

2
3 June X, 2016

4
5 Hon. Carl Weisbrod
6 Chair
7 City Planning Commission
8 120 Broadway, 31st Floor
9 New York, NY 10271

10
11 **Re: Theater Subdistrict Fund Text Amendment**
12 **N160254ZRM**

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14 Dear Chair Weisbrod:

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16 Manhattan Community Board 4, at the June 1st, 2016 Full Board meeting, voted on application
17 N160254ZRM for a zoning text amendment to the Zoning Resolution (ZR) §81-744 to establish
18 a new methodology for calculating the contribution rate to the Theater Subdistrict Fund from the
19 transfer of development rights within the Theater Subdistrict. In addition, the Department of City
20 Planning (DCP) is proposing to streamline proposals pursuant to ZR §81-744(a) and make them
21 chairperson certifications instead of Commission certifications.

22
23 The Board voted to approve the application provided a process was incorporated to ensure that
24 funding went to smaller theater organizations, with budgets of \$250,000 or less, especially within
25 community district 4. However, the board voted to deny the application unless the proposal to
26 make such transfers chairperson certifications only and not subject to City Planning Commission
27 is rescinded.

28
29 **Background**

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

34
35 The original Special Theater District was created in 1967 as the first special district established
36 pursuant to the ZR. It was created “to preserve and protect the unique character of the area as a
37 cultural, theatrical and entertainment mecca and to protect theaters from the westward expansion
38 of Midtown office development.”¹

39
40 In 1982, when the Board of Estimate approved the Special Midtown District (MiD), the Special
41 Theater District became a subdistrict within the MiD and new zoning provisions were introduced
42 “to further enhance the Theater Subdistrict through the transfer of development rights to nearby
43 lots and to restrict the demolition of listed theaters.” The 1998 text amendment established a new
44 mechanism for listed theaters in the ZR to transfer their available development rights throughout
45 the subdistrict in exchange for “retaining, preserving and maintaining a legitimate theater use,

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

46 and for a contribution” to a newly created Theater Subdistrict Fund. This provided more
47 opportunities for theaters to transfer development rights while strengthening requirements for the
48 continuation of legitimate theater use. DCP reports that there are approximately seventeen (17)
49 theaters with available development rights to transfer within the subdistrict with about 1.5
50 million square feet. The total amount contributed to the Fund is \$8,589,349.55.

51
52 [Joe Restuccia to add some language on the history behind the CD4 portion of the subdistrict.]
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54
55 **Description of the Proposed Zoning Text Amendment**

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57 **a. Theater Subdistrict Fund Methodology**

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

68
69 According to the ZR, the dollar value is to be adjusted every three to five years to reflect any
70 change in the assessed value of properties within the Theater Subdistrict. The 1998 City
71 Planning Commission report notes that the \$10.00 per square foot amount is approximately 20%
72 of the average sales price of land per square foot in the Theater Subdistrict. The established
73 methodology for adjusting the dollar value is to calculate the total of the Department of Finance
74 assessed value of property in the Theater Subdistrict and divide by the total building floor area in
75 the Theater Subdistrict and then adjust the contribution rate accordingly. DCP has undertaken the
76 contribution rate review within the prescribed three to five year window and has found that the
77 contribution amount to the Fund expressed as a percentage of the amount paid for the transferred
78 development rights ranged from approximately 4% to 9%, far less than the 20% percent
79 envisioned in 1998.

80
81 DCP is proposing to establish a new methodology for calculating the contribution amount to the
82 Fund based on 20% of the total amount paid for the transferable development rights. DCP is also
83 establishing a base amount or “floor price” for transferable development rights. This is because
84 there are “few arm’s lengths transactions in this area and there are many variables that can
85 influence the price paid for the transferable development rights that may not be directly related to
86 their fair market value.” The floor price is a value per square foot and it will provide a basis for
87 establishing a minimum contribution to the Fund. The Commission will consider a Market Study
88 appraisal undertaken by a certified valuation and appraisal company to establish the floor price
89 and to adjust every three to five years.

90

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

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94 **b. Proposal for Chairperson Certification**

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96 The existing transfer of development rights pursuant to ZR §81-744(a) allows the transfer of
97 development rights from a granting site to a receiving site by City Planning Commission
98 Certification within the Theater Subdistrict subject to five findings.²

99

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

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105 **Community Board Recommendations**

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107 **a. Theater Subdistrict Fund Methodology**

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

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115 However, the Board has also for too long now seen the money that has gone to the theater
116 subdistrict go to organizations though worthy but in less need for assistance; not to mention by
117 name some organizations that have profited off their name and mission but for years now failed
118 to adhere to their mission. Accordingly, the Board proposes a process be incorporated to ensure
119 that funding goes to smaller theater organizations, with budgets of \$250,000 or less, especially
120 within community district 4. Attached in Appendix A is a map that highlights such theaters
121 within the theater subdistrict and community district 4. [David Pincus to work with Joe Restuccia
122 to compile and develop the map.] The Board will be reaching out to its elected officials in an
123 effort to assist in creating a workable process for a better distribution of the theater subdistrict
124 fund.

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126 **b. Proposal for Chairperson Certification**

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128 The Board cannot support this application unless the proposal to make such transfers chairperson
129 certifications only and not subject City Planning Commission is rescinded. The Board would be
130 working against its mandate within the land use process and negligent in its duties as a watchdog
131 for the community if it was to support a proposal to limit review for such an important part of the

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

132 City of New York, its theater. In addition, the Board is aware that Manhattan Community Board
133 5, where the bulk of the Theater Subdistrict resides, strongly opposes a mere chairperson
134 certification for this process. We join them in opposition to this proposed amended change and
135 strongly recommend it be rescinded from the application.

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137 Subject to the above, this Board submits its recommendations to this application.

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139 Sincerely,

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Delores Rubin
Chair

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

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

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