The 25,000 Sq Ft Exemption:

The "Mandatory Inclusionary Housing" Loophole Likely to Result in Little or No Affordable Housing in SoHo and NoHo

GREENWICH VILLAGE SOCIETY FOR HISTORIC PRESERVATION VILLAGE PRESERVATION

The City's affordable housing projections are based upon a false and unfounded assumption that developers won't chose to utilize the plan's loophole allowing residential developments of 25,000 sq ft per zoning lot or less to provide no affordable housing whatsoever, and instead pay into an affordable housing "fund" (that fund has never been established nor created a single unit of affordable housing).

How do they justify this assumption? The City claims that since no Mandatory Inclusionary Housing (MIH) development has used the fund option so far, none will do so in the SoHo/NoHo rezoning. This argument is deeply flawed, however, because:

- **Due to the use of funding mechanisms that won't apply in SoHo/NoHo, most MIH projects haven't allowed that option:** 87% of all MIH projects so far have received public subsidies that made them 100% affordable, thus eliminating the option of paying into the affordable housing fund (no such subsidies are being offered for developments in the SoHo/NoHo rezoning).

- **Nearly all MIH projects so far have been in weak housing markets that have provided little or no incentive for paying your way out of providing affordable housing:** MIH has previously been applied largely in neighborhoods with very weak housing markets, where the difference between the prices of market-rate housing and the "affordable" housing required by MIH is often not great; in some cases, the "affordable" housing actually charges HIGHER rents than the market rate housing. In Ocean Hill and East New York, for instance, listings for market-rate 1BR units in two MIH developments, 2175 Bergen Street and 975 Liberty Avenue, have averaged \$2,147 and \$2,114, respectively. By contrast, the required "affordable" 1BR units rent for as much as \$1,950 and \$1,800. At 2178 Bergen Street in Ocean Hill, the 2BR market-rate units actually rented for \$2,193, or LESS than the \$2,400 "affordable" 2BR units (full details here). **With so little difference in profit between market rate and "affordable" units, there has been little incentive for developers to pay the fee to avoid including "affordable" units and instead keep the space for market-rate units.**

- **In a very strong housing market like SoHo/NoHo, by contrast, there is a tremendous financial incentive to pay the fee[1], avoid including affordable units, and keep all the space as market rate:** In SoHo/NoHo, market-rate housing in new development fetches astronomically higher prices than what the "affordable" units would, and many times over what market-rate units do in other MIH markets. Units in new development command an average of \$16,892 in monthly rents and \$6.437 million in sales prices, providing the tremendous financial incentive that hasn't existed in other MIH markets to opt out of providing affordable housing when possible.

As a result of this loophole, developments in SoHo/NoHo with less than 25,000 sq ft of residential use will almost assuredly not include any affordable housing.

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[1] It should be noted that, if payments were ever made into the affordable housing fund, the monies would be reserved for use within the Community District for 10 years before they could be used elsewhere in the borough. The lack of available public development sites within the CB makes use of the monies in the fund anywhere within a 10-year period highly unlikely. And while, after 10 years, they could be used elsewhere, such funding mechanisms have a poor track record for being used in any meaningful way toward their purported goal anywhere.

Consider the case of 216 and 218 Lafayette Street. Under the rezoning, the City expects development of this site to yield 4,335 sq ft of retail and 24,552 sq ft of residential development, yielding 28 market-rate residential units and seven to nine affordable ones. A developer, however, would have every season to simply pay into the fund so as to devote the entire residential portion of the project to luxury residential units, and none of it to affordable units. **There are multiple sites in the rezoning that like this allow for 25,000 sq ft or less of residential development where the city projects affordable housing being built because they assume developers will forgo this very financially appealing option of simply paying into the fund and being allowed to use all their space for market-rate residential development.**

This method of avoiding the affordable housing requirement will likely be used on development sites allowing more than 25,000 sq ft too, making affordable housing development also unlikely there. The possibility of avoiding an on-site affordable housing requirement also offers a tremendous financial incentive for developers on larger sites to avoid losing 25–30% of their space to unprofitable "affordable" housing. They can do this by limiting the amount of residential space to 25,000 sq ft per zoning lot, locating those on the most profitable upper floors, and filling the lower floors of the building with the other highly profitable uses allowable under the plan and exempted from affordable housing requirements, such as big-box chain store retail, office space, hotels, and private university or other "community facility" space.

Consider the case of 217 Hester Street. Under the rezoning the City predicts:

- 22,478 sq ft of market-rate residential uses with 9,633 sq ft of affordable housing and 2,509 sq ft of ground floor retail space for a total of 34,620 sq ft of development.

In every one of the sites where the City projects affordable housing being built in the SoHo/NoHo rezoning (shown above), the 25,000 sq ft exemption would allow as much or more highly profitable market rate space to be built by NOT including affordable housing, as compared to if it is included.
This makes the chances the rezoning producing significant affordable housing production very unlikely.

However, the rezoning would also allow:

- 25,000 sq ft of market-rate residential uses and 9,620 sq ft of commercial space for a total of 34,620 sq ft of 100% market-rate development — NO AFFORDABLE HOUSING

The second option results in far more market-rate development, and even more luxury residential development. The first scenario, by contrast, sacrifices almost 30% of the development to affordable housing, and the City assumes developers will choose to do so. But there is a clear financial incentive for them to do the latter, and provide absolutely no affordable housing. This dynamic will repeat itself throughout the district, because the plan is structured in such a way that in virtually every case where the City predicts affordable housing will be built, more market rate space can be built by NOT including affordable housing. **This provides a tremendous financial incentive for developers to not produce a single unit of affordable housing.**