



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**CHRISTINE BERTHET**  
Chair

**Jesse R. Bodine**  
District Manager

May 19, 2015

Mr. Timothy J. Naughton  
Chief Executive Officer  
Avalon Bay Communities  
275 7<sup>th</sup> Avenue #2501  
New York, NY 10001

**Re: Avalon Bay Employee Benefits**

Dear Mr. Naughton:

Belatedly Manhattan Community Board 4 (CB4) is writing to express its concern over the apparent failure by Avalon Bay to comply with the terms of agreement negotiated in conjunction with the 2005 West Chelsea rezoning at Avalon West Chelsea Apartments. Avalon Bay, as the property owner of three residential developments in CD4, is a significant stakeholder in our community. Avalon West Chelsea Apartments at 282 11<sup>th</sup> Avenue is Avalon Bay's newest rental development in CD4 and contains 691 market-rate rental units and 142 affordable units in its two residential towers of thirty-one and thirteen stories respectively.

At the November 19, 2014 meeting of CB4's Housing, Health and Human Services Committee, Chelsea residents, workers in nearby developments and Avalon Bay employees notified CB4 that Avalon Bay, by failing to offer prevailing wage and to permit collective bargaining for building services' employees of the West Chelsea Apartments, had violated the principles agreed to in the West Chelsea Points of Agreement (WCPOA), executed in conjunction with the 2005 West Chelsea rezoning.

The WCPOA dated June 20, 2005 sets forth additional benefits for the community and was agreed to by the NYC Administration, NYC Council Speaker and interested parties (which specifically included property owners benefiting from the rezoning). The WCPOA includes an agreement to develop a number of publicly-owned sites as affordable housing, incentivize additional affordable housing on-site, establish a 50% community preference for those affordable units and to ensure that the beneficiaries of the rezoning, namely the developers of the up-zoned development sites, agree to pay prevailing wage to their building services' workers. The benefits enumerated in the WCPOA were intended to mitigate in part the impact on lower income residents that the up-zoning would inevitably cause.

The WCPOA are set forth in a letter dated June 20, 2005 letter from then Deputy Mayor Daniel L. Doctoroff to the NYC Council Speaker Gifford Miller. The full text of the WCPOA is attached and relevant sections are excerpted below:

*Section 4. BUILDING SERVICES WORKERS*

*Private developers in the West Chelsea neighborhood, the Service Employees International Union, Local 32BJ, the Mayor's Office, and the City Council have agreed to the following principles:*

*a) All Building Service workers, such as porters, handypersons, doorpersons, security officers, watchpersons, elevator operators and starters, building cleaners, concierges, and building superintendents, who are employed at newly constructed residential buildings are entitled to a fair wage and benefits, taking into consideration the specific circumstances of each new building.*

*b) With respect to buildings of 50 or more residential units where less than 50% of the apartments in a building are dedicated to housing that is affordable to individuals or families with a gross household income at or below 125% of the Area Median Income of the New York, NY PMSA, as determined by the U.S. Department of Housing and Urban Development Income, Building Service Employees should receive a wage not less than the "prevailing wage."*

*c) Collective bargaining is the most appropriate mechanism to determine the wages and benefits for Building Service Employees at all newly constructed residential buildings in the West Chelsea neighborhood.*

CB4 was told that Avalon Bay, because it purchased the development site subsequent to the rezoning, has claimed that it is not subject to the WCPOA and need not comply with the agreed principles regarding prevailing wage and collective bargaining rights. The WCPOA was negotiated as an overall benefit to the community to mitigate, in part, the impacts from the up-zoning. CB4's unequivocal position is that the agreement must be honored by Avalon Bay as the developer that has benefitted immensely from the up-zoning.

As a result of this up-zoning, properties in Chelsea are among the most expensive in the city, if not the world. With each rezoning, our community has become increasingly polarized between those who can afford to live in newer luxury buildings, and those lower income and generally longer term residents who are in danger of being displaced. The provisions of the WCPOA governing worker's rights were negotiated to ensure that, at the very minimum, workers in these luxury properties receive at least living wages and benefits.

All three of Avalon's properties in CD4, including AVA Highline, Avalon Clinton and now Avalon West Chelsea Apartments are situated on sites benefitting enormously from recently up-zonings. CB4 is appalled that Avalon Bay, a developer that has benefitted so handsomely from the up-zonings that have forever altered our community, is refusing to honor the agreement to pay decent living wages to its building services employees. As a developer with a longstanding

interest in and as a member of our community, we urge Avalon Bay to do the right thing and honor the term of the WCPOA with respect to its workers.

