

CITY PLANNING COMMISSION

December 7, 2005 / Calendar No. 10

N 060046(A) ZRM

IN THE MATTER OF a revised application submitted by the Department of City Planning, Councilmember Christine Quinn, and Manhattan Community Board 4, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, relating to Article IX, Chapter 3 (Special Hudson Yards District), Article IX Chapter 6 (Special Clinton District), and Article XII Chapter 1 (Special Garment Center District), Community Districts 4 and 5, Borough of Manhattan.

The application for the zoning text amendment N 060046 ZRM was filed by the Department of City Planning, Councilmember Christine Quinn, and Manhattan Community Board 4 as joint applicants on August 4, 2005. On November 23, 2005, a revised application N 060046(A) ZRM was filed.

BACKGROUND

In January 2005, the several applications related to the Hudson Yards and intended to revitalize Manhattan's Far West Side were approved by the City Council. The applications included establishing a new Special Hudson Yards District to facilitate the expansion of Midtown's central business district, expand residential neighborhoods, and regulate development adjacent to new parks and open space and connections to a proposed expansion of the Number 7 Subway Line. During the public review the need for additional text changes requiring subsequent action were identified. Subsequently, the need for other text changes to clarify the approved text, eliminate inaccurate references in the text, and add new provisions consistent with the intent of the text were also identified. The proposed zoning text amendment, N 060046 ZRM, filed on August 4, 2005 includes these additional text changes.

The area affected by the proposed text changes includes the Special Hudson Yards District, the Perimeter and Preservation Areas of the Special Clinton District, and the P2 Area of the Special Garment Center District. These areas are generally bounded by West 30th Street on the south, Eighth Avenue on the east, West 59th Street on the north, and Eleventh Avenue on the west.

The original application, N 060046 ZRM, for the text change included 18 items encompassing affordable housing, development controls, and clarifications and corrections. In response to

extensive comments made on one aspect of the proposed 18 items (relating to the theater bonus in Subarea 2 of the 42nd Street Perimeter Area of the Special Clinton District (Section 96-25)), on November 23, 2005, the application was split into two parts (N 060046 ZRM and N 060046 (A) ZRM). This will allow the 17 items that have achieved a high degree of consensus to proceed (N 060046(A) ZRM) while permitting further review and discussion of the theater bonus. The revised application, N 060046(A) ZRM, also includes two additional technical clarifications and is the subject of this report.

The proposed zoning text changes are described below.

Special Hudson Yards District

Affordable Housing

Change the Inclusionary Housing Program in a portion of Subdistrict C to it make consistent with the remainder of Subdistrict C (Section 93-222)

The proposed text change would modify the base FAR and the Inclusionary Housing Bonus program that is applicable for the lots between West 33rd and West 35th streets, Eighth Avenue and 100 feet east of Ninth Avenue in Subdistrict C (34th Street Corridor).

The current base FAR in this area for residential development is 7.5 FAR with a bonus to 10.0 FAR through the District Improvement Bonus (DIB) (Section 93-31) and a bonus from 10.0 to 12.0 FAR through the Inclusionary Housing Bonus (Section 23-90). The proposed text change would adjust the base FAR to 6.5, with an increase to 12.0 FAR through the DIB (Section 93-31) and the Special Hudson Yards District Inclusionary Housing Bonus mechanism (Section 23-90 as modified by Section 93-23). Floor area increases above the base FAR would be increased by five square feet pursuant to the DIB for every six square feet pursuant to the Special Hudson Yards District Inclusionary Housing Bonus.

Change the base FAR in a portion of Subarea D1 to make the Inclusionary Housing Program consistent with the remainder of Hudson Yards (Section 93-223(a))

The proposed text would change the base FAR that is applicable for property located between the centerline of the blocks between West 40th and West 41st streets and from Hudson

Boulevard to 150 feet east of Tenth Avenue in Subarea D1 of the Hell's Kitchen Subdistrict (Subdistrict D).

The current base FAR in this area for residential development is 7.5. The proposed text change would make the base FAR 6.5, consistent with the remainder of Subarea D1. The mechanism for floor area increases above the base would not be changed. Floor area increases above the base FAR would be increased by five square feet pursuant to the DIB for every six square feet pursuant to the Special Hudson Yards District Inclusionary Housing Bonus mechanism (Section 23-90 as modified by Section 93-23).

Definitions of "administering agent" and "fair rent" amended (Section 93-231)

The proposed text changes the definition of "administering agent" as the entity responsible for carrying out the low income plan. The current provision is that the administering agent would be a non-profit institution unless the Commissioner of the Department of Housing Preservation and Development (HPD) determines that such a qualified institution could not be secured to serve that role. The proposed text change would allow the Commissioner to designate the same entity responsible for carrying out the requirements of city, state or federal housing assistance programs utilized by the lower income housing, to also serve as administering agent for Inclusionary Housing purposes.

The proposed text change would correct an omission in the definition of "fair rent" in order to allow all "lower income housing" to carry debt. The adopted zoning text allows only "moderate" and "middle" income housing to carry debt. By allowing "low" income units to carry debt at the discretion of the HPD Commissioner, the proposed text change would allow the use of more programs for the creation of "lower" income housing. Additionally, the HPD Commissioner may determine that rents satisfying city, state, or federal programs would qualify as fair rent, so long as they do not exceed 30 percent of a "moderate income" or "middle income" household's income.

Lower Income Housing Requirements (Section 93-233)

The proposed text change would allow the insurance provisions of Section 23-94(g) to be

modified by the HPD Commissioner to provide priority for lenders participating in the financing of lower income housing that is assisted under city, state or federal programs.

The permits and certificate of occupancy provisions of paragraph (f) of Section 23-94 shall not apply; in lieu thereof, the new provisions in paragraph (d) of this section shall apply. The proposed provisions would not allow the Department of Buildings (DOB) to issue building permits for bonused floor area unless a low income plan for the development has been approved by HPD. Additionally, no temporary or permanent certificate of occupancy could be issued for the bonused floor area unless such a certificate of occupancy has been issued for each unit of low income housing. Currently, these restrictions apply to all floor area in the building.

In addition, for preservation projects not requiring a new certificate of occupancy, the HPD Commissioner would need to certify compliance with the requirements of the lower income housing plan before DOB grants a temporary or permanent certificate of occupancy for the bonused floor area.

The proposed text change would allow the HPD Commissioner to waive the size and distribution requirements of Section 23-941(b) for Inclusionary Units where the requirements are inconsistent with the requirements of city, state and federal programs.

Harassment and demolition provisions for Hudson Yards (Section 93-90)

The proposed text change would add this new section to the Special Hudson Yards District and provides a process to evaluate whether harassment of tenants has occurred. If harassment is found, the proposed amendment would impose zoning-based remedies that would be in addition to any other legal penalties. The provision responds to the concerns raised by the Community Board and the City Council that there be additional protections for existing residential units.

Hell's Kitchen Midblocks

Prohibit ground floor conversions to commercial use in Hell's Kitchen Midblocks (Section 93-124)

Within the R8A/C2-5 area of Subdistrict D (Hell's Kitchen Subdistrict), specifically Subarea D4,

the proposed text change would prohibit the conversion of existing residential units on the ground floor to commercial use. This change would ensure that no current residential units located on the ground floors would be replaced with commercial use. The proposed text change would not change the ability for new developments in Subarea D4 to have ground floor commercial uses in mixed-use residential developments.

Use and Location of Parking Facilities in Subareas D4 and D5 (Section 93-82)

The proposed text change would amend the public parking regulations in Subdistrict D (Hell's Kitchen Subdistrict) to allow public parking on split zoning lots located partially within Subareas D4 and D5. Public parking would be allowed if the majority of parking garage floor space is in the adjoining Subarea and the garage would be subject to the as-of-right provisions of the adjoining Subarea. The text also clarifies that public parking is allowed in Subareas D4 and D5 of the Hell's Kitchen Subdistrict only through a City Planning Commission special permit.

Development Controls

Tower coverage in Subdistrict B (Farley Corridor) (Section 93-52)

The proposed text change would eliminate the tower lot coverage requirements of paragraph (c) of Section 93-42 for towers in Subdistrict B (Farley Corridor). The proposed provision would make the tower coverage regulations in Subdistrict B the same as that in the Subdistrict A (Large Scale Plan).

Due to the large size of the zoning lots in this Subdistrict, the minimum tower lot coverage requirements of 30 percent for residential towers would result in towers that would be too large to be practical. To facilitate the use of the residential FAR in Subdistrict B, which is limited to either 4.0 or 6.0 FAR dependent upon the subarea, the tower coverage requirements for residential development will not apply. This would allow residential towers to be developed at typical tower sizes.

The maximum tower coverage of 60 percent would also be eliminated. Due to the large size of the zoning lots in this Subdistrict, 60 percent coverage would allow towers larger than the tower control limiting the length of the building in any direction to no more than 250 feet. The 250

foot tower length limitation, thus provides a more restrictive limit on the tower size than does the tower coverage rule.

Pedestrian circulation space (Section 93-63)

The proposed text change would allow the street level area of new subway station entrances within the zoning lot to count towards required pedestrian circulation space. The existing text (Section 37-07) only allows subway stair relocations and renovations to count towards meeting the pedestrian circulation space requirement. The proposed text would allow new subway station entrances to qualify as required pedestrian circulation space.

In addition, the text is being amended so zoning lots required to provide public access pursuant to Section 93-70 (Public Access Requirements for Special Sites) would not need to provide pedestrian circulation space. The public access requirements on these zoning lots are expected to provide adequate pedestrian circulation space thus making additional pedestrian circulation space unnecessary.

Clarifications and Corrections

Maximum floor area ratio in Subdistrict B text clarification (Section 93-221(b))

The proposed text would eliminate references to the maximum Floor Area Ratio for Subdistrict E (South of the Port Authority Subdistrict) in Section 93-221(b) of the adopted zoning text. Section 93-224 in the existing text already deals with the maximum Floor Area Ratio for Subdistrict E.

Maximum floor area ratio in Subdistrict C (Section 93-222)

The proposed text change eliminates three erroneous references to Section 93-32 (Phase II Park Area). Section 93-32 does not apply in Subdistrict C (34th Street Corridor).

Floor area regulations in Subarea D3 (Section 93-223(b) through (d))

The proposed text augments the floor area table in Section 93-22 to clarify the method to increase floor area in Subarea D3 of the Hell's Kitchen Subdistrict (Subdistrict D) by adding text as paragraph (b) and re-lettering existing paragraphs (b) through (d) accordingly. The change

does not alter any of the floor area regulations in Subarea D3. With the proposed text change, Section 93-223 would explain the allowed floor area and mechanisms of increase for all of the Subareas in Subdistrict D (Hell's Kitchen Subdistrict).

Special Clinton District

Harassment Provisions (Section 96-01, 96-107, 96-108, 96-109, 96-110, 96-24)

The proposed text change would update the Special Clinton District Harassment and Cure provisions to reflect improved administrative procedures that are being established in the Special Hudson Yards District. The procedures in the Special Hudson Yards District and Special Clinton District would thus be made more consistent.

