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**IN THE MATTER OF** an application submitted by 1-10 Bush Terminal Owner L.P. and 19-20 Bush Terminal Owner L.P., pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York establishing the Special Industry City District (ARTICLE XII, Chapter 9) and modifying related sections in the Borough of Brooklyn, Community District 7.

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This application for a zoning text amendment was filed by the applicant, 1-10 Bush Terminal Owner L.P. and 19-20 Bush Terminal Owner L.P., on February 19, 2019. Approval of this action, along with its related actions, would facilitate a mixed-use development containing approximately 6.6 million square feet of industrial, commercial, and community facility uses in the Sunset Park neighborhood of Brooklyn, Community District 7.

**RELATED ACTIONS**

In addition to the zoning text amendment (N 190298 ZRK) that is the subject of this report, implementation of the land use actions associated with the proposed development also require action by the City Planning Commission (CPC) on the following applications, which are being considered concurrently with this application:

- C 190296 ZMK**      A zoning map amendment to change an M3-1 district to an M2-4 district and to establish the Special Industry City District (IC)
  
- C 190297 ZSK**      A special permit to modify use, bulk, and other requirements within the IC
  
- C 160146 MMK**      A City Map amendment for the elimination, discontinuance, and closing of 40th Street between 1st and 2nd avenues

## **BACKGROUND**

A full background discussion and description of this project appears in the report for the related zoning map amendment (C 190296 ZMK).

## **ENVIRONMENTAL REVIEW**

This application (N 190298 ZRK), in conjunction with the related applications (C 190296 ZMK, C 190297 ZSK and C 160146 MMK), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations. Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 18DCP034K. The lead is the City Planning Commission.

A summary of the environmental review, including the Final Environmental Impact Statement (FEIS) dated August 7, 2020, appears in the report on the related application for a zoning map amendment (C 190296 ZMK).

## **UNIFORM LAND USE REVIEW**

In response to the COVID-19 pandemic, the Mayor issued Emergency Executive Order No. 100 on March 16, 2020 that suspended certain time requirements relating to the Uniform Land Use Review Procedure (ULURP) and other land use processes as of March 12, 2020. The suspension included portions of sections 195, 197-c and 197-d of the New York City Charter, as well as sections of the Administrative Code and the Rules of the City of New York, pertaining to time limitations. The CPC ceased meeting immediately after issuance of the Executive Order until August 3, 2020, when the regular schedule of meetings was resumed. The ULURP time requirements suspended by Emergency Executive Order No. 100 are expected to begin running by September 14, 2020.

This application (N 190298 ZRK) was referred for information and review in accordance with the procedures for non-ULURP matters, in conjunction with the applications for the related actions (C 190296 ZMK, C 190297 ZSK and C 160146 MMK), which were certified as complete by the Department of City Planning on October 28, 2019 and duly referred to Community Board 7 and the Brooklyn Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

### **Community Board Public Hearing**

Community Board 7 held a public hearing on December 9, 2019 on the application and did not affirm a position on this application. A summary of the Community Board's recommendations for the related actions (C 190297 ZSK and C 160146 MMK) appears in the report for the related zoning map amendment action (C 190296 ZMK).

### **Borough President Recommendation**

The Brooklyn Borough President held a public hearing on this application (N 190298 ZRK), in conjunction with the related applications for a for a zoning map amendment (C 190296 ZMK), special permit (C 190297 ZSK), and City Map change (C 160146 MMK) on January 8, 2020 and issued a recommendation was considered by the Brooklyn Borough President, who issued a recommendation to approve the application with conditions.

A summary of the Borough President's recommendation appears in the report for the related zoning map amendment (C 190296 ZMK).

### **City Planning Commission Public Hearing**

On February 5, 2020 (Calendar No. 4), the CPC scheduled February 19, 2020 for a public hearing on this application (N 190298 ZRK) and the related applications for a zoning map amendment (C 190296 ZMK), special permit (C 190297 ZSK), and City Map change (C 160146 MMK). The hearing was duly held on February 19, 2020 (Calendar No. 26), in conjunction with the public

hearings on the applications for the related items.

There were 26 speakers in favor and 26 in opposition, as described in the report on the related action for a zoning map amendment (C 190296 ZMK), and the hearing was closed.

