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THEATER DISTRICT ZONING REGULATIONS PROVIDING FOR AS-OF-RIGHT TRANSFER OF THEATER AIR RIGHTS ARE UPHELD BY APPELLATE DIVISION

City Planning Chairman Joseph B. Rose and Corporation Counsel Michael Hess today announced that the Appellate Division, First Department, in a unanimous decision, has upheld the validity of the 1998 Theater Subdistrict zoning regulations which preserve the City's theater industry. The zoning permits the sale of air rights from the Broadway theaters to sites within the Theater Subdistrict, located between 40th and 57th Streets and Sixth and Eighth Avenues. The transfer of air rights provides funds to physically preserve theaters; assures their continued use as legitimate theaters; and creates funds to invest in the increased audiences and the industry's growth. The decision allows the City to move forward with implementation of this important initiative to ensure the preservation and continued vitality of Broadway's historic theaters.

Broadway theater is one of the most significant economic and cultural institutions in New York City. The industry generates in excess of two billion dollars a year and directly accounts for some 250,000 full- and part-time jobs. The concentration of over 40 Broadway theaters makes the Theater District one of the most well-known areas in the world. New York City has long recognized that the preservation of the Broadway theaters is crucial to the City's economic and cultural vitality strength of the district and to the theater industry. The Theater Subdistrict Amendments, proposed by the Department of City Planning and adopted by the City Planning Commission and City Council in 1998, reflect the City's most significant act to preserve the Broadway theaters in the face of an active real estate market.

Joseph B. Rose, Chairman of the City Planning Commission and Director of the City Planning Department, stated, The unanimous ruling is a triumph for the future of the Broadway theaters, the authority of the democratic process, and the integrity of our land use and environmental review procedures. The means New York City will not have to choose between economic growth and the preservation of irreplaceable cultural and economic resources. The right of the City Planning Commission and the City Council to act in the public interest has been affirmed, and reason and the rule of law have been restored to the environmental review process.

The key feature of the 1998 amendments is a preservation mechanism which allows the 25 Broadway theaters with excess development rights to transfer these rights to development sites in the Theater Subdistrict on an as-of-right basis; that is, without need for further discretionary government review. The sale of development rights must be in exchange for a covenant ensuring the operational soundness of the theater and its continued use as a legitimate theater, as well as a contribution to a Theater Subdistrict Fund for the promotion of theater use and preservation. Theaters that transfer their development rights would no longer be allowed to convert them to non-theater uses. Projects receiving transferred theater development rights could be increased in size by 20 percent.

Michael Hess, Corporation Counsel, said, I am pleased with this wonderful decision. It upholds the Department of City Planning's environmental review process and recognizes that the City's zoning power can be used to preserve our vital theater industry.