 100

RECEIVED NYSCEF: 09/24/2021

FILED: APPELLATE DIVISION - 1ST DEPT 07/22/2021 10:35 AM

2020-04916

NYSCEF DOC. NO. 24

Supreme Court of the State of New York

RECEIVED NYSCEF: 07/22/2021

Appellate Division, First Judicial Department

Judith J. Gische,
Cynthia S. Kern
Jeffrey K. Oing
Martin Shulman

J.P.,

JJ.

Appeal No.	13937-
	13937A
Index No.	161071/19
Case Nos.	2020-04916
	2020-04917

In the Matter of THE CITY CLUB OF NEW YORK,
Petitioner-Respondent,

–against–

NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, et al.,

Respondents-Appellants.

Respondents appeal from the judgment of the Supreme Court, New York County (Arthur F. Engoron, J.), entered November 18, 2020, granting, on the terms set forth in an order, same court and Justice, entered September 25, 2020, the petition brought pursuant to CPLR article 78 to annul the determination of respondent New York City Board of Standards and Appeals, dated October 15, 2019, which affirmed the issuance of a building permit by respondent New York City Department of Buildings allowing respondents Extell Development Company and West 66th Sponsor LLC to proceed with construction, and the appeal therefrom bringing up for review an order, same court and Justice, entered March 20, 2020, which denied respondents' motion to dismiss the petition.

James E. Johnson, Corporation Counsel, New York (Eric Lee, Richard Dearing and Claude S. Patton of counsel), for municipal appellants.

Cyrulnik Fattaruso LLP, New York (Jason Cyrulnik, Paul Fattaruso and Alex Potter of counsel), for Extell Development Company and West 66th Sponsor LLC, appellants.

John R. Low-Beer, Brooklyn and Charles N. Weinstock, New York, for respondent.

OING, J.

This appeal asks us to resolve a challenge to the determination of the New York City Board of Standards and Appeals (BSA) upholding a Department of Buildings (DOB) permit for a project development near Lincoln Center. Petitioner contends that BSA incorrectly interpreted the applicable provisions of the New York City Zoning Resolution and that therefore the determination is contrary to law and arbitrary and capricious. Supreme Court agreed with petitioner. Respondents BSA and owner appealed.

The development project is a 39-story, 775-foot-high residential and community facility building situated on a zoning lot located within the Special Lincoln Square District, a special-purpose area with its own distinct set of zoning provisions. Respondents Extell Development Company and West 66th Street Sponsor LLC (owner) are constructing the building on the block bounded by West 65th and 66th Streets, Columbus Avenue, and Central Park West. The project will have approximately 130 condominiums atop a 30,000-square-foot community facility space. The building will have four floors for mechanical equipment whose combined height is 198 feet. The lower floors will be occupied by Congregation Habonim, a synagogue founded in 1939 that previously sat on part of the site. In April 2019, after DOB issued the required permits and the building's foundation was completed, the project vested (*see* Zoning Resolution [ZR] § 11-331).

The project is situated on a zoning lot (54,687 square feet) that straddles two different zoning districts. This type of zoning lot is known as a “split lot,” with each zoning district having its own limitations on uses, densities, and building profiles allowed within its boundaries. The northern portion of the zoning lot lies in a C4-7

district, a general commercial district that permits high-density residential and commercial development (35,105 square feet). The southern portion of the zoning lot lies in an R8 district, a general residential district that permits mid-density development (19,582 square feet). The owner created the project's zoning lot by merging these two zoning districts because without the merger the project would be limited to its original proposal of a 27-story residential and community facility building with a total height of 292 feet. Pursuant to the applicable Zoning Resolution provisions, the total floor area permitted on the project site is 548,543 square feet. ZR § 82-34's bulk distribution regulation required that the project had to have at least 60% of the total floor area located below a height of 150 feet (329,125.8 square feet). The project designated 329,131.92 square feet of floor area below 150 feet, slightly more than the 60% requirement.

Petitioner appealed DOB's approval of this project to BSA on two grounds, that the project failed to comply with the applicable bulk distribution regulation, which resulted in a building five or six floors taller than permitted, and that the project's floor-to-ceiling height for its mechanical spaces was excessive. BSA denied the appeal, and petitioner commenced this article 78 proceeding. Supreme Court granted the petition and annulled BSA's determination on the ground that the approval was contrary to the purpose of the applicable Zoning Resolution provisions, which was "to limit the height of buildings" in the Special Lincoln Square District. We now reverse.

ZR § 77-01 provides that the split-lot regulation applies "[w]henver any zoning lot is located in two or more districts in which different uses are permitted, or in which different use, bulk, accessory off-street parking and loading, or other regulations apply." In that circumstance, ZR § 77-02 mandates that "each portion of such zoning lot shall be

regulated by all the provisions applicable to the district in which such portion of the zoning lot is located.”

The split-lot provisions are triggered for the project’s zoning lot given that the two districts have different zoning regulations. Petitioner argues that the ZR § 82-34 bulk distribution regulation is not applicable to the project’s R8 zoning district because it is limited to the C4-7 zoning district. The result would prohibit a transfer of floor area square footage across R8’s zoning district boundary lines to C4-7 zoning district. Prohibiting the transfer would undermine the construction of the 39-story building because the project would not have the required area square footage even after the merger of the two zoning districts.

This Court has held that a split lot is treated as a single lot when assessing compliance with a zoning requirement that applies equally to both zoning districts of the split lot and that the split-lot provision is applied on a “regulation-by-regulation basis” (*see Matter of Beekman Hill Assn. v Chin*, 274 AD2d 161, 174-178 [1st Dept 2000], *lv denied* 95 NY2d 767 [2000]). ZR § 82-34, the relevant bulk distribution regulation, provides that “[w]ithin the Special District, at least 60 percent of the total floor area permitted on a zoning lot” must be below a height of 150 feet from curb level. There is no dispute that the project complied with ZR § 82-34. Practically speaking, this provision directly regulates the distribution of a building’s floor area and indirectly regulates height by restricting much of a zoning lot’s floor area to the part of a building below a cutoff. Every square foot that needs to be below the 150-foot ceiling to comply with ZR § 82-34 reduces the number of square feet that could be above it. That said, ZR § 82-34 does not set forth any language setting a fixed height limit (*compare* ZR § 23-

662 [listing maximum height of buildings in feet for residential contextual districts]¹; ZR § 23-691 [listing maximum height for limited height districts]; ZR § 98-423 [listing maximum height for the subareas in Special West Chelsea District]; ZR § 62-354 [establishing a maximum height in feet and number of stories for certain residential district within a waterfront area in Brooklyn]]. As noted by BSA, “the Special District’s bulk-distribution regulations do operate to reduce the height of buildings in the Special District – only not to the extent [petitioner] wish[es]” (BSA Resolution, Sept. 17, 2019, BSA Cal. Nos. 2019-89-A and 2019-94-A). By its plain language and relying on *Beekman Hill*, BAS held that this regulation applies to both the R8 and the C4-7 zoning districts because it is located in a “Special District.” Indeed, ZR § 82-34’s language does not identify any delineating exceptions; it applies within the Special District regardless of subdistrict, street frontage, other designated location, or zoning district designation. ZR § 82-34’s imposition of the bulk distribution regulation within the Special Lincoln Square District creates the commonality discussed in *Beekman Hill* so as to override the split-lot provision’s prohibition against transfer of floor area between the two zoning districts, and permits the two zoning districts to be treated as one. Under these circumstances, we find that BSA’s determination to apply ZR § 82-34 to the project’s zoning lot was rational.

Petitioner fares no better with its argument that the phrase “[w]ithin the Special District” does not encompass the Special Lincoln Square District because it is ambiguous. Were this an issue of pure statutory reading and analysis, BSA’s

¹ A contextual district is one in which the goal of the regulations is to “produce buildings that are consistent with existing neighborhood character” (ZR Glossary of Zoning Terms).

interpretation would have been accorded less weight (*see Matter of Peyton v New York City Bd. of Stds. & Appeals*, 36 NY3d 271, 280 [2020]). However, the interpretation of the “Special District” term entails an evaluation of factual data and inferences, and involves knowledge and understanding of underlying operational practices. BSA’s finding that the Special Lincoln Square District is a ZR § 82-34 “Special District” was rational and therefore entitled to deference (*id.*).

BSA rationally rejected petitioner’s argument that the bulk distribution regulation and the tower coverage regulation are inextricably linked and that the tower coverage regulation should be applied to the R8 zoning district. In contrast to the wording set forth in ZR § 82-34, *supra*, the language in ZR § 82-36, the tower coverage regulation, applies only in the C4-7 zoning district. BSA properly calculated compliance with the tower coverage regulation solely on the basis of the C4-7 zoning district of the zoning lot because ZR § 82-36 does not apply in R8 zoning districts. That calculation included BSA’s express consideration of testimony and credible evidence in the form of architectural diagrams and examples of buildings in the vicinity (*Matter of Peyton*, 36 NY3d at 280 [deference to BSA is appropriate where it “entails an evaluation of factual data and inferences to be drawn therefrom”]).

Petitioner next argues that pursuant to ZR § 12-10 the project’s floor-to-ceiling heights of its mechanical floor spaces, i.e., areas for mechanical equipment, do not qualify as floor space used for mechanical equipment so as to be exempt from floor-to-ceiling floor-area calculations. To be sure, ZR § 12-10, as amended, precludes deduction of floor-to-ceiling height for the mechanical areas from floor area calculations in certain zoning districts. In resolving this issue, BSA rationally relied on its precedent (*see 15 East 30th Street*, BSA Cal. No. 2016-4327-A [Sept. 20, 2017]) in ruling that when this

project vested ZR § 12-10 did not control or regulate the height of the mechanical floor area (see *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009] [rational for agency to act “consistent with its own rules and precedents”]) . Regardless, the project’s foundation’s completion prior to the effective date of ZR § 12-10’s amendment permitted the project to proceed with construction as of right under ZR § 11-331]. Thus, BSA’s determination that ZR § 12-10, prior to its amendment, did not provide a basis for counting the height of the project’s mechanical floor areas against the zoning lot’s total permissible floor area was rational. We note that petitioner has challenged the amount of the project’s floor space used for mechanical equipment as excessive or irregular in a separate proceeding. The merits of that challenge are not before us, and we offer no opinion thereon.

