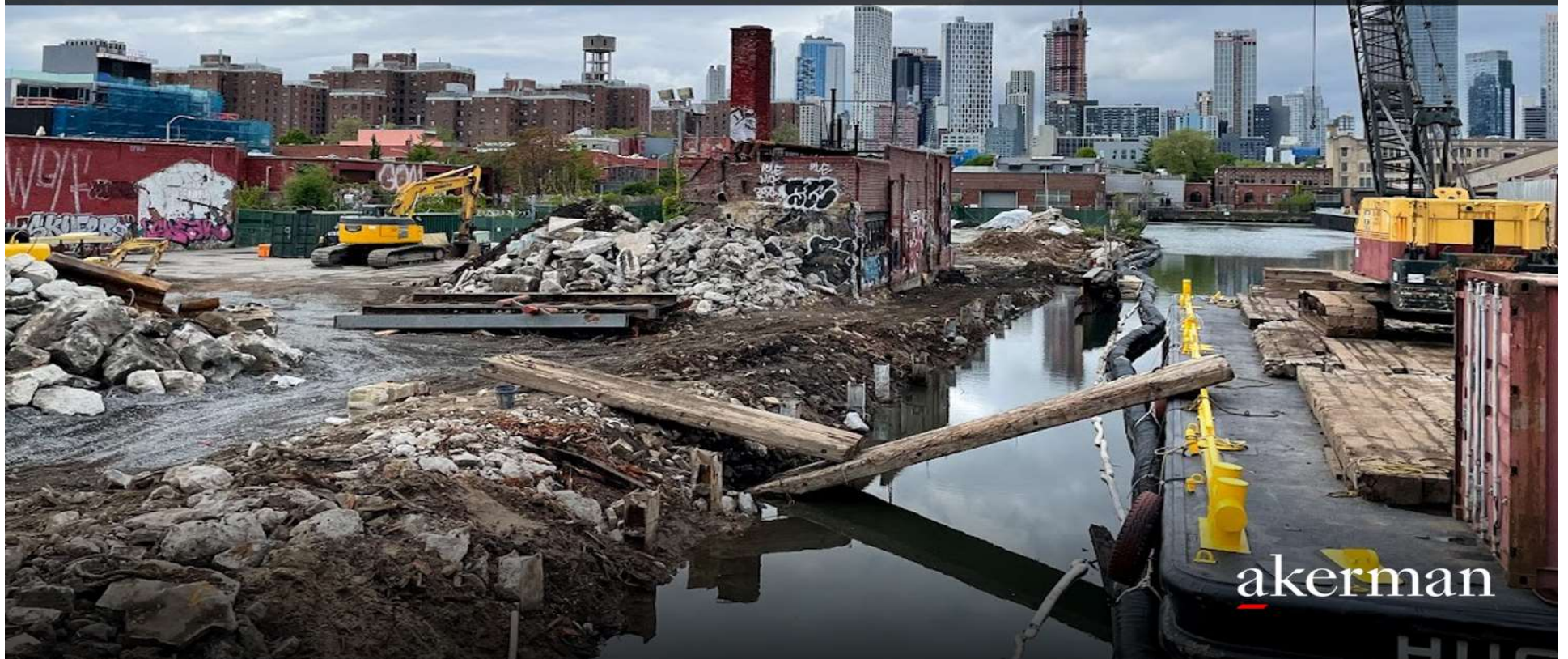


Gowanus Neighborhood Rezoning Seminar Series

November 4, 2021



akerman

Today's Speakers



Steven P. Polivy
Chair, Economic Development
and Incentives Practice
New York
212 880 3800
steven.polivy@akerman.com



Joshua J. Rinesmith
Partner, Real Estate
New York
212 259 6402
joshua.rinesmith@akerman.com



