



**DELORES RUBIN**  
Chair

**Jesse Bodine**  
District Manager

CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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June 17, 2016

Hon. Carl Weisbrod  
Chair  
City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

**Re: Theater Subdistrict Fund Text Amendment  
N160254ZRM**

Dear Chair Weisbrod:

Manhattan Community Board 4, at the June 1<sup>st</sup>, 2016 Full Board meeting, by a vote of 39 in favor, 0 opposed, 0 abstaining and 0 present but not eligible to vote, voted on application N160254ZRM for a zoning text amendment to the Zoning Resolution (ZR) §81-744 to establish a new methodology for calculating the contribution rate to the Theater Subdistrict Fund from the transfer of development rights within the Theater Subdistrict. In addition, the Department of City Planning (DCP) is proposing to streamline proposals pursuant to ZR §81-744(a) and make them chairperson certifications instead of Commission certifications.

The Board voted to deny unless:

- such Theatre Development Rights transfers remain subject to City Planning Commission Certification or Authorization and not the reduced public review of a Chairperson Certification
- a text modification was incorporated to ensure that a portion of the Theater Subdistrict Fund was allocated smaller not for profit theater organizations, with budgets of \$250,000 or less, located with Manhattan Community District 4

### **Background**

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

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

In 1982, when the Board of Estimate approved the Special Midtown District (MiD), the Special Theater District became a subdistrict within the MiD and new zoning provisions were introduced “to further enhance the Theater Subdistrict through the transfer of development rights to nearby lots and to restrict the demolition of listed theaters.”

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

The 1998 text amendment established a new mechanism for listed theaters in the ZR to transfer their available development rights throughout the subdistrict in exchange for “retaining, preserving and maintaining a legitimate theater use, and for a contribution” to a newly created Theater Subdistrict Fund. The TDR process was subject to a Special Permit under the Uniform Land Use Review Procedure (ULURP). This provided more opportunities for theaters to transfer development rights while strengthening requirements for the continuation of legitimate theater use. DCP reports that there are approximately seventeen (17) theaters with available development rights to transfer within the subdistrict with about 1.5 million square feet. The total amount contributed to date to the Fund is \$8,589,349.

In the original 1998 proposed TDR text, the entire west side Eighth Avenue from West 56<sup>th</sup> to West 42<sup>nd</sup> Streets was to be included as receiving sites for theater TDR’s. That area, in the Perimeter Area of the Special Clinton District, has a 10 FAR of bonusable to 12 FAR only through Inclusionary Housing. The proposed text called for allowing an FAR increase from 10 to 14.4 through either Inclusionary Housing or TDR’s. The Clinton community and Manhattan Community Board 4 saw the proposed change as a wedge to moving the density of Midtown to the west into Clinton at the expense of affordable housing production through Inclusionary Housing. After a contentious ULURP process, a compromise was reached.

The proposed receiving site transfer area would be limited to the west side of Eighth Avenue from West 42<sup>nd</sup> to West 45<sup>th</sup> Streets to encompass the landmark listed Martin Beck Theater on West 45<sup>th</sup>, west of Eighth Avenue. The Special Clinton District boundaries of its Perimeter would remain in place and the Theater Subdistrict of the Midtown Special District would be overlapped on the Clinton Special District for those three blockfronts. Lastly, the zoning bonuses would work in sequence, Inclusionary Housing first, TDR’s second.

Most important, the text of ZR §81-744 stated TDR’s would be managed by a City Planning Commission Certification or Authorization which “shall be referred to the affected Community Board, the local Council Member and the Borough President of Manhattan,” to mirror the ULURP public review process.

## **Description of the Proposed Zoning Text Amendment**

### **a. Theater Subdistrict Fund Methodology**

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

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

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

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

#### **b. Proposal for Chairperson Certification**

The existing transfer of development rights pursuant to ZR §81-744(a) allows the transfer of development rights from a granting site to a receiving site by City Planning Commission

Certification within the Theater Subdistrict subject to five findings,<sup>2</sup> or Authorization subject to four findings<sup>3</sup>

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

## **Community Board Recommendations**

### **a. Theater Subdistrict Fund Methodology**

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

However, the Board has also for too long now seen the money that has gone to the theater subdistrict go to organizations which, though worthy, are in less need of assistance. Additionally, it has gone to some organizations that have profited off their name and mission but for years now failed to adhere to their mission. Accordingly, the Board proposes a process be incorporated to ensure that funding goes to smaller theater organizations, with budgets of \$250,000 or less, especially within Community District 4. Attached in Appendix A is a map that highlights such theaters within the theater subdistrict and community district 4. The Board will be reaching out to its elected officials in an effort to assist in creating a workable process for a better distribution of the Theater Subdistrict Fund.

### **b. Proposal for Chairperson Certification**

The Board cannot support the proposed zoning text change to reduce the public review of TDR' to a Chairperson Certification. The Board would be working against its charter mandate within ULURP process and negligent in its duties as a watchdog for the community if it was to support a proposal to limit review for such an important part of the City of New York, its Broadway Theater District.

Sincerely,

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<sup>3</sup>81-744(a)

- (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.

3 81-477(b)

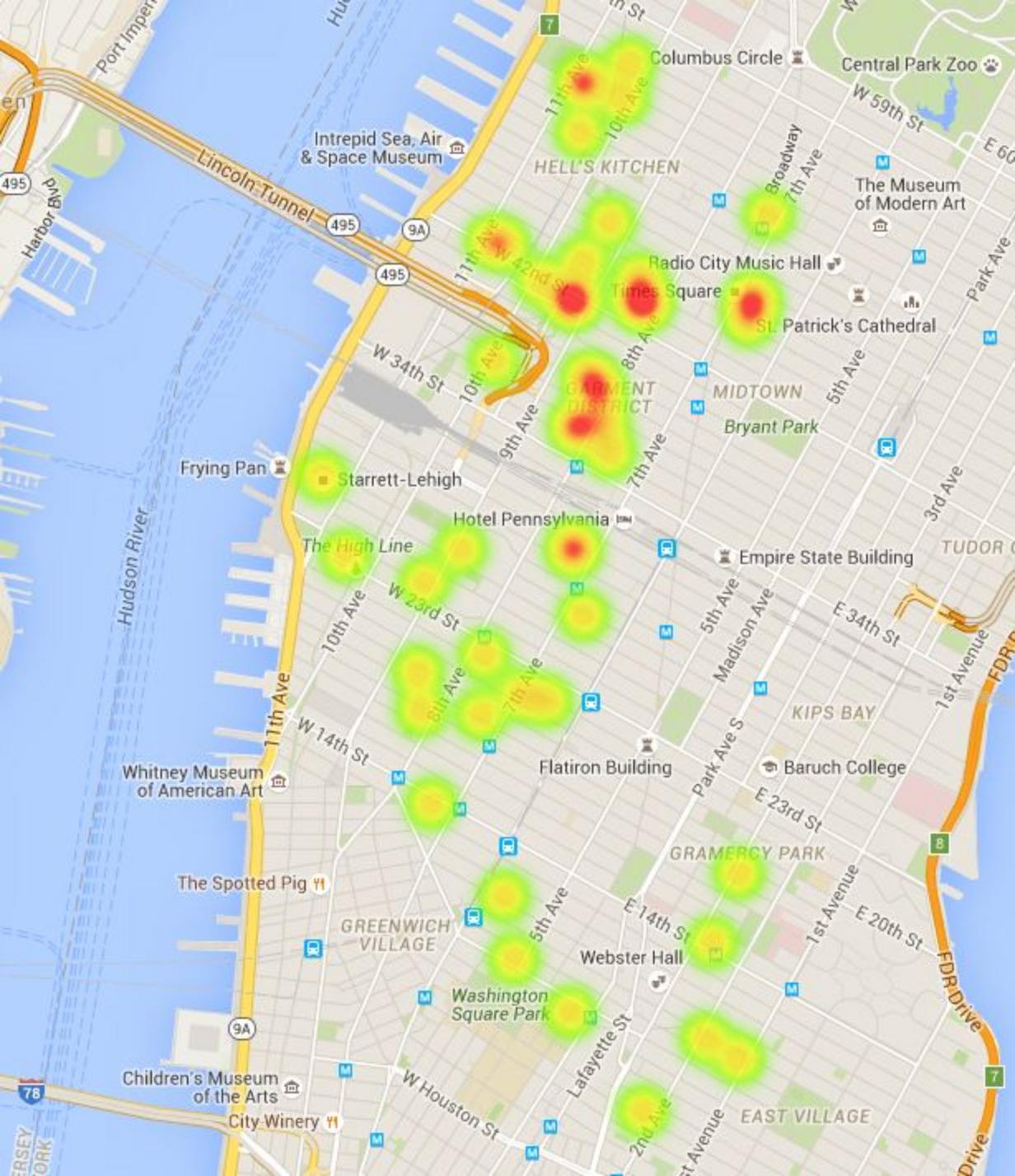


Delores Rubin  
Chair



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

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



## League of Independent Theater Members - CB4 and CB5

<b>Company</b>	<b>Category</b>	<b>Address</b>	<b>ZIP Code</b>	<b>BBL</b>
2econd Stage Theater	CB4 Theaters	305 W 43rd Street, New York, NY		
52nd Street Project	CB4 Theaters	789 10th Avenue New York, NY 10019		
Abingdon Theatre Company	CB4 Theaters	312 West 36th St, New York, NY 10018		
All For One	League of Independent Theaters	1650 Broadway, New York, NY	10036	
Amnesia Wars Productions	League of Independent Theaters		10019	
Ars Nova Theater	League of Independent Theaters	511 W 54th St, New York, NY	10019	
Atlantic Theatre Company	CB4 Theaters	336 W 20th St, New York, NY 10011		
Castillo Theatre	CB4 Theaters	543 W 42nd St, New York, NY 10036		
Concrete Temple Theatre	League of Independent Theaters	211 East 14th Street, New York, NY	10003	
Concrete Timbre	League of Independent Theaters		10011	
Cosmic Orchid	CB4 Theaters			
Developing Artists	League of Independent Theaters	12 5th Ave, New York, NY	10011	
D'moiselles	League of Independent Theaters		10011	
Ego Actus Theatre Company	League of Independent Theaters	290 9th Ave, New York, NY 10001		
Gotham Writers Workshop	CB4 Theaters	555 Eighth Ave #1402, New York, NY 10018		
Hard Sparks	League of Independent Theaters	51 West 11th Street, New York, NY	10001	
Horse Trade	League of Independent Theaters	85 East 4th Street, New York, NY	10003	
Irish Repertory Theatre Company	CB4 Theaters	132 W 22nd St, New York, NY 10011		
John Montgomery Theatre Company	League of Independent Theaters		10022	
Kairos Italy Theater	League of Independent Theaters	60 East 8th St, New York, NY	10003	
Lark Play Development	League of Independent Theaters	311 West 43rd Street, New York, NY	10019	
LIVE Theater/The Nerve Tank	League of Independent Theaters	261 West 22nd Street, New York, NY	10011	
Mad & Merry Theatre Company	League of Independent Theaters		10011	
Manhattan Theatre Club	CB4 Theaters	311 West 43rd St, New York, NY		
Medicine Show Theatre Ensemble	League of Independent Theaters	549 West 52nd Street, New York, NY	10019	
Mind the Gap Theatre (NY) Inc.	League of Independent Theaters	535 W 23rd St, New York, NY	10011	
Mint Theater Company	CB4 Theaters	410 W42nd St, New York, NY 10036		
Nettles Artists Collective	League of Independent Theaters	325 West 38th Street, New York, NY	10018	
New Dramatists	CB4 Theaters	424 West 44th St, New York, NY 10036		
New Perspectives Theatre Co.	League of Independent Theaters	456 West 37th Street, New York, NY	10018	
New York Madness	League of Independent Theaters		10036	

