



November 3, 2021

Speaker Corey Johnson
Council Member Margaret Chin
Council Member Carlina Rivera
Borough President Gale Brewer

Dear Corey, Margaret, Carlina and Gale:

I write with urgency to ask you to kill the de Blasio administration's proposed upzoning of SoHo, NoHo, and Chinatown.

There are many things wrong with this bad plan. In this letter I will deal with one of the worst features, which is the danger the upzoning presents to the tenants living in rent-regulated or loft apartments, and to the preservation of this scarce affordable housing stock. In short, if you approve this plan, you will be planting a bullseye on the backs of these tenants and apartments. Predatory investors will inevitably swoop up these properties with an eye to demolition.

The City Planning Commission argues that demolition is unlikely because of strengthened rent laws and landmarks protections. But as we have seen, the Landmarks Preservation Commission has frequently allowed demolition of landmarked buildings as long as the façade is preserved. And after the rent law reforms of two years ago, proposed demolition is the only mechanism that remains for developers to remove an entire building of rent-controlled and rent-stabilized apartments from the regulated universe.

According to the City Planning Commission there are 185 buildings containing rent-protected apartments in the upzoning district. Through research and legwork, Village Preservation has identified some 635 rent-regulated units in 108 buildings. Given that

there are another 77 buildings that are still unidentified, it is probable that there are close to 1,000 units. But we don't know for sure because CPC has refused to release the addresses. Whatever the number, the tenants are at risk, and the City risks losing the housing.

These buildings tend to be on the small size, typically between four and seven stories tall. Under current zoning there is little incentive for demolition, as any replacement building could not be substantially larger than the existing ones. But the mayor's plan increases the allowable Floor Area Ratio for all these properties, in some cases to 6.5 FAR, in others to 9.7 FAR and in others to 12 FAR, the largest allowed for residential buildings in the five boroughs. These changes represent an increase in FAR of 30 percent, 94 percent, and 140 percent, respectively.

The Village Preservation research found that 90 percent of the buildings with rent-regulated units they identified would be underbuilt under the rezoning, and 100 percent of those in Chinatown and outside of historic districts would be underbuilt, creating strong incentives for demolition. It should be noted that 30 percent of the rent-regulated units Village Preservation identified are located outside historic districts or are within historic districts but designated as "no style" buildings, and therefore do not have even that modicum of landmark protection.

The Housing Stability and Tenant Protection Act of 2019 repealed Vacancy Decontrol and other weakening amendments that were inserted into the rent control and rent stabilization laws by the state legislature in 1993, 1997 and 2003, and by the New York City Council in 1994. In the 25 years Vacancy Decontrol was in effect, the City lost at least 300,000 apartments which were converted to market rate status (and which unfortunately were not restored to regulation by HSTPA). Since these 2019 reforms, landlords can no longer remove an apartment from regulation on turnover, and a stabilized apartment must be re-rented as a stabilized unit, essentially at the same rent the prior tenant was paying.

As you know, these 2019 amendments represent a sea change. All the mechanisms that landlords could use in the past to deregulate units and jack rents up more than required to allow landlords to maintain their properties were ended or reduced. The one exception is demolition: HSTPA left intact all the provisions that allow landlords to evict rent-controlled or rent-stabilized tenants when they plan to demolish the building.

When regulated tenants are in occupancy, landlords must obtain permission from the Office of Rent Administration, a unit of the NYS Division of Housing and Community Renewal, to terminate tenancies for purposes of demolition. These proceedings are

difficult, time-consuming, and costly for developers but not impossible, and where the developer is determined there is not much tenant attorneys can do to prevent the inevitable outcome. All the developer ultimately must prove to the agency is that it has filed the necessary plans with appropriate government agencies, and that it has the economic wherewithal to complete the project. If the application is successful, the remaining tenants are entitled to woefully inadequate relocation stipends.

But it is much more common for demolition to occur outside the parameters of the rent laws. If the developer can empty the building by harassment, curtailment of services, filing of holdover cases, and/or buyouts, no approval from DHCR is required, as there are no controlled or stabilized tenants left.

The increases in FAR contained in the proposed upzoning would represent an irresistible incentive for developers. The financial rewards would far outweigh any difficulties in achieving demolition, and over time many of these low-rise properties would be replaced by something bigger – likely luxury condos, office buildings, or even NYU dorms.

Nor would the addition of anti-eviction and anti-harassment protections to the plan, or funds to hire organizers or lawyers to represent tenants threatened with displacement, be sufficient to fight the market forces that this upzoning would unleash. It is useful for such protective measures to be incorporated into any upzoning plan, but they are no match for greedy speculators. Not in the third hottest real estate market in New York City, according to Property Shark, second only to Hudson Yards and Tribeca.

When I testified at the Borough President's hearing and the CPC hearing, I suggested that if the plan goes forward, it should be amended to incorporate a "demapping" of all addresses within the rezoning area that contain rent-controlled, rent-stabilized, Loft Law IMD or JLWQA units. Any increase in FAR at these addresses will lead to loss of this affordable housing. The most vulnerable tenants, with a proposed 12 FAR, seem to be in the southeast corner of the rezoning area; this is in Chinatown, but CPC has dishonestly labeled it "SoHo East."

Let me state unequivocally that Tenants PAC believes that all neighborhoods in the five boroughs of New York City, including more affluent communities, need to accommodate greater density to increase the supply of affordable housing. If this proposal by the de Blasio administration were truly designed to accomplish that in SoHo, NoHo, and Chinatown, we would support it.

These neighborhoods need updated zoning, and they need affordable housing. But not this plan, which is wrong on so many other counts – allowing hotels and office buildings, incorporating loopholes that would allow developers to avoid building a single unit of affordable housing, allowing big box stores, and allowing expansionist institutions such as NYU to cross Houston Street.

It's time to send this plan back to the drawing board. Among other needed changes, any upzoning should be limited to parking lots and garages, plus perhaps sites in the housing opportunity zones with a built FAR of less than 2.0 which would include some one- and two-story commercial buildings. While you are at it, take out office buildings and hotels, eliminate the 25,000 square foot loophole, remove the ability of NYU to take over another neighborhood, eliminate big box stores, make affordable housing mandatory, and increase the percentage of below-market units to 50 percent.

Please give me a call at (917) 669-2977 to discuss this proposal or email me at mmckee@tenantpac.org. Thanks for your attention to this critical issue.

Sincerely,

Michael McKee
Treasurer