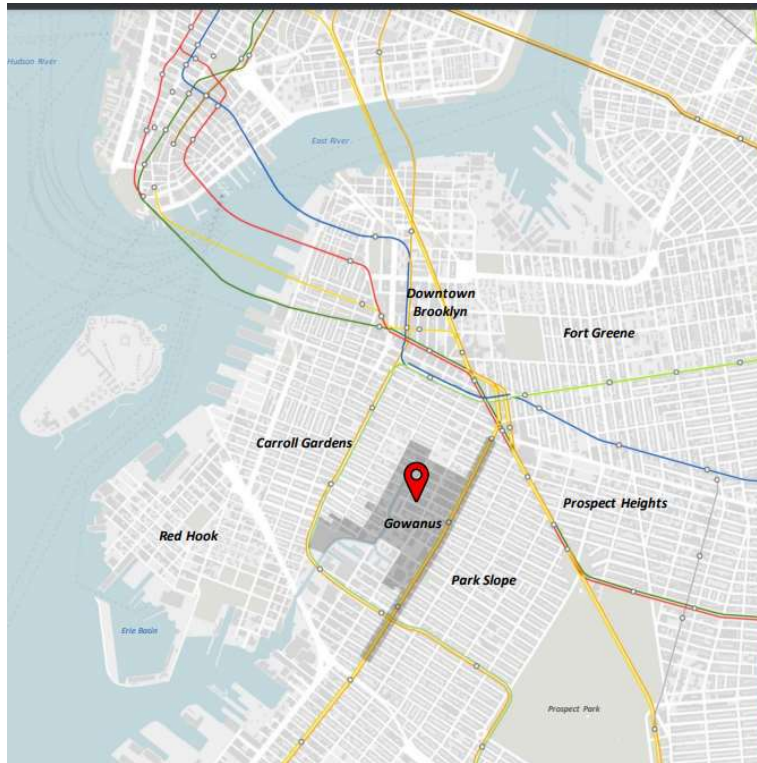
Beth Zafonte
Director of Economic
Development Services
New York
212 880 3800
beth.zafonte@akerman.com



Frank St. Jacques
Associate, Real Estate
New York
212 880 3800
frank.stjacques@akerman.com

Gowanus Neighborhood Plan Rezoning

Geographic Area Covered by Rezoning



Neighborhood Plan Goals

Gowanus: A Framework for a Sustainable, Inclusive, Mixed-Use Neighborhood Structured around community priorities and organized by goals and strategies

- Sustainability and Resiliency
- Community and Cultural Resources
- Transportation
- Land Use and Urban Form
- Housing
- Community and Cultural Resources
- Environmental Remediation
 - Leverage redevelopment of property adjacent to canal to remediate contamination
- Economic and Job Development
 - Support clusters of economic activity and promote development of new jobs generating uses through increased industrial and commercial density and relaxed parking requirements

Gowanus Rezoning – Land Use Actions

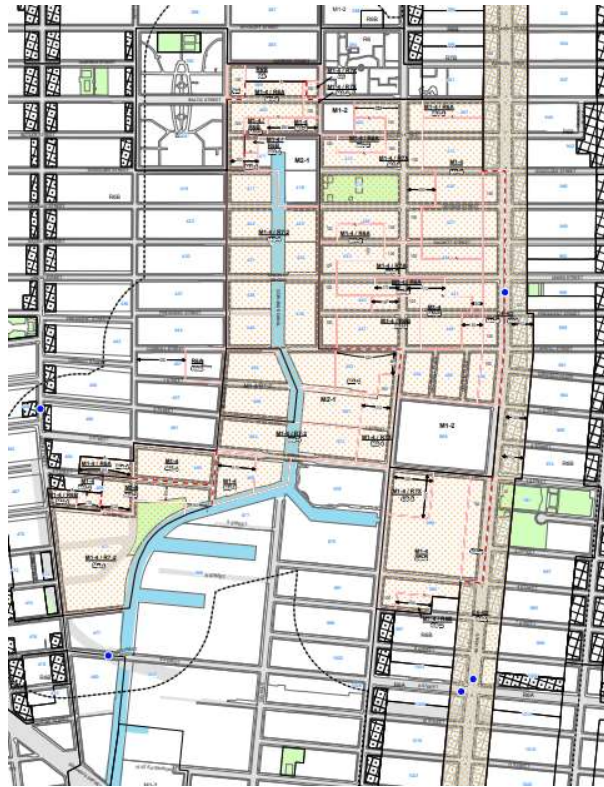
- **City Map Amendments**
 - Mapping of new streets and parkland, elimination of certain streets
- **Urban Development Action Area Project and Disposition of City Owned Property**
 - Designation of portion of Block 471 as a UDAAP to facilitate the development of the Gowanus Green project
- **Disposition of City-Owned Property**
 - To facilitate the transfer of development rights from City-owned property
- **Zoning Text Amendment**
 - Appendix F – Mandatory Inclusionary Housing Area



