

## THE COUNCIL

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*Minutes of the Proceedings for the*

### STATED MEETING

*of*

Thursday, December 10, 2020, 1:49 p.m.

*held remotely via video-conference*

*The Majority Leader (Council Member Cumbo)*

*presiding as the Acting President Pro Tempore*

### Council Members

Corey D. Johnson, *Speaker*

Adrienne E. Adams	Mark Gjonaj	Carlina Rivera
Alicia Ampry-Samuel	Barry S. Grodenchik	Ydanis A. Rodriguez
Diana Ayala	Robert F. Holden	Deborah L. Rose
Inez D. Barron	Ben Kallos	Helen K. Rosenthal
Joseph C. Borelli	Peter A. Koo	Rafael Salamanca, Jr
Justin L. Brannan	Karen Koslowitz	Ritchie J. Torres
Fernando Cabrera	Bradford S. Lander	Mark Treyger
Andrew Cohen	Stephen T. Levin	Eric A. Ulrich
Costa G. Constantinides	Mark D. Levine	Paul A. Vallone
Robert E. Cornegy, Jr	Farah N. Louis	James G. Van Bramer
Laurie A. Cumbo	Alan N. Maisel	Kalman Yeger
Chaim M. Deutsch	Steven Matteo	
Darma V. Diaz*	Carlos Menchaca	
Ruben Diaz, Sr.	I. Daneek Miller	
Daniel Dromm	Francisco P. Moya	
Mathieu Eugene	Keith Powers	
Vanessa L. Gibson	Antonio Reynoso	

Absent: Council Members Chin and Perkins.

At the time of this virtual Stated Meeting, there were three vacant seats on the Council pending the swearing-in of the certified winners of the following non-partisan special elections: December 22, 2020 in the 12th District (The Bronx); February 2, 2021 in the 24th District (Queens); and February 23, 2021 in the 31st District (Queens).

*\*Editor's Note:* Darma V. Diaz, a newly elected Council Member, was sworn-in as the representative for the 37<sup>th</sup> District (Brooklyn) by the City Clerk and Clerk of the Council (Mr. McSweeney) on December 1, 2020.

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

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

*There were 46 Council Members marked present at this Stated Meeting held remotely.*

During the Communication from the Speaker segment of this meeting, the Speaker (Council Member Johnson) extended a special welcome and congratulations to newly elected Council Member Darma V. Diaz on her first Stated Meeting as a Council Member.

### INVOCATION

The Invocation was delivered by Rabbi Eli Cohen, Executive Director serving as a spiritual leader at Crown Heights Jewish Community Council located at 1206 Carroll Street, Brooklyn, N.Y. 11225.

So I'm joining the meeting from my office here in Crown Heights,  
where the Hanukkah *menorah* is ready, right here,  
to be lit for the first night of Hanukkah.

I want to thank the Majority Leader,  
our dear Council Member Laurie Cumbo,  
and also our beloved Speaker  
for this invitation in honoring  
our community on this eve of Hanukkah.  
I also have to single out (I'm sorry everybody else),  
but I want to single out the members  
that represent Crown Heights,  
Council Members Eugene, Ampry-Samuel, and Cornegy.  
So a special shout-out to all of you.

I also ask you to join me  
at the suggestion of the Lubavitch Rebbe.  
I'm holding up here a charity box  
and I'm putting a quarter in as a symbolic gift to charity,  
and if you have your own charity box  
in your home or your office, or wherever else you are  
please join me in that important act.  
This was the suggestion of the Rebbe many years ago  
to another rabbi who was leaving such an Invocation.

It's a *Chabad* custom that we sit and watch the lights of the *menorah*  
for half an hour after we kindle them.

And while we're watching them, one of our great Rebbes taught,  
"We must listen to the message of the Hanukkah lights."

So what is the special message  
that these lights are going to be telling us tonight?

So from Proverbs it says,

"For the light of God is the soul of man."

These lights tell us that every single one of us has a soul inside

whose job is to bring illumination and brightness into this world.  
 Many have described these past months  
 as a time of darkness, of loss, and of suffering,  
 and indeed we've felt this personally.  
 But throughout we've seen bright souls  
 who have brought healing, comfort,  
 and even joy to those around them.  
 These Hanukkah lights tell us  
 that every one of us can be a bright light,  
 helping our neighbors with charity,  
 with a kind word, and with a helping hand.  
 The New York City Council has been the flame  
 to kindle many of those candles by supporting initiatives  
 by great organizations throughout the city.  
 So let us pray that you, members of the City Council,  
 be blessed with good health, with strength,  
 and with wisdom to continue your important work.  
 May you merit to see the success of your initiatives  
 and may we all see you shepherd this city  
 to be safe and prosperous in this tumultuous time.  
 May the Creator bless and keep  
 our brave first responders and health workers  
 as they defend us and heal the vulnerable and the sick.  
 May He bless our essential workers and all the volunteers  
 at food pantries, social service programs,  
 and other good works throughout the city.  
 And we pray for the good health and good fortune  
 of every single resident in New York City,  
 from our seniors to our children,  
 as we will quickly recover them this pandemic.  
 And may the lights of the Hanukkah *menorah*  
 usher in the redemption with *mashiach*,  
 a time of great light when good will triumph over evil  
 and where jealousy, war, sickness, and hatred will be abolished,  
 and "the world will be filled with the knowledge of God  
 as the waters cover the ocean."

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

During the Communication from the Speaker segment of this meeting, the Speaker (Council Member Johnson) acknowledged that the number of coronavirus deaths in New York City had reached 24, 411 as of December 9, 2020. He reported that the surge in COVID-19 cases was continuing throughout the city. The Speaker (Council Member Johnson) emphasized how important it was to continue adhering to what public experts call the core four: staying home if one is sick, wearing a mask, washing one's hands, and keeping six feet apart for social distancing. He urged New Yorkers to flatten the curve once again.

The Speaker (Council Member Johnson) acknowledged the recent deaths of the following first responders who lost their lives due to 9/11-related illnesses: NYPD Auxiliary Officer Michael Dorian; NYPD Police Officer Frank Rosado; and EMT Donnell Ford of Jamaica Hospital. He noted that the city would be forever grateful for their sacrifices and for their service. On behalf of the Council, the Speaker (Council Member Johnson) sent his deepest condolences to the families of the deceased during this difficult time.

The Speaker (Council Member Johnson) acknowledged the death of former New York City Mayor David Dinkins. Mayor Dinkins, the city's first black mayor, passed away on November 23, 2020 at the age of 93. The Speaker (Council Member Johnson) described him as a model and mentor for those who enter public service seeking to serve with dignity and with commitment. He praised him as a man who fought for the most vulnerable in the city. The Speaker (Council Member Johnson) spoke of Mayor Dinkins's vision for the city as a gorgeous mosaic and as a city that could meet any challenge by working collectively. On behalf of the Council, the Speaker (Council Member Johnson) offered his deepest condolences to the Dinkins family.

The Speaker (Council Member Johnson) acknowledged the death of Muslim activist Dr. Ahmed Jabar. Dr. Jabar passed away on the morning of December 10, 2020 at the age of 73. He described him as a beloved civic leader and a true bridge-builder. On behalf of the Council, the Speaker (Council Member Johnson) shared in the grief of all Muslim and Arab New Yorkers and expressed his gratitude for Dr. Jabar's dedication to these communities and to the city as well.

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

At this point, a Moment of Silence was observed.

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#### **ADOPTION OF MINUTES**

Council Member Cornegy moved that the Minutes of the Stated Meetings of October 29, 2020 and November 19, 2020 be adopted as printed.

#### **COMMUNICATION FROM CITY, COUNTY & BOROUGH OFFICES**

M-262

**Communication from the Board of Elections - Submitting the Certification of Election of Darma V. Diaz, as the new Council Member of the 37th Councilmanic District, Brooklyn.**

(For text of the New York City Board of Elections Certification for the General Election held on November 3, 2020 in the 37th Council District in Brooklyn, please refer to the attachment section of [the M-262 of 2020 file](https://council.nyc.gov) in the legislation section of the New York City Council website at <https://council.nyc.gov>)

Received, Ordered, Printed and Filed.

M-263

**Communication from the Brooklyn Borough President – Submitting Strategic Policy Statement for 2020, as required by the New York City Charter.**

(For text of the Strategic Policy Statement, please refer to the attachment to [the M-263 of 2020 file](#) in the legislation section of the New York City Council website at <https://council.nyc.gov>)

Received, Ordered, Printed and Filed.

M-264

**Communication from the Bronx County Democratic Committee recommending the name of Miguelina Camilo to the Council regarding her appointment as Bronx County Democratic Commissioner of Elections pursuant to § 3-204 of the New York State Election Law.**

(For text of the Strategic Policy Statement, please refer to the attachment to [the M-264 of 2020 file](#) in the legislation section of the New York City Council website at <https://council.nyc.gov>)

Referred to the Committee on Rules, Privileges and Elections.

M-265

**Communication from Richmond County Democratic Committee recommending the name of Patricia Anne Taylor Carsel to the Council regarding her re-appointment as Richmond County Democratic Commissioner of Elections pursuant to § 3-204 of the New York State Election Law.**

December 1, 2020

Honorable Michael McSweeney  
City Clerk and Clerk of the Council  
141 Worth Street  
Municipal Building  
New York, N.Y. 10013

Dear Mr. McSweeney:

Enclosed please find a Certificate of Recommendation for the Re-appointment of Patricia Anne Taylor Carsel, Esq. as Richmond County Democratic Commissioner of Elections.

Ms. Patricia Anne Taylor Carsel is an extremely qualified candidate for the position of Commissioner of Elections. She has served as principal court attorney with the New York State Office of Court Administration and served in the Criminal Courts of the City of New York from 2007 to 2018 as law clerk to the Hon. Dena E. Douglas. Additionally, Ms. Patricia Anne Taylor Carsel holds the honor of being the first African American Borough Commissioner in the history of Staten Island. The Democratic Committee of Richmond County's Executive Committee voted unanimously for her re-appointment.

This appointment is very important to me on both a personal and professional level. I want to thank you in advance for your time and consideration in this regard.

Sincerely,

Michael J. Cusick  
County Chairman

Referred to the Committee on Rules, Privileges and Elections.

M-266

**Communication from the New York County Democratic Committee recommending the name of Tiffany Townsend to the Council regarding her appointment as New York County Democratic Commissioner of Elections pursuant to § 3-204 of the New York State Election Law.**

ELECTION COMMISSIONER CERTIFICATION OF NOMINATION

To the Clerk of the New York City Council:

I certify that:

At a meeting of the Executive Committee of the New York County Democratic Committee held on the 28th day of October, 2020, by Executive Order of Andrew M. Cuomo, Governor of the State of New York, said meeting held by video conferencing with notice to all participants as to how to access such video conference, a quorum being present, Tiffany Townsend, residing at [*building address redacted*] New York, NY 10016, a registered voter of the County of New York and duly enrolled member of the Democratic Party, was nominated by said committee under the applicable provision of the New York State Election Law and the Rules and Regulations of the Democratic Party of the County of New York for appointment to the office of Commissioner of Elections for the term to commence January 1, 2021 and to expire December 31, 2024.

New York, NY  
October 30, 2020

Domenico Minerva  
Chairperson of the New York County Democratic Committee

Referred to the Committee on Rules, Privileges and Elections.

**PETITIONS AND COMMUNICATIONS**

M-267

**Communication from Council Member Donovan J. Richards - Submitting his resignation from the office of New York City Council Member of the 31st Council District effective December 2, 2020.**

December 2, 2020

Mike McSweeney  
New York City Clerk  
121 Worth Street  
New York, NY 10013

Dear Mr. McSweeney:

Please be advised that I hereby resign the office of Member of the City Council for the 31st Council District effective Wednesday, December 2, 2020 at 10:00 a.m. due to my election as Queens Borough President.

I am thankful for the many years of service alongside my colleagues in the City Council. and the opportunity to serve my district. These last few years have brought great changes to our city that I know will make it a fairer and more equitable place to call home.

I look forward to continuing the work that has been started in the City Council as I begin this new chapter.

Very truly yours,

Donovan J. Richards  
City Council Member  
District 31

Received, Ordered, Printed and Filed.

## REPORT OF THE STANDING COMMITTEES

### Committee on Civil and Human Rights

Report for Int. No. 1314-A

#### **Report of the Committee on Civil and Human Rights in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record, pending criminal accusations or criminal convictions.**

The Committee on Civil and Human Rights, to which the annexed proposed amended local law was referred on December 20, 2018 (Minutes, page 5176), respectfully

### REPORTS:

#### I. INTRODUCTION

On December 10, 2020, the Committee on Civil and Human Rights, chaired by Council Member Mathieu Eugene, held a vote on Proposed Introductory Bill Number 1314-A (Int. 1314-A), in relation to prohibiting discrimination based on one's arrest record, pending criminal accusations or criminal convictions. At a hearing held on January 22, 2020, the Committee received feedback on the bill from the New York City Commission on Human Rights (CCHR), advocates and other stakeholders. This testimony informed changes to the bill. The bill passed with five in the affirmative, no negatives, and no abstentions.

#### II. BACKGROUND

The barriers to employment for individuals with a criminal record present a myriad of public safety and equity concerns, which affect those who have been arrested or convicted of a crime, as well as their families and the general public. In the United States, more than 70 million people have a criminal record, which is approximately the same number who have a college degree.<sup>1</sup> This number is so large that, if all these people were to form their own country, it would be the world's 18<sup>th</sup> largest – larger than Canada and France, and three times the size of Australia.<sup>2</sup> It is estimated that, by age 23, nearly one in three Americans will have been arrested.<sup>3</sup>

In New York State there were nearly 220,000 arrests in 2019, including both adults and those under 18, according to data from the Federal Bureau of Investigations.<sup>4</sup> For these individuals, an arrest record may have devastating effects on trying to access housing, education or employment.

These issues are more problematic for communities of color as data consistently show that, despite similar offence rates, people of color are arrested at much higher proportions than their white peers.<sup>5</sup> In 2016, for instance, black Americans represented nearly a third of all individuals arrested in the country, which is double

<sup>1</sup> Tina Rosenberg "Have you ever been arrested? Check here", *New York Times*, May 24, 2016, available at: <https://www.nytimes.com/2016/05/24/opinion/have-you-ever-been-arrested-check-here.html>.

<sup>2</sup> Matthew Friedman "Just facts: As many Americans have criminal records as college diploma", *Brennan Center for Justice*, November 17, 2015, available at: <https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas>.

<sup>3</sup> Id.

<sup>4</sup> FBI "2017 crime in the United States", table 69, available at: <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-69>

<sup>5</sup> Elizabeth Hinton, LeShae Henderson and Cindy Reed "An unjust burden: The disparate treatment of black Americans in the criminal justice system", *Vera Institute of Justice*, May 2018, available at: [https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-unjust-burden/legacy\\_downloads/for-the-record-unjust-burden-racial-disparities.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-unjust-burden/legacy_downloads/for-the-record-unjust-burden-racial-disparities.pdf).



their share of the population.<sup>6</sup> Meanwhile, in analysis of recent arrests for marijuana possession in New York City, research showed that 93 percent of people arrested in January-March 2018 were people of color.<sup>7</sup>

Studies have consistently shown that unemployment and recidivism are closely linked.<sup>8</sup> However, research also shows that employers are less inclined to hire someone with an arrest record. One seminal study showed that employers were 50 percent less likely to call back a white applicant for an entry-level job once they found out that the applicant served time for drug possession with intent to distribute. For black applicants, employers were 64 percent less likely to call them back.<sup>9</sup>

In order to create more equitable hiring practices, the New York City Council enacted the Fair Chance Act in 2015. Under this law, New York City employers are prohibited from inquiring about a job applicant's criminal history, prior to making a conditional offer of employment. Such 'ban the box' laws, as they are commonly referred to, exist in 35 states and 150 cities across the Country.<sup>10</sup> Between 2015 and 2019, the City's Commission on Human Rights (CCHR) has conducted approximately 1614 investigations and filed 520 complaints against employers accused of violating the law, and collected nearly \$790,000 in damages for victims.<sup>11</sup> In Fiscal Year 2020 (FY20), CCHR received 98 inquiries in relation to employment discrimination based on arrest or conviction record.<sup>12</sup> Similarly, CCHR also resolved 40 pre-complaint interventions and filed 58 total claims in relation to employment discrimination based on arrest or conviction record.<sup>13</sup> Despite the fact that New York City's law is considered one of the toughest in the country,<sup>14</sup> there is still room for improvement.

Under the City's current fair chance law, employers are prohibited from inquiring about a person's criminal record prior to making an offer of employment. If the employer decides to rescind the offer, based on the applicant's criminal history, the employer must provide a written explanation for the decision, as well as copies of the information used to determine the record, and the applicant will then have three days to respond. Additionally, any reasoning for the revocation must be in compliance with the State's Correction Law Article 23-A, which sets strict criteria in assessing whether there is a direct relationship between the criminal offence and the job being offered. In spite of these requirements, there currently exist a number of ways that allow employers to discriminate based on a current or potential employee's interaction with the criminal justice system, which Int. 1314-A aims to address. To begin with, Int. 1314-A would extend the list of protections to include: pending adjournments in contemplation of dismissal (ACDs); youthful offender adjudications; non-pending arrests and criminal accusations; and unsealed violations, in addition to arrests and convictions currently included as categories that may not be inquired about prior to an employment offer. It also prohibits consideration of violations or non-criminal offenses. If enacted, Int. 1314-A would also ensure that these fair chance procedures be followed by and applied to current employees as well as prospective. Int. 1314-A also clarifies what factors employers are to consider when conducting the analysis regarding pending arrests and criminal accusations. Lastly, 1314-A aims to minimize the barriers to obtaining a license or permit (exempting those issued by the City's Business Integrity Commission; i.e. "BIC"), by prohibiting discrimination for prior violations.

<sup>6</sup> The Sentencing Project "Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and related Intolerance: Regarding racial disparities in the United States criminal justice system", March 2018, available at: <file:///C:/Users/lkskrzypiec/Downloads/UN-Report-on-Racial-Disparities.pdf>.

<sup>7</sup> "Racial disparities evident in New York City arrest data for marijuana possession", *Innocence Project*, May 14, 2018, available at: <https://www.innocenceproject.org/racial-disparities-in-nyc-arrest-data-marijuana-possession/>.

<sup>8</sup> "Executive summary: Research supporting employment as an important component of evidence-based practices," U.S. Probation Office, Eastern District of Missouri, January 20, 2009, available at: <https://s3.amazonaws.com/static.nicic.gov/Library/028146.pdf>.

<sup>9</sup> Tina Rosenberg "Have you ever been arrested? Check here", *New York Times*, May 24, 2016, available at: <https://www.nytimes.com/2016/05/24/opinion/have-you-ever-been-arrested-check-here.html>.

<sup>10</sup> Margaret Barthel "Employers are still avoiding former inmates", *The Atlantic*, November 5, 2019, available at: <https://www.theatlantic.com/politics/archive/2019/11/are-states-complying-ban-box-laws/601240/>.

<sup>11</sup> Mirela Iverac "New York cracks down on employers who unfairly reject workers with criminal histories", *Gothamist*, May 6, 2019, available at: <https://gothamist.com/news/new-york-cracks-down-on-employers-who-unfairly-reject-workers-with-criminal-histories>.

<sup>12</sup> "Fiscal Year 2020 Annual Report", New York City Commission on Human Rights, available at: [https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR\\_Annual\\_Report\\_FY20.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHR_Annual_Report_FY20.pdf)

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* 11

### III. BILL ANALYSIS

#### Int. 1314-A

Section one of the bill adds three new definitions to section 8-102 of the Administrative Code for the terms “conditional offer of employment,” “public agency” and “relevant fair chance factors.” The term “conditional offer of employment” means:

[A]n offer of employment, promotion or transfer which may only be revoked based on one of the following:

1. The results of a criminal background check, conducted in accordance with the provisions of this chapter;
2. The results of a medical exam as permitted by the americans with disabilities act of 1990, as amended, 42 U.S.C. §12112; or
3. Other information the employer could not have reasonably known before making the conditional offer if the employer can show as an affirmative defense that, based on the information, it would not have made the offer regardless of the results of the criminal background check.

The term “public agency” is defined as “the state or any local subdivision thereof, or any state or local department, agency, board or commission.” “Relevant fair chance factors” means:

- i) With respect to arrests or convictions preceding employment, other than arrests or criminal accusations pending at the time of application for employment, the factors set forth in section 753 of the correction law.
- ii) With respect to arrests or criminal accusations pending at the time of an application for employment and arrests or convictions that have occurred during employment:
  - (a) the policy of the city, as expressed in this chapter, to overcome stigma toward and unnecessary exclusion of persons with criminal justice involvement in the areas of licensure and employment;
  - (b) the specific duties and responsibilities necessarily related to the employment held by the person;
  - (c) the bearing, if any, of the criminal offense or offenses for which the employee was convicted, or that are alleged in the case of pending arrests or criminal accusations, on the employee’s fitness or ability to perform one or more such duties or responsibilities;
  - (d) whether the person was 25 years of age or younger at the time of occurrence of the criminal offense or offenses for which the person was convicted, or that are alleged in the case of pending arrests or criminal accusations;
  - (e) the seriousness of such offense or offenses; and
  - (f) the legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public; and
  - (g) in the case of employees, any additional information produced by the employee, or produced on their behalf, in regards to their rehabilitation or good conduct, including history of positive performance and conduct on the job or in the community, or any other evidence of good conduct.

Since section three of the bill repeals § 8-107(9)(a)(5), section two of the bill reinstates this provision by moving it into § 8-107(9)(a)(4), thereby maintaining that it is an unlawful discriminatory practice for any person to make “any inquiry in writing or otherwise” regarding an arrest or criminal accusation in the issuance of a license, registration or permit.

Section three of the bill prohibits any person from inquiring about or denying a license, registration or permit, unless required by law, because an applicant: 1) has been convicted of a violation as defined in section 10.00 of

the Penal Law; 2) has been convicted of a non-criminal offense as defined by a law of another state; or 3) has an arrest or criminal accusation followed by a conviction for a violation or non-criminal offense. This section of the bill does not apply to licenses, registrations, or permits issued by BIC.

Section four of the bill changes the title of subdivision 10 of § 8-107 from “Criminal conviction; employment” to “Employment actions based on pending arrests and criminal accusations, and criminal convictions preceding and during employment.” Section 8-107(10)(a) is amended to have a new title: “Actions prohibited by state law concerning criminal convictions preceding employment.” A new paragraph (b) is added titled “Criminal convictions during employment.” New paragraph (b) prohibits employers or their agents from taking an adverse employment action against an employee because such person was convicted of one or more criminal offenses or finding that such employee lacked “good moral character” because of such convictions, unless the employer, after considering the relevant fair chance factors, concludes that: (i) there is a direct relationship between the criminal conviction and the employment held by the person; or (ii) the continuation of the employment would involve an unreasonable risk to property, or to the safety or welfare of specific individuals or the general public. Similarly, the bill adds a new paragraph (c) that requires the same analysis required in paragraph (b) but for applicants or employees with pending arrests or criminal accusations.

A new paragraph (d) is added to permit employers to put employees on unpaid leave for a reasonable time while they undertake the analysis required by new paragraph (b). A new paragraph (e) is added to clarify that a criminal action that has been adjourned in contemplation of dismissal is not considered a pending action unless the order to adjourn in contemplation of dismissal is revoked and the case is restored to the calendar for further prosecution.

Old paragraph (b) is relettered to paragraph (f) and amended to clarify that paragraphs (b) and (c) above do not apply to applicants for employment or persons employed as: (i) police officers or peace officers as defined in subdivisions 33 and 34 of section 1.20 of the Criminal Procedure Law; or (ii) at a law enforcement agency as the term is used in article 23-A of the Correction Law.

A new paragraph (g) is added to clarify that employers are permitted to take an adverse employment action where an applicant or employee is found to have made intentional misrepresentations regarding their arrest or conviction history, provided that such adverse action is not based on the failure to divulge information that the applicant or employee was not required to share by law. In this scenario, before taking the adverse action, employers are required to provide the applicant or employee with a copy of the documents that the employer relied on to conclude that an intentional misrepresentation was made, and the employer must give the applicant or employee sufficient time to respond.

New paragraph (h) clarifies that the prohibition on discrimination against those with pending arrests or criminal accusations or convictions that occur during employment do not apply to public agencies taking adverse action against an employee where such employee is entitled to a disciplinary process pursuant to the Civil Service Law, or where the public agency follows a disciplinary process set forth in agency rules or as required by law. New paragraph (i) also excludes from the application of these provisions certain collateral consequences of criminal proceedings including mandatory forfeiture, disability or a bar to employment imposed by law unless an executive pardon, certificate of relief from disabilities or a certificate of good conduct has been issued.

Section five of the bill amends the title of § 8-107(11) from “Arrest record; employment” to “Non-pending arrests and criminal accusations, and dispositions of charges that an employer may not consider.” Paragraph (a) is amended to add a new title: “Non-pending arrests and criminal accusations; adjournments in contemplation of dismissal; youthful offender adjudications; convictions sealed pursuant to certain sections of the criminal procedure law.” Paragraph (a) is also amended to clarify that “any inquiry in writing or otherwise” about or denial of employment due to an arrest or criminal accusation is prohibited. Paragraph (b) is amended to add a new title: “Violations and non-criminal offenses that have not been sealed.” Paragraph (b) is amended to prohibit employers from taking any adverse action against an employee or applicant because of (i) a conviction for a violation as defined in section 10.00 of the Penal Law or (ii) a conviction for a non-criminal offense, as defined by the law of another state. In addition, it is an unlawful discriminatory practice for an employer to take an adverse action against an employee or applicant based on an arrest or criminal accusation that was followed by a conviction for a violation or non-criminal offense. These provisions do not apply to:

- Police officers or peace officers or other law enforcement personnel as listed in subdivisions 33 and 34 of section 1.20 of the Criminal Procedure Law or persons applying to work at a law enforcement agency as the term is used in article 23-A of the Correction Law; and
- Mandatory forfeiture, disability or a bar to employment imposed by law unless an executive pardon, certificate of relief from disabilities or a certificate of good conduct has been issued.

New subparagraph (5) of paragraph (b) of subdivision 11 of § 8-107 permits the enforcement of these provisions against a public agency through an Article 78 proceeding.

Section six of the bill amends § 8-107(11-a) to incorporate the relevant fair chance factors into the process employers are already required to follow after an offer of employment is made and an applicant is found to have an arrest or conviction record. The bill amends the existing process required in § 8-107(11-a) to require employers, prior to taking any adverse employment action against a current employee due to a criminal conviction or pending arrest or criminal accusation, to carry out the following:

1. Request from the employee information relating to the relevant fair chance factors;
2. Perform an analysis of the relevant fair chance factors and make a determination as to whether there is a direct relationship between the criminal conviction and the employment, or that the continuation of employment would result in an unreasonable risk to the property, safety or welfare of specific individuals or the general public.
3. Provide a written copy of the analysis in writing to the employee; and
4. Provide sufficient time after the analysis is provided for the employee to respond.

The above process does not apply to employees who are entitled to a disciplinary process as set forth in section 75 of the Civil Service Law. It also does not apply if a mandatory forfeiture, disability or bar to employment is imposed by law and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct. It also does not apply to applicants or persons employed as police officers or peace officers as defined in subdivisions 33 and 34 of 1.20 of the Criminal Procedure Law, or those employed at a law enforcement agency as the term is used in article 23-A of the Correction Law.

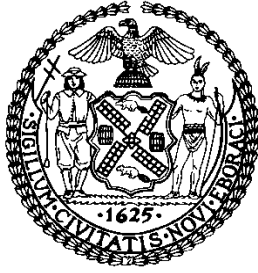
Section 8-107(11-a) is also amended to require the Department of Citywide Administrative Services to provide a written analysis of the relevant fair chance factors to any applicant or employee prior to taking any adverse action.

The prohibition against discrimination based on arrest or criminal records does not apply where any federal, state or local law requires criminal background checks for employment purposes or bars employment based on criminal history, and includes any self-regulatory organization as defined in the Securities Exchange Act of 1934.

Section seven of the bill requires the CCHR to conduct outreach and education directed at public and private employers, and the general public.

If passed, this bill would become law 200 days after its enactment.

**(The following is the text of the Fiscal Impact Statement for Int. No. 1314-A:)**



**THE COUNCIL OF THE CITY OF NEW YORK**

**FINANCE DIVISION**

LATONIA MCKINNEY, DIRECTOR

**FISCAL IMPACT STATEMENT**

**PROPOSED INTRO. NO. 1314-A**

**COMMITTEE:** Civil and Human Rights

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record, pending criminal accusations or criminal convictions.

**Sponsors:** By the Public Advocate Williams, Council Members Adams, Lander, Dromm, Rosenthal, Kallos and Menchaca (by request of the Mayor).

**SUMMARY OF LEGISLATION:** Proposed Intro. No. 1314-A would extend employment protections to individuals with pending adjournments in contemplation of dismissal (ACDs) and convictions of violations prior to sealing. The bill also would prohibit discrimination in licensing against applicants with convictions for violations, even prior to sealing. Additionally, this bill would require an employer to make an individualized assessment of the relationship between the job and a pending criminal case.

**EFFECTIVE DATE:** This local law would take effect 200 days after becoming law.

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

**FISCAL IMPACT STATEMENT:**

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

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

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

**SOURCE OF FUNDS TO COVER ESTIMATED COSTS:** N/A

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

**ESTIMATE PREPARED BY:** Nevin Singh, Financial Analyst

**ESTIMATE REVIEWED BY:** Eisha Wright, Unit Head  
Noah Brick, Assistant Counsel

**LEGISLATIVE HISTORY:** This legislation was introduced to the Council on December 20, 2018 as Intro. No. 1314 and was referred to the Committee on Civil and Human Rights (Committee). The Committee heard the legislation on January 22, 2020 and the legislation was laid over. The legislation was subsequently amended and the amended version, Proposed Intro. No. 1314-A, will be voted on by the Committee at a hearing on December 10, 2020. Upon successful vote by the Committee, Proposed Intro. No. 1314-A will be submitted to the full Council for a vote on December 10, 2020.

**DATE PREPARED:** December 7, 2020.

*Accordingly, this Committee recommends its adoption, as amended.*

**(The following is the text of Int. No. 1314-A:)**

Int. No. 1314-A

By the Public Advocate (Mr. Williams) and Council Members Adams, Lander, Dromm, Rosenthal, Kallos, Menchaca, Reynoso, Ayala, Van Bramer and Rivera (by request of the Mayor).

**A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record, pending criminal accusations or criminal convictions**

*Be it enacted by the Council as follows:*

Section 1. The definition of "employer" in section 8-102 of title 8 of the administrative code of the city of New York, as amended by local law number 172 for the year 2019, is amended, and new definitions of "conditional offer of employment," "public agency" and "relevant fair chance factors" are added to appear in alphabetical order, to read as follows:

*Conditional offer of employment. The term "conditional offer of employment" means an offer of employment, promotion or transfer which may only be revoked based on one of the following:*

- 1. The results of a criminal background check, conducted in accordance with the provisions of this chapter;*
- 2. The results of a medical exam as permitted by the americans with disabilities act of 1990, as amended, 42 U.S.C. §12112; or*
- 3. Other information the employer could not have reasonably known before making the conditional offer if the employer can show as an affirmative defense that, based on the information, it would not have made the offer regardless of the results of the criminal background check.*

**Employer.** For purposes of subdivisions 1, 2, 3, 10, 11-a, and 22, subparagraph 1 of paragraph a of subdivision 21, paragraph e of subdivision 21 and subdivision 23 of section 8-107, the term "employer" does not include any employer that has fewer than four persons in the employ of such employer at all times during the period beginning twelve months before the start of an unlawful discriminatory practice and continuing through the end of such unlawful discriminatory practice, provided however, that in an action for unlawful discriminatory practice based on a claim of gender-based harassment pursuant to subdivision one of section 8-107, the term "employer" shall include any employer, including those with fewer than four persons in their employ. For purposes of this definition, (i) natural persons working as independent contractors in furtherance of an employer's business enterprise shall be counted as persons in the employ of such employer and (ii) the employer's parent, spouse, domestic partner or child if employed by the employer are included as in the employ of such employer.

**Public agency.** *The term "public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.*

**Relevant fair chance factors.** *The term "relevant fair chance factors" means:*

- (i) With respect to arrests or convictions preceding employment, other than arrests or criminal accusations pending at the time of application for employment, the factors set forth in section 753 of the correction law.*

(ii) *With respect to arrests or criminal accusations pending at the time of an application for employment and arrests or convictions that have occurred during employment:*

(a) *the policy of the city, as expressed in this chapter, to overcome stigma toward and unnecessary exclusion of persons with criminal justice involvement in the areas of licensure and employment;*

(b) *the specific duties and responsibilities necessarily related to the employment held by the person;*

(c) *the bearing, if any, of the criminal offense or offenses for which the applicant or employee was convicted, or that are alleged in the case of pending arrests or criminal accusations, on the applicant or employee's fitness or ability to perform one or more such duties or responsibilities;*

(d) *whether the person was 25 years of age or younger at the time of occurrence of the criminal offense or offenses for which the person was convicted, or that are alleged in the case of pending arrests or criminal accusations;*

(e) *the seriousness of such offense or offenses; and*

(f) *the legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public; and*

(g) *any additional information produced by the applicant or employee, or produced on their behalf, in regards to their rehabilitation or good conduct, including history of positive performance and conduct on the job or in the community, or any other evidence of good conduct.*

§ 2. Subparagraph (4) of paragraph (a) of subdivision 9 of section 8-107 of the administrative code of the city of New York, as amended by local law number 63 for the year 2018, is amended to read as follows:

(4) For any person to *make any inquiry in writing or otherwise about, or deny any license, registration or permit to any applicant for, or act adversely upon any holder of a license, registration or permit, by reason of such applicant or holder having been arrested or accused of committing a crime,* when such *inquiry,* denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the executive law.

§ 3. Subparagraph (5) of paragraph (a) of subdivision 9 of section 8-107 of the administrative code of the city of New York is REPEALED and a new subparagraph 5 is added to read as follows:

(5) *Unless specifically required by law, for any person to make any inquiry in writing or otherwise about, or deny any license, registration or permit to any applicant, or act adversely upon any applicant for or holder of a license, registration or permit by reason of:*

(i) *such applicant or holder having a conviction for a violation as defined in section 10.00 of the penal law;*

(ii) *such applicant or holder having been convicted of a non-criminal offense, as defined by a law of another state; or*

(iii) *an arrest or criminal accusation which was followed by a conviction described in this subparagraph.*

(iv) *This subparagraph does not apply to any license, registration, or permit issued by the business integrity commission.*

§ 4. Subdivision 10 of section 8-107 of the administrative code of the city of New York, as amended by local law number 63 for the year 2015, paragraphs (a) and (c) as amended by local law number 63 for the year 2018, is amended to read as follows:

10. [Criminal conviction; employment] *Employment actions based on pending arrests and criminal accusations, and criminal convictions preceding and during employment. (a) Actions prohibited by state law concerning criminal convictions preceding employment. It shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to deny employment to any person or take adverse action against any employee by reason of such person or employee having been convicted of one or more criminal offenses, or by reason of [a] finding the person [of a] lacks [of] "good moral character" [which is] based on such person or employee having been convicted of one or more criminal offenses, when such denial or adverse action is in violation of the provisions of article [23-a] 23-A of the correction law.*

(b) *Criminal convictions during employment. It shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to take adverse action against any employee by reason of such person having been convicted during their employment of one or more criminal offenses, or by reason of finding the person lacks "good moral character" based on such person having been convicted during their employment of one or more criminal offenses, unless, after considering the relevant fair chance factors, the employer determines that either (i) there is a direct relationship between the criminal conviction and the employment held by the person; or (ii) the continuation of the employment would involve an unreasonable risk to property, or to the safety or welfare of specific individuals or the general public.*

(c) *Pending arrests and criminal accusations preceding and during employment. It shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to take adverse action against any applicant or employee based on an arrest or criminal accusation that is pending, or by reason of finding the person lacks "good moral character" based on such a pending arrest or criminal accusation, unless, after considering the relevant fair chance factors, the employer determines that either (i) there is a direct relationship between the alleged wrongdoing that is the subject of the pending arrest or criminal accusation and the employment sought or held by the person; or (ii) the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.*

(d) *For purposes of paragraphs (b) and (c), placing an employee on unpaid leave for a reasonable time while the employer takes the steps described in such paragraphs and subdivision 11-a of this section shall not be deemed to be an adverse action.*

(e) *For purposes of this subdivision, an action that has been adjourned in contemplation of dismissal shall not be considered a pending action unless the order to adjourn in contemplation of dismissal is revoked and the case is restored to the calendar for further prosecution.*

([b]f) [For purposes of this subdivision, "employment" shall not include membership in any law enforcement agency.] *Paragraphs (b) and (c) of this subdivision shall not apply to an applicant for employment or a current employee employed (i) as a police officer or peace officer, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or (ii) at a law enforcement agency as that term is used in article 23-A of the correction law.*

(g) *Nothing in this section shall prevent an employer from taking adverse action against an applicant or employee who is found to have made intentional misrepresentations regarding their arrest or conviction history, provided that such adverse action is not based on a failure to divulge information that a person may not be required to divulge, as provided in subdivision 16 of section 296 of article 15 of the executive law and in subdivision 11 of this section, and provided further that the employer provides the applicant or employee with a copy of the documents that formed the basis of the determination that an intentional misrepresentation was made and gives the person a reasonable time to respond.*

(h) *Paragraphs (b) and (c) shall not apply to public agencies taking adverse action against an employee based upon a pending arrest or criminal accusation that preceded or arose during employment, or convictions that occurred during employment, where the employee is entitled to a disciplinary process as set forth in section 75 of the civil service law, or where the public agency follows a disciplinary process set forth in agency rules or as required by law.*

(i) *The provisions of this subdivision shall not apply where a mandatory forfeiture, disability or bar to employment is imposed by law and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.*

([c]j) [Pursuant to section 755 of the correction law, the] *The provisions of this subdivision shall be enforceable against public agencies by a proceeding brought pursuant to article 78 of the civil practice law and rules, and the provisions of this subdivision shall be enforceable against [private] other employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter 5 of this title. [For purposes of this paragraph only, the terms "public agency" and "private employer" have the meaning given such terms in section 750 of the correction law.]*

§ 5. Subdivision 11 of section 8-107 of the administrative code of the city of New York, as amended by local law number 63 for the year 2018, is amended to read as follows:

11. [Arrest record; employment] *Non-pending arrests and criminal accusations, and dispositions of charges that an employer may not consider. (a) Non-pending arrests and criminal accusations; adjournments in contemplation of dismissal; youthful offender adjudications; convictions sealed pursuant to certain sections of the criminal procedure law. It shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, for any person to[: (a) Deny] make any inquiry in writing or otherwise about, or deny employment to, any applicant or act adversely upon any employee by reason of an arrest of or criminal accusation [of] against such applicant or employee when such inquiry, denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the executive law; or].*

(b) [Make any inquiry in writing or otherwise, regarding any arrest or criminal accusation of an applicant or employee when such inquiry is in violation of subdivision 16 of section 296 of article 15 of the executive law.] *Violations and non-criminal offenses that have not been sealed. (1) It shall be an unlawful discriminatory*



*practice for any employer, employment agency or agent thereof to make any inquiry in writing or otherwise about, or deny employment to any person or take adverse action against any employee, based on the applicant or employee having:*

- (i) been convicted of a violation as defined in section 10.00 of the penal law; or*
- (ii) been convicted of a non-criminal offense, as defined by a law of another state.*

*(2) It shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to make any inquiry in writing or otherwise about, or deny employment to any person or take adverse action against any employee based on an arrest or criminal accusation that was followed by an order or conviction described in subparagraph (1) of this paragraph.*

*(3) The provisions of this paragraph shall not apply to an applicant for employment or a current employee employed (i) as a police officer or peace officer, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or (ii) at a law enforcement agency as that term is used in article 23-A of the correction law.*

*(4) The provisions of this paragraph shall not apply where a mandatory forfeiture, disability or bar to employment is imposed by law and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.*

*(5) The provisions of paragraph (b) shall be enforceable against public agencies by a proceeding brought pursuant to article 78 of the civil practice law and rules, and the provisions of this subdivision shall be enforceable against other employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter 5 of this title.*

§ 6. Subdivision 11-a of section 8-107 of the administrative code of the city of New York, as amended by local law number 63 for the year 2018, is amended to read as follows:

11-a. Arrest and conviction records *preceding and during employment*; employer inquiries *and fair chance process*. (a) In addition to the restrictions in [subdivision] *subdivisions 10 and 11* of this section, it shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to:

(1) Declare, print or circulate or cause to be declared, printed or circulated any solicitation, advertisement or publication, which expresses, directly or indirectly, any limitation, or specification in employment based on a person's arrest or criminal conviction;

(2) Because of any person's arrest or criminal conviction, represent that any employment or position is not available, when in fact it is available to such person; or

(3) Make any inquiry or statement related to the pending arrest or criminal accusation, or criminal conviction record of any person who is in the process of applying for *a position* [employment] with such employer or agent thereof until after such employer or agent thereof has extended a conditional offer of employment to the applicant. For purposes of this subdivision, with respect to an applicant for temporary employment at a temporary help firm as such term is defined by subdivision 5 of section 916 of article 31 of the labor law, an offer to be placed in the temporary help firm's general candidate pool shall constitute a conditional offer of employment. For purposes of this subdivision, "any inquiry" means any question communicated to an applicant in writing or otherwise, or any searches of publicly available records or consumer reports that are conducted for the purpose of obtaining an applicant's criminal background information, and "any statement" means a statement communicated in writing or otherwise to the applicant for purposes of obtaining an applicant's criminal background information regarding: (i) an arrest record; (ii) a conviction record; or (iii) a criminal background check.

(b) After extending an applicant a conditional offer of employment, an employer, employment agency or agent thereof may inquire about the applicant's arrest or conviction record if before taking any adverse employment action based on such inquiry, the employer, employment agency or agent thereof:

(i) Provides a written copy of the inquiry to the applicant in a manner to be determined by the commission;

(2) *Requests from the applicant information relating to the relevant fair chance factors;*

(ii) Performs an analysis [of the applicant under article 23-a of the correction law] *as required by paragraphs (a) and (c) of subdivision 10 of this section;*

(4) [and provides] *Provides* a written copy of such analysis to the applicant in a manner to be determined by the commission, which shall include but not be limited to supporting documents that formed the basis for an adverse action based on such analysis and the employer's or employment agency's reasons for taking any adverse action against such applicant; and

(iii)5 After giving the applicant the inquiry and analysis in writing [pursuant to subparagraphs (1) and (2) of this paragraph], allows the applicant a reasonable time to respond, which shall be no less than [three] five business days and during this time, holds the position open for the applicant.

(c) *Before taking any adverse employment action against a current employee based on a criminal conviction, or pending arrest or criminal accusation, the employer, employment agency or agent thereof shall:*

(1) *Request from the employee information relating to the relevant fair chance factors;*

(2) *Perform an analysis as required by paragraphs (b) and (c) of subdivision 10 of this section;*

(3) *Provide a written copy of such analysis to the employee in a manner to be determined by the commission, which shall include but not be limited to supporting documents that formed the basis for an adverse action based on such analysis and the employer's or employment agency's reasons for taking any adverse action against such employee; and*

(4) *After giving the employee the inquiry and analysis in writing, allow the employee a reasonable time to respond before taking adverse action.*

(d) *Paragraph (c) of this subdivision shall not apply:*

(1) *If a public agency takes adverse action against an employee based upon a pending arrest or criminal accusation that preceded or arose during employment or a conviction that occurred during employment, where the employee is entitled to a disciplinary process as set forth in section 75 of the civil service law, or where the public agency follows a disciplinary process set forth in agency rules or as required by law; or*

(2) *If a mandatory forfeiture, disability or bar to employment is imposed by law and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.*

(c)e Nothing in this subdivision shall prevent an employer, employment agency or agent thereof from taking adverse action against any employee or denying employment to any applicant for reasons other than such employee or applicant's arrest or criminal conviction record.

(d)f An applicant shall not be required to respond to any inquiry or statement that violates paragraph (a) of this subdivision and any refusal to respond to such inquiry or statement shall not disqualify an applicant from the prospective [employment] position.

(e) This subdivision shall not apply to any actions taken by an employer or agent thereof pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history. For purposes of this paragraph federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in section 3(a)(26) of the securities exchange act of 1934, as amended.]

(g) This subdivision shall not apply to any actions taken by an employer or agent thereof [ with regard to an applicant for employment]:

(1) [As] *With regard to an applicant for employment or a current employee employed as a police officer or peace officer, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or at a law enforcement agency as that term is used in article [23-a] 23-A of the correction law, including but not limited to the police department, the fire department, the department of correction, the department of investigation, the department of probation, the division of child protection and the division of youth and family [services] justice of the administration for children's services, the business integrity commission, and the district attorneys' offices; or*

(2) *With regard to an applicant for employment or a current employee employed in any position listed in the determinations of personnel published as a commissioner's calendar item and listed on the website of the department of citywide administrative services upon a determination by the commissioner of citywide administrative services that the position involves law enforcement, is susceptible to bribery or other corruption, or entails the provision of services to or safeguarding of persons who, because of age, disability, infirmity or other condition, are vulnerable to abuse. If the [department] employer takes adverse action against any applicant or employee based on the [applicant's] person's arrest or criminal conviction record, it shall provide to the person a written copy, [of such analysis performed under article 23-a of the correction law to the applicant] in a form and manner to be determined by the department, of an analysis considering the relevant fair chance factors and concluding that either (i) there is a direct relationship between criminal history or alleged wrongdoing and the employment sought or held by the person; or (ii) the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public; or*

(3) Pursuant to any federal, state or local law requiring criminal background checks for employment purposes or barring employment based on criminal history. For purposes of this paragraph federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in section 3(a)(26) of the securities exchange act of 1934, as amended.

([g]h) The provisions of this subdivision shall be enforceable against public agencies by a proceeding brought pursuant to article 78 of the civil practice law and rules, and the provisions of this subdivision shall be enforceable against private employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter 5 of this title. [For purposes of this paragraph only, the terms "public agency" and "private employer" shall have the meaning given such terms in section seven hundred fifty of the correction law.]

§ 7. The commission on human rights shall engage in outreach and education efforts regarding the rights of current and prospective employees, and the responsibilities of employers, established by this local law. Such outreach and education shall be directed at public and private employers, and the general public.

§ 8. This local law shall take effect 200 days after its enactment, provided, however, that the commissioner shall take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

MATHIEU EUGENE, *Chairperson*; DANIEL DROMM, BRADFORD S. LANDER, INEZ D. BARRON, BILL PERKINS; Committee on Civil and Human Rights, December 10, 2020. *Others Attending: The Public Advocate (Mr. Williams).*

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

## **Report of the Committee on Consumer Affairs and Business Licensing**

Report for Int. No. 1170-A

**Report of the Committee on Consumer Affairs and Business Licensing in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to requiring businesses to notify customers of the use of biometric identifier technology and prohibiting the sale of biometric identifier information.**

The Committee on Consumer Affairs and Business Licensing, to which the annexed proposed amended local law was referred on October 17, 2018 (Minutes, page 3898), respectfully

### **REPORTS:**

#### **I. INTRODUCTION**

On December 10, 2020, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Andrew Cohen, held a remote vote on Proposed Int. No. 1170-A, in relation to requiring businesses to notify customers of the use of biometric identifier technology, and prohibiting the sale of biometric identifier information. The Committee heard testimony on a previous version of this bill at a joint hearing in October 2019, where the Departments of Information Technology and Telecommunications, and Consumer and Worker Protection, chambers of commerce, advocacy groups, community-based non-profit organizations, and other interested members of the public provided feedback on this bill. At the vote on December 10, the Committee voted 6 in favor, 0 opposed and 0 abstentions on the bill.

## II. BACKGROUND

### Biometric and Facial Recognition Technology

As with all technology, that used to identify individuals is rapidly evolving, and used for a variety of both security and for-profit purposes. Biometric identification techniques have expanded from simply revealing basic physical attributes to now include fingerprint, iris and retinal scans, voice recognition, DNA tests, and facial recognition.<sup>1</sup> Additionally, biometric identification methods are expanding in real-time to include measures, such as brain signal identification, and heart pattern and finger vein pattern recognition.<sup>2</sup>

Typically, there are two main classes of biometrics data that can be collected in order to identify an individual: (1) behavioral characteristics; and (2) physiological characteristics.<sup>3</sup> Behavioral characteristics concern the behavior of an individual, while physiological characteristics concern the shape or composition of the body. Behavioral biometrics include an individual's keystroke, signature and voice recognition.<sup>4</sup> Physiological biometrics include facial recognition, fingerprint and iris scanning, hand geometry, and DNA.<sup>5</sup> Facial recognition systems use an individual's physiological information such as facial structure, eye color, size and shape.<sup>6</sup>

Facial recognition technology can identify an individual from a digital image by comparing and analyzing facial patterns.<sup>7</sup> This technology can also compare live captures of individuals or their digital image data to the record of the individual that is stored in the database.<sup>8</sup> Facial recognition technology involves scanning a particular area. Person's faces within a 35-degree angle of the camera can be extracted from the people in the monitored area.<sup>9</sup> Rapidly, facial characteristics, or nodal points, may be identified and recorded. Nodal points include such characteristics as depth of eye sockets, distance between eyes, and width of nose. Once these points have been identified, the nodal point measurements are turned into a comprehensive numerical code, which is called a faceprint. Within a minute, millions of faceprints can be compared to a database of stored faceprints.<sup>10</sup> Different facial recognition systems use slightly different methods.<sup>11</sup>

Facial recognition technology allows for: (1) facial classification, by classifying the face into categories such as an estimation of gender, age or race; (2) verification, by comparing the similarity of previously stored faceprint of any particular individual to a new faceprint and establishing a confidence score that the two individuals are the same; and (3) identification, by comparing a person's facial image to a database of stored faceprints.<sup>12</sup>

<sup>1</sup> Center for Global Development, *Biometrics FAQs*, CGD, 2019, available at: <https://www.cgdev.org/page/biometrics-faqs>.

