



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**Christine Berthet**  
Chair

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District Manager

November 25, 2015

Carl Weisbrod, Chair  
City Planning Commission  
22 Reade Street  
New York, New York 10007

Vicki Been  
Commissioner  
Department of Housing Preservation & Development  
100 Gold Street 10038

**Re:** **Mandatory Inclusionary Housing**  
*NI60051ZRY (zoning text amendment)*

Dear Chair Weisbrod and Commissioner Been,

At its full board meeting on November 4th, 2015, Manhattan Community Board 4 (MCB4) reviewed the application by the New York City Department of City Planning (the "Applicant") for the proposed Citywide Zoning Text Amendment to create a Mandatory Inclusionary Housing Program (MIH).

The Board by a vote of 39 in favor, 0 opposed, 0 abstentions and 0 present but not eligible **recommended to approve with conditions** the proposed text amendment.

**Background—MCB4 Affordable Housing Preservation & Production**

Manhattan Community Board 4 has been an affordable housing advocate for decades. From the 1970's when the City was plagued by disinvestment and abandonment, through gentrification and tenant displacement in the 1980's and 1990's, and the major rezoning actions and luxury rental and condo development of the early 2000's, MCB4 has always sought flexibility and creativity from the City government and the private sector to develop and preserve affordable housing.

In 2015, MCB4 developed an Affordable Housing Plan for Manhattan Community District 4, with the goal of fostering the development and preservation of 10,966 units of affordable

housing. The plan is a living document that guides its efforts to support affordable housing.

MCB4 believes that Economic Integration is the only way to help keep Chelsea, Hudson Yards, and Clinton/Hell's Kitchen the thriving neighborhoods they are today. The Board will work to ensure that any changes to Zoning Regulation establish the requirements, standards, and support necessary for developing the housing that is crucial to maintaining our diversity.

### **Application**

The application is for a proposed city-wide text amendment that would apply to any new residential development, enlargement or conversion that requires rezoning. At the point of such a rezoning action, MIH will be mapped over the rezoned underlying zoning. (It will not apply to any development not subject to these actions.) In the proposed Zoning text amendment, The City of New York would make the provision of permanently affordable housing a requirement in any development that falls under these parameters.

### **Elements of the Application**

#### **Applicability**

- The zoning text amendment would apply to any new residential development, enlargement, or conversion that requires a rezoning.
- The requirement will also apply to neighborhoods that undergo large-scale rezonings.

#### **Income bands**

- The City Planning Commission, along with the City Council will have the discretion to apply one of three affordable housing options to a development.
- Option One requires developers to provide ***at least 25% of their total residential floor area to households at an average of 60% of the Area Median Income*** (AMI).
- Option Two requires developers to provide ***at least 30% of their total residential floor area to households at an average of 80% AMI***.
- Option Three, called the Workforce Option, requires developers to provide ***at least 30% of the residential floor area as housing for households of an average 120% AMI***.
- All options mandate that no affordable unit exceed 130% AMI.

#### **Affordable Housing Fund**

- For developments that are ***between 10 and 25 units, or 12,500 to 25,000 square feet***, the developer must make a payment to an affordable housing fund (in lieu of constructing affordable apartments).
- The payment will be calculated by multiplying the number of affordable units required of the development by a factor that is based on the cost of providing an affordable unit in the particular community where the market rate development will be constructed.
- The funds will be used for construction, rehabilitation, preservation and other affordable housing purposes as defined by HPD guidelines.
- The funds will be used for projects within the same community district or within a half mile radius of the market rate development.
- If the payment cannot be spent within the number of years set forth in HPD guidelines, the funds would become available for use in a broader area.

### **Economic Integration--Affordable Housing Apartment Distribution Within a Building**

- Affordable Apartment distribution will be decreased from 65% of the floors of building to 50% of the floor
- Affordable Apartment distribution (at the decreased 50%) will not apply to condominium and co-op developments when affordable units are rentals
- Equal apartment distribution will not be required for senior or supportive housing units, given the need for social service program requirements

### **Economic Integration--Equality in Apartment Finishes and Appliances--for Market Rate and Affordable Housing Residents**

- MIH is silent on this matter and contains no proposed zoning text.

### **Economic Integration--Equal Access to Building Amenities--for Market Rate and Affordable Housing Residents**

- MIH is silent on this matter and contains no proposed zoning text.

### **Location of Affordable Units**

- Units can be located in the same building as the development, in a separate building on the same zoning lot as the market rate development, or on a separate zoning lot within the same community district or within a half mile of the market rate development.
- Units that are built as part of off-site developments not on the same zoning lot will not be eligible for a 421-a real estate tax abatement.

### **Unit Sizes—Changes in Standards**

- The minimum unit sizes would be as follows: 400 square feet of floor area for a zero-bedroom unit; 575 square feet of floor area for a one-bedroom unit; 775 square feet of floor area for a two-bedroom unit; 950 square feet of floor area for a three-bedroom unit.
- When the average floor area of an apartment of a particular apartment size (studio, one-bedroom, etc.) is smaller than the minimum unit size requirement, the smaller floor area standard would apply.
- The bedroom mix of the affordable units will have to either match the market rate units or have at least 50% of units that are two bedrooms or more, with 75% or more being one bedroom or more.

### **Public Review and Comment by Community Boards**

- MIH removes the required 45-day public comment and review period for Community Boards. This zoning provision has been in the Voluntary Inclusionary Housing program since 1987.

### **BSA Special Permit**

- There will be a hardship exemption under which developers can go before the Board of Standards and Appeals to modify their affordable housing requirements.

### **Additional Programs**

- Developments may be able to meet their affordable housing requirements if they offer a homeownership option, similar to the one currently available under the Voluntary Inclusionary Housing program
- There would be no preservation option, whereby bonus floor area can be used to meet affordable housing requirements
- Developers whose affordable units are supportive housing could locate those units in a building separate from the market rate units
- A tenant who has lived in a site that is to be demolished for an MIH development may live in one of the affordable units provided by the development, even if their household income exceeds the qualifications set by the program.

### **Regulatory Agreement**

- The regulatory agreement between the developer and HPD would contain an MIH application, which would be a standardized form that would be required for all MIH sites that would specify compliance with the MIH guidelines
- The developer must submit a copy of the MIH application to the local Community Board
- HPD will provide a list of pre-qualified monitoring agents who can oversee compliance with the MIH regulatory agreement.

### **HPD/MIH Program Guidelines**

- Distribution requirements can be changed in situations where a development has too few units to meet the requirements.
- The method used by which HPD measures the square footage of affordable units will be changed so that it conforms to the method used by the Department of Buildings.

## **MCB4 Proposed Actions and Recommendations**

### **Applicability**

***MCB4 supports the applicability of the proposed text amendment, which will entail any new residential development, enlargement, or any conversion that requires a rezoning.***

### **Affordable Housing Income Band--Proposed Options**

#### ***MCB4 supports:***

- Option One, under which developers are required to provide ***at least 25% of their total residential floor area to households at an average of 60% AMI.***
- Option Two, under which developers are required to provide ***at least 30% of their total residential floor area to households at an average of 80% AMI.***

#### ***MCB4 supports with conditions:***

- Option Three, the Workforce Option, under which developers are required to provide ***at***

*least 30% of the residential floor area as housing for households of an average 120% AMI (with no households earning more than 130% AMI).*

This option is currently proposed to be excluded in CD's 1-8 in Manhattan.

**MCB4 requests the Workforce Option be available in MCB4.** Manhattan and its Westside have been historically and should continue to be economically integrated communities. The Workforce Option targets households (from 1 to 4 persons) with annual household incomes ranging from \$36,300 to \$112,190. This income group includes firefighters, civil servants, and persons working in service, health and hospitality industries.

