



IN THE MATTER OF an application submitted by the Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, concerning Article VIII, Chapter 1 (Special Midtown District), to modify the regulations governing the transfer of development rights from listed theaters, Borough of Manhattan, Community Districts 5 and 4.

An application (N 160254 ZRM) for an amendment to the Zoning Resolution was filed by the Department of City Planning on March 24, 2016, to modify the regulations governing the transfer of development rights in Section 81-744 (Transfer of development rights from listed theaters) in the Theater Subdistrict of the Special Midtown District (MiD). The text amendment will establish a new methodology for calculating the contribution rate into the Theater Subdistrict Fund. On August 16, 2016, pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure rules, the Department of City Planning filed an application (N 160254(A) ZRM) in response to comments and recommendations heard during the public review process for the proposed text amendment. These proposed changes in Section 81-71 (General Provisions), Section 81-741 (General provisions) and Section 81-744 (Transfer of development rights from listed theaters), are to clarify the goals of the Theater Subdistrict Council, the administration of the Fund, and to make minor clarifications to the text. The modified application (N 160254(A) ZRM) is the subject of this report.

BACKGROUND

Professional theater, often referred to as “Broadway,” and the theatrical arts are among New York City’s most important economic and cultural assets. The 40 Broadway theaters attracted

12.9 million visitors for total gross ticket sales of \$1.3 billion in 2015. New York City and the Department of City Planning have taken numerous steps to support and strengthen the long-term viability of the theater industry and the listed theaters, including the creation of the first special district established pursuant to the Zoning Resolution in 1967 and subsequent zoning text amendments.

The Theater Subdistrict is primarily located in Community District 5; a three-block area within Community District 4, running along the west side of the Eighth Avenue Corridor between West 42nd Street and West 45th Street, is located both in the MiD and the Special Clinton District. The Theater Subdistrict is bounded by West 57th Street to the north and West 40th Street to the south; Sixth Avenue to the east and Eighth Avenue to the west; and a line 150 feet west of Eighth Avenue from West 42nd Street to West 45th Street. Within the Theater Subdistrict are the Theater Subdistrict Core (bounded by West 50th Street to West 43rd Street north to south; a line 200 feet west of Sixth Avenue and a line 100 feet east of Eighth Avenue) and the Eighth Avenue Corridor (bounded in the north by West 56th Street and West 43rd Street to the south; a line 100 feet east of Eighth Avenue and Eighth Avenue to the west; and a section bounded in the north from West 45th Street to West 42nd Street to the south, Eighth Avenue and a line 150 feet west of Eighth Avenue).

The Theater Subdistrict area is a dense commercial district in Midtown Manhattan with a wide array of uses including theater and entertainment, restaurants, hotels, residential, and industrial. Times Square is in the Theater Subdistrict Core and provides a variety of entertainment venues,

including the large Broadway theaters as well as smaller theaters, music and comedy venues, and shopping. It is a worldwide attraction known for its large illuminated neon signs, the Tkts Booth on West 47th Street, the “bowtie” public space and the New Year’s Eve ball drop.

Zoning in the Theater Subdistrict reflects its status as a central commercial district. It predominantly consists of C6 districts, which permit high bulk commercial development with base FARs ranging from 10.0 to 15.0 and bonuses available for public plazas and Inclusionary Housing. The C6-7T zoning district is unique to the Theater Subdistrict Core (FAR of 14.0 for commercial and mixed uses, and 12.0 for residential use), as are requirements for entertainment-related uses.

The original Special Theater District, approved in 1967, was the first special district established pursuant to the Zoning Resolution. It was created to preserve the unique character of the area as a cultural, theatrical and entertainment mecca and to protect theaters from the westward expansion of Midtown office development. The zoning regulations also included a floor area bonus for new theaters created within new developments. On May 13, 1982, the Board of Estimate approved the MiD, which established a framework for growth and development within the central business district. At the same time, the Special Theater District became a subdistrict within the MiD and new zoning provisions were introduced to enable the transfer of development rights within the Theater Subdistrict to encourage preservation and restrict the demolition of theaters listed in the Zoning Resolution.

The 1998 zoning text amendment (June 3, 1998; N 980271 ZRM) established a new mechanism for listed theaters (Section 81-742) to transfer their available unused development rights to a receiving site throughout the subdistrict in exchange for retaining, preserving and maintaining a legitimate theater use. This provided more opportunities for theaters to transfer development rights while strengthening requirements for the continuation of legitimate theater use (defined as the live presentation of stage productions by professional performing artists, including but not limited to plays and musicals). The transfer of development rights must be approved by the City Planning Commission and also be accompanied by a contribution into the Theater Subdistrict Fund (81-744). The Theater Subdistrict Fund (the Fund) is overseen by the not-for-profit Theater Subdistrict Council with the goals of developing new audiences, promoting the production of new plays and theatrical works, monitoring the preservation and use covenants in listed theaters, and enhancing the long-term viability of the Theater Subdistrict. The contribution amount into the Fund is based on a dollar value multiplied by the total amount of square footage transferred from the granting site to the receiving site.

Since 1998, there have been 23 transfers pursuant to ZR Section 81-744 from nine theaters including the Martin Beck Theater (four transfers), the St. James Theater (two transfers), the Broadhurst Theater (four transfers), the Booth Theater (five transfers), the Shubert Theater (two transfers), the Majestic Theater (two transfers), the Schoenfeld Theater, the Neil Simon Theater, and the Helen Hayes Theater (two transfers). These transfers were to 15 receiving sites for a total floor area transferred of 596,698 square feet and contributions of \$8.5 million into the Theater Subdistrict Fund. There are approximately 17 theaters with approximately 1.4 million

square feet of available development rights remaining to transfer within the subdistrict. The Theater Subdistrict transfer of development rights is a City Planning Commission certification pursuant to Section 81-744(a) or a City Planning Commission authorization pursuant to Section 81-744(b). The authorization is specifically for receiving sites that are located along the Eighth Avenue Corridor of the Theater Subdistrict. Three of the 23 transfers that have been completed since 1998 have been pursuant to Section 81-744(b).

The existing methodology for contributions into the Fund is based on a dollar value multiplied by the total amount of square footage transferred from the granting site to the receiving site. The original dollar value was \$10.00 and has been adjusted twice: first in 2006 with an increase by 49 percent to \$14.91, and then in 2011 with an increase by 18 percent to \$17.60. The dollar value is to be adjusted every three to five years to reflect any change in the assessed value of properties within the Theater Subdistrict. The 1998 City Planning Commission report notes that the \$10.00 per square foot amount is “approximately 20 percent of the average sales price of land per square foot in the Theater Subdistrict.” The established methodology for adjusting the dollar value is to calculate the change in assessed property values in the Theater Subdistrict and adjust the contribution amount per square foot. The previous two adjustments were completed by using the New York City Department of Finance’s assessed property value data and dividing by the total building floor area in the Theater Subdistrict and then adjusting the contribution rate accordingly.

Proposed Zoning Text Amendment

Theater Subdistrict Fund Methodology

As part of its current contribution rate review within the prescribed three-to-five year window - at the end of 2016 it will be five years since the last adjustment - the Department of City Planning (the Department) reviewed all of the completed transfers of development rights pursuant to the 81-744 zoning mechanism since its inception. The Department found that the contribution amount to the Fund, expressed as a percentage of the amount paid for the transferred development rights, ranged from approximately four percent to nine percent, far less than the 20 percent envisioned by the Commission in 1998.

The Department, as originally referred on March 24, 2016, is proposing to establish a new methodology for calculating the contribution amount to the Fund based on 20 percent of the total amount paid for the transferable development rights. Because there are many variables that can influence the price paid for the transferable development rights that may not be directly related to their fair market value, the Department is also establishing a base amount, or “floor price,” for transferable development rights. The floor price is a value per square foot that will provide a basis for establishing a minimum contribution to the Fund. The contribution amount into the Fund would be the greater of either the 20 percent of the sale price of the transferable development rights, or an amount equal to 20 percent of the floor price multiplied by the amount of transferred floor area (expressed in square feet).