Sincerely,

Sincerely,



Christine Berthet  
Chair

[Signed 5/19/2015]

Barbara Davis  
Co-Chair  
Housing, Health and  
Human Services Committee



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

DANIEL L. DOCTOROFF  
DEPUTY MAYOR FOR  
ECONOMIC DEVELOPMENT AND REBUILDING

June 20, 2005

Speaker Gifford Miller  
New York City Council  
City Hall  
New York, NY 10007

Re: West Chelsea – City Council ULURP Actions

Dear Mr. Speaker:

Attached to this letter is a "Points of Agreement" reflecting recent discussions between the Administration and the City Council with respect to the consideration by the City Council of the West Chelsea zoning and related ULURP actions.

As we have discussed, some of the items set forth in the Points of Agreement will require changes to the zoning resolution which may be made by the Council now, while other items may require additional follow-up action by the Administration, the City Council, the Planning Commission and other parties. Where follow-up action is needed, such follow-up is subject to review and consideration under applicable procedures, including land use and environmental review, and the receipt of applicable approvals. We are confident that we can continue to work together to achieve the goals stated in the Points of Agreement.

The cooperation and input that we have received from members of the City Council thus far has been extremely valuable. We look forward to working further with you, and the entire Council, as the project progresses.

Sincerely,

A handwritten signature in cursive script that reads "Daniel L. Doctoroff".

Daniel L. Doctoroff

## WEST CHELSEA – IMPROVEMENTS AT THE CITY COUNCIL

- **More affordable housing:** Increases the percentage of units projected to be affordable from 17% projected under the proposal approved by the City Planning Commission to at least 22% (more if the pursuit of affordable housing development on other publicly owned sites is successful). In total the number of affordable units has increased from 900 after the approval of the City Planning Commission (out of 5,329 total units) to 1,195 (out of 5,557 total units), or a 33% increase in the number of affordable units. In addition an affordable housing fund of up to \$10 million will create more units in the Community Board. Although the West Chelsea rezoning incorporates all of the programs and principles of recent rezonings, the final percentage is lower due to the requirements associated with transforming the High Line into public open space, the preservation of manufacturing zoning in the mid-blocks, and the dearth of large public sites. The comparable percentage adjusting for these requirements is 27% affordable.
- **Preservation of existing affordable housing:** Preserves additional 4% of units through anti-harassment provisions.
- **More permanent affordable housing:** Significantly increases the number of *permanent* affordable housing units from 295 affordable units (~33%) to about 900 affordable units (~63%).
- **Greater certainty of affordable housing production:** Extension of 421-a exclusion zone and allowing use of programs helps to insure developers actually build affordable housing.
- **More diverse range of incomes for affordable housing:** Of the roughly 900 affordable housing units created through the inclusionary housing program and on public sites, over 40% will be targeted toward moderate and middle income families.
- **Reduced height:** The maximum height limit on Tenth Avenue between W. 24<sup>th</sup> and W. 28<sup>th</sup> Street will be reduced to 125 feet. All new development along this stretch of Tenth Avenue will not exceed the height of the historic Williams Warehouse.
- **Further study:** Commits the Administration to examine possible further rezonings and historic preservation in the area.
- **MWBE participation:** Commits the Department of Small Business Services to using every tool at its disposal to ensure the participation of MWBEs in both the redevelopment of the High Line and the broader development of West Chelsea.

**The Council achieved these improvements while ensuring the preservation and restoration of the High Line, a unique public open space that will represent a 15% increase in parkland in Council District 3, and that will provide a striking amenity for community residents, New Yorkers, and visitors from around the world.**

**In conjunction with the above, an agreement by property owners and developers representing approximately 75% of the projected housing units in the West Chelsea area will ensure that building services workers in the area will receive prevailing wages, benefits, and other protections.**

# WEST CHELSEA – POINTS OF AGREEMENT<sup>1</sup>

## 1. AFFORDABLE HOUSING

### a) 421-a exclusion zone

The Administration would support Council action to expand the 421-a exclusion zone to cover the entirety of the rezoning area as well as the land to the west, as detailed in the attached proposed bill, in order to increase the utilization of the 80/20 program, thereby making the construction of onsite affordable housing more likely.

### b) Anti-harassment

The Administration agrees to work with the Council to extend the anti-harassment provisions developed for the Hudson Yards area to multiple dwellings in appropriate portions of the West Chelsea rezoning area as part of a follow-up corrective action.

