



## CITY PLANNING COMMISSION

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April 25, 2012/Calendar No. 10

N 120171 ZRM

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**IN THE MATTER OF** an application submitted by the New York City Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, concerning Article IX, Chapter 3 (Special Hudson Yards District), Borough of Manhattan, Community District 4.

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This application (N 120171 ZRM) for an amendment of the Zoning Resolution relating to Article IX, Chapter 3 (Special Hudson Yards District), was filed by the Department of City Planning on January 19, 2012.

### **BACKGROUND**

The Department of City Planning has proposed a text amendment to the Special Hudson Yards District (SHYD) in order to facilitate implementation of the third section of the High Line elevated park which runs between West 30th and 34th streets, and Tenth and Twelfth avenues. The amendment would modify the building location and public access area requirements applicable within Eastern Rail Yard Subarea A1 (“Subarea A1”) located between West 30th and 33rd streets, and Tenth and Eleventh avenues.

The portion of the High Line structure north of West 30th Street is currently owned by the CSX Rail Corporation and remains undeveloped. This portion is located above property currently owned by public entities. Blocks 702, 704 and 676 make up the Metropolitan Transportation Authority’s West Side Rail Yards, while Block 679 is owned by the Convention Center Development Corporation and is used as a truck marshalling facility for the adjacent Javits Convention Center. Blocks 702 and 704 are zoned C6-4 and make up the entirety of Eastern Rail Subarea A1 in the SHYD. Block 676 is also zoned C6-4 and makes up the entirety of Western Rail Yard Subdistrict F in the SHYD. Finally, Block 679 is zoned M2-3. The City owns the public streets over which the High Line crosses.

When original planning for the Hudson Yards proposal was underway, the future of the High Line north of West 30th Street was uncertain and thus the 2005 Hudson Yards rezoning of the area (N 040500(A) ZRM) did not incorporate the High Line on the Eastern Rail Yard, except for a required pedestrian link between Subarea A1's required outdoor plaza and the High Line to the south. At that time, the Western Rail Yard site was the proposed location for a new NY Jets Stadium/Multi-Use Facility. The stadium project, however, was not approved by the Public Authorities Control Board and the proposal was withdrawn.

By the time of the Western Rail Yard Project, which envisioned approximately 5.7 million square feet of mixed-use development and 5.5 acres of publicly-accessible open space on the block, it was planned that the High Line north of West 30th Street would be preserved and made available for public use. Thus, the zoning adopted in conjunction with the Western Rail Yard Project in 2009 (C 090433 ZMM) defined a High Line open space as one of that project's six required spaces.

In early 2010, the Department of Parks and Recreation and the Department of Citywide Administrative Services proposed the site selection and acquisition of the High Line north of West 30th Street to expand the existing High Line public open space network up to West 34th Street. This application (C 100180 PCM) was approved in June 2010.

Since then, the City has been working with the various involved parties on a plan to acquire the section of the High Line north of West 30th Street, improve it, and make it available for public use. Current plans would provide permanent improvements to the open space network on the site of Subarea A1 by the end of 2013 and temporary improvements on the Western Rail Yard site and on the block owned by the Convention Center Development Corporation, with permanent improvements coming in the future.

To accomplish this plan, the City has been working to complete acquisition of this last section of the High Line and the Department has proposed this text amendment to Subarea A1 (the Eastern

Rail Yards) in order to complement the zoning for the Western Rail Yard Project and provide for rehabilitation and implementation of permanent landscape improvements on the site.

Together with a related application by ERY Tenant LLC (N 120176 ZRM) which seeks a text amendment to allow for changes relating to ground floor retail requirements, signage regulations, and public access areas located in Subarea A1, these proposed text amendments would facilitate development of Section 3 of the High Line between Tenth and Eleventh avenues along the southern edge of A1.

The proposed zoning text amendment would maintain the existing requirements as to minimum lot coverage for public access areas within Subarea A1, but require that the High Line between Tenth and Eleventh avenues (the “ERY High Line”) be provided as part of the required public access areas for the site and be associated with its initial phase of development.

These amendments would also allow the portion of the High Line over Tenth Avenue (the “Tenth Avenue Spur”) to count toward the minimum public access area requirements for Subarea A1, subject to the requirements of the ERY High Line.

The proposed text amendment contains the following elements:

*Public Access Areas*

To ensure that the portion of the High Line within Subarea A1 is improved as a landscaped park and made available for public use in a manner commensurate with portions south of West 30th Street, Section 93-71 (Public Access Areas in the Eastern Rail Yards Subarea A1) would be amended to require that the ERY High Line be provided as a publicly accessible open area. Additionally, the Tenth Avenue Spur may also be provided.

In order to meet the public access area requirements of Section 93-71(a), the amended text would require (i) payment of a High Line Rehabilitation Deposit or completion of rehabilitation of the structure by March 31, 2013 in accordance with plans and specifications approved by the City;

(ii) payment of a High Line Landscape Improvement Deposit; (iii) funding for the annual maintenance and operations of the ERY High Line; and (iv) an easement agreement allowing public access, use, and enjoyment of the ERY High Line. In all instances, these requirements would also apply to the Tenth Avenue Spur if it is provided as part of Subarea A1 public access areas.

### *Location of Buildings*

To ensure that the ERY High Line has sufficient access to light and air, serves as a valuable public amenity, and provides a level of amenity commensurate with portions south of West 30th Street, Section 93-514 (Eastern Rail Yard Subarea A1) would be amended to require that the ERY High Line more than 335 feet from Tenth Avenue be completely open to the sky and any buildings located adjacent to the ERY High Line be a minimum of five feet from the structure measured at the level of the High Line bed and at all points above.

To provide for flexibility in the development of the mixed-use project proposed within Subarea A1, Section 93-514 would also be amended to allow for portions of a building within 335 feet of Tenth Avenue to be located above the ERY High Line provided that they are 60 feet above the High Line bed and have a maximum width 280 feet along the north edge of the ERY High Line, a maximum width of 200 feet along West 30th Street and have a maximum average width of 240 feet.