The proposed floor price originated from a market study of transferable development rights within the Theater Subdistrict undertaken by a certified real estate market valuation and appraisal company for this proposal. The Department is using the ten most recent transfers of

development rights in the Subdistrict, adjusting for changes in market conditions (indexed to December 31, 2015), and dividing them into quartiles, with the lower quartile proposed as the floor price. The lower quartile is the number below which 25 percent of the data points can be found. The floor price will be adjusted by the Commission every three to five years. The modified proposal, as referred on August 16, 2016, will also allow applicants for transferable development rights pursuant to Section 81-744 to request a new market study and survey before the three-to-five year schedule to determine whether there are any changes in real estate market conditions in the Theater Subdistrict. The market study and survey would be paid for by the applicant and completed within a one-year timeframe. The market study for this proposed text amendment took approximately two months to complete.

Proposal for Chairman Certification

The proposed text amendment, as originally referred, would modify the Zoning Resolution to permit the transfer of development rights pursuant to ZR Section 81-744(a) through a Chairman certification. The existing provision allows the transfer of development rights from a granting site to a receiving site by City Planning Commission certification within the Theater Subdistrict provided that:

- (1) The maximum amount of floor area transferred from a granting site is the basic maximum floor area permitted less the floor area of existing buildings and any previously-transferred development rights;
- (2) Each transfer irrevocably reduces the allowable floor area of the granting site by the amount transferred;

- (3) The maximum floor area that can be transferred to a receiving site is no more than 20 percent of the base FAR of the receiving site;
- (4) Assurances for the continuance of legitimate theater use per ZR 81-743 are made; and
- (5) Legal documents are executed ensuring that the appropriate funds are deposited into the Theater Subdistrict Fund.

Each of these findings is administrative in character. Because the Commission's purview in these actions is to approve calculations and documentation that have already been reviewed by staff, the Department is proposing to streamline applications pursuant to ZR Section 81-744(a) and make them Chairman certifications instead of Commission certifications, similar to other comparable non-discretionary actions in the Zoning Resolution.

Theater Subdistrict Council

The text amendment filed by the Department of City Planning in August (N 160254(A) ZRM), which is the subject of this report, will clarify the goals of the Theater Subdistrict Council in Section 81-71 (General Provisions) by specifying that smaller theatrical organizations should be considered for funding, as should broader activities that support and strengthen the theater industry in the Subdistrict. This includes activities such as training for production and technical personnel, stage managers, stagehands, costumers, lighting and sound technicians, playwrights, composers, and other nonperforming personnel, with a focus on developing more diversity in the field.

In the current text, Section 81-741 (General provisions), the Theater Subdistrict Council is

required to reserve 20 percent of Fund revenues for periodic inspection and maintenance reporting requirements of theaters that have transferred development rights pursuant to Section 81-744. Since 1998, there have been three required inspection and maintenance reports of theaters and the amount of required reserves far exceeds the costs to complete the reports. The Department believes that the Theater Subdistrict Council can determine a sufficient amount of funds to reserve for future reports without having the 20 percent requirement in the Zoning Resolution.

ENVIRONMENTAL REVIEW

This application (N 160254(A) ZRM), in conjunction with the originally referred application (N 160254 ZRM), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 16DCP136M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on March 25, 2016. On September 2, 2016, a Revised Environmental Assessment Statement (EAS) was issued which describes and analyzes modifications to the proposed actions. The Revised EAS concluded that the proposed actions would not result in any new or different significant adverse environmental impacts not already identified in the previous Negative Declaration. A Revised Negative Declaration was issued on September 6, 2016. The

Revised Negative Declaration reflects the changes to the proposed actions and supersedes the Negative Declaration issued on March 28, 2016.

The City Planning Commission has determined that the proposed action will have no significant effect on the environment.

PUBLIC REVIEW

The original application (N 160254 ZRM) was referred on March 28, 2016 for information and review to Community Board 5, Community Board 4, and the Borough President of Manhattan in accordance with the procedures for referring non-ULURP matters. On September 6, 2016, the modified application (N 160254(A) ZRM) was referred for information and review to Community Board 5, Community Board 4, and the Borough President of Manhattan in accordance with the procedures for referring non-ULURP matters.

Community Board Public Hearing

Manhattan Community Board 5 held a public hearing on May 12, 2016, and, on that date, voted to approve the original application (N 160254 ZRM) by a vote of 43 in favor, 0 opposed, and 1 abstaining, conditioned on the addition of the Community Board 5 Chairperson to the Theater Subdistrict Council. The Community Board also requested that the transfer of development rights from listed theaters remains a City Planning Commission certification, and that the Department should improve procedures to ensure that developers have provided and maintained theater-related use provisions in their Restrictive Declarations.

Manhattan Community Board 4 held a public hearing on the original application (N 160254 ZRM) at its full board meeting on June 1, 2016 and, on that date, voted to disapprove the application by a vote of 39 in favor, 0 opposed, 0 abstentions, and 0 present but not eligible to vote, unless two conditions are met: that transfers of development rights from listed theaters remain subject to City Planning Commission certification and not a Chairman certification; and that the zoning text is modified to ensure Funds from the Theater Subdistrict Council are allocated to “smaller not for profit theater organizations, with budgets of \$250,000 or less: and located in Community District 4.

Borough President Review

The original application (N 160254 ZRM) was considered by the President of the Borough of Manhattan, who issued a recommendation dated August 16, 2016, to approve the application with the conditions that the transfer of development rights remain a Commission certification, that there be a mechanism for the theater owners to request a new assessment and adjustment of the floor price, and that steps be taken to allow the Fund to benefit smaller nonprofit organizations working in the area’s theater industry.

City Planning Commission Public Hearing

On August 24, 2016, the City Planning Commission scheduled a September 7, 2016, public hearing on the amended application (N 160254(A) ZRM) (Calendar No. 9) and the original application (N 160254 ZRM) (Calendar No. 8). The hearing was duly held on September 7, 2016 (Calendar No. 30), along with the public hearing on the application as originally referred

(Calendar No. 29). There were five speakers, with two testifying in favor of the application and three in opposition.

A representative from the Office of the Manhattan Borough President spoke in favor of the application and the change in the methodology for determining the contribution amount. He also spoke in support of the text amendment that will allow an applicant to request a market study prior to the three-to-five year window and to clarify the goals that support smaller theater organizations as well as the broader theater-related activities. The representative requested that the certification remain a Commission certification.

A representative of Community Board 5 spoke in favor of the proposal and of aligning the contribution rate into the Theater Subdistrict Fund with the 20 percent of sales value of transferable development rights.

A representative from the Real Estate Board of New York spoke against the proposal. The speaker said that the proposal was onerous and that pegging the contribution amount to 20 percent of the sale price of transferable development rights, and to a floor price, would chill the market and result in fewer transactions. He questioned the original intent of the 1998 text amendment being based on 20 percent of the sale price. He said that adding to the proposal the ability to request a market study prior to the three-to-five year window was impractical, offered no relief to the theater owners, and would only delay projects. The speaker recommended keeping the current methodology, creating a grace period for projects that are under contract, and

a phase-in for any increase to the contribution rate. He also spoke in favor of streamlining the certification process by changing the Commission certification to a Chairman certification.

A representative of the three major theater owners spoke against the proposal and stated that the proposed standard of 20 percent of the sale price of the transferable development rights was unfair, but she focused primarily on the creation of a floor price. The speaker stated that the floor price did not take into account the full range of variables involved in a deal, that theater transfers were arm's length transactions, and that the sale price can be verified through signed tax forms. She stated that permitting an applicant to request a new market study to adjust the floor price would still not reflect a true price in a fast-falling market, and that subsequent future adjustments to the floor price undertaken by the City might take into account different variables from the ones currently proposed. The representative also spoke in favor of making the action a Chairman certification because of the potential to speed up the process and because similar land use actions, such as those in Hudson Yards or the High Line Transfer Corridor in the Special West Chelsea District, are either as-of-right or Chairman certifications.

A land use attorney who has represented theater owners in previous transfers spoke against the proposal and concurred with the points the previous two speakers had made. He stated that there is no indication that the current contribution rate is insufficient or that the Theater Subdistrict Council is not meeting its goals and therefore a significant increase into the Fund is not necessary.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes this application for the zoning text amendment, as modified herein, is appropriate.