Pedestrian circulation space for new subway entrances (Section 96-21e)

The proposed text change would allow the street level area of new subway station entrances to count towards meeting pedestrian circulation space. This is the same provision as proposed for in the Special Hudson Yards District.

Parking regulations for buildings with valid permits on 12/31/04 (Section 96-21f)

The proposed text change would allow developments in the 42nd Street Perimeter Area of the Special Clinton District that received building permits prior to December 31, 2004 to use either the parking regulations in effect on that date or to utilize the parking regulations adopted as part of the Special Hudson Yards District. This clarifies the intent of modifications made by the City Council to the zoning text when it approved the text.

Special Garment Center District

Maximum permitted floor area (Section 121-31)

The proposed text would eliminate the erroneous reference to Section 93-32 (Phase II Park Area) in Section 121-31 of the adopted zoning text. Section 93-32 does not apply in the Special Garment Center District and was erroneously included in this Section.

Harassment and demolition provisions (Section 121-50)

The proposed text change would make Section 93-90 (Harassment Provisions) of the Special

Hudson Yards District applicable to the P-2 Preservation Area of the Special Garment Center District.

Additional Technical Clarifications

Height and Setback in Subdistricts A through E (Section 93-42)

This clarification makes it clear that in Subdistricts A through E, the height of the building is measured from curb level.

Off-Street Parking Regulations (Section 93-80) and Required and Permitted Parking (Section 93-81)

This clarification makes it clear that the existing regulations of section 36-52 (Size and Location of Spaces) regarding the size of parking spaces shall apply in the Special Hudson Yards District.

ENVIRONMENTAL REVIEW

Application N 060046 ZRM was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq* and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 03DCP031M. The City Planning Commission is the lead agency.

A Notice of Minor Modification was issued on August 5, 2005, which determined that the text changes set forth in Application N 060046 ZRM would not result in any new or additional significant adverse impact not already set forth in the Final Generic Environmental Impact Statement for the Hudson Yards. A modified Notice of Minor Modifications was issued on December 5, 2005 to reflect Application N 060046(A) ZRM, which does not include a proposed amendment to Section 96-25 and adds two additional technical clarifications in Section 93-42 and Sections 93-80 and 93-81. The modified Notice of Minor Modifications determined that the text changes set forth in Application N 060046(A) ZRM would not result in any new or additional significant adverse impact not already set forth in the Final Generic Environmental Impact Statement for the Hudson Yards.

PUBLIC REVIEW

On August 11, 2005, the original application (N 060046 ZRM) was duly referred to Manhattan Community Boards 4 and 5, the Manhattan Borough President, and the Manhattan Borough Board in accordance with the Commission's policy for non-ULURP items.

Community Board Review

Community Board 4 held a public hearing on the original application (N 060046 ZRM) on October 6, 2005 and adopted a resolution to approve 17 of the 18 proposed text changes by a vote of 29 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible to vote. The Board recommended removal of Section 96-25 of the Zoning Resolution which allows for a theater bonus within Subarea 1 of the 42nd Street Perimeter Area. The board's recommendation stated:

The proposed modification, and indeed the entire bonus mechanism, will provide a substantial financial benefit to the developer. It makes no sense to establish more specific terms of the mechanism until the developer's intentions are known and the corresponding benefit to the public is clear. Such caution is warranted particularly since the developer has chosen to take no part in the public consideration of this application though the proposed text change would directly benefit the developer's project.

We are concerned that adding such loose language as "non-profit performing arts uses" will invite uses that are inappropriate for this location. This Board has a demonstrated history of working with property owners to adapt zoning text to specific situations that meet the needs of all parties. We urge The Related Companies to work with this community to identify a use and a tenant that will satisfy the developer's legitimate financial and marketing needs and provide a public amenity appropriate for the scale of this bonus and appropriate for this residential area. We commit ourselves to working quickly with all concerned to approve an appropriate text modification, written with a specific user in mind and with appropriate protections concerning future users. However, in the absence of a specific proposal, we cannot recommend approval of the proposed modification, and we further recommend removal of the theater bonus provision altogether.

Now, Therefore, Be It Resolved that Manhattan Community Board No. 4:
recommends approval of Items 1 through 15, inclusive, and Items 17 and 18
in the application,
recommends disapproval of Item 16 – Modifications to the Theater Bonus
(Section 96-25), and

recommends amendment of the Zoning Resolution to remove Section 96-25, and further

Resolved that this Board will welcome a subsequent proposal for a text amendment that will allow a bonus for narrowly defined non-profit performing arts uses at a scale appropriate for this location, provided the specific use and tenant have been identified.

Community Board 5, the Manhattan Borough President, and the Manhattan Borough Board did not comment on the application.

City Planning Commission Public Hearing

On November 2, 2005 (Calendar No. 6), the City Planning Commission scheduled November 16, 2005, for a public hearing on the original application (N 060046 ZRM). The hearing was duly held on November 16, 2005 (Calendar No. 26). There were four speakers in favor and eight in opposition.

The four speakers in favor included three representatives from Community Board 4 and a representative of the State Assembly Member from District 75. They stated that they supported the application except for the proposed amendment to the provisions of Section 96-25 regarding the definition of “legitimate theater” and the allowance of “non-profit performing arts uses” to qualify for the bonus.

Those speaking in opposition to the proposed amendment included representatives of Manhattan Class Company, Manhattan Plaza Tenants Association, American Federation of Television and Radio Artists, West 44th Street Block Association, AntiGravity Inc., the Municipal Arts Society, and two representatives of Hell’s Kitchen Neighborhood Alliance. In addition to voicing opposition to Section 96-25, they stated that the bonus was never intended to apply to uses such as Cirque du Soleil, a possible user of the bonus, but was intended to reinforce the character of the area by promoting small Off-Broadway-type theaters in conjunction with predominantly residential development. They also commented on the inappropriateness of a large “Times Square” type of performance use on this portion of West 42nd Street, which is developing as a residential corridor.

Those speaking in opposition also raised concerns regarding the term “non-profit performing arts”. Most speakers supported uses such as Manhattan Class Company (MCC) Theater and St. Luke’s Orchestra as possible users which could qualify for the bonus. In addition, the speaker representing the Manhattan Plaza Tenants Association, indicated that the “non-profit performing arts” language was too broad and should be more narrowly defined. Another speaker, representing AntiGravity Inc., a performance group, indicated that the language unnecessarily restricted emerging performing arts that may be “for profit” from being considered.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this amendment to the Zoning Resolution (N 060046(A) ZRM) is appropriate. This report reflects the Commission’s comments on the proposal as originally referred (N 060046 ZRM) and the revised application (N 060046(A) ZRM) submitted on November 23, 2005 in response to concerns raised during the public review concerning the proposed theater bonus in Subarea 2 of the 42nd Street Perimeter Area of the Special Clinton District (Section 96-25). That aspect of the original application (N 060046 ZRM) merits further study and review. The Commission notes that all other aspects of the proposed text received widespread support during the public review.

The proposed zoning text change (N 060046(A) ZRM) addresses several deficiencies, ambiguities and errors in the zoning text adopted in January of 2005.

The Commission notes that the text changes strengthen the provision of affordable housing through the expansion of the Special Hudson Yards Inclusionary Housing Bonus to the portions of Subareas C and D1 not covered under the initial rezoning. The Commission also believes that the creation of anti-harassment provisions within the Special Hudson Yards District and P2 Area of the Special Garment Center District, and the prohibition on conversion of ground floor residences within the Hell’s Kitchen midblocks, respond to the concerns raised by the Community Board and the City Council that there be additional protections for existing residential units.

The Commission also notes that modifications to the tower coverage regulations in the Farley Corridor will allow for more feasible residential development. Additionally, it is appropriate to allow new subway entrances within zoning lots to count the street level landing area toward the pedestrian circulation requirements of the development.

The Commission believes that this proposed text amendment (N 060046(A) ZRM) will facilitate the redevelopment of the west side and is consistent with the objectives of the original Hudson Yards proposal adopted in January of 2005.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, and based on the environmental determination set forth in the modified Notice of Minor Modification dated December 5, 2005 and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;

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

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

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ARTICLE IX: SPECIAL PURPOSE DISTRICTS

CHAPTER 3: SPECIAL HUDSON YARDS DISTRICT

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**93-12
Special Residential Use Regulations**

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**93-124
Restrictions on conversions of residential use**

In #commercial districts# mapped within R8A Districts, a #residential use# existing on (effective date of amendment) and located on the ground floor or within five feet of #curb level# may not be converted to a #commercial use#.

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**93-22
Floor Area Regulations in Subdistricts B, C, D and E**

* * *

Maximum Permitted Floor Area Ratio
within Subdistricts B through E

	Farley Corridor Subdistrict B				34th St Corridor Sub district C	Hell's Kitchen Subdistrict D			South of Port Auth. Sub district E
Subarea	Western Blocks	Central Blocks	Farley Post Office	Penn. Stn.		Subarea D1	Subarea D2	Subarea D3	
ROW A Basic maximum #floor area ratio# for non- #residential buildings#	10.0 total 10.0 C 2.0 CF	12.0 total 12.0 C 2.0 CF	10.0 total 10.0 C 6.0 R 2.0 CF	10.0 total 10.0 C 2.0 CF	10.0 total 10.0 C 10.0 CF	7.5 total 2.0 C 7.5 CF	7.5 total 2.0 C 7.5 CF	7.5 total 6.0 C 7.5 CF	10.0 total 10.0 C 2.0 CF
ROW B Basic maximum FAR for #buildings# containing #residences#	NA	NA	NA	NA	6.5 total 6.5 C 6.5 R 6.5 CF	6.5 total 2.0 C 6.5 R 6.5 CF	6.5 total 2.0 C 6.5 R 6.5 CF	7.5 total 6.0 C 7.5 R 7.5 CF	NA

ROW C	21.6 total	19.0	10.0	19.5	13.0	15.0	13.0	12.0	18.0
Maximum	21.6 C	total	total	total	total	total	total	total	total
FAR through	6.0 R	19.0 C	10.0 C	19.5 C	13.0 C	3.0 C	3.0 C	7.2 C	18.0 C
special #floor	2.0 CF	4.0 R	6.0 R	2.0 CF	12.0 R	12.0 R	12.0 R	7.5 R	3.0 R
area# increases		2.0 CF	2.0 CF		12.0 CF	12.0CF	12.0CF	12.0CF	2.0 CF
pursuant to									
Section 93-30,									
inclusive,									
Inclusionary									
Housing									
Section 93-23,									
inclusive, or									
Section 74-79,									
inclusive as									
applicable.									

C = Commercial FAR
 CF = Community Facility FAR
 R = Residential FAR

* * *

93-221
Maximum #floor area ratio# in Subdistrict B

* * *

(b) Subarea B2

In the Central Blocks Subarea (Subarea B2) of Subdistrict B ~~and the South of Port Authority Subdistrict (Subdistrict E)~~, #residential use# shall only be permitted as part of a #development# or #enlargement# with a #commercial floor area ratio# of 15.0 or more, or as provided for phased developments in Section 93-122.

