



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**COREY JOHNSON**  
Chair

**ROBERT J. BENFATTO, JR., ESQ.**  
District Manager

June 10, 2013

Robert D. LiMandri  
Commissioner  
Department of Buildings  
280 Broadway, 7<sup>th</sup> Floor  
New York, NY 10007

To Janet Sadik-Khan  
Commissioner  
Department of Transportation  
55 Water Street, 9<sup>th</sup> Floor  
New York, NY 10041

**Re: After-hours Variances**

Dear Commissioner LiMandri and Sadik-Khan:

Manhattan Community Board 4 (CB4) requests immediate changes to the method by which after-hours variances (AHVs) are issued by the New York City Department of Buildings (DOB) and Transportation (DOT) in District 4. We request that AHV for night work on a given block or a given street, by both DOB and/or DOT be approved for duration of no more than seven (7) days out of any rolling 30 days on a certain block, and weekend work be approved for no more than one weekend out of four consecutive weekends. This is acutely needed in our district where so many massive projects are underway as a result of the rezoning on the west side.

**MCB4 therefore urgently requests that DOB does everything in its power to ensure that new construction does not disrupt residential communities more than absolutely necessary.**

As we understand it, AHVs allow developers and landlords to work at times most New Yorkers are sleeping or relaxing—late at night, early in the morning and on the weekends. MCB4 Quality of Life Committee has received a deluge of complaints over the last two years from residents who are getting sick because of the uninterrupted loud noise.<sup>1</sup> Business Owners cannot speak on the telephone, hold meetings and they lose key employees who cannot sustain the pain inflicted by such constant noise.

“Noise is generally viewed as being one of a number of general biological stressors. It is felt that

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<sup>1</sup> A technique American troops used successfully in Panama to capture General Noriega, and still qualifies as Cruel, Inhuman and Degrading treatment (CID) illegal under U.S law

excessive exposure to noise might be considered a health risk in that noise may contribute to the development and aggravation of stress related conditions such as high blood pressure, coronary disease, ulcers, colitis, and migraine headaches. Growing evidence suggests a link between noise and cardiovascular problems. There is also evidence suggesting that noise may be related to birth defects and low birth-weight babies. There are also some indications that noise exposure can increase susceptibility to viral infection and toxic substances.”<sup>2</sup>

According to DOB, applications for AHVs citywide have indeed increased at a staggering rate in recent years, from just 59,128 filed in 2007 to 128,605 in 2009. With so many more projects seeking special permission to work outside of permissible work hours, it is more critical than ever that DOB and DOT ensure that projects are granted AHVs only when appropriate and mandated under existing code.

Under the New York City Administrative Code Section 24-223, AHVs may only be issued in cases of emergency work, public safety concerns, City construction projects, with minimal noise impact and undue hardship guaranteed. However, we have been apprised in conversations with members of our various local electeds’ staffs, that AHV applications are routinely approved based on a review of the scope of work, rather than on the Administrative Code criteria. Worse, as conveyed by DOB staff and confirmed by Assemblyperson Linda Rosenthal’s office, the AHV application form neither lists the requirements for an AHV to be issued nor contains sections for the applicant to prove that it has met them. . Further we understand that renewals of such AHV are self-certified.

Rather than limit the volume of work, DOB has required only that the contractor simply file a noise mitigation plan with the New York City Department of Environmental Protection, which allows developers to perform virtually any work within the limits of the City noise code and is already required under Section 24-203 of the Administrative Code. As anyone living near a construction site on a weekend can attest, after-hours construction – even ones permissible under City’s noise code - are extremely disruptive to area residents. Similarly, DOB does not require developers to prove undue hardship, such as financial concerns, which may explain why some of the most expensive apartments in Manhattan are being constructed in Manhattan Community District 4 with AHVs for late-night, early morning and weekend work ongoing for years.

According to your staff, the quality of life of adjoining residents is not part of the criteria to grant repeated permits on a given block: for example, the fact that construction noise was permitted for three week ends in a row does not constitute a ground to deny work on a fourth week end. Similarly, an AHV granted by DOT to do street work on the weekend, will not take in consideration whether there is construction during the weekdays in the same street. Additionally, DOT finds it acceptable to lose a traffic lane at peak traffic hours for the purpose of construction but the loss of a moving lane, for the purpose of residents’ health and quality of life, is unacceptable.

However, the scientific community agrees that “with an adequate time before the next noise

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<sup>2</sup> **NOISE EFFECTS HANDBOOK, A Desk Reference to Health and Welfare Effects of Noise**, By Office of the Scientific Assistant Office of Noise Abatement and Control U.S. Environmental Protection Agency, October 1979, Revised July 1981 EPA 500-9-82-106

exposure, the ear will generally recover to a previous pre-exposure threshold. Repeated noise exposures without adequate time for recovery between exposures can lead to a Noise-Induced Permanent Threshold Shift (NIPTS)”.<sup>3</sup>

From the massive construction taking place over years on W. 54<sup>th</sup> Street between Eleventh and Twelfth Avenues, to the rezoning of Eleventh Avenue, to the proposed rezoning in Clinton’s Special Clinton Urban Renewal Area (CURA ) to the ongoing development at Hudson Yards, West Chelsea and its surrounding neighborhoods, MCD4’s residents have been exposed to years of quality of life abuses due to the AHVs that have been previously granted, and is also facing a minimum of ten to fifteen more years of massive and constant new construction in the midst of its residential neighborhoods. We are not only requesting the DOB and DOT to only grant AHV’s using the “letter” and spirit of the Administrative Code, but we are also asking you to incorporate health and quality of live criteria in the approval process. We are actively working with all local elected officials to prioritize this issue, and bring long needed relief to the stress that these variances almost uniformly bring to the residents of this district and City at large.

While development is essential to any thriving city, DOB must strike a balance between developers and the residents affected by the construction. The Administrative Code establishes reasonable criteria for issuing AHVs which ensure that developers work after-hours only when necessary or when the work will not impact the surrounding community, but DOB appears unwilling to hold developers to these requirements.

Manhattan Community Board 4 (CB4) requests a meeting with DOB and DOT to discuss the issuance of AHVs and the quality of life impacts on the District 4 community.

Sincerely,

Corey Johnson  
Chair

Larry Roberts  
Co-Chair  
Quality of Life: ACES Committee

David Pincus  
Co-Chair  
Quality of Life: ACES Committee

cc: Assemblymember, Linda Rosenthal  
Manhattan Borough President, Scott Stringer  
Congressman, Jerry Nadler  
NYS Senator Brad Hoylman  
Assemblymember, Richard Gottfried  
Council Member, Gail Brewer  
NYC Council Speaker, Christine Quinn  
Department of Health and Mental Hygiene

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<sup>3</sup> **NOISE EFFECTS HANDBOOK, A Desk Reference to Health and Welfare Effects of Noise**, By Office of the Scientific Assistant Office of Noise Abatement and Control U.S. Environmental Protection Agency, October 1979, Revised July 1981 EPA 500-9-82-106