The Commission acknowledges a long and unique history of the City and the Department working with the theater industry to support and strengthen the Theater Subdistrict and to preserve the listed theaters. The Commission believes that the proposal would promote a more rational methodology for determining the contribution rate to the Fund and one that is based on the actual value of the transferred development rights instead of assessed property values. This change to the methodology will align with the original intent of the 1998 text amendment, which was based on the sales price of land value in the Subdistrict and a contribution rate equivalent to 20 percent of the value of transferable development rights. The Department's analysis of previous transfers into the Fund during the preparation of this proposal indicated that the contribution rate has been well below 20 percent: rather, it has been in the five-to-nine percent range.

The Commission heard testimony at the public hearing concerning the origin of, and the intent behind, the 20 percent and \$10 per square foot standards of the current text. The Commission believes that the \$10 per square foot value was derived from land value in the Theater Subdistrict being approximately \$100 per square foot when the text was written. Because there

were no existing transfers of development rights in the area using this type of mechanism to transfer development rights to a larger area, the Department estimated that the value of transferable development rights in the Subdistrict was approximately 50 percent of land sales value. This discount over the sales price resulted in the contribution rate being \$10, or 20 percent of \$50. The Commission believes that 20 percent was the original, clear intent of the 1998 text amendment and that the \$10 was derived from the average sales price of land per square foot and based on an estimate of value of transferable development rights. The 1998 text amendment that created the ability to transfer unused development rights of listed theaters to a wider area throughout the Subdistrict for the continuation of a legitimate theater use and the contribution to the Fund, as outlined in the Commission report, was supported by the theater industry and the real estate industry at that time.

The Commission received and heard testimony against the establishment of a floor price. The Commission believes that, while a sales price for transferable development rights will be accurately recorded with the appropriate authorities, the inclusion of a floor price is a necessary element of the proposal because of the many variables that go into the negotiated sale price of transferable development rights. The Commission cannot be certain that every action for transferable development rights is at arm's length, nor is it the responsibility of the Department to make these determinations. At the public hearing, a theater industry representative stated there is a full range of variables in each negotiation for the transfer of development rights. The Commission considers this range of variables, which might be completely permissible but not always transparent, to be the reason for the floor price. The floor price establishes a minimum

contribution into the Fund, and it is based on a reasonable lower quartile of recent transfers of development rights within the Subdistrict.

The Commission heard concerns about changing the Commission certification to a Chairman certification from the Borough President and both Community Boards. The Commission notes that its role in all applications pursuant to Section 81-744(a) is making ministerial determinations. The Department reviews and verifies the numbers and legal documents and the Commission's discretion is limited. This proposal will make the process more efficient and is in line with other districts that allow transfers subject to limited discretion such as Hudson Yards, the Special West Chelsea District, and Manhattanville. The Commission will still adjust the contribution rate into the Fund and receive annual reports from the Theater Subdistrict Council. Applications for both the certification (81-744a) and the authorization (81-744b) will still be referred to the affected Community Board, the Borough President, and Councilmembers for 60 days for comment and review.

The Commission notes that several issues raised during the public review process centered on taking a broader look at the proposal, including whether the latest round of grantmaking meets the funding guidelines and the goals of the Theater Subdistrict Council. These issues were outside of the scope of the original proposal (N 160254 ZRM), which was solely focused on adjusting the contribution rate and changing the methodology for determining the contribution rate. The text amendment which is the subject of this report modified the proposal to address these concerns. The Commission believes that this text amendment supports the goals of the

Theater Subdistrict Council, highlighting that smaller theatrical organizations should be considered for funding as well as a broader goal to support and strengthen the Subdistrict, are consistent with the original intent of the Theater Subdistrict Council and add some flexibility to the grantmaking process. The Commission notes that the Theater Subdistrict Council has been focusing grants on the development and creation of theatrical works and developing new audiences, and that the purpose of the new round of funding, which is to provide training for non-performing artistic personnel with a focus on developing more diversity in the field, received positive feedback during the public review process.

Another issue that arose from the public review process, and is addressed in this text amendment, concerns the assertion by a theater industry representative that a fast-changing real estate market, or an economic downturn, could affect the price of transferable development rights within the Theater Subdistrict prior to the proposed three-to-five year adjustment. The Commission is cognizant of this possibility and notes that applicants will have the opportunity to request a new market study prior to the three-to-five year window in order to adjust the floor price in an expeditious way. Such a study would be paid for by the applicant and completed by a City-approved, certified real estate market valuation and appraisal company using the methodology in this text amendment.

On October 21, 2016, the Department received a report from a representative of the three major theater owners that examined and reviewed the Department-initiated market study of transferable development right values in the Theater Subdistrict. The Department received a letter on

October 31, 2016, from the company that completed the market study, and the Commission believes that the content of that letter satisfies the concerns raised by the report.

The Commission heard testimony at the public hearing from the real estate industry and the theater industry concerning the 20 percent adjustment to the contribution rate and requesting that it be phased-in over time. The Commission recognizes that the 20 percent adjustment is a notable change from the current, discounted rate per square foot, that such a change could affect current negotiations for transfers, and that a phase-in process is appropriate. Therefore, the Commission is modifying the text to include the following: for a transfer of development rights by certification or authorization, the contribution rate to the Fund shall be 20 percent of the sale price or the floor price (multiplied by the amount of transferred floor area), whichever is greater, effective the date of approval; however, an applicant who files an application and is certified by the Chairman or authorized by the Commission by June 30, 2017 (including having the legal documents executed and recorded and the contribution deposited into the Fund) shall contribute \$17.60 per square foot of transferred floor area to the Fund. The contribution to the Fund shall be 10 percent of the sale price or floor price (multiplied by the amount of transferred floor area), whichever is greater, for an application filed by December 31, 2017, and an applicant who goes through the Department's pre-certification review process and files an application within the same time period will continue to have the 10 percent rate for one year after filing.

The Commission believes that the zoning text amendment and the proposed changes to the contribution rate methodology are appropriate and that the Theater Subdistrict Fund will

continue to promote theater use and to develop audiences, preserve listed theaters, nurture creativity in the development of plays and theatrical organizations, and support the Theater Subdistrict.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant adverse impact on the environment, and

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter underlined is new, to be added;

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

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

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

Article VIII - Special Purpose Districts

Chapter 1

Special Midtown District

* * *

81-70

SPECIAL REGULATIONS FOR THEATER SUBDISTRICT

81-71

General Provisions

The regulations of Sections 81-72 to 81-75, inclusive, relating to Special Regulations for the Theater Subdistrict, are applicable only in the Theater Subdistrict, of which the Theater Subdistrict Core and the Eighth Avenue Corridor are parts, except that any listed theater designated in Section 81-742, or portion thereof, located outside of the Theater Subdistrict shall be deemed to be a “granting site” pursuant to Section 81-744 (Transfer of development rights from listed theaters).

The Theater Subdistrict is bounded by West 57th Street, Avenue of the Americas, West 40th Street, Eighth Avenue, West 42nd Street, a line 150 feet west of Eighth Avenue, West 45th Street and Eighth Avenue.

The Theater Subdistrict Core is bounded by West 50th Street, a line 200 feet west of Avenue of the Americas, West 43rd Street and a line 100 feet east of Eighth Avenue.

The Eighth Avenue Corridor is bounded by West 56th Street, a line 100 feet east of Eighth Avenue, West 43rd Street, Eighth Avenue, West 42nd Street, a line 150 feet west of Eighth Avenue, West 45th Street and Eighth Avenue.

The west side of Eighth Avenue between 42nd and 45th Streets is also subject to the provisions of the Special Clinton District to the extent set forth in Article IX, Chapter 6, subject to Section 81-023 (Applicability of Special Clinton District regulations).

These boundaries are shown on Map 1 (Special Midtown District and Subdistricts) in Appendix A of this Chapter. The regulations of Sections 81-72 to 81-75, inclusive, supplement or modify the regulations of this Chapter applying generally to the #Special Midtown District# of which the Subdistrict is a part.