* * *

93-222
Maximum #floor area ratio# in Subdistrict C

* * *

The #floor area ratio# of any #building# containing #residences# may be increased from 6.5 pursuant to Sections 93-31 ~~or 93-32~~, and pursuant to Section 23-90 (INCLUSIONARY HOUSING), as modified by Section 93-23, as follows:

(a) The #residential floor area ratio# may be increased from 6.5 to a maximum of 12.0 only if for every five square feet of #floor area# increase pursuant to Sections 93-31 ~~or 93-32~~ there is a #floor area# increase of six square feet pursuant to Section 23-90 as modified

by Section 93-23.

- (b) Any #floor area# increase above a #floor area ratio# of 12.0 shall be only pursuant to Sections 93-31 ~~or 93-32~~.

~~However, notwithstanding the table in Section 93-22, for any #zoning lot# or portion thereof located within the area bounded by West 35th Street, Eighth Avenue, West 33rd Street, and a line 100 feet east of and parallel to Ninth Avenue, the basic maximum #residential floor area ratio# shall be 7.5 and may be increased from 7.5 to 10.0 only pursuant to Section 93-31, and may be further increased from 10.0 to 12.0 only pursuant to Section 23-90.~~

93-223

Maximum #floor area ratio# in Subdistrict D

- (a) Subareas D1 and D2

* * *

- (2) Any #floor area# increase above a #floor area ratio# of 12.0 shall be only pursuant to Sections 93-31 or 93-32.

~~However, notwithstanding the table in Section 93-22, for any #zoning lot# or portion thereof located in that portion of Subarea D1 between West 41st Street and the centerline of the #blocks# between West 41st and West 40th Streets, the basic maximum #residential floor area ratio# shall be 7.5 and may be increased from 7.5 pursuant to Section 93-31 or 93-32, and pursuant to Section 23-90 (INCLUSIONARY HOUSING), as modified by Section 93-23, as follows:~~

- (1) ~~The #residential floor area ratio# may be increased from 7.5 to a maximum of 12.0 only if for every five square feet of #floor area# increase pursuant to Section 93-31 or 93-32 there is a #floor area# increase of six square feet pursuant to Section 23-90 as modified by Section 93-23.~~

- (2) ~~Any #floor area# increase above a #floor area ratio# of 12.0 shall be only pursuant to Sections 93-31 or 93-32.~~

Furthermore, in Subarea D1, the #floor area ratio# on a #zoning lot# may exceed 13.0 only where the #community facility floor area ratio# is not less than the excess of such #floor area ratio# above 13.0.

- (b) Subarea D3

In Subarea D3, the basic maximum #floor area ratio# may be increased only pursuant to Section 93-31 (District Improvement Fund).

- ~~(b)~~(c) Subareas D4 and D5

In Subareas D4 and D5, the underlying #floor area ratio# regulations shall apply.

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(e)(d) Authorization for transfer of #floor area# for public utilities

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(d)(e) Authorization for transfer of #floor area# for public open areas

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93-23 Modifications of Inclusionary Housing Program

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93-231 Definitions

For the purposes of this Chapter, the following definitions in Section ~~23-92~~ 23-93 shall be modified:

Administering agent

The "administering agent" is the entity or entities identified in the #lower income housing plan# as responsible for ensuring compliance with such plan.

The #administering agent# shall be a not-for-profit organization, unless the Commissioner of Housing Preservation and Development finds that a good faith effort by the developer of the #compensated development# to secure a qualified not-for-profit organization as the #administering agent# was unsuccessful. However, the Commissioner may approve an entity that is responsible for compliance monitoring pursuant to city, state, or federal funding sources, to serve as the #administering agent# during such compliance period.

If an entity other than a not-for-profit organization is proposed to serve as the #administering agent#, and the affected Community Board objects during its review period to the approval of the proposed entity, the Commissioner shall respond in writing to the Community Board's objections prior to approving the proposed entity to serve as #administering agent#.

Fair rent

“Fair rent” shall be as defined in Section ~~23-92~~ 23-93 with respect to #standard units# occupied by #lower income households#, except that the Commissioner of Housing Preservation and Development may determine that rents satisfying the requirements of city, state or federal programs assisting #lower income housing# will be considered “fair rent”, provided that such

rents do not exceed 30 percent of a #lower income household#'s income, and provided further that upon expiration or termination of the requirements of the city, state or federal program, rent increases and re-rentals shall be subject to the higher of the then-currently applicable Section 8 Standard or the Rent Stabilization Standard.

The following definition of "fair rent" shall apply to #moderate income households# and #middle income households#:

At initial occupancy of #lower income housing# that is occupied by a #moderate income household# or a #middle income household# as defined in this Section 93-231, "fair rent" shall include an annual rent for each such housing unit equal to not more than 30 percent of the annual income of the tenant of such housing (the "30 Percent Standard").

Upon renewal of a lease for such an existing tenant in #lower income housing#, #fair rent# (the "Rent Stabilization Standard") ~~shall be~~ is not more than the then-current #fair rent# for such housing plus a percentage increase equal to the percentage increase for a renewal lease of the same term permitted by the Rent Guidelines Board for units subject to the rent stabilization law.

After initial occupancy, upon rental of #lower income housing# to a new tenant, #fair rent# ~~shall be~~ is not more than the higher of

- (a) the then-currently applicable "30 Percent Standard"; or
- (b) the Rent Stabilization Standard.

In order for rent to be #fair rent#, the following must also apply:

There shall be no additional charge to the tenant for the provision of heat and electric service, except that the Commissioner of Housing Preservation and Development may approve a #lower income housing plan# making a #lower income#, #moderate income# or #middle income household# responsible for the payment of utilities as long as the sum of the following do not exceed 30 percent of said #lower income#, #moderate income# or #middle income household's# income:

- (1) the initial #fair rent#; and
- (2) the monthly costs of a reasonable compensation for these utilities, by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

The Commissioner of Housing Preservation and Development may determine that rents satisfying the requirements of city, state or federal programs assisting #lower income housing# will be considered 'fair rent', provided that such rents do not exceed 30 percent of a #moderate income# or #middle income household#'s income, as applicable, and provided further that upon expiration or termination of the requirements of the city,

state or federal program, rent increases and re-rentals shall be subject to the higher of the then-currently applicable 30 Percent Standard or the Rent Stabilization Standard.

At initial occupancy of any #lower income housing# occupied by a #lower income#, #moderate income# or #middle income household#, a portion of the fair rents may be for the payment of the principal or interest on debt, and such housing may secure debt, provided that, as of the date of the approval of the #lower income housing plan#, the Commissioner of Housing Preservation and Development finds that the total annual rent, when such interest and principal payments are deducted, is in compliance with the requirements of paragraph (c) of Section ~~23-94~~ 23-95 (Lower Income Housing Requirements), and provided that the lender agrees to enter into a written agreement which subordinates such debt to the provisions of the #lower income housing plan#.

* * *

93-233

Lower Income Housing Requirements

#Developments# that increase #floor area# in accordance with the provisions of this Section shall comply with the lower income housing requirements of Section ~~23-94~~ 23-95 (Lower Income Housing Requirements), except as modified in this Section.

* * *

(b) The provisions of paragraph (d) (Income verification) of Section ~~23-94~~ 23-95 shall apply, except that prior to renting #lower income housing#, the #administering agent# shall verify the income of each household to occupy such housing to assure that the households are #lower#, #moderate# or #middle income households# as provided by this Section and in the approved #lower income housing plan#. The #administering agent# shall submit an affidavit to the Commissioner of Housing Preservation and Development upon initial occupancy and annually thereafter attesting that all incoming occupants of #lower income housing# are #lower#, #moderate# or #middle income households# as required by the provisions of this Section and in the approved #lower income housing plan#.

(c) The provisions of paragraph (g) (Insurance) of Section 23-95 may be modified by the Commissioner of Housing Preservation and Development to provide priority for lenders participating in the financing of #lower income housing# that is assisted under city, state or federal programs.

(d) Permits and certificate of occupancy

The requirements of paragraph (f) of Section 23-95 shall not apply. In lieu thereof, the provisions of this paragraph (d) shall apply.

No building permit for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-232 (Floor area increase) shall be issued until the

Commissioner of Housing Preservation and Development certifies that an acceptable #lower income housing plan# has been filed and approved.

No temporary certificate of occupancy shall be issued for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-232 until a temporary certificate of occupancy for each unit of #lower income housing# that is the subject of the #lower income housing plan# accepted by the Commissioner of Housing Preservation and Development has been issued, or, if the building has a valid certificate of occupancy and no new certificate of occupancy is required under the preservation option, until the Commissioner has certified to the Department of Buildings that the applicant has fulfilled its obligations with respect to the lower income housing.
No permanent certificate of occupancy shall be issued for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-232 until a permanent certificate of occupancy for each unit of #lower income housing# that is the subject of the #lower income housing plan# accepted by the Commissioner of Housing Preservation and Development has been issued or, if the building has a valid certificate of occupancy and no new certificate of occupancy is required under the preservation option, until the Commissioner has certified to the Department of Buildings that the applicant has fulfilled its obligations with respect to the lower income housing.

Prior to the issuance of any temporary or permanent certificate of occupancy for any portion of the #compensated development# that utilizes #floor area# bonused pursuant to Section 93-232 the Commissioner of Housing Preservation and Development shall certify that the #lower income housing# is in compliance with the #lower income housing plan#.

- (e) (e) The provisions of Sections ~~23-941, 23-942 and 23-943~~ 23-951, 23-952 and 23-953 shall apply, except as follows:
- (i) ~~that~~ with respect to Sections ~~23-941(a), 23-942(b), and 23-943(a),~~ 23-951(a), 23-952(b), and 23-953(a), #lower income housing# shall be maintained and leased to #lower#, #moderate# or #middle income households#, as provided in this Section, for the life of the increased #floor area#, and in accordance with the approved #lower income housing plan#.
 - (ii) if the lower income housing is subject to the requirements of city, state or federal programs assisting the lower income housing that have size and distribution requirements conflicting with the size and distribution requirements of Section 23-941(b), then the size and distribution requirements of Section 23-941(b) may be waived by the Commissioner of Housing Preservation and Development to facilitate the #development# of #lower income housing#, and
 - (iii) ~~Furthermore,~~ Section ~~23-943(a)~~ 23-953(a) shall be modified to provide that the #administering agent# shall not be required to verify the income of households in tenancy as of the date upon which the Commissioner of Housing Preservation and Development approves the #lower income housing plan#.

* * *

93-42

Height and Setback in Subdistricts A through E

In Subdistricts A through E, the underlying height and setback regulations shall not apply, except as set forth in Section 93-542 (Height and setback in Subareas D4 and D5). In lieu thereof, the provisions of this Section shall apply. These regulations are further modified in certain locations as set forth in Section 93-50 (SPECIAL HEIGHT AND SETBACK REGULATIONS IN SUBDISTRICTS A THROUGH E). The rooftop regulations set forth in Section 93-41 shall apply. The height of all #buildings or other structures# shall be measured from #curb level#.

* * *

93-52

Special Height and Setback Regulations in the Farley Corridor (Subdistrict B)

The tower #lot coverage# requirements of paragraph (c) of Section 93-42 shall not apply to any #development# or #enlargement# within the Farley Corridor (Subdistrict B).