In light of the foregoing, we do not reach respondents’ remaining arguments.

Accordingly, the judgment of the Supreme Court, New York County (Arthur F. Engoron, J.), entered November 18, 2020, granting, on the terms set forth in an order, same court and Justice, entered September 25, 2020, the petition brought pursuant to CPLR article 78 to annul the determination of respondent New York City Board of Standards and Appeals, dated October 15, 2019, which affirmed the issuance of a building permit by respondent New York City Department of Buildings allowing respondents Extell Development Company and West 66th Sponsor LLC to proceed with construction, and the appeal therefrom bringing up for review an order, same court and Justice, entered March 20, 2020, which denied respondents’ motion to dismiss the petition, should be reversed, on the law, without costs, the judgment vacated, the petition denied, and the proceeding dismissed. The appeals from order, same court and Justice, entered September 25, 2020, which granted the petition and enjoined

construction of a proposed building at 36 West 66th Street in Manhattan, should be dismissed, without costs, as subsumed in the appeal from the judgment.

Judgment, Supreme Court, New York County (Arthur F. Engoron, J.), entered November 18, 2020, granting, on the terms set forth in an order, same court and Justice, entered September 25, 2020, the petition brought pursuant to CPLR article 78 to annul the determination of respondent New York City Board of Standards and Appeals, dated October 15, 2019, which affirmed the issuance of a building permit, and the appeal therefrom bringing up for review an order, same court and Justice, entered March 20, 2020, reversed, on the law, without costs, the judgment vacated, the petition denied, and the proceeding dismissed. Appeals from order, same court and Justice, entered September 25, 2020, dismissed, without costs, as subsumed in the appeal from the judgment.

Opinion by Oing, J. All concur.

Gische, J.P., Kern, Oing, Shulman, JJ.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: July 22, 2021



Susanna Molina Rojas
Clerk of the Court

**Exhibit B to Koplik Affirmation-
Decision and Order of the Honorable Eileen A. Rakower
Appealed From, dated May 4, 2021, with Transcript of
Proceedings, dated May 4, 2021
(Reproduced herein at pages 4, 6 to 29)**

**Exhibit C to Koplik Affirmation-
March 17, 2021 City Planning Commission Report for Application
#N 210095 ZRY
(Reproduced herein at pages 4441 to 4856)**

**City Respondents' Memorandum of Law in Opposition to Motion for
Leave to Renew, dated September 24, 2021
[pp. 5309 - 5319]**

FILED: NEW YORK COUNTY CLERK 09/24/2021 01:51 PM

NYSCEF DOC. NO. 103

INDEX NO. 160565/2020

RECEIVED NYSCEF: 09/24/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

LANDMARKWEST! INC.,

Petitioner,

-against-

Index No. 160565/2020

NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, NEW YORK CITY DEPARTMENT OF
BUILDINGS, EXTELL DEVELOPMENT COMPANY,
AND WEST 66TH SPONSOR LLC,

Respondents.

----- x

**CITY RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S
MOTION FOR LEAVE TO RENEW**

GEORGIA M. PESTANA
Corporation Counsel of the
City of New York
Counsel for City Respondents
100 Church Street, Room 5-157
New York, New York 10007
Tel: (212) 356-2187

September 24, 2021

SHERYL NEUFELD,
MARK MUSCHENHEIM,
PAMELA A. KOPLIK,
OF COUNSEL

Respondents, NEW YORK CITY BOARD OF STANDARDS AND APPEALS (“BSA”) and NEW YORK CITY DEPARTMENT OF BUILDINGS (“DOB”), (“City Respondents”) by their attorney, GEORGIA M. PESTANA, Corporation Counsel of the City of New York, submits this memorandum of law in opposition to Petitioner’s motion for leave to renew the Article 78 petition denied and dismissed by this Court’s May 4, 2021 Decision and Order. *See* Notice of Motion.

PRELIMINARY STATEMENT

The instant proceeding involves the proposed development of a 39-story residential and community-facility building in the Special Lincoln Square District. The main issue considered by the BSA was whether the architectural and mechanical plans for the proposed building show sufficient mechanical equipment in the area identified as mechanical space to justify floor-area deductions pursuant to Zoning Resolution (“ZR”) § 12-10.¹ In the prior proceedings before this Court, the City Respondents and counsel for EXTELL DEVELOPMENT COMPANY and WEST 66TH SPONSOR LLC (“Owner Respondents”) established that the BSA correctly and reasonably rejected Petitioner’s contention that the

¹ The BSA Resolution at issue herein is the culmination of prior proceedings that resulted in a September 17, 2019 BSA Resolution. That prior September 17, 2019 BSA Resolution related to two main issues: i) whether the floor-to-ceiling heights of floor space used for mechanical equipment in the proposed building comply with the floor area definition of ZR § 12-10 in effect before May 29, 2019; and ii) whether the proposed building complies with the applicable bulk distribution regulations for zoning lots located in the Special District in accordance with ZR § 83-34. The September 17, 2019 BSA Resolution determined that the proposed building did comply with those provisions of the ZR. While Petitioner herein did not appeal the September 17, 2019 BSA Resolution, the City Club of New York commenced an Article 78 proceeding entitled *The City Club of New York v. New York City Board of Standards and Appeals, et al.* (Index No. 161071/2019), which resulted in a September 25, 2020 Decision and Order (R. 002407 – R. 002417), which, *inter alia*, voided the permit for the proposed building. The City Respondents and the Owner Respondents appealed that Decision and Order, and on July 22, 2021 the Appellate Division, First Department reversed and the proceeding was dismissed. A copy of the Appellate Division Decision and Order is annexed to the Affirmation of Pamela A. Koplik (“Koplik Aff.”) filed herewith as Exhibit A.

proposed building does not contain sufficient mechanical equipment to justify the floor-area deductions taken. By Decision and Order dated May 4, 2021, for the reasons stated on the record at oral argument, this Court agreed with the Respondents, denying the petition and finding that the BSA's determination was not arbitrary and capricious. *See* Decision and Order, and the transcript upon which it was based, collectively annexed to the Koplik Aff. as Exhibit B. Now, Petitioner moves for leave to renew the petition "in light of post-judgment legislative developments." *See* Notice of Motion. As Petitioner fails to satisfy the requirements for renewal, the motion should be denied.² The crux of the matter is that there has been a change in the law, specifically, the definition of "floor area" in Section 12-10 of the ZR, and that change is not a mere clarification. Because there has been a change in the law and because the project was already vested pursuant to ZR § 11-33,³ the subject amendment to the ZR § 12-10 does not apply to the proposed building.

STATUTORY FRAMEWORK

Section 2221 of the CPLR sets forth the procedure and requirements of a motion affecting a prior order, such as a motion to reargue or renew. It provides, in pertinent part, as follows:

Rule 2221 Motion affecting prior order

(a) A motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order...

² While Petitioner does not allege that it seeks leave to *reargue* its Article 78 Petition, to the extent that its papers can be deemed to be a motion for leave to reargue, the motion should also be denied. Petitioner has not identified any "matters of fact or law allegedly overlooked or misapprehended by the court." *See* CPLR § 2221(d)(2).

³ Pursuant to ZR 11-33, if the foundation of a project is completed prior to the effective date of an amendment of the ZR, the construction may continue pursuant to a previously lawfully issued permit.

* * *

(d) A motion for leave to reargue:

1. shall be identified specifically as such;
2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and
3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals.

(e) A motion for leave to renew:

1. shall be identified specifically as such;
2. shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and
3. shall contain reasonable justification for the failure to present such facts on the prior motion.

(f) A combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought. The court, in determining a combined motion for leave to reargue and leave to renew, shall decide each part of the motion as if it were separately made. If a motion for leave to reargue or leave to renew is granted, the court may adhere to the determination on the original motion or may alter that determination.

Section 12-10 of the ZR, entitled "Definitions," formerly stated, in pertinent part:

However, the *floor area* of a *building* shall not include:

* * *

8) floor space used for mechanical equipment....

Section 12-10 of the ZR was amended in pertinent part as follows (with underlined words being added and strike throughs being deleted):

However, the *floor area* of a *building* shall not include:

* * *

(8) floor space used for accessory mechanical equipment, including equipment serving the mechanical, electrical, or plumbing systems of buildings as well as fire protection systems, and power systems such as solar energy systems, generators, fuel cells, and energy storage systems. Such exclusion shall also include the minimum necessary floor space to provide for necessary maintenance and access to such equipment.

See March 17, 2021 City Planning Commission Report for Application #N 210095 ZRY annexed to the Koplik Aff. as Exhibit C at pp 73-74.

ARGUMENT

THE INSTANT MOTION FOR LEAVE TO RENEW SHOULD BE DENIED BECAUSE PETITIONER HAS NOT DEMONSTRATED THAT THERE HAS BEEN A CHANGE IN THE LAW WHICH WOULD CHANGE THE COURT'S DECISION AND ORDER.

To be granted leave to renew, a movant must submit “new facts not offered on the prior motion that would change the prior determination” or “demonstrate that there has been a change in the law that would change the prior determination.” CPLR 2221(e)(2). Petitioner has done neither. Petitioner devotes an excessive amount of pages to asserting that there was a *clarification* in the law as opposed to a change in the law, and asserts that such a clarification in

the law supports a motion for leave to renew.⁴ See August 6, 2021 Affirmation of Mikhael Sheynker (“Sheynker Aff.”) at ¶¶ 2-19. However, petitioner is incorrect in its characterization of the ZR amendment at issue as a mere clarification.

The first sentence of the amendment is admittedly a clarification in the law. The first sentence adds a phrase modifying the term mechanical equipment in the definition of floor space to exclude “floor space used for accessory mechanical equipment, including equipment serving the mechanical, electrical, or plumbing systems of buildings as well as fire protection systems, and power systems such as solar energy systems, generators, fuel cells, and energy storage systems.” Section 12-10 of the ZR (newly inserted words underlined).