In order to preserve and protect the character of the Theater Subdistrict as a cultural, theatrical and entertainment showcase as well as to help ensure a secure basis for the useful cluster of shops, restaurants and related amusement activities, special incentives and controls are provided for the preservation and rehabilitation of existing theaters and special restrictions are placed on ground floor #uses# within the Subdistrict. In order to preserve and protect the special scale and character of the Theater Subdistrict Core, which includes Times Square, special #building street wall# height and setback controls and requirements for the inclusion of #illuminated signs# and entertainment and entertainment-related #uses# apply within the Subdistrict Core. In order to ensure the orderly growth and development of the Eighth Avenue Corridor and its transition to the scale and character of adjoining midblocks, special #building street wall#, height and setback controls apply within the Corridor. In order to preserve and maintain the character of the western edge of the Theater Subdistrict as both an integral part of the Theater Subdistrict and as a transition to the Clinton neighborhood, the west side of Eighth Avenue between 42nd and 45th Streets is also subject to the provisions of the Special Clinton District.

A Theater Subdistrict Council shall be created, comprised of the Mayor, three (3) representatives appointed by the Mayor from the performing arts, theatrical related industries, the Director of the Department of City Planning, the Speaker of the City Council and his or her designee, and the Manhattan Borough President. The members shall choose a Chair from among themselves. The Theater Subdistrict Council shall be a not-for-profit corporation whose organizational purpose shall be limited solely to promoting theater and theater-related use and preservation within the Theater Subdistrict and promoting the welfare of the Theater Subdistrict generally. The goals of the Theater Subdistrict Council shall include:

- (a) enhancing the long-term viability of Broadway by facilitating the production of plays and small musicals within the Theater Subdistrict, with consideration given to small theatrical organizations;
- (b) developing new audiences for all types of theatrical productions, ~~and;~~
- (c) monitoring preservation and use covenants in Broadway's "listed theaters"; and
- (d) assisting activities that support and strengthen the New York City theater industry within the Subdistrict.

The Theater Subdistrict Council shall adopt a plan every three years for the sale, distribution and marketing of reduced price tickets to new and undeveloped audience groups. Such plan shall include locations outside of the Theater Subdistrict where such reduced price tickets will be available. The plan shall also include a way to evaluate yearly its effectiveness by:

- ~~(a)~~ —the number of tickets sold; and
- ~~(b)~~ —the penetration of the new identified markets which shall be reported to the Chairperson of the City Planning Commission and filed with the Council of the City of New York.

The Theater Subdistrict Council shall advise the Chairperson of the City Planning Commission concerning applications for any special permit, authorization or certification pursuant to the special regulations for the Theater Subdistrict and shall be the holder and administrator of the funds received in connection with transfers of development rights from "listed theaters" pursuant to Section 81-744 in accordance with the provisions for the Theater Subdistrict Fund set forth in paragraph ~~(h)~~(i) of Section 81-741 (General provisions).

* * *

81-74 Special Incentives and Controls in the Theater Subdistrict

81-741 General provisions

- (a) Certifications

- (1) The transfer of development rights from any “granting site” in accordance with the provisions of Section 81-744 (Transfer of development right from listed theaters) shall be permitted ~~upon~~ by certification ~~by~~ of the Chairperson of the City Planning Commission.

* * *

(i) Theater Subdistrict Fund

In furtherance of the purposes of this Section, the Theater Subdistrict Council shall establish a separate interest-bearing account (the "Theater Subdistrict Fund" or "Fund") for the deposit and administration of the revenues received by the Theater Subdistrict Council generated by the transfer of development rights pursuant to Section 81-744. Upon receipt of any revenue generated pursuant to such Section, the Theater Subdistrict Council shall notify the Comptroller, the Speaker and the Department of City Planning, and promptly deposit such revenues into the Theater Subdistrict Fund and shall expend such revenues and any interest accumulated thereon in the following manner:

- (1) a portion of any such revenues shall be reserved, sufficient in the judgment of the Theater Subdistrict Council ~~but in no event less than 20 percent of such revenues,~~ to undertake the ongoing periodic inspection and maintenance report requirements pursuant to paragraph ~~(e)~~(d) of Section 81-743. ~~The Theater Subdistrict Council may petition the City Planning Commission for a reduction in the percentage of such reserve and the Commission may grant such reduction if, in its judgement, a lesser percentage will be sufficient to carry out the purposes of this paragraph;~~ and
- (2) the remainder of such revenue shall be used for activities chosen by the Theater Subdistrict Council furthering the objectives and purposes of this Section, which activities may include judicial or administrative proceedings instituted by the Theater Subdistrict Council against any property owner or lessee to enforce the obligations of such owner or lessee pursuant to any restrictive declaration entered into in connection with a transfer of development rights pursuant to Section 81-744. Notwithstanding the foregoing, funds shall not be used for the physical repair and preservation of theaters.

The Theater Subdistrict Council shall provide an annual report to the Department of City Planning, the Comptroller, the Speaker and the City Planning Commission indicating the amounts and dates of any deposits to the Theater Subdistrict Fund in the immediately preceding calendar year, the balance of the Theater Subdistrict Fund at the close of the calendar year, the amounts expended on activities within the Theater Subdistrict and the nature of those activities. The Theater Subdistrict Council shall maintain complete, accurate and detailed records, with supporting documentation, in respect to all deposits to and withdrawals from the Theater

Subdistrict Fund, and shall make such records available to the City of New York, the Department of City Planning, the Comptroller, the Speaker and the City Planning Commission upon reasonable notice and during business hours for inspection and copying.

* * *

81-744

Transfer of development rights from listed theaters

For the purposes of the Theater Subdistrict:

A “listed theater” shall mean a theater designated as listed pursuant to Section 81-742 (Listed theaters).

A “granting site” shall mean either a #zoning lot# or that portion of a #zoning lot# occupied by a “listed theater” and comprised of those block and lot numbers specified for such theater pursuant to the table in Section 81-742, as such block and lots existed on January 12, 1998. However, a “granting site” shall not include any #zoning lot# occupied by a “listed theater” located within the geographical area covered by the 42nd Street Development Land Use Improvement Project, adopted by the New York State Urban Development Project in 1984, as such Project has and may be subsequently amended.

A “receiving site” shall mean a #zoning lot# or the portion of a #zoning lot# located within the Theater Subdistrict to which development rights of the “granting site” are transferred. However, no portion of a “receiving site” shall be located within the 42nd Street Development Project Area. In addition, for #zoning lots# containing “listed theaters,” that portion of the #zoning lot# occupied by the “listed theater” and comprised of the block and lot numbers specified for such theater, pursuant to the table in Section 81-742, shall not be included in the “receiving site.”

Any “receiving site” divided by a district boundary or Theater Subdistrict Core boundary may locate #bulk# in accordance with the provisions of Section 81-746 (Additional provisions for zoning lots divided by district or subdistrict core boundaries).

The “floor price” is a value per square foot of transferable development rights in the Theater Subdistrict, which shall provide a basis for establishing a minimum contribution to the Theater Subdistrict Fund established pursuant to paragraph (i) of Section 81-741 (General provisions), as provided in this Section. As of [date of adoption] the “floor price” is equal to \$347 per square foot. When establishing or adjusting the “floor price”, the City Planning Commission shall initiate a market study conducted by qualified professionals utilizing industry best practices. The City Planning Commission shall, by rule, review and adjust this amount pursuant to the City Administrative Procedure Act no more than once every three years and no less than once every five years.

An applicant for transferable development rights, upon written request to the City Planning Commission, may ask for a market study to determine any recent changes in market conditions within the Subdistrict. The study must be paid for by the applicant and completed within a one-year timeframe. The Department of City Planning shall initiate the study conducted by qualified professionals utilizing industry best practices and the City Planning Commission shall, by rule, review and adjust this amount pursuant to the City Administrative Procedure Act.