* * *

93-63

Pedestrian Circulation Space

In C2-8 and C6-4 Districts, all new #developments# or #enlargements# on #zoning lots# of 5,000 square feet or larger with more than 70,000 square feet of new #floor area# shall provide pedestrian circulation space in accordance with the provisions of Section 37-07 (Requirements for Pedestrian Circulation Space). In addition, for #developments# or #enlargements# that provide subway entranceways constructed after (effective date of amendment), one and one-half times the area of such entranceway accessible to the public at #street# level may qualify as pedestrian circulation space, up to a maximum amount of 3,000 square feet.

Pedestrian circulation space shall not be required if any of the following conditions exist:

- (a) The #zoning lot# is entirely occupied by a #building# of no more than one #story# in height.
- (b) The #zoning lot# is an #interior lot# fronting on a #wide street# with less than 80 feet of #street# frontage.
- (c) The #zoning lot# is a #through lot# and both #street# frontages are less than 25 feet in length.
- (d) The #zoning lot# is required to provide public access pursuant to Section 93-70 (PUBLIC ACCESS REQUIREMENTS FOR SPECIAL SITES).

93-80

OFF-STREET PARKING REGULATIONS

The regulations governing permitted and required #accessory# off-street parking spaces of Article I, Chapter 3 (Comprehensive Off-Street Parking Regulations in Community Districts 1, 2, 3, 4, 5, 6, 7 and 8 in the Borough of Manhattan and a Portion of Community Districts 1 and 2 in the Borough of Queens), and Article II, Chapter 5; Article III, Chapter 6 (Accessory Off-Street Parking and Loading Regulations) and Article IV, Chapter 4 (Accessory Off-Street Parking and Loading Regulations) shall not apply except as set forth in this Section. In lieu thereof, the provisions of this Section, inclusive, shall apply.

93-81

Required and Permitted Parking

All #developments# or #enlargements# on #zoning lots# greater than 15,000 square feet shall provide #accessory# parking spaces in accordance with the provisions of this Section. For #zoning lots# of 15,000 square feet or less, #accessory# parking spaces are permitted up to the maximum number allowed for required spaces as set forth in this Section.

- (a) For #residences#, #accessory# off-street parking spaces shall be provided for at least 33 percent of the total number of #dwelling units#, except that where such #dwelling units# are government-assisted, pursuant to paragraph (e) of Section 25-25, #accessory# off-street parking spaces shall be provided for at least 25 percent of the total number of such #dwelling units#. The total number of off-street parking spaces #accessory# to #residences# shall not exceed 40 percent of the total number of #dwelling units#. However, if the total number of #accessory# off-street parking spaces required for such #use# on the #zoning lot# is less than 15, no such spaces shall be required.
- (b) For #commercial# and #community facility uses#, a minimum of 0.30 #accessory# off-street parking spaces shall be provided for each 1,000 square feet of #floor area#, and not more than 0.325 off-street parking spaces shall be provided for every 1,000 square feet of #floor area#. However, if the total number of #accessory# off-street parking spaces required for such #uses# on the #zoning lot# is less than 40, no such spaces shall be required. No parking shall be required for houses of worship or #schools#.
- (c) The required and permitted amounts of #accessory# off-street parking spaces shall be determined separately for #residential#, #commercial# and #community facility uses#.
- (d) The provisions of Sections 36-52 (Size and Location of Spaces) and 36-53 (Location of Access to the Street) shall apply to all permitted or required #accessory# off-street parking spaces.

93-82

Use and Location of Parking Facilities

The provisions of this Section shall apply to all off-street parking spaces within the #Special Hudson Yards District#.

- (a) ~~In Subdistricts A through E, a~~ All #accessory# off-street parking spaces may be made available for public use. However, any such space shall be made available to the occupant of a #residence# to which it is #accessory# within 30 days after written request therefore is made to the landlord. Furthermore, if #accessory# and public parking spaces are provided on the same #zoning lot#, all such spaces shall be located within the same parking facility. However, in C1-7A Districts and in C2-5 Districts mapped within R8A Districts, all #accessory# off-street parking spaces shall be used exclusively by the occupants of the #residential development#, #enlargement# or conversion. Where a parking facility is located partially within a C2-5 District mapped within an R8A District and partially within another district, all such #accessory# off-street parking spaces may be made available for public use provided more than half of the floor space of the parking facility is located outside the C2-5 District mapped within an R8A District.

* * *

93-90

Harassment

- (a) Definitions

- 1. Anti-harassment area

“Anti-harassment area” shall mean the #Special Hudson Yards District# and Preservation Area P-2 of the #Special Garment Center District#.

- 2. Application date

“Application date” shall mean the date that the Department of Housing Preservation and Development accepts a completed application for a #certification of no harassment# for processing.

- 3. Certification of no harassment

“Certification of no harassment” shall mean a certification by the Department of Housing Preservation and Development pursuant to this Section that there has not been #harassment# of the lawful occupants of a #multiple dwelling# during the #inquiry period#.

- 4. Cure compliance lot

“Cure compliance lot” shall mean a #zoning lot# on which #low income housing# is provided pursuant to a #restrictive declaration# in accordance with the cure provisions of paragraph (d) of this Section. A #cure compliance lot# may be a #cure requirement lot#.

5. Cure requirement

Except as otherwise provided in paragraph (e) of this Section with respect to Subareas 4 and 5 of the #Hell’s Kitchen Subdistrict# of the #Special Hudson Yards District#, “cure requirement” shall mean #floor area# in an amount not less than the greater of:

- (i) 28 percent of the total #residential# and #hotel floor area# of any #multiple dwelling# to be altered or demolished in which #harassment# has occurred, or
- (ii) 20 percent of the total #floor area# of any new or altered #building# on the #cure requirement lot#.

6. Cure requirement lot

“Cure requirement lot” shall mean (i) a #zoning lot# containing a #multiple dwelling# with respect to which the Department of Housing Preservation and Development has denied a #certification of no harassment#, or (ii) a #zoning lot# with respect to which an applicant, in lieu of seeking a #certification of no harassment# which would otherwise be required for the full or partial demolition or #material alteration# of a #multiple dwelling# located in the #anti-harassment area#, elects to seek a certification of compliance with the cure provisions of paragraph (d) of this Section and enters into a #restrictive declaration#.

7. Dwelling unit

“Dwelling unit” shall have the meaning set forth in the Multiple Dwelling Law.

8. Exempt hotel

“Exempt hotel” shall mean any #multiple dwelling#:

- (i) which is a #transient hotel# and was a #transient hotel# on the #referral date#, and
- (ii) in which no #residential# occupant is, or was on the #referral date#, entitled to a renewal lease or otherwise entitled to continued occupancy pursuant to the Local Housing Emergency Rent Control Act, as amended, the City Rent and Rehabilitation Law, as amended, the Rent Stabilization

Law of 1969, as amended, or the Emergency Tenant Protection Act of 1974, as amended, and

(iii) which has been exempted from the provisions of this Section by written determination of the Department of Housing Preservation and Development.

9. Exempt institutional residence

“Exempt institutional residence” shall mean any #multiple dwelling#:

(i) the occupancy of which is restricted to non-profit institutional use and was restricted to non-profit institutional use on the #referral date#, and

(ii) which has been exempted from the provisions of this Section by written determination of the Department of Housing Preservation and Development.

10. Harassment

“Harassment” shall mean any conduct by or on behalf of an owner of a #multiple dwelling# that includes:

(i) the use or threatened use of force which causes or is intended to cause any person lawfully entitled to occupancy of a #dwelling unit# or #rooming unit# in such #multiple dwelling# to vacate such unit or to surrender or waive any rights in relation to such occupancy;

(ii) the interruption or discontinuance of essential services which

(a) interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of a #dwelling unit# or #rooming unit# in the use or occupancy of such #dwelling unit# or #rooming unit# and

(b) causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# or #rooming unit# to vacate such #dwelling unit# or #rooming unit# or to surrender or waive any rights in relation to such occupancy;

(iii) a failure to comply with the provisions of subdivision (c) of section 27-2140 of article seven of subchapter five of the Housing Maintenance Code which causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# or #rooming unit# to vacate such unit or to waive any rights in relation to such occupancy; or

- (iv) any other conduct which prevents or is intended to prevent any person from the lawful occupancy of such #dwelling unit# or #rooming unit# or causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# or #rooming unit# to vacate such #dwelling unit# or #rooming unit# or to surrender or waive any rights in relation to such occupancy, including but not limited to removing the possessions of any occupant from the #dwelling unit# or #rooming unit#; removing the door at the entrance to the #dwelling unit# or #rooming unit#; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying the occupant with a key.

11. Inquiry period

“Inquiry period” shall mean a period which:

- (i) commences upon the later of the #referral date# or a date which is fifteen years prior to the #application date#, and
- (ii) terminates upon the #application date#;

provided, however, that the Department of Housing Preservation and Development may:

- (a) set such commencement date upon any date which is on or after the #referral date# and is more than fifteen years prior to the #application date# where it determines that such extension of the duration of the inquiry period would further the purposes of this Section, and
- (b) extend such termination date up to and including the date upon which the Department of Housing Preservation and Development determines to grant or deny a #certification of no harassment#.

12. Low income housing

“Low income housing” shall mean #dwelling units# or #rooming units# occupied or to be occupied by persons or families having an annual household income at the time of initial occupancy equal to or less than eighty percent of the median income for the primary metropolitan statistical area, as determined by the United States Department of Housing and Urban Development or its successors from time to time for a family of four, as adjusted for family size.

13. Material alteration

“Material alteration” shall mean any alteration to a #multiple dwelling# or other #building#, including, but not limited to, an alteration which reduces or increases

the #floor area# of the #multiple dwelling# or other #building#, converts #floor area# from residential to non-residential use, changes the number or layout of #dwelling units# or #rooming units#, or adds or removes kitchens or bathrooms; provided, however, that #material alteration# shall not include:

- (i) an #incidental alteration# which does not change the layout of #dwelling units# or #rooming units#, or
- (ii) a repair or replacement of existing elements of such #multiple dwelling# or other #building# without materially modifying such elements.

14. Multiple dwelling

“Multiple dwelling” shall have the meaning set forth in the Multiple Dwelling Law.

15. Referral date

“Referral date” shall mean June 21, 2004.

16. Restrictive declaration

“Restrictive declaration” shall mean a legal instrument which:

- (i) provides that #low income housing# in an amount not less than the #cure requirement# shall be provided in a new or altered #multiple dwelling# located in the #anti-harassment area#.
- (ii) provides that the #low income housing# must comply with the requirements of Section 23-90, as amended by this Chapter, unless any such requirement is waived by the Department of Housing Preservation and Development.
- (iii) contains such other terms as the Department of Housing Preservation and Development shall determine,
- (iv) has been approved by the Department of Housing Preservation and Development.
- (v) runs with the land and binds all parties in interest to the #cure requirement lot# and their successors,
- (vi) runs with the land and binds all parties in interest to the #cure compliance lot# and their successors, and
- (vii) is perpetual in duration.

