



CITY PLANNING COMMISSION
CITY OF NEW YORK

OFFICE OF THE CHAIRMAN

REVISED NEGATIVE DECLARATION
Supersedes the Negative Declaration Issued on March 28, 2016*

Project Identification

CEQR No. 16DCP136M
ULURP No. N160254ZRM, N160254(A)ZRM
SEQRA Classification: Type I

Lead Agency

City Planning Commission
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New York, NY 10271
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Name, Description, and Location of Proposal:

Theater Subdistrict Fund Text Amendment

The New York City Department of City Planning is proposing a zoning text amendment (ULURP No. N160254ZRM) to the New York City Zoning Resolution (ZR) Section 81-744 (a) (Transfer of development rights from listed theaters) to modify the contribution rate into the Theater Subdistrict Fund ("The Fund") which is created from the transfer of development rights from theaters listed in ZR Section 81-742 (Listed theaters). The text amendment will establish a new methodology for calculating this contribution rate. The transfer of development rights pursuant to Section 81-744 was originally established in a 1998 text amendment (CEQR No. 98DCP031M) in order to protect and preserve theaters. The Fund was created to develop new audiences, promote the production of new theater work, and to highlight the importance of Broadway and its contribution to American Theater. The proposed text amendment would also modify the ZR to permit transfer of development rights through a Chairperson certification rather than a Commission certification.

*This Revised Negative Declaration reflects the submission of ULURP No. N160254(A)ZRM, which incorporates modifications to the original zoning text amendment proposal based on recommendations made during the public review process. These proposed changes include changes to clarify the goals of the Theater Subdistrict Council, the administration of the Fund, and to make minor corrections to zoning language text. These changes are further explained in the Proposed Modifications section below.

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In response to recommendations made during the public review process, the Department of City Planning is proposing a series of modifications to the original zoning text amendment proposal which focused solely on changing the methodology for determining the contribution rate (ULURP No. N160254(A)ZRM). These proposed changes to Section 81-71 (General Provisions) and Section 81-741 (General provisions) are to clarify the goals of the Theater Subdistrict Council, the administration of the Fund, and to make minor corrections to the text. The proposed changes in this application, described more fully below, expand the scope of the original application while allowing the public review process for the overall proposal to continue.

1. New Methodology for Contribution Rate for Theater Subdistrict Fund

The regulations of the Theater Subdistrict contain a mechanism to allow for the transfer of unused development rights from identified “listed” or “granting” theaters in the Zoning Resolution (81-742) 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. The dollar value has been adjusted twice since the original \$10.00 value in 1998 was established: it was increased in 2006 by 49 percent 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. Following the adoption of this text amendment in 1998, official records of actions taken by the CPC noted that the \$10.00 per square foot amount is based on 20 percent of the average sales price of land per square foot in the Theater Subdistrict. The established methodology for adjusting the dollar value is to use New York City Department of Finance’s data and calculate the total 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.

When the Department last reviewed contribution rates within the prescribed three to five year window (at the end of 2016 it will be five years), and reviewed the completed transfers of development rights that used the 81-744 zoning mechanism, the Department 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 percent to 9 percent. This is a notable difference from the original intent of the 1998 zoning text amendment of 20 percent.

The Department is proposing to establish a new methodology for calculating the contribution amount to the Fund based on a percentage of the total amount paid by a receiving site for the transferred development rights to the granting site. Since there are many variables that can influence the price paid for the transfer of development rights that may not be directly related to the fair market value of the transfer of development rights, the Department is also proposing to establish a base price or floor amount for transferable development rights. This base price per square foot would consist of a market study valuation of land within the Theater Subdistrict and will be completed by a certified valuation and appraisal company.

The proposed text amendment would promote a more rational methodology for determining the contribution rate to the Fund as it would reflect actual value of the transferable development rights. The Department of Finance's assessed property values are not based on actual fair market value or sales price. The proposal would also support the original intent of the 1998 text amendment which based the \$10.00 per square foot contribution rate as being approximately 20 percent of the sales price per square foot of land value in the Subdistrict. The new methodology to determine contribution rates would result in rates that more closely align with the 20 percent amount envisioned when the text amendment was originally designed.

2. *Proposal for Chairperson Certification*

In addition to changing the methodology for determining the price of transfer of development rights, the proposed text amendment would also modify the ZR to permit transfer of development rights through a Chairperson certification. Currently, the existing transfer of development rights pursuant to ZR Section 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 provided that:

- i. 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;
- ii. Each transfer irrevocably reduces the allowable floor area of the granting site by the amount transferred;
- iii. 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;
- iv. Assurances for the continuance of legitimate theater use per ZR 81-743 are made; and
- v. Legal documents are executed ensuring that the appropriate funds are deposited into the Theater Subdistrict Fund.

