



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

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District Manager

December 14, 2015

Vicki Been, Commissioner
Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Dear Commissioner Been:

At its November meeting of the Housing Health and Human Services Committee, members of Manhattan Community Board 4 raised concerns about a loophole in the tenant anti-harassment provisions of the Special Clinton, Special Hudson Yards and Special West Chelsea Districts that recently became apparent when assisting the tenants living in one of the most troubled sites in our district at 485-497 Ninth Avenue. MCB4 representatives recently voiced their concerns at a meeting with representatives from the Department of Housing Preservation and Development (HPD) and more recently crafted language to close this loophole. MCB4 is writing to express its support for closing this loophole in order to protect tenants living in our district and further requests that this matter be handled expeditiously.

Background- Special Purpose Districts

Adopted by the Board of Estimate¹ in 1973, the Special Clinton District (SCD) was one of the first Special Purpose Districts created in the City of New York. The SCD allows dense residential and commercial development to proceed in the Perimeter Areas (along 8th Avenue and West 42nd Street) while establishing a Preservation Area, with specific height limits, in the neighborhood's low rise residential core (west of 8th Avenue to west of 11th Avenue, from West 43rd to West 56th Streets). Of particular importance, the SCD was the first district in the City to include protections against tenant harassment. The SCD's tenant anti-harassment provisions require that an owner obtain a certification from HPD stating that no harassment has occurred on the site before the Department of Buildings (DOB) can issue a permit for material alteration. This Certification of No Harassment (CONH) requirement mandates that owners of properties in which harassment has been documented must provide permanent affordable housing before altering or demolishing these buildings.

During the rezoning of the Hudson Yards in 2005 and West Chelsea in 2008, MCB4 worked with HPD and the Department of City Planning (DCP) to incorporate similar anti-harassment tenant protections into both the Special Hudson Yards District (SHYD) and the Special West Chelsea District (SWCD) in order to prevent large-scale displacement of existing tenants in

¹ Until 1990, the Board of Estimate was the precursor body to the City Council for final approval of zoning actions.

MCB4’s core residential areas (ranging from 13 to 33 feet). As large areas within our community district have been rezoned, often at enormous dense floor area ratios, the anti-harassment and demolition provisions have been an ongoing deterrent against wholesale tenant displacement.

Apparent Loophole in the Zoning Text

Recently, when working to protect the tenants living in 485-497 9th Avenue, MCB4 became aware of a loophole in the Zoning Text that allows owners to circumvent the CONH provisions of the Special Hudson Yards District (and by extension Section 96-108 of the SCD and 98-70 of the SWCD). Specifically, under Section 93-91 of the SHYD, a building declared by DOB to be unsafe can be demolished without obtaining a CONH.

While the intent of this language was to allow the City to expeditiously address emergency situations that compromise public safety, if left unchecked it can be used by building owners to circumvent anti-harassment provisions. The loophole inadvertently awards owners who actively or passively compromise the structural integrity of a building by not requiring compliance with the CONH provisions. As a result, they are relieved of any obligation to provide permanent affordable housing, even if they have engaged in tenant harassment tactics and/or facilitated the structural instability of the building.

Not only do the tenants who remain on such a site lose this protection, but the City as a whole loses the permanent affordable housing that would have otherwise been required to be built at that site.

MCB4 is therefore recommending the following text changes to the Special Clinton, Special Hudson Yards and Special West Chelsea Districts to close this loophole while also maintaining public safety protections:

Proposed Amendment—CONH Loophole Special Clinton District Zoning Text

96-110(b)

- (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,
 - (i) no permit may be issued by the Department of Building pursuant to Section 96-109 and 96-24, and no special permit may be granted by the City Planning Commission pursuant to Section 96-107 and 96-108;
 - (ii) no permit may be issued by the Department of Buildings for the construction of a #development#, #enlargement# or #extension# of a structure located on a #zoning lot# where a #multiple dwelling# had been found to be unsafe pursuant to Title 28, Chapter 2 Article 216 of NYC Admin Code and demolished pursuant to Section 96-108.

**Proposed Amendment—CONH Loophole
Special Hudson Yards District Zoning Text**

93-90(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#; or
 - (iii) the construction of a #development#, #enlargement# or #extension# on a zoning lot on which a #multiple dwelling# has been found to be unsafe pursuant to Title 28, Chapter 2 Article 215 or 216 of the New York City Administrative Code and demolished pursuant to Section 93-91(a) 108.

**Proposed Amendment—CONH Loophole
Special West Chelsea District Zoning Text**

98-70

SUPPLEMENTAL REGULATIONS

- (a) In the #Special West Chelsea District#, the provisions of paragraphs (a) through (d), inclusive, of Section 93-90 (HARASSMENT) shall apply as modified in this Section.
- (b) In the #Special West Chelsea District#, the provisions of Section 93-91 (Demolition) shall apply.

There are not changes recommended for Section 98-70 of the SWCD Zoning Text because the text makes a reference to SHYD Zoning Text Section 93-90

MCB4 thanks HPD for its attention to this matter and hopes that the elimination of the loophole in the Zoning Text will support the goal of creating and preserving affordable housing throughout Community District 4 and throughout New York City.

Sincerely,



Christine Berthet
MCB4 Chair



Barbara Davis, Co-Chair
Housing, Health &
Human Services Committee

Joe Restuccia, Co-Chair
Housing, Health &
Human Services Committee

cc: All Local Electeds