

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON LAND USE

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HELD AT: Council Chambers - City Hall

B E F O R E: David G. Greenfield
Chairperson

COUNCIL MEMBERS: Vincent J. Gentile
Annabel Palma
Inez E. Dickens
Daniel R. Garodnick
Darlene Mealy
Rosie Mendez
Ydanis A. Rodriguez
Peter A. Koo
Brad S. Lander
Stephen T. Levin
Jumaane D. Williams
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Donovan J. Richards
Inez D. Barron
Andrew Cohen
Ben Kallos
Antonio Reynoso
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A P P E A R A N C E S (CONTINUED)

Edith Hsu-Chen
Director of Manhattan Office at NYC Department
of City Planning

Anita Laremont
Department of City Planning General Counsel

Patrick Wehle
Assistant Commissioner for External Affairs at
Department of Buildings

Joseph Ventour
Chief of Special Operations at Department of
Buildings

Jerold Kayden
Harvard Law School of Design

Marcel Negret
Municipal Art Society of New York

Rachel Levy
Friends of the Upper East Side Historic District

Kelly Carroll
Historic District Council

Brian Nesin
Friends of POPS

Basha Gerhards
Manhattan Borough President Gale Brewer's office

A P P E A R A N C E S (CONTINUED)

Lo van der Valk
Carnegie Hill Neighbors

Jesús Pérez
Manhattan Community Board Six

Moses Gates
Regional Plan Association

Alice Blank
Community Board One - Community Advocates for
Public Space

Eric Edward Stern
Manhattan Community Board Five

CHAIRPERSON GREENFIELD: Good afternoon.

Thank you all for joining us. My name is David Greenfield. I am the Council Member from the 44th Councilmatic District of Brooklyn and I am privileged to serve as the Chair of the Council's Land Use Committee. I want to welcome my esteemed colleagues who are members of the Committee and who are present here today. I see Council Member Chin. I see Council Member Dickens, Council Member Koo, Council Member Gentile, and Council Member Cohen, Council Member and Chair Richards, Council Member Kallos, Council Member Torres, and Council Member Garodnick. Thank you all for joining us. Today, we will hold a hearing concerning oversight over the City's privately owned public spaces, abbreviated as POPS. This is the first Oversight hearing the City Council has ever conducted on the issue and is a recognition that we need to develop new and better strategies for protecting our scarce public space in New York City. I especially want to thank Council Member Chin who most recently had to go through a rezoning in relation to privately owned public space for working with us on this issue and continuing to be a leader in this issue. At the same time we will also be

1 holding a hearing on Intro 1219-2016, a bill which
2 was written by myself and Council Member Kallos which
3 would require the New York City Department of City
4 Planning and the New York City Department of
5 Buildings to provide reports to the City Council
6 about every POPS built pursuant to zoning. First, a
7 little background. Privately owned public spaces are
8 provided and maintained by a private owner for public
9 use, pursuant to provisions of the zoning in exchange
10 for a four area bonus generating literally millions
11 of square feet of bonus floor area in some of the
12 most desirable and valuable neighborhoods in New York
13 City. POPS are generally permitted in the City's
14 high-density commercial and residential districts and
15 are intended to provide light, air, breathing room,
16 and green space to ease the congestion in the City's
17 densest areas. We have hundreds of these spaces
18 scattered across New York City, but primarily in
19 Manhattan below 96th Street. Since the inception of
20 the POPS program in 1961, there have been some
21 extraordinary spaces created, but also far too many
22 problems with the quality of the spaces and with
23 unauthorized privatization of what are supposed to be
24 public spaces. Today, we will explore the subject of
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2 how as a City we can do better to protect and improve
3 these spaces and how we forcefully [sic] ensure
4 careful and rigorous enforcement of the agreements
5 that are already in place for these privately owned
6 public spaces, and also develop strategies to upgrade
7 and improve existing spaces. One direction forward
8 is suggested by Intro Number 1219 which would require
9 the Department of City Planning to provide detailed
10 information about each POPS and require DOB, the
11 Department of Buildings, to submit detailed reports
12 on the compliance of each of these public spaces. We
13 don't see this bill as the only approach, but we do
14 see it as an opportunity to have a broader discussion
15 about other potential strategies and a starting point
16 for having more accountability and transparency in
17 relation to POPS in this city. To that end, by
18 shining a light on all the POPS in this city, that
19 will on its own help ensure compliance, but it will
20 also create a situation where the reporting
21 requirements will ensure that the public better
22 understands what the public space is, what the public
23 is entitled to, and what are the obligations of the
24 property owners as well. Part of the backdrop for
25 this discussion is the dramatic flouting of the rules