### **Waterfront Revitalization Program Consistency Review**

This application (N 190298 ZRK) was reviewed by the City Coastal Commission for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), approved by the New York City Council on October 30, 2013 and by the New York State Department of State on February 3, 2016, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 15-049. This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

### **CONSIDERATION**

The CPC believes that the proposed zoning text amendment (N 190298 ZRK), in conjunction with the related applications, is appropriate. A full description of the CPC's consideration, analysis of the issues, and the reasons for approving the application appear in the report for the related zoning map amendment (C 190296 ZMK).

### **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on August 7, 2020, with respect to this application (CEQR No. 18DCP034K, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and regulation, have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, adopted herein is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable;
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating, as conditions to the approval, pursuant to the restrictive declaration attached to the report for related application C 190297 ZSM as Exhibit A, those project components related to the environment and mitigation measures that were identified as practicable; and
3. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached to the report for related application C 190297 ZSM as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, Kings County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

**RESOLVED**, that City Planning Commission, in its capacity as the City Coastal Commission finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination and consideration and findings

described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter underlined is new, to be added;

Matter ~~struck-out~~ is to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicates where unchanged text appears in the Zoning Resolution.

## **ARTICLE I - GENERAL PROVISIONS**

### **Chapter 1 - Title, Establishment of Controls and Interpretation of Regulations**

\* \* \*

#### **11-12**

##### **Establishment of Districts**

\* \* \*

#### **11-122**

##### **Districts established**

Establishment of the Special Hunts Point District

In order to carry out the special purposes of this Resolution as set forth in Article X, Chapter 8, the #Special Hunts Point District# is hereby established.

##### Establishment of the Special Industry City District

In order to carry out the special purposes of this Resolution as set forth in Article XII, Chapter 9, the #Special Industry City District# is hereby established.

Establishment of the Special Inwood District

In order to carry out the special purposes of this Resolution as set forth in Article XIV, Chapter 2, the #Special Inwood District# is hereby established.

\* \* \*

**Chapter 2 - Construction of Language and Definitions**

\* \* \*

**12-10**

**Definitions**

\* \* \*

**Special Hunts Point District**

The “Special Hunts Point District” is a Special Purpose District designated by the letters “HP” in which special regulations set forth in Article X, Chapter 8, apply.

**Special Industry City District**

The “Special Industry City District” is a Special Purpose District designated by the letters “IC” in which special regulations set forth in Article XII, Chapter 9, apply.

**Special Inwood District**

The “Special Inwood District” is a Special Purpose District designated by the letters “IN” in which special regulations set forth in Article XIV, Chapter 2, apply.

\* \* \*

**Chapter 4 – Sidewalk Cafe Regulations**

\* \* \*

**14-44**

**Special Zoning Districts Where Certain Sidewalk Cafes Are Permitted**

#Enclosed# or #unenclosed sidewalk cafes# shall be permitted, as indicated, in the following special zoning districts, where allowed by the underlying zoning. #Small sidewalk cafes#, however, may be located on #streets# or portions of #streets# within special zoning districts pursuant to the provisions of Section 14-43 (Locations Where Only Small Sidewalk Cafes Are Permitted).

\* \* \*

|          |                          |                            |
|----------|--------------------------|----------------------------|
| Brooklyn | #Enclosed Sidewalk Cafe# | #Unenclosed Sidewalk Cafe# |
|----------|--------------------------|----------------------------|

\* \* \*

|   |           |            |
|---|-----------|------------|
| Enhanced Commercial District 4 (Broadway, Bedford-Stuyvesant) | No        | Yes        |
| <u>Industry City District</u>                                 | <u>No</u> | <u>Yes</u> |
| Mixed Use District-8 (Greenpoint-Williamsburg)                | Yes       | Yes        |

\* \* \*

**ARTICLE VI – SPECIAL REGULATIONS APPLICABLE TO CERTAIN AREAS**

**Chapter 2 – Special Regulations Applying in the Waterfront Area**

\* \* \*

**62-13  
Applicability of District Regulations**

The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4, the provisions of Article VI, Chapter 4, shall control.



