

## BRONX COALITION FOR A COMMUNITY VISION ZONING TEXT ASKS

### DEEP AFFORDABILITY OPTION IN MANDATORY INCLUSIONARY HOUSING

**What It Does:** Creates a new "deep affordability" Option within the proposed Mandatory Inclusionary Housing policy that requires 30% affordable housing at 30% AMI. Adopting this Option for the Jerome Avenue rezoning would guarantee that all new residential construction creates a significant share of deeply affordable housing that matches the needs of current residents.

**How It Works:** The City's current MIH proposal includes only three Options, which would require developers to set aside 25-30% of all construction as housing permanently affordable at an average of 60-120% AMI. Although a policy that requires the creation of permanently affordable housing is a big step in the right direction, 60-120% AMI is way above what most current residents of the Southwest Bronx can afford to pay. This means that once developers stop taking City subsidies that require greater affordability, *all* of the new housing that's built in the community will be beyond the reach of current residents.

To address this, the City should add an MIH Deep Affordability option of 30% affordable housing at 30% AMI, and implement that Option for this rezoning. MIH must include at least one Option that addresses the needs of the NYC households that make less than 30% AMI, or \$25,000 a year – households that represent a quarter of the City and a huge share of the residents of the Southwest Bronx, but are completely left out by the City's existing housing programs. In order to truly meet the needs of the Southwest Bronx, additional tools will be needed to get even more deeply affordable housing, but a stronger MIH program would provide a significant part of the solution.

Adopting this Deep Affordability option for the Jerome Avenue rezoning would require additional subsidy, but the same is true for the MIH Options already proposed by the City. And additional investment is worth it to ensure that the Southwest Bronx remains a community accessible to low-income and working-class people, long into the future.

### Floor Area Affordability Bonus: AFFORDABLE HOUSING & GOOD, LOCAL JOBS

**What It Does:** Ensures that the community has real affordable housing and high quality local jobs.

**How It Works:** Create a special district and grant developers a floor area bonus only if they commit to building deeply affordable housing (a minimum of 50% of total units) reflective of the neighborhood median income, hiring 30% of the workers from the local community, and utilizing state-certified apprenticeship programs to ensure well trained and safe workers. To make sure that developers would take the deal, the City should limit the amount of new residential construction that's permitted as-of-right, creating more incentive to take a density bonus option.

**What's the Model?** This floor area bonus system would essentially be a variation of the existing Voluntary Inclusionary Housing (VIH) program, with some new twists. First, instead of giving away significant density and then offering a bonus with strings attached, as the City often did in past neighborhood rezonings where VIH was implemented, the City should limit the amount of density that is granted as-of-right under the Jerome Avenue rezoning. That way, developers will be more likely to take the bonus with the FAAB conditions attached. Second, the FAAB model would not only require mandatory affordability levels – similar to VIH, but with deeper and greater affordability – but would also add the requirement of good, local jobs.

Like VIH, the FAAB model does not pose legal problems because developers don't have to take the deal if they don't want to – they can just stick with their existing building rights. Although the City has never previously inserted hiring-related requirements into the zoning text, we believe that doing so is within the City's broad zoning powers and that the FAAB model would be an important way of ensuring that the rezoning actually benefits the community and that construction creates high-quality jobs for local New York residents.

### **Sample Text for Floor Area Affordability Bonus:**

#### ***PURPOSE AND NEED FOR THE PROPOSED ACTION***

The proposed action seeks to facilitate vibrant, inclusive residential neighborhoods with a wide variety of local and regional commercial options, job opportunities for local residents, safe working conditions at construction sites and well-trained construction workers, and attractive streets that are safe and inviting for residents, workers, and visitors.

The Proposed Actions reflect DCP's on-going engagement with Community Boards 5 and 16, local elected officials and community residents and stakeholders to achieve the following land use objectives:

- Create opportunities for new residential development with up to 100% permanently affordable housing
- Create opportunities for local job creation for disadvantaged local residents. Local job creation ensures that people are going to be able to afford to continue to stay in the community even if it changes.
- Create opportunities for safe working conditions for construction workers and the surrounding community through state-certified apprenticeship training programs

#### ***Create opportunities for new residential development with up to 100% permanently affordable housing***

Changing the zoning to allow for up to 100% affordability at the neighborhood median income at higher densities is intended to significantly expand the supply of housing, particularly at a rent level that the majority of the existing residents can afford. The Proposed Actions would promote the development of affordable housing by requiring at least half of new housing units in high-density residential developments to be permanently and deeply affordable at local AMI levels, which is not required by current zoning or the proposed Mandatory Inclusionary Housing (MIH) policy.