**Since 2006 in MCB4, the Voluntary Inclusionary Housing Program (VIH) has produced 2,571 units of affordable housing, of which 93.7% are 60% AMI or below<sup>1</sup>.** The rest of the units are as follows:

AMI	Number of Units	Percent of Total Units	Income Range (for 1 – 4 persons)
40%	187	7.3%	\$24,200-\$34,520
50%	1,574	61.2%	\$30,250 - \$43,150
60%	647	25.2%	\$36,300 - \$51,780
80%	64	2.5%	\$48,350-\$69,050
100%	27	1.1%	\$60,500 - \$86,300
130%	27	1.1%	\$78,650-\$112,200
165%	47	1.8%	\$99,850-\$142,400
>165%	8	0.3%	\$99,900 and above

**Total:** 2,571

Affordable housing in MCD4 should be available to a range of incomes to include all New Yorkers. **Economic Integration should be the goal, not economic segregation.** Manhattan should not be economically stratified for the very wealthy and lowest income only. Therefore the Workforce Option, which permits a broader range of incomes, must be available in MCB4.

Given the strong real estate market in Manhattan, it is financially feasible for a market rate development to support a greater percentage of affordable housing. **Therefore MCB4 recommends that the Workforce Option requirement for Manhattan be 30% or more**<sup>2</sup>.

**Further MCB4 request that, in projects with multiple affordability bands, no gaps in affordability are permitted, such affordability gaps restrict access to broad range of New Yorkers.**

**Local Affordable Housing Fund-- Payment in Lieu Contributions for Developments less than 12,500 square feet**

<sup>1</sup> See Appendix attached (list of VIH buildings forthcoming)

<sup>2</sup> Given the new 421A requirement for 25% affordability @ 80% AMI or below, for projects using this option and 421A, the Workforce Component will be effectively an 5% increment of such housing

For developments that are *between 10 and 25 units, or 12,500 to 25,000 square feet*, the developer can make a payment to an affordable housing fund (in lieu of construction affordable apartments).

***MCB4 supports contribution to a Local Affordable Housing Fund provided that:***

- ***The Contribution Standard should be based on current actual costs for constructing housing in that Community District***
- ***Proposed zoning text must include an annual review of the contribution formula and standard.***
- ***Use of the Local Affordable Housing Fund should be determined by HPD in consultation with the local Community Board and Councilmember and Borough President.***

### **Economic Integration-- Affordable Housing Apartment Distribution within a Building**

The proposed MIH zoning proposes:

- Allowing Supportive or Senior Housing to be clustered in a portion of a building
- Decreasing the requirement for distribution of the affordable housing from 65% to 50% of the floors in a building
- Waiving the requirement for distribution of the affordable housing in Condo buildings with affordable rental units

***MCB4 supports:***

- ***Allowing Supportive or Senior Housing to be clustered in a portion of a building.*** Such housing often has specific social services or programmatic needs (such as activity rooms, health care facilities and/or social service offices). Therefore the need to cluster such affordable units benefits the residents of those apartments and required to better meet their needs.

***MCB4 cannot support:***

- ***Decreasing the requirement for distribution of the affordable housing from 65% to 50% of the floors of a building***

Since 2007, MCB4 has reviewed 26 Inclusionary Housing applications, containing 3,516 affordable units. In its direct experience in reviewing Inclusionary Housing applications in the Voluntary Inclusionary Housing Program (VIH), ***MCB4 has requested, and developers have agreed, to affordable apartment distribution 67% to 100% of the floors.***

## Inclusionary Housing in MCB4—Inclusionary Apartment Distribution within Buildings

Project	Address	Year	Required Distribution	Distribution Agreement
<b>Caledonia</b>	450 West 17th Street	2006	65%	65%
<b>TF Cornerstone</b>	455 West 37th Street	2007	65%	65%
<b>Clinton Housing</b>	505 West 51st Street	2007	100%	100%
<b>Douglaston Development</b>	316 11th Avenue	2007	65%	65%
<b>Emerald Green</b>	310-328 West 38th Street	2007	65%	100%
<b>River Place II</b>	600 West 42nd Street	2007	65%	65%
<b>Atlantic Development</b>	303 10th Avenue	2008	65%	65%
<b>TF Cornerstone</b>	505 West 37th Street	2008	65%	65%
<b>Avalon Bay</b>	525 West 28th Street	2009	65%	100%
<b>Tower 37 LLC</b>	350 West 37th Street	2009	65%	73%
<b>Crystal Green</b>	330 West 39th Street	2010	65%	72%
<b>Gotham West</b>	550 West 45th Street	2011	65%	80%
<b>Mercedes House</b>	770 11th Avenue	2011	65%	100%
<b>Lalezarian</b>	515 West 28th Street	2012	65%	80%
<b>Related Companies</b>	500 West 30th Street	2012	65%	85%
<b>Arker Companies Development</b>	424 West 55th Street	2013	100%	100%
<b>DHA Capital</b>	546 West 44th Street	2013	65%	71%
<b>Extell Development</b>	551 10th Avenue	2013	65%	80%
<b>Moinian</b>	605 West 42nd Street	2013	65%	67%
<b>Iliad Development</b>	509 West 38th Street	2014	65%	84%
<b>Elad</b>	505 West 43rd	2014	65%	60% <sup>1</sup>
<b>Manhattan West</b>	401 West 31st Street	2014	65%	69%
<b>Taconic/Ritterman</b>	525 West 52nd Street	2014	65%	83%
<b>TF Cornerstone</b>	606 West 57th Street	2014	65%	85%
<b>Site 7</b>	540 West 53rd	2014	100%	100%
<b>Lalezarian</b>	515 West 36th Street	2015	65%	79%

**Average 83.4%**

1 –number of inclusionary units too low to meet 65% distribution requirement

The development community is properly focused on maximizing return on investment. More Market Rate units on higher floor bring higher per square foot rents or higher per square foot purchase prices.

The City of New York, through it Department of Housing Preservation and Development and City Planning Commission, should focus on maximizing social investment. The MIH proposal should foster not only affordable housing but also Economic Integration, truly integrating all income groups within a building.

The higher floors and increased floor area will only exist due to the proposed Mandatory Inclusionary Zoning. **Higher income New Yorkers' apartments should not sit on the shoulders of Lower Income households.**

***MCB4 requests the affordable housing distribution requirement be increased from 50% to 80% of all floors within a building.***

**Segregating and or relegating affordable units to lower floors creates, not a Poor Door, but a Poor Floor.**

***MCB4 cannot support:***

- ***Waiving the requirement for distribution of the affordable housing in Condo or Co-op buildings with affordable rental units***

In the VIH Program, affordable units are required to be integrated on 65% of the floors of the development.

In its MIH presentation to MCB4, HPD stated the reason for waiving the requirement for Economic Integration for Co-ops and Condos which contain affordable housing rental units was that they presented difficulties in management and operation.

MCB4 rejects this rationale as unfounded in longstanding real estate practice and operation. Since the 1960's, thousands of buildings throughout the City of New York have been converted from rental housing to home ownership in the form of Coops or Condominiums. In nearly every instance, rent stabilized or rent controlled renters have continued to live side by side with new owners (either prior tenants or new buyers). The majority of such buildings has been and continues to be successfully managed by the private sector. Managing a mixed building of market rate condos or coops and affordable rental housing is the same circumstance.

***MCB4 requests that the affordable housing distribution remain as a requirement for Co-op and Condominiums buildings and the distribution requirement be 80% of all floors within a building.***

**Segregating affordable units onto lower floors creates, not a Poor Door, but a Poor Floor, and in the case of Coops or Condos, creates the impression that the City of New York values homeowners over renters.**

Furthermore, MCB4 is both surprised and distressed that this proposal is silent with regards to access to amenities, finishes, and appliances for affordable units. These issues must be addressed in order to ensure that the residents of these affordable units do not become the victims of stigmatization. The need to set standard requirements for affordable units has become clear to MCB4, which in its years of evaluating applications, has seen an overwhelming number of developers who have sought to create separate standards for affordable units. This has been the key issue in the Community Board's reviews of these applications.