17. Rooming unit

“Rooming unit” shall have the meaning set forth in the Housing Maintenance Code.

(b) Permit Process

1. Unless the Department of Housing Preservation and Development has issued a #certification of no harassment# pursuant to paragraph (c) of this Section or has certified compliance with the cure provisions of paragraph (d) of this Section, the Department of Buildings shall not issue a permit for:
 - (i) the full or partial demolition of a #multiple dwelling# located in the #anti-harassment area#; or
 - (ii) the #material alteration# of a #multiple dwelling# located in the #anti-harassment area#.

2. Any permit for alterations may be exempted from the provisions of this Section by written determination of the Department of Housing Preservation and Development that such alterations are to be performed solely for the purpose of either:
 - (i) making the public areas of a #multiple dwelling# accessible to persons with disabilities without altering the configuration of any #dwelling unit# or #rooming unit#, or
 - (ii) making a #dwelling unit# or a #rooming unit# accessible to persons with disabilities .

3. The following structures shall be exempt from the provisions of this Section: (i) any city-owned #multiple dwelling#; (ii) any #multiple dwelling# which is the subject of a program approved by Department of Housing Preservation and Development for the provision of housing for persons of low or moderate income and has been exempted from the provisions of this Section by written determination of the Department of Housing Preservation and Development; (iii) any #multiple dwelling# initially occupied for residential purposes after January 1, 1974, except for #buildings# which are or have been interim #multiple dwellings# pursuant to Article 7C of the Multiple Dwelling Law; (iv) any #exempt hotel#; (v) any #multiple dwelling# in which occupancy is restricted to clubhouse or school dormitory use and occupancy was restricted to clubhouse or school dormitory use on the #referral date#; and (vi) any #exempt institutional residence#.

4. Where the Department of Housing Preservation and Development has denied a #certification of no harassment# with respect to a #multiple dwelling#, the Department of Buildings shall not issue any permit with respect to any #multiple dwelling# or other #building# located on, or to be located on, the #cure requirement lot# except in accordance with paragraph (d) of this Section.

(c) Certification of No Harassment

1. The Department of Housing Preservation and Development shall determine and certify whether there has been #harassment# of the lawful occupants of a #multiple dwelling# during the #inquiry period#.
2. There shall be a rebuttable presumption that any of the acts or omissions described in paragraph (a)(10) of this Section occurring within the #inquiry period# were committed by or on behalf of the owner of such #multiple dwelling# and that such acts or omissions:
 - (i) were committed with the intent to cause a person lawfully entitled to occupancy of a #dwelling unit# or #rooming unit# in such #multiple dwelling# to vacate such unit or to surrender or waive a right in relation to such occupancy, and
 - (ii) materially advanced the demolition or alteration in furtherance of which the permit and #certification of no harassment# are sought.
3. The Department of Housing Preservation and Development may promulgate rules regarding the implementation of this Section. Such rules may include, but shall not be limited to, provisions which:
 - (i) establish the information to be required in an application for #certification of no harassment#, the form of such application, and the manner of filing of such application,
 - (ii) establish reasonable fees and charges to be collected from applicants for the administrative expenses incurred by the Department of Housing Preservation and Development, including, but not limited to, costs for publication of any notices, and
 - (iii) establish the duration for which a #certification of no harassment# will remain effective, and
 - (iv) authorize the rescission of a #certification of no harassment# if the Department of Housing Preservation and Development finds either that #harassment# has occurred after the #inquiry period# or that the application for such #certification of no harassment# contained a material misstatement of fact. Following such rescission, the Department of

Buildings may revoke any permit for which such #certification of no harassment# was required.

4. The Department of Housing Preservation and Development may refuse to accept, or to act upon, an application for a #certification of no harassment# where the Department of Housing Preservation and Development finds that:
 - (i) taxes, water and sewer charges, emergency repair program charges, or other municipal charges remain unpaid with respect to such #multiple dwelling#.
 - (ii) such #multiple dwelling# has been altered either without proper permits from the Department of Buildings or in a way that conflicts with the certificate of occupancy for such #multiple dwelling# (or, where there is no certificate of occupancy, any record of the Department of Housing Preservation and Development indicating the lawful configuration of such #multiple dwelling#) and such unlawful alteration remains uncorrected, or
 - (iii) the Department of Housing Preservation and Development has previously denied an application for a #certification of no harassment# pursuant to this Section.
5. If the Department of Housing Preservation and Development determines that an application for a #certification of no harassment# contains a material misstatement of fact, the Department of Housing Preservation and Development may reject such application and bar the submission of a new application with respect to such #multiple dwelling# for a period not to exceed three years.
6. Before determining whether there is reasonable cause to believe that #harassment# has occurred with respect to any #multiple dwelling#, the Department of Housing Preservation and Development shall publish a notice in such form and manner as shall be specified in the rules promulgated pursuant to paragraph (c)(3) of this Section. Such notice shall seek public comment regarding whether there has been #harassment# of the lawful occupants of such #multiple dwelling# from the #referral date# to the date of submission of comments. If the Department of Housing Preservation and Development receives comments containing material evidence that #harassment# occurred on or after the #referral date# and more than fifteen years prior to the #application date#, the Department of Housing Preservation and Development shall, in accordance with paragraph (a)(11) of this Section, set the commencement of the #inquiry period# on a date prior to the date of such alleged harassment.
7. The Department of Housing Preservation and Development shall determine whether there is reasonable cause to believe that #harassment# has occurred during the #inquiry period#.

- (i) If there is no reasonable cause to believe that #harassment# has occurred during the #inquiry period#, the Department of Housing Preservation and Development shall issue a #certification of no harassment#.
- (ii) If there is reasonable cause to believe that #harassment# has occurred during the #inquiry period#, the Department of Housing Preservation and Development shall cause a hearing to be held in such manner and upon such notice as shall be determined by the Department of Housing Preservation and Development, unless the applicant waives the right to a hearing. Following receipt of the report and recommendation of the hearing officer, or receipt of a waiver of the right to such a hearing from the applicant, the Department of Housing Preservation and Development shall either grant or deny a #certification of no harassment#.

8. The Department of Housing Preservation and Development may deny a #certification of no harassment# without a prior hearing if there has been a finding by the Division of Housing and Community Renewal or any court having jurisdiction that there has been harassment, unlawful eviction or arson at the #multiple dwelling# during the #inquiry period#.

(d) Certification of Cure For Harassment

- 1. The Department of Housing Preservation and Development shall not certify compliance with the cure provisions of this paragraph to the Department of Buildings unless all parties in interest to the #cure requirement lot# and all parties in interest to the #cure compliance lot# have entered into a #restrictive declaration#.
- 2. Any permit or certificate of occupancy issued by the Department of Buildings with respect to any structure located on a #cure requirement lot# or a #cure compliance lot# shall be subject to the following conditions:
 - (i) The Department of Buildings shall not issue any permit, except a permit for an alteration which is not a #material alteration#, with respect to any structure located on the #cure requirement lot# unless the #restrictive declaration# has been recorded in the Office of the City Register and indexed against each tax lot within the #cure requirement lot# and each tax lot within the #cure compliance lot#.
 - (ii) The Department of Buildings shall not issue any temporary or permanent certificate of occupancy for any new or existing structure or portion thereof on the #cure requirement lot#, other than any #low income housing# located on the #cure requirement lot#, until:
 - (a) the Department of Housing Preservation and Development certifies that the #low income housing# required by the #restrictive

declaration# has been completed in compliance with the #restrictive declaration#, and

(b) the Department of Buildings has issued a temporary or permanent certificate of occupancy for each unit of such #low income housing#.

(iii) The Department of Buildings shall include the occupancy restrictions of the #restrictive declaration# in any temporary or permanent certificate of occupancy for any new or existing structure or portion thereof on the #cure compliance lot#. Failure to comply with the terms and conditions set forth in the #restrictive declaration# shall constitute a violation, and a basis for revocation, of any certificate of occupancy containing such restriction.

(iv) The Department of Buildings shall include the occupancy restrictions of the #restrictive declaration# in any temporary or permanent certificate of occupancy for any new or existing structure or portion thereof on the #cure requirement lot#, except where (a) the #cure requirement lot# is not the #cure compliance lot#, and (b) the management and operation of the #cure compliance lot# is wholly controlled by, and the #restrictive declaration# requires that management and operation of the #cure compliance lot# remain wholly controlled by, an independent not-for-profit administering agent that is not affiliated with the owner of the #cure requirement lot#. Failure to comply with the terms and conditions set forth in the #restrictive declaration# shall constitute a violation, and a basis for revocation, of any certificate of occupancy containing such restriction.

3. No portion of the #low income housing# required under this Section shall qualify to:

(i) increase the #floor area ratio# pursuant to the provisions of Section 23-90, as modified by the provisions of the #Special Hudson Yards District# and the #Special Garment Center District#, or

(ii) satisfy an eligibility requirement of any real property tax abatement or exemption program with respect to any #multiple dwelling# that does not contain such #low income housing#.

(e) Demolition In Subareas 4 and 5 of the #Hell's Kitchen Subdistrict#

Notwithstanding any provision of paragraph (a)(5) of this Section or paragraph (d) of this Section to the contrary, with regard to any #multiple dwelling# to be demolished in Subareas 4 and 5 of the #Hell's Kitchen Subdistrict# of the #Special Hudson Yards

District#, #cure requirement# shall mean #floor area# in an amount not less than the greater of:

- (i) 40 percent of the total #residential# or #hotel floor area# of any #multiple dwelling# to be demolished in which #harassment# has occurred, or
- (ii) 30 percent of the total #floor area# of any new #building# on the same #zoning lot# as the #multiple dwelling# to be demolished.

* * *

Chapter 6 Special Clinton District

* * *

96-01 Definitions

Definitions specially applicable to this Chapter are set forth in this Section. The definitions of other defined terms are as set forth in Section 12-10 (DEFINITIONS).

Certification of no harassment

“Certification of no harassment” shall mean a certification by the Department of Housing Preservation and Development pursuant to Section 96-110 that there has not been #harassment# of the lawful occupants of a #multiple dwelling# during the #inquiry period#, as defined in Section 96-110.

Harassment

“Harassment” shall mean any conduct by or on behalf of an owner of a #multiple dwelling# that includes:

- (i) the use or threatened use of force which causes or is intended to cause any person lawfully entitled to occupancy of a #dwelling unit# or #rooming unit# in such #multiple dwelling# to vacate such unit or to surrender or waive any rights in relation to such occupancy;
- (ii) the interruption or discontinuance of essential services which
 - (a) interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of a #dwelling unit# or #rooming unit# in the use or occupancy of such #dwelling unit# or #rooming unit# and

- (b) causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# or #rooming unit# to vacate such #dwelling unit# or #rooming unit# or to surrender or waive any rights in relation to such occupancy;
- (iii) a failure to comply with the provisions of subdivision (c) of section 27-2140 of article seven of subchapter five of the Housing Maintenance Code which causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# or #rooming unit# to vacate such unit or to waive any rights in relation to such occupancy; or
- (iv) any other conduct which prevents or is intended to prevent any person from the lawful occupancy of such #dwelling unit# or #rooming unit# or causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# or #rooming unit# to vacate such #dwelling unit# or #rooming unit# or to surrender or waive any rights in relation to such occupancy, including but not limited to removing the possessions of any occupant from the #dwelling unit# or #rooming unit#; removing the door at the entrance to the #dwelling unit# or #rooming unit#; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying the occupant with a key.