(a) **Transfer of development rights by certification**

The Chairperson of the City Planning Commission shall allow, by certification, a transfer of development rights from a “granting site” to a “receiving site,” except that any “granting site,” or portion thereof, located outside the Theater Subdistrict, may not transfer development rights to any portion of a “receiving site” within the Special Clinton District, provided that:

- (1) the maximum amount of #floor area# transferred from a “granting site” is the basic maximum #floor area ratio# established pursuant to Sections 81-211 (Maximum floor area ratio for non-residential or mixed buildings) or 81-213 (Special provisions for transfer of development rights from listed theaters within the Special Clinton District), as applicable, for such “granting site” as if it were undeveloped, less the total #floor area# of all existing #buildings# or portions of #buildings# on the “granting site” and #floor area# attributed to the “granting site” that has been previously used or transferred;
- (2) each transfer, once completed, irrevocably reduces the amount of #floor area# that may be #developed# or #enlarged# on the #zoning lot# containing the “granting site” by the amount of #floor area# transferred;
- (3) the maximum amount of #floor area# transferred to a “receiving site” shall not exceed the basic maximum #floor area ratio# established pursuant to Section 81-211 for such “receiving site” by more than 20 percent;
- (4) the provisions of Section 81-743 (Required assurances for continuance of legitimate theater use) are met; and
- (5) appropriate legal documents are executed ~~ensuring that~~ and recorded and a contribution ~~in an amount equal to ten dollars* per square foot of transferred #floor area#~~ be has been deposited in the Theater Subdistrict Fund established pursuant to paragraph (i) of Section 81-741 (General provisions) ~~at the earlier of either the time of closing on the transfer of development rights pursuant to this Section or the filing for any building permit for any #development# or #enlargement# that anticipates using such development rights.~~ Such contribution shall:

- (i) be equal to \$17.60 per square foot of transferred #floor area# for an application that is certified by the Chairperson of the City Planning Commission or authorized by the Commission, pursuant to paragraph (b) of this Section, by June 30, 2017;
- (ii) be equal to 10 percent of the sale price of the transferred #floor area# or an amount equal to 10 percent of the “floor price” multiplied by the amount of transferred #floor area#, whichever amount is greater, for any other application filed by December 31, 2017, provided such application is certified by the Chairperson or authorized by the Commission, pursuant to paragraph (b) of this Section, within one year of filing;
- (iii) for any other application, be equal to the greater of 20 percent of the sale price of the transferred #floor area#, or an amount equal to 20 percent of the “floor price” multiplied by the amount of transferred #floor area#.

~~The City Planning Commission shall review such amount no more than once every three years and no less than once every five years and shall adjust the amount to reflect any change in assessed value of all properties on #zoning lots# wholly within the Theater Subdistrict.~~

(b) Transfer of development rights by authorization

The City Planning Commission shall allow, by authorization, an additional transfer of development rights beyond the amount of #floor area# transfer permitted by certification in paragraph (a) of this Section from a “granting site” to any portion of a “receiving site” located within the Eighth Avenue Corridor, except that any “granting site,” or portion thereof, located outside the Theater Subdistrict may not transfer development rights to any portion of a “receiving site” within the Special Clinton District, subject to the following conditions:

- (1) the maximum amount of such additional #floor area# transfer to that portion of a “receiving site” located within such Corridor shall not exceed the maximum total #floor area ratio# with as-of-right #floor area# allowances in the Theater Subdistrict set forth in Section 81-211 by more than 20 percent; and
- (2) such transfer complies with the conditions and limitations set forth for the transfer of development rights in paragraph (a) of this Section.

In order to grant such authorization, the City Planning Commission shall find that such #development# or #enlargement#:

- (i) relates harmoniously to all structures and #open space# in its vicinity in terms of scale, location and access to light and air in the area; and
- (ii) serves to enhance or reinforce the general purposes of the Theater Subdistrict.

Any application pursuant to paragraphs (a) and/or (b) of this Section shall be referred to the affected Community Board, the local Council Member and the Borough President of Manhattan. No certification or authorization shall be granted prior to sixty days after such referral and sixty days after the date any reports required to be submitted to the Landmarks Preservation Commission pursuant to Section 81-743, paragraph (b), or the Theater Subdistrict Council pursuant to Section 81-71 (General Provisions) have been so submitted.

(c) Requirements for Application

An application filed with the Chairperson of the City Planning Commission for the transfer of development rights by certification pursuant to paragraph (a) of this Section, or with the City Planning Commission for the transfer of development rights by authorization pursuant to paragraph (b) of this Section, shall be made jointly by the owners of the "granting site" and the "receiving site" and shall include:

- (1) a site plan and #floor area# zoning calculations for the "granting site" and the "receiving site"; for certifications, documentation acceptable to the Chairperson and for authorizations documentation acceptable to the City Planning Commission, indicating the sales price of the transferred floor area; and; any such other information as may be required by the Chairperson or the City Planning Commission, as applicable;
- (2) a copy of the transfer instrument legally sufficient in both form and content to effect such a transfer, together with a notice of the restrictions limiting further #development# or #enlargement# of the "granting site" and the "receiving site." The notice of restrictions shall be filed by the owners of the respective lots in the Borough Office of the Register of the City of New York, indexed against the "granting site" and the "receiving site," a certified copy of which shall be submitted to the Chairperson of the City Planning Commission. Receipt of the certified copy shall be a pre-condition to issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement# on the "receiving site."

Both the instrument of transfer and the notice of restrictions shall specify the total amount of #floor area# transferred and shall specify, by lot and block numbers, the lots from which and the lots to which such transfer is made.

- (3) demonstrations of compliance with the requirements of Section 81-743 and paragraph (a)(5) of this Section, including all necessary legal documents. Issuance of any building permit, including any foundation or alteration permit, shall be conditioned upon the filing of such legal documents in the Borough Office of the Register of the City of New York and receipt by the Chairperson of the City Planning Commission of certified copies of same as required pursuant to Section 81-743.

A separate application shall be filed for each transfer of development rights to an independent “receiving site.”

~~* The contribution of ten dollars per square foot of transferred #floor area# was adjusted by rule on November 15, 2006, to \$14.91 per square foot and on December 10, 2011, to \$17.60 per square foot~~

* * *

The above resolution (N 160254(A) ZRM), duly adopted by the City Planning Commission on November 16, 2016 (Calendar No. 3), is filed with the Office of the Speaker, City Council and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

KENNETH J. KNUCKLES, ESQ., Vice Chairman
RAYANN BESSER, IRWIN CANTOR, P.E.,
MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY,
CHERYL COHEN EFFRON, HOPE KNIGHT, ANNA HAYES LEVIN,
ORLANDO MARIN, LARISA ORTIZ, Commissioners

ALFRED C. CERULLO, III, Commissioner, Abstained

MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

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New York, NY 10123-2199
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Wally Rubin, District Manager

May 13, 2016

Hon. Carl Weisbrod
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: Theatre Subdistrict Fund Text Amendment to change the contribution rate into the fund from the transfer of development rights from Broadway theatres to sites within the subdistrict.

Dear Chair Weisbrod:

At the regularly scheduled monthly Community Board Five meeting on Thursday, May 12, 2016, the following resolution passed with a vote of 43 in favor; 0 opposed; 1 abstaining:

WHEREAS, The Department of City Planning (DCP) has applied to amend the portion of the Zoning Resolution related to the Theater Subdistrict; and

WHEREAS, The original Special Theater District was created in 1967 as the first special district established pursuant to the New York City Zoning Resolution; and

WHEREAS, In 1998, a zoning text amendment (June 3, 1998; [N980271ZRM](#)) established a new mechanism for theaters listed in the Zoning Resolution to transfer their available development rights throughout the subdistrict in exchange for retaining, preserving and maintaining a legitimate theater use, and for a contribution to a newly created Theater Subdistrict Fund; and

WHEREAS, The “listed theaters” within the zoning resolution are not permitted to be demolished and include: 1. Ambassador 2. Barrymore 3. Belasco 4. Biltmore 5. Booth 6. Broadhurst 7. Broadway 8. Brooks Atkinson 9. City Center 10. Cort 11. Ed Sullivan 12. Empire 13. Eugene O’Neill 14. Forty-Sixth St. 15. Golden 16. Harris 17. Helen Hayes 18. Henry Miller 19. Hudson 20. Imperial 21. Liberty 22. Longacre 23. Lunt Fontaine 24. Lyceum 25. Lyric 26. Majestic 27. Mark Hellinger 28. Martin Beck 29. Music Box 30. Nederlander 31. Neil Simon 32. New Amsterdam 32a. New Amst. roof 33. New Apollo 34. Palace 35. Plymouth 36. Ritz 37. Royale 38. St. James 39. Selwyn 40. Shubert 41. Studio 54 42. Times Square 43. Victory 44. Virginia 45. Winter Garden; and

WHEREAS, The Theater Subdistrict Council (TSC) has engaged in four rounds of grant making, distributing \$5.7 million in 37 grants to 25 groups; and