However the next phrase of the amendment, which states “[s]uch exclusion shall also include the minimum necessary floor space to provide for necessary maintenance and access to such equipment” (*Id.*) is a clear change in the law, especially with the addition of the words “minimum necessary.” No such minimum requirement was contained within the ZR prior to the amendment. While the BSA (and DOB) did consider and include floor space necessary to maintain and access such equipment in its evaluation of the floor area deductions for the proposed building, it cannot be said that such analysis included the evaluation of the *minimum necessary* floor space. Notably the phrase “minimum necessary” is wholly absent from the BSA Resolution at issue. Therefore, that phrase of the subject amendment must be seen as a change in the law; and because the project for the proposed building had already vested Pursuant to ZR 11-33, the change in the law does not apply to the proposed building permit and does not impact this Court’s review of the BSA determination at issue.\

⁴ City Respondents generally do not take issue with the notion that a motion for leave to renew can be supported upon a clarification in the law. Notably, however, most caselaw on this point seems to refer to a clarification in the decisional law, not in statutory or regulatory law. See, e.g. *Dinallo v. DAL Elec.*, 60 A.D.3d 620 (2d Dept. 2009); *Roundabout Theatre Co. v. Tishman Realty & Constr. Co.*, 302 A.D.2d 272 (1st Dept. 2003).

As set forth in City Respondent's Memorandum of Law in Opposition to the Petition (Dkt. 72), the BSA's decision to uphold DOB's issuance of the building permit for the proposed building was rational and lawful, supported by the record as a whole and in accordance with the provisions of the ZR. The BSA correctly and reasonably rejected Petitioner's contention that the proposed building does not contain sufficient mechanical equipment to justify the floor-area deductions taken. The BSA correctly reasoned that the proposed building's architectural and mechanical plans do demonstrate sufficient floor-based mechanical equipment, stating, in relevant part:

Much of this equipment sits directly on the floor or directly on pads—indisputably representing “floor space used for mechanical equipment”—and because of the nature of mechanical equipment, these pieces require clearance and service areas that further justify the New Building's floor-area deductions.

(R. 003369). *See* composite drawings annexed to DOB's October 16, 2019 Submission (R. 002418 – R. 002448) and Owner Respondents' October 21, 2019 Submission (R. 002449 – R. 002480). The BSA further noted that DOB's mechanical engineers reviewed the proposed building's drawings and appropriately deemed DOB's review reasonable (R. 003369). The BSA also correctly pointed out that expert testimony provided by the Owner Respondent demonstrates that the number of floors of mechanical equipment is well within the range of standard practices for construction of buildings of this scale (R. 003369 – R. 003370). Finally, the BSA appropriately noted that the Owner Respondent's reliance on DOB's practices regarding the justifications for floor-area deductions for mechanical equipment to be reasonable in the instant case (R. 003370). After considering all of the arguments on appeal, but finding them unpersuasive, the BSA correctly found that Petitioner failed to demonstrate that the architectural

and mechanical plans for the proposed building show insufficient mechanical equipment in the area identified as mechanical space to justify floor area deductions.

Contrary to Petitioner's assertions in its motion for leave to renew, the newly inserted words in the recent ZR amendment do not change the analysis for the instant case because of the project's vesting. Moreover, a proper reading of the amended definition of Floor Area in § 12-10 of ZR must still turn on the ZRs' definition of "use" and "used for," which Petitioner improperly abandons for a dictionary definition of the term "use." *See* Sheynker Aff. at ¶¶ 8, 16, and fn. 3. The amended definition reads in part, "the *floor area* of a *building* shall not include" ... "(8) floor space **used for** accessory mechanical equipment (emphasis supplied)" and then qualifies that such mechanical equipment includes various types ("including equipment serving the mechanical, electrical, or plumbing systems of *buildings* as well as fire protection systems, and power systems such as solar energy systems, generators, fuel cells, and energy storage systems. Such exclusion shall also include the minimum necessary floor space to provide for necessary maintenance and access to such equipment.") ZR § 12-10.

Petitioner's erroneous argument that ZR amendment "contains a clarification that establishes the BSA's denial of the appeal was a result of a gross misreading of the word 'use' in paragraph (8) of the definition of Floor area" (Sheynker Aff. at ¶ 8) is astounding in completely ignoring the ZRs' definitions of the terms "use" and "used for." ZR § 12-10 defines "use" as follows:

A "use" is: (a) any purpose for which a ***building or other structure*** or an open tract of land may be designed, arranged, intended, maintained or occupied; or (b) any activity, occupation, business or operation carried on, or intended to be carried on, in a ***building or other structure*** or on an open tract of land (Emphasis in original)

ZR § 12-01(f) states as follows: The phrase “used for” includes “arranged for”, “designed for”, “maintained for”, “or occupied for.” In light of the ZRs definitions of “use” and “used for,” which have remained unchanged and were not amended, the design of a space for mechanical equipment or the intention for the space to be used for mechanical equipment constitutes mechanical space “use” to justify the floor-area exemptions.

Moreover, while the second sentence of the subject ZR amendment would change the analysis because it adds the requirement to only include the “minimum necessary floor space to provide for necessary maintenance and access to such equipment” in floor area deductions, such amendment was made subsequent to the project’s vesting and therefore is inapplicable to the instant case.⁵ See ZR 11-33.

Petitioner includes materials to assert that the subject amendment to the ZR was a mere clarification including: i) a March 5, 2021 Department of City Planning’s (“DCP”) Notice of Completion of the Final Environmental Impact Statement (Sheynker Aff., Exhibit D); ii) a DCP Community Outreach Summary (Sheynker Aff., Exhibit E); and iii) an April 27, 2021 City Council Transcript of the Minutes of the Committee on Land Use (Sheynker Aff., Exhibit F). But cherry picking isolated descriptions of the amendment to the ZR as a “mere clarification” does not change the fact that the amendment was much more than a clarification. The new requirement in ZR § 12-10 that the definition of the floor area of a building shall not include “the minimum necessary floor space to provide for necessary maintenance and access to such equipment” is a minimum requirement that did not previously exist in the ZR at the time that the project at issue vested.

⁵ There was no dispute before the BSA concerning vesting pursuant to ZR § 11-33 (R. 002373). Notably, the Appellate Division Decision and Order in *The City Club of New York v. New York City Board of Standards and Appeals, et al.* (Index No. 161071/2019) explicitly noted that the project had vested. See Exhibit A to Koplik Aff. at p. 2 and 6-7.

Nevertheless, these documents provide nothing in analyzing whether or not the ZR in the instant case was correctly applied by the BSA to uphold the issuance of the building permit for the proposed building. As already established in prior proceedings before this Court, the ZR was properly applied, and this proper application cannot be revisited with a post-vesting change in the ZR.

CONCLUSION

For the reasons set forth above, City Respondents respectfully request that the Court deny the instant motion in its entirety, and grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 24, 2021

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CERTIFICATION UNDER UNIFORM CIVIL RULE 202.8-b

According to Microsoft Word, the portions of the City Respondents' Memorandum of Law that must be included in a word count contain 2885 words, and comply with Uniform Civil Rule 202.8-b.

Dated: New York, NY
September 24, 2021

Respectfully submitted,

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By: _____/s/_____
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**Extell Respondents' Memorandum of Law in Opposition to Motion
for Leave to Renew, dated September 27, 2021
[pp. 5320 - 5339]**

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NYSCEF DOC. NO. 104

INDEX NO. 160565/2020

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LANDMARKWEST! INC.,

Petitioner,

v.

NEW YORK CITY BOARD OF STANDARDS AND
APPEALS, NEW YORK CITY DEPARTMENT OF
BUILDINGS, EXTELL DEVELOPMENT
COMPANY, and WEST 66TH SPONSOR LLC,

Respondents.

Index No. 160565/2020

IAS Part 6

Hon. Eileen A. Rakower

Motion Sequence 2

**EXTELL RESPONDENTS' MEMORANDUM OF LAW
IN OPPOSITION TO MOTION TO RENEW**

Respondent Extell Development Company and its affiliate West 66th Sponsor LLC (together, "Extell") respectfully submit this memorandum of law in opposition to motion of Petitioner, LandmarkWest! Inc., to renew its Article 78 petition that this Court denied and dismissed in its Decision and Order dated May 4, 2021.

INTRODUCTION

LandmarkWest!'s motion to renew fails to state any valid reason for this Court to revisit its sound ruling upholding a rational determination by the New York City Board of Standards and Appeals (BSA). Disgruntled about the height of Extell's building project on the Upper West Side, LandmarkWest! and other challengers have litigated numerous theories to try to convince the Department of Buildings (DOB), BSA, or the courts that the project somehow violates the zoning rules. It does not, as DOB and BSA have consistently ruled. While another challenger temporarily managed to persuade a different judge to overturn BSA's ruling on zoning issues relating to the height of Extell's building, the Appellate Division unanimously reversed, holding

that BSA's well-considered decision was rational and "entitled to deference." *City Club of N.Y. v. BSA*, --- N.Y.S.3d ----, 2021 WL 3083700, at *3 (1st Dep't July 22, 2021).

In this proceeding, LandmarkWest! belatedly challenged the project's use of *horizontal* floor area for mechanical equipment, even though its real objection was to the *height* of the building. In its motion, LandmarkWest! now openly admits (§§ 24-25) that the goal of its horizontal-floor-area challenge is to try to strip Extell of its vesting rights and force Extell to "redraw its plans" under new height rules that were enacted *after* Extell had completed the project's foundation and thus indisputably do not apply to the current, vested project. This remarkable and telling admission of LandmarkWest!'s true motives lays bare that LandmarkWest! claims no injury from the *horizontal* floor area it purports to challenge and instead is misusing the courts to try to cancel Extell's permit by any possible means in the hope that it can somehow force Extell to start over under different *height* rules that LandmarkWest! prefers.

In its final Decision and Order in this case, this Court recognized that BSA had considered all of LandmarkWest!'s arguments and carefully examined the plans for Extell's mechanical floors, and this Court correctly held that BSA's decision to uphold the permit was not arbitrary or capricious. The soundness of this Court's ruling has been reinforced by the Appellate Division's recent unanimous reversal of another judge's failure to accord proper deference to BSA's rulings on the project's compliance with height-related zoning regulations. *City Club*, 2021 WL 3083700, at *3.