For purposes of this definition, #dwelling unit#, #referral date# and #rooming unit# shall be defined as in Section 96-110.

Material alteration

“Material alteration” shall mean any alteration to a #multiple dwelling# including, but not limited to, an alteration which reduces or increases the #floor area# of the #multiple dwelling#, converts #floor area# from residential to non-residential use, changes the number or layout of #dwelling units# or #rooming units#, or adds or removes kitchens or bathrooms; provided, however, that #material alteration# shall not include:

- (i) an #incidental alteration# which does not change the layout of #dwelling units# or #rooming units#, or
- (ii) a repair or replacement of existing elements of such #multiple dwelling# without materially modifying such elements.

For purposes of this definition, #dwelling unit# and #rooming unit# shall be defined as in Section 96-110.

Mixed building

For the purposes of this Chapter, a "mixed building" is a #building# in a #Commercial District# used partly for #residential use# and partly for #community facility# or #commercial use#, or a

#building# in a #Residential District# used partly for #residential use# and partly for #community facility use#.

Multiple dwelling

“Multiple dwelling” shall have the meaning set forth in the Multiple Dwelling Law.

* * *

96-107

Special regulations for community facility uses

#Developments#, #enlargements# or #extensions# of #community facility uses# or conversions of an existing #building# to a #community facility use#, are permitted on #zoning lots# containing existing #buildings# with #residential uses# only, pursuant to the provisions of this Section. The City Planning Commission, by special permit, may permit #developments#, #enlargements# or #extensions# of #community facility uses#, provided that the Commission makes the following findings:

- (a) that the existing #building# is not eligible for rehabilitation under any active publicly-aided program under which funds are available;
- (b) that, prior to evicting or otherwise terminating the occupancy of any tenant preparatory to demolition, the developer shall have notified the ~~Commissioner~~ Department of Housing Preservation and Development of his or her intention to demolish the #building#; and
- (c) ~~that the eviction and relocation practices followed by the owner of the building satisfy all applicable legal requirements and that no harassment has occurred or, if it has been determined by the applicable governmental agency that legal relocation or eviction requirements have not been satisfied~~ Department of Housing Preservation and Development has issued a #certification of no harassment# or that harassment has occurred, that the owner has complied with Section 96-110 (Harassment and cure) (d) (Certification of Cure For Harassment).

This special permit shall be in addition to any special permits required for nursing homes, health related-facilities and domiciliary care facilities for adults, pursuant to the provisions of Section 74-90.

The Commission may prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area.

96-108

Demolition of buildings

No demolition permit or alteration permit for partial demolition involving a decrease of more than 20 percent in the amount of #residential floor area# in a #building# shall be issued by the

Department of Buildings for any #building# containing #dwelling units# within the Preservation Area, unless it is an unsafe #building# and demolition is required pursuant to the provisions of Title 26, Sub-chapter 3, Article 8 of the New York City Administrative Code.

However, the City Planning Commission, by a special permit, may allow demolition of #buildings# containing #dwelling units# or #rooming units# other than unsafe #buildings# within the Preservation Area, provided that the Commission makes the following findings:

- (a) that the existing #building#:
 - (1) is not eligible for rehabilitation under any active publicly-aided program under which funds are available; or
 - ~~(2) was vacant on August 17, 1990 and is to be demolished for the purpose of implementing a publicly assisted program (exclusive of any tax abatement or tax exemption) for the construction of housing units for lower income households as defined in Section 23-923 (Definitions), and which units in the aggregate will occupy not less than one half of the #floor area# permitted on the #zoning lot# as of the date of the special permit, are to be administered by a not for profit agent and which comply with the requirements of Section 23-945 (Lower Income Housing Requirements), paragraphs (a) through (k), inclusive, and either the funds may not lawfully be used to rehabilitate the existing #building# or the project sponsor demonstrates that rehabilitation of the existing #building# is not appropriate in view of the specific requirements of the funding program as to the nature of the units to be constructed, services to be provided or population to be served; or~~
 - ~~(2) (3)~~ is to be substantially preserved and requires an alteration permit to allow the removal and replacement of 20 percent or more of the #floor area#.
- (b) that prior to evicting or otherwise terminating the occupancy of any tenant preparatory to demolition, the owner shall have notified the applicable governmental agency of its intention to demolish the #building#;
- (c) ~~that the eviction and relocation practices followed by the owner satisfy all applicable legal requirements and that no harassment has occurred or, if it has been determined by the applicable governmental agency that harassment has occurred~~ Department of Housing Preservation and Development has issued a #certification of no harassment# ~~or if the owner has waived in writing the need for such a determination, that the owner has complied with Section 96-110 (Harassment and cure) (d) (Certification of Cure For Harassment).~~ ~~However, the owner has the right to withdraw its harassment determination waiver at any time prior to the issuance of a special permit pursuant to this Section; and~~
- (d) that an acceptable program for new #development# of the #zoning lot# is submitted to the Commission which indicates that to the extent permitted by the provisions of Section 96-10 (PRESERVATION AREA), the number of new #dwelling units# to be constructed is

at least equal to the number of #dwelling units# to be demolished and that the #floor area# of the new #residential development# is at least equal to the #floor area# of the #dwelling units# to be demolished and that site development will commence within a period of twelve months from completion of relocation.

The Commission may prescribe appropriate conditions and safeguards to insure that any interim #uses# proposed on the site prior to any construction is in conformance with the purposes of this Special District.

96-109

Alterations of buildings

Prior to the issuance of an alteration permit by the Department of Buildings for an #material alteration# of a #multiple dwelling# ~~other than an incidental alteration of a #building# containing #residential uses#~~ within the Preservation Area, the ~~Commissioner~~ Department of Housing Preservation and Development shall certify to the Department of Buildings that:

- (a) prior to evicting or otherwise terminating the occupancy of any tenant preparatory to alteration, the owner shall have notified the Commissioner of his or her intention to alter the #building#; and
- (b) ~~the eviction and relocation practices followed by the owner of the #building# satisfy all applicable legal requirements and that no harassment has occurred or, if it has been determined by the applicable governmental agency that legal relocation or eviction requirements have not been satisfied~~ Department of Housing Preservation and Development has issued a #certification of no harassment# or that harassment has occurred, that the owner has complied with Section 96-110 (Harassment and cure) (d) (Certification of Cure For Harassment).

However, a permit for alterations may be exempted from the provisions of this Section by written determination of the Department of Housing Preservation and Development that such alterations are to be performed solely for the purpose of either:

- (a) making the public areas of a #multiple dwelling# accessible to persons with disabilities without altering the configuration of any #dwelling unit# or #rooming unit#, or
- (b) making a #dwelling unit# or a #rooming unit# accessible to persons with disabilities.

For purposes of this Section, #dwelling unit# and #rooming unit# shall be defined as in Section 96-110.

96-110

Harassment and cure

(a) Definitions

1. Application date

“Application date” shall mean the date that the Department of Housing Preservation and Development accepts a completed application for a #certification of no harassment# for processing.

2. Cure compliance lot

“Cure compliance lot” shall mean a #zoning lot# on which #low income housing# is provided pursuant to a #restrictive declaration# in accordance with the cure provisions of paragraph (d) of this Section. Each #cure compliance lot# shall be located entirely within the corresponding #cure requirement lot#.

3. Cure requirement

“Cure requirement” shall mean #floor area# in an amount not less than the greater of:

(a) 28 percent of the total #residential# and #hotel floor area# of any #multiple dwelling# to be altered or demolished in which #harassment# has occurred, or

(b) 20 percent of the total #floor area# of any new or altered #building# on the #cure requirement lot#.

#Cure requirement# shall also mean any cure for harassment that was approved by the City Planning Commission or the Department of Housing Preservation and Development and was permitted by the provisions of this Section prior to (date of enactment).

4. Cure requirement lot

“Cure requirement lot” shall mean (i) a #zoning lot# containing a #multiple dwelling# with respect to which the Department of Housing Preservation and Development has denied a #certification of no harassment#, or (ii) a #zoning lot# with respect to which an applicant, in lieu of seeking a #certification of no harassment# which would otherwise be required, elects to seek a certification of compliance with the cure provisions of paragraph (d) of this Section and enters into a #restrictive declaration#.

5. Dwelling unit

“Dwelling unit” shall have the meaning set forth in the Multiple Dwelling Law.

6. Exempt hotel

“Exempt hotel” shall mean any #multiple dwelling#:

- (i) which is a #transient hotel# and was a #transient hotel# on the #referral date#, and
- (ii) in which no #residential# occupant is, or was on the #referral date#, entitled to a renewal lease or otherwise entitled to continued occupancy pursuant to the Local Housing Emergency Rent Control Act, as amended, the City Rent and Rehabilitation Law, as amended, the Rent Stabilization Law of 1969, as amended, or the Emergency Tenant Protection Act of 1974, as amended, and
- (iii) which has been exempted from the provisions of this Section by written determination of the Department of Housing Preservation and Development.

7. Exempt institutional residence

“Exempt institutional residence” shall mean any #multiple dwelling#:

- (i) the occupancy of which is restricted to non-profit institutional use and was restricted to non-profit institutional use on the #referral date#, and
- (ii) which has been exempted from the provisions of this Section by written determination of the Department of Housing Preservation and Development.

8. Inquiry period

“Inquiry period” shall mean a period which:

- (i) commences fifteen years prior to the #application date#, and
- (ii) terminates upon the #application date#;

provided, however, that the Department of Housing Preservation and Development may:

- (a) set such commencement date upon any date which is on or after the #referral date#, and is more than fifteen years prior to the #application date# where it determines that such extension of the duration of the inquiry period would further the purposes of this Section, and

- (b) extend such termination date up to and including the date upon which the Department of Housing Preservation and Development determines to grant or deny a #certification of no harassment#.

9. Low income housing

“Low income housing” shall mean #dwelling units# or #rooming units# occupied or to be occupied by persons or families having an annual household income at the time of initial occupancy equal to or less than eighty percent of the median income for the primary metropolitan statistical area, as determined by the United States Department of Housing and Urban Development or its successors from time to time for a family of four, as adjusted for family size.

10. Referral date

“Referral date” shall mean September 5, 1973.

11. Restrictive declaration

“Restrictive declaration” shall mean a legal instrument which:

- (i) provides that #low income housing# in an amount not less than the #cure requirement# shall be provided in a new or altered #multiple dwelling# on the #cure compliance lot#;
- (ii) provides that the #low income housing# must comply with the requirements of Section 23-90, as amended by this Chapter, unless any such requirement is waived by the Department of Housing Preservation and Development. However, in the Preservation Area, paragraph (b) of Section 23-951 (On-site new construction option) shall be inapplicable and in its place and stead, paragraph (a) of Section 96-105 (Dwelling unit regulations) shall be applicable;
- (iii) contains such other terms as the Department of Housing Preservation and Development shall determine;
- (iv) has been approved by the Department of Housing Preservation and Development;
- (v) runs with the land and binds all parties in interest to the #cure requirement lot# and their successors;
- (vi) runs with the land and binds all parties in interest to the #cure compliance lot# and their successors; and
- (vii) is perpetual in duration.