Further, this section would be amended to allow for structural columns to be constructed on the south side of the ERY High Line structure provided they take up (when viewed in elevation) no more than 50 percent of the area inscribed in a rectangle that is: above the High led bed, below the 60 foot overhang and within the maximum 200 foot width along West 30th Street. Additionally, a maximum of 25 percent of this area may be opaque.

### *Phased Development*

To ensure that the ERY High Line is improved and made available for public use as early as possible in the planned phased development of Subarea A1, Section 93-71 (Public Access Areas

in the Eastern Rail Yard Subarea A1) would be amended to require that no certification for the phased development of public access areas be permitted unless the ERY High Line is part of the initial phase.

#### *Timing and Performance of Obligations*

To ensure that the ERY High Line is improved and made available for public use as early as possible in the initial phase of development of Subarea A1, Section 93-71 would be amended to include provisions to secure performance of the required payments and other obligations, tied to crane permit and Temporary Certificate of Occupancy.

#### *Certification for Phased Development*

Pursuant to Section 93-70 (Public Access Requirements for Special Sites), the current text allows the owner to seek certification for phased development of Subarea A1. Should this happen prior to adoption of the proposed text amendment, the proposed text provides that for any certifications granted for phased development of public access areas in Subarea A1 before enactment of this text amendment, such certification shall expire 45 days following the approval of the text amendment. At that point, the ERY High Line along with the Tenth Avenue Spur, if applicable, and the Public Plaza and Connection to Public Plaza shall be designated as the public access areas associated with the initial phase pursuant to a new application under Section 93-70 which shall be made within such 45-day period. In the event that, prior to text adoption, a crane permit has been issued, compliance with all requirements under the text associated with issuance of a crane permit shall be prerequisites to the new certification of phased development.

### **ENVIRONMENTAL REVIEW**

The application (N 120171 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 12DCP095M. The lead is the City Planning Commission.

After a study of the potential impacts of the proposed actions, a Negative Declaration was issued on January 25, 2012.

### **PUBLIC REVIEW**

On January 27, 2012, this application (N 120171 ZRM) was duly referred to Community Board 4 and the Borough President for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Review**

Community Board 4 held a public hearing on the application on March 7, 2012, and on that date, unanimously voted to adopt a resolution to approve the application, subject to the following conditions:

- That it be modified to require that public bathrooms are installed in convenient proximity to this section of the High Line and that the Tenth Avenue Spur is included as part of the publicly accessible open area and improved with amenities commensurate with the rest of the High Line.
- Deletion of the provisions allowing a maximum of 25% of the area to be opaque and that the zoning allows balconies to be built projecting from the High Line in the space between the High Line and the property line.

### **Borough President Review**

This application was considered by the Borough President, who issued a recommendation in support of the application on March 12, 2012.

### **City Planning Commission Public Hearing**

On February 29, 2012 (Calendar No. 2), the City Planning Commission scheduled March 14, 2012 for a public hearing on this application (N 120171 ZRM). The hearing was duly held on March 14, 2012 (Calendar No. 11). There were seven speakers in favor of the application and none in opposition.

Representatives of Community Board 4, Friends of the High Line, the Manhattan Borough President's office, area residents and the developers of the Eastern Rail Yard: ERY Tenant LLC, all spoke in favor of the application. Comments were made in support of the continuing the High Line north of 30th Street, with an acknowledgment of the text amendment's important role in accomplishing that goal. Speakers also discussed the controls regarding columns adjacent to the High Line necessary to support the building being built over the High Line and the importance of maintaining this area as open as possible. The representative of ERY Tenant proposed changes to these controls in order to guarantee openness below the High Line along 30th Street, but also allow additional flexibility for the building's developing structural design by lowering the minimum required amount of open area.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The Commission believes that the amendment (N 120171 ZRM), as modified herein, is appropriate.

By facilitating the development of the High Line in and around Eastern Rail Yard Subarea A1, the Commission believes the amendment will further the City's goal of acquiring the entirety of the High Line north of West 30th Street, improving the structure, and making it available for public use.

The Commission notes that the original planning for Subarea A1 was done at a time when the future of the High Line north of West 30<sup>th</sup> Street was uncertain and thus did not incorporate the High Line - except for a required pedestrian link between Subarea A1's required outdoor plaza

and the High Line to the south. The Commission believes the amendment appropriately updates the plan for the Eastern Rail Yard by requiring the High Line within Subarea A1 be provided as one of the required public access areas for the development and that this will result in an improved site plan for the site.

The Commission believes the amendment will ensure that the portions of the High Line within Subarea A1 (the “ERY High Line”) are improved as a landscaped park and made available for public use in a manner commensurate with portions south of West 30th Street. The Commission notes the amendment sets forth requirements for payments for rehabilitation and landscaping work, an easement agreement, and mechanisms for accomplishment of the work. The Commission is also pleased that the amendment includes provisions to ensure that the ERY High Line is provided as part of the initial phase of the subarea’s development so as to ensure access along this section of the High Line as soon as possible. The Commission notes that, on the site owner’s election, the portion of the High Line over Tenth Avenue (the “Tenth Avenue Spur”) would also be subject to these requirements.

The Commission heard testimony from Community Board 4 asking that the Tenth Avenue Spur portion be included as a required public access area on the site, similar to the ERY High Line. However, the Commission notes that this portion of the High Line does not sit above the private property which makes up Subarea A1. Additionally, the City already owns this portion of the High Line and is expecting to improve it and make this section available for public use. Therefore, the Commission believes this change is not warranted.

The Commission believes the requirements for the location of buildings adjacent to the High Line are appropriate, as modified. The Commission notes the amendment contains requirements to ensure substantial portions of the High Line are open to the sky. Further, for the eastern portion of the High Line, the amendment controls development above and around the park to ensure it has access to light and air while providing flexibility in the design of the adjacent building and its structural supports.

The Commission heard testimony requesting changes to these controls to ensure greater openness along and around the High Line and more flexibility in the sizing of the structural supports. The Commission believes it is crucial that view corridors for pedestrians along the High Line remain sufficiently open while allowing for development around the High Line to occur. Therefore, the Commission amends the text to allow the maximum amount of opaque materials in this area when viewed in elevation to be 30 percent; however, the overall requirement for a minimum of 50 percent openness will remain unchanged. The remaining portion of the area would still be permitted to be made up of transparent or translucent material, as the Commission believes this provides for an appropriate design transition between the High Line and the building being planned above. However, to ensure that the view corridor for visitors to the High Line is not inadvertently filled with structural materials, the Commission is modifying the text so that the area between the High Line bed and above to a height of 25 feet when viewed in elevation must remain a minimum of 55 percent open. Further, the Commission modifies the text herein so that these calculations begin at grade along West 30<sup>th</sup> Street to ensure greater openness of the area below the High Line along the sidewalk.

The Commission notes that the design and planning for this section of the High Line is currently underway and is pleased that it is slated to include landscape improvements and amenities commensurate with the rest of the elevated park south of West 30<sup>th</sup> Street. The Commission heard testimony from CB4 about a number of design elements for the High Line, including the inclusion of public restrooms and provisions for benches and balconies outboard of the High Line. The Commission notes that the amendment facilitates the ongoing design process for the High Line, and allows for creative approaches towards Section 3 of the High Line. The Commission looks forward to seeing this final phase of the park be completed.

**RESOLUTION**

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

**RESOLVED**, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination, 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 in underline is new, to be added;
- Matter in ~~strikeout~~ is to be deleted;
- Matter with # # is defined in Section 12-10;
- \* \* \* indicates where unchanged text appears in the Zoning Resolution

**Article IX - Special Purpose Districts**

**Chapter 3  
Special Hudson Yards District**

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## **93-01 DEFINITIONS**

### **High Line**

For the purpose of this Chapter, the “High Line” shall refer to the elevated rail line structure, including without limitation sidetracks and spurs, located between Gansevoort Street and West 34<sup>th</sup> Street in the north-south direction, and between Washington Street/Tenth Avenue and Twelfth Avenue in the east-west direction.

### **ERY High Line**

For the purpose of this Chapter, the #ERY High Line# shall refer to the portion of the #High Line# between the western #street line# of Tenth Avenue and the western #street line# of Eleventh Avenue north of West 30<sup>th</sup> Street.

### **Tenth Avenue Spur**

For the purpose of this Chapter, the #Tenth Avenue Spur # shall refer to the portion of the #High Line# above the intersection of Tenth Avenue and West 30<sup>th</sup> Street.

### **High Line Rehabilitation Deposit**

For the purpose of this Chapter, the #High Line Rehabilitation Deposit# shall be in the amount of \$ 9,580,763 for the #ERY High Line#, and, if the #Tenth Avenue Spur# is provided as a public access area pursuant to Section 93-71, in the amount of \$12,203,234 , as adjusted by changes in the construction cost index published by ENR for New York City commencing as of January, 2012. Payment of the #High Line Rehabilitation Deposit# shall be in the form of cash or other form of immediately available funds if plans and specifications for rehabilitation of the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, have been substantially completed as of the time of the #High Line Rehabilitation Deposit# is required, and if such plans and specifications have not been substantially completed at the time the #High Line Rehabilitation Deposit# is required, in the form of cash or a cash equivalent, such as letter of credit, in a form acceptable to the City. The #High Line Rehabilitation Deposit# shall be held by the City or an instrumentality of the City as the Chairperson of the City Planning Commission shall designate, and shall be applied exclusively to the rehabilitation of the #ERY High Line# and , if applicable, the #Tenth Avenue Spur# .

### **High Line Landscape Improvement Deposit**

For the purpose of this Chapter, the # High Line Landscape Improvement Deposit# shall be in the amount of \$18,214,507 for the #ERY High Line#, and, if the #Tenth Avenue Spur# is provided as a public access area pursuant to Section 93-71, in the amount of \$23,200,228, as adjusted by changes in the construction cost index published by ENR for New York City commencing as of January 2012. Payment of the #High Line Landscape Improvement Deposit# shall be in the form of cash or other form of immediately available funds. The #High Line Landscape Improvement Deposit# shall be held by the City or an instrumentality of the City as the Chairperson of the City Planning Commission shall designate, and shall be applied exclusively to the to the improvement for public use of the #ERY High Line# and, if

applicable, the #Tenth Avenue Spur# .

**High Line Maintenance Funding**

For the purpose of this Chapter, #High Line Maintenance Funding# shall mean funding sufficient for the maintenance and ordinary repair of the #ERY High Line# and, if applicable, the #Tenth Avenue Spur# in an amount acceptable to the city, as adjusted on an annual basis.

**93-10  
USE REGULATIONS**

The #use# regulations of the underlying districts are modified as set forth in this Section, inclusive.

The only permitted change of #use# for the #High Line# shall be to provide publicly accessible open space in accordance with the provisions of Section 93-71 (Public Access Areas in the Eastern Rail Yards Subarea A1) and Section 93-75 (Publicly Accessible Open Spaces in Subdistrict F).

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**93-51  
Special Height and Setback Regulations in the Large-Scale Plan Subdistrict A**

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**93-514  
Eastern Rail Yards Subarea A1**

(a) Location of #buildings#

#Buildings# shall be located only in the following areas:

- (1) east of the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East;
- (2) west of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West and within 220 feet of West 33rd Street; and
- (3) west of the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East and within 220 feet of West 30th Street, provided that either:

- (i) such area contains only #uses# in Use Groups 3 and 4; or
- (ii) where such area includes #residential use#:
  - (a) such #residential use# is permitted only in a #building# located west of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West, and such #building# may also include #uses# in Use Groups 3, 4, 6A and 6C; and
  - (b) a #building# containing only #uses# in Use Groups 3 or 4 may be located not closer than 50 feet east of such prolongation.