### ***Create opportunities for local job creation for disadvantaged local residents***

Creating an optional density bonus program to allow for local job creation is intended to significantly increase the job opportunities available for disadvantaged local residents and forestall displacement that might otherwise occur as a result of high unemployment rates and rising rent pressures. The Proposed Actions would promote the job opportunities available to local residents by requiring 30% of hours worked on each project to be done by disadvantaged local residents.

### ***Create opportunities for safe working conditions for construction workers and the surrounding community through state-certified apprenticeship training programs***

Creating an optional density bonus program to allow for apprenticeship utilization for construction workers is intended to significantly increase the level of training and the safety of worksites in the rezoned area. The Proposed Actions would promote the training opportunities for new construction workers by ensuring they are trained through state-certified apprenticeship programs, leading to improved safe working conditions. It will also promote the safety of the surrounding community, which will be subject to significant amounts of redevelopment.

## **COMMUNITY FACILITY ZONING**

**What It Does:** Ensures that the community has the schools, health centers, community centers, parks, and other spaces that it needs to support new and current residents. Ties the development of such facilities to new housing construction to make sure that increases in population are matched by increases in essential services.

**How It Works:** The population in the Southwest Bronx will increase dramatically after the rezoning, placing additional strain on our schools, transportation, roads, parks, community centers, and other community facilities. It's important that there be a plan to create more capacity as the neighborhood's population grows, but since new residents won't flood in all at once, it's difficult to know now exactly how much of each of these things the community will need, and when. But, if the City waits until after the rezoning to acquire the land and buildings that will be needed to create more community spaces, prices may have gone up a lot – making it difficult or impossible to build the facility.

To address this, the City should put a rule in the zoning plan that will make community facility space a required part of new construction. One way to do this would be to link the square footage of a certain use to a requirement for an equal or greater amount of square footage for the desired community facility. This model was used in the Special Harlem Waterfront District to tie the development of commercial space to an equal or greater amount of space for desired uses in the district, including community facilities. Another option would be to include a zoning text provision that requires developments in the area to provide easements for certain public amenities, the way the City's Special Transit Land Use District requires a set-aside for subway-related uses.

A third model the City could put in the zoning text is a requirement that obligates the Department of Buildings to assess whether there are adequate community facilities in

the area before giving building permits to developers who want to add more housing in the community. If the community has enough of what it needs, the developer can get the permit and go ahead with construction. If something is lacking, the developer will need to set aside space in the new development for a community facility. Alternatively, special requirements can be attached to development in an area that has infrastructure needs, as was done through Lower Density Growth Management Areas in Staten Island in the Bronx.

Finally, the zoning text can provide that community facility space will not count against all of the buildable space the developer has – so the developer will be able to build as much as he would have otherwise – but the community facility space will be *added* to help meet the community's needs. The city agency that wants to use the space – for example, the Department of Education, if a school needs to be built – could then pay for the construction costs related to building the community space, and will pay the developer reasonable rent for the space afterward. This was done in the Hudson Square Special District.

**What's the Model?** Special Harlem River Waterfront District, Special Transit Land Use District, Lower Density Growth Management Areas, Hudson Square Special District.

**Sample Text:**

<http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art08c07.pdf>

<http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art09c05.pdf>

<http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art08c08.pdf>

[http://www1.nyc.gov/assets/planning/download/pdf/plans/ldgma-si/ldgma\\_si.pdf](http://www1.nyc.gov/assets/planning/download/pdf/plans/ldgma-si/ldgma_si.pdf)

## **PAYMENT IN LIEU OF TAXES (PILOT) FUND**

**What It Does:** Guarantees that revenues generated by development stay in the community instead of going to the City's general coffers.

**How It Works:** Create a special district and a PILOT fund to keep revenues generated by development in the community.

**What's the Model?** In New York, PILOTs are usually offered as incentives to companies to induce them to locate their business in New York City. But they can also be used to keep the profits from development in a neighborhood that is facing rapid change. Either way, the basic idea is the same: companies enter into agreements to receive exemptions from property taxes and instead make PILOT payments, which are lower than the tax payments would have been.

On Manhattan's Far West Side, the City created a PILOT to harness private funding to finance the extension of the 7 subway line and the construction of new streets and parks, part of an ambitious plan that also included significant new office space and

housing. A new local development corporation, the Hudson Yards Infrastructure Corporation (HYIC), was created to issue bonds for infrastructure construction. The bonds were backed by the revenue the project would create – most significantly, PILOT payments made by private developers building within the area.

The rezoning of the area allowed for significantly more building and offered the prospect of huge profits for developers; the PILOT structure aimed to ensure that some of the revenue generated by these new buildings stayed in the area and supported public services and amenities. Any PILOT funds in excess of what was needed to repay the bonds would flow back to the City. To date, \$3 billion in bonds have been issued to support subway construction and parks in the area, and debt payments now run over \$150 million a year. Until recently, PILOT revenues were not sufficient to cover the bond payments, and since 2006, the City has been forced to spend more than \$350 million of its budget to make payments on the bonds. However, development in the area has increased, and this year, for the first time in a decade, the PILOT funds will be enough to cover the bond payment without any additional funding from the City.

