

PROPOSED (A Text)
THEATER SUBDISTRICT FUND
TEXT AMENDMENT

August 31, 2016

Matter in underline is new, to be added;
Matter in ~~strikeout~~ is to be deleted;
Matter within # # is defined in Section 12-10;
* * * indicates where unchanged text appears in the Zoning Resolution

Article VIII - Special Purpose Districts

Chapter 1
Special Midtown District

* * *

81-70
SPECIAL REGULATIONS FOR THEATER SUBDISTRICT

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81-71
General Provisions

The regulations of Sections 81-72 to 81-75, inclusive, relating to Special Regulations for the Theater Subdistrict, are applicable only in the Theater Subdistrict, of which the Theater Subdistrict Core and the Eighth Avenue Corridor are parts, except that any listed theater designated in Section 81-742, or portion thereof, located outside of the Theater Subdistrict shall be deemed to be a “granting site” pursuant to Section 81-744 (Transfer of development rights from listed theaters).

The Theater Subdistrict is bounded by West 57th Street, Avenue of the Americas, West 40th Street, Eighth Avenue, West 42nd Street, a line 150 feet west of Eighth Avenue, West 45th Street and Eighth Avenue.

The Theater Subdistrict Core is bounded by West 50th Street, a line 200 feet west of Avenue of the Americas, West 43rd Street and a line 100 feet east of Eighth Avenue.

The Eighth Avenue Corridor is bounded by West 56th Street, a line 100 feet east of Eighth Avenue, West 43rd Street, Eighth Avenue, West 42nd Street, a line 150 feet west of Eighth Avenue, West 45th Street and Eighth Avenue.

The west side of Eighth Avenue between 42nd and 45th Streets is also subject to the provisions of the Special Clinton District to the extent set forth in Article IX, Chapter 6, subject to Section 81-023 (Applicability of Special Clinton District regulations).

These boundaries are shown on Map 1 (Special Midtown District and Subdistricts) in Appendix A of this Chapter. The regulations of Sections 81-72 to 81-75, inclusive, supplement or modify the regulations of this Chapter applying generally to the #Special Midtown District# of which the Subdistrict is a part.

In order to preserve and protect the character of the Theater Subdistrict as a cultural, theatrical and entertainment showcase as well as to help ensure a secure basis for the useful cluster of shops, restaurants and related amusement activities, special incentives and controls are provided for the preservation and rehabilitation of existing theaters and special restrictions are placed on ground floor #uses# within the Subdistrict. In order to preserve and protect the special scale and character of the Theater Subdistrict Core, which includes Times Square, special #building street wall# height and setback controls and requirements for the inclusion of #illuminated signs# and entertainment and entertainment-related #uses# apply within the Subdistrict Core. In order to ensure the orderly

growth and development of the Eighth Avenue Corridor and its transition to the scale and character of adjoining midblocks, special #building street wall#, height and setback controls apply within the Corridor. In order to preserve and maintain the character of the western edge of the Theater Subdistrict as both an integral part of the Theater Subdistrict and as a transition to the Clinton neighborhood, the west side of Eighth Avenue between 42nd and 45th Streets is also subject to the provisions of the Special Clinton District.

A Theater Subdistrict Council shall be created and comprised of the Mayor, three (3) representatives appointed by the Mayor from the performing arts, theatrical related industries, the Director of the Department of City Planning, the Speaker of the City Council and his or her designee, and the Manhattan Borough President. The members shall choose a Chair from among themselves. The Theater Subdistrict Council shall be a not-for-profit corporation whose organizational purpose shall be limited solely to promoting theater and theater-related use and preservation within the Theater Subdistrict and promoting the welfare of the Theater Subdistrict generally. The goals of the Theater Subdistrict Council shall include:

- (a) enhancing the long-term viability of Broadway by facilitating the production of plays and small musicals within the Theater Subdistrict, with consideration given to small theatrical organizations;
- (b) developing new audiences for all types of theatrical productions; ~~and~~
- (c) monitoring preservation and use covenants in ~~Broadway's~~ "listed theaters"; and
- (d) assisting activities that support and strengthen the New York City theater industry within the Subdistrict.

