

Application # **C 170360 HUM**

Project Name **East Harlem Neighborhood Rezoning**

CEQR Number

Borough(s): **Manhattan**

Community District Number(s): **11**

Please use the above application number on all correspondence concerning this application

**SUBMISSION INSTRUCTIONS**

- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, 120 Broadway, 31st Floor, New York, NY 10271
  - FAX:** to (212) 720-3488 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

*Docket Description*

**IN THE MATTER OF** an application submitted by the Department of Housing Preservation and Development (HPD), Pursuant to Section 505 of Article 15 of the General Municipal (Urban Renewal) Law of New York State and Section 197-c of the New York City Charter, for the Second Amended Urban Renewal Plan for the Milbank Frawley Circle East Urban Renewal Area, Borough of Manhattan, Community District 11.

Applicant(s): NYC Department of Housing Preservation and Development 100 Gold Street New York, NY 10038		Applicant's Representative: Veanda Simmons New York City Department of Housing Preservation and Development 100 Gold Street New York, NY 10038	
Recommendation submitted by: <i>Manhattan Community Board 11</i>			
Date of public hearing: <i>6/20/2017</i>		Location: <i>Icahn School of Medicine at Mount Sinai Goldwyn Auditorium, 1425 Madison Ave, NY, NY 10029</i>	
Was a quorum present? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.	
Date of Vote: <i>6/20/2017</i>		Location: <i>Icahn School of Medicine at Mount Sinai, Goldwyn Auditorium, 1425 Madison Ave, NY, NY 10029</i>	
<b>RECOMMENDATION</b>			
<input type="checkbox"/> Approve		<input type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input checked="" type="checkbox"/> Disapprove With Modifications/Conditions	
<b>Please attach any further explanation of the recommendation on additional sheets, as necessary.</b>			
<b>Voting</b>			
# In Favor: <i>32</i>		# Against: <i>9</i>	
# Abstaining: <i>1</i>		Total members appointed to the board: <i>49</i>	
Name of CB/BB officer completing this form <i>Thomas Herrera</i>		Title <i>Assistant District Manager</i>	Date <i>7/3/2017</i>

Application #: **C 170358 ZMM**

Project Name: **East Harlem Neighborhood Rezoning**

CEQR Number:

Borough(s): **Manhattan**

Community District Number(s): **11**

Please use the above application number on all correspondence concerning this application

**SUBMISSION INSTRUCTIONS**

- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, 120 Broadway, 31<sup>st</sup> Floor, New York, NY 10271
  - FAX:** to (212) 720-3488 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

SEE ATTACHED.

<b>Applicant(s):</b> New York City Department of City Planning 120 Broadway, 31st Floor New York, NY 10271-0001		<b>Applicant's Representative:</b> Edith Hsu-Chen, Deputy Director New York City Department of City Planning, Manhattan Office 120 Broadway, 31st Floor New York, NY 10271-0001	
<b>Recommendation submitted by:</b> Manhattan Community Board 11			
<b>Date of public hearing:</b> 6/20/2017		<b>Location:</b> Feahn School of Medicine at Mont Sinni Goldwurm Auditorium, 1425 Madison Ave, NY, NY 10029	
<b>Was a quorum present?</b> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.	
<b>Date of Vote:</b> 6/20/2017		<b>Location:</b> Feahn School of Medicine at Mont Sinni Goldwurm Auditorium, 1425 Madison Ave, NY, NY 10029	
<b>RECOMMENDATION</b> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove <input type="checkbox"/> Approve With Modifications/Conditions <input checked="" type="checkbox"/> Disapprove With Modifications/Conditions			
Please attach any further explanation of the recommendation on additional sheets, as necessary.			
<b>Voting</b> # In Favor: 32 # Against: 9 # Abstaining: 1 Total members appointed to the board: 49			
<b>Name of CB/BB officer completing this form</b> Thomas Herrera		<b>Title Assistant + District</b> Manager	<b>Date</b> 7/3/2017



Diane Collier  
**Chair**

Angel D. Mescain  
**District Manager**

## COMMUNITY BOARD ELEVEN

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June 26, 2017

Marisa Lago  
Director  
New York City Department of City Planning  
120 Broadway, 31st Floor  
New York, NY 10271

### **Re: Recommendation on ULURP Application Nos. C 170358 ZMM and C 170360 HUM East Harlem Neighborhood Rezoning**

Dear Director Lago,

Community Board 11 (CB11) held two, separate public hearings on the East Harlem Neighborhood Rezoning, one on May 16<sup>th</sup>, 2017 and another on June 20<sup>th</sup>, 2017. On June 20<sup>th</sup>, 2017 Community Board 11 voted on the rezoning proposal for East Harlem. Over the past few years, Community Board 11 has invested a considerable amount of time and resources into engaging the community and planning for the future. Through our initial engagement and planning along Park Avenue in 2013, to the East Harlem Neighborhood Plan Steering Committee, and more recently through our Rezoning Task Force, we've helped create a vision for our community that acknowledges existing growth and change, but emphasizes the protection of existing community residents and neighborhood character.

Through the East Harlem Neighborhood Plan, we developed a simple rezoning framework and that embraced the City's new Mandatory Inclusionary Housing (MIH) program, supporting the minimum up-zoning needed to trigger MIH. This would require affordable housing in every new development in the rezoned areas, but minimize the added density and help to preserve community character and stimulate local small business and economic growth.

We suggested up-zoning all avenues and 116th Street, intentionally deciding to spread a minimum increase in density throughout a large area, rather than a higher density rezoning in a limited area. We determined this would allow for development of affordable housing throughout the district, but not permit new development inconsistent with the existing community context.

The Community Board and the EHNP Steering Committee were disappointed to learn that after two years of developing a community-based rezoning proposal, the Department of City Planning did not embrace all of the goals. While their proposal does rezone the community with the goal of developing affordable housing and economic stimulation, it does not preserve the existing character of the neighborhood. DCP has instead decided to allow the highest density residential districts allowed under state and city law in a limited geography - on Park Avenue and Third

Avenue. Rather than spreading out a minimum up-zoning across the neighborhood, DCP left out the area south of 104th Street, all of First Avenue, as well as the lower stretches of Madison Avenue, all of which was included in the EHNP.

The need to develop affordable housing and job creation is not just an East Harlem goal, it is clearly a citywide goal, but the Department of City Planning must approach this goal without impacting the community excessively and respecting its existing character. DCP instead chose to extend the same density found on the Upper East Side into East Harlem. Community Board 11 feels strongly that the proposal as it is does not conform to our core values, the EHNP and the CB11 Park Avenue Recommendations.

The following is a comprehensive analysis of the proposed rezoning that includes our proposed recommendations, as well as the voting results.

## **PREAMBLE**

East Harlem stakeholders have spent many years engaging in extensive community planning. Community residents, community organizers, Community Board 11, Speaker Mark-Viverito, Manhattan Borough President Gale Brewer, and non-profit organizations dedicated to quality of life issues are some of the entities that have been involved in thinking through the myriad issues facing East Harlem and mapping a course that thoughtfully balances the diverse array of interests represented in our community. This process consisted of, to name a few of the steps along the way, the Park Avenue Corridor recommendations, the 2013 study conducted by Community Board 11 and Civitas, and the recent multiyear process resulting in the East Harlem Neighborhood Plan. Unfortunately, the City's current proposal to rezone a substantial portion of East Harlem utterly misses the mark. The City's professed goals are to create permanent affordable housing by rezoning our community to allow for a significant increase in density and thereby trigger Mandatory Affordable Housing and to create economic opportunities for residents to meet their earning potential and thus meet affordability challenges. However, while the City's plan contains some virtues, as discussed below, overall it thoroughly disregards the recommendations made by East Harlem stakeholders after years of multilateral planning in favor of a top-down approach that ignores East Harlem's concerns. For this reason, the City's plan to rezone East Harlem must not pass without considerable revisions.

## **INTRODUCTION**

### **PROPOSED ACTIONS**

The New York City Department of City Planning ("**DCP**") has proposed a series of land use actions including zoning map amendments, zoning text amendments, and city map changes (collectively, the "**Proposed Actions**") affecting a 95-block area in the East Harlem neighborhood of Manhattan Community District 11 ("**CD11**"). The Proposed Actions are intended to facilitate the development of affordable housing, create new commercial and manufacturing space to support job creation, and preserve existing neighborhood character. According to the Draft Scope of Work for the project Environmental Impact Statement ("**DSOW**"), issued November 10, 2016, the Proposed Actions are expected to result in a net

increase of approximately 3,500 dwelling units, 151,100 square feet of commercial space, 98,000 square feet of community facility space, and 132,400 square feet of manufacturing space. The Proposed Actions are also expected to result in a net decrease of 10,600 square feet of auto-related space, 33,000 square feet of hotel space, and 53,800 square feet of warehouse/storage space.

The Proposed Actions reflect DCP's ongoing engagement with Community Board 11 of Manhattan ("CB11") and other community partners. This proposal reflects input generated from the East Harlem Neighborhood Plan ("EHNP"), a comprehensive, community-focused study aimed at identifying opportunities for the creation of new mixed-income housing and the preservation of existing affordable units consistent with Mayor de Blasio's housing plan, Housing New York: A Five-Borough, Ten-Year Plan. Any changes to the zoning map should be evaluated for consistency, accuracy, and—given the land use implications—appropriateness for the growth, improvement, and development of the neighborhood and borough. Our goal in evaluating the text amendment, is to consider whether the Proposed Actions are consistent with the goals of the EHNP (as well as the information gleaned from community engagement sessions) and if they are appropriate and beneficial to the community.

## **BACKGROUND**

### *East Harlem*

In 2003 the City of New York ("NYC") rezoned 57 blocks of East Harlem including most of the area between Lexington Avenue, 122nd Street, Pleasant/First Avenue and 99th Street. The rezoning replaced height factor zoning districts with height limited contextual zoning districts that allowed greater density on the avenues. The 2003 rezoning omitted public housing estates from the rezoning, which resulted in an irregular rezoning area. A 2015 study found that development within the 2003 rezoning are tended toward smaller buildings when compared to development that occurred outside the rezoning area, and new development inside the rezoning area had much less rent regulated housing. In 2008, the 125th Street Special District was mapped in an area that spanned 124th Street to 126th Street across most of Manhattan. Together with the 2008 East 125th Street rezoning, this corridor was rezoned to higher density, height limited buildings that provided incentives for affordable housing and visual arts uses.

As of 2016, East Harlem is comprised of approximately 126,307 residents with a median income of \$31,422. CD11 is predominately comprised of multi-family residential and mixed residential/commercial properties (low to midrise multi-family walk-up and elevator). CD11 is generally bordered by 96<sup>th</sup> Street to the south, Fifth Avenue to the west and the FDR / Harlem River Drive to the north and east. Additionally, CD11 also includes Thomas Jefferson Park, Marcus Garvey Park, Harlem River Park, and Randall's and Ward's Islands.