<sup>2</sup> Li, Cha and Tappert *Biometric Distinctiveness of Brain Signals Based on EEG*, 2018 IEEE 9th International Conference on Biometrics Theory, Applications and Systems (BTAS), Redondo Beach, CA, USA, pp. 1-6 (2018); R. Palaniappan, and S. M. Krishnan, *Identifying individuals using ECG signals*, Proceedings of International Conference on Signal Processing and Communications, Bangalore, India, pp. 569-572, 11-14 (2004); Mulyono, David & Horng, Shi-Jinn. A study of finger vein biometric for personal identification (2008).

<sup>3</sup> Angelica Carrero, *Biometrics and Federal Databases: Could You Be in It?*, 51 J. Marshall L. Rev. 589, 589-92 (2018) (citing Margaret Rouse, Biometrics, [www.searchsecurity.techtarget.com/definition/biometrics](http://www.searchsecurity.techtarget.com/definition/biometrics); see generally What is Biometrics?, IDEMIA, [www.morpho.com/en/biometrics](http://www.morpho.com/en/biometrics))

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Tarun Agarwal, *Biometric Sensors—Types and Its Workings*, ELPROCUS, [www.elprocus.com/different-types-biometric-sensors/](http://www.elprocus.com/different-types-biometric-sensors/).

<sup>8</sup> See *supra*, note 3.

<sup>9</sup> Kanya A. Bennett, *Can Facial Recognition Technology Be Used to Fight the New Way against Terrorism: Examining the Constitutionality of Facial Recognition Surveillance Systems*, 3 N.C. J.L. & Tech. 151 (2001) (citing Kevin Bonsor, *How Facial Recognition Works*, at <http://www.howstuffworks.com/facial-recognition.htm>).

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Elias Wright, *The Future of Facial Recognition Is Not Fully Known: Developing Privacy and Security Regulatory Mechanisms for Facial Recognition in the Retail Sector*, 29 Fordham Intell. Prop. Media & Ent. L.J. 611, 621 (2019) (citing Federal Trade Commission, Facing Facts: Best Practices for Common Uses of Facial Recognition Technologies, 4-5 (2012)).

## The Use of Facial Recognition Technologies

### Retail Sector

Facial recognition is a rapidly growing biometric technology used in the retail sector.<sup>13</sup> From a business and marketing perspective, facial recognition is viewed as an important tool in the toolbox of “the future of shopping,” with retailers readily experimenting with its potential. For example, services such as FaceFirst offer facial recognition technology specifically targeted towards retailers using “surveillance...and an underlying software platform that leverages artificial intelligence to [prevent] theft, [fraud,]...and...violence.”<sup>14</sup> FaceFirst can scan faces as far as 50 to 100 feet away.<sup>15</sup> When a person walks through a store's entrance, a video camera captures multiple images of the shopper, selects the clearest one and adds the shopper's picture to the store's client database.<sup>16</sup> FaceFirst software compares that image with other images in its database. If a match occurs, either recognizing the shopper as a suspected shoplifter or important client, the software can alert store employees within seconds of the person's entrance into the store. After being added to the database, the software can recognize the customer on each subsequent visit to the store. Similarly, retailers can pre-set pictures of individuals they wish to track in the system such as individuals suspected of burglaries based on information from nearby stores or police records.<sup>17</sup>

In 2015, Walmart tested a system that scanned the faces of all individuals entering several of its stores; the system could identify suspected shoplifters, and instantly alert store security on their mobile devices.<sup>18</sup> Target is another large retailer that tested facial recognition software, “in a small number of Target stores to understand its ability to help prevent fraud and theft.”<sup>19</sup> In March of 2018, the American Civil Liberties Union (ACLU) reached out to 20 of the biggest stores in the United States to ask if they use facial recognition technology: the resulting report stated that “of the 20 companies...contacted, only one was willing to tell [the ACLU] that they don't use it.”<sup>20</sup>

Although many facial recognition products presently on the market focus on increasing security, customer engagement and marketing capabilities might be the true value for some retailers in the future. Facial recognition can be used by retailers to connect online with offline behaviors,<sup>21</sup> provide more in-depth market demographics

<sup>13</sup> A recent study found that facial recognition is likely to generate revenue of \$9.78 billion by 2023, growing at a compounded annual growth rate of 16.81% between 2017 and 2023; *Global Facial Recognition Market Report 2018*, Cision: PR Newswire (June 5, 2018), <https://www.prnewswire.com/news-releases/global-facial-recognition-market-report-2018-300660163.htm>; Elias Wright, *The Future of Facial Recognition Is Not Fully Known: Developing Privacy and Security Regulatory Mechanisms for Facial Recognition in the Retail Sector*, 29 Fordham Intell. Prop. Media & Ent. L.J. 611, 685 (2019).

<sup>14</sup> Nick Coult, *Facial Recognition Software: Coming Soon to Your Local Retailer?*, Crime Rep. (Apr. 23, 2018), <https://thecrimereport.org/2018/04/23/facial-recognition-software-coming-soon-to-your-local-retailer>; Elias Wright, *The Future of Facial Recognition Is Not Fully Known: Developing Privacy and Security Regulatory Mechanisms for Facial Recognition in the Retail Sector*, 29 Fordham Intell. Prop. Media & Ent. L.J. 611, 685 (2019).

<sup>15</sup> See Chris Burt, *FaceFirst Facial Recognition Coming to Thousands of U.S. Retail Locations*, Biometric Update, Aug. 21, 2018, <https://www.biometricupdate.com/201808/facefirst-facial-recognition-coming-to-thousands-of-u-s-retail-locations>; Vincent Nguyen, *Shopping for Privacy: How Technology in Brick-and-Mortar Retail Stores Poses Privacy Risks for Shoppers*, 29 Fordham Intell. Prop. Media & Ent. L.J. 535, 569 (2019).

<sup>16</sup> See David Lumb, *Is Facial Recognition The Next Privacy Battleground?*, Fast Co. , Jan. 26, 2015, <http://www.fastcompany.com/3040375/is-facial-recognition-the-next-privacy-battleground>; Vincent Nguyen, *Shopping for Privacy: How Technology in Brick-and-Mortar Retail Stores Poses Privacy Risks for Shoppers*, 29 Fordham Intell. Prop. Media & Ent. L.J. 535, 569 (2019).

<sup>17</sup> Vincent Nguyen, *Shopping for Privacy: How Technology in Brick-and-Mortar Retail Stores Poses Privacy Risks for Shoppers*, 29 Fordham Intell. Prop. Media & Ent. L.J. 535, 543–44 (2019).

<sup>18</sup> Chris Frey, *Revealed: How Facial Recognition Has Invaded Shops--and Your Privacy*, The Guardian, (Mar. 3, 2016), <https://www.theguardian.com/cities/2016/mar/03/revealed-facial-recognition-software-infiltrating-cities-saks-toronto>; see also Sapna Maheshwari, *Stores See a Future Without “May I Help You?” (They'll Already Have Your Data)*, N.Y. Times (Mar. 10, 2019), <https://www.nytimes.com/2019/03/10/business/retail-stores-technology.html>; Elias Wright, *The Future of Facial Recognition Is Not Fully Known: Developing Privacy and Security Regulatory Mechanisms for Facial Recognition in the Retail Sector*, 29 Fordham Intell. Prop. Media & Ent. L.J. 611, 685 (2019).

<sup>19</sup> Jenna Reck, a Target spokesperson, Leticia Miranda, *Thousands of Stores Will Soon Use Facial Recognition, And They Won't Need Your Consent*, BuzzFeedNews, August 17, 2018, <https://www.buzzfeednews.com/article/leticiamiranda/retail-companies-are-testing-out-facial-recognition-at>.

<sup>20</sup> *Are Stores Who Shop at Secretly Using Face Recognition on You?* March 28, 2019, ACLU, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/are-stores-you-shop-secretly-using-face>.

<sup>21</sup> This approach is called omnichannel.

and track in-store product engagement. With this omnichannel approach, retailers can track “aggregated bits of data collected through loyalty programs, point of sale records and other sources.”<sup>22</sup>

Further, by using multiple tracking technologies, retailers might manipulate the availability, cost and appeal of an item.<sup>23</sup> This type of pricing, in part, uses existing customer information to determine the ideal cost that a shopper will spend on a particular item. Consumers provide retailers with this information “whenever they make a credit card purchase[,]...use free e-mail services, surf [the Internet] for information[,] or engage in social media.”<sup>24</sup> Moreover, retailers can purchase the data obtained by social media platforms, such as shoppers' e-mail addresses and other personal information.<sup>25</sup> This information enables retailers “to develop a broad picture about a consumer, such as identifying that the individual owns a house, runs marathons, eats healthy food, has a premium bank card, and is good in financial health.”<sup>26</sup>

### Entertainment Venues

The use of facial recognition technology at entertainment venues dates to at least the early 2000s. In January 2001, facial recognition technology was installed at the Raymond James Stadium by the Tampa Police Department to scan the faces of Super Bowl attendees.<sup>27</sup> Since then, this technology has proliferated and is now used at several entertainment venues, including Madison Square Gardens and Barclays Center.<sup>28</sup> In 2018, Live Nation and Ticketmaster invested in Blink Identity, a company that specializes in military-grade facial recognition software.<sup>29</sup>

The details surrounding how this technology will be used are closely guarded, but venues claim that the technology is needed for security and operational purposes to determine who may enter the premises.<sup>30</sup> For example, some artists, like Taylor Swift, reportedly use this technology at concerts to track stalkers.<sup>31</sup> Venues also use this technology to identify employees and vendors.<sup>32</sup> In Brooklyn, the Barclays Center has teamed up with IDEMIA, which manages the Transportation Security Administration's PreCheck program, to offer expedited entry lines.<sup>33</sup> Similarly, Live Nation claims that they intend to use the technology to improve the customer experience by linking tickets to faces and offering tailored services.<sup>34</sup>

It is unclear how the data collected through facial recognition technology is managed and stored by entertainment venues. Facial recognition technology can often determine the age range and likely gender of concertgoers.<sup>35</sup> Technology experts warn that this data could be collected and sold to third parties for marketing

<sup>22</sup> See *supra*, note 18.

<sup>23</sup> Stephanie Pandolph, *Shoppers Expect More Personalization*, Bus. Insider, Oct. 26, 2017, <https://www.businessinsider.com/shoppers-expect-more-personalization-2017-10>; Victoria Greene, *7 Examples of Big Data Personalization*, Big Data, Oct. 11, 2018, <https://bigdata-madesimple.com/7-examples-of-big-data-retail-personalization/>; Vincent Nguyen, *Shopping for Privacy: How Technology in Brick-and-Mortar Retail Stores Poses Privacy Risks for Shoppers*, 29 Fordham Intell. Prop. Media & Ent. L.J. 535, 569 (2019).

<sup>24</sup> Akiva A. Miller, *What Do We Worry About When We Worry About Price Discrimination? The Law and Ethics of Using Personal Information for Pricing*, 19 J. Tech. L. & Pol'y 43, 91 (2014); Vincent Nguyen, *Shopping for Privacy: How Technology in Brick-and-Mortar Retail Stores Poses Privacy Risks for Shoppers*, 29 Fordham Intell. Prop. Media & Ent. L.J. 535, 569 (2019).

<sup>25</sup> Vincent Nguyen, *Shopping for Privacy: How Technology in Brick-and-Mortar Retail Stores Poses Privacy Risks for Shoppers*, 29 Fordham Intell. Prop. Media & Ent. L.J. 535, 569 (2019); Seth Schoen, *New Cookie Technologies: Harder to See and Remove, Widely Used to Track You*, Elec. Frontier Found, Sept. 14, 2009, <https://www.eff.org/deeplinks/2009/09/new-cookie-technologies-harder-see-and-remove-wide>.

<sup>26</sup> *Id.*

<sup>27</sup> Robert H. Thornburg, *Face Recognition Technology: The Potential Orwellian Implications and Constitutionality of Current Uses Under the Fourth Amendment*, 20 J. Marshall J. Computer & Info. L. 321 (Winter 2002).

<sup>28</sup> Kevin Draper “Madison Square Garden Has Used Face-Scanning Technology on Customers”, *New York Times*, March 13, 2018, available at: <https://www.nytimes.com/2018/03/13/sports/facial-recognition-madison-square-garden.html>.

<sup>29</sup> Maggie Serota “Ticketmaster Explores Replacing Tickets With Facial Recognition”, *Spin Magazine*, May 8, 2018, available at: <https://www.spin.com/2018/05/ticketmaster-facial-recognition-blink-live-nation/>.

<sup>30</sup> See *supra*, note 28.

<sup>31</sup> Steven Knopper “Why Taylor Swift Is Using Facial Recognition at Concerts”, *Rolling Stone*, December 13, 2018, available at: <https://www.rollingstone.com/music/music-news/taylor-swift-facial-recognition-concerts-768741/>.

<sup>32</sup> See *supra*, note 28.

<sup>33</sup> *Id.*

<sup>34</sup> See *supra*, note 29.

<sup>35</sup> See *supra*, note 29.

purposes without the consent of consumers.<sup>36</sup> Several artists and activists have begun to speak out on the use of the technology. Fight For the Future, a nonprofit digital rights group, is campaigning to ban facial recognition software as a law enforcement tool, and recently launched a campaign against the use of the technology at concerts and festivals.<sup>37</sup> Tom Morello, of Rage Against the Machine, Amanda Palmer, Downtown Boys, Anti-Flag, and others have spoken up in support of the campaign.<sup>38</sup> Some musicians have expressed concerns that the technology will be used to target undocumented immigrants.<sup>39</sup> In response, several music festivals (including the Governor's Ball, in New York City, Bonnaroo in Tennessee, Punk Rock Bowling, in Las Vegas, Electric Forest in Michigan and Austin City Limits) announced they would cease using the technology.<sup>40</sup>

### Casinos

Notably, casinos began using facial recognition technology years ago.<sup>41</sup> The technology was introduced as far back as 1994 at the Bally's Las Vegas Hotel and Casino in Las Vegas, Nevada, but the technology at that time was not advanced enough to follow a person or to identify faces unless the person looked straight at the camera.<sup>42</sup> By the early 2000s, facial recognition had become a staple at casinos and today the technology has advanced enough that some casino owners boast they can identify someone through facial recognition with 55 percent accuracy, despite the person's face being obscured with "a hat, scarf, and glasses," and sixty-nine percent accuracy "when just glasses were removed."<sup>43</sup>

### Concerns Related to Facial Recognition Technology

#### Technological Limitations

Facial recognition technology is an evolving scientific and diagnostic tool and, therefore is limited in its accuracy and reliability. Factors that can affect proper identification are poor image quality, unusual poses or facial expressions, the age of the photograph, and the race, ethnicity and gender of the person.

Although facial recognition software companies generally claim high accuracy rates, the technology has not been able to overcome its algorithmic biases that tend to misidentify women and people of color in higher proportions. Studies consistently show that facial recognition technologies underperform when aiming to identify people of color, women and non-binary people.<sup>44</sup> This is clearly illustrated in the graph below, which tested the accuracy rates of different facial recognition software. The results show that facial recognition technologies are far-less accurate when the image is of a dark-skinned female.<sup>45</sup>

<sup>36</sup> Wendy Mesley "The Weekly Briefing: Interview with Takara Small" *CBC News*, May 20, 2018, available at: <https://www.youtube.com/watch?v=6lpHzPMcA10>.

<sup>37</sup> Amanda Gersten "Musicians and Activists Speak Out Against Ticketmaster's Investment in Facial Recognition Technology", *Paste Magazine*, September 10, 2019, available at: <https://www.pastemagazine.com/articles/2019/09/musicians-and-activists-speak-out-against-ticketma.html>.

<sup>38</sup> *Id.*

<sup>39</sup> Dan Reilly "Musicians and Fans Unite to Keep Facial Recognition Tech Out of Concerts", *Fortune Magazine*, September 30, 2019, available at: <https://fortune.com/2019/09/30/ban-facial-recognition-live-events-music-festivals-concerts/>.

<sup>40</sup> *Id.*; Ben Kaye "Bonnaroo Electric Forest, Austin City Limits Festivals Say They Won't Use Facial Recognition Tech", *Consequence of Sound*, September 30, 2019, available at: <https://consequenceofsound.net/2019/09/bonnaroo-electric-forest-austin-city-limit-festivals-facial-recognition/>.

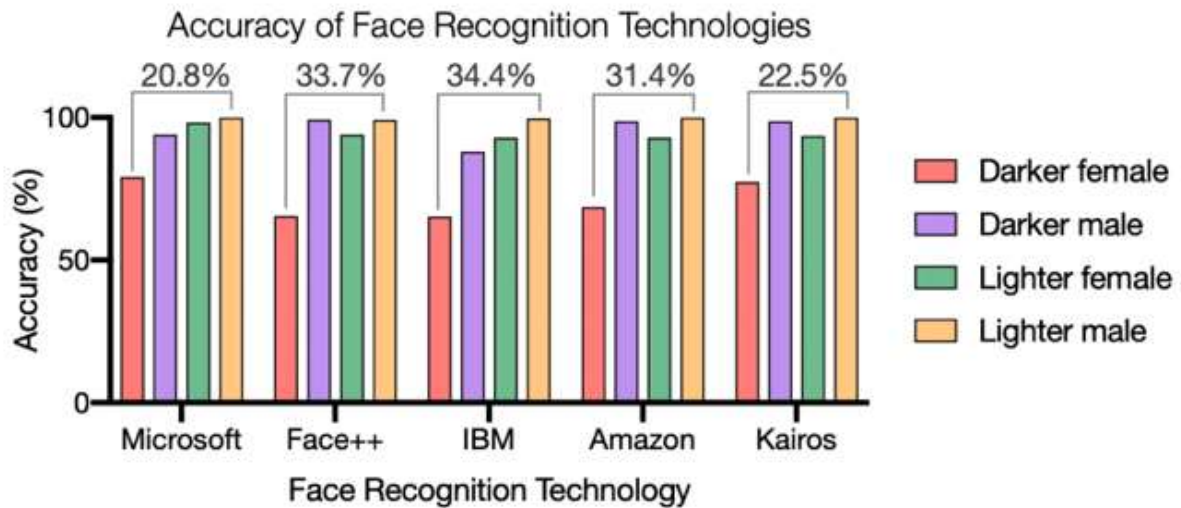
<sup>41</sup> See Dan Koepfel, *Casino Hackers*, CNN, Oct. 23, 2006, <http://www.cnn.com/2006/TECH/07/13/popsi.gambling/>; Stacy Norris, "... and the Eye in the Sky Is Watching Us All" - *the Privacy Concerns of Emerging Technological Advances in Casino Player Tracking*, 9 UNLV GAMING L.J. 269, 291 (2019).

<sup>42</sup> Stacy Norris, "... and the Eye in the Sky Is Watching Us All" - *the Privacy Concerns of Emerging Technological Advances in Casino Player Tracking*, 9 UNLV GAMING L.J. 269, 291 (2019) (citing Jamie Condliffe, *Facial recognition is getting incredibly powerful, and even more controversial*, *Bus. Insider*, Sept. 8, 2017, <http://www.businessinsider.com/facial-recognition-controversy-improvement-2017-9>).

<sup>43</sup> *Id.*

<sup>44</sup> See for example: Drew Harwell "Federal study confirms racial bias of many facial-recognition systems, casts doubt on their expanding use", *Washington Post*, December 19, 2019, available at: <https://www.washingtonpost.com/technology/2019/12/19/federal-study-confirms-racial-bias-many-facial-recognition-systems-casts-doubt-their-expanding-use/>.

<sup>45</sup> Alex Najibi "Racial discrimination in face recognition technology", *Harvard University*, October 24, 2020, available at: <http://sitn.hms.harvard.edu/flash/2020/racial-discrimination-in-face-recognition-technology/>.



Such errors can be particularly damaging for individuals who are mistakenly entered into a criminal database, for example, of supposed shoplifters. This was the alleged case for student Ousmane Bah, who is suing Apple for \$1 billion. Bah claims that his name was mistakenly linked to the face of a thief who stole products from an Apple store. The flawed facial recognition hit resulted in the NYPD arriving at Bah's home to arrest him for crimes he had no part in.<sup>46</sup>

Issues pertaining to the accurate identification of an individual occur when the photos being matched are not taken in a controlled environment or do not necessarily meet the optimal standards for facial recognition software to operate most accurately.<sup>47</sup> In other words, when an individual has his or her face partially obscured, or is facing to the side rather than the front, or the lighting is not proper, the verification will be less reliable.<sup>48</sup> Since the outbreak of COVID-19, mask wearing is encouraged, particularly in an indoor/outdoor retail environment or public gathering, throwing into question whether this will further affect the accuracy of this technology. So far, results have been mixed.<sup>49</sup>

Moreover, even uses of facial recognition technology in controlled environments raise significant concerns about accuracy, especially for women, children, African Americans and Asians for whom the existing facial recognition algorithms are known to be less accurate.<sup>50</sup> For example, a New Zealand man of Asian descent had his passport photograph rejected when facial recognition software mistakenly registered his eyes as being closed.<sup>51</sup> The automated system told the 22-year-old engineering student that the photo (illustrated below) was invalid because his eyes were closed, even though they were clearly open.<sup>52</sup>

<sup>46</sup> Sigal Samuel "The growing backlash against facial recognition tech", *Vox*, April 27, 2019, available at: <https://www.vox.com/future-perfect/2019/4/27/18518598/ai-facial-recognition-ban-apple-amazon-microsoft>.

<sup>47</sup> Kristine Hamann & Rachel Smith, *Facial Recognition Technology Where Will It Take Us?*, Crim. Just., Spring 2019, at 9, 10.

<sup>48</sup> See *supra*, note 3.

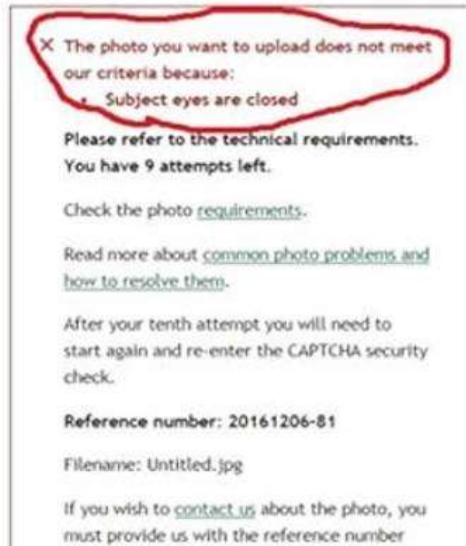
<sup>49</sup> Alfred Ng "Facial recognition designed to detect around face masks is failing, study finds", *CNET*, August 26, 2020, available at: <https://www.cnet.com/health/facial-recognition-designed-to-detect-around-face-masks-is-failing-study-finds/>.

<sup>50</sup> Mariko Hirose, *Privacy in Public Spaces: The Reasonable Expectation of Privacy Against the Dragnet Use of Facial Recognition Technology*, 49 Conn. L. Rev. 1591, 1596–98 (2017).

<sup>51</sup> James Regan, *New Zealand Passport Robot Tells Applicant of Asian Descent to Open Eyes*, Reuters, December 7, 2016, <https://www.reuters.com/article/us-newzealand-passport-error/new-zealand-passport-robot-tells-applicant-of-asian-descent-to-open-eyes-idUSKBN13W0RL>.

<sup>52</sup> *Id.*





### Data Breaches and Cyber Security

As the use of facial recognition technology becomes more widespread it can give individuals or businesses the ability to identify almost any person who goes out into public places, surreptitiously or otherwise, tracking movement, location and conduct. This could result in the creation of numerous private and public databases of information, which may be sold, shared or used in ways that the consumer does not necessarily understand or consent to. These databases are vulnerable to security failures and breaches, information leaks by careless or corrupt employees, hackers, or even foreign intelligence agency break-ins.<sup>53</sup>

Biometric information is based on a unique physiological characteristic making it naturally stable and difficult to artificially alter.<sup>54</sup> Biometric information is part of a person's identity. Unlike a password, this information cannot be readily changed. So, for example, if cybercriminals access biometric data — fingerprints, retina, facial or voice — they gain information that can be permanently linked to an identity. Such potential damage could be irreversible.

Biometric data is often collected and stored in large databases that, if not properly protected, are susceptible to hacking. For example, last year, researchers discovered a severe vulnerability in the biometric databases of a company called Suprema, which contained the fingerprints of over one million people, as well as facial recognition information, unencrypted usernames and passwords, and personal information of employees of various clients of the company.<sup>55</sup> These clients included the British Metropolitan Police Service, defense contractors and banks. Suprema describes itself as a "global Powerhouse in biometrics, security and identity solutions," with a product range that "includes biometric access control systems, time and attendance solutions, fingerprint live scanners, mobile authentication solutions and embedded fingerprint modules."<sup>56</sup> Suprema's

<sup>53</sup> Sharon Nakar, Dov Greenbaum "Now You See Me. Now You Still Do: Facial Recognition Technology and the Growing Lack of Privacy", 23 B.U. J. Sci. & Tech. L. 88, 109 (2017).

<sup>54</sup> See, e.g., Arielle Pardes "Facial Recognition Tech Is Ready for Its Post-Phone Future", *Wired*, September 10, 2018, available at: <https://www.wired.com/story/future-of-facial-recognition-technology/>.

<sup>55</sup> Josh Taylor "Major Breach Found in Biometrics System Used by Banks, UK Police and Defence Firms", *The Guardian*, August 14, 2019, available at: <https://www.theguardian.com/technology/2019/aug/14/major-breach-found-in-biometrics-system-used-by-banks-uk-police-and-defence-firms>.

<sup>56</sup> Zak Doffman "New Data Breach Has Exposed Millions of Fingerprint and Facial Recognition Records: Report", *Forbes*, August 14, 2019, available at: <https://www.forbes.com/sites/zakdoffman/2019/08/14/new-data-breach-has-exposed-millions-of-fingerprint-and-facial-recognition-records-report/#7309aded46c6>; and "Report: Data Breach in Biometric Security Platform Affecting Millions of Users", August 14, 2019, available at: <https://www.vpnmentor.com/blog/report-biostar2-leak/>.

system was designed to provide centralized control for access to secure facilities like warehouses or office buildings.<sup>57</sup>

### Privacy-related Issues

In addition to concerns about data breaches, facial recognition technology also raises a number of privacy concerns. “Unlike other biometric identifiers such as iris scans and fingerprints, facial recognition is designed to operate at a distance, without the knowledge or consent of the person being identified. Individuals cannot reasonably prevent themselves from being identified by cameras that could be anywhere....”<sup>58</sup>

In New York City, as well as many other municipalities, establishments frequently do not inform customers that facial recognition software is being used, and it is unclear what companies or businesses do with the data once it is collected. Information on customers, their behaviors and their purchasing histories can be valuable, and there have been numerous incidents of companies collecting this information and either selling it to, or having it harvested by third parties, without the knowledge or consent of consumers. The most recent high-profile case where these practices were employed involved Facebook and the political consulting firm Cambridge Analytica that closed its operations in 2018. It was reported that Cambridge Analytica had harvested information from 50 million Facebook profiles to gather data on voters for its clients involved in the pro-Brexit campaign and Donald Trump’s election.<sup>59</sup> In a similar situation, consumers of the photo storage application Ever, found their images were being used without their explicit consent. The Ever app was marketed and used a cloud-based photo storage system. However, the company then used these photos to develop their own facial recognition software, which they then sold to law enforcement, the military and private companies.<sup>60</sup>

In Illinois, where legislation mandates that companies inform customers that there is facial recognition technology in use and obtain customers’ consent before it can be used on them, a class action lawsuit is being brought against Macy’s department stores. According to the complainant, Macy’s, using a program called Clearview, “is “actively profiting” off information gleaned from the biometric data through improved security and marketing.”<sup>61</sup> The Clearview database of faces has been created by the company collating images from people’s social media posts, and allows businesses to analyze photos and videos of their customers, captured on in-store surveillance, against the database, in order to identify their customers.<sup>62</sup> According to leaked documents, Walmart, Kohl’s, Bank of America, Wells Fargo and a number of government agencies also use Clearview.<sup>63</sup> In November this year, the Los Angeles Police Department banned the use of commercial software, such as Clearview. Now, facial recognition searches can only be run against the database of booking photos, rather than datasets gleaned from social media.<sup>64</sup>

Other government agencies have been accused of mining personal biometric data. For example, earlier this year the *New York Times* reported that Immigration and Customs Enforcement (ICE) used facial recognition software to mine state driver’s license databases.<sup>65</sup> ICE is also reportedly using the Clearview software discussed

<sup>57</sup> See *supra*, note 55.

<sup>58</sup> Sharon Nakar, Dov Greenbaum “Now You See Me. Now You Still Do: Facial Recognition Technology and the Growing Lack of Privacy”, 23 B.U. J. Sci. & Tech. L. 88, 96 (2017).

<sup>59</sup> Carole Cadwalladr, *Revealed: 50 Million Facebook Profiles Harvested For Cambridge Analytica In Major Data Breach*, The Guardian, March 17, 2018, <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.

<sup>60</sup> Olivia Solon and Cyrus Farivar, *Millions of People Uploaded Photos To The Ever App. Then The Company Used Them To Develop Facial Recognition Tools*, NBC News, May 9, 2019, <https://www.nbcnews.com/tech/security/millions-people-uploaded-photos-ever-app-then-company-used-them-n1003371>.

<sup>61</sup> Robert Channick “Macy’s hit with privacy lawsuit over alleged use of controversial facial recognition software”, *Chicago Tribune*, August 11, 2020, available at: <https://www.chicagotribune.com/business/ct-biz-macys-lawsuit-clearview-facial-recognition-20200811-mstcyf7wufdjvbanpv6ehjvni-story.html>.

<sup>62</sup> Id.

<sup>63</sup> Ryan Mac, Caroline Haskins, and Logan McDonald “Clearview’s facial recognition app has been used by the Justice Department, ICE, Macy’s, Walmart, and the NBA”, *BuzzFeed*, February 27, 2020, available at: <https://www.buzzfeednews.com/article/ryanmac/clearview-ai-fbi-ice-global-law-enforcement>.

<sup>64</sup> Briana Saks, Ryan Mac, and Caroline Haskins “Los Angeles Police just banned the use of commercial facial recognition”, *BuzzFeed*, November 17, 2020, available at: <https://www.buzzfeednews.com/article/briannasaks/lapd-banned-commercial-facial-recognition-clearview>.

<sup>65</sup> Catie Edmondson, *ICE Used Facial Recognition To Mine State Driver’s License Databases*, *New York Times*, July 7, 2019, <https://www.nytimes.com/2019/07/07/us/politics/ice-drivers-licenses-facial-recognition.html?searchResultPosition=12>.

above.<sup>66</sup> Similarly, data from consumer-based surveillance software such as Ring (which uses cameras to monitor a person's doorbell and/or entryway), is also being shared with law enforcement. Ring, which is now owned by Amazon, has partnered with more than 400 local police departments to send requests for footage to Ring users, on behalf of the police. Users can deny the request, but if the request is granted, police are able to obtain consumer-recorded video footage, without the need for a warrant. In exchange, the police departments promote Ring as an important security device.<sup>67</sup> Indeed, at least one police department in California has offered the Ring devices as a reward to members of the public, in lieu of cash, for information on crimes.<sup>68</sup>

The ubiquity of facial recognition technology also raises serious concerns over where a person can expect a degree of privacy and anonymity. To demonstrate the ease with which this technology can be employed, the *New York Times* conducted its own facial recognition project of people in Bryant Park during an afternoon. They utilized footage taken from three cameras that publicly stream the happenings of the park and ran the images through facial recognition software that cost less than \$100. Through this process, the team was able to detect 2,750 faces from a nine-hour period and, using a database created from publicly available photos, they were able to match identities.<sup>69</sup> While being identified as being in Bryant Park one lunchtime might seem innocuous enough, the power of this technology has potentially dangerous ramifications. For instance, in Hong Kong, facial recognition has been employed by rival sides to identify both protesters and police.<sup>70</sup> Meanwhile, in the United States, toy store Toys “R” Us is reportedly using the technology in their stores, although they claim that the algorithm is capable of excluding children.<sup>71</sup>

### **Other Jurisdictions**

To combat some of the concerns regarding the use of facial recognition technology, jurisdictions across the country have enacted legislation to regulate it. Illinois' Biometric Information Privacy Act, a forerunner in governing this technology, has been in place for more than ten years, but more states and cities are looking to legislate on the issue and there are also numerous proposed bills at the federal level.<sup>72</sup>

#### **Portland, OR**

In September 2020, Portland became the first US jurisdiction to ban private entities' use of facial recognition technology in places of public accommodation.<sup>73</sup> The legislation also allows a private right of action, but the ban is limited to technology related to facial recognition, and not other biometric identifiers.<sup>74</sup> Portland also passed a separate ordinance to ban the use of the technology by local government agencies.

<sup>66</sup>See *supra*, note 63.

<sup>67</sup> Louise Matsakis “The Ringification of suburban life”, *Wired*, September 26, 2019, <https://www.wired.com/story/ring-surveillance-suburbs/>.

<sup>68</sup> Louise Matsakis “Cops Are Offering Ring Doorbell Cameras in Exchange For Info”, *Wired*, September 2, 2019, <https://www.wired.com/story/cops-offering-ring-doorbell-cameras-for-information/>.

<sup>69</sup> Sahil Chino “We built an ‘unbelievable’ (but legal) facial recognition machine”, *New York Times*, April 16, 2019, <https://www.nytimes.com/interactive/2019/04/16/opinion/facial-recognition-new-york-city.html>.

<sup>70</sup> Paul Mozur, *In Hong Kong Protests, Faces Become Weapons*, *New York Times*, July 26, 2019, <https://www.nytimes.com/2019/07/26/technology/hong-kong-protests-facial-recognition-surveillance.html?searchResultPosition=16>.

<sup>71</sup> Louis Matsakis “Toys “R” Us is back—Now with more surveillance!”, *Wired*, November 12, 2020, available at: <https://www.wired.com/story/toys-r-us-surveillance/>.

<sup>72</sup> For example, Arizona, Massachusetts, West Virginia, South Carolina, Maryland, Utah, and New Jersey all have bills related to biometric data, but as of early October 2020, none have passed. There are also several jurisdictions in Massachusetts that have banned the use of facial recognition technology by local government (see: Amba Kak “Regulating Biometrics: Global Approaches and Urgent Questions”, *AI Now Institute*, September 2020, available at: <https://ainowinstitute.org/regulatingbiometrics.pdf>, p. 90).

<sup>73</sup> Hunton Andrews Kurth “Portland, Oregon Becomes First Jurisdiction in U.S. to Ban the Commercial Use of Facial Recognition Technology”, *National Law Review*, September 10, 2020, available at: <https://www.natlawreview.com/article/portland-oregon-becomes-first-jurisdiction-us-to-ban-commercial-use-facial#:~:text=On%20September%209%2C%202020%2C%20Portland.including%20stores%2C%20restaurants%20and%20hotels>

<sup>74</sup> *Id.*

### Illinois

In 2008, Illinois became the first jurisdiction in the country to enact legislation related to biometric data use. Under the Illinois Biometric Information Privacy Act (BIPA), any private entity that collects biometric identifier information must first provide a written disclosure and obtain a release from any individuals whose biometric information is being collected.<sup>75</sup> The law also prohibits the sale of biometric information. BIPA also includes a private right of action.<sup>76</sup>

### Texas

The Texas law prohibits the collection of an individual's biometric identifiers for a commercial purpose, unless the individual is first informed and consents.<sup>77</sup> Texas law also requires consent for the sale or disclosure of an individual's biometric identifiers, and entities must use reasonable care in storing [biometric data] and shall destroy the biometric identifier within a reasonable time.<sup>78</sup> However, Texas does not offer a private right of action and only the Attorney General can enforce violations of the law.<sup>79</sup>

### California

California's Consumer Privacy Act (CCPA), which went into effect at the beginning of this year, takes a broader definition of biometric data to include "keystroke and gait patterns as well as sleep, health, and exercise data that contain identifying information."<sup>80</sup> However, the private right of action under CCPA does not cover biometric data.<sup>81</sup>

In terms of disclosures, the CCPA grants a 'right to know' so that a person "may request that businesses disclose...what personal information they have collected, used, shared, or sold about you, and why they collected, used, shared, or sold that information."<sup>82</sup> It also allows consumers to request deletion of information and opt-out of the sale of their data to third-parties.<sup>83</sup>

### Washington

The Washington law<sup>84</sup> prohibits both companies and individuals "from entering biometric data into a database without providing notice, gaining consent and providing a mechanism for preventing the subsequent use of the biometric data for a commercial purpose".<sup>85</sup> Notably, unlike the laws in the above states, under Washington's legislation the definition of "biometric identifier" excludes facial recognition data, and instead is limited to "data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, voiceprint, eye retinas, irises or other unique biological patterns or characteristics that are used to identify a specific individual."<sup>86</sup>

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<sup>75</sup> 740 Ill. Comp. Stat. Ann. 14/15

<sup>76</sup> *Id.* at 14/20

<sup>77</sup> Tex. Bus. & Com. Code Ann. § 503.001 (West)

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> California Consumer Privacy Act of 2018, §1798.140 (b).

<sup>81</sup> Molly K. McGinley "The Biometric Bandwagon Rolls On: Biometric Legislation Proposed Across the United States", *National Law Review*, March 25, 2019, available at: <https://www.natlawreview.com/article/biometric-bandwagon-rolls-biometric-legislation-proposed-across-united-states>.

<sup>82</sup> California Attorney General Xavier Becerra "California Consumer Privacy Act (CCPA)", available at: <https://oag.ca.gov/privacy/ccpa#sectionc>.

<sup>83</sup> *Id.*

<sup>84</sup> Wash. Rev. Code Ann. §§ 19.375.010- 19.375.040 (West)

<sup>85</sup> "State Biometric Privacy Legislation: What You Need to Know", *Thompson Hine*, September 5, 2019, available at:

<https://www.thompsonhine.com/publications/state-biometric-privacy-legislation-what-you-need-to-know#:~:text=Washington%20enacted%20biometric%20privacy%20protections,data%20for%20a%20commercial%20purpose>.

<sup>86</sup> NYC Bar Association "Power, pervasiveness and potential", August 2020, p. 15.

### **COVID-19 and Biometric Information**

While biometric technology itself has been around for some time, the COVID-19 pandemic has given rise to new applications for the purpose of identifying and tracking individuals for health screening purposes. The HealthPass by CLEAR is one such example. Users download the application, verify their identity through biometric identifiers (such as a fingerprint and iris scan),<sup>87</sup> and then input any health related data, such as COVID-19 lab tests, or self-reported symptoms. Employers or other establishments such as airports or businesses serving customers, might then expedite users' entry into a facility. At the point of entry, users may open an app, verify their identity in some manner, and possibly have their temperature taken through a scan.<sup>88</sup> In New York City, businesses already using HealthPass include "the Related Companies, Cushman & Wakefield, Deloitte, NBC Universal, the New York Mets and Danny Meyer's Union Square Hospitality Group."<sup>89</sup> The restaurant group Founder's Table, which runs restaurant chains including Chopt and Dos Toros, are requiring their staff to use the app. The employees are required to take a health survey each day to enter their jobsite.<sup>90</sup> The World Economic Forum, together with the Commons Project, is also currently developing an app where users can store their COVID-19-related health information, for verification at airports and other travel hubs. Once publicly available, app users may be able to upload their COVID-19 health data onto the app, regardless of the country in which they took the tests, and have the results verified, according to the standards of the country of entry.<sup>91</sup>

However, unlike commercial establishments that surreptitiously collect biometric information themselves from consumers who access their goods or services, these COVID-19 applications are downloaded and consented to by the user themselves.

### **III. LEGISLATIVE ANALYSIS**

This bill addresses the increased collection and use of biometric identifier information, such as the use of facial recognition technology, by commercial establishments to track consumer activity. This bill would require commercial establishments to post signage that notifies customers if the establishment "collects, retains, converts, stores or shares" biometric identifier information used to identify individuals, such as scans of customer faces, irises, or fingerprints. Commercial establishments are defined as "a place of entertainment, a retail store, or a food and drink establishment." The bill also makes it unlawful "to sell, lease, trade, share in exchange for anything of value or otherwise profit" from the exchange of customer's biometric identifier information that these establishments have used to identify individuals.

The bill provides for a private right of action that allows for judgments of \$500 for failing to post signage or negligently selling/sharing covered biometric information and \$5,000 for the intentional or reckless sale of such biometric information. Prior to filing an action for a violation of the signage requirement, a plaintiff must provide the commercial establishment with written notice of the violation. The commercial establishment must provide a written response within 30 days stating the violation has been cured, otherwise the plaintiff may proceed with filing an action. The plaintiff is not required to provide written notice for violations of the prohibition on the sale of biometric identifier information.

This bill does not apply to governmental entities. The requirement to post signs does not apply to financial institutions, which already adhere to various disclosure requirements in terms of the collection of personal information, or to commercial establishments that collect biometric information only through photographs or video recordings that do not utilize automated or assisted processes to identify individuals, and which do not share photos or video with any entity other than law enforcement. The bill requires the Department of Consumer and Worker Protection to create rules regarding the posting of the required signage. It also requires the Chief

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<sup>87</sup> CLEAR "How it works", available at: <https://www.clearme.com/how-it-works>.

<sup>88</sup> CLEAR "Health Pass", on file.

<sup>89</sup> *The Real Deal* "Related, Cushman & Wakefield use new app to screen workers for Covid", October 28, available at: <https://therealdeal.com/2020/10/28/related-cushman-wakefield-use-new-app-to-screen-workers-for-covid/>.

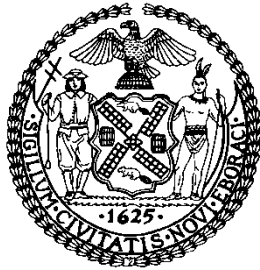
<sup>90</sup> Jessica Puckett "Clear goes beyond airports with its COVID-19 screening service", *Condé Nast Traveler*, July 31, 2020, available at: <https://www.cntraveler.com/story/clear-goes-beyond-airports-with-its-covid-19-screening-service>.

<sup>91</sup> CommonPass, available at: <https://commonpass.org>.

Privacy Officer, in conjunction with other relevant City agencies, to conduct outreach and education to affected commercial establishments.

This local law takes effect 180 days after it becomes law.

**(The following is the text of the Fiscal Impact Statement for Int. No. 1170-A:)**



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

**LATONIA MCKINNEY, DIRECTOR**

**FISCAL IMPACT STATEMENT**

**PROPOSED INT. NO.: 1170-A**

**COMMITTEE: Consumer Affairs and Worker  
Protection**

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring businesses to notify customers of the use of biometric identifier technology and prohibiting the sale of biometric identifier information.

**SPONSOR(S):** By Council Members Torres, Rosenthal, Rivera, Moya, Rose, Cornegy, Louis, Gibson and Kallos.

**SUMMARY OF LEGISLATION:** Proposed Int. No. 1170-A would address the increased collection and use of biometric identifier information, such as the use of facial recognition technology, by commercial establishments to track consumer activity. The bill would prohibit the sale of biometric identifier information. It would also require certain commercial establishments, such as retailers, restaurants, and entertainment venues, to post signage notifying consumers if they collect biometric identifier information. The bill would provide for a private right of action that allows for judgments of \$500 for failing to post signage or negligently selling/sharing biometric information and \$5,000 for the intentional or reckless sale of biometric information. Lastly, the bill would require the Chief Privacy Officer and others to conduct and facilitate outreach and education to affected commercial establishments.

**EFFECTIVE DATE:** This local law would take effect 180 days after it becomes law.

**FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED:** FISCAL 2022

**FISCAL IMPACT STATEMENT:**

	<b>Effective FY21</b>	<b>FY Succeeding Effective FY22</b>	<b>Full Fiscal Impact FY22</b>
<b>Revenues</b>	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0
<b>Net</b>	\$0	\$0	\$0

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

**IMPACT ON EXPENDITURES:** It is estimated that there would be no impact on expenditures resulting from the enactment of this legislation as the designated agency would use existing resources to fulfill its requirements.

**SOURCE OF FUNDS TO COVER ESTIMATED COSTS:** N/A

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

**ESTIMATE PREPARED BY:** Florentine Kabore, Financial Analyst

**ESTIMATE REVIEWED BY:** John Russell, Unit Head  
Stephanie Ruiz, Assistant Counsel

**LEGISLATIVE HISTORY:** Proposed Int. No. 1170-A was introduced by the Council on October 17, 2018 and the legislation was referred to the Committee on Consumer Affairs and Business Licensing (Committee). A hearing was held by the Committee jointly with the Committee on Technology and the Committee on Housing and Buildings on October 7, 2019, and the legislation was laid over. The legislation was subsequently amended, and the amended version, Proposed Int. No. 1170-A will be considered by the Committee on December 10, 2020. Upon successful vote by the Committee, the Proposed Int. No. 1170-A will be submitted to the full Council for a vote on December 10, 2020.

**DATE PREPARED:** December 8, 2020.

*Accordingly, this Committee recommends its adoption, as amended.*

**(The following is the text of Int. No. 1170-A:)**

Int. No. 1170-A

By Council Members Torres, Rosenthal, Rivera, Moya, Rose, Cornegy, Louis, Gibson, Kallos, Menchaca, Ayala and Barron.

**A Local Law to amend the administrative code of the city of New York, in relation to requiring businesses to notify customers of the use of biometric identifier technology and prohibiting the sale of biometric identifier information**

*Be it enacted by the Council as follows:*

Section 1. Title 22 of the administrative code of the city of New York is amended by adding a new chapter 12 to read as follows:

**CHAPTER 12**  
**BIOMETRIC IDENTIFIER INFORMATION**

*§ 22-1201 Definitions.*

*§ 22-1202 Collection, use, and retention of biometric identifier information.*

*§ 22-1203 Private right of action.*

*§ 22-1204 Applicability.*

*§ 22-1205 Outreach and education.*

*§ 22-1201 Definitions. As used in this chapter, the following terms have the following meanings:*

*Biometric identifier information. The term "biometric identifier information" means a physiological or biological characteristic that is used by or on behalf of a commercial establishment, singly or in combination, to identify, or assist in identifying, an individual, including, but not limited to: (i) a retina or iris scan, (ii) a fingerprint or voiceprint, (iii) a scan of hand or face geometry, or any other identifying characteristic.*

*Commercial establishment. The term "commercial establishment" means a place of entertainment, a retail store, or a food and drink establishment.*

*Consumer commodity.* The term “consumer commodity” means any article, good, merchandise, product or commodity of any kind or class produced, distributed or offered for retail sale for consumption by individuals, or for personal, household or family purposes.

*Customer.* The term “customer” means a purchaser or lessee, or a prospective purchaser or lessee, of goods or services from a commercial establishment.

*Financial institution.* The term “financial institution” means a bank, trust company, national bank, savings bank, federal mutual savings bank, savings and loan association, federal savings and loan association, federal mutual savings and loan association, credit union, federal credit union, branch of a foreign banking corporation, public pension fund, retirement system, securities broker, securities dealer or securities firm, but does not include a commercial establishment whose primary business is the retail sale of goods and services to customers and provides limited financial services such as the issuance of credit cards or in-store financing to customers.

*Food and drink establishment.* The term “food and drink establishment” means an establishment that gives or offers for sale food or beverages to the public for consumption or use on or off the premises, or on or off a pushcart, stand or vehicle.

*Place of entertainment.* The term “place of entertainment” means any privately or publicly owned and operated entertainment facility, such as a theater, stadium, arena, racetrack, museum, amusement park, observatory, or other place where attractions, performances, concerts, exhibits, athletic games or contests are held.

*Retail store.* The term “retail store” means an establishment wherein consumer commodities are sold, displayed or offered for sale, or where services are provided to consumers at retail.

§ 22-1202 Collection, use, and retention of biometric identifier information. a. Any commercial establishment that collects, retains, converts, stores or shares biometric identifier information of customers must disclose such collection, retention, conversion, storage or sharing, as applicable, by placing a clear and conspicuous sign near all of the commercial establishment’s customer entrances notifying customers in plain, simple language, in a form and manner prescribed by the commissioner of consumer and worker protection by rule, that customers’ biometric identifier information is being collected, retained, converted, stored or shared, as applicable.

b. It shall be unlawful to sell, lease, trade, share in exchange for anything of value or otherwise profit from the transaction of biometric identifier information.

