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February 12, 2024

Hon. Eric Adams
Mayor
City Hall
New York, NY 10007

Daniel Garodnick
Chair
Department of City Planning
120 Broadway, 31st Fl.
New York, NY 10271

RE "City of Yes" Economic Opportunity
Proposed Zoning Text Amendments
ULURP Number: N240010ZRY

Dear Mayor Adams and Chair Garodnick,

At the recommendation of the Clinton/Hell's Kitchen Land Use and the Chelsea Land Use Committees, Manhattan Community Board 4 (MCB4) at its February 7, 2024, meeting voted by a count of 35 in favor, 0 opposed, 1 Present-not-eligible, and 0 abstentions to **deny the proposed citywide zoning text amendments under the City of Yes for Economic Opportunity unless significant changes are made.**

Background

On November 8, 2023, Department of City Planning staff presented the proposed citywide zoning text amendment, City of Yes for Economic Opportunity (COYEO), to a joint meeting of MCB4's Clinton-Hell's Kitchen Land Use (C/HKLU) and Chelsea Land Use Committees (CLU). Questions from that joint meeting, plus questions from MCB4's Transportation Committee (TPC) and the Housing, Health, and Human Services Committee (HHHS) were gathered and submitted to DCP staff for follow up. Responses to those questions were circulated to the

respective committee members, and DCP staff joined the C/HKLU committee meeting on January 10, 2024, to discuss the issues in greater detail.

MCB4 wants to express special gratitude to DCP staff members Matt Waskiewicz, Andy Cantu, Abby Rider, and Jennifer Gravel for their collective and attentive engagement with our committee members.

Overriding Concerns about the Proposed Zoning Text

The proposed zoning text amendments are a major updating of commercial uses and how they are permitted within residentially zoned neighborhoods and residential buildings. MCB4 is generally in support of revisions to the zoning resolution to allow for expanded economic opportunities throughout the City. It is important for zoning text to change to reflect new means of work and life in today's society, especially the emergence of remote work. However, zoning text amendments cannot be a one size fits all; many of the proposed citywide text amendments do not work as intended at the neighborhood level. The proposed zoning text amendments need to address specific concerns of individual neighborhoods and different community districts.

MCB4 has three major and overriding concerns regarding this proposal:

1. The unintended consequences impacting existing apartments and households in existing residential buildings.
2. The lack of enforceability of the proposed changes and the lack of enforcement capacity of multiple agencies in protecting existing households under the proposed changes.
3. The broad language applying across the city without regard of the unique and diverse characteristics of individual neighborhoods across New York City.

Overall Recommendations

MCB4 recommends DCP institute three overriding changes to the proposed zoning text amendments and a companion City budget action.

Housing Issues

New York City continues to experience an affordable housing crisis. MCB4 recognizes and agrees with the intent of the proposed zoning changes designed to facilitate more business activity by updating outdated zoning classifications. However, as proposed text amendments will have a negative impact on the existing housing stock. MCB4's main concern is that residential quality of life will be diminished through the introduction of commercial uses into existing residential buildings.

The proposed zoning text amendments allow for retrofitting existing residential buildings to allow higher percentages of commercial/retail uses. This action will create internal conflicts, enforcement issues, and serious noise concerns. MCB4 has local knowledge and experience of such conflicts in buildings throughout Hell's Kitchen and Chelsea. Residential buildings are not designed to accommodate the noise, vibrations, pedestrian traffic, deliveries, and waste disposal of commercial activities.

MCB4 has seen the impact of AirBnB usage decreasing available housing stock and remains concerned that a movement towards increasing commercial definitions into residential buildings will open an opportunity for “hotel” style lodging to proliferate.

The proposed text amendment would allow for mixing residential and commercial uses in the same building. Many of the mechanisms to properly protect and separate residential from commercial uses for privacy and security are suitable for new construction or office conversion to residential use, but difficult, costly or impossible in an existing residential building.

MCB4 supports the concept of mixed use but recommends the proposed zoning text apply only to new buildings or commercial conversions constructed or renovated after the zoning text referral date.

Concurrent Enforcement Funding and Penalties

Much of the proposed language in the zoning text amendments would necessitate increased enforcement, as highlighted by the presentation and subsequent answers to our questions posed to Department of City Planning (DCP) staff. Some of the enforcement agencies named include the Department of Buildings (DOB), Department of Transportation (DOT), Department of Consumer Affairs (DCA), and Department of Environmental Protection (DEP).