The Theater Subdistrict Council shall adopt a plan every three years for the sale, distribution and marketing of reduced price tickets to new and undeveloped audience groups. Such plan shall include locations outside of the Theater Subdistrict where such reduced price tickets will be available. The plan shall also include a way to evaluate yearly its effectiveness by:

- ~~(a)~~ the number of tickets sold; and
- ~~(b)~~ the penetration of the new identified markets which shall be reported to the Chairperson of the City Planning Commission and filed with the Council of the City of New York.

The Theater Subdistrict Council shall advise the Chairperson of the City Planning Commission concerning applications for any special permit, authorization or certification pursuant to the special regulations for the Theater Subdistrict and shall be the holder and administrator of the funds received in connection with transfers of development rights from "listed theaters" pursuant to Section 81-744 in accordance with the provisions for the Theater Subdistrict Fund set forth in paragraph (h) of Section 81-741 (General provisions).

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81-74 Special Incentives and Controls in the Theater Subdistrict

81-741 General provisions

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(i) Theater Subdistrict Fund

In furtherance of the purposes of this Section, the Theater Subdistrict Council shall establish a separate interest-bearing account (the "Theater Subdistrict Fund" or "Fund") for the deposit and administration of the revenues received by the Theater Subdistrict Council generated by the transfer of development rights pursuant to Section 81-744. Upon receipt of any revenue generated pursuant to such Section, the Theater Subdistrict Council shall notify the Comptroller, the Speaker and the Department of City Planning, and promptly deposit such revenues into the Theater Subdistrict Fund and shall expend such revenues and any interest accumulated thereon in the following manner:

- (1) a portion of any such revenues shall be reserved, sufficient in the judgment of the

~~Theater Subdistrict Council but in no event less than 20 percent of such revenues, to undertake the ongoing periodic inspection and maintenance report requirements pursuant to paragraph (d)(e) of Section 81-743. The Theater Subdistrict Council may petition the City Planning Commission for a reduction in the percentage of such reserve and the Commission may grant such reduction if, in its judgement, a lesser percentage will be sufficient to carry out the purposes of this paragraph; and~~

- (2) the remainder of such revenue shall be used for activities chosen by the Theater Subdistrict Council furthering the objectives and purposes of this Section, which activities may include judicial or administrative proceedings instituted by the Theater Subdistrict Council against any property owner or lessee to enforce the obligations of such owner or lessee pursuant to any restrictive declaration entered into in connection with a transfer of development rights pursuant to Section 81-744. Notwithstanding the foregoing, funds shall not be used for the physical repair and preservation of theaters.

The Theater Subdistrict Council shall provide an annual report to the Department of City Planning, the Comptroller, the Speaker and the City Planning Commission indicating the amounts and dates of any deposits to the Theater Subdistrict Fund in the immediately preceding calendar year, the balance of the Theater Subdistrict Fund at the close of the calendar year, the amounts expended on activities within the Theater Subdistrict and the nature of those activities. The Theater Subdistrict Council shall maintain complete, accurate and detailed records, with supporting documentation, in respect to all deposits to and withdrawals from the Theater Subdistrict Fund, and shall make such records available to the City of New York, the Department of City Planning, the Comptroller, the Speaker and the City Planning Commission upon reasonable notice and during business hours for inspection and copying.

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81-744

Transfer of development rights from listed theaters

For the purposes of the Theater Subdistrict:

A “listed theater” shall mean a theater designated as listed pursuant to Section 81-742 (Listed theaters).