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2 at Trump Tower, but to be fair, I know the media
3 loves to focus on Trump Tower because he is fairly
4 high profile these days, but to be fair, Trump Tower
5 is just one of many POPS in this city that are not
6 following the rules and regulations. Literally, off
7 the top of my head I can think of a few others
8 including 325 Fifth Avenue, 40 Broad Street, the Park
9 Meridian Hotel, and so this is a common phenomenon.
10 I don't think it's fair to pick on any one landlord
11 or owner. I think it's a situation where land owners
12 and developers have realized that because of a
13 combination of lax enforcement and lack of
14 transparency, they can take advantage of a situation
15 and they can utilize a public space effectively,
16 privately which really undermines the purpose of what
17 it is that we are trying to achieve with these public
18 spaces. We need to do better and I know my
19 colleagues and many members of the public that we
20 have heard from strongly agree. So, to kick things
21 off, we're going to invite our panel to join us, and
22 then I'm going to ask two of my colleagues to make
23 remarks. Today, our first panel, we're going to be
24 joined by Edith Hsu-Chen, Director of the Manhattan
25 Office of the Department of City Planning, Anita

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2 Laremont, the General Counsel to the Department of
3 City Planning, Patrick Wehle, the Assistant
4 Commissioner for External Affairs, and Joseph
5 Ventour, the Chief of Special Operations both from
6 the Department of Buildings. We're also truly
7 fortunate and grateful to have with us a very special
8 guest today. Direct from Cambridge, he actually flew
9 in this morning. This is an individual who literally
10 wrote the book. Counselor, may I have the book so we
11 can show it on the record. He literally wrote the
12 book, the book on privately owned public spaces, and
13 that is Professor Jerold Kayden from Harvard's
14 Graduate School of Design. Professor Kayden has
15 graciously accepted the Council's invitation to
16 testify today and to provide us with more
17 information, and aside from being a professor, he's
18 also an attorney and a Chair of the Department, and
19 we want to thank you, Professor, for making the trip
20 down here today. Before I begin, I would actually
21 like to turn to two of my colleagues and ask them to
22 make remarks. I'm going to start first with Chair
23 Donovan Richards who is the Chair of the Zoning
24 Subcommittee and ask him to make some remarks to be

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2 followed by the co-sponsor of the legislation that
3 we're reviewing today. Council Member Richards?

4 COUNCIL MEMBER RICHARDS: Thank you, Mr.
5 Chair. Thank you for convening this hearing and for
6 looking into this important topic. I really think
7 this is a new day when it comes to the Council's
8 oversight on Land Use issues, and I appreciate your
9 leadership. I also want to acknowledge Council Member
10 Chin working through these very difficult and thorny
11 issues recently. And the bottom line is folks, we
12 have a real problem here. We have permitted the
13 construction of millions of square feet across the
14 City, but we're not sure if the public is getting its
15 end of the bargain. We have so little public space
16 in some of the most congested parts of New York City
17 where our communities are asking for more public
18 space, but we're not doing everything we can to
19 improve the space we have. POPS have become like
20 some orphans slipping through the cracks between
21 agencies and with a lack of public understanding,
22 building owners are allowed to ignore these rules.
23 These spaces taken together are acres and acres of
24 public space, and we need to treat them like the
25 resource they are and should be. Perhaps this is the

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2 only, the one and only blessing the Trump campaign
3 has really focused on, and now we are focusing our
4 energy on this issue, but as the Chair said, we know
5 this is only the beginning of the conversation. It
6 is time to make POPS great again. Thank you all, and
7 Mr. Chairman, and to our co-sponsor Ben Kallos, I
8 thank you for your leadership on this issue. Let's go
9 after these POPS.