Gowanus Rezoning – Land Use Actions

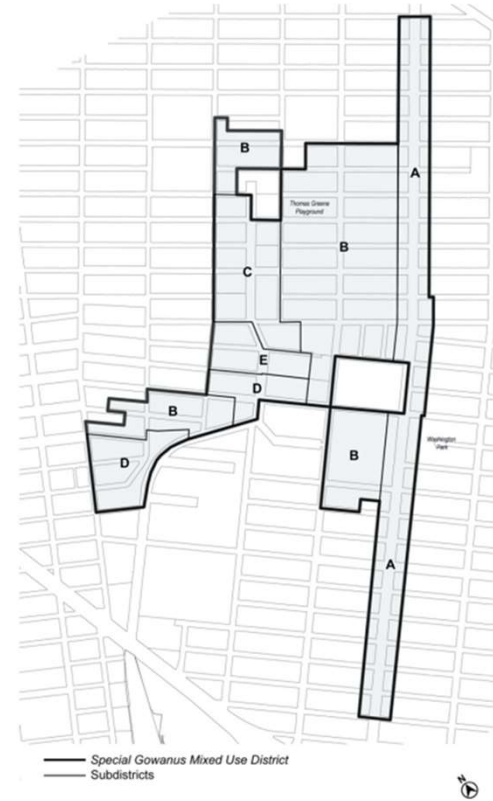
Zoning Map Amendments

Zoning Change Map



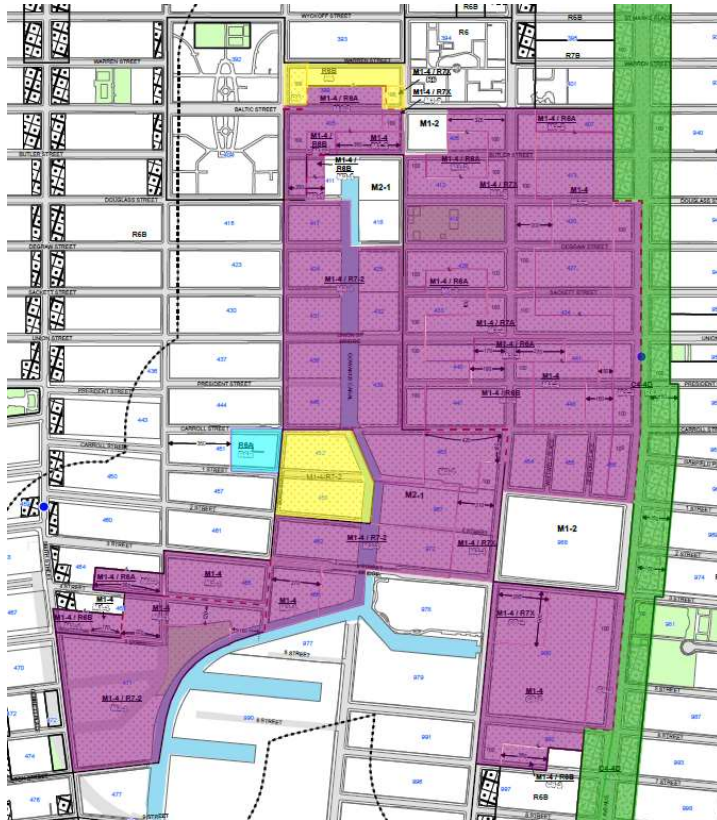
Zoning Text Amendment

Special Gowanus Mixed Use District

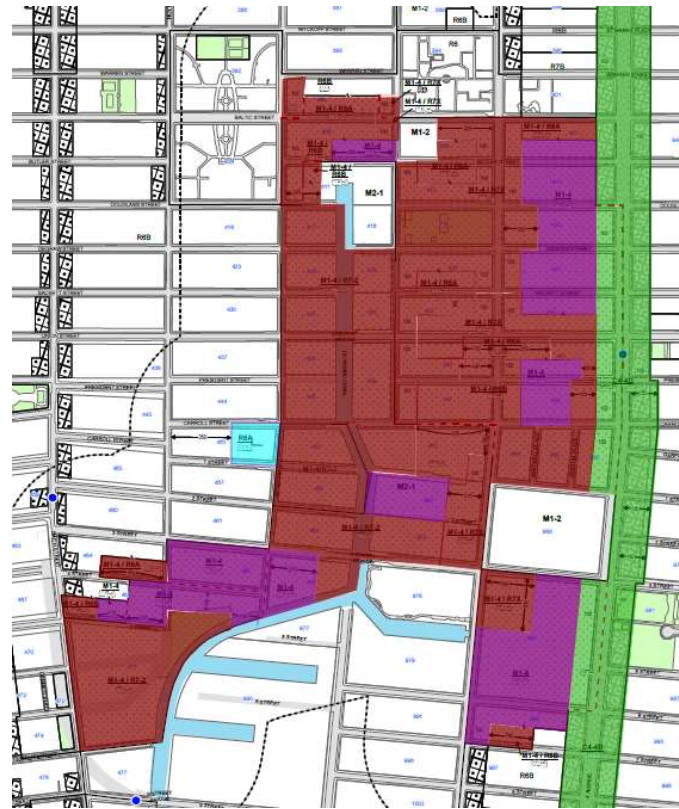


Zoning Changes to Facilitate Residential Housing

Existing Zoning – C8 and M Districts



Proposed Zoning – MX and M Districts



Areas for Mixed-Use Development with Residential

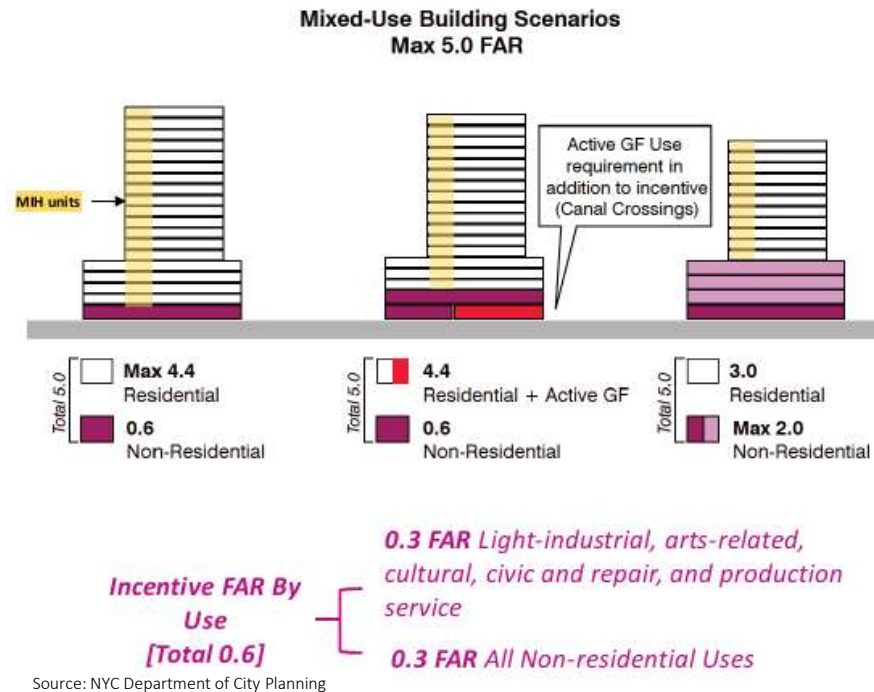
New Paired Zoning Districts

- Modified M1-4 zoning districts are paired with R7X and R7-2 residential districts
- Retail and entertainment uses are limited to a maximum FAR of 2.0
- Industrial, certain community facilities and other commercial uses (office and arts-related uses) allowed at a maximum FAR of up to 3.0 or 4.0, depending on the location
- Bonus FAR is available for buildings with non-residential and “Gowanus Mix” uses, including light industrial, arts-related, cultural, and civic uses; and repair and production services