\* \* \*

The regulations of this Chapter shall apply in the following Special Purpose Districts, except as specifically modified within the Special Purpose District provisions:

#Special Industry City District#

#Special Inwood District#

#Special St. George District#.

\* \* \*

## **ARTICLE XII - SPECIAL PURPOSE DISTRICTS**

\* \* \*

### **Chapter 9 - Special Industry City District**

#### **129-00**

#### **GENERAL PURPOSES**

The “Special Industry City District” established in this Resolution is designed to promote and protect public health, safety and general welfare. These general goals include, among others, the following specific purposes:

- (a) to facilitate and guide compatible businesses and organizations to foster a sustainable business environment by allowing a range of industrial, commercial and community facility uses;
- (b) to create a local and regional employment, institutional and retail center within a well-considered site plan;
- (c) to strengthen connections to the upland neighborhood of Sunset Park;

- (d) to support a pedestrian-friendly environment through the creation of an active and inviting public realm, and the pedestrian orientation of ground floor use;
- (e) to preserve, protect and enhance the built form and character of the existing industrial and manufacturing district;
- (f) to promote the most desirable use of land within the district, thus conserving the value of land and buildings, and thereby protect the City's tax revenues.

## **129-01**

### **General Provisions**

In harmony with the general purpose and intent of this Resolution and the general purposes of the #Special Industry City District# and in accordance with the provisions of this Chapter, the regulations of the Special District shall apply.

Except as modified by the particular provisions of the Special District, the regulations of the underlying zoning districts shall remain in effect. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. However, in #flood zones#, in the event of a conflict between the provisions of this Chapter and the provisions of Article VI, Chapter 4 (Special Regulations Applying in Flood Hazard Areas), the provisions of Article VI, Chapter 4, shall control.

## **129-02**

### **Applicability of Article VI, Chapter 2**

In the event that #zoning lots# within an application for a special permit pursuant to Section 129-21 (Special Permit for Use and Bulk Modifications) are partially located within #waterfront blocks# and partially within non-#waterfront blocks#, all #zoning lots# within the application are to be considered non-#waterfront blocks#, and the provisions of Article VI, Chapter 2 (Special Regulations Applying in the Waterfront Area) shall not apply.

## **129-10**

### **SPECIAL REGULATIONS**

## **129-11**

### **Special Use Regulations**

The #use# regulations of the underlying districts are modified by the provisions of this Section.

For #developments#, #enlargements#, #conversions# or changes of #use# established after [date of adoption] that are subject to performance standards, the M1 District performance standards of Section 42-20, inclusive, shall apply.

If any existing #use# or #building or other structure# is #extended#, #enlarged# or reconstructed after [date of adoption], the performance standards for an M1 District shall apply to such #extended#, #enlarged# or reconstructed portion of such #use# or #building or other structure#.

## **129-12**

### **Special Off-Street Parking Regulations**

For #developments#, #enlargements#, #conversions#, or changes of #use# in M1-2 Districts that are the subject of a special permit granted by the City Planning Commission pursuant to Section 129-21 (Special Permit for Use and Bulk Modifications), the underlying off-street parking regulations of an M2-4 District shall apply.

## **129-13**

### **Other Regulations**

Except where modified by special permit of the City Planning Commission pursuant to Section 129-21, the remaining #use# and #parking# regulations of the underlying districts shall apply, in addition to all #bulk# regulations of the underlying districts.

**129-20**  
**SPECIAL PERMITS**

**129-21**  
**Special Permit for Use and Bulk Modifications**

For #developments#, #enlargements#, #conversions#, or changes of #use# involving one or more #zoning lots#, but planned as a unit, that comprise in total an area of at least 1.5 acres, where all zoning lots are located wholly within the #Special Industry City District#, the City Planning Commission may allow, by special permit, the modifications listed in paragraph (a) of this Section provided that the Commission determines that the findings in paragraph (b) are met. Application requirements are set forth in paragraph (c) and additional requirements are set forth in paragraph (d) that apply subsequent to the approval of an application.

(a) Permitted modifications

The Commission may permit the following modifications to the underlying #use# and #bulk# regulations, subject to any applicable conditions.