### **Economic Integration--Equality in Apartment Finishes and Appliances--for Market Rate and Affordable Housing Residents**

Economic Integration demands equality in apartment finishes (flooring, tile, countertops, plumbing and lighting fixtures) and appliances. Such finishes should be the same in all market rate and affordable units. The goal of Economic Integration is ensuring that tenants or owners in the same building live in the same standard of housing. *Creating a separate but not equal apartment finish standards leads to stigmatization.*

All residents should be in the same housing; some apartments just rent or sell for less. The quality of the apartments should not be secondary; the affordable housing residents must not be treated as second class citizens. Their lower income housing creates the financial benefit of the additional height and or bulk directly resultant from MIH, and in turn increases the return for the investment of the private sector. Additionally, MCB4 recommends that this standard also apply to the current Voluntary Inclusionary Housing Program (VIH). MCB4, in its review of 26 VIH applications has achieved the following:

### **Inclusionary Housing in MCB4—Equality in Apartment Finishes**

Project	Address	Floors	Countertops	Cabinets	Appliances	Paint	Wall Tile	Doors/ Hardware	Baths	In unit washer/dryer
<b>Caledonia</b>	450 West 17th Street	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
<b>TF Cornerstone</b>	455 West 37th Street	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
<b>Clinton Housing</b>	505 West 51st Street	S	S	S	S	S	S	S	S	S
<b>Douglaston</b>	316 11th Avenue	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
<b>Emerald Green</b>	310-328 West 38th Street	S	S	S	S	S	S	S	S	S
<b>River Place II</b>	600 West 42nd Street	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
<b>Atlantic Development</b>	303 10th Avenue	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
<b>TF Cornerstone</b>	505 West 37th Street	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
<b>Avalon Bay</b>	525 West 28th Street	S	S	S	S	S	S	S	S	S
<b>Tower 37 LLC</b>	350 W. 37th Street	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
<b>Crystal Green</b>	330 West 39th Street	S	S	S	S	S	S	S	S	S
<b>Gotham West</b>	550 West 45th Street	(2)								
<b>Mercedes House</b>	770 11th Avenue	S	S	S	S	S	S	S	S	S
<b>Lalezarian</b>	515 West 28th Street	(3)								S
<b>Related Companies</b>	500 West 30th Street	(1)	(1)	S	(1)	(1)	(1)	S	S	S
<b>Arker Companies</b>	424 West 55th Street	(4)								
<b>DHA Capital</b>	546 West 44th Street	D	D	D	(1)	(1)	(1)	(1)	(1)	S
<b>Extell Development</b>	551 10th Avenue	D	S	S	S	S	(1)	(1)	D	S
<b>Moinian</b>	605 West 42nd Street	S	D	S	D	S	S	(1)	(1)	S
<b>Iliad Development</b>	509 West 38th Street	(5)								S
<b>Elad</b>	505 West 43rd	S	S	S	S	S	S	S	S	S
<b>Manhattan West</b>	401 West 31st Street	S	D	S	D	S	S	(1)	(1)	S
<b>Taconic/Ritterman</b>	525 West 52nd Street	S	S	S	S	S	S	S	S	(1)
<b>TF Cornerstone</b>	606 West 57th Street	D	D	S	D	(1)	(1)	(1)	(1)	S
<b>Site 7</b>	540 West 53rd	S	S	S	S	S	S	S	S	S
<b>Lalezarian</b>	515 West 36th Street	S	S	(1)	S	(1)	(1)	(1)	S	S

S – Same; D – Different

(1) Information not available

(2) "Same as the finishes in the moderate- and middle-income units"

(3) Quality not less than hardwood, porcelain, stone or ceramic

(4) Oak strip wood flooring, ceramic tile, and wood cabinets

Given its record in achieving a better degree of Equality of Apartment Finishes and Appliances, ***MCB4 requests the proposed MIH Zoning Text be amended to include requirements for MIH developments for the same level of Apartment Finishes for Market Rate and Affordable Apartments. Such Equality in Apartment Finishes and Appliances should also be met if Affordable Apartments are built off site.***<sup>3</sup>

***MCB4 also requests post-construction compliance inspections be made by HPD to ensure that Apartment Finishes and Appliances are equal for Market Rate and Affordable Apartments.***

Additionally, MCB4 would like to point out that in many new multifamily developments use a fan blower to supply heat to a unit. Fan blowers use electrical power, and in some cases have created a cost burden on affordable housing tenants, forcing them to choose between heat and an unaffordable electric bill. MCB4 has received multiple complaints from Inclusionary Housing tenants are unable to meet utility costs to keep heat running in winter. ***MCB4 requests HPD to take the utility cost of fan blowers in account in its calculation of utility allowances for affordable housing tenants.***

#### **Economic Integration--Equal Access to Building Amenities--for Market Rate and Affordable Housing Residents**

Economic Integration also demands equal access to building wide amenities such as:

- children's playrooms and outdoor playrooms
- outdoor patios
- roof decks
- party rooms and kitchens
- libraries and game lounges
- storage lockers
- screening rooms
- bike rooms
- gyms

Access to such building wide amenities (except in the case of gyms which require a separate paid membership) should be equally accessible to all market rate and affordable apartment residents. The goal of Economic Integration is ensuring that tenants or owners in the same building are able to enjoy and mix socially in the building-wide amenities. **Restricting or limiting use of building-wide amenities creates two classes of residents through the Zoning Resolution and bakes in income inequality leading to stigmatization.**

MCB4 in review of 26 VIH applications has achieved the following:

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<sup>3</sup> Affordable developments built with monies from the Affordable Housing Fund will have no direct nexus with the market rate project contributing to the Fund, therefore this requirement would not apply to units using these funds.

## Inclusionary Housing in MCB4—Equal Access to Building Amenities

Project	Roof deck	Gym	Amenity Lounge	Bike Parking	Playroom
Caledonia	(1)	(1)	(1)	(1)	(1)
TF Cornerstone	(1)	(1)	(1)	(1)	(1)
Clinton Housing	Yes	(1)	Yes	(1)	(1)
Douglaston Development	(1)	(1)	(1)	(1)	(1)
Emerald Green	(1)	(1)	(1)	(1)	(1)
River Place II	(1)	(1)	(1)	(1)	(1)
Atlantic Development	(1)	(1)	(1)	(1)	(1)
TF Cornerstone	(1)	(1)	(1)	(1)	(1)
Avalon Bay	(2)	(2)	(2)	(2)	(2)
Tower 37 LLC	(1)	(1)	(1)	(1)	(1)
Crystal Green	(1)	Yes	Yes	(1)	(1)
Gotham West	(1)	Yes	Yes	(1)	Yes
Mercedes House	(1)	(1)	(1)	(1)	(1)
Lalezarian	Yes	Discounted	(1)	(1)	(1)
Related Companies	Yes	Discounted	(1)	(1)	(1)
Arker Companies	(1)	(1)	(1)	(1)	(1)
DHA Capital	Yes	Discounted	Yes	Fee	(1)
Extell Development	Discounted	Discounted	Discounted	Discounted	Discounted
Moinian	Discounted	Discounted	Discounted	Discounted	Discounted
Iliad Development	Yes	Yes	Yes	Yes	Yes
Elad	Yes	Yes	Yes	Yes	Yes
Manhattan West	(3)	(3)	(3)	(3)	(3)
Taconic/Ritterman	(4)	(4)	(4)	(4)	(4)
TF Cornerstone	Yes	Yes	Yes	(1)	(1)
Site 7	Yes	Yes	(1)	(1)	Yes
Lalezarian	Yes	Lower fee	Yes	Yes	(1)

(1) Information not available

(2) “Affordable rates”

(3) "All of these amenity spaces will either be free and open to all residents of the building or will be available to the low-income tenants of the building"

(4) “Free or reduced fee”

Given the record in achieving a better degree of Equal Access to Building Wide Amenities, ***MCB4 requests the proposed MIH Zoning Text be amended to include requirements for MIH developments to provide Equal Access to Building Wide Amenities for Market Rate and Affordable Apartments.***<sup>4</sup>

<sup>4</sup> For gym facilities, open to all tenants, discounted rates affordable to Inclusionary tenants would apply. However, for gyms that require a separate paid membership This requirement would not apply.

### **Location of Affordable Units**

***MCB4 supports with conditions establishing options that allow developers to place affordable housing units in the same development as the market rate units, in a separate building on the same zoning lot as the market rate development, on a separate zoning lot within the same Community District, or within a half mile of the market rate development only for Supportive or Senior Housing.*** Additionally, eliminating affordable units built on off-site developments from the 421-a program ensures that developers will not receive unwarranted financial benefits.