### *East Harlem Neighborhood Plan*

The EHNP is a community-driven comprehensive roadmap for fostering smart growth in East Harlem. The process was led by City Council Speaker Mark-Viverito, CB11, and Community Voices Heard ("CVH") in partnership with a 21-member steering committee of local stakeholders. Developing the plan was a year-long process with no less than eight large public meetings, approximately 40 policy discussions, numerous calls and meetings with city agencies,

and on-the-ground canvassing for person-to-person survey collection. The culmination of this work resulted in a detailed neighborhood plan with over 230 key objectives and recommendations to ensure a stable and inclusive future for the neighborhood with ideas of how we can achieve it.

According to the EHNP's recommendations, all future rezoning plans should be done in conjunction with each other to ensure that 50 percent of the new housing on private rezoned and public sites is affordable to a variety of low- and moderate-income levels. More specifically, the EHNP recommends that 100 percent of units on public sites be permanently affordable, and that 20 percent of affordable units be set aside for those earning no higher than 30 percent of area median income ("AMI").

## **Area Context**

The neighborhood surrounding the project area is comprised of strong residential and commercial elements, as well as a variety of building typologies.

### *Boundaries*

The Proposed Actions put forth by DCP affect approximately 95 blocks in an area primarily bordered by East 104th Street to the south, East 132nd Street to the north, Park Avenue to the west and Second Avenue to the east; between East 126th Street and East 132nd Street, the western border approaches Fifth Avenue, as more fully described in the ULURP application for the Proposed Actions (the "**Rezoning Area.**") While much of the area proposed for rezoning has not been rezoned since 1961, the Rezoning Area also includes portions of the 125th Street Special District that was mapped in 2008, and large portions of the 2003 contextual rezoning.

## **CONSIDERATIONS FOR COMMUNITY BOARD 11**

It is the mission of CB11 to reflect the needs and desires of the community in any position CB11 takes with respect to DCP's rezoning proposal. To evaluate and more fully consider the Proposed Actions, CB11 has created the East Harlem Rezoning Task Force, which has interacted extensively with the community (through public meetings, community outreach, electronic and paper surveys and other efforts) to develop a comprehensive response reflecting the community's interests in, and concerns with, the Proposed Actions.

Although the City's proposal to rezone a large portion of East Harlem is the largest such proposal in East Harlem since the 1961 zoning was implemented, it is not the first time that CB11 has engaged community residents and community partners with the objective of developing democratic and bottom-up—rather than top-down—priorities for the development of East Harlem. CB11 has long advocated for increased affordable housing in East Harlem and for the continued preservation of affordable housing. Recently, CB11 was one of several project partners that developed the EHNP, and in that process, worked to make sure that many of the community's priorities became a part of the Plan's recommendations. Prior to the EHNP, CB11 and Civitas developed rezoning recommendations for the Park Avenue corridor in 2013 where the community pioneered a version of Mandatory Inclusionary Housing by asking that such a concept be developed for the Park Avenue corridor. For years CB11 has consistently advocated

for policies that would maximize the number of units available for affordable housing, and specifically housing that is affordable to the East Harlem community. In addition, CB11 has worked to address a number of community priorities, including local workforce development, protection of small businesses, and the adequacy of schools and afterschool programs for our youth.

We are keenly aware that rhetoric and practice often fail to square with each other in any proposed rezoning of a neighborhood. First, we note that DCP's proposal occurs against a backdrop of historical rezonings of low-income communities of color, which have resulted in tremendous displacement. To address this reality, CB11 supports measures that both preserve affordable housing and develop new, permanent affordable housing. To that end, it is imperative that we strengthen and enforce rent-regulation laws. Furthermore, we support the construction of permanent mixed-income housing with a baseline 50/30/20 model, also discussed below. We support the requirement for mandatory inclusionary housing ("MIH") in any sweeping rezoning proposal; however, given that the majority of our neighbors live below 30% of the AMI, CB11 firmly advocates for deeper affordability than that currently offered under MIH.

CB11 recognizes that while the City's rezoning proposal is in the spirit of the EHNP rezoning recommendations, there are important and significant differences that remain of concern, especially as they relate to the impacts of increased density. While the EHNP recommended that even a larger area be rezoned, it generally recommended the minimum increase in density necessary to trigger MIH on wide streets and avenues. The purpose of this recommendation was to ensure that when new development occurred, affordable housing would be required. In large portions of the rezoning area, the Proposed Zoning brings the highest density residential districts allowed by law to both Third Avenue and Park Avenue, much more than necessary to trigger MIH. In these areas, the proposed zoning introduces densities considerably higher than the density recommended by the EHNP, and much higher than the Park Avenue Rezoning recommendations. If Third Avenue is rezoned to R9 (8.5 FAR), the large majority of the additional building bulk allowed will be for affordable housing. This is not true under the Proposed Rezoning, which will double the allowable FAR on Third Avenue, but only about half of that additional bulk will be for affordable housing.

The goal of creating as much affordable housing as possible is laudable, but the increase to 12 FAR from 6 FAR on Third Avenue is just too much for a building that will only have approximately 25% of its units permanently affordable: CB11 recognizes that this amount of density will forever change the character of the community, and unless it was for 100% affordable housing, this is simply too much density for the District. But more than just character, CB11 remains concerned that the Proposed Actions will cause a range of externalities that must be addressed by NYC in order to both minimize the impact of rezoning as well as improve the lives of residents of East Harlem. For example, the Proposed Actions have raised questions concerning the expected increase in pedestrian traffic, the ability of current public transportation options to accommodate the increased population, the sufficiency of the existing education facilities, the availability of social services to meet an increased population, the risk to displacement of local businesses, and the suitability of existing infrastructure.

We note that the gap between the City's plan and the community's plan is due at least in part to findings in the EIS that CB11, along with numerous community stakeholders, consider to be extremely dubious. Thus, to the extent that any neighborhood-wide rezoning (or any rezoning of any NYC neighborhood whereby five (5) or more city blocks are proposed for rezoning, NYC Department of City Planning or any other city agency, office or elected official shall ensure that the community board for the affected community shall be provided with funding reasonably sufficient to conduct an environmental impact statement, in addition to any required environmental impact statement any city agency may itself conduct, through a vendor or contractor of its own choosing.

This document is will discuss these concerns in detail. CB11 believes that some of these concerns may be mitigatable through direct and indirect actions that support the rezoning, some of which are detailed in the EHNP and others of which are detailed in the Statement of District Needs, but mitigation will only go so far. There is no mitigation for the change in the district character that 12 FAR districts will bring to East Harlem, and this and other elements of the Proposed Rezoning will need to change. Nevertheless, CB11 appreciates the City's close attention to the EHNP and earlier community driven efforts in East Harlem. We look forward to working with the Manhattan Borough President and the City Council Speaker to identify capital projects and dedicated funds toward which private developers will contribute should the Proposed Actions be approved in some form, and we will continue to work with the City on changes to the Proposed Actions that will support an affordable, sustainable, East Harlem for all its residents.

## **LAND USE AND ZONING**

CB11 has long advocated for the development of increased affordable housing. Insofar as the Proposed Actions seek to create additional housing opportunities that are affordable to the East Harlem community, CB11 is supportive of such efforts. However, the Proposed Actions raise a number of concerns that require mitigation or further consideration in order to best produce an increase in the number of units available that are affordable to the East Harlem community while also minimizing the harmful effects that increased development may cause.

This section will evaluate the Proposed Actions and how they meet the needs and concerns of the East Harlem community. First, this section will address one of the core elements of the plan: rezoning to spur development that is affordable to the East Harlem community. Second, this section will evaluate the Proposed Actions as a whole and evaluate comprehensive concerns. Third, this section will focus on individual components of the Proposed Actions, including specific boundary issues, the Park Avenue corridor, the Third Avenue corridor and other elements.

### **Practical Effects of the Proposed Actions**

The Proposed Actions intend to create a substantial increase in affordable housing for the East Harlem community--a priority for the East Harlem community and a matter long advocated for by CB11. To achieve this goal, however, the Proposed Actions seek to "upzone" portions of the Rezoning Area fronting avenues. As a result, the likely impact of the Proposed Actions will be: (a) An increase in new construction as developers seek to avail themselves of the higher density allowed; (b) an increase in the height, density and overall size of buildings in the avenue portion



of the Rezoning Area; and, relatedly, (c) an increase in the number of new residential units and commercial space. Additionally, as the Proposed Actions are overlaid with MIH, the residential units created will be “affordable” units at a minimum of the prescribed MIH requirements.

## **Alternatives and/or mitigation strategies for addressing the negative impacts of the Proposed Actions**

### **General Analysis**

CB11 has long advocated for increased affordable housing. In this context, CB11 has expressed a number of priorities: (1) more affordable housing needs to be built; (2) existing affordable housing needs to be preserved; and (3) affordable housing--both newly developed and preserved units--needs to be “affordable” to the East Harlem community, and must meet the needs of residents at the AMI bands that are reflective of the East Harlem population.

The Proposed Actions undoubtedly seek to increase the number of affordable units in East Harlem with its main mechanism an upzoning that increases density so that more units can be built. However, the goal of creating more affordable housing is not the only priority for East Harlem. It is also important to seek to preserve the character and culture of East Harlem and to minimize the disruption and difficulty associated with the increased density (both with regards to the increased number and size of buildings, and with the increased population that such development entails). Thus, CB11 strongly believes that greater consideration needs to be made as to whether the Proposed Actions appropriately balance the need for increased affordable housing with the need to preserve a sustainable, livable environment. In this regard, CB11 believes that less significant up-zoning would provide a better balance of the goal for increased affordable housing with the needs and interests of the East Harlem community. The Proposed Actions permit taller, denser buildings and, by doing so, provide for an increase in the number of affordable units. But the greater density does not equate to a 1-for-1 increase in the number of affordable units; rather, it provides an opportunity for luxury-style, high-priced rental housing at the cost of taller, denser buildings that dramatically increase the population of the neighborhood, placing a strain on the services provided to residents.

In addition to the development of increased affordable housing, it is imperative that NYC improve and expand efforts to preserve affordable housing. There are limited vacant development sites in East Harlem and the rezoning is mapped onto many occupied buildings, some of which are small and affordable. These smaller buildings will experience development pressures because of the rezoning, which will put these existing affordable units at risk. Further, new market rate development may cause affordable rents to increase, putting existing affordable, but unregulated units at risk. In short, it is not sufficient to simply build new affordable housing and lose existing affordable housing; instead, NYC must commit to increasing efforts to preserve the existing affordable housing. Specifically, concurrent with the potential approval of the Proposed Actions, NYC must (1) commit additional resources to renovate existing affordable units; and (2) improve and expand tenant protection efforts (including, but not limited to, even further expanding the guarantee of universal access to legal representation for Housing Court to support East Harlem renters that are at or above the \$50,000 threshold, enforcement by HPD and

other city agencies to protect against landlord harassment, funding to promote tenant organizing efforts as well as increased tenant rights awareness efforts.

