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Joint Testimony from the Office of Council Member Margaret S. Chin and the Office of the Manhattan Borough President Gale A. Brewer

Comments on the SoHo NoHo Neighborhood Plan Draft Scope of Work

CEQR No. 21DCP059M

ULURP Nos. Pending

The SoHo/NoHo neighborhoods are unique and treasured places in the historic fabric of New York City. SoHo/NoHo buildings are largely protected by Landmarks Preservation Commission (LPC) regulations, but the neighborhoods’ historic resources go far beyond its architecture. The special regulations dictated by the M1-5A and M1-5B zoning, which are only mapped in these two neighborhoods, have influenced the lifestyle and work of the community who live in these truly mixed-use buildings. For the last 50 years, the existing zoning has given artists and manufacturing businesses the opportunity to thrive. Additionally, as the retail landscape changed these two neighborhoods have transformed into the most prominent retail district in the nation. The unique components of these two neighborhoods deserve careful consideration in any future development in order to appropriately safeguard its existing historic character and the neighbors who live and work within them.

The Envision SoHo/NoHo Planning Process

In January 2019, Manhattan Borough President Gale Brewer and Council Member Margaret Chin initiated the Envision SoHo/NoHo engagement process. The pre-planning process engaged the Applicant, the Department of City Planning (DCP) as a third Process Sponsor and members of the SoHo/NoHo community (the Envision SoHo/NoHo Advisory Group) to examine key land use and zoning issues within the neighborhoods. The six-month engagement process involved over 40 meetings, including 6 public meetings/workshops, 17 advisory group meetings, and 8 focus group meetings with various resident and stakeholder groups.

While the process’s final report titled *Envision SoHo/NoHo: A Summary of Findings & Recommendations* did not specify a specific zoning proposal that provided zoning districts and maximum Floor Area Ratios (FAR), the report did outline some specific zoning recommendations that should be carefully considered.

Additionally, the report listed a number of opportunities to improve quality-of-life concerns and promote neighborhood economic vitality. These recommendations include:

- Maintaining Joint Live Work Quarters for Artists (JLWQA) as a permitted use and continue to coexist with other uses and residents;
- Exploring ways to affirm SoHo/NoHo’s heritage as an arts and cultural district and continue to allow art-making and maker uses to evolve and expand in place;
- Expanding opportunities for the creation of housing in the area, especially affordable housing;
- Ensuring that the height, scale and density of new buildings are in context with existing historic buildings and neighborhood built environment;
- Improving the enforcement of zoning rules, building codes, and other regulations;
- Improving the reporting, transparency, and tracking of rent regulated units and tenant harassment protections for rent regulated units;
- Exploring ways to provide rental assistance for low-income artist and other renters; and
- Developing pathways to legalize non-artist residents in SoHo/NoHo and modernize the artist certification process.
- Alleviating street and sidewalk congestion and implementing best practices for trash pick-ups, street cleaning, and loading/unloading commercial deliveries;
- Maximizing opportunities for open space, community space, and greenery;
- Allowing a wider range of as-of-right commercial uses on the ground floor and basement, while maintaining the special permit process for physical culture establishments and Use Group 10 commercial and retail units over 10,000 square feet;
- Considering scale, type, and hours of operation of eating and drinking uses, while maintaining current regulations on bars and entertainment establishments; and
- Providing predictable zoning rules that support small businesses such as independent retail and local services of an appropriate neighborhood scale.

Some of these concerns are largely omitted from the *SoHo/NoHo Neighborhood Plan Draft Scope of Work (DSOW) for an Environmental Impact Statement (EIS)* released on October 28, 2020. We also find that the DSOW and the DCP’s proposal include significant inaccuracies that must be corrected and technical mechanisms that must be elaborated upon. Our comments below reflect the order of tasks listed under “Proposed Draft Scope of Work for the EIS” (DSOW, 25). The Applicant is proposing zoning map amendments and zoning text amendments (the Proposed Actions).

Task 2: Land Use, Zoning and Public Policy

Affordable Housing

There are generally two ways to create new affordable units: through regulations, or with subsidies. The Mandatory Inclusionary Housing Program (MIH) is one such regulation that grants additional floor area in exchange for income-restricted units. During this time of our city’s economic downturn, the importance of taking every opportunity to create affordable units is clearer than ever, especially when additional subsidy is not required.