### **Unit Sizes—Changes in Standards**

***MCB4 supports the proposed unit size minimums, and the built-in flexibility that would allow developments with market-rate units that are of smaller size to provide corresponding affordable units that are also equal in size.*** Additionally, maintaining equality in bedroom mix is important. The requirement that at least 50% of units be two bedrooms or more (with at least 75% being one bedroom or more) will make these affordable units open to a wider range of households in our community.

### **Public Review and Comment by Community Boards**

***MCB4 requests proposed MIH zoning text be amended to retain the VIH provisions<sup>5</sup> for the 45 day public comment and review by Community Boards***

MCB4 has reviewed 26 Inclusionary Housing Plans since 2007, the greatest number of any in the any Community District in the city. That review process is integral for public information and ensuring developer compliance. Maintaining the 45 day Community Board Public Comment Period for MIH applications as it exists in VIH ensures the public and local Community Board can provide meaningful comment. MCB4's work in Inclusionary Housing review has provided significant improvements in economic integration with improved affordable housing distribution, equality in apartment finishes, and equal access to building wide amenities for affordable housing tenants.

**Reducing the requirement to notification, with no 45 day public review and comment period, reduces transparency for neighborhoods and their Community Boards, promoting development at the cost of public involvement.**

### **BSA Special Permit**

***MCB4 supports having a procedure in place for developers who face unusual challenges to meeting the affordable housing requirements.*** The Board expects that such requirements will be justifiably modified to give developers allowances while still holding them responsible to the affordable housing goals of the proposed amendment.

### **Additional Programs**

***MCB4 supports the consideration of other programs with regards to affordable units provided under MIH. Such consideration allows multiple programs, like the homeownership option, and MIH requirements to work in harmony. The community Board also supports eliminating the preservation option and enabling supportive housing units, whose residents have a range of special needs, to be placed in a separate building from the contributing development.***

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<sup>5</sup> New York City Zoning Resolution – Inclusionary Housing Section 23-961, d (3)

*Furthermore, MCB4 is in agreement with the support of grandfathered tenants in the proposed amendment.* Protecting existing tenants through grandfathering is key to protecting the long-term resident and character of our community.

### **Regulatory Agreements**

*MCB4 supports including a standardized application as part of the MIH process, as well as the monitoring of the affordable units to ensure that developers comply with the MIH regulatory agreement.*

### **HPD/MIH Program Guidelines**

*MCB4 supports the flexibility that the proposed text would provide for developments with too few units to meet distribution requirements.* Furthermore, it applauds the proposal to standardize square footage calculations across both HPD and DOB.

### **MIH Requirements Waiver for Infrastructure or Transit Improvements**

*MCB4 cannot support waiver of MIH requirements for infrastructure or transit improvements* Until 1990 the CSD contained zoning text for density bonus options—either the provision of public open space or affordable housing. While the open space option was used by the development community, the affordable housing option was never used. After the deletion of the open space option in 1990, Inclusionary Housing began to be built or preserved in the CSD. **When less costly or simpler bonus options exist, simpler than the provision of affordable housing, the development community will choose the economic path of least resistance,** and essentially buy out one time capital improvements, as opposed to the initial capital investment coupled with long social investment that affordable housing requires.

### **Other considerations**

Increased funding is needed for DOB/HPD enforcement to penalize owners who neglect affordable housing. Stronger regulations for buildings with occupied units undergoing renovations or re-construction are needed. In September 2015, the City Council introduced a series of local laws that place greater scrutiny on owners who repeatedly approach tenants with buyout offers and labels such actions as harassment of tenants. Currently, the City Council is considering a bill that would also classify illegal apartment conversions as harassment. In order to be properly enforced, the City will need funding to HPD and DOB to provide adequate staff capacity to respond to these abuses.

### **Conclusion**

The proposed MIH zoning text is a serious effort to extend the provision of Inclusionary Housing to rezoned areas throughout the entire City of New York. However, it contains serious flaws. As with the ZQA proposed zoning, it is a one-size-fits-all approach for a complex city made up of diverse neighborhoods and districts, each with different and fine-grained needs. MIH makes the assumption that all communities' affordable housing needs are the same.

The need for lowest income housing in parts of Bedford Stuyvesant or Mott Haven is matched by the needs for moderate and middle income housing on the Upper West Side or Clinton/Hell's Kitchen. These needs are not competing but complementary. The city is simply not one

demographic group, neighborhoods must be able to ensure MIH serves the long term residents of each neighborhood, not some abstract citywide ideal.

MCB4 finds it especially disturbing that DCP and HPD believe only Manhattan below 110<sup>th</sup> Street on the West side and 96<sup>th</sup> Street on the East side, in Community Boards 1 through 8, is not an appropriate area for Workforce Housing, for families and individuals earning between \$76,440 and \$93,240. Manhattan has always had the City's greatest income inequality—we have 5<sup>th</sup> Avenue and Double 5<sup>th</sup> (that is 10<sup>th</sup> Avenue), sprawling apartments with Central Park views and walk ups with Lincoln Tunnel traffic views. But Manhattan has tens of thousands of moderate income residents who deserve increased opportunities to remain in their neighborhoods as was accomplished by the Mitchell Lama rental and cooperative programs in the 1960's. MIH should not create greater income inequality in affordable housing.

While many of elements of MIH address and improve on deficiencies in procedure and policy in VIH, the lack of focus on Economic Integration is most disturbing. MIH not only lessens affordable apartment distribution requirements from 65% of the floors to 50% but eliminates the requirement entirely for coops and condos. Further is silent on Equality in Apartment Finishes and Appliances--for Market Rate and Affordable Housing Residents and Equal Access to Building Amenities. Such a citywide proposal must acknowledge the Economic Integration is a central value to creating healthy mixed income communities. Poor doors are not only physical, but a state of mind. As long as zoning text and program regulation, permit two classed of apartments, there will be two classes of tenants. **The point of Inclusionary Housing is to include, not exclude onto lower floor, with cheaper floors and countertops and limited or no access to building amenities. The statement of how the City values Inclusionary Housing is made by its actions, MIH's reduction of Economic Integration or silence on Apartment Finishes and Access to Amenities speaks volumes by such an omission.**

MCB4 looks forward to continuing discussions with both the Department of City Planning and the Department of Housing Preservation and Development in order to ensure that the proposed Mandatory Inclusionary Housing program adequately addresses the needs of Manhattan Community District 4.

Sincerely,



Christine Berthet  
Board Chair



Jean-Daniel Noland, Co-Chair  
Clinton/Hell's Kitchen Land Use Committee



Betty Mackintosh, Co-Chair  
Chelsea Land Use Committee



Lee Compton, Co-Chair  
Chelsea Land Use Committee



Joe Restuccia, Co-Chair  
Housing, Health & Human Services Committee

[Signed 11/25/2015]  
Barbara Davis, Co-Chair  
Housing, Health and Human Services Committee

cc: J. Nadler, U.S. Congress  
B. Hoylman, State Senator  
A. Espaillat, State Senator  
D. Gottfried, State Assemblymember  
L. Rosenthal, State Assemblymember  
C. Johnson, City Councilmember  
H. Rosenthal, City Councilmember  
V. Been, HPD  
L. Carroll, HPD  
D. Hernandez, HPD  
E. Hsu-Chen, DCP  
F. Ruchala, DCP  
K. Grebowiec-Hall, DCP



CITY OF NEW YORK

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**Christine Berthet**  
Chair

**Jesse R. Bodine.**  
District Manager

November 30, 2015

Carl Weisbrod, Chair  
City Planning Commission  
22 Reade Street  
New York, New York 10007

**Re:** **Zoning for Quality and Affordability**  
*N160049ZRY (proposed zoning text amendment)*

Dear Chair Weisbrod,

At its full board meeting on November 4th, 2015, Manhattan Community Board 4 (MCB4) reviewed the application by the New York City Department of City Planning (the "Applicant") for the proposed Citywide Zoning Text Amendment to create a Mandatory Inclusionary Housing Program (MIH).