WHEREAS, The TSC administers the Theater Subdistrict Fund and allocates grants with the goal of promoting the production of new theater work, developing new audiences, and showcasing Broadway’s singular role in the history of American theater; and

WHEREAS, The development rights transfer mechanism was created to preserve and protect the unique character of the area as a cultural, theatrical and entertainment mecca and to protect theaters from the westward expansion of Midtown office development; and

WHEREAS, While the contribution rate per square foot of zoning floor area transferred was set initially at \$10 per square foot and was increased by the City Planning Commission to \$14.91 in 2006 and \$17.60 in 2011; and

WHEREAS, The City Planning Commission is obligated to revisit and consider modifications to the price between every three and five years; and

WHEREAS, While the initial price was set at approximately 20 percent of the value of the development rights, the significant increase in demand for transferable development rights has resulted in a contribution rate that is far below the 20 percent; and

WHEREAS, Community Board Five has asked repeatedly for the contribution rate to be increased (and ideally pegged to a percent of the transfer value) to provide greater public benefit through higher contributions to the Theater Subdistrict Fund; and

WHEREAS, Community Board Five welcomes DCP's response to our suggestion and their proposal of a new mechanism of calculating the contribution rate as follows:

“Such contribution shall be equal to the greater of:

- i) Twenty percent of the sales price of the transferred #floor area#; or
- ii) An amount equal to 20 percent of the “floor price” multiplied by the amount of transferred #floor area#”; and

WHEREAS, While DCP has suggested that the ZR be modified to permit certification of the transfer of development rights by the Chair of the City Planning Commission as opposed to certification of the full City Planning Commission (which is currently the case), we believe the existing full-commission approval process should be maintained so as to ensure the continued level of transparency; and

WHEREAS, Community Board Five is concerned about the oversight and implementation of theater-related use provisions at the receiving sites of the subdistrict, and has asked DCP to investigate and improve procedures to ensure that developers have provided and maintained spaces as outlined in their respective Restrictive Declarations; and

WHEREAS, The TSC consists of the Mayor, the Speaker of City Council, the Manhattan Borough President, and the Director of the Department of City Planning, as well as four representatives appointed by the Mayor and the City Council Speaker from the performing arts, theatrical and related industries; and

WHEREAS, Community Board Five believed in 1998 and reaffirms its belief that the chair of Community Board Five should have a seat on the Theater Subdistrict Council given the unique perspective that the chair can offer; therefore be it

RESOLVED, Community Board Five **recommends approval** of the application by DCP for the Theater Subdistrict Fund Text Amendment **CONDITIONAL** upon the addition of the chair of Manhattan Community Board Five to the Theater Subdistrict Council.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair



Eric Stern
Chair, Land Use, Housing and Zoning Committee



DELORES RUBIN
Chair

Jesse Bodine
District Manager

CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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June 17, 2016

Hon. Carl Weisbrod
Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

**Re: Theater Subdistrict Fund Text Amendment
N160254ZRM**

Dear Chair Weisbrod:

Manhattan Community Board 4, at the June 1st, 2016 Full Board meeting, by a vote of 39 in favor, 0 opposed, 0 abstaining and 0 present but not eligible to vote, voted on application N160254ZRM for a zoning text amendment to the Zoning Resolution (ZR) §81-744 to establish a new methodology for calculating the contribution rate to the Theater Subdistrict Fund from the transfer of development rights within the Theater Subdistrict. In addition, the Department of City Planning (DCP) is proposing to streamline proposals pursuant to ZR §81-744(a) and make them chairperson certifications instead of Commission certifications.

The Board voted to deny unless:

- such Theatre Development Rights transfers remain subject to City Planning Commission Certification or Authorization and not the reduced public review of a Chairperson Certification
- a text modification was incorporated to ensure that a portion of the Theater Subdistrict Fund was allocated smaller not for profit theater organizations, with budgets of \$250,000 or less, located with Manhattan Community District 4

Background

The original Special Theater District was created in 1967 as the first special district established pursuant to the ZR. It was created “to preserve and protect the unique character of the area as a cultural, theatrical and entertainment mecca and to protect theaters from the westward expansion of Midtown office development.”¹

¹ The ZR also included a floor area bonus for new theaters to be created within new developments.

In 1982, when the Board of Estimate approved the Special Midtown District (MiD), the Special Theater District became a subdistrict within the MiD and new zoning provisions were introduced “to further enhance the Theater Subdistrict through the transfer of development rights to nearby lots and to restrict the demolition of listed theaters.”

The transfer of development rights(TDR’s) pursuant to ZR §81-744 was originally established in a 1998 text amendment in order to protect and preserve theaters. The Fund was created “to develop new audiences, promote the production of new theater work.”

The 1998 text amendment established a new mechanism for listed theaters in the ZR to transfer their available development rights throughout the subdistrict in exchange for “retaining, preserving and maintaining a legitimate theater use, and for a contribution” to a newly created Theater Subdistrict Fund. The TDR process was subject to a Special Permit under the Uniform Land Use Review Procedure (ULURP). This provided more opportunities for theaters to transfer development rights while strengthening requirements for the continuation of legitimate theater use. DCP reports that there are approximately seventeen (17) theaters with available development rights to transfer within the subdistrict with about 1.5 million square feet. The total amount contributed to date to the Fund is \$8,589,349.

In the original 1998 proposed TDR text, the entire west side Eighth Avenue from West 56th to West 42nd Streets was to be included as receiving sites for theater TDR’s. That area, in the Perimeter Area of the Special Clinton District, has a 10 FAR of bonusable to 12 FAR only through Inclusionary Housing. The proposed text called for allowing an FAR increase from 10 to 14.4 through either Inclusionary Housing or TDR’s. The Clinton community and Manhattan Community Board 4 saw the proposed change as a wedge to moving the density of Midtown to the west into Clinton at the expense of affordable housing production through Inclusionary Housing. After a contentious ULURP process, a compromise was reached.

The proposed receiving site transfer area would be limited to the west side of Eighth Avenue from West 42nd to West 45th Streets to encompass the landmark listed Martin Beck Theater on West 45th, west of Eighth Avenue. The Special Clinton District boundaries of its Perimeter would remain in place and the Theater Subdistrict of the Midtown Special District would be overlapped on the Clinton Special District for those three blockfronts. Lastly, the zoning bonuses would work in sequence, Inclusionary Housing first, TDR’s second.

Most important, the text of ZR §81-744 stated TDR’s would be managed by a City Planning Commission Certification or Authorization which “shall be referred to the affected Community Board, the local Council Member and the Borough President of Manhattan,” to mirror the ULURP public review process.

Description of the Proposed Zoning Text Amendment

a. Theater Subdistrict Fund Methodology

The proposal is to modify the contribution rate from the transfer of development rights from those theaters listed in ZR §81-742. The regulations of the Theater Subdistrict contain a mechanism to allow for the transfer of unused development rights from the identified listed theaters to a receiving site within the Theater Subdistrict. The transfer of development rights must be accompanied by a contribution into the Theater Subdistrict Fund (§81-744). The existing contribution amount is based on a dollar value multiplied by the total amount of square feet transferred from the granting site to the receiving site. However, the dollar value has been adjusted twice since the original \$10.00 value in 1998 was established: it was increased in 2006 by 49% to \$14.91; and increased in 2011 by 18% to \$17.60.

According to the ZR, the dollar value is to be adjusted every three to five years to reflect any change in the assessed value of properties within the Theater Subdistrict. The 1998 City Planning Commission report notes that the \$10.00 per square foot amount is approximately 20% of the average sales price of land per square foot in the Theater Subdistrict. The established methodology for adjusting the dollar value is to calculate the total of the Department of Finance assessed value of property in the Theater Subdistrict and divide by the total building floor area in the Theater Subdistrict and then adjust the contribution rate accordingly. DCP has undertaken the contribution rate review within the prescribed three to five year window and has found that the contribution amount to the Fund expressed as a percentage of the amount paid for the transferred development rights ranged from approximately 4% to 9%, far less than the 20% percent envisioned in 1998.