Even the units that are called “affordable” fail to provide housing that is actually affordable to the current residents of East Harlem. As CB11 has previously indicated through its disapproval of MIH during the ULURP process, MIH’s requirements for affordable housing are important first steps but fail to address the actual affordability needs of the East Harlem community. As indicated above, the median income of East Harlem is \$31,422. Deeper levels of affordability are needed for housing that does not create rent burdens for existing residents.

In particular, MIH’s requirements are insufficient for East Harlem. MIH offers one or more of several options for developments applying MIH zoning: a set-aside of 25% of units at 60% of AMI (approximately \$47,000 on average for a family of three), including 10% of units at 40% of AMI (approximately \$31,000 on average for a family of three); a set-aside of 30% of units at 80% of AMI (approximately \$62,000 on average for a family of three); a set-aside of 20% of units at 40% of AMI; or a set-aside of 30% of units at 115% of AMI (approximately \$89,000 on average for a family of three), including 5% of units at 70% of AMI (approximately \$54,000 on average for a family of three) and 5% of units at 90% of AMI (approximately \$70,000 on average for a family of three). Thus, with the exception of the limited number of units potentially set-aside at the 40% of AMI level, the MIH affordability set-asides fail to create affordable housing for those residents of East Harlem at the district’s median income, let alone for those residents below the median income. MIH does not provide affordable housing for any residents earning 10% and 20% of AMI. In addition, MIH does not provide any benefit to those residents of East Harlem whose incomes exceed the highest income threshold for affordable unit set-asides (families earning in excess of 115% of AMI) though these families are nonetheless often rent burdened. These concerns are more fully discussed below in the Housing section. Yet it remains important to understand that the land use and zoning changes being proposed through the Proposed Actions permit increased development through upzoning on the basis that affordable units are being developed for East Harlem residents. Despite this upzoning benefit, there remain vast swaths of the East Harlem community that will remain unable to obtain affordable housing, and this need must be addressed concurrently with any Proposed Actions.

### **Broad Analysis of Proposed Actions**

CB11 has a number of overarching concerns with how the Proposed Actions impact land use and zoning:

First, the boundaries of the Proposed Actions differ from those advised by the EHNP. CB11 has supported the principle of a rezoning that would spur affordable housing development in every new development. However, the Proposed Actions omitted the areas east of Second Avenue and south of 104th Street. The exclusion of these two areas shows a disregard for the recommendations of the EHNP, and the exclusion of the area south of 104th Street is particularly disconcerting as CB11 believes there are extensive market pressures here driving up rents, and this area needs affordable housing in every new development. The failure to use the larger rezoning area recommended by the EHNP is a missed opportunity to create more affordable housing in East Harlem. A rezoning that would map MIH areas to the east of Second Avenue, to

the south of 104th Street, and perhaps areas along Madison Avenue as described in the EHNP should be discussed with the Community Board so that affordable housing can be a part of developments in these areas as well.

Second, CB11 and East Harlem residents have expressed extensive concern that the Proposed Actions will create tall and massive buildings. The Proposed Actions call for large portions of East Harlem to be up-zoned to R10 and R10 equivalent districts, which allow buildings up to 12 FAR, Third Avenue and Park Avenue. CB11 believes that R9 or R9 equivalent districts provide a more appropriate balance between supply of units, preservation of community character, and the mitigation of community impacts. R9 is the minimum density increase necessary to trigger MIH on Third Avenue. If Third and Park Avenue were rezoned to allow 12 FAR buildings, many sites would be developed with buildings of approximately 30-35 stories or possibly more. Such building heights far exceed East Harlem's existing buildings and do not provide a sufficient number of increased affordable units to justify the loss of space, the imposition of tall buildings and the change in community character. To the extent new developments fail to provide 100% affordable housing--and affordable housing that is actually affordable to the residents of East Harlem--CB11 believes the maximum floor area ratio should not exceed 8.5 FAR on Third and Park Avenues, outside the 125th Street Special District. The only exception to CB11's position on the 12 FAR districts are the changes proposed to the 125th Street Special District, which considering this area's current and future proximity to transit, the high densities proposed by the City in the rezoning are appropriate.

Third, in addition the massive increase in density proposed by the City, CB11 is also concerned about the new tower form the Proposed Actions introduces. The proposed East Harlem Corridors Special District allows a great deal of flexibility in building form. Flexibility is not, in and of itself, a bad thing, but as currently written, the proposed zoning text would allow thin, very tall towers on a small base, and not require the tower-on-base regulations that are currently described in the Zoning Resolution. Tower-on-base is the required tower form on avenues for most of the Upper East and Upper West sides. Because it has a track record, we understand how this building form performs and the types of buildings it produces. It is a mistake to abandon it in East Harlem to allow a new form that lowers the base height, removes provisions for minimum tower coverage and floor area located less than 150 feet. These changes will effectively allow for much taller buildings, but produce no additional floor area or units. The current tower-on-base regulations provide effective height limits without being prescriptive. Further, very tall, thin towers permitted by the proposed zoning are both completely out of character, and because they are extremely expensive to build, are not appropriate for affordable housing. Consequently, the Proposed Actions should adopt the existing tower-on-base building form, in addition to the quality housing envelope and not include the new tower form described in the East Harlem Corridors Special District; the East Harlem rezoning needs to promote building forms that make sense for affordable housing, not luxury housing.

Fourth, there are elements of the proposed rezoning that were not a part of either the EHNP or the Park Avenue rezoning that are welcome new additions and these improvements should be acknowledged: The Park Avenue rezoning recommendations incited the development of non-residential spaces along Park Avenue, but the proposed zoning text requires it, which is a better solution. Further, the limitation on the development of transient hotels appears to be a well-

considered solution to the concern that higher density districts that allow non-residential uses would not produce affordable housing, job intensive commercial spaces, or services for the local community, but hotels designed to serve tourists. This limitation on transient hotels helps to ensure that the needs of East Harlem are met first.

Fifth, there are also elements that were not a part of either the EHNP or the Park Avenue rezoning recommendations that CB11 categorically rejects. The Special East Harlem Corridors District as proposed will allow public parking garages in the district as-of-right, which in most districts require a CPC special permit. While there has been some support in the community for keeping some amount of accessory residential parking, there has never been any indication from CB11 that the community district needed more commercial parking garages. Large commercial parking garages would be terrible uses in this area: As a job producing non-residential use, they are large but produce very few jobs, taking away non-residential spaces from uses that might produce more jobs, or provide necessary local services. They deaden the streetscape and attract traffic to areas that are already congested. There is also a concern that if congestion pricing ever became law, the demand for parking garages in East Harlem could soar due to its easy proximity to Midtown, and push out higher and better uses that serve the needs of East Harlem residents.

Finally, the proposed Special East Harlem Corridors District includes important provisions designed to keep commercial streets active and functioning as attractive, walkable retail areas, including transparency requirements, parking wrapping, limited residential lobbies and limited curb cuts. It does not, however, add full Enhanced Commercial Corridor protections to any part of the district. The contemplated rezoning is likely to spur increased development and dramatically increase the number of residents. The Proposed Actions do not provide assurances that new commercial establishments will provide the services necessary for these new residents as well as the existing residents. East Harlem has historically lacked access to grocery stores, amongst other challenges, and an Enhanced Commercial District could be designed to encourage these historically underrepresented uses that are critical to the well-being of neighborhood residents, but new and existing. At minimum an Enhanced Commercial District should be designed to help preserve the very fine grained commercial uses along 116th Street. Within the rezoning area, 116th Street is lined with small to tiny storefronts that provide a variety of goods and services that are important to the community and contribute to the street's excellent urban design; large footprint retail uses would disrupt the continuity of the street and diminish the quality of the place. An Enhanced Commercial district should be designed to limit the size of retail frontages in at least this area. With respect to La Marqueta and the Park Avenue Commercial Corridor, the City should advance the East Harlem community's recommendations by supporting (a) the construction of capital improvements to the City-owned lots underneath the Metro North viaduct, (b) the creation of a contiguous corridor that has integrated design and use standards for those lots, and (c) the creation of a local governance structure for overseeing the implementation of the community's recommendations for the development and operations of this local community asset.

### **Specific Analysis**

In addition to the foregoing, the effects of the Proposed Actions must be considered as they impact specific geographic areas.

*Third Avenue.* The Proposed R10 district along the Third Avenue corridor is too dense housing. Instead, R9 in the southern portion and an R9 equivalent commercial district in the northern portion would more appropriately serve the needs of the community to simultaneously increase the number of affordable units while also minimizing the negative externalities of taller, larger and denser buildings. The density proposed for Third Avenue must be lowered to equal that proposed for Second Avenue.

*Park Avenue.* As with the Third Avenue corridor, CB11 believes that a R10 district along the Park Avenue corridor is too dense without providing sufficient benefit to the community in the form of increased affordable housing. As with Third Avenue, CB11 believes that this corridor should not exceed R9 densities of 8.5 FAR. Increased height and density along the Park Avenue corridor poses considerable challenges and potential direct impacts on neighboring residents. For example, the highest density district proposed is located directly abutting small (2.0 FAR and less) three family rowhouses built in 2002 on the midblocks between 118th Street, Park Avenue, 120th Street and Madison Avenue. These units were built on property taken during Urban Renewal and their development was facilitated by HPD. While CB11 acknowledges that the existing parking lots on Park Avenue are not a desired use, the urban renewal plan (URP) currently does not allow *any* new residential buildings in a portion of this area to be rezoned R10. To both amend the plan to allow residential uses, and then to allow those uses at the highest possible density, is too large of a change for the residents of this area: R9 zoning will activate the street, provide substantial new housing, and affordable housing, while lowering the impact on neighbors when compared with the City's R10 proposal.

But even at the R9 densities, the City will have to make public safety and infrastructure investments, as further described herein, to mitigate negative impacts and to allow the Park Avenue corridor to realize its potential. Further, the City must engage in efforts to find better uses and designs for the area underneath the Park Avenue railroad tracks as a necessary complement to the Proposed Actions. Any up-zoning of the Park Avenue corridor adjacent to the tracks must convert current parking lots, vacant space and other city uses into opportunities for local business to better serve the needs and interests of the residents of the potential developments as well as the East Harlem community as a whole. It must further make additional investments in La Marqueta so that this important market can better serve the needs of the existing and new community that will be created along Park Avenue.