The Board by a vote of 39 in favor, 0 opposed, 0 abstention and 0 present but not eligible **recommended to deny unless** the following modifications changes are made to the proposed Zoning for Quality and Affordability zoning text amendment (ZQA).

**Background and Context**

The Community Board has long understood the importance of affordable and senior housing in the communities of Chelsea, Hudson Yards and Clinton/Hell's Kitchen. Our concerns are based on 40 years of community planning and the creation of four Special Zoning Districts.

**Special Clinton District**

Adopted by the Board of Estimate<sup>1</sup> in 1973, the Special Clinton District ("SCD") was one of the first Special Purpose Districts created. The SCD allowed dense residential and commercial to proceed in the Perimeter Areas (along 8<sup>th</sup> Avenue and West 42<sup>nd</sup> Street) while establishing a Preservation Area, with specific height limits, in the neighborhood's core (west of 8<sup>th</sup> Avenue to west of 10<sup>th</sup> Avenue, from West 43<sup>rd</sup> to West 56<sup>th</sup> Streets) Notably, the SCD was the first district to feature a zoning bonus for the creation of affordable housing as well as the first to include protections against tenant harassment. The SCD's tenant anti-harassment provisions (requirements for Certificates of No Harassment (CONH)) prevented owners from altering or

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<sup>1</sup> Until 1990, the Board of Estimate was the precursor body to the City Council for final approval of zoning actions.



demolishing building in which harassment had been documented. That provision has been an ongoing deterrent against wholesale tenant displacement.

### **The Chelsea Plan—rezoning of East Chelsea**

Adopted as a rezoning by City Council in 1996, the Chelsea 197-a Plan the community was community initiative to craft compromises and trade-offs to balance the competing needs for development and preservation in East Chelsea, a 64-block area between 14th and 34th Streets west of Sixth Avenue. The Chelsea Plan was a set of recommendations for zoning changes intended to create housing opportunities and to balance new development with the preservation of neighborhood context. The Plan embraced contextual zoning, establishing requirements for streetwalls, height and setback and building heights. These provisions were carefully calibrated on 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Avenues and the side streets dependent on upon the built context which ranged from lofts and 6 to 8 story apartment buildings to 5 to 3 story tenements and brownstones.

### **Special Hudson Yards District**

Adopted by the City Council in 2005, the Special Hudson Yards District (SHYD) was created to foster commercial and residential development west of 8<sup>th</sup> Avenue from West 30<sup>th</sup> to West 41<sup>st</sup> Streets in a former manufacturing zone. The SHYD allows the highest density of commercial development of any district in the City of New York. It established a series of zoning mechanisms and bonuses to create revenue for the city's Hudson Yards Infrastructure Corporation service bonds used primarily for the construction of #7 line subway extension and its station on West 34<sup>th</sup> Street. After negotiations with the MCB4 and the City Council, the SHYD was amended to include provisions for affordable housing production and development, through Inclusionary Housing, demolition restrictions and anti-harassment provisions (requirements for Certificates of No Harassment (CONH) in the final zoning text. In 2009, The SHYD was amended to include the Western Railyards (WRY), the site of the failed football stadium plan. That amendment included further provisions for affordable housing both on and off site. During both zoning actions, height, set back and court and streetwall provisions were carefully calibrated among all subdistricts in the SHYD.

### **Special West Chelsea District**

Adopted by the City Council in 2005, the Special West Chelsea District (SWCD) was created to facilitate the Highline Park and foster commercial and residential development in Chelsea west of 10<sup>th</sup> Avenue from West 23<sup>rd</sup> to West 15<sup>th</sup> Streets in a former manufacturing zone. The SWCD also established a series of zoning mechanisms for transfer of development rights for properties encumbered by the Highline. After negotiations with the MCB4 and the City Council, the SHYD was amended to include provisions for affordable housing production and development, through Inclusionary Housing, demolition restrictions and anti-harassment provisions (requirements for Certificates of No Harassment (CONH)) in the final zoning text. During both zoning actions, height, set back and court and streetwall provisions were carefully calibrated for all subdistricts in the SWCD

### **Application**

The City proposes city-wide amendments to the Zoning Resolution that will:

- Increase available floor area for developments that include affordable senior housing

- Remove parking requirements for affordable housing developments
- Modify height and setback restrictions in contextual districts

## **Elements of the Application**

### **Senior Housing**

#### *Affordable Senior Housing*

- Change name of the zoning definition “non-profit residence for the elderly” to “affordable independent residence for seniors”
- Allow approximately 20% more floor area for “non-profit residences for the elderly” in R8 through R10 districts and numerous medium density contextual districts
- Increase permitted unit density in “affordable independent residence for seniors”

#### *Long-Term Care Facilities*

- Create a new definition for “long term care facilities” and add this designation to Use Group 3, Community Facilities
- Allow all “long-term care facilities” in R3 through R10 districts, including nursing homes, as-of-right
- Extend proposed FAR increase for “affordable independent residences for seniors” to “long term care facilities” in districts R3 through R10 as-of-right
- Require special permits for development of “long-term care facilities” in R1 and R2 districts

#### *Mixing of Residence and Care Facilities*

- Clarify calculations for requirements and floor area deductions under Quality Housing
- Allow use of residential FAR caps for mixed developments with residential units and Non-profit Institutions with Sleeping Accommodations and Long-Term Care Facilities, instead of typical reduced FAR for mixed use facilities in order to provide a ‘spectrum of care’ for senior residents
- Clarify calculation of dwelling unit factor in buildings with residential and community facility uses
- Remove restriction that community facilities cannot be on the same floor or above residential uses in special districts. Maintain restriction for commercial uses

### **Height and Setback Modifications**

#### *Affordable Senior Housing and Long-term Care Facility Building Envelopes*

- Increase permitted FAR by approximately 20% in R6 through R10 districts for affordable senior housing and long term care facilities
- Permit greater height and number of stories for uses other than residential where higher FAR is permitted for buildings with 20% or greater affordable senior housing and long term care facility uses
- Increase base height to conceal increase in overall additional building height
- Permit shared accessory spaces for affordable senior housing in rear yards and ground

floors in districts other than “B” districts

- Remove the height restriction of the width of abutting street and change to maximum permitted by the contextual envelope for narrow buildings (less than 45 feet)
- In R6 through R10 non-contextual districts, permit a more flexible “alternative Quality Housing building envelope” for sites where infrastructure creates barrier

#### *Inclusionary Housing Building Envelopes*

- Permit greater maximum height for full use of FAR available through the IH program
- Increase base height to conceal increase in overall additional building height
- Permit shared accessory spaces in rear yards and ground floors in districts other than “B” districts
- Remove the Sliver Law height restriction of the width of abutting street and change to maximum permitted by the contextual envelope for narrow buildings (less than 45 feet)

#### *Ground Floors*

- Increase ground floor height to allow buildings with residential units on the ground floor to elevate unit windows above street level and to allow for the addition of retail spaces which require heights greater than the maximums currently in place.
- Increase maximum height of Quality Housing buildings by 5 feet if the second floor begins at 13 feet or higher in all contextual zooming districts except R7B and R8B
- Allow a floor area exemption of up to 100sf for ramps in a residential floor lobby

#### *Street Walls*

- For medium density contextual districts, require buildings to locate their streetwall only in relation to directly adjacent buildings
- Reduce maximum setback from 15 feet off of the property line to 10 feet
- Clarify line-up provisions for buildings with architectural features such as bay windows in “B” districts
- Add street wall requirements beyond 50 feet of a wide street in high density districts
- Permit window recesses and structural expression within one foot from the street wall
- Allow deeper projections for a limited percentage of the street wall’s overall width
- In R6 through R10 districts, modify required width to depth ratio to 1:1 for courts less than 30 feet and remove restrictions for courts wider than 30 feet
- Add streetwall requirements beyond 50 feet of a wide street in high density commercial districts
- Wholly residential buildings must comply with more stringent streetwall commercial regulations in commercial districts
- Remove special line-up provision whereby narrow buildings in a commercial district have to line up with adjacent buildings so that they may better conform to conditions in the area.