§ 22-1203 Private right of action. A person who is aggrieved by a violation of this chapter may commence an action in a court of competent jurisdiction on his or her own behalf against an offending party. At least 30 days prior to initiating any action against a commercial establishment for a violation of subdivision a of section 22-1202, the aggrieved person shall provide written notice to the commercial establishment setting forth such person’s allegation. If, within 30 days, the commercial establishment cures the violation and provides the aggrieved person an express written statement that the violation has been cured and that no further violations shall occur, no action may be initiated against the commercial establishment for such violation. If a commercial establishment continues to violate subdivision a of section 22-1202, the aggrieved person may initiate an action against such establishment. No prior written notice is required for actions alleging a violation of subdivision b of section 22-1202. A prevailing party may recover:

1. For each violation of subdivision a of section 22-1202, damages of \$500;
2. For each negligent violation of subdivision b of section 22-1202, damages of \$500;
3. For each intentional or reckless violation of subdivision b of section 22-1202, damages of \$5,000;
4. Reasonable attorneys’ fees and costs, including expert witness fees and other litigation expenses; and
5. Other relief, including an injunction, as the court may deem appropriate.

§ 22-1204 Applicability. a. Nothing in this chapter shall apply to the collection, storage, sharing or use of biometric identifier information by government agencies, employees or agents.

b. The disclosure required by subdivision a of section 22-1202 shall not apply to:

1. Financial institutions.
2. Biometric identifier information collected through photographs or video recordings, if: (i) the images or videos collected are not analyzed by software or applications that identify, or that assist with the identification of, individuals based on physiological or biological characteristics, and (ii) the images or video are not shared with, sold or leased to third-parties other than law enforcement agencies.



§ 22-1205 *Outreach and education. The chief privacy officer shall conduct or facilitate, with any other relevant agency or office, outreach and education efforts, through guidance posted on city websites or through such other means as may be feasible, to inform commercial establishments likely to be affected by this chapter about its requirements.*

§ 2. This local law takes effect 180 days after it becomes law.

ANDREW COHEN., *Chairperson*; PETER A. KOO, KAREN KOSLOWITZ, BRADFORD S. LANDER, JUSTIN L. BRANNAN, KALMAN YEGER; Committee on Consumer Affairs and Business Licensing, December 10, 2020.

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

## **Report of the Committee on Cultural Affairs, Libraries and International Intergroup Relations**

Report for Int. No. 2034-A

### **Report of the Committee on Cultural Affairs, Libraries and International Intergroup Relations in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to coordinating the use of open space for art and cultural programming.**

The Committee on Cultural Affairs, Libraries and International Intergroup Relations, to which the annexed proposed amended local law was referred on August 27, 2020 (Minutes, page 1669), respectfully

#### **REPORTS:**

#### **I. INTRODUCTION**

On Thursday, December 10, 2020, the Committee on Cultural Affairs, Libraries and International Intergroup Relations, chaired by Council Member Jimmy Van Bramer, will hold a hearing to consider Proposed Introduction No. 2034-A, sponsored by Council Member Cumbo, related to coordinating the use of open space for art and cultural programming, and Proposed Introduction No. 2036-A, sponsored by Council Member Van Bramer, related to the temporary use of outdoor space for artistic and cultural events. The first hearing on this legislation was held on Thursday, September 24, 2020. Representatives of the Department of Cultural Affairs (DCLA) testified, in addition to advocacy groups, various arts and cultural organizations, and other interested stakeholders.

#### **II. BACKGROUND**

On March 12, 2020, in response to COVID-19, Governor Cuomo barred gatherings of more than 500 people and placed restrictions on other gatherings,<sup>1</sup> prompting many of NYC's cultural institutions—including the

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<sup>1</sup> Jesse McKinley and Michael Gold, *Ban on Large Gatherings in N.Y. as Coronavirus Cases Rise Sharply* (Mar. 12, 2020), available at <https://www.nytimes.com/2020/03/12/nyregion/coronavirus-nyc-event-ban.html>; See Executive Order 202.31 (May 14, 2020), available at <https://www.governor.ny.gov/news/no-20231-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

Metropolitan Museum of Art (The Met), the Museum of Modern Art (MoMA), the Whitney Museum of American Art, the Guggenheim, the Metropolitan Opera, Carnegie Hall and the NY Philharmonic—to shut their doors, postpone all programming and cancel all shows.<sup>2</sup> In a press conference the same day, NYC Mayor Bill de Blasio stressed the importance of the restrictions, which he conveyed as “difficult but necessary.”<sup>3</sup> On March 20, 2020, Governor Cuomo announced an executive order creating “New York State on PAUSE” restrictions, for the state,<sup>4</sup> resulting in a de-facto shelter in place order.<sup>5</sup> While artists, art organizations, cultural groups and galleries began exploring creative ways to keep people engaged with art, culture and commerce while observing safety precautions at this time,<sup>6</sup> the arts and cultural community, in particular, has continued to be disproportionately and negatively impacted by the COVID-19 pandemic.

Prior to the pandemic, the cultural sector in NYC was one of the largest industries in NYC,<sup>7</sup> employing nearly 400,000 workers, paying them \$31 billion in wages and generating \$110 billion in economic activity.<sup>8</sup> Last year, the theater industry in NYC alone grossed \$1.8 billion and drew 14.8 million patrons,<sup>9</sup> while the dance sector contributed over \$300 million to the City's economy.<sup>10</sup> In New York State, the cultural sector contributes more than \$120 billion to the economy annually.<sup>11</sup> However, when cultural institutions closed their doors in March 2020, the City's artists, actors, musicians, stagehands and freelancers suddenly found themselves unemployed and severed from their communities and livelihoods.<sup>12</sup> On March 19th, the Metropolitan Opera laid off all of its union employees<sup>13</sup> and on March 31st, The Met announced it would look at its \$3.6 billion endowment to cover costs and maintain employees, something the museum had not previously done, even during World Wars, 9/11 or Hurricane Sandy.<sup>14</sup> By early April, the Queens Museum had laid off 30 employees, the Whitney Museum of Art laid off 20 percent of its staff and other institutions expressed they may have to lay off staff – in some cases by up to 68 percent.<sup>15</sup> At the same time, the performing arts industry shed 70 percent of its

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(describing previous orders); Michael Paulson, *Broadway, Symbol of New York Resilience, Shuts Down Amid Virus Threat* (Mar. 12, 2020), available at <https://www.nytimes.com/2020/03/12/theater/coronavirus-broadway-shutdown.html>.

<sup>2</sup> Robin Pogrebin and Michael Cooper, *New York's Major Cultural Institutions Close in Response to Coronavirus* (Mar. 12, 2020), available at <https://www.nytimes.com/2020/03/12/arts/design/met-museum-opera-carnegie-hall-close-coronavirus.html>.

<sup>3</sup> Transcript: Mayor de Blasio Holds Media Availability on COVID-19 (Mar. 12, 2020), available at <https://www1.nyc.gov/office-of-the-mayor/news/137-20/transcript-mayor-de-blasio-holds-media-availability-covid-19> (“That’s really, really painful for the many, many people who work in that field, let alone so many New Yorkers and people all over the country who really look forward to these events, these concerts, these sports events, and it’s really going to be kind of a hole in our lives and it’s painful,” he said. “It’s not something we would ever want to do but it’s something we have to do.”); Michael Paulson, *Broadway, Symbol of New York Resilience, Shuts Down Amid Virus Threat* (Mar. 12, 2020), available at <https://www.nytimes.com/2020/03/12/theater/coronavirus-broadway-shutdown.html>.

<sup>4</sup> Governor Cuomo Signs the ‘New York State on PAUSE’ Executive Order (Mar. 20, 2020), available at <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

<sup>5</sup> Governor Cuomo Signs the ‘New York State on PAUSE’ Executive Order (Mar. 20, 2020), available at <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

<sup>6</sup> Information shared during the daily “Culture @3” call, hosted by the CIG; See Judd Grossman, Michael Straus, Catherine K. B. Lucas and Sarah E. Schuster, *What Legal Rights Do Artists and Galleries Have During a Pandemic?* (May 13, 2020), available at <https://www.artnews.com/art-news/news/artists-galleries-legal-rights-coronavirus-1202687028/>.

<sup>7</sup> NYC Comptroller Scott Stringer, *The Creative Economy: Art, Culture and Creativity in New York City* (Oct. 25, 2019), available at <https://comptroller.nyc.gov/reports/the-creative-economy/>.

<sup>8</sup> NYC Comptroller Scott M. Stringer, *New York by the Numbers: Weekly Economic and Fiscal Outlook* (May 26, 2020), available at <https://comptroller.nyc.gov/newsroom/new-york-by-the-numbers-weekly-economic-and-fiscal-outlook-no-2-may-26-2020/>.

<sup>9</sup> See Michael Paulson, *Broadway's Box Office Keeps Booming. Now Attendance is Surging, Too*. NY TIMES (May 29, 2019), available at <https://www.nytimes.com/2019/05/29/theater/broadway-box-office.html>.

<sup>10</sup> See Dance NYC & New York City Dance Makers and Organizations, *Letter to Mayor Bill de Blasio RE: Advisory Council on Arts, Culture, and Tourism*, DANCENYC (May 13, 2020), available at <https://www.dance.nyc/news/2020/05/Letter-to-Mayor-Bill-de-Blasio-Re-Advisory-Council-on-Arts-Culture-and-Tourism/>.

<sup>11</sup> See National Assembly of Art Organizations, *Creative Economy State Profiles: New York* (n.d.), available at [https://nasaa-arts.org/nasaa\\_research/creative-economy-state-profiles/](https://nasaa-arts.org/nasaa_research/creative-economy-state-profiles/); see also NATIONAL ENDOWMENT FOR THE ARTS, *State-Level Estimates of the Arts' Economic Value and Employment (2001-2017)* (Mar. 2020), available at <https://www.arts.gov/artistic-fields/research-analysis/arts-data-profiles/arts-data-profile-25>.

<sup>12</sup> Information shared during the daily “Culture @3” call, hosted by the CIG.

<sup>13</sup> Anastasia Tsioulcas for NPR, Tweet: <https://twitter.com/anastasiat/status/1240645951309701120?s=21>.

<sup>14</sup> Sarah Cascone, *In a Surprise Move, the Metropolitan Museum of Art Is Looking to Its \$3.6 Billion Endowment to Cover Costs* (Mar. 31, 2020), available at <https://news.artnet.com/art-world/met-endowment-paying-staff-1820772>.

<sup>15</sup> Information shared during the daily “Culture @3” call, hosted by the CIG.

jobs due to closures,<sup>16</sup> as a survey by the National Independent Venue Association found that 90 percent of independent venues would be forced to close forever if they do not receive government aid.<sup>17</sup> In fact, data suggests that the arts and cultural sector in NYC has been the second hardest hit industry with regard to job loss, after restaurants.<sup>18</sup>

The effects of the pandemic have been unlike any other in recent history.<sup>19</sup> While the State has lifted restrictions on some art and cultural organizations, allowing them to re-open on August 24 with limited capacity,<sup>20</sup> the museum sector alone lost almost 34 percent of its jobs due to closures, and both large and small museums face continued existential challenges to stay afloat while abiding by current limited capacity and social distancing guidelines.<sup>21</sup>

## **I. Proposed Int. No. 2034-A**

Proposed Int. No. 2034-A would require the Mayor’s Office of Citywide Event Coordination and Management (CECM), in consultation with the Department of Cultural Affairs (DCLA), the Department of Parks and Recreation (Parks), the Department of Information, Technology and Telecommunications (DOITT) and any other relevant agency or office, to create a website that would provide information on open spaces, such as roadways, parks, or pedestrian plazas, designated by the City for art and cultural programming, facilitate the use of such space by art and cultural institutions and allow users to search for such open space on a map. Pursuant to the legislation, the website would also allow users to search for information about outdoor programs offered by art and cultural institutions that are coordinated by CECM and provide information about other events either hosted by art and cultural institutions or outdoor events held on private property, to the extent such information is provided to CECM.

Section two of Proposed Int. No. 2034-A would provide that the local law take effect 90 days after it becomes law.

Since introduction, Proposed Int. No. 2034-A was amended to change the section being amended from 23-305 to 23-804, to clarify several definitions, to require CECM and not DOITT to implement the legislation, to update the forum being created from a mobile application to a website and to change the timeline for the development of the resource from 180 to 90 days.

## **II. Proposed Int. No. 2068-A**

Proposed Int. No. 2068-A would require the Mayor’s Office of Citywide Event Coordination and Management (CECM), in consultation with the Department of Transportation (DOT), the Department of Buildings (DOB), the Police Department (NYPD), the Fire Department (NYFD), and any other agency

<sup>16</sup> See Afia Earna, *How New York City Might Begin to Revive Its Decimated Tourism Industry*, GOTHAM GAZETTE (Sep. 13, 2020), available at [https://www.gothamgazette.com/city/9742-how-to-revive-new-york-city-tourism?mc\\_cid=b644d5807f&mc\\_eid=46585a506c](https://www.gothamgazette.com/city/9742-how-to-revive-new-york-city-tourism?mc_cid=b644d5807f&mc_eid=46585a506c).

<sup>17</sup> See Afia Earna, *How New York City Might Begin to Revive Its Decimated Tourism Industry*, GOTHAM GAZETTE (Sep. 13, 2020), available at [https://www.gothamgazette.com/city/9742-how-to-revive-new-york-city-tourism?mc\\_cid=b644d5807f&mc\\_eid=46585a506c](https://www.gothamgazette.com/city/9742-how-to-revive-new-york-city-tourism?mc_cid=b644d5807f&mc_eid=46585a506c).

<sup>18</sup> NYC Comptroller Scott M. Stringer, *New York by the Numbers: Weekly Economic and Fiscal Outlook* (May 26, 2020), available at <https://comptroller.nyc.gov/newsroom/new-york-by-the-numbers-weekly-economic-and-fiscal-outlook-no-2-may-26-2020/> (explaining that “private employers in New York City shed 823,500 jobs in April – one in every five private sector jobs; dine-in restaurants were the hardest hit, dropping by 119,000 jobs – an 85% decline in a single month; and the arts, entertainment and recreation sector saw the largest decline after restaurants, losing 67,200 jobs, or 78%”); See Niv Elis, *Arts, Struggling to Survive, Face a Longer Road to Recovery*, THE HILL (Apr. 11, 2020), available at <https://thehill.com/homesnews/coronavirus-report/492301-arts-struggling-to-survive-pandemic-face-a-longer-road-to-recovery>; see also David Kaufman, *An Architect in City Hall Plots NYC’s Cultural Recovery*, ARCHITECTURAL DIGEST (Jul. 30, 2020), available at <https://www.architecturaldigest.com/story/gonzalo-casals-nyc-cultural-commissioner>.

<sup>19</sup> See Abigail Savitch-Lew, Eli Dvorkin, and Laird Gallagher, *Art in the Time of Coronavirus: NYC’s Small Arts Organizations Fighting for Survival*, CENTER FOR AN URBAN FUTURE (April 2020), available at

<https://nycfuture.org/research/art-in-the-time-of-coronavirus>.

<sup>20</sup> *Id.*

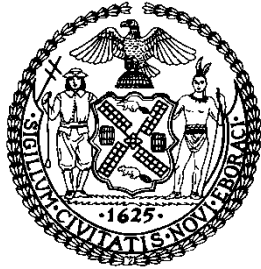
<sup>21</sup> *Id.*

designated by the Mayor, to establish an Open Culture program to allow eligible art and cultural institutions or cultural venues to use approved open space for artistic or cultural events by March 1, 2021. Pursuant to the legislation, there would not be a fee to participate in the program outside of the \$20 application fee to apply to the, the DOT would be required to share a list of eligible open spaces by February 1, 2021 and all other applicable penalties or fines that may be issued for such event for violation of any applicable rule, law or order would still be relevant. Proposed Int. No. 2068-A would also require that the program would remain in effect until October 31, 2021, or a later date to be determined and not to exceed March 31, 2022, and that CECM would be required to provide to notice to the Mayor and the Council at least five days prior to the termination of such program.

Section two of Proposed Int. No. 2068-A would provide that the local law take effect immediately and be deemed repealed on March 31, 2022.

Since introduction, Proposed Int. No. 2068-A was amended to add that the CECM would administer the Open Culture program, and to clarify several definitions, such as that eligible art and cultural institutions includes those who are (a) an art or cultural group, organization or institution within the city of New York that is a member of the Cultural Institutions Group or is eligible to apply for a grant through the Cultural Development Fund or (b) a person providing documentation of funding from a Borough Arts Council within the prior two years, and that Open Space refers to certain streets, not parks, roadways, plazas or parking lots, and to add a date for the program to begin, as well as changing the program’s expiration date from January 31, 2021 to October 31, 2021. The legislation was also amended to remove the self-certification process, add that the program would be free, add an application fee of \$20, stipulate that applications would need to be processed within five days, and clarify that eligible art and cultural institutions would be able to charge for events provided that such institution or venue may not physically exclude a member of the public from viewing such event from a publicly accessible location outside the open space assigned for such event.

**(The following is the text of the Fiscal Impact Statement for Int. No. 2034-A:)**



**THE COUNCIL OF THE CITY OF NEW YORK**

**FINANCE DIVISION**

**LATONIA MCKINNEY, DIRECTOR**

**FISCAL IMPACT STATEMENT**

**PROPOSED INT. NO. 2034-A**

**COMMITTEE:** Cultural Affairs, Libraries and International Intergroup Relations

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**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to coordinating the use of open space for art and cultural programming.

**Sponsors:** By Council Members Cumbo, Van Bramer, Kallos, Vallone, Chin, Richards and Cornegy.

**SUMMARY OF LEGISLATION:** Proposed Int. No. 2034-A would require the Mayor’s Office of Citywide Event Coordination and Management (CECM), in consultation with the Department of Cultural Affairs (DCLA), the Department of Parks and Recreation (Parks), the Department of Information, Technology and Telecommunications (DoITT) and any other relevant agency or office, to create a website that would provide information on open spaces, such as roadways, parks, or pedestrian plazas, designated by the City for art and cultural programming, facilitate the use of such space by art and cultural institutions and allow users to search for such open space on a map. The website would also allow users to search for information about outdoor programs offered by art and cultural institutions that are coordinated by CECM and provide information about other events either hosted by art and cultural institutions or outdoor events held on private property, to the extent such information is provided to CECM.

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

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

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**FISCAL IMPACT STATEMENT:**

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

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

**IMPACT ON EXPENDITURES:** It is estimated that there would be no fiscal impact on expenditures resulting from the enactment of this legislation as the designated agencies would use existing resources to fulfill its requirements.

**SOURCE OF FUNDS TO COVER ESTIMATED COSTS:** N/A

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

**ESTIMATE PREPARED BY:** Aliya Ali, Principal Financial Analyst

**ESTIMATE REVIEWED BY:** Stephanie Ruiz, Assistant Counsel  
Nathan Toth, Deputy Director  
Crielhien Francisco, Unit Head

**LEGISLATIVE HISTORY:** This legislation was introduced to the Council on August 27, 2020 as Int. No. 2034, and was referred to the Committee on Cultural Affairs, Libraries and International Intergroup Relations (Committee). A hearing was held by the Committee jointly with the Committee on Economic Development on September 24, 2020, and the legislation was laid over. The legislation was subsequently amended and the amended version, Proposed Int. No. 2034-A, will be voted on by the Committee at a hearing on December 10, 2020. Upon successful vote by the Committee, Proposed Int. No. 2034-A will be submitted to the full Council for a vote on December 10, 2020.

**DATE PREPARED:** November 12, 2020.

**(For text of Int. No. 2068-A and its Fiscal Impact Statement, please see the Report of the Committee on Cultural Affairs, Libraries and International Intergroup Relations for Int. No. 2068-A, respectively, printed in these Minutes; for text of Int. No. 2034-A, please see below)**

*Accordingly, this Committee recommends the adoption of Int. Nos. 2034-A and 2068-A.*

**(The following is the text of Int. No. 2034-A:)**

Int. No. 2034-A

By Council Members Cumbo, Van Bramer, Kallos, Vallone, Chin, Cornegy, Holden, Rosenthal, Ayala, Rivera and Barron.

**A Local Law to amend the administrative code of the city of New York, in relation to coordinating the use of open space for art and cultural programming**

*Be it enacted by the Council as follows:*

Section 1. Chapter 8 of title 23 of the administrative code of the city of New York is amended by adding a new section 23-804 to read as follows:

§ 23-804 *Open space coordination platform. a. Definitions. For purposes of this section, the following terms have the following meanings:*

*Art and cultural institutions. The term “art and cultural institutions” means not-for-profit art and cultural groups, organizations, venues or institutions within the city of New York.*

*Office. The term “office” means the mayor’s office of citywide event coordination and management established pursuant to executive order number 105, dated September 17, 2007, or another office or agency designated by the mayor.*

*Open space. The term “open space” means a roadway space, park space, or another public outdoor location, including but not limited to a pedestrian plaza or public parking lot, that is made available by the office for use by art and cultural institutions for outdoor performances or as a rehearsal space.*

*b. Website for coordinating the use of open space for art and cultural programming. The office shall, in consultation with any other relevant agency or office, including but not limited to the department of cultural affairs, the department of parks and recreation, and the department of information technology and telecommunications, create a website that:*

- 1. Provides information about open space;*
- 2. Facilitates the use of open space by art and cultural institutions;*
- 3. Allows users to search for open space, by location and on a map; and*
- 4. Allows users to search for information about outdoor programs offered by art and cultural institutions that are coordinated by the office. Such website may also provide information about other events hosted by art and cultural institutions and outdoor events held on private property, to the extent such information is provided to the office for inclusion on such website.*

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

JAMES G. VAN BRAMER, *Chairperson*; LAURIE A. CUMBO; MARK GJONAJ, FRANCISCO P. MOYA; JOSEPH C. BORELLI. Committee on Cultural Affairs, Libraries and International Intergroup Relations, December 10, 2020.

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

## Report for Int. No. 2068-A

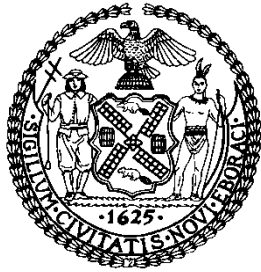
**Report of the Committee on Cultural Affairs, Libraries and International Intergroup Relations in favor of approving and adopting, as amended, a Local Law in relation to the temporary use of outdoor space for artistic and cultural events.**

The Committee on Cultural Affairs, Libraries and International Intergroup Relations, to which the annexed proposed amended local law was referred on August 27, 2020 (Minutes, page 1751), respectfully

**REPORTS:**

(For text of report, please see the Report of the Committee on Cultural Affairs, Libraries and International Intergroup Relations for Int. No. 2034-A printed in these Minutes)

*The following is the text of the Fiscal Impact Statement for Int. No. 2068-A:*



**THE COUNCIL OF THE CITY OF NEW YORK**

**FINANCE DIVISION**

LATONIA MCKINNEY, DIRECTOR

**FISCAL IMPACT STATEMENT**

**PROPOSED INT. NO. 2068-A**

**COMMITTEE:** Cultural Affairs, Libraries and International Intergroup Relations

**TITLE:** A Local Law in relation to the temporary use of outdoor space for artistic and cultural events.

**Sponsors:** By Council Members Van Bramer, Cumbo, Reynoso, Kallos, Rose, Menchaca, Powers, Lancman, Cabrera, Vallone, Holden, Salamanca, Gjonaj, Chin, Cornegy, Rosenthal, Adams, Lander and Levine.

**SUMMARY OF LEGISLATION:** Proposed Int. No. 2068-A would require the City to create an “Open Culture” program that would allow eligible art and cultural institutions or cultural venues to use approved open space for artistic or cultural events. The Mayor’s Office of Citywide Event Coordination and Management (CECM), in consultation with the Department of Transportation (DOT), the Department of Buildings (DOB), the Police Department (NYPD), the Fire Department (NYFD), and any other agency designated by the Mayor, would establish the program by March 1, 2021. There would be an application fee of \$20 for participation in the program and the DOT would be required to share a list of eligible open spaces by February 1, 2021. The program would remain in effect until October 31, 2021, with the possibility of extension, but it would expire by March 31, 2022.

**EFFECTIVE DATE:** This local law would take effect immediately and will expire and be deemed repealed on March 31, 2022.

**FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED:** Fiscal 2022**FISCAL IMPACT STATEMENT:**

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

**IMPACT ON REVENUES:** It is anticipated that the impact on revenue would be de minimis. The revenue generated from the \$20 application fee would offset the loss of revenue from the permit application fees.

**IMPACT ON EXPENDITURES:** It is estimated that there would be no fiscal impact on expenditures resulting from the enactment of this legislation as the designated agencies would use existing resources to fulfill its requirements.

**SOURCE OF FUNDS TO COVER ESTIMATED COSTS:** N/A

**SOURCE OF INFORMATION:** New York City Council Finance Division

**ESTIMATE PREPARED BY:** Aliya Ali, Principal Financial Analyst

**ESTIMATE REVIEWED BY:** Stephanie Ruiz, Assistant Counsel  
Nathan Toth, Deputy Director  
Cirlhien Francisco, Unit Head

**LEGISLATIVE HISTORY:** This legislation was introduced to the Council on August 27, 2020 as Int. No. 2068, and was referred to the Committee on Cultural Affairs, Libraries and International Intergroup Relations (Committee). A hearing was held by the Committee jointly with the Committee on Economic Development on September 24, 2020, and the legislation was laid over. The legislation was subsequently amended and the amended version, Proposed Int. No. 2068-A, will be voted on by the Committee at a hearing on December 10, 2020. Upon successful vote by the Committee, Proposed Int. No. 2068-A will be submitted to the full Council for a vote on December 10, 2020.

**DATE PREPARED:** December 7, 2020.

*Accordingly, this Committee recommends its adoption, as amended.*

**(The following is the text of Int. No. 2068-A:)**

Int. No. 2068-A

By Council Members Van Bramer, Cumbo, Reynoso, Kallos, Rose, Menchaca, Powers, Cabrera, Vallone, Holden, Salamanca, Gjonaj, Chin, Cornegy, Rosenthal, Adams, Lander, Levine, Rivera, Ayala and Barron.

**A Local Law in relation to the temporary use of outdoor space for artistic and cultural events**

*Be it enacted by the Council as follows:*

Section 1. Definitions. For the purposes of this local law, the following terms have the following meanings:  
Artistic or cultural event. The term “artistic or cultural event” means an event or programming offered or run by an eligible art and cultural institution or a cultural venue, including but not limited to cultural performances, rehearsals and classes.



COVID-19. The term “COVID-19” means the disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

Cultural venue. The term “cultural venue” means an entertainment facility in the city of New York intended or designed to be used for a performance in front of a live audience.

Eligible art and cultural institution. The term “eligible art and cultural institution” means (i) an art or cultural group, organization or institution within the city of New York that is a member of the cultural institutions group, as determined by the department of cultural affairs, or that is eligible to apply for a grant through the cultural development fund administered by such department, or (ii) a person providing documentation of funding from a borough arts council within the prior two years.

Office. The term “office” means the mayor’s office of citywide event coordination and management established pursuant to executive order number 105, dated September 17, 2007, or another office or agency designated by the mayor to perform the functions of such office set forth in this local law.

Open space. The term “open space” means any portion of a roadway, designated by the department of transportation, in consultation with the office, that may be used by an eligible art and cultural institution or cultural venue for an outdoor artistic or cultural event.

Program. The term “program” means the open culture program established pursuant to section two of this local law.

§ 2. Open culture program. By March 1, 2021, the office, in consultation with the department of transportation, the department of buildings, the police department, the fire department, and any other agency designated by the mayor, shall establish an open culture program pursuant to which an eligible art and cultural institution or cultural venue may utilize an open space for an artistic or cultural event. The office shall, in consultation with relevant agencies, establish eligibility and use guidelines and policies for such program, and promulgate any necessary rules; provided, however, that such program shall include the following elements:

a. There shall be no fee for participation by an eligible art and cultural institution or cultural venue in such program, except as provided for in section four of this local law.

b. An eligible art and cultural institution or cultural venue utilizing an open space for an event or performance may produce such event for no charge to an audience, request audience donations before, during or after such event, or charge for tickets; provided, however, that such institution or venue may not physically exclude a member of the public from viewing such event from a publicly accessible location outside the open space assigned for such event.

c. An event or performance must comply with any applicable requirements on outdoor cultural events and gatherings set by applicable federal or state law or regulations or other directive from the governor or any agency of the state of New York.

d. The program shall provide that permission for an eligible art and cultural institution or cultural venue to use an open space will only require an application to one city agency, and that to the extent practicable such application place a minimal burden on such institution or venue. A determination that such application is approved or denied shall be made within five business days of application submission by an eligible art and cultural institution or cultural venue.

§ 3. Designation of open spaces. The department of transportation, in consultation with the office, shall designate locations to be open spaces, considering suggestions from council members and factors including but not limited to the effects on traffic, public safety, quality of life, and suitability for use of such locations for performances. The department of transportation shall transmit a list of such open spaces to the office by February 1, 2021.

§ 4. Allowable fees. a. In accordance with subdivision a of section two of this local law, only an application fee of \$20 may be charged for application and participation in the program, provided, however, that applicants seeking a permit to use or operate a sound device or apparatus must pay the applicable fee in accordance with subdivision h of section 10-108 of the administrative code of the city of New York.

b. Nothing in this section shall waive any penalty or fine that may be issued for such event for violation of any applicable rule, law or order.

§ 5. Compliance with other laws. a. Nothing in this local law shall relieve an eligible art and cultural institution or cultural venue from their obligation to adhere to all emergency executive orders issued pursuant to section 24 or 29-a of the executive law, and to all local, state, and federal requirements relating to health and safety. An eligible art and cultural institution or cultural venue participating in the program shall adhere to all

applicable guidance and regulations issued by the department of transportation, the department of cultural affairs, the department of buildings, the department of health and mental hygiene, the New York state department of health, and any other agency. Such institution or venue shall also adhere to all local, state and federal requirements relating to accessibility for people with disabilities.

b. The following laws and rules are suspended only to the extent necessary to implement this program, provided that the office or any relevant agency may further limit the waiver of such laws and rules in program guidance to effectuate the establishment of the program:

1. Paragraph a of subdivision 2 of section 16-118 of the administrative code of the city of New York, to the extent such paragraph would prohibit the obstruction of a sidewalk, flagging or curbstone as part of the program.

2. Subdivision b of section 16-122 of the administrative code of the city of New York, to the extent such subdivision would prohibit movable property to be left, or any obstruction to be erected, in a public place as part of the program.

3. Section 21-111 of the administrative code of the city of New York, to the extent such section would require an eligible art and cultural institution or cultural venue to obtain a public solicitation license in order to solicit donations as part of this program.

4. Paragraph r of subdivision 1 of section 1301 of the New York city charter, section 22-205 of the administrative code of the city of New York, "Movie-making, telecasting and photography in public places," and chapter 9 of title 43 of the rules of the city of New York, to the extent any such provision may require a permit for any filming or rigging in connection with an event covered by the program.

5. Sections 2-03 and 2-04 of title 34 of the rules of the city of New York, to the extent such sections would require a permit and a fee for the use of a tent or umbrella as part of the program.

6. Sections 7-02 and 7-04 of title 34 of the rules of the city of New York, to the extent such provisions would apply to the installation or construction of an improvement or other structure as part of the program.

7. Chapter 1 of title 50 of the rules of the city of New York, to the extent necessary to: (i) suspend all deadlines and fee schedules for a roadway event occurring as part of the program, (ii) allow the office to modify or eliminate any timeframe or deadline for an agency or applicant to review or comment on an application submitted as part of this program in order that the office may make a timely determination as required by subdivision d of section two of this local law; and (iii) allow the office to establish application and use guidelines for the program.

§ 6. Suspension. The department of transportation, upon consultation with the office and the department of health and mental hygiene, may suspend the program upon a determination that use of open space as part of the program may materially impact public health and safety efforts to contain the spread of COVID-19. The office shall promptly provide written notice to the speaker of the council of any such suspension.

§ 7. Expiration. The program shall remain in effect until October 31, 2021, or until such later date as the office shall determine; provided, however, that such program shall not remain in effect after March 31, 2022. The office shall provide written notice to the speaker of the council at least five days prior to the termination of such program.

§ 8. This local law takes effect immediately and shall expire and be deemed repealed on March 31, 2022.

JAMES G. VAN BRAMER, *Chairperson*; LAURIE A. CUMBO; MARK GJONAJ, FRANCISCO P. MOYA; JOSEPH C. BORELLI. Committee on Cultural Affairs, Libraries and International Intergroup Relations, December 10, 2020.

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

## Report of the Committee on Housing and Buildings

Report for Int. No. 2033-A

### **Report of the Committee on Housing and Buildings in favor of approving and adopting, as amended, a Local Law to amend the administrative code of the city of New York, in relation to statements of compliance, issuance and posting requirements of certificates of occupancy and interim certificates of occupancy.**

The Committee on Housing and Buildings, to which the annexed proposed amended local law was referred on August 27, 2020 (Minutes, page 1666), respectfully

#### **REPORTS:**

##### **Introduction**

On December 9, 2020, the Committee on Housing and Buildings, chaired by Council Member Robert Cornegy, Jr., held a hearing on Int. No. 2033-A, A Local Law to amend the administrative code of the city of New York, in relation to statements of compliance, issuance and posting requirements of certificates of occupancy and interim certificates of occupancy. The original bill was first heard on November 10, 2020. More information about this bill, along with the materials for that hearing, can be found at <https://on.nyc.gov/3ojRRG5>.

##### **Int. No. 2033-A**

New York City law currently requires the issuance of either a certificate of occupancy, a partial certificate of occupancy, or a temporary certificate of occupancy before a building can be legally occupied.<sup>1</sup> Certificates of occupancy provide the occupancy limits, layout, and allowable use of a building.<sup>2</sup> Partial certificates of occupancy are required for specific floors of buildings built prior to 1938, and which are not otherwise required to have certificates of occupancy.<sup>3</sup> Temporary certificates of occupancy (TCO) are issued to indicate that a property, or part of a property, is safe for occupancy, but that the outstanding issues preventing the issuance of a certificate of occupancy have not yet been resolved.<sup>4</sup> TCOs are valid for 90 days.<sup>5</sup> Prior to a new TCO being issued, after the expiration of the prior TCO, the Department of Buildings (DOB) must conduct a new inspection.

Int. No. 2033-A would allow DOB to issue interim certificates of occupancy to authorize occupancy of specific floors of a building after an inspection, prior to completion of permitted construction work on the building. This bill would not apply to residential buildings with fewer than eight stories or four dwelling units, non-residential buildings with fewer than five stories, mixed-use buildings with fewer than four dwelling units, or parking structures. This bill would also allow the permit holder seeking an interim certificate of occupancy to submit a signed statement of compliance required by section 28-118.4.2 of the Administrative Code of the city of New York. This bill would further require building owners to post a copy of partial certificates of occupancy and temporary certificates of occupancy, including interim certificates of occupancy, in accordance with section 28-118.19 of the Administrative Code. This bill would additionally allow the DOB Commissioner to revoke temporary and interim certificates of occupancy that were issued in error or on the basis of incorrect information.

This legislation would take effect 120 days after becoming law.

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<sup>1</sup> Department of Buildings Guide to Certificate of Occupancy, [https://www1.nyc.gov/assets/buildings/pdf/cofo\\_guide.pdf](https://www1.nyc.gov/assets/buildings/pdf/cofo_guide.pdf)

<sup>2</sup> *Id.*

<sup>3</sup> See Admin Code §28-118.16.1.

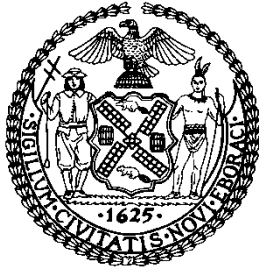
<sup>4</sup> Department of Buildings, Certificate of Occupancy, <https://www1.nyc.gov/site/buildings/homeowner/certificate-of-occupancy.page>

<sup>5</sup> *Id.*

**Update**

On Wednesday, October 9, 2020, the Committee adopted Int. No. 2033-A by a vote of eight in the affirmative, zero in the negative, and zero abstentions.

**(The following is the text of the Fiscal Impact Statement for Int. No. 2033-A:)**



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

**LATONIA MCKINNEY, DIRECTOR**

**FISCAL IMPACT STATEMENT**

**PROPOSED INTRO. NO: 2033-A**

**COMMITTEE: Housing and Buildings**

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to statements of compliance, issuance and posting requirements of certificates of occupancy and interim certificates of occupancy.

**SPONSOR(S):** Council Members Cornegy and Kallos (by request of the Mayor).

**SUMMARY OF LEGISLATION:** This bill would allow the Department of Buildings (“DOB”) to issue interim certificates of occupancy, authorizing occupancy of specific floors of a building, prior to completion of permitted construction work. This bill would not apply to residential buildings with fewer than eight stories or four dwelling units, non-residential buildings with fewer than five stories, mixed-use buildings with fewer than four dwelling units, or parking structures. This bill would also allow for the permit holder to submit a signed statement by the registered design professional of record or permit holder stating that the building complies with all applicable laws and rules, except for specified authorized variations. It would also require building owners to post a copy of partial certificates of occupancy and temporary certificates of occupancy including interim certificates of occupancy. This bill would further allow the DOB Commissioner to revoke temporary and interim certificates of occupancy that were issued in error or on the basis of incorrect information.

**EFFECTIVE DATE:** This bill would take effect 120 days after becoming law.

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

**FISCAL IMPACT STATEMENT:**

	<b>Effective FY21</b>	<b>FY Succeeding Effective FY22</b>	<b>Full Fiscal Impact FY22</b>
<b>Revenues</b>	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0
<b>Net</b>	\$0	\$0	\$0

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

**IMPACT ON EXPENDITURES:** It is anticipated that there would be no impact on expenditures resulting from the enactment of this legislation as the costs of complying with this legislation would be borne by private parties and existing resources could be used for any enforcement arising from this legislation.

**SOURCE OF FUNDS TO COVER ESTIMATED COSTS:** N/A

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

**ESTIMATE PREPARED BY:** Luke Zangerle, Financial Analyst

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

**LEGISLATIVE HISTORY:** This legislation was introduced to the full Council on August 27, 2020 as Intro. No. 2033 and was referred to the Committee on Housing and Buildings (“Committee”). A hearing was held by the Committee on November 10, 2020 and the bill was laid over. The legislation was amended, and the amended version, Intro. No. 2033-A, will be considered by the Committee on December 9, 2020. Following a successful Committee vote, the bill will be submitted to the full Council for a vote on December 10, 2020.

**DATE PREPARED:** December 8, 2020.

*Accordingly, this Committee recommends its adoption, as amended.*

**(The following is the text of Int. No. 2033-A:)**

Int. No. 2033-A

By Council Members Cornegy and Kallos (by request of the Mayor).

**A Local Law to amend the administrative code of the city of New York, in relation to statements of compliance, issuance and posting requirements of certificates of occupancy and interim certificates of occupancy**

*Be it enacted by the Council as follows:*

Section 1. Section 28-101.5 of the administrative code of the city of New York is amended by adding a definition of the term “interim certificate of occupancy”, in alphabetical order, to read as follows:

**INTERIM CERTIFICATE OF OCCUPANCY.** *A type of temporary certificate of occupancy authorizing occupancy of one or more floors of a building prior to the completion of all work needed to obtain a certificate of occupancy for the building, and that remains in effect until the issuance of a certificate of occupancy for the building.*

§ 2. Table 28-112.8 of the administrative code of the city of New York is amended by adding a fee for “Application for interim certificate of occupancy” after the line beginning “Application for temporary certificate of occupancy”, to read as follows:

**TABLE 28-112.8**

SERVICE TYPE	FEE	RENEWALS	COMMENTS
<i>Application for interim certificate of occupancy</i>	\$130		

§ 3. Section 28-118.4.2 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

**§ 28-118.4.2 Statement of compliance.** When a certificate of occupancy for a new or altered building is applied for, the application shall be accompanied by a signed statement of the registered design professional of record or [the superintendent of construction, as applicable,] permit holder stating that such person has examined the approved construction documents and specifications of the building for which the certificate of occupancy is sought, and that, to the best of his or her knowledge and belief, the building has been erected or altered in accordance with the approved construction documents and specifications and, as erected or altered, complies with the provisions of this code and all other applicable laws and rules, except insofar as variations or variances therefrom have been legally permitted or authorized, specifying such variations or variances in such required statement.

§ 4. Section 28-118.15 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

**§ 28-118.15 Temporary certificates of occupancy.** Upon application, the commissioner is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that the subject portion or portions of the building may be occupied and maintained in a manner that will not endanger public safety, health, or welfare. The commissioner shall set a time period during which the temporary certificate of occupancy is valid. *The provisions of section 28-118.15.1 apply only to interim certificates of occupancy. Nothing in section 28-118.15.1 is intended to affect, alter or amend the commissioner's power to issue or to set time periods for the expiration of temporary certificates of occupancy that are not interim certificates of occupancy.*

**§ 28-118.15.1 Interim certificate of occupancy.** An interim certificate of occupancy may be issued authorizing occupancy of a specific floor or floors of a building prior to the completion of the entire work covered by a permit in accordance with this section and rules of the department, subject to the following conditions:

1. *The building is of noncombustible construction and protected with an automatic sprinkler system;*
2. *Adequate means of egress are provided;*
3. *There are no outstanding objections relating to or affecting the occupancy of such portion of the building; and*
4. *Upon inspection, the portion of the building is deemed safe for occupancy without reliance upon temporary measures.*

**Exceptions:** *Section 28-118.15.1 shall not apply to:*

1. *Residential buildings with fewer than eight stories or fewer than four dwelling units; or*
2. *Non-residential buildings with fewer than five stories; or*
3. *Mixed-use buildings with fewer than four dwelling units; or*
4. *Parking structures.*

**§ 28-118.15.1.1 Issuance, contents and posting of interim certificate of occupancy.** *An interim certificate of occupancy shall be issued after an inspection by the commissioner determines that the floor or floors of the building conform substantially to the approved construction documents and to the*

*provisions of this code and other applicable laws and rules. Such interim certificate of occupancy shall contain the same information as a certificate of occupancy issued pursuant to section 28-118.6 and shall be posted while it is in effect in accordance with section 28-118.19 and replaced when necessary in accordance with section 28-118.19.1.*

**§ 28-118.15.1.2 Effective period.** *An interim certificate of occupancy shall remain in effect until the issuance of a certificate of occupancy for the building in accordance with section 28-118.6.*

**§ 28-118.15.2 Revocation and suspension.** *The commissioner may revoke or suspend a temporary certificate of occupancy, including an interim certificate of occupancy, that was issued in error, or on the basis of incorrect information provided to the department, or based on discontinuance of a nonconforming use pursuant to Article V of the New York city zoning resolution, in accordance with the procedures set forth in sections 28-105.10.1 and 28-105.10.2 for the suspension or revocation of a permit.*

§ 5. Section 28-118.17 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

**§ 28-118.17 Revocation of certificates of occupancy.** The commissioner is authorized to request, in writing, pursuant to section six hundred forty five of the New York city charter that the board of standards and appeals or a court of competent jurisdiction revoke, vacate, or modify a certificate of occupancy issued under the provisions of this code whenever the certificate is issued in error, or on the basis of incorrect information provided to the department, *or the nonconforming use reflected on the certificate of occupancy is no longer permitted pursuant to Article V of the New York city zoning resolution.* *This section shall not be construed to apply to interim certificates of occupancy and other temporary certificates of occupancy.*

§ 6. Section 28-118.19 of the administrative code of the city of New York, as added by local law number 33 for the year 2007, is amended to read as follows:

**§ 28-118.19 Posting of certificates of occupancy.** The owner shall post a copy of the building's certificate of occupancy, *partial certificates of occupancy or temporary, including interim, certificates of occupancy* in accordance with this section 28-118.19, except buildings occupied entirely by group R3. Buildings that are not required to have a certificate of occupancy shall be posted by the owner with a sign or placard in a form prescribed by the commissioner. The certificate of occupancy or sign, as applicable, shall be permanently affixed to the structure in a conspicuous location in a public hall, corridor, management office of the building or as otherwise prescribed by the commissioner.

**§ 28-118.19.1 Replacement of posted certificates of occupancy and signs.** All posted certificates of occupancy, *partial certificates of occupancy, temporary, including interim, certificates of occupancy* or signs, as applicable, shall not be removed or defaced and, if lost, removed or defaced, shall be immediately replaced. The commissioner may inspect or cause to be inspected periodically all buildings for compliance with the provisions of this code in regard to posting; and the inspection reports shall specify any violation thereof.

§ 7. This local law takes effect 120 days after it becomes law.

ROBERT E. CORNEGY, Jr., *Chairperson*; FERNANDO CABRERA, HELEN K. ROSENTHAL, BARRY S. GRODENCHIK, BILL PERKINS, MARK GJONAJ, CARLINA RIVERA, FARAH N. LOUIS; Committee on Housing and Buildings, December 9, 2020.

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

## Report of the Committee on Land Use

Report for L.U. No. 691

**Report of the Committee on Land Use in favor of approving Application No. C 200238 PCQ (DSNY Queens Sanitation Garage 1) submitted by the Department of Sanitation and the Department of Citywide Administrative Services, pursuant to Section 197-c of the New York City Charter, for the site selection and acquisition of property for a sanitation garage and salt shed facility to be located at 31-11 20th Avenue (Block 850, p/o Lot 350) and 19th Avenue (Block 826, Lot 42), Borough of Queens, Council District 22, Community District 1.**

The Committee on Land Use, to which the annexed Land Use item was referred on October 29, 2020 (Minutes, page 2329) and which same Land Use item was coupled with the resolution shown below, respectfully

### REPORTS:

#### SUBJECT

**QUEENS CB - 1**

**C 200238 PCQ**

City Planning Commission decision approving an application submitted by the Department of Sanitation (DSNY) and the Department of Citywide Administrative Services (DCAS), pursuant to Section 197-c of the New York City Charter, for the site selection and acquisition of property located at 31-11 20th Avenue (Block 850, p/o Lot 350) and 19th Avenue (Block 826, Lot 42) for a sanitation garage and salt shed facility, Community District 1, Borough of Queens.

#### INTENT

To approve the site selection and acquisition of property located at 31-11 20<sup>th</sup> Avenue (Block 850, p/o Lot 350) and 19<sup>th</sup> Avenue (Block 826, Lot 42), to facilitate the construction of a 93,775-gross-square-foot sanitation garage and a 20,000-square-foot enclosed salt storage shed in the Astoria Industrial Business Zone (IBZ) in Queens, Community District 1.

#### PUBLIC HEARING

**DATE:** November 5, 2020

**Witnesses in Favor:** Five

**Witnesses Against:** Two

#### SUBCOMMITTEE RECOMMENDATION

**DATE:** November 17, 2020

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



**In Favor:**

Adams, Koo, Barron, Miller, Treyger.

**Against:**

None

**Abstain:**

None.

**COMMITTEE ACTION**

**DATE:** December 9, 2020

The Committee recommends that the Council approve the attached resolution.

**In Favor:**

Salamanca, Gibson, Barron, Deutsch, Koo, Levin, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz, Moya, Rivera.

**Against:**

None

**Abstain:**

None

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

Res. No. 1501

**Resolution approving the decision of the City Planning Commission on ULURP No. C 200238 PCQ (L.U. No. 691), a site selection and acquisition of property located at 31-11 20<sup>th</sup> Avenue (Block 850, p/o Lot 350) and 19<sup>th</sup> Avenue (Block 826, Lot 42), Borough of Queens, for use as a sanitation garage and salt shed facility.**

By Council Members Salamanca and Adams.

**WHEREAS**, the Department of Sanitation (DSNY) and the Department of Citywide Administrative Services (DCAS), filed an application to pursuant to Section 197-c of the New York Charter for the site selection and acquisition of property located at 31-11 20th Avenue (Block 850, p/o Lot 350) and 19th Avenue (Block 826, Lot 42), for use as a sanitation garage and salt shed facility in the Astoria Industrial Business Zone (IBZ) in Queens, Community District 1 (ULURP No. C 200238 PCQ) (the "Application");

**WHEREAS**, the City Planning Commission filed with the Council on October 28, 2020 its decision dated October 7, 2020 (the "Decision") on the Application;

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

**WHEREAS**, upon due notice, the Council held a public hearing on the Decision and Application on November 5, 2020;

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

**WHEREAS**, the Council has considered the relevant environmental issues, including the negative declaration issued December 4<sup>th</sup>, 2019 (CEQR No. 18DOS008Q) (the "Negative Declaration").