(1) Use modifications

The Commission may permit:

- (i) the following #uses# from Use Group 3A: #schools#, with no living or sleeping accommodations; colleges or universities, including professional schools, libraries, museums and non-commercial art galleries, in total, limited to an aggregate #floor area# of 625,000 square feet;

- (ii) #transient hotels#, as listed in Use Groups 5 and 7A;
- (iii) all #uses# listed in Use Groups 6A, 6C, 7B, 8B, 9A, 10A, 12B and 14A, regardless of whether permitted as-of-right in the underlying district, provided that:
  - (a) all retail and service establishment #uses# shall be limited to an aggregate #floor area# of 900,000 square feet;
  - (b) if the amount of aggregate #floor area# for such #uses# exceeds 120,000 square feet, all additional retail and service establishment #uses# shall provide parking at the rate of one space per 500 square feet of #development#, #enlargement# or change of #use#; and
  - (c) art, music, dancing or theatrical studios in Use Group 9A and depositories for storage of office records, microfilm or computer tapes, or for data processing, photographic or motion picture production studios and radio or television studios in Use Group 10A shall be exempt when calculating aggregate retail and service #floor area#;
- (iv) #physical culture or health establishments#, including gymnasiums. For the purposes of applying the underlying regulations, a #physical culture or health establishment# shall be considered a Use Group 9A #use#; and
- (v) modifications to the performance standards for distilleries, as listed in Use Group 18A as an alcoholic beverage manufacturing establishment, as follows. In lieu of Sections 42-272 (Classifications) and 42-275 (Regulations applying to Class III materials or products), all distilleries established by this special permit, and the Class III materials they manufacture, store, handle and use, shall be subject to the design, installation, operation and maintenance requirements of the New York City Fire Code and rules, including occupancy group restrictions, floor restrictions, storage limitations, and facility and equipment requirements. An application demonstrating compliance with the New York City Fire Code and rules shall be made to the Fire Department for approval. No distilleries shall be permitted to open or

receive a certificate of occupancy by the Department of Buildings and no existing distilleries shall be allowed to expand except with Fire Department approval.

(2) Bulk Modifications

The Commission may permit modifications to all underlying #bulk# regulations other than the permitted #floor area ratio#.

(b) Findings

To grant a special permit, the Commission shall find that:

(1) any modifications will aid in achieving the general purposes and intent of the Special District;

(2) for #uses# modifications:

(i) such proposed #uses# are compatible with existing #uses# and are appropriate for the location;

(ii) such #uses# will be located so as to draw a minimum of vehicular traffic to and through local #streets#;

(iii) access to public #streets# from such #uses# is designed to maximize pedestrian safety and minimize vehicle and pedestrian conflicts;

(iv) such #uses# will not impair the essential character or future use or development of the surrounding area.

(v) For #uses# in Use Group 3A:

(a) an adequate separation from air, noise, traffic and other adverse effects is achieved to minimize the potential conflicts from surrounding industrial uses. For #schools#, such separation shall be

achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along #lot lines# of the #zoning lot#; and

(b) in selecting the site for such uses, due consideration has been given to the proximity and adequacy of mass transit facilities;

(c) for #schools#, the movement of traffic through the #street# on which the #school# is located will be controlled so as to protect children going to and from the #school#. The Commission shall refer the application to the Department of Transportation for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site; and

(vi) for #transient hotels# in Use Group 5 or 7A:

(a) an adequate separation from air, noise, traffic and other adverse effects is achieved to minimize the potential conflicts from surrounding industrial #uses#; and

(b) such #use# is appropriate to the needs of business in the #Special Industry City District# and will not impair the essential character or future #use# or #development# of the surrounding area; and

(3) for #bulk# modifications, the Commission shall find that:

(i) the proposed modifications facilitate a good site plan that enhances the streetscape and promotes a harmonious relationship in scale and design with existing #buildings# and the essential character within the #Special Industry City District#;

(ii) such proposed modifications will not unduly obstruct access to light and air of adjoining properties or public #streets#; and

(iii) the distribution of #floor area# and location of #buildings# will not unduly increase the #bulk# of #buildings# in any one #block# or unduly obstruct

access of light and air to the detriment of the occupants or users of #buildings# in the #block# or nearby #blocks# or of people using the public #streets#.