Yet LandmarkWest! now brings a meritless renewal motion, arguing that the Court's decision was "erroneous" and decrying Extell's project as a "monstrosity" that threatens "the architectural and urban integrity of the Upper West Side neighborhood" and is a product of

“wealth and greed” (§§ 5, 22, 26). Setting these gratuitous bitter attacks aside, LandmarkWest! states no valid basis for renewal, instead insisting that the Court got it wrong or somehow “might not have appreciated the importance of the issues raised on this Petition” (§ 22). As a pretext for renewal, LandmarkWest! adopts an untenable misreading of a “Flood Resiliency” amendment to the Zoning Resolution. This project is not affected by the flood resiliency issues that prompted the amendment—and more fundamentally, Extell’s project vested in April 2019, more than two years *prior* to the 2021 Flood Resiliency amendment. In short, the motion fails out of the gate because the 2021 Flood Resiliency amendment does not apply to this project. Yet LandmarkWest! tries to use the 2021 Flood Resiliency amendment as an excuse to revisit its failed theory that Extell should somehow be required to cram its mechanical equipment into the smallest conceivable floor-area footprint.

LandmarkWest!’s theory is not the rule: floor area is deemed to be “used for” mechanical equipment where, as here, it “is devoted to housing the mechanical equipment of the proposed building and those floors cannot be occupied for purposes other than the housing of such equipment.” Dkt. 14 at 3 (DOB statement). The 2021 Flood Resiliency amendment did not change that standard. Instead, prompted by concerns that arose in the context of *retrofitting* mechanical equipment in connection with flood recovery efforts (Dkt. 91 at 34-35), the 2021 Flood Resiliency amendment provides that owners may *also* deduct certain areas even if not themselves “used for” mechanical equipment, but then limited the scope of that allowance to the minimum needed. Here, all of the project’s deducted floor area is “used for mechanical equipment” as defined by the Zoning Resolution (which definition remained untouched by the 2021 Flood Resiliency amendment). Nor was any equipment being relocated or retrofitted for flood recovery. The 2021 Flood Resiliency amendment simply does not affect the analysis.

But even if Extell's project included space addressed by the 2021 Flood Resiliency amendment, the amendment does not apply to Extell's project because the project had already vested in 2019, *two years prior* to the amendment's effective date. Recognizing these fatal facts, LandmarkWest! insists that its untenable interpretation of the 2021 Flood Resiliency amendment is only a "clarification," appearing to believe that such a characterization would somehow give it retroactive effect. LandmarkWest!'s theory fails for two reasons. First, if the amendment meant what LandmarkWest! says (that is, that all such deductions are now limited to the minimum necessary allowances), it plainly would be a *change* in law—a radical and impracticable change that would unduly restrict property owners' discretion in their arrangement of mechanical equipment and impose a costly and unworkable burden of review on DOB and BSA to pack mechanical equipment into its smallest possible arrangement. And again, such a change plainly could not apply to Extell's project retroactively. Second, even legislative amendments characterized as clarifications do not apply to vested projects absent express language providing for an amendment's retroactive application, which indisputably is not the case here.

At bottom, LandmarkWest! identifies no basis for the Court to depart from its ruling that BSA carefully considered all of LandmarkWest!'s arguments, applied its expert judgment to the facts and circumstances of Extell's project, and rationally upheld Extell's permit. Nothing about BSA's review and reasoning was arbitrary or capricious, and it remains entitled to deference.

BACKGROUND

This Court is well familiar with the facts of this case, having received more than 250 pages of briefing and pleadings, a record of more than 3400 pages, and oral argument from LandmarkWest!, the BSA, and Extell. In the interest of brevity, Extell here briefly summarizes facts discussed in greater detail in its answer and opposition to LandmarkWest!'s Article 78 petition. *See* Dkt. 73; Dkt. 76 at 4-13.

A. DOB and BSA Conduct Fact-Intensive Analysis to Determine that the Project's Mechanical Spaces Are Used for Mechanical Equipment

This action concerns a building project on Manhattan's Upper West Side, which vested in April 2019. LandmarkWest! and others who dislike the building's height have pursued challenges, arguing that the building is too tall under the zoning rules, but DOB and BSA found that Extell's building plans comply with applicable zoning rules governing the building's height, and the First Department has rejected those challenges and ruled that the BSA's determination was rational. *City Club of N.Y. v. BSA*, 2021 WL 3083700 (1st Dep't July 22, 2021). In the middle of proceedings before the BSA, LandmarkWest! belatedly raised the challenge at issue here, to the *horizontal* floor area for the project's mechanical floors, arguing that Extell excluded too much horizontal floor area as being "used for mechanical equipment." See Dkt. 12.

Notwithstanding the untimeliness of LandmarkWest!'s "horizontal" challenge, the BSA, a specialized agency with unique expertise in zoning matters, conducted a careful and detailed analysis of LandmarkWest!'s argument. The BSA directed DOB to re-review the building's mechanical plans, and DOB analyzed the building's mechanical equipment to verify that Extell's floor-area deductions were proper. Using the BSA's prior precedent as a "blueprint," DOB identified the following mechanical equipment on the project's four mechanical floors:

- 15th Floor: "storm water detention tank, electrical switchboard, electric unit heaters, water source heat pumps, fan units, a duct heater, an electric humidifier, energy recovery unit (water source heat pump), an emergency generator, an exterior lighting dimmer rack, intake sound attenuators, and a sheet metal plenum behind louver"
- 17th Floor: "Boilers, electric unit heaters, water source heat pumps, fan units, a 2-pipe fan coil unit, hot water expansion tanks, air separators, hot water pumps, hot water heat exchangers, an air handler unit, an air intake louver, an exhaust louver, and pipe chase containing the elevator smoke vent and the elevator shaft supply duct passing through the floor"
- 18th Floor: "water cooled direct expansion air conditioning (DX) unit, cold water pumps; cold and hot water pumps, expansion tanks, air separators, water source heat

pumps, electric unit heaters, electric panels, water cooled chillers, fan units, heat exchangers, an exhaust louver, and an intake louver”

- 19th Floor: “fire reserve storage tank, water source heat pumps, energy recovery units (water source heat pumps), fan units, an electric humidifier, electric unit heaters, an intake louver, and an exhaust louver”

Dkt. 14 at 3-4. Based on its review, DOB concluded that **“the floor space on such floors is devoted to housing the mechanical equipment of the proposed building and those floors cannot be occupied for purposes other than the housing of such equipment.”** *Id.* at 3 (emphasis added). DOB also concluded upon analysis that the number of floors deducted for mechanical equipment was “consistent with similarly sized buildings.” *Id.*

The BSA conducted hours of public hearings and received expert testimony. *See* Dkt. 16 at 14-16; Dkt. 18 at 6-7, 87-121. On January 28, 2020, the BSA concluded that LandmarkWest! had “not demonstrated that the architectural and mechanical plans for the New Building show insufficient mechanical equipment in the area identified as mechanical space to justify floor-area deductions.” Dkt. 3 at 3. The BSA also noted that “expert testimony provided by the Owner demonstrates that other similar buildings contain 12 mechanical floors, whereas the New Building contains 4—well within the range of standard practices for constructing buildings of this scale.” *Id.* at 4-5. The BSA explained that it had reviewed the record, expert testimony, and plans for the building, and found that the building’s plans “demonstrate sufficient floor-based mechanical equipment.” *Id.* at 4.

B. This Court Upholds the BSA’s Rational and Well-Considered Determination

On December 7, 2020, LandmarkWest! brought this Article 78 challenge, arguing that the BSA’s determination was arbitrary and capricious and was not entitled to deference. Dkt. 1. The Court denied LandmarkWest!’s petition on May 4, 2021. Dkt. 80. The Court found that the BSA had rationally considered LandmarkWest!’s arguments and found them unavailing: “they

went through all of the arguments and they made a determination that the permit should be upheld and it was not arbitrary, it was not capricious.” Dkt. 81 at 23. The Court held that the BSA had made factual findings that the Court would not overturn: “They did look at the amount of equipment, the types of equipment. They explored the reasoning regarding exhausting certain equipment, servicing certain equipment, and it’s not how many people you could fit in a room to service equipment. It could just be the size, the mere size of the equipment itself which has to be managed in a certain space to service that equipment.” *Id.* Accordingly, the Court properly declined to “substitute its judgment for that of the BSA” and denied the petition. *Id.*

C. The Instant Motion to Renew

Dissatisfied with the outcome of its challenge and insisting (§ 5) that the Court’s ruling was “erroneous,” LandmarkWest! now brings this motion to renew based on the Flood Resiliency amendment that was approved by the City Council on May 12, 2021. The 2021 Flood Resiliency amendment, which post-dates the vesting of Extell’s project by more than two years, was intended to allow greater flexibility for homeowners taking flood resiliency measures—for example, to relocate mechanical equipment from their basement to their yard without having to sacrifice a floor-area deduction. The 2021 Flood Resiliency amendment does not state that it will apply retroactively, and its text and legislative history make clear that it is intended to *expand*, not contract, property owners’ ability to deduct floor area in connection with mechanical equipment.

ARGUMENT

I. Changes to the Zoning Resolution that Post-Date the Project’s Vesting Date Do Not Apply to the Project

As a threshold dispositive matter, because Extell’s building project lawfully vested in April 2019, changes to the Zoning Resolution that become effective after that date do not apply

the project. *See* ZR 11-311 (where permit has lawfully vested, owner may continue construction irrespective of subsequent amendments to ZR); *see also City Club of N.Y. v.*

BSA, --- N.Y.S.3d ---, 2021 WL 3083700, at *1 (1st Dep’t July 22, 2021) (“the project vested” in April 2019).

Indeed, the First Department has already confronted and decided this precise issue in connection with this very project, with respect to another amendment of the Zoning Resolution that post-dated the project’s vesting date (and pre-dates the 2021 Flood Resiliency amendment *Landmark West!* cites in its renewal motion). Specifically, the First Department held: **“the project’s foundation’s completion prior to the effective date of ZR § 12-10’s amendment permitted the project to proceed with construction as of right under ZR § 11-331.”** *City Club*, 2021 WL 3083700, at *3 (emphasis added). The First Department therefore reviewed the BSA’s application of ZR 12-10 as it existed “*prior to its amendment.*” *Id.* (emphasis added). That principle applies with equal if not greater force here: the Flood Resiliency amendment was effective May 12, 2021, more than two years after the project vested in April 2019.