To be clear, CB11 does agree that R10 equivalent densities are appropriate with the modified 125th Street Special District. Here, the deleterious effect of taller and denser developments will be reduced due to existing and planned transportation infrastructure (Metro North station, the future Second Avenue Subway terminus and the nearby Lexington Avenue station) as well as the existing zoning and nature of the thoroughfare.

*116th Street.* One of the most significant intersections along the 116th Street corridor is the intersection of 116th Street and Lexington Avenue. This intersection, in the heart of East Harlem, is a central hub: The 116th Street subway stop meets with both crosstown buses and downtown buses bring significant foot traffic to a vibrant commercial street. As a result, the intersection is already significantly populated. The Proposed Actions call for ½ of each block

frontage at this intersection to be up-zoned to R9. Outside this intersection on 116th Street and Lexington Avenue, the Proposed Actions call for changes to the existing zoning that are the minimum required to trigger MIH, but do not increase density any more than required.

CB11 is supportive of the increased affordable housing this will bring to this intersection and agrees that there is an opportunity to spur new development. However, changes to the zoning must be accompanied by significant investment in development to better address the bustling nature of this corner. First and foremost, the subway stations need to be improved and stairs and elevators should be integrated into new development that occurs on this intersection so that sidewalk widths can be expanded and ease access to the subway station and neighboring bus stops. Additionally, consideration should be given to the former presence of a grocery store at this intersection and efforts should be made to encourage the development of a grocery store in the ground floor of any new development.

The proposed Special East Harlem Corridors District, of which 116th Street is a part, includes important provisions designed to keep commercial streets active and functioning as attractive, walkable retail areas. Because of the fine grained existing nature of 116th Street, an Enhanced Commercial District should be developed to protect this existing character. Within the rezoning area, 116th Street is lined with small storefronts that provide a variety of goods and services that are important to the community and contribute to the street's excellent urban design; large footprint retail uses would disrupt the continuity of the street and diminish the quality of the place. An Enhanced Commercial district should be designed to limit the size of storefronts along 116th Street.

*Zoning boundary differences and City Map changes.* As indicated above, the Proposed Actions do not mirror the East Harlem Neighborhood Plan and/or the Park Avenue Rezoning recommendations. CB11 believes that these differences are important and the City should reconsider the Proposed Actions to better match those specific recommendations. The following is a list of changes the CB believes should be made to the Proposed Actions:

1. **127<sup>th</sup> Street between Lexington and Park Avenue should be remapped.** This street was vacated during urban renewal, but with the density that is now being proposed, this one block--one block north of the Metro North station--should be remapped. Remapping 127th Street was a part of the 2013 Park Avenue Rezoning recommendations as a related ULURP action, and at that time it was found that a 60 foot street could be remapped without impacting existing buildings. The Proposed Actions is likely the City's last chance to correct this error and to provide a relief for the congestion this increased density proposed will bring. Further, by breaking up this superblock any future development on this site will be more in-scale with the surrounding neighborhood.
2. **A commercial overlay (C1-4) should be mapped on the west side of Madison Avenue between 127<sup>th</sup> and 128<sup>th</sup> Street.** This change was identified in the Park Avenue rezoning recommendations in 2013 and was a comment included on the Draft Scope of Work.
3. **The south side of 124<sup>th</sup> Street between Park and Lexington should be rezoned as either R7D or C4-4D.** The Proposed Actions omits northern midblock portion of western portion of block 1772 and leaves it as R7-2 with a C2-4 commercial overlay. All adjacent areas were either

rezoned in 2008 or are now proposed to be rezoned. This small section of 124<sup>th</sup> Street is largely non-residential and the existing R7-2 is a poor fit for current uses and form. The Park Avenue rezoning recommendations called for the MX district on Park Avenue to “turn the corner” to cover this part of 124<sup>th</sup> Street, but considering Proposed Actions’ density for Park Avenue, this would be too dense for this narrow street. Instead, this block should be rezoned to either the R7D proposed on Lexington Avenue, or the C4-4D that is mapped on the north side of 124th Street.

**4. Do not rezone Eugene McCabe playground or the Henry J Carter Specialty Hospital to high densities that produce unwanted development pressures on these sites.** These sites on the west side of Park Avenue between 120th and 122nd Street and should not be rezoned. They were not recommended for rezoning in the EHNP and they should not be rezoned in the Proposed Actions. The Park Avenue rezoning noted the playground as a “Park,” reflecting 11-13 of the zoning resolution. The site of the Carter Hospital was recommended for rezoning in the Park Avenue recommendations, but the initial recommendation was made before the hospital was built. The playground should be left as open space and a rezoning to R10 or equivalent will put pressures on the Carter Hospital, which is a new facility and an asset to the community.

There is concern that because the Eugene McCabe playground is a Jointly Operated Playground that the City will use it for development rights just as it has attempted to do at the ECF site on East 96th Street. Consequently, it should not be rezoned.

**5. Rezone the Urban Assembly school,** which is the block bounded by Park Avenue, 127th Street, Madison Avenue and 128th Street. The Proposed Actions carves out this site, rezoning all land around it, but leaving this school as R7-2. This site was identified as a potential public development site in the EHNP and contains an outdated school facility that was built without windows. This is a prime location for increased density to support both substantial amounts of affordable housing, as well as for a new, updated school facility that would serve the northern part of the District and beyond.

**6. Rezone the mid-block portion of the blocks bounded by 122<sup>nd</sup> Street, 124<sup>th</sup> Street, Lexington Avenue and Third Avenue.** Like the Urban Assembly School, these portions of blocks were inexplicably carved out of the rezoning while everything around them is proposed for rezoning. The R7-2 district here has been in place since 1961 and allows for community facility towers in the mid-block, and height factor buildings that are not considered the future of East Harlem. The midblock portion of the block bounded by 122<sup>nd</sup> Street, Lexington Avenue, 123rd Street and Third Avenue should be zoned R7B, just as was proposed directly to the south. The mid-block portion of the block bounded by 124<sup>th</sup> Street, Lexington Avenue, 123<sup>rd</sup> Street, and Third Avenue was identified as a public site in the EHNP and should be rezoned as described in the EHNP (R8 or R8A) in anticipation for development with 100% affordable housing.

**7. Rezone the east side of Park Avenue from 128<sup>th</sup> Street to 131<sup>st</sup> Street.** Like Park Avenue directly to the west and south, CB11 recognizes that this area that can accommodate growth: it is within easy walking distance to the Metro North Station and the future terminus of the Second Avenue subway, as well as just a block from an exit of the Harlem River Drive. This area was identified for rezoning in the 2013 Park Avenue rezoning recommendations and in the EHNP, yet is inexplicably carved out of the Proposed Actions. The current zoning is M1-2, a low density manufacturing district that does not describe the desired future of this area. The current uses on these blocks that front Park Avenue are: the Addicts Rehabilitation Center (ARC), A

Consolidated Edison substation, and the DSNY garage for Community District 10. ARC and the DSNY garage for Community District 10 are not appropriate uses to support the redevelopment of Park Avenue into an active destination street. A rezoning to a higher density district would bring development pressures to this area, which would be a positive development and it would help in the relocation of these uses. The DSNY garage should be in CD10 or in a consolidated garage placed elsewhere. The ARC facility, while providing an important public service, should provide this service on a site that is better suited for its needs, and the needs of the community. Finally, the ConEd substation is part of critical infrastructure, but 1) it is not the kind of use that is appropriate for the vision of Park Avenue of the future; and 2) it was built before Superstorm Sandy on a piece of land that is 14 feet above sea level very close to the Harlem River. This use should be moved to a more appropriate location and a rezoning to a higher density mixed use district will support the redevelopment of this area into more desirable uses.

**8. Commercial overlays should not be mapped onto NYCHA housing estates.** The Proposed Rezoning maps commercial overlays on most of the avenue portions of the NYCHA housing estates in the rezoning area. Mapping commercial overlays on NYCHA property was a draft recommendation of the EHNP that was overwhelmingly rejected by the Steering Committee. Any plan for future development on NYCHA estates needs to be developed directly with residents. To be clear, future development on NYCHA estates is not rejected, but only that any future development on NYCHA be planned in conjunction with NYCHA residents, CB11, and the larger community. Mapping a commercial overlay in these areas without any plan is a distraction that does nothing to further a development plan for these areas and should be abandoned.

**9. Modify the Park Avenue Hub Subdistrict of the 125th Street Special District and the proposed zoning changes to that subdistrict to exclude the New York City landmark at the northwest corner of 125th Street and Park Avenue.** CB11 has concerns that the excess floor area from this Landmarked building will be shifted to the vacant site abutting the landmark to the north, allowing a new building in the proposed 12 FAR district to be too tall for the area.

## HOUSING

### **Practical effects of Proposed Actions on housing**

East Harlem is home to a large amount of regulated and subsidized housing. At least 75% of East Harlem residential units are subject to regulation of some sort: specifically, approximately 15% of units are subject to rent stabilization; 30% of units are public housing units administered by the New York City Housing Authority (“NYCHA”); and an additional 30% of units receive some sort of government assistance, such as Section 8 subsidies. As a result, only one-fourth of East Harlem residential units are unregulated.

Furthermore, 38% of CD11 make 30% or below of the area Average Median Income (“AMI”), and a further 17% of CD11 have household incomes between 31% and 50% of AMI. Thus, a majority—55%—of CD11 make 50% of AMI or less. However, there is a wide array of income levels in CD11. Almost one-third of East Harlem makes over 80% of AMI, and nearly one-fifth



of the community's households make over 120% of AMI. While it is imperative that we advocate for households on the lower end of the income spectrum—a position consistently adopted by CB11 throughout its existence—it is important to ensure housing protections for middle-class, or moderate-income, households. All too often, housing safeguards fail to contemplate the large segments of our community that have too much income to qualify for government-assisted housing but not enough income to afford market-rate apartments. Protection of low-income tenants and moderate-income tenants are not mutually exclusive. It is clear that both low-income and moderate-income East Harlem residents would benefit from housing preservation strategies. Even without a planned rezoning, landlords have a financial incentive to deregulate apartments so as to maximize profits, often doing so by harassing existing rent-regulated tenants. This reality is worsened when the City proposes an upzoning of the community—as is the case here with the Proposed Actions—as property owners sell to developers at sharply increased prices. Indeed, CD11 already has many buildings that are being warehoused, i.e., sitting vacant, rather than using their potential and renting out the units, as owners wait for shifts in development trends in order to maximize sale prices.