Paired M1-4 Development FAR Bonus

M1-4/R7-2 Zoning Districts



- Incentive FAR bonuses for non-residential uses in M1-4/R7-2:
 - 0.3 FAR for specified “Gowanus Mix Uses”
 - 0.3 FAR for all non-residential uses
- Allows increase in total FAR from 4.4 to 5.0

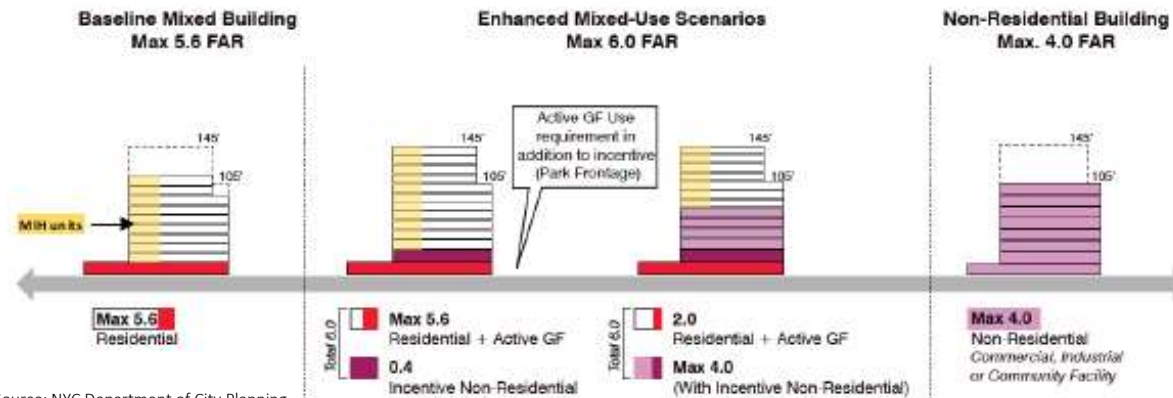
Paired M1-4 Development FAR Bonus

M1-4/R7X Zoning Districts

- Incentive FAR bonuses for non-residential uses in M1-4/R7X:
 - 0.2 FAR for specified “Gowanus Mix Uses”
 - 0.2 FAR for all non-residential uses
- Allows increase in total FAR from 5.6 to 6.0

Incentive FAR By Use
Total 0.4

- 0.2 FAR Light-industrial, arts-related, cultural, civic and repair, and production service*
- 0.2 FAR All Non-residential Uses*