**RESOLVED:**

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

Pursuant to Section 197-d of the New York City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, C 200238 PCQ, incorporated by reference herein, and the record before the Council, the Council approves the Decision for the site selection and acquisition of the Site for use as a sanitation garage and salt shed facility

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 694

**Report of the Committee on Land Use in favor of approving Application No. C 200033 ZMQ (Special Flushing Waterfront District) submitted by FWRA, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 10a and 10b, changing from a C4-2 District to an M1-2/R7-1 District, changing from an M3-1 District to an M1-2/R7-1 District, and establishing a Special Flushing Waterfront District (FW), Borough of Queens, Community District 7, Council District 20.**

The Committee on Land Use, to which the annexed Land Use item was referred on November 19, 2020 (Minutes, page 2452) and which same Land Use item was coupled with the resolution shown below, respectfully

**REPORTS:****SUBJECT****QUEENS CB-7 - TWO APPLICATIONS RELATED TO SPECIAL FLUSHING WATERFRONT DISTRICT****C 200033 ZMQ (Pre. L.U. No. 694)**

City Planning Commission decision approving an application submitted by FWRA, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 10a and 10b:

1. changing from a C4-2 District to an M1-2/R7-1 District property bounded by a line 425 feet southerly of Northern Boulevard, College Point Boulevard, a line perpendicular to the westerly street line of College Point Boulevard distant 845 feet southerly (as measured along the street line) from the point of

intersection of the westerly street line of College Point Boulevard and the southerly street line of Northern Boulevard, a line passing through a point distant 200 feet westerly of College Point Boulevard on the last named course and proceeding northwesterly at an angle of 125 degrees to said named course, and the U.S. Pierhead and Bulkhead line;

2. changing from an M3-1 District to an M1-2/R7-1 District property bounded by the westerly prolongation of the northerly street line of 36th Avenue, College Point Boulevard, a line 425 feet southerly of Northern Boulevard, and the U.S. Pierhead and Bulkhead line; and
3. establishing a Special Flushing Waterfront District (FW) bounded by the westerly prolongation of the northerly street line of 36th Avenue, College Point Boulevard, 39th Avenue, Janet Place, Roosevelt Avenue, College Point Boulevard, the northerly street line of 40th Road and its northeasterly and south westerly prolongations, a line passing through a point distant 891.29 feet southwestly of College Point Boulevard on the last named course and proceeding northwesterly at an angle 127 degrees 12 minutes and 20 seconds to said named course, the easterly boundary line of a park, and the U.S. Pierhead and Bulkhead line;

as shown on a diagram (for illustrative purposes only) dated December 16, 2019.

#### **N 200034 ZRQ (Pre. L.U. No. 695)**

City Planning Commission decision approving an application submitted by FWRA, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, establishing the Special Flushing Waterfront District (creating Article XII, Chapter 7) and modifying related Sections, including APPENDIX F (Inclusionary Housing designated areas and Mandatory Inclusionary Housing areas).

#### **INTENT**

To approve an amendment to establish the Special Flushing Waterfront District (SFWD), to rezone a C4-2 District to an M1-2/R7-1 District, and an M3-1 District to an M1-2/R7-1 District; amend zoning text to establish the SFWD text, modify Appendix B Index of Special Districts to include the SFWD, and modify Appendix F to designate a portion of the project area as a Mandatory Inclusionary Housing Area utilizing Options 1 and 2; and modify related ZR Sections, including 62-13 Applicability of District Regulations, 62-95 Borough of Queens, 62-952 Waterfront Access Plan Q-2: Downtown Flushing, 11-122 Districts Established, 12-10 Definitions, 14-44 Special Zoning Districts Where Certain Sidewalk Cafes Are Permitted, and 23-011 Quality Housing. The proposed actions would implement a comprehensive plan to redevelop approximately 29 acres of waterfront area in the Downtown Flushing neighborhood of Queens, Community District 7.

#### **PUBLIC HEARING**

**DATE:** November 9, 2020

**Witnesses in Favor:** Sixty-eight

**Witnesses Against:** Thirty-one

**SUBCOMMITTEE RECOMMENDATION****DATE:** December 9, 2020

The Subcommittee recommends that the Land Use Committee approve the decisions of the City Planning Commission on L.U. Nos. 694 and 695.

**In Favor:**

Moya, Levin, Reynoso, Grodenchik, Rivera.

**Against:**

None

**Abstain:**

None.

**COMMITTEE ACTION****DATE:** December 9, 2020

The Committee recommends that the Council approve the attached resolutions.

**In Favor:**

Salamanca, Gibson, Deutsch, Koo, Levin, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz, Moya, Rivera.

**Against:**

Barron

**Abstain:**

None.

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

Res. No. 1502

**Resolution approving the decision of the City Planning Commission on ULURP No. C 200033 ZMQ, a Zoning Map amendment (Preconsidered L.U. No. 694).**

By Council Members Salamanca and Moya.

**WHEREAS**, FWRA LLC, filed an application pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 10a and 10b, changing from a C4-2 District to an MI-2/R7- 1 District; changing from an M3-1 District to an MI-2/R7-1 District; and establishing a Special Flushing Waterfront District (FW), which in conjunction with the related proposed actions would implement a comprehensive plan to redevelop approximately 29 acres of waterfront area in the Downtown Flushing neighborhood of Queens, Community District 7 (ULURP No. C 200033 ZMQ), (the "Application");

**WHEREAS**, the City Planning Commission filed with the Council on November 6, 2020, its decision dated November 4, 2020 (the "Decision") on the Application;

**WHEREAS**, the Application is related to application N 200034 ZRQ (Pre. L.U. No. 695), a zoning text amendment to establish the Special Flushing Waterfront District (SFWD); to update the Waterfront Access Plan Q-2 and; to designate a Mandatory Inclusionary Housing (MIH) area;

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

**WHEREAS**, upon due notice, the Council held a public hearing on the Decision and Application on November 9, 2020;

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

**WHEREAS**, the Council has considered the relevant environmental issues, including the negative declaration issued December 16<sup>th</sup>, 2019 (CEQR No. 20DCP083Q), which includes an (E) designation to avoid the potential for significant adverse impacts related to air quality, noise, and hazardous materials (E-557) (the “Negative Declaration”).

**RESOLVED:**

The Council finds that the action described herein will have no significant impact on the environment as set forth in the (E) Designation (E-557) and Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, C 200033 ZMQ, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section Nos. 10a and 10b:

1. changing from a C4-2 District to an M1-2/R7-1 District property bounded by a line 425 feet southerly of Northern Boulevard, College Point Boulevard, a line perpendicular to the westerly street line of College Point Boulevard distant 845 feet southerly (as measured along the street line) from the point of intersection of the westerly street line of College Point Boulevard and the southerly street line of Northern Boulevard, a line passing through a point distant 200 feet westerly of College Point Boulevard on the last named course and proceeding northwesterly at an angle of 125 degrees to said named course, and the U.S. Pierhead and Bulkhead line;
2. changing from an M3-1 District to an M1-2/R7-1 District property bounded by the westerly prolongation of the northerly street line of 36th Avenue, College Point Boulevard, a line 425 feet southerly of Northern Boulevard, and the U.S. Pierhead and Bulkhead line; and
3. establishing a Special Flushing Waterfront District (FW) bounded by the westerly prolongation of the northerly street line of 36th Avenue, College Point Boulevard, 39th Avenue, Janet Place, Roosevelt Avenue, College Point Boulevard, the northerly street line of 40th Road and its northeasterly and south westerly prolongations, a line passing through a point distant 891.29 feet southwesterly of College Point Boulevard on the last named course and proceeding northwesterly at an angle 127 degrees 12 minutes and 20 seconds to said named course, the easterly boundary line of a park, and the U.S. Pierhead and Bulkhead line;

as shown on a diagram (for illustrative purposes only) dated December 16, 2019, and subject to the conditions of CEQR Declaration E-557, Borough of Queens, Community District 7.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 695

**Report of the Committee on Land Use in favor of approving Application No. N 200034 ZRQ (Special Flushing Waterfront District) submitted by FWRA, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, establishing the Special Flushing Waterfront District (creating Article XII, Chapter 7) and modifying related Sections, including APPENDIX F (Inclusionary Housing designated areas and Mandatory Inclusionary Housing areas) to establish a Mandatory Inclusionary Housing Area utilizing Options 1 and 2, Borough of Queens, Community District 7, Council District 20.**

The Committee on Land Use, to which the annexed Land Use item was referred on November 19, 2020 (Minutes, page 2452) and which same Land Use item was coupled with the resolution shown below, respectfully

**REPORTS:**

**(For text of report, please see the Report of the Committee on Land Use for L.U. No. 694 printed in these Minutes)**

*Accordingly, this Committee recommends its adoption.*

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

Res. No. 1503

**Resolution approving the decision of the City Planning Commission on Application No. N 200034 ZRQ, for an amendment of the text of the Zoning Resolution (Preconsidered L.U. No. 695).**

By Council Members Salamanca and Moya.

**WHEREAS**, FWRA LLC, filed an application pursuant to Section 201 of the New York City Charter, for an amendment of the text of the Zoning Resolution of the City of New York, establishing the Special Flushing Waterfront District (creating Article XII, Chapter 7) and modifying related Sections, including APPENDIX F (Inclusionary Housing designated areas and Mandatory Inclusionary Housing areas), which in conjunction with the related proposed actions would implement a comprehensive plan to redevelop approximately 29 acres of waterfront area in the Downtown Flushing neighborhood of Queens, Community District 7 (ULURP No. N 200034 ZRQ), (the “Application”);

**WHEREAS**, the City Planning Commission filed with the Council on November 6, 2020, its decision dated November 4, 2020 (the "Decision") on the Application;

**WHEREAS**, the Application is related to application C 200033 ZMQ (Pre. L.U. No. 694), a zoning map amendment to change an a C4-2 and M3-1 districts to a M1-2/R7-1 district and to establish the Special Flushing Waterfront District (FW);

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

**WHEREAS**, upon due notice, the Council held a public hearing on the Decision and Application on November 9, 2020;

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

**WHEREAS**, the Council has considered the relevant environmental issues, including the negative declaration issued December 16<sup>th</sup>, 2019 (CEQR No. 20DCP083Q), which includes an (E) designation to avoid the potential for significant adverse impacts related to air quality, noise, and hazardous materials (E-557) (the "Negative Declaration").

**RESOLVED:**

The Council finds that the action described herein will have no significant impact on the environment as set forth in the (E) Designation (E-557) and Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, N 200034 ZRQ, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

Matter underlined is new, to be added;

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 I  
GENERAL PROVISIONS**

**Chapter 1  
Title, Establishment of Controls and Interpretation of Regulations**

\* \* \*

**11-122  
Districts established**

In order to carry out the purposes and provisions of this Resolution, the following districts are hereby established:

\* \* \*

Special Purpose Districts

\* \* \*

Establishment of the Special Enhanced Commercial District

In order to carry out the special purposes of this Resolution as set forth in Article XIII, Chapter 2, the #Special Enhanced Commercial District# is hereby established.

Establishment of the Special Flushing Waterfront District

In order to carry out the special purposes of this Resolution as set forth in Article XII, Chapter 7, the #Special Flushing Waterfront District# is hereby established.

Establishment of the Special Forest Hills District



\* \* \*

**Chapter 2  
Construction of Language and Definitions**

\* \* \*

**12-10  
DEFINITIONS**

\* \* \*

**Special Enhanced Commercial District**

The "Special Enhanced Commercial District" is a Special Purpose District designated by the letters "EC" in which special regulations set forth in Article XIII, Chapter 2, apply.

Special Flushing Waterfront District

The "Special Flushing Waterfront District" is a Special Purpose District designated by the letters "FW" in which special regulations set forth in Article XII, Chapter 7, apply.

**Special Forest Hills District**

The "Special Forest Hills District" is a Special Purpose District designated by the letters "FH" in which special regulations set forth in Article VIII, Chapter 6, apply.

\* \* \*

**Chapter 4  
Sidewalk Cafe Regulations**

\* \* \*

**14-40  
AREA ELIGIBILITY FOR SIDEWALK CAFES**

\* \* \*

**14-44  
Special Zoning Districts Where Certain Sidewalk Cafes Are Permitted**

#Enclosed# or #unenclosed sidewalk cafes# shall be permitted, as indicated, in the following special zoning districts, where allowed by the underlying zoning. #Small sidewalk cafes#, however, may be located on #streets# or portions of #streets# within special zoning districts pursuant to the provisions of Section 14-43 (Locations Where Only Small Sidewalk Cafes Are Permitted).

\* \* \*

Queens	#Enclosed Sidewalk Cafe#	#Unenclosed Sidewalk Cafe#
Downtown Far Rockaway District	No	Yes
Downtown Jamaica District	No	Yes
<u>Flushing Waterfront</u>	<u>No</u>	<u>Yes</u>
Forest Hills District <sup>1</sup>	No	Yes
Long Island City Mixed Use District <sup>2</sup>	No	Yes
Southern Hunters Point District	No	Yes
Willetts Point District	No	Yes

\* \* \*

**ARTICLE II  
RESIDENCE DISTRICT REGULATIONS**

\* \* \*

**Chapter 3  
Residence Bulk Regulations in Residence Districts**

\* \* \*

**23-011**

**Quality Housing**

\* \* \*

R6 R7 R8 R9 R10

(c) In the districts indicated without a letter suffix, the optional Quality Housing #bulk# regulations permitted as an alternative pursuant to paragraph (b) of this Section, shall not apply to:

- (1) Article VII, Chapter 8 (Special Regulations Applying to Large Scale Residential Developments);
- (2) Special Purpose Districts

However, such optional Quality Housing #bulk# regulations are permitted as an alternative to apply in the following Special Purpose Districts:

#Special East Harlem Corridors District#;

#Special Flushing Waterfront District#;

#Special Grand Concourse Preservation District#;

\* \* \*

**ARTICLE VI  
Special Regulations Applicable to Certain Areas**

\* \* \*

**Chapter 2  
Special Regulations Applying in the Waterfront Area**

\* \* \*

**62-10  
GENERAL PROVISIONS**

\* \* \*

**62-13  
Applicability of District Regulations**

\* \* \*

The regulations of this Chapter shall apply in the following Special Purpose Districts, except as specifically modified within the Special Purpose District provisions:

#Special Flushing Waterfront District#

#Special Inwood District#

#Special St. George District#.

\* \* \*

**62-90  
WATERFRONT ACCESS PLANS**

\* \* \*

**62-95**

**Borough of Queens**

The following Waterfront Access Plans are hereby established within the Borough of Queens. All applicable provisions of Article VI, Chapter 2, remain in effect within the areas delineated by such plans, except as expressly set forth otherwise in the plans:

- Q-1: Northern Hunters Point, as set forth in Section 62-951
- Q-2: Flushing Waterfront, in the #Special Flushing Waterfront District#, as set forth in Section ~~62-952~~ 127-50 (Flushing Waterfront Access Plan)
- Q-3: Newtown Creek, in the #Special Southern Hunters Point District#, as set forth in Section 125-46 (Newtown Creek Waterfront Access Plan).

\* \* \*

**62-952**

**Waterfront Access Plan Q-2: Downtown Flushing**

[NOTE: existing provisions moved to Section 127-50 and modified]

\* \* \*

**ARTICLE XII**

**SPECIAL PURPOSE DISTRICTS**

\* \* \*

**Chapter 7**

**Special Flushing Waterfront District**

[All text in this Chapter is new text]

**127-00**

**GENERAL PURPOSES**

The “Special Flushing Waterfront District” established in this Resolution is designed to promote and protect public health, safety and general welfare. These general goals include, among others, the following specific purposes:

- (a) to enhance neighborhood economic diversity by broadening the range of housing choices for residents of varied incomes;
- (b) to create a lively and attractive built environment that will provide amenities and services for the use and enjoyment of area residents, workers and visitors;
- (c) to encourage well-designed development that complements the pedestrian experience and enhances the built character of the neighborhood;
- (d) to establish and maintain physical and visual public access to and along Flushing Creek;
- (f) to make use of the waterfront by providing public access via private street network, direct connections to the water and to promote coordinated redevelopment of the area in a manner consistent with waterfront access and internal circulation within the Special District; and
- (g) to promote the most desirable use of land and building development in accordance with the District Plan for Downtown Flushing and thus conserve the value of land and buildings and thereby improve the City’s tax revenues.

### **127-01**

#### **General Provisions**

The provisions of this Chapter shall apply within the #Special Flushing Waterfront District#. The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control unless expressly stated otherwise.

### **127-02**

#### **District Plan and Maps**

In order to carry out the purposes and provisions of this Chapter, district maps are located in the Appendix to this Chapter and are hereby incorporated and made an integral part of this Resolution. They are incorporated for the purpose of specifying locations where special regulations and requirements, as set forth in the text of this Chapter, apply.

Map 1: Special Flushing Waterfront District and Subdistricts

Map 2: Publicly Accessible Private Street Network

Map 3: Requirements Along Street Frontages

Map 4: Waterfront Access Plan: Parcel Designation

Map 5: Waterfront Access Plan: Visual Corridors

- Map 6:           Waterfront Access Plan: Public Access Areas
- Map 7:           Waterfront Access Plan: Phase I Waterfront Public Access Improvements
- Map 8:           Waterfront Access Plan: Phase II Waterfront Public Access Improvements

### **127-03**

#### **Subdistricts**

In order to carry out the provisions of this Chapter, three subdistricts, Subdistrict A, Subdistrict B and Subdistrict C, are established.

The location and boundaries of these subdistricts are shown on Map 1 (Special Flushing Waterfront District and Subdistricts) in the Appendix to this Chapter.

### **127-04**

#### **Definitions**

For purposes of this Chapter, matter in italics is defined in Section 12-10 and within this Section, except where explicitly stated otherwise in individual provisions in this Chapter.

#### Conceptual plan

A “conceptual plan” is a plan that sets forth the proposed final design, in compliance with the requirements of Section 127-421 (Requirements for publicly accessible private streets), for the remaining portions of the #publicly accessible private street# or #upland connection# certified pursuant to paragraph (b)(1)(i) of Section 127-422 (Certification for publicly accessible private streets), or paragraph (a)(1)(i) of Section 127-542 (Supplemental provisions), respectively. The plan shall include the proposed location, dimensions and grading for such remaining portions on adjoining #zoning lots# and shall be considered by the Chairperson of the City Planning Commission in reviewing the proposed #final site plan# for such remaining portions, if and when they become the subject of a certification pursuant to paragraph (b)(2) of Section 127-422 or paragraph (a)(2) of Section 127-542.

#### Final site plan

A “final site plan” is a plan that specifies the final design for the location, dimensions, and grading of all or portions of the #publicly accessible private streets# or #upland connection# that are the subject of a certification pursuant to paragraphs (a) or (b) of Section 127-422 or paragraphs (a)(1) or (a)(2) of Section 127-542. Where applicable, the design of such plan shall be consistent with any #conceptual plan# for the same portion of the #publicly accessible private street# or #upland connection# and, once certified and implemented in accordance with paragraph (b) of Section 127-422 or paragraph (a) of Section 127-542, such plan shall supersede any #interim plan# for the same portion of a #publicly accessible private street# or #upland connection#.

Interim site plan

An “interim site plan” is a plan that specifies, for an interim period, the design for the location, dimensions, and grading of portions of the #publicly accessible private street# or #upland connection# that are the subject of a certification pursuant to paragraph (b)(1) of Section 127-422 or paragraph (a)(1) of Section 127-542 and located on the applicant’s #zoning lot#. A design for an interim period is necessary where it is not feasible to implement the final design for such portions until build-out of the remaining portions of the #publicly accessible private street# or #upland connection# occurs. Such #interim site plan#, once certified, shall remain in effect until implementation of the #final site plan# in accordance with paragraph (b) of Section 127-422 or paragraph (a) of Section 127-542, at which time the certified #final site plan# shall supersede the #interim site plan#.

Publicly accessible private street

A “publicly accessible private street” is a way specified on Map 2 in the Appendix to this Chapter that functions as a #street# for the purposes of general public use, including vehicular and pedestrian traffic, and is open and unobstructed from its ground level to the sky, except by streetscape elements required or permitted by the provisions of this Chapter.

**127-05****Applicability of District Regulations****127-051****Applicability of the Quality Housing Program**

Within Subdistrict A and Subdistrict B, any #building# containing #residences#, or any #building# containing #long-term care facilities# or philanthropic or non-profit institutions with sleeping accommodations, shall be #developed# or #enlarged# in accordance with the Quality Housing Program and the regulations of Article II, Chapter 8 (Quality Housing) shall apply. The #bulk# regulations of this Chapter shall be considered the applicable #bulk# regulations for #Quality Housing buildings#.

**127-052****Applicability of the Inclusionary Housing Program**

For the purposes of applying the Inclusionary Housing Program provisions set forth in Sections 23-154 and 23-90, #Mandatory Inclusionary Housing areas# within the #Special Flushing Waterfront District# are shown in APPENDIX F (Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas) of this Resolution.

**127-053****Applicability of Article VI, Chapter 1**

The provisions of Article VI, Chapter 1 (Special Regulations Applying Around Major Airports) shall apply, except as modified in accordance with the provisions of this Chapter.



**127-054****Applicability of Article VI, Chapter 2**

The provisions of Article VI, Chapter 2 (Special Regulations Applying in the Waterfront Area) shall apply in all #waterfront areas#, except as modified in accordance with the provisions of this Chapter.

**127-055****Applicability of Article VI, Chapter 4**

The provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas) shall apply. In the event of a conflict between the provisions of this Chapter and Article VI, Chapter 4, the provisions of Article VI, Chapter 4 shall control.

**127-056****Applicability of Article XII, Chapter 3**

In M1 Districts paired with a #Residence District#, the special #use#, #bulk# and parking and loading provisions of Article XII, Chapter 3 (Special Mixed Use District) shall apply, except as modified by the provisions of this Chapter, and shall supplement or supersede the provisions of the designated #Residence District# or M1 District, as applicable.

**127-10****SPECIAL USE REGULATIONS**

Within the #Special Flushing Waterfront District#, the #use# regulations of the underlying zoning districts and of Article VI, Chapter 2 (Special Regulations Applying in the Waterfront Area), and Article XII, Chapter 3 (Special Mixed Use District), shall apply, except as modified by the provisions of this Section, inclusive.

**127-11****Location of Residential Use Within Buildings**

The provisions of Section 32-422 (Location of floors occupied by commercial uses) shall be modified to permit #dwelling units# on the same #story# as a #commercial use# provided no access exists between such #uses# at any level containing #dwelling units# and provided no #commercial uses# are located directly over any #dwelling units#. However, such #commercial uses# may be located over #dwelling units# by authorization of the City Planning Commission upon a finding that sufficient separation of #residential uses# from #commercial uses# exists within the #building#.

**127-12****Physical Culture or Health Establishments**

The provisions of Section 73-36 (Physical Culture or Health Establishments) shall not apply. In lieu thereof, #physical culture or health establishments# shall be permitted as-of-right. For the purposes of applying the underlying regulations to such #use#, a #physical culture or health establishment# shall be considered a Use Group 9 #use# and shall be within parking requirement category B.

**127-13****Sign Regulations**

For M1 Districts paired with a #Residence District#, the provisions regulating #signs# in C4 Districts, as set forth in Section 32-60 (SIGN REGULATIONS), inclusive, shall apply for any #signs#.

**127-20****SPECIAL BULK REGULATIONS**

For the purpose of applying the #bulk# regulations of this Section, inclusive, Subdistricts A, B and C, as shown on Map 1 in the Appendix to this Chapter, shall be considered #waterfront blocks#.

Within Subdistricts A and B, the applicable #bulk# regulations of the underlying districts and of Article VI, Chapter 2 (Special Regulations Applying in the Waterfront Area), and Article XII, Chapter 3 (Special Mixed Use District), shall apply, except as modified by the provisions of this Section, inclusive.

Within Subdistrict C, the applicable #bulk# regulations of the underlying districts and of Article VI, Chapter 2 shall apply.

All #upland connections#, #visual corridors#, #shore public walkways# and #publicly accessible private streets#, shall be considered #streets# and their boundaries shall be considered #street lines# for the purposes of applying all #bulk# regulations, except that such #streets# shall not subdivide a #zoning lot#. Furthermore, such #streets# shall be considered part of the #zoning lot# for the purpose of applying the #floor area# regulations of this Section, inclusive.

**127-21****Special Floor Area Regulations**

The #floor area# provisions of Section 62-32 (Maximum Floor Area Ratio and Lot Coverage on Waterfront Blocks) and applicable regulations shall apply except as modified in this Section, inclusive.

(a) Floor space for accessory off-street parking

The #floor area# of a #building# shall not include floor space used for #accessory# off-street parking spaces provided in any #story# located not more than 33 feet above the height of the #base plane#.

(b) Special floor area regulations for mixed use districts

For M1 Districts paired with a #Residence District#, located inside a #Mandatory Inclusionary Housing area#, the applicable maximum #floor area ratio# provisions of paragraph (d) of Section 23-154 (Inclusionary Housing) or Section 23-155 (Affordable independent residences for seniors) shall apply to all #residential uses#. In addition, the maximum #floor area ratio# shall be 4.8 for #community facility uses#, 3.0 for #commercial uses# and 3.0 for #manufacturing uses#.

**127-22****Special Yard Regulations**

On #waterfront zoning lots#, the #waterfront yard# provisions of Section 62-33 (Special Yard Regulations on Waterfront Blocks) and grading requirements of paragraph (a) of Section 64-82 (Modification of Waterfront

Regulations Relating to Level of Yards, Visual Corridors and the Ground Floor) shall apply, except as modified as follows:

- (a) for all #waterfront zoning lots#, as defined in Section 62-11 (Definitions), whose #developments# are comprised #predominantly#, as defined in Section 62-11, of #uses# in Use Groups 16, 17 and 18, a #waterfront yard#, as also defined in Section 62-11, shall be provided in accordance with the provisions of Section 62-332 (Rear yards and waterfront yards); and
- (b) the grading requirements of paragraph (a) of Section 64-82 may be modified pursuant to a certification by the Chairperson of the City Planning Commission as set forth in Section 127-61 (Certification for Interim Grading Conditions).

On #zoning lots# that are not #waterfront zoning lots#, no #yard# regulations shall apply.

### **127-23** **Special Height and Setback Regulations**

The height and setback provisions of paragraphs (a)(4) of Section 62-341 (Developments on land and platforms) shall apply except as modified in Section 127-231 (Permitted obstructions). The remaining provisions of Section 62-341 shall be superseded by the provisions of this Section, inclusive.

The height of all #buildings or other structures# shall be measured from the #base plane#, except where modified by specific provisions of this Section, inclusive, or by the provisions of Article VI, Chapter 4.

Sidewalk widenings shall be provided along specified #street# frontages and at specified depths as set forth on Map 3 (Requirements Along Street Frontages) in the Appendix to this Chapter. Such sidewalk widening shall be improved to Department of Transportation standards for sidewalks, and be at the same level as the adjoining sidewalk.

### **127-231** **Permitted obstructions**

The permitted obstruction provisions of paragraph (a)(4) of Section 62-341 (Developments on land and platforms) shall be modified as follows:

- (a) the dormer provisions of paragraph (a)(4)(i) of Section 62-341 shall be modified pursuant to the provisions of paragraph (c)(1) of Section 127-233 (Base heights and setback regulations);
- (b) the penthouse regulations of paragraph (a)(4)(ii) of Section 62-341 shall not apply; and
- (c) the maximum height of any permitted obstructions shall be determined in accordance with the provisions of Article VI, Chapter 1 (Special Regulations Applying Around Major Airports), except where modified by certification of the Chairperson of the City Planning Commission pursuant to Section 127-236 (Certification to modify maximum height of building or other structure).

### **127-232** **Street wall location regulations**

Along #street# frontages where a sidewalk widening is required pursuant to Map 3 in the Appendix to this

Chapter, the #street wall# location requirements of this Section shall apply from the interior boundary of such sidewalk widening.

(a) Along primary #street# frontages

Along primary #street# frontages, as shown on Map 3, at least 60 percent of the #aggregate width of street walls# shall be located within eight feet of the #street line# and rise to at least the minimum base height as specified in Section 127-233 (Base heights and setback regulations), or the height of the building, whichever is lower. The remaining #aggregate width of street walls# may be located either within eight feet of the #street line# or beyond eight feet of the #street line#. The requirements of this paragraph shall not apply to the portion of a #building# adjacent to the major portion of a publicly accessible area, as specified in Section 127-43 (Publicly Accessible Area).

(b) Along secondary #street# frontages

Along secondary #street# frontages, as shown on Map 3, #street walls# may be located at any distance from the #street line#.

(c) Along all #street# frontages

Along both primary and secondary #street# frontages, recesses shall be permitted at the ground floor level as follows:

- (1) recesses up to three feet in depth from the #street wall# shall be permitted at any distance from the #street line# to provide access to the #building#; and
- (2) recesses that exceed a depth of three feet from the #street wall# shall be permitted, provided that such recesses are not deeper than 10 feet and have a height of at least 15 feet, as measured from the adjacent sidewalk level to the ceiling of such ground floor recess.

**127-233**

**Base heights and setback regulations**

(a) Along primary #street# frontages

Along primary #street# frontages, as shown on Map 3 (Requirements Along Street Frontages) in the Appendix to this Chapter, the following shall apply:

- (1) The minimum base height shall be 25 feet, or two #stories#, whichever is lower, and the maximum base height shall be 105 feet along College Point Boulevard and 75 feet along all other primary #street# frontages.
- (2) Along Type 1 primary #street# frontages, at a height not lower than the minimum base height nor higher than the maximum base height, a setback with a minimum depth of 10 feet, as measured from the #street wall#, shall be provided, except that:
  - (i) the depth of such required setback may be reduced in accordance with the provisions of paragraph (c)(2) of Section 23-662 (Maximum height of buildings and setback regulations). However, where a sidewalk widening is required pursuant to this Section, as indicated on Map 4 (Waterfront Access Plan: Parcel Designation), the minimum depth of the required setback above the maximum base height may be reduced to five feet, as measured from the #street wall#; and

(ii) the depth of such setbacks may include the depth of recesses or #outer courts# in the #street wall# of the #building# base, provided that the aggregate width of any such recessed portion of a #street wall# with a setback of less than seven feet, as applicable, does not exceed 40 percent of the #aggregate width of street wall# at any level.

(3) Along Type 2 primary #street# frontages, a #building# may rise without any setback above the maximum base height.

(b) Along secondary #street# frontages

Along secondary #street# frontages, as shown on Map 3, the following shall apply:

(1) Along the #shore public walkway#, the maximum base height shall be 75 feet, and any portion of a #building# that exceeds the maximum base height shall be set back at least 10 feet from the #street line#. Wherever a #supplemental public access area# is provided as a widened #shore public walkway#, such widened area shall be included in such setback distance.

(2) Along other secondary #street# frontages, the minimum base height shall be 25 feet, or two #stories#, whichever is lower, and the maximum base height shall be 75 feet. However, along secondary #street# frontages facing an #upland connection# with a width of less than 30 feet pursuant to the applicable provisions of paragraph (a) of Section 127-532 (Upland connections), the minimum base height shall be 15 feet. At a height not lower than the minimum base height nor higher than the maximum base height, a setback with a minimum depth of 10 feet, as measured from the #street wall#, shall be provided, except that:

(i) the depth of such required setback may be reduced in accordance with the provisions of paragraph (c)(2) of Section 23-662. However, where a sidewalk widening is required pursuant to this Section, as specified on Map 3, the portion of a #building# located above the maximum base height need not set back more than 10 feet from the #street line#, provided such #building# portion meets the requirements of paragraph (d) of Section 127-234 (Tower regulations), as applicable; and

(ii) the depth of such required setback may include the depth of recesses or #outer courts# in the #street wall# of the #building# base, provided that the aggregate width of any such recessed portion of a #street wall# with a setback of less than 10 feet, or the reduced setback distance pursuant to the provisions of paragraph (b)(2)(i) of this Section, as applicable, does not exceed 40 percent of the #aggregate width of street wall# at any level; and

(c) Additional allowances along all #street# frontages

(1) Within a required setback area, dormers and projections shall be considered permitted obstructions, and shall be permitted as follows:

(i) The aggregate #street wall# width of all dormers and projections combined shall not exceed 50 percent of the #aggregate width of street wall# of the #story# below the required setback. Any projection deeper than five feet shall be considered a dormer.

(ii) The aggregate #street wall# width of dormers shall not exceed 30 percent of the #aggregate width of street wall# of the #story# below the required setback. The height of such dormers shall not exceed 135 feet in Subdistrict A and 175 feet in

Subdistrict B, as measured above the #base plane#. No dormers shall be permitted along #street walls# fronting on the #shore public walkway#.

- (2) Notwithstanding the applicable setback regulations in paragraphs (a) and (b) of this Section, portions of #buildings or other structures# located:
- (i) within 150 feet of a publicly accessible area, and either
  - (ii) adjacent to such publicly accessible area, or
  - (iii) along a #street# across from such publicly accessible area located on the same #zoning lot#.

may rise without a setback, provided that such publicly accessible area is in compliance with the provisions of Section 127-43 (Publicly Accessible Area). In addition, all #street walls# facing such publicly accessible area shall be subject to the articulation requirements of Section 127-235 (Supplemental articulation regulations).

### **127-234**

#### **Tower regulations**

For the purposes of applying the provisions of this Section, a “tower” shall be any portion of a #building or other structure# that is located above the maximum base height. Such portion of a #building or other structure# shall be subject to the following requirements:

- (a) Maximum tower widths

Along the #shore public walkway#, the maximum width of a tower, or portion thereof, that is located within 110 feet of the pierhead line and facing the #shore public walkway#, shall not exceed 100 feet. Such width shall be determined by drawing perpendicular lines in plan view from the pierhead line to the outermost extents of the #street wall# of such tower, or portion thereof, within 110 feet of the pierhead line, exclusive of any permitted projections and dormers. However, in Subdistrict A, where the depth of a #zoning lot#, or portion thereof, is less than 220 feet, the maximum width of a tower within such shallow lot portion, shall not exceed 130 feet, provided that such depth was in existence both on [date of adoption] and on the date of application for a building permit.

Along all other #streets#, the #aggregate width of street wall# in a tower shall not exceed 250 feet.

- (b) Tower top regulations

For all #zoning lots# in Subdistrict A, and for each portion of a #zoning lot# in Subdistrict B, bounded entirely by #streets#, as such term is defined in Section 127-20, the following requirements shall apply:

- (1) Where two or more towers are provided and any portion of such towers exceeds 175 feet, the following shall apply:
- (i) the gross area of the highest two #stories# of at least one tower shall not exceed 80 percent of the gross area of the #story# immediately below such #stories#; or
  - (ii) a height difference of at least 20 feet, or two #stories#, whichever is less, shall be provided between such towers.

(2) Where only one tower is provided and the aggregate portions of such tower above 175 feet exceeds a gross area of 15,000 square feet, the gross area of the highest two #stories# shall not exceed 80 percent of the gross area of the #story# immediately below such #stories#.

(c) Maximum tower height

The maximum height of a #building or other structure# shall be determined in accordance with the provisions of Article VI, Chapter 1 (Special Regulations Applying Around Major Airports), except where modified by certification of the Chairperson of the City Planning Commission pursuant to Section 127-236 (Certification to modify maximum height of building or other structure).

(d) Additional requirements within Subdistrict B

Along Janet Place, where a sidewalk widening is required pursuant to Map 3, the width of each individual tower portion located within 50 feet of the #street line# of Janet Place shall not exceed 70 feet, exclusive of any permitted projections and dormers. Such width shall be determined by drawing perpendicular lines in plan view from the #street line# to the outermost extents of the #street wall# of such tower, or portion thereof, within 50 feet of the #street line#, exclusive of any permitted projections and dormers. Such tower portion and any other such tower portion within the same or an #abutting building# shall be separated by at least 40 feet.

**127-235**

**Supplemental articulation requirements**

In addition to all other provisions of Section 127-23 (Special Height and Setback Regulations), inclusive, for #street wall# widths exceeding 150 feet, as measured parallel to the #street line#, articulation shall be provided in accordance with the provisions of this Section.

The depth of required recesses or projections of a #building# shall be measured from the #street wall#. For the purpose of applying the provisions of this Section, the base height of such #building# shall be either the maximum base height or the height of such #building# where a required setback pursuant to the provisions of Section 127-233 (Base heights and setback regulations) is provided, whichever is lower. However, if such #building# provides multiple setbacks, the highest of such multiple setbacks shall be considered the base height of such #building#.

The portion of a tower #street wall# subject to the tower top regulations of paragraph (b) of Section 127-234 (Tower regulations) shall not be included for the purposes of determining or satisfying the articulation requirements of this Section. In addition, setbacks provided in accordance with the provisions of Section 127-233 shall not constitute recesses.

(a) Along all #streets# other than #shore public walkways#

For #street walls# fronting #streets# other than the #shore public walkway#, a minimum of 15 percent of the entire surface area of each #street wall# shall either recess or project a minimum of two feet from the #street wall# with no individual recess or projection exceeding 50 percent of such surface area of the #street wall#.

Along each #street wall# frontage, at least one-third of such overall 15 percent requirement shall be provided in the form of articulation below the base height of such #building#, and at least one-third shall be provided above the base height, respectively. The remaining one-third of such 15 percent requirement may be located anywhere on the #street wall#. Where a #street wall# frontage does not

exceed the maximum base height, the overall 15 percent requirement shall be provided in the #building# base.

Within the articulation provided in the #building# base, the aggregate width of articulation at each level where provided shall achieve a #street wall# width that is equivalent to at least 10 percent of the #aggregate width of street wall# at that level, and no individual recess or projection shall have a #street wall# width of less than 10 feet.

In no event shall the total amount of projections above the base height exceed the thresholds permitted pursuant paragraph (c)(1) of Section 127-233.

(b) Along the #shore public walkway#

For #street walls# fronting the #shore public walkway#, at least five percent of the entire surface area of the #street wall# below the base height shall either recess or project a minimum of two feet from the #street wall# with no individual recess or projection exceeding 50 percent of such surface area of the #street wall#.

Within the articulation provided in the #building# base, the aggregate width of articulation at each level where provided shall achieve a #street wall# width that is equivalent to at least 10 percent of the #aggregate width of street wall# at that level, and no individual recess or projection shall have a #street wall# width of less than 10 feet.

### **127-236**

#### **Certification to modify maximum height of building or other structure**

The special permit provisions of Section 73-66 (Height Regulations Around Airports) shall not apply. In lieu thereof, the height restrictions of Sections 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection within any Flight Obstruction Area), may be modified where the Chairperson of the City Planning Commission has certified to the Department of Buildings that the provisions of this Section have been met. An application for such certification shall include:

- (a) a site plan and elevations, showing the proposed #building or other structure# in relation to the underlying maximum height limits;
- (b) separate verification letters from the Federal Aviation Administration and the Port Authority of New York and New Jersey that such #building or other structure#, including the location of temporary structures such as construction cranes, will not constitute a danger to the safety of air passengers or disrupt established airways or runway operations, respectively; and
- (c) materials sufficient to demonstrate that the modified height of a #building or other structure# does not exceed 200 feet above mean sea level within Subdistrict A, and 245 feet above mean sea level within Subdistrict B.

### **127-30**

#### **SPECIAL ACCESSORY OFF-STREET PARKING AND LOADING REGULATIONS**

Within the #Special Flushing Waterfront District#, the applicable parking and loading regulations set forth in Article III, Chapter 6, Article IV, Chapter 4 (Accessory Off-street Parking and Loading Regulations), Article VI, Chapter 4 (Special Regulations Applicable to Certain Areas), and Article XII, Chapter 3 (Special Mixed



Use District) shall apply, inclusive, except as modified in this Section. For the purpose of applying the provisions of this Section, all #upland connections#, #visual corridors#, #shore public walkways# and #publicly accessible private streets#, as specified in Section 127-42 (Publicly Accessible Private Streets), shall be considered #streets# and their boundaries shall be considered a #street line#.

### **127-31**

#### **Accessory Off-street Parking Regulations**

The underlying parking regulations shall be modified as follows:

- (a) In M1 Districts paired with a #Residence District# in Subdistrict A, the following shall apply:
- (1) #Commercial# and #manufacturing uses# shall provide either one parking space for every 1,000 square feet of #floor area#, or shall provide parking spaces at the rate required for M1-2 Districts pursuant to Section 44-21 (General Provisions), whichever requires a smaller number of spaces.
- In addition, the provisions of Section 44-23 (Waiver of Requirements for Spaces Below Minimum Number) and paragraph (a) and (b) of Section 44-231 (Exceptions to application of waiver provisions) shall not apply to #manufacturing uses#. In lieu thereof, #accessory# off-street parking spaces may be waived for #manufacturing# and #commercial uses# if the number of spaces for all applicable uses is at or below 40 spaces.
- (2) #Residential# and #community facility uses# shall be subject to the parking requirements of R7-1 Districts, as set forth in Article II, Chapter 5 (Accessory Off-Street Parking and Loading Regulations).
- (b) In C4-2 Districts within Subdistricts B and C, the parking requirements applicable to C4-4 Districts, as set forth in Article III, Chapter 6 (Accessory Off-Street Parking and Loading Regulations), shall apply.

### **127-32**

#### **Loading Regulations**

The provisions of the underlying loading regulations shall be modified as follows:

- (a) in C4-2 Districts, the loading requirements applicable to C4-4 Districts, as set forth in Article III, Chapter 6 (Accessory Off-Street Parking and Loading Regulations), shall apply.
- (b) the requirement of Sections 36-60 (OFF-STREET LOADING REGULATIONS), inclusive, and 44-50 (GENERAL PURPOSES), inclusive, shall not apply to changes of uses;
- (c) the provisions of Sections 36-63 (Special Provisions for a Single Zoning Lot With Uses Subject to Different Loading Requirements), 36-64 (Wholesale, Manufacturing, or Storage Uses Combined With Other Uses), 44-53 (Special Provisions for a Single Zoning Lot With Uses Subject to Different Loading Requirements) and 44-54 (Wholesale, Manufacturing or Storage Uses Combined With Other Uses) shall not apply; and
- (d) the minimum length requirements for loading berths #accessory# to #commercial uses#, other than funeral establishments, and wholesale, manufacturing or storage #uses#, as set forth in Sections 36-681 (Size of required berths), and 44-581 (Size of required loading berths), shall be 37 feet.

**127-40****DISTRICT PLAN ELEMENTS**

Within Subdistrict A and Subdistrict B, the district plan element provisions of this Section shall apply. For the purpose of applying the provisions of this Section, inclusive, all #upland connections#, #visual corridors#, #shore public walkways# and #publicly accessible private streets# shall be considered #streets# and their boundaries shall be considered a #street line#.

**127-41****Special Streetscape Regulations**

For the purposes of applying the special streetscape provisions of Section 37-30 to this Chapter, any portion of a #ground floor level street# frontage along primary #street# frontages designated on Map 3 (Requirements Along Street Frontages) in the Appendix to this Chapter shall be considered #primary street frontages#, and a #ground floor level street# frontage along secondary #street# frontages on Map 3 shall be considered a #secondary street frontage#. In addition, defined terms shall include those in Sections 12-10 and 37-311.

**127-411****Special provisions for frontages along streets and the shoreline**

The provisions of this Section shall apply to #developments# or #ground floor level enlargements#.

(a) At the intersection of #primary street frontages#

For #ground floor level street walls# within 50 feet of the intersection of two #primary street frontages#, as shown on Map 3 in the Appendix to this Chapter:

- (1) #uses# on the #ground floor level#, to the minimum depth set forth in Section 37-32 (Ground Floor Depth Requirements for Certain Uses), shall be limited to non-#residential uses#, except for lobbies.
- (2) #Group parking facilities# located on the #ground floor level# of a #building# shall be wrapped by #floor area# in accordance with the provisions of paragraph (a) of Section 37-35 (Parking Wrap and Screening Requirements), and above the #ground floor level#, such parking facilities shall be wrapped by #floor area# or screened in accordance with the provisions of Section 37-35.
- (3) #Ground floor level street walls# shall be glazed in accordance with the provisions set forth in Section 37-34 (Minimum Transparency Requirements).

(b) Along other #street# frontages

For portions of #buildings# along the remainder of #primary street frontages#, and for #buildings# with #secondary street frontages#, as shown on Map 3, #group parking facilities# located on the #ground floor level# shall be wrapped by #floor area# or screened in accordance with the provisions of Section 37-35. However, for portions of #buildings# facing the #shoreline#, #group parking facilities# at all levels shall be wrapped by #floor area# or screened in accordance with the provisions of Section 37-35.

**127-412****Special provisions for blank walls**

The blank wall provisions of paragraph (a)(7)(ii) of Section 62-655 (Planting and trees) shall not apply. In lieu thereof, the provisions of this Section, inclusive, shall apply.

Along all frontages, where no transparent materials or #building# entrances or exits are provided on the #ground floor level street wall# lower than a height of four feet above the level of the adjoining sidewalk for a continuous width of at least 25 feet, at least 75 percent of the linear footage of any such portions of a #ground floor level street wall# shall be treated by one or more of the following visual mitigation elements which shall be provided on the #zoning lot#, except where such elements are permitted within the #street# under other applicable laws or regulations.

(a) Planting

Any combination of perennials, annuals, decorative grasses or shrubs shall be provided in planting beds, raised planting beds or planter boxes in front of the #street wall#. Each foot in width of a planting bed, raised planting bed or planter box, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirements. Such planted area shall extend to a depth of at least three feet, inclusive of any structure containing the planted material. Any individual planted area shall have a width of at least five feet, and the height of such planting, inclusive of any structure containing the planted materials, shall be at least three feet.

Where a blank wall exceeds a #street wall# width of 50 feet, at least 25 percent of such #street wall# width shall be planted in accordance with the provisions of this paragraph.

(b) Benches

Fixed benches with or without backs shall be provided in front of the #street wall#. Unobstructed access shall be provided between such benches and an adjoining sidewalk or required circulation paths. Each linear foot of bench, as measured parallel to the #street wall#, shall satisfy one linear foot of frontage mitigation requirement. Any individual bench shall have a width of at least five feet, and no more than 20 feet of benches may be used to fulfill such requirement per 50 feet of frontage.

(c) Bicycle racks

Bicycle racks, sufficient to accommodate at least two bicycles, shall be provided in front of the #street wall#, and oriented so that the bicycles are placed parallel to the #street wall#. Each bicycle rack so provided shall satisfy five linear feet of frontage mitigation requirement. No more than three bicycle racks may be used to fulfill such requirement per 50 feet of frontage.

(d) Tables and chairs

Fixed tables and chairs shall be provided in front of the #street wall#. Each table shall have a minimum diameter of two feet, and have a minimum of two chairs associated with it. Each table and chair set so provided shall satisfy five linear feet of frontage mitigation requirement.

(e) Wall treatment

Wall treatment, in the form of permitted #signs#, graphic or sculptural art, rustication, decorative screening or latticework, or living plant material, shall be provided along the #street wall#. Each linear foot of wall treatment shall constitute one linear foot of frontage mitigation requirement. Such wall

treatment shall extend to a height of at least 10 feet, as measured from the level of the adjoining sidewalk or grade, and have a minimum width of 10 feet, as measured parallel to the #street wall#.

#### **127-42**

##### **Publicly Accessible Private Streets**

The provisions of this Section, inclusive, shall apply to any #development#, as defined in Section 62-11 (Definitions), on a #zoning lot# that contains any portion of a required #publicly accessible private street#.

#### **127-421**

##### **Requirements for publicly accessible private streets**

#Publicly accessible private streets# shall be:

- (a) accessible to the public at all times, except when required to be closed for repairs, and for no more than one day each year in order to preserve the private ownership of such area. Where an #upland connection# is designated on a #publicly accessible private street# as specified on Map 6 (Waterfront Access Plan: Public Access Areas) in the Appendix to this Chapter, the provisions of this paragraph shall supersede the hours of access provisions applicable to an #upland connection#;
- (b) constructed to the dimensions specified on Map 2 (Publicly Accessible Private Street Network) in the Appendix to this Chapter and be constructed to Department of Transportation standards for public #streets# including, but not limited to, sidewalks, curb design, lighting, traffic signage, pavement materials, drainage and crosswalks. In addition, where an #upland connection# is designated on a #publicly accessible private street# as specified on Maps 7 and 8 (Phase I and Phase II Waterfront Public Access Improvements, respectively) in the Appendix to this Chapter, the #upland connection# design requirements of Section 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS), inclusive, shall apply; and
- (c) constructed with sidewalks that have a minimum clear path of eight feet along their #street lines#, except where an #upland connection# is designated on a #publicly accessible private street#. Such sidewalks shall be provided with street trees in accordance with the provisions of Section 26-41 (Street Tree Planting), except that such street trees shall be planted within a street tree pit or a raised planting bed, with at least 180 cubic feet of soil for each tree, and with a minimum horizontal width of four feet and vertical depth of 3 feet 6 inches, and such planting pit or raised planting bed shall be located adjacent to, and extend along the curb.

#### **127-422**

##### **Certification for publicly accessible private streets**

Where a #publicly accessible private street# is designated entirely within a #zoning lot#, the provisions of paragraph (a) of this Section shall apply. Where a #publicly accessible private street# is designated on two or more #zoning lots# and the design and construction of adjoining portions of the #publicly accessible private street# may not be finalized, the provisions of paragraph (b) of this Section shall apply. The provisions of paragraph (b) provide for certification of such portions of a #publicly accessible private street# in accordance with an #interim site plan# that satisfies the requirements of the New York City Fire Code; a #conceptual plan# for portions of the #publicly accessible private street# on other #zoning lots# that will be certified and constructed at a later time; and a #final site plan#, which will either supersede an #interim site plan# or be guided by a #conceptual plan#. The provisions of paragraph (c) shall apply to #development# on a #zoning lot# that contains any portion of a required #publicly accessible private street#.