The COVID-19 pandemic has highlighted the inequities of our city as lower-income communities of color have been disproportionately impacted by the pandemic, and we know that vulnerabilities are experienced in multiplicity – lack of access to health care, open space, jobs, and housing are the underlying factors that have long contributed to these inequities. If we are truly striving for a more equitable and just city, our housing policy must look to integrate wealthier and whiter neighborhoods.

The area of SoHo/NoHo is one of the wealthiest in the city, and the recent planning work here has highlighted opportunities for the development of affordable housing through MIH. The DSOW anticipates the creation of 621 to 940 affordable units to be integrated over 84 development sites within the next ten years. These are units that would be created through no additional government subsidy and would remain permanent in perpetuity.

Mandatory Inclusionary Housing (MIH) Threshold

The Proposed Actions as outlined in the DSOW contemplate the application of the MIH rules as they stand today, but we believe that modifications should be made in order to ensure the MIH units will be developed in this neighborhood. As stated, “the [MIH] program requires permanently affordable housing set-asides for all developments over 10 units or 12,500 Zoning Square Foot (ZSF) within the MIH designated areas or, as an additional option for developments between 10 and 25 units, or 12,500 to 25,000 ZSF, a payment into an Affordable Housing Fund” (DSOW, 18).

The 10-unit and 12,500 ZSF threshold should be reduced in SoHo/NoHo to 0. In the Reasonable Worst Case Development Scenario (RWCDs), 21 projected or potential development sites are anticipated to be under or very close to the 12,500 ZSF threshold, therefore approximately 70 affordable units may not be built.

Use of Affordable Housing Fund

It is unclear whether the optional Affordable Housing Fund is guaranteed to only be used within the SoHo/NoHo district. The option for developers to simply pay into an Affordable Housing Fund rather than building affordable units in SoHo/NoHo undermines the intention of creating affordable housing opportunities within these neighborhoods. Because of limited public land and the number of private projects that are pursuing subsidies from the NYC Department of Housing and Preservation Development (HPD), the Affordable Housing Fund may not be applied to affordable housing projects within SoHo/NoHo. This effect significantly compromises the intent of integrating these neighborhoods and therefore is only appropriate for the smallest buildings of 0-12,500 ZSF of space, where this flexibility would be necessary.

Interim Multiple Dwelling (IMD) Units

The New York City Loft Board needs to be more aggressive about monitoring affordable and rent stabilized housing. The Board should work with HPD to develop a list of buildings and apartments that are rent stabilized and if necessary, a strategy for preserving them.

Existing Joint Live Work Quarters for Artists Units and Art Spaces

It is clear that the Joint Live Work Quarters for Artists (JLWQA) program is no longer working as it was designed to, as evidenced by an extreme drop in Department of Cultural Affairs (DCLA) artist certifications and lack of enforcement of certifications over the past couple of decades. The Proposed Actions intend to keep the JLWQA as an optional use, which would allow certified artists to more easily sell or rent their spaces and building owners to offer their units to a broader range of people. While we support these changes, additional actions should be taken to promote artist and maker uses in this historically artist community.

The proposed zoning for the Special SoHo/NoHo Mixed-Use District (SNMD) would allow for existing JLWQA units to remain and references a mechanism that would, “facilitate the voluntary transition from Use Group 17D JLWQA to Use Group 2 residential use with expanded home occupation provisions.” The mechanism would also, “be paired with conditions that support arts and culture uses and establishments

that broadly benefit the community and the public in and beyond the Project Area” (DSOW, 18). This mechanism remains undefined and must be clarified for how it intends to accomplish its stated goals.

Furthermore, the proposal is vague about expanding home occupations for work-live situations. Project Actions should include provisions for grandfathering existing uses to protect artist tenants currently residing in JLWQA units. All JLWQA units need to continue in perpetuity as affordable units.

Mapping Discrepancies

We ask that the DCP revisit their study of Projected and Potential Development Sites (DSOW, 21) as some of the listed lots are erroneous in building typology, height and size. We also ask that the list further include existing numbers of retail, commercial, manufacturing (including JLWQA) and residential uses.

A building-by-building analysis is imperative as some of the lots identified by the DCP may already be in demolition, development, or a private sale transaction, thereby precluding the lot as a Projected or Potential Development site for affordable housing analysis by the DSOW. One such example is the lot “DSOW ID 13” (358 Bowery) which was sold in 2019 along with nearby development rights. On December 2, 2020, the owner of that site filed a Department of Buildings application to demolish the structure that is on that site, highlighting the need for this application to be informed by the most up-to-date information as it moves through the public review process.