The vesting law exists for good reason: it is an elementary principle of fairness that “individuals should have an opportunity to know what the law is and to conform their conduct accordingly.” *Regina Metro. Co. v. DHCR*, 35 N.Y.3d 332, 370 (2020) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994)). Accordingly, new laws do not apply retroactively without a “clear expression” of such intent. *Id.* The fairness and due process problems with applying a new law retroactively “are further heightened where, as here, the new statutory provisions affect contractual or property rights, matters in which predictability and stability are of prime importance” *Id.* at 382 (holding that retroactive application of amendment would violate due process).

Predictability and stability are of prime importance in matters of property rights because property owners reasonably rely on the predictability and stability of the law in developing their property—in this case, Extell has spent hundreds of millions of dollars on its building project in reasonable reliance on that predictability and stability. This Court has already carefully considered the BSA’s analysis of the project’s compliance with the Zoning Resolution as it existed at the project’s vesting date and held that it was not arbitrary or capricious. It would violate the fundamental principles of vesting and the “deeply rooted” presumption against retroactive legislation for the Court to revisit the question based on an amendment that post-dated not only the project’s vesting date, but also the BSA’s ruling. *Landgraf*, 511 U.S. at 265.

II. The 2021 Flood Resiliency Amendment Does Not Have Retroactive Effect and Cannot Render the BSA’s Decision Retroactively Arbitrary and Capricious

Desperate to circumvent the clear and controlling law establishing that Extell’s vested project is not subject to post-vesting Zoning Resolution amendments, LandmarkWest! advances an argument that would require this Court not only to give the 2021 Flood Resiliency amendment retroactive effect, but also to conclude that the amendment somehow retroactively renders the BSA’s prior decision arbitrary and capricious. LandmarkWest! is wrong on both counts.

First, the 2021 Flood Resiliency amendment cannot be applied retroactively to further restrict Extell’s property rights. For starters, even where an amendment’s purpose is “to clarify the preexisting intent of the legislature,” that is “not an adequate basis for finding that the legislature intended the amendment to be applied retroactively.” 97 N.Y. Jur. 2d Statutes § 235 (citing *Schultz Constr. v. Ross*, 76 A.D.2d 151, 154 (3d Dep’t 1980), *aff’d*, 53 N.Y.2d 790 & 792 (1981)). Rather, the court must find “a clear expression” that the legislative body specifically intended the amendment to *apply retroactively*, sufficient to assure that the legislative body “has

affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.” *Regina Metro.*, 35 N.Y.3d at 370 (quoting *Landgraf*, 511 U.S. at 272-73).

LandmarkWest! does not and cannot identify any such “clear expression” of retroactive application here. Indeed, nothing in LandmarkWest!’s proffered legislative history suggests that this *Flood Resiliency* amendment was enacted with any thought at all for potential impact—retroactive or otherwise—on property owners in Extell’s position. Rather, by LandmarkWest!’s own account (§ 5), the 2021 Flood Resiliency amendment was targeted to “Flood Hazard Areas” to “*remove zoning barriers* that hinder the reconstruction and retrofitting of buildings to resiliency standards and to help ensure that new construction will be more resilient” (quoting CPC Report; emphasis added). As to the 2021 Flood Resiliency amendment’s specific changes to the definition of “floor area” in ZR 12-10, LandmarkWest! admits (§ 12) that those changes were intended to enable homeowners to relocate their mechanical equipment “above the flood zone level.” Those purposes are *prospective*, not retrospective (flood-resiliency measures, including relocating and retrofitting equipment, involve preparing for future weather events), and have nothing to do with Extell’s project. Moreover, the express purpose was to *remove* zoning barriers, not to impose more restrictive zoning barriers. The CPC’s report states that the goal of the 2021 Flood Resiliency amendment is to facilitate future recovery from storm-related flooding “by *reducing* regulatory obstacles.” Dkt. 86 at 33 (emphasis added).

Tellingly, and in stark contrast to the 2021 Flood Resiliency amendment, other legislation the City Council approved the very same day expressly provides for potential retroactive application. *See* Dkt. 87 at 1118 (new section 25-435.1 of administrative code “is retroactive to and deemed to have been in effect as of July 1, 2020”), 1121 (new section 25-467.4 of

administrative code “shall be retroactive to and deemed to have been in full force and effect as of June 30, 2021” if it becomes law after that date). The 2021 Flood Resiliency amendment does not contain any such language. Notably, even these laws with express retroactivity provisions did *not* reach back more than *two years* to April 2019 when Extell’s project vested.

LandmarkWest!’s own cited authority reinforces that, on the facts presented here, the 2021 Flood Resiliency amendment does not warrant retroactive application. *See, e.g., In re Gleason (Michael Vee, Ltd.)*, 96 N.Y.2d 117, 122 (2001) (“Amendments are presumed to have prospective application unless the Legislature’s preference for retroactivity is explicitly stated or clearly indicated.”); *Town of Cortlandt v. N.Y.S. Bd. of Real Prop. Servs.*, 36 A.D.3d 823, 826 (2d Dep’t 2007) (recognizing “fundamental canon of statutory construction that retroactive operation is not favored by courts and statutes will not be given such construction unless the language expressly or by necessary implication requires it”).

Second, the *May 2021* Flood Resiliency amendment cannot retroactively render the BSA’s *January 2020* resolution arbitrary and capricious. It is a “fundamental principle of Article 78 review” that judicial review of administrative decisions is confined to what was before the agency. *Rizzo v. DHCR*, 6 N.Y.3d 104, 110 (2005) (“the admission of subsequent events which occurred after the final agency order would defeat finality and could subject an otherwise final order to endless recurring review”); *see also Waverly Place Assocs. v. DHCR*, 292 A.D.2d 211, 212 (1st Dep’t 2002) (refusing to remand to agency to apply amendment that “did not become effective until after DHCR issued the determination now under review”). Accordingly, a court may not consider “events that took place after the agency made its determination.” *Id.* This Court rightly determined that the BSA’s *January 2020* decision was not arbitrary or capricious. Dkt. 81 at 23. That determination cannot be affected by a Zoning Resolution amendment enacted well

over a year *after* the BSA made its determination and therefore plainly was not before the agency when the administrative determination was rendered. LandmarkWest! cites no authority granting leave to renew judicial review of a rational agency determination where, as here, the renewal request is based on an amendment enacted *after* the determination. *Cf. 620 W. 182nd St. Heights Assocs. v. Dep't of Hous. Pres. & Dev. of City of N.Y.*, 149 A.D.3d 558, 559 (1st Dep't 2017) (denying renewal for “change in circumstances after the agency’s determination”); *Matter of W. Vill. Houses Tenants’ Ass’n v. BSA*, 302 A.D.2d 230, 231 (1st Dep’t 2003) (motion to renew should have been denied because new document “did not come into existence until after the Board’s determination”).

III. By LandmarkWest!’s Own Characterization of the 2021 Flood Resiliency Amendment, It Does Not Meet the Requirements for Renewal

In addition to the foregoing failures, LandmarkWest!’s motion to renew fails on its own terms as well. Specifically, by insisting (*e.g.*, ¶ 7) that the 2021 Flood Resiliency amendment is *not* a “change in law,” LandmarkWest! establishes that its motion to renew is improper because renewal requires, as relevant here, “a *change in the law* that would change the prior determination.” CPLR 2221(e) (emphasis added). The First Department has made clear that an intervening event that “merely clarifies existing law does *not* afford a basis for renewal attributed to a change in the law.” *D’Alessandro v. Carro*, 123 A.D.3d 1, 7 (1st Dep’t 2014) (emphasis added) (citing *Philips Int’l Invs. v. Pektor*, 117 A.D.3d 1, 4 (1st Dep’t 2014)); *see also N.Y.C. Asbestos Litig.*, 2020 WL 1065949, at *3 (Sup. Ct. N.Y. Cty. Mar. 5, 2020) (“intervening decision providing clarification of existing law does not create a basis for renewal”); *Liporace v. Niemark & Niemark, LLP*, 2017 WL 4890713, at *1 (Sup. Ct. N.Y. Cty. Oct. 25, 2017) (same).

LandmarkWest!’s contention (¶ 4) that it is somehow “axiomatic” that renewal lies from a mere clarification, as distinct from a change, is wrong and unsupported by its cited authority:

In *Roundabout Theatre Co. v. Tishman Realty & Const.*, 302 A.D.2d 272, 272-73 (1st Dep’t 2003), renewal was based on an intervening Court of Appeals case that was a *change* in the law—deciding “novel issues” and reversing several Appellate Division rulings. *See 532 Madison Ave. Gourmet Foods v. Finlandia Ctr.*, 96 N.Y.2d 280, 286 (2001). The court’s passing reference in *Roundabout* to “an intervening clarification,” 302 A.D.2d at 273, was not drawing any legal distinction between a clarification and a change, did not purport to expand the scope of CPLR 2221(e), and pre-dates the First Department’s more recent decisions in *D’Alessandro* and *Philips* that squarely address the issue.

LandmarkWest! insists (§ 20) that the 2021 Flood Resiliency amendment’s change “adds nothing” and is the equivalent of saying “that ‘blue’ sky is ‘blue.’” By LandmarkWest!’s own lights, then, the 2021 Flood Resiliency amendment provides no basis for renewal: the First Department has made clear that a new source of legal authority that “did no more than restate” existing law, “albeit more clearly,” is “not a sufficient basis for renewal.” *Philips Int’l Invs., v. Pektor*, 117 A.D.3d 1, 4, 7 (1st Dep’t 2014) (affirming denial of renewal motion premised on Court of Appeals decision that “merely clarified existing law”).