As the law currently stands, all rent-stabilized apartments—ones that give tenants an array of protections, including a right to a renewal lease and limits on how much the landlord can raise the rent—can be removed from rent-stabilization if the apartment becomes vacant and the monthly rent crosses the threshold of \$2,700. Additionally, in buildings with limits on rents that can be charged because of subsidies from the New York City Department of Housing Preservation and Development (“HPD”), limited rents are only offered as long as the regulatory agreement between the landlord and HPD is in place, and some of those agreements last for only 30 years. After the regulatory agreement expires, landlords are no longer bound to offer the affordable rent, which means that the only permanently affordable residential units are the public housing complexes operated by NYCHA. As a result, even if a landlord of a rent-regulated or government-assisted residential unit does not engage in unlawful conduct to charge market rental rates, the fact remains that the unit will eventually become lawfully deregulated and convert to a market apartment, if the landlord chooses not to renew their regulatory agreement with HPD.

While these realities potentially paint a dire picture, make it all the more important that the City engage in serious preservation efforts.

The requirement of the Proposed Actions that any new development taking advantage of the upzoning comply with MIH obligations with respect to affordable housing is an important idea and a step in the right direction. That being said, there are ways that the City can improve upon the affordable housing requirement included in MIH. First, CB11 firmly advocates for deeper affordability, which is possible through, for example, financial incentives. CB11 has consistently maintained that MIH in new residential development should be set at 50/30/20, with 50% market units, 30% moderate-income units, and 20% low-income units. Second, CB11 maintains that the City is capable of incentivizing and encouraging the development of affordable housing by local non-profit developers; specifically, the City must give preference to local non-profit developers for any request for proposals (“RFP”) for development on public land, as well as provide other financial incentives and relief for non-profit developers and their investors, in light of the fact that non-profit developers are more likely to maintain permanent affordability than their for-profit counterparts.

In sum, it is imperative that, in order to ensure East Harlem's long-term housing vitality and accessibility to our low- and moderate-income, the Proposed Actions include both robust strategies to enforce and expand existing legal protections for tenants aimed at preserving existing affordable housing and provisions for the construction of additional permanent affordable housing in any new development.

## **Alternatives and/or mitigation strategies for addressing the negative impacts of the Proposed Actions**

### **Preservation/Protection**

CB11's priority is the preservation and protection of affordable housing. As noted above, at least 75% of East Harlem housing is regulated in some fashion. Even after adjusting for the approximately 30% consisting of NYCHA public housing, nearly half of East Harlem residences are rent-regulated (subject to rent control or rent stabilization) and/or government-assisted housing. For these privately-owned, government-subsidized residential units, HPD can play a role in extending financial incentives to maintain these units as affordable units with regulated rent limits. To that end, HPD should expand the financial resources available to East Harlem building owners and developers to preserve affordable units by creating a neighborhood-wide HPD funding set-aside. HPD should work to identify privately-owned buildings that could most benefit from an injection of city funds, such as those in need of major repairs, and also those that have rent limits due to regulatory agreements in place between the landlord and the City, which are buildings whose owners may be amenable to the refinancing of their mortgages in exchange for an extension of the regulatory agreement.

Moreover, the City should identify those unregulated buildings containing between one and five residential units that may be suitable for entry into an affordable housing preservation program.

Additionally, the City must continue to fund the current expansion of free legal representation for those families making under 200% of the federal poverty line. In February 2017, Mayor Bill de Blasio and City Council Speaker Melissa Mark-Viverito announced an increase in funding of \$93 million toward legal services for low-income tenants. This unprecedented allocation in funding for civil legal services in New York City Housing Court is a very positive step in the right direction. However, this recent increase in funding should be implemented in a way that serves to build upon the City's strides toward equal justice. The City should ensure that it robustly funds not only individual eviction defense, but also group representation of legal services providers. Group representation enables tenants, among other things, to adequately and efficiently address building-wide conditions, rectify power imbalances, and embolden renters to vindicate their rights. While there is overlap between the group and individual contexts, there exist important differences between those contexts with respect to leverage, strategy, and legal issues, to name a few. Tenants, tenant organizers, and tenant attorneys know this reality well, and the City must take heed if it wishes to ensure that this historic allocation of funds is deployed in a manner that actually effectively addresses the displacement forces the City declares it seeks to combat. To this end, the City must continue to vigorously fund the Tenant Rights Coalition ("TRC")--a project established by Legal Services NYC and The Legal Aid Society through City

funds--which has a mission specifically targeted to combating displacement forces of gentrification in the largely low- and moderate-income communities of color that are slated for up-zoning. The City must extend the TRC contract on terms that enable legal services providers to meet realistic benchmarks. CB11 is particularly interested in the renegotiation and extension of the TRC contract given the City's designation of zip codes that encompass East Harlem neighborhoods.

Furthermore, in light of the realities presented by rezoning, access to information, and disparate access to the courts depending on economic status, the City should provide funding to allow legal services providers to maintain East Harlem storefront offices and/or satellite offices in area community-based organizations for a period of no less than five years from the date of approval of the Proposed Actions, if ultimately approved. Such funding would allow legal services providers to have a visible presence in East Harlem, further increasing access to civil legal services for many individuals who may not receive judicial referrals or who do not otherwise have access to information regarding their legal rights and/or how to attain counsel in Housing Court proceedings.

In addition to the City's injection of needed funds to increase the level of tenant representation in Housing Court, the City itself must aggressively identify and penalize incidents of tenant harassment. The need for a proactive stance by the City in this realm is reflected in the EHNP as well as in the positions adopted by community organizations.

Additionally, the City must create a citywide Certification of No Harassment ("CoNH"). Under this program, landlords would have to attain a CoNH prior to alteration or demolition of a building that contained any rent-regulated unit within the last ten years. In order to attain a CoNH, landlords seeking to demolish a building containing formerly rent-regulated units would have the burden of proving that they have no history of tenant harassment. At a minimum, in the interim the City must expand the applicability of the current CoNH program to include CD11. The City must include the entirety of CD11 to account for the potential effects of the Proposed Actions on the areas outside of the study area.

Furthermore, the City must exercise its power to institute an anti-warehousing tax and/or additional tax on the transfer of warehoused residential properties. Such a tax would disincentivize the practice of allowing residential spaces to remain vacant for long periods of time. Implementation of an anti-warehousing tax will lead to productive use of property and increase the housing stock for the community. CB11

## **New Development**

Although CB11's primary focus has been and continues to be the preservation and protection of affordable housing in our community, the Proposed Actions present an opportunity to ensure the development of permanently affordable housing stock. Under current zoning regulations in East Harlem, there is no requirement that affordable housing be built in new residential construction. As gentrification and its attendant displacement forces continues in East Harlem, residents risk replacement of the current housing stock with almost exclusively unregulated market units by way of new construction and deregulation of currently regulated apartments.

The City justifies the Proposed Actions as a tool to ensure that East Harlem preserves affordable housing and that any new residential development offsets displacement of low- and moderate-income residents through MIH, part of Mayor de Blasio's Housing New York plan. However, while MIH is a serious step in the right direction, it falls well short of addressing the housing affordability needs of the East Harlem community. The majority of East Harlem residents earn less than 30% of AMI, yet the deepest level of affordability under MIH is a set-aside of 25% of any new residential development averaging to 60% of AMI. Of this 25%, 10% will be required at 40% of AMI.

Though MIH is a step in the right direction in that it makes affordable housing mandatory in any new residential development, its current options are wholly insufficient to meet the needs of East Harlem. Not only is the affordable set-aside under MIH actually unaffordable for most East Harlem residents, but it also neglects the substantial percentage of East Harlemites who make over 80% of AMI. These East Harlem families would not qualify for the new affordable units, yet they have insufficient income to afford the unregulated market units or to afford them without being severely rent-burdened. Therefore, CB11 supports a 50/30/20 model wherein 50% of new units are market units and the remaining 50% are affordable units (30% of the units are available to moderate-income families and 20% of the units are accessible to low- and very low-income families, based on a percentage of AMI reflective of East Harlem). CB11 calls on the City to incentivize and subsidize the 50/30/20 model, so that 20% of new residential units will be available to residents earning less than 30% of AMI and 30% of new residential units will be set aside for residents earning between 30% and 120% of AMI. CB11 further calls on City and State subsidies that are directed toward deeper MIH affordability to be insulated against federal budget cuts. Particular in today's federal political climate, it is imperative that the City build a financial bulwark against the whims of the federal government.

Furthermore, it is important that developers meet MIH requirements within each building. That is, developers cannot be permitted to offset failure to meet the affordable housing targets by making up for the shortfall offsite. Permitting developers to transfer the shortfall to offsite projects serves to reinforce socioeconomic segregation, which reinforces notions of second-class status and defeats the purpose of mixed-income housing.

For any development on public land, including NYCHA in-fill proposals, CB11 demands that such development offer 100% affordable housing, with bands targeting a spectrum from 10% of AMI to 120% of AMI. Moreover, in the current climate of budget cuts of programs focused on assisting the most vulnerable families, CB11 requests that the City and State ensure that the incentives and subsidies toward housing preservation and deeper affordability in new development are insulated against federal budget cuts, so that the programs can run in perpetuity regardless of federal allocation decisions.

Finally, CB11 notes that although NYCHA public housing will not be directly affected by the rezoning, there will be myriad indirect effects created by the Proposed Actions. First, as stated above, any process that could yield development of NYCHA land must include the affected NYCHA residents and development should not occur without those NYCHA residents' approval. Second, the effects on economic opportunities, open spaces, and affordability of local goods and

services springing from the Proposed Actions, to name but a few areas, will have a direct impact on the day-to-day lives of East Harlem's NYCHA residents. CB11 steadfastly maintains that East Harlem, home to the second highest concentration of public housing projects in the nation, should not be up-zoned and developed in a manner that isolates NYCHA residents. NYCHA residents must be continuously respected as an important part of the fabric of our community. The City must improve the conditions and quality of life of CD11 NYHCA residents through sufficient funding, and it must actively consider the effect of any development on local NYCHA residents.

## **LOCAL ECONOMY**

### **Practical effects of Proposed Actions on the local economy**

East Harlem contains a significant number of businesses and non-profit organizations that collectively employ over 40,000 individuals. The City's Proposed Actions will have a tremendous impact on the businesses and organizations located in East Harlem. As the City's proposal stands, small businesses and non-profit agencies will likely face substantial challenges, such as steep increases in rent and non-renewal of lease agreements. Those small businesses and organizations that remain may experience further collateral consequences, such as the inability to retain employees due to the sharp increases in rent. Moreover, the failure of the Proposed Actions to limit the width of certain commercial spaces leaves small businesses vulnerable to displacement by chain stores, banks, or other large businesses.