DCP is proposing to establish a new methodology for calculating the contribution amount to the Fund based on 20% of the total amount paid for the transferable development rights. DCP is also establishing a base amount or “floor price” for transferable development rights. This is because there are “few arm’s lengths transactions in this area and there are many variables that can influence the price paid for the transferable development rights that may not be directly related to their fair market value.” The floor price is a value per square foot and it will provide a basis for establishing a minimum contribution to the Fund. The Commission will consider a Market Study appraisal undertaken by a certified valuation and appraisal company to establish the floor price and to adjust every three to five years.

DCP believes the proposed text amendment would “promote a more rational methodology for determining the contribution rate to the Fund.”

b. Proposal for Chairperson Certification

The existing transfer of development rights pursuant to ZR §81-744(a) allows the transfer of development rights from a granting site to a receiving site by City Planning Commission

Certification within the Theater Subdistrict subject to five findings,² or Authorization subject to four findings³

DCP believes that since each of these findings are of an administrative nature and because the City Planning Commission's purview is to approve numbers and legal documents that have already been vetted, DCP is proposing to streamline proposals pursuant to ZR §81-744(a) and make them chairperson certifications instead of Commission certifications.

Community Board Recommendations

a. Theater Subdistrict Fund Methodology

The Board thanks DCP for working to revise the methodology and proposal a methodology closer to the original intent of the 1998 text amendment which based the contribution rate on approximately 20% of the sales price of land value in the subdistrict. For too long developers have been, legally, putting way too little into the theatre subdistrict fund. This proposal is an excellent step in the right direction.

However, the Board has also for too long now seen the money that has gone to the theater subdistrict go to organizations which, though worthy, are in less need of assistance. Additionally, it has gone to some organizations that have profited off their name and mission but for years now failed to adhere to their mission. Accordingly, the Board proposes a process be incorporated to ensure that funding goes to smaller theater organizations, with budgets of \$250,000 or less, especially within Community District 4. Attached in Appendix A is a map that highlights such theaters within the theater subdistrict and community district 4. The Board will be reaching out to its elected officials in an effort to assist in creating a workable process for a better distribution of the Theater Subdistrict Fund.

b. Proposal for Chairperson Certification

The Board cannot support the proposed zoning text change to reduce the public review of TDR' to a Chairperson Certification. The Board would be working against its charter mandate within ULURP process and negligent in its duties as a watchdog for the community if it was to support a proposal to limit review for such an important part of the City of New York, its Broadway Theater District.

Sincerely,

²81-744(a)

- (1) The maximum amount of floor area transferred from a granting site is the basic maximum floor area permitted less the floor area of existing buildings and any previously-transferred development rights;
- (2) Each transfer irrevocably reduces the allowable floor area of the granting site by the amount transferred;
- (3) The maximum floor area that can be transferred to a receiving site is no more than 20% of the base FAR of the receiving site;
- (4) Assurances for the continuance of legitimate theater use per ZR §81-743 are made; and
- (5) Legal documents are executed ensuring that the appropriate funds are deposited into the Theater Subdistrict Fund.

³ 81-477(b)