IV. The Terms of the 2021 Flood Resiliency Amendment Do Not Apply, But Even If They Did, They Would Not Affect the Outcome in Any Event

Given the 2021 Flood Resiliency amendment’s clear inapplicability to Extell’s 2019-vested project, this Court need not reach questions concerning interpretation of the amendment’s various parts. LandmarkWest!’s interpretation, however, is incorrect, constituting yet another fatal flaw in its motion. *Cf. DeRaffele Mfg. v. Kaloakas Mgmt.*, 48 A.D.3d 807, 809 (2d Dep’t 2008) (motion to renew properly denied where alleged change of law would not have altered prior determination).

The 2021 Flood Resiliency amendment *revised* one sentence and *added* one sentence in the definition of “floor area” pertaining to floor-area deductions for use of mechanical equipment. In the sentence that was *revised*, the pre-amendment Zoning Resolution provided that “floor space used for mechanical equipment” could be excluded from “floor area.” In turn, the Zoning Resolution broadly defined “used for” as follows: “The phrase ‘used for’ includes ‘arranged for,’ designed for,’ ‘intended for,’ ‘maintained for,’ or ‘occupied for.’” ZR 12-01(f); *see also* ZR 12-10 (broadly defining “use”). That broad definition of “used for” remains intact and *was not revised at all* in the 2021 Flood Resiliency amendment.

This exclusion of “floor space used for mechanical equipment” was the basis for DOB’s and BSA’s exclusion of Extell’s four mechanical floors from the “floor area” of the project here. Consistent with the Zoning Resolution’s broad definitions of “use” and “used for,” DOB concluded, and the BSA affirmed, that the floor space of the project’s four mechanical floors here was “used for mechanical equipment.” As DOB properly found, the project’s mechanical floors here are “devoted to housing the mechanical equipment of the proposed building and those floors cannot be occupied for purposes other than the housing of such equipment.” Dkt. 14 at 3.

In the 2021 Flood Resiliency amendment, this language was revised to “floor space used for accessory mechanical equipment, including equipment serving the mechanical, electrical, or plumbing systems of buildings as well as fire protection systems, and power systems such as solar energy systems.” The additional words indisputably do not alter the analysis of whether Extell’s floor space is used for mechanical equipment. LandmarkWest! does not contend otherwise. No restrictive language was added to this portion of the provision in the 2021 Flood Resiliency amendment. Accordingly, Extell’s four mechanical floors would still qualify as “used for accessory mechanical equipment” under the amended provision.

The 2021 Flood Resiliency amendment also *added* a new, separate sentence to the Zoning Resolution: “Such exclusion shall *also* include the minimum necessary floor space to provide for necessary maintenance and access to such equipment” (emphasis added). As LandmarkWest!’s own account of the legislative history states (§ 13), this identification of a *second* category of floor space for deduction arose from circumstances where owners in flood areas were “trying to reconfigure and relocate building systems”—placing the mechanical equipment away from the flood risk, which “can pose difficulties” in determining floor-area deductions for “space used to access the equipment” (quoting DCP *Community Outreach Summary*). As the City Planning Commission Report explained, the rules “in some situations, made it difficult to retrofit buildings in the floodplain by moving mechanical equipment from below-grade locations, where they are fully exempted from floor area calculations, to upper areas, where they may not be exempted.” Dkt. 91 at 34-35. The second amendment provided for deductions in such situations, and the City Council then restricted those deductions to the minimum necessary for such areas.

Of course, Extell did not rely on this second, newly added category for its floor-area calculations, not only because Extell was not retrofitting or relocating equipment for flood resiliency, but also because the newly added sentence was not even part of the applicable Zoning Resolution. The project’s floor-area deductions here were based solely on “floor space used for mechanical equipment” because each of the four floors being used in the project for mechanical equipment are dedicated mechanical floors that do not serve any other use. To be sure, dedicated floor space “used for” mechanical equipment also includes necessary clearance for the equipment, to facilitate servicing, and to provide access. That was certainly the case for the mechanical floors of Extell’s project. However, the dedicated floor space “used for” mechanical

equipment that serves these functions is not and never has been constrained to the “minimum necessary” area to do so. That was true under the Zoning Resolution as it applied to Extell’s project as of the time of vesting, and (although inapplicable to this Article 78) it remains true under the 2021 Flood Resiliency amendment as well. *None* of Extell’s floor-area deduction was claimed under 2021 Flood Resiliency amendment’s newly added category, and thus the new “minimum necessary” restriction would not come into play even if the 2021 Flood Resiliency amendment had provided for retroactive application to Extell’s project (it does not).

But in its motion to renew, LandmarkWest! uses a loose mix-and-match approach, latching onto the words “minimum necessary” that describe the newly added *second* category of excludable floor area and inappropriately reading those words backward into the *preceding* sentence that broadly permits exclusion for “floor space used for accessory mechanical equipment.” That is not what the 2021 Flood Resiliency amendment says. And for good reason: it would be impracticably burdensome and contrary to sound mechanical engineering practice to require property owners to cram their mechanical equipment into the “minimum necessary” space—particularly in a building like Extell’s where entire floors are devoted to mechanical equipment and, as DOB found, “cannot be occupied for purposes other than the housing of such equipment.” Dkt. 14 at 3.

LandmarkWest!’s attempt to impose a “minimum necessary” requirement even where floor space is being “used for” accessory mechanical equipment does not appear anywhere in the statute that was in effect at the time of vesting or even in the amended statute, and therefore would run afoul of the well-settled principle that a court “cannot amend a statute by inserting words that are not there.” *People v. Buyund*, 179 A.D.3d 161, 169 (2d Dep’t 2019) (quoting *Chem. Specialties Mfrs. Ass’n v. Jorling*, 85 N.Y.2d 392, 394 (1995); see also *Flores v. Lower E.*

Side Serv. Ctr., 4 N.Y.3d 363, 369 (2005) (refusing to “presume that the Legislature meant to impose a restriction it failed to include in the statute” where “it is evident that the Legislature knows how to impose such a limitation when it intends to do so”). LandmarkWest!’s untenable interpretation is also contrary to the express purpose of the 2021 Flood Resiliency amendment. A court “must consider the spirit and purpose of the act and the objects to be accomplished.” *People v. Thomas*, 33 N.Y.3d 1, 6 (2019). The purpose of the 2021 Flood Resiliency amendment was to *expand*, not limit, the available floor-space exclusions related to mechanical equipment, to allow *greater* flexibility for homeowners taking flood resiliency measures—for example, to relocate mechanical equipment from their basement to their yard without having to sacrifice a floor-area deduction.

Moreover, the fact that parts of the 2021 Flood Resiliency amendment have been described in non-binding commentary as a “clarification” would mean that they should be construed narrowly—and certainly not as a departure from the BSA’s prior rational interpretation. *See Mayblum v. Chu*, 67 N.Y.2d 1008, 1010 (1986) (where purpose of amendment was to “clarify” prior law, court should not read amendment as “change in judicial construction”).

LandmarkWest!’s radical interpretation would in fact render the 2021 Flood Resiliency amendment not a mere “clarification,” but a major—and impracticable—change in the law. *Cf. Mayer v. City Rent Agency*, 46 N.Y.2d 139, 149 (1978) (statute could not be deemed “clarification” by mere say-so); *Roosevelt Raceway v. Monaghan*, 9 N.Y.2d 293, 304-05 (1961) (“clarification” by legislature could not change original interpretation of statute: “The Legislature has no power to declare, retroactively, that an existing statute shall receive a given

construction when such a construction is contrary to that which the statute would ordinarily have received.”).

Reinterpreting the Zoning Resolution to require mechanical equipment to be crammed into the smallest possible area would also violate the longstanding rule that because “zoning ordinances are in derogation of common-law rights,” they “must be strictly construed so as not to place any greater interference upon the free use land than is absolutely required.” *Exxon Corp. v. BSA*, 128 A.D.2d 289, 295-96 (1st Dep’t 1987). As the Court of Appeals had made clear: “Any ambiguity in the language used in such regulations must be resolved in favor of the property owner.” *Allen v. Adami*, 39 N.Y.2d 275, 277 (1976).

Nor does the 2021 Flood Resiliency amendment provide any basis for the Court to depart from the settled standards for Article 78 review: “the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious.” *Hodge v. N.Y.C. Transit Auth.*, 2019 WL 1091253, at *2 (Sup. Ct. N.Y. Cty. Mar. 7, 2019). ZR 12-10 in particular contains a “complex set of cross-references and interlocking provisions” that “counsels deference” to the BSA. *Peyton v. BSA*, 36 N.Y.3d 271, 280-81 (2020). And this case in particular “entails an evaluation of factual data and inferences, and involves knowledge and understanding of underlying operational practices,” requiring deference to the BSA’s decision as long as it was “rational.” *City Club of N.Y. v. BSA*, --- N.Y.S.3d ----, 2021 WL 3083700, at *3 (1st Dep’t 2021). Nothing in the May 2021 Flood Resiliency amendment changes the Court’s sound conclusion that there was a rational basis for the BSA’s decision. As the Court rightly held, the BSA’s January 2020 decision was not arbitrary or capricious.

* * *

In sum, this proceeding does not call for the Court to construe the specific terms of the 2021 Flood Resiliency amendment because that amendment does not apply to this project and was not part of the BSA decision under review in this Article 78 proceeding. The 2021 Flood Resiliency amendment was not part of the record before the BSA, not part of the BSA's or this Court's reasoning, and not enacted until two years *after* Extell's project vested. Unless an amendment expressly provides for retroactive application (regardless of whether it is characterized as a change or a clarification), it does not and cannot apply retroactively to a vested project. The First Department's recent decision affirming the BSA's analysis of this project based on the regulations in place at the time that it vested in 2019—and not based on subsequent amendments from 2020—further confirms that LandmarkWest!'s motion to renew lacks merit.

CONCLUSION

For these reasons, Extell respectfully requests that the Court deny LandmarkWest!'s motion to renew.

Dated: September 27, 2021

Respectfully submitted,

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WORD COUNT CERTIFICATION

Pursuant to 22 NYCRR § 202.8-b, counsel certifies that, as calculated by the processing system used to prepare this brief, the number of words in the brief, exclusive of the caption, signature block, and this certification, is 5,692.