Retail and Office Space

Even though most people would characterize SoHo/NoHo as a major retail neighborhood, the majority of the M1-5A and M1-5B zoning district provisions do not allow as-of-right retail uses on the ground floor and basement levels. According to the DSOW, more than 90 CPC special permits were granted in this area between 2000 and 2019, and the New York City Board of Standards and Appeals (BSA) also granted variances over this period. It is clear that the existing zoning in SoHo/NoHo was created under economic circumstances that have not existed for some time, with the result being a constant stream of applications and approvals for CPC special permits and BSA variances. There is significant room for improvement in this outdated framework.

The Proposed Actions would change the current restrictions on retail and allow large-scale retail (defined as over 10,000 ZSF) as-of-right on the ground floor and basement levels throughout the area. The Envision SoHo/NoHo Advisory Group carefully contemplated what the right retail restrictions should be in the new framework. The general consensus was to allow a wider range of as-of-right retail and commercial uses on the ground floor and basement levels, while maintaining the special permit process for retail and use over 10,000 ZSF. We stand by these recommendations. Given the consistent mixed-use character of these neighborhoods, it is crucial to consider the quality of life impacts to the residents living above commercial uses. Large-scale retail tends to bring more frequent deliveries and trash hauls at all hours. Maintaining the special permit process for retail over 10,000 ZSF will give local residents a voice in the process when new large-scale retail is proposed.

The DSOW should furthermore consider an avenue for the conversion of existing office or commercial spaces to affordable units. While a post-COVID future remains uncertain at this time, there may be significant real estate impacts of companies choosing to discontinue their office leases in favor of working from home.

Community Alternative Zoning Plan for SoHo/NoHo

In December 2020, a coalition of neighborhood groups, including Village Preservation, drafted an alternative plan that offered an alternative set of principles for guiding any rezoning of the neighborhood. This plan should be analyzed before the proposed action moves forward.

Task 3: Socioeconomic Conditions

The DCP must broaden the scope of study of the SoHo/NoHo population to include data of the share of the community who identify as artists and an analysis of how many art making, art displaying, and art supporting units currently reside in the neighborhoods, and the number of existing JLWQA units that are currently occupied and vacant. This study should also include an analysis of the number of art spaces and art supporting spaces that have been lost in the last few decades. The definition of artist and art making spaces needs to be broadened and modernized.

The DSOW must fully consider the southeast and southwest portions of the SoHo/NoHo area for further study. The southwest area (bordered by Canal Street and 6th Avenue, listed in the DSOW Figure 4 as “SoHo West”) is generally a transitional area and the southeast area (bordered by Canal Street and Baxter Street, listed in the DSOW Figure 4 as “SoHo East”) adjoins Manhattan Chinatown. Both areas have a different neighborhood character compared to the core of SoHo/NoHo and deserve their own analysis of socioeconomic conditions to fully understand their neighborhood needs.

Task 4: Community Facilities and Services

School and University Facilities

There have been conversations over many years about the potential for a school on the New York University (NYU) campus, and NYU is committed to working with New York City School Construction Authority (SCA) to site a school there if one is needed. Many community members have discussed the possibility of moving forward with a special needs school at this site and we urge the SCA and the New York Department of Education (DOE) to work closely with our offices to advance this proposal. We cannot responsibly add thousands of units of new housing units into the neighborhood without advancing schools at these sites.

The DSOW must include data for current school enrollment numbers in SoHo/NoHo and projected enrollment and school seat data for elementary, intermediate, and high school levels according to the Reasonable Worst Case Development Scenario (RWCDs), which estimates that approximately 1,683 new Dwelling Units will be added to the area. Additionally, the DSOW analysis must analyze libraries, childcare centers, police stations, fire stations, and health care facility needs. Due to the oversaturation of university dormitories in the neighborhood, we request that community facilities further stipulate a provision that there will be no dormitory or live-in use.

The Envision SoHo/NoHo Advisory Group supported the idea of a density development bonus in exchange for the provision of artist and art supporting spaces. The possibility of an additional 0.5 Floor Area Ratio (FAR) bonus for the provision of artist and art supporting space on the ground floor and basement levels should be studied. It is important that these spaces be visible to the public at the ground floor. Should a developer choose to apply for this community facility bonus for art making purposes, the SNMD must further stipulate that the community facility use will be made a permanent use.

Any new residential floor area for developments, enlargements and conversions containing significantly large existing buildings would require certification by the City Planning Commission (CPC) Chairperson (See *Non-Residential Floor Area Retention* on DSOW, 18). This certification would also require that non-residential floor area be retained at a one-to-one ratio in larger buildings. We ask that “significantly large existing buildings” be defined. Furthermore, this provision should be studied to encourage artist and artist supporting spaces in these buildings. The one-to-one ratio requirement could be reduced to 0.5-to-1 FAR

if artist or artist supporting spaces are provided on the ground floor and basement levels.