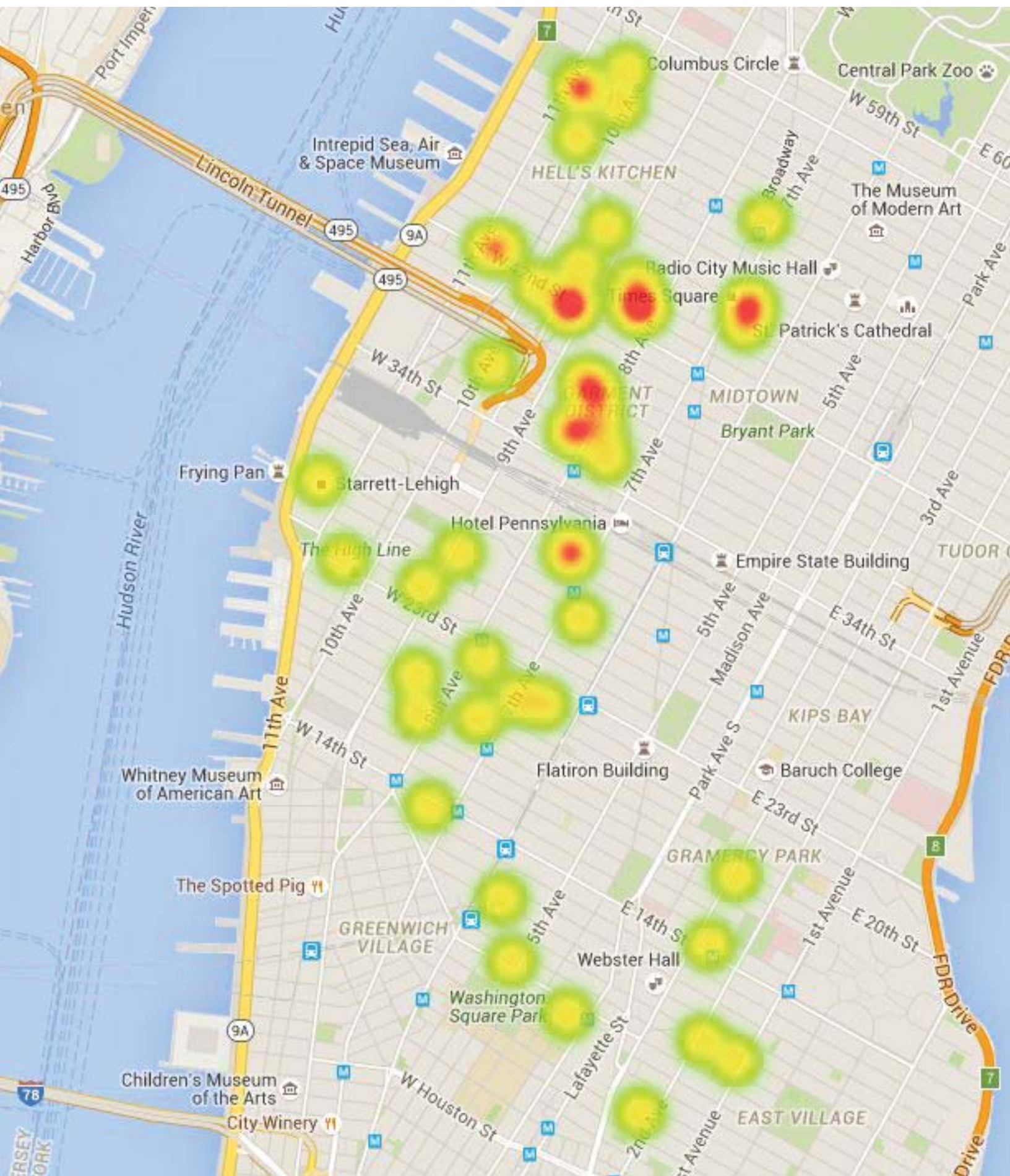


Delores Rubin
Chair



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

cc: NYC Council Member Corey Johnson
Manhattan Borough President Gale Brewer



League of Independent Theater Members - CB4 and CB5

Company	Category	Address	ZIP Code	BBL
2econd Stage Theater	CB4 Theaters	305 W 43rd Street, New York, NY		
52nd Street Project	CB4 Theaters	789 10th Avenue New York, NY 10019		
Abingdon Theatre Company	CB4 Theaters	312 West 36th St, New York, NY 10018		
All For One	League of Independent Theaters	1650 Broadway, New York, NY	10036	
Amnesia Wars Productions	League of Independent Theaters		10019	
Ars Nova Theater	League of Independent Theaters	511 W 54th St, New York, NY	10019	
Atlantic Theatre Company	CB4 Theaters	336 W 20th St, New York, NY 10011		
Castillo Theatre	CB4 Theaters	543 W 42nd St, New York, NY 10036		
Concrete Temple Theatre	League of Independent Theaters	211 East 14th Street, New York, NY	10003	
Concrete Timbre	League of Independent Theaters		10011	
Cosmic Orchid	CB4 Theaters			
Developing Artists	League of Independent Theaters	12 5th Ave, New York, NY	10011	
D'moiselles	League of Independent Theaters		10011	
Ego Actus Theatre Company	League of Independent Theaters	290 9th Ave, New York, NY 10001		
Gotham Writers Workshop	CB4 Theaters	555 Eighth Ave #1402, New York, NY 10018		
Hard Sparks	League of Independent Theaters	51 West 11th Street, New York, NY	10001	
Horse Trade	League of Independent Theaters	85 East 4th Street, New York, NY	10003	
Irish Repertory Theatre Company	CB4 Theaters	132 W 22nd St, New York, NY 10011		
John Montgomery Theatre Company	League of Independent Theaters		10022	
Kairos Italy Theater	League of Independent Theaters	60 East 8th St, New York, NY	10003	
Lark Play Development	League of Independent Theaters	311 West 43rd Street, New York, NY	10019	
LIVE Theater/The Nerve Tank	League of Independent Theaters	261 West 22nd Street, New York, NY	10011	
Mad & Merry Theatre Company	League of Independent Theaters		10011	
Manhattan Theatre Club	CB4 Theaters	311 West 43rd St, New York, NY		
Medicine Show Theatre Ensemble	League of Independent Theaters	549 West 52nd Street, New York, NY	10019	
Mind the Gap Theatre (NY) Inc.	League of Independent Theaters	535 W 23rd St, New York, NY	10011	
Mint Theater Company	CB4 Theaters	410 W42nd St, New York, NY 10036		
Nettles Artists Collective	League of Independent Theaters	325 West 38th Street, New York, NY	10018	
New Dramatists	CB4 Theaters	424 West 44th St, New York, NY 10036		
New Perspectives Theatre Co.	League of Independent Theaters	456 West 37th Street, New York, NY	10018	
New York Madness	League of Independent Theaters		10036	

League of Independent Theater Members - CB4 and CB5

Company	Category	Address	ZIP Code	BBL
New York Neo-Futurists	League of Independent Theaters	219 West 19th Street, New York, NY	10019	
NY Artists Unlimited	League of Independent Theaters	212 W 14th St, New York, NY	10011	
Parity Productions	CB4 Theaters			
Peccadillo Theatre Company	CB4 Theaters	423 W 46th St, New York, NY 10036		
Phoenix Theatre Ensemble	League of Independent Theaters	200 East 10th Street, New York, NY	10003	
Pick Up Performance Co(s)	CB4 Theaters	520 8th Ave, New York, NY 10018		
Pipeline Theatre	League of Independent Theaters		10011	
Playwrights Horizons	CB4 Theaters	416 West 42nd St., New York, NY		
Primary Stages	CB4 Theaters	307 West 38th St, New York, NY 10018		
Project Girl Performance Collective	League of Independent Theaters		10003	
Red Bull Theater	CB4 Theaters	191 7th Avenue 2S, New York, NY 10011		
ReGroup Theatre Co.	League of Independent Theaters	520 West 50th Street, New York, NY	10019	
Ripple Effect Artists Inc.	League of Independent Theaters	601 West 26th Street, New York, NY	10010	
Signature Theatre Company	CB4 Theaters	480 West 42nd Street, New York, NY		
Slightly Altered States	League of Independent Theaters		10010	
SmartTix	League of Independent Theaters	237 W 35th Street, New York, NY	10018	
Stage Left Studio	League of Independent Theaters	214 West 30th Street, New York, NY	10001	
Stage Left Studio	League of Independent Theaters	214 West 30th Street, New York, NY	10001	
Terra Incognita Theater	League of Independent Theaters		10019	
TerraNova Collective	CB4 Theaters	401 W. 24th St, #8, New York, NY 10011		
The Brewing Dept.	League of Independent Theaters		10001	
The New Group	CB4 Theaters	410 W 42nd St, New York, NY 10036		
The Onomatopoeia Theatre Company	League of Independent Theaters		10003	
The Pearl Theater Company	CB4 Theaters	555 W 42nd St, New York, NY 10036		
The Play Company	CB4 Theaters	321 W 44th St, New York, NY 10036		
The Playroom Theater	League of Independent Theaters	151 West 46th Street, New York, NY	10036	
The Playroom Theater	League of Independent Theaters	151 W 46th Street, New York, NY	10036	
Theater for the New City	League of Independent Theaters	155 1st Avenue, New York, NY	10003	
Theatre Breaking Through Barriers	CB4 Theaters	306 W 18th St, New York, NY 10011		
TSOS	CB4 Theaters			
Videograf LLC	League of Independent Theaters	144 West 27th Street, New York, NY	10001	

League of Independent Theater Members - CB4 and CB5

Company	Category	Address	ZIP Code	BBL
Voyage Theater Company	League of Independent Theaters		10003	
Waterwell Productions	League of Independent Theaters	145 W 45th St, New York, NY	10036	
White Horse Theater Company	League of Independent Theaters	205 Third Avenue, New York, NY	10003	
Works Productions	League of Independent Theaters		10011	
WorkShop Theater Company	League of Independent Theaters	312 W 36th Street, New York, NY	10018	
YaYa Productions	League of Independent Theaters		10010	
Ensemble Studio Theater		549 West 52nd Street, New York, NY		



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Gale A. Brewer, Borough President

August 16, 2016

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

Re: Application No. N 160254 ZRM – Theater Subdistrict Fund Text Amendment

Dear Chair Weisbrod:

I write in regard to the application by the Department of City Planning (DCP) for a text amendment to Section 81-744 of the New York City Zoning Resolution (ZR) to modify the contribution rate into the Theater Subdistrict Fund.

The proposed text amendment would establish a new methodology for calculating the contribution rate that is based on the actual value of the development rights rather than the assessed property values. This is meant to align the rate more closely with the original intent of the 1998 legislation, which was to ensure that the contribution amounted to approximately 20 percent of the value of the development rights. Currently, the contribution amount expressed as a percentage falls far below 20 percent. The proposed text amendment would also make a certification for a transfer of development rights subject to the Chairperson instead of approval by the City Planning Commission (CPC).

At its Full Board meeting on June 1, 2016, Manhattan Community Board 4 (CB4) voted to deny the text amendment unless two conditions were satisfied. First, development rights transfers should remain subject to a CPC vote and not relegated to the ministerial function of the Chairperson. Second, the text should be revised to ensure that a portion of the Theater Subdistrict Fund is allocated to smaller nonprofit theater organizations, with budgets of \$250,000 or less, especially within Manhattan Community District 4.

At its Full Board meeting on May 12, 2016, Manhattan Community Board 5 (CB5) voted to approve the text amendment conditional upon the addition of the chair of Manhattan Community Board Five to the Theater Subdistrict Council. CB5 also expressed the desire for development rights transfers to remain a Commission Certification.

At the Manhattan Borough Board meeting on June 16, 2016, a representative from the Shubert Organization spoke out against the text amendment on behalf of the theaters in the subdistrict.

In addition to their disapproval of the proposed increase in the contribution amount, they expressed strong opposition to the implementation of a sale price floor, which they believe to be a needless constraint that does not account for the dynamism of the real estate market. The theater groups had not spoken in front of the Community Boards. Given the issues they raised, there was no vote on this item at Borough Board.

I agree with both Community Boards 4 and 5 in supporting the adjustment of the contribution methodology while opposing the change from a CPC Certification to a Chairperson Certification. While there are other floor area transfer mechanisms in the ZR treated as ministerial actions, experience has shown me the importance of a community board referral and a public vote on these matters. Manhattan already bears the consequences of non-public as of right zoning lot mergers and the floor area massing those transfers bring and I am uncomfortable with adding to that universe. I also recognize the concern of the theater groups over the price floor and the three to five year adjustment period for the assessed value of properties within the Theater Subdistrict. In cases where the real estate market moves faster than the adjustment of values, I believe there should be a mechanism that can safeguard the viability of development rights transfers.

My office has been in conversation with the Community Boards and DCP regarding the possibility of establishing a mechanism by which the theater could request an assessment. This assessment would be conducted by the usual City-approved assessor, and would be paid for by the theater. We have also discussed, as per CB4's recommendation, a way forward for the Fund to benefit smaller nonprofit organizations in the theater industry. It is our understanding that DCP is in the process of filing an A-modification that addresses these issues.

In light of this, I recommend **approval** of N 160254 ZRM **with the conditions** that the review of transfer of development rights remain a Commission Certification, that there is a mechanism that allows the theaters to request assessment and readjustment of the floor price, and that steps be undertaken to determine how the Fund can better benefit smaller nonprofit organizations working in the area's theater industry.

Sincerely,

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer