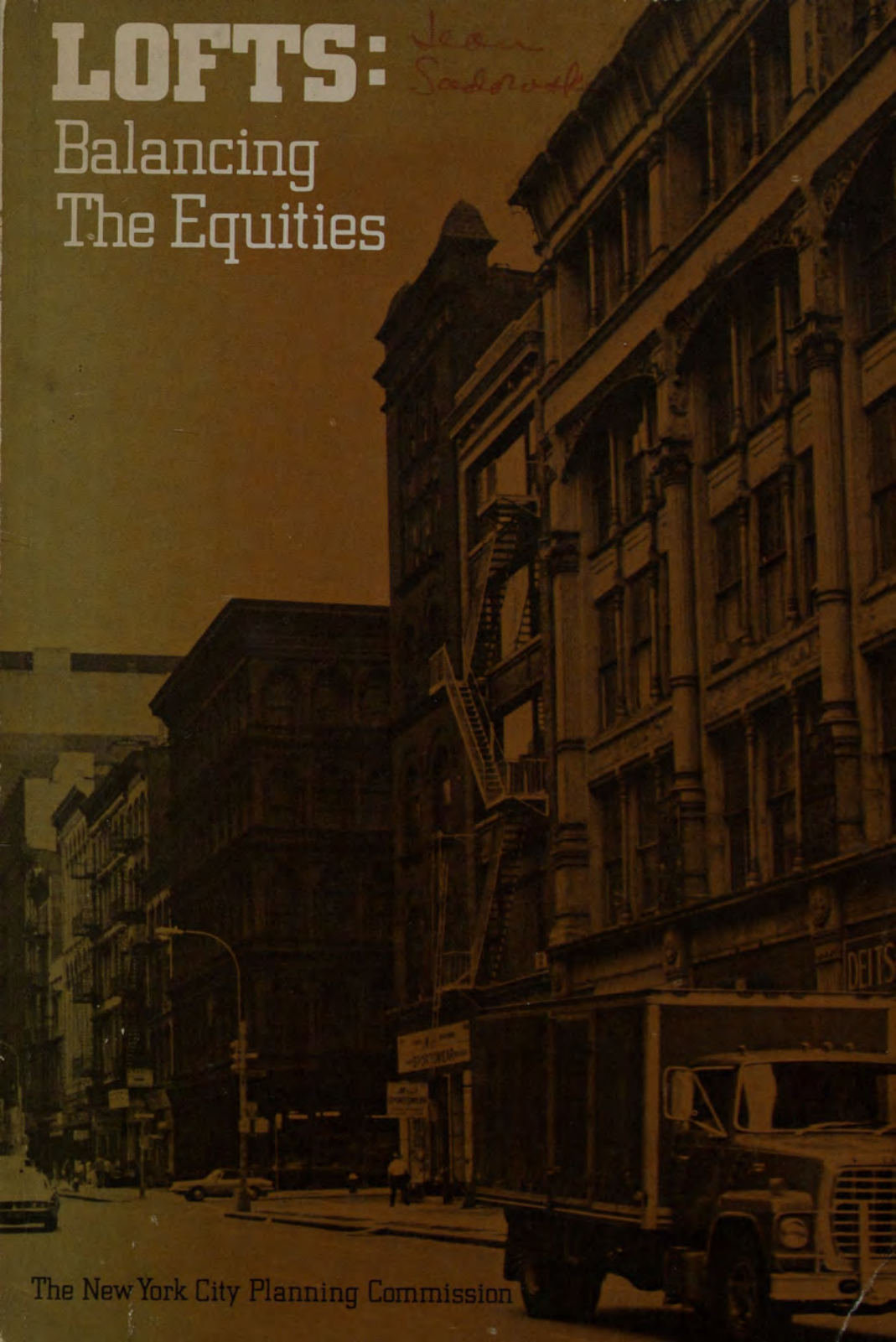
LOFTS:
Balancing The Equities



The New York City Planning Commission

Cover Photo: The Broadway Corridor, SoHo, looking North from Grand Street.

LOFTS:

Balancing The Equities

EDWARD I. KOCH, Mayor
CITY OF NEW YORK

CITY PLANNING COMMISSION
HERBERT STURZ, Chairman

FEBRUARY 1981

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DCP 81-05

PREFACE

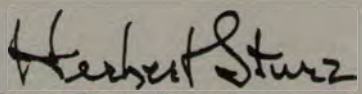
For too long a time, zoning regulations for Manhattan's loft neighborhoods south of 59th Street have neither safeguarded industry nor functioned as a guide to residential loft conversion investment.

Responding to this problem after careful study by city agencies and local manufacturers, artists, and residents, the proposal described in these pages has been crafted to meet the twin goals of industrial preservation and housing opportunity.

Where land use competition between unequal private market forces threatens the larger public interest, it is necessary that government intervene. Such intervention, however, must be the minimum necessary to insure protection of the public interest. In the case of loft conversion, unrestricted residential conversion of valuable industrial space results in adverse consequences for the city tax base and its large blue collar working population. At the same time, the need for housing in locations proximate to jobs demands a coherent, safe program for conversion of lofts to residential use buildings.

The proposal described in these pages is controversial. It asks something of everyone. From developers it asks relocation benefits for displaced business tenants; from industry it asks an orderly transition to residential use in areas no longer recognized as prime business districts; from residential tenants it asks acceptance of regularized safety and housing quality standards; and from the City it demands an investment in law enforcement to assure realization of the twin goals of industrial protection and residential security.

It is a complex and innovative proposal; together with related tax and code reforms and strong enforcement initiatives, it promotes in classical zoning terms the health, safety and general welfare of the city at large.



HERBERT STURZ, *Chairman*
New York City Planning Commission

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SUMMARY OF LOFT ACTIONS

The City Planning Commission on February 9, 1981, approved a series of zoning measures in Manhattan loft districts south of 59th Street which are designed to safeguard industry while providing guidance for future residential conversion activity.

I. Issues

This proposal is part of the administration's response to the conflict between industrial and residential competitors for loft space in Manhattan south of 59th Street. Within the past few years, the combination of a relatively stabilized manufacturing base, the dearth of new residential construction, and the desire to live in this part of Manhattan has caused the surplus of loft space to disappear. Luxury loft housing is now successfully bidding for space occupied by the industrial and "pioneering" residential tenant.

Residential conversion in these areas has proceeded either illegally in disregard of land use and building code regulations, or by the grant of large numbers of variances. As a consequence, some areas currently zoned manufacturing no longer have an exclusively manufacturing character. Residential development has occasionally intruded into important industrial areas. The resulting dispersal of manufacturing firms and their attendant jobs has hurt the city's economy.

In addition, the safety and continued occupancy of illegal residential tenants is jeopardized by living outside of the framework of residential and building law protections.

II. The Comprehensive Proposal

In order to balance the legitimate but conflicting needs of industrial and residential uses for loft space, the following measures are required:

1. Zoning map amendments which reflect land use changes since the 1961 zoning ordinance.

2. Zoning text changes which establish standards for recycled buildings.

3. Zoning text changes requiring, as a condition of conversion, relocation assistance for displaced industrial firms which relocate within New York City. These benefits will be funded by developers who convert to residential use.

4. State legislation recognizing the residential status of illegal loft dwellers and providing a framework for legalization.

5. Removal of the tax incentive programs of J-51 and 421 used for residential conversion in Manhattan's loft districts reserved for business uses.

6. A special mayoral office for loft enforcement to create the proper deterrent to new illegal conversions and to monitor the legalization of existing illegal conversions. This office combines inspection and prosecutorial functions, and gives the City a strong zoning and code enforcement capability which it heretofore lacked.

7. Amendments to Article 7B of the Multiple Dwelling Law to simplify the standards for recycled buildings.

The implementation of this proposal has begun with the Mayor's establishment of the enforcement unit, the adoption of Article 7B amendments by the State Legislature, and the approval by the Planning Commission of the necessary zoning changes.

III. The Zoning Proposal

The City Planning Commission is recommending that the Board of Estimate adopt a series of zoning map and text changes regarding the conversion of non-residential buildings to residential use in Manhattan Community Boards #1 through #6. These land use regulations are designed to ensure that adequate industrial loft space is retained for New York City's Manhattan based garment, meat and printing firms. These changes also provide continued and expanded opportunities to create habitable, legal housing in recycled buildings. Recycling is channeled to neighborhoods where residential use is appropriate and where conversion has minimal impact on industrial users.

The zoning map and text changes define three types of loft districts. Maps of these districts follow this summary.

A. Manufacturing Districts

These are currently manufacturing districts where industrial uses are concentrated in major market centers. Four existing districts are reaffirmed as manufacturing only. These are the Garment Center, Northeast Chelsea (apparel related), the Meat Market, and the Graphic Arts Center. This will protect 46 million square feet of loft space. Manufacturing designation does not permit residential use, either by conversion or by the construction of new residential buildings. J-51 and 421 tax abatement and exemption programs would not be available in these districts.

B. Mixed Use Districts

These are districts which contain substantial numbers of important industrial uses as well as significant residential use. Two new mixed use districts are created as part of the proposed zoning actions:

1. Southeast Chelsea and the Garment Center East.

In these districts conversion is permitted provided that a specified amount of comparable space is preserved for non-residential use within each district. Developers may transfer the preservation obligation for non-residential space between buildings. This preservation obligation is ensured by the recording of a restrictive covenant. Housing standards are established, including large unit sizes to provide opportunities for living-work situations, roof top open space, and light and air standards.

The midblock portion of the Garment Center East between 5th and 6th Avenues and between West 35th and the north side of West 39th Streets is being certified concurrently for a map change to manufacturing in response to requests from real estate and industrial representatives. The proposed mixed use designation is adopted as an interim measure to partially protect a dense concentration of apparel-related uses until the manufacturing designation can be adopted.

2. SoHo/NoHo and Tribeca

In the existing mixed use districts of SoHo/NoHo and Washington Market/Tribeca, the prohibition against the conversion of larger buildings which has proven vulnerable to variance applications is being modified by a City Planning Commission special permit. The granting of this special permit is predicated on objective findings demonstrating that market conditions no longer justify the continued industrial use of the property.

C. Commercial and Residential Districts

These are districts which have minimal industrial use in areas predominately either residential or commercial in character. These districts encompass all of Manhattan south of 59th Street not zoned manufacturing or mixed use. The West Village is being mapped as a commercial district. Residential use of entire buildings is permitted with no industrial preservation requirement. The zoning sets up housing standards appropriate to recycled buildings, including density, light and air, and an open space equivalent.

Other elements of the zoning text changes include:

Relocation Incentive Program

The zoning establishes a relocation assistance program to encourage dislocated industrial tenants to relocate within New York City. Tenants would receive $4.50 per square foot directly from the developer when they move to another New York City location. If the tenant is not eligible, these funds are paid to the New York City Business Relocation Assistance Corporation which will provide additional relocation assistance. A companion relocation measure tied to J-51 conversions outside Manhattan's loft areas will be considered by the City Council this spring.

Business Relocation Assistance Corporation

This not-for-profit corporation receives those monies which do not go to relocating tenants, for disbursement to relocatees within New York City. The Board of Directors of BRAC consists of the Chairman of the City

Planning Commission, the Commissioner/Executive Director of the Office of Economic Development, the Chairman of the Board of Standards and Appeals, and two representatives from the apparel and printing industries.

Industrial Loft Advisory Council

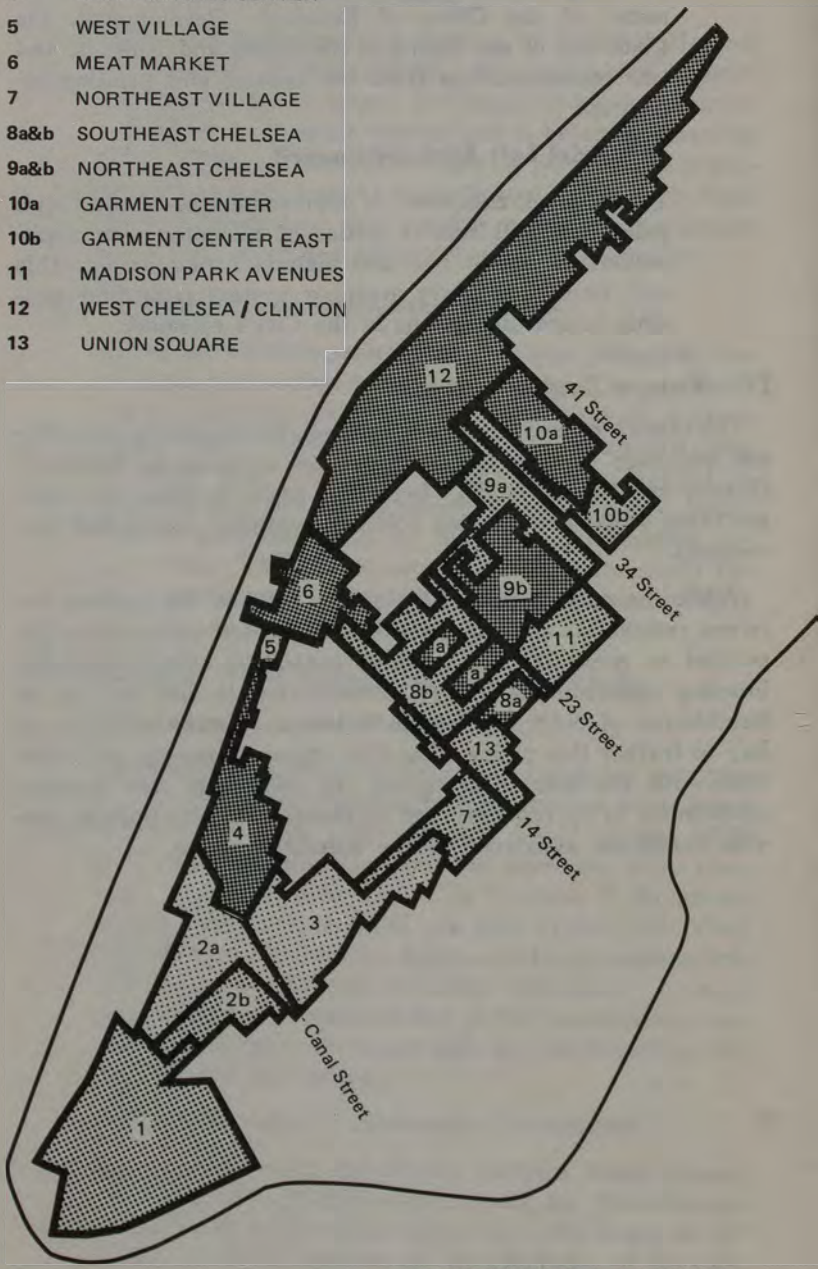
This council, composed of representatives of the City's industries, will receive notice of all conversion applications in mixed use and manufacturing areas. This will permit an early warning system regarding possible future disruptions in the City's economy.

IV. Future Zoning Actions

The history of creating residential neighborhoods by recycling loft buildings is now beginning to be repeated in Brooklyn, Queens and Staten Island. Industrial areas in these boroughs are being studied to develop policies governing residential conversions.

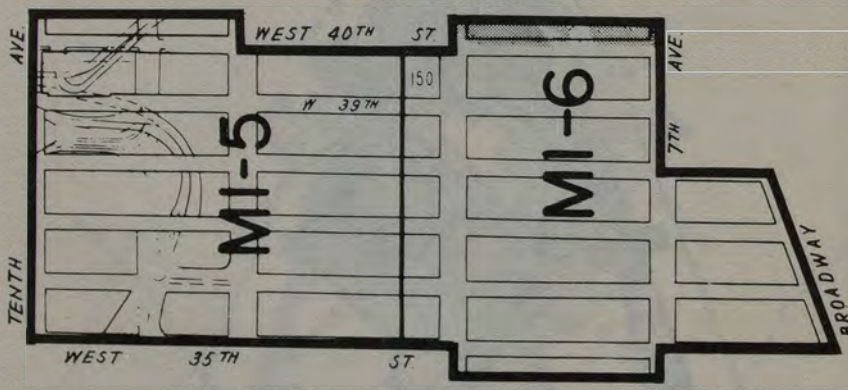
While the current proposal seeks to balance the equities between residential and industrial needs for loft space, it is important to recognize the need to encourage other residential housing opportunities in new construction as well as the rehabilitation of older residential buildings. Zoning will be one key to further this policy. The City, through zoning and other tools, will continue to recognize the important role industry contributes to its economy and to ensure that city policies provide maximum assistance to the industrial sector.

1 LOWER MANHATTAN CBD
2a&b WASHINGTON MARKET / TRIBECA
3 SOHO NOHO
4 GRAPHIC ARTS CENTER
5 WEST VILLAGE
6 MEAT MARKET
7 NORTHEAST VILLAGE
8a&b SOUTHEAST CHELSEA
9a&b NORTHEAST CHELSEA
10a GARMENT CENTER
10b GARMENT CENTER EAST
11 MADISON PARK AVENUES
12 WEST CHELSEA / CLINTON
13 UNION SQUARE

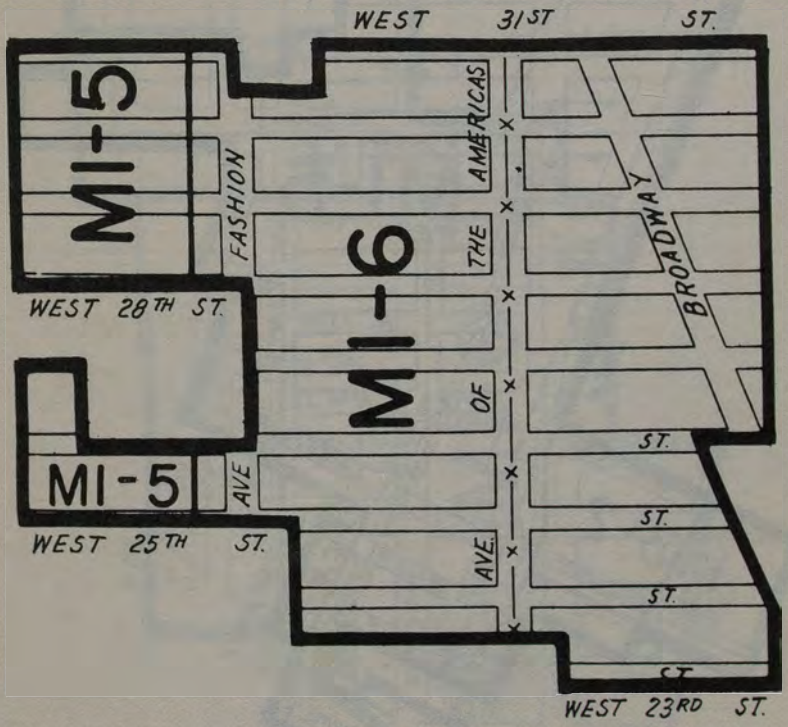


EXISTING ZONING

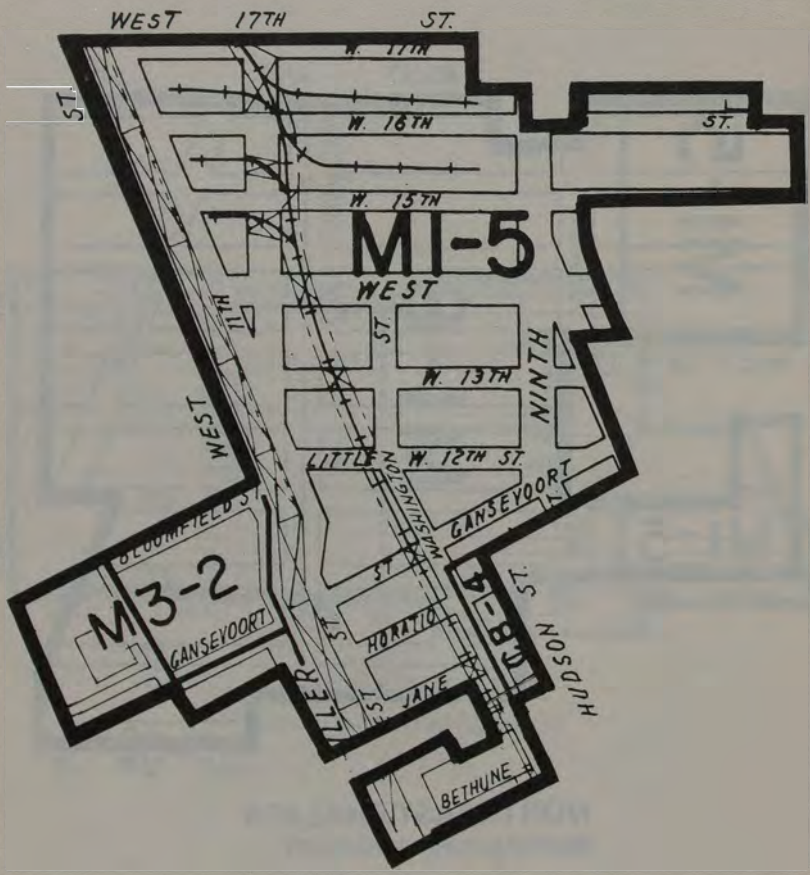
PROPOSED ZONING



GARMENT CENTER
(MANUFACTURING DISTRICT)

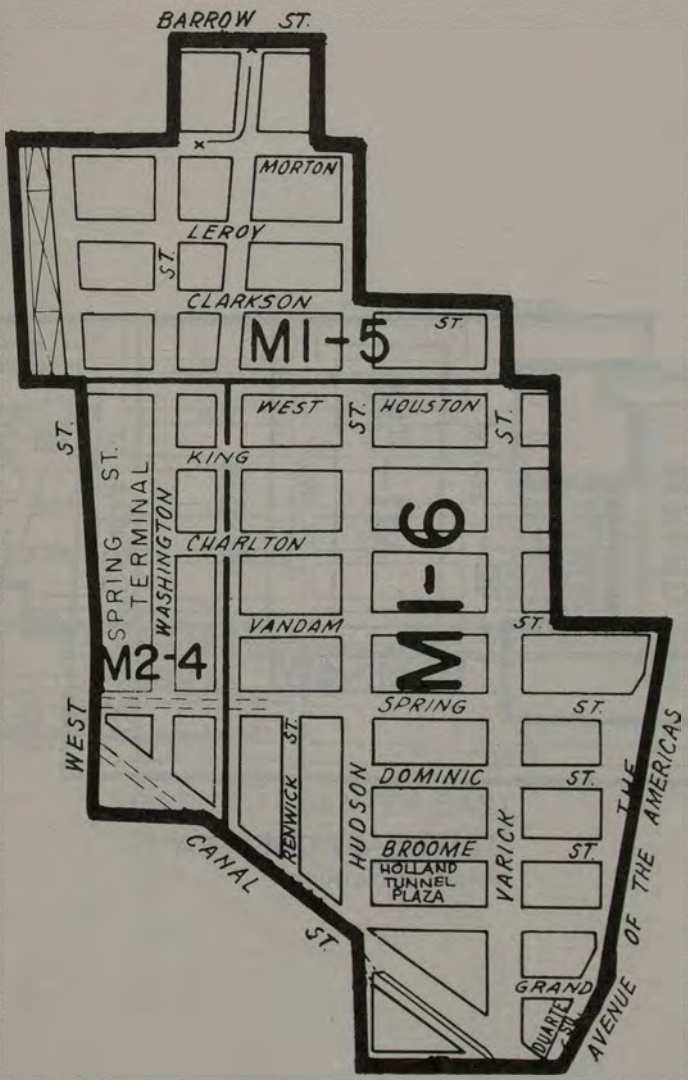


NORTHEAST CHELSEA
(MANUFACTURING DISTRICT)



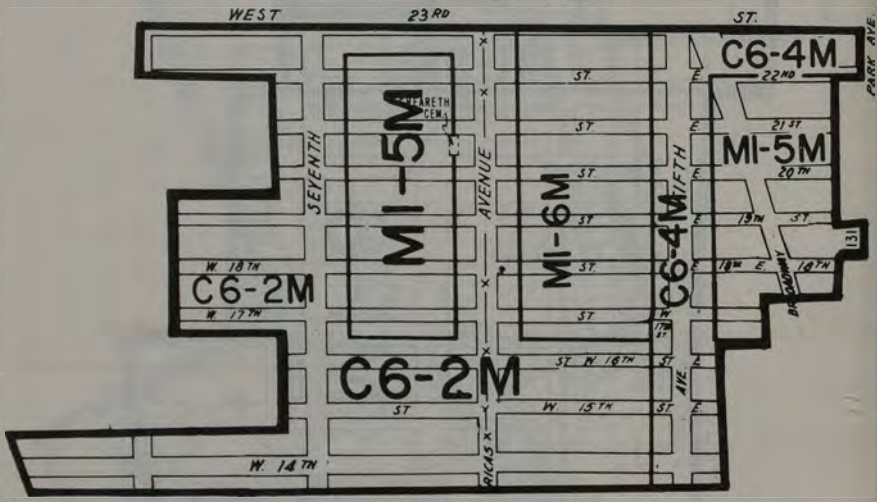
MEAT MARKET

(MANUFACTURING DISTRICT)

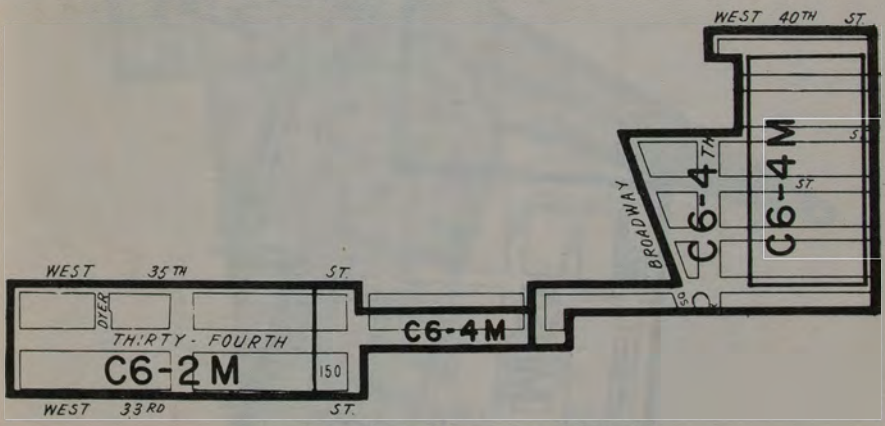


GRAPHIC ARTS CENTER

(MANUFACTURING DISTRICT)



SOUTHEAST CHELSEA
(MIXED USE DISTRICT)

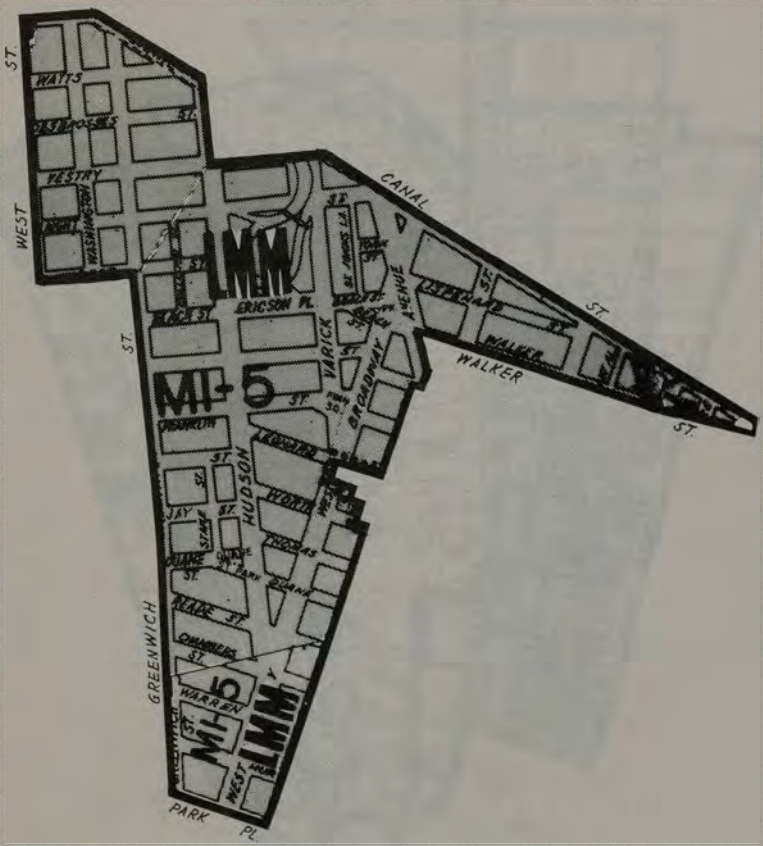


GARMENT CENTER EAST

(MIXED USE DISTRICT)

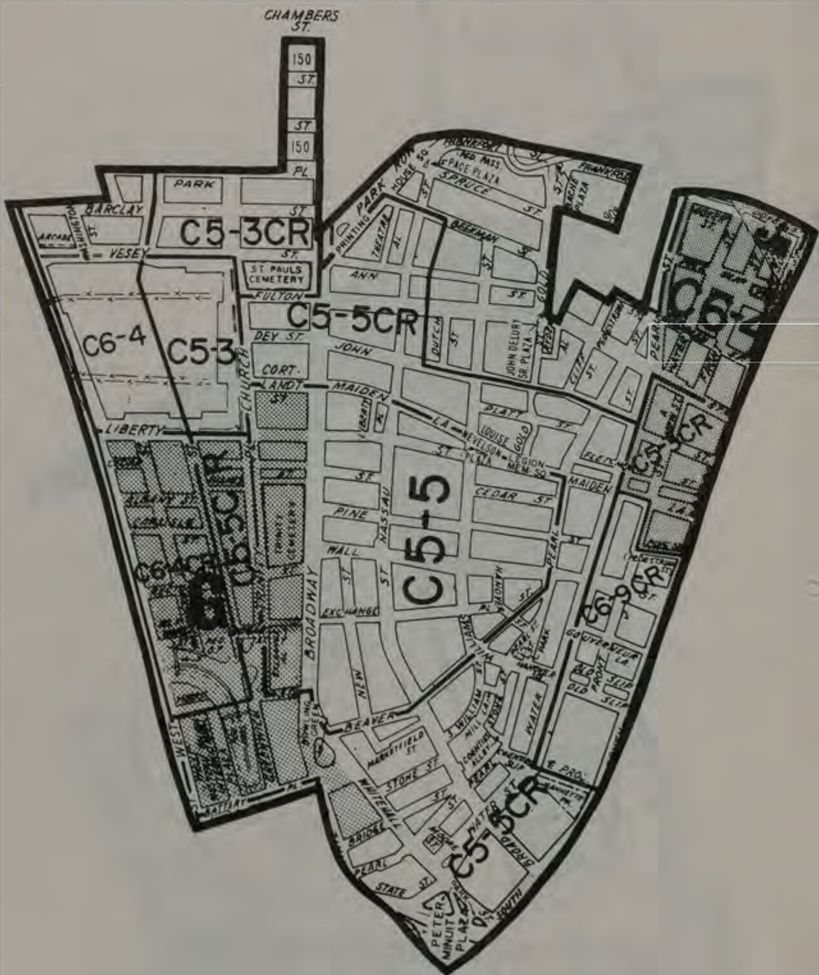
SOHO / NOHO

(MIXED USE DISTRICT)

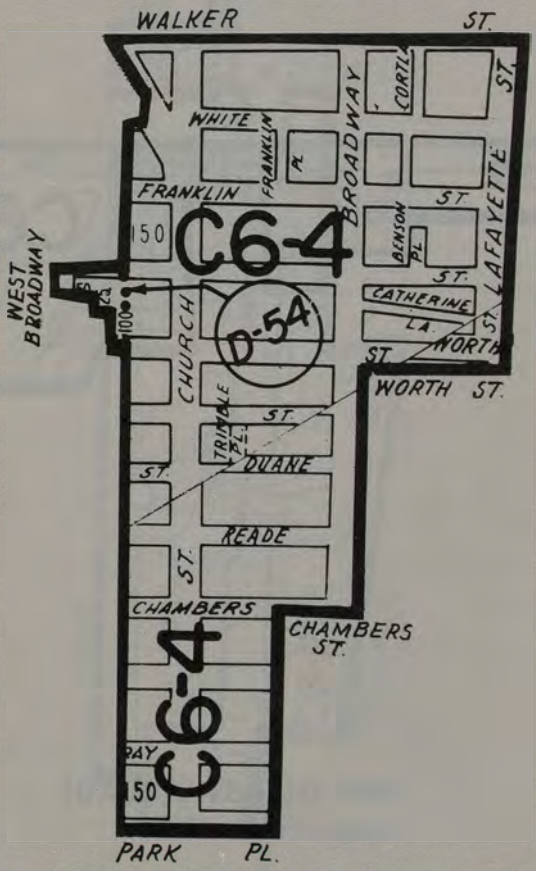


WASHINGTON MARKET / TRIBECA

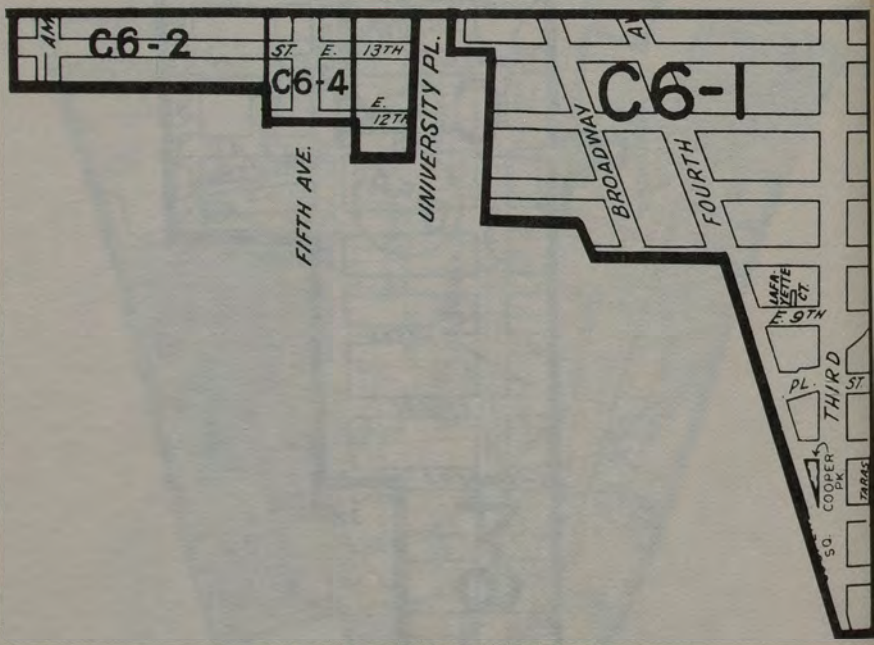
(MIXED USE DISTRICT)



LOWER MANHATTAN CBD
(COMMERCIAL DISTRICT)

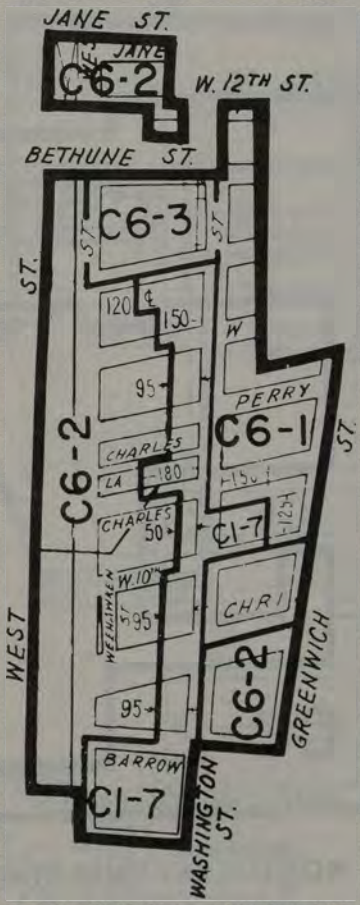


WASHINGTON MARKET / TRIBECA
(COMMERCIAL DISTRICT)

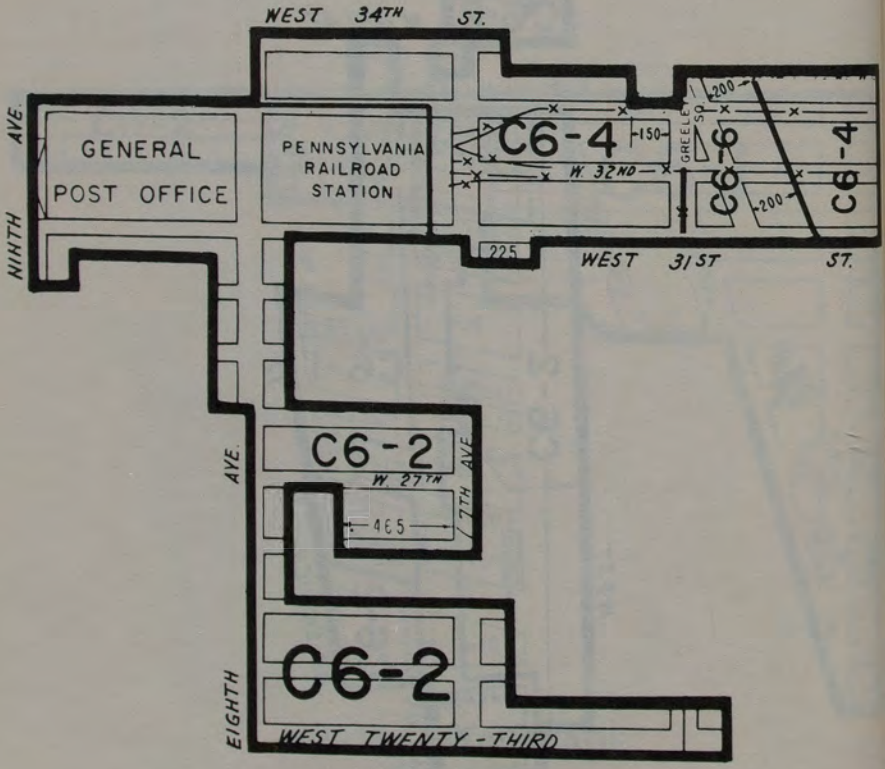


NORTHEAST VILLAGE

(COMMERCIAL DISTRICT)

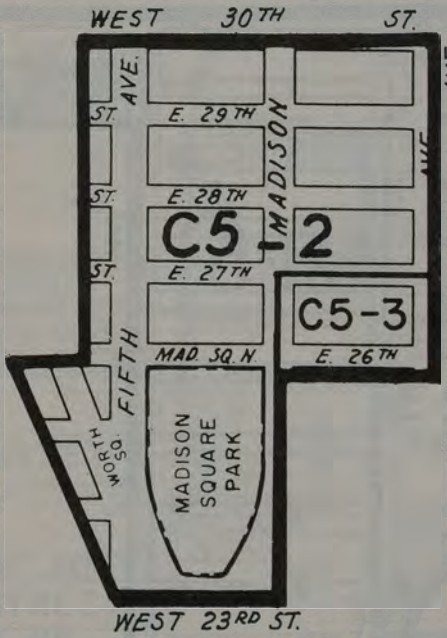


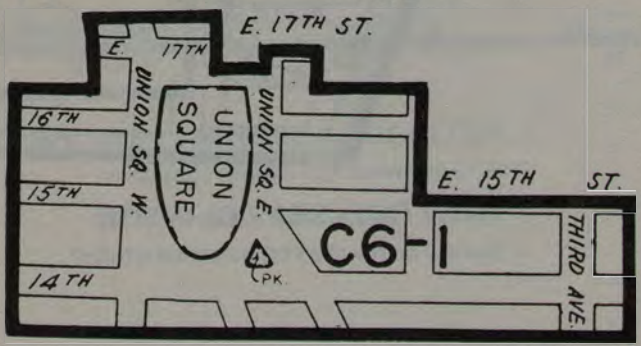
WEST VILLAGE
(COMMERCIAL DISTRICT)



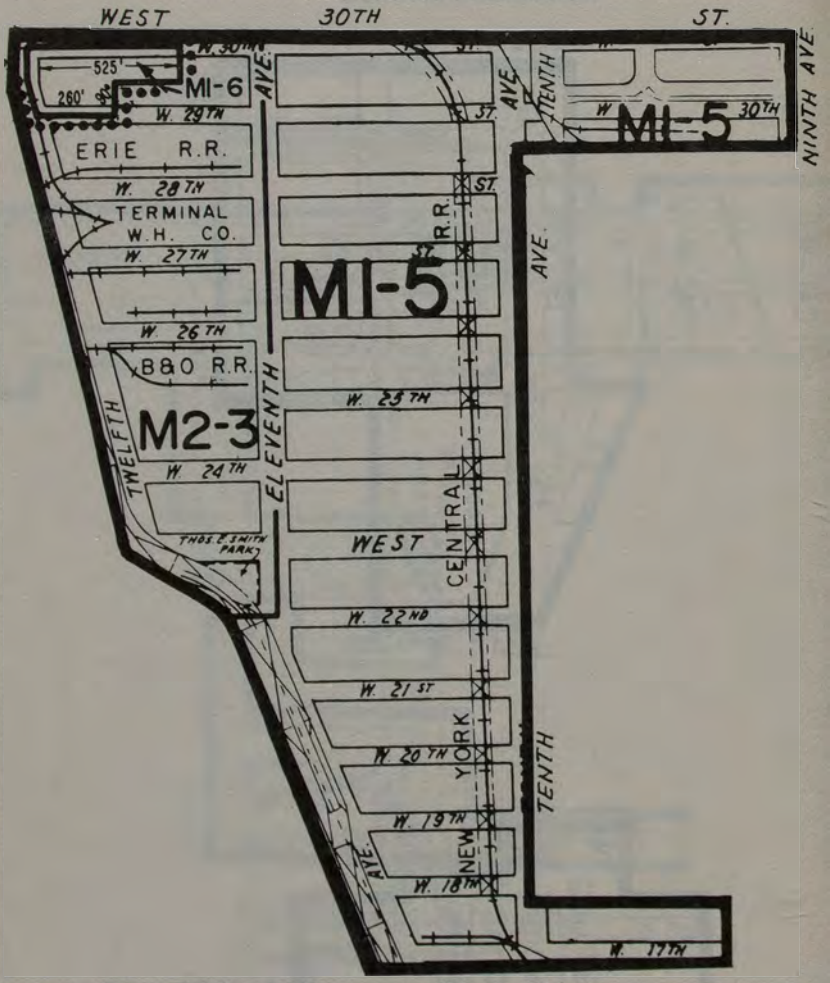
NORTHEAST CHELSEA
(COMMERCIAL DISTRICT)

MADISON / PARK AVENUES
(COMMERCIAL DISTRICT)



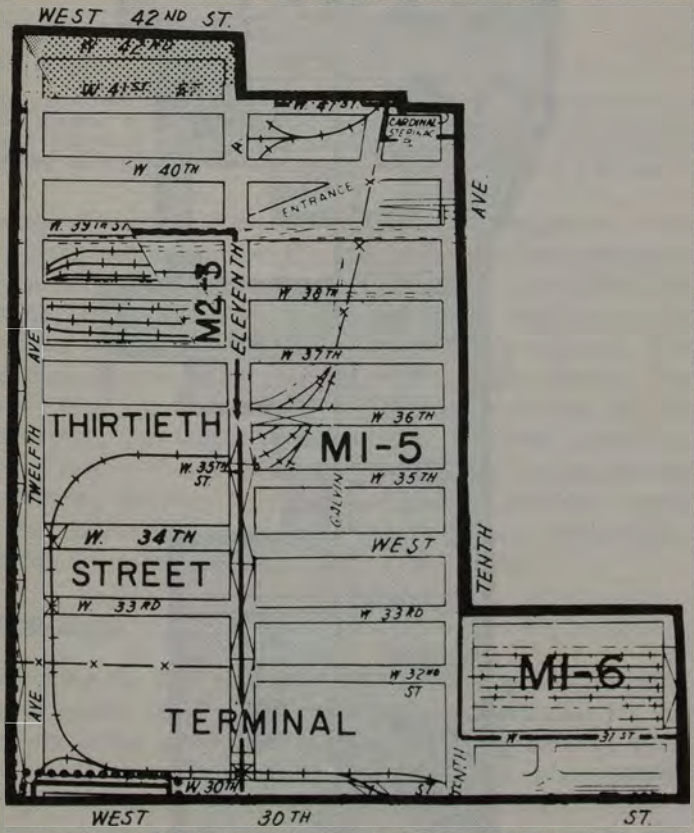


UNION SQUARE
(COMMERCIAL DISTRICT)



WEST CHELSEA / CLINTON

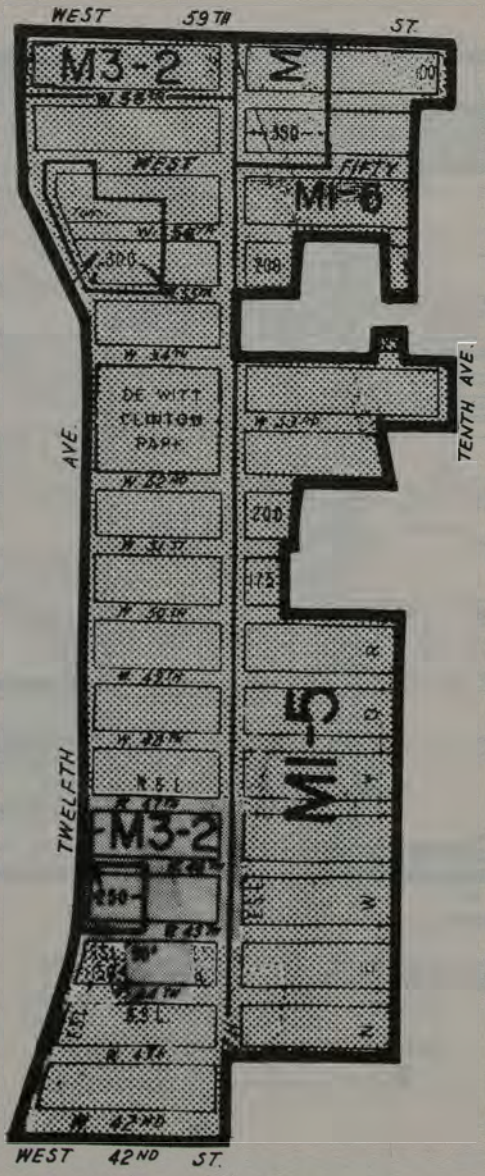
(MANUFACTURING FOR FURTHER STUDY)



WEST CHELSEA / CLINTON

(MANUFACTURING FOR FURTHER STUDY)

(CONVENTION STUDY AREA)



WEST CHELSEA / CLINTON

(MANUFACTURING FOR FURTHER STUDY)

PRINCIPAL REPORT

CITY PLANNING COMMISSION
February 9, 1981 / Calendar #1

Amendments of the Zoning Resolution pursuant to Section 200 of the New York City Charter relating to Article I, new Chapter 5, Section 15-00, and miscellaneous changes in other Sections, regarding the conversion of non-residential buildings to residential use in Manhattan Community Boards 1 through 6.

The amendments seek to protect the vitally important Manhattan based industries from the effects of unbridled conversion of loft buildings to residential use. Concurrently, additional opportunities are provided for housing in areas where residential use will not have an adverse impact on the City's economy. The zoning map changes define current manufacturing districts, create new mixed use districts, and remap a manufacturing district to commercial. The text changes establish standards for the conversion of non-residential buildings to residential use outside the manufacturing districts. The text changes also provide a mechanism for relocation assistance for industrial uses displaced by conversion when they relocate in New York City.

BACKGROUND

In adopting the 1961 zoning ordinance, the Board of Estimate sought to ensure "that sufficient space will be available for use for manufacturing and related activities". Large areas of Manhattan which were occupied by industrial uses were mapped manufacturing. Other areas with significant industrial activity were mapped commercial, because they were adjacent to the central business districts or residential areas. The industrial uses in these commercial areas were expected to decrease over time.

The first major review of this policy was undertaken in 1963. In response to the proposed Lower Manhattan Expressway, and to the suggestion that the area between Broome and Houston Streets be cleared for high-rise housing, Chester Rapkin was commissioned to study the South Houston Industrial Area. The Rapkin report declared, "These dingy exteriors, however, conceal the fact that the establishments operating within them are, for

the most part, flourishing business enterprises of considerable economic value to the City of New York". The report provided a basis for the City's eventual decision not to build the expressway or the new housing.

In 1968, a group representing artists in SoHo requested that the Zoning Resolution be changed to permit occupancy of loft buildings for joint living-work purposes. Studies at that time showed more than 27,000 blue-collar jobs in this area. Some loft spaces, which had been vacated by industry, were occupied by artists who needed large spaces for both living and working. In adopting zoning amendments to permit limited artists' living-work quarters, the Commission sought to balance the needs of artists and traditional industrial uses. Joint living-work quarters for artists were permitted in the smaller buildings which were experiencing the greater vacancies, while the larger buildings were reserved for industrial uses.

When adopting these amendments in January 1971, the Commission cited the need to study the area north of Houston Street, known as NoHo, and Washington Market/Tribeca, the area to the south of Canal Street.

Following the completion of these studies, in 1975 the Commission proposed to amend the SoHo regulations and extend the district to NoHo, and to create the Special Lower Manhattan Mixed Use District south of Canal Street. In SoHo/NoHo the Commission recognized the importance of artists and cultural activities in New York City which generated over three billion dollars in annual receipts. The Commission stated in its report "that since 1970 when it first allowed Joint living-work quarters for artists in SoHo, the area has developed into a major cultural center of international renown". Between 1970 and 1975 industrial employment declined in New York City in general, including in SoHo, and increasing vacancies in loft buildings of less than 5,000 square feet were noted, except on Broadway where levels of occupancy were high. Therefore, the Commission adopted amendments which increased the space available for artists by extending the SoHo M1-5B district to include NoHo, and by permitting conversion in buildings of up to 5,000 square feet lot coverage. To protect industrial uses, the over 5,000 square foot buildings (and the over 3,600 square foot buildings along Broadway) and the ground floor of most M1-5B buildings were reserved for traditional industrial uses.

In June 1976, the Commission adopted the Special Lower Manhattan Mixed Use District, permitting general residential use in an area south of Canal Street. Although artists' use was desirable and therefore was permitted in the district, the existing occupancies indicated a broader residential population. The Commission divided the district into Area A, where every building could convert above the second floor, and Area B, where buildings of less than 5,000 square feet lot coverage could convert. The northern "B" area had considerably higher occupancy levels of industrial uses and contained buildings especially designed for printing and warehousing, both signicant uses in the area.

The Department of City Planning continued to study loft conversions in Manhattan. In December 1977, it issued *Residential Re-Use of Non-Residential Buildings* which surveyed conversion activity in Manhattan south of 59th Street. The report dramatized the extent of conversion activity in these areas and the extraordinary degree of illegality. Of 1023 identified conversions, 936, or 91.5 percent, were illegal. Widespread illegality had occurred in all conversion areas whether or not residential use was allowed by the zoning ordinance. The study recognized the increasing role of conversion in helping to meet the market demand for housing.

The report also identified four important policy concerns: 1. the impact of strong residential demand on space occupied for business uses; 2. the potential hazards and liabilities to the public, individuals, and property from ad-hoc, unregulated, and illegal conversion; 3. the need for protection for tenants, cooperators and property owners in an unregulated market; and 4. the inability to achieve City policy objectives due to ineffective enforcement. In addition to the need for enforcement, the report cited the importance of coordinating various City agencies which establish housing, economic development, land-use, and law enforcement policies.

Mayor Edward I. Koch responded to the need for coordinating these policies by creating the Loft Conversion Task Force within the City. In July 1978, the Task Force issued its report, the *Action Plan*. It recommended various City and State actions consisting of the following: 1. an enforcement plan to prevent future illegal conversions and an accelerated inspection program for existing illegal conversions; 2. a review of and revisions to

Code requirements to provide for safe housing in conversions; 3. support for state legislation which would create an anti-harassment measure to protect manufacturing tenants; 4. support for state legislation which would amend the requirements for the sale of co-operative units to ensure that only legal units would be offered to prospective purchasers; 5. relocation assistance to industrial tenants who are displaced by conversions receiving J-51 tax abatement; 6. examination of the appropriateness of mixed use zoning; 7. public information for interested parties about City and State policies concerning the use of loft buildings; and 8. incentives to upgrade industrial buildings for industrial uses.

Based on the Planning Department's March 1980 report, *Manhattan Loft Rezoning Proposal* and the *Action Plan,* in September 1980, the Mayor released for public comment a comprehensive Manhattan loft conversion policy. The policy sought to resolve the valid needs of industrial and residential loft occupants, as well as the concerns of property owners. The proposal was composed of six elements:

1. **Zoning text and map changes which are the subject of this report and which are discussed below.**

2. **Relocation incentives to displaced industrial tenants to encourage their relocation within New York City.** Residential reuse results in increased property values for landlords and developers, while industrial tenants who are forced to move because of the conversions must bear the full costs of such moves. Faced with these costs, many businesses close or relocate outside of the City, resulting in job and tax losses for the City.

There are two elements to the relocation program. For Manhattan south of 59th Street a relocation program would be included in the Zoning Resolution and is discussed below. A second program, prepared by the Department of Housing Preservation and Development and applicable in Brooklyn, Queens, The Bronx, Staten Island and in Manhattan north of 59th Street, would tie the availability of J-51 tax benefits to an owner's provision of relocation awards to manufacturing tenants displaced by conversion.

3. **A resolution of the status of illegal loft dwellers by state legislation** prepared by the Department of Housing Preservation

and Development. The illegal nature of most loft conversions has resulted in a myriad of legal problems for both tenants and landlords. In particular, pioneering loft tenants, whose sacrifices have made lofts a viable and attractive form of housing, have been the victims of inadequate legal protections.

The courts have experienced great difficulty applying existing laws designed for traditional residential situations to this new type of housing. In interpreting these statutes, different courts have issued seemingly conflicting decisions. In some, residential loft tenants have been evicted. In others, the courts have ordered rent to be paid into escrow until the building is legalized. In these situations landlords often cannot legalize since there is no rent revenue. Still other courts have placed some units under rent stabilization.

This legislation would confer multiple dwelling status on most illegally converted buildings with three or more units, and would specify how and when these buildings would become legal. Also, rent protection would be extended to tenants, although these rents would be restructured to reflect the costs of legalization.

4. **Revisions of the J-51 and 421 tax abatement and exemption programs to eliminate these benefits in Manhattan's important manufacturing districts.** While these programs may be useful in encouraging the creation of new housing, it is counterproductive to provide incentives for housing in areas which the City seeks to preserve for industrial use.

5. **Amendments to Article 7B of the Multiple Dwelling Law to simplify the conversion of loft buildings.**

6. **The establishment of a loft enforcement office to ensure effective zoning and code compliance.** This unit, combining inspection and prosecutorial capability, is mandated to prevent new illegal conversions, as well as to monitor the transition of presently illegal buildings to legal status. Initially, this unit will operate in Manhattan south of 59th Street. As the City adopts loft programs in other areas, such as Long Island City in Queens or Fulton Ferry in Brooklyn, the jurisdiction of this office will be expanded. Special zoning and code enforcement units will be used when City policy identifies an enforcement need which is beyond the routine capabilities of the normal enforcement channels. When a particular species of violation is

sufficiently reduced, enforcement will be returned to the Building and Law Departments.

On November 26, 1980, Governor Hugh Carey signed a bill (1980 N. Y. Laws, ch. 889) which implements portions of this policy: the aforementioned amendments to Article 7B of the Multiple Dwelling Law; enabling legislation permitting the City to establish the J-51 related program of relocation assistance; automatic lease renewal of one year for residential loft tenants whose leases expire between June 1980 and June 1981; and a moratorium on evictions based upon illegal occupancy. This legislation maintains the status quo for residential loft tenants until the residential status legislation can be adopted in the spring, 1981, state legislative session.

THE PROPOSAL

On September 2, 1980 the City Planning Commission certified a package of zoning actions to establish a land use policy for Manhattan loft areas which were designed to protect sufficient space for manufacturing including important industrial clusters. Loft districts in Brooklyn and Queens are being studied separately by the Planning Deparment and will be the subject of future policy recommendations.

Four existing manufacturing districts would be retained in Manhattan: the Garment Center, Northeast Chelsea, the Meat Market and the Graphic Arts Center. These areas contain over 46 million square feet of loft space. Two new mixed use districts would be created: Southeast Chelsea, portions of which are mapped C6 and M1, and the Garment Center East, presently a C6 district. The areas of Washington Market/Tribeca and SoHo/NoHo remain mixed use. In SoHo, the M1-5A district which permits ground floor retail activity would be extended. The four mixed use districts would preserve almost 23 million square feet of loft space. Other loft districts are mapped commercial, permitting as-of-right conversion. The West Village, currently mapped M1 and C8 and not allowing residential conversion, would be rezoned to C6, a district permitting conversion.

At the time the Commission certified the map changes, it circulated for comment draft text amendments. The objective of these text amendments and additions was to establish a coordinated set of land use regulations applicable to Manhattan's loft areas, specifically Community Boards #1 through #6.

The proposal contained three major pieces of legislation:

1. A new Chapter 5 in Article I to establish housing and density standards appropriate to recycled buildings in the residential, commercial, and new mixed use districts; and to provide for relocation incentives to industrial tenants dislocated by conversions in these areas who relocate within New York City.

2. Amendments to the SoHo/NoHo text (Section 42-14D) to eliminate ambiguities from the existing text, establish a City Planning Commission Special Permit for oversized buildings, and provide for relocation incentives to displaced industrial tenants.

3. Amendments to the Special Lower Manhattan Mixed Use District (Section 111-00) to establish a City Planning Commission Special Permit for oversized buildings; to make certain technical changes in the text; and to provide for relocation incentives to displaced industrial tenants.

In addition to the above three major pieces were several other revised and new sections of the Resolution. The revised sections would establish and describe the mixed use districts and inform the public of the existence of special regulations in Article I, Chapter 5 governing conversions in the mixed use, residential and commercial districts in Manhattan Community Boards #1 through #6. A new section would grandfather existing illegal residents in the manufacturing district of Northeast Chelsea; another would provide for relocation benefits to industrial tenants displaced when variances are granted in manufacturing districts for residential use.

A synopsis of these amendments follows: In Article I, Chapter 5, regulations 15-00 to 15-025 would have general applicability to all conversions in Manhattan south of 59th Street except those in SoHo/NoHo and Washington Market. These general provisions would include eliminating the lot area requirements for mixed use buildings, permitting "sandwiching" of residential and non-residential uses in the same building, and requiring notice of mixed use to potential residents of this type of building.

Sections 15-10 through 15-13 would contain regulations for conversions in all residential and commercial districts except

Southeast Chelsea and Garment Center East. Density standards would be established which relate to the densities permitted for new construction in the respective districts. Dwelling unit size would be substituted for room count. Housing standards would be established including such light and air provisions as a width to depth ratio, and the elimination of non-habitable rooms in small units. Roof top open space would be mandated in buildings with fifteen or more dwelling units. In C6 districts home occupation provisions would be liberalized.

Sections 15-20 through 15-26 would regulate conversions in the new mixed use areas of Southeast Chelsea and the Garment Center East. These regulations would have required mandatory mixed use buildings,* reserving space for commercial/manufacturing uses. A minimum dwelling unit size of 1,200 square feet would be established. Roof top open space and adequate light and air would be required. Home occupation standards would be liberalized.

Section 15-30 would provide for minor modifications and Section 15-40 would provide a City Planning Commission Special Permit for conversion of the reserved portions of buildings in the new mixed use areas and of oversized buildings in SoHo/NoHo and Washington Market.

Sections 15-50 through 15-58 would establish a Relocation Incentive Program. It would apply to all conversions in Manhattan Community Boards #1 through #6. Prior to the issuance of a building permit a developer of a loft building would be required to pay a $9 per square foot "conversion contribution" to the New York City Business Relocation Assistance Corporation (BRAC). A developer would be able to take advantage of a 50 percent discount by making a $4.50 per square foot "direct help payment" available to his tenants at the time of relocation. Tenants relocating in New York City would receive their benefit from this direct help payment. Manufacturing establishments would receive the full $4.50, while other industrial type tenants would receive $2.25 per square foot. Any funds not received by such tenants would go to BRAC to provide relocation assistance where needed. All payments and benefits would be indexed for inflation.

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* This requirement has been significantly modified subsequent to the Commission's public hearing.

Sections 42-14D, 42-141 and 43-17, the SoHo/NoHo text, would be restructured for clarity, establishing different subsections controlling Joint living-work quarters for artists, ground floor uses, and large scale entertainment facilities. In addition, artists living-work quarters would be permitted on the second floor; existing grandfather provisions would be phased out by September 1, 1981; and the conversion of oversized buildings could be possible by City Planning Commission Special Permit.

The Special Lower Manhattan Mixed Use amendments, Sections 111-00 through 111-22, would similarly provide for the City Planning Commission Special Permit to convert oversized buildings in Area B; the sandwiching of uses within the same building; the liberalizing of a portion of the loft dwelling requirements; and the phasing out by September 1, 1981, of the grandfather provisions.

The Commission received comments from Community Boards #2, #4, and #5. Community Board #2 requested revisions to the map changes limiting the proposed extension of M1-5A to frontage along West Broadway, a reduction in the area proposed to be remapped in the West Village, and proposed a C6-1 designation for this remapped area. Community Board #2 supported the text change with helpful comments and suggestions. It also suggested linking the implementation of the zoning to the enactment of the residential status legislation, as well as the elimination of J-51 in the West Village.

Community Board #4 supported the proposed amendments, although suggesting that the zoning be tied to the passage of the residential status legislation. Community Board #5, although supporting the intent of these changes, opposed them as unworkable, expressing specific concerns about the Relocation Incentive Program, the remapping of C6 districts to mixed use, and the retroactive nature of the relocation program. No recommendations were received from Community Boards #1, #3, or #6. Editorials from *The New York Times,* the *Daily News* and WABC-TV endorsed the Mayor's comprehensive loft proposal.

The Department's staff met with interested groups including the Housing Committee of the City Council; Citizens Housing and Planning Council; the Real Estate Board of New York; the Lower Manhattan Loft Tenants; labor and industry representatives including the International Ladies Garment Workers

Union, the United Hatters, Cap, and Millinery Union, the Printing Industries of Metropolitan New York, and counsel for Meat Market firms; the New York Chamber of Commerce; the Chambers-Canal Civic Organization; arts community representatives; the neighborhood associations of the Horatio Street Block Association, NoHo Neighborhood Association and the Flatiron Association; and the city agencies of the Board of Standards and Appeals, the Office of Economic Development, the Department of Buildings, the Department of Cultural Affairs and the Department of Housing Preservation and Development.

Among their concerns and suggestions were: 1. elements of the relocation program resulting in "double penalties" to owners if their tenants left without notice; 2. problems with the development of mixed use buildings; 3. the importance of prompt approval of residential status legislation and the difficulty of making such legislation equitable; 4. concerns about the impact of office use competition in manufacturing districts; 5. the need for adequate locations for displaced businesses; 6. the importance of the recognition of the needs of artists, including recognition of and relocation assistance for AIR occupants; 7. the need to examine loft conversion in the other boroughs; and 8. the importance of a survey to evaluate the effectiveness of the SoHo/NoHo zoning in providing artists' housing.

On December 23, 1980 the Commission calendared the proposed map changes C800459 ZMM and text amendments N800 458 ZRM for public hearing on January 7, 1981. The calendared text included 11 major changes in response to concerns raised by Community Boards, government officials and other interested parties:

1. The definition of accessory use in Section 12-10 was amended to permit only two accessory living units per building in districts which permit residential use, and to provide the first statutory recognition of the AIR program.

2. Section 15-013 was changed to protect property owners who had received variances and building permits but had not yet done sufficient work to have secured vested rights.

3. Section 15-025 was added requiring double glazed windows in all mixed use buildings in order to meet environ-

mental noise standards identified in the CEQR review conducted pursuant to Article 8 of the New York Environmental Conservation Law, and Executive Order No. 91.

4. To avoid excess density, Sections 15-111 and 15-22 limited the addition of mezzanines to buildings with a floor area ratio of 12 or less.

5. To provide greater protection for existing manufacturing and commercial tenants, a reduced floor area reservation in the new mixed use districts was included (Section 15-212). This permitted a reduction of the floor area to be reserved for industrial and commercial uses if the existing tenants in the space reserved were given leases.

6. In the mixed use districts of Southeast Chelsea and the Garment Center East the home occupation standards of Section 15-25 was changed to permit 3 instead of 2 non-resident employees.

7. Section 15-26 was added to require private sanitation collection in mixed use buildings in the new mixed use districts.

8. The minor modification provisions of Section 15-30 were amended to give Community Boards greater flexibility in scheduling meetings and to limit any modification in required unit size to 5 percent.

9. There were a number of changes to the Relocation Incentive Program. These included:

   (a) Section 15-52—expanding the program to all manufacturing type buildings in Community Boards 1 through 6, and restricting the use of any BRAC funds to relocation purposes only.

   (b) Section 15-521—to require BRAC to publish rules governing the distribution of funds paid into BRAC in order to ensure greater accountability.

   (c) Section 15-541—elimination of one of the "retroactive" provisions by permitting space which was vacant on September 1, 1980, to be eligible for the direct help discount.

(d) Sections 15-542 to 15-546—rules for the establishment of escrow accounts and for the making of direct help payments. These rules minimize the administrative burden on developers while ensuring prompt payment to relocating tenants.

(e) To reduce the impact of the Relocation Incentive Program on developers two new provisions were added. Section 15-552 would exempt space occupied by non-manufacturing use from the program if such uses occupied at least 50 percent of the building. Section 15-553 would eliminate a penalty for a developer if a tenant left without notice. It also encourages a developer to relocate tenants at one time even if their lease terms had been staggered.

(f) Section 15-58 was added listing which uses would qualify for the full relocation benefits of $4.50 per square foot and which uses would receive $2.25 per square foot. Artist studios would qualify for the $2.25 per square foot benefit.

10. Conversions under the Landmark Preservation Special Permit (Section 74-711) would be subject to the Relocation Incentive Program.

11. The City Planning Commission Special Permits were amended to provide for OED input to make the legalization of oversized buildings in SoHo/NoHo and Tribeca easier if such conversions meet the housing standards of the district and if the previous conforming use tenants were not forced to relocate, and to make possible the reservation of manufacturing or commercial space in other buildings.

PUBLIC HEARING

The Commission held a public hearing on this text amendment N800458 ZRM, Calendar #57, and the corresponding amendment to the Zoning Map C800459 ZMM, Calendar #58, on January 7, 1981. Twenty-three people spoke before the Commission. Written comments were received from several speakers.

Although there was general agreement among the speakers that maintenance of the status quo was an unacceptable public

policy, almost every speaker expressed reservations concerning City policy toward industry reflected in the proposal. In addition to the Community Board positions previously mentioned, the major criticisms concerned two points:

1. insufficient space being protected for manufacturing use, and
2. the difficulty of mandatory mixed use buildings in the new mixed use districts.

Two speakers representing the firms in the Meat Market cited the importance of this market to the City of New York. They indicated that the proposed map amendments in the West Village would make 5 meat market buildings eligible for conversion. They also mentioned the importance to the Market of the Merchants Refrigerated Warehouse at 16th Street and 10th Avenue and requested that all meat market related locations be included within the protected areas.

A representative of the printing industry spoke in support of the proposed amendments. However, he called for additional manufacturing districts near the Convention Center to protect existing industries.

Representatives of several apparel related unions and industry groups spoke in opposition to the proposal. Citing the negative impact of loft conversions on apparel firms and blue collar, minority jobs, they called on the City to provide greater protection for industry. They noted that many apparel firms are not located in areas proposed for exclusively manufacturing use designation. These included the Garment Center East and Southeast Chelsea (both proposed for mixed use), and the blocks near the Empire State Building which are the center of the handbag industry (and which were not the subject of this proposal). These representatives spoke of the importance of location to apparel firms and that different branches of the industry had different but equally important locations. They supported relocation benefits, enforcement and the elimination of J-51 benefits. They expressed a fear that this proposal was a first step in removing industrial uses from the City.

A former Planning Commissioner representing the United Hatters, Cap and Millinery Workers Union, spoke of the impact of other policies on the City's industries, including the lack of

adequate housing alternatives in the City, inadequate transportation, and federal tax policies. He strongly objected to mandatory mixed use buildings, calling manufacturing and residential use in one building incompatible.

A representative of the Citizens Housing and Planning Council spoke of the need to protect industrial clusters and suggested that the manufacturing districts could be more broadly mapped. He criticized mixed use buildings as being the most difficult and most expensive way to convert. Although the Council supported the concept of relocation benefits, they were concerned that small developers would find it difficult to operate under such a program.

The New York Chamber of Commerce's representative said the proposal "tilts against loft manufacturing" and that sectors of the City's manufacturing could be eliminated. Mixed use buildings were felt to be potentially unworkable. The need for new white collar housing and a "positive approach to the manufacturing base" was cited.

The Real Estate Board of New York reported that market conditions had:

> . . . dramatically changed since 1977. A strong market now exists for manufacturing space, especially in buildings which offer 4,000 square feet or more. A November 1980 REBNY survey sampling the nearly 1,100 loft buildings in the staff's proposed "M" zones registered a vacancy rate of less than 2%. . . . The assumption of a weak market for manufacturing loft space therefore does not reflect the market reality of 1981.

It stated that mixed use buildings would pose problems with regard to financing, construction, insurance, and marketing. It recommended a policy which would "allow, but not encourage or mandate mixed use buildings" and suggested mixed uses side by side within districts as a practical course. Conversion, where permitted, should be as of right.

A number of speakers made more specific suggestions. A former Deputy Mayor and former Planning Commission Chairman, representing a client, suggested dividing the Southeast Chelsea area into a commercial district on the east and a more restrictive mixed use district on the west. An architect sug-

gested permitting 50 percent of each Southeast Chelsea block to convert. A representative of the Brooklyn Chamber of Commerce called for extra relocation benefits for firms which move to reemerging industrial areas in the other boroughs.

The Lower Manhattan Loft Tenants spoke in opposition, referring to the need to look at Brooklyn and Queens and the abuse of previous plans. They supported enforcement but questioned if sufficient funds had been allocated. They pointed to the artists' needs for loft space and the difficulties artists faced in today's loft market.

A manufacturer spoke of his need for relocation assistance and a place to relocate. Now an occupant of a mixed use building, he said it presented no problems for him.

CONSIDERATION

In cities across America, people have discovered the imporance of preserving older buildings and conserving a piece of our heritage. This has included the modernization, restoration, and the creative re-use of older buildings. As technological, economic, or demographic changes have made some schools, hospitals, office and loft buildings obsolete, people have found new uses for them. New York City has been among those in the forefront of such adaptive re-use.

The Mayor's *Action Plan* found conversion of industrial and commercial buildings to have emerged as a major component of the City's real estate industry. Conversions have taken many properties which would have been abandoned because of the loss of almost 300,000 manufacturing jobs and the construction of 66 million square feet of new office space since 1967, and turned them to viable new uses. The "dingy exteriors" described in the Rapkin Report are now part of the SoHo Cast-Iron Historic District and are listed on the National Register of Historic Sites, preserving for posterity the forerunners of the modern skyscraper. Re-use, however, has not occurred without a price.

Industrial Uses In Manhattan

Manhattan, which has been the focus of most re-use activity, is also the heart of the City's industrial base. In 1978, 12,500 industrial businesses employed almost 300,000 people, 55 percent

of all New York City industrial employees. Another 184,000 people were employed in wholesale trade, trucking and warehousing. Almost all of this employment was located south of 60th Street. The Manhattan based industries are, for the most part, organized into tight clusters. Small businesses rely on linkages with other related firms in order to survive.

The borough's most important industry is the apparel industry which in 1976 employed 105,000 people directly and almost 70,000 people in related industries. The heart of the industry is the Garment Center between Sixth and Ninth Avenues and between 35th and 41st Streets. Here are concentrated showrooms, manufacturers, pleaters, notions, trimmings and other important apparel businesses. Other concentrations exist in the Garment Center East, Northeast Chelsea, Southeast Chelsea and SoHo/NoHo. While some apparel firms have relocated to the outer boroughs, the need to be accessible to buyers, to be near public transportation for workers, and to be near suppliers and customers precludes widespread relocation of this industry.

The printing industry is concentrated in the Graphic Arts Center in the vicinity of Hudson and Varick Streets, in northern Tribeca, in portions of Chelsea, SoHo, and near the Convention Center site. The industry employs over 80,000 people. These firms service the financial, advertising and publishing businesses and their proximity to clients is their most important reason for being in New York City.

The Meat Market, on the streets north and south of West 14th Street, is the largest wholesale meat market in the nation with over $2.7 billion in annual sales. In recent years, millions of dollars have been spent by market firms to bring the Market up to federal code standards and to provide a new refrigeration plant. With the conversion by variance of the Manhattan Refrigerated Warehouse, the Market relies on the Merchants warehouse for needed refrigerated storage facilities. Because of the economics of relocation, previous attempts to move the Meat Market have not been feasible.

During the years of sharp decline in industrial activity in the mid-seventies, loft buildings experienced widespread vacancy and low rent levels. Within the last two years the combination of a stabilized manufacturing sector, increased residential occupancy of loft buildings and speculation has reduced vacancy

rates in the Manhattan loft areas to near 2 percent. The better industrial relocation resources in the outer boroughs, such as Long Island City and Bush Terminal, are experiencing similarly low vacancy rates and are commanding high rents. Even if the funds for relocation were available and the linkages could be reproduced, there simply is not enough suitable space in the outer boroughs to absorb a mass relocation of Manhattan based industries. Recognizing this, the proposed policy is designed to protect these important industries.

Residential Demand and Gentrification

Manhattan south of 59th Street is becoming increasingly popular as a residential location. With a residential vacancy rate of 1 percent, rents today are often in excess of $300 per room and co-op loft prices can exceed $100 per square foot. Industrial buildings, once regarded as unsuitable for residential use, have now become significant housing resources.

Most occupants of converted industrial buildings have expressed high levels of satisfaction with their neighborhoods. A 1978 study by Kristina Ford found that in only 3 of 6 conversion neighborhoods studies did more than 10 percent of those surveyed respond that they would not live in their neighborhoods again. In neighborhoods where residential development was most extensive, levels of dissatisfaction were the lowest. Even in less developed loft neighborhoods dissatisfaction never exceeded 28 percent. Since 1978, residential use has continued to grow, particularly in those areas which had been less residentially developed, such as Chelsea. As residential use grows so do the restaurants, shops and service facilities which in turn increase the public acceptance of those communities for residential use.

Although most early loft occupants were identified as artists, loft housing, like other central city housing, is being gentrified. The Ford study found those living in lofts to be better educated (75 percent had finished college), more affluent (median household income was over $21,000) and younger (median age 31.8) than the city-wide averages. Professionals or managers accounted for more than one half of the households.

Though the loft population is generally middle to upper middle class, it does not appear likely that the availability of this type of housing is responsible for the return of the middle class to

the City. Only 8 percent of those surveyed in the Ford study indicated that the availability of this type of unit was significant in their decision to live in the City.

Competition for Loft Space

Between 1965 and 1978, when manufacturing in Manhattan declined by 37 percent, owners of industrial property had difficulty finding any tenants for their lofts. Today, with a vacancy rate of 2 percent, tenants have difficulty finding lofts.

According to the Real Estate Board's 1980 analysis, manufacturing rents have doubled in some areas, making industrial use of loft buildings profitable. Even so, the $4 per square foot industrial rent in many better industrial locations cannot compete effectively with luxury residential conversions which can rent for $12 per square foot. Loft buildings, valued at $7 per square foot for industrial use, can be sold for $20-$30 per square foot. At these prices, owners of industrial properties are hard pressed not to sell to loft developers.

The impact on manufacturers of a long term shrinkage in available loft space is obvious. An increasing number of firms would have to move to a decreasing number of spaces. For this reason, the loft policy seeks to both preserve sufficient space in Manhattan for businesses which need to be here and to require relocation assistance for firms displaced by conversion.

The needle, printing, and meat trades are not the only victims of residential gentrification. The pioneering loft residents, who made loft living popular and loft neighborhoods viable, are being priced out. The residential status legislation being prepared by the Department of Housing Preservation and Development will ensure that existing loft occupants are not swept away in a tide of gentrification. This land use policy also seeks to provide continued opportunities for new living-work uses.

By creating different types of districts which permit residential conversion, the market would have the opportunity to sort out those who would pay more to live in an exclusively residential district and those preferring to pay less and live in the environment of a mixed industrial-residential district. To make living-work situations more feasible, the home occupation standards of the new mixed use districts would be liberalized and a mini-

mum unit size of 1200 square feet would be established. The certified-artist areas of SoHo/NoHo are being retained. The City's Artist Housing Task Force will be surveying the results of the ten year experience in SoHo/NoHo and will be making recommendations on the best mechanisms to meet current artists' housing needs.

Recently, the Commission has observed a new competitor for loft space. As the demand for office space has soared, new office construction has been unable to keep pace. Rents for prime office space can exceed $40 per square foot. With rent levels rising, office space users have sought space in what had previously been less attractive buildings. Consequently, the market for secondary office buildings, which were being converted to residential use several years ago, is now burgeoning. Owners of some well located loft buildings have chosen to seek higher rentals by converting their buildings from industrial to office use.

In the new mixed use districts, the proposal provides incentives for retaining manufacturing uses. In exchange for giving long term leases to existing tenants or to new manufacturing tenants, the required preservation of floor area can be reduced. This office-manufacturing competition should be monitored by the Industrial Loft Advisory Council together with the Office of Economic Development.

Safety and Housing Quality

Since the issuance of the *Residential Re-Use* report in 1977, the City has been fighting against time to bring illegal lofts up to code standards before tragedy struck. While the Commission was considering this proposal, a 23 year old man became one of the first known residential loft fatalities when he fell down an elevator shaft. It is imperative that these illegal and dangerous conditions be remedied.

In adapting non-residential buildings to residential use some developers have sought to maximize their returns by crowding as many units as possible into these buildings. Existing zoning regulations, designed for new residential construction, do not provide adequate or realistic standards for residential re-use. Among the resulting problems are: the lack of open space in industrial neighborhoods and the sale of roof-top open space

for the exclusive use of top floor tenants; the creation of bedrooms without windows, particularly cellar "recreation rooms" in studio apartments; a lack of flexibility created by room count restrictions when applied to large open plan lofts; and excessive density caused by the conversion of very large buildings. This proposal would establish standards to address each of these problems.

Current zoning prohibits the "sandwiching" of residential uses between non-residential uses. The Commission continues to believe that this policy provides a desirable living environment for the general population.

However, the existing conditions in partially converted loft buildings attest to the need to permit "sandwiching" in the zoning districts governed by this proposal. For almost two decades, conversions have proceeded on an ad hoc basis and residential tenants have voluntarily chosen to live below commercial or manufacturing uses. To continue to prohibit "sandwiching" in converted buildings would result in the eviction of either the existing residential or the non-residential tenants. To prohibit future "sandwiching" would create incentives for property owners to vacate upper floors of industrial tenants when they wish to convert vacant lower floors to residential use. Harassment of such tenants is common in this situation. The Commission recognizes "sandwiching" as an imperfect alternative, but the only solution which avoids these undesirable consequences. The proposed text amendments would, therefore, allow "sandwiching" when converting non-residential buildings to residential use. "Sandwiching" would continue to be prohibited in new or existing residential buildings.

Past Zoning Actions

In the last decade, the Planning Commission has adopted zoning regulations to govern loft conversion in three areas. Generally, these regulations were successful in achieving their limited objectives. For this reason the Commission believes these regulations should remain. Where experience has shown the need, changes are being offered. Most important among these is the special permit for oversized buildings and a phasing out of grandfather and cooperative provisions which have become difficult to administer.

Drawing on the cooperative efforts of the Department of Buildings, the Board of Standards and Appeals, the Office of Economic Development, the Department of Housing Preservation and Development and the Department of Cultural Affairs, these zoning amendments are being done as part of a coordinated loft conversion program. It combines enforcement, tax reform, tenant protection, and relocation benefits as necessary adjuncts to zoning action. It recognizes that zoning alone cannot produce the desired result. This program is different from past actions in that it recognizes the need to approach conversion on a borough-wide and eventually city-wide basis.

The Commission has considered the following alternative options:

1. maintaining the status quo,
2. increasing conversion opportunities, and
3. increasing protection for industrial uses.

Alternative 1: Maintaining the Status Quo

The status quo is unacceptable. Existing zoning, adopted in 1961, is out of date with the reality of land use in some loft neighborhoods. Some areas zoned manufacturing have become increasingly residential. Others zoned commercial have remained predominantly manufacturing.

Recognizing that the existing zoning is outdated, property owners have increasingly sought relief through variances. In 1980, more than 60 variance applications were filed for property in Manhattan's manufacturing districts. These applications would, if granted, result in the conversion of 2.2 million square feet and the creation of 1300 housing units. By granting many variances the Board of Standards and Appeals has in effect stated that some manufacturing areas have changed and that variances to permit housing would not change the "essential character" of the area.

Variances provide relief for property owners. Owners make applications based on individual decisions. The impact on important industrial concentrations is not a statutory factor to be considered. The result of this random issuance of variances is that vital industry linkages are being disrupted.

Variances are only one way in which the status quo fails to protect industrial uses. Illegal conversions, which have historically accounted for most conversion activity, make the status quo untenable. No policy can be useful unless there is a reasonable certainty that it will be effectuated.

Several factors make enforcement of current zoning an expensive and unrewarding task. First, the previous softness of demand for industrial compared to residential space in some parts of the currently zoned manufacturing districts has already caused thousands of illegal conversions. The burden of a new enforcement program would be borne most heavily by the unprotected residential tenants. Second, illegal conversion would be likely to continue unless sufficient space were available to meet the residential demand. It could not be stemmed unless the City stationed a "policeman on every corner"—an unrealistic option.

Even if the City were prepared to commit inordinate resources to enforce the current loft zoning, it is unlikely that the courts would provide the necessary judicial support. Judges would be unlikely to order the eviction of new illegal residential tenants when thousands of equally illegal neighbors were unaffected.

Alternative 2: Increasing Conversion Opportunities

The rising rate of conversion and the rising rentals and co-op prices are indicative of the heightened demand for housing—a demand which has been increasing faster than the supply. The Commission's initial proposal recognized this and provided an additional 10 million square feet of loft space for housing. This would have increased the amount of loft space available for as-of-right conversion to a total of 90 million square feet. Unfortunately, increasing the amount of space available for housing necessarily decreases the space reserved for industry, without meeting the housing demand.

While the need for more housing is unquestionable, the Commission recognizes that conversion of non-residential buildings will not, by itself, solve the City's housing crisis. More important would be the establishment of a workable housing policy. New construction and preservation of existing housing stock must be stimulated to provide affordable market rate housing for the middle and upper class who are now competing for loft

space in Manhattan south of 59th Street. Following the completion of the Midtown Development Study, and the implementation of this loft policy, the Planning Department will be reviewing the Zoning Resolution with the intention of removing obstacles to such new residential construction in appropriate areas and coordinating zoning with the Department of Housing Preservation and Development's housing programs.

But the City must also continue to address the needs of those who cannot afford market rate housing. Preserving blue collar jobs is also a housing policy since it provides incomes which support workers' homes. Although provisions of low income housing will be largely dependent on federal funding, the City should not neglect job protection as a major form of assistance to low income households.

Alternative 3: Increasing Protection for Industrial Uses

The clearest message at the public hearing was that the City should do more for its remaining industrial base. With relocation outside of Manhattan a limited alternative, both industrial and real estate representatives agreed that manufacturing districts should be expanded beyond the boundaries certified in September.

Accordingly, the Commission is today certifying a proposed map amendment which would rezone the mid-blocks between 5th and 6th Avenues in the Garment Center East to M1-6. This change would protect an additional 2.4 million square feet of apparel related industrial space from conversion. The Commission is also studying the area around the Empire State Building which includes the center of the handbag industry and may warrant greater zoning protection than it now has. Similarly, West Chelsea contains a number of excellent industrial properties such as the Starrett-Lehigh Building and a number of printing buildings near the Convention Center site which may also deserve protection.

Southeast Chelsea is currently partially zoned M1, generally in the midblocks, and partially C6 along the Avenues and 14th, 15th and 16th Streets. It contains large numbers of industrial jobs, including significant portions of the menswear industry. Unfortunately, existing zoning has not worked to protect these industrial uses. Many of these uses, such as some menswear

firms, are located within the C6 district, where conversion is permitted as-of-right. The C6 district accounts for 37% of the area's 19 million square feet of loft space (7 million square feet). An additional 1.8 million square feet (9%) within the M1 district is in buildings on split lots, which are also partially in C6 districts and thus easily converted. In all, almost half of the district's loft space, 8.8 million square feet, is presently threatened by the existing C6 district mapping.

Southeast Chelsea's remaining 10.2 million square feet is in the districts mapped M1. This space is theoretically protected. Experience, however, has shown the fallacy of mapping manufacturing districts in areas which are no longer entirely manufacturing in character. The manufacturing district requirements have not prevented the widespread intrusion of residential uses in this area. Illegal conversions, which accounted for 97% of all conversions in 1977, have changed the character of this area. Recognizing this, property owners have sought more than 50 variances in these manufacturing districts. While some are still under consideration, it is important to realize that none have been denied. In 1980 alone, applications for variances accounted for 700,000 square feet of M1 zoned loft space. In granting these applications, the Board of Standards and Appeals has recognized that the essential character of these areas is no longer manufacturing and that permitting a loft building to convert to residential use will not alter the mixed use character which now exists. The cumulative effect of these individual variance decisions is to remove hundreds of thousands of square feet of loft space from the industrial market. In effect, having manufacturing district regulations in districts where no longer appropriate protects nothing.

The Commission's proposal, as modified, seeks to recognize the mixed use character of Southeast Chelsea while preserving the maximum amount of space for industrial uses. By linking as-of-right conversion to a mandatory preservation of space for manufacturing and commercial uses (see discussion of revised Mixed Use District Regulations below) this proposal will ensure that 7.5 million square feet will not be converted. This preserved space will be protected by deed restrictions which will run with the land. Owners whose property was subject to these deed restrictions would not be eligible to apply for variances since it would be the recorded convenant and not the zoning which

would preclude conversion. These owners would, in effect, be selling their conversion rights to other owners, so that no owners would be in the position of being unable to obtain a return on their investment in the property.

This mechanism provides for the preservation of important industrial loft space while protecting property owners' investments. To protect more industrial firms, the Commission has also modified the preservation tables to increase the amount of preserved space in the M portions of the mixed use area. The new tables reflect an increase in the preserved space of 500,000 square feet, providing for a total preservation of 7.5 million square feet.

The Commission's proposal, as revised, protects manufacturing while increasing housing opportunities. Although the total amount of space zoned manufacturing will be reduced to reflect land use changes over the past twenty years, we believe the remaining blue-collar jobs will be better protected. Important clusters of industrial uses will be more secure. These areas, which will also benefit from manufacturers relocating from non-manufacturing districts, are unlikely to experience high vacancy rates. This should reduce or eliminate the need for variances in these districts. By protecting the clusters, the existing economies of agglomeration will be preserved.

In the mixed use districts, such as Southeast Chelsea, where variances are more difficult to oppose, additional industrial loft space will be preserved. This preservation will be accomplished by having the higher paying residential use help meet the economic requirements of property owners, in effect subsidizing industrial uses. Any manufacturer who must relocate because of conversion will be eligible for relocation assistance if he relocates within New York City.

The proposed zoning changes, combined with other components of the City's proposed program provide—for the first time—a coherent rational City loft policy which will make the task of enforcement easier and which the courts can understand and accept. The key to effective enforcement is both delineation of realistic manufacturing zones reflecting industrial strength and the allocation by the City of additional enforcement capability organized and deployed in such a way as to secure the maximum impact. The combination of inspection and prosecutorial func-

tions in a mayoral unit gives the City a capability for enforcement of loft zoning which it has heretofore lacked.

The success of a similar effort in the Midtown Enforcement Project has provided a model for the City to build upon. An effective enforcement unit operating in the loft zones should materially improve the City's dismal enforcement record. It is expected that once this proposal is adopted by the Board of Estimate, and the loft enforcement unit is operational, respect for zoning rules will ensue. Ultimately this will permit the deployment of these extraordinary resources in other problematic areas of zoning enforcement throughout the City.

In addition, an Industrial Loft Advisory Council composed of industry and union representatives, will be established within the Office of Economic Development. It will receive notice of all loft conversion applications to the Planning Commission and variance applications to the Board of Standards and Appeals relating to loft conversions, and will have the opportunity to advise these bodies on the effects of these applications.

To satisfy the need for housing, the proposal as amended would increase the amount of space available for conversion by approximately 7 million square feet. It will also remove the discretionary nature of approvals for these conversions making more conversions as-of-right. By providing an outlet for residential development these changes will reduce conversion pressure on protected areas.

DECISIONS

In consideration of the above, the Commission makes the following recommendations to the Board of Estimate including changes in the proposal as heard on January 7, 1981:

1. **Meat Market.** The boundaries of this district are being extended north to 17th Street and south to Bethune Street to ensure that all Meat Market related businesses are not subject to conversion pressures. A counsel to the Meat Market has indicated support for the revised Meat Market proposal.
2. **West Village.** In addition to the extension of the boundaries of the Meat Market, the Commission is modifying its proposal to reflect existing residential densities in the West Village. The properties to the east of Washington

Street, which are adjacent to an R-6 district, will be remapped from C8-4 to C6-1, instead of C6-2 as originally calendared. Properties west of Washington Street, which are adjacent to West Village Houses (C6-2) and Westbeth (C6-3), will be remapped from M1-5 to C6-2.

3. **Printing Industries.** These areas will be protected by continued manufacturing designation of the Graphic Arts Center, a special permit to ensure that oversize buildings in Tribeca do not convert while there is a viable industrial market, and the remapping of West 33rd to 35th Streets from commercial to mixed use. Printing buildings near the Convention Center which are included within the Convention Center Area Study are an important resource to our blue collar economy. They will be protected in any recommendations which emerge from the Convention Center Study.

4. **Apparel and Related Industries.** These industries will have the protection of the existing manufacturing zones of the Garment Center and Northeast Chelsea, a special permit to regulate the conversion of oversized buildings in SoHo/NoHo, and the remapping of the Fifth to Sixth Avenue mid-blocks in the Garment Center East from a commercial to a mixed use district. In addition, today the Commission is certifying a proposed rezoning of these same blocks to manufacturing. Southeast Chelsea will also become a mixed use district with its 7.5 million square feet business space preservation component.

5. **Revised Mixed Use District Regulations.** The Commission initially proposed mixed use district regulations for Southeast Chelsea and Garment Center East which would have permitted every building to be partially converted and mandated that a portion of every building be reserved for commercial or manufacturing use. This mandatory mixed use requirement received much criticism at the public hearing. Following the recommendations of both the Real Estate Board and industrial representatives, the Commission has amended the mixed use district regulations.

The new regulations would permit conversion to residential use where a specified amount of equivalent space

had been preserved either in the building to be converted or in any comparable building within the mixed use district. The preservation would be accomplished by a deed restriction which would run with the land. The Chairman of the Planning Commission would certify that the preservation had been properly made.

This would ensure that space would remain in non-residential use in perpetuity or as long as there continued to be a viable market for such non-residential space. The deed restriction could be modified only with the permission of the Planning Commission.

The Commission would only modify the deed restriction if it could be demonstrated that circumstances relating to market conditions had changed, including the vacancy rate in the district, unavailing efforts to find non-residential tenants had failed, the refusal by tenants of leases offered at fair market rental, and the inability of the fair market rental to support the reasonable costs of operating the building.

A developer choosing to convert property in a mixed use district would have the option of combining buildings, buying conversion rights from another building, or having a mixed use building. None of these options would require a discretionary governmental review. A developer could reduce the amount of floor area required to be preserved by giving leases to existing tenants or new manufacturing tenants. If market conditions warrant, the Commission may grant special permits to allow additional space to be converted.

In C5 and C6 districts, existing manufacturing uses in Use Groups 17B and 17E are being made conforming by these amendments in order to permit these uses to expand within a building. To provide the maximum flexibility within the mixed use districts, the Commission will propose, as a separate action, that in C6-2M and C6-4M districts new uses in Use Groups 17B and 17E will also be conforming.

6. **Lower Manhattan Mixed-Use District.** The Commission recommends adopting the proposed amendments which will provide relocation benefits to industrial tenants, a

special permit to review conversions of the large, over 5,000 square foot buildings, and the phase-out of grandfather provisions.

7. **SoHo/NoHo.** The focus of the City's contemporary art industry, these areas will remain closed to general residential use. The proposed special permit, relocation, and phase-out of grandfather provisions, should be adopted. The extension of the M1-5A district, permitting retail uses, should be limited to properties along West Broadway.

8. **Artist-In-Residence Program.** This program, which has existed since the mid-1960s, will be continued. The definition of accessory use will be amended to include AIRs as living accessory to the artists' work space in districts where residential use is permitted. No more than two "accessory living" units may be permitted in any building.

9. **Madison-Park Avenues.** The Department of City Planning is now reviewing the area between 30th and 34th Streets to determine if this area, which houses the handbag and other apparel industries, warrants protection.

10. **Relocation Incentive Program.** This program will provide for tenants to receive relocation assistance directly from owners of loft buildings. In situations where tenants do not relocate within New York City, or where tenants are not entitled to the full direct help payment, landlords will make payments to BRAC. The Commission recommends that the Board of Directors of BRAC consist of the Chairman of the City Planning Commission, the Chairman of the Board of Standards and Appeals, the Commissioner/Executive Director of the Office of Economic Development, and a representative from both the printing and needle trades. BRAC will use its funds to provide additional relocation assistance. The Commission would like to see such additional assistance provided to firms engaged in businesses which are particularly difficult to move, and to firms which relocate to designated reemerging industrial areas outside of the central business districts. Any organization which distributes funds to achieve a public purpose must be cau-

tious to assure that funds are distributed equitably. Accordingly, the Commission has provided for BRAC to circulate and publish rules governing the disbursement of its funds. The Commission urges the directors of BRAC to adopt rules which permit the minimum of discretion in choosing the recipients of additional relocation assistance.

11. **Change.** In recommending these text and map changes to the Board of Estimate, the Commission recognizes that the conditions which justify this approach may change in the future. For this reason, the Commission has built the following monitoring systems and flexibility into the proposal.

    A. All conversions will be reported to the Planning Commission, thereby permitting easy monitoring of conversion activity. The Board of Standards and Appeals will be monitoring the Relocation Program. The legalization of existing illegal conversions will be monitored by the Office of Loft Enforcement. Should conditions warrant, these agencies can recommend changes in this policy.

    B. A City Planning Commission Special Permit provides greater flexibility should the industrial market soften. The Special Permit allows reductions in the space preserved for non-residential uses, if market conditions no longer warrant the preservation. Both the Office of Economic Development and its Industrial Loft Advisory Council would receive legal notice of any Special Permit applications and could provide relevant information. Should market conditions change so significantly that many Special Permits were granted, it would be indicative of the need to review and possibly amend these zoning regulations.

    C. Variances—Properties which can meet the five findings required under Section 72-21 of the Zoning Resolution may seek variances from the Board of Standards and Appeals. In the mixed use districts, property owners must exhaust their administrative remedies via the Special Permit procedure before seeking a variance. Should the Special Permit be denied, and

a variance sought, the Board of Standards and Appeals will have the record of the Commission's Special Permit review before it. The Industrial Loft Advisory Council will receive notice of such an application and may comment on it.

CONCLUSIONS

The Commission recognizes that there are limits to government regulation when strong market forces are involved. Although we share a desire to provide the greatest possible protection for industrial uses, we are wary of creating a false sense of security by approving excessive but unworkable land use regulations. This policy seeks to counterpoise the competing positive forces by providing reasonable outlets for conversion opportunities. A reapportionment of more space to either residential or manufacturing use at this time will presently upset the carefully constructed balance. In that event, the losers are likely to be the uses which are least able to compete in the marketplace—manufacturers, their employees, and the pioneering residential loft tenants. Should that happen the City's prized diversity would be sadly diminished.

Through the last decade, municipal government has taken a reactive role toward loft conversions. The zoning actions in 1971 and 1976 in SoHo/NoHo and Tribeca/Washington Market were taken in response to pressure to legitimize existing illegal communities. Enforcement efforts, which relied on voluntary compliance, were ineffectual. This policy of neglect has not been benign. Loft tenants, both residential and industrial, have suffered.

These zoning amendments, in conjunction with other elements of the Mayor's Comprehensive Manhattan Loft Policy, will provide a realistic framework for future land use in loft districts. Conversion opportunities will be expanded, but will be guided away from industrial areas which are important to the City's economy. Industrial tenants which must relocate will receive incentives to offset the costs of moving in order to encourage industry to remain in New York City. Housing created in formerly non-residential buildings will have to meet minimum standards. Provisions have been made for open space for residents and sanitation services to prevent the further straining of

the City's resources. Schools, police and fire resources are adequate in areas where conversions would be permitted.

These policies will be effective if the presumption of illegality that now pervades the loft conversion market is removed. The City has made an auspicious beginning with the creation and funding of the Office of Loft Enforcement. This office will commence enforcement operations upon the adoption of these amendments. Its priorities would be to prevent new illegal conversions, particularly in the manufacturing and mixed use districts, and to oversee the legalization of existing illegal conversions. The office will provide assistance to those involved in the legalization process.

Conversion of non-residential buildings is not a Manhattan phenomenon. It is occurring in Brooklyn, Queens and Staten Island as well. As in Manhattan, these conversions raise questions of appropriate land use policy. Industrial areas in these boroughs need to be studied to determine if the existing zoning should be amended. The Department of City Planning is currently studying portions of the industrial Brooklyn waterfront and part of Long Island City in Queens. Eventually, the entire Brooklyn and Queens East River industrial belt will be studied. By commencing these studies at an early stage in the conversion process—and acting swiftly—the Commission intends to avoid some of the mistakes experienced in Manhattan.

The Commission has determined that the amendments as modified are appropriate and adopted the following resolution, which is duly filed with the Secretary of the Board of Estimate, pursuant to Section 200 of the New York City Charter.

RESOLVED by the City Planning Commission that the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changes relating to Article I, new Chapter 5, Section 15-00, and miscellaneous changes in other Sections, regarding the conversion of non-residential buildings to residential use in Manhattan Community Boards 1 through 6, as follows:

Loft Zoning Regulations

11-12

Establishes four new mixed use districts

C6-2M

C6-4M

M1-5M

M1-6M

STATUTORY TEXT

LOFT ZONING REGULATIONS

Matter in **Bold Type** is new;

Matter in brackets [ ], is old, to be omitted;

Matter in *italics* is defined in Section 12-10.

11-12

Establishment of Districts

In order to carry out the purposes and provisions of this resolution, the following districts are hereby established:

Residence Districts

R1-1 Single-Family Detached Residence District

R1-2 Single-Family Detached Residence District

R2 Single-Family Detached Residence District
R3-1 General Residence District (L)
R3-2 General Residence District

R4 General Residence District
R5 General Residence District
R6 General Residence District

Commercial Districts

C2-1 Local Service District
C2-2 Local Service District
C2-3 Local Service District
C2-4 Local Service District
C2-5 Local Service District
C2-6 Local Service District
C2-7 Local Service District
C2-8 Local Service District

C3 Waterfront Recreation District

C4-1 General Commercial District
C4-2 General Commercial District
C4-2A General Commercial District
C4-3 General Commercial District
C4-4 General Commercial District
C4-5 General Commercial District
C4-6 General Commercial District
C4-7 General Commercial District

C5-1 Restricted Central Commercial District
C5-2 Restricted Central Commercial District
C5-3 Restricted Central Commercial District
C5-3CR Restricted Central Commercial District
C5-4 Restricted Central Commercial District
C5-5 Restricted Central Commercial District
C5-5CR Restricted Central Commercial District

11-12 (continued)

C6-1 General Central Commercial District
C6-1A General Central Commercial District
C6-2 General Central Commercial District

C6-2M General Central Commercial/Manufacturing District

C6-3 General Central Commercial District
C6-4 General Central Commercial District
C6-4CR General Central Commercial District

C6-4M General Central Commercial/Manufacturing District

C6-5 General Central Commercial District
C6-6 General Central Commercial District
C6-6CR General Central Commercial District
C6-7 General Central Commercial District
C6-7CR General Central Commercial District
C6-8 General Central Commercial District
C6-9 General Central Commercial District
C6-9CR General Central Commercial District

C7 Commercial Amusement District

C8-1 General Service District
C8-2 General Service District
C8-3 General Service District
C8-4 General Service District

Manufacturing Districts

M1-1 Light Manufacturing District (High Performance)
M1-2 Light Manufacturing District (High Performance)
M1-3 Light Manufacturing District (High Performance)
M1-4 Light Manufacturing District (High Performance)
M1-5 Light Manufacturing District (High Performance)
M1-5A Light Manufacturing District (High Performance)
M1-5B Light Manufacturing District (High Performance)

M1-5M Light Manufacturing—Mixed Use District (High Performance)

M1-6 Light Manufacturing District (High Performance)

M1-6M Light Manufacturing—Mixed Use District (High Performance)

M2-1 Medium Manufacturing District (Medium Performance)
M2-2 Medium Manufacturing District (Medium Performance)
M2-3 Medium Manufacturing District (Medium Performance)
M2-4 Medium Manufacturing District (Medium Performance)

M3-1 Heavy Manufacturing District (Low Performance)

11-12 (continued)

12-10

This provision places a limit of 2 accessory living accommodations on each building in R and C1 through C6 districts. All buildings with 3 or more units are multiple dwellings under State law.

A new entity, the Industrial Loft Advisory Council, is defined. This body will monitor conversions and their effect on industrial activity in New York.

15-00

Establishes the rationale for the City's loft conversion policy.

STATUTORY TEXT

M3-2 Heavy Manufacturing District
(Low Performance)

12-10 DEFINITIONS

Words in the text or tables of this resolution which are *italicized* shall be interpreted in accordance with the provisions set forth in this Section.

Accessory use, or accessory

An "accessory use":

(a) Is a *use* conducted on the same *zoning lot* as the principal *use* to which it is related (whether located within the same or an *accessory building or other structure*, or as an *accessory use* of land), except that, where specifically provided in the applicable district regulations, *accessory* off-street parking or loading need not be located on the same *zoning lot;* and

(b) Is a *use* which is clearly incidental to, and customarily found in connection with, such principal *use;* and

(c) Is either in the same ownership as such principal *use*, or is operated and maintained on the same *zoning lot* substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal *use.*

When "accessory" is used in the text, it shall have the same meaning as *accessory use.*

An *accessory use* includes:

(a) Living or sleeping accommodations for servants

(b) Living or sleeping accommodations for caretakers in connection with any *use* listed in Use Group 3 through 18, inclusive

[(c) Except in C7, C8 and *manufacturing districts*, living or sleeping accommodaitons in connection with *commercial or manufacturing uses.*]

(c) Living or sleeping accommodations in connection with *commercial* or *manufacturing uses*, including living or sleep accommodations in connection with a studio listed in Use Group 9, provided that

1. no *building* contains more than two kitchens and

2. no such living or sleeping accommodations are located in a C7, C8 or *manufacturing district.*

* * *

Industrial Loft Advisory Council

The Industrial Loft Advisory Council shall be the council in the Mayor's Office of Economic Development created by Executive Order of the Mayor composed of representatives of local industry which may advise the Mayor, the City Planning Commission and its Chairman, or the Board of Standards and Appeals concerning applications pursuant to the Zoning Resolution..

* * *

Article 1

Article I, Chapter 5—Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan.

15-00 GENERAL PURPOSES

In Manhattan Community Districts 1, 2, 3, 4, 5 and 6, special regulations for the conversion to dwelling units of non-residential buildings or portions thereof,

15-00 (continued)

15-01

Establishes the applicability of these regulations to conversions in Manhattan Community Boards 1 through 6.

15-012

Only the relocation provisions of this chapter apply in SoHo/NoHo or the Lower Manhattan Mixed Use District (Tribeca).

erected prior to December 15, 1961, have been established in order to promote and protect public health, safety, and general welfare. These goals include, among others, the following specific purposes:

(a) To permit owners to increase the return on their investment in appropriate existing non-residential buildings by authorizing the conversion to dwelling units without requiring such dwelling units to conform to the provisions of Article 2 of this resolution upon payment of a conversion contribution;

(b) To reduce the deleterious effects on commercial and manufacturing uses caused by the reduction of land and floor area available to such uses permitted under the provisions of this chapter by providing relocation incentives for such uses;

(c) To protect important job producing industries;

(d) To provide sufficient space for commercial and manufacturing activities which are an integral part of New York City's economy;

(e) To provide for adequate returns to property owners by allowing more profitable residential use with a limited mix of commercial and manufacturing uses;

(f) To provide a new housing opportunity of a type and at a density appropriate to these Community Districts;

(g) To ensure the provision of safe and sanitary housing units in converted buildings;

(h) To ensure the provision of adequate amenities in conjunction with residential development.

15-01

Applicability

In Manhattan Community Districts 1, 2, 3, 4, 5 and 6 the conversion to *dwelling units* of non-*residential buildings* or portions thereof, erected prior to December 15, 1961, shall be subject to the provisions of this chapter.

However, the conversion to *dwelling units* of non-*residential buildings* that meet all the requirements for new *residential development* of Article II (Residence District Regulations) and are located in R6, R7, R8, R9, R10, C1, C2, C3, C4, C5, or C6 districts is exempt from the provisions of this chapter. Except as modified by the express provisions of this chapter, the regulations of the applicable zoning districts remain in effect.

15-011

Special Clinton District

The Preservation Area of the Special Clinton District is excluded from the applicability of the provisions of this chapter.

15-012

M1-5A, M1-5B, or LMM Districts

Except as specifically set forth in Sections 15-41 and 15-50 the provisions of this chapter are not applicable in M1-5A, M1-5B or LMM districts.

15-013

Buildings which had filed conversion plans by September, 1980, may continue construction under those plans and are not required to conform to these new provisions. Work must be completed within two years of the date the building permit was obtained.

15-021

Use groups 17B and 17E, light manufacturing use groups, are changed to conforming uses in C5 and C6 districts. Presently illegal residential tenants in the manufacturing district of Northeast Chelsea are given the opportunity to be legalized as a permitted use.

15-022

Sandwiching, having a manufacturing use located on a higher floor than a residential use, is permitted.

15-023

Residential tenants in mixed use buildings must receive a warning about the possible inconvenience of living in a building with commercial or manufacturing uses.

STATUTORY TEXT

15-013

Building Permits Issued Before the Effective Date of this Chapter

At the option of the owner, the provisions of this chapter shall not apply to any alteration for which:

(a) plans were filed and pending with the Department of Buildings on September 1, 1980, and a Building Permit was issued by (the effective date of this amendment), or

(b) a variance was granted by the Board of Standards and Appeals and a Building Permit issued prior to (the effective date of this amendment).

The right to convert to *dwelling units* in accordance with this section shall automatically lapse 2 years from the issuance of said Building Permit if a temporary or permanent Certificate of Occupancy has not been obtained. Amendments filed after September 1, 1980 which create additional *dwelling units* or increase the amount of *floor area* to be converted to such units shall be subject to the requirements of this chapter.

15-02

General Provisions

15-021

Special Use Regulations

In C5 and C6 districts in Manhattan Community Districts 1, 2, 3, 4, 5, and 6, all existing lawful *uses* in Use Groups 17B or E in *buildings* erected prior to December 15, 1961 shall be considered conforming. Such *uses* may be *extended* within such *buildings*.

In M1-5 and M1-6 districts located within the rectangle formed by West 23rd Street, Fifth Avenue, West 31st Street and Eighth Avenue, no new *dwelling units* shall be permitted. However, *dwelling units* which were occupied on September 1, 1980 are a permitted *use* provided the Board of Standards and Appeals finds that:

(a) such *dwelling units* comply with the requirements of Section 15-22 (Number of Permitted Dwelling Units) and Section 15-23 (Light and Air Provisions), and

(b) an alteration application to permit such *use* is filed with the Department of Buildings prior to September 1, 1981.

Such *dwelling units* are subject to the requirements of Section 15-50 et seq.

15-022

Location within Building

Dwelling units converted under the provisions of this chapter are not subject to the provisions of Section 32-42 (Location within Buildings).

15-023

Notice to Residential Tenants in Mixed Use Buildings

The owner or developer of a *building* converted under the provisions of this chapter and containing one or more *dwelling units* and one or more *commercial* or *manufacturing uses* above the first *story* shall be required to notify all prospective *residential* occupants of such *dwelling units* that:

15-023 (continued)

15-024

The Department of City Planning will receive notices of all alteration permits, to assist it in monitoring trends.

15-025

New dwelling units in mixed use buildings must have double glazed windows to reduce noise and meet CEQR requirements.

15-10 to 15-13

Regulations for R and C Districts

15-11

The density standards generally applicable to new residential buildings are made inapplicable and replaced by a new standard relating to unit size.

15-111

Density: Dwelling Unit Size

Density standards are established which relate to the densities permitted for new construction in the respective residential and commercial districts. (See attached: "Analysis of Proposed Dwelling Unit Size Standards".) The standards work as follows:

For each R 6 through R 10 district and for the commercial district equivalents, the existing lot area per room standards have been converted to

(a) such *dwelling units* are located in a mixed *use building* containing *commercial* or *manufacturing uses* which the City is committed to maintain, and

(b) such prospective occupants should make any investigation they deem necessary to determine that the conditions existing or permitted to exist are not offensive to such prospective occupant.

Prior to the issuance of a Building Permit, the owner or developer shall file an affidavit with the Department of Buildings that such notice will be provided in all *residential* leases and offering plans.

15-024

Notice of Filing to Create Dwelling Units

Within ten days of filing an application with the Department of Buildings for an alteration permit for *dwelling units*, a duplicate copy of such application shall be sent to the Department of City Planning by the applicant for information purposes.

15-025

Double Glazed Windows

All *dwelling units* in *buildings* which contain one or more *uses* listed in Section 15-58 and converted under the provisions of this chapter shall be required to have double glazing on all windows. However, *dwelling units* occupied by *residential* tenants on September 1, 1980, shall not be required to have double glazed windows.

15-10 REGULATIONS GOVERNING CONVERSIONS TO DWELLING UNITS OF NON-RESIDENTIAL BUILDINGS IN RESIDENTIAL AND COMMERCIAL DISTRICTS, EXCEPT C6-2M AND C6-4M DISTRICTS.

15-11

Bulk Regulations

The *lot area* requirements of the following sections are hereby superseded and replaced with the requirements of Section 15-11 for the conversion of non-*residential buildings* to *dwelling units*: Sections 23-20 through 23-28 (Density Regulations—Required Lot Area per Dwelling Unit, Lot Area per Room, or Floor Area per Room), 24-20 (Lot Area Requirements for Buildings Used Partly for Residential Use), 35-40 through 35-43 (Applicability of Lot Area Requirements to Mixed Buildings) and 54-31 (Enlargements or Conversions).

15-111

Number of Permitted Dwelling Units

The number of *dwelling units* permitted is the total number calculated under Section 15-111 (a) and (b), and may be distributed anywhere within the *building* except in the *cellar*. Portions of a *dwelling unit* located in the *cellar* shall comply with the provisions of Section 15-112.

(a) *Floor area* which does not exceed the maximum *residential floor area* permitted by the provisions of the applicable district may be converted

a floor area per dwelling unit standard. To compute the number of units permitted in a conversion, the new floor area per unit standards are applied to the floor area permitted for new residential construction. Any floor area in excess of that permitted in new residential construction is computed on the basis of 1800 square feet per dwelling unit. After calculating the total number of units permitted in the conversion, the units may be distributed anywhere within the building.

Example: Density Calculation of a Non-Residential Building to Residential Use (as per Section 15-111(a))

Zoning District:	R8
Permitted Residential FAR:	FAR 6.0
Floor area per dwelling unit:	790 sq. ft.
Building Characteristics:	FAR 9.0 (Actual) sq. ft. 5,000 sq. ft. lot size 10 story building 4,500 sq. ft. per story 45,000 sq. ft. gross floor area

1. Permitted floor area ratio x Lot area = Max. allowable floor area
   FAR 6.0 x 5,000 sq. ft. = 30,000 sq. ft.
2. Max. allowable floor area ÷ Permitted floor area/D.U. = Permitted Dwelling unit
   30,000 sq. ft. ÷ 790 sq. ft. = 37.97 D.U.
3. Actual FAR of building — Permitted FAR = Excess FAR
   FAR 9.0 — FAR 6.0 = FAR 3.0
4. Excess FAR x Lot area = Excess floor area
   FAR 3.0 x 5,000 sq. ft. = 15,000 sq. ft.
5. Excess floor area ÷ Min. area D.U. for excess area = Additional D.U.
6. Total number dwelling units permitted in converted building:
   37.97 D.U. + 8.33 D.U. = 46.30 or 46 D.U.
7. Gross floor area ÷ Number of D.U. = Av. floor area/D.U.
   45,000 sq. ft. ÷ 46 D.U. = 978 sq. ft.

(Additional examples on page 144, "Analysis of Dwelling Unit Size Standards")

15-112

Light and Air Provisions

To insure a minimum standard of daylight and ventilation in converted dwelling units, the light and air standards of Article 7B of the State Multiple Dwelling Law are incorporated into the Zoning Resolution. These standards have generally proven workable, although specific examples of poor housing can be designed using them. Therefore, this section specifies 3 new requirements in the zoning:

a. & b. (i) mezzanines shall be provided with natural light and ventilation.

(ii) cellar recreation rooms are permitted only in two-bedroom apartments, to preclude a windowless bedroom in studio and one-bedroom apartments.

to *dwelling units*. The number of *dwelling units* attributable to the *floor area* permitted under the provisions of the applicable district shall be determined by the following tables:

Minimum Floor Area per Dwelling Unit in Specific Zoning Districts

Applicable District	Maximum Residential Floor Area Ratio Permitted	Minimum Floor Area Per Dwelling Unit Permitted
R6 or equivalent	2.43	700 square feet
R7 or equivalent	3.44	745 square feet
R8 or equivalent	6.02	790 square feet
R9 or equivalent	7.52	880 square feet
R10 or equivalent	10.00	900 square feet

(b) In existing non-*residential buildings the residential floor area* which exceeds the *residential floor area* permitted by the provision of the applicable district may be converted to *dwelling units* provided that there shall be not less than 1,800 square feet of gross *floor area* per *dwelling unit* in such excess *residential floor area.*

For the purposes of this section only, mezzanines constructed pursuant to Chapter 26 of the Administrative Code shall be allowed within individual *dwelling units* provided that the gross area of such mezzanine does not exceed 33⅓% of the *floor area* contained within such *dwelling unit.* Such mezzanines are permitted only in *buildings* with an existing *floor area ratio* of 12 or less, and only between existing floors that are to remain. No mezzanine shall be included as *floor area* for the purpose of calculating the minimum required size of a *dwelling unit* or for calculating *floor area* devoted to *dwelling units.*

15-112

Light and Air Provisions

(a) For the purposes of this section a "living room" is defined by Section 4 of the Multiple Dwelling Law.

(b) Spaces other than "living rooms"

(i) Mezzanines shall be lit and ventilated in accordance with the provisions of sub-article 1202.0 and sub-article 1205.0 of the Administrative Code.

(ii) *Cellar* space is not permitted in *dwelling units* with three and one half *rooms* or fewer, unless such *dwelling units* contain at least 1,200 square feet of interior *floor area.*

(iii) Spaces, other than "living rooms", kitchens, bathrooms or mezzanines, with a minimum width of 5 feet in the narrowest dimension measured perpendicular to a wall enclosing such space, are not permitted in *dwelling units* with three and one half *rooms* or fewer, unless such *dwelling units* contain at least 1,200 square feet of interior *floor area.*

(c) Every *dwelling unit* shall meet the light and air requirements of Section 277 of the Multiple Dwelling Law.

(iii) other non-habitable rooms are not permitted in studio and one-bedroom apartments.

c. adopts light and air standards from the Multiple Dwelling Law.

d. a width to depth ratio of 1:4 is specified to prevent excessively long and narrow apartments. This provision would require a unit 80 feet deep to have a minimum width of 20 feet.

15-12

Open Space Equivalent

The dense, overbuilt character of most non-residential buildings has provided few opportunities for ground level open space for residents. To provide open space, this section requires buildings with 15 units to develop 30 percent of the gross roof area for tenant recreational use. For each additional unit over 15, an additional 100 square feet of roof area shall be developed for this use, up to a maximum of 50 percent of the roof area.

15-13

Special Home Occupation Provision

In C6 districts the existing size limitations for home occupations are waived by this section. Instead of the current provision for home occupations, which allows 25 percent or a maximum of 500 square feet for such uses within a dwelling unit, 49 percent of the unit can be occupied by a home occupation, with no maximum area. This will allow the possibility of increasingly popular "living-work" situations, while still providing a measure of protection to purely residential users. (Note: the mixed use districts have more liberal home occupation standards.)

15-20

Regulations for Conversions in the New Mixed Use Districts

These sections specify requirements for conversions in the new mixed use districts of Southeast Chelsea and the Garment Center East.

15-21 through 15-215

Use Regulations

These new mixed use districts permit conversion to residential use as long as a specified amount of floor area is preserved for commercial or manufacturing uses. This preserved floor area may be located in the building in which the conversion is occurring, or it may be located in a comparable building in the same mixed use district. Two mixed use areas, Southeast Chelsea and the Garment Center East, are defined.

Example: Building A and Building B are comparable buildings each containing 75,000 square feet of floor area. In order to convert 37,500 square feet of floor area to residential use, 37,500 square feet of floor area must be preserved. Each building may remain half residential and half manufacturing. Alternatively, Building A

STATUTORY TEXT

(d) Width to Depth Ratio

Where there is more than one *dwelling unit* per *story* the average width of each *dwelling unit* shall be at least one fourth of the depth. Depth is the farthest point within the *dwelling unit* from the exterior *building* wall containing windows used to meet the requirements of Section 15-112(c) (Light and Air Provisions), measured perpendicular to such *building* wall. Width is the distance between exterior *dwelling unit* walls measured perpendicular to the depth.

15-12

Open Space Equivalent

At least 30 percent of the gross roof area of a *building* containing 15 *dwelling units* shall be developed for recreational *use*. For each additional *dwelling unit*, 100 square feet of additional roof area shall be developed for recreational *use*, up to a maximum of 50 percent of the gross roof area. This recreational area shall be accessible to all the occupants of said *building* and their guests. No fees shall be charged to the occupants or their guests. The provisions of this section may be modified pursuant to Section 15-30.

15-13

Special Home Occupation Provision

In C6 districts the *home occupation* provisions of Section 12-10 shall apply, except that up to 49 percent of the total *floor area* of a *dwelling unit* may be used for a *home occupation*. Such *home occupation* may occupy more than 500 square feet of *floor area*. For the purposes of this section, mezzanines shall be counted as *floor area*.

15-20 REGULATIONS GOVERNING CONVERSIONS TO DWELLING UNITS OF NON-RESIDENTIAL BUILDINGS IN C6-2M, C6-4M, M1-5M AND M1-6M DISTRICTS.

The *lot area* requirements of the following sections are hereby superseded and replaced with the requirements of Section 15-21 and 15-22 for the conversion of non-*residential buildings* to *dwelling units:* Sections 23-20 through 23-28 (Density Regulations—Required Lot Area per Dwelling Unit, Lot Area per Room, or Floor Area per Room), 24-20 (Lot Area Requirements for Buildings Used Partly for Residential Use), 35-40 through 35-43 (Applicability of the Lot Area Requirements to Mixed Buildings) and 54-31 (Enlargements or Conversions).

15-21

Use Regulations; Transfer of Preservation Obligations and Conversion Rights

In C6-2M, C6-4M, M1-5M and M1-6M districts, the conversion of *floor area* to *dwelling units* in existing non-*residential buildings*, or portions thereof, is permitted subject to the certification by the Chairman of the City Planning Commission that *floor area* has been preserved for *commercial* or *manufacturing uses* in accordance with the provisions of this section. The applicant shall provide a copy of any application for a certification under this section to the *Industrial Loft Advisory Council* c/o Mayor's Office of Economic Development. For the purposes of this section only, the following mixed *use* areas are defined:

Southeast Chelsea—All C6-2M, C6-4M, M1-5M and M1-6M districts between 13th Street and 23rd Street, and Park and Eighth Avenues.

may "buy" from Building B the right to convert an additional 37,500 square feet. Building B would no longer be permitted to convert any portion of its floor area since it had transferred this right to Building A. Building A would then be able to be entirely converted to residential use.

15-211

This section specifies the amount of floor area which must be preserved for manufacturing or commercial uses when floor area is being converted to residential use. The amount of floor area to be preserved varies according to the size of the building and the underlying zoning district. In all districts, the larger the building the higher the proportion of industrial use to residential use that is required.

STATUTORY TEXT

Garment Center East—The C6-2M and C6-4M districts located between West 33rd Street and West 35th Street, and between Seventh Avenue and Tenth Avenue. The C6-4M district located between West 35th and West 40th Streets and between Fifth Avenue and Avenue of the Americas.

15-211

Floor Area Preservation

The amount of *floor area* to be preserved for permitted *commercial* or permitted *manufacturing uses* shall be in accordance with Table I below if the *floor area* to be converted is located in a C6-2M or C6-4M district, and in accordance with Table II below if the *floor area* to be converted is located in a M1-5M or M1-6M district, unless modified by the City Planning Commission pursuant to Section 15-41. Such *floor area* shall be comparable to the *floor area* to be converted, as required by Section 15-213.

TABLE I

FOR CONVERSION IN C6-2M OR C6-4M DISTRICTS
FLOOR AREA PRESERVED FOR PERMITTED
COMMERCIAL OR PERMITTED MANUFACTURING USE

Area of *Zoning Lot* Containing *Floor Area* to be Converted	Less than 5,000 sq. ft.	5,000 sq. ft. or more but less than 10,000 sq. ft.	10,000 sq. ft. or more
Amount of *Floor Area* to be Preserved as a Percentage of *Floor Area* of the *Building* to be Converted	33.3% of *floor area*	50% of *floor area*	66.6% of *floor area*

TABLE II

FOR CONVERSION IN M1-5M OR M1-6M DISTRICTS
FLOOR AREA PRESERVED FOR PERMITTED
COMMERCIAL OR PERMITTED MANUFACTURING USE

Area of *Zoning Lot* Containing *Floor Area* to be Converted	Less than 5,000 sq. ft.	5,000 sq. ft. or more but less than 10,000 sq. ft.	10,000 sq. ft. or more
Amount of *Floor Area* to be Preserved as a Percentage of *Floor Area* of the *Building* to be Converted	33.3% of *floor area*	66.6% of *floor area*	66.6% of *floor area*

15-211 (continued)

15-212

In order to encourage owners and landlords not to evict existing tenants, and to preserve space for manufacturing rather than commercial tenants, more floor area may be converted, and a smaller amount is required to be preserved, where the landlord has given a manufacturing tenant or any commercial tenant occupying the space for 2 years, a new 3-year lease with a 2-year renewal option. If the owner/landlord has not yet rented the space, he must covenant, in a document to be recorded, to preserve the space for the manufacturing use.

STATUTORY TEXT

Such *floor area* may be preserved in the *building* to be converted, or in any other *building* within the same mixed *use* area, as defined in Section 15-21 above.

Floor area may not be preserved on portions of floors. If the *floor area* which must be preserved includes a fraction of a floor, the next highest number of full floors must be preserved for permitted *commercial* or permitted *manufacturing uses. Floor area* used for *home occupations* may not be used to meet the requirements of *floor area* and *stories* which must be preserved for *commercial* or *manufacturing use.* No accessory living or sleeping accommodations shall be permitted in the *floor area* preserved for permitted *commercial* or permitted *manufacturing uses.*

15-212

Reduced Floor Area Preservation

Notwithstanding the provisions of Section 15-211, Table I set forth in this Section 15-212 may be substituted for Table I in Section 15-211, and Table II in this Section 15-212 may be substituted for Table II in Section 15-211 governing the amount of *floor area* to be preserved, provided that such preserved *floor area* will be occupied by a *commercial* or *manufacturing use* which has been in occupancy for 2 years prior to the application for a certification under the provisions of Section 15-21 or by a *use* listed in Section 15-58, and subject to the following conditions:

(a) Where the preserved *floor area* is occupied by an existing *commercial* or *manufacturing use* for 2 years immediately preceding the date of application for a certification under Section 15-21, or where the preserved *floor area* is occupied by a *use* listed in Section 15-58, the landlord shall present a lease, signed by both the landlord and such tenant, and certified as recorded by the Office of the City Register of New York County. Such lease shall:

(i) be for a period of not less than 3 years from the date of application for such certification with provision for 2 years renewal at the tenant's option, and

(ii) not be subject to cancellation by the landlord.

(b) Where the preserved *floor area* is occupied by any such *use* for 2 years immediately preceding the date of application under Section 15-21, and such occupant is the owner of said *floor area,* the Chairman of the City Planning Commission shall require that the Certificate of Occupancy designate the preserved *floor area* for a *use* listed in Section 15-58 for a period of 5 years from the date of such certification.

(c) Where the preserved *floor area* will be occupied by a *use* listed in Section 15-58 but no such tenant is yet occupying the *floor area,* the owner shall covenant to preserve such *floor area* for a *use* listed in Section 15-58, in the legal commitment required pursuant to Section 15-214.

15-212 (continued)

15-213

In order to ensure that the space which is being preserved for commercial or manufacturing uses is adequate for such industrial use, and is not inferior to the space being converted, several requirements have been established for the space to be preserved. A licensed engineer must indicate on an affidavit that the requirements have been met, and that the floor area to be preserved is comparable to the floor area being converted.

The criteria relate to number and load (capacity) of elevators, floor load, size of floors, loading facilities, space between columns, and the height of the stories.

STATUTORY TEXT

TABLE I

FOR CONVERSION IN C6-2M OR C6-4M DISTRICTS

REDUCED FLOOR AREA AND FLOORS PRESERVED FOR PERMITTED COMMERCIAL OR PERMITTED MANUFACTURING USE

Area of *Zoning Lot* Containing *Floor Area* to be Converted	Less than 5,000 sq. ft.	5,000 sq. ft. or more but less than 10,000 sq. ft.	10,000 sq. ft. or more
Amount of *Floor Area* to be Preserved as a Percentage of *Floor Area* of the *Building* to be Converted	1 floor, plus, in *Buildings* of more than 6 *stories*, 25% of the *floor area* in excess of 6 *stories*	33.3% of *floor area*	50% of *floor area*

TABLE II

FOR CONVERSION IN M1-5M OR M1-6M DISTRICTS

REDUCED FLOOR AREA AND FLOORS PRESERVED FOR PERMITTED COMMERCIAL OR PERMITTED MANUFACTURING USE

Area of *Zoning Lot* Containing *Floor Area* to be Converted	Less than 5,000 sq. ft.	5,000 sq. ft. or more but less than 10,000 sq. ft.	10,000 sq. ft. or more
Amount of *Floor Area* to be Preserved as a Percentage of *Floor Area* of the *Building* to be Converted	1 floor, plus, in *Buildings* of more than 6 *stories*, 25% of the *floor area* in excess of 6 *stories*	50% of *floor area*	50% of *floor area*

15-213

Comparability

Where the *floor area* to be preserved is not located within the *building* to be converted, such *floor area* must be comparable to *floor area* in the *building* to be converted. Comparability, shown by an affidavit from a professional engineer licensed under the laws of the State of New York, shall exist where the *floor area* to be preserved meets the following criteria:

1) Elevators: Load and Number

(a) Load

Each elevator shall have a minimum load of 2,000 pounds. The total load of all elevators servicing the *floor area* to be preserved shall be in accordance with the following ratio:

15-213 (continued)

15-214

a & b) Before a developer may receive an alteration permit to convert floor area to residential use, the Chairman of the City Planning Commission must verify that the developer has preserved the appropriate floor area. To ensure that such floor area is preserved for manufacturing or commercial use, the owner of the property being preserved must sign a covenant restricting the property to such uses. This restrictive covenant will be recorded in the Office of the City Register, and the restriction

STATUTORY TEXT

Total Load		Total Load
Gross *floor area* of *building* to be preserved	Is greater than or equal to 80% of	Gross *floor area* of *building* to be converted

(b) Number

There shall be a minimum of two elevators. The number of elevators servicing the *floor area* to be preserved shall be in accordance with the following ratio:

Number of Elevators		Number of Elevators
Gross *floor area* of *building* to be preserved	Is greater than or equal to 80% of	Gross *floor area* of *building* to be converted

If the number of elevators required pursuant to the above ratio includes a fraction of an elevator, this fraction shall be rounded to the nearest whole number.

2) Floor Load

The floors shall have a minimum live load capacity of 100 pounds per square foot (100 psf).

3) Size of Floors

The *floor area* shall be located on floors of not less than 3,000 square feet or 50% of the size of the floors in the *building* to be converted, whichever is greater. *Floor area* may not be preserved on portions of floors.

4) Loading Facilities

The loading facilities shall be at least equal in number to those in the *building* to be converted. In addition, if such *building* has an off-street loading dock, the *building* containing the *floor area* to be preserved must have such off-street loading facilities.

5) Column Spacing

There shall be a minimum distance between columns of 15 feet, measured on center. In addition, the average distance between columns shall not be less than 90% of the average distance between columns in the *building* to be converted.

6) Height of *Stories*

The *stories* shall have an average minimum height of ten feet.

15-214

Certification and Other Requirements of Preservation and Conversion

a) Prior to the issuance of an alteration permit for the conversion of *floor area* to *residential use*, the Chairman of the City Planning Commission shall certify compliance with the requirements of Section 15-21 upon proof of a legal commitment to preserve and maintain the required *floor area* for permitted *commercial* or permitted *manufacturing use*. Such legal commitment shall be executed by all parties having any

will be binding on all persons who purchase, lease, or have any other interest in the property.

c) When preservation obligations are transferred between buildings, the amount of floor area under a preservation obligation which may be transferred is in addition to the amount of floor area required to be preserved under Section 15-211 or 15-212 in the building receiving the transferred preservation obligation.

Example: Building A and Building B are each 10-story buildings with floors of 10,000 square feet.

The owners of both buildings A and B have a preservation obligation of 50,000 square feet each. The owner of Building A wishes to convert her entire building. The owner of Building B agrees to transfer A's preservation obligation to his building. This 50,000 square foot preservation obligation to be transferred is in addition to B's basic 50,000 square foot preservation obligation. At the conclusion of the process A may convert her entire 100,000 square foot building and B must preserve his entire building.

15-215

Grandfathers existing illegal residential units which are in excess of those permitted in the new mixed-use districts.

15-22

Dwelling Unit Size

All dwelling units must have a minimum size of 1,200 square feet. It is anticipated that this, combined with the liberal home occupation requirements, will encourage a type of residential tenancy which is compatible with mixed use buildings. Preferably, people seeking a residential occupancy will be attracted to purely residential buildings in the residential and commercial districts, leaving the buildings in mixed use districts to those who need a living-work environment.

interest in the *floor area* to be preserved as shown by a certificate issued by a title insurance company licensed to do business in the State of New York showing all such parties in interest.

A "party in interest" in the tract of land shall include only (W) the fee owner thereof, (X) the holder of any enforceable recorded interest superior to that of the fee owner and which could result in such holder obtaining possession of all or substantially all of such tract of land, (Y) the holder of any enforceable recorded interest in all or substantially all of such tract of land which would be adversely affected by the preservation as required herein, and (Z) the holder of any unrecorded interest in all or substantially all of such tract of land which would be superior to and adversely affected by the preservation required herein and which would be disclosed by a physical inspection of the tract of land.

A copy of the legal commitment required herein shall be recorded in the Conveyances Section of the Office of the City Register of New York County upon certification.

b) The *floor area* to be preserved shall not already have been preserved by a legal commitment under the provisions of Section 15-21, as evidenced by the report from the title company issued pursuant to (a) above.

c) The amount of *floor area* required to be preserved in any *building* pursuant to Section 15-211 or 15-212 shall not be reduced by the existence of a previously issued legal commitment for preservation on a portion of the *floor area* in the *building*.

15-215

Existing Non-Conforming Dwelling Units

The requirements of Section 15-211 regarding the amount of *floor area* to be preserved for permitted *commercial* or permitted *manufacturing uses* may be waived by the Commissioner of Buildings if such *floor area* was occupied as *dwelling units* as of September 1, 1980, provided that an application for such waiver has been filed with the Department of Buildings prior to September 1, 1981. Such application may be filed by the owner of the *building* or the occupant of the *dwelling unit*.

15-22

Number of Permitted Dwelling Units

(a) In *buildings* converted to *dwelling units* under Section 15-20 (Regulations Governing Conversions to Dwelling Units of Non-Residential Buildings in C6-2M, C6-4M, M1-5M and M1-6M Districts) where there is more than one *dwelling unit* per *story*, there shall be a minimum *dwelling unit* size of 1,200 square feet of interior *floor area* unless modified pursuant to Section 15-30 (Minor Modifications).

(b) For the purposes of this section only, mezzanines constructed pursuant to Chapter 26 of the Administrative Code shall be allowed within individual *dwelling units* provided that the gross area of such mezzanine does not exceed 33⅓ percent of the *floor area* contained within such *dwelling unit*. Such mezzanines are permitted only in *buildings* with an existing *floor area ratio* of 12 or less, and only between existing floors that are to remain. No mezzanine shall be included as *floor area*

15-22 (continued)

15-23

Light and Air Provisions

To ensure adequate light and air, the standards of light and ventilation of Article 7B of the Multiple Dwelling Law are incorporated into the Zoning Resolution. In addition, mezzanines must be provided with natural light and ventilation, and there is a width to depth ratio of 1:4 to prevent excessively long and narrow apartments. Because of the large minimum unit size, the requirements for cellar recreation rooms found in the provisions for converted buildings in residential and commercial districts are not needed in the mixed use districts.

15-24

Open Space Equivalent

To provide open space, buildings with 15 units must develop 30 percent of the gross roof area for tenant recreation. As the number of units increases above 15, an additional 100 square feet of roof area per unit must be developed for recreational use, up to a maximum of 50 percent of the roof area.

15-25

Home Occupations

To allow and encourage a wide range and variety of living-work situations, home occupations are permitted without any limitations on floor area. For these mixed use districts only, a home occupation would include any service or production operation permitted in Use Groups 6 through 17, although the sale of merchandise produced elsewhere is not allowed.

15-26

Private sanitation is required for mixed use buildings within the mixed use areas of Southeast Chelsea and the Garment Center East.

for the purpose of calculating the minimum required size of a *dwelling unit* or for calculating *floor area* devoted to *dwelling units.*

15-23

Light and Air Provisions

(a) Every *dwelling unit* shall meet the light and air requirements of Section 277 of the Multiple Dwelling Law.

(b) Mezzanines shall be lit and ventilated in accordance with the provisions of sub-article 1202.0 and sub-article 1205.0 of the Administrative Code.

(c) Width to Depth Ratio

Where there is more than one *dwelling unit* per *story,* the average width of each *dwelling unit* shall be at least one fourth of the depth. Depth is the farthest point within the *dwelling unit* from the exterior *building* wall containing windows used to meet the requirements of Section 15-23(a) (Light and Air Provisions), measured perpendicular to such *building* wall. Width is the distance between exterior *dwelling unit* walls measured perpendicular to the depth.

15-24

Open Space Equivalent

At least 30 percent of the gross roof area of a *building* containing 15 *dwelling units* shall be *developed* for recreational *use.* For each additional *dwelling unit,* 100 square feet of additional roof area shall be *developed* for recreational *use,* up to a maximum of 50 percent of the gross roof area. This recreational area shall be accessible to all the occupants of said *building* and their guests. No fees shall be charged to the occupants or their guests. The provisions of this section may be modified pursuant to Section 15-30.

15-25

Home Occupations

A *home occupation* may occupy a *dwelling unit* as an *accessory use* in excess of the *floor area* limitations of Section 12-10 (Definitions), and subject to the following:

(a) Businesses operated as *home occupations* may have up to three non-*residential* employees.

(b) In addition to the *uses* listed in Section 12-10 (Definitions), a *home occupation* may include a permitted *commercial* or permitted *manufacturing use.* It shall not include the sale of merchandise produced elsewhere.

(c) The Commissioner of Buildings may issue rules and regulations setting forth appropriate standards to implement the intent of this section.

15-26

Collection of Residential and Commercial Refuse

All *residential* trash shall be consolidated with the trash from the *commercial* or *manufacturing use* tenants and collected in the same manner as the trash from such commercial or manufacturing tenants. Such collection shall be the responsibility of the owner of the *building* or portion thereof.

15-30

Minor Modifications

This section permits the City Planning Commission to grant minor modifications of the size of the dwelling unit in mixed use districts if such a unit is within 5 percent of the 1,200 square foot minimum; and to vary the amount of roof recreation area if such an area is unusable or cannot be made useful at a reasonable cost.

15-40

Special Permit

This section indicates the availability of a City Planning Commission Special Permit in Section 74-782 in order to modify the preservation requirements of Section 15-21.

15-50

Relocation Incentive Program

15-51

The preamble states the purposes and provides a general outline of the Relocation Incentive Program.

STATUTORY TEXT

15-30 MINOR MODIFICATIONS

On application, the Chairman of the City Planning Commission may grant minor modifications to the following provisions of this chapter:

(a) The requirements of Section 15-22 (a) relating to *dwelling unit* size may be modified provided that the Chairman of the Commission has administratively certified to the Department of Buildings that the division of one or more *stories* into *dwelling units* with an area of at least 1,200 square feet cannot be accomplished without practical difficulties because the *floor area* of such *story*, exclusive of exterior walls and common areas, is within 5 percent of a multiple of 1,200 square feet.

(b) The requirements of Section 15-12 and Section 15-24 relating to the open space equivalent may be modified provided that the Chairman of the Commission has administratively certified to the Department of Buildings that the roof either is unsuited for open space *use* or cannot be made suitable for open space *use* at reasonable cost.

A developer must send a copy of any request for modification pursuant to this section to the applicable Community Board at least 20 days prior to the next regularly scheduled Board meeting. If the Community Board chooses to comment on such requests it must do so within 31 days of such notification.

15-40 SPECIAL PERMIT

15-41

Residential Conversion in C6-2M, C6-4M, M1-5M, M1-6M, M1-5A, M1-5B and LMM Districts

In C6-2M, C6-4M, M1-5M and M1-6M Districts, the City Planning Commission may permit modification of the requirements of Section 15-21; in M1-5A and M1-5B districts the City Planning Commission may permit the modification of the requirements of Section 42-14D 1 (b) and in the LMM Special Purpose District the City Planning Commission may permit the modification of the requirements of Section 111-103, in accordance with the provisions of Section 74-711 or 74-78.

15-50 RELOCATION INCENTIVE PROGRAM

15-51

Preamble

In order to reduce the deleterious effects on commercial and manufacturing uses caused by the reduction of existing floor area available to such uses as the result of the conversion of non-residential buildings to dwelling units or Joint living-work quarters for artists, while permitting owners to convert such buildings to dwelling units or Joint living-work quarters for artists, thereby increasing the value of such buildings, a Relocation Incentive Program is established. These general goals include, among others, the following specific objectives:

(a) To provide incentives for eligible commercial and manufacturing uses displaced by the conversion of commercial or manufacturing buildings, or portions thereof, to dwelling units, to relocate within the City of New York.

(b) To provide certainty to eligible commercial and industrial tenants as to the extent and availability of relocation incentives.

15-51 (continued)

15-52

Definitions

Various terms are defined which relate solely to the Relocation Incentive Program. The program applies where an applicable building is being converted.

STATUTORY TEXT

(c) To ensure that such incentives are available to the eligible commercial or manufacturing uses at the time they relocate.

(d) To assist in the retention of industrial firms and industrial relocation within the City of New York in accordance with the intent of this Chapter.

Under the Relocation Incentive Program, owners who plan to convert space used for commercial and manufacturing uses to dwelling units or Joint living-work quarters for artists under the provisions of this Chapter or Sections 42-14D, 74-711, 74-78 and 111-00 of this resolution will be required to pay a conversion contribution or provide direct relocation payments before they can obtain an Alteration Permit. The conversion contribution will be paid into the Industrial Relocation Fund to be administered by the New York City Business Relocation Assistance Corporation. These funds will be used to provide industrial relocation assistance in accordance with the intent of this Chapter.

Building owners may receive a discount from the conversion contribution if they provide direct assistance to manufacturing tenants which relocate in New York City. The Board of Standards and Appeals shall administratively review applications and certify that eligible tenants have received the appropriate relocation assistance and have relocated in New York City.

Prior to the issuance of an Alteration Permit for the development of dwelling units or Joint living-work quarters for artists, an owner must present proof of either payment of the conversion contribution or BSA approval of direct relocation payments.

15-52

Definitions

For the purposes of Sections 15-50 through 15-58 matter in *italics* is defined in this Section or in Section 12-10.

Applicable Building

An "applicable building" is any existing *building* or other structure, erected prior to December 15, 1961, which

1. (a) is located in a R6, R7, R8, R9, R10, C1, C2, C4, C5, C6, M1-5A, M1-5B, M1-5M, M1-6M or LMM district, or

   (b) is granted a *use* variance pursuant to the provisions of Sections 75-21 and 72-221; and

2. (a) on September 1, 1980, was used for a *use* listed in Section 15-58, or

   (b) was vacant on September 1, 1980, and was used within 3 years prior to such date for a *use* in such Use Groups, or

   (c) in the case of 1(b) above, was used for a *use* listed in Section 15-58 on (the effective date of this amendment).

Conversion Contribution

A "conversion contribution" is the contribution to the Industrial Relocation Fund provided by the owner of an *applicable building*. Such contribution shall be provided by the owner in order to convert such *building* to *dwelling units* or *Joint living-work quarters for artists* without meeting the requirements for the development of *dwelling units* in Article 2. (Residence District Regulations)

15-52 (continued)

15-521

Requires BRAC to establish rules for the distribution of its funds, and specifies a publication procedure before the rules are effective. This is to limit BRAC's discretionary powers.

STATUTORY TEXT

The Corporation

The "Corporation" is the New York City Business Relocation Assistance Corporation, a not-for-profit corporation. The Board of Directors of the Corporation shall consist of the Commissioner or Executive Director of the Office of Economic Development, the Chairman of the City Planning Commission, the Chairman of the Board of Standards and Appeals and two industrial representatives.

Eligible Tenant

An "eligible tenant" is a commercial or manufacturing tenant, or commercial or manufacturing owner/occupant, determined by the *Corporation* to be engaged in a business listed in Section 15-58 and who:

(i) occupied and used space within an *applicable building* for not less than 24 months immediately prior to vacating,

(ii) vacated the premises on or after (the effective date of this amendment), and

(iii) either purchased, or leased for a term of not less than 24 months, other premises within the City of New York for the purpose of engaging in a business listed in Section 15-58.

A sub-tenant shall be eligible to receive a relocation incentive in accordance with the provisions of Section 15-50 et seq. notwithstanding any lack of eligibility of its prime tenant.

The Fund

The "Fund" is the Industrial Relocation Fund. The *Fund* is established within the *Corporation.* The *Corporation* shall accept the *conversion contribution* to be accredited to the *Fund* and apply such monies toward the relocation of industrial tenants, including any verification action required under the provisions of Section 15-50 et seq. (Relocation Incentive Program), or toward the administration of the *Fund,* and for such other purposes relating to industrial relocation as the *Corporation* may determine.

The Industrial Relocation Fund will be administered by the *Corporation.*

15-521

Rules and Regulations for the Fund

The *Corporation* shall promulgate rules and regulations for the distribution of monies from the *Fund.* The *Corporation* shall provide a copy of all proposed rules and regulations and any proposed amendments thereto to:

a) Manhattan Community Boards 1 through 6,

b) the City Planning Commission,

c) the Office of Economic Development,

d) the Board of Standards and Appeals,

e) Members of the Board of Estimate, and

f) the *Industrial Loft Advisory Council.*

15-521 (continued)

15-531

Establishes the rate of the conversion contribution at $9 per square foot which will be adjusted each year for inflation, based on a government price index.

15-532

Requires the payment of the conversion contribution prior to the issuance of an alteration permit. Provides for a reduction where there has been a direct help payment, or other discount or exclusion.

15-54

Direct Help

A discount from the conversion contribution is available where the developer has made a direct help payment to the tenant or, in some cases, to BRAC. The Board of Standards and Appeals must authorize the discount, upon proof that the direct help payment has been appropriately made.

STATUTORY TEXT

In addition, the *Corporation* shall publish notice of the existence of proposed rules and regulations and any proposed amendments thereto for five business days in a newspaper of general circulation in the City of New York, and shall make all such proposed rules, regulations and amendments available to the public. Comments on such proposed rules, regulations and amendments shall be accepted for 30 days thereafter. The rules and regulations, or amendments thereto, as adopted, shall be provided to all persons listed in subdivisions (a) through (f) above, and shall be made available to the general public.

15-53

Conversion Contribution

15-531

Rate of Contribution

The *conversion contribution* shall be paid into the *Fund*. If tendered prior to September 1, 1982, such contribution shall be at the rate of $9.00 per square foot of the gross *floor area* to be used for *dwelling units* or *Joint living-work quarters for artists* and stairwells, elevator shafts, halls and other common *floor areas* of the *building* used in conjunction with such *dwelling units* or *Joint living-work quarters for artists*, excluding ground floor lobbies, less any discount authorized under the provisions of Section 15-54 (Direct Help) or Section 15-55 (Additional Discounts or Exclusions from Conversion Contributions). On September 1, 1982, and on each subsequent September 1, the *Corporation* shall establish the monetary rate at which the *conversion contribution* is to be paid during that year. Said rate change shall be based on the Gross National Product Implicit Price Deflators for the Trucking and Warehousing Industry, prepared by the U.S. Department of Commerce.

15-532

Contribution Procedure

Prior to the issuance of an Alteration Permit, the owner shall pay the *conversion contribution*, in an amount equal to the rate applicable at the date of payment multiplied by the gross *floor area* as provided in Section 15-531. The amount of such contribution may be reduced by authorization of the Board of Standards and Appeals pursuant to Section 15-54 (Direct Help) or Section 15-55. (Additional Discounts or Exclusions from Conversion Contributions). Nothing in this section shall be construed to require such owner to pay the *conversion contribution* in accordance with the provisions of this section more than once on any particular *floor area*. Upon proof of payment of the *conversion contribution* by the owner, the Board shall notify the Department of Buildings that the requirements of Section 15-50 et seq. have been met.

15-54

Direct Help

The Board of Standards and Appeals shall issue an authorization for a discount from all or part of the amount of the *conversion contribution* when it determines that the owner of an *applicable building* has made a direct help payment in accordance with Section 15-541 through Section 15-545. The amount of the discount shall be twice the direct help payment provided to the recipients as required in Section 15-541.

The owner of an *applicable building* shall include a copy of each escrow agreement signed pursuant to Section 15-542 with the application to the Board for the authorization for a direct help discount.

15-54 (continued)

15-541

The direct help payment is equal to 50% of the conversion contribution. By making a direct help payment a developer saves 50% of the amount of the conversion contribution he would be required to pay.

a. This sub-section specifies to whom a building owner must make payments to be entitled to the discount.

b. When a manufacturing tenant relocates to new premises which are smaller than the premises it vacated, the amount of the benefit the tenant receives is based on the smaller space.

STATUTORY TEXT

The owner of an *applicable building* applying for a direct help discount shall, on the date of such application, provide the Office of Economic Development with a copy of said application. Within 30 days of the receipt of any such application, the Office of Economic Development may provide the Board of Standards and Appeals with a report on the history of commercial and manufacturing tenancy of such *building*.

15-541

Amount of Direct Help Payment

a) The direct help payment shall be equal to 50% of the *conversion contribution*. To entitle the owner of an *applicable building* to be eligible for the discount authorized under the provisions of Section 15-54, such owner shall make direct help payments in accordance with the following:

Condition of the Space to Be Converted	Recipient of the Direct Help Payment	% of Conversion Contribution Each Recipient Receives
Vacant since September 1, 1980.	The *Corporation*	50%
In R6, R7, R8, R9, R10, C1, C2, or C4 districts, vacant since January 1, 1981.	The *Corporation*	50%
Vacant more than 24 months.	The *Corporation*	50%
Occupied by an *eligible tenant* listed in Section 15-581.	The Tenant	50%
Occupied by an *eligible tenant* listed in Section 15-582.	The Tenant The *Corporation*	25% 25%
Occupied by a commercial or manufacturing tenant for more than 24 months but such tenant did not relocate within New York City.	The *Corporation*	50%

b) Direct Help Payments When Tenant Relocates to a Smaller Space

In no event shall an *eligible tenant* receive a direct help payment of more than 50% of the amount produced by multiplying the currently applicable rate of *conversion contribution* by the *floor area* occupied by such tenant after relocation. If, as a result of such tenant relocating to a smaller space, the amount of direct help payment provided by an owner to an *eligible tenant* is less than the amount of the direct help payment the owner is required to provide pursuant to the provisions of Section 15-541a, the remainder shall be paid to the *Corporation*. The *Corporation* shall determine if there has been relocation to a smaller space. The owner shall be entitled to a discount for all such direct help payments.

15-542 and 15-543

Procedure for establishment of the escrow account.

15-542

a) A developer makes a direct help payment by establishing an escrow account in the amount of the direct help payment. The beneficiary of the escrow account is the tenant who is relocating. The terms of the escrow agreement are partially established in this section, and will be included on a standard form to be prepared by BRAC. The escrow property, i.e., the direct help payment, is paid to the tenant when BRAC determines that the tenant has met the definition of an eligible tenant. If the tenant is not an eligible tenant, for example if the tenant does not relocate within New York City, the escrow property is paid to BRAC.

b) The owner/developer is responsible for any costs arising out of the establishment of the escrow account and is entitled to any interest which may accrue.

STATUTORY TEXT

15-542

Establishment of Escrow Accounts

To receive a discount under the provisions of Section 15-54 (Direct Help), the owner of an *applicable building* shall establish an escrow account in accordance with the provisions established in this section.

a) Such owner shall deposit a sum of money equal to the amount of the direct help payment required under Section 15-541 in an escrow account in a banking institution located in the City of New York. The escrow agent shall be such bank or the owner's attorney. The escrow account shall be established pursuant to an agreement signed by the owner and the escrow agent, which agreement shall be on a form provided by the *Corporation.* Where the commercial or manufacturing tenant is listed in Section 15-581, said escrow agreement shall contain the specific provisions in subsection (i) below; where the commercial or manufacturing tenant is listed in Section 15-582, said escrow agreement shall contain the specific provisions listed in subsection (ii) below:

(i) The escrow property delivered hereunder shall be held in escrow by (the escrow agent) to be delivered to (the tenant) at such time as the New York City Business Relocation Assistance Corporation, hereinafter called the Corporation, has verified that (the tenant) is an *eligible tenant* under the terms of Section 15-50 et seq. of the Zoning Resolution of the City of New York. This escrow property shall be paid in full to (the tenant) within 15 days of such verification, unless the *Corporation* has made a determination that (the tenant) has relocated to a smaller space in accordance with the provisions of Section 15-541b of the Zoning Resolution. Where the *Corporation* has determined that (the tenant) has relocated to a smaller space, (the tenant) shall receive payment from the escrow account in an amount equal to that required by Section 15-541b of the Zoning Resolution within 15 days of such verification. The remainder of the escrow property shall be paid to the *Corporation* at the same time. In the event that the *Corporation* issues a statement of non-eligibility under Section 15-544(c) of the Zoning Resolution, this escrow property will be paid to the *Corporation* within 15 days of the issuance of such statement. In the event that these conditions are not met within six months from the earlier to occur of the date (the tenant) vacates space in (address of the building) or the date of the establishment of this escrow account, (the escrow agent) shall pay the escrow property delivered hereunder to the *Corporation* at the expiration of said 6-month period.

Notwthstanding the foregoing, where the *Corporation* notifies (the escrow agent) that (the owner) and (the tenant) have entered into a new lease of the premises at (address of the building) for a term of more than three months, the escrow property delivered hereunder shall be returned to (the owner/escrowor) within 15 days of such notification.

(ii) The escrow property delivered hereunder shall be held in escrow by (the escrow agent) until such time as the New York City Business Relocation Assistance Corporation, hereinafter called the Corporation, has verified that (the tenant) is an *eligible tenant* under the terms of Section 15-50 et seq. of the Zoning Resolution of the City of New York. Within 15 days of such verification, (the escrow agent) shall pay 50% of the escrow property hereunder to (the tenant) and 50% of the escrow property to the *Corporation,* unless

15-542 (continued)

15-543

This section sets out when a developer/owner must establish the escrow account. In most cases, this will be between 30 and 60 days prior to the date the tenant's lease expires.

the *Corporation* has made a determination of relocation to a smaller space in accordance with the provisions of Section 15-541b of the Zoning Resolution. Where the *Corporation* has determined that (the tenant) has relocated to a smaller space, (the tenant) shall receive payment from the escrow account in an amount equal to that required by Section 15-541b of the Zoning Resolution within 15 days of such verification. The remainder of the escrow property shall be paid to the *Corporation* at the same time. In the event that the *Corporation* issues a statement of non-eligibility under Section 15-544(c) of the Zoning Resolution, this escrow property will be paid to the *Corporation* within 15 days of the issuance of such statement.

In the event that the above conditions are not met within six months from the earlier to occur of the date (the tenant) vacates space in (address of the building) or the date of the establishment of this escrow account, (the escrow agent) shall pay the escrow property delivered hereunder to the *Corporation* at the expiration of said 6-month period.

Notwithstanding the foregoing, where the *Corporation* notifies (the escrow agent) that (the owner) and (the tenant) have entered into a new lease of the premises at (address of the building) for a term of more than three months, the escrow property delivered hereunder shall be returned to (the owner/escrowor) within 15 days of such notification.

b) All interest which accrues on the escrow account shall be paid to the owner who establishes such escrow account. Any expenses incurred in establishing such account shall be paid by said owner. A copy of all escrow agreements shall be delivered by said owner to the *Corporation*.

15-543

Time for Establishment of Escrow Accounts

For the purpose of this section only, an *eligible tenant* shall not be required to have purchased or leased other premises within the City of New York.

Escrow accounts shall be established on the dates provided in this section. However, the escrow account shall not be established more than two months prior to the expiration of the tenant's lease, except by mutual consent of the owner and tenant.

(a) Lease Termination

In the event that an *eligible tenant* has a lease with a term of at least one year, and the owner of an *applicable building* notifies said *eligible tenant* that his tenancy will be terminated on the date said tenant's lease expires, or, if there has been no such notification by the owner and said tenant's lease has not been renewed, such owner shall establish the escrow account at least 30 days prior to the date of termination of tenancy.

(b) Holdover or Short-Term Lease

In the event that an *eligible tenant* has a lease of less than one year, or is a holdover tenant with no lease for the space in the *applicable building*, the owner of the *building* shall establish the escrow account not later than 90 days after said tenant notifies the owner of the date

15-543 (continued)

15-544

Prescribes the procedure for payment of funds from the escrow account to the tenant, or, if no eligible tenant, to BRAC.

BRAC has the responsibility of investigating whether the tenant has relocated within New York City. If the tenant is not an eligible tenant, BRAC issues a statement of non-eligibility, and the escrow property is paid to BRAC. A manufacturing tenant generally has 6 months from the date the escrow account is established to seek payment of the account, or becomes ineligible for any relocation assistance.

15-545

Disputes as to the computation of the relocation payment will be resolved by BRAC.

15-546

Provides for direct payment to BRAC, without the necessity of an escrow account, in certain situations, e.g. where the space being converted is vacant.

said tenant intends to vacate the premises, or 30 days prior to said tenant's date of termination of tenancy, whichever occurs later.

An owner of an *applicable building* shall notify the *eligible tenant* in writing of the establishment of the escrow account within 5 days of the establishment of such account. Such notice shall include a copy of the escrow agreement.

15-544

Payment of Funds from Escrow Account

a) An *eligible tenant* shall receive its share of the direct help payment from the funds held in the escrow account pursuant to the provisions of Section 15-541 within 15 days of the date the *Corporation* verifies that such tenant is an *eligible tenant.*

b) If the *eligible tenant* fails to seek verification from the *Corporation* within 6 months after the earlier of the date such tenant vacates space in the *applicable building* or the date of the establishment of the escrow account, the escrow property shall be paid to the *Fund.* Such tenant shall then be ineligible to receive any relocation assistance either in the form of a direct help payment or assistance from the *Corporation.* Notwithstanding the above, where there is a dispute as to payment of the escrow account to be resolved under the provisions of Section 15-545, and the expiration of the above 6-month period has resulted in payment to the *Fund,* such tenant shall remain eligible to receive relocation payment from the *Corporation* in an amount equal to the direct help payment for which such tenant was eligible under Section 15-541.

c) In the event that a commercial or manufacturing tenant does not relocate in New York City, or for any other reason is not an *eligible tenant,* the *Corporation* shall issue a statement of non-eligibility. Within 15 days of the issuance of said statement, the *Fund* shall receive payment from the escrow account. The acceptance of the direct help payment by the *Corporation* shall not imply the authorization of the direct help payment credit by the Board of Standards and Appeals. Should such authorization be denied, any funds paid to the *Corporation* under this provision shall be considered part of the *conversion contribution.*

15-545

Disputed Payments from Escrow Account

Any dispute in the computation of the amount of the direct help payment to each recipient in accordance with the provisions of Section 15-541 through 15-543, or as to the eligibility of a commercial or manufacturing tenant for relocation assistance, shall be resolved by the Board of Directors of the *Corporation* within six months.

15-546

Direct Payment to the Corporation

An owner shall make the direct help payment to the *Corporation,* and shall not be required to establish an escrow account, in the following situations:

(a) where the *floor area* to be converted has been vacant since September 1, 1980;

15-546 (continued)

15-55

Permits the BSA to authorize discounts or exclusions from the relocation program. This decreases the number of situations in which developers must pay the full conversion contribution.

15-551

No payment is required if the space was used for residential purposes on September 1, 1980.

15-552

No payment is required for space not used by industrial users on September 1, 1980, provided industrial uses occupied no more than 50% of the building. If offices occupy less than 50% of the building, the conversion contribution is required on all space converted.

STATUTORY TEXT

(b) where the *floor area* is located in a R6, R7, R8, R9, R10, C1, C2 or C4 district, and such *floor area* has been vacant since January 1, 1981;

(c) where the *floor area* to be converted has been vacant for more than 24 months prior to the filing for the authorization for the direct help payment discount under Section 15-541; or

(d) where the owner applies to the Board of Standards and Appeals for an authorization for a discount for certain vacated space under Section 15-553.

An owner shall make the direct help payment to the *Corporation* prior to the granting of any authorization for a direct help payment discount.

The acceptance of the direct help payment by the *Corporation* shall not imply the authorization of the direct help payment credit by the Board of Standards and Appeals. Should such authorization be denied, any funds paid to the *Corporation* under this provision shall be considered part of the *conversion contribution.*

15-55

Additional Discounts or Exclusions from Conversion Contributions

A copy of any application under this section shall be sent by the applicant to the Office of Economic Development at the time of filing. The Office of Economic Development may provide additional information to the Board.

Authorizations issued under this section shall not expire during the existence of the Relocation Incentive Program.

15-551

Existing Conversion

If the Board of Standards and Appeals determines that *floor area* was used as *dwelling units* or *Joint living-work quarters for artists* on September 1, 1980, the Board shall authorize that such *floor area* not be included in computing the *conversion contribution,* provided that an application for an authorization under this provision was filed with the Board of Standards and Appeals prior to September 1, 1981.

15-552

Non-industrial Related Uses

The Board of Standards and Appeals shall issue an authorization that *floor area* used for a *use* not listed in Section 15-58, shall not be included in the computation of the *conversion contribution* provided that:

(a) The Board determines that *uses* not listed in Section 15-58 occupied at least 50% of the *floor area* of the *building* on September 1, 1980, and

(b) Such *floor area* was not vacant on September 1, 1980.

For the purposes of this section, common areas of the *building* shall not be included in the computation of the *floor area* occupied by such *uses.* The burden of proof is on the applicant to show that the requirements of this section have been met.

15-553

Prevents developers from having to make relocation payments to different tenants over lengthy time periods. It encourages both landlords and tenants to vacate within a 6 month period.

15-554

No payment is required for space vacant 5 years or more.

15-56

Specifies when BRAC must verify whether a tenant is an eligible tenant.

15-571

Ties the Relocation Incentive Program to the remainder of the new chapter, so that if the Relocation Incentive Program is found by a court to be invalid, the entire new chapter will be deemed invalid as well.

STATUTORY TEXT

15-553

Discount for Certain Vacated Space

The Board of Standards and Appeals may authorize a discount from the *conversion contribution* in an amount equal to 50% of the *conversion contribution* where there is substantial evidence to support a finding that an *eligible tenant* had

(a) vacated *floor area* in an *applicable building* more than 6 months prior to the expiration of said tenant's lease, and there is no evidence of harassment by the landlord or the landlord's agent; or

(b) vacated *floor area* in an *applicable building* not earlier than 6 months prior to the expiration of said tenant's lease, and the owner can demonstrate that said tenant was offered a lease renewal or extension at fair market rental not less than 6 months prior to the expiration of said lease. Such renewal or extension shall have been for a period of at least 3 years unless the landlord notified said tenant in writing that:

(i) such lease renewal or extension was an interim measure until the conversion of such *floor area*, and

(ii) at the termination of such interim renewal or extension said tenant would receive a direct help payment in accordance with the provisions of Section 15-54.

Where the Board issues on authorization under this section, the direct help payment shall be made to the *Corporation*.

15-554

Exclusion for Space Vacant 5 years

Upon proof that *floor area* has been vacant for a minimum of 5 years, the Board of Standards and Appeals shall issue an authorization that no *conversion contribution* shall be required to be made for such *floor area*.

15-56

Verification of Relocation Requirements

Within 15 days after a request by a tenant, but in no event prior to the date of relocation, the *Corporation* shall determine whether a commercial or manufacturing tenant is an *eligible tenant* and, in appropriate cases, verify that relocation has occurred. The *Corporation* shall also determine whether there has been relocation to a smaller space under the provisions of Section 15-541b. Notwithstanding the above, a commercial or manufacturing tenant may notify the *Corporation*, prior to relocation, of the date of relocation and the *Corporation* may agree with such tenant to determine whether such tenant is an *eligible tenant* on a specific date subsequent to the relocation.

15-57

Special Provisions

15-571

Non-Separability

The provisions of Sections 15-50 through 15-58 (Relocation Incentive Program) shall be deemed to be an integral part of Article I, Chapter 5. If any sentence,

15-571 (continued)

15-572

The Relocation Incentive Program ends on January 1, 1991, unless the City Planning Commission re-adopts it.

15-573

The New York Real Property Tax Law provides a system of relocation benefits. Pursuant to a provision in that law, the Relocation Incentive Program included in the Zoning Resolution applies in lieu of that state authorized program.

15-58

Uses on these lists are treated as industrial and industrial related uses. Those in Group A are entitled to a full relocation benefit of $4.50 per square foot; those in Group B will receive $2.25 per square foot.

clause, paragraph or part of Sections 15-50 through 15-58 shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not be confined in its operation to the sentence, clause, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered, but shall be construed to invalidate and impair the remainder of Article I, Chapter 5, in addition thereto. However, any such judgment shall not act to invalidate any other sentence, paragraph, clause, section or chapter of the Zoning Resolution.

15-572

Termination

The provisions of Sections 15-50 through 15-58 shall cease to have all force and effect on January 1, 1991, unless re-adopted by the City Planning Commission on or before such date.

15-573

Applicability

Where an *applicable building* is being converted, the provisions of Sections 15-50 through 15-58 (Relocation Incentive Program) shall apply in lieu of the relocation benefits authorized under subdivision 10 of Section 489 of the New York Real Property Tax Law.

15-58

Eligible Commercial and Manufacturing Uses

15-581

Group A

The following *uses* are included in Section 15-581. *Accessory uses* shall be considered part of such *use*. *Uses* which are encompassed within categories under more than one Use Group are included in Section 15-581 as long as one such category is included below:

In Use Group 9A:

Blueprinting or Photostating establishments

Medical or dental laboratories

Printing establishments

In Use Group 10A:

Motion Picture Production Studios

Radio or television studios

In Use Group 11A:

All *uses*

In Use Group 16A:

Blacksmith shops

Carpentry, custom woodworking or furniture making shops

15-58 (continued)

Household or office equipment or machinery repair shops
Machinery rental or sales establishments
Mirror silvering or glass cutting shops
Silverplating shops
Soldering or welding shops
Tool, die or pattern-making establishments or similar small machines

In Use Group 16D:

Carpet cleaning establishments
Dry cleaning or cleaning and dyeing establishments
Laundries
Photographic developing or printing establishments

In Use Group 17A:

Produce or meat markets, wholesale

In Use Group 17B:

All *uses*

In Use Group 18D, only for the purposes of the Relocation Incentive Program

All *uses.*

15-582

Group B

The following *uses* are included in Section 15-582. *Accessory uses* shall be considered part of such *uses. Uses* which are encompassed within categories under more than one Use Group are included in Section 15-582 as long as one such category is included below:

In Use Group 7B:

Exterminators
Gun Repair
Sailmaking Establishments
Taxidermists shops
Trade Embalmers
Window cleaning contracting establishments

In Use Group 8B:

Upholstering shops

In Use Group 9A:

Musical instrument repair shops
Plumbing, heating or ventilating equipment showrooms
Studios, art, music, dancing, or theatrical

15-58 (continued)

23-01

Cross references the new Article I, Chapter 5, regulations with the existing residential district regulations.

Typewriter or other small business machine sales, rental, or repairs

Umbrella repair shops

In Use Group 9B:

Hair products for head wear wholesaling

In Use Group 10A:

Depositories for storage of office records, etc.

In Use Group 10B:

All *uses*

In Use Group 11B:

All *uses*

In Use Group 16A:

Electrical, glazing, heating, painting, paperhanging, plumbing, roofing, or ventilating contractors establishments

Poultry or rabbit killing establishments

Sign painting shops

In Use Group 16D:

Linen, towel, or diaper supply establishments

Moving or storage offices

Packing or crating establishments

Warehouses

Wholesale establishments

In Use Group 17A:

Building material and contractors yards

In Use Group 17C:

Trucking terminals or motor freight stations

In Use Group 18B, only for the purposes of the Relocation Incentive Program

All *uses.*

RESIDENCE DISTRICTS

Chapter 3 Bulk Regulations for Residential Buildings in Residence Districts

* * *

23-01

Applicability of this Chapter

* * *

In Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the conversion to *dwelling units* of non-*residential buildings*, or portions thereof, erected prior

23-01 (continued)

31-15 and 31-16

These general descriptions of C5 and C6 districts are being modified to indicate that light manufacturing is a permitted use and to acknowledge the creation of mixed use districts.

32-00

Cross references the new Article I, Chapter 5, regulations with the existing commercial district use regulations.

It also establishes light manufacturing (Use Group 17) as a permitted use in C5 and C6 districts in Manhattan Community Boards 1 to 6.

to December 15, 1961 shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan), unless such conversions meet the requirements for new *residential development* of Article II (Residence District Regulations).

* * *

COMMERCIAL DISTRICT REGULATIONS

Chapter 1 Statement of Legislative Intent

* * *

31-15

C5 Restricted Central Commercial Districts

These districts are designed to provide for office buildings and the great variety of large retail stores and related activities which occupy the prime retail frontage in the central business district, and which serve the entire metropolitan region. The district regulations also permit a few high-value custom and other manufacturing establishments which are generally associated with the predominant retail activities, and which depend on personal contacts with persons living all over the region. The district regulations are also designed to provide for continuous retail frontage.

31-16

C6 General Central Commercial Districts

These districts are designed to provide for the wide range of retail, office, amusement service, custom **and other** manufacturing, and related uses normally found in the central business district and regional commercial centers, but to exclude non-retail uses which generate a large volume of trucking.

* * *

Chapter 2 Use Regulations

32-00 GENERAL PROVISIONS

In order to carry out the purposes and provisions of this resolution, the *uses* of *buildings* or *other structures* and of tracts of land have been classified and combined into Use Groups. A brief statement is inserted at the start of each Use Group to describe and clarify the basic characteristics of that Use Group. Use Groups 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, including each use listed separately therein, are permitted in Commercial Districts as indicated in Sections 32-11 to 32-25, inclusive.

In Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the conversion to *dwelling units of* non-*residential buildings*, or portions thereof, erected prior to December 15, 1961 shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan), unless such conversions meet the requirements for new *residential development* of Article II (Residence District Regulations).

All C6-1A Districts shall comply with the regulations of C6-1 Districts except as set forth in Sections 32-15, 32-16, 32-17, 32-20, and 32-644.

In a C8 District, any *use* listed in Use Group 11A or 16 which involves the production, processing, cleaning, servicing, testing, or repair of products, goods, or materials shall conform to the performance standards for the M1 Districts as set forth in Sections 42-20 to 42-28 inclusive, relating to Performance Standards.

32-00 (continued)

33-01

Cross references the new Article I, Chapter 5, regulations with the existing commercial district bulk regulations for commercial or community facility buildings.

34-01

Cross references the new Article I, Chapter 5, regulations with the existing commercial district bulk regulations for residential buildings.

35-01

Cross references the new Article I, Chapter 5, regulations with the existing commercial district bulk regulations for mixed buildings.

STATUTORY TEXT

In C5 and C6 Districts in Manhattan Community Districts 1, 2, 3, 4, 5 and 6, all existing lawful *uses* in Use Groups 17B or E in existing enclosed *buildings* erected prior to December 15, 1961 shall be considered conforming and shall conform to the performance standards for the M1 Districts as set forth in Sections 42-20 to 42-28 inclusive relating to Performance Standards. Such *uses* may be extended within *buildings*.

The following chart sets forth the Use Groups permitted in the various Commercial Districts.

* * *

COMMERCIAL DISTRICTS

Chapter 3 Bulk Regulations for Commercial or Community Facility Buildings in Commercial Districts

* * *

33-01

Applicability of this Chapter

* * *

In Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the conversion to *dwelling units of* non-*residential buildings,* or portions thereof, erected prior to December 15, 1961 shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan), unless such conversions meet the requirements for new *residential development* of Article II (Residence District Regulations).

COMMERCIAL DISTRICTS

Chapter 4 Bulk Regulations for Residential Buildings in Commercial Districts

* * *

34-01

Applicability of this Chapter

* * *

In Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the conversion to *dwelling units* of non-*residential buildings,* or portions thereof, erected prior to December 15, 1961 shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan), unless such conversions meet the requirements for new *residential development* of Article II (Residence District Regulations).

* * *

COMMERCIAL DISTRICTS

Chapter 5 Bulk Regulations for Mixed Buildings in Commercial Districts

* * *

35-01

Applicability of this Chapter

* * *

In Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the conversion to *dwelling units* of non-*residential buildings,* or portions thereof, erected prior

35-01 (continued)

41-11

General purposes for the new mixed use districts in Northeast Chelsea and the Garment Center East.

42-132

Cross references the regulations for the new mixed use districts.

42-133

Grandfathers existing illegal residential units in the Northeast Chelsea "M" Zone which meet the size and light and air standards of the new mixed use districts.

STATUTORY TEXT

to December 15, 1961 shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan), unless such conversions meet the requirements for new *residential development* of Article II (Residence District Regulations).

* * *

MANUFACTURING DISTRICT REGULATIONS

* * *

41-10 PURPOSES OF SPECIFIC MANUFACTURING DISTRICTS

41-11

M1 Light Manufacturing Districts
(High Performance)

These districts are designed for a wide range of manufacturing and related uses which can conform to a high level of performance standards. Manufacturing establishments of this type, within completely enclosed buildings, provide a buffer between Residence (or Commercial) Districts and other industrial uses which involve more objectionable influences. New residential development is excluded from these districts, except for joint living-work quarters for artists in M1-5A and M1-5B Districts **and dwelling units in M1-5M and M1-6M Districts,** both to protect residences from an undesirable environment and to ensure the reservation of adequate areas for industrial development.

42-131

M1-5A and M1-5B Districts

Special use regulations applicable in M1-5A and M1-5B Districts are set forth in Section 42-14D (Special Uses in M1-5A and M1-5B Districts) **M1-5A M1-5B**

42-132

M1-5M and M1-6M Districts

In M1-5M and M1-6M Districts in Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the conversion to *dwelling units* of non-*residential buildings* or portions thereof, erected prior to December 15, 1961 shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan). M1-5M M1-6M

42-133

Provisions for Dwelling Units in Certain M1-5 or M1-6 Districts

In M1-5 and M1-6 Districts located within the rectangle formed by West 23rd Street, Fifth Avenue, West 31st Street, and Eighth Avenue, no new *dwelling units* shall be permitted. However, *dwelling units* which were occupied on September 1, 1980, are a permitted *use* provided the Board of Standards and Appeals finds that:

(a) such *dwelling units* comply with the requirements of Section 15-22 (Dwelling Unit Size) and Section 15-23 (Light and Air Provisions), and

42-133 (continued)

42-14D and 42-141

Revisions to the SoHo/NoHo Text

The text is reorganized to establish three categories of regulations governing: 1) Joint living-work quarters for artists; 2) commercial and manufacturing uses on the ground floor; and 3) entertainment facilities. This reorganization is needed because of confusing language in the current provisions. This changes the ground floor and entertainment regulations which inadvertently only apply if there are Joint living-work quarters for artists in the building.

Generally, buildings under 5,000 square feet may be converted to artists quarters. However, on Broadway conversions are limited to buildings of less than 3,600 square feet.

The differences with the existing text are as follows:

A. City Planning Commission Special Permit (Section 42-14D.1.(b))

A City Planning Commission Special Permit is established for all oversized buildings. This is the same Special Permit that is provided in the new mixed use districts of Southeast Chelsea and the Garment Center East, and in the Special Lower Manhattan Mixed Use District. The Special Permit will require proof that:

1. The conversion will not harm the industrial sector of the City's economy.
2. Based on the availability of alternative space for industrial use, the conversion will not preempt space necessary for industrial uses.
3. Conforming use tenants must have been given the opportunity to remain in the building at reasonable fair market terms.
4. The increased residential density will not be a burden on neighborhood facilities.

To assist the Commission in determining these findings, the Office of Economic Development will provide information on economic conditions.

There are two other requirements of the Special Permit:

1. All units permitted by the Special Permit must meet the housing standards, i.e., unit size, and light and air orientation.
2. Existing residential units in excess of the permitted conversion ratio may receive a Special Permit without meeting all of the findings, if there is no history of forcing industrial tenants to vacate.

B. Provisions in the current text which grandfather certain non-conforming Joint living-work quarters for artists, or non-artists in NoHo (if these NoHo residents were in occupancy in 1976) are being phased out. After September 1, 1981, no new applications under these grandfather provisions will be accepted. This change is made to simplify the bureaucratic burden in determining who qualifies for grandfathering. It has become increasingly difficult to assess whether the conditions needed to approve the grandfather rule existed in 1976. The existing regulations which require industrial use on the second floor of buildings between 3,600 and 5,000 square feet are repealed. In 1976 only 30 percent of the second floors of buildings under 5,000 square feet were occupied by industrial uses. The Commission did not eliminate this provision then because of a technical problem in the way the text had been calendared.

C. Open Space Equivalent (Section 42-14D.1.(e))

To provide open space, this section requires buildings with 15 units to develop 30 percent of the gross roof area for tenant recreational use. For each unit over 15, an additional 100 square feet of roof area shall be developed for this use, up to a maximum of 50 percent of the roof area.

STATUTORY TEXT

(b) an alteration application to permit such *use* is filed with the Department of Buildings prior to September 1, 1981.

Such *dwelling units* are subject to the requirements of Section 15-50 et seq.

* * *

42-14

[Delete entire Section 42-14 D.]

42-14D

Special Uses in M1-5A and M1-5B Districts

1. *Joint living-work quarters for artists* in *buildings* in M1-5A and M1-5B Districts provided:

(a) Such *building* was erected prior to December 15, 1961.

(b) The *lot coverage* of such *building* does not exceed 5,000 square feet except that in *buildings* with frontage along Broadway the *lot coverage* shall not exceed 3,600 square feet. However, such quarters may also be located in a *building* occupying more than 5,000 square feet of *lot area* if the entire *building* was held in cooperative ownership by artists on September 15, 1970. *Joint living-work quarters for artists* are permitted in other *buildings* or other structures only by special permit of the City Planning Commission pursuant to Section 74-782.

(c) In M1-5B Districts in *buildings* occupying less than 3,600 square feet of *lot area, Joint-living work quarters for artists* may not be located below the floor level of the second *story* unless modified by the City Planning Commission pursuant to Section 42-141 (Modification by Certification of the City Planning Commission of *uses* in M1-5A and M1-5B Districts).

(d) In *buildings* occupying more than 3,600 square feet of *lot area, Joint living-work quarters for artists* may not be located below the floor level of the 2nd *story* unless modified by the City Planning Commission pursuant to Section 42-141 (Modification by Certification of the City Planning Commission of *uses* in M1-5A and M1-5B Districts).

(e) At least 30 percent of the gross roof area of a *building* containing 15 *Joint living-work quarters for artists* shall be developed for recreational *use*. For each additional *Joint living-work quarter for artists*, 100 square feet of additional roof area shall be developed for recreational *use* up to a maximum of 50 percent of the gross roof area. This recreational area shall be accessible to all the occupants of said *building* and their guests. No fees shall be charged to the occupants or their guests. The provisions of this section may be modified pursuant to Section 42-141.

(f) In any *building* which as a result of zoning map change CP-23167 is zoned M1-5B, any existing occupant of a *Joint living-work quarters for artists* which cannot meet the qualifications of the Department of Cultural Affairs may remain as a lawful *use*. This lawful *use* is non-transferable and ceases immediately upon the vacating of such space. Such occupants must register with the Department of Cultural Affairs prior to September 1, 1981 in order to preserve their lawful status in their existing space.

(g) In a *building* for which an alteration permit for *Joint living work quarters for artists* was requested prior to the effective date of amendment (CP-23170), such alterations may comply with the regulations effective prior to such date.

42-14D.1.(h)

The Relocation Incentive Program incorporated in Article I, Chapter 5, will provide relocation benefits in SoHo/NoHo. A more detailed explanation is included elsewhere.

42-14D2.

The ground floor must be reserved for manufacturing uses, unless it is in an under 3,600 square foot building in the M1-5A portion of SoHo (unchanged).

42-14D3.

Regulates entertainment uses (unchanged).

—No restaurant of more than 5,000 square feet

—No dancing except by BSA Special Permit

—Limitations on other entertainment uses.

STATUTORY TEXT

(h) Prior to the issuance of an Alteration Permit for *Joint living-work quarters for artists use*, the owner shall pay a conversion contribution in accordance with the provisions of Article 1, Chapter 5.

2. Commercial and manufacturing *uses* below the floor level of the second *story* provided:

(a) In M1-5A Districts, in *buildings* occupying more than 3,600 square feet of *lot area*, only *uses* listed in Use Groups 7, 9, 11, 16, 17A, 17B, 17C or 17E shall be allowed below the floor level of the second *story* of such *buildings*, unless modified by the City Planning Commission pursuant to Section 42-141 (Modification by Certification of the City Planning Commission of *uses* in M1-5A and M1-5B Districts) or Section 74-781 (Modification by Special Permit of the City Planning Commission of *uses* in M1-5A and M1-5B Districts);

(b) In M1-5B Districts, in any *buildings*, only *uses* listed in Use Groups 7, 9, 11, 16, 17A, 17B, 17C or 17E shall be allowed below the floor level of the second *story* of such *buildings* unless modified by the City Planning Commission pursuant to Section 42-141 (Modification by Certification of the City Planning Commission of *uses* in M1-5A and M1-5B Districts) or Section 74-781 (Modification by Special Permit of the City Planning Commission of *uses* in M1-5A and M1-5B Districts);

3. In addition to the above restrictions, the following *uses* are not permitted as of right in any *building* or *other structure* or on any tract of land in M1-5A or M1-5B Districts:

(a) All eating or drinking places as listed in Use Groups 6A, 10A or 12A of more than 5,000 square feet of floor space, except that any eating or drinking place which is listed in Use Group 6A, which had obtained an Alteration Permit prior to July 14, 1976 is permitted.

(b) Eating or drinking places of less than 5,000 square feet without restriction on entertainment or dancing as listed in Use Groups 10A or 12A. However, such *uses* are permitted only by special permit of the Board of Standards and Appeals in accordance with standards set forth in Section 73-241.

(c) Non-Commercial clubs as listed in Use Groups 6E and 14B.

(d) All *uses* listed in Use Group 8A except that theaters are permitted only by special permit of the Board of Standards and Appeals in accordance with standards set forth in Section 73-202. However, this provision shall not apply to theaters with a capacity of less than 100 seats.

(e) Banquet Halls, Wedding Chapels, Catering Establishments, Physical culture or health establishments, including gymnasiums, reducing salons, massage establishments, or steam baths. However, this provision shall not apply to gymnasiums occupying not more than 10,000 square feet and used exclusively for the following sports facilities: basketball, handball, squash, and tennis.

(f) All *uses* listed in Use Group 12A.

(g) All *uses* listed in Use Group 13 except that theaters are permitted only by special permit of the Board of Standards and Appeals in accordance with standards set forth in Section 73-202. However, this provision shall not apply to theaters with a capacity of less than 100 seats.

42-14D4.

This provision permits a non-conforming ground floor use to be changed only to a conforming use (manufacturing) or Use Group 6 (retail).

42-141

The existing minor modification procedures are being amended as previously indicated to phase out the grandfather provisions and to eliminate waivers of ground floor regulations for buildings to meet the IRS 80-20 rule for co-ops.

A new paragraph permits modification of the new open space requirements.

Additional SoHo/NoHo regulations are in 43-17.

43-01

Cross references the new Article I, Chapter 5, regulations with the existing manufacturing district bulk regulations.

STATUTORY TEXT

4. (a) Any *use* which became *non-conforming* after April 27, 1976 shall be governed by Article V of this resolution (Non-Conforming Uses and Non-Complying Buildings), except that in M1-5A and M1-5B districts Section 52-37 is hereby superseded and replaced by Section 42-14 D 4 (b).

(b) In M1-5A and M1-5B districts any *non-conforming use* listed in Use Groups 5, 6, 8, 10, 12, 13, 14, or 15 may be changed, initially or in any subsequent change, only to a conforming *use* or a *use* listed in Use Group 6.

[Delete entire Section 42-141]

NEW 42-141

Modification by Certification of the City Planning Commission of uses in M1-5A and M1-5B Districts

A developer must send a copy of any request for modification pursuant to this section to the applicable Community Board at least twenty days prior to the next regularly scheduled Community Board meeting. If the Community Board elects to comment on such requests it must do so within 31 days of such notification.

In M1-5A and M1-5B Districts the requirements of Section 42-14D 1.(c) or (d) or Section 42-14 D 2. (a) or (b) may be modified provided that either:

1. Such space was vacant as of January 28, 1976 and an application under this provision was filed with the City Planning Commission prior to September 1, 1981, or

2. Such space was occupied by a *Joint living-work quarters for artists as* of January 28, 1976; and an application under this provision was filed with the City Planning Commission prior to September 1, 1981, or

3. The Commission finds that the space below the floor level of the second *story* is required by an artist whom the Department of Cultural Affairs has certified as working in a heavy or bulky medium which is not easily transported to the upper floors.

The requirements of Section 42-14D 1. (e) may be modified provided that the Chairman of the Commission has administratively certified to the Department of Buildings that the roof either is unsuited for open space *use* or cannot be made suitable for open space *use* at reasonable cost.

Chapter 3 Bulk Regulations

* * *

43-01

Applicability of this Chapter

* * *

In Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the conversion to *dwelling units* of non-*residential buildings*, or portions thereof, erected prior to December 15, 1961 shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan), unless such conversions meet the requirements for new *residential development* of Article II (Residence District Regulations).

43-17

Regulates mezzanines and establishes a minimum unit size in Joint artist living-work quarters of 1,200 square feet.

43-171

Minor Modification

This section permits the City Planning Commission to grant minor modifications regarding the size of the dwelling units in SoHo/NoHo if such a unit is within 5 percent of the 1,200 square foot minimum.

52-31

In the Resolution, this provision currently waives all bulk regulations when a building is converted from a non-conforming to a conforming use, i.e., converting a factory to a residence in a C-1 district. This new provision will eliminate this waiver and require conversions to residential use in Manhattan Community Boards 1 to 6 to meet our new standards.

STATUTORY TEXT

43-17

Special Provisions for Joint Living-Work Quarters for Artists in M1-5A and M1-5B Districts

In the district indicated, no *building* containing *Joint living-work quarters for artists* shall be enlarged, except that mezzanines are allowed within individual quarters, provided that such mezzanines do not exceed 33⅓ percent of the gross *floor area* of such individual quarters. No mezzanine shall be included as *floor area* for the purpose of calculating minimum required size of a *Joint living-work quarters for artists.*

In the districts indicated no *building* containing *Joint living-work quarters for artists* shall be subdivided into quarters of less than 1,200 square feet except where no *story* contains more than one *Joint living-work quarters for artists* **unless modified pursuant to Section 43-171.**

In the districts indicated, two or more *buildings* which are separated by individual load bearing walls and contain *Joint living-work quarters for artists,* each of which *building* conforms to the regulations set forth in Section 42-14 may be combined to produce a *lot area* covered by *buildings* in excess of 3,600 square feet.

43-171

Minor Modifications

On application, the Chairman of the City Planning Commission may grant minor modifications to the requirements of Section 43-17 relating to *Joint living-work quarters for artists* size, provided that the Chairman of the City Planning Commission had administratively certified to the Department of Buildings that the division of one or more *stories* into *Joint living-work quarters for artists* with an area of at least 1,200 square feet cannot be accomplished without practical difficulties because the *floor area* of such *story,* exclusive of exterior walls and common areas, is within 5 percent of a multiple of 1,200 square feet.

A developer must send a copy of any request for a modification pursuant to this section to the applicable Community Board at least twenty days prior to the next regularly scheduled Community Board meeting.

52-30 CHANGE OF NON-CONFORMING USE

52-31

General Provisions

For the purposes of this Chapter, a change of *use* is a change to another *use* listed in the same or any other Use Group; however, a change in ownership or occupancy shall not, by itself, constitute a change of *use.*

A *non-conforming use* may be changed to any conforming *use,* and the applicable district *bulk* regulations and *accessory* off-street parking requirements shall not apply to such change of *use* or to alterations made in order to accommodate such conforming *use,* but shall apply to any *enlargement.* **However, notwithstanding the provisions above, in Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the conversion to *dwelling units of* non-*residential buildings,* or portions thereof, erected prior to December 15, 1961 shall be subject to the provisions of Article I, Chapter 5 (Residential Conversion of Existing Non-Residential Buildings in Community Districts 1, 2, 3, 4, 5, and 6 in the Borough of Manhattan), unless such conversions meet the requirements for new *residential development* of Article II (Residence District Regulations).**

52-31 (continued)

72-01

This gives the BSA the power to grant authorizations.

72-221

Requires relocation incentives when variances are granted for loft conversions.

72-31

This specifies that the Board may issue authorizations for discounts against, or exclusions from, the conversion contribution when the building owner has complied with the Relocation Incentive Program.

STATUTORY TEXT

A *non-conforming use* may be changed to another *non-conforming use* only in accordance with the provisions of this Chapter.

Any such change of *use* permitted by this Chapter shall conform to the applicable district regulations on *accessory* off-street loading berths as set forth in Section 52-41 (General Provisions) and on *accessory signs,* except that in Residence Districts such change shall conform to the regulations on *accessory signs* applicable in a C1 District.

72-01

General Provisions

* * *

(e) To hear and decide applications for such authorizations as are set forth in this resolution and enumerated in Section 72-30.

72-221

Conversion Contribution

In Manhattan Community Districts 1, 2, 3, 4, 5, and 6, the granting of a variance to convert an existing non-*residential building* or other structure, or portion thereof, which on (the effective date of this amendment) was used for a *use* listed in Section 15-58, or which was vacant on (the effective date of this amendment) and was used within three years prior to (the effective date of this amendment) for a *use* in such Use Groups, shall be conditioned upon payment of a conversion contribution in accordance with the provisions of Section 15-50.

A copy of the application for a variance which, if granted, would require the payment of conversion contribution, as specified above, shall be provided to the *Industrial Loft Advisory Council,* c/o Mayor's Office of Economic Development.

72-30 AUTHORIZATIONS

72-31

General Provisions

The Board of Standards and Appeals shall have the power to issue authorizations on such matters as are set forth in this section. The Board shall hear and decide applications for authorizations in an administrative proceeding in the same manner in which it hears appeals for interpretation pursuant to Section 72-10.

72-32

Authorizations Relating to the Conversion of Non-Residential Buildings to Dwelling Units or Joint Living-Work Quarters for Artists

72-321

Credit for Direct Help or Additional Discounts or Exclusions from Conversion Contributions.

In accordance with the provisions of Section 15-54 (Direct Help), the Board may issue an authorization for a credit against payment of all or part of

72-321 (continued)

74-711

Requires conversion contributions or direct help payments when conversions are permitted by Landmark Preservation Special Permit.

any conversion contribution required pursuant to Section 15-53 and 72-221 (Conversion Contributions).

If the Board determines that *floor area* was used as *dwelling units* or *Joint living-work quarters for artists* on September 1, 1980, the Board shall authorize that such *floor area* not be included in computing the conversion contribution as provided in Section 15-551 (Existing Conversion).

If the Board determines that *floor area* was used for a *use* not listed in Section 15-58, the Board shall authorize that such *floor area* not be included in computing the conversion contribution as provided in Section 15-552 (Non-Industrial Related Uses).

If the Board finds that *floor area* was vacated under the conditions set forth in Section 15-553 (Discount for Certain Vacated Space), the Board may authorize a discount from the conversion contribution in an amount equal to 50% of the conversion contribution for such *floor area.*

If the Board determines that *floor area* was vacant for a minimum of 5 years, the Board shall authorize that such *floor area* be excluded from payment of the conversion contribution, as provided in Section 15-554 (Exclusion for Space Vacant 5 Years).

74-711

Landmark Preservation In All Districts

In all districts, upon application of the Landmarks Preservation Commission, the City Planning Commission may permit modification of the *use* and *bulk* regulations applicable to *zoning lots* with existing *buildings,* provided that the following findings are made:

(a) That the said *zoning lot* contains a landmark designated by the Landmarks Preservation Commission, or that said *zoning lot* lies within a Historic District designated by the Landmarks Preservation Commission.

(b) That a program has been established for continuing maintenance that will result in the preservation of the subject *building* or *buildings.*

(c) That any modification of *bulk* regulations will not result in an appreciable increase of *building* volume on the zoning lot.

(d) That the modification of *use* regulations will have minimal adverse effects on the conforming *uses* in the surrounding area.

Before applying to the City Planning Commission for such modification of *bulk* and *use* regulations, the Landmarks Preservation Commission shall obtain a report from the Department of Buildings and the Fire Department.

For such existing *buildings* or portion thereof being converted to *residential use,* the City Planning Commission shall make the following findings:

(1) that the gross *residential floor area* per *room* shall be at least equal to the requirement set forth herein:

Total Existing FAR	*Required Gross Floor Area Per Room (S.F.)*
below 3.4	215
between 3.4 to 7.5	240
above 7.5	300

74-711 (continued)

74-781

This is the current special permit in Soho/Noho, which permits the waiver of the ground and second floor requirements of industrial use.

74-782

Special Permit

To provide increased flexibility to account for possible changes in economic conditions, the City Planning Commission may grant a Special Permit to increase the proportion of residential uses. The Commission will have to make the following findings:

1. The conversion will not harm the industrial sector of the City's economy.
2. Based on the availability of alternative space for industrial use, the conversion will not preempt space necessary for industrial uses.
3. Conforming use tenants must have been given the opportunity to remain in the building at reasonable fair market terms.

(2) that for *buildings* with a total existing FAR above 7.5, there shall be at least 12 square feet of social or recreational space for each *residential room* except where the Landmarks Preservation Commission certifies that the provision of such space will adversely affect the landmark.

(3) that the gross *floor area* of any mezzanine constructed within a *dwelling unit* shall not exceed 33⅓ percent of the *floor area* contained within the residential unit. The *floor area* of such mezzanine shall not be included in gross residential *floor area* for purposes of determining the minimum required number of *residential rooms* stated in (1) above.

(4) that the design of *building* interiors will result in interior useable space of high quality and amenity in terms of such elements as dwelling size, privacy, ventilation and storage facilities.

When such conversions involve the relocation of non-residential tenants the Commission shall require the payment of a conversion contribution in accordance with the provisions of Section 15-50 through Section 15-58.

The City Planning Commission may prescribe appropriate additional conditions and safeguards which will enhance the character of the development of said *zoning lot.*

74-78

Conversions of Non-Residential Buildings

74-781

Modifications by Special Permit of the City Planning Commission of Uses in M1-5A and M1-5B Districts.

In M1-5A Districts the City Planning Commission may, after public notice and hearing and subject to Board of Estimate approval, permit modification of Section 42-14D [c, d, e or f] **1c, 1d, 2a, or 2b** provided that: The Commission finds that the owner of the space, **or a predecessor in title,** has made a good faith effort to rent such space to a mandated use at fair market rentals. Such efforts shall include but not be limited to: advertising in local and City wide press, listing the space with brokers, **notifying the New York City Office of Economic Development,** and informing local and city wide industry groups. Such efforts shall have been actively pursued for a period of no less than six months for *buildings* under 3,600 square feet and one year for *buildings* over 3,600 square feet prior to the date of the application for a special permit.

74-782

Residential Conversion in C6-2M, C6-4M, M1-5M, M1-6M, M1-5A, M1-5B and LMM Districts

In C6-2M, C6-4M, M1-5M and M1-6M, the City Planning Commission may permit modification of the requirements of Section 15-21; in M1-5A and M1-5B districts the City Planning Commission may permit the modification of the requirements of Section 42-14D 1(b) and in the LMM Special Purpose District the City Planning Commission may permit the modification of the requirements of Section 111-103, provided that the Commission finds that:

(a) The conversion will not harm the industrial sector of the City's economy;

(b) The applicant for the Special Permit or a predecessor in title, has made a good faith effort to rent such space to a mandated *use* at fair market

4. The increased residential density will not be a burden on neighborhood facilities.

To assist the Commission in determining these findings, the Office of Economic Development will provide information on economic conditions.

There are two other requirements of the Special Permit:

1. All units permitted by the Special Permit must meet the housing standards, i.e., unit size, and light and air orientation.
2. Existing residential units in excess of the permitted conversion ratio may receive a Special Permit without meeting all of the findings, if there is no history of forcing industrial tenants to vacate.

111-00 through 111-22

Special Lower Manhattan Mixed Use District

Several changes have been made in this Special District.

rentals. Such effort shall have been actively pursued for a minimum of one year immediately preceding the application. A good faith effort shall include, but not be limited to, advertising in local and City-wide press, listing the space with brokers doing business in the industrial real estate market, notifying the New York City Office of Economic Development, and informing local and City-wide industry groups. The applicant shall provide records showing the specific efforts to rent such space;

(c) There is sufficient alternative space to meet the needs of *commercial* and *manufacturing uses* in the area. The vacancy rate for industrial space in the area shall be one evidentiary element to prove the availability of alternative space;

(d) City, state and federal economic development programs, to the extent applicable, had been explored and found not suitable;

(e) The commercial and industrial tenants were given the opportunity by the applicant or predecessor in title to remain in the spaces at fair market rentals, and the property owner or predecessors in title did not cause the vacating of the space for the additional conversion;

(f) The neighborhood in which the conversion is taking place will not be excessively burdened by increased residential density; and

(g) All *dwelling units* or *Joint living-work quarters for artists* permitted by this special permit meet the standards of the applicable district for such units or quarters.

If the Commission determines that *floor area* in the *building*, or portion thereof, was occupied as *dwelling units* or *Joint living-work quarters for artists* on September 1, 1980, findings (b), (c), (d), and (e) shall not be required for the grant of a special permit for such *floor area*. However, the Commission must find that there is no substantial evidence that the landlord forced commercial or manufacturing tenants to vacate such *floor area* through harassment, non-renewal of leases, or the charging of rents in excess of the then fair market value.

The Commission shall request a report from the Office of Economic Development regarding information useful in making findings (a), (b), (c), (d) and (e). Said report is to be provided within 30 days of the Commission's request.

The applicant shall provide a copy of any application for a Special Permit under this section to the *Industrial Loft Advisory Council*, c/o Mayor's Office of Economic Development.

In granting the special permit under this Section, the Commission shall require the preservation of the maximum amount of *floor area* for *commercial* or *manufacturing uses* that the Commission deems feasible.

ARTICLE XI

Special Purpose Districts
(continued)

Chapter 1 Special Lower Manhattan Mixed Use District

111-00 GENERAL PURPOSES

The Special Distirct established in this Resolution is designed to promote and protect public health, safety, and general welfare. These general goals include, among others, the following specific purposes:

111-00 (continued)

STATUTORY TEXT

(a) To retain adequate wage, job producing stable industries within Lower Manhattan;

(b) To protect light manufacturing and to encourage stability and growth in Lower Manhattan by permitting light manufacturing and controlled residential uses to coexist where such uses are deemed compatible;

(c) To provide a limited new housing opportunity of a type and at a density appropriate to this industrial zone;

(d) To insure the provision of safe and sanitary housing units in converted buildings;

(e) To promote the most desirable use of land and building development in accordance with the Plan for Lower Manhattan as adopted by the City Planning Commission.

111-01 DEFINITIONS

For purposes of this Chapter, matter in italics is defined in Section 12-10 (definitions) and in Section 111-01 (Definitions).

Special Lower Manhattan Mixed Use District (repeated from Section 12-10)

The Special Lower Manhattan Mixed Use District is a Special Purpose District designated by the LETTERS "LMM," in which special regulations set forth in Article XI Chapter 1 apply. The LMM District and its regulations supplement or supersede those of the districts on which it is superimposed.

Loft Dwelling (Repeated from Section 12-10).

A "loft dwelling" is a *dwelling unit* in the Special Lower Manhattan Mixed Use District, in a *building* designed for non-*residential use* erected prior to December 15, 1961. Regulations governing *loft dwellings* are set forth in Article XI Chapter 1 (Special Lower Manhattan Mixed Use District).

Joint Living-Work Quarters for Artists (Repeated from Section 12-10).

A "joint living-work quarters for artists" consists of one or more *rooms* in a non-*residential building*, on one or more floors, which are arranged and designed for use by, and are used by not more than four non-related *artists*, or an *artist* and his family maintaining a common household, with lawful cooking space and sanitary facilities including the requirements of the Housing Maintenance Code, and including adequate working space reserved for the *artist* or *artists* residing therein. An *artist* is a person so certified by the New York City Department of Cultural Affairs. Regulations governing *joint living-work quarters for artists* are set forth in Section 42-14D (Use Group 17—Special Uses), 43-17 (Special Provisions for Joint Living-Work Quarters for Artists). 74-78 (Conversion of Non-Residential Buildings) and 42-141 (Modification by certification of the City Planning Commission of *uses* in M1-5A and M1-5B Districts), and Article XI Chapter 1 (Special Lower Manhattan Mixed Use District).

111-02 GENERAL PROVISIONS

The provisions of this Chapter shall apply to all *developments, enlargements, extensions, alterations, accessory uses, open and enclosed,* and changes in *uses* within the special district.

Loft Dwellings and *joint living-work quarters for artists* are permitted *uses* within the Special District, and are subject to the *bulk* requirements of Section 111-11 (Bulk Regulations for Buildings Containing Loft Dwellings or Joint Living-Work Quarters for Artists).

Except as modified by the express provisions of the District, the regulations of the underlying districts remain in effect.

11-101

Sandwiching

To allow flexibility in locating industrial and residential users in the same building, this section permits loft dwellings below commercial/industrial uses. This new provision will provide some degree of protection for industrial tenants located on upper floors of a building who wish to stay in a converted building.

111-103

City Planning Commission Special Permit

A Special Permit is established for all oversized buildings in Area B. This is the same Special Permit that is provided in the new mixed use districts and in SoHo/NoHo. The Special Permit will require proof that:

1. The conversion will not harm the industrial sector of the City's economy.
2. Based on the availability of alternative space for industrial use, the conversion will not preempt space necessary for industrial uses.
3. Conforming use tenants must have been given the opportunity to remain in the building at reasonable fair market terms.
4. The increased residential density will not be a burden on neighborhood facilities.

To assist the Commission in determining these findings, the Office of Economic Development will provide information on economic conditions.

There are two other requirements of the Special Permit:

1. All units permitted by the Special Permit must meet the housing standards, i.e., unit size, and light and air orientation.
2. Existing residential units in excess of the permitted conversion ratio may receive a Special Permit without meeting all of the findings, if there is no history of forcing industrial tenants to vacate.

STATUTORY TEXT

111-03 DISTRICT MAP

The District Map for the Special Lower Manhattan Mixed Use District (Appendix A) identifies specific areas comprising the Special District in which special zoning regulations carry out the general purposes of the Special Lower Manhattan Mixed Use District. These areas are as follows:

Area A—General Mixed Use Area

Area B_1—Limited Mixed Use Area

Area B_2—Limited Mixed Use Area

111-10 SPECIAL USE REGULATIONS

111-101

Location of Permitted Uses in Buildings Containing Loft Dwellings or Joint Living-Work Quarters for Artists.

Loft dwellings and *Joint living-work quarters for artists* are not permitted below the floor level of the third *story*. [*Loft dwellings* are not permitted on or below a *story* occupied by a *commercial use* or by any *use* listed in Use Group 17.]

111-102

Use Restrictions

Use of the ground floor in *buildings* constructed prior to March 10, 1976 shall be restricted to uses listed in Use Groups 7, 9, 11, 16, 17a, 17b, 17c, or 17e, except that

(a) In *buildings* having frontage on Chambers Street, Greenwich Street, West Street, Hudson Street, West Broadway or Canal Street, ground floor *uses* shall be permitted in conformance with the underlying districts, or

(b) Where such *use* occupied the ground floor of a *building* prior to March 10, 1976, ground floor *uses* shall be permitted in conformance with the underlying districts.

111-103

Additional Use Restrictions in Area B_1 and B_2

Within Area B_1 and Area B_2 *loft dwellings* and *joint living-work quarters for artists* shall [not be permitted in *buildings* where the *lot coverage* exceeds 5,000 feet.] **be permitted in *buildings* where the *lot coverage* is less than 5,000 square feet. *Loft dwellings* and *Joint living-work quarters for artists* shall be permitted in other *buildings or other structures* only by special permit of the City Planning Commission pursuant to Section 74-782 (Special Permit).**

111-104

Special Provisions for Area B_2

In Area B_2 except as modified by the express provisions of this chapter, the underlying district regulations are superseded and replaced by the regulations applicable in M2-4 districts.

111-11 BULK REGULATIONS FOR BUILDINGS CONTAINING LOFT DWELLINGS OR JOINT LIVING-WORK QUARTERS FOR ARTISTS

Joint living-work quarters for artists **located within the district shall comply with all the *bulk* regulations of this section applicable to *loft dwellings*.**

111-111(b)(v)

Loft Dwelling Requirements

A revision of this section will permit a loft dwelling having street frontage, or opening onto a 30 foot rear yard, to have rooms that front on a rear yard or court of less than 30 feet.

111-112

Open Space Equivalent

This section clarifies the existing roof recreation area requirements. The amendment provides for an additional 100 square feet of roof recreation area for each loft dwelling over 15, up to a maximum area of 50 percent of the gross roof area.

111-20

Minor Modifications by the Department of Buildings

The minor modifications of Sections 111-201(a) and (b) that can be granted by the Commissioner of Buildings are being phased out as of September 1,

STATUTORY TEXT

111-111

Loft Dwelling Requirements

(a) All *loft dwellings* shall have one or more windows which open into a *street* or a *yard* of 30 feet minimum depth.

(b) The minimum *floor area* contained within a *loft dwelling* shall be not less than 2,000 s.f., [and a *loft dwelling* shall contain no more than one "living room" as defined in section 4 of the Multiple Dwelling Law,] except that:

(i) where a *loft dwelling* occupies the entire usable area of a floor there shall be no minimum *floor area;* or

(ii) where a *loft dwelling* has a minimum clear width of 14 feet throughout and has windows opening onto both a *street* and a *yard* which has a depth of 10 percent of the depth of the *loft dwelling* there shall be no minimum *floor area;* or

(iii) where the ratio in a *loft dwelling* of the window area opening onto a *street* or a *yard* of 30 feet minimum depth to the *floor area* contained within the *loft dwelling* exceeds 5 percent, the minimum *floor area* contained within the *loft dwelling* may be reduced by 200 s.f. for each additional percent, to a ratio of 10%; or

(iv) where the ratio in a *loft dwelling* of the window area opening onto a *street* or a *yard* of 30 feet minimum depth to the *floor area* contained within the *loft dwelling* equals or exceeds 10 percent, there shall be no minimum *floor area.* [and

(v) a *loft dwelling* may contain more than one "living room" (as defined by section 4 of the Multiple Dwelling Law), when the ratio of the window area opening onto a *street* or a *yard* of 30 feet minimum depth to the *floor area* contained within each such "living room" equals or exceeds 10 percent.]

(c) In no event shall the number of *loft dwellings* exceed one per 1,000 s.f. of *floor area* devoted to *loft dwellings.*

(d) No *building* containing *loft dwellings* shall be *enlarged,* except that mezzanines constructed pursuant to Chapter 26 of the Administrative Code shall be allowed within individual *loft dwellings,* provided that the gross *floor area* of such mezzanine does not exceed 33⅓ percent of the *floor area* contained within such *loft dwelling.* No mezzanine shall be included as *floor area* for the purpose of calculating the minimum required size of a *loft dwelling* or for calculating *floor area* devoted to *loft dwellings.*

111-112

Open Space Equivalent

At least 30 percent of the ***gross*** roof area of a *building* containing 15 or more *loft dwellings* shall be *developed* for recreational *use.* [and shall be accessible to all the occupants of said *loft dwellings* and their guests for whom no fees are charged.]

For each additional *loft dwelling*, 100 square feet of additional roof area shall be *developed* for recreational *use* up to a maximum of 50 percent of the gross roof area. This recreational area shall be accessible to all the occupants of said *loft dwellings* and their guests for whom no fees are charged.

111-20 MINOR MODIFICATIONS

111-201

The requirements of Section 111-101 relating to location of *loft dwellings* or *joint living-work quarters for artists* below the floor level of the third *story* of a *building* and Section

1981. These provisions allow residential use below the third story of a building if the space was vacant or occupied residentially as of March 10, 1976. Also, Section 111-201(c) is being eliminated. It permitted the waiver of the requirement that the second floor be in industrial use if the use of the space would prevent qualification of the building as a non-profit cooperative. Land use regulations should supersede the 20/80 income rule for co-ops.

111-202

Minor Modifications by the Chairman of the City Planning Commission

The Chairman shall authorize minor modifications, instead of the City Planning Commission.

STATUTORY TEXT

111-102 relating to *use* restrictions in floor area on the ground floor may be modified provided that the Commissioner of Buildings certifies that

(a) such space was vacant as of March 10, 1976, or

(b) such space was occupied by a resident as of March 10, 1976, or

[(c) *use* of such space in conformance with Sections 111-101 or 111-102 would prevent the qualification of the *building* as a non profit Cooperative Corporation.]

An application for minor modification under this provision must be filed prior to September 1, 1981. Such application may be filed by the owner or the occupant of the *loft dwelling*.

111-202

On application, **Chairman of** the City Planning Commission may grant minor modifications to the following provisions of this chapter:

(a) The requirements of Section 111-101 relating to location of *loft dwellings* or *joint living-work quarters for artists* below the floor level of the third *story* of a *building* and Section 111-102 relating to *use* restrictions in floor area on the ground floor may be modified provided that **the Chairman of** the Commission finds that the owner of the space has made a good faith effort to rent such space to a mandated *use* at fair market rentals. Such efforts shall include but not be limited to: advertising in local and city wide press, listing the space with brokers, **notifying the New York City Office of Economic Development** and informing local and city wide industry groups. Such efforts shall have been actively pursued for a period of no less than six months for buildings under 3600 sq. ft. and one year for buildings over 3600 sq. ft. prior to the date of the application.

(b) The requirements of Section 111-111 relating to *loft dwellings* may be modified provided that **the Chairman of** the Commission has administratively certified to the Department of Buildings that the design of the *loft dwellings* or *joint living-work quarters for artists* provides sufficient light and air to allow minor modifications of these provisions.

(c) The requirements of Section 111-112 relating to roof top *open space* may be modified provided that **the Chairman of** the Commission has administratively certified to the Department of Buildings that the roof either is unsuited for *open space* use or cannot be made suitable for *open space* use at reasonable cost.

A developer must send a copy of any request for modification pursuant to this section to the applicable Community Board at least ten days prior to the next regularly scheduled Community Board meeting. If the Community Board elects to comment on such requests it must do so within 30 days of such notification. [All such requests for modification shall be granted in whole or in part or denied by the Commission within 45 days after receipt thereof.]

111-21 NOTICE OF FILING TO CREATE LOFT DWELLINGS OR JOINT LIVING-WORK QUARTERS FOR ARTISTS

A duplicate copy of the application for an alteration permit shall be sent to the City Planning Commission by the applicant for information purposes only. No building permit shall be issued by the Buildings Department for such *loft dwellings* or *joint living-work quarters for artists* without the acknowledged receipt of such notice by the City Planning Commission.

111-22

Conversion Contribution

The Relocation Incentive Program (Section 15-50) incorporated in Article I, Chapter 5, will provide relocation benefits to displaced industrial tenants relocating in the City.

STATUTORY TEXT

111-22 Conversion Contribution

Prior to the issuance of an Alteration Permit for *loft dwellings* or *Joint living-work quarters for artists use*, the owner shall pay a conversion contribution in accordance with the provisions of Article I, Chapter 5.

APPENDIX A

DISTRICT MAP

AREA A : General Mixed Use Area
AREA B1: Limited Mixed Use Area
AREA B2: Limited Mixed Use Area

This chart accompanies the Plain English explanation of Section 15-111, page 68.

ANALYSIS OF DWELLING UNIT SIZE STANDARDS**

10,000 SQ. FT. SITE

		NEW CONSTRUCTION CURRENTLY ALLOWED				COMPARISON OF STANDARDS AT VARIOUS FARS															
		BASIC LOT AREA REQUIREMENT		MINIMUM LOT AREA REQUIREMENT		6 FAR				10 FAR				15 FAR				20 FAR			
						# UNITS			AVG* APT SIZE SQFT	# UNITS			AVG* APT SIZE SQFT	# UNITS			AVG* APT SIZE SQFT	# UNITS			AVG* APT SIZE SQFT
DISTRICT	FAR PERMITTED	# ROOMS PERMITTED	# 3 ROOM APT	# ROOMS PERMITTED	# 3 ROOM APT	UNDER-LYING	EXCESS	TOTAL		UNDER-LYING	EXCESS	TOTAL		UNDER-LYING	EXCESS	TOTAL		UNDER-LYING	EXCESS	TOTAL	
R-6	2.4	90.9	30.3	104.2	34.7	34.3	20.0	54.3	884	34.3	42.2	76.5	1074	34.3	70.0	104.3	1151	34.3	97.8	132.1	1211
R-7	3.4	117.6	39.2	138.9	46.3	45.7	14.4	60.1	799	45.7	36.7	82.4	971	45.7	64.4	110.1	1090	45.7	42.2	137.9	1160
R-8	6.0	166.7	55.6	227.3	75.8	75.8	—	75.8	634	75.8	22.2	98.0	816	75.8	50.0	125.8	951	75.8	77.8	153.6	1042
R-9	7.5	222.2	74.1	256.4	85.5	68.2 + 14.8	—	83.0	722	85.3	139	99.2	806	85.3	41.7	127.0	945	85.3	69.4	154.7	1034
R-10	10.0	333.3	111.1	333.3	111.1	66.7 + 44.4	—	111.1	720	111.1	—	111.1	720	111.1	27.8	138.9	864	111.1	55.6	166.7	960

*Assumes 20% of floor area is common space.

**These calculations are approximations only, and are not to be taken as the legally required dwelling unit size standards.

ZONING MAP REPORT

CITY PLANNING COMMISSION

February 9, 1981/Calendar No. 2 C800459ZMM

An amendment of the zoning map (section nos. 8b, 8d, 12a and 12c), pursuant to Sections 197-c and 200 of the New York City Charter, as follows:

1. Changing from an M1-5B District to an M1-5A District, properly bounded by Broome Street, Mercer Street, Canal Street, and a line midway between West Broadway and Thompson Street (CB 2);

2. Changing from a C8-4 District to a C6-2 District, property bounded by:

a) Christopher Street, Greenwich Street, Barrow Street, and Washington Street (CB 2); and

b) A line midway between Gansevoort Street and Horatio Street, a line 100 feet east of Washington Street, a line midway between West 11th Street and Perry Street, Greenwich Street, West 10th Street, a line 150 feet east of Washington Street, a line 125 feet north of West 10th Street, and Washington Street (CB 2);

3. Changing from an M1-5 District to a C6-2 District, property bounded by Gansevoort Street, Washington Street, Bethune Street, West Street, Bank Street, a line 120 feet east of West Street, a line midway between Bank Street and West 11th Street, a line 150 feet west of Washington Street, West 11th Street, a line 95 feet west of Washington Street, Charles Lane, a line 180 feet west of Washington Street, Charles Street, a line 50 feet west of Washington Street, West 10th Street, a line 95 feet west of Washington Street, Barrow Street, West Street, Morton Street, and Miller Highway (CB 2);

4. Changing from C6-4, C6-2, M1-5 and M1-6 Districts to C6-4M, C6-2M, M1-5M and M1-6M Districts, property bounded by West 23rd Street, East 23rd Street, Park Avenue South, East 22nd Street, a line 100 feet west of Park Avenue South, East 19th Street, Park Avenue South, a line 131 feet south of East 19th Street, a line 100 feet west of Park Avenue South, a line midway between East 17th Street and East 18th Street, a line 100 feet west of Broadway, a line 100 feet west of Union Square West, a line midway between East 16th Street and East 17th Street, a line 100 feet east of Fifth Avenue, a line 100 feet south of 14th Street, a line 100 feet east of Hudson Street, a line midway between West 14th Street and West 15th Street, a line 100 feet west of Seventh Avenue, a line midway between West 16th Street and West 17th Street, a line 100 feet east of Eighth Avenue, a line midway between West 19th Street and West 20th Street, a line 100 feet west of Seventh Avenue, West 22nd Street, and Eighth Avenue (CB 4 and 5);

5. Changing from C6-4 and C6-2 Districts to C6-4M and C6-2M Districts, property bounded by West 35th Street, Eighth Avenue, a line midway between West 34th Street and West 35th Street, Seventh Avenue, West 35th Street, Broadway, West 38th Street, a line 100 feet east of Avenue of the Americas, a line midway between West 39th Street and West 40th Street, Avenue of the Americas, West 40th Street, a line 100 feet west of Fifth Avenue, a line midway between West 34th Street and West 35th Street, a line 100 feet east of Seventh Avenue, West 33rd Street,

and Tenth Avenue (CB 5), Borough of Manhattan, as shown on a diagram dated September 2, 1980.

The amendment of the zoning map (C800459ZMM) was initiated by the City Planning Commission in conjunction with amendments of the Zoning Resolution (N800458ZRM) regarding the conversion of non-residential buildings to residential use. A full description of the proposal, and a detailed discussion of its merits, are contained in the related report dated February 9, 1981 (Cal. #1), approving the amendments of the Zoning Resolution (C800459ZMM).

The application for the amendment of the Zoning Map was certified as complete by the City Planning Commission on September 2, 1981, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP), and referred to Community Boards #2, #4 and #5, and the Manhattan Borough Board. The Boards' recommendations are summarized in the related report approving the amendments of the Zoning Resolution (C800459ZMM).

On December 22, 1980 (Cal. #11), the Commission scheduled a public hearing on the proposed amendment. The hearing was duly held on January 7, 1981 (Cal. #58), in conjunction with the related hearing on the amendments of the Zoning Resolution (N800459ZRM) (Cal. #57). There were a number of appearances, as described in the related report on the amendments of the Zoning Resolution, and the hearing was closed.

As a result of study and investigation after the public hearing, including careful consideration of the recommendations received from the Community Boards and other organizations and City agencies as described in the related report approving the amendments of the Zoning Resolution (N800459ZMM), some modifications of the scope of the proposal were deemed advisable, and are accordingly incorporated into the resolution being sent to the Board of Estimate. These modification include:

1. Shrinking the boundaries of the area proposed to be rezoned from M1-5 to C6-2 in Paragraph 3 of the original description above, thereby retaining the original boundaries of the portion of the M1-5 area no longer being rezoned (Meat Market). The new boundaries of the area proposed to be rezoned from M1-5 to C6-2 are set forth in Paragraph 4 of the modified description below.

2. In the area originally proposed to be rezoned from C8-4 to C6-2 in Paragraph 2b of the original description above, the portion north of West 12th Street is deleted from the scope of the rezoning, thereby retaining the C8-4 portion of this area. The remainder of this area is being rezoned from C8-4 to C6-1 instead of C6-2 as originally proposed. A modified description is set forth in Paragraph 3 below.

3. Shrinking the boundaries of the area proposed to be rezoned from C6-4 to C6-4M in paragraph 5 of the original description above, thereby retaining the original C6-4 designation of the portion of the C6-4 area no longer being rezoned. The new boundaries of the area proposed to be rezoned from C6-4 and C6-2 Districts to C6-4M and C6-2M Districts are set forth in Paragraph 6 of the modified description below. The new C6-4M zone bounded by a line midway between East 39th Street and East 40th Street, a line 150 feet west of Fifth Avenue, West 35th Street, and a line 150 feet east of Avenue of the Americas, will be the subject of a future action (C810124ZMM) under ULURP, rezoning the property from C6-4M to M1-6.

4. Shrinking the boundaries of the area proposed to be rezoned from M1-5B to M1-5A in Paragraph 1 of the original description above, thereby retaining the original M1-5B designation of the portion of the area no longer being rezoned. The new boundaries of the area proposed to be

rezoned from M1-5B to M1-5A, are set forth in Paragraph 1 of the modified description below.

The City Planning Commission therefore considers the proposed rezoning, as modified, appropriate and adopted the following resolution on February 9, 1981 (Cal. #2), which is herewith filed with the Secretary of the Board of Estimate, in accordance with the requirements of Sections 197-c and 200 of the Charter.

Resolved, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section Nos. 8b, 8d, 12a, and 12c, as follows:

1. Changing from an M1-5B District to an M1-5A District, property bounded by Broome Street, a line midway between West Broadway and Wooster Street, Canal Street, and a line midway between Thompson Street and West Broadway (CB 2);

2. Changing from a C8-4 District to a C6-2 District, property bounded by Christopher Street, Greenwich Street, Barrow Street, and Washington Street (CB 2);

3. Changing from a C8-4 District to a C6-1 District, property bounded by West 12th Street, a line 100 feet east of Washington Street, a line midway between West 11th Street and Perry Street, Greenwich Street, West 10th Street, a line 150 feet east of Washington Street, a line 125 feet north of West 10th Street, and Washington Street (CB 2);

4. Changing from an M1-5 District to a C6-2 District, property bounded by:

   a) Jane Street, a line 110 feet west of Washington Street, West 12th Street, a line 50 feet west of Washington Street, a line midway between Bethune Street and West 12th Street, a line 125 feet east of West Street, West 12th Street, and Miller Highway; and

   b) Bethune Street, West Street, Bank Street, a line 120 feet east of West Street, a line midway between Bank Street and West 11th Street, a line 150 feet west of Washington Street, West 11th Street, a line 95 feet west of Washington Street, Charles Lane, a line 180 feet west of Washington Street, Charles Street, a line 50 feet west of Washington Street, West 10th Street, a line 95 feet west of Washington Street, Barrow Street, West Street, Morton Street, and Miller Highway (CB 2);

5. Changing from C6-4, C6-2, M1-5, and M1-6 Districts to C6-4M, C6-2M, M1-5M and M1-6M Districts, property bounded by West 23rd Street, East 23rd Street, Park Avenue South, East 22nd Street, a line 100 feet west of Park Avenue South, East 19th Street, Park Avenue South, a line 131 feet south of East 19th Street, a line 100 feet west of Park Avenue South, a line midway between East 17th Street and East 18th Street, a line 100 feet west of Broadway, a line 100 feet west of Union Square West, a line midway between East 16th Street and East 17th Street, a line 100 feet east of Fifth Avenue, a line 100 feet south of 14th Street, a line 100 feet east of Hudson Street, a line midway between West 14th Street and West 15th Street, a line 100 feet west of Seventh Avenue, a line midway between West 16th Street and West 17th Street, a line 100 feet east of Eighth Avenue, a line midway between West 19th Street and West 20th Street, a line 100 feet west of Seventh Avenue, West 22nd Street, and Eighth Avenue (CB 4 and 5); and

6. Changing from C6-4 and C6-2 Districts to C6-4M and C6-2M Districts, property bounded by:

a) West 35th Street, Eighth Avenue, a line midway between West 35th Street and West 34th Street, Seventh Avenue, West 34th Street, Eighth Avenue, West 33rd Street, and Tenth Avenue; and

b) A line midway between West 40th Street and West 39th Street, a line 150 feet west of Fifth Avenue, West 35th Street, and a line 150 feet east of Avenue of the Americas (CB 5), Borough of Manhattan, as shown on a diagram dated September 2, 1980, and modified February 9, 1981.

LOFT GLOSSARY

BRAC (New York City Business Relocation Assistance Corporation)

A not-for-profit corporation whose directors comprise the Chairman of the City Planning Commission, the Commissioner or Executive Director of the Office of Economic Development, the Chairman of the Board of Standards and Appeals, and two representatives of the apparel and printing industries. This corporation will receive the contributions not paid directly to relocating tenants, and will be authorized to distribute this money in the form of additional relocation assistance to firms displaced by loft conversion which relocate within the City of New York.

Certification

A ministerial action by the Chairman of the City Planning Commission, governed by objective standards, permitting the transfer of business preservation obligations and conversion rights within certain mixed use districts.

Commercial Districts

A mapped classification under the Zoning Resolution which generally permits commercial and residential usage and allows existing manufacturing uses to continue, but does not permit new manufacturing uses to locate therein.

Conversion

Generally, a change of use within a loft building from its industrial tenancy to residential tenancy.

Grandfathering

A zoning technique which permits certain existing illegal residential loft tenants to become legal non-

conforming uses in a particular district. The legalization is dependent on the dwelling units conforming to the requirements of the New York Multiple Dwelling Law and Building Code, and the obtaining of a new Certificate of Occupancy.

Industrial Loft Advisory Council

A group consisting of representatives of Manhattan industries, to be created by Mayoral Executive Order as an adjunct to the Mayor's Office of Economic Development. This Council will receive legal notice of all loft conversion applications filed with the Departmnt of City Planning, the City Planning Commission, and the Board of Standards and Appeals, and may advise those bodies concerning the affected business tenancies therein.

Loft

A type of building generally constructed prior to 1930 for commercial or manufacturing use, and which is now or has been occupied by manufacturing tenants. A loft building is constructed such that it covers most of its lot, leaving relatively little open space. The interior usually has few columns and, therefore, has large unencumbered spaces.

Manufacturing Districts

A mapped classification under the Zoning Resolution which generally permits manufacturing and commercial usage but not residential usage.

Mixed Building

One building which contains, on different floors, both business and residential uses.

Mixed Use Area

An area which contains industrial buildings and residentially converted buildings as well as mixed buildings.

Mixed Use Districts

A special mapped classification under the Zoning Resolution which, depending upon the district, will permit coexistence between manufacturing, commercial and residential usage in a relationship based on the character of the particular district. Examples include: SoHo, NoHo, Tribeca, Southeast Chelsea and Garment Center East.

Office of Loft Enforcement

An agency within the Office of the Mayor consisting of inspectors, attorneys and other staff. Its responsibilities are to undertake efficient, active surveillance of illegal conversion activity and early prosecution thereof.

Relocation Assistance

The money available to manufacturing type tenants, displaced by conversion, who relocate within New York City. The funds for this assistance will come from developer payments in the form of either a "conversion contribution" or "direct help payment". The conversion contribution is paid to the New York City Business Relocation Assistance Corporation (BRAC). The direct help payment is equal to 50% of the conversion contribution and is paid directly to the industrial tenants who relocate within New York City.

Residential Districts

A mapped classification under the Zoning Resolution which, insofar as new uses are concerned, permits only residential and community facility usage. However, existing manufacturing and commercial uses are allowed to continue.

Sandwiching

Allowing a business use to be located above a residential use within the same building.

Special Permit

A discretionary action by the City Planning Commission and the Board of Estimate to permit loft conversion in mixed use districts beyond the allowable limits upon the making of specified findings relating to economic conditions. The procedure for the grant of a Special Permit is governed by Section 197-c of the New York City Charter (ULURP).

Transfer of Preservation Obligations and Conversion Rights

A zoning technique available in the mixed use districts of Southeast Chelsea and Garment Center East which permits the exchange of preservation obligations and conversion rights between properties. This technique will permit the development of entirely residential or entirely industrial buildings while maximizing the protection of industrial loft space.

Variance

A discretionary action by the Board of Standards and Appeals (BSA) pursuant to Section 72-21 of the Zoning Resolution. The BSA may allow an applicant relief from the land use constraints of the Zoning Resolution, based on findings of uniqueness, inability to realize a reasonable return, compatability with the character of the neighborhood, absence of self-created hardship, and the minimum necessary relief. Before seeking a variance, a property owner must exhaust all administrative avenues open to him under the Zoning Resolution, i.e. the CPC Special Permit.

CREDITS

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Lofts have been studied during the chairmanship of John Zuccotti, Victor Marrero, and Robert F. Wagner, Jr., now Deputy Mayor for Policy. The Directors of the loft project wish to acknowledge the assistance of the following individuals, agencies and organizations:

VITO J. FOSSELLA
Chairman, Board of Standards and Appeals

IRWIN FRUCHTMAN
Commissioner, Department of Buildings

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MAYOR'S TASK FORCE ON LOFT CONVERSION
PHILLIP TRIMBLE, *Chairman*

* * * * *

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* * * * *

We wish to thank Lucille Rogers, Lois McDaniel and their respective staffs, and Martin Schor for preparation of this report; Community Boards #1 through #6; elected officials and their staffs who represent loft neighborhoods; Lower Manhattan Loft Tenants, Chelsea Loft Dwellers, and Brooklyn Loft Tenants; members of the real estate community; and architects and attorneys who represent industrial and residential loft tenants.

* * * * *

Henry Nicholas, Luciano Castelli, Vitaly Sorokine, Zygmund Apel, Norman Shilepsky, Stanley Shabronsky, Edward Whitman: Graphics staff.
Phil Sacks, Cover and Graphics
Barbara Bartlett, Production Coordinator
Philip B. Wallick, Publisher

Printed in Washington Market/Tribeca
New York City


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LOFTS:
Balancing The Equities

ADDENDUM

On April 9, 1981, the Board of Estimate approved the amendments to the Zoning Resolution which are contained within *LOFTS: Balancing the Equities,* with minor modifications.

CONTENTS OF THE ADDENDUM

Letter of legislative intent to the Board of Estimate from the City Planning Commission, regarding these modifications 3

Modifications of the text contained on Pages 59-143 of *LOFTS: Balancing the Equities* 5

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THE NEW YORK DEPARTMENT OF CITY PLANNING
Herbert Sturz, *Chairman*
Alanne Baerson, *Executive Director*
2 Lafayette Street
New York, N. Y. 10007

DCP 81-06

April 8, 1981

TO THE BOARD OF ESTIMATE:

In response to comments at your public hearings on the pending loft zoning proposals, the City Planning Commission herewith recommends certain minor changes thereto. These minor modifications and corrections clarify and implement the Commission's continuing intent in recommending the loft package to the Board of Estimate.

The recommended changes are as follows:

1. Section 12-10. A sentence has been added to the definition of the Industrial Loft Advisory Council ("ILAC") to make it clear that ILAC is an "interested party" within the meaning of the New York City Charter, and would thus be able to appeal variances granted or denied by the Board of Standards and Appeals to the Board of Estimate.

2. Section 15-013. Where a variance has been granted to permit loft conversion to dwelling units, the additional requirement of building permit issuance prior to the effective date of the legislation to exempt this conversion from requirements of the new Chapter 5, has been deleted as redundant.

3. Sections 15-021, 15-215, 15-551, 42-133, 42-14D(1)(f), 42-141(1) and (2) and 111-201. To fall within the protective ambit of these sections, which allow existing illegal residential uses to continue without otherwise complying with the new requirements for conversion, an application must be filed with the appropriate agency. The deadline for filing was originally set at September 1, 1981, but has been extended to January 4, 1982 to allow additional time and greater opportunity to legalize.

4. Section 15-213. Licensed registered architects, in addition to licensed engineers, will now be authorized to certify that floor space to be preserved for non-residential uses is comparable to the floor space being converted.

To ensure that the floor area being preserved had adequate elevator service, a minimum of 2 elevators was originally mandated. A minor amendment is recommended authorizing com-

parability where only one elevator is present in both the preserved and the conversion properties as long as the elevator is similar in size and the amount of floor area it services.

5. Section 15-52. The definition of "applicable building" has been revised for clarity and to ensure consistency with other parts of the proposal.

6. Section 15-52. Two new directors have been added to the board of directors of BRAC: the Commissioner of the Department of Housing Preservation and Development, and the President of the Public Development Corporation.

7. Section 15-532. The eligible tenant who relocates within the city without benefit of a direct help escrow account will be entitled to receive assistance based on the full conversion contribution rather than the amount of the direct help payment. This minor modification carries out the intent of the relocation incentive provision by encouraging within-the-city relocation in those cases where front-end direct help escrow accounts are not set up.

8. Section 15-554, and 72-321. To prevent the retroactive application of the Relocation Incentive Program, no conversion contribution will be required for space which was vacant on September 1, 1979, the date the draft report on loft conversion in Manhattan Community Boards 1-6 was first circulated. If space was vacant on this date, no firm will be losing benefits as a result of this city action.

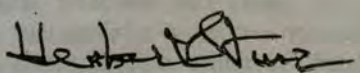
9. Section 15-581. Artist studios have been moved to Group A, making them eligible for the $4.50 per sq. ft. relocation benefit.

10. Section 72-01. The Board of Standards and Appeals is specifically given the power to make the findings necessary under various provisions of the text.

11. Section 74-782. The added language makes clear that the grant of a special permit by the City Planning Commission is subject to the approval of the Board of Estimate.

With these minor changes, the City Planning Commission urges the Board of Estimate to approve the presently pending loft zoning proposals.

Sincerely,



Herbert Sturz

MINOR MODIFICATIONS OF THE TEXT CONTAINED ON PAGES 59-143 OF *LOFTS: Balancing the Equities*

Matter in **Bold Type** is new (amended language added by the Board of Estimate);

Matter in brackets [ ], is old, to be omitted;

Matter in *Italics* is defined in Section 12-10 or Section 15-52.

12-10

* * *

Industrial Loft Advisory Council

The "Industrial Loft Advisory Council" shall be the council in the Mayor's Office for Economic Development created by Executive Order of the Mayor and composed of representatives of local industry, which may advise the Mayor, the City Planning Commission and its Chairman, or the Board of Standards and Appeals concerning applications pursuant to the Zoning Resolution. **The ILAC shall be an interested party for the purpose of Section 668(c) of the New York City Charter.**

* * *

15-013

Building Permits Issued Before the Effective Date of This Chapter

* * *

(b) a variance was granted by the Board of Standards and Appeals [and a Building Permit issued] prior to (the effective date of this amendment).

* * *

15-021

* * *

(b) an alteration application to permit such use is filed with the Department of Buildings prior to [September 1, 1981] **January 4, 1982.**

* * *

15-213

Comparability

Where the *floor area* to be preserved is not located within the *building* to be converted, such *floor area* must be comparable to *floor area* in the *building* to be converted. Comparability, shown by an affidavit from a professional engineer **or a registered architect,** licensed under the laws of the State of New York, shall exist where the *floor area* to be preserved meets the following criteria:

* * *

(b) Number

* * *

Notwithstanding the above, where there is only 1 elevator servicing the *floor area* to be converted, there may be 1 elevator servicing the *floor area* to be preserved if the following exist:

(i) the *floor area* to be serviced by the elevator in the *building* to be preserved does not exceed the *floor area* serviced by the elevator in the *building* to be converted by more than 10%, and

(ii) the ratio of the volume of the elevator servicing the *floor area* to be preserved to the *floor area* to be preserved is at least 90% of the ratio of the volume of the elevator servicing the *floor area* to be converted to the *floor area* to be converted.

* * *

15-215

Existing Non-Conforming Dwelling Units

The requirements of Section 15-211 regarding the amount of *floor area* to be preserved for permitted *commercial* or permitted *manufacturing uses* may be waived by the Commissioner of Buildings if such *floor area* was occupied as *dwelling units* as of September 1, 1980, provided that an application for such waiver has been filed with the Department of Buildings prior to [September 1, 1981] **January 4, 1982.** Such application may be filed by the owner of the *building* or the occupant of the *dwelling unit.*

15-52

* * *

Applicable Building

An "applicable building" is any existing *building* or other structure, erected prior to December 15, 1961, which

1. (a) is located in a R6, R7, R8, R9, R10, C1, C2, C4, C5, C6, M1-5A, M1-5B, M1-5M, M1-6M or LMM district, and

   (b)(i) on September 1, 1980 was used for a *use* listed in Section 15-58, or

   (ii) was vacant on September 1, 1980 and was used within 3 years prior to such date for a *use* in such Use Groups;

   or

2. (a) is granted a *use* variance pursuant to the provisions of Sections 72-21 and 72-221; and

   (b)(i) on (the effective date of this amendment) was used for a *use* listed in Section 15-58, or

   (ii) was vacant on (the effective date of this amendment) and was used within 3 years prior to such date for a *use* in such Use Groups.

* * *

The Corporation

The "Corporation" is the New York City Business Relocation Assistance Corporation, a not-for-profit Corporation. The Board of Directors of the Corporation shall consist of the Commissioner or Executive Director of the Office of Economic Development, the Chairman of the City Planning Commission, the Chairman of the Board of Standards and Appeals, the Commissioner of the Department of Housing Preservation and Development, the President of the New York City Public Development Corporation and two industrial representatives.

15-532

(a) * * *

(b) The *conversion contribution* shall be paid into the *Fund* primarily for the benefit of the commercial or manufacturing tenant who last occupied the *floor area* to be converted and subsequently relocated within the City of New York. Within six months of the payment of the *conversion contribution,* and upon verification by the *Corporation* that said tenant is an *eligible tenant,* the *Corporation* shall pay to said tenant the appropriate portion of the *conversion contribution.* The appropriate portion of the *conversion contribution* shall be equal to the amount produced by multiplying the rate of *conversion contribution* applicable at the time of payment of the *conversion contribution* by either the *floor area* occupied by such tenant prior to relocation, or the *floor area* occupied by such tenant after relocation, whichever is less.

The *Corporation* shall determine whether a commercial or manufacturing tenant is an *eligible tenant* within 15 days after a re-

quest by said tenant, and, in appropriate cases, verify the eligibility of said tenant. Where a commercial or manufacturing tenant is not an *eligible tenant*, the *Fund* shall retain the *conversion contribution*. Where an *eligible tenant* does not seek verification of eligibility within six months of the payment of the *conversion contribution*, such tenant shall be ineligible to receive any payment or assistance from the *Corporation*.

Notwithstanding the above, where the *eligible tenant* has received assistance from the *Corporation*, the amount of such assistance will be subtracted from the amount to which said tenant is eligible under this section, and the remainder shall be retained by the *Corporation*.

15-551

Existing Conversion

If the Board of Standards and Appeals determines that *floor area* was used as *dwelling units* or *Joint Living-work quarters for artists* on September 1, 1980, the Board shall authorize that such *floor area* not be included in computing the *conversion contribution*, provided that an application for an authorization under this provision was filed with the Board of Standards and Appeals prior to [September 1, 1981.] **January 4, 1982.**

15-554

Exclusion for [Space Vacant 5 years] **Certain Vacant Space**

Upon proof that *floor area* has been vacant **since September 1, 1979,** or for a minimum of 5 years, the Board of Standards and Appeals shall issue an authorization that no *conversion contribution* shall be required to be made for such *floor area*.

15-581

* * *

Group A

* * *

In Use Group 9A:

Blueprinting or Photostating establishments

Medical or dental laboratories

Printing establishments

Studios, art, music, dancing or theatrical

* * *

Group B

* * *

In Use Group 9A:

Musical instrument repair shops

Plumbing, heating or ventilating equipment showrooms

[Studios, art, music, dancing or theatrical]

Typewriter or other small business machine sales, rental, or repairs

Umbrella repair shops

Section 42-133

* * *

(b) an alteration application to permit such *use* is filed with the Department of Buildings prior to [September 1, 1981] **January 4, 1982.**

Section 42-14D

Special Uses in M1-5A and M1-5B Districts

* * *

(f) In any *building* which as a result of zoning map change CP-23167 is zoned M1-5B, any existing occupant of a *Joint living-work quarters for artists* which cannot meet the qualifications of the Department of Cultural Affairs may remain as a lawful *use*. This lawful *use* is non-transferable and ceases immediately upon the vacating of such space. Such occupants must register with the Department of Cultural Affairs prior to [September 1, 1981] **January 4, 1982** in order to preserve their lawful status in their existing space.

* * *

Section 42-141

Modification by Certification of the City Planning Commission of uses in M1-5A and M1-5B Districts.

* * *

1. Such space was vacant as of January 28, 1976 and an application under this provision was filed with the City Planning Commission prior to [September 1, 1981], **January 4, 1982,** or
2. Such space was occupied by a *Joint-living-work quarters for artists* as of January 28, 1976; and an application under this provision was filed with the City Planning Commission prior to [September 1, 1981] **January 4, 1982,** or

* * *

72-01

General Provisions

* * *

(f) To make such determinations and findings as may be set forth in this resolution.

72-321

* * *

If the Board determines that *floor area* was vacant since September 1, 1980, or for a minimum of 5 years, the Board shall authorize that such *floor area* be excluded from payment of the conversion contribution, as provided in Section 15-554 (Exclusion for [Space Vacant 5 Years.] **Certain Vacant Space).**

74-782

Residential Conversion in C6-2M, C6-4M, M1-5M, M1-6M, M1-5A, M1-5B and LMM Districts

In C6-2M, C6-4M, M1-5M and M1-6M districts, the City Planning Commission, **subject to the approval of the Board of Estimate,** may permit modification of the requirements of Section 15-21; in M1-5A and M1-5B districts the City Planning Commission, **subject to the approval of the Board of Estimate,** may permit the modification of the requirements of Section 42-14D 1(b); and in the LMM Special Purpose District the City Planning Commission, **subject to the approval of the Board of Estimate,** may permit the modification of the requirements of Section 111-103, provided that the Commission finds that:

* * *

111-201

* * *

An application for minor modification under this provision must be filed prior to [September 1, 1981] **January 4, 1982.** Such application may be filed by the owner or the occupant of the *loft dwelling.*

AN EXPLANATION OF THE MIXED USE DISTRICTS OF SOUTHEAST CHELSEA AND GARMENT CENTER EAST

Southeast Chelsea and the Garment Center East are the two new mixed use districts in the Zoning Resolution, Sections 15-20 through 15-26. The following describes Southeast Chelsea and explains the opportunities for conversion and the options for preserving commercial/manufacturing space. The explanation set forth below also applies to conversions in the Garment Center East.

I. Description of Southeast Chelsea

Southeast Chelsea is an area consisting of approximately 48 blocks bounded by 23rd Street on the north, 14th Street on the south, Park Avenue South on the east and 8th Avenue on the west. The district contains 19 million square feet of loft space occupied by a variety of uses which give it a mixed use character. The primary use is industrial or industrial-related tenancies which account for approximately 12 million square feet and 30,000 jobs. These uses include mens and ladieswear factories, graphic arts establishments, professional photographers' studios, and suppliers to these uses. The remaining 7 million square feet are occupied mostly by illegal residential uses.

II. Description of Zoning Regulations for Southeast Chelsea

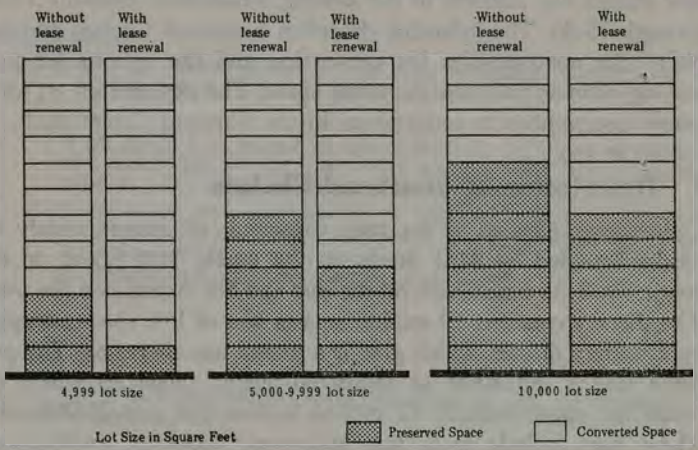
The Zoning regulations recognize that this area is neither exclusively residential nor manufacturing and, therefore, permit new residential conversion as a compatible use while preserving 7.5 million square feet of space for business uses. Every building in Southeast Chelsea has an as-of-right conversion potential provided that a specified amount of non-residential space is preserved in the district. These regulations are explained below:

A. Amount of preserved space — The amount of space preserved ranges from one floor in a six story building on a lot of less than 5,000 square feet, to 66 percent of the floor area in a building on a lot of 10,000 square feet or more. (See Illustration 1.)

B. Reduction of the amount of preserved business space A developer has the ability to convert 16 percent more of

the floor area in his building if existing tenants or new manufacturing tenants are given five year leases. (See Illustration 1.)

Illustration 1:
Amount of Residential and Non-Residential Space in Buildings of Various Lot Sizes with and without Lease Renewal



C. Transfer of Preservation Obligation and Conversion Right (Illustration 2) — A developer has three options to meet the requirements for preserved non-residential space:

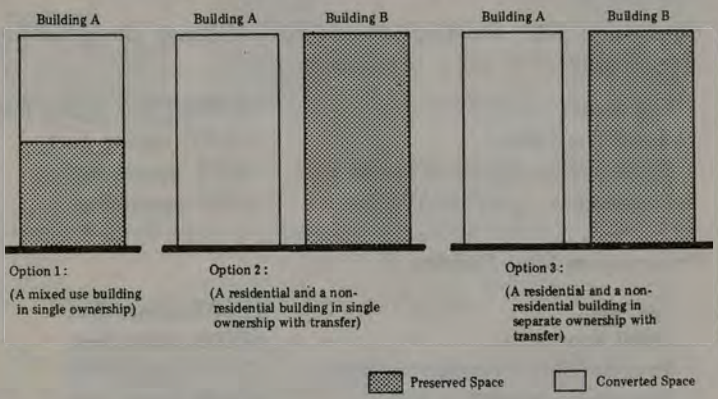
Option 1 — He can preserve the space in his building (Building A), thereby developing a mixed commercial/residential building.

Option 2 — He can buy another building (Building B) in Southeast Chelsea which has comparable features to the building he wishes to convert, i.e., Building A. (There are numerical standards in the zoning ordinance defining comparable buildings.) He can then transfer the preserved business space obligation from Building A to Building B, and transfer the conversion rights from Building B to Building A. This would permit a completely residential Building A and a completely business Building B.

Option 3 — He can develop his own Building A as a completely residential building by purchasing only the conversion rights of a comparable Building B, rather than an outright purchase of Building B as in Option 2. In this

manner the preserved business space obligation of Building A can be transferred to Building B. Building A and Building B remain in separate ownership with Building A being all residential and Building B remaining an all business building.

Illustration 2:
Options for Residential and Non-Residential Development



D. Restrictive Declarations — All preserved business space in Southeast Chelsea will be subject to a restrictive declaration signed by all parties in interest including mortgagees. This deed restriction will be recorded at the Office of the City Register, it runs with the land, and can only be modified by the City Planning Commission and the Board of Estimate. Any modification will be based on findings similar to those of the Special Permit. A memorandum of law concerning the validity and enforceability of such deed restrictions follows.

E. Special Permit — The amount of space to be preserved in this district is based on the best planning estimates of the non-residential demand for space in Southeast Chelsea. Should market conditions change significantly and non-residential demand decrease, developers may seek a City Planning Commission Special Permit to allow a reduced preservation obligation. To grant this Special Permit the Commission must make findings related to area-wide vacancy, demand for non-residential space, efforts to rent space, and other economic factors.

III. Case Study

The following is an example of the transfer of preservation obligation which a developer anticipates using by acquiring three buildings in Southeast Chelsea. He will be able to develop two buildings as residential and a third as a business building. (See Illustration 3.)

Conversion Site: Building A^1 and A^2 (Although these buildings are adjacent, it is not a requirement.)

Lot sizes:	7,900 & 5,200 square feet
Total floor area:	100,100 square feet
Preservation obligation* at 33.3%:	33,333 square feet
Conversion rights* at 67.6%:	66,767 square feet

Preservation Site: Building B

Lot size:	11,000 square feet
Total floor area:	67,000 square feet
Preservation obligation* at 50%:	33,500 square feet
Conversion rights* at 50%:	33,500 square feet

A developer purchases Building A^1 and A^2 for $22.50 per square foot or $2,252,000 all cash. (Purchase price would be $520,000 to $690,000 higher if previous owner was providing financing.) He then purchases Building B for $28.50 per square foot or $1.9 million all cash, or $2.7 million with a purchase money mortgage.

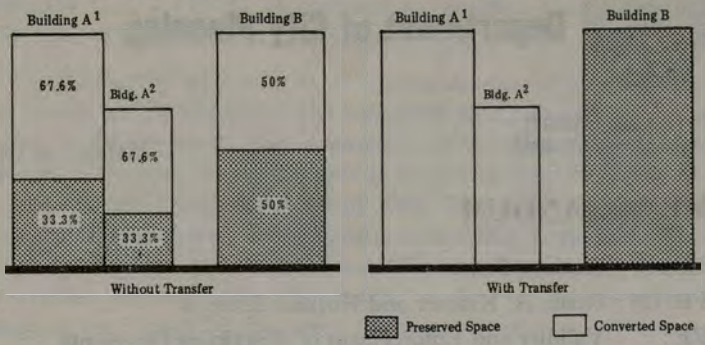
The developer transfers the 33,333 square foot preservation obligation from Building A^1 and A^2 to Building B. Building B must now preserve 33,333 square feet in addition to its own preservation obligation of 33,500 square feet, or a total of 66,833 square feet, thereby preserving the entire Building B for business uses. This preservation of space in Building B will be subject to a deed restriction.

Building A^1 and A^2 receive 33,500 square feet of conversion rights from Building B and may be converted entirely to residential use. The Chairman of the City Planning Commission will certify that these transfers were done in accordance with the requirements in the Zoning Resolution. This certification is ministerial and non-ULURP.

---

*Assumes five year leases to tenants in the preserved space.

Illustration 3:
Case Study Example of Transfer of Preservation Obligation and Conversion Rights*



*Assumes five year leases to tenants in the preserved space.

IV. Monitoring of Preserved Space

The Chairman's certification, which includes the deed restriction, will be reported to the Department of Buildings and the Office of Loft Enforcement, and the deed restriction will be indicated on the zoning map. Any property in Southeast Chelsea seeking a Building Permit at a future date would be checked on the computer data bank of the Office of Loft Enforcement to determine whether space has previously been preserved via a deed restriction. The private sector check to guarantee that space is not used twice to meet the preservation obligation would result from title searches done by any prospective purchaser or lender.

Department of City Planning

OFFICE OF COUNSEL
Norman Marcus, Counsel

March 10, 1981

MEMORANDUM

TO: Herbert Sturz
FROM: Robin A. Kramer and Norman Marcus
RE: Validity and Enforcement of Restrictive Covenants

Is the legal commitment to preserve space for commercial or manufacturing use required by the new loft provisions, in the form of a restrictive declaration or covenant, a valid and enforceable restriction in the courts of the State of New York? This question necessitates an analysis of two issues:

1) the validity and enforceability of restrictive covenants against subsequent purchasers, and

2) the propriety of such a condition imposed in a zoning resolution.

1. *Enforceability of Restrictive Covenants (e.g. "deed restrictions") Generally*

A restrictive declaration, or deed restriction which runs with the land, is a negative or affirmative obligation with respect to the use, by a property owner, of the affected property. The obligation imposes a burden on an interest in land, and is binding on all persons who acquire any interest in that property.

Restrictive covenants are generally upheld by courts, since private parties may, in the "exercise of their constitutional right of freedom of contract, impose whatever restrictions upon the use of their lands they desire". Rathkopf, *The Law of Zoning & Planning*, at 74-1. The only limitation on this freedom is that "the confinement agreed upon must be reasonable and not offensive to public policy". *Silverstein v. Shell Oil Co.*, 40 App. Div. 2d 34, 337 N.Y.S. 2d 442 at 445 (3d Dep't 1972), aff'd, 33 N.Y. 2d 950, 353 N.Y.S. 2d 730, 309 N.E. 2d 1311 (1972). Courts cannot be used to enforce covenants which impose restrictions in violation of

the Constitution, as when based on race or color. *Shelley v. Kraemer,* 334 U.S. 1 (1948). A covenant to preserve space for a specific type of use raises no such constitutional issues.

The covenantor of a restrictive declaration can be compelled by the courts, at the request of the benefitted party, to adhere to the terms of the covenant. See *Annotation: Who May Enforce Restrictive Covenants or Agreements as to Use of Real Property,* 51 A.L.R. 3d 556. Thus, the City of New York may enjoin a loft owner who has entered into the requisite covenant from converting property in violation of the covenant. The more important question is whether persons who subsequently acquire an interest in the property are bound by the terms of the covenant.

For a restrictive covenant to run with the land, and be enforceable against such future owners or other parties in interest, the covenant must meet three conditions: the covenantor must have intended that the restrictions be binding in the future, the covenant must touch and concern the land, and there must be privity of estate, i.e. a succession of conveyances between the covenantor and the party to be bound. *Neponsit Property Owners' Ass'n. v. Emigrant Ind. Sav. Bank,* 278 N.Y. 248 at 254 -5, 15 N.E. 2d 793 (1938); *Silverman, supra.*

A covenant touches and concerns the land where it alters the legal rights which otherwise exist in connection with ownership of land. *Neponsit, supra.* Covenants requiring contributions by property owners in a subdivision for maintenance of common property, and restricting the competitive use of property, have been held to touch and concern the land, *Neponsit, Silverstein, supra,* as have the more typical situations where property is limited to single-family use. See, e.g. *Ginsberg v. Yeshiva of Far Rockaway,* 358 N.Y.S. 2d 477 (App. Div. 2d Dep't 1974), aff'd, 36 N.Y. 2d 706, 366 N.Y.S. 2d 418, 325 N.E. 2d 876 (1975).

The covenant to preserve required by the Zoning Resolution is expressly intended to run with the land, and subsequent purchasers will be in privity of estate with the covenantor/current property owner. Limiting the use of property to non-residential purposes clearly touches and concerns the land because it is a restriction on the use of land. The restriction benefits the City and all city-owned property located within a radius of ½ mile from the property because residential use of this space will adversely impact the city's economy, and destroy business linkages in the surrounding area. Thus, the prescribed covenant is within the class of real covenants,

running with the land, which may be enforced by the City against all persons who subsequently acquire interests.

Where a real covenant is valid it will continue to be enforced against successive owners, unless and until the character of the neighborhood has so changed as to defeat "the object and purposes for which the restrictions were enforced." *Evangelical Lutheran Church of the Ascension of Snyder v. Sahlem,* 254 N.Y. 161, 166 (1930). The rule generally is that equity will refuse to enforce a covenant on the grounds of changed circumstances only when the change is so great that the restriction has become valueless to the original beneficiary of the covenant, and onerous to the property of the party seeking relief. E.g., *Normus Realty Corp. v. Disque,* 20 App. Div. 2d 277, 247 N.Y.S.2d 143 (1st Dep't 1964). At a minimum, New York courts will not excuse a party from strict compliance except where the "neighborhood has so altered that the ends to be attained by the restriction have been frustrated by the years". *Clintwood Manor, Inc. v. Adams,* 29 App. Div. 2d 278, 287 N.Y.S.2d 235 at 237 (4th Dep't 1968), aff'd., 24 N.Y.2d 759, 299 N.Y.S.2d 853, 247 N.E.2d 667 (1969).

A commitment by a property owner, in the form of a restrictive covenant, to use her property only for industrial and commercial purposes will be enforced as long as the area continues to be a viable location for manufacturing or other non-residential activities (i.e., circumstances have not changed).

2. *Restrictive Covenants as a "Condition" of Zoning*

Is mandating such a covenant in a zoning ordinance as a requirement for loft conversion to residential use in a mixed use district an impermissible condition to be imposed by the zoning resolution, voiding both the zoning resolution and the restrictive covenant?

The legal principle underlying zoning regulations, established by the Supreme Court in *Euclid v. Ambler Realty Co.,* 272 U.S. 365 (1926), is that the use of property may be regulated as part of a state's exercise of police power, in order to promote the public health, safety or welfare. With respect to restrictive declarations entered into in connection with zoning, the rule in New York was established by the Court of Appeals in *Church* v. *Town of Islip,* 8 N.Y.2d 254, 203 N.Y.S.2d 866, 168 N.E.2d 680 (1960). In that case, the town board conditioned its grant of a rezoning on

the applicant's agreement to certain obligations. The reasonable conditions required of the applicant were held not to invalidate the zoning ordinance. Therefore, they were within the general state zoning enabling act authority. N.Y. Gen. City Law § 20 (24) (McKinney Supp. 1980-81).

Conditions and safeguards imposed in conjunction with a change of zone or a grant of a variance or special permit are valid as long as such conditions are reasonable. *Dexter v. Town of Gates,* 36 N.Y.2d 102 at 105, 365 N.Y.S.2d 500, 324 N.E.2d 870 (1975). Conditions have been found unreasonable where the zoning change was for the personal benefit of the applicant alone. *Dexter; Levine v. Town of Oyster Bay,* 46 Misc. 2d 196, 259 N.Y.S.2d 247 (Sup. Ct., Nassau 1974), aff'd, 272 N.Y.S.2d 171 (App. Div. 2d Dep't 1966). The requirement in the loft legislation of a deed restriction for the retention of a proportion of non-residential (business) space in a mixed use area is rational, uniform and not for the benefit of one specific person.

Zoning amendments which require the applicant to enter into restrictive covenants are therefore valid and enforceable under New York law. In the cases decided in this area by courts in both New York and other states, the key issue has been whether the commitment required of an applicant as a condition to the rezoning by a zoning board invalidated the change because it was contract zoning in the context of individual parcel zoning amendments. E.g. *Church v. Town of Islip; In Re Rosedale Ave., City of New York,* 243 N.Y.S.2d 814 (Sup. Ct. 1963); *State ex rel Zupancic v. Schimenz,* 174 N.W.2d 533 (Wis. Sup. Ct. 1970). Here a uniform regulation conditions residential conversion in a mixed use district upon preservation of a specified proportion of non-residential space, either in the same building or in another building in the area. In this sense it is no different from other specific requirements of the Zoning Resolution, e.g. the necessity to provide parking spaces as a condition of new development, or provisions of the South Richmond/Natural Area Special Districts which set forth requirements relating to non-disturbance of natural features as a precedent to development permission.

The Appellate Division, 1st Department, affirmed the enforceability of a restrictive declaration made by a property owner in connection with a rezoning by the New York City Planning Commission and Board of Estimate. *Flushing Property Owners Association, Inc. v. Planning Commission of the City of New York,*

43 App. Div. 2d 515, 348 N.Y.S.2d 765 (1st Dep't 1973). In this Article 78 proceeding to annul a building permit contrary to the terms of a recorded covenant limiting development to a department store, the court stated that the restrictive declaration "constitutes a binding contractual commitment which may not be ignored . . . by the individual covenantor or disregarded . . . by the City Planning Commission to the detriment of the . . . property owners in the area for whose benefit the restrictions were expressly imposed . . . ." Id at 766.

3. *Conclusion*

The restrictive covenant to preserve business space imposed by the Zoning Resolution in order to convert property in mixed use districts to residential use is a valid exercise of the zoning police power by New York City, based upon common law generally and specific precedent in New York State courts. It is therefore enforceable by New York City against all persons who obtain an interest in the restricted property.

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