## League of Independent Theater Members - CB4 and CB5

<b>Company</b>	<b>Category</b>	<b>Address</b>	<b>ZIP Code</b>	<b>BBL</b>
New York Neo-Futurists	League of Independent Theaters	219 West 19th Street, New York, NY	10019	
NY Artists Unlimited	League of Independent Theaters	212 W 14th St, New York, NY	10011	
Parity Productions	CB4 Theaters			
Peccadillo Theatre Company	CB4 Theaters	423 W 46th St, New York, NY 10036		
Phoenix Theatre Ensemble	League of Independent Theaters	200 East 10th Street, New York, NY	10003	
Pick Up Performance Co(s)	CB4 Theaters	520 8th Ave, New York, NY 10018		
Pipeline Theatre	League of Independent Theaters		10011	
Playwrights Horizons	CB4 Theaters	416 West 42nd St., New York, NY		
Primary Stages	CB4 Theaters	307 West 38th St, New York, NY 10018		
Project Girl Performance Collective	League of Independent Theaters		10003	
Red Bull Theater	CB4 Theaters	191 7th Avenue 2S, New York, NY 10011		
ReGroup Theatre Co.	League of Independent Theaters	520 West 50th Street, New York, NY	10019	
Ripple Effect Artists Inc.	League of Independent Theaters	601 West 26th Street, New York, NY	10010	
Signature Theatre Company	CB4 Theaters	480 West 42nd Street, New York, NY		
Slightly Altered States	League of Independent Theaters		10010	
SmartTix	League of Independent Theaters	237 W 35th Street, New York, NY	10018	
Stage Left Studio	League of Independent Theaters	214 West 30th Street, New York, NY	10001	
Stage Left Studio	League of Independent Theaters	214 West 30th Street, New York, NY	10001	
Terra Incognita Theater	League of Independent Theaters		10019	
TerraNova Collective	CB4 Theaters	401 W. 24th St, #8, New York, NY 10011		
The Brewing Dept.	League of Independent Theaters		10001	
The New Group	CB4 Theaters	410 W 42nd St, New York, NY 10036		
The Onomatopoeia Theatre Company	League of Independent Theaters		10003	
The Pearl Theater Company	CB4 Theaters	555 W 42nd St, New York, NY 10036		
The Play Company	CB4 Theaters	321 W 44th St, New York, NY 10036		
The Playroom Theater	League of Independent Theaters	151 West 46th Street, New York, NY	10036	
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Theater for the New City	League of Independent Theaters	155 1st Avenue, New York, NY	10003	
Theatre Breaking Through Barriers	CB4 Theaters	306 W 18th St, New York, NY 10011		
TSOS	CB4 Theaters			
Videograf LLC	League of Independent Theaters	144 West 27th Street, New York, NY	10001	

## League of Independent Theater Members - CB4 and CB5

<b>Company</b>	<b>Category</b>	<b>Address</b>	<b>ZIP Code</b>	<b>BBL</b>
Voyage Theater Company	League of Independent Theaters		10003	
Waterwell Productions	League of Independent Theaters	145 W 45th St, New York, NY	10036	
White Horse Theater Company	League of Independent Theaters	205 Third Avenue, New York, NY	10003	
Works Productions	League of Independent Theaters		10011	
WorkShop Theater Company	League of Independent Theaters	312 W 36th Street, New York, NY	10018	
YaYa Productions	League of Independent Theaters		10010	
Ensemble Studio Theater		549 West 52nd Street, New York, NY		