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**Gale A. Brewer, Borough President**

**March 13, 2019**

**Testimony of Manhattan Borough President Gale A. Brewer to the City of New York City Planning Commission**

**Cal. No. 40 - Residential Mechanical Voids Zoning Text Amendment  
Non-ULURP Application No. N 190230 ZRY by the New York City Department of City Planning**

Good morning Chair Lago and Commissioners of the New York City Planning Commission. I am Manhattan Borough President Gale A. Brewer and I am here to deliver a statement in support of addressing the zoning loopholes that threaten to drastically alter the character of neighborhoods in the borough of Manhattan.

The issue of zoning loopholes is of great concern to me. For well over a year, my office has been working with elected officials and local advocacy groups to push for changes to the Zoning Resolution to ensure that development is in keeping with the spirit of the zoning and the context of our neighborhoods. Development is supposed to be predictable. Something is wrong when communities face surprise after surprise—and many such projects end up in a litigious process that involves DOB zoning challenges and challenges through the City’s Board of Standards and Appeals.

Mechanical voids are just one kind of zoning loophole. My office has counted 16 developments in Manhattan that are either proposed, in construction, or completed—and employ a variety of loopholes to achieve greater heights. And while I am thankful that the Department of City Planning has completed a study of over 700 buildings in an effort to provide a solution to the problem of mechanical voids, I am here to urge you to do more.

First of all, the zoning text proposed by DCP needs to be strengthened.

The formula does not do enough to curtail the brazen abuse of mechanical floors and other enclosed floor spaces. DCP’s own application stated that an analysis of over 80 buildings in high density districts demonstrated that in the typical tower, mechanical floors were located either midway through the building or were “regularly located every 10 to 20 stories”. Given this finding, I do not believe the 75 foot threshold, which is about 7 stories, is appropriate.

I also disagree with DCP’s assertion that the floor area calculation for excessively tall mechanical floors should involve rounding. According to DCP’s proposal, a 135 foot floor would be 5.4 times taller than the threshold proposed by DCP but would nonetheless count as only 5 floors of floor area. Plenty of zoning districts in Manhattan allow floor area ratios that have decimals. There is no valid reason why this figure should be rounded.

For those reasons, I request the following two changes to the proposed formula:

- 1. Raise the clustering threshold from 75 feet to 90 feet; and**
- 2. Eliminate the rounding provision for calculating the floor area**

DCP's proposed text will only apply to *enclosed* floor areas. As a loophole mechanism, there is little difference between mechanical floors and *unenclosed* spaces like terraces, stilts, or any other gimmicks used to achieve excessive building heights. **The language should therefore be expanded to apply to terraces and other unenclosed floor spaces.**

I am also concerned about certain parts of Manhattan in which the proposed text amendment will not apply but which nonetheless contain extremely soft sites. In particular, the blocks bounded by West 56<sup>th</sup> Street, the southern portion of West 58<sup>th</sup> Street, and Fifth and Sixth Avenues is concerning. West 57<sup>th</sup> Street, which has been nicknamed "Billionaire's Row", has seen several Supertall buildings. And just two weeks after this Application was certified, developers filed for demolition on two sites within this area. This area is facing an imminent threat and if no action is taken at this juncture, we may see exactly the kind of development that this Application intends to prevent. For this reason, **I am requesting that this area be included in the proposed text amendment.**

Additionally, I believe strongly that if the proposed zoning text is to be effective, inter-agency coordination is essential. **A task force comprised of employees of the Department of City Planning and the Department of Buildings (DOB) should be formed** and tasked with ensuring that the new zoning text is applied effectively once it is adopted by the City Council. Plan reviewers at the DOB need to be aware of these new restrictions and they need to receive training on how to identify excessively tall mechanical and unused or inaccessible floors. This agency framework would also be crucial in ensuring transparency when it comes to determining which developments—if any—are considered vested buildings.

DCP has committed to doing a follow-up action to address three central business districts in Manhattan: the Special Hudson Yards, Special Lower Manhattan, and Special Midtown Districts. I understand and agree with DCP's decision to prioritize and address the issue of mechanical voids in a timely manner. I also believe that the agency's extensive study of buildings, as well as its consultation with the professionals who design those buildings, adequately informed its application. However, I expect that with its follow-up action, DCP will allow ample time for a public review process.

Finally, we need a more comprehensive approach. The point of closing a loophole is that you do not leave an opening that can be exploited by developers. To that end, I fully expect that DCP will proceed with changes that will address other zoning loopholes, including excessive floor-to-floor heights, gerrymandered zoning lots, zoning lot carve-outs, and anything else that developers start thinking up. And we need to think bigger. We need to address other areas in Manhattan; we need to address *kinds* of buildings—hotels, for example, have an equally appealing incentive to bring their rooms to greater heights.

I appreciate the fact that the broad range of work that DCP does is usually centered on developments that are *not* as-of-right, and that one of the issues with these loopholes is that we see them almost *exclusively* in as-of-right developments. But we have a duty to be proactive. Planning is not simply looking at which tricks have been used—it's looking ahead and *anticipating* what we will see next, and then taking steps to address those issues.

Thank you for your time and consideration.