No building permit shall be issued for a #development# on a #zoning lot#, containing any portion of a #publicly accessible private street#, until the Chairperson of the City Planning Commission certifies, in

conjunction with a certification pursuant to Section 127-54 (Special Review Provisions) to the Department of Buildings that:

- (a) where the #publicly accessible private street# is designated on one #zoning lot#, or where the #publicly accessible private street# is designated on two or more #zoning lots# and such #publicly accessible private street# will be constructed in its entirety concurrently with the applicant's #development#, a #final site plan# has been submitted;
- (b) where the #publicly accessible private street# is designated on two or more #zoning lots# and the portion of such #publicly accessible private street# located outside of the applicant's property will not be or has not been constructed concurrently with the applicant's #development#:
  - (1) if no prior certification pursuant to this Section was issued for a portion of the #publicly accessible private street# on another #zoning lot#, the Chairperson shall certify that:
    - (i) a #conceptual plan# has been submitted for the #publicly accessible private street#. In addition, certified mailing of notification that the applicant is seeking to commence construction of such #publicly accessible private street# shall be given to all other owners whose property contains any remaining portion of such #publicly accessible private street#, along with a copy of such #conceptual plan#;
    - (ii) a #final site plan# for the applicant's #zoning lot# has been submitted showing compliance with the design standards of Section 127-421 (Requirements for publicly accessible private streets). In addition, where compliance with the fire apparatus access road requirements, set forth in the New York City Fire Code, require modifications to the design standards of Section 127-421, an #interim site plan# has been submitted that deviates from such design standards to the minimum extent necessary; and
    - (iii) the grading proposed in the #final site plan#, #conceptual plan# and #interim site plan# have been certified pursuant to Section 127-61.

Property owners of #zoning lots# containing any remaining portion of the #publicly accessible private street# shall have up to 30 days from the date of the applicant's certified mailing of the notification required in paragraph (b)(1)(i) of this Section to respond to the applicant and to confirm for the Chairperson that the construction of the entire #publicly accessible private street# is not feasible concurrently with the applicant's #development#. In the event that such notified property owners do not respond to the applicant and the Chairperson within the 30-day period, the applicant may proceed with completing this certification. Where a notified property owner responds that it is feasible to complete the portion of the #publicly accessible private street# on such owner's #zoning lot# concurrently with the applicant's portion, such property owner shall commence certification pursuant to the applicable provisions of this Section within 45 days from the date of submitting such response. In the event such notified property owners do not commence such certification within the 45-day period, the applicant may proceed with completing this certification.

In addition, where construction of #publicly accessible private streets# will not occur concurrently on the adjoining #zoning lot#, property owners of #zoning lots# containing any remaining portion of the #publicly accessible private street# shall have up to 45 days from the date of submitting their response to comment on any anticipated practical difficulties associated with the proposed location, dimensions and grading specified in the #conceptual plan# that would preclude the reasonable development of such owner's property. Any submission of comments to the applicant and Chairperson shall include documentation from a

licensed architect, landscape architect, or engineer, as applicable, that demonstrates the reason for such anticipated practical difficulties.

Copies of the approved #conceptual plan#, as well as the certified #interim site plan# and #final site plan# shall be forwarded to all property owners of a #zoning lot# containing any remaining portion of the #publicly accessible private street#.

Any portion of the #publicly accessible private street# constructed in compliance with a certified #interim site plan# shall be converted to the final design in compliance with the certified #final site plan# for such portion upon receiving notice from an adjoining property owner as set forth in paragraph (b)(2) of this Section that the remaining portion of the #publicly accessible private street# has been substantially completed and opened to the public.

(2) If a prior certification pursuant to paragraph (b)(1) of this Section was issued for a portion of a #publicly accessible private street# on another #zoning lot#, the Chairperson shall certify that:

- (i) a #final site plan# for the applicant's #zoning lot# has been submitted that is consistent with the #conceptual plan# from the prior certification; and
- (ii) the proposed amenities and design elements within the #final site plan# in the applicant's portion of a #publicly accessible private street# shall match or complement those that were previously constructed.

Upon substantial completion by applicant of its portion of the #publicly accessible private street# that has been constructed pursuant to a certified #interim site plan# and the opening of such portion to the public, notice shall be provided to any property owner of a #zoning lot# containing a portion of such #publicly accessible private street#. Such notice shall be provided to enable such other owner sufficient time, as shall be specified in the restrictive declaration required pursuant to paragraph (c) of this Section, to convert any constructed interim condition and complete the #publicly accessible private street# in compliance with the previously approved #final site plan#; and

(c) a restrictive declaration has been executed and recorded against the applicant's #zoning lot# in accordance with the provisions of Section 127-423 (Restrictive declaration). Required site plans, the #conceptual plan# and a maintenance and capital repair plan for the #publicly accessible private street# shall be included as exhibits to the restrictive declaration.

No temporary or final certificate of occupancy shall be issued until the Chairperson of the City Planning Commission notifies the Department of Buildings that the proposed #publicly accessible private street#, or portion thereof, has been substantially completed in compliance with the certified #interim site plan# or #final site plan#, and is open to the public. In addition, where a property owner seeks certification pursuant to paragraph (b)(2) of this Section, no temporary or final certificate of occupancy shall be issued until interim portions of the #publicly accessible private street# are completed in compliance with the previously approved #final site plan# for such portions.

### **127-423** **Restrictive declaration**

For any #publicly accessible private street# proposed for certification pursuant to Section 127-422 (Certification for a publicly accessible private street), a restrictive declaration shall be provided to ensure the

proper construction, improvement, operation, maintenance and repair of the roadbed and any sidewalk adjacent to the roadbed. Adequate security shall be specified in such declaration to ensure that the #publicly accessible private street# is maintained in accordance with the declaration. The restrictive declaration shall further specify that the #publicly accessible private street# shall not be used for any other purposes than #street#-related purposes, including, but not limited to, pedestrian and vehicular circulation, and shall be publicly accessible at all times. To ensure proper #street# use and provide enforcement, in accordance with the parking provisions set forth in the restrictive declaration, executed contracts with a security monitoring and a towing company shall be required prior to the issuance of a temporary certificate of occupancy. In addition, a reserve account with sufficient funds for the maintenance and capital repair of the constructed #publicly accessible private street# shall be maintained at all times. Such reserves, contracts, and the required maintenance and repair shall be the responsibility of a Property Owner's Association that will oversee the management and maintenance of the #publicly accessible private streets#, upon the development on two or more #zoning lots#, and include as members all property owners of #zoning lots# bordering or containing the completed #publicly accessible private streets#. Filing and recording of the restrictive declaration shall be a precondition to the Chairperson's certification under Section 127-422.

Such restrictive declaration shall be prepared in a form acceptable to the Department of City Planning, filed and duly recorded in the Borough Office of the Register of the City of New York, and indexed against the property. The restrictive declaration and any maintenance and operation agreement shall run with the land and be binding on the owners, successors and assigns.

In addition, the portions of the #publicly accessible private streets# on a #developed zoning lot# shall be recorded on the certificate of occupancy for such #building# by the Department of Buildings. The recording information of the restrictive declaration shall be included on the certificate of occupancy for any #building#, or portion thereof, issued after the recording date.

#### **127-424**

##### **Certification for zoning lot subdivision**

In conjunction with a certification pursuant to Section 62-812 (Zoning lot subdivision), a #zoning lot# that existed before [date of adoption] containing any portion of #publicly accessible private street# may be subdivided into two or more #zoning lots# or reconfigured in a manner that would reduce its area or dimension, provided that the Chairperson of the City Planning Commission certifies that the provisions of paragraph (a), (b) or (c) of such Section are satisfied as to #waterfront public access area#, #visual corridors# and #publicly accessible private streets#, respectively. For the purposes of applying such provisions, the regulations pertaining to #waterfront public access areas# and #visual corridors# shall also be applied to #publicly accessible private streets#.

#### **127-43**

##### **Publicly Accessible Area**

Where a tower rises sheer in accordance with the provisions of paragraph (c)(2) of Section 127-233 (Base heights and setback regulations), no #building# permit shall be issued by the Department of Buildings until the Chairperson of the City Planning Commission certifies a site plan demonstrating that a publicly accessible area, in compliance with the following requirements, will be provided.

##### (a) Minimum size and location

A publicly accessible area shall contain a minimum area of at least 2,000 square feet. Such publicly accessible area shall be located at the intersection of two #streets#, and shall have a minimum width of

20 feet along each #street line#. A publicly accessible area shall in no event include area within a #publicly accessible private street#.

In addition, the major portion of a publicly accessible area shall occupy no less than 75 percent of the total publicly accessible area. The major portion is the largest area of the publicly accessible area and is the area of primary use. Major portions shall be generally regular in shape, easily and directly accessible from adjoining #buildings# and public spaces, and continuously visible from all portions of the publicly accessible area and from adjoining public spaces.

(b) Design requirements

All publicly accessible areas shall comply with the following provisions:

- (1) a minimum of 20 percent of the open area shall be planted with any combination of perennials, annuals, decorative grasses, shrubs or trees in planting beds, raised planting beds or planter boxes. Such planting bed shall extend to a depth of at least two feet, inclusive of any structure containing the planted material, and any individual planted area shall have a width of at least five feet;
- (2) one linear foot of seating shall be provided for each 60 square feet of publicly accessible area. For the purposes of such calculation, moveable seating or chairs may be credited as 24 inches of linear seating per chair;
- (3) permitted obstructions within such area shall be subject to the provisions of Section 37-726 (Permitted obstructions), and any kiosk or open air cafe provided shall meet the operational and service requirements listed in paragraphs (a) and (b) of Section 37-73 (Kiosks and Open Air Cafes);
- (4) the provisions of Section 37-722 (Level of plaza) and 37-728 (Standards of accessibility for persons with disabilities) shall apply to such area, and any steps provided shall be subject to the provisions of Section 37-725 (Steps);
- (5) entry plaques and information plaques shall be provided in accordance with the provisions of paragraphs (a) and (b) of Section 37-751 (Public space signage systems); and
- (6) all ground floor level #building# walls located within a distance of 150 feet from and facing a publicly accessible area provided on the same #zoning lot# shall either comply with the provisions of paragraph (a) of Section 127-411 (Special provisions for frontages along streets and the shoreline), or the provisions of paragraph (e) of Section 127-412 (Special provisions for blank walls).

(c) Design changes

Any modification to a publicly accessible area certified pursuant to the provisions that, in the aggregate, results in design changes impacting more than 20 percent of the area of such publicly accessible area as compared to the certified plans, shall require a new certification pursuant to the provisions of this Section. Where a design change does not exceed 20 percent, the modifications made to the publicly accessible area shall not reduce the amount of amenities provided or otherwise creates a non-compliance with the provisions of this Section.

(d) Hours of public access



Such publicly accessible area shall be accessible to the public between the hours of 6:00 a.m. and 10:00 p.m. seven days of the week.

No certificate of occupancy shall be issued until the Chairperson of the City Planning Commission determines that the publicly accessible area is substantially completed in compliance with the certified plan and that such space has been made available for use by the public in compliance with the requirements of this Section.

**127-50**  
**FLUSHING WATERFRONT ACCESS PLAN**

[NOTE: existing provisions moved from Section 62-952 and modified]

The provisions of Article VI, Chapter 2 (Special Regulations Applying in the Waterfront Area), shall apply, except as superseded, supplemented or modified by the provisions of this Section, inclusive. Map 4 (Waterfront Access Plan: Parcel Designation), Map 5 (Waterfront Access Plan: Visual Corridors), and Map 6 (Waterfront Access Plan: Public Access Areas) in the Appendix to this Chapter show the boundaries of the area comprising the Flushing Waterfront Access Plan, boundaries of parcels within the Plan and the location of certain features mandated or permitted by the Plan.

The Plan has been divided into parcels consisting of tax blocks and lots and other lands as established on [date of adoption], as follows:

Subdistrict A

- Parcel 1:           Block 4963, Lots 212 and 249
- Parcel 2:           Block 4963, Lot 210
- Parcel 3:           Block 4963, Lot 200

Subdistrict B

- Parcel 4:           Block 4963, Lot 85
- Parcel 5:           Block 4963, Lot 65
- Parcel 6:           Block 4963, Lot 75
- Parcel 7:           Block 4963, Lots 7, 8 and 9
- Parcel 8:           Block 4963, Lot 1

Subdistrict C

- Parcel 9:           Block 5066, Lots 7503 and 7507

Any #development# on a #zoning lot# within the parcels listed above shall be subject to the requirements of Section 127-51 (Modified Applicability for Visual Corridors and Waterfront Public Access Areas), Section 127-52 (Special Requirements for Visual Corridors), Section 127-53 (Special Requirements for Waterfront Public Access Areas) and Section 127-54 (Special Review Provisions).

For the purposes of this Section, inclusive, defined terms shall include those listed in Sections 12-10 and 62-11, but #development# shall be as defined in Section 62-11.

**127-51**  
**Modified Applicability for Visual Corridors and Waterfront Public Access Areas**

The applicability provisions for #visual corridors# pursuant to Section 62-51 (Applicability of Visual Corridor Requirements) and #waterfront public access areas# pursuant to Section 62-52 (Applicability of Waterfront Public Access Area Requirements) shall apply, except as modified as follows:

- (a) #developments# comprised predominantly of #uses# in Use Groups 16, 17 or 18, except for docking facilities serving passenger vessels or sightseeing, excursion or sport fishing vessels, are subject to the special requirements for #visual corridors# set forth in Section 127-52; and
- (b) #developments# comprised predominantly of #uses# in Use Groups 16, 17 or 18 shall provide a minimum amount of #waterfront public access area# in accordance with the provisions of Section 62-58 (Requirements for Water-Dependent Uses and Other Developments). Within such #waterfront public access area#, a circulation path shall be provided with a minimum clear width of at least 10 feet and shall connect with either an adjoining #shore public walkway# or additional circulation paths on adjoining #zoning lots#.

### **127-52**

#### **Special Requirements for Visual Corridors**

For #developments# within Parcels 3, 5 and 7, #visual corridors# shall be provided in the locations designated on Map 5 in the Appendix to this Chapter and pursuant to the requirements of Sections 62-51 (Applicability of Visual Corridor Requirements) and 62-65 (Public Access Design Reference Standards).

### **127-53**

#### **Special Requirements for Waterfront Public Access Areas**

#Waterfront public access areas# shall be provided pursuant to Sections 62-52 (Applicability of Waterfront Public Access Area Requirements), 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS), and 62-70 (MAINTENANCE AND OPERATION REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS), inclusive, except as modified in this Section, inclusive.

For all such #waterfront public access areas#, as designated on Map 6 (Waterfront Access Plan: Public Access Areas) in the Appendix to this Chapter, the minimum seat depth requirement of paragraph (b) of Section 62-652 (Seating) shall be modified to 16 inches.

### **127-531**

#### **Shore public walkways**

For #zoning lots developed# within Parcels 1, 3, 4, 5, 7 and 8, a #shore public walkway# shall be provided in the location designated on Map 6 in the Appendix to this Chapter. The applicable provisions of Section 62-53 (Requirements for Shore Public Walkways) and Section 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS), inclusive, shall apply except as modified in this Section:

- (a) the circulation and access provisions of paragraph (a) of Section 62-62 (Design Requirements for Shore Public Walkways and Supplemental Public Access Areas) shall be modified as follows:
  - (i) the required circulation path within a #shore public walkway# shall be provided at a minimum elevation of 5 feet, 6 inches above the #shoreline#, except that such requirement need not include portions of a circulation path that slope downward to meet the elevation of an existing publicly accessible sidewalk;

- (ii) where secondary circulation paths are provided, such paths may count as a part of the required circulation path for satisfying the locational requirement of being within 10 feet of the #shoreline# for at least 20 percent of the length of such #shoreline#. However, such secondary circulation paths may comply with the paving requirements of paragraph (a)(2) of Section 62-656; and
- (iii) where a #shore public walkway# is on a #zoning lot# that is adjacent to a #waterfront zoning lot# without a #shore public walkway#, the portion of the circulation path that terminates at the common #zoning lot line# shall be located within 40 feet of the shoreline;
- (b) the minimum width of the screening buffer pursuant to paragraph (c)(2)(ii) of Section 62-62 (Design Requirements for Shore Public Walkways and Supplemental Public Access Areas) shall be four feet. No screening buffer shall be required where there is a pathway connecting a required circulation path towards a publicly accessible sidewalk or entry to a commercial or community facility use; and
- (c) the grade level of required planting areas pursuant to paragraph (d)(2) of Section 62-61 (General Provisions Applying to Waterfront Public Access Areas) shall be increased to no more than three feet higher or lower than the adjoining level of the pedestrian circulation path.

### **127-532**

#### **Upland connections**

For #developments# within Parcels 1, 2, 3, 4, 5 and 7, #upland connections# shall be provided as specified on Map 6 (Waterfront Access Plan: Public Access Areas) in the Appendix to this Chapter. The applicable provisions of Section 62-56 (Requirements for Upland Connections) and Section 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS), inclusive, shall apply except as modified in this Section.

(a) Flexible location zone

For # developments# on Parcels 1, 2 and 3, a single #upland connection# shall be provided pursuant to the following provisions:

- (1) If Parcel 1 #develops# before Parcels 2 or 3, a Type 1 #upland connection# shall be provided with a minimum width of 20 feet. The requirements of paragraph (a)(2) of Section 62-561 (Types of upland connections) shall not apply and the minimum planting area requirements shall be reduced to 25 percent. Where such #upland connection# is provided without a 20-foot-wide open area, an average maintained level of illumination of not less than one and a half horizontal foot candles (lumens per foot) shall be provided throughout all walkable areas;
- (2) If Parcels 1 and 2 are #developed# jointly before Parcel 3, an #upland connection# shall be provided on Parcels 1 and 2, along their southerly boundary, pursuant to the requirements of Sections 62-561 and 62-64 (Design Requirements for Upland Connections). The 20-foot-wide open area required pursuant to paragraph (a)(2) of Section 62-561 shall be provided on Parcel 3, along its northerly boundary, at the time Parcel 3 #develops#. In any event, the required open area shall abut such required upland connection;
- (3) If Parcel 3 #develops# before Parcels 1 or 2:
  - (i) where a #development# is comprised predominantly of Use Groups 1 through 15 inclusive, an #upland connection# shall be provided on Parcel 3 pursuant to the requirements of Section 62-561 and Section 62-64. If such #upland connection# is

provided along the northerly boundary of such Parcel, the required 20-foot-wide open area pursuant to paragraph (a)(2) of Section 62-561 shall be satisfied on Parcels 1 and 2, along the southerly boundary, at the time these parcels #develop#. However, in any event, the required open area shall abut such required upland connection:

- (ii) where a #development# is comprised predominantly of #uses# in either Use Groups 16, 17 or 18, a Type 1 #upland connection# shall be provided with a minimum width of 20 feet. The requirements of paragraph (a)(2) of Section 62-561 shall not apply and the minimum planting area requirements shall be reduced to 25 percent; or
- (4) If Parcels 2 and 3 are #developed# jointly before Parcel 1, an #upland connection# shall be provided pursuant to the requirements of Sections 62-561 and 62-64.

For any other sequencing or combination of #developments#, a single #upland connection# shall be provided pursuant to the provisions of Sections 62-561 and 62-64 within the flexible location zone on Map 6.

(b) Minimum standards for interim condition

Where an #upland connection# is designated on two or more parcels and only a portion of such #upland connection# can be constructed pursuant to a specific certification, such portion of the #upland connection# may be provided independently to satisfy the requirements of Section 62-56. Where the New York City Fire Department determines that such requirements conflict with the provision of unobstructed width for fire apparatus access roads pursuant to the New York City Fire Code, the design requirements of Section 62-60 shall be modified to the minimum extent necessary to accommodate such fire apparatus access roads requirements. However, all interim conditions shall meet the following requirements:

- (1) provide public access from the first upland #street# to the #shore public walkway#; and
- (2) for every tree pit required pursuant to the provisions of paragraph (c)(1) of Section 62-64 (Planting) that is not provided, a moveable planter shall be provided.

Such interim condition shall be certified pursuant to paragraph (a)(1) of Section 127-542 (Supplemental provisions) and Section 127-61 (Certification for Interim Grading Conditions).

### **127-533**

#### **Phased development of waterfront public access areas**

When a parcel is undergoing partial #development# or the #zoning lot# corresponding to a parcel is subdivided or reconfigured pursuant to Section 62-812 (Zoning lot subdivision), the City Planning Commission may authorize a phasing plan to implement #waterfront public access area# improvements pursuant to paragraph (c) of Section 62-822 (Modification of waterfront public access area and visual corridor requirements).

However, in Subdistrict B, when partial #development# occurs on the upland portion of Parcels 4, 5 and 7 that is bounded by #publicly accessible private streets# or #streets#, a phasing plan to implement an interim and final design of the #waterfront public access areas# may be certified by the Chairperson of the City Planning Commission pursuant to Section 127-54 (Special Review Provisions), provided that the following requirements are met:

- (a) the #waterfront public access area# shall be provided according to the phasing specified in Map 7 (Waterfront Access Plan: Phase I Waterfront Public Access Area Improvements) and Map 8

(Waterfront Access Plan: Phase II Waterfront Public Access Area Improvements). The requirements of Phase I shall apply when #development# occurs on the upland portion of the parcel bounded by #publicly accessible private streets# and other #streets# as shown on Map 6 (Waterfront Access Plan: Public Access Areas). The requirements of Phase II shall apply when #development# occurs on the seaward portion of the parcel bounded by both the #shoreline# and #publicly accessible private streets#; and

- (b) any #upland connection# provided pursuant to Phase I shall meet the design requirements of paragraph (b) of Section 127-532 (Upland connections). For portions of the #shore public walkway# that are provided in Phase I, the requirements of Sections 62-53 (Requirements for Shore Public Walkways) and 62-60 (DESIGN REQUIREMENTS FOR WATERFRONT PUBLIC ACCESS AREAS) may be modified to the minimum extent necessary to accommodate a temporary waterfront viewing area.

Such phasing plan shall also be certified pursuant to Section 127-61 (Certification for Interim Grading Conditions).

#### **127-54** **Special Review Provisions**

The applicable provisions of Section 62-80 (SPECIAL REVIEW PROVISIONS), inclusive, shall apply, except as specifically modified or supplemented by the provisions of this Section, inclusive.

#### **127-541** **Applicability**

The provisions of Section 62-81, inclusive, shall apply to #zoning lots# containing predominantly #uses# in Use Groups 16, 17, or 18, subject to the modified #waterfront public access area# provisions of Section 127-50 (FLUSHING WATERFRONT ACCESS PLAN), inclusive.

#### **127-542** **Supplemental provisions**

In conjunction with a certification pursuant to Section 62-811 (Waterfront public access and visual corridors), the Chairperson of the City Planning Commission shall further certify that:

- (a) where an #upland connection# is designated on two or more parcels and the portion of such #upland connection# located outside of the applicant's parcel will not be constructed concurrently with the applicant's #development#:
- (1) if no prior certification pursuant to this Section was issued for a portion of an #upland connection# on another parcel, the Chairperson shall certify that:
    - (i) a #conceptual plan# has been submitted for the #publicly accessible private street#. In addition, notification that the applicant is seeking to commence construction of such #publicly accessible private street# shall be given to any other owner whose property contains any remaining portion of the #publicly accessible private street#, along with a copy of such #conceptual plan#;
    - (ii) a site plan has been submitted, specifying the location, dimensions and grading of the portion of the #upland connection# to be constructed on the applicant's #zoning lot#.

Such site plan shall demonstrate compliance with the requirements of paragraph (b) of Section 127-532 (Upland connections); and

- (iii) the grading proposed in the #conceptual plan# has been certified pursuant to Section 127-61.

Property owners of the parcel containing a remaining portion of the #upland connection# shall have up to 30 days from the applicant's certified mailing of the notification required in paragraph (a)(1)(i) of this Section to respond to the applicant and to confirm for the Chairperson that the construction of the entire #upland connection# is not feasible concurrently with the applicant's #development#. In the event such notified property owners do not respond to the applicant and the Chairperson within the 30-day period, the applicant may proceed with completing this certification. Where a notified property owner responds that it is feasible to complete the portion of the #upland connection# on their parcels concurrently with the applicant's #development#, such property owner shall commence certification pursuant to the applicable provisions of this Section within 45 days from the date of submitting such response. In the event such notified property owners do not commence such certification within the 45-day period, the applicant may proceed with completing this certification.

In addition, where construction of the #upland connection# will not occur concurrently, property owners of parcels containing a remaining portion of the #upland connection# shall have up to 45 days from the date of submitting their response to comment on any anticipated practical difficulties associated with the proposed location, dimensions and grading specified in the #conceptual plan# that would preclude the reasonable #development# of such owner's parcel. Any submission of comments to the applicant and Chairperson shall include documentation from a licensed architect, landscape architect, or engineer, as applicable, that demonstrates the reason for such anticipated practical difficulties.

Copies of the approved #conceptual plan#, as well as the certified #interim site plan# and #final site plan# shall be forwarded to any property owner of a parcel containing the remaining portion of the #upland connection#.

Any portion of the #upland connection# constructed in compliance with a certified #interim site plan# shall be converted to the final design in compliance with the certified #final site plan# for such portion upon receiving notice from an adjoining property owner as set forth in paragraph (a)(2) of this Section that the remaining portion of the #upland connection# has been substantially completed and is accessible to the public.

- (2) If a prior certification pursuant to paragraph (a)(1) of this Section was issued for a portion of the #upland connection# on another parcel, the Chairperson shall certify that:
- (i) a #final site plan# for the applicant's parcel has been submitted that is consistent with the #conceptual plan# from the prior certification; and
  - (ii) the proposed amenities and design elements within the #final site plan# for the applicant's portion of the #upland connection# shall match or complement those that were previously constructed.

Notice shall be provided to any property owner of a parcel containing a portion of the #upland connection# that has been constructed pursuant to a certified #interim site plan# upon the applicant substantially completing its portion of the #upland connection# and making such portion accessible to the public. Such notice shall be provided to enable such other owner

sufficient time, as shall be specified in the restrictive declaration required pursuant to this paragraph (a), to convert any constructed interim condition and complete the #upland connection# in compliance with the previously approved #final site plan#.

A restrictive declaration shall be executed and recorded against the corresponding #zoning lot# of the applicant's parcel, in accordance with the provisions of Section 62-74 (Requirements for Recordation). Required site plans, the #conceptual plan# and a maintenance and capital repair plan for the #upland connection# shall be included as exhibits to the restrictive declaration.

No temporary or final certificate of occupancy shall be issued until the Chairperson of the City Planning Commission notifies the Department of Buildings that the proposed #upland connection#, or portion thereof, has been substantially completed in compliance with the certified #interim site plan# or #final site plan#, and is open to the public. In addition, where a property owner sought certification pursuant to paragraph (a)(2) of this Section, no temporary or final certificate of occupancy shall be issued until interim portions of the #upland connection# are completed in compliance with the previously approved the #final site plan# for such portions.

- (b) For phased implementation of #waterfront public access areas# pursuant to Section 127-533 (Phased development of waterfront public access areas), a plan has been submitted that complies with the required amount of #waterfront public access area# at each development phase pursuant to Section 127-533.

To ensure the provision of #waterfront public access areas# for phased #developments# occurring in Phase I, as specified on Map 7 (Waterfront Access Plan: Phase I Waterfront Public Access Improvements) in the Appendix to this Chapter, no temporary certificate of occupancy shall be issued for any #development# on the upland portion of each parcel that is bounded by #publicly accessible private streets# or #streets# until all required sections of #waterfront public access areas# designated on Map 7 have been substantially completed pursuant to the design requirements of Section 127-533.

For Phase II subsequent #development# occurring on the seaward portion of Parcels 4, 5 or 7, bounded by both the #shoreline# and #publicly accessible private streets#, all #waterfront public access areas#, as specified on Map 8 (Waterfront Access Plan: Phase II Waterfront Public Access Improvements), shall be substantially completed pursuant to the final design requirements of Section 127-533, prior to the issuance of a temporary or final certificate of occupancy. However, 50 percent of the #floor area# of any subsequent #development# on Parcels 4 and 5 may receive a temporary certificate of occupancy upon the completion of the required #shore public walkway# as designated on such parcel. A temporary or final certificate of occupancy for the remaining 50 percent of the #floor area# on Parcels 4 and 5 shall not be issued until all required #waterfront public access areas# pursuant to Map 8 are substantially complete.

An alternate location for the required section of an #upland connection# on Parcel 4 may be provided in Phase I, as specified in Map 7, in the event that Parcel 5 has substantially completed all of the required #waterfront public access areas# prior to partial #development# on the upland portion of Parcel 4. Where such alternate location is provided in Phase I, any subsequent #development# on Parcel 4 may only receive a temporary or final certificate of occupancy upon substantial completion of all required #waterfront public access areas# designated on Map 8.

A certification will be granted on condition that an acceptable restrictive declaration is executed and filed pursuant to Section 62-74 (Requirements for Recordation).

## **127-60**

### **ADDITIONAL REVIEW REQUIREMENTS**

**127-61****Certification for Interim Grading Conditions**

For any #development# or #enlargement# seeking:

- (a) modification to the level of #waterfront yard# provisions of Section 127-22 (Special Yard Regulations);
- (b) a certification pursuant to paragraph (b)(1) of Section 127-422 (Certification for a publicly accessible private street); or
- (c) a certification pursuant to Section 127-542 (Supplemental provisions).

the Chairperson of the City Planning Commission shall certify that a site survey has been conducted and sufficient documentation has been submitted, demonstrating that the proposed grades of a #waterfront yard#, interim plan for a #publicly accessible private street# or #upland connection# would not preclude #developments# or #enlargements# on adjacent parcels from complying with the provisions of this Chapter as part of an integrated public realm.

**Appendix****SPECIAL FLUSHING WATERFRONT DISTRICT PLAN**

Map 1: Special Flushing Waterfront District and Subdistricts

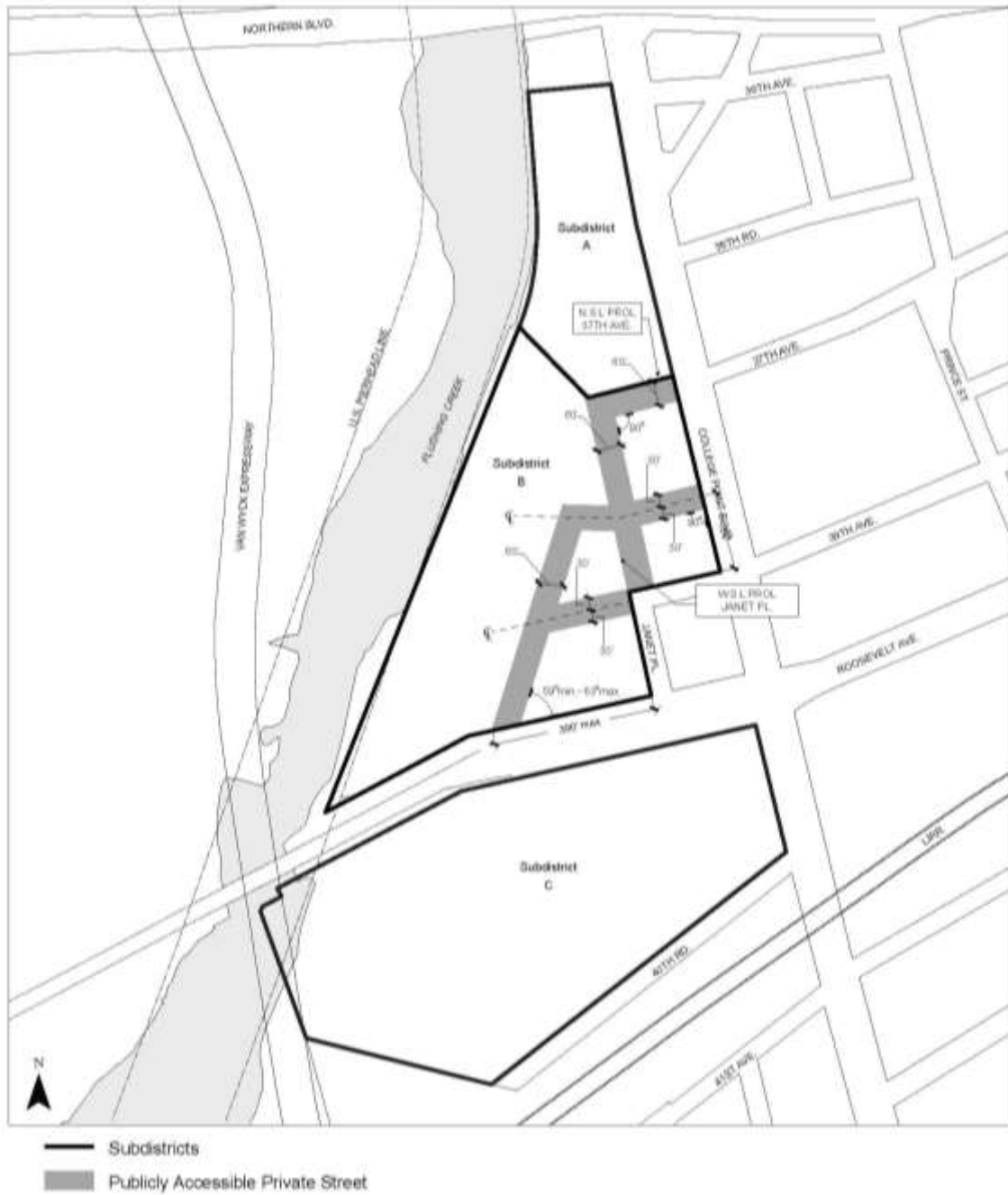


[PROPOSED MAP]



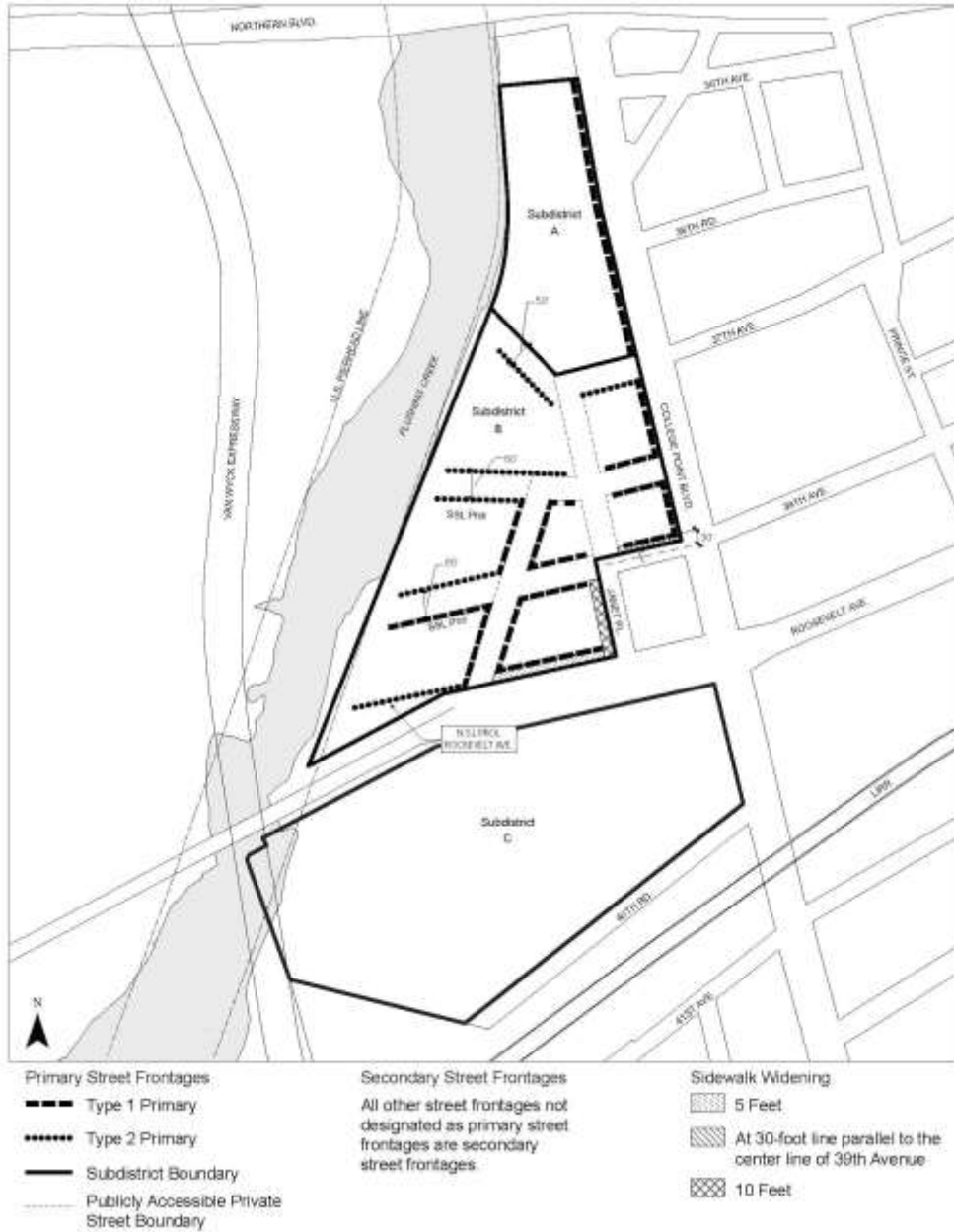
Map 2: Publicly Accessible Private Street Network

[PROPOSED MAP]



Map 3: Requirements Along Street Frontages

[PROPOSED MAP]



Map 4: Waterfront Access Plan – Parcel Designation

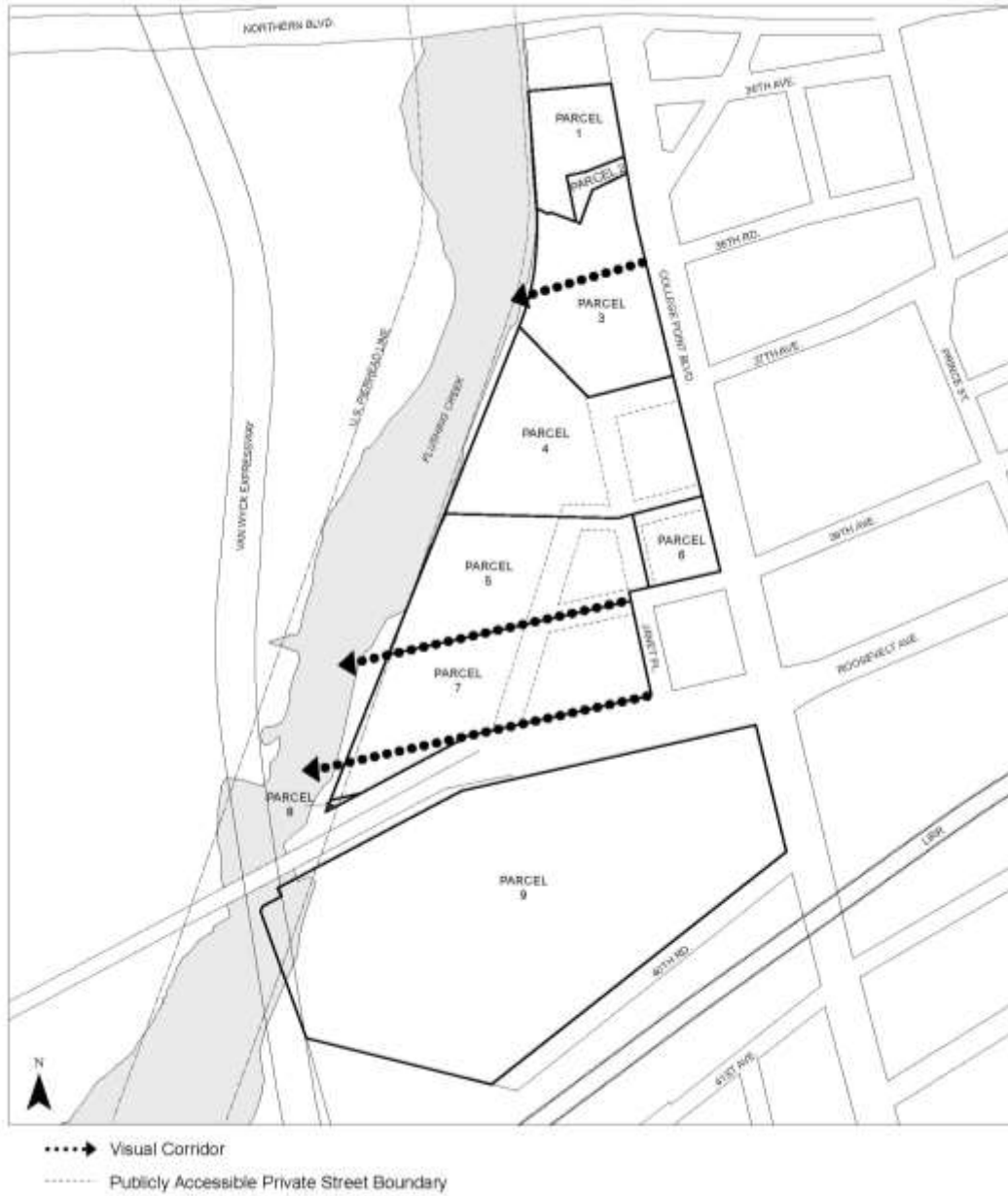
[PROPOSED MAP]



- WAP Boundary
- Parcel Line
- 49037.2.4 Tax Block / Lot numbers

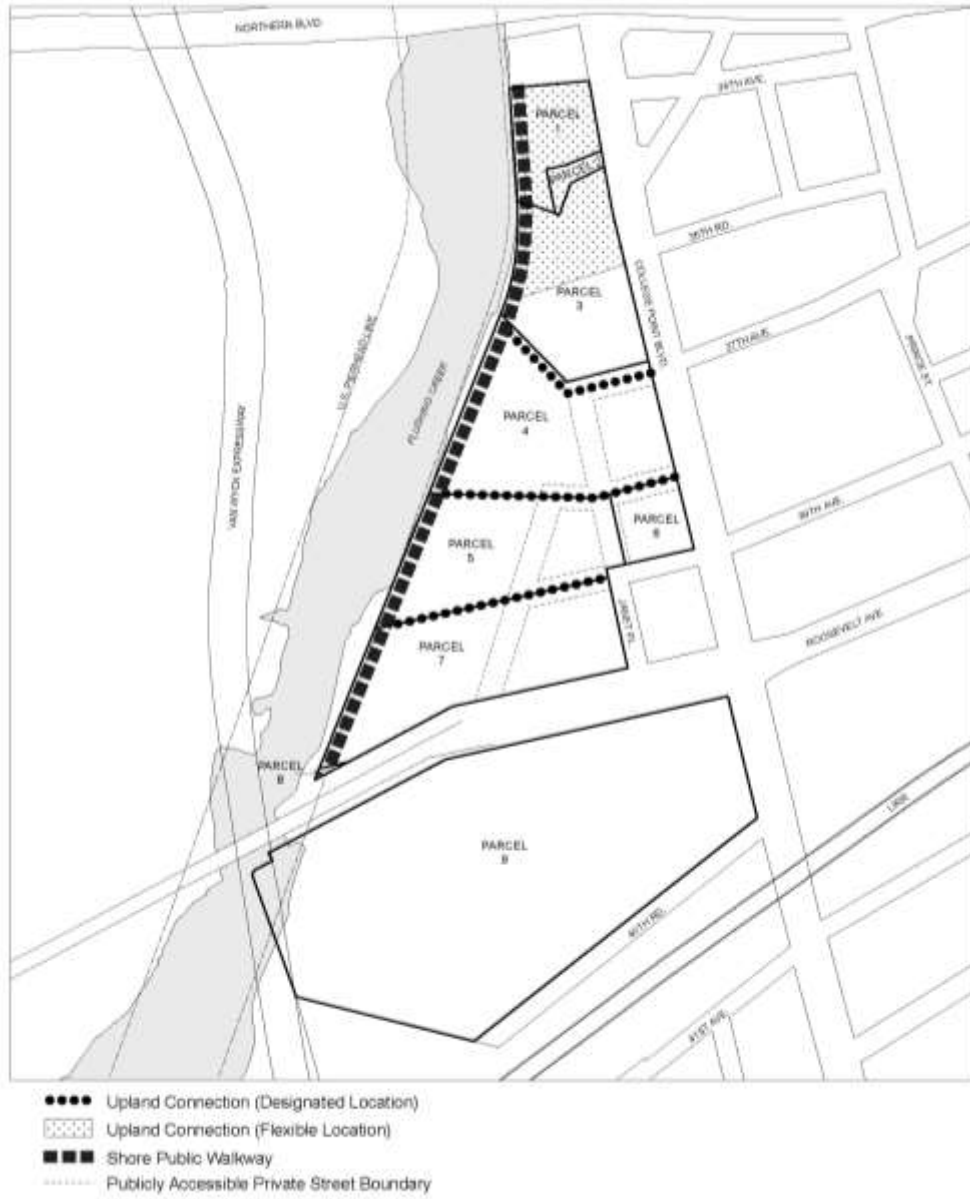
Map 5: Waterfront Access Plan – Visual Corridors

[PROPOSED MAP]



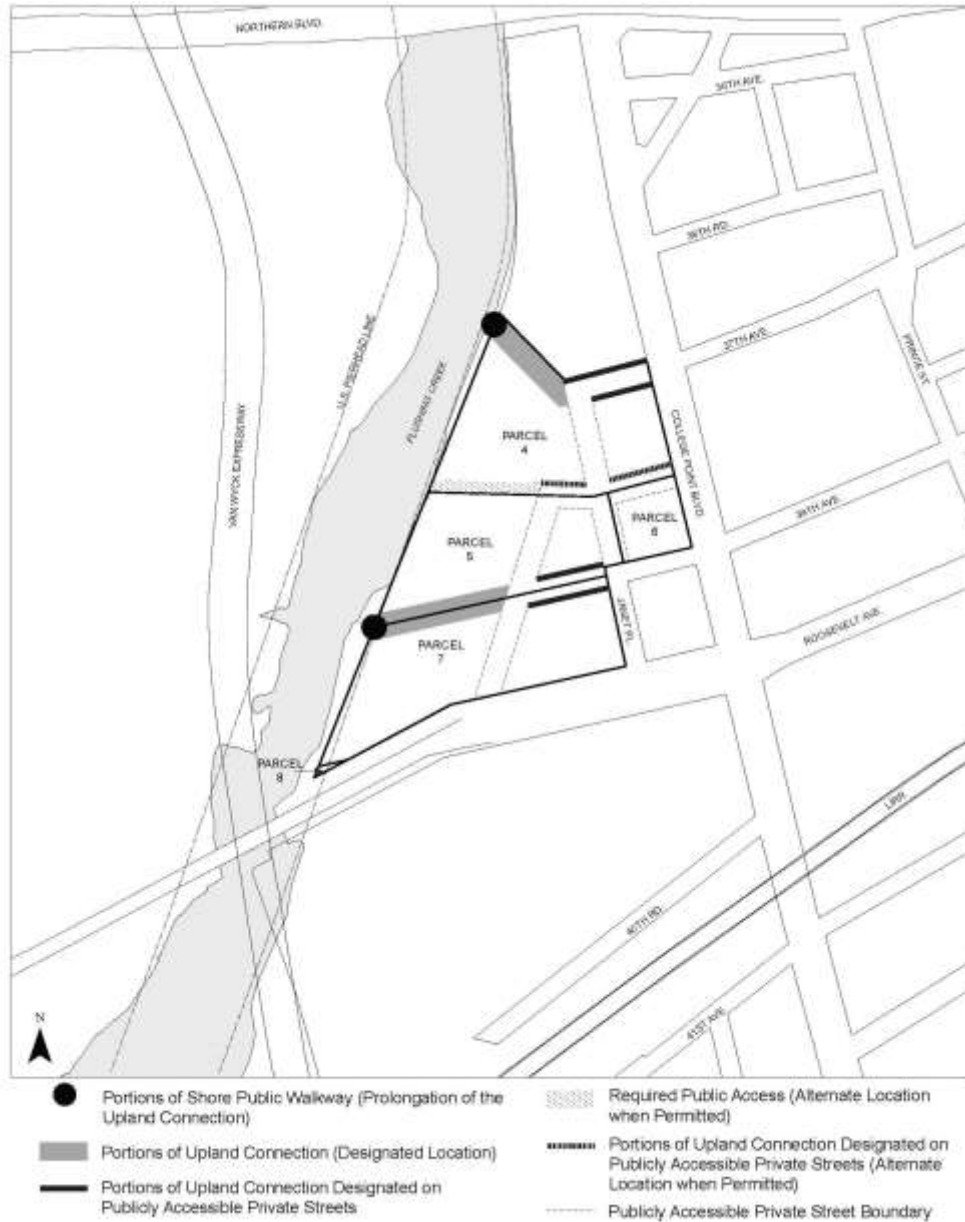
Map 6: Waterfront Access Plan – Public Access Areas

[PROPOSED MAP]