### c) Public sites

The Administration agrees, subject to HUD and any other necessary public approvals, to develop affordable housing on the Chelsea-Eliot NYCHA site located on the northwest corner of West 25<sup>th</sup> Street and Ninth Avenue. The Administration anticipates that this site will generate 128 affordable units, targeted to middle and moderate income families. All units will be permanently affordable. A portion of the units to be developed may be set aside for NYCHA residents or households on the waiting list through Section 8. Existing parking spaces on the site will be replaced by underground parking in the new development, corresponding to zoning and NYCHA regulations as required.

The Administration agrees, subject to HUD and any other necessary public approvals, to develop affordable housing on the Fulton Houses NYCHA site located on West 18<sup>th</sup> Street between Ninth and Tenth Avenues. The Administration anticipates that this site will generate 100 affordable units, targeted to middle and moderate income families. All units will be permanently affordable. A portion of the units to be developed may be set aside for NYCHA residents or households on the waiting list through Section 8. Existing parking spaces on the site will be replaced by underground parking in the new development, corresponding to zoning and NYCHA regulations as required.

Development on Fulton Houses at West 18<sup>th</sup> Street would displace a large trash compactor. After extensive site review, it has been determined that the only appropriate place for its relocation would be to the parking lot on the north side of West 19<sup>th</sup> Street, which does not front any residential building, but is a shallow lot, with a depth of only 75 feet and existing residential

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<sup>1</sup> As we have discussed, some of the items set forth in the Points of Agreement will require changes to the Zoning Resolution which may be made by the Council now, while other items may require additional follow-up action by the Administration, the City Council, the City Planning Commission and other parties. Where follow-up action is needed, such follow-up is subject to review and consideration under applicable procedures, including land use and environmental review, and the receipt of applicable consents. We are confident that we can continue to work together to achieve the goals stated in the Points of Agreement.

buildings on the lot line to the north. With a required rear yard of 30 feet, the remaining space for development on the West 19th Street site would not allow for an economically-feasible multi-family building. In the event that in the future the Department of Sanitation should determine that its lot located on 20th Street between 6th and 7th Avenues is no longer needed for operational purposes, the Administration will pursue the development of affordable housing on the site. Alternatively if it is decided to dispose of the site for another purpose (subject to Council approval) the Administration will pursue options under which the disposition of the site can be used to augment funds administered by HPD for affordable housing within the West Chelsea area. The Department of Sanitation agrees to examine within the next twelve months options identified by the community for relocating operations from this site.”

d) Permit City, State, and Federal programs in inclusionary program

The Administration agrees to allow developers to count affordable units created toward both the 80/20 requirement and the Inclusionary Housing Bonus in both the C6-3 and C6-4 districts. The Administration also agrees to allow developers to access any and all housing subsidy programs for the construction or rehabilitation of inclusionary housing. This will allow the Administration to increase the share of affordable units required under the inclusionary program and will result in both greater incentives for the production of affordable housing and permanent affordability for all affordable units in 80/20 buildings that make use of the inclusionary bonus.

e) Tiering of inclusionary bonus to higher income levels

The Administration agrees to allow developers to provide inclusionary housing units to higher income levels in exchange for providing more affordable units, as detailed in the modified zoning text.

f) Affordable Housing Fund

The Administration agrees to create a West Chelsea Affordable Housing Fund for affordable housing production in the community board. After 90% of the High Line Transfer Corridor floor area transfers to receiving sites or is otherwise used, developments may be able to purchase floor area from the City, or an entity to be established by the City, for the portion of the bonus that can be achieved only through the purchase of High Line Transfer air rights (5 to 6 FAR in C6-2, 5 to 6.25 FAR in C6-3, and 6.5 to 9.15 FAR in C6-4). The price of the floor area will be to comparable to the price of air rights at such time as 90% of the High Line Transfer Corridor floor area has been exhausted. Preliminary projections, using \$150 psf as an estimated cost of the bonus, show that the proceeds could generate up to \$10 million. However, price fluctuations may allow the fund to be higher or lower than this estimation. The fund can be used toward land acquisition for affordable housing production and to serve households at moderate and middle incomes.

g) Community preference

All affordable housing units created through the inclusionary program or on public sites will be subject to HPD’s standard 50% community preference requirements.

h) Conversions

The Administration agrees to introduce an Inclusionary Housing Bonus for conversions that mirrors the inclusionary housing density bonuses and income tiers in for new constructions buildings in each district. If a potential conversion building is overbuilt above the maximum

allowable residential FAR, such building will only be able to achieve their residential maximum density through inclusionary zoning.