(4) for any #building# located at or above the elevation of the #High Line bed# which faces the #ERY High Line#, the #street wall# shall not be located closer than five feet to the edge of the #ERY High Line# and such five foot separation shall remain unobstructed, from the level of the #High Line bed# adjacent to such #building# to the sky. Notwithstanding the foregoing, for any #building# located partly within 335 feet of the Tenth Avenue #street line#, any portion thereof of up to 280 feet in width, as measured parallel to West 30th Street, may be located above the #High Line bed# at a height of 60 feet or more measured from the #High Line bed# provided such portion has a maximum width of 200 feet along the West 30th Street #street line# and a maximum average width of 240 feet. Structural columns and related architectural features placed within the maximum width of 200 feet along the West 30<sup>th</sup> Street #street line# supporting such portion of the #building# may be located within five feet of the southern edge of the #ERY High Line#, and such columns and related architectural features shall, when viewed in elevation along West 30th Street, occupy no more than 50 percent of the measured area of such elevation located within the maximum width of 200 feet along the West 30<sup>th</sup> Street #street line# , from the mean level of the adjoining public sidewalk to a height of 60 feet above the level of the #High Line bed#. A maximum of thirty percent of such measured area may be constructed of opaque materials. Additionally, such columns and related architectural features shall, when viewed in elevation along West 30<sup>th</sup> Street, occupy no more than 45 percent of the measured area of such elevation located within the maximum width of 200 feet along the West 30<sup>th</sup> Street #street line#, from the level of the #High Line bed# to a height of 25 feet above the level of the #High Line bed#.

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## 93-70

### **PUBLIC ACCESS REQUIREMENTS FOR SPECIAL SITES**

Public access shall be provided for special sites as specified in this Section, inclusive. In the event of a conflict between the provisions of this Section, inclusive, and any underlying regulation, the provisions of this Section shall govern.

No building permit shall be issued for any #development# or #enlargement# on such sites until the Chairperson of the City Planning Commission certifies to the Department of Buildings that the provisions of this Section have been met.

An application for such certification shall be filed with the Chairperson showing the plan of the #zoning lot#; a site plan indicating the area and dimensions of all required public access areas and the location of all proposed #buildings#, ~~and~~ a detailed plan or plans demonstrating compliance with the provisions of this Section. For certifications relating to the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, as set forth in 93-71(h), the requirements set forth in such section shall apply.

Plans for public access areas shall be set forth in an instrument in a form acceptable to the City, and setting forth such provisions as necessary to ensure compliance with the provisions of this Section. Such instrument shall be filed and duly recorded in the Borough Office of the City Register of the City of New York and indexed against the property. Such filing and recording of the instrument shall be a precondition for the Chairperson's certification under this Section. The recording information shall be included on the certificate of occupancy for any #building#, or portion thereof, on the #zoning lot# issued after the recording date.

The Chairperson shall allow for the phased development of public access areas upon certification to the Commissioner of Buildings that a plan has been submitted that provides for the completion of any public access area that is integral to the #development# of a #building# or #buildings# within each phase. Where the public use and enjoyment of a public access area is contingent upon #development# on an adjacent #zoning lot# that has not yet occurred, the Chairperson may allow for the future development of such public access area at the time that the adjacent #zoning lot# is #developed#.

No temporary certificate of occupancy from the Department of Buildings may be issued for any portion of any #development# or #enlargement# with a #floor area ratio# of 10.0 or more until the Chairperson certifies to the Department of Buildings that the public access area is substantially complete, and the public access area is open to and useable by the public. No permanent certificate of occupancy from the Department of Buildings may be issued for any portion of such #development# or #enlargement# with a #floor area ratio# of 10.0 or more until the Chairperson certifies to the Department of Buildings that the public access area is complete and that all public access requirements of this Section have been met in accordance with the plans for such public access areas. Notwithstanding the foregoing, for #zoning lots# with multiple #buildings# for which the Chairperson has certified that a plan has been submitted that provides for the phased development of public access areas through completion of any public

access area that is integral to the #development# of a #building# or #buildings# within each phase, such certifications shall be made with respect to substantial completion or completion of the public access areas integral to each such phase, except as provided in 93-71(h).

### **93-71**

#### **Public Access Areas in the Eastern Rail Yards Subarea A1**

Any #development# in the Eastern Rail Yards Subarea A1 shall provide public access areas in accordance with the following requirements:

(a) Amount of public access areas

Public access areas shall be provided in an amount not less than 55 percent of the #lot area# of the #zoning lot#. At least 40 percent of the #lot area# of the #zoning lot# shall be publicly accessible and open to the sky. At least an additional 15 percent of the #lot area# of the #zoning lot# shall be publicly accessible and may be either open or enclosed. Such open or enclosed areas shall be comprised of the types of public access areas listed in paragraphs (b) through (f), and (h), of this Section. Open areas may also include the area of the sidewalk widening along Eleventh Avenue required pursuant to Section 93-61 and, at the option of the owner, the Tenth Avenue Spur.

(h) ERY High Line and Tenth Avenue Spur

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The #ERY High Line# shall be provided as a publicly accessible open area. The #Tenth Avenue Spur# may, at the option of the owner, also be provided as a publicly-accessible open area.

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In order to meet the public access area requirements of 93-71(a) and this paragraph (h), the following shall be provided for the #ERY High Line#, and shall , if owner has elected to include the #Tenth Avenue Spur# as a public access area, be further provided for the #Tenth Avenue Spur#:

- (i) (aa) Payment of the #High Line Rehabilitation Deposit# or (bb) subject to entry into construction-related agreements with the city or its designee, completion of the rehabilitation of the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, not later than March 31, 2013 , subject to a determination of force majeure by the city in accordance with the terms thereof. If owner has elected to perform the rehabilitation work set forth in clause (bb), then all such work shall be completed in accordance with plans and specifications prepared by or on behalf of the city .
- (ii) Payment of the #High Line Landscape Improvement Deposit#.
- (iii) Provision of #High Line Maintenance Funding#.