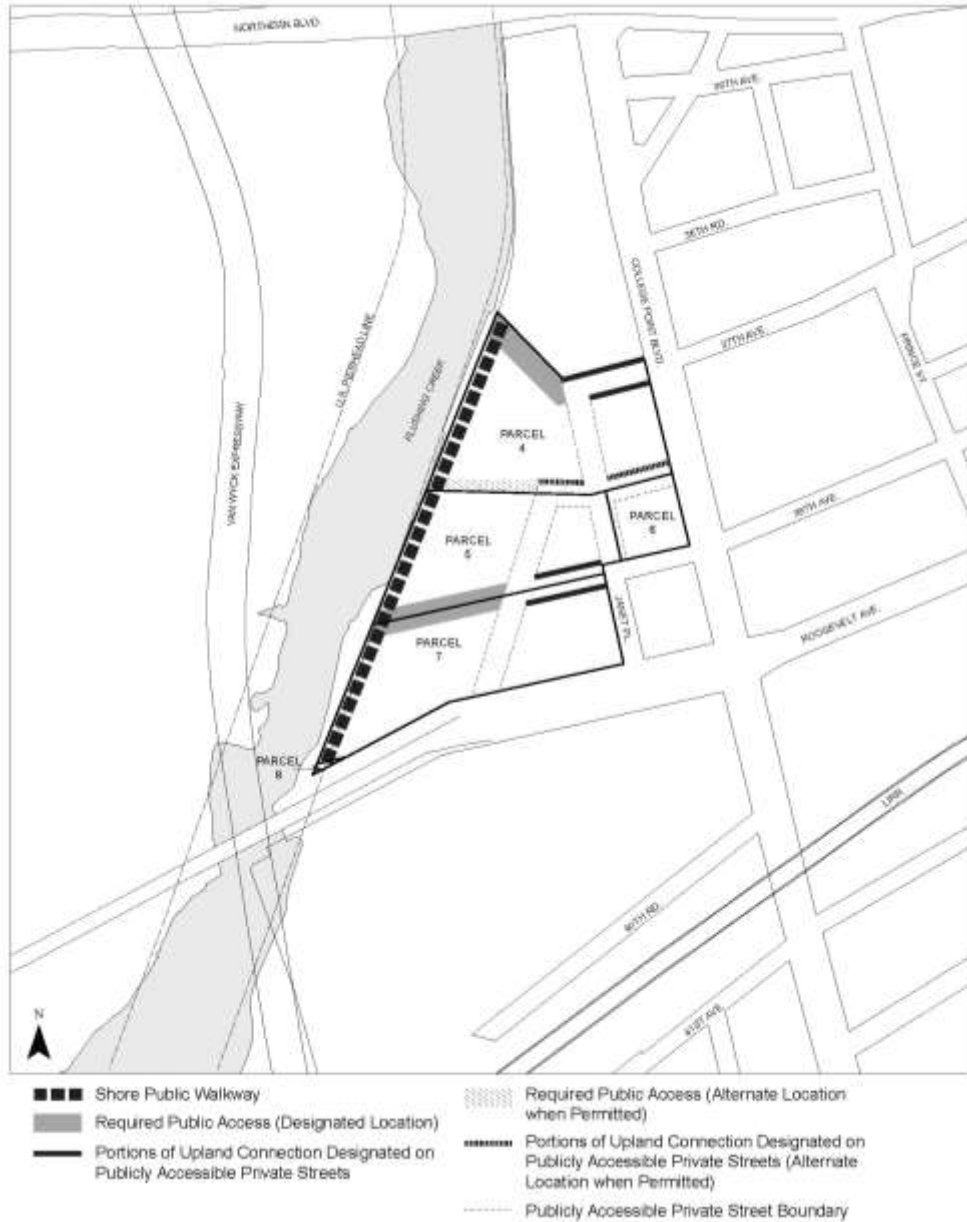
Map 7: Waterfront Access Plan – Phase I Waterfront Public Access Improvements

[PROPOSED MAP]



Map 8: Waterfront Access Plan – Phase II Waterfront Public Access Improvements

[PROPOSED MAP]



\* \* \*



**APPENDIX F**

**Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas**

\* \* \*

**QUEENS**

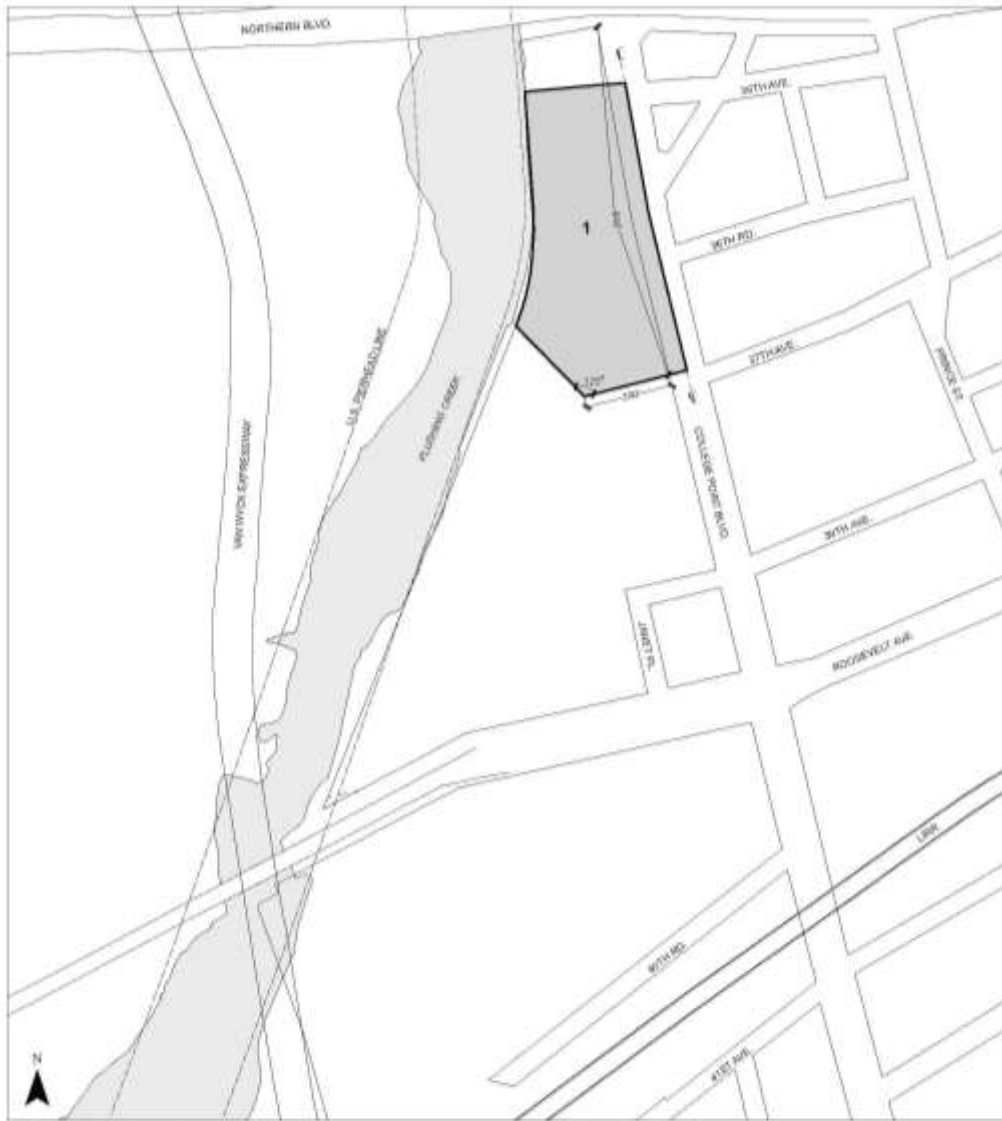
\* \* \*


**Queens Community District 7**

\* \* \*

Map 3 [date of adoption]

[PROPOSED MAP]



 Mandatory Inclusionary Housing Area (see Section 23-154 (d)(2))  
Area 1 – (date of adoption) – MIH Program Option 1 and Option 2

Portion of Community District 7, Borough of Queens

\* \* \*

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 696

**Report of the Committee on Land Use in favor of approving, as modified, Application No. C 200092 ZMK (312 Coney Island Avenue Rezoning) submitted by 312 Coney Island Avenue, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 16d, changing from a C8-2 District to an R8A District and establishing within the proposed R8A District a C2-4 District, Borough of Brooklyn, Community District 7, Council District 39.**

The Committee on Land Use, to which the annexed Land Use item was referred on November 19, 2020 (Minutes, page 2452), respectfully

#### **REPORTS:**

#### **SUBJECT**

#### **BROOKLYN CB-7 – THREE APPLICATIONS RELATED TO 312 CONEY ISLAND AVENUE REZONING**

#### **C 200092 ZMK (Pre. L.U. No. 696)**

City Planning Commission decision approving an application submitted by 312 Coney Island Avenue, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 16d:

1. changing from a C8-2 District to an R8A District property bounded by Ocean Parkway, Park Circle-Machate Circle, Coney Island Avenue, Caton Place, and a line 150 feet easterly of East 8<sup>th</sup> Street; and
2. establishing within the proposed R8A District a C2-4 District bounded by Ocean Parkway, Park Circle-Machate Circle, Coney Island Avenue, Caton Place, and a line 150 feet easterly of East 8<sup>th</sup> Street;

as shown on a diagram (for illustrative purposes only) dated December 16, 2019, and subject to the conditions of CEQR Declaration E-555.

#### **N 200093 ZRK (Pre. L.U. No. 697)**

City Planning Commission decision approving an application submitted by 312 Coney Island Avenue LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying bulk regulations for a portion of the Special Ocean Parkway District and modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area.

**C 200094 ZSK (L.U. No. 698)**

City Planning Commission decision approving an application submitted by 312 Coney Island Avenue, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-533 of the Zoning Resolution to modify:

1. The requirements of Section 25-23 (Requirements Where Group Parking Facilities Are Provided) to waive all required accessory parking

In connection with a proposed mixed-use development on property located at 312 Coney Island Avenue (Block 5322, Lots 10 & 20).

**INTENT**

To approve the amendment to the Zoning Map Section No. 16d, to change a C8-2 District to an R8A District, and establish within the proposed R8A District a C2-4 District; amend zoning text to designate a Mandatory Inclusionary Housing (MIH) area with Options 1 and 2, and a related section in ZR Article XI, Chapter 3 to modify setback requirements for sites in R8A districts adjacent to Park Circle within the Special Ocean Parkway District (SOPD); and grant an approval of the special permit pursuant to ZR Section 74-533 to waive required residential accessory parking spaces to facilitate a new, approximately 312,754 square-foot mixed-use development containing a church, a school, retail, and residential units, located at 312 Coney Island Avenue in the Windsor Terrace neighborhood of Community District 7, Brooklyn.

**PUBLIC HEARING**

*(Pre. L.U. Nos. 696 and 697 Mandatory Items Only)*

**DATE:** November 18, 2020

**Witnesses in Favor:** Twenty-four

**Witnesses Against:** Fifteen

*(L.U. No. 698 Special Permit Item Only)*

**DATE:** December 7, 2020

**Witnesses in Favor:** None

**Witnesses Against:** None

**SUBCOMMITTEE RECOMMENDATION**

**DATE:** December 7, 2020

The Subcommittee recommends that the Land Use Committee approve the decision of the City Planning Commission on Pre. L.U. 696, and approve with modifications the decisions of the City Planning Commission on Pre. L.U. No. 697 and L.U. No. 698.

**In Favor:**

Moya, Levin, Reynoso, Grodenchik, Rivera.

**Against:**

None

**Abstain:**

None

**COMMITTEE ACTION**

**DATE:** December 9, 2020

The Committee recommends that the Council approve the attached resolutions.

**In Favor:**

Salamanca, Gibson, Deutsch, Koo, Levin, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz, Moya, Rivera.

**Against:**

Barron

**Abstain:**

None

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 697

**Report of the Committee on Land Use in favor of approving, as modified, Application No. N 200093 ZRK (312 Coney Island Avenue Rezoning) submitted by 312 Coney Island Avenue, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying bulk regulations for a portion of the Special Ocean Parkway District and modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Brooklyn, Community District 7, Council District 39.**

The Committee on Land Use, to which the annexed preconsidered Land Use item was referred on November 19, 2020 (Minutes, page 2453), respectfully

**REPORTS:**

**(For text of report, please see the Report of the Committee on Land Use for L.U. No. 696 printed in these Minutes)**

*Accordingly, this Committee recommends its adoption, as modified.*

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 698

**Report of the Committee on Land Use in favor of approving, as modified, Application No. C 200094 ZSK (312 Coney Island Avenue) submitted by 312 Coney Island Avenue, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-533 of the Zoning Resolution to modify the requirements of Section 25-23 (Requirements Where Group Parking Facilities Are Provided) to waive all required accessory parking, in connection with a proposed mixed-use development on property located at 312 Coney Island Avenue (Block 5322, Lots 10 & 20), in Borough of Brooklyn, Community District 7, Council District 39.**

The Committee on Land Use, to which the annexed Land Use item was referred on November 19, 2020 (Minutes, page 2453), respectfully

#### REPORTS:

**(For text of report, please see the Report of the Committee on Land Use for L.U. No. 696 printed in these Minutes)**

*Accordingly, this Committee recommends its adoption, as modified.*

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 699

**Report of the Committee on Land Use in favor of approving Application No. C 200094 ZSK (312 Coney Island Avenue) submitted by 312 Coney Island Avenue, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-533 of the Zoning Resolution to modify the requirements of Section 25-23 (Requirements Where Group Parking Facilities Are Provided) to waive all required accessory parking, in connection with a proposed mixed-use development on property located at 312 Coney Island Avenue (Block 5322, Lots 10 & 20), in Borough of Brooklyn, Community District 7, Council District 39.**

The Committee on Land Use, to which the annexed Land Use item was referred on November 19, 2020 (Minutes, page 2453) and which same Land Use item was coupled with the resolution shown below, respectfully

**REPORTS:**

**SUBJECT**

**BROOKLYN CB - 1**

**C 200158 ZMK**

City Planning Commission decision approving an application submitted by 223 Troutman LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 12d, by establishing within an existing R6B District a C2-4 District bounded by North 1st Street, Bedford Avenue, a line 100 feet northeasterly of Grand Street, and a line 100 feet northwesterly of Bedford Avenue, Borough of Brooklyn, Community District 1, as shown on a diagram (for illustrative purposes only) dated January 21, 2020, and subject to the conditions of CEQR Declaration E-559.

**INTENT**

To approve the amendment to establish a C2-4 commercial overlay within an existing R6B zoning district to facilitate ground floor commercial use in a three-story mixed-use building located at 276 Bedford Avenue (Block 2380, Lot 20) in the Williamsburg neighborhood of Brooklyn Community District 1.

**PUBLIC HEARING**

**DATE:** November 18, 2020

**Witnesses in Favor:** One

**Witnesses Against:** One

**SUBCOMMITTEE RECOMMENDATION**

**DATE:** December 7, 2020

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

**In Favor:**

Moya, Levin, Reynoso, Grodenchik, Rivera.

**Against:**

None

**Abstain:**

None

**COMMITTEE ACTION**

**DATE:** December 9, 2020

The Committee recommends that the Council approve the attached resolution.

**In Favor:**

Salamanca, Gibson, Barron, Deutsch, Koo, Levin, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz, Moya, Rivera.

**Against:**

None

**Abstain:**

None.

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

Res. No. 1504

**Resolution approving the decision of the City Planning Commission on ULURP No. C 200158 ZMK, a Zoning Map amendment (Preconsidered L.U. No. 699).**

By Council Members Salamanca and Moya.

**WHEREAS**, 223 Troutman LLC, filed an application pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 12d, establishing within an existing R6B District a C2-4 District to facilitate ground floor commercial use in a three-story mixed-use building located at 276 Bedford Avenue (Block 2380, Lot 20) in the Williamsburg neighborhood of Community District 1, Brooklyn (ULURP No. C 200158 ZMK) (the "Application");

**WHEREAS** the City Planning Commission filed with the Council on November 10, 2020, its decision dated November 4, 2020 (the "Decision") on the Application;

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

**WHEREAS**, upon due notice, the Council held a public hearing on the Decision and Application on November 18, 2020;

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

**WHEREAS**, the Council has considered the relevant environmental issues, including the negative declaration issued January 21<sup>st</sup>, 2020 (CEQR No. 20DCP072K), subject to the conditions of CEQR declaration E-559 which will supersede the (E) designation (E-7A) for noise placed on both lots in the affected area as part of the Bedford Avenue North Third Street URA (the "Negative Declaration").

**RESOLVED:**

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



Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, C 200158 ZMK, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 12d, by establishing within an existing R6B District a C2-4 District bounded by North 1<sup>st</sup> Street, Bedford Avenue, a line 100 feet northeasterly of Grand Street, and a line 100 feet northwesterly of Bedford Avenue, Borough of Brooklyn, Community District 1, as shown on a diagram (for illustrative purposes only), dated January 21, 2020, and subject to the conditions of the CEQR Declaration E-559.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 700

**Report of the Committee on Land Use in favor of approving Application No. N 200057 ZRK (803 Rockaway Avenue Rezoning) submitted by Bridge Rockaway Housing Development Fund Company Inc., pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article XII Chapter 3 for the purpose of amending restrictions for certain uses in MX-19 and modifying Appendix F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Brooklyn, Community District 16, Council District 42.**

The Committee on Land Use, to which the annexed Land Use item was referred on November 19, 2020 (Minutes, page 2454) and which same Land Use item was coupled with the resolution shown below, respectfully

#### **REPORTS:**

#### **SUBJECT**

**BROOKLYN CB-16 – TWO APPLICATIONS RELATED TO 803 ROCKAWAY AVENUE REZONING**

**N 200057 ZRK (Pre. L.U. No. 700)**

City Planning Commission decision approving an application submitted by Bridge Rockaway Housing Development Fund Company, Inc., pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article XII Chapter 3 for the purpose of amending

restrictions for certain uses in MX-19 and modifying Appendix F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Brooklyn, Community District 16.

**C 200056 ZMK (Pre. L.U. No. 701)**

City Planning Commission decision approving an application submitted by Bridge Rockaway Housing Development Fund Company, Inc., pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 17d:

1. changing from an M1-1 District to an M1-4/R6A District property bounded by a line 100 feet southerly of Riverdale Avenue, Thatford Avenue, Newport Street, and a line 100 feet westerly of Thatford Avenue; and
2. changing from an M1-1 District to an M1-4/R7A District property bounded by a line 100 feet southerly of Riverdale Avenue, a line 100 feet westerly of Thatford Avenue, Newport Street, Rockaway Avenue and its southerly and northerly centerline prolongations; and
3. establishing a Special Mixed Use District (MX-19) bounded by a line 100 feet southerly of Riverdale Avenue, Thatford Avenue, Newport Street, Rockaway Avenue and its southerly and northerly centerline prolongations;

as shown on a diagram (for illustrative purposes only) dated February 3, 2020, and subject to the conditions of CEQR Declaration E-561.

**INTENT**

To approve an amendment of the zoning text to modify restrictions for certain uses in MX-19 and to designate a Mandatory Inclusionary Housing (MIH) area utilizing Option 1; and amend the Zoning Map to change an M1-1 zoning district to M1-4/R7A and M1-4/R6A zoning districts and to map Special Mixed Use District (MX-19) to facilitate the development of a new seven-story, approximately 183,000-square-foot, mixed-use building with 174 units of supportive and affordable housing and ground floor light manufacturing and community facility space at 803 Rockaway Avenue in the Brownsville neighborhood of Brooklyn, Community District 16.

**PUBLIC HEARING**

**DATE:** November 18, 2020

**Witnesses in Favor:** Nine

**Witnesses Against:** None

**SUBCOMMITTEE RECOMMENDATION**

**DATE:** December 7, 2020

The Subcommittee recommends that the Land Use Committee approve the decisions of the City Planning Commission on Pre. L.U. Nos. 700 and 701.

**In Favor:**

Moya, Levin, Reynoso, Grodenchik, Rivera.

**Against:**

None

**Abstain:**

None

**COMMITTEE ACTION**

**DATE:** December 9, 2020

The Committee recommends that the Council approve the attached resolutions.

**In Favor:**

Salamanca, Gibson, Barron, Deutsch, Koo, Levin, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz, Moya, Rivera.

**Against:**

None

**Abstain:**

None.

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

Res. No. 1505

**Resolution approving the decision of the City Planning Commission on Application No. N 200057 ZRK, for an amendment of the text of the Zoning Resolution (Preconsidered L.U. No. 700).**

By Council Members Salamanca and Moya.

**WHEREAS**, Bridge Rockaway Housing Development Fund Company, Inc., filed an application pursuant to Section 201 of the New York City Charter, for an amendment of the text of the Zoning Resolution of the City of New York, modifying Article XII Chapter 3 for the purpose of amending restrictions for certain uses in MX-19 and modifying Appendix F for the purpose of establishing a Mandatory Inclusionary Housing area utilizing Option 1, which in conjunction with the related action would facilitate the development of a new seven-story, approximately 183,000-square-foot, mixed-use building with 174 units of supportive and affordable housing and ground floor light manufacturing and community facility space at 803 Rockaway Avenue in the Brownsville neighborhood of Brooklyn, Community District 16 (Application No. N 200057 ZRK) (the “Application”);

**WHEREAS**, the City Planning Commission filed with the Council on November 10, 2020, its decision dated November 4, 2020 (the “Decision”), on the Application;

**WHEREAS**, the Application is related to application C 200056 ZMK (Pre. L.U. No. 701), a Zoning map amendment to change an M1-1 zoning district to M1-4/R7A and M1-4/R6A zoning districts and to map Special Mixed Use District (MX-19);

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

**WHEREAS**, upon due notice, the Council held a public hearing on the Decision and Application on November 18, 2020;

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

**WHEREAS**, the Council has considered the relevant environmental issues, including the negative declaration issued February 3<sup>rd</sup>, 2020 (CEQR No. 19DCP220K ) which includes an (E) designation to avoid the potential for significant adverse impacts related to hazardous materials and air quality (E-561) (the “Negative Declaration”).

**RESOLVED:**

The Council finds that the action described herein will have no significant impact on the environment as set forth in the (E) Designation (E-561) and Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, N 200057 ZRK, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

Matter underlined is new, to be added;

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

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

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

\* \* \*

**ARTICLE XII  
SPECIAL PURPOSE DISTRICTS**

\* \* \*

**Chapter 3  
Special Mixed Use District**

\* \* \*

**123-20  
SPECIAL USE REGULATIONS**

\* \* \*

**123-22  
Modification of Use Groups 16, 17 and 18**

\* \* \*

**123-222**

**Uses permitted with restrictions**

\* \* \*

Any #use# from Use Group 16 or 17, listed in this Section, may only locate in a #building enlarged# or #developed# after December 10, 1997, containing a #use# listed in Section 123-21 (Modification of Use Groups 2, 3 and 4), or share a common wall with such #building#;

(a) upon certification by a licensed architect or engineer to the Department of Buildings that any such #use# listed in Use Group 16 or 17:

(a)(1) does not have a New York City or New York State environmental rating of “A”, “B” or “C” under Section 24-153 of the New York City Administrative Code for any process equipment requiring a New York City Department of Environmental Protection operating certificate or New York State Department of Environmental Conservation state facility permit; and

(b)(2) is not required, under the City Right-to-Know Law, to file a Risk Management Plan for Extremely Hazardous Substances; or

(b) in MX-19, upon the submission to the Department of Buildings of a copy of a restrictive declaration, in a form acceptable to the Department of Environmental Protection, that has been executed and recorded in the Office of the City Register against all tax lots with such #use#, binding the owners, successors, and assigns to provide any building design requirements consistent with the underlying zoning as may be approved by the Department of Environmental Protection to protect residents of such #building# from air contaminants, odors, vibrations, or noise.

\* \* \*

**123-60**

**SPECIAL BULK REGULATIONS**

\* \* \*

**123-63**

**Maximum Floor Area Ratio and Lot Coverage Requirements for Zoning Lots Containing Only Residential Buildings in R6, R7, R8 and R9 Districts**

\* \* \*

#Special Mixed Use District#	Designated #Residence District#
MX-1 – Community District 1, The Bronx	R6A R7D
MX 2 – Community District 2, Brooklyn	R7A R8A R8X
MX 4 – Community District 3, Brooklyn	R6A
MX 8 – Community District 1, Brooklyn	R6 R6A R6B R7A
MX 11 – Community District 6, Brooklyn	R7-2
MX 13 – Community District 1, The Bronx	R6A R7A R7X R8A
MX 14 – Community District 6, The Bronx	R7A R7X
MX 16 – Community Districts 5 and 16, Brooklyn	R6A R7A R7D R8A
MX-18 – Community District 1, The Bronx	R7X
<u>MX 19 – Community District 16, Brooklyn</u>	<u>R6A R7A</u>
MX 20 – Community District 8, Brooklyn	R7A

\* \* \*

**123-90**

**SPECIAL MIXED USE DISTRICTS SPECIFIED**

The #Special Mixed Use District# is mapped in the following areas:

\* \* \*

#Special Mixed Use District# - 18: (10/17/19)

Mott Haven, The Bronx

The #Special Mixed Use District# - 18 is established in Mott Haven in The Bronx as indicated on the #zoning maps#.

#Special Mixed Use District# - 19: [date of adoption]

Brownsville, Brooklyn

The #Special Mixed Use District# - 19 is established in Brownsville in Brooklyn as indicated on the #zoning maps#.

#Special Mixed Use District# - 20: (5/8/19)

Crown Heights West, Brooklyn

The #Special Mixed Use District# - 20 is established in Crown Heights West in Brooklyn as indicated on the #zoning maps#.

\* \* \*

**APPENDIX F**

**Inclusionary Housing Designated Areas and Mandatory Inclusionary Housing Areas**

\* \* \*

**BROOKLYN**

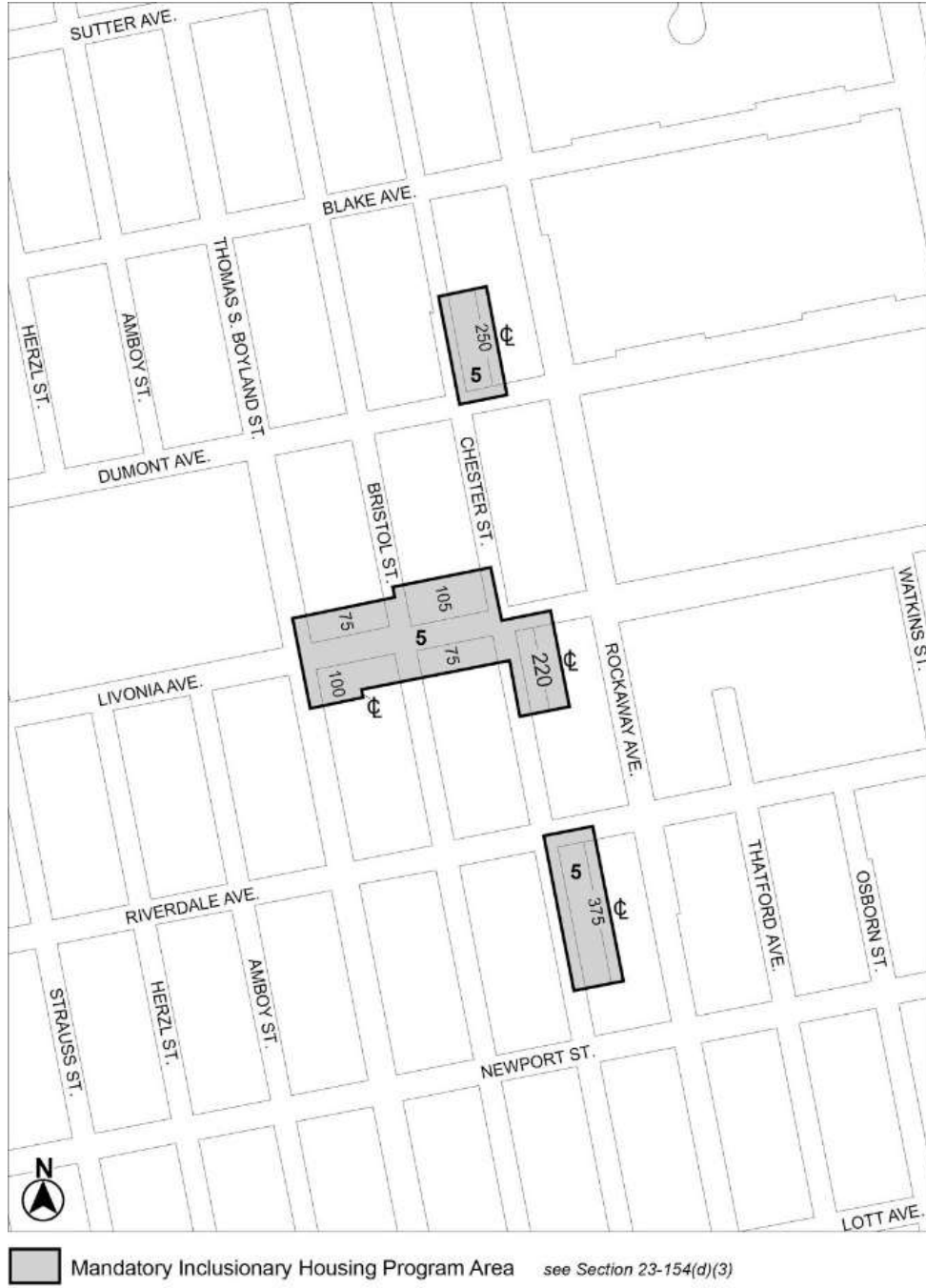
\* \* \*

**Brooklyn Community District 16**

\* \* \*

Map 4 – [date of adoption]

[EXISTING MAP]

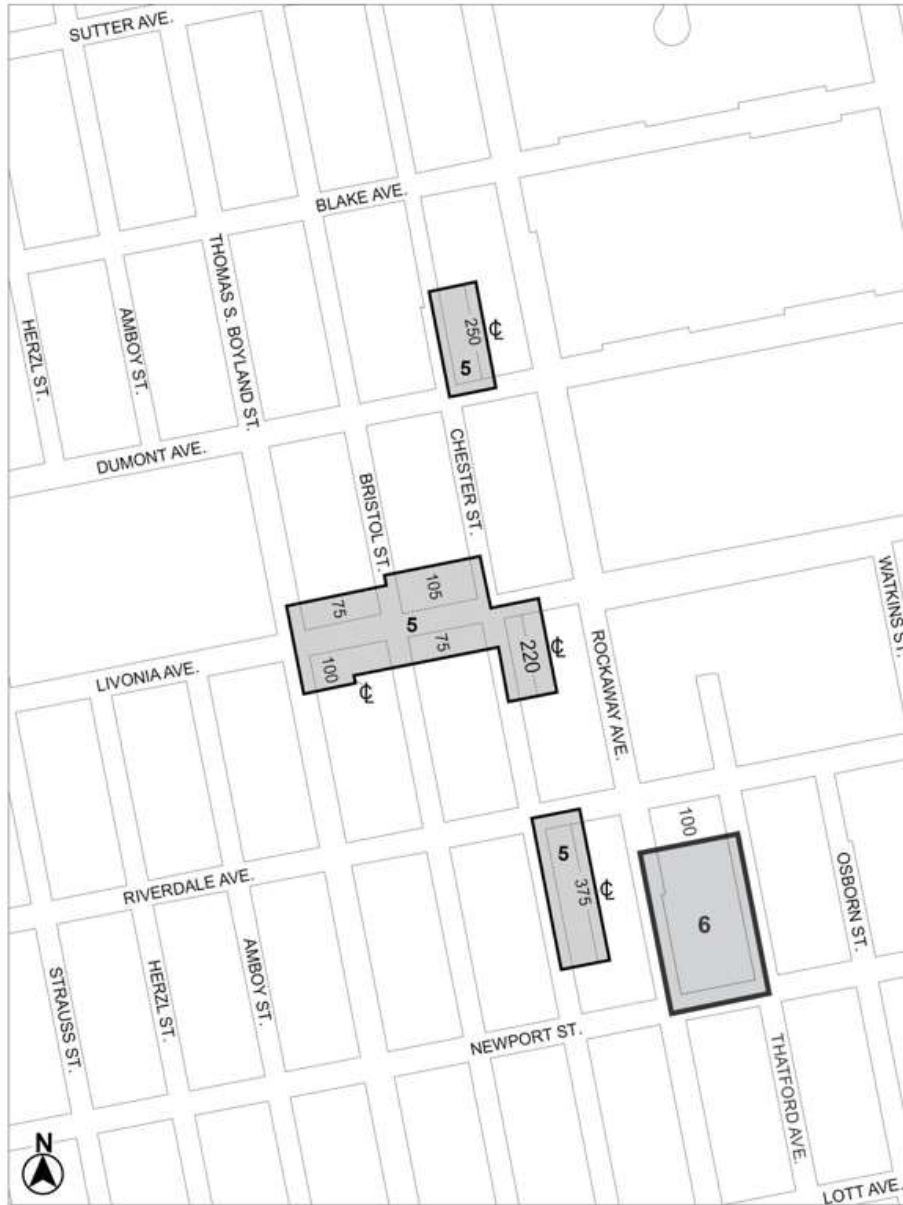


█ Mandatory Inclusionary Housing Program Area see Section 23-154(d)(3)

Area 5 — 12/20/18 MIH Program Option 1 and Deep Affordability Option



[PROPOSED MAP]



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

Area 5 – 12/20/18 MIH Program Option 1 and Deep Affordability Option

Area 6 – [date of adoption] MIH Program Option 1



Portion of Community District 16, Brooklyn

\* \* \*

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 701

**Report of the Committee on Land Use in favor of approving Application No. C 200056 ZMK (803 Rockaway Avenue Rezoning) submitted by Bridge Rockaway Housing Development Fund Company Inc., pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 17d, changing from an M1-1 District to an M1-4/R6A District; changing from an M1-1 District to an M1-4/R7A District; and establishing a Special Mixed Use District (MX-19), Borough of Brooklyn, Community District 16, Council District 42.**

The Committee on Land Use, to which the annexed Land Use item was referred on November 19, 2020 (Minutes, page 2454) and which same Land Use item was coupled with the resolution shown below, respectfully

**REPORTS:**

**(For text of report, please see the Report of the Committee on Land Use for L.U. No. 700 printed in these Minutes)**

*Accordingly, this Committee recommends its adoption.*

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

Res. No. 1506

**Resolution approving the decision of the City Planning Commission on ULURP No. C 200056 ZMK, a Zoning Map amendment (Preconsidered L.U. No. 701).**

By Council Members Salamanca and Moya.

**WHEREAS**, Bridge Rockaway Housing Development Fund Company, Inc., filed an application pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 17d, changing from an M1-1 District to an M1-4/R6A District, changing from an M1-1 District to an M1-4/R7A District, and establishing a Special Mixed Use District (MX-19), which in conjunction with the related action would facilitate the development of a new seven-story, approximately 183,000-square-foot, mixed-use building with 174 units of supportive and affordable housing and ground floor light manufacturing and community facility space at 803 Rockaway Avenue in the Brownsville neighborhood of Brooklyn, Community District 16 (ULURP No. C 200056 ZMK) (the "Application");

**WHEREAS** the City Planning Commission filed with the Council on November 10, 2020, its decision dated November 4, 2020 (the "Decision") on the Application;

**WHEREAS**, the Application is related to application N 200057 ZRK (Pre. L.U. No. 700), a zoning text amendment to modify restrictions for certain uses in MX-19 and to designate a Mandatory Inclusionary Housing (MIH) area;

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

**WHEREAS**, upon due notice, the Council held a public hearing on the Decision and Application on November 18, 2020;

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

**WHEREAS**, the Council has considered the relevant environmental issues, including the negative declaration issued February 3<sup>rd</sup>, 2020 (CEQR No. 19DCP220K ) which includes an (E) designation to avoid the potential for significant adverse impacts related to hazardous materials and air quality (E-561) (the “Negative Declaration”).

**RESOLVED:**

The Council finds that the action described herein will have no significant impact on the environment as set forth in the (E) Designation (E-561) and Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, C 200056 ZMK, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 17d:

1. changing from an M1-1 District to an M1-4/R6A District property bounded by a line 100 feet southerly of Riverdale Avenue, Thatford Avenue, Newport Street, and a line 100 feet westerly of Thatford Avenue; and
2. changing from an M1-1 District to an M1-4/R7A District property bounded by a line 100 feet southerly of Riverdale Avenue, a line 100 feet westerly of Thatford Avenue, Newport Street, Rockaway Avenue and its southerly and northerly centerline prolongations; and
3. establishing a Special Mixed Use District (MX-19) bounded by a line 100 feet southerly of Riverdale Avenue, Thatford Avenue, Newport Street, Rockaway Avenue and its southerly and northerly centerline prolongations;

as shown on a diagram (for illustrative purposes only) dated February 3, 2020, and subject to the conditions of CEQR Declaration E-561 Borough of Brooklyn, Community District 16.

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

Report for L.U. No. 702

**Report of the Committee on Land Use in favor of approving Application No. N 200078 ZRM (Mansion Restaurant Sidewalk Café) submitted by Mansion Restaurant Inc., pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article I, Chapter 4 (Sidewalk Cafe Regulations) Borough of Manhattan, Community District 8, Council District 5.**

The Committee on Land Use, to which the annexed Land Use item was referred on November 19, 2020 (Minutes, page 2454) and which same Land Use item was coupled with the resolution shown below, respectfully

#### **REPORTS:**

#### **SUBJECT**

**MANHATTAN CB - 8**

**N 200078 ZRM**

City Planning Commission decision approving an application submitted by Mansion Restaurant Inc., pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying Article I, Chapter 4 (Sidewalk Cafe Regulations).

#### **INTENT**

To approve an amendment to NYC ZR Sections 14-41 (Locations Where Certain Sidewalk Cafes Are Not Permitted) and 14-42 (Locations Where Enclosed Sidewalk Cafes Are Not Permitted), on a 125-foot portion of East 86<sup>th</sup> Street at York Avenue to allow the Mansion Restaurant to apply for a revocable consent and license to operate an unenclosed sidewalk café adjacent to the restaurant's East 86<sup>th</sup> Street frontage, at 1634 York Avenue in the Yorkville neighborhood of Manhattan, Community District 8.

#### **PUBLIC HEARING**

**DATE:** November 18, 2020

**Witnesses in Favor:** Two

**Witnesses Against:** None

**SUBCOMMITTEE RECOMMENDATION****DATE:** December 7, 2020

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

**In Favor:**

Moya, Levin, Reynoso, Grodenchik, Rivera.

**Against:**

None

**Abstain:**

None.

**COMMITTEE ACTION****DATE:** December 9, 2020

The Committee recommends that the Council approve the attached resolution.

**In Favor:**

Salamanca, Gibson, Barron, Deutsch, Koo, Levin, Miller, Reynoso, Treyger, Grodenchik, Adams, Ayala, Diaz, Moya, Rivera.

**Against:**

None

**Abstain:**

None.

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

Res. No. 1507

**Resolution approving the decision of the City Planning Commission on Application No. N 200078 ZRM, for an amendment of the text of the Zoning Resolution (Preconsidered L.U. No. 702).**

By Council Members Salamanca and Moya.

**WHEREAS**, Mansion Restaurant Inc., filed an application pursuant to Section 201 of the New York City Charter, for an amendment of the text of the Zoning Resolution of the City of New York, modifying Article I Chapter 4 (Sidewalk Cafe Regulations) to allow the Mansion Restaurant to apply for a revocable consent and license to operate an unenclosed sidewalk café adjacent to the restaurant's East 86<sup>th</sup> Street frontage, at 1634 York Avenue in the Yorkville neighborhood of Manhattan, Community District 8 (Application No. N 200078 ZRM) (the "Application");

**WHEREAS**, the City Planning Commission filed with the Council on November 10, 2020, its decision dated November 4, 2020 (the "Decision"), on the Application;

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

**WHEREAS**, upon due notice, the Council held a public hearing on the Decision and Application on November 18, 2020;

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

**WHEREAS**, the Council has considered the relevant environmental issues, including the negative declaration issued January 21<sup>st</sup>, 2020 (CEQR No. 20DCP027M) (the “Negative Declaration”).

**RESOLVED:**

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

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in the report, N 200078 ZRM, incorporated by reference herein, and the record before the Council, the Council approves the Decision of the City Planning Commission.

Matter underlined is new, to be added;

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

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

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

**ARTICLE I**

**GENERAL PROVISIONS**

**Chapter 4**

**Sidewalk Cafe Regulations**

\* \* \*

**14-41**

**Locations Where Certain Sidewalk Cafes Are Not Permitted**

No #enclosed# or #unenclosed sidewalk cafes# shall be permitted on any of the following #streets#, portions of #streets# and areas, except that #small sidewalk cafes# may be permitted pursuant to the provisions of Section 14-43 (Locations Where Only Small Sidewalk Cafes Are Permitted).

\* \* \*

Manhattan:

\* \* \*

79th Street — from the East River to Fifth Avenue

86th Street — from the East River to Fifth Avenue, south side only

86th Street — from the East River to 125 feet east of York Avenue, north side only, and from York Avenue to Fifth Avenue, north side only

116th Street — from Malcolm X Boulevard to Frederick Douglass Boulevard

\* \* \*

**14-42**

**Locations Where Enclosed Sidewalk Cafes Are Not Permitted**

No #enclosed sidewalk cafe# shall be permitted on any of the following #streets#.

Manhattan:

Bleecker Street — from Bank Street to Mercer Street

Central Park South — from Fifth Avenue to Sixth Avenue

Park Avenue South and Park Avenue — from 31st Street to 38th Street

86th Street — from the East River to Fifth Avenue

\* \* \*

RAFAEL SALAMANCA, Jr., *Chairperson*; PETER A. KOO, STEPHEN T. LEVIN, VANESSA L. GIBSON, INEZ D. BARRON, CHAIM M. DEUTSCH, I. DANEEK MILLER, ANTONIO REYNOSO, MARK TREYGER, BARRY S. GRODENCHIK, ADRIENNE E. ADAMS, DIANA AYALA, RUBEN DIAZ, Sr., FRANCISCO P. MOYA, CARLINA RIVERA; Committee on Land Use, December 9, 2020. *Other Council Members Attending: Council Member Lander.*

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

### **Report of the Committee on Public Housing**

Report for Int. No. 1911-A

#### **Report of the Committee on Public Housing in favor of approving and adopting, as amended, a Local Law in relation to the provision of information to tenants of the New York city housing authority regarding the mold ombudsperson.**

The Committee on Public Housing, to which the annexed proposed amended local law was referred on February 27, 2020 (Minutes, page 681), respectfully

#### **REPORTS:**

#### **INTRODUCTION**

On December 10, 2020, the Committee on Public Housing, chaired by Council Member Alicka Ampry-Samuel, held a hearing on Int. No. 1911-A, in relation to the provision of information to tenants of the New York city housing authority regarding the mold ombudsperson. The original bill was first heard on October 7, 2020. More information about this bill, along with the materials for that hearing, can be found at <https://go.usa.gov/x7SKT>.

#### **Int. No. 1911-A**

In 2013, a group of plaintiffs filed a class action lawsuit on behalf of New York City Housing Authority (NYCHA) residents and nonprofit organizations against NYCHA for NYCHA's failure to make reasonable accommodations and modifications in its policies, practices, and procedures to effectively abate mold and excessive moisture in tenants' apartments.<sup>1</sup> On April 17, 2014, the case settled and the Court approved a Stipulation and Order of Settlement ("Consent Decree") imposing certain mold, leak, and excessive moisture repair requirements on NYCHA.<sup>2</sup> In November 2018, the Court approved a revised settlement agreement,<sup>3</sup> extending the terms of the original Consent Decree, requiring the appointment of an independent ombudsperson,

<sup>1</sup> *Baez v. New York City Hous. Auth.*, 2013 WL 6632355 (S.D.N.Y.).

<sup>2</sup> *Id.*

<sup>3</sup> *Baez v. New York City Hous. Auth.*, No. 13CV8916, 2018 WL 6242224 (S.D.N.Y. Nov. 29, 2018).



and removing the Consent Decree's sunset provision.<sup>4</sup> The Mold Ombudsperson is responsible for receiving complaints from NYCHA tenants through its Ombudsperson Call Center when NYCHA fails to comply with the terms of the Consent Decree, and after NYCHA tenants have exhausted ordinary channels to address mold and excessive moisture concerns.<sup>5</sup>

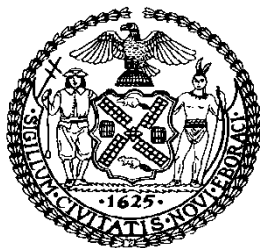
Int. No. 1911-A would require an office or agency designated by the Mayor to distribute to each tenant of NYCHA a pamphlet or other printed document that contains information about the mold ombudsperson, the mold ombudsperson's call center, and how to make a complaint to the mold ombudsperson. The office would also be required to communicate this information to each tenant by telephone. For tenants enrolled in electronic billing, the designated office can opt to send the information via e-mail instead of distributing a paper copy. Int. No. 1911-A also requires the designated office to distribute such pamphlet to certain elected officials and community representatives, and to hold a public briefing at least once a year to provide information about the mold ombudsperson.

This legislation would take effect immediately and would expire and be deemed repealed on the date that the mold ombudsperson or any subsequently appointed person with similar duties ceases to be appointed.

### Update

On Thursday, December 10, 2020, the Committee adopted Int. No. 1911-A by a vote of ten in the affirmative, zero in the negative, and zero abstentions.

**(The following is the text of the Fiscal Impact Statement for Int. No. 1911-A:)**



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

**PROPOSED INTRO. NO: 1911-A**

**COMMITTEE: Public Housing**

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**TITLE:** A Local Law in relation to the provision of information to tenants of the New York city housing authority regarding the mold ombudsperson.

**SPONSORS:** By Council Members Torres, Ampry-Samuel, Ayala, Gibson, Rosenthal and Barron.

---

**SUMMARY OF LEGISLATION:** Proposed Int. No. 1911-A would require an office or agency designated by the Mayor to distribute to each tenant of the New York City Housing Authority (NYCHA) a pamphlet that contains information about the court-appointed mold ombudsperson, the mold ombudsperson's call center, and how to make a complaint to the mold ombudsperson. The office would also be required to send such pamphlet to local elected officials and certain community representatives and hold a public briefing at least once a year to provide information about the mold ombudsperson.

**EFFECTIVE DATE:** This local law would take effect immediately and would expire and be deemed repealed on the date that the mold ombudsperson or any subsequently appointed person with similar duties ceases to be appointed.

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<sup>4</sup> *Id.* at 5.

<sup>5</sup> Mold and Leak Ombudsperson Call Center (OCC) – For NYCHA Residents, available at <https://ombnyc.com/home> (last accessed Dec. 8, 2020).

**FISCAL YEAR IN WHICH FULL FISCAL IMPACT ANTICIPATED:** Fiscal 2022**FISCAL IMPACT STATEMENT:**

	<b>Effective FY21</b>	<b>FY Succeeding Effective FY22</b>	<b>Full Fiscal Impact FY22</b>
<b>Revenues</b>	\$0	\$0	\$0
<b>Expenditures</b>	De minimis	De minimis	De minimis
<b>Net</b>	De minimis	De minimis	De minimis

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

**IMPACT ON EXPENDITURES:** It is anticipated that there would be minimal to no impact on expenditures resulting from the enactment of this legislation because the office or agency designated by the mayor could use existing resources to implement the provisions of this local law. This estimate assumes that the distribution of informational materials about the mold ombudsperson could be included with existing written notices and other administrative mailings, such as monthly rent statements or annual lead paint notices. The bill also includes a provision to allow the designated office to distribute the informational materials via electronic mail. As such, any expenditures would be related to additional postage expenses in the case of tenants for whom the city doesn't have email addresses.

**SOURCE OF FUNDS TO COVER ESTIMATED COSTS:** N/A

**SOURCE OF INFORMATION:** New York City Council Finance Division

**ESTIMATE PREPARED BY:** Sarah Gastelum, Principal Financial Analyst

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

**LEGISLATIVE HISTORY:** This legislation was introduced to the full Council as Int. No. 1911 on February 27, 2020 and was referred to the Committee on Public Housing (Committee). A hearing was held by the Committee on October 7, 2020, and continued on October 21, 2020, and the bill was laid over. The legislation was subsequently amended and the amended version, Proposed Intro. No. 1911-A, will be considered by the Committee on December 10, 2020. Following a successful vote by the Committee, Proposed Intro. No. 1911-A will be submitted to the full Council for a vote on December 10, 2020.

**DATE PREPARED:** December 7, 2020.

*Accordingly, this Committee recommends its adoption, as amended.*

**(The following is the text of Int. No. 1911-A:)**

## Int. No. 1911-A

By Council Members Torres, Ampry-Samuel, Ayala, Gibson, Rosenthal, Barron, Menchaca and Rivera.

**A Local Law in relation to the provision of information to tenants of the New York city housing authority regarding the mold ombudsperson**

*Be it enacted by the Council as follows:*

Section 1. Definitions. For purposes of this local law, the following terms have the following meanings:

Call center. The term “call center” means the ombudsperson’s call center established pursuant to the court order.

City. The term “city” means the city of New York.

Court order. The term “court order” means the court order issued on September 20, 2019 in the case Baez et al. v. New York City Housing Authority by the United States district court in the southern district of New York.