Furthermore, East Harlem has a higher rate of unemployment than that of New York City and the country as a whole. The increase in development due to the City's Proposed Actions presents employment opportunities. Without requirements (and enforcement of those requirements) that developers hire local residents for their projects, East Harlem residents may experience a massive transformation of their community that largely leaves them on the economic sidelines, confirming a feeling of marginalization and exploitation.

Historically, East Harlem contained many local and family owned businesses, which provided vital products and services catering to the core residents. Often serving as a vital lifeline for integrating the community, local family based locales such as La Marqueta continue to this day. However, during the many years of accumulation of investment properties by non-East Harlem investors in the hopes of profiteering during heightened speculation has directly led to the aforementioned warehousing and devolution of the community, thus stifling economic opportunity.

Along First, Second and Third Avenues, many of these buildings do not achieve their commercial potential due to neglected, if not blighted conditions. The remaining businesses, which survive this process, are surrounded by storefronts that continually change due to increased unaffordable rent assessments. With current tax laws in effect, the owners of these properties possess no incentive to engage in fair negotiations with the existing tenants/businesses and in many cases the owners gain more by continuing the practice of rotating the commercial space for additional tax write-offs. Such practices result in abandoned storefronts. Coupled with the vacant apartments above the commercial spaces carry a stigma for investment and

revitalization, thus negatively impacting the surrounding environment and the community at large.

The incoming extension of the Second Avenue Subway will offer new advantages for many of these shareholders and the community. With this planned public works project, the potential for many of these investors to maximize their investment without community input may be realized. The Community Board has initiated outreach to advocate for the community with the aforementioned investors in the past and in most instances, the owners neither care to engage or at best are ambivalent to the community's overall needs. Beyond the general workforce development for this project and other future construction developments, responsibility for creating favorable terms for CD11 should be of the highest priority.

The City can dictate the terms to offset the negative impact of rezoning such as the potential displacement vacuum. The City possesses the singular opportunity to direct mandates through the combined efforts of the rezoning process and the City's legislative powers that would foster local economic growth through issuing incentives to property holders. Working in tandem with the City and State through issuance of financial mechanisms incorporating financial floors, ceilings, sunset clauses, etc. for CD11 specific rezoning would engender community-based engagement. Such implementation would foster retention of many of these treasured businesses that have survived and create an environment for more businesses to invest in our community. Adopting a community-based preference mechanism in conjunction with the above methodology would allow for a more engaged and comprehensive approach.

Beyond standard economic practices, engagement with neighborhood based MWBEs would engender a more widespread approach to the memorialized positions of CB11. Those small businesses and organizations catering to the needs of the community would create opportunities for both local hiring and commodities acquisition. Locally-owned businesses become the economic web for the community. As well as the cultural elements, many of these businesses cater to various economic bands within the community. By incorporating more locally-owned MWBEs from the community, the City will maintain a necessary component to maintaining the community fabric during the rezoning process. All the while, these businesses attract those outside of the community with a more robust disposable income. Additionally, these businesses trend towards hiring locally, which only engenders more economic opportunity for the community.

Further to the provisions above, the City should fully incorporate those enshrined positions and requests that align with the District Needs Statements, EHNP, and any and all positions memorialized by CB11. An approach of this nature would foster a renaissance of the community while mitigating the potential impacts associated from a rezoning process.

### **Alternatives and/or mitigation strategies for addressing the negative impacts of the Proposed Actions**

Developers wishing to build in East Harlem should the Proposed Actions be approved must adhere to the following guidelines, which are specifically geared toward the inclusion of the East Harlem community, (located in zip codes 10029, 10035, 10037, 10128) and to serve as the basis

of economic development goals when executing land use actions for the building of local infrastructure, commercial, and residential projects:

- 1) Requirement for the utilization of community-based organizations (“CBOs”), located in East Harlem as a first source for workforce training, development, and placement on projects in East Harlem.
- 2) Implement funding to establish pipeline capacity for required training qualifications acquisition, trainee opportunities, or any prerequisite requirement assistance through local CBOs to ensure East Harlem residents have the ability to qualify for such placements. Include in funding initiatives, support for business development for women- and/or minority-owned business enterprises (“M/WBEs”).
- 3) Ensure local community participation in all phases of development, not only during construction, but also in the pre- and post-construction phases. At a minimum, developers must hire East Harlem residents to be a minimum representation of 35% of their workforce.
- 4) Utilize local businesses and M/WBEs or disadvantaged business enterprises (“DBE”). Minimum participation level should account for 33% of projects stemming from the Proposed Actions.
- 5) Provide reports to CB11 throughout the project in order to track progress on the above items.

Of particular importance to CB11 is the way that lower income communities of color, which includes East Harlem, are subjected to a level of policing and prosecution that is not found in other communities. Once individuals have a criminal record, they experience a multitude of collateral consequences, including housing discrimination, inability to qualify for student loans, and employment discrimination, to name but a few. These consequences make it nearly impossible for those who have paid their debt to society to return to society as productive members. Consequently, it is critical that the City provide additional funds for non-profit organizations engaged in reentry work so that they can train East Harlem residents reentering the community after their sentence to attain the requisite skills for employment opportunities stemming from the Proposed Actions.

## **INFRASTRUCTURE**

### **Practical effects of Proposed Actions on East Harlem’s existing infrastructure**

East Harlem has a population of nearly 125,000. While there are good transportation links between East Harlem and the rest of New York City, as well as the greater metropolitan area, the existing transportation is insufficient to optimally support the existing population, and the City’s Proposed Actions will serve to exacerbate the existing infrastructure challenges facing East Harlem. Specifically, the 4, 5, and 6 trains are often overcrowded and are the MTA subway lines with the lowest rates of on-time departures and arrivals. The Q train recently opened three new stations, with the most northern station of 96th Street serving the southernmost point of CD11.

Further relief will occur when the MTA eventually opens the Q train Phase 2 stations of 106th Street, 116th Street, and 125th Street; however, by that point, East Harlem will have experienced considerable growth due to not only the Proposed Actions, but also due to large projects on Second Avenue that contain significant residential construction and are currently in the pipeline, such as the Avalon Bay project at Second Avenue and East 96th Street and the African Burial Ground at Second Avenue and East 125th Street. Additionally, crosstown travel is difficult and congested. Unless the crosstown links are improved and expanded, East Harlem will continue to face crosstown backlogs on a consistent basis. Finally, the increased density permitted under the Proposed Actions will see important but narrow corridors, i.e., Lexington Avenue and Park Avenue, facing increasing challenges with respect to pedestrian congestion and safety.

## **Alternatives and/or mitigation strategies for addressing the negative impacts of the Proposed Actions**

### **Transportation**

According to the Draft Environmental Impact Statement for the Proposed Actions (including the proposed Sendero Verde site), East Harlem can expect an influx of 15,962 residents and 3,803 workers by 2027. However, the Proposed Actions provide no means for addressing this substantial increase in population for the community. A massive influx of new residents, as well as workers, requires a significant investment in transportation to appropriately mitigate the impact that this new development will cause. In conjunction with the Proposed Actions, NYC must dedicate additional resources to improve methods of transportation in East Harlem. All of these considerations must consider not only the effect of the Proposed Actions but all other developments that are outside the scope of the Proposed Actions but nonetheless contributing to an increase in residents and a substantial change to the overall transportation needs of East Harlem.

In particular, NYC must improve existing transportation infrastructure and expand transportation opportunities in the following ways. First, NYC must ensure that funding is secured for the long-proposed Phase 2 expansion of the Second Avenue Subway. This expansion will provide additional means of transportation for East Harlem residents and will mitigate the overcrowded conditions of the only other subway in the East Harlem neighborhood. Until such time as Phase 2 of the Second Avenue Subway is actually constructed, it is important to require that the MTA and the NYC Department of Transportation actually mitigate the effect of increased ridership in the East Harlem community through alternative means. As of now, the Draft Environmental Impact Statement disregards the expected ridership in anticipation of the finalization of the Phase 2 project. Unfortunately, after years of being disregarded, CB11 remains skeptical that East Harlem will have an opportunity to benefit from the development of the Second Avenue Subway. Second, NYC must improve bus service in East Harlem. Both the north-south bus lines as well as the crosstown bus lines are regularly overcrowded and increased bus service will provide an invaluable service to East Harlem residents, particularly as a significant increase in neighborhood population is anticipated. Third, alternative public transportation must be encouraged. For instance, the proposed expansion of Citi Bike to East Harlem must be expedited and further expansion to ensure that Citi Bike is a viable method of transportation for East



Harlem residents. More importantly, Citi Bike membership costs must be reevaluated and potentially subsidized to make it a viable alternative for East Harlem residents.

Finally, vehicular traffic and congestion requires further consideration. In connection with the development spurred by the Proposed Actions, an increase in construction vehicles and other traffic is likely to increase. In addition, street closures and related detours seem likely as construction vehicles consume East Harlem's roadways. For instance, along the Park Avenue corridor where a R10 upzoning is proposed, the effect of construction vehicles along one lane streets in each direction seems likely to cause significant challenges to vehicular traffic in East Harlem. Mitigation must be considered and approval of street closures must take a comprehensive view of all developments in East Harlem and not just site-specific approvals or rejections.

### **Public Safety**

As the population of East Harlem is expected to increase in connection with the Proposed Actions, CB11 believes additional resources are necessary to preserve the safety of the East Harlem community.

Police resources need to be expanded to reflect the anticipated increase in the population. Yet such increased resources need to also reflect a need for effective community policing. Overpolicing and overcriminalization must be avoided at all costs. As the population increases, CB11 expects that the police will continue to be a presence in the community but policing must avoid targeting specific populations. In addition, policing must be conducted in a manner that avoids creating the appearance of an actively policed neighborhood. Police must improve efforts at community engagement and community relations. Financial resources should be dedicated to promoting these efforts.

In addition to police, other public safety issues must be addressed. The Fire Department and EMS must also be sufficiently staffed and provided with the necessary resources to address an increased population. Other than emergency services, the anticipated increase in the population is likely to increase vehicular traffic and pedestrian traffic. The NYC Department of Transportation and other relevant agencies must consider how best to address this, how to promote pedestrian safety, how to avoid overcrowding on local streets and, otherwise, how to preserve a safe neighborhood.

### **Sanitation**

The asthma hospitalization rate in East Harlem is among the highest of all neighborhoods in New York City. Among the top contributors to poor air quality in the community are its proximity to the FDR and the presence of two sanitation garages. As such, CB 11 believes that additional resources are necessary to address inadequate sanitation infrastructure and to mitigate poor air quality.