Task 5: Open Space

It is no surprise that SoHo/NoHo lacks open space. In fact, the large floor plates of buildings are a big part of what gives these neighborhoods such unique character. As there are very few publicly owned sites in the surrounding area, we urge the Administration to explore, in tandem with NYC Department of Parks & Recreation, any green space opportunities in the neighborhood, and if needed, include disposition actions in the bundle of land use actions to facilitate infill for community facilities or affordable housing units. A few examples include 70 Mulberry Street in Community Board 3 and the Department of Environmental Protection (DEP) sites at Bowery Street and East 4th Street (planned as new open space construction) and at Grand Street and Lafayette Street (142 Grand Street), which was previously presented in an LPC public hearing on June 25, 2019 as a new passive open space for the public.

As the Proposed Actions seek to promote this character in new development, opportunities to create new open spaces at the ground level will likely not be realized. Green spaces and trees provide an incredibly important ecological value to New Yorkers and help to keep the city cool during increasingly hot summers. The City Council passed Local Laws 92 and 94 of 2019, which require buildings to dedicate a portion of their roofs to renewable energy or green roofs. In SoHo/NoHo, extra incentives should be considered in order to increase the likelihood of green roofs in this area that is so lacking in open space.

Task 6: Shadows

We ask that the DSOW consider the impact of shadows upon open space, parks, individual landmarks, and the historic district as a whole, as its architectural elements could very well be compromised. We also ask that the DCP consider artist live-work spaces within buildings that could be adversely impacted by shadows, for example, indoor photography studios with spaces that depend on natural light. One artist pointed out that her large, industrial windows are required for her to do her work, and any blocking of sunlight would destroy her ability to make a living.

Tasks 7, 8, and 19:

Historic and Cultural Resources, Urban Design/Visual Resources, Neighborhood Character

About 80 to 85 percent of the Project Area is located within the SoHo Cast Iron Historic District and its extension, the NoHo Historic District and its extension, and the NoHo East Historic District, allowing the LPC substantial regulatory oversight throughout the area. While LPC review will certainly help to ensure that the character of future development is harmonious with the existing buildings, a public facing document that outlines specific guidelines for the architectural character of future development should be created with assistance and input from the LPC and the broader community. This will help alleviate the administrative burden on the LPC and give community members an additional voice in the process.

We request that the DSOW include an adaptive re-use study of any distressed, historical buildings in the neighborhood. We also request that the DSOW study the possibility of any archaeological remains and artifacts from historical burial grounds that were prevalent in the history of Lower Manhattan.

Tasks 9 – 11: Natural Resources, Hazardous Materials, and Water and Sewer Infrastructure

There are significant and unaddressed environmental concerns prevalent in the southern and southeast zones of the Project Area (listed in the DSOW Figure 4 as the “Canal Corridor” and “SoHo East”) which were historically swampland. There are ground stability issues at Canal Street that could be a detriment to any new construction around or near historical buildings in the area. Additionally, the Canal Street intersections at Broadway and Grand Street experienced some of Lower Manhattan’s worst flooding in the aftermath of 2012 Hurricane Sandy.

The DSOW must include the environmental implications of historic automobile related services located in the Project Area. This area, nicknamed “Gasoline Alley,” was home to a considerable number of gas stations and automobile repair shops. This includes a previous gasworks facility at the southeast corner of Centre Street and Baxter Street that went through a New York State Department of Environmental Conservation (DEC) Voluntary Cleanup Program in January of 2018 (Consolidated Edison (CE) – Hester St. Gas Works, DEC Site # V00528).

The DSOW should further outline if the increase in neighborhood building densities would affect street-level wind conditions and an increase of ground-level particulates.

Task 12: Solid Waste and Sanitation Services

Quality of Life

The mixed-use character of SoHo/NoHo continues to raise a number of quality of life concerns that are distinct to the neighborhood. The Envision SoHo/NoHo Advisory Group made recommendations around loading zones and waste pick-ups that must be addressed as part of this proposal. It is possible that these issues are outside of the bounds of zoning. However, the commitments in the DSOW must be meaningfully upheld. The scope of work acknowledges that “although not part of the proposed zoning actions... strategies outside of zoning would be developed to work in unison to support broader planning goals such as improving public realm management (e.g., retail delivery and loading management) and supporting the arts and creative industries in SoHo/NoHo)” (DSOW, 13).