**Reply Affirmation of Mikhail Sheynker, for Petitioner, in Further
Support of Motion for Leave to Renew, dated October 18, 2021
[pp. 5340 - 5356]**

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
LANDMARKWEST! INC.

--against--

Index No.:
160565/2020

Reply Affirmation

NEW YORK CITY BOARD OF STANDARDS
AND APPEALS, NEW YORK CITY DEPARTMENT
OF BUILDINGS, EXTELL DEVELOPMENT
COMPANY AND WEST 66TH SPONSOR LLC
-----X

MIKHAIL SHEYNKER, ESQ., an attorney duly admitted to
practice law before the Courts of the State of New York, hereby
affirms and states under penalty of perjury pursuant to CPLR
2106:

1. I am associated with Klein Slowik PLLC, attorneys of
record for Petitioner LandmarkWest!, Inc. (LW!) and respectfully
submit this Affirmation in further support of its application
pursuant to CPLR 2221 (e) to renew its prior mandamus proceeding
to review pursuant to Article 78 of the CPLR.

**I. May 12, 2021 Amendment to Paragraph(8) Was a
Clarification That Raised No Due Process Retroactivity
Concerns and Simply Set Forth What the Law Was All
Along**

2. In opposition to the current motion, Respondents argue
that the May 12 amendment to the definition of floor space is a
clear case of a "change" in the law that can only have
prospective effect. To the contrary, this argument only

strengthens Petitioner's position that DOB and BSA squarely violated the law by exempting excessive amounts of floor area around mechanical equipment. The most crucial sentence that the amendment adds is: "Such exclusion shall also include the minimum necessary floor space to provide for necessary maintenance and access to such equipment". This sentence is made of two inter-connected, yet distinct parts. First, the ZR now states that the deduction for mechanical equipment *shall* include area around the equipment. That is, it *must* include such area. It did not state so before. And second, it states that the exempted area around the equipment is limited to what is "minimum necessary."

3. If this sentence were, according to Respondents, a change in the law, not a clarification, then that would have to mean that before this "change", no floor space around the mechanical equipment qualified for the deduction. It would also mean that before this "change" in the law, only the floor space of the footprint of the mechanical equipment was deemed "floor space used for mechanical equipment". The second part defines how much of that area may be exempted from FAR calculations.¹

¹ Counsel for Extell, in its opposition brief, attempts to paint the amended language to create two categories of distinct deductions, based on the first sentence and the added second sentence, of amended paragraph 8, with the result that even if the clarification is applied to the issues at hand, Extell's deduction was received under the first category and not the second. (Extell Opp. Brief, p. 16, 17). The so-called second-category argument has no basis in sound statutory interpretation.

4. If "floor space to provide for necessary maintenance and access to such equipment" is mentioned for the first time in May 12, 2021 amendment, that would have to mean that its prior absence had a substantive meaning. If that is not the case, then what is the import of the words in the prior version: "floor space used for mechanical equipment"? These words are still present in the amended version, with the addition of the word "accessory" between "mechanical" and "equipment". If they still carried over, that means that they did not previously cover floor space needed for access to and service of the mechanical equipment. Otherwise, this sentence is surplusage.

5. Respondents may say that the prior version was previously read to include service area around the equipment, and the point of this amendment was only to limit it to "minimum necessary"—and these are the only two words that should be considered a change to the law, and everything else is only a clarification. However, Respondents cannot have it both ways. Either the amendment is a change in the law or a clarification, but cannot be both at the same time.

II. Legislative Clarifications of the Law Are Applied to All Pending Cases

6. Respondents argue that even if the May 12 amendment is a clarification, the legislature cannot retroactively control the way courts interpret legislation that had previously been

passed. It is true that when the highest court in the state has resolved a particular legal issue involving statutory interpretation and the legislature disagrees with the interpretation, any subsequent legislative amendments to negate the judicial interpretation is a change in the law that has only prospective application. But here, the only judicial interpretation of this legal issue is the present case. It is a case of first impression. In all fairness, there has not even been an administrative determination as to the meaning of the phrase "used for mechanical equipment," because here the BSA split 2-2 on the substantive questions, especially the question of the issue of how much of the deduction could be an allocated as floor space needed to access and operate the equipment.

7. The caselaw is clear that the legislature may pass legislative clarifications as to what the law meant when initially enacted and that clarification can and must inform determinations of pending court cases.

8. On a federal level, whether an amendment is a clarification of the existing law or a substantial change to the existing law is key to determining if the amendment raises retroactivity concerns with constitutional implications. See *Beverly Comm. Hosp. Ass'n v. Belshe*, 132 F.3d 1259, 1265 (9th Cir.1997). If an amendment is determined to be a "clarification" then it has no retroactive effect, in the true sense of the

word, and not subject to any presumption against retroactivity, because clarifications merely state what the law was all along. If on the other hand, an amendment constitutes a substantial change to the law, then it raises issues as to retroactivity. *Id.*; *ABKCO Music, Inc. v. LaVere*, 217 F.3d 684, 689 (9th Cir. 2000). When an amendment is deemed clarifying rather than substantive, it "is not subject to any presumption against retroactivity and is applied to all cases pending as of the date of its enactment" *ABKCO Music, Inc.*, 217 F.3d at 689 (citation omitted).²

9. "Several factors are relevant when determining if an amendment clarifies, rather than effects a substantive change to prior law." *Dept. of Toxic Substances Control v. Interstate Non-Ferrous Corp.*, 99 F.Supp.2d 1123, 1129-30 (E.D.Cal.2000). "A significant factor is whether a conflict or ambiguity existed with respect to the interpretation of the relevant provision

² If an amendment constitutes a change in the law, then the court must engage in an analysis set forth in the United States Supreme Court decision in *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). A *Landgraf* analysis is based on "[e]lementary considerations of fairness dictat[ing] that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *Landgraf*, 511 U.S. at 265. This takes into account "familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance." *Id.* at 270. The first step in the analysis is to determine whether Congress has expressly prescribed the statute's proper reach. "If Congress has done so, of course, there is no need to resort to judicial default rules." *Id.* If there is no express command, "the court must determine whether the new statute would have retroactive effect, i.e., whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transaction already completed." *Id.* "If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result." *Id.*

when the amendment was enacted. If such an ambiguity existed, courts view this as an indication that a subsequent amendment is intended to clarify, rather than change, the existing law." *Id.* at 1129 (quoting *Piamba Cortes v. American Airlines, Inc.*, 177 F.3d 1272, 1283-84 (11th Cir.1999)).

10. In addition, courts "may rely upon a declaration by the enacting body that its intent is to clarify the prior enactment." *Id.* at 1284; see also *Brown v. Thompson*, 374 F.3d 253, 259 (4th Cir. 2004). In *ABKCO Music, Inc.*, the Ninth Circuit held that a 1997 amendment to the Copyright Act providing that distribution of phonorecords before January 1, 1978 did not constitute publication of the musical work embodied clarified prior law. *ABKCO Music, Inc.*, 217 F.3d at 691-92. In its analysis, the court looked at the congressional record and the ambiguity of the prior statute noting there was a circuit split as to the term "publication" as it was not defined under the Copyright Act. *Id.* at 690-91.

11. Moreover, the Ninth Circuit looked at the House Report stating that the amendment "intended to restore the law to what it was before the decision of the Ninth Circuit Court of Appeals in *La Cienega Music Co. v. Z.Z. Top.*" *Id.* at 690. Moreover, sponsors and non-sponsors of the bill commented on the bill using words such as "clarify". *Id.* at 690.

12. Most circuits are aligned with this view. For example, the Eleventh Circuit has clearly stated that "concerns about retroactive application are not implicated when an amendment that takes effect after the initiation of the lawsuit is deemed to clarify relevant law rather than effect a substantive change in the law". *Piamba*, 177 F.3d at 1283. In *Pope v Shalala*, the Seventh Circuit compared an amendment clarifying the law as no "more retroactive in its operation than a judicial determination construing and applying a statute to a case in hand." 998 F.2d 473, 483 (7th Cir. 1993).

13. On the New York state court level, remedial or clarifying legislation likewise does not raise retroactivity concerns, even in the context of criminal law. *E.g.*, *People v Jean*, 14 Mis.3d 1208(a), *3 (Sup. Ct., Rockland County 2006); *see also Matter of OnBank & Trust Co.*, 90 N.Y.2d 725, 731 (1997) ("remedial purpose of the amendment would be undermined if it were applied only prospectively"); *Gleason v Michael Vee Ltd.*, 96 NY.2d 117, 122 (2001) (applying amendment to CPLR 7502 retroactively--"legislative history establishes that the purpose of the amendment was to clarify what the law was always meant to do and say: that all arbitration-related applications should be concentrated in a single proceeding or action, to promote judicial economy and prevent forum shopping. These factors together persuade us that the remedial purpose of the amendment

should be effectuated through retroactive application"); *EFS Medical Supplies Inc. v Dowling*, 252 AD2d 99, 108 (1st Dept. 1998) (when applying Congressional enactment clarifying legislative intent)

III. Application of May 12, 2021 Amendment to Determination of Current Proceeding Does Not Work Injustice on Extell.

14. A review of the administrative and legislative materials, appended herein, establishes that the purpose behind inserting additional language in paragraph (8) of the definition of the term Floor Area was to clarify, not to change, the existing law, but "to make what was intended all along even more unmistakably clear". *Brown supra*. Review of the Full Environmental Impact Statement, issued by the Department of City Planning, solidifies this conclusion. Exhibit D to Moving Affirm.

15. Extell's argument that this clarification included in the package of amendments entitled the Zoning for Coastal Flood Resiliency ("ZCFR") was done for reasons that have nothing to do with Manhattan developers' abuse of the ME FAR deductions. Extell argues that these amendments had nothing to do with projects similar to Extell, but "were intended to enable homeowners to relocate their mechanical equipment "above the flood zone level." Extell argues that ZCFR was targeted to

"Flood Hazard Areas", and "was not enacted with any thought at all for potential impact -retroactive or otherwise-on property owners in Extell's position." It is true that Hurricane Sandy had nothing to do with high-rise construction on Manhattan. It is also true that the issue of the abuse of FAR ME deductions by high-rise developers was not even considered by the City Council when ZCFR was passed.