- (iv) An easement agreement allowing use of the #ERY High Line# for public space in accordance with the requirements of this paragraph (h), as well as for use and access for rehabilitation, improvement, maintenance and repair purposes, acceptable to the city .

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Such requirements, shall be set forth in agreements or instruments in a form acceptable to the city, including such provisions as are necessary to ensure compliance with the provisions of this Section. The execution of such agreements by owner, and mortgagees and parties in interest of owner, and, where appropriate, the filing and recordation of such instruments in the Borough Office of the City Register of the City New York, indexed against the property, shall be a precondition to the Chairperson's certification to the Department of Buildings for a building permit under Section 93-70. The recording information shall be included on the certificate of occupancy for any #building#, or portion thereof, on the #zoning lot# issued after the recording date.

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No certification for the phased development of public access areas on the Eastern Rail Yard Subarea A1 under Section 93-70 shall be permitted unless the #ERY High Line# is included as a public access area for the initial phase in accordance with the provisions of this paragraph (h).

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No crane permit shall be granted for construction of a #development# or #enlargement# in such initial phase until the Chairperson certifies to the Department of Buildings that: (a) either the #High Line Rehabilitation Deposit# has been made or all construction documents and instruments necessary for accomplishment of the rehabilitation of the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, in accordance with (i)(bb) above in this paragraph (h) have been executed and delivered; and (b) the #High Line Landscape Improvement Deposit# has been made .

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No temporary or permanent certificate of occupancy for a #development# or #enlargement# in such initial phase shall be granted unless the Chairperson certifies to the Department of Buildings that (a) either the #High Line Rehabilitation Deposit# has been previously furnished or the rehabilitation of the #ERY High Line# and, if applicable, the #Tenth Avenue Spur# , have been completed in accordance with the construction documents and instruments; (b) the initial installment of #High Line Maintenance Funding# has been delivered , provided and to the extent that the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, have been substantially completed and are open for use by the public , and (c) the easement agreement described in (iv) above is in effect for the #ERY High Line# . The requirement for a certification of substantial completion of public access areas before the granting of a temporary certificate of occupancy for the #development# or #enlargement# within such phase pursuant to Section 93-70 shall not apply with respect to the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#.

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Nothing herein shall be construed to affect any obligation of owner to make the # High Line Rehabilitation Deposit# at an earlier date, in accordance with the terms of

agreements or instruments entered into by the parties, or to complete rehabilitation work for the #ERY High Line# and, if applicable, the #Tenth Avenue Spur# by March 31, 2013, subject to a determination of force majeure by the city in accordance with the terms of such agreements.

Use by the city of the #High Line Landscape Improvement Deposit# for improvement of the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, shall be subject to approval by the Chairperson, based upon a determination that the design and location of access points to the #ERY High Line# and, if applicable, the #Tenth Avenue Spur#, have been arranged such that public use thereof will not result in any significant adverse impacts with respect to transit or pedestrians.

(i) Certifications for Phased Development Pursuant to Section 93-70 Granted Before [insert the effective date of this amendment]:

If a certification for the phased development of public access areas on the Eastern Rail Yard Subarea A1 under Section 93-70 was granted before [insert the effective date of this amendment], such certification shall expire 45 days following such date and shall thereupon no longer be in force and effect. Within said 45 day period, a new application for certification pursuant to Section 93-70 and 93-71(h) shall be filed by the owner which shall include the #ERY High Line# and, if applicable, the #Tenth Avenue Spur# as public access areas associated with the initial phase, in addition to any other public access areas previously so certified. The expiration of any certification under Section 93-70 granted before the [insert the effective date of amendment], shall not affect the validity of any permit issued by the Department of Buildings prior to the expiration of such 45 day period, provided the new application under 93-70 and 93-71(h) is made within such 45 day period.

In the event that a certification for the phased development of public access areas on the Eastern Rail Yard Subarea A1 under Section 93-70 was granted before [insert the effective date of amendment], and a crane permit for the construction of a #development# or #enlargement# within such initial phase was granted prior to 45 days after [insert the effective date of this amendment], the preconditions to issuance of a crane permit set forth in 93-71(h) shall be prerequisites for the grant of any new certification for phased development made under this paragraph (i).

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The above resolution (N 120171 ZRM), duly adopted by the City Planning Commission on May April 25, 2012 (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, FAICP Chair**

**KENNETH J. KNUCKLES, Esq., Vice Chairman**

**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**

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CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**COREY JOHNSON**  
Chair

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

March 12, 2012

Amanda M. Burden

Chair  
City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: Text Amendment for the High Line  
ULURP Application # N120171ZRM**

Dear Chair Burden:

On February 8, 2012, a joint meeting of Manhattan Community Board 4's (CB4) Clinton/Hell's Kitchen Land Use Committee and the Chelsea Preservation and Planning Committee heard a presentation by the Department of City Planning (DCP) on proposed text amendments to the Special Hudson Yards District (SHYD). These text amendments will facilitate development of Phase III of the High Line, which runs between West 30th and West 34th Streets and Tenth and Twelfth Avenues. The proposed text amendments modify the building location and public access area requirements applicable within Eastern Rail Yards Subarea A1, located between West 30th and West 33rd Streets and Tenth and Eleventh Avenues. On March 7, 2012, at its regularly scheduled Full Board Meeting, CB4 **recommended approval** of the application by unanimous vote.

Background

The proposed action includes text amendments to the SHYD, which was adopted in January 2005. Subsequent to the adoption of the SHYD, several City actions were adopted by City Council in order to transform the High Line into public open space, including a rezoning to map the Special West Chelsea District in order to guide development in West Chelsea and facilitate reuse of the High Line. The City also undertook a public action to acquire the High Line up to West 30th Street. At the time of the original approval of the Hudson Yards proposal, consensus had not yet been reached to convert the northernmost section of the High Line to a public park, thus, the text made provisions only to link the High Line to the public space in the Eastern Rail Yards. In 2009, concurrent with the public approval process for the Western Rail Yards, consensus had been reached to preserve Phase III of the High Line as open space. Therefore, the Western Rail Yards zoning makes provisions for the High Line as a required open space.