#### *Corner Buildings*

- Increase maximum permitted lot coverage to 80% to 100% for buildings within 100 feet of a corner in R6 through R10 districts
- Allow portions of buildings in a high density district that are also within 25 feet of a low

density district to build either a maximum height of 75 feet or the maximum base height of the zoning district, whichever is less

#### *Setback Requirements*

- Remove rear yard setback requirements from Quality Housing buildings
- Reduce required front setback above base height by 1 foot for every foot it is set back from the property line, but maintain a 5 foot minimum setback

#### *Building Envelopes and Number of Stories*

- Increase maximum base height in some districts by 5 feet, consistent with maximum overall height increase
- Establish a maximum number of stories that can be built in a zoning district in concert with maximum building height
- Increase maximum building height by 5 to 10 feet in R9 and R10 districts
- Align Quality Housing optional regulations on wide streets with comparable “A” districts and narrow street regulations in “B” districts
- Allow for Quality Housing option building envelope in former study areas in non-contextual areas
- Adjust building envelopes in Special Zoning Districts where special building envelope and maximum FAR rules are not explicitly stated so that the maximum building envelopes are in line with the changes proposed for Quality Housing.

#### *Unit Size and Configuration*

- Remove 400sf minimum apartment size to provide greater unit type flexibility and allow unit density factor to govern
- Reduce density factor in R8 through R10 districts to 680sf
- Remove various double-paned window requirements from Zoning Resolution as they restrict use of higher efficiency window and are already mandated by building code
- Allow the Office of Environmental Remediation to modify sound-attenuated window requirements based on site conditions

#### *Irregular Site Conditions*

- Adjust rear yard and lot coverage requirements to allow for shallower rear yards and higher lot coverage
- Provide greater flexibility for street walls on acutely angled lots
- Reduce lot slope requirement from 10% to 5% for use of sloping base plane
- Reduce separation of multiple buildings on a single lot from 60 feet to 40 feet
- Create a new BSA special permit for Quality Housing on an irregular lot with additional flexibility for sites with predominately affordable housing

## **MCB4 Proposed Actions and Recommendations**

### **Senior Housing**

The provision of a wide array of housing options for seniors is essential to fostering communities in which seniors can receive a spectrum of services as they age in place. These proposed changes will ensure that senior housing meets the diverse needs and capabilities of our seniors.

#### **MCB4 supports:**

##### **Affordable senior housing**

Updating the definition of Senior Housing brings current usage into the Zoning Resolution. Promoting affordable housing through increased density in bulk and unit density makes development more financially feasible. However, such incentives to meet the need for affordable housing for seniors must be tempered by neighborhood context. Such bulk and height increases are not appropriate to all districts in a neighborhood. Social needs should not be met at the expense of light and air, livable streets and neighborhood scale.

- *Changing name of the zoning definition “non-profit residence for the elderly” to “affordable independent residence for seniors”*
- *Increased unit density for non-profit residences for the elderly*

##### **Long-Term Care Facilities**

Allowing long-term care facilities to be developed, with fewer restrictions, will remove barriers to providing much needed care for seniors in our community. However, such incentives to meet the need for long term care facilities must be tempered by neighborhood context. Such bulk and height increases are not appropriate to all districts in a neighborhood. Social needs should not be met at the expense of light and air, livable streets and neighborhood scale.

- *The new definition in the Zoning Text of long-term care facilities*
- *Allowing all “long-term care facilities” in R3 through R10 districts, including nursing homes, as-of-right*

##### **The mixing of residential and care facilities**

This set of changes enables facilities; with mixed uses that address the changing care needs senior have over time, to be developed.

- *Clarification of calculations for requirements and floor area deductions under Quality Housing and calculation of dwelling unit factor in buildings with residential and community facility uses*
- *Allowing use of residential FAR caps for mixed developments with residential units and Non-profit Institutions with Sleeping Accommodations and Long-Term Care Facilities, instead of typical reduced FAR for mixed use facilities in order to provide a ‘spectrum of care’ for senior residents*
- *Removing restrictions prohibiting community facilities not to be on the same floor or above residential uses in special zoning districts. (this restriction will be maintained for commercial uses*

## **Height and Setback Modifications**

### **MCB4 supports:**

#### **Affordable Senior Housing and Long-term Care Facility Building Envelopes**

These zoning text changes will enable better use of rear yards and ground floors for senior housing and more flexible building envelopes.

- *Shared accessory spaces for affordable senior housing in rear yards and ground floors in districts other than “B” districts*
- *In R6 through R10 non-contextual districts, permit a more flexible “alternative Quality Housing building envelope” for sites where infrastructure creates barrier*

#### **Inclusionary Housing--building envelopes.**

These zoning text changes will enable better use of rear yards and ground floors for senior housing.

- *Shared accessory spaces for affordable senior housing in rear yards and ground floors in districts other than “B” districts*

#### **Ground Floors**

These zoning text changes will enable ground floors at lower than street level by exempting a limited FAR for accessible ramps.

- *A floor area exemption of up to 100sf for ramps in a residential floor lobby*

#### **Street Walls**

These zoning text changes will enable corner buildings to better fit into their neighborhood context on 7<sup>th</sup> and 9<sup>th</sup> Avenues in Chelsea, on 9<sup>th</sup> Avenue lower Hell’s Kitchen and on 11<sup>th</sup> Avenue from West 42<sup>nd</sup> to West 54<sup>th</sup> Streets.

- *For medium density contextual districts, requiring buildings to locate their streetwall only in relation to directly adjacent buildings*
- *Reducing maximum setback from 15 feet off of the property line to 10 feet*
- *Clarifying line-up provisions for buildings with architectural features such as bay windows in “B” districts*
- *Adding street wall requirements beyond 50 feet of a wide street in high density districts (R8 through R10).*
- *Permit window recesses and structural expression within one foot from the street wall*
- *Allow deeper projections for a limited percentage of the street wall’s overall width*
- *In R6 through R10 districts, modify required width to depth ratio to 1:1 for courts less than 30 feet and remove restrictions for courts wider than 30 feet*
- *Add streetwall requirements beyond 50 feet of a wide street in high density commercial districts*
- *Requiring wholly residential buildings to comply with more stringent streetwall commercial regulations in commercial districts*
- *Removing special line-up provision whereby narrow buildings in a commercial*

*district have to line up with adjacent buildings so that they may better conform to conditions in the area.*

### **Corner Buildings**

These zoning text changes will enable corner buildings to better fit into their neighborhood context on 7<sup>th</sup> and 9<sup>th</sup> Avenues in Chelsea, on 9<sup>th</sup> Avenue lower Hell's Kitchen and on 11<sup>th</sup> Avenue from West 42<sup>nd</sup> to West 54<sup>th</sup> Streets.

- *Increasing maximum permitted lot coverage to 80% to 100% for buildings within 100 feet of a corner in R6 through R10 districts*
- *Allowing portions of buildings in a high density district that are also within 25 feet of a low density district to build either a maximum height of 75 feet or the maximum base height of the zoning district, whichever is less*

### **Setback Requirements**

These allowances will grant flexibility in setback modifications while also preserving the quality of street life, which is the overarching goal of setback requirements.

- *Removing rear yard setback requirements from Quality Housing buildings*
- *Reducing required front setback above base height by 1 foot for every foot it is set back from the property line, but maintain a 5 foot minimum setback*

### **Building Envelopes and Number of Stories**

Aligning the set of options and regulations that govern the various districts in MCB4 allows for simpler, more accessible guidelines.

- *Aligning Quality Housing optional regulations on wide streets with comparable "A" districts and narrow street regulations in "B" districts*
- *Allowing for Quality Housing building envelope option in former study areas in non-contextual areas*
- *Adjusting building envelopes in Special Zoning Districts where special building envelope and maximum FAR rules are not explicitly stated so that the maximum building envelopes are in line with the changes proposed for Quality Housing.*

### **Unit Size and Configuration**

These zoning text changes will provide for greater flexibility in unit sizes, greater density and allow for a wider array of household sizes in buildings. The window requirements are now embodied Building Code and Office of Environmental Remediation requires flexibility in sound attenuation requirements.