There are two basic ways that PILOTs can be structured to generate revenue for an area. Under the first option, the City takes out bonds and then uses the PILOT funds to pay back those bonds. The advantage of this structure is that it enables the City to plan in advance for the infrastructure or services it wants to fund through the PILOT money, and then secure the project funding before the PILOTs are collected. The other way that cities can structure PILOTs is through a pay-as-you-go set-up. Under this structure, the City will not take out loans to fund infrastructure or services, but it will apply whatever PILOT funds it receives toward the designated uses.

Although it's important to recognize the practical concerns about PILOT funds – for one thing, buildings that receive tax abatements like 421(a) are not subject to taxation for many years, so they will not generate revenue for a PILOT – PILOTs can do what no other financing mechanism can: keep revenues generated from development in the community where that development is taking place. This is critical for all communities facing rezonings, since absent a PILOT, each rezoned neighborhood may wait years for necessary infrastructure to be developed, while developers grow rich off of their new development rights and the City turns its attention elsewhere.

## **CERTIFICATION OF NO HARASSMENT REQUIREMENT**

**What It Does:** Prevents landlords from harassing rent-stabilized tenants by creating serious disincentives for harassment.

**How It Works:** This zoning text provision would create a rule barring landlords from receiving certain building and construction permits on sites where harassment is found to have occurred – *unless* the landlord agrees to set aside part of the building as permanently affordable housing.

**What's the Model?** A requirement that landlords receive a Certification of No Harassment or take the affordable housing "cure" is already in place in Hell's Kitchen in

the Special Clinton District. A similar requirement could be adopted in the text for the Jerome Ave rezoning, or as citywide legislation.

The basic idea is that the Department of Buildings *should not give building or alteration permits* to landlords who have harassed tenants – unless those landlords agree to build new affordable housing. Landlords *should not be able to profit* from pushing tenants out or making their lives so miserable that they leave. If landlords know they cannot make a lot of money by harassing tenants, they won't do it as often. This new rule would help prevent harassment because landlords will not want to have to make parts of their buildings permanently affordable. And if landlords harass tenants *despite* the new rule, they will have to build affordable housing to pay for what they've done. Either way, this rule would help ensure that low-income people can stay in the neighborhood, even as it changes.

These new rules would require the City to keep a list of suspicious landlords who have many maintenance code violations, housing court cases against tenants, reports of bad behavior from community groups, and other factors suggesting that the landlord might be harassing tenants. If a landlord from this list applied for a building permit from the Department of Buildings, the landlord could not get the permit right away – first, there would have to be a *hearing* to figure out whether the landlord had harassed tenants. Building residents and other people in the community would have the chance to testify at this hearing. If the landlord is found to have harassed tenants, the landlord would *not* be able to get the building permit from DOB unless they agreed to set aside part of the building as new, permanently affordable housing.

**Sample Zoning Text:** <http://www.nyc.gov/html/dcp/pdf/zone/art09c06.pdf>

## **PROTECT SMALL LOCAL BUSINESSES**

### **SELECT AN AREA WHERE AUTO BUSINESSES CAN REMAIN & BE PROTECTED**

**What It Does:** Manipulates market conditions by maintaining the existing zoning where businesses are located to prevent competition from new competing uses and may further limit existing competing uses in the protected area.

**How It Works:** Specifications for limitations on uses can be written in through a Special Enhanced Zoning District

**What's the Model?** See the section below on prescribing and/or limiting uses.

**Sample Zoning Text – Special Enhanced Commercial District:**

<http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf>

## **CREATE OPPORTUNITIES FOR SMALL LOCAL BUSINESSES, NOT JUST LARGE CORPORATE CHAINS**

Multiple mechanisms are needed to accomplish this. Three methods that operate through zoning include:

## Size caps

**What It Does:** Limit the size of new commercial spaces in order to create opportunities for local small businesses and not just large (often corporate chain stores) that can out-compete for rents and drive up prices in the overall area. These limits: a) make the area less attractive to large foot-print chain stores which often operate on a formula for required square footage and also b) can contribute to limiting the escalation of commercial rents that often follows when multiple chain stores site in a neighborhood.

**How It Works:** When the real estate market picks up (often facilitated by a rezoning), small local businesses may be displaced by an influx of larger businesses seeking to capitalize on the new market and newly created spaces in new construction. These businesses can pay higher rents than long-standing businesses and may conflict with the needs or character of the neighborhood. A Special Enhanced Zoning District can shape the nature of a commercial district by limiting the size of new commercial spaces in order to support smaller storefronts.