In 2010, the Department of Parks and Recreation and the Department of Citywide Administrative Services (DCAS), via the Uniform Land Use Review Procedure (ULURP), proposed site selection and acquisition of Phase III of the High Line. The proposal for acquisition received City Council approval in June 2010. Based on that authorization, the City has pursued acquisition of Phase III of the High Line from CSX Rail Corporation. That acquisition would then allow for permanent improvements on Phase III of the High Line. In conjunction with the proposed text amendments, the portion of the High Line between Tenth and Eleventh Avenues, north of West 30th Street (the “ERY High Line”) and the City-owned section of the structure that sits over the intersection of Tenth Avenue and 30th Street (“Tenth Avenue Spur”) would be permitted to be approved public open space funded by the developer of the Eastern Rail Yards.

Summaries of the Proposed Text Amendments, followed by the Board’s comments, are below.

## **Public Access Areas**

### Existing Regulations

- Subarea A1 requires that 55% of the lot area be publicly accessible (40% of the lot area must be open to the sky; the additional 15% of the lot area may either be open or enclosed). These open or enclosed areas include the outdoor plaza, public plaza, through block connection, connection to public plaza, connection to High Line, and Tenth Avenue bridge.

### Proposed Modifications

- Include the ERY High Line in the required public access areas that comprise 55% of the lot area;
- Allow the Tenth Avenue Spur to count towards the minimum requirements for public access areas
- Require an easement agreement between the City and the developer to allow for public access and use of the High Line;
- Require payment by the developer of a High Line Rehabilitation Deposit, on completion of rehabilitation of the structure, by March 31, 2013;
- The High Line Rehabilitation Deposit would be \$9,580,763 or, if the Tenth Avenue Spur is included, \$12,203,234;
- Require payment by the developer of a High Line Landscape Improvement Deposit;
- The High Line Landscape Improvement Deposit would be \$18,214,507 or, if the Tenth Avenue spur is included, \$23,200,228;
- Require payment by developer of High Line Maintenance Funding;
- Funding for the annual maintenance and ordinary repair of the High Line portion within the Eastern Rail Yards;
- If the Tenth Avenue Spur is included in the public access areas, it would also be subject to all of these requirements.

## **CB4 Comments**

The Board has long advocated for full preservation and public use of the High Line, including the Tenth Avenue Spur. In fact, former CB4 Chair Peter Obletz was the visionary who first called for the High Line's public reuse. CB4 is delighted that the portion of the High Line between Tenth and Eleventh Avenues north of West 30th Street will be secured as publicly-accessible open space and that a framework for funding its rehabilitation, landscape improvement, and annual maintenance will be created.

As this portion of the High Line will become a great public space, it will need a great public convenience: bathrooms. Currently there is only one restroom facility to serve both Sections I and II of the High Line, the demand for which far exceeds the supply, resulting in huge lines, particularly on weekends. The Board requests that a provision be made for the construction of public bathroom facilities in a building of convenient proximity to this section of the High Line.

The Board also requests that the zoning text be modified to require the Tenth Avenue Spur to be included as part of the public access area with funds secured for its rehabilitation and maintenance.

CB4 recommends approval of this amendment to the zoning text on the condition that it be modified to require that public bathrooms are installed in convenient proximity to this section of the High Line and that the Tenth Avenue Spur is included as part of the publicly accessible open area and improved with amenities commensurate with the rest of the High Line.

## **Location of Buildings**

### Existing Regulations

In Subarea A1 buildings shall be located only in the following areas:

- East of the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East;
- West of the southerly prolongation of the western sidewalk widening line of Hudson Boulevard West and within 220 feet of West 33rd Street; and
- West of the southerly prolongation of the eastern sidewalk widening line of Hudson Boulevard East and within 220 feet of West 30th Street.

### Proposed Modifications

- Require that the portion of the ERY High Line more than 355 feet west of Tenth Avenue be completely open to the sky and any buildings adjacent to the ERY High Line will be a minimum of 5 feet from the High Line bed;
- Allow portions of buildings within 335 feet west of Tenth Avenue to be located above the ERY High Line as long as they are 60 feet above the High Line bed, with a maximum height of 280 feet along the north edge of the ERY High Line, a maximum

width of 200 feet along West 30th Street, and maximum average width of 240 feet;

- Allow structural columns on the south side of the ERY High Line as long as, when viewed in elevation, they take up no more than 50% of the rectangle that is above the High Line bed, below the 60 foot overhang and within the maximum 200 foot width along West 30th Street. A maximum of 25% of this area may be opaque.

## **CB4 Comments**

The Board supports the physical separation of surrounding buildings from the High Line. The Board also supports the concession made to the developer to allow structural columns from the Eastern Rail Yards buildings to land on the southerly side of the High Line and appreciates that DCP has required a 60 foot height for the columns. However, having reviewed various design proposals for Phases I and II of the High Line, the Board has found that any cladding between the structural columns reduces the sense of openness. The Board cannot support covering the area between columns, specifically, the allowance for 25% of the area to be opaque. It is crucial for the public that everything possible be open (no glass, mesh, or other architectural device), except for the structural columns themselves. While CB4 understands that the design will be subject to change, any covering between the structural columns should not be allowed.

Given that the High Line is set back up to 17 feet from the southern property line for much of its length along 30th Street, the Board requests that the zoning allow balconies to be built projecting from the High Line in the space between the High Line and the property line. This would provide visual animation of the streetscape along 30th Street as well as valuable additional space for the public on the High Line itself.