MCB4 experiences the challenges faced when city agencies do not have the staffing levels needed for enforcement:

- NYC DOB allowing illegal demolition of 170 apartments in 24 residential buildings Special Zoning Districts which prohibits demolition of residential buildings, due to lack of experienced plans examiners.
- NYC HPD allowing buildings with hundreds of housing code violations, with tenants living in hazardous and unsafe condition, due to lack of code enforcement inspectors and legal staff to bring civil actions to cure such violations.
- NYC DOT struggling to manage sidewalk sheds left in place for years, promoting illegal activity and unsafe streets, due to lack of enforcement agents.
- NYS OCM not shutting down the proliferation of illegal cannabis shops due to lack of a staff and the creation of any enforcement strategy.

Today, these city agencies, **with their current staffing**, have difficulty enforcing existing regulations. For example, as of January 30th, DEP employs 65 people for air and noise inspections for the entire city¹. Without a concomitant increase in enforcement funding, these agencies will not be able to enforce these new regulations.

The Mayor’s Office and the City Council must come to an agreement, as part of the review and approval of this zoning text, for increased and dedicated staffing at DOB, DEP, DCA, and DOT to enforce the new proposed zoning text to protect residential apartments and residents in order to preserve the current residential quality of life throughout the City.

¹ Per DEP Director of Noise Abatement

A schedule of increased penalties for violations of the proposed zoning text must be developed by affected agencies. Further, a time frame to adopt such penalties and an enforcement budget must be agreed to as part of this zoning action, so they can be noticed in the City Record and adopted, concurrently or soon after the adoption of these proposed zoning text amendments.

City-Wide Approach vs. Local Zoning Requirements

The proposed text amendment does not account for the specificity of the different Special Zoning and Historic Districts around the City. MCB4 appreciates the statements and the intent to protect our Special and Historic Districts. However, this proposal's wholesale approach has the distinct potential to run roughshod over our residential areas, diminish residential quality of life, and undermine the strength of our commercial districts. These Special Zoning Districts represent a nuanced and carefully crafted balance of preservation and development, which has allowed major increases in commercial and residential density to benefit both the City and the Westside.

The proposed zoning text must be modified, in specific areas, not to undermine the carefully crafted language in the Westside Special Zoning Districts—Special Clinton District, Special Hudson Yards District, Special Garment Center District, Chelsea Historic District, West Chelsea Historic District, and the Special West Chelsea District.

Specific to Hudson Yards, the changes to the Parking sections in Article 1 – Chapter 3 Comprehensive Off-Street Parking and Loading are extraordinarily broad, ubiquitous and near impossible to follow even for people used to reading zoning text. It is not clear whether there are just changes in nomenclature or if substantive changes are included. The revised language must maintain the terms of the Hudson Yards Parking that was the result of litigation. Circulating such a draft cannot be considered a proxy for consultation and transparency as mandated by ULURP and the City Charter.

MCB4 opposed these changes unless the Hudson Yard Parking language is maintained in its entirety and City Planning creates and circulates a summary document that allows the public to comment before seeking approval.

Zoning Text Sections Proposal Categories

The COYEO proposal includes 18 different category changes to the zoning code. Below are MCB4 concerns or issues within each of the DCP specific categories.

1. Lift time limits to reactivating vacant storefronts.

This zoning text has been in effect since 1973 under NYC ZR, Section 96-106. It has been successful in maintaining small scale commercial use in the midblock R8 districts, providing a vibrant street life.

MCB4 supports this zoning text amendment.

2. Simplify rules for business types allowed on commercial streets.

MCB4 opposes this zoning text amendment unless provisions are included in the text to protect residential tenants against noise and vibrations from physical cultural establishments (gyms), event space, and dance studios; against offensive odors or dust from agricultural businesses; and against the sale of agricultural products not produced on the same zoning lot.

3. Expand opportunities for small-scale clean production.

MCB4 supports the expansion for small scale clean production with conditions requiring that:

- ***Provisions are included in the text to protect residential tenants against noise and vibrations from physical cultural establishments (gyms), event space, and dance studios; against offensive odors or dust from agricultural businesses; and against the sale of agricultural products not produced on the same zoning lot.***
- ***Provision to include resolution of compliance for fire sprinklers, fire safety plans, and fire egress in buildings with fire escapes***
- ***Provision to include resolution of compliance for ventilation to meet minimum distances from residential window and fire escapes***
- ***Provision to include funding and enforcement mechanisms for DOB enforcement fire egress and ventilation requirements***

4. Modernize loading dock rules so buildings can adapt over time.

MCB4 takes no position on this proposed text amendment.