**What's the Model?** Some cities have adopted size caps to limit big-box stores. One way to do this locally is through "frontage requirements" in zoning. These can require a minimum number of storefronts in an area (effectively reducing the size of the establishments) and can limit the size of the storefront for certain uses, like banks.

### **Sample Zoning Text – Special Enhanced Commercial District:**

<http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf>

## Zoning for Businesses that Serve Local Needs

**What it does:** Certain designations in the Commercial Zoning Code (C1 and C2) limit the commercial uses to neighborhood serving retail. Within those categories, further restrictions could be applied through a Special Enhanced Commercial District.

**How It Works:** The zoning designation of a commercial overlay defines the allowable uses for ground floor commercial establishments in mixed-use buildings, as well as parking requirements. There are standard categories for neighborhood-serving retail that could be further limited through language in a Special District.

**What's the Model?:** The Special Enhanced Commercial District on Amsterdam and Columbus Avenues in Manhattan sets aside a minimum percentage of ground floor space that *must* be used for the sale of fresh food and ties these to size of the establishment.

**Sample Zoning Text:** <http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf>

## Set-Asides for Small Businesses

**What it does:** Compel developers to devote space to local retail establishments

**How it works:** Creates a preference for locally-owned businesses and attaches a requirement for new construction over a certain size to set aside a portion of its retail space for that retail. In the model described below, “qualified locally-owned” businesses were identified by DSBS and the Community Board, with leasing preferences given to businesses within that Board and secondary preferences to those in surrounding Community Boards.

**What’s the Model?** This idea was proposed by community as part of 125th Street Rezoning. It was not ultimately not adopted through the zoning, but the concept eventually made it into the East 125 Street Development RFP.

**Sample Text:**

<http://www1.nyc.gov/assets/hpd/downloads/pdf/125thRFPFinal.pdf> (page 10)

<https://www.nycedc.com/sites/default/files/files/rfp/qadocuments/A%20West%20RFP%20Info%20Session%201.14.16.pdf>

**ADOPT SPECIAL ENHANCED ZONING DISTRICTS THAT LIMIT COMMERCIAL USES TO THE TYPES COMMONLY USED BY LOCAL RESIDENTS**

This can be accomplished by at least two different approaches to a Special Enhanced Zoning District a) prescribing uses or b) limiting uses.

**Prescribe uses**

**What It Does:** Narrows the allowable uses in a local-serving district by specifically naming the uses that are allowed in the vision for retail in the area.

**How It Works:** As part of a Special Enhanced Zoning District that can accomplish various goals simultaneously, it spells out the specific eligible commercial uses for an area and prohibits uses that are not part of the community vision for retail in the area.

**What’s the Model?** Special Madison Avenue Preservation District protected specialty shops by mandating that the ground floor of buildings on Madison Avenue be occupied by selected uses, such as barber shops, beauty shops, food stores, laundromats, and hardware stores.

**Sample Zoning Text:** <http://www.nyc.gov/html/dcp/pdf/zone/art09c09.pdf>

**Limit uses**

**What It Does:** Narrows the allowable uses in a local-serving district by prohibiting them outright or places restrictions uses that are not desired in the vision for retail in the area.

**How It Works:** As part of a Special Enhanced Zoning District that can accomplish various goals simultaneously, it spells out excluded commercial uses for an area and/or uses that are subject to specific requirements (such as limited size storefronts for banks on the Upper West Side or occupation of second floors).



**What's the Model?**

The Special Enhanced Commercial District on the Upper West Side (6/28/2012) and the 125<sup>th</sup> Street Corridor (4/30/2008). Branches of major banks were beginning to dominate the commercial space on Amsterdam, Columbus, and Broadway at the expense of retail diversity and accessibility to goods and services. The area's new zoning limits the width of new banks to 25 ft. (less than a third of the width of bank branches opened in recent years), and protects small business by requiring a minimum of two non-residential establishments for every 50 ft. of street frontage. In East Harlem, banks were similarly restricted along with office, hotel, and other "non-active" uses. Arts uses were encouraged by the creation of an arts category and the requirement that developments with more than a certain size of floor area (60,000 sq ft) must include 5% of that floor area for arts uses.

**Sample Zoning Text:**

*Special Enhanced Commercial District:*

<http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf>

*Special 125<sup>th</sup> Street District:*

[http://www.nyc.gov/html/dcp/pdf/125th/125thstreet\\_proposed\\_text\\_amendment\\_sept24.07\\_legal.pdf](http://www.nyc.gov/html/dcp/pdf/125th/125thstreet_proposed_text_amendment_sept24.07_legal.pdf)