10 CHAIRPERSON GREENFIELD: Thank you, Chair
11 Richards, and I'm going to turn it over now to the
12 co-sponsor of my legislation, Intro 1219, and that is
13 Council Member Ben Kallos.

14 COUNCIL MEMBER KALLOS: Thank you to
15 Chair David Greenfield for your friendship and
16 leadership on this issue of privately owned public
17 spaces, and I'm proud to be a co-sponsor. It's
18 something that I've been looking into for some time
19 and apparently so has our Land Use Chair, and that is
20 a good thing. Thank you on behalf of all of our
21 preservationists here today and throughout the City
22 who want to see our privately owned public space
23 benefit the public to the maximum extent possible.
24 And so for those of you tuning in, what we're talking
25 about is the City lets developers build bigger in

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2 exchange for giving something back to the public in
3 the form of a "open space," and that varies from a
4 space that's actually open to the public that people
5 can use however they wish to something adjacent to a
6 store that owners often shoo people out of to in some
7 instances, and not to focus on the Donald, but that
8 they will rope off and not allow others in, or just
9 as-- so I think those are just some of the examples.
10 Or in a lot of places you will see big signs that say
11 "private property" and locked gates, and so all of
12 this brings Introduction 1219 which is essential
13 which will help us get a sense of the magnitude of
14 the problem working with the Department of City
15 Planning to make sure we know where these are, and it
16 would be hard pressed not to acknowledge the amazing
17 work of the Municipal Art Society, a part of our
18 legislation drafted by Council Member Greenfield 25-
19 115 would actually create and interactive map. And
20 if you want to see a preview of what that might look
21 like, you can go to apops.mas.org and hopefully as we
22 hear testimony you'll share some of the information
23 that would be helpful for the public to know. I know
24 a lot of people have asked me, "Can I use the POP for
25 a performance? Can I use it for a green-- a fresh

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2 food box? How can the public actually use it for the
3 benefit of the community? Can we put a green market
4 there?" these kinds of questions, and hopefully we'll
5 be able to have that information out there in the
6 public so that our communities can make the best use
7 of it. Looking forward to our testimony today, and
8 thank you to Chair Greenfield.

9 CHAIRPERSON GREENFIELD: Thank you very
10 much. I also want to just note that in fact it's a
11 relatively new practice since I became Chair of the
12 Land Use Committee to actually do oversight and
13 policy meetings. Traditionally we just did whatever
14 the Charter mandate was in terms of traditionally
15 things like zoning and landmarks, and in fact this is
16 one of several hearings that we're holding that's an
17 oversight hearing. This hearing has been in the
18 works for over a year, and so I do want to thank the
19 Land Use Director Raju Mann [sp?] for his leadership
20 and his hard work on this, and I want to thank Julie
21 Luben [sp?] who is our Counsel, Amy Levitan [sp?],
22 Deputy Director, as well as Dylan Casey [sp?]. I want
23 to thank my Chief of Staff Danny Pearlstein [sp?] and
24 my Counsel Alaina Secheva [sp?], all of whom who
25 spend literally hundreds of hours in preparation for

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2 this hearing. Customarily we start with the City
3 representatives first, so if it's okay with you we'll
4 start with City Planning. Then we'll move onto the
5 Department of Buildings, and then we will end our
6 first panel with our professor. Our first panels
7 also do not have clocks, and future panels will have
8 them, and that's because you're our primary panel.
9 So whenever you're ready, whoever would like to begin
10 from City Planning we'll ask you to start and just
11 state your name for the record. Before you begin,
12 the Council now has a practice where we ask folks, if
13 you don't mind, to please raise your hand. Do you
14 swear or affirm that everything that you will testify
15 today will be the complete truth?