16. But, to Extell's chagrin, when reviewing the problems that property owners faced when relocating their ME equipment, the Department of City Planning and the City Council discovered that the DOB was very inconsistent and unprincipled in approving deductions for floor area used for mechanical equipment. If the Court reviews the transcript of the testimony of DOB's general counsel before the BSA in this case regarding the DOB's policy towards signing off on such deductions, it becomes apparent that there was no standard policy:

COMMISSIONER SCIBETTA: Do you have any examples of the Department of Buildings requesting information about a mechanical space after such a space -- not, not with concern to safety but with a concern to is this actual mechanical -- is this excluded as mechanical space.

MS. MILLER: I don't have the benefit of that knowledge.

COMMISSIONER SCIBETTA: So counsel, where would you come, how did you come to the statement that this is something that happens?

MS. MILLER: Oh, the, the, the, the examiners that review this have said that they, they do look at, we, we've

spoken with, uh, the, uh, borough commissioners and they, uh, they will look at it very much to know that can you realistically, can this floor be realistically used for, is it going to become some other use, or is this a mechanical space. They will look at it to determine that.

COMMISSIONER SCIBETTA: That's what they told you but we—

MS. MILLER: Mm-hmm.

COMMISSIONER SCIBETTA: --you don't know if that's happened?

MS. MILLER: Whether we have rejected spaces specifically because -

COMMISSIONER SCIBETTA: Yes

MS. MILLER: -- um, I, I would imagine colloquially, they would tell me that they have if they're telling me that they look at that, but I don't have the specifics.

(December 17, 2019 Hearing Tr., 62:10-23, 63: 1-9, NYSCEF Docket No. 63).

17. Apparently, whatever review the DOB did, it was not done pursuant to any formulated policy. In fact, the very reason why this clarifying amendment had to be enacted is because the DOB did not award any deductions for floor area outside the footprint of the mechanical equipment when residential home owners applied. And if that is the case, why does Extell now claim that it would be unfair to apply "new law" to it. After all, this "new law" is more generous than the "prior law." Extell's own brief states on page 10 that the express purpose of these amendments "was to remove zoning barriers, not to impose

more restrictive zoning barriers." Certainly, Extell would get a greater FAR deduction under the version of the law that for the first time expressly allows a deduction of floor space for the purpose of accessing and servicing the equipment.

18. But that "minimum necessary" language is very upsetting to Extell. Extell argues that this is a clear departure from what the law was before, in 2019, when Extell's plans were approved. Yet, half of the members of the BSA sitting in review of LW!'s accepted LW!'s argument and Ambrosino's analysis that the language "used for" meant the amount of space "needed," not "wanted" for use of the mechanical equipment. While the BSA regulations require a majority vote to prevail on an appeal, it cannot be overlooked that there was a tie vote on the underlying factual/legal issues, most importantly on the issue of what the law meant in 2019.

19. Unlike the First Department's decision in *Committee of Environmentally Sound Development v. Amsterdam Ave. Redevelopment Assocs. LLC* (194 A.D.3d 1, 11-12 [1st Dept. 2021]), the administrative reading of the existing statute was anything but settled. Moreover, unlike in the *Peyton* and *Committee of Environmentally Sound Development* decisions, the BSA determination here was anything but unanimous. In fact, the four members of the Board could not agree on the proper reading of

the relevant language of the statute. The DOB's prior practice was also not consistent or uniform.

20. Extell cannot now claim a surprise change to the well-settled practice or procedure, with the basic constitutional notions of fairness and due process implicated, if this clarification were made applicable to the work plans filed in 2019. This clarification merely eliminates disingenuous arguments asserted by the developers at that time and brings order to the Department of Buildings' application of the ME FAR deduction that was unfair to small home owners and unduly generous to large developers, was inconsistent and unprincipled. This clarification does not change the law as it existed in 2019—it only makes it 100% clear that “used for” means the floor space that is needed for “use” of the mechanical equipment--and requires a reevaluation based on this clear standard.

21. The split among board members on the reading of the language “used for” was so complete and diametrically opposed that Extell cannot now say that “minimum necessary” is a change in the law, as opposed to a clarification on what the law was back when Extell obtained its permit in 2019. The law has not changed. The grey area in the wording was removed. Had Extell obtained a majority vote of the BSA, it could then argue what the law “was” in 2019 and how it has been “changed” as part of ZCFR in 2021. This particular provision has not been changed: it

has been clarified.³ And this clarification impacts determination of this Article 78 proceeding.

IV. Significance of the May 12, 2021 Amendment to Current Proceeding

22. At the oral argument, Judge Rakower responded to Petitioner's counsel when explaining her decision that it does not matter how many people you can fit in a 1,000 square foot room to service the mechanical equipment occupying only 77 square feet of floor area. (Oral Arg. Tr. 23:13-14 responding to 21:18-25). In fact, this clarifying amendment says that it does matter. This clarification's application to the current case will further the legislative intent and principles of justice and uniformity in the law and will vindicate common sense over slothful unwillingness to engage legal issues beyond one's comfort zone.

V. Extell's Remaining Arguments Are Unavailing

23. Extell's reliance on the First Department decision in *Waverly Place Assocs. v. DHCR* (292 A.D.2d 211, 212 [1st Dept. 2002]) is quite disingenuous. That case involved change in the regulation involving rent stabilization deregulation—with no

³ Respondent's reference to other parts of the amendment that reference retroactive application of the law is a red herring. Those sections involved a clear change to the existing law and were not accompanied by references of "clarification." In such a case, of course, for a change in the law to have retroactive effect, the legislation must so provide under the *Landgraf* precedent. That is settled law. On the other hand, the *Landgraf* principles do not apply to clarifications that have no retroactivity constitutional concerns as they merely explain what the law has been all along.

discussion of clarification vs change in the law. It is not even remotely relevant. Extell's further reliance on Article 78 caselaw⁴ that involves an attempt to present before the court factual documents that were not presented before the administrative body are inapposite. Here, the issue on this motion is one of a proper legal standard to apply. While both the DOB and the BSA are accorded deference by the courts under the Article 78 standard due to these bodies' possession of specialized expertise, these bodies may only interpret and enforce the ZR, but cannot legislate: they cannot rewrite the law. The law and its meaning are ultimately controlled by the legislative body filled with elected representatives. The Court's deference to administrative bodies does not project to questions of pure statutory interpretations, pure legal questions. Otherwise, what is the point of Article 78 in the CPLR? Since the times of *Marbury v. Madison*, the courts interpret the legislative intent and state what the law is.

24. If this Court is persuaded that the clarifying amendment must guide the BSA's determination of LW!'s appeal

⁴ Extell Opp Brief, p. 12: "620 W. 182nd St. Heights Assocs. v. Dep't of Hous. Pres. & Dev. of City of N.Y., 149 A.D.3d 558, 559 (1st Dep't 2017) (denying renewal for "change in circumstances after the agency's determination"); Matter of W. Vill. Houses Tenants' Ass'n v. BSA, 302 A.D.2d 230, 231 (1st Dep't 2003) (motion to renew should have been denied because new document "did not come into existence until after the Board's determination").

before the BSA, this Court can remand this matter to the BSA for further considerations based on the May 2021 clarification.

25. Finally, Respondents' attempt to hide behind the principle of vesting in land use cases and their argument that the First Department in a related appeal has determined that Extell's project vested in May 2019, is irrelevant. *The City Club of N.Y. v BSA et al.*, 198 A.D.3d 1, 3 (1st Dept 2021) ("BSA rationally relied on its precedent [see 15 East 30th Street, BSA Cal. No. 2016-4327-A [Sept. 20, 2017]] in ruling that when this project vested ZR § 12-10 did not control or regulate the height of the mechanical floor area). The First Department expressly stated that: "We note that petitioner⁵ has challenged the amount of the project's floor space used for mechanical equipment as excessive or irregular in a separate proceeding. The merits of that challenge are not before us, and we offer no opinion thereon." *Id.* at 3.

26. Therefore, whether Extell's project remains to be "vested" will depend on what happens with this motion to renew and eventually with LW!'s own appeal to the First Department. As explained in the moving affirmation, if Extells' FAR calculations filed with 2019 plans were incorrect, obviously

⁵ The First Department apparently confused LW! with the petitioner in that case, the City Club of New York, and did not realize that proceeding was not brought by the City Club. Hence the reference to "petitioner".

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there was no "vesting" to speak of, as the permit issued in 2019 will be revoked.

27. Accordingly, Petitioner requests that the Court grant leave to renew and, upon renewal, reconsider its May 4, 2021 decision in light of the May 12, 2021 amendment clarifying the definition of Floor Area in ZR §12-10.

Dated: Brooklyn, New York
October 18, 2021

KLEIN SLOWIK, PLLC

A handwritten signature in black ink, appearing to read 'M. Sheynker', is written over a horizontal line.

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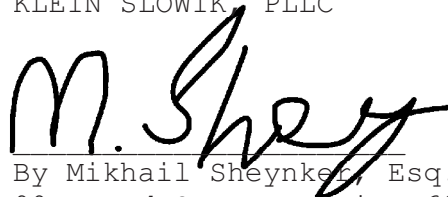
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CERTIFICATION PURSUANT TO 22 NYCRR 202.8-b(c)

I, Mikhail Sheynker, counsel for Petitioner in the above-captioned matter, hereby certify that this affirmation was generated on a computer word-processing program, using Courier New font, 12 pt. size, double-spaces with 1-inch margins, and the word count for this brief is 3810 words, inclusive of this certification.

Dated: Brooklyn, New York
October 18, 2021

KLEIN SLOWIK, PLLC

A handwritten signature in black ink, appearing to read 'M. Sheynker', is written over a horizontal line.

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Certification Pursuant to CPLR §2105

CERTIFICATION PURSUANT TO CPLR § 2105

I, Mikhail Sheynker, a member of the firm of Klein Slowik PLLC, Attorneys for Petitioner-Appellant, hereby certify pursuant to § 2105 of the CPLR that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file in the office of the clerk of the Supreme Court, County of New York.

Dated: December 6, 2021

Klein Slowik PLLC

By:



Mikhail Sheynker

Attorneys for Petitioner-Appellant