- *Removing 400sf minimum apartment size to provide greater unit type flexibility and allow unit density factor to govern*
- *Reduce density factor in R8 through R10 districts to 680sf*
- *Remove various double-paned window requirements from Zoning Resolution as they restrict use of higher efficiency window and are already mandated by Building Code*
- *Allow the Office of Environmental Remediation to modify sound-attenuated window requirements based on site conditions*

### **Irregular Site Conditions**

These zoning text changes will enable more flexibility to develop shallow and acutely angled lots.

- *Adjust rear yard and lot coverage requirements to allow for shallower rear yards and higher lot coverage*
- *Provide greater flexibility for street walls on acutely angled lots*

**MCB4 cannot support the following provisions of the ZQA unless the modifications and conditions below are met:**

### **Affordability Time Limits on Senior Housing**

In the City's current proposed ZQA zoning text, there is no permanent affordability restriction for non-profit residences for the elderly or long-term care facilities that are not also Inclusionary Housing.

- *MCB4 recommends that non-profit residences for the elderly or long-term care facilities which receive as of right 20% FAR increases should be permanently affordable. If the additional bulk is permanent, the affordability should be permanent as well.*

### **Affordable Senior Housing and Long-term Care Facility Building Envelopes**

Absent zoning text guaranteeing permanent affordability, **MCB4 cannot support:**

- *Extending proposed FAR increases for “affordable independent residences for seniors” to “long term care facilities” in districts R3 through R10 as-of-right*
- *The proposed increases in floor area in R8 through R10 districts as a method of fostering the development of affordable senior housing.*

### **Inclusionary Housing Building Envelopes**

These provisions curtail MCB4's efforts to ensure that the character of our neighborhoods is preserved and opens the door for out-of-scale developments and sliver buildings. **MCB4 cannot support:**

- **Removing the Sliver Law height restrictions of the width of abutting street and change to maximum permitted by the contextual envelope for narrow buildings (less than 45 feet)**

### **Building Envelopes and Number of Stories**

The changes below will threaten MCB4's efforts to ensure that quality, contextual buildings of adequate scale continue to be built in our neighborhood. **MCB4 cannot support wholesale zoning text changes to:**

- *Increasing maximum base height in some districts by 5 feet, consistent with maximum overall height increase*
- *Establishing a maximum number of stories that can be built in a zoning district in concert with maximum building height*
- *Increasing maximum building height by 5 to 10 feet in R9 and R10 districts*

However, MCB4's support is qualified as noted below.



For the Special Zoning Districts and areas noted below affected by the proposed Zoning Text Modifications in the ZQA, MCB4 requests the City Planning Commission modify the proposed Zoning Text to include to **establish hard Building and Streetwall Height Limits in the:**

- **Special Clinton District**—Subarea C2 in the SCD (11<sup>th</sup> Avenue, West 43<sup>rd</sup> and West 44<sup>th</sup> Streets, 10<sup>th</sup> 11<sup>th</sup> Avenues)
- **Special Hudson Yards District**—Subareas D4 & D5 (Hell’s Kitchen Subdistrict) of the SHYD
- **Special West Chelsea District**—West 23<sup>rd</sup> Street between 10<sup>th</sup> and 11<sup>th</sup> Avenues
- **East Chelsea**—an irregular geographic area in East Chelsea from West 14<sup>th</sup> to West 30<sup>th</sup> Streets, from the west side of 6<sup>th</sup> Avenue to the east side 10<sup>th</sup> Avenue rezoned under the 1996 Chelsea Plan (197-a and 197-c).

**Special Clinton District (SCD)** –in 2009, as part the rezoning of Western Railyards, the Mayor and the City Council agreed to study rezone West Clinton, a manufacturing area primarily west of 10<sup>th</sup> Avenue, including 11<sup>th</sup> Avenue from West 43<sup>rd</sup> to West 54<sup>th</sup> Streets and 43<sup>rd</sup>/44<sup>th</sup> Street corridor between 10<sup>th</sup> and 11<sup>th</sup> Avenues. The goals of such rezoning, which had long been requested by the community, were:

- promoting residential development, with accompanying provisions for affordable housing through Inclusionary Housing
- neighborhood preservation by extending of the Preservation Area in midblocks
- ensuring neighborhood context through heights limits and streetwall requirements

The agreement also called for the rezoning application to be jointly submitted by the Department of City Planning and MCB4.

After a 2 year study process, marked by careful and thoughtful negotiation by both parties, an application was certified and adopted in 2011. The midblocks were put in the Preservation Area with height limit of 66 feet, the east side of 11<sup>th</sup> Avenue was rezoned to R8A, with height limit of 120 feet and streetwalls between 60 and 80 feet to respect and tie into the adjacent Preservation Area, and the 43<sup>rd</sup>/44<sup>th</sup> corridor, provided a transition block between the high density C6-4 corridor on West 42<sup>nd</sup> and the Preservation Area to the north. The blocks west of 11<sup>th</sup> Avenue, requested by the community to be rezoned residential, remained manufacturing but with a height limits of 135 feet and use restrictions prohibiting hotel use.

Ever since that action, The Clinton/Hell’s Kitchen community has been vigilant in monitoring compliance to those zoning changes. The proposed ZQA proposes to undo that 2 year effort along with the community and political compromises it represents. MCB4 cannot support such an action.

***Instead MCB4 requests that SCD 96-31 be modified to include Zoning Text to establish height and setback limits in Subarea C2 of the SCD consistent with the adopted 2011 West Clinton Rezoning.***<sup>2</sup>

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<sup>2</sup> Attached proposed SCD Zoning text amendment (**Appendix A**)

**East Chelsea**—MCB4 requests the establishment of Building and Streetwall Height Limits in a geographic area of East Chelsea in areas rezoned under the 1996 Chelsea Plan. The Chelsea Plan, adopted by the City Council in May 1996, was a set of recommendations for zoning changes intended to create housing opportunities and to balance new development with the preservation of neighborhood context within a 64-block area between 14th and 34th Streets west of Sixth Avenue. With the Chelsea Plan the community undertook the task of deciding what compromises and trade-offs best balanced the two competing needs.

East Chelsea was subjected to the same intensive review that West Chelsea received during the subsequent creation of the Special West Chelsea District (SWCD). The designated subareas in the SWCD, which have text-based height limits, are not affected by the proposed ZQA Zoning Text Amendment. However, the areas rezoned<sup>3</sup> through Chelsea Plan (197-a and 197-c), would be fully subject to the proposed building height and setback increases.

***MCB4 requests that a geographic area<sup>4</sup>, previously rezoned under the Chelsea 197-a Plan (as modified by DCP and adopted as a 197-c rezoning by the City Council on May 22, 1996), establish height and setback limits in the Zoning Text consistent with that 1996 plan.<sup>5</sup>***

**Special Hudson Yards District (SHYD)**—In 2005, after working with MCB4 from 2001, the City Council adopted rezoning of 38 blocks of former manufacturing area on the Westside of Manhattan to create the SHYD. The 196 pages of zoning text are extremely detailed and specific regulations governing the transfer of development rights from the Eastern Railyards, establishing a District Improvement Bonus, providing for subway improvements and sidewalk widening, acquiring park land and new streets and establishing Inclusionary Housing zones. The text even specifically calls out requirements for percentage of glass in storefronts.

A main effort of the Clinton/Hell's Kitchen community was the preservation of the neighborhood's main street, 9<sup>th</sup> Avenue, and the residential tenement midblocks between 9<sup>th</sup> and 10<sup>th</sup> Avenues from West 35<sup>th</sup> to West 41st Streets.

All these efforts were codified in an agreement between the Mayor and City Council, the Hudson Yards Points of Agreement (HYPOA)<sup>6</sup>. In that agreement, the reduction of proposed height and establishment of streetwall requirements to respect the context of the existing 4 and 5 story tenements in those blocks was accomplished through mapping an R8A zone in the Hell's Kitchen Subdistrict (areas D4 and D5 of the SHYD). The existing tenements were also protected from demolition under 93-91, and therefore will continue to be the built context. Whereas in Special West Chelsea District (SWCD) hard heights were embedded in the zoning text, in the SHYD, Hell's Kitchen Subdistrict, heights are a function of the underlying zoning.