A “granting site” shall mean either a #zoning lot# or that portion of a #zoning lot# occupied by a “listed theater” and comprised of those block and lot numbers specified for such theater pursuant to the table in Section 81-742, as such block and lots existed on January 12, 1998. However, a “granting site” shall not include any #zoning lot# occupied by a “listed theater” located within the geographical area covered by the 42nd Street Development Land Use Improvement Project, adopted by the New York State Urban Development Project in 1984, as such Project has and may be subsequently amended.

A “receiving site” shall mean a #zoning lot# or the portion of a #zoning lot# located within the Theater Subdistrict to which development rights of the “granting site” are transferred. However, no portion of a “receiving site” shall be located within the 42nd Street Development Project Area. In addition, for #zoning lots# containing “listed theaters,” that portion of the #zoning lot# occupied by the “listed theater” and comprised of the block and lot numbers specified for such theater, pursuant to the table in Section 81-742, shall not be included in the “receiving site.”

Any “receiving site” divided by a district boundary or Theater Subdistrict Core boundary may locate #bulk# in accordance with the provisions of Section 81-746 (Additional provisions for zoning lots divided by district or subdistrict core boundaries).

The “floor price” is a value per square foot of transferable development rights in the Theater Subdistrict, which shall provide a basis for establishing a minimum contribution to the Theater Subdistrict Fund established pursuant to paragraph (i) of Section 81-741 (General provisions), as provided in this Section. As of (date of enactment) the “floor price” is equal to \$347 per square foot. When establishing or adjusting the “floor price”, the City Planning Commission shall initiate an appraisal study conducted by qualified professionals utilizing industry best practices. The City Planning Commission shall, by rule, review and adjust this amount pursuant to the City

Administrative Procedure Act no more than once every three years and no less than once every five years.

An applicant for transferable development rights, upon written request to the City Planning Commission, may ask for an appraisal study to determine any recent changes in market conditions within the Subdistrict. The appraisal study must be paid for by the applicant and completed within a one-year timeframe. The Department of City Planning shall initiate the appraisal study conducted by qualified professionals utilizing industry best practices and the City Planning Commission shall, by rule, review and adjust this amount pursuant to the City Administrative Procedure Act.

(a) **Transfer of development rights by certification**

The Chairperson of the City Planning Commission shall allow, by certification, a transfer of development rights from a “granting site” to a “receiving site,” except that any “granting site,” or portion thereof, located outside the Theater Subdistrict, may not transfer development rights to any portion of a “receiving site” within the Special Clinton District, provided that:

- (1) the maximum amount of #floor area# transferred from a “granting site” is the basic maximum #floor area ratio# established pursuant to Sections 81-211 (Maximum floor area ratio for non-residential or mixed buildings) or 81-213 (Special provisions for transfer of development rights from listed theaters within the Special Clinton District), as applicable, for such “granting site” as if it were undeveloped, less the total #floor area# of all existing #buildings# or portions of #buildings# on the “granting site” and #floor area# attributed to the “granting site” that has been previously used or transferred;
- (2) each transfer, once completed, irrevocably reduces the amount of #floor area# that may be #developed# or #enlarged# on the #zoning lot# containing the “granting site” by the amount of #floor area# transferred;
- (3) the maximum amount of #floor area# transferred to a “receiving site” shall not exceed the basic maximum #floor area ratio# established pursuant to Section 81-211 for such “receiving site” by more than 20 percent;
- (4) the provisions of Section 81-743 (Required assurances for continuance of legitimate theater use) are met; and
- (5) appropriate legal documents are executed and recorded and that, thereafter, and prior to certification, ensuring that a contribution ~~in an amount equal to ten dollars* per square foot of transferred #floor area#~~ be deposited in the Theater Subdistrict Fund established pursuant to paragraph (i) of Section 81-741 (General provisions) ~~at the earlier of either the time of closing on the transfer of development rights pursuant to this Section or the filing for any building permit for any #development# or #enlargement# that anticipates using such development rights.~~ Such contribution shall be equal to the greater of:
 - (i) twenty percent of the sales price of the transferred #floor area#; or
 - (ii) an amount equal to 20 percent of the “floor price” multiplied by the amount of transferred #floor area#.