11. Rooming unit

#Rooming unit# shall have the meaning set forth in the Housing Maintenance Code.

(b) Permit Process

1. Unless the Department of Housing Preservation and Development has issued a #certification of no harassment# pursuant to paragraph (c) of this Section or has certified compliance with the cure provisions of paragraph (d) of this Section, no ~~Notwithstanding any provision to the contrary contained in this Chapter,~~ a permit may be issued by the Department of Buildings pursuant to Sections ~~96-108, 96-109, 96-23~~ or 96-24, and ~~no or~~ a special permit may be granted by the City Planning Commission pursuant to Sections 96-107 or 96-108 with respect to any #building# on a #zoning lot# in which harassment or other failure to satisfy applicable legal requirements in eviction and relocation has occurred, provided that the Department of Housing Preservation and Development has determined and certified that all parties in interest to the #zoning lot#, as the term "party in interest" is defined in #zoning lot# in Section 12-10 (DEFINITIONS), have entered into a legal agreement approved by the Department of Housing Preservation and Development which shall run with the land and bind all parties in interest and their successors. Such agreement shall provide for either the #floor area# cure or land cure as set forth below:
2. The following structures shall be exempt from the provisions of this Section: (i) any city-owned #multiple dwelling#; (ii) any #multiple dwelling# which is the subject of a program approved by Department of Housing Preservation and Development for the provision of housing for persons of low or moderate income and has been exempted from the provisions of this Section by written determination of the Department of Housing Preservation and Development; (iii) any #multiple dwelling# initially occupied for residential purposes after January 1, 1974, except for #buildings# which are or have been interim #multiple dwellings# pursuant to Article 7C of the Multiple Dwelling Law; (iv) any #exempt hotel#; (v) any #multiple dwelling# in which occupancy is restricted to clubhouse or school dormitory use and occupancy was restricted to clubhouse or school dormitory use on the #referral date#; and (vi) any #exempt institutional residence#.
3. Where the Department of Housing Preservation and Development has denied a #certification of no harassment# with respect to a #multiple dwelling#, the Department of Buildings shall not issue any permit with respect to any #multiple dwelling# or other #building# located on, or to be located on, the #cure requirement lot# except in accordance with paragraph (d) of this Section.

(c) Certification of No Harassment

1. The Department of Housing Preservation and Development shall determine and certify whether there has been #harassment# of the lawful occupants of a #multiple dwelling# during the #inquiry period#.
2. There shall be a rebuttable presumption that #harassment# occurring within the #inquiry period# was committed by or on behalf of the owner of such #multiple dwelling# and that such #harassment#:
 - (i) was committed with the intent to cause a person lawfully entitled to occupancy of a #dwelling unit# or #rooming unit# in such #multiple dwelling# to vacate such unit or to surrender or waive a right in relation to such occupancy, and
 - (ii) materially advanced the demolition or alteration in furtherance of which the permit and #certification of no harassment# are sought.
3. The Department of Housing Preservation and Development may promulgate rules regarding the implementation of this Section. Such rules may include, but shall not be limited to, provisions which:
 - (i) establish the information to be required in an application for #certification of no harassment#, the form of such application, and the manner of filing of such application,
 - (ii) establish reasonable fees and charges to be collected from applicants for the administrative expenses incurred by the Department of Housing Preservation and Development, including, but not limited to, costs for publication of any notices,
 - (iii) establish the duration for which a #certification of no harassment# will remain effective, and
 - (iv) authorize the rescission of a #certification of no harassment# if the Department of Housing Preservation and Development finds either that #harassment# has occurred after the #inquiry period# or that the application for such #certification of no harassment# contained a material misstatement of fact. Following such rescission, the Department of Buildings may revoke any permit for which such #certification of no harassment# was required.
4. The Department of Housing Preservation and Development may refuse to accept, or to act upon, an application for a #certification of no harassment# where the Department of Housing Preservation and Development finds that:

- (i) taxes, water and sewer charges, emergency repair program charges, or other municipal charges remain unpaid with respect to such #multiple dwelling#.
 - (ii) such #multiple dwelling# has been altered either without proper permits from the Department of Buildings or in a way that conflicts with the certificate of occupancy for such #multiple dwelling# (or, where there is no certificate of occupancy, any record of the Department of Housing Preservation and Development indicating the lawful configuration of such #multiple dwelling#) and such unlawful alteration remains uncorrected, or
 - (iii) the Department of Housing Preservation and Development has previously denied an application for a #certification of no harassment# pursuant to this Section.
- 5. If the Department of Housing Preservation and Development determines that an application for a #certification of no harassment# contains a material misstatement of fact, the Department of Housing Preservation and Development may reject such application and bar the submission of a new application with respect to such #multiple dwelling# for a period not to exceed three years.
- 6. Before determining whether there is reasonable cause to believe that #harassment# has occurred with respect to any #multiple dwelling#, the Department of Housing Preservation and Development shall publish a notice in such form and manner as shall be specified in the rules promulgated pursuant to paragraph (c)(3) of this Section. Such notice shall seek public comment regarding whether there has been #harassment# of the lawful occupants of such #multiple dwelling# from the #referral date# to the date of submission of comments. If the Department of Housing Preservation and Development receives comments containing material evidence that #harassment# occurred on or after the #referral date# and more than fifteen years prior to the #application date#, the Department of Housing Preservation and Development shall, in accordance with paragraph (a)(8) of this Section, set the commencement of the #inquiry period# on a date prior to the date of such alleged harassment.
- 7. The Department of Housing Preservation and Development shall determine whether there is reasonable cause to believe that #harassment# has occurred during the #inquiry period#.
 - (i) If there is no reasonable cause to believe that #harassment# has occurred during the #inquiry period#, the Department of Housing Preservation and Development shall issue a #certification of no harassment#.
 - (ii) If there is reasonable cause to believe that #harassment# has occurred during the #inquiry period#, the Department of Housing Preservation and Development shall cause a hearing to be held in such manner and upon

such notice as shall be determined by the Department of Housing Preservation and Development, unless the applicant waives the right to a hearing. Following receipt of the report and recommendation of the hearing officer, or receipt of a waiver of the right to such a hearing from the applicant, the Department of Housing Preservation and Development shall either grant or deny a #certification of no harassment#.

8. The Department of Housing Preservation and Development may deny a #certification of no harassment# without a prior hearing if there has been a finding by the Division of Housing and Community Renewal or any court having jurisdiction that there has been harassment, unlawful eviction or arson at the #multiple dwelling# during the #inquiry period#.

(d) Certification of Cure For Harassment

1. The Department of Housing Preservation and Development shall not certify compliance with the cure provisions of this paragraph to the Department of Buildings unless all parties in interest to the #cure requirement lot# and all parties in interest to the #cure compliance lot# have entered into a #restrictive declaration#.
2. Any permit or certificate of occupancy issued by the Department of Buildings with respect to any structure located on a #cure requirement lot# or a #cure compliance lot# shall be subject to the following conditions:
 - (i) The Department of Buildings shall not issue any permit, except a permit for an alteration which is not a #material alteration#, with respect to any structure located on the #cure requirement lot# unless the #restrictive declaration# has been recorded in the Office of the City Register and indexed against each tax lot within the #cure requirement lot# and each tax lot within the #cure compliance lot#.
 - (ii) The Department of Buildings shall not issue any temporary or permanent certificate of occupancy for any new or existing structure or portion thereof on the #cure requirement lot#, other than any #low income housing# located on the #cure requirement lot#, until:
 - (a) the Department of Housing Preservation and Development certifies that the #low income housing# required by the #restrictive declaration# has been completed in compliance with the #restrictive declaration#, and
 - (b) the Department of Buildings has issued a temporary or permanent certificate of occupancy for each unit of such #low income housing#.

(iii) The Department of Buildings shall include the occupancy restrictions of the #restrictive declaration# in any temporary or permanent certificate of occupancy for any new or existing structure or portion thereof on the #cure compliance lot#. Failure to comply with the terms and conditions set forth in the #restrictive declaration# shall constitute a violation, and a basis for revocation, of any certificate of occupancy containing such restriction.

(iv) The Department of Buildings shall include the occupancy restrictions of the #restrictive declaration# in any temporary or permanent certificate of occupancy for any new or existing structure or portion thereof on the #cure requirement lot#, except where the management and operation of the #cure compliance lot# is wholly controlled by, and the #restrictive declaration# requires that management and operation of the #cure compliance lot# remain wholly controlled by, an independent not-for-profit administering agent that is not affiliated with the owner of the #cure requirement lot#. Failure to comply with the terms and conditions set forth in the #restrictive declaration# shall constitute a violation, and a basis for revocation, of any certificate of occupancy containing such restriction.

3. No portion of the #low income housing# required under this Section shall qualify to:

- (i) increase the #floor area ratio# pursuant to Section 96-21 (Special Regulations for 42nd Street Perimeter Area); Section 96-22 (Special Regulations for Eighth Avenue Perimeter Area); any #floor area ratio# increase provision of the #Special Garment Center District, #Special Hudson Yards District#, #Special West Chelsea District#; or Section 23-90; or
- (ii) satisfy an eligibility requirement of any real property tax abatement or exemption program with respect to any #multiple dwelling# that does not contain such #low income housing#.