The expected population growth connected to the Proposed Actions will undoubtedly increase strain on outdated sanitation infrastructure, which, in its current state, exacerbates asthma related

illness and vermin. According to the EIS, development resulting from the Proposed Actions would generate approximately 133.3 additional tons per week of solid waste, of which approximately 55 percent (73.1 tons) would be handled by the New York City Department of Sanitation (“DSNY”). The increase in solid waste generated by the Proposed Actions translates to over 17 additional truckloads per week of solid waste. Air pollution from sanitation garages and trucks in the community should be mitigated by permanently relocating the M- 10 Sanitation Garage located on 131st Street and Park Avenue, which is in direct violation of the City’s Fair Share Mandate. CB 11 believes the M-10 garage should be relocated to Central Harlem, the neighborhood it serves, in order to avoid further environmental and health damage to the East Harlem community.

Furthermore, the M-11 Sanitation Garage, which is currently adjacent to Metro East 99th Street, an affordable housing complex for seniors, continues to cause high rates of airborne particulate matter. While DSNY has proposed moving the M-11 Sanitation Garage to the Potamkin site on 127th Street and Second Avenue, their current proposal would do nothing to mitigate air pollution or vermin infestation by either upgrading the existing fleets with zero emissions buses and sanitation trucks or developing a fully enclosed, green facility with advanced indoor air filtration systems. It is CB11’s position that the City should dedicate resources necessary to fund the construction of a consolidated sanitation garage for the CB11 catchment area, using best practices in environmental controls including a fully enclosed sanitation garage in addition to upgrading the entire sanitation fleet.

Finally, more trash receptacles are needed, and existing receptacles should be collected more frequently to prevent overflowing or littering, which can also have adverse impacts on stormwater drainage during heavy rainfall.

## **HEALTH**

### **Practical effects of Proposed Actions on the health of East Harlem’s residents**

East Harlem has some of the poorest air quality in New York City, which has led to an asthma hospitalization rate among children ages 5 to 14 that is more than double the rate for New York City overall. The roads traversing CD11 as well as FDR Drive are frequently and regularly congested, which contributes significantly to the area’s poor air quality. Additionally, and alarmingly, East Harlem has an infant mortality rate and a premature mortality rate that is nearly double the average for Manhattan in each category. East Harlem also has an elevated level of individuals living with hypertension, which is exacerbated by stressors like living in apartments with consistently substandard conditions or in households that are rent-burdened. The real estate realities in our community also heighten the risk of creation and/or aggravation of mental health conditions.

Regrettably, the primary and secondary health impacts of government action on the affected communities are often overlooked or given short shrift. The increase in population resulting from the Proposed Actions will further burden the transportation networks in the area. As noted above, the existing subway lines and bus options are overcrowded and already insufficient to

fully meet the existing public transportation needs of East Harlem. The increased demand will have both direct health impacts, e.g., worsening asthma rates, and indirect health impacts, e.g., increased stress. Additionally, the increase in property values and corresponding increase in rent levels due to an up-zoning of the area will contribute to further worry surrounding housing stability. As noted in the New York Academy of Medicine's East Harlem Neighborhood Plan Health Impact Assessment ("HIA"), there is a direct correlation between higher rent burdens and increased health problems and likelihood of postponing medical treatment for financial reasons. Its HIA also highlights direct correlations between housing unaffordability and poor mental health in low- and moderate-income groups, as well as acceptance of substandard housing conditions.

### **Alternatives and/or mitigation strategies for addressing the negative impacts of the Proposed Actions**

CB11 firmly believes that the City's DEIS severely underestimates the number of people whose health will be adversely affected by the Proposed Actions, a position supported by the New York Academy of Medicine ("NYAM"), one of the community partners engaged in the EHNP process. NYAM's HIA highlights the East Harlem health realities, which entail a community already combating hypertension, obesity, child and adult asthma, diabetes, and mental health issues--and avoidable hospitalizations due to these conditions--at a rate well above Manhattan and New York City averages.

Without implementation of the recommendations herein regarding housing preservation and deeper affordability in new development, the City's Proposed Actions will certainly lead to deterioration in the health of current East Harlem residents, particularly those who are low- and moderate-income, which encapsulates the vast majority of CD11 residents. In order to mitigate the health impacts that any up-zoning of the area would undoubtedly bring about--in addition to the implementation of the recommendations with respect to density, transportation, infrastructure, as well as housing recommendations concerning housing preservation, housing maintenance, and deeper affordability--the City must encourage development design and construction specifications that mitigate noise pollution, particularly near the Park Avenue viaduct, and incorporate green design. Moreover, all new development must incorporate dust mitigation techniques to reduce the impact on the health of existing residents. Furthermore, the City must allocate a substantial increase in funding for community treatment programs specializing in asthma or mental health, as well as facilities offering basic, low-cost preventative care.

Finally, CB11 notes that the City's process for assessing the health impact on the residents of any community slated to be rezoned is fundamentally flawed and leads to counterfactual determinations that there will be little to no impact on the health of current residents if new development occurs. Consequently, CB11 calls for future health impact assessments performed not only by the City, but, as detailed above in the Introduction, to the extent that any neighborhood-wide rezoning (or any rezoning of any NYC neighborhood whereby five (5) or more city blocks are proposed for rezoning, NYC Department of City Planning or any other city agency, office or elected official shall ensure that the community board for the affected community shall be provided with funding reasonably sufficient to conduct an environmental

impact statement, in addition to any required environmental impact statement any city agency may itself conduct, through a vendor or contractor of its own choosing.

## **SCHOOLS/EDUCATION**

East Harlem faces unique challenges with respect to the educational needs of our children, as youths (up to 24 years old) consist of one-third of the area's population. CB11 has long advocated for increased investment in our school's capital needs, as well as an expansion of programming for pre-K, daycare and afterschool programs in our community. The Proposed Actions seek to create both affordable and market-rate housing opportunities in the East Harlem community, which CB11 is supportive of such efforts. However, the analysis regarding the direct and indirect effects of the Proposed Actions on Community Facilities raise several concerns that require mitigation or further consideration. The Proposed Actions are estimated to increase the community's residents and workers by approximately 9.5%, from the original estimate of 4.5%, which will undoubtedly increase the number of youths and cause further strain on the current limited spaces in the schools.

This section will evaluate the Proposed Actions and how they meet the needs and concerns of the East Harlem community about Schools and Education. First, this section will address a known calculation error with using CEQR Technical manual to determine generation rates for youths. This error significantly skews the reality and may cause the Proposed Actions to have a significantly adverse impact to East Harlem. Second, this section will discuss the concerns regarding the methodology used to demonstrate the Proposed Actions will not have a significantly adverse impact to the neighborhood. Third, this section will provide data from the NYC Department of Education that contradicts the analysis provided by the Proposed Actions.

### **Practical effects of Proposed Actions on East Harlem schools and educational needs of East Harlem's students**

There are concerns regarding the rezoning-neighborhood plan and how youth and school seats are counted under the current DOE use, which does not accurately account for the numbers in our community. Over the years, CB11 has drawn attention to the fact that the composition of youths in this district has consistently been different than the rest of the borough. East Harlem School District 4 has approximately 24.2% students with disabilities, as compared to 18.7% for New York City overall, and only 18% of East Harlem students graduated from high school ready for college, as compared with 70% of students graduating on the Upper East Side. The Proposed Actions uses the school children Generation Rates in the CEQR Technical Manual in its analysis, which is a known error as it regards data gathered from the entire borough of Manhattan. The Final Scope of Work needs to explicitly address this error, otherwise it is intentionally undercounting the number of school children generated by the action.

According to the 2014 CEQR Technical Manual, a significant adverse impact may result, warranting consideration of mitigation, if the proposed project would result in both of the following:

- A collective utilization rate of the schools in the study area that is greater than 100 percent in the With-Action Scenario; and

- An increase of five percent or more in the collective utilization rate of the schools in the study area between the No-Action and With-Action Scenarios.

This methodology indicates that even if the collective utilization rate is greater than 100%, so long as the difference is not greater than five percent, the Proposed Actions is not considered a significantly adverse impact. However, a utilization rate greater than 100% suggests that there is overcrowding in schools, thus adding even one percent is exacerbating the existing condition. Using this methodology does not adequately justify that there isn't significant adverse impact to the study area.

The analysis also does not provide percentages for the current utilization rates of Community District 4 schools. Furthermore, there is no data provided that addresses the current infrastructure of the district's schools. Without these necessary data points, it is impossible to verify or adequately evaluate the Proposed Actions' impact. Based on 2015-2016 School Year Enrollment Capacity and Utilization Report produced by the NYC Department of Education, Elementary and High School target utilization rates in Community School District 4 have both exceeded 100%. Thus, any additional load of students will aggravate the current condition. This is precisely why the current methodology fails to justify the Proposed Actions will not have a significantly adverse impact to the neighborhood.

### **Alternatives and/or mitigation strategies for addressing the negative impacts of the Proposed Actions**

#### **School Children Generation Rates in the CEQR Technical Manual**

There is a known error with the student generation rates found in the CEQR Technical Manual. The rates found in the Manual are as follows:

#### **Student generation rates for all unit types from the CEQR Technical Manual**

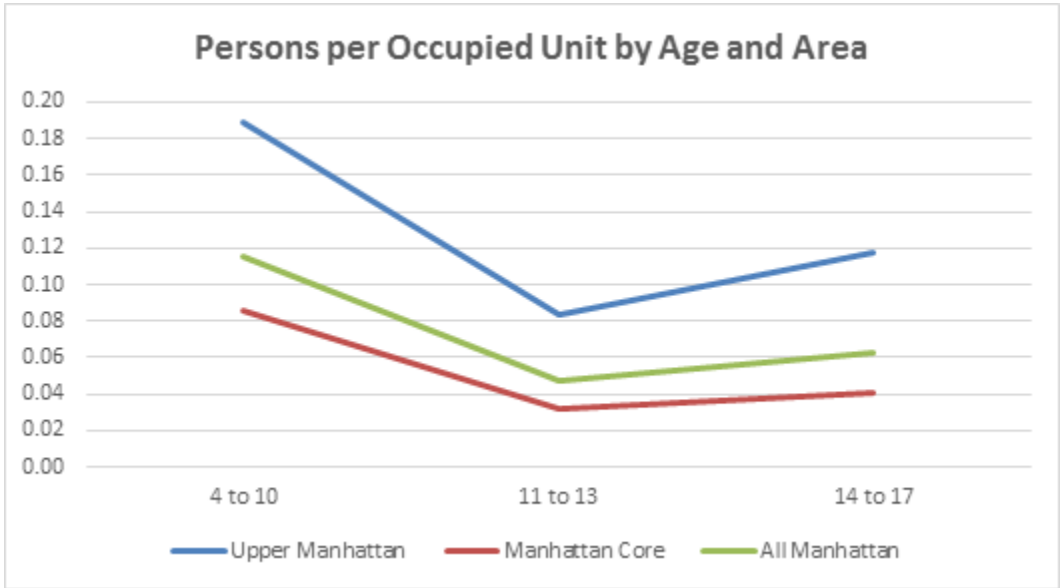
Borough	Elementary (Age 4-10)	Middle school (Age 11-13)	High school (Age 14-17)
BRONX	0.39	0.16	0.19
BROOKLYN	0.29	0.12	0.14
<b>MANHATTAN</b>	<b>0.12</b>	<b>0.04</b>	<b>0.06</b>
QUEENS	0.28	0.12	0.14
STATEN ISLAND	0.21	0.09	0.14

The New York City Zoning Resolution makes a distinction between the Manhattan Core and upper Manhattan in a host of land use policies. Zoning has shaped these two areas of Manhattan and created places with important physical, cultural and socio-economical differences. Therefore, it is reasonable to assume that the children are not produced at the same rate.