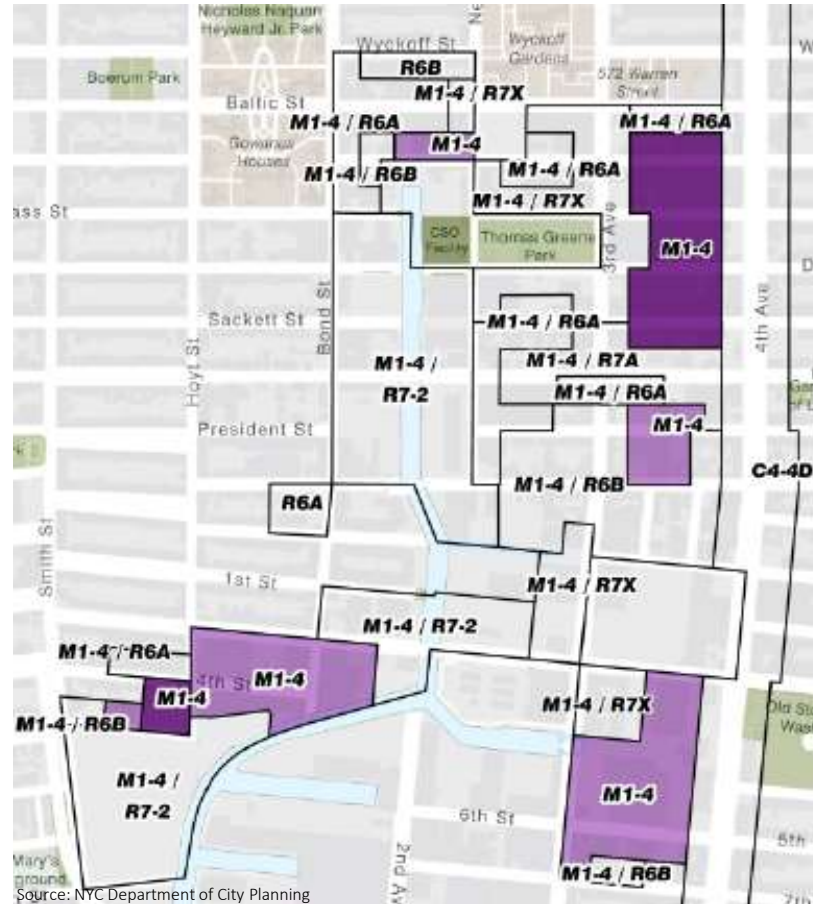


Source: NYC Department of City Planning

Areas for Non-Residential Development

M1-4 Zoning Districts (Non-Paired)

- Modified M1-4 zoning districts are mapped along six areas (~14 blocks)
- Replace M1-1, M1-2, M3-1 and C8-2 zoning districts
- Maintain the prohibition on residential use
- Promote non-residential uses in new mixed-use developments
- Same FAR for non-residential uses as in paired M1-4 zoning districts, except schools, houses of worship and health facilities and non-profit hospitals allowed at a maximum FAR of 4.8 in non-paired M1-4 districts

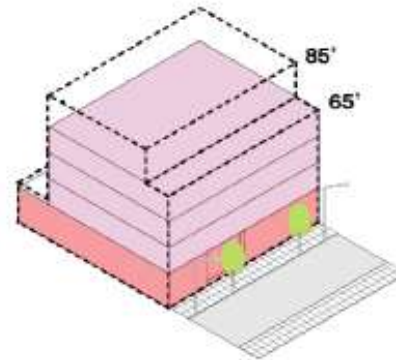


M1-4 Non-Residential Development

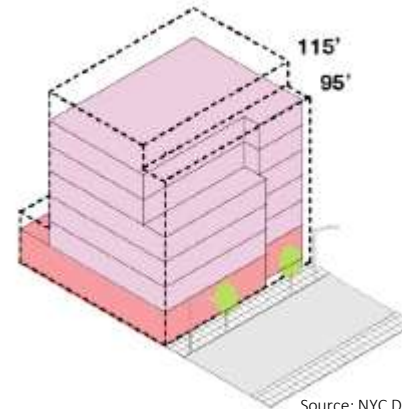
M1-4 Zoning Districts (Non-Paired)

- M1-4 (3FAR) district allows 85 ft height above 65 ft base height
- M1-4 (4FAR) district allows 115 ft height above 95 ft base height
- An additional 30 ft of height allowed for sites larger than 20,000 sq ft

M1-4 (3FAR)



M1-4 (4FAR)



Source: NYC Department of City Planning

Status of Public Review – ULURP



- **City Planning Certification – April 19, 2021**
- **Brooklyn Community Boards 2 and 6**
 - CB 2 – unfavorable recommendation issued June 21, 2021
 - CB 6 – approved with conditions on June 23, 2021
- **Brooklyn Borough President – Approved with conditions on August 24, 2021**
- **City Planning Commission – Approved**
 - Hearing held on June 28, 2021; Vote on September 22, 2021
- **City Council**
 - Zoning and Franchises Subcommittee held October 12, 2021

Economic Development Incentive Programs



New York City Industrial Development Agency

Commercial Office Space Incentives For Developers

For developers of commercial space located in areas of the city lacking in adequate commercial office facilities

Projects to be leased to targeted industries:

- Technology
- Media/ advertising
- Fashion
- Life sciences/ engineering

Program Benefits:

- Sales Tax Waiver
- Mortgage Recording Tax Deferral
- Real Estate Tax Abatements – Project improvements are abated for 25-year term

NYCIDA (cont'd)

Industrial Incentives Program

Available for developers and end-users for:

- manufacturers
- distributors
- warehousers
- other industrial companies

Program Benefits:

- PILOT: 25-year reduction or elimination of land and building taxes based upon location and size of investment
- Sales Tax: On building materials or capital equipment installed in project
- Mortgage Tax: Reduced by 2.5%

NYCIDA- FRESH (Food Retail Expansion to Support Health)

Financial Incentives for FRESH:	Must be in designated FRESH area.
Land Taxes:	May be fully abated for up to 25 years (with benefits phasing out starting in year 21).
Building Taxes:	Stabilized at pre-improvement level for 21 years, 4-year phase-out.
Sales Tax Exemption:	On building materials and capital equipment for initial installation.
Mortgage Recording Tax Exemption:	Deferred for 25 years or life of project.

*Tax incentives are independent of zoning incentives.

FRESH Cont.

Stores must provide:

- A minimum of 5,000 square feet of retail space for a general line of food and nonfood grocery products intended for home preparation, consumption, and utilization.
- A minimum of 30 percent of retail space dedicated to perishable goods that may include dairy, fresh produce, fresh meats, poultry, fish, and frozen foods.
- At least 500 square feet of retail space for fresh produce.

Industrial & Commercial Abatement Program

NYS Real Property Tax Law Section 489-BBBBBBB

- I. Eligible Areas - Outside Manhattan properties are located either in a Regular Abatement Area or a Special Abatement Area. Limited available areas in Manhattan including north of 96th Street, the Garment Center, and Lower Manhattan.
- II. Improvement Requirements - Required expenditures must equal 30% of the taxable assessed value within four years of issuance of first building permit or start of construction if no permit required.
- III. ICAP Abatement Base/Benefit: This is the difference between the Post-completion Tax and 115% of the Initial Tax.
- IV. The Golden Rules: (1) A preliminary application must be filed **PRIOR** to the issuance of a building permit. (2) A final application must be filed **within 1 year** of the building permit issuance date.

ICAP

Benefit Schedules – Borough Regular and Special Areas

1. Regular Abatement Area: 15 years. 11-year abatement at 100% of the abatement base with a four-year phase-out.
2. Special Abatement Area (commercial or industrial): 25 years. 16-year freeze on construction increases, nine-year phase-out.
3. Inflation protection for an increase in years 2-13. **Note:** only covers increases in excess of 5% in any year.
4. Retail in a special abatement area is covered by 25-year abatement only for 10% of total building. Retail over 10% receives 15-year.

The ICAP Program includes a plethora of requirements from before the commencement of work, relating to contracting, on completion and annually thereafter. It is easy to mess up so be sure to get help!

Relocation Employment Assistance Program (“REAP”)

Benefit:

- Tax credits for relocating jobs from outside of New York City or below 96th Street in Manhattan to designated locations above 96th Street in Manhattan or in one of the other four boroughs.
- A 12-year annual credit equal to \$3,000 per “eligible aggregate employment share” for relocation into “revitalization areas”, zoned C4, C5, C6, M1, M2, or M3.
- \$1,000 per eligible employment share outside revitalization area.
- Credit applied against:
 - NYC General Corporation Tax
 - Unincorporated Business Tax and/or
 - Banking Corporation Tax
 - Utility Tax
- \$25/sf property renovation eligibility requirements
- FIRST FIVE YEARS REAP CREDITS ARE REFUNDABLE REGARDLESS OF TAX LIABILITY

REAP (cont'd)

The Golden Rule:	A company must have conducted substantial business operations either outside New York City or below 96 th Street in Manhattan for at least 24 consecutive months immediately before relocating.
Property Criteria:	<ul style="list-style-type: none">• Eligible for ICIP (note: not ICAP)• Leased from New York City Industrial Development Agency• Owned by New York City• Leased from Port Authority or NYS UDC <p style="text-align: center;">OR</p>
Premises Criteria:	If leased or subleased, the term must extend to a date at least 3 (three) years after the later of the following: Lease commencement date; or Date of relocation

Excelsior Jobs Program – Empire State Development

Threshold Eligibility:

- (i) Investment in job creation in NYS for targeted industries
- (ii) “But for” inducement finding required

Program Benefits: Four fully refundable tax credits. 10-year benefit.