**Total number of affordable units**

	<b>AFFORDABLE UNITS</b>
<b>CPC proposal</b>	<b>900</b> <b>(17% of total)</b>
<b>Revised proposal</b>	
80/20 (non-IHB)	298
Permanent inclusionary	669
Public sites	228
<b>Total</b>	<b>1195</b> <b>(22% of total)</b>
Preservation (Anti-harassment provisions)	230 <b>(4% of total)</b>
<b>Total</b>	<b>1195+230</b> <b>(22% of total + 4% preserved)</b> <b>+ \$10 million fund</b>

**Matrix of Density Bonuses**

	<b>C6-2*</b>	<b>C6-3</b>	<b>C6-4</b>
<b>CPC proposal</b>	<b>FAR</b>	<b>FAR</b>	<b>FAR</b>
Base FAR	5	5	7.5
Through High Line Transfer	5.65	6.65	9.15
Through High Line Transfer/ IHB	6	7.5	10
Through IHB			12
<b>Total Inclusionary Bonus</b>	<b>0.35</b>	<b>0.85</b>	<b>2.85</b>
<b>Revised proposal</b>			
Base FAR	5	5	6.5
Through High Line Transfer	6	6.25	9.15
Through High Line Transfer/ IHB		7.5	
Through IHB			12
<b>Total Inclusionary Bonus</b>		<b>1.25</b>	<b>2.85</b>

\* C6-2 areas with a maximum of 6 FAR only, not including areas with 5 FAR maximum.



## **2. OTHER ZONING**

### a) Height

The Administration agrees to reduce the maximum height on Tenth Avenue between 24<sup>th</sup> and 28<sup>th</sup> Streets from 145 feet to 125 feet.

### b) Adjust bonuses to maintain sufficient capacity for High Line floor area, increase High Line improvements, and increase amount of inclusionary housing

i. Increase the Inclusionary Housing Bonus in C6-3 from 0.85 FAR (13%) to 1.25 FAR (20%) and require 10%-12.5%-15% affordable, depending on income levels served.

ii. Provide that the top-tier of the C6-4 bonus between 9.15-12 FAR (31%) bonus can only be achieved through inclusionary housing and require 20%-25%-30% affordable, depending on income levels served.

iii. Increase the High Line improvement bonus for Subarea I from 1.5 FAR to 2.5 FAR consistent with other High Line improvement bonus sites.

### c) Further study

The Administration agrees that the Department of City Planning will study the areas to the immediate west and south of the rezoning area to consider possible future actions deemed appropriate for the neighborhood. As requested by Community Board 4, the Department would study the area bounded by Eleventh and Twelfth Avenues, between West 22<sup>nd</sup> and 29<sup>th</sup> Street, and West 15<sup>th</sup> and 17<sup>th</sup> Streets, between Tenth and Eleventh Avenues. The Department also believes it would be appropriate to include in the study the eastern blockfront of Tenth Avenue between West 15<sup>th</sup> and West 16<sup>th</sup> Streets. A letter from the Chair of the City Planning Commission has been provided.

### d) Historic preservation

The Administration agrees that the Landmarks Preservation Commission will evaluate the community's historic preservation proposal and determine whether the area merits designation as a historic district or individual landmarks. The Commission will complete its assessment and make its recommendations by the end of FY 2006. A letter from the Executive Director of the Landmarks Preservation Commission has been provided.

## **3. MWBE CONTRACTING AND CONSTRUCTION OPPORTUNITY**

### a) Bid matching and information sharing for High Line and West Chelsea Special District ("West Chelsea") opportunities

The Department of Small Business Services (DSBS) will apply DSBS' database and bid matching/alert process to High Line sub-contracting and West Chelsea contracting opportunities. E-mail alerts will be sent to certified MWBEs to inform them of new High Line and West Chelsea opportunities as they arise. DSBS also will promote usage of DSBS' online, searchable database of MWBEs by High Line and West Chelsea contractors and businesses.

b) Technical assistance and preparation for contracting opportunities

DSBS will target its MWBE technical assistance program to anticipated High Line and West Chelsea contracting opportunities. This involves two major components. The first is identification of the types of goods and services contracting opportunities that are likely to arise in both the short- and long-term through High Line and West Chelsea developers, businesses and tenants. The second component is connecting MWBE contractors that provide such goods and services to DSBS' technical assistance curriculum to build their capacity to be competitive for such anticipated contracting opportunities.