(c) Application requirements

An application to the Commission for the grant of this special permit shall include a site plan showing the boundaries and the proposed location of all #buildings# or other structures# on each #zoning lot#. Any #development#, #enlargement#, #conversion# or change of #use# shall be on a tract of land which is under the sole control of the applicant(s) as in single fee ownership or in alternate ownership arrangements according to the #zoning lot# definition in Section 12-10 (DEFINITIONS), or as holders of a written option to purchase at the time of application for this special permit. Such site plans shall provide zoning calculations and proposed #use#, bulk, parking, and loading for each #zoning lot# portion. Alternate site plans may be provided for approval by the Commission, which clearly identify all portions in common ownership (single fee ownership or alternate ownership arrangements according to the #zoning lot# definition in Section 12-10 (DEFINITIONS)) and all portions not in common ownership at the time of application for this special permit. Such plans may include #zoning lots# within the boundaries of the special district which are not under the sole control of the applicant(s) as fee owners or holders of a written option to purchase at the time of application for this special permit.

(d) Additional restrictions and requirements

Subsequent to the approval of an application for a special permit pursuant to this Section, the following shall apply, where applicable:

- (1) Prior to issuing a building permit facilitated by this special permit for a #development#, #enlargement#, #conversion# or change of #use# on a #zoning lot# or portion of a #zoning lot# that was not under the sole control of the applicant(s) at the time of application for this special permit, as represented in an alternate site plan, the Department of Buildings shall be furnished with a certification by the Chairperson of the City Planning Commission that confirms such #zoning lot# or portion thereof is, at the time of application for such building permit, under the sole control of the applicant(s) as single fee owners or alternate ownership arrangements



according to the #zoning lot # definition in Section 12-10 (DEFINITIONS), or as holders of a written option to purchase.

- (2) Where a #building# contains a #use# permitted in Use Groups 3A, 5 or 7A through this special permit, such #uses# may locate in a #building#, or share a common wall with a #building#, containing #commercial uses#, or #manufacturing uses#, other than those listed in Use Group 18, upon certification by a licensed architect or engineer to the Department of Buildings that any such #use# listed in Use Group 16 or 17:
- (i) does not have a New York City or New York State environmental rating of “A”, “B” or “C” under Section 24-153 of the New York City Administrative Code for any process equipment requiring a New York City Department of Environmental Protection operating certificate or New York State Department of Environmental Conservation state facility permit; and
  - (ii) is not required, under the City Right-to-Know Law, to file a Risk Management Plan for Extremely Hazardous Substances.
- (3) The maximum number of permitted parking spaces in an #accessory group parking facility# pursuant to Section 44-12 (Maximum Size of Accessory Group Parking Facilities) may be increased to 500 spaces if the Commissioner of Buildings determines that each such facility:
- (i) has separate vehicular entrances and exits, located not less than 25 feet apart;
  - (ii) is located on a street not less than 60 feet wide and has adequate reservoir space at the vehicular entrance to accommodate either 10 automobiles or five percent of the total parking spaces provided by the use, whichever amount is greater.
- (4) #Accessory# off-street parking may be located on #zoning lots# other than the same #zoning lot# as the #use# to which they are #accessory#, provided that they are located within the boundary of the special permit application.

- (5) For the purposes of applying the provisions of Sections 11-42 (Lapse of Authorization or Special Permit Granted by the City Planning Commission Pursuant to the 1961 Zoning Resolution) and 11-43 (Renewal of Authorization or Special Permit) to any special permit granted under this Section including a future certification pursuant to paragraph (d)(1) of this Section, substantial construction shall, in addition to having the meaning set forth in Section 11-42, also mean the issuance by the Department of Buildings of a temporary or permanent certificate of occupancy, or an equivalent, for any use not permitted by the underlying district regulations.

The Commission may prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area.

\* \* \*

The above resolution (C 190298 ZRK), duly adopted by the City Planning Commission on August 19, 2020 (Calendar No. 15), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

**MARISA LAGO**, *Chair*

**KENNETH J. KNUCKES, ESQ.**, *Vice Chairman*

**ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO, III, JOSEPH DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD**, *Commissioners*

**DAVID J. BURNEY**, *Commissioner, VOTING NO*

**MICHELLE R. DE LA UZ**, *Commissioner, RECUSED*