CB4 recommends approval of this portion of the text amendment subject to the deletion of the provisions allowing a maximum of 25% of the area to be opaque. CB4 requests that the zoning allow balconies to be built projecting from the High Line in the space between the High Line and the property line.

## **Certification for Phased Development**

### Existing Regulations

- Developer can seek certification for phased development of the Eastern Rail Yards.

### Proposed Modifications

- No certification for phased development of the public access areas of the Eastern Rail yards is permitted unless the ERY High Line is part of the initial phase;
- If certification of phased development occurs prior to the adoption of this text amendment, the certification will expire after 45 days after approval of the text amendment;
- At that point, the ERY High Line, the Tenth Avenue Spur, if applicable, the Public Plaza and the Connection to Public Plaza will be designated as public access areas associated with the initial phase pursuant to a new application made within a 45 day

period;

- If a crane permit has been issued prior to the adoption of the text amendment, compliance with the new text amendment is a prerequisite to a new certification of phased development.

#### **CB4 Comments**

CB4 recommends approval of this modification.

#### **Timing and Performance of Obligations**

Existing Regulations

None

#### **Proposed Modifications**

- Require fulfillment of the High Line payments and obligations before either crane permits or a Temporary Certificate of Occupancy can be issued.

#### **CB4 Comments**

CB4 recommends approval of this amendment.

Thank you, as always, for considering our comments.

Sincerely,



Corey Johnson, Chair  
Manhattan Community Board 4



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



J. Lee Compton, Co-Chair  
Chelsea Preservation & Planning

[Signed 3/12/12]  
Bret Firfer, Co-Chair  
Chelsea Preservation and Planning

cc: Congressman Jerrold Nadler  
NYS Senator Tom Duane  
NYS Assembly Member Richard Gottfried  
NYC Council Speaker Christine Quinn  
Manhattan Borough President Scott Stringer  
HYDC – Ann Weisbrod, Wendy Leventer, Aaron Kirsch  
DCP – David Karnovsky, Edith Hsu-Chen, Frank Ruchala  
MTA

Friends of the High Line – Peter Mullan  
Related – Michael Samuelian  
Fried Frank – Melanie Meyers, Tal Golumb



THE CITY OF NEW YORK  
**OFFICE OF THE PRESIDENT**  
BOROUGH OF MANHATTAN

**SCOTT STRINGER**  
BOROUGH PRESIDENT

March 12, 2012

Amanda M. Burden, FAICP, Chair  
City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: High Line Text Amendment (N 120171 ZRM) and Eastern Rail Yard Site Plan Text Amendment (N 120176 ZRM)**

Dear Chair Burden:

Thank you for providing the opportunity to comment on the applications submitted by the Department of City Planning (“DCP”) for two amendments to Article IX, Chapter 3 (Special Hudson Yards District) of the New York City Zoning Resolution (“ZR”). The High Line Text Amendment would require the High Line between 10<sup>th</sup> and 11<sup>th</sup> avenues be provided as part of the required public access areas within the Eastern Rail Yard and be associated with its initial phase of development. The portion of the High Line over 10<sup>th</sup> Avenue could count towards public access area requirements provided certain obligations are met. The Eastern Rail Yard Site Plan Text Amendment modifies ground floor retail requirements, signage regulations and public access area configurations in the Eastern Rail Yard.

**High Line Text Amendment - N 120171 ZRM**

The proposed text amendment modifies the building location and public access area requirements within Eastern Rail Yard (“Subarea A1” of the Hudson Yards Special District), which is bounded by 30<sup>th</sup> and 33<sup>rd</sup> streets between 10<sup>th</sup> and 11<sup>th</sup> avenues. The amendment would modify ZR §§ 93-01 (Definitions) to describe segments of the High Line specific to Subarea A1, 93-51 (Special Height and Setback Regulations in the Large-Scale Plan Subdistrict A), and 93-70 (Public Access Requirements for Special Sites), which stipulate the location of buildings with respect to the High Line and would permit the inclusion of portions of the High Line in Subarea A1 public access area requirements.

The High Line originally opened in 1934 as an elevated railroad track and ceased operation in 1980. It spans from Gansevoort to West 34<sup>th</sup> Street. The City acquired the segment of the High Line between Gansevoort and West 30<sup>th</sup> Street in 2005. The section from Gansevoort to West 20<sup>th</sup> Street opened as a public park in 2009; the second section up to West 30<sup>th</sup> Street was

completed in 2011. The remainder of the High Line to West 34<sup>th</sup> Street is not currently in City ownership; its acquisition is anticipated this year.

The bed of the portion of the High Line along West 30<sup>th</sup> Street and above Subarea A1, between 10<sup>th</sup> and 11<sup>th</sup> avenues, measures 35,167 SF. The proposed text defines this segment as the “ERY High Line.” The projecting portion east of 10<sup>th</sup> Avenue is defined as the “Tenth Avenue Spur,” the bed of which measures 9,626 SF. Subarea A1, comprised of Block 702, Lots 1 and 50 and Block 704, Lots 1, 5 and 6, measures approximately 570,000 SF.

The text amendment addresses three major aspects of the development of the third section of the High Line with respect to the development of The Eastern Rail Yard: the preservation of the ERY High Line and, potentially, the Tenth Avenue Spur; the phasing of contributions towards the High Line as they relate to the development of Subarea A1 and the configuration of any building or structure in Subarea A1 as it relates to the High Line.

As specified in the ZR, 55% of the Eastern Rail Yard is required to be public access area – 40% must be open to the sky. As proposed, ZR § 93-71 requires that ERY High Line be provided as a public access area and allows the Tenth Avenue Spur to be included at the owner’s discretion. The inclusion of these spaces is predicated on a sequence of payments, including the High Line Rehabilitation Deposit, the High Line Landscape Improvement Deposit and High Line Maintenance Funding, at stipulated phases of Subarea A1 development.