The Department is proposing to streamline the process and permit the transfer of development rights through Chairperson Certification rather than Commission certification. This change would expedite the process. Transfer of development rights would also continue to be available by City Planning Commission authorization pursuant to Section (81-744) (b), however. The authorization is for receiving sites that are located along the Eight Avenue Corridor of the Theater Subdistrict.

Proposed Application Modifications:

A Revised Environmental Assessment Statement, dated September 2, 2016, reflects the submission of N160254(A)ZRM which incorporates recommendations and associated proposed changes made during the public review process. These proposed changes include: clarifying the goals of the Theater Subdistrict Council that theatrical organizations of any size should be considered for facilitating the production of plays and musicals, and that broader activities such as the Fund's Round 5 Grant Program to develop and train non-performing theater professionals, will support and strengthen the industry in the Theater Subdistrict. Additionally, other changes include the amount the Theater

Subdistrict Council must reserve for periodic inspection and maintenance report requirements and to request a market study appraisal to the Subdistrict outside of the 3-to-5 year time period. Finally, the proposed changes include minor zoning text edits.

The proposed action would apply to the Theater Subdistrict found within the greater Special Midtown District. The Theater Subdistrict is primarily located in Community District 5 with a small three block area within Community District 4 along the southwestern edge of the Eighth Avenue Corridor which is also in the Special Clinton District. The Theater Subdistrict is bounded by West 57th Street to the north and West 40th Street to the south; Sixth Avenue to Eighth Avenue east to west; and a line 150 feet west of Eighth Avenue from West 42nd Street to West 45th Street. Within the Theater Subdistrict is the Theater Subdistrict Core and the Eighth Avenue Corridor. The Core is bounded by West 50th Street to West 43rd Street north to south; a line 200 feet west of Sixth Avenue and a line 100 feet east of Eighth Avenue. The Eighth Avenue Corridor is bounded in the north by West 56th Street and West 43rd Street to the south; a line 100 feet east of Eighth Avenue and Eighth Avenue to the west; and a section bounded in the north from West 45th Street to West 42nd Street to the south, Eighth Avenue and a line 150 feet west of Eighth Avenue. The zoning in the Theater Subdistrict includes C5-3, C5-2.5, C6-4, C6-5, C6-6, C6-6.5, C6-7, C6-7T, and M1-6. There are 33 NYC Landmarks Preservation Commission (LPC) or Interior Landmarked theaters within this Subdistrict.

The proposed action is not anticipated to affect development. The proposal does not change the availability of transferable development rights or the number of theaters with available transferable development rights. It also does not change the market value for transferable development rights or affect how much a receiving site pays for them; the proposal would only affect the amount granting sites must contribute to the Fund. The proposal to change the action to a Chairperson certification from a City Planning Commission certification is not anticipated to affect development positively or negatively.

Absent the proposed action, transfer of development rights would continue to be calculated using the current methodology- a set dollar value would be multiplied by the total amount of square feet being transferred from the granting site to the receiving site. Although this dollar amount is currently set at \$17.60, per requirements that these rates increase every three to five years, this amount would be anticipated to increase by a currently undetermined amount. Under the No-Action Scenario, transfer of development rights would continue to require City Planning Commission certification and would also continue to be available by City Planning Commission authorization pursuant to Section (81-744) (b).

The build year for the proposed action is 2026.

Statement of No Significant Effect:

The Environmental Assessment and Review Division of the Department of City Planning, on behalf

of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated March 25, 2016 prepared in connection with ULURP Application No. N160254ZRM and the Revised Environmental Assessment Statement dated September 2, 2016 prepared in connection with ULURP Application N160254(A)ZRM. The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment.

Supporting Statement:

The above determination is based on an environmental assessment which finds that:

1. No significant effects on the environment which would require an Environmental Impact Statement are foreseeable.
2. The Revised Environmental Assessment Statement dated September 2, 2016 reflects the proposed modifications to the original text amendment and concluded that the modification would not have the potential for significant impacts on the environment and would not alter the conclusions of the Environmental Assessment Statement dated March 25, 2016 and the Negative Declaration issued March 28, 2016.

This Revised Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

Should you have any questions pertaining to this Revised Negative Declaration, you may contact Lisa Blake (212) 720-3621.



Robert Dobruskin, AICP, Director
Environmental Assessment & Review Division
Department of City Planning

Date: September 2, 2016

Carl Weisbrod, Chairman
City Planning Commission

Date: September 6, 2016