Elected officials and community representatives. The term “elected officials and community representatives” means each council member, borough president and community board in the city, each state senator and state assembly member representing a district that is wholly or partly within the city, each United States congress member representing a district that is wholly or partly within the city, and each tenant organization and community-based organization identified by the office as providing services to tenants.

Mold ombudsperson. The term “mold ombudsperson” means the ombudsperson appointed pursuant to the court order or any subsequently appointed person with similar duties.

§ 2. Provision of information about the mold ombudsperson. The mayor shall designate an office or agency to distribute to each unit in a development of the New York city housing authority a non-electronic pamphlet, flyer or other printed material containing information about the mold ombudsperson and the right of a tenant of the New York city housing authority to contact the mold ombudsperson. Such pamphlet, flyer or other printed material shall include information in English and each of the designated citywide languages, as defined in section 23-1101 of the administrative code of the city of New York, about how to contact the mold ombudsperson, including through the call center, with a complaint about mold and what information to include in such complaint. Such pamphlet, flyer or other printed material shall be provided to each unit in a development of the New York city housing authority and to each elected official and community representative no later than 60 days after the effective date of this local law. Thereafter, such pamphlet, flyer or other printed material shall be provided to each unit in a development of the New York city housing authority and to each elected official and community representative at least annually. The designated office shall additionally communicate such information about the mold ombudsperson via telephonic communication at least once annually to each unit in a development of the New York city housing authority. For tenants who receive rent statements electronically, the designated office may distribute such pamphlet or flyer via electronic mail.

§ 3. Public briefing. No later than 60 days after the effective date of this local law, and at least annually thereafter, the office or agency designated pursuant to section two shall hold a public briefing for elected officials and community representatives for the purpose of providing information about the functions and responsibilities of the mold ombudsperson.

§ 4. This local law takes effect immediately and expires and is deemed repealed on the date that the mold ombudsperson or any subsequently appointed person with similar duties ceases to be appointed.

ALICKA AMPRY-SAMUEL, *Chairperson*; VANESSA L. GIBSON, LAURIE A. CUMBO, CARLOS MENCHACA, MARK TREYGER, JAMES VAN BRAMER, RAFAEL SALAMANCA, Jr., DIANA AYALA, RUBEN DIAZ, Sr., MARK GJONAJ; Committee on Public Housing, December 10, 2020. *Other Council Members Attending: Council Member Barron.*

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

**Report of the Committee on Rules, Privileges and Elections**

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

Report for Res. No.1497

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

The Committee on Rules, Privileges and Elections, to which the annexed preconsidered resolution was referred on December 10, 2020 and which same resolution was coupled with the resolution shown below, respectfully

**REPORTS:**

**PRECONSIDERED RES. NO. 1497:** By Council Member Karen Koslowitz

**SUBJECT:** Preconsidered Resolution amending Rule 7.00 of the Rules of the Council in relation to changes in membership to the Standing Committees of the Council and the Land Use Subcommittees.

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

See attached for the changes to membership.

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

Res. No. 1497

**Resolution amending Rule 7.00 of the Rules of the Council in relation to changes in membership to the Standing Committees of the Council and the Land Use Subcommittees.**

By Council Member Koslowitz:

**RESOLVED**, pursuant to Rule 7.00(a) of the Rules of the Council, the Council does hereby consent to the following changes in Membership to certain Standing Committees and the Land Use Subcommittees.

**STANDING COMMITTEES**

**Criminal Justice**

D. Diaz

**Cultural Affairs, Libraries and International Intergroup Relations**

D. Diaz  
[Borelli]

**Environmental Protection**

D. Diaz

**Finance**

D. Diaz

**General Welfare**

D. Diaz

**Governmental Operations**

D. Diaz

**Health**

D. Diaz

**Land Use**

Borelli  
[Richards]

**Parks and Recreation**

D. Diaz  
[Adams]

**Public Housing**

[Richards]

**Public Safety**

Adams, Chair  
[Richards, Chair]

**State and Federal Legislation**

D. Diaz

**Transportation**

[Richards]

**LAND USE SUBCOMMITTEES****Landmarks, Public Sitings and Dispositions**

Levin  
[Adams, Chair]

**Zoning and Franchises**

Ayala  
Borelli  
[Richards]

KAREN KOSLOWITZ, *Chairperson*; DEBORAH L. ROSE, RITCHIE J. TORRES, MARK TREYGER, ADRIENNE E. ADAMS, THE MINORITY LEADER (STEVEN MATTEO), THE SPEAKER (COUNCIL MEMBER COREY D. JOHNSON); Committee on Rules, Privileges and Elections, December 10, 2020.

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

### **GENERAL ORDER CALENDAR**

*There were no additional items listed on the General Order Calendar.*

**ROLL CALL ON GENERAL ORDERS FOR THE DAY**  
**(Items Coupled on General Order Calendar)**

- |                                       |   |
|---------------------------------------|---|
| (1) <b>Int 1170-A -</b>               | Businesses to notify customers of the use of biometric identifier technology and prohibiting the sale of biometric identifier information.                                      |
| (2) <b>Int 1314-A -</b>               | Prohibiting discrimination based on one's arrest record, pending criminal accusations or criminal convictions.  |
| (3) <b>Int 1911-A -</b>               | Provision of information to tenants of the New York city housing authority regarding the mold ombudsperson.   |
| (4) <b>Int 2033-A -</b>               | Statements of compliance, issuance and posting requirements of certificates of occupancy and interim certificates of occupancy.   |
| (5) <b>Int 2034-A -</b>               | Coordinating the use of open space for art and cultural programming.  |
| (6) <b>Int 2068-A -</b>               | Temporary use of outdoor space for artistic and cultural events.  |
| (7) <b>Res 1497 -</b>                 | Resolution amending Rule 7.00 of the Rules of the Council in relation to <b>changes in membership</b> to the Standing Committees of the Council and the Land Use Subcommittees. |
| (8) <b>L.U. 691 &amp; Res 1501 -</b>  | <b>App. C 200238 PCQ (DSNY Queens Sanitation Garage 1)</b><br>Borough of Queens, Council District 22, Community District 1.   |
| (9) <b>L.U. 694 &amp; Res 1502 -</b>  | <b>App. C 200033 ZMQ (Special Flushing Waterfront District)</b><br>Borough of Queens, Community District 7, Council District 20.  |
| (10) <b>L.U. 695 &amp; Res 1503 -</b> | <b>App. N 200034 ZRQ (Special Flushing Waterfront District)</b><br>Borough of Queens, Community District 7, Council District 20.  |
| (11) <b>L.U. 699 &amp; Res 1504 -</b> | <b>App. C 200158 ZMK (Bedford Avenue Overlay Extension)</b><br>Brooklyn, Community Board 1, Council District 34.  |

- (12) **L.U. 700 & Res 1505 -** App. N 200057 **ZRK (803 Rockaway Avenue Rezoning)**  
Borough of Brooklyn, Community District 16, Council District 42.
- (13) **L.U. 701 & Res 1506 -** App. C 200056 **ZMK (803 Rockaway Avenue Rezoning)**  
Borough of Brooklyn, Community District 16, Council District 42.
- (14) **L.U. 702 & Res 1507 -** Application No. N 200078 **ZRM (Mansion Restaurant Sidewalk Café)** Borough of Manhattan, Community District 8, Council District 5.

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

**Affirmative** – Adams, Ampry-Samuel, Ayala, Barron, Borelli, Brannan, Cohen, Constantinides, Cornegy, Deutsch, D. Diaz, R. Diaz, Dromm, Eugene, Gibson, Gjonaj, Grodenchik, Holden, Kallos, Koo, Koslowitz, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Powers, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Ulrich, Vallone, Van Bramer, Yeger, the Minority Leader (Council Member Matteo), the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **44**.

*Present but Not Voting – Cabrera and Reynoso.*

**The General Order vote recorded for this Stated Meeting was 44-0-0 as shown above with Council Members Cabrera and Reynoso considered Present but Not Voting. The following legislative items had the individual votes shown below with Council Members Cabrera and Reynoso considered Present but Not Voting as well:**

The following was the vote recorded for **Int. No. 1314-A:**

**Affirmative** – Adams, Ampry-Samuel, Ayala, Barron, Brannan, Cohen, Constantinides, Cornegy, Deutsch, D. Diaz, R. Diaz, Dromm, Eugene, Gibson, Gjonaj, Grodenchik, Kallos, Koo, Koslowitz, Lander, Levin, Levine, Louis, Maisel, Menchaca, Miller, Moya, Powers, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Vallone, Van Bramer, Yeger, the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **40**.

**Negative** – Borelli, Holden, Ulrich, and the Minority Leader (Council Member Matteo) – **4**.

*Present but Not Voting – Cabrera and Reynoso.*



The following was the vote recorded for **L.U. No. 694 & Res. No. 1502** and **L.U. No. 695 & Res. No. 1503**:

**Affirmative** – Adams, Ampy-Samuel, Ayala, Borelli, Brannan, Cohen, Cornegy, Deutsch, D. Diaz, R. Diaz, Dromm, Eugene, Gibson, Gjonaj, Grodenchik, Holden, Kallos, Koo, Koslowitz, Levin, Levine, Louis, Maisel, Miller, Moya, Powers, Rivera, Rodriguez, Rose, Rosenthal, Salamanca, Torres, Treyger, Ulrich, Yeger, the Minority Leader (Council Member Matteo), the Majority Leader (Council Member Cumbo), and The Speaker (Council Member Johnson) – **38**.

**Negative** – Barron, Constantinides, Lander, Menchaca and Van Bramer – **5**.

**Abstention** – Vallone – **1**.

*Present but Not Voting* – Cabrera and Reynoso.

*The following Introductions were sent to the Mayor for his consideration and approval:  
Int. Nos. 1170-A, 1314-A, 1911-A, 2033-A, 2034-A, and 2068-A.*

## RESOLUTIONS

*Presented for voice-vote*

**The following are the respective Committee Reports for each of the Resolutions referred to the Council for a voice-vote pursuant to Rule 8.50 of the Council:**

Report for voice-vote item Res. No. 923

**Report of the Committee on Women and Gender Equity in favor of approving a Resolution calling on the New York State Legislature to pass, and the Governor to sign, S2253-A654, which would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense.**

The Committee on Women and Gender Equity, to which the annexed resolution was re-assigned on November 27, 2020 after originally being referred to the Committee on Public Safety on June 13, 2019 (Minutes, page 2224), respectfully

### REPORTS:

#### I. INTRODUCTION

On December 10, 2020, the Committee on Women and Gender Equity, chaired by Council Member Helen K. Rosenthal, will hold a vote on Resolution No. 923, which calls on the New York State Legislature to pass, and the Governor to sign, S2253-A654, which would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense, and Proposed Resolution No. 1444-A, which calls on the New York State Legislature to pass, and the Governor to sign, a bill to amend the criminal procedure law to allow violations for Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively. This legislation was originally heard at a hearing of this Committee on December 3, 2020, at which the Committee received testimony from local legal service providers, activists, advocacy groups, and experts in the fields of gender, gender equality and gender-based violence, as well as other interested stakeholders.

#### II. BACKGROUND

##### *Section 240.37 of the Penal Law*

In New York state (“State”), Section 240.37 of the New York Penal Law<sup>1</sup> is an anti-loitering statute, which advocates have come to colloquially refer to as the “walking while trans” ban.”<sup>2</sup> Since 1976, New York Penal Law Section 240.37 has criminalized loitering in a public place by anyone the police determine is present for the purpose of prostitution.<sup>3</sup> The law has faced opposition since its inception<sup>4</sup> and, in recent years, advocates have called for the law to be repealed on the ground that it not only targets sex workers, but that the statute allows

<sup>1</sup> N.Y. Penal Law § 240.37 (“Loitering for the purpose of engaging in a prostitution”)

<sup>2</sup> See Amanda Arnold, *A Guide to the ‘Walking While Trans’ Ban*, THE CUT (Jul. 22, 2020), available at <https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html>.

<sup>3</sup> N.Y. Penal Law § 240.37; New York Civil Liberties Union staff, *Legislative Memo: Loitering Repeal* (last visited Nov. 27, 2020), available at <https://www.nyclu.org/en/legislation/legislative-memo-loitering-repeal>.

<sup>4</sup> Ronald Smothers, *Prostitution Loitering Bill Passes Albany Legislature* (Jun. 11, 1976), available at <https://www.nytimes.com/1976/06/11/archives/prostitution-loitering-bill-passes-albany-legislature>; New York City Bar Association Committees on LGBTQ Rights, Civil Rights, Criminal Justice Operations, Immigration & Nationality Law and Sex & Law, *Repeal the ‘Walking While Trans’ Ban* (Feb. 3, 2020), available at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban>.

officers to arbitrarily arrest and detain New Yorkers for “simply walking around or standing on the street.”<sup>5</sup> These advocates argue that the statute is outdated, leads to harassment, and criminalizes consenting adults who trade sex, collaborate with or support sex working peers, or patronize adult sex workers.<sup>6</sup> According to one article, the law currently enables officers to decide “that a woman’s skirt is too short, or that she’s been lingering too long on one street corner, and to apprehend her based on suspicion that she’s ‘loitering for the purpose of prostitution;’” or in other words, the law can lead to harassment.<sup>7</sup>

Additionally, the law is colloquially referred to as the “walking while trans” ban because, as advocates stress, transgender women, and particularly transgender women of color, are disproportionately targeted by the law.<sup>8</sup> In 2018, there was a 120 percent increase in arrests for loitering,<sup>9</sup> with 47 percent of all arrests pursuant to Section 240.37 across the State happening in Queens,<sup>10</sup> and even as arrests for other prostitution-related charges declined in the same year.<sup>11</sup> According to the State Division of Criminal Justice Services, in 2018, 91 percent of people arrested under the statute were Black and Latinx people and 80 percent identified as women.<sup>12</sup> Data suggests this is an ongoing trend. In 2012 and 2015, five precincts in New York City, and all five “neighborhoods where the majority of residents are people of color,”<sup>13</sup> accounted for nearly 70 percent of all citywide arrests pursuant to Section 240.37.<sup>14</sup>

<sup>5</sup> Amanda Arnold, *A Guide to the ‘Walking While Trans’ Ban*, THE CUT (Jul. 22, 2020), available at <https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html>; Decrim NYC, *Advocacy* (last visited Nov. 27, 2020), available at <https://www.decrimny.org/advocacy>.

<sup>6</sup> New York City Bar Association Committees on LGBTQ Rights, Civil Rights, Criminal Justice Operations, Immigration & Nationality Law and Sex & Law, *Repeal the ‘Walking While Trans’ Ban* (Feb. 3, 2020), available at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban>; Decrim NYC, *Advocacy* (last visited Nov. 27, 2020), available at <https://www.decrimny.org/advocacy>; See Rciardo Cortez, *Arresting Gaze: How One New York Law Turns Women into Suspects* (Aug. 3, 2017), available at <https://www.vanityfair.com/culture/2017/08/nypd-prostitution-laws>.

<sup>7</sup> Amanda Arnold, *A Guide to the ‘Walking While Trans’ Ban*, THE CUT (Jul. 22, 2020), available at <https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html>; See Vaidya Gullapalli, *A Chance to Repeal a ‘Walking While Trans’ Ban* (Feb 05, 2020), available at <https://theappeal.org/a-chance-to-repeal-a-walking-while-trans-ban/>.

<sup>8</sup> Amanda Arnold, *A Guide to the ‘Walking While Trans’ Ban*, THE CUT (Jul. 22, 2020), available at <https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html>; See New York City Bar Association Committees on LGBTQ Rights, Civil Rights, Criminal Justice Operations, Immigration & Nationality Law and Sex & Law, *Repeal the ‘Walking While Trans’ Ban* (Feb. 3, 2020), available at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban>; Joey L. Mogul, et al; Queer (In)Justice: The Criminalization of LGBT People in the United States, 1, 61 (2011); Human Rights Campaign and Trans People of Color Coalition, *Addressing Anti-Transgender Violence: Exploring Realities, Challenges and Solutions for Policymakers and Community Advocates*, HUMAN RIGHTS CAMPAIGN 28 (2015), available at <https://www.hrc.org/resources/addressing-anti-transgender-violence-exploring-realities-challenges-and-sol>; See also, e.g., Amnesty International, *Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual and Transgender People in the U.S.*, 1, 128 (Sep. 21, 2005), available at <https://www.amnesty.org/en/documents/AMR51/122/2005/en/>; See also Cara Kelly, *Two Black transgender women were killed last week, thousands showed up to protest* (Jun. 15, 2020), available at <https://www.usatoday.com/story/news/nation/2020/06/15/deaths-black-trans-women-riah-milton-dominique-fells-spur-protests/3191769001/> (discussing more recent advocacy around the issue).

<sup>9</sup> Emma Whitford, *Surge in Prostitution Related Loitering Charges Affects Undocumented Immigrants* (Dec. 19, 2018), available at <https://documentedny.com/2018/12/19/surge-in-loitering-charges-may-affect-undocumented-immigrants/>.

<sup>10</sup> Jason Cohen, *Advocates and elected officials speak about repealing Walking While Trans* (Jul. 11, 2020), available at <https://www.bxtimes.com/advocates-and-elected-officials-speak-about-repealing-walking-while-trans/>.

<sup>11</sup> See, e.g., Emma Whitford, *One Year on From Yang Song’s Death, Asian Sex Worker Advocates Call for Reduced Policing* (Nov. 26, 2018), available at <https://documentedny.com/2018/11/26/one-year-on-from-yang-songs-death-asian-sex-worker-advocates-call-for-reduced-policing/>.

<sup>12</sup> Jason Cohen, *Advocates and elected officials speak about repealing Walking While Trans* (Jul. 11, 2020), available at <https://www.bxtimes.com/advocates-and-elected-officials-speak-about-repealing-walking-while-trans/>.

<sup>13</sup> These precincts were in Bushwick, Brooklyn; Belmont/Fordham Heights, Bronx; East New York, Brooklyn; Hunts Point, Bronx and Brownsville, Brooklyn. See The Legal Aid Society of New York City and Cleary Gottlieb Steen & Hamilton LLP, *The Legal Aid Society and Cleary Gottlieb Challenge the Constitutionality of New York’s Loitering for Prostitution Law: Demand an End to NYPD’s Arbitrary and Discriminatory Enforcement of the Law Against Women of Color* (Sep. 30, 2016), available at <https://orgs.law.columbia.edu/qpoc/sites/default/files/content/LAS-Cleary-Gottlieb-Challenge-the-Constitutionality-of-New-Yorks-Loitering-for-Prostitution-Law-Press-Release-9.30.16.pdf>.

<sup>14</sup> The Legal Aid Society of New York City and Cleary Gottlieb Steen & Hamilton LLP, *The Legal Aid Society and Cleary Gottlieb Challenge the Constitutionality of New York’s Loitering for Prostitution Law: Demand an End to NYPD’s Arbitrary and Discriminatory Enforcement of the Law Against Women of Color* (Sep. 30, 2016), available at <https://orgs.law.columbia.edu/qpoc/sites/default/files/content/LAS-Cleary-Gottlieb-Challenge-the-Constitutionality-of-New-Yorks-Loitering-for-Prostitution-Law-Press-Release-9.30.16.pdf>.

*S2253-A654 and Addressing 'Walking While Trans'*

Assembly Bill 654 and Senate Bill 2253, sponsored by Assembly Member Amy Paulin and State Senator Brad Hoylman, would repeal section 240.37 of the Penal Law.<sup>15</sup> Advocates argue the statute's repeal would send a message that New York "values civil rights and dignity for those policed for being in the commercial sex industry and for those profiled as engaging in commercial sex."<sup>16</sup>

### III. CONCLUSION

At today's hearing, the Committee on Women and Gender Equity will consider Resolution No. 923 and Proposed Resolution No. 1444-A.

**(For text of Res. No. 1444-A, please see the Report of the Committee on Women and Gender Equity please see the Report of the Committee on Women and Gender Equity for Res. Nos. 1444-A printed in these Minutes; for text of Res. No. 923, please see below)**

*Accordingly, this Committee recommends the adoption of Res. Nos. 923 and 1444-A*

**(The following is the text of Res. No. 923:)**

Res. No. 923

**Resolution calling on the New York State Legislature to pass, and the Governor to sign, S2253-A654, which would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense.**

By Council Members Rivera, Cumbo, Torres, Dromm, Chin, Ayala, Rosenthal, Van Bramer, Constantinides, Kallos, Menchaca, Adams, Gibson, Lander, Reynoso, Levin, Barron, Moya, Cornegy, Louis, Grodenchik, Powers, Cohen, Levine, Ampry-Samuel, Koslowitz, Rose, Brannan and The Public Advocate (Mr. Williams).

**Whereas**, One-hundred and twenty-six people were arrested in 2018 in New York City for violating Penal Law 240.37, loitering for the purposes of engaging in prostitution, according to information provided by the New York Police Department; and

**Whereas**, Such arrests more than doubled from the previous year, in which only 47 people were arrested for this offense; and

**Whereas**, According to the Legal Aid Society of New York, Arrests under this law have disproportionately targeted black and Latina women;

**Whereas**, Police records have demonstrated that law enforcement officers use the manner of a person's dress as an indicator of whether they are engaging in prostitution; and

**Whereas**, Criminalizing the way women act and dress should have no place in state law; and

**Whereas**, Police records have also demonstrated that possession of contraception is used as an indicator of whether a person is engaging in prostitution; and

**Whereas**, According to the Human Rights Watch, using condoms as an indicator of being engaged in prostitution poses a significant threat to public health by discouraging the use of tools that address HIV prevention and sexual reproductive health; and

**Whereas**, The law fails to effectively identify those who are engaged in the sex trade, and instead relies on stereotypes and archaic views of sexuality; and

<sup>15</sup> Senate Bill S2253, *available at* <https://www.nysenate.gov/legislation/bills/2019/s2253>; Assembly Bill A654, *available at* <https://www.nysenate.gov/legislation/bills/2019/a654>.

<sup>16</sup> Decrim NYC, *Advocacy* (last visited Nov. 27, 2020), *available at* <https://www.decrimny.org/advocacy>.

**Whereas**, Involvement in the criminal justice system can have devastating effects, including loss of employment and deportation; and

**Whereas**, Under section 212 of the Immigration and Nationality Act, a person is ineligible for documented status if they have engaged in prostitution within ten years of the date of application; and

**Whereas**, Immigration and Customs Enforcement (ICE) has patrolled human trafficking intervention courts, with the goal of deporting individuals charged with prostitution offenses; and

**Whereas**, S2243/A-654, sponsored by Senator Hoylman and Assembly Member Paulin, would repeal Penal Law 240.37 ; now, therefore be it

**Resolved**, That the Council of the City of New York calls upon the New York State Legislature to pass, and the governor to sign, S2253-A654, which would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense.

HELEN K. ROSENTHAL, Chair; BRADFORD S. LANDER, LAURIE A. CUMBO, BEN KALLOS, DIANA AYALA; Committee on Women and Gender Equity, December 10, 2020. *Other Council Members Attending: Council Member Koslowitz.*

Pursuant to Rule 8.50 of the Council, the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) called for a voice vote. Hearing those in favor, the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) declared the Resolution to be adopted.

The following 7 Council Members formally noted their intention to vote negative on this item: Council Members Borelli, Deutsch, R. Diaz, Holden, Ulrich, Yeger, and the Minority Leader (Council Member Matteo).

Adopted by the Council by voice-vote.

Report for voice-vote item Res. No. 1444-A

**Report of the Committee on Women and Gender Equity in favor of approving a Resolution calling on the New York State Legislature to pass, and the Governor to sign, a bill to amend the criminal procedure law to allow violations for Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively.**

The Committee on Women and Gender Equity, to which the annexed resolution was re-assigned on November 30, 2020 after originally being referred to the Committee on Public Safety on October 15, 2020 (Minutes, page 2209), respectfully

#### REPORTS:

**(For text of report, please see the Report of the Committee on Women and Gender Equity for Res. No. 923 printed above in the voice-vote Resolution Calendar section of these Minutes)**

*Accordingly, this Committee recommends its adoption, as amended.*

**(The following is the text of Res. No. 1444-A:)**

Res. No. 1444-A

**Resolution calling on the New York State Legislature to pass, and the Governor to sign, a bill to amend the criminal procedure law to allow violations for Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively.**

By Council Members Rivera, Rosenthal, Kallos, Gibson and Ayala.

**Whereas**, Penal Law section 240.37, Loitering for the Purpose of Engaging in a Prostitution Offense, penalizes merely appearing to be engaged in such an offense, an inherently problematic and vague standard that invites discriminatory enforcement; and

**Whereas**, In fact, the enforcement of this law disproportionately targets Black and Latina women and transgender women of color; and

**Whereas**, Eighty percent of people who were arrested under the law in 2018 were women, and of that, forty-nine percent were Black and forty-two percent were Latina, according to the New York State Division of Criminal Justice Services; and

**Whereas**, In 2013 and 2014, the nonprofit organization Red Umbrella Project found that in a Brooklyn court, over ninety percent of defendants charged under the law were Black; and

**Whereas**, Section 240.37 remains in the Penal Law even as Governor Cuomo has publicly supported repealing this statute; and

**Whereas**, The collateral consequences stemming from an arrest, violation or conviction for criminal offenses are severe; and

**Whereas**, People who are arrested or convicted for Loitering for the Purposes of Engaging in Prostitution can lose their employment and housing; and

**Whereas**, Undocumented individuals who are arrested or convicted for Loitering for the Purposes of Engaging in Prostitution can be subject to deportation as immigration law disqualifies individuals from adjusting their immigration status if they have been arrested or convicted on a prostitution offense; and

**Whereas**, These collateral consequences overwhelmingly burdens Black and Latina women and transgender women of color as they are disproportionately subjected to enforcement of this problematic statute; and

**Whereas**, Under Criminal Procedure Law section 160.55, New Yorkers are prohibited from sealing their violations for Loitering for the Purpose of Engaging in a Prostitution Offense; and

**Whereas**, This is one of only two violations in New York State law that can never seal under the statute; and

**Whereas**, This prohibition only exacerbates the burdens a violation for Loitering for the Purposes of Engaging in a Prostitution Offense carries; and

**Whereas**, To reduce some of the needless burdens imposed on New Yorkers with Penal Law 240.37 Offense violations, the New York State Legislature should amend Criminal Procedure Law 160.55 to permit New Yorkers to seal their violations for this offense; and, now therefore, be it

**Resolved**, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, a bill to amend the Criminal Procedure Law to allow violations for Loitering for the Purpose of Engaging in a Prostitution Offense to be sealed and have the law apply retroactively.

HELEN K. ROSENTHAL, Chair; BRADFORD S. LANDER, LAURIE A. CUMBO, BEN KALLOS, DIANA AYALA; Committee on Women and Gender Equity, December 10, 2020. *Other Council Members Attending: Council Member Koslowitz.*

Pursuant to Rule 8.50 of the Council, the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) called for a voice vote. Hearing those in favor, the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) declared the Resolution to be adopted.

The following 6 Council Members formally noted their intention to vote negative on this item:

Council Members Borelli, Deutsch, R. Diaz, Holden, Ulrich, and the Minority Leader (Council Member Matteo);

The following Council Member formally noted his intention to abstain on this item:

Council Member Yeger.

Adopted by the Council by voice-vote.

**INTRODUCTION AND READING OF BILLS**

Int. No. 2166

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

**A Local Law to amend the administrative code of the city of New York, in relation to the sale of tax liens.***Be it enacted by the Council as follows:*

Section 1. The opening paragraph of subdivision b of section 11-319 of the administrative code of the city of New York, as amended by local law number 4 for the year 2017, is amended to read as follows:

The commissioner of finance, on behalf of the city, may sell tax liens, either individually, in combinations, or in the aggregate, pursuant to the procedures provided herein. The commissioner of finance shall establish the terms and conditions of a sale of a tax lien or tax liens. [Enactment of the local law that added this sentence shall be deemed to constitute authorization by the council for the commissioner of finance to conduct a sale or sales of tax liens through and including December thirty-first, two thousand twenty. Subsequent to December thirty-first, two thousand twenty, the city shall not have the authority to sell tax liens.] *Enactment of the local law that added this sentence shall be deemed to constitute authorization by the council for the commissioner of finance to conduct a sale or sales of tax liens through and including December thirty-first, two thousand twenty-four. Subsequent to December thirty-first, two thousand twenty-four, the city shall not have the authority to sell tax liens.*

§ 2. Subdivision b of section 11-319 of the administrative code of the city of New York is amended by adding a new paragraph 14 to read as follows:

*14. Notwithstanding any provision of this chapter to the contrary, during the period commencing January first, two thousand twenty-one and ending December thirty-first, two thousand twenty-one no tax lien or tax liens on any covered property shall be sold where the assessed value of such covered property is less than two hundred fifty thousand dollars and the owner of such covered property submits documentation to the commissioner of finance prior to the date of the sale demonstrating that: (i) the income of such owner for the most recent calendar year or fiscal year for which the owner filed a federal or state income tax return was less than one hundred fifty thousand dollars; and (ii) such owner has been adversely affected by the COVID-19 pandemic. For purposes of this paragraph, the following terms have the following meanings:*

*“adversely affected by the COVID-19 pandemic” means: (A) the owner of a covered property or a member of the household of such owner was diagnosed with COVID-19, received confirmation from a health professional of having contracted COVID-19 or experienced symptoms of COVID-19 and sought a medical diagnosis; or (B) the loss of the primary source of income because of COVID-19 between March seventh, two thousand twenty and December thirty-first, two thousand twenty, which continued for at least one month, by the owner of a covered property;*

*“covered property” means any class one property that is not vacant land classified as class one property pursuant to section eighteen hundred two of the real property tax law, as such class of property is defined in subdivision one of section eighteen hundred two of the real property tax law;*

*“date of sale” means (A) for a negotiated sale, the date of the signing of the tax lien purchase agreement, and (B) for a competitive sale, the date designated by the commissioner of finance for the submission of bids.*

§ 3. This local law takes effect immediately and is retroactive to and deemed to have been in full force and effect as of January 1, 2021.

Referred to the Committee on Finance.

## Preconsidered Int. No. 2167

By Council Member Borelli.

**A Local Law to amend the administrative code of the city of New York and the New York city building code, in relation to requiring carbon monoxide detecting devices in the basements of certain dwellings**

*Be it enacted by the Council as follows:*

Section 1. Subdivision a of section 27-2045 of the administrative code of the city of New York, as amended by local law number 157 for the year 2016, is amended by adding a new definition of “basement common area” in alphabetical order to read as follows:

*Basement common area. The term “basement common area” means an area in the basement of a class A or class B multiple dwelling that is not within a dwelling unit and that is available for common use by all occupants, including owners or tenants, or a group of occupants and their invitees, except that such term does not include areas regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.*

§ 2. Subparagraph b of paragraph 1 of subdivision b of section 27-2045 of the administrative code of the city of New York, as amended by local law number 157 for the year 2016, is amended to read as follows:

(b) Provide and install one or more approved and operational carbon monoxide detecting devices in each dwelling unit *and in any basement common area*, in accordance with section 908.7 of the New York city building code or sections 27-981.1, 27-981.2 and 27-981.3 of the 1968 building code, as applicable, or, in the alternative for class B multiple dwellings, provide and install a line-operated zoned carbon monoxide detecting system with central annunciation and central office tie-in for all public corridors and public spaces, pursuant to rules promulgated by the commissioner of buildings or by the commissioner in consultation with the department of buildings and the fire department;

§ 3. Article 315 of chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new section 28-315.2.5 to read as follows:

**§ 28-315.2.5 Carbon monoxide alarms for occupancy group R-2 basements.** *Areas in the basement of a multiple dwelling classified in occupancy group R-2, that are not within a dwelling unit and that are available for common use by all occupants, including owners or tenants, or a group of occupants and their invitees, except those areas regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling, shall be equipped with approved and operational carbon monoxide detecting devices on or before December 1, 2021, in accordance with section 908.7 of the New York city building code.*

§ 4. Section 908.7 of the New York city building code is amended by adding a new section 908.7.1.1.4 to read as follows:

**908.7.1.1.4 Required locations in basements.** *For a building within occupancy group R-2 where carbon monoxide alarms or detectors are required under section 908.7.1.1, carbon monoxide alarms or detectors shall be located in all basement common areas, as such term is defined in subdivision a of section 27-2045 of the Administrative Code.*

§ 5. This local law takes effect immediately.

Referred to the Committee on Housing and Buildings (preconsidered but laid over by the Committee on Housing and Buildings and the Committee on Fire and Emergency Management).



## Int. No. 2168

By Council Members Brannan and Koslowitz.

**A Local Law to amend the administrative code of the city of New York, in relation to creating a water meter database**

*Be it enacted by the Council as follows:*

Section 1. Subchapter 4 of chapter 3 of title 24 of the administrative code of the city of New York is amended by adding a new section 24-368 to read as follows:

§ 24-368 *Database of water meters.* a. *Notwithstanding any contrary provision of chapter 5 of title 23, the commissioner of environmental protection shall create and maintain a searchable online database through which members of the public who register and pay a periodic subscription fee, as established by the department, may access information about commercial, residential and industrial water meters and flat-rate accounts. Such database shall be available on or through the city's website, in a non-proprietary format that permits automated processing, have the ability to produce reports by query, be accessible through an application programming interface and include all non-confidential information maintained in connection with each water meter, including, but not necessarily limited to, the following:*

1. *Water meter number, as designated by the 8-digit serial number on the meter;*
2. *Date of every bill issued for the water meter;*
3. *Value of every water meter reading recorded by the department;*
4. *Total amount of water used as of the most recent water meter reading;*
5. *Amount of money the owner of the water meter owes;*
6. *Average daily flow, in cubic feet, since the most recent water meter reading;*
7. *Date the water meter was installed;*
8. *Date the water meter was sealed, if any;*
9. *Size of the water meter, in cubic feet;*
10. *Location of the water meter at the property;*
11. *Department's description of the water meter;*
12. *Cumulative late payment charges;*
13. *Cumulative denial-of-access fees; and*
14. *Cumulative theft-of-service fees.*

b. *The database shall continue to include the information required by subdivision a for any water meter that has been replaced.*

c. *The database shall include the information required by subdivision a starting from January 1, 1996 or the date the water meter was installed, whichever is later.*

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

Referred to the Committee on Environmental Protection.

## Int. No. 2169

By Council Members Cabrera and Kallos.

**A Local Law in relation to requiring the taxi and limousine commission to study the impact of autonomous vehicles on the city's taxi and for-hire vehicle industry**

*Be it enacted by the Council as follows:*

Section 1. Definitions. For purposes of this local law, the following terms have the following meanings:  
City. The term “city” means the city of New York.

Commission. The term “commission” means the New York city taxi and limousine commission.

§ 2. Study. The commission shall conduct a study of the anticipated impact of autonomous vehicles on the taxi and for-hire vehicle industry. This study shall include, but not be limited to, an assessment of potential job displacement, congestion and fare pricing and revenue. The department of transportation shall provide assistance in conducting the study upon request by the commission.

§ 3. Report. a. No later than 270 days after the effective date of this local law, the commission shall submit a report to the mayor and the speaker of the council setting forth its findings, as well as recommendations for legislation and policy to address any challenges identified. The report shall include a summary of information considered in formulating any conclusions or recommendations.

b. The commission shall publish the report electronically on its website no later than 10 days after submission to the mayor and the speaker of the council.

§ 4. Agency support. Each agency affected by this local law shall provide appropriate staff and resources to support the work of such agency related to the study.

§ 5. Effective date. This local law takes effect immediately.

Referred to the Committee on Transportation.

Res. No. 1495

**Resolution calling on the New York State Legislature to pass, and the Governor to sign, A.10844, which would require valid absentee ballots that are missing a dated postmark to be counted if they are received within three days following the day of the election.**

By Council Members Cabrera, Kallos and Yeger.

**Whereas**, The sanctity of the United States’ electoral process is the bedrock of our national democracy; and

**Whereas**, A basic tenet of the electoral process is ensuring that each valid ballot cast will be counted; and

**Whereas**, In early 2020, the rapid spread of the SARS-CoV-2 virus led many states and localities, including New York, to restrict in-person gatherings in order to stem viral spread; and

**Whereas**, On April 9, Governor Cuomo issued an emergency executive order that expanded access to absentee ballots in the June primary elections, allowing New York voters to request such a ballot based on a fear of contracting COVID-19; and

**Whereas**, In the June Primary Election, New York City reported historic numbers of absentee ballots cast: roughly 38 percent of all ballots cast, or 318,707, were absentee or military ballots, as compared to just 27,941 absentee or military ballots cast in the 2016 Primary Election; and

**Whereas**, Forty-five percent of the absentee ballot applications received by the City Board of Election arrived in the two weeks prior to the June 23 election; and

**Whereas**, The Board was still mailing thousands of absentee ballots to voters up until the day before the election; and

**Whereas**, Some voters who did not receive their absentee ballots in time decided to vote in person while others chose not to vote at all; and

**Whereas**, In the June Primary, 4,800 Brooklyn absentee ballots did not receive a postmark when they went through the mail, due to a lack of coordination with the United States Postal Service, and were thrown out; and

**Whereas**, In a Manhattan congressional race, Federal District Court Judge Torres ruled that at least 1,000 absentee ballots without dated postmarks were to be counted so long as the Board of Election received them by the second day after the election and bore no other dated postmark; and

**Whereas**, In response to this issue and in preparation for the November Election, Governor Cuomo signed S.8799A (Gianaris)/A.10808-A (Bichotte) into law on August 20, 2020; and

**Whereas**, S.8799A/A.10808-A allows absentee ballots that are missing a dated postmark, but which are otherwise valid, to be counted if they are received by the boards of election on the day after the election; and

**Whereas**, Receipt one day after the election does not give enough time for otherwise valid absentee ballots to be received by the local boards of elections; and

**Whereas**, In the lead-up to the 2020 General Election, the United States Postal Service warned voters not to mail absentee ballots within one week of the November 3 election day, as significant stress on the mail system had led to delays that could affect absentee ballot delivery; and

**Whereas**, Absentee ballots are typically treated as first-class mail, with a one- to three-day delivery window; and

**Whereas**, First-class mail on-time delivery rates have steadily declined since June, particularly in urban cities, such as New York City; and

**Whereas**, The United States Postal Service's inconsistent ballot postmarking marking practices, along with the timeliness of mail delivery, could cause thousands of valid absentee ballots to be discounted; and

**Whereas**, On July 24, 2020, Assemblymember Dinowitz introduced A.10844, which would allow absentee ballots that are missing a dated postmark, but which are otherwise valid, to be counted if received by the third day after an Election; and

**Whereas**, A.10844 better responds to the delay created by an overburdened postal service, while ensuring that a missing dated postmark does not unnecessarily discount a valid ballot; now, therefore, be it

**Resolved**, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, A.10844, which would require valid absentee ballots that are missing a dated postmark to be counted if they are received within three days following the day of the election.

Referred to the Committee on Governmental Operations.

Res. No. 1496

**Resolution calling upon the New York State Legislature to pass, and the Governor to sign, A.0342/ S.3867 in relation to the codification of animal cruelty laws under the Penal Law and A.0634/ S.2623 in relation to promoting awareness and enforcement of animal crime laws.**

By Council Member Cabrera.

**Whereas**, New York State law defines animal cruelty as a situation where a person causes unjustified harm, pain, or suffering to an animal or neglects an animal's care by not providing it with proper food, water, medical care, or suitable shelter; and

**Whereas**, The New York Police Department's (NYPD) Animal Cruelty Investigation Squad investigates reports of animal abuse or neglect; and

**Whereas**, NYPD's Animal Cruelty Investigation Squad utilizes a mobile command center that is equipped with basic animal rescue tools, including portable cages, leashes, and devices to read identifying computer chips implanted in dogs and cats; and

**Whereas**, In 2014, the New York City Council passed the Animal Abuse Registration Act, which requires any adult convicted of an animal abuse crime residing in New York City to contact the New York City Health Department to be added to the Animal Abuse Registry; and

**Whereas**, Anyone on the Animal Abuse Registry is prohibited from owning, possessing, residing with, having custody of, or intentionally engaging in any physical contact with any animal for five years; and

**Whereas**, Currently, in New York State, animal protection statutes are contained in the Agricultural and Markets Law, where crimes against animals are treated as crimes against "property;" and

**Whereas**, According to the Animal Legal Defense Fund, recognizing animals' status as property has created persistent barriers to protecting their lives and advancing their interests through the legal system; and

**Whereas**, A.0634/ S.2623, introduced in 2019 and sponsored by Assemblymember Linda Rosenthal and Senator Andrew Lanza, seeks to promote understanding, awareness, and consistent enforcement and

interpretation of animal crimes laws through amendments to the Agriculture and Markets Law and the Penal Law; and

**Whereas**, Whereas, A.0342/ S.3867, introduced in 2019 and sponsored by Assembly Member Rosenthal and Senator Lanza, seeks to codify animal cruelty laws under the Penal Law; and

**Whereas**, Animals deserve legal protections and a legal status that reflects their beings as creatures with the capacity to feel emotion; now, therefore, be it

**Resolved**, That the Council of the City of New York calls upon the New York State Legislature to pass, and the Governor to sign, A.0342/ S.3867 in relation to the codification of animal cruelty laws under the Penal Law and A.0634/ S.2623 in relation to promoting awareness and enforcement of animal crime laws.

Referred to the Committee on Public Safety.

Int. No. 2170

By Council Members Constantinides and Kallos.

**A Local Law to amend the administrative code of the city of New York, in relation to the sustainable energy loan program**

*Be it enacted by the Council as follows:*

Section 1. The definitions of “energy audit” and “energy efficiency improvement” in section 11-3001 of the administrative code of the city of New York, as added by local law number 96 for the year 2019, are amended to read as follows:

Energy audit. The term "energy audit" means a formal evaluation of the energy consumption of a permanent building or structural improvement to real property, conducted by a contractor certified by the authority, or certified by a certifying entity approved by the authority for purposes of article 5-L of the general municipal law, or certified by the administering agency, for the purpose of identifying appropriate energy efficiency improvements that could be made to *or incorporated into the construction of* the property.

Energy efficiency improvement. The term "energy efficiency improvement" means any *improvement to real property, whether as a component of the new construction of a building or as the renovation or retrofitting of [a] an existing* building to reduce energy consumption, such as window and door replacement, lighting, caulking, weatherstripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements, determined to be cost-effective pursuant to criteria established by the authority. However, "energy efficiency improvement" shall not include lighting measures or household appliances that are not permanently fixed to real property.

§ 2. Section 11-3001 of the administrative code of the city of New York, as added by local law number 96 for the year 2019, is amended by adding a new definition of “real property” in alphabetical order to read as follows:

*Real property. The term “real property” means any property, an interest in which is or is eligible to be recorded with the city register or the office of the Richmond county clerk by the possessor of such interest.*

§ 3. This local law takes effect immediately.

Referred to the Committee on Environmental Protection.

## Preconsidered Int. No. 2171

By Council Members Cornegy, Rosenthal and Louis.

**A Local Law to amend the administrative code of the city of New York and the New York city building code, in relation to the date by which carbon monoxide detectors are required to be installed in commercial spaces**

*Be it enacted by the Council as follows:*

Section 1. Article 315 of chapter 3 of title 28 of the administrative code of the city of New York, as amended by local law number 191 for the year 2018, is amended to read as follows:

**§ 28-315.11 Buildings that are equipped with a fire alarm system and that contain Group A-1, A-2, A-3, Group B or Group M occupancies.** By [January] *July* 1, 2021, existing buildings equipped with a fire alarm system and that contain group A-1, A-2 or A-3, Group B or Group M occupancies shall comply with the retroactive requirements of section 908.7.3.1 of the New York city building code.

§ 2. Section 908.7.3.1 of the New York city building code, as amended by local law number 191 for the year 2018, is amended to read as follows:

**908.7.3.1 Retroactive provisions for existing buildings.** Notwithstanding any other provision of law, listed carbon monoxide detectors shall be installed in existing buildings that are equipped with a fire alarm system and that contain group A-1, A-2, A-3, Group B or Group M occupancies in accordance with Section 908.7.3 by [January] *July* 1, 2021.

§ 3. This local law takes effect immediately.

Referred to the Committee on Housing and Buildings (preconsidered but laid over by the Committee on Housing and Buildings).

## Int. No. 2172

By Council Members Deutsch, Levine, Rosenthal, Kallos and Yeger.

**A Local Law to amend the administrative code of the city of New York, in relation to eligibility requirements for one-shot deal rental arrears grants in response to the COVID-19 pandemic and the expiration and repeal thereof**

*Be it enacted by the Council as follows:*

Section 1. Chapter 1 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-144 to read as follows:

**§ 21-144 Eligibility for one-shot deal rental arrears grants in response to COVID-19. a. Definitions.** *For the purposes of this section, the following terms have the following meanings:*

*COVID-19.* The term "COVID-19" means the 2019 novel coronavirus or 2019-nCoV.

*COVID-19 period.* The term "COVID-19 period" means the period beginning March 7, 2020 to, and including, March 6, 2022.

*COVID-19 state disaster emergency.* The term "COVID-19 state disaster emergency" means the state disaster emergency declared by the governor in executive order number 202 issued on March 7, 2020.

*HRA.* The term "HRA" means the human resources administration.

*One-shot deal rental arrears grant.* The term "one-shot deal rental arrears grant" means a one-time grant

of financial assistance that HRA provides to households to pay rental arrears resulting from an emergency in which HRA determines eligibility, and the eligibility requirements do not require approval from the state of New York.

*b. Notwithstanding any local law, rule or agency policy to the contrary, the commissioner shall not require an applicant to demonstrate an ability to pay future rent as a precondition of eligibility for a one-shot deal rental arrears grant if such applicant experienced a loss of income due to COVID-19 during the COVID-19 period.*

*c. For the purposes of subdivision b of this section, an applicant has experienced a loss of income due to COVID-19 if such applicant demonstrates, through documentation determined by the commissioner, a loss of income as a direct result of one or more of the following:*

- 1. Such applicant or a member of such applicant's household was diagnosed with COVID-19;*
- 2. Such applicant was providing care for a family member or a member of such applicant's household who was diagnosed with COVID-19;*
- 3. Such applicant became unemployed, partially unemployed or could not commence employment as a direct result of COVID-19 or the COVID-19 state disaster emergency; or*
- 4. Such applicant became primarily responsible for providing financial support for such applicant's household because the previous head of the household died as a direct result of COVID-19.*

*d. The commissioner shall promulgate rules necessary and appropriate to the administration of this section.*

§ 2. This local law takes effect 120 days after it becomes law and expires and is deemed repealed 5 years after it becomes law.

Referred to the Committee on General Welfare.

Int. No. 2173

By Council Member Dromm, the Public Advocate (Mr. Williams), Council Members Lander, Reynoso, Rivera, Levin, Rosenthal and Kallos.

**A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails**

*Be it enacted by the Council as follows:*

Section 1. Chapter 1 of title 9 of the administrative code is amended by adding a new section 9-161 to read as follows:

§ 9-161 *Solitary confinement. a. Definitions. For the purposes of this section, the following terms have the following meanings:*

*Emergency lock-in. The term "emergency lock-in" means a department-wide emergency lock-in, a facility emergency lock-in, a housing area emergency lock-in or a partial facility emergency lock-in as defined in section 9-155.*

*Restrictive housing. The term "restrictive housing" means any housing area that separates incarcerated persons from the general jail population due to a heightened threat to the safety and security of staff and other incarcerated persons.*

*Solitary confinement. The term "solitary confinement" means any instance in which a person is locked in a cell in isolation as punishment for a violent offense.*

*b. Ban on solitary confinement. No incarcerated individual shall be placed in solitary confinement unless such confinement is necessary to de-escalate immediate conflict, in which case an incarcerated individual may be placed in such confinement for no longer than four hours immediately following such conflict.*

*c. Reporting on solitary confinement. For each instance an incarcerated person is placed in solitary confinement, the department shall prepare an incident report that includes a detailed description of why isolation was necessary to de-escalate immediate conflict and the length of time the incarcerated individual was placed in solitary confinement. Within 15 days of the end of each quarter of the fiscal year, the department shall provide*

*the council and the board of correction all such reports and post all such reports on the department's website with any identifying information redacted.*

*d. Restrictive housing.*

*1. No incarcerated individual shall be placed in restrictive housing until a hearing on such placement is held pursuant to the rules of the board of correction. Incarcerated individuals shall have the right to be represented by legal counsel for such hearings, which shall be provided by the department if such individual does not have their own counsel. Such legal counsel shall be provided adequate time to prepare for such hearings.*

*2. No incarcerated individual shall be placed in restrictive housing for longer than four months in any 12 month period.*

*3. The placement of an incarcerated individual in restrictive housing shall be reviewed every 15 days to determine whether the incarcerated person continues to present a significant threat to the safety and security of the facility if housed outside restrictive housing.*

*4. Individuals placed in restrictive housing shall have comparable interaction with other individuals and comparable amenities to those housed outside restrictive housing.*

*5. The department shall utilize programming that addresses the unique needs of those in restrictive housing, and staff in restrictive housing units shall be trained in de-escalation techniques, conflict resolution, the use of force, and related topics to address the unique needs of those in restrictive housing units.*

*6. Positive incentives shall be used to encourage good behavior in restrictive housing units, and disciplinary sanctions shall be used as little as is feasible.*

*e. Out-of-cell time.*

*1. All incarcerated individuals shall have access to at least 14 hours of time outside of their cells every day, except for incarcerated individuals placed in solitary confinement pursuant to subdivision b of this section, and except that individuals placed in restrictive housing pursuant to subdivision d of this section shall have access to at least 10 hours of time outside of their cells.*

*2. No incarcerated individual shall be placed in restraints during out-of-cell time unless an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other incarcerated persons or staff, and in such instances the least restrictive form of restraints shall be used for no longer than necessary to abate such imminent harm.*

*3. Incarcerated individuals may congregate with others and move about their housing area freely during out-of-cell time and shall have access to education and programming pursuant to section 9-110.*

*f. Emergency lock-ins. Emergency lock-ins shall only be used when necessary to investigate or de-escalate an emergency. Emergency lock-ins shall be confined to as narrow an area as possible. Emergency lock-ins shall be lifted as quickly as possible.*

*§ 2. This local law takes effect 180 days after it becomes law. The board of correction shall take any actions necessary for the implementation of this local law, including the promulgation of rules relating to procedures and penalties necessary to effectuate this section, before such date.*

Referred to the Committee on Criminal Justice.