ZR § 93-514 sets the configuration of buildings relative to the ERY High Line. The portion of the ERY High Line between 11<sup>th</sup> Avenue and a line 335 feet west of 10<sup>th</sup> Avenue must be completely open to the sky and no buildings are permitted closer than 5 feet from the High Line – this distance must be maintained from the High Line bed upwards. Within 335 feet of 10<sup>th</sup> Avenue, any portion of a building must be a minimum 60 feet above the High Line bed and be no more than 280 feet wide along its north edge and a maximum width of 200 feet along West 30<sup>th</sup> St. Additionally, structural columns that cantilever the building over the High Line can occupy no more than 50% of the 200-foot maximum width and 25% of this area is permitted to be constructed of opaque materials.

The proposed text provides an enforceable mechanism to ensure that the third section of the High Line is landscaped, maintained and publicly accessible. The High Line has already demonstrated its immeasurable value as a public park and its contribution to the economic vitality of the neighborhoods that surround its current one-mile stretch. To make certain that the third section of the High Line is appropriately showcased, the final design of any proposed building next to the High Line should endeavor to maximize light and view corridors by minimizing obstructions. The third section of the High Line is currently the subject of an extensive public engagement process to inform its design. This office looks forward to participating in these discussions to work towards this aim.

### **Eastern Rail Yard Site Plan - N 120176 ZRM**

The proposed text amendment modifies the ground floor retail requirements, signage regulations and public access area configurations in Subarea A1. The amendment modifies ZR §§ 93-14

(Ground Floor Level Requirements), which provides for retail continuity, 93-17 (Modification of Sign Regulations) relating to signage size and location requirements along 10<sup>th</sup> Avenue and 93-71 (Public Access Areas in the Eastern Rail Yards Subarea A1) to alter some of the permitted uses in and dimensions of required public access areas.

The Special Hudson Yards District was adopted in 2005 to allow for the development of the Eastern Rail Yards as a complex of commercial, residential and community facility buildings with a minimum 55% public access area. In 2010, the MTA entered into a 99-year lease with a selected developer. Following several years of design and coordination with regulatory agencies, elected officials, the community board and civic groups, the applicant is proposing to adjust ground floor retail, signage and public access area provisions.

ZR § 93-14 is proposed to allow public access areas in Subarea A1 to count towards required retail continuity. Along and within 100 feet of 10<sup>th</sup> Avenue, ZR § 93-17 would allow up to four signs at a maximum height of 95 feet, rather than the underlying 40 feet. Up to four signs would be permitted to have a maximum surface area of 650 SF and one to be no more than 1,800 SF, rather than the underlying 500-SF limit. ZR § 93-71 is proposed to amend several public access area regulations:

- Hours of access: Excluding the High Line, open air public access areas will be accessible from 6:00 am to 1:00 am; enclosed spaces will be accessible from 8:00 am to 10:00 pm.
- Outdoor Plaza Retail: 10% of the Outdoor Plaza is permitted to be covered by buildings or structures. The text amendment limits permitted uses to Use Groups 6A and 6C and stipulates the maximum dimensions of such a building.
- Public Plaza: To accommodate a Department of Environmental Protection easement at the corner of West 30<sup>th</sup> Street and 10<sup>th</sup> Avenue, the Public Plaza frontage along 10<sup>th</sup> Avenue is proposed to be reduced from a minimum 200 feet to a minimum 180 feet. The Public Plaza is still required to be no less than 12,000 SF in total area.
- Through block connection: At the owner's discretion, the text amendment permits the construction of an atrium adjacent to the Outdoor Plaza that is no less than 4,000 SF in area, a minimum 60 feet in height and at least 50 feet deep parallel from the building wall. If the owner chooses to include such an atrium, the through block connection may be decreased from 30 to 24 feet in width and reach a height of at least 34 feet for at least 70% of the connection, provided no portion has a height lower than 17 feet. The text permits obstructions, including: escalators, stairs, elevators, columns and lighting.
- Connection to the Public Plaza: The public way linking the Outdoor Plaza to the Public Plaza on West 30<sup>th</sup> Street will increase in height to a minimum 34 feet within at least 50% of the connection provided no portion is lower than 17 feet.
- Connection to High Line: As a result of the lobby space configuration at the connection to the High Line, the text is amended to eliminate the retail requirement.
- Tenth Avenue Bridge: The bridge at West 32<sup>nd</sup> Street and 10<sup>th</sup> Avenue does not need to be constructed until the through block connection has been completed.

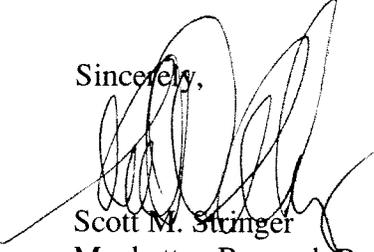
The proposed revisions of the zoning text are generally appropriate. The inclusion of public access areas in required retail continuity and the modification of certain public access area

dimensions do not detract from the pedestrian experience nor do they adversely affect the quality of public spaces in the Eastern Rail Yard. While this office recognizes the obstacles of limiting entry to public access areas to fixed times of day, the proposed hours reasonably accommodate daytime and evening activity while making necessary provisions for maintenance and safety.

Additionally, the proposed signage changes reflect the magnitude of buildings and structures that will be constructed in the Eastern Rail Yard. The façade of the building anticipated along 10<sup>th</sup> Avenue will extend the equivalent of three blocks. At such a scale, the proposal to raise signage heights to 95 feet and allow one sign to be as large as 1,800 SF is acceptable. However, to prevent any unintended impacts from disruptive signs along 10<sup>th</sup> Avenue, if such signs are permitted, the City should take the necessary precautions to limit levels of illumination and prohibit flashing signage in consideration of neighboring residences.

The proposed text amendments are a reflection of the continued thoughtful planning of the Hudson Yards district. The completion of the High Line park is essential to New York City. Equally, the public spaces that are being provided in the Eastern Rail Yard will enhance the experience of visitors. As such, the proposed text amendments are appropriate.

Sincerely,



Scott M. Stringer  
Manhattan Borough President