~~The City Planning Commission shall review such amount no more than once every three years and no less than once every five years and shall adjust the amount to reflect any change in assessed value of all properties on #zoning lots# wholly within the Theater Subdistrict.~~

(b) **Transfer of development rights by authorization**

The City Planning Commission shall allow, by authorization, an additional transfer of development rights beyond the amount of #floor area# transfer permitted by certification

in paragraph (a) of this Section from a “granting site” to any portion of a “receiving site” located within the Eighth Avenue Corridor, except that any “granting site,” or portion thereof, located outside the Theater Subdistrict may not transfer development rights to any portion of a “receiving site” within the Special Clinton District, subject to the following conditions:

- (1) the maximum amount of such additional #floor area# transfer to that portion of a “receiving site” located within such Corridor shall not exceed the maximum total #floor area ratio# with as-of-right #floor area# allowances in the Theater Subdistrict set forth in Section 81-211 by more than 20 percent; and
- (2) such transfer complies with the conditions and limitations set forth for the transfer of development rights in paragraph (a) of this Section.

In order to grant such authorization, the City Planning Commission shall find that such #development# or #enlargement#:

- (i) relates harmoniously to all structures and #open space# in its vicinity in terms of scale, location and access to light and air in the area; and
- (ii) serves to enhance or reinforce the general purposes of the Theater Subdistrict.

Any application pursuant to paragraphs (a) and/or (b) of this Section shall be referred to the affected Community Board, the local Council Member and the Borough President of Manhattan. The Chairperson of the City Planning Commission shall not grant any such certification or authorization prior to sixty days after such referral and sixty days after the date any reports required to be submitted to the Landmarks Preservation Commission pursuant to Section 81-743, paragraph (b), or the Theater Subdistrict Council pursuant to Section 81-71 (General Provisions) have been so submitted.

(c) Requirements for Application

An application filed with the Chairperson of the City Planning Commission for the transfer of development rights by certification pursuant to paragraph (a) of this Section, or with the City Planning Commission for the transfer of development rights by authorization pursuant to paragraph (b) of this Section, shall be made jointly by the owners of the “granting site” and the “receiving site” and shall include:

- (1) a site plan and #floor area# zoning calculations for the “granting site” and the “receiving site”; for certifications, documentation acceptable to the Chairperson indicating the sales price of the transferred floor area; and, for authorizations and/or special permit applications, any such other information as may be required by the City Planning Commission;
- (2) a copy of the transfer instrument legally sufficient in both form and content to effect such a transfer, together with a notice of the restrictions limiting further #development# or #enlargement# of the “granting site” and the “receiving site.” The notice of restrictions shall be filed by the owners of the respective lots in the Borough Office of the Register of the City of New York, indexed against the “granting site” and the “receiving site,” a certified copy of which shall be submitted to the Chairperson of the City Planning Commission. Receipt of the certified copy shall be a pre-condition to issuance of any building permit, including any foundation or alteration permit, for any #development# or #enlargement# on the “receiving site.”

Both the instrument of transfer and the notice of restrictions shall specify the total amount of #floor area# transferred and shall specify, by lot and block numbers, the lots from which and the lots to which such transfer is made.

- (3) demonstrations of compliance with the requirements of Section 81-743 and paragraph (a)(5) of this Section, including all necessary legal documents. Issuance of any building permit, including any foundation or alteration permit, shall be

conditioned upon the filing of such legal documents in the Borough Office of the Register of the City of New York and receipt by the Chairperson of the City Planning Commission of certified copies of same as required pursuant to Section 81-743.

A separate application shall be filed for each transfer of development rights to an independent "receiving site."

*~~The contribution of ten dollars per square foot of transferred #floor area# was adjusted by rule on November 15, 2006, to \$14.91 per square foot and on December 10, 2011, to \$17.60 per square foot~~