~~(1) #Floor area# cure~~

~~(i) Lower income housing, in an amount equal to at least 28 percent (the "cure percentage") of the total #residential floor area# of any #building# to be altered or demolished in which harassment (as defined in paragraph (d) of this Section) has occurred, shall be provided in a new or altered #building# on the same #zoning lot# as the #building# to be altered or demolished.~~

~~(ii) If at the time of filing an application for a building permit or special permit, an existing #building# to be altered contains occupied units, the~~

requirement set forth in this paragraph, (a)(1), regarding the provision of lower income housing shall be satisfied as follows:

(a) — ~~not less than 28 percent of the #floor area# of all vacant units shall be provided for lower income housing; and~~

(b) — ~~the balance of any required lower income housing shall be comprised of qualifying occupied units;~~

(iii) — ~~Such designated lower income housing units shall be in compliance with the applicable regulations of Section 23-90 (INCLUSIONARY HOUSING) except that in the Preservation Area, paragraph (b) of Section 23-941 (On-site new construction option) shall be inapplicable and in its place and stead, paragraph (a) of Section 96-105 (Dwelling unit regulations) shall be applicable.~~

(2) — Land cure

For ~~#buildings#~~ that were vacant on August 17, 1990 only:

(i) — ~~that sufficient land on the same #zoning lot# has been donated or provided for nominal consideration by the owner of the land for the construction of lower income housing at a rate of 1.0 square foot of lower income housing #floor area# for every 1.1 square feet of existing #residential floor area# of a #building# subject to the cure provisions;~~

(ii) — ~~the legal instruments relating to the transfer of title to an administering agent have been approved pursuant to Section 23-90;~~

(iii) — ~~the administering agent has signed an agreement with a City, State or federal housing or development agency to fully fund the construction of lower income housing;~~

(iv) — ~~such lower income housing shall comply with the requirements of Section 23-90, except that the lower income housing may receive City, State or federal subsidies;~~

(v) — ~~the total amount of new #residential floor area# to be provided pursuant to this Section shall in no event be less than the amount required under Section 96-108 (Demolition of buildings), paragraph (d);~~

(vi) — ~~no demolition permit shall be issued by the Department of Buildings pursuant to Section 96-108 until there has been a funding closing with a City, State or federal housing or development agency to finance the construction of the lower income housing units to be constructed as required in paragraph (a)(2)(i) of this Section;~~

~~(vii) — no temporary Certificate of Occupancy shall be issued for any purpose other than lower income housing on the same #zoning lot# until a temporary Certificate of Occupancy for all units of lower income housing has been issued. No permanent Certificate of Occupancy shall be issued for any purpose other than lower income housing on the same #zoning lot# until a permanent Certificate of Occupancy for all units of lower income housing has been issued.~~

~~(b) — Any building permit or special permit issued pursuant to this Section shall be subject to the following additional conditions:~~

~~(1) — No certificate of occupancy, temporary or permanent, shall be issued by the Department of Buildings for new #buildings# and/or existing #buildings# or portions thereof which are to remain on the #zoning lot#, any one of which #buildings# requires compliance with this Section due to harassment, until the Commissioner of Housing Preservation and Development certifies that the lower income housing is in compliance with the Lower Income Housing Plan as set forth in Section 23-90 and the Department of Buildings has issued a Certificate of Occupancy, temporary or permanent, for each unit of the lower income housing.~~

~~(2) — Immediately upon issuance of a building permit or special permit, the legal agreement described in paragraph (a) of this Section shall be recorded by the applicant in the Conveyance Section of the Office of the City Register in the County of New York and indexed against the subject #zoning lot#. If the applicant does not immediately so record the legal agreement, the City of New York may record the agreement at the sole cost and expense of the applicant. This occupancy restriction of paragraph (a) of this Section shall be included in both the temporary and permanent certificates of occupancy issued by the Department of Buildings for the new and/or existing #buildings#. Failure to comply with the terms and conditions set forth in the legal agreement shall constitute a violation of the permit or certificate of occupancy and may constitute a basis for revocation of the permit or Certificate of Occupancy.~~

~~(3) — No portion of the lower income housing required under this Section shall qualify to:~~

~~(i) — increase the #floor area ratio# pursuant to Section 96-21 (Special Regulations for 42nd Street Perimeter Area) or Section 23-90; or~~

~~(ii) — satisfy the requirement of a program to receive tax abatement or exemptions which are not specifically limited to lower income housing.~~

~~(e) — The requirements of paragraphs (a) and (b) of this Section, the two-bedroom unit distribution requirement of Section 96-105 and the provisions of Section 96-108 shall not apply to any existing #buildings# located within the #Special Clinton District# which are~~

acquired and rehabilitated to provide low to moderate income housing units pursuant to a special permit approved by the Board of Estimate prior to February 28, 1988. In lieu thereof, and notwithstanding any provision to the contrary contained in this Chapter, the following curative measures shall apply where there has been any harassment as defined in paragraph (d) of this Section:

- (1) — a building permit may be issued by the Department of Buildings when the Chairperson of the City Planning Commission has certified to the Department of Buildings that a restrictive declaration which binds the owner of the #zoning lot# and all successors in interest, in a form satisfactory to the Chairperson, has been recorded against the #zoning lot# on which the low to moderate income housing units are located, which restricts the occupancy of such units to low to moderate income persons and #families# in accordance with the terms of the special permit, and to persons and #families# residing in such units at the time such declaration is recorded;
 - (2) — a temporary or permanent Certificate of Occupancy may be issued by the Department of Buildings when the Chairperson of the City Planning Commission has certified that such low to moderate income housing units are in full compliance with the terms of the previously approved special permit; and
 - (3) — no portion of the lower income housing provided pursuant to paragraph (c) of this Section may be used to increase the #floor area ratio# of a #zoning lot# pursuant to Section 96-21 or Section 23-90.
- (d) — For the purposes of this Chapter, "harassment" (including other failure to satisfy applicable legal requirements in eviction and relocation practices) shall mean any conduct, as described below, by or on behalf of an owner of a #building# containing #dwelling units# or #rooming units# which materially advanced #development#, #enlargement#, demolition of a #building#, the conversion or alteration of a #building# or the #extension# of a #use# within a #building#, in the furtherance of which the permit is sought:
- (1) — the use or threatened use of force which causes or is intended to cause any person lawfully entitled to occupancy of a #dwelling unit# or #rooming unit# in such multiple dwelling to vacate such unit or to surrender or waive any rights in relation to such occupancy;
 - (2) — the interruption or discontinuance of essential services which:
 - (i) — interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of a #dwelling unit# or #rooming unit# in the use or occupancy of such #dwelling unit# or #rooming unit#; and

- (ii) ~~causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# or #rooming unit# to vacate such unit or to surrender or waive any rights in relation to such occupancy;~~
- (3) ~~the failure to comply with the provisions of subdivision (c) of Section 27-2140 of Article 7 of subchapter 5 of the Housing Maintenance Code which causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# or #rooming unit# to vacate such unit or to waive any rights in relation to such occupancy; or~~
- (4) ~~any other conduct which prevents or is intended to prevent any person from the lawful occupancy of such #dwelling unit# or #rooming unit# or causes or is intended to cause such person lawfully entitled to occupancy of such #dwelling unit# to vacate such unit or to surrender or waive any rights in relation to such occupancy, including but not limited to removing the possessions of any occupant from the #dwelling unit# or #rooming unit#; removing the door at the entrance to the #dwelling unit# or #rooming unit#; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying the occupant with a key.~~

~~For any alleged act of harassment which has taken place within 15 years of the date of filing an application for a building permit or special permit pursuant to Sections 96-107, 96-108, 96-109, 96-23 or 96-24, there shall be a presumption, rebuttable by the applicant, that the harassment materially advanced the #development# on the #zoning lot# or the #enlargement#, #extension#, conversion or alteration of the existing #building# in furtherance of which the permit is sought.~~

~~Such determination of harassment for the purpose of this Chapter shall be made by the Department of Housing Preservation and Development after a hearing in accordance with applicable statutes and regulations, prior to certification of compliance with the aforementioned Sections 96-107, 96-108, 96-109, 96-23 or 96-24.~~

~~Notwithstanding anything set forth in this Section, no act of harassment which occurred prior to September 5, 1973, shall constitute harassment for the purposes of this Chapter.~~

~~* * *~~

**96-20
PERIMETER AREA**

~~* * *~~

**96-21
Special Regulations for 42nd Street Perimeter Area**

~~* * *~~

(e) Pedestrian circulation space

Within Subarea 2 of the 42nd Street Perimeter Area, as shown in Appendix A, pedestrian circulation space shall be provided in accordance with the provisions of Section 37-07 (Requirements for Pedestrian Circulation Space). In addition, for #developments# or #enlargements# that provide subway entranceways constructed after (effective date of amendment), one and one-half times the area of such entranceway accessible to the public at #street# level may qualify as pedestrian circulation space, up to a maximum amount of 3,000 square feet.

(f) Special curb cut and parking requirements

No curb cuts shall be permitted on 42nd Street. The parking requirements of the #Special Hudson Yards District# shall apply within the 42nd Street Perimeter Area, as set forth in Section 93-80 (OFF-STREET PARKING), except that such parking requirements shall not apply to any #development# or #enlargement# for which a special permit was granted prior to January 19, 2005.

Any #development# or #enlargement# for which a building permit has been lawfully issued prior to December 31, 2004 shall comply with either the parking regulations in effect at the time the permit was issued, or the requirements of this paragraph (f).

~~The provisions of this Section 96-21 shall not apply to any #development# or #enlargement# for which a building permit has been lawfully issued prior to December 31, 2004. In lieu thereof, the regulations in effect at the time such permit was issued shall apply.~~

* * *

**96-21
Special Regulations for 42nd Street Perimeter Area**

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**96-24
Relocation and Demolition of Buildings in the Perimeter Area**

Prior to the issuance by the Department of Buildings of a demolition permit or a permit for any #development#, #enlargement# or #extension# on any #zoning lot# containing #residential uses# within the Perimeter Area, the ~~Commissioner~~ Department of Housing Preservation and Development shall certify to the Department of Buildings:

- (a) that prior to evicting or otherwise terminating the occupancy of any tenant in connection with vacating any #building#, the developer shall have notified the Department of Housing Preservation and Development of plans for the relocation of tenants which shall:
 - (1) to the extent possible provide for the relocation of tenants within the Clinton District; and

- (2) provide for the satisfaction of all the requirements for the issuance of a certificate of eviction under applicable rent control and rent stabilization regulations of the State of New York; and
- (b) that the developer has complied with the relocation plan submitted pursuant to paragraph (a) of this Section and that ~~no harassment has occurred~~ the Department of Housing Preservation and Development has issued a #certification of no harassment#, or if it has been determined by the applicable governmental agency that legal relocation or eviction requirements have not been satisfied or that harassment has occurred, that the owner has complied with Section 96-110 (~~Harassment and cure~~) (d) (Certification of Cure For Harassment).

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Article XII - Special Purpose Districts

**Chapter 1
Special Garment Center District**

* * *

**121-31
Maximum Permitted Floor Area**

The basic maximum #floor area ratio# of a non-#residential building# shall be 10.0 and may be increased to a maximum #floor area ratio# of 12.0 only pursuant to Section 93-31 (District Improvement Fund). For #buildings# containing #residences#, the basic maximum #floor area ratio# shall be 6.5. The #floor area ratio# of any #building# containing #residences# may be increased from 6.5 pursuant to Sections 93-31, and pursuant to Section 23-90 (INCLUSIONARY HOUSING), as modified by Section 93-23, provided that for every five square ~~feet~~ feet of #floor area# increase pursuant to Section 93-31 ~~or 93-32~~ there is a #floor area# increase of six square feet pursuant to Section 23-90 as modified by Section 93-23, inclusive. The maximum #residential floor area ratio# shall be 12.0.

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**121-50
SUPPLEMENTAL REGULATIONS IN PRESERVATION AREA P-2**

In Preservation Area P-2, the provisions of Section 93-90 (HARASSMENT), inclusive, shall apply.

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The above resolution (N 060046(A) ZRM), duly adopted by the City Planning Commission on December 7, 2005 (Calendar No. 10), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, AICP, Chair

KENNETH J. KNUCKLES, Esq., Vice-Chairman

**ANGELA M. BATTAGLIA, IRWIN CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,
ALFRED C. CERULLO, III, JANE D. GOL, CHRISTOPHER KUI, LISA GOMEZ,
JOHN MEROLO, KAREN A. PHILLIPS, DOLLY WILLIAMS, Commissioners**

RICHARD W. EADDY, Commissioner, RECUSED