The prevalence of SoHo/NoHo’s through-block buildings and narrow streets are of concern for deliveries and waste removal. The DSOW should consider the impact of increasing commercial spaces for the area upon pedestrian and vehicular movements, in particular the areas of Bleecker Street, Spring Street, Mercer Street, and Crosby Street.

We strongly encourage consideration of the following strategies for deliveries and trash pick-ups made by the Envision SoHo/NoHo Advisory Group:

- Develop a vending action plan with improved strategies that ensure pedestrian safety while allowing continued vending;
- Conduct a comprehensive parking and loading and unloading study to improve conditions and enforcement;
- Create a coordinated district-wide loading plan for deliveries;
- Prioritize or require delivery technologies that are quieter;
- Coordinate with the New York City Department of Sanitation’s Commercial Waste Zones program;
- Work with landlords to implement best practices in lease terms, e.g. require that trash be stored inside buildings until pick-up; and
- Define community standards, e.g. “optimal hours of operation” with the aim to guide private carters’ bidding that serves commercial businesses.

Tasks 13 - 17: Energy, Transportation, Air Quality, Greenhouse Gas Emissions, and Noise

The COVID-19 pandemic has brought upon us an unprecedented time in the city's history and we are still experiencing the impacts that it has left on the urban landscape. With businesses being conducted from home, we have seen the closure of a number of SoHo/NoHo retail spaces and restaurants that previously depended on pedestrian foot traffic.

We ask that the DSOW carefully scrutinize any environmental data collected after March 2020 and take into consideration that the presented data is not representative of the pre-COVID-19 conditions of the SoHo/NoHo neighborhood. Collected data on vehicular traffic, pedestrian foot traffic, subway use, energy, noise, and air quality must be re-evaluated to account for pre-COVID-19 levels. The DSOW notes that, "... due to the ongoing COVID-19 pandemic, field measurements of noise levels may not represent expected noise exposure at the proposed project... if the current traffic pattern is not deemed representative, "existing condition" noise levels would be established using a combination of noise levels measured within and adjacent to the rezoning area for previous environmental reviews, mathematical models, add projections of typical vehicular traffic volumes. The specific methodology and technical approach for the establishment of existing condition noise levels will be described in a memorandum submitted to the lead agency for comment and approval" (DSOW, 48).

This procedure must be appropriately conveyed to all the partners listed in the DSOW for these sections that will be consulted for impact analyses; National Grid, the Mayor's Office of Sustainability (MOS), the New York City Department of Transportation (DOT), the Metropolitan transportation Authority-New York City Transit (MTA-NYCT), and the New York City Department of Environmental Protection (DEP).

Task 18 and 20: Public Health and Construction

Now more than ever, it is imperative that construction impacts be reviewed in tandem with public health impacts. These include any and all unmitigated significant adverse impacts from conditions related to air quality, hazardous materials, noise, as well as transportation systems and construction staging impacts on vehicular and pedestrian traffic. Both the Project Development Sites and Potential Development Sites must be analyzed for construction impacts to the area and additionally their impacts to public health, within the 10-year analysis period as stated by the DSOW. The geographic area for analysis must include lots that straddle the Project Area, for conservative analysis purposes.

The analysis of construction impacts must also include analysis and mitigations for historical building damage, as many adjacent properties to listed projected development sites are landmarked properties. The construction study must also include impacts to subgrade water, storm, and sewage channels, unstable ground, and existing building foundations.

Conclusion

While we largely support the inclusion of MIH and affordable housing in the SoHo/NoHo neighborhoods and the opportunity to remedy the many pre-existing quality-of-life concerns, we are troubled that the City has decided to pursue a rezoning at this time of a nation-wide emergency and recovery period. We ask that the DCP carefully scrutinize all collected data to ensure that records are representative with pre-COVID conditions and that any public hearing processes for the scoping for environmental documents and Uniform Land Use Review Procedure (ULURP) are upheld to the highest standard for proper community dialogue and discussion. We ask that the DCP work closely with the LPC to identify,

conserve, and protect the longstanding landmarked buildings in the SoHo/NoHo historic district and that tenant protections for live-work spaces are upheld in any transition.

This is an important opportunity to modernize outdated zoning to better reflect current conditions of the SoHo/NoHo neighborhoods. However, the mixed-use legacy and unique neighborhood character that originated from historical zoning measures must be protected and celebrated.

We look forward to continue working with the DCP on this important project.