Int. No. 2174

By Council Members Kallos and Yeger.

**A Local Law to amend the New York city charter, in relation to a civic participation framework**

*Be it enacted by the Council as follows:*

Section 1. Chapter 47 of the New York city charter is amended by adding a new section 1069.2 to read as follows:

*§ 1069.2 Civic participation framework. a. The department of records and information services shall adopt a standard schema and template or templates for the presentation of participation information for every city*

*government meeting, activity or proposed action for which participation by the public, whether in person or through another method, is possible. Such template or templates shall be in plain language, both machine and human readable, and shall, at minimum, include fields for the event title, event location, event date, event time, method of participation, requirements for participation and the location or locations impacted by the subject of the event. The adopted standard template or templates shall be made available online.*

*b. For every city government meeting, activity or proposed action for which participation by the public, whether in person or through another method, is possible the agency responsible for such meeting or activity shall fill out the relevant template for the presentation of participation information, pursuant to the standard adopted in subdivision a. Such completed template shall be available, in advance of such meeting, activity or proposed action and contemporary with any other notice or outreach efforts, on the agency’s website, through a web application program interface and in such other locations as the commissioner of records and information services shall require.*

§ 2. Within 30 days of the effective date of this section, the commissioner of records and information services shall convene a working group that shall include the department of information technology and telecommunications, the office of operations, and such other agencies or offices as the commissioner may deem necessary, as well as the city council and members of the public, to recommend a standard schema and template or templates pursuant to subdivision a of section 1069.2 of the New York city charter. Within 6 months of the effective date of this section, the commissioner of records and information services shall report such working group’s recommendations to the mayor and the speaker of the council.

§ 3. This local law takes effect 9 months after it becomes law, except that section two of this local law takes effect immediately.

Referred to the Committee on Governmental Operations.

Preconsidered Res. No. 1497

**Resolution amending Rule 7.00 of the Rules of the Council in relation to changes in membership to the Standing Committees of the Council and the Land Use Subcommittees.**

By Council Member Koslowitz:

**RESOLVED**, pursuant to Rule 7.00(a) of the Rules of the Council, the Council does hereby consent to the following changes in Membership to certain Standing Committees and the Land Use Subcommittees.

**STANDING COMMITTEES**

**Criminal Justice**

D. Diaz

**Cultural Affairs, Libraries and International Intergroup Relations**

D. Diaz

[Borelli]

**Environmental Protection**

D. Diaz

**Finance**

D. Diaz

**General Welfare**

D. Diaz



**Governmental Operations**D. Diaz**Health**D. Diaz**Land Use**Borelli

[Richards]

**Parks and Recreation**D. Diaz

[Adams]

**Public Housing**

[Richards]

**Public Safety**Adams, Chair

[Richards, Chair]

**State and Federal Legislation**D. Diaz**Transportation**

[Richards]

**LAND USE SUBCOMMITTEES****Landmarks, Public Sitings and Dispositions**Levin

[Adams, Chair]

**Zoning and Franchises**AyalaBorelli

[Richards]

Adopted by the Council (preconsidered but approved by the Committee on Rules, Privileges and Elections).

Int. No. 2175

By Council Members Lander, Kallos and Louis.

**A Local Law to amend the New York city charter, in relation to the reporting of unofficial election night results for ranked choice elections**

*Be it enacted by the Council as follows:*

Section 1. Paragraph 13 of subdivision c of section 1057-g of the New York city charter, as added by vote of the electors on November 5, 2019, is amended to read as follows:

13. Section 9-126 shall apply to ranked choice elections, except that the reference in paragraph (a) of subdivision 2 to the number of votes received by each person voted for shall be deemed in ranked choice elections to be a reference to the total number of ballots that marked each such person as rank number 1 for that ranked choice office; and except that, for ranked choice elections, the tabulation of results as they are received pursuant to paragraph (b) of subdivision 2 shall be deemed to refer to [either, as determined by the board of elections of the city of New York pursuant to paragraph 1 of subdivision f of this section of the charter, (i) a tabulation of the number of ballots assigning rank number 1 for each candidate for each ranked choice office, or (ii)] *a tabulation of the number of votes cast for each [such] candidate for that ranked choice office for each round of tabulation, as tabulated pursuant to subdivision e of this section of the charter.*

§ 2. Paragraph 1 of subdivision f of section 1057-g of the New York city charter, as added by vote of the electors on November 5, 2019, is amended to read as follows:

1. When making public the results of a ranked choice election pursuant to section 9-126 of the election law, the board of elections in the city of New York shall release as the unofficial tally [either, as determined by the board, (i) the total number of ballots that marked a candidate in such an election as rank number 1 that ranked choice office, or (ii)] the number of votes cast for each candidate for that ranked choice office for each round of tabulation, as tabulated pursuant to subdivision e of this section of the charter.

§ 3. This local law takes effect immediately.

Referred to the Committee on Governmental Operations.

Int. No. 2176

By Council Members Levin, Rosenthal and Kallos.

**A Local Law to amend the administrative code of the city of New York, in relation to a supportive housing tenant's bill of rights**

*Be it enacted by the Council as follows:*

Section 1. Chapter 1 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-145 to read as follows:

§ 21-145 *Supportive housing bill of rights. a. Definitions. For purposes of this section, the following terms have the following meanings:*

*Dwelling unit. The term "dwelling unit" means a dwelling unit as defined in paragraph 13 of subdivision a of section 27-2004.*

*Supportive housing. The term "supportive housing" means affordable, permanent housing with support services for tenants.*

*Tenant. The term "tenant" means a person occupying, or intending to occupy, the dwelling unit for 30 consecutive days or more.*

*b. Notice of supportive housing tenant's rights. Every provider of supportive housing shall be required to provide every tenant at the time of initial occupancy, at each renewal, and upon request, a notice of rights approved by the department using plain and simple language. The notice shall be in the English and the primary language spoken by the tenant. The notice shall include, but not be limited to, the following information:*

*1. Whether the dwelling unit is subject to the rent stabilization laws pursuant to section 26-504, et seq., and if not, the reason for exemption. For dwelling units that are subject to the rent stabilization laws, the notice shall also provide information on how to obtain a rent history from the state division of housing and community renewal.*

*2. Whether the dwelling unit is in a building that is in receipt of a tax exemption or abatement, including but not limited to abatements or exemptions pursuant to sections 421-a or 421-g of the real property tax law or section 11-243. If the building is in receipt of an exemption or abatement, the notice will include the abatement or exemption start and end dates.*

*3. The tenant's right to bring special proceedings pursuant to article 7 of the real property actions and proceedings law and that a tenant's eviction must be sought through a court proceeding and any relevant phone*

numbers that a tenant may contact for legal advice and possible legal representation, including but not limited to 311.

4. The tenant's right to enforce the housing maintenance code pursuant to section 27-2001 et seq and information concerning how to report violations and contact information for the person or people responsible for maintaining housing maintenance code standards and responding to emergencies.

5. The tenant's right to be request reasonable accommodations and the right to be protected against discrimination pursuant to section 290 et seq. of the human rights law and section 8-101 et seq.

6. The tenant's right to receipts for payments made in exchange for occupancy pursuant to section 235-e of the real property law.

7. The tenant's right to have family and/or additional occupants pursuant to section 235-f of the real property law.

8. Whether the dwelling unit is subject to section 595 et seq. of title 14 of the New York codes, rules and regulations, and the tenant's rights under that section.

9. The tenant's right to be free from harassment pursuant to section 27-2004.

10. The following information about the building's regulatory scheme:

(a) Each funding stream used to provide social services, subsidize rents, or underwrite the development of the unit or property;

(b) The name(s) of the program(s) pursuant to which the tenant is occupying the dwelling unit;

(c) The name of the agency administering the program and/or providing services or assistance pursuant to (a) and (b);

(d) Any applicable grievance, or equivalent, policy or procedure to register and hear tenant complaints;

(e) Any applicable regulations;

(f) Contact information for a responsible person at the administering agency;

(g) The total rent, tenant rent, and agency rent amounts; and

(h) The manner in which the rent will be paid.

11. The tenant's right to be provided access to legal services if facing eviction in housing court and all other relevant tenant's rights.

12. Any additional information related to tenant's rights provided orally or in writing to a supportive housing applicant during an interview with a provider.

c. Any provider that is subject to this chapter that is initiating an eviction proceeding pursuant to article 7 of the real property actions and proceedings law., shall plead compliance with this chapter pursuant to section 741 of the real property actions and proceedings law.

d. Penalties. Any provider who violates the provisions of subdivision b of this section shall be liable for a civil penalty of \$250 for each violation. For purposes of this section, each dwelling unit for which a provider fails to provide the notice required pursuant to this section shall be deemed a separate violation.

e. The department shall receive, investigate, and respond to complaints concerning violations of this section. All complaints, responses, and violations issued by the department will be posted on the department's website and will include the identity of the supportive housing provider, the date the complaint was submitted, any results of the complaint, the date of the conclusion of any investigation resulting from the complaint, and the number and amount of penalties assessed.

§ 2. This local law takes effect 120 days after it becomes law.

Referred to the Committee on General Welfare.

Int. No. 2177

By Council Members Levin and Rosenthal.

**A Local Law to amend the administrative code of the city of New York, in relation to outreach to unsheltered individuals**

*Be it enacted by the Council as follows:*

Section 1. Chapter 3 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-324 to read as follows:

§ 21-324 *Outreach to unsheltered individuals. a. Definitions. For the purposes of this section, the following terms have the following meanings:*

*Outreach. The term “outreach” means engaging in contact with or offering services to unsheltered individuals experiencing homelessness, including but not limited to the removal of an individual’s personal property.*

*Unsheltered individual. The term “unsheltered individual” means an individual with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.*

*b. Outreach to unsheltered individuals by any government agency shall not include any involvement by the police department and shall be limited to department staff or staff contracted by the department to contact and offer services to unsheltered individuals experiencing homelessness.*

§ 2. This local law takes effect 180 days after it becomes law, provided that the commissioner may take all actions necessary for its implementation, including the promulgation of rules, before such effective date.

Referred to the Committee on General Welfare.

Int. No. 2178

By Council Member Levine.

**A Local Law in relation to requiring the department of transportation to study the impact of e-commerce deliveries during the COVID-19 pandemic**

*Be it enacted by the Council as follows:*

Section 1. a. Definitions. For the purposes of this section, the following terms have the following meanings: COVID-19. The term “COVID-19” means the 2019 novel coronavirus or 2019-nCoV.

E-commerce. The term “e-commerce” means electronic commerce or internet commerce, the buying and selling of goods online and not in a physical store.

Open Streets. The term “Open Streets” means streets open to limited vehicular traffic by the mayor and department of transportation for pedestrians and cyclists to use while maintaining social distancing. Such term shall also include the use of streets, sidewalks and curb lanes for outdoor dining space.

b. Study on the impact of e-commerce deliveries during the COVID-19 pandemic. Beginning 30 days after the effective date of this local law, and annually thereafter, the department of transportation shall, in consultation with the department of environmental protection, the department of consumer and worker protection, the small business administration and any other relevant agencies, conduct a study of the impacts of e-commerce deliveries in particular by companies delivering over 5,000 packages each day in the city. Such study shall include, but need not be limited to, an analysis of the following information for the prior calendar year, and a comparison to such information before the COVID-19 pandemic:

1. The volume of e-commerce deliveries;

2. An assessment of e-commerce delivery vehicle traffic, including:

(a) Any impact on congestion, including traffic in residential areas and whether traffic flow changed due to e-commerce deliveries;

(b) Any impact on roadway maintenance, including whether increased maintenance was needed due to e-commerce deliveries;

(c) Any impact on pedestrian spaces, sidewalks and pedestrian plazas, including whether such spaces were used for e-commerce delivery parking, package sorting or package drop-off; and

(d) Any impact created by the interplay between the Open Streets program, or any similar successor program, and e-commerce deliveries;

3. An assessment of air quality in residential neighborhoods, including any 311 complaints related to e-commerce deliveries and air quality from residents of such neighborhoods; and

4. Any impact of e-commerce deliveries on local businesses, including businesses whose regular course of operations includes sending and receiving e-commerce shipments and a list of such businesses disaggregated by the estimated average number of shipments per day.

c. Annual report. No later than November 1, 2021, and annually thereafter until November 1, 2023, the department shall submit to the mayor and the council, and post on the department's website, a report on the impact of e-commerce deliveries during the COVID-19 pandemic. Such annual reports shall include:

1. The information described in subdivision a of this section for the relevant reporting period, disaggregated by borough and zip code where appropriate, and a comparison to such information before the COVID-19 pandemic;

2. The results of all prior studies required by this local law; and

3. Recommendations to reduce any detrimental impacts of increased e-commerce deliveries during the COVID-19 pandemic.

§ 2. This local law takes effect immediately and expires and is deemed repealed on December 1, 2023.

Referred to the Committee on Transportation.

Int. No. 2179

By Council Members Louis, Cabrera, Rosenthal, Kallos and Yeger.

**A Local Law to amend the administrative code of the city of New York, in relation to increasing access to data and maternal mortality and morbidity**

*Be it enacted by the Council as follows:*

Section 1. Subdivision b of section 17-199.3 of the administrative code of the city of New York, as amended by local law 188 of the year 2018, is amended to read as follows:

b. No later than September 30, 2019, and no later than September 30 annually thereafter, the department shall *post on its website*, submit to the speaker and publish in a machine-readable format in the annual summary of vital statistics the most recent calendar year data available regarding maternal mortality in New York City, to the extent such data is made available to the department, on an individual-person level, anonymized to comply with privacy considerations, including but not limited to the health insurance portability and accountability act (HIPAA), including, but not be limited to:

§ 2. This local law takes effect immediately.

Referred to the Committee on Women and Gender Equity.

Int. No. 2180

By Council Members Powers, Kallos and Yeger.

**A Local Law to amend the administrative code of the city of New York, in relation to results of noise inspections.**

*Be it enacted by the Council as follows:*

Section 1. Section 24-207 of the administrative code of the city of New York, as amended by local law number 53 for the year 2018, is amended to read as follows:

(f) The commissioner shall publish on the city's website;

(i) the manner by which noise levels shall be measured during inspections conducted pursuant to this section and in accordance with section 24-217.1 which shall be available online[.] and

*(ii) the results of each inspection, which shall be available online within 24 hours after such inspection has been completed.*

[(f)](g) By no later than January 31 of each year, the department shall submit to the mayor and the council, and publicly post on its website, a report, containing, at a minimum, for the previous calendar year:

- (i) the number of inspectors employed by the department;
- (ii) the number of complaints regarding noise received by the department, disaggregated by the type of noise;
- (iii) the number of after hours noise complaints responded to within the amount of time prescribed by rule as well as the number of duplicative after hours noise complaints;
- (iv) the number of non-violation resolutions to complaints;
- (v) the number of noise related violations issued;
- (vi) the number of such violations which were dismissed;
- (vii) the amount of civil penalties which were paid pursuant to such violations;
- (viii) the number of alternative noise mitigation plans approved pursuant to section 24-221 of this code; and
- (ix) the number of written stop work orders issued pursuant to section 24-223.1 of this code.

§ 2. This local law takes effect immediately.

Referred to the Committee on Environmental Protection.

Res. No. 1498

**Resolution calling upon the New York State Legislature to pass, and the Governor to sign, S.8902/A.10942, which would authorize boards of elections in New York State to establish absentee ballot drop-off locations.**

By Council Members Powers and Kallos.

**Whereas**, The right to vote is the cornerstone of representative democracy; and

**Whereas**, The public health risks of the COVID-19 virus have made absentee voting a safer alternative to in-person voting for hundreds of thousands of New Yorkers; and

**Whereas**, In the spring of 2020, Governor Cuomo issued executive orders allowing New Yorkers to cite risk of exposure to COVID-19 as a valid reason for requesting an absentee ballot, ordering local boards of election to mail an absentee ballot application form to every eligible voter in the state, and ordering local boards of election to send voters their absentee ballots for the June Primary Election with a postage-paid return envelope; and

**Whereas**, At a New York City Council oversight hearing on September 25, the City Board of Elections reported that it mailed out over 775,000 absentee ballots to voters in June, a roughly twelve-fold increase from the 2016 Presidential Primary; and

**Whereas**, In June, due to a United States Postal Service (USPS) error, thousands of mailed-in absentee ballots were initially invalidated by the New York City Board of Elections due to a lack of postmark, only to be subsequently validated in compliance with a federal court order; and

**Whereas**, Throughout the summer of 2020, newly appointed postmaster general Louis DeJoy implemented policy changes, purportedly to reduce costs and inefficiencies at the USPS, including removing hundreds of high-speed mail sorting machines, cutting overtime, and organizational restructuring; and

**Whereas**, In July, the USPS sent a letter to all 50 states, warning them that if they did not require voters to request mail-in ballots at least 15 days before an election, there could be a risk that the USPS would not be able to deliver ballots in time for votes to be counted; and

**Whereas**, On September 21, a federal judge in New York ordered Mr. De Joy and the USPS to reverse the policy changes implemented in the summer, to pre-approve all overtime requested from October 26 to November 6, to treat all election mail as first-class priority mail, and to submit a weekly report detailing the USPS's progress in improving mail delivery; and

**Whereas**, Due to these operational failures and attempted policy changes at the USPS, public trust in the USPS's ability to deliver absentee ballots on time has eroded; and

**Whereas,** At the September 25 City Council oversight hearing, the New York City Board of Elections' Executive Director stated that he expects the Board to process more than one million absentee ballots in the November General Election, more than double the amount cast in the June Primary Election; and

**Whereas,** Returning an absentee ballot to a secure drop box is an increasingly popular alternative to mailing the ballot back through the USPS; and

**Whereas,** According to the Cybersecurity and Infrastructure Security Agency, the branch of the U.S. Department of Homeland Security tasked with securing election infrastructure, ballot drop boxes are "secure and convenient means for voters to return their mail ballot;" and

**Whereas,** At least 33 other states and the District of Columbia have used, or plan on using, ballot drop boxes in 2020; and

**Whereas,** In western states that conduct elections largely via absentee ballots, ballot drop box use is very high, including in Colorado where nearly 75 percent of all ballots were returned to a drop box in 2016; and

**Whereas,** On September 9, Governor Cuomo signed an Executive Order mandating that boards of election allow voters to drop off absentee ballots at drop boxes located at boards of election offices, early voting poll sites, or Election Day poll sites; and

**Whereas,** The New York City Board of Elections announced it would provide ballot drop boxes at every board office, early voting poll site, and Election Day poll site; and

**Whereas,** New York State Senator Brad Hoylman and Assembly Member Richard Gottfried introduced S.8902/A.10942, which would authorize boards of election to set up secure ballot drop box locations across the state, not limited to only poll sites or board offices; and

**Whereas,** Numerous good government and voting advocacy groups support S.8902/A.10942, including but not limited to the League of Women Voters of New York State, VoteEarlyNY, Citizens Union, and NYPIRG; and

**Whereas,** Establishing secure ballot drop boxes at various locations would give New York voters more options to return their absentee ballots safely and securely, would eliminate the need for paid postage, and would reduce the burden on the USPS; now, therefore, be it

**Resolved,** That the Council of the City of New York calls upon the New York State Legislature to pass, and the Governor to sign, S.8902/A.10942, which would authorize boards of elections in New York State to establish absentee ballot drop-off locations.

Referred to the Committee on Governmental Operations.

Int. No. 2181

By Council Members Rivera and Kallos.

**A Local Law to amend the administrative code of the city of New York, in relation to the imposition of civil penalties on property owners who fail to repair sidewalk defects**

*Be it enacted by the Council as follows:*

Section 1. Subdivision c of section 19-152 of the administrative code of the city of New York, as amended by local law number 120 for the year 2018, is amended to read as follows:

c. Whenever the department shall determine that a sidewalk flag should be installed, constructed, reconstructed, or repaved, or that a vacant lot should be fenced, or a sunken lot filled or a raised lot cut down, it may order the owner of the property abutting on such sidewalk flag or the owner of such vacant, sunken or raised lot by issuing a violation order to perform such work. Such order shall provide a detailed explanation of the inspection and the sidewalk defects according to sidewalk flags including a detailed diagram of the property and defects by type. The order shall also inform the owner of the existence of the borough offices within the department together with an explanation of the procedures utilized by the borough office as provided for in paragraph eighteen of subdivision a of section twenty-nine hundred three of the New York city charter as well as a complaint and appeal process, including the right to request a reinspection and then the right to appeal by

filing a notice of claim with the office of the comptroller of the city of New York and thereafter a petition for appeal and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed under the direction of or by the department as provided herein and the procedures as to how to appeal by filing a notice of claim with the office of the comptroller of the city of New York and how to file a petition and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed as provided herein and the location, where the forms may be obtained. Such order shall specify the work to be performed, an estimate of the cost of the work to repair the defects and the order shall also specify a reasonable time for compliance, provided that the time for compliance shall be a minimum of 75 days. *Such order shall specify that failure to complete the work as directed may subject the owner to a civil penalty pursuant to paragraph 1 of subdivision o of this section.* The department shall, by appropriate regulations, provide for a reinspection by a different departmental inspector than the inspector that conducted the first or original inspection upon request of the property owner to the appropriate borough office. Where appropriate, the department shall notify the property owner of the date of reinspection at least five days prior to the reinspection date. Such inspector conducting the reinspection shall conduct an independent inspection of the property without access to the reports from the first inspection. The inspector conducting the reinspection shall file a new report and the department shall issue a new order to the owner specifying the results of the reinspection with a detailed diagram of the property and defects by type. Such order shall also advise the owner of the procedures utilized by the borough office as provided for in paragraph eighteen of subdivision a of section twenty-nine hundred three of the New York city charter and also of the right to challenge the notice of account and/or the quality of the work performed by filing a notice of claim with the office of the comptroller and thereafter a petition and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed under the direction of or by the department as provided in sections 19-152.2 and 19-152.3 of the code and specify the procedures as to how to appeal by filing a notice of claim with the office of the comptroller of the city of New York and how to file a petition and commence a proceeding to review and/or correct the notice of account and/or the quality of the work performed and the location where the forms may be obtained.

§ 2. Subdivision d of section 19-152 of the administrative code of the city of New York, as amended by local law number 120 for the year 2018, is amended to read as follows:

d. If the department has been notified in writing of the existence of a defective, unsafe, dangerous or obstructed condition of a sidewalk pursuant to subdivision (c) of section 7-201 of the code, and the department determines that such condition constitutes an immediate danger to the public, it may notify the property owner that such condition constitutes an immediate danger to the public and direct such owner to repair same within ten days of the service of the notice. *Such notice shall specify whether such owner is subject to a civil penalty pursuant to paragraph 3 of subdivision o of this section and that failure to complete the work as directed may subject such owner to a civil penalty pursuant to paragraph 2 of subdivision o of this section.*

§ 3. Section 19-152 of the administrative code of the city of New York is amended by adding a new subdivision o to read as follows:

*o. An owner of real property shall be subject to a civil penalty not to exceed \$250 under the following circumstances:*

*1. Where such owner fails to complete work as directed in a violation order issued pursuant to subdivision c of this section within the time specified for compliance in such order;*

*2. Where such owner fails to complete work as directed by a notice issued pursuant to subdivision d of this section within the time specified for compliance in such notice; or*

*3. Immediately upon issuance to such owner of a notice pursuant to subdivision d of this section where the department determines that such owner knew or should have known that the condition of the sidewalk constitutes an immediate danger to the public, except where the department determines that such owner's failure to address such condition prior to the issuance of such notice is reasonable under the circumstances.*

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

Referred to the Committee on Transportation.



## Res. No. 1499

**Resolution calling on the New York State Legislature to pass, and the Governor to sign, S.2888A/A.00318A, relating to informing maternity patients about the risks associated with cesarean section.**

By Council Members Rivera and Rosenthal.

**Whereas**, According to the American College of Obstetricians and Gynecologists (ACOG), a cesarean birth is the delivery of a baby through incisions made in the abdomen and uterus; and

**Whereas**, According to ACOG, a cesarean birth may be performed if there are certain concerns about the fetus, problems with the placenta, if the birthing parent has certain medical conditions, and for other reasons; and

**Whereas**, While cesarean sections can be medically needed, for low risk pregnancies and those who do not medically require a cesarean section, there are benefits to having a vaginal birth; and

**Whereas**, According to the Mayo Clinic, cesarean sections include risks for both the birthing parent and baby; and

**Whereas**, Babies born by scheduled cesarean section are more likely to develop transient tachypnea, a breathing problem marked by abnormally fast breathing during the first few days after birth, and, rarely, babies may experience a surgical injury; and

**Whereas**, Risks for birthing parents include infection, postpartum hemorrhage, blood clots, wound infection, surgical injury, and other issues; and

**Whereas**, Individuals who have a cesarean section also require time to recover and additional postpartum care; and

**Whereas**, Cesarean sections also impact the birthing parent's future maternal health; and

**Whereas**, Individuals who have a cesarean section face a higher risk of potentially serious complications in a subsequent pregnancy, such as cesarean scar on the uterus rupturing during a future vaginal birth; and

**Whereas**, According to the New York State Taskforce on Maternal Mortality and Disparate Racial Outcomes, the cesarean delivery rate in the U.S. has risen to over 30 percent, and, when compared to vaginal deliveries, cesarean deliveries carry overall higher rates of maternal mortality; and

**Whereas**, According to the Task Force's report, from 2012-2014, 66 percent of prenatal related deaths in New York State involved a cesarean section; and

**Whereas**, According to the New York City 2008-2012 Severe Maternal Morbidity report, maternal morbidity is a continuum from mild adverse effects to life-threatening events or death; and

**Whereas**, According to the report, the severe maternal morbidity rate was higher among people with a primary or repeat cesarean (474.1 and 492.3 per 10,000 deliveries, respectively), compared to those with a vaginal birth (109.8 per 10,000 deliveries) or vaginal birth after a cesarean (172.7 per 10,000 deliveries); and

**Whereas**, Although it is difficult to differentiate between morbidity caused by cesarean delivery versus morbidity requiring a cesarean delivery, cesarean sections may have a higher risk of maternal morbidity; and

**Whereas**, According to the Centers for Disease Control and Prevention, in 2018 the cesarean delivery rate in New York State was 33.9 percent, tied for the twelfth highest rate in the country; and

**Whereas**, As the cesarean rate continues to rise, it is increasingly important to ensure that all individuals giving birth are informed of the risks associated with cesarean births; and

**Whereas**, S.2888A/A.00318A, sponsored by Senator Julia Salazar and Assembly Member Amy Paulin, amends the public health law, in relation to informing maternity patients about the risks associated with cesarean section; and

**Whereas**, The bill would require maternal health providers to supply individuals with a planned cesarean and those who undergo an unplanned cesarean with a standardized written communication about cesarean sections; and

**Whereas**, Such written communication would include, but not be limited to, potential maternal injuries, potential injuries to the fetus, the impact of a cesarean delivery may have on future pregnancies and deliveries, and the circumstances in which cesarean delivery may be necessary to save the life of the parent or fetus; and

**Whereas,** The information would be developed by the Commissioner based on consultations with appropriate health care professionals, providers, consumers, educators, and patients, including the ACOG and the New York State Association of Licensed Midwives; and

**Whereas,** Such a law would ensure the universal dissemination of information to improve the health and safety of New York's birthing parents and newborns; now, therefore, be it

**Resolved,** That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, S.2888A/A.00318A, relating to informing maternity patients about the risks associated with cesarean section

Referred to the Committee on Health.

Res. No. 1500

**Resolution calling on the State Legislature to pass, and the Governor to sign, S.7147-A/A.9156, which would expand Medicaid benefits to one year postpartum.**

By Council Members Rivera, Rosenthal and Kallos.

**Whereas,** According to the Centers for Disease Control and Prevention (CDC), a pregnancy-related death is defined as the death of a person while pregnant or within one year of the end of a pregnancy (regardless of the outcome or duration of the pregnancy) from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes; and

**Whereas,** Data from the CDC find that about one-third of all pregnancy-related deaths occur one week to one year after a pregnancy ends; and

**Whereas,** In 2016, New York State was ranked 30th in the nation for its maternal mortality rate, with clear racial disparities; and

**Whereas,** New York State had a maternal mortality rate for Black women of 52 deaths per 100,000 live births, compared to 16 deaths per 100,000 live births for white women during 2014-2016; and

**Whereas,** According to the American College of Obstetricians and Gynecologists (ACOG), the postpartum period represents a time of increased vulnerabilities; and

**Whereas,** In addition to monitoring a person's physical wellbeing postpartum, it is important to maintain access to mental health and substance use disorder treatment services during this time; and

**Whereas,** Those with opioid use disorder relapse far more often in the postpartum period compared with during pregnancy and should have access to and continued use of treatment services; and

**Whereas,** New York State offers Medicaid to pregnant New York residents who meet income requirements, regardless of immigration status; and

**Whereas,** In the Medicaid for pregnancy program, babies receive health care services for at least one year after birth, but the pregnant individual only receives care for 60 days after the end of pregnancy; and

**Whereas,** New York State only offers family planning services to those who lose their Medicaid for pregnant parents coverage; and

**Whereas,** S.7147-A/A.9156, sponsored by Senator Gustavo Rivera and Assembly Member Richard Gottfried, would extend the Medicaid coverage period for medical assistance to a period of one year beginning on the last day of pregnancy; and

**Whereas,** In New York State, over 60 percent of births were covered by Medicaid in 2017; and

**Whereas,** In New York City in 2017, 70 percent of Black infant births, 78 percent of Hispanic infant births and 59 percent Asian/Pacific Islander infant births were covered by Medicaid compared to 37 percent white infant births; and

**Whereas,** The expansion of Medicaid eligibility has been associated with 1.6 fewer maternal deaths per 100,000 women compared with states that didn't expand the program; and

**Whereas,** The CDC has found that three in five pregnancy-related deaths could be prevented; and

**Whereas**, According to CDC Director Dr. Robert R. Redfield, “Ensuring quality care for [pregnant parents] throughout their pregnancies and postpartum should be among our Nation’s highest priorities”; and

**Whereas**, Extending Medicaid coverage past 60 days postpartum is a commonsense way to save lives and improve parent and child health outcomes and could help reduce stark racial disparities in maternal mortality; now, therefore, be it

**Resolved**, That the Council of the City of New York calls on the State Legislature to pass and the Governor to sign S.7147-A/A.9156, which would expand Medicaid benefits to one year postpartum.

Referred to the Committee on Health.

Int. No. 2182

By Council Members Rodriguez and Kallos.

**A Local Law to amend the administrative code of the city of New York, in relation to requiring parking sensors for certain city fleet and city contracted vehicles**

*Be it enacted by the Council as follows:*

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-145 to read as follows:

*§ 6-145 Parking sensors for certain city fleet and city contracted vehicles. a. Definitions. For the purposes of this section, the following terms have the following meanings:*

*City contracted vehicle. The term “city contracted vehicle” means any large vehicle that is utilized on a weekly or more frequent basis within the city to fulfill requirements material to the scope of a contract registered with the comptroller. This definition does not include agency on-call emergency contracts, including on-call storm emergency contracts, or the following types of contracts that are governed by rules of the procurement policy board: emergency procurements; intergovernmental contracts; government to government contracts; and contracts for the provision of work or services by public utilities.*

*Department. The term “department” means the department of citywide administrative services.*

*Large vehicle. The term “large vehicle” means a motor vehicle with a manufacturer's gross vehicle weight rating exceeding 10,000 pounds. “Large vehicle” does not include vehicles on which parking sensor installation is deemed impractical by the department pursuant to subdivision c of this section.*

*Parking sensor. The term “parking sensor” means a device fit to the side, front or back of a vehicle designed to alert the driver to obstacles while reversing and while parking a vehicle.*

*b. Parking sensors. 1. No later than June 1, 2022, all large vehicles in the city fleet shall be equipped with parking sensors.*

*2. No later than June 1, 2022, all city contracted vehicles shall be equipped with parking sensors. Such requirement shall only apply to contracts entered into on or after June 1, 2021.*

*c. The department may promulgate any rules necessary to administer the provisions of this section, including but not limited to rules establishing parking sensor specifications that depart from the default specifications set forth in subdivision a of this section when such departure is deemed necessary by the department, as well as rules governing when the installation of parking sensors on certain city vehicles is impractical and would not be required or would disrupt a provision of public safety or public health services, or where written exemptions may be authorized, including due to limitations in vendor capacity to supply parking sensors. Such rules may include exemptions for city-owned trucks that are in the order cycle for replacement. The department shall be authorized to inspect parking sensors and parking sensor specifications for compliance with the requirements of this section.*

*d. Enforcement. All agency contracts involving city contracted vehicles shall contain the requirements of this section, and shall be enforced as part of each agency’s oversight with respect to each contract. The department shall provide technical guidance to each contracting agency with respect to their oversight*

*responsibilities pursuant to this section. Contract requirements shall include, but not be limited to, a penalty of up to \$5,000 for each city contracted vehicle that is found to be out of compliance with the requirements of this section.*

§ 2. This local law takes effect immediately, provided, however, that the provisions of subdivision d of section 6-145, as added by this local law, shall apply to contracts registered by the comptroller on or after June 1, 2021, and shall not apply to renewals, exemptions or modifications of contracts entered into prior to June 1, 2021.

Referred to the Committee on Governmental Operations.

Int. No. 2183

By Council Member Rodriguez.

**A Local Law in relation to waiving fines and civil penalties for certain taxi and limousine commission-related violations**

*Be it enacted by the Council as follows:*

Section 1. Waiver of fines and civil penalties for certain taxi and limousine commission-related violations.

a. Definitions. For the purposes of this section, the following terms have the following meanings:

City. The term “city” means the city of New York.

Commission. The term “commission” means the New York city taxi and limousine commission.

Driver. The term “driver” means an individual who has obtained a universal driver’s license from the commission pursuant to section 19-505 of the administrative code of the city of New York.

Tribunal. The term “tribunal” means the office of administrative trials and hearings hearings division, which includes the administrative tribunal referenced in section 19-506.1 of the administrative code of the city of New York.

b. Notwithstanding any other provision of law or rule, the city shall waive any outstanding fines or civil penalties, including any additional fees or accrued interest, owed by drivers for violations of laws and rules enforced by the commission, for which the notice of violation returnable to the tribunal was issued on or before the effective date of this local law, and provided that drivers demonstrate to the satisfaction of the commission that any conditions cited in the notice of violation have been corrected.

c. The provisions of subdivision b of this section shall not apply to (i) violations of section 19-507 of the administrative code of the city of New York or section 80-20 of title 35 of the rules of the city of New York, or (ii) violations of laws or rules enforced by the commission that pose a danger to pedestrian, cyclist or motorist safety.

§ 2. This local law takes effect immediately.

Referred to the Committee on Transportation.

Int. No. 2184

By Council Member Salamanca.

**A Local Law to amend the administrative code of the city of New York, in relation to requiring reporting on the police department’s 2020 community ambassador initiative**

*Be it enacted by the Council as follows:*

Section 1. Subdivision a of section 14-150 of the administrative code of the city of New York is amended by adding a new paragraph 9 to read as follows:

*9. A report on the department's community ambassador initiative, announced in June of 2020, including but not limited to: (i) the criteria used to select community ambassadors; (ii) the number of community ambassadors hired; (iii) the annual budget for the initiative; (iv) the compensation paid to community ambassadors; (v) a description of the duties and responsibilities of community ambassadors; and (vi) a summary of the projects undertaken by each community ambassador, disaggregated by patrol precinct. The department shall also post the name and contact information of each community ambassador on its website.*

§ 2. This local law takes effect immediately.

Referred to the Committee on Public Safety.

Int. No. 2185

By Council Members Van Bramer and Rosenthal.

**A Local Law to amend the administrative code of the city of New York, in relation to reusable eating utensils for dine-in customers**

*Be it enacted by the Council as follows:*

Section 1. Chapter 4 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 13 to read as follows:

*Subchapter 13: Non-reusable Eating Utensils*

*§ 20-699.7 Non-reusable Eating Utensils for Dining In a. Definitions. For purposes of this chapter:*

*Dine-in. The term "dine-in" means relating to or offering food that is eaten in the food service establishment where it is ordered rather than being taken away.*

*Eating utensil. The term "eating utensil" means a tool used for eating and drinking, including but not limited to, plates, bowls, knives, forks, spoons, chopsticks, cups, and lids, but does not include stirrers and straws.*

*Food service establishment. The term "food service establishment" means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises pursuant to subdivision s of section 81.03 of the health code of the city of New York.*

*b. The department shall conduct a study on the feasibility of restricting the use of non-reusable eating utensils for dine-in customers at all food service establishments in the city. The department shall issue a report to the mayor and the speaker of the council 150 days after the effective date of this section that shall include, but not be limited to:*

- 1. Financial impact to food service establishments and customers;*
- 2. Potential weight of waste reduction of reducing non-reusable utensils;*
- 3. Potential environmental benefits from the potential waste reduction, including single-use plastic reduction. Such potential benefits shall include, if possible, reduced trucking of waste and impacts of reduced landfilling and incineration of waste;*
- 4. Impact of dishwashing services including, but not limited to commercial dishwashing services;*
- 5. Safety and cleanliness guidelines, including how to determine dishwashing capacity and staffing requirements; and*
- 6. Potential cost savings to the department and city for the collection, processing, transportation, litter removal, and disposal of non-reusable utensils, condiment packets and napkins.*

§ 2. This local law takes effect 6 months after it becomes law.

Referred to the Committee on Consumer Affairs and Business Licensing.

Preconsidered L.U. No. 703

By Council Member Salamanca:

**Application No. 20215007 HIQ (N 210188 HIQ) submitted pursuant to Section 3020 of the New York City Charter and Section 25-303 of the Administrative Code of the City of New York for approval of the by the Landmarks Preservation Commission's designation of Public School 48 (now P75Q at P.S. 48, The Robert E. Peary School) (Tax Map Block 10144, Lot 42), as an historic landmark (DL-519/LP-2646), Borough of Queens, Council District 28, Community District 12.**

Referred to the Committee on Land Use and the Subcommittee on Landmarks, Public Sitings & Dispositions.

Preconsidered L.U. No. 704

By Council Member Salamanca:

**Application No. 20215010 HHK (NYC Health & Hospitals/Woodhull II) submitted by the New York City Health and Hospitals Corporation, pursuant to Section 7385(6) of the HHC Enabling Act, for authorization to lease a parcel of land on the campus of NYC Health and Hospitals/Woodhull in Brooklyn to Comunilife, Inc., to be used for the development of an eight-story multifamily residential building with supportive housing, Borough of Brooklyn, Council District 36, Community District 3.**

Referred to the Committee on Land Use and the Subcommittee on Landmarks, Public Sitings & Dispositions (preconsidered by the Subcommittee on Landmarks, Public Sitings & Dispositions).

Preconsidered L.U. No. 705

By Council Member Salamanca:

**Application No. C 200086 ZMK (1501-1555 60<sup>th</sup> Street Rezoning) submitted by 1529-33 60<sup>th</sup> Street, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 22d, changing from an M1-1 District to an R7A District and establishing within the proposed R7A District a C2-4 District, Borough of Brooklyn, Community District 12, Council District 44.**

Referred to the Committee on Land Use and the Subcommittee on Zoning & Franchises (preconsidered by the Subcommittee on Zoning and Franchises).

Preconsidered L.U. No. 706

By Council Member Salamanca:

**Application No. N 200087 ZRK (1501-1555 60<sup>th</sup> Street Rezoning) submitted by 1529-33 60<sup>th</sup> Street, LLC, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Brooklyn, Community District 12, Council District 44.**

Referred to the Committee on Land Use and the Subcommittee on Zoning & Franchises (preconsidered by the Subcommittee on Zoning and Franchises).

Preconsidered L.U. No. 707

By Council Member Salamanca:

**Application No. C 150178 ZMK (265 Front Street Rezoning) submitted by Michael Spinard, pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 12d, changing from an M1-2 District to an R6A District and establishing within the proposed R6A District a C2-4 District, Borough of Brooklyn, Community District 2, Council District 33.**

Referred to the Committee on Land Use and the Subcommittee on Zoning & Franchises (preconsidered by the Subcommittee on Zoning and Franchises).

Preconsidered L.U. No. 708

By Council Member Salamanca:

**Application No. N 180178 ZRK (265 Front Street Rezoning) submitted by Michael Spinard, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, modifying APPENDIX F for the purpose of establishing a Mandatory Inclusionary Housing area, Borough of Brooklyn, Community District 2, Council District 33.**

Referred to the Committee on Land Use and the Subcommittee on Zoning & Franchises (preconsidered by the Subcommittee on Zoning and Franchises).

NEW YORK CITY COUNCIL

**A N N O U N C E M E N T S**

**Friday, December 11, 2020**

Committee on Higher Education

Inez Barron, Chairperson

**Oversight** - Status of Nursing Programs at the City University of New York.  
Remote Hearing (Virtual Room 1).....10:00 a.m.

Committee on Criminal Justice

Keith Powers, Chairperson

**Oversight** - Ending Solitary Confinement in New York City Jails.  
**Int 2173** - By Council Member Dromm, the Public Advocate (Mr. Williams), Council Members Lander, Reynoso, Rivera, Levin and Rosenthal - **A Local Law** to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails.  
Remote Hearing (Virtual Room 3).....10:30 a.m.

**Monday, December 14, 2020**

Committee on General Welfare

Stephen Levin, Chairperson

**Oversight** - Supportive Housing.  
**Int 2176** - By Council Member Levin - **A Local Law** to amend the administrative code of the city of New York, in relation to a supportive housing residents’ bill of rights.  
**Int 2177** - By Council Member Levin - **A Local Law** to amend the administrative code of the city of New York, in relation to outreach to unsheltered individuals.  
Remote Hearing (Virtual Room 3).....1:00 p.m.

Subcommittee on Landmarks, Public Sitings and Dispositions

Adrienne Adams, Chairperson

**See Land Use Calendar**  
Remote Hearing (Virtual Room 1).....2:00 p.m.

**Tuesday, December 15, 2020**

Committee on Cultural Affairs, Libraries & International Intergroup Relations

James Van Bramer, Chairperson

**Oversight** - The Impact of COVID-19 on Art and Cultural Educational Programming in New York City.  
Remote Hearing (Virtual Room 3).....10:00 a.m.

Committee on Environmental Protection

Costa Constantinides, Chairperson

**Oversight** - Climate Change and Air Quality: A Public Health Issue.  
**Int 2149** - By Council Members Constantinides, Treyger, Kallos and Rosenthal - **A Local Law** to amend the administrative code of the city of New York, in relation to establishing climate indicators.  
**Res 1469** - By Council Members Constantinides and Kallos - **Resolution** calling on nations around the world to implement, the United States Senate to approve, and the president to ratify a fossil fuel non-proliferation treaty.  
Remote Hearing (Virtual Room 2).....11:00 a.m.



**Tuesday, December 15, 2020 (Cont.)**

[Committee on Technology](#)

Robert Holden, Chairperson

**Oversight** - Benefits and Disadvantages of Cloud-Computing Systems.

**Preconsidered Int \_\_\_\_** - By Council Members Torres and Vallone - **A Local Law** in relation to an assessment of the feasibility of storing city agencies’ electronic data on cloud computing systems.

Remote Hearing (Virtual Room 1)..... 1:00 p.m.

**Wednesday, December 16, 2020**

[Committee on Contracts](#)

Ben Kallos, Chairperson

**Oversight** - Review of Agency Compliance with Local Law 63 of 2011 Requiring Cost-Benefit Analyses of Displacement of City Workers in Solicitations for Certain Contracts

Remote Hearing (Virtual Room 2)..... 10:00 a.m.

[Committee on Women and Gender Equity](#) jointly with the  
[Committee on Education](#)

Helen Rosenthal, Chairperson  
Mark Treyger, Chairperson

**Oversight** - The Impact of COVID-19 on Childcare in NYC.

**Res 1324** – By Council Members Louis, Cornegy, Treyger, Kallos and Chin - **Resolution** calling on the New York City Department of Education to partner with nonprofit organizations to provide on-site pro bono legal assistance at schools to help students and their families with housing issues.

**Res 1473** - By Council Members Louis, Treyger and Chin - **Resolution** calling upon the New York City Department of Education to provide families of children with disabilities the necessary training and equipment to properly enable distance learning.

Remote Hearing (Virtual Room 3)..... 10:00 a.m.

[Subcommittee on Zoning & Franchises](#)

Francisco Moya, Chairperson

**See Land Use Calendar**

Remote Hearing (Virtual Room 1)..... 10:30 a.m.

[Committee on Land Use](#)

Rafael Salamanca, Jr., Chairperson

**All items reported out of the Subcommittees  
AND SUCH OTHER BUSINESS AS MAY BE NECESSARY**

Remote Hearing (Virtual Room 1)..... 11:00 a.m.

[Committee on Oversight and Investigations](#) jointly with the  
[Committee on Public Safety](#)

Ritchie Torres, Chairperson  
Adrienne Adams, Chairperson

**Oversight** – Racism, Bias, and Hate Speech in the NYPD.

Remote Hearing (Virtual Room 4)..... 11:00 a.m.

**Thursday, December 17, 2020**

[Committee on Rules, Privileges & Elections](#)

Karen Koslowitz, Chairperson

**M 264** - Communication from the Bronx County Democratic Committee recommending the name of **Miguelina Camilo** to the Council regarding her appointment to the office of Commissioner of Elections pursuant to § 3-204 of the New York State Election Law.

**M 265** - Communication from Richmond County Democratic Committee recommending the name of **Patricia Anne Taylor Carsel** to the Council regarding her re-appointment as Richmond County Democratic Commissioner of Elections pursuant to § 3-204 of the New York State Election Law.

**M 266** - Communication from the New York County Democratic Committee recommending the name of **Tiffany Townsend** to the Council regarding her appointment to the office of Commissioner of Elections pursuant to § 3-204 of the New York State Election Law.  
 Remote Hearing (Virtual Room 1).....10:30 a.m.

***Stated Council Meeting (Virtual Room 1).....Agenda –1:30 p.m***

**Friday, December 18, 2020**

[Committee on Sanitation and Solid Waste Management](#) jointly with the Antonio Reynoso, Chairperson  
[Committee on Parks and Recreation](#) Peter Koo, Chairperson  
**Oversight** - Community Composting in NYC.  
 Remote Hearing (Virtual Room 1).....11:00 a.m.

The following comments were made by the Speaker (Council Member Johnson) during the Communication from the Speaker segment of this meeting:

The Speaker (Council Member Johnson) acknowledged the departure of two Council staffers: John Blasco and Breeana Mulligan. Mr. Blasco had been with the Council since 2014. He first served as a staffer for former Council Member Rosie Mendez and Council Member Carlina Rivera before joining the Community Engagement Division. The Speaker (Council Member Johnson) praised Mr. Blasco’s tireless efforts to help communities all across New York City. He thanked Mr. Blasco for his work at the Council and wished him the best. Ms. Mulligan, first deputy press secretary for the Speaker’s Office, had been with the Council since 2014. She first served as a staffer for Council Member Paul Vallone before joining the Communications Division in 2017 where she worked with the Speaker’s Office under former Speaker Mark-Viverito. The Speaker (Council Member Johnson) praised her dedication to her position and added that the entire Council had benefitted from her work. He expressed his appreciation and pride for her years of service and for her next step in life. The Speaker (Council Member Johnson) thanked Ms. Mulligan for all of her hard work at the Council.

The Speaker (Council Member Johnson) wished a happy birthday to Council Member Adams.

The Speaker (Council Member Johnson) wished everyone a happy and healthy Hanukkah. He wished a beautiful Festival of Lights celebration to all of his Jewish colleagues, to all Jewish New Yorkers, and to all Jewish people around the country and the world.

Whereupon on motion of the Speaker (Council Member Johnson), the Majority Leader and Acting President Pro Tempore (Council Member Cumbo) adjourned these proceedings to meet again for the Stated Meeting on Thursday, December 17, 2020.

MICHAEL M. McSWEENEY, City Clerk  
 Clerk of the Council