c) Promoting MWBE participation during the pre-bid process

In connection with New York City Economic Development Corporation's (EDC) mandatory pre-bid meetings for High Line contracting opportunities, EDC shall encourage MWBE contracting and subcontracting on the High Line project by promoting DSBS' procurement and technical assistance programs for MWBEs and by organizing networking sessions between potential prime contractors and MWBE contractors to facilitate subcontracting opportunities.

d) Additional MWBE efforts

The Administration has demonstrated its commitment to increasing the successful participation of MWBEs in public and private sector contracting opportunities. So far, the Administration has dramatically simplified and shortened the certification process, increased the number of certified companies, and created certification partnerships with the State of New York and other public entities. The Administration also has created an on-line searchable database of MWBEs, and modified small purchase procurements to insure their participation. In addition, the Administration has extended its initiatives beyond the public sector by linking its MWBE program to private sector diversity contracting programs and forming a MWBE Advisory Board of business and community leaders. In partnership with the City Council, the Administration is committed to further growing MWBE success by building upon these foundational efforts.

The Administration recognizes that other public entities have implemented race and/or gender based strategies, such as: adopting MWBE goals or utilization plans for a municipality and/or its agencies; or requiring prime contractors to create MWBE utilization plans or achieve MWBE subcontracting goals. However, the Administration also recognizes that adoption of any of these options, or any other race or gender based program, would be premature until an evaluation of the City Council's disparity study has been completed.

Since the release of the City Council's disparity study, the Administration has been analyzing the study, as well as MWBE program enhancement options such as those described above. While a range of race and gender based options remain under consideration, in response to the disparity study, the Administration has already begun to expand its MWBE capacity building initiatives by offering new classes on bonding, responding to RFPs, forming joint ventures, finance, marketing, and legal issues. Also, City agencies have been holding networking events with MWBEs about specific City contracting opportunities.

Overall, the Administration's MWBE program strategy will be cognizant of the critical need to ensure that MWBEs in construction and other industries have a full and fair opportunity to share in the success of City-led development initiatives throughout the City, including the High Line project and new residential development in West Chelsea.

e) Commission on Construction Opportunity

As part of the Administration's continuing efforts to ensure that all New Yorkers benefit from economic development initiatives, the Mayor created a "Commission on Construction Opportunity" earlier this year. The Commission is comprised of private developers and contractors, including minority and women-owned businesses, union representatives, advocates, and government officials. It is co-chaired by Deputy Mayors Walcott and Doctoroff, and also includes seven City Commissioners, and Congressman Charles Rangel.

The Commission is charged with ensuring that all New Yorkers, particularly minorities, women, returning veterans and recent high school graduates, are well-prepared for and have access to quality, permanent jobs in construction in both the private and public sectors during the expected construction boom over the next ten years – driven by projects such as the development of West Chelsea and the restoration of the high Line. The Commission is looking at how these major development projects can provide long-term careers in construction for New Yorkers, rather than just temporary jobs on a single project.

Since the Mayor's March 7<sup>th</sup> announcement of the formation of the Commission, the Commission has already met twice, in March and May, and is scheduled to meet again in July and September. While still in its early stages, the Commission is looking at a multi-pronged strategy, including increasing the number of apprentice slots, recruiting minorities and women for these slots, creating the infrastructure to prepare them and ensuring their success over the long term. The Administration is optimistic that thanks to this unique multi-sector partnership, New Yorkers from all boroughs will benefit from current and future private and public sector construction opportunities in West Chelsea and elsewhere.

#### **4. BUILDING SERVICES WORKERS**

Private developers in the West Chelsea neighborhood, the Service Employees International Union, Local 32BJ, the Mayor's Office, and the City Council have agreed to the following principles:

- a) All Building Service workers, such as porters, handypersons, doorpersons, security officers, watchpersons, elevator operators and starters, building cleaners, concierges, and building superintendents, who are employed at newly constructed residential buildings are entitled to a fair wage and benefits, taking into consideration the specific circumstances of each new building.
- b) With respect to buildings of 50 or more residential units where less than 50% of the apartments in a building are dedicated to housing that is affordable to individuals or families with a gross household income at or below 125% of the Area Median Income of the New York, NY PMSA, as determined by the U.S. Department of Housing and Urban Development Income, Building Service Employees should receive a wage not less than the "prevailing wage."
- c) Collective bargaining is the most appropriate mechanism to determine the wages and benefits for Building Service Employees at all newly constructed residential buildings in the West Chelsea neighborhood.