5. Allow commercial use in residential buildings on the same floor as or above floors with residential use.

This proposal seems contrary to the City's overarching goal of preserving and creating affordable housing. This proposal will accelerate the loss of affordable and market rate housing. The proposed protections for residents in mixed use buildings are inadequate based on our experience of such configurations.

This amendment would require retrofitting, which may not be adequately possible in many existing buildings. A 15-foot vertical and/or horizontal buffer or partition wall is simply not enough to separate commercial and residential uses. Businesses with deliveries or in-person customers will generate additional foot traffic in residential buildings disturbing quality of life and burdens on the physical components of the buildings (i.e.: elevators, stairwells, and hallways).

In buildings not built for such a mixture of uses, locating commercial uses above residential uses will generate immediate conflict. They will create significant adverse impacts not only to residents in the buildings but also to residents in adjoining buildings. This proposed action will put a major burden on agencies to inspect, issue summonses, enforce code violations and litigate if not resolved.

Rooftop commercial use severely impacts quality of life. Promoting active rooftop space is contradictory with the proposals of the City of Yes, Environment, where roof tops would be equipped with solar panels and green roofs. Bars and event space on roofs are extremely disruptive to the building residents and to residents in the surrounding buildings.

24/7 vibrancy is welcome in concept, but not at the expense of residential quality of life.

MCB4 opposes this zoning text amendment unless it is limited in use to new construction or office building conversion approved by the DOB after the zoning text referral date. This text must not apply to existing residential buildings.

6. Simplify and modernize how businesses are classified in zoning.

MCB4 takes no position on this except to ensure the current protections for our Special Districts must be maintained in this section.

7. Clarify rules to permit indoor urban agriculture.

MCB4 opposes this zoning text amendment unless provisions are included in the text:

- ***To restrict the use of toxic chemicals, notably nitrates.***
- ***To ensure odors and dust do not disturb existing residents.***
- ***To ensure structural stability of existing buildings, plus inclusion of additional funding for various agency inspections.***
- ***To ensure electrical, water, and sewer uses for agricultural businesses do not conflict with or impair existing residential use.***
- ***To ensure deliveries and waste removal do not negatively impact residential quality of life.***
- ***To prohibit commercial growth of cannabis in any building containing residential uses.***

8. Give life sciences companies more certainty to grow.

MCB4 does not have enough information to take a position at this time. MCB4 needs more information on the life science developments in other neighborhoods of Manhattan before determining a position.

9. Support nightlife with common-sense rules for dancing and live entertainment.

MCB4 believes that the proposed zoning changes allowing ticketed events at venues with capacities under 200 people risks compromising reasonable residential quality of

life. Allowing smaller venues -- which are often located in or surrounded by residential buildings -- to publicize events with specified showtimes, however, creates a serious risk that noisy, disruptive lines of patrons will form on the sidewalks outside the venues, disturbing nearby residents.

MCB4 believes that allowing dancing in venues under 200 people risks transforming such venues from relatively quiet restaurants and bars into noisy nightclubs where dancing is a central feature or attraction. We have learned that such clubs are significantly more disruptive to residents living above or near them than are typical restaurants and bars. Although MCB4 has no objection to incidental, occasional dancing by patrons of small venues, we believe allowing small venues to promote or feature patron dancing would be problematic.

MCB4 supports the proposed text for use of storefronts for dancing and live entertainment with capacities under 200 people with conditions:

- ***For venues under 200 people, the zoning allows events with specified showtimes only if the venue can accommodate patrons waiting for the event within the venue itself (rather than in sidewalk lines).***
- ***Zoning text modification to allow dancing in small venues only with no advertised or promoted dancing other than in connection with other venue events, and if the venue does not have a demarcated dance floor or other designated space specifically for patron dancing.***

10. Create more opportunities for amusements to locate.

MCB4 believes that amusement uses are not appropriate for C1 and C2 uses. These uses could absorb multiple storefronts with entirely indoor uses which decreases pedestrian street traffic. If a version of this text amendment is approved, the consolidation of multiple storefronts to accommodate amusement facilities should be prohibited and zoning protections are implemented to protect residential tenants against noise and vibration.

MCB4 opposes this zoning text amendment.