#### **Student generation rates for all unit types from 2010-2014 ACS PUMS**

	Elementary (Age 4-10)	Middle school (Age 11-13)	High school (Age 14-17)
CEQR Data	0.116	0.047	0.063
<b>Upper</b>	<b>0.189</b>	<b>0.083</b>	<b>0.117</b>
Core	0.085	0.032	0.041

Furthermore, data queried from the American Community Survey (ACS) Public Use Microdata (PUMS) file confirms this, as Upper Manhattan produces more than twice as many school-aged children per unit as the Manhattan Core. By averaging upper Manhattan and the Manhattan Core together, CEQR uses a generation rate that is wrong for both regions: under-estimating the number of school-aged children in upper Manhattan and over-estimating the number of school-aged children in the Manhattan Core. The above table is shown graphically below:



The ACS PUMS is a US Census Bureau product that is widely considered to be the timeliest and reliable source of data for such detailed queries. Since the best data available for this kind of analysis tells us that the Manhattan Core and upper Manhattan function differently when it comes to child production, the environmental review for the East Harlem rezoning cannot use the student generation rates found in the Technical Manual because they are demonstrably incorrect. The DGEIS should evaluate the Proposed Action impacts using student generation rates represent the different area rates of Manhattan Core and Upper Manhattan.

All this being said, no sophisticated jurisdiction outside New York City generates estimates of school-aged children absent of assumptions of the type of units being built by number of bedrooms. Simply, 100 studio apartments will produce far fewer school children than 100 two bedroom apartments and student projections should be taking this into account. But with few exceptions, CEQR requires that all units are treated the same, which is illogical if the goal is to produce reliable estimates.

Therefore, CB11 requests that the East Harlem Rezoning EIS perform its analysis again using the ACS generation rates for Upper Manhattan only, and the Draft Scope of Work should be

amended to instruct the use of these rates, and accompanied by a discussion of why the rates in the CEQR Technical Manual are not being used. Alternatively, the East Harlem Rezoning EIS could develop estimates based on Reasonable Worst Case unit mixes for the project. In the future, New York City should develop generation rates with at least as much sophistication as other jurisdictions in the United States, and recognize that unit mixes, unit types, tenure, affordability, and even the age of the building matters in school children generation.

## **PARKS/OPEN SPACES**

### **Practical effects of Proposed Actions on parks and open spaces**

East Harlem currently faces a shortage of communal open spaces. Thomas Jefferson Park and Marcus Garvey Park are the largest parks bordering the areas affected by the Proposed Actions. A large section of the East River Esplanade represents the eastern border of our neighborhood. Additionally, the southwestern portion of CD11 borders the northeast corner of Central Park. Although these parks and open spaces provide a good foundation for East Harlem, there is much that can be done to improve the availability and quality of open areas for the residents of Community District 11 (CD11). Furthermore, these spaces including community gardens, playgrounds, and parks, will undoubtedly be further strained as the population grows. The City sets a benchmark of 1.5 acres of open space per 1,000 residents, while New Yorkers for Parks sets a goal of 2.5 acres per 1,000 residents; regardless of which measure one uses, East Harlem falls below that threshold. The City's Proposed Actions permit a drastic increase in residential density, which will greatly increase the use of what open spaces currently exist and will also incentivize the use of land for maximum profit, which in turn will require the vigilant safeguarding of East Harlem's parks and open spaces. Indeed, this is a time for the City to engage in active planning to improve and expand CD11's open spaces.

According to the CEQR Technical Manual, a proposed action may result in a significant adverse direct impact on any specific open space resources if there would be direct displacement/alteration of existing open space. Eugene McCabe Field is a jointly operated playground adjacent to P.S. 79 within the areas that is subject to rezoning by the Proposed Actions. Although there are no specific development plans for Eugene McCabe Field, the proposed high density rezoning will bring development pressures that may change the playground's use in the future.

### **Alternatives and/or mitigation strategies for addressing the negative impacts of the Proposed Actions**

The development of Sendero Verde and the Proposed Actions are expected to increase the population of East Harlem by over 12,000 residents and workers in the next 10 years. Although, the study indicates that the increased demand would not result in significant adverse impacts to open spaces, it will increase the original population growth by over 50%. In addition, the Final Scope of Work analysis details the necessary negative externalities of shadows that the Proposed Actions will cause to existing open spaces. It is then reasonable to recommend that additional funds are allocated towards existing open spaces like the East River Esplanade, and other parks and playgrounds to offset these externalities. In 2016, the New York City Department of Parks

and Recreation (NYCDPR), its Community Parks Initiative (CPI), and the Randall's Island Park Alliance (RIPA), inaugurated the East Harlem Esplanade Project, which aims to completely rebuild the 107th Street Pier while expanding its programming in the process. This all includes a strategy pertaining to reconstruction advocacy, stewardship, and programming best practices for an improved Esplanade along East Harlem, covering East 96th to East 125th streets. In order to maintain and/or improve the quality of life for residents of East Harlem, it is crucial to expand and improve on these efforts.

Currently, Eugene McCabe playground is within the R7-2 zoning, but is within the area planned to be rezoned to R10. In order to preserve and protect Eugene McCabe playground from being developed/redeveloped, CB11 recommends that this space is carved out of the rezoning Proposed Actions.

### **CONCLUSION**

For all of the reasons detailed above, the Proposed Actions must be considerably modified before CB11 can support the City's plan. In its current form, the City's proposal to rezone East Harlem utterly fails to account for the community's needs. The City must match its rhetoric with action. The impact of the Proposed Actions in their current form would be far-reaching and destructive for the overwhelming majority of East Harlem's current residents and would upend our community's vibrant culture and character. The City's plan to rezone our neighborhood is part of its plan to ensure housing stability and affordability throughout New York City; however, the years-long process that has yielded CB11's recommendations makes clear that a more nuanced and local approach is required. It is not enough for the City to say that it cares about low- and moderate-income New Yorkers; it must demonstrate that dedication through proposals that address the needs of the community as laid out by the community itself.

**Community Board 11 (CB11) does not recommend approval of ULURP Application Nos. C 170358 ZMM and C 170360 HUM unless such proposed actions are considerably modified to reflect the interest and desires of the residents of East Harlem. Modifications are as follows:**

1. Maximum R9 and R9-equivalent up-zoning, exception being R10 equivalent district along modified 125th Street Special District
2. Require special permit application process for commercial parking garages
3. Enhanced commercial district on 116th Street, limiting size of storefronts
4. Carve out Eugene McCabe playground and Henry J. Carter Specialty Hospital
5. Include 127th Street between Park Avenue and Lexington Avenue
6. Include current carved out portions of north Park Ave
7. If 116th Street is rezoned, public transportation must be folded into building envelope
8. Utilize local community-based organizations for workforce development, training, and placement on East Harlem projects
9. Establishment of adequately funded workforce development program, which offers certifications and apprenticeships necessary to
10. 35% of workforce must be from East Harlem



11. Funding for community partnerships with existing local reentry programs to facilitate productive transitions for those returning to society after criminal convictions
12. Preference for MWBE/DBE
13. Creation of tax incentive program to incentivize contracts with local MWBE/DBE in development
14. Creation of tax incentive program for commercial property owners to ensure growth of small businesses
15. Community engaged before, during, and after construction, with regular reports to CB11 to track progress on goals
16. Renewal of anti-displacement legal services contracts, i.e., Tenant Rights Coalition, with realistic benchmarks determined by current housing law practitioners that enable thoughtful and effective group representation in order to harmonize rhetoric with reality in combating and/or mitigating the effects of gentrification
17. Increase the number of HPD inspectors as well as convenience of inspection times, and ensure adequate follow-up on whether violations were cured, efficiently issuing fines where the violations go uncorrected beyond the time allowed by law; importantly, HPD must increase its response to complaints regarding emergency conditions (e.g., no heat or hot water), as well as promptly fine and correct failures to correct emergency violations, with the agency billing the emergency repairs to the landlord
18. Greatly increase HPD outreach on HPD's role in addressing housing maintenance issues and create and publicize HPD website with consolidated user-friendly information regarding housing maintenance issues
19. Increased, proactive outreach by City to identify landlords who could benefit from subsidies to being unregulated buildings into rent-regulation schemes
20. Establishment of citywide Certification of No Harassment, or at least expansion of current program to all of CD11
21. 50/30/20 MIH made possible through subsidies
22. Prohibition against offsetting affordable housing offsite
23. Public land reserved for 100% affordable residential housing, which includes any NYCHA in-fill (affected NYCHA residents must be included in decision-making)
24. Priority given to local non-profit developers in all RFPs for development on public land
25. Ensure that City and State subsidies directed toward housing preservation, deeper affordability in new development, and open spaces continue in perpetuity, regardless of federal budget allocations
26. Increase programs and subsidies for homeownership opportunities for low-income and moderate-income families
27. M11 sanitation garage must be in fully enclosed facility with updated technology
28. City must relocate M10 sanitation garage to central Harlem to comport with Fair Share Mandate
29. Funding for asthma and mental health treatment centers, as well as facilities offering preventative medical care
30. Health impact assessment must be done not only by City, but also by community-based organization and/or local community board

*Full Board Vote: 32 in favor, 9 opposed, 1 abstained and 1 no vote*

If you have any questions regarding our recommendation, please contact Angel Mescaín, District Manager at 212-831-8929 or amescain.cb11@gmail.com.

Sincerely,

A handwritten signature in black ink that reads "Diane Collier". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

Diane Collier  
Chair  
Community Board 11

Enclosure

cc: Hon. Melissa Mark-Viverito, Speaker, New York City Council (via email)  
Hon. Brian Benjamin, New York State Senate (via email)  
Hon. Gale A. Brewer, Manhattan Borough President (via email)  
Hon. Robert J. Rodriguez, New York State Assembly (via email)  
Hon. Jose M. Serrano, New York State Senate (via email)  
Candy Vives-Vasquez, Community Board 11 (via email)  
Judith Febbraro, Community Board 11 (via email)