The R8A zone was a compromise since its height limit of 120 feet well exceeded the heights the 4 and 5 story tenements, at 50 and 60 feet respectively. But the R8A streetwall requirement, at 60 to 80 feet, made reinforced the built context. Two sites, (one on West 39<sup>th</sup> and 9<sup>th</sup>, the other

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<sup>3</sup> Attached affected rezoned areas with height and setback increases (**Appendix B**)

<sup>4</sup> Attached East Chelsea affected zoning boundary map (**Appendix C**)

<sup>5</sup> Attached 1996 Chelsea Plan (**Appendix D**)

<sup>6</sup> HYPOA attached, dated January 10, 2005 (**Appendix E**)

midblock on West 37<sup>th</sup>) have been completed to date, with two other large sites on West 35<sup>th</sup> currently under construction. These 4 sites comprise 603 new apartments completed or currently under construction.

Increasing the height limit, even by 5 feet, in district which currently creates buildings twice the size of neighboring buildings, is simply not needed to ensure constructability. Even more damaging to neighborhood context would be the proposed increase in streetwall heights, currently 60 to 80 feet, to 100 feet. Such streetwalls would be double the height of adjacent 5 story tenements, dwarfing them in scale. Such a streetwall height is more appropriate to a loft district, not a medium density residential district, where infill will occur in protected built context.

***MCB4 requests that SHYD, 93-542 be modified to include Zoning Text to establish height and setback limits consistent those established in the 2005 Hudson Yards Rezoning.***<sup>7</sup>

**Special West Chelsea District (SWCD)**—Also in 2005, after working with MCB4 from 2003, the City Council adopted a rezoning of 17 blocks of former manufacturing area in West Chelsea Manhattan to create the SWCD. The 96 pages of zoning text are extremely detailed and specific regulations governing the transfer of development rights from the Highline, establishing subdistricts for bonuses or requirements for Highline access or improvements, acquiring park land and establishing Inclusionary Housing zones. The text even specifically calls out Highline adjacency volumes and permitted massings.

The main effort of the Chelsea community was balancing the proposed new development with establishing height limits and street wall requirements to respect the existing neighborhood context along 10<sup>th</sup> and 11<sup>th</sup> Avenues and the side streets from West 15<sup>th</sup> to West 30<sup>th</sup> Streets. The result was a SWCD with 10 subdistricts each setting forth specific and exacting requirements for massing, height and streetwalls.

All these efforts were codified in an agreement between the Mayor and City Council, the West Chelsea Points of Agreement (WCPOA)<sup>8</sup>. In that agreement, the western portion of West 23<sup>rd</sup> Street fronting 11<sup>th</sup> Avenue was rezoned and became part of Subdistrict C to include the height and streetwall requirements of the 11<sup>th</sup> Avenue corridor. However, the West 23<sup>rd</sup> Street corridor (from midblock West 22<sup>nd</sup> to West 24<sup>th</sup> Streets, 10<sup>th</sup> Avenue to 150 feet east of 11<sup>th</sup> Avenue) remained governed only by the underlying zoning. That zoning is a combination of C6-2A and C6-3A zones, R8A and R9A equivalents respectively<sup>9</sup>.

ZQA would increase in the C6-2A zone the streetwalls from the current 60 to 85 feet to 105 feet, an increase of 2 stories, but in the C6-3A only an increase of 3 feet. It would also increase the overall building height in of C6-2A from 120 feet to 125 feet and in the C6-3A from 145 feet to 155 feet, also an increase of 1 story. Again, as part of the overall negotiation on the SWCD, this corridor was left in the underlying zoning, without hard streetwall and height text limits, since the underlying zoning met community context. Changing the underlying zoning changes the

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<sup>7</sup> Attached proposed SHYD Zoning text (**Appendix F**)

<sup>8</sup> Attached, dated June 20, 2005 (**Appendix G**)

<sup>9</sup> Attached underlying zoning map, West 23<sup>rd</sup> Street Corridor (**Appendix H**)

context.

***MCB4 requests that SWCD 98-423 and 98-50, be reverted to the original zoning text which includes height and setback limits in the West 23<sup>rd</sup> Street Corridor established and consistent with the agreements made in 2005 West Chelsea Rezoning.***<sup>10</sup>

### **Ground Floors**

MCB4 has seen extensive new construction throughout our entire district. A great deal of that construction has included ground floor commercial space, both on avenues and narrow side streets. These spaces have been occupied by all types of businesses (see appendix J), which are successful within the existing building envelopes and height controls. ***The ability to have successful commercial space is a function of the local retail market, not ceiling height.***

Creating higher ceiling heights for commercial spaces will create out of scale first floors to the context of surrounding existing buildings. Context creates one city of different style and periods, zoning should seek to harmonize, not emphasize their difference. MCB4 cannot support:

- ***Increase ground floor height to allow buildings with residential units on the ground floor to elevate unit windows above street level and to allow for the addition of retail spaces which require heights greater than the maximums currently in place.***
- ***Increase maximum height of Quality Housing buildings by 5 feet if the second floor begins at 13 feet or higher in all contextual zoning districts except R7B and R8B***

This proposed text should be deleted from the proposed ZQA.

### **Conclusion**

The proposed ZQA zoning text is flawed at best. It is a one-size-fits-all approach for a complex city made up of diverse neighborhoods and districts, each with different and fine-grained needs. The approach is a blunt instrument for different communities whose real estate markets are simply not same. Encouraging residential development, for both market and affordable housing, requires different tools for Jerome Avenue in the Bronx, Atlantic Avenue in Brooklyn or 11<sup>th</sup> Avenue on the Westside of Manhattan.

The proposed ZQA zoning text ignores the context of decades of rezoning efforts on the Westside of Manhattan in the Chelsea, Hell's Kitchen and Clinton neighborhoods. All of these efforts balanced increased density and preservation of context in order to allow the city to grow while ensuring neighborhood survival and managing change. Since 1969, for nearly 50 years, our communities have worked in depth with rezoning and development proposals. Zoning and planning for the Westside of Manhattan in MCD4 must be developed within that context.

ZQA lumps together needed text changes to encourage the development of affordable senior housing with wholesale changes to contextual zones throughout the city. Its companion proposal, MIH, demands permanent affordability for a zoning bonus for bulk, yet grants the same bonus

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<sup>10</sup> Attached proposed SWCD Zoning text (**Appendix I**)

for senior housing with no such requirement. Such a basic contradiction of housing policy seeking permanent affordability makes no sense.

Proposed Changes in height, setback, and streetwall take into account only the current zoning district, not the built context within it. Running throughout the proposed text are the claims that such text changes are needed to allow for successful development. That may be the case in some areas of the city. However, residential development is galloping ahead under the current regulations in West Chelsea and Hudson Yards. It states ground floor commercial spaces cannot be properly developed within the current zoning envelope, when the reality is that on the Westside, recent developments include commercial spaces that are currently occupied by stores paying premium rents.

The proposal needs extensive revision to make it responsive to the diverse needs of the hundreds of communities which make up the City of New York.

MCB4 looks forward to continuing discussions with the Department of City Planning, the Manhattan Borough President and the City Council on the proposed Zoning for Quality and Affordability zoning text. With revisions and modifications, taking the historical context of the past 10 years of city and private sector initiated zoning actions into account, MCB4 believes we can all work together to adequately address the needs and concerns of Chelsea, Hell's Kitchen and Clinton communities of the Westside of Manhattan.

Sincerely,



Christine Berthet  
Board Chair



Jean-Daniel Noland, Co-Chair  
Clinton/Hell's Kitchen Land Use Committee



Betty Mackintosh, Co-Chair  
Chelsea Land Use Committee



Lee Compton, Co-Chair  
Chelsea Land Use Committee



Joe Restuccia, Co-Chair  
Housing, Health & Human Services Committee

[Signed 11/25/2015]  
Barbara Davis, Co-Chair  
Housing, Health and Human Services Committee

cc: J. Nadler, US Congress  
B. Hoylman, State Senate  
A. Espaillat, State Senate  
D. Gottfried, State Assembly  
L. Rosenthal, State Assembly  
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