1. Excelsior Jobs Tax Credit:

- A credit of up to 6.85% of wages per net new job.

2. Excelsior Investment Tax Credit:

- A credit valued at 2% of qualified investments.

3. Excelsior Research and Development Tax Credit

4. Excelsior Real Property Tax Credit: In certain distressed areas/targeted industries.

*Qualified green projects receive enhanced benefits.

New Market Tax Credit Program

- These credits are allocated by the US Treasury to community Development Entities (CDEs) from a lottery of approximately \$3.5 billion on an annual basis.
- Must be located in a census tract qualifying as a “low-income community”(LIC):
 - (i) The poverty rate for such census tract is at least 20%; or
 - (ii) The Median Family Income (MFI) of such census tract does not exceed 80% of the greater of either statewide MFI or the metropolitan area MFI.

New Market Tax Credit Program

- The credits are then purchased by financial institutions that will purchase the NMTC with a discounted up-front payment which goes into the project.
- The credit is equal to 39% of the amount invested over a seven-year period—5% for the first three years and 6% for the next 4 years.
- Typical structure consists of an investment entity which will make a “leveraged loan” which is funded by the investors who have funded the investment vehicle making the loan in a senior and junior loan structure.
- The B loan is paid interest for the seven-year period and then can be “purchased” by an affiliate of the company for nominal consideration.

Economic Incentives Golden Rules

1. **Investigate incentives early in the process.**
 - a. Explore all benefits when (i) considering a new lease and/or relocation, (ii) expanding employment and/or (iii) making a capital investment.
2. **Include necessary lease provisions before signing lease.**
3. **Do not pull any building permits without confirming applications have been filed, as may be required.**
4. **Be mindful of the time requirements for each program.**
 1. 421-a Example: Commencement must occur on or before June 15, 2022 and COMPLETION must occur on or before June 15, 2026.
 2. Commencement for new development is defined as "the date upon which excavation and construction of initial footings and foundations lawfully begins in good faith."

Incentive	Sunset Date	Vesting Requirements
Industrial and Commercial Abatement Program (“ICAP”)	3/1/2025	<p>Before 3/1/2025:</p> <ul style="list-style-type: none"> • File preliminary application before 1st permit. • Permit must be issued no later than 4/1/2025.
Relocation Employment Assistance Program (“REAP”)	7/1/2025	<p>Before 7/1/2025:</p> <ul style="list-style-type: none"> • Purchase, lease, or enter into contract. • Commence improvements. • File application. • Relocate within 36 mos.of application (72 mos. if improvements exceed \$50.0MM)
Commercial Expansion Program (“CEP”)	7/1/2024, No benefits granted after 6/30/2030	<p>Before 7/1/2024:</p> <ul style="list-style-type: none"> • Lease commencement no later than 7/1/2024. • File application within 180 days of lease commencement.
Energy Cost Savings Program (“ECSP”)	7/1/2023	<p>Before 7/1/2023:</p> <ul style="list-style-type: none"> • File application. Pre-move site visit. • Relocate. Post move site visit. • Complete qualifying improvements. • Receive executed Certificate of Eligibility (by both applicant and DSBS) no later than 7/1/2023.

Q&A



Steven P. Polivy
Chair, Economic Development
and Incentives Practice
New York
212 880 3800
steven.polivy@akerman.com



Joshua J. Rinesmith
Partner, Real Estate
New York
212 259 6402
joshua.rinesmith@akerman.com



Beth Zafonte
Director of Economic
Development Services
New York
212 880 3800
beth.zafonte@akerman.com



Frank St. Jacques
Associate, Real Estate
New York
212 880 3800
frank.stjacques@akerman.com

Upcoming Gowanus Series Events

- **The Future of Gowanus – Thursday, December 16, 2021 @ 1:00 PM**
 - Overview of completed public review process, highlights of any amendments to land use actions, insights on the future of Gowanus

Akerman LLP
700+ Lawyers
24 Offices

akerman.com

©2021 Akerman LLP. All rights reserved.

akerman