11. Enable entrepreneurship with modern rules for home-based businesses.

While MCB4 supports the movement towards more “Work from Home” environments and the need to revise zoning to allow for such changes, we have serious concerns about this proposal. Notably:

- The increase in the proposed amount of available commercial activity in residential buildings could lead to a reduction in housing units, both affordable and market rate.
- The proposal of using 49% of a residential apartment for business and having 3 employees on any residential floor will create conflict among neighbors.

- Customer Facing businesses, with multiple deliveries, will negatively impact the quality of life for existing residents, and the community.
- Allowing mix of commercial uses into residential buildings, i.e., a home office employing up to five people, brings not only workers, but customers of the business, creating problems for security and predictability, and is contrary to the peace and quiet enjoyment of a residential building.
- There are no indications that structural and physical issues will be addressed such as separate entrances, stairwells, hallways, and elevators for employees, customers, and deliveries, to ensure both security and privacy for residential tenants or owners.
- There is no language included to protect residents against hazardous situations such as fumes, high heat, and toxic chemicals (e.g.: situations with uncertified e-bike batteries, manufacturing supplies, and manufacturing waste).
- Allowing a manufacturing use in a residential building is a step backwards to 19th century practices of abusive cottage industries with attendant serious labor violations.
- Based on responses from DCP, this proposal will require enforcement of multiple issues across multiple agencies including HPD, DOHMH, FDNY, NYPD, and DOB.

MCB4 recommends removing this proposed zoning text, at this time, until further study can be completed to address these concerns and funding can be secured for the additional enforcement requirements.

12. Introduce corridor design rules that ensure buildings contribute to surroundings.

MCB4 supports this proposed text as long as the current zoning protections for our Special Districts are maintained and not in conflict with this proposal.

13. Reduce conflicts between auto repair shops and pedestrians.

MCB4 continues to work to protect sidewalk access for pedestrians and supports any efforts to keep sidewalks clear of commercial activity.

MCB4 takes no position on this proposed text amendment.

14. Encourage safe and sustainable deliveries with micro-distribution.

MCB4 supports the proposed text for use of storefronts for micro-distribution with conditions:

- ***Add zoning text to prohibit uncertified e-bikes and battery storage in residential buildings.***

- ***In a companion administrative action, the City needs to offer financial incentives to move micro-distribution businesses off the street into leased properties, inclusive of loading, parking, and distribution.***

15. Facilitate local commercial space on residential campuses.

MCB4 supports this proposed text for the integration of commercial space in large residential campuses (i.e.: NYCHA) as long as environmental protections and traffic mediation measures are required as part of such proposed use.

16. Create process for allowing corner stores in residential areas.

MCB4 does not have enough information to take a position, at this time. MCB4 requires further information on the impact of such zoning on other Manhattan neighborhoods before taking a position.

17. Rationalize waiver process for adapting spaces for industries like film.

MCB4 supports the development of film and television studios in the MCD4.

However, MCB4 has experienced issues with proposed film studio development that conflicts with the Special Clinton District. In the spring of 2003, the Studio City ULURP application, Number C010136PPM² proposed the construction of a 14-story, 250-foot-high structure on 11th Avenue between West 43rd and West 44th Street; the application was ultimately withdrawn.

The 2009 West Clinton Rezoning³ carefully negotiated bulk and density modifications to avoid future conflicts with proposed developments.

MCB4 supports the proposed revisions with modifications:

- ***That the text be modified to require a Special Permit, instead of a CPC authorization, in Area C-2 of the Special Clinton District, pursuant to Section 96-332 of the Special Clinton District.***

18. Create new kinds of zoning districts for future job hubs.

MCB4 does not have enough information to take a position at this time. MCB4 requires further information on the impact of such zoning on other Manhattan neighborhoods before taking a position.

MCB4 encourages the plan to promote economic activity and the aspirational goals of the City in undertaking this endeavor. However, the potential for the reduction of housing units, the possible

² Studio City ULURP: <https://zap.planning.nyc.gov/projects/P2001M0104>

³ [West Chelsea Rezoning](#)

negative impact on the quality of life on existing residents, and the need for increased enforcement resources as a result of the proposed zoning text amendments calls for greater study and understanding of the consequences of this action.

Sincerely,



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Manhattan Community Board 4



Kerry Keenan
Co-Chair
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Jeffrey LeFrancois
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Cc: Hon. Adrienne Adams, Speaker, NYC Council
Hon. Erik Bottcher, NYC Councilmember
Hon. Rafael Salamanca, Jr., Chair, NYC Council Committee on Land Use
Hon. Mark Levine, Manhattan Borough President
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