16 UNIDENTIFIED: I do.

17 CHAIRPERSON GREENFIELD: Thank you very
18 much. You may proceed.

19 EDITH HSU-CHEN: Thank you, and good
20 afternoon. Hello, my name is Edith Hsu-Chen. I am
21 the Director of Manhattan Office at the Department of
22 City Planning. Good afternoon, Chair Greenfield and
23 other distinguished members of the Land Use
24 Committee. Thank you for the opportunity to be here
25 today to discuss privately owned public spaces or

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2 POPS as well as proposed Intro 1219 regarding
3 reporting to the compliant status of privately owned
4 public spaces by the Department of City Planning and
5 the Department of Buildings. I am joined here by my
6 colleagues from DCP and DOB to testify on these
7 matters. Let me first present to you a brief
8 overview and background on POPS in the New York City
9 Zoning Resolution, and then I'll comment on the
10 legislative proposal before you. Please bear with
11 me, I realize Chair Greenfield has done some of this
12 background. First, a very simple definition. A
13 privately owned public space is a public space
14 located on private property. POPS are required to be
15 open, accessible and usable to the public free of
16 charge. The first POPS were created from zoning
17 regulations introduced in 1961 which incentivized the
18 provision of public space as part of a private
19 development in exchange for a floor area bonus.
20 Originally, POPS included only two types of spaces,
21 plazas and arcades. Over time, the types of POPS and
22 the POPS inventory has grown. The term POPS now
23 collectively refers to many types of enclosed and
24 unenclosed public spaces on private property. These
25 include plazas, arcades, sidewalk widenings, open-air

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2 concourses, covered pedestrian spaces, through-block
3 arcades, through-block connections, and gallerias.
4 Not all POPS generate bonus floor area. Some are
5 required as part of a special permit or other
6 approval. Plazas are perhaps the most well-known
7 subset of POPS. There are many types of plazas
8 including plazas that were developed pursuant to the
9 original 1961 regulations and these spaces tend to be
10 rather spare. Frankly, not much was required of them
11 in 1961. After that, there have been urban plazas,
12 residential plazas and something called public
13 plazas, I guess reinforcing the public [sic], and
14 these are all required to provide public amenities
15 within the spaces such as seating and landscaping.
16 Since the inception of zoning regulations for POPS
17 more than five decades ago, more than 500 POPS have
18 been created. They are located at over 300 buildings
19 in the City. The vast majority of POPS are located
20 in Manhattan. There are a handful in Brooklyn and
21 Queens. We very much believe that these spaces are
22 very valuable to the general public. The POPS
23 program has delivered more than three and a half
24 million square feet of public space. POPS provide
25 public open space for rest, respite and circulation.

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2 Many contain functional and visual amenities such as
3 tables and chairs and planting. POPS primly exist in
4 the City's high-density commercial and residential
5 districts. They provide light, air, breathing room,
6 and green space to ease the predominantly hardscape
7 character of the City's densest areas. They have
8 become very valuable parts of the built environment.
9 But while each of these spaces provides much needed
10 open space, some of these POPS are deficient in their
11 configuration, elevation, amenities, or other design
12 features. When there are deficiencies we believe
13 they have been primarily attributable to the lack of
14 specific design rules or allocated criteria regarding
15 the design of successful public spaces from earlier
16 zoning regulation. Throughout the last half century
17 since the plaza-- the first plaza was provided, the
18 City has learned what works and what does not. We
19 have frequently upgraded and improved the zoning
20 regulations to ensure better spaces for the public.
21 In 2007, the Department proposed and the City Council
22 adopted a robust and comprehensive reform of the POPS
23 regulations pertaining to new plazas and for existing
24 plazas that seek upgrading. These new standards
25 represented a significant upgrade to and the

1 consolidation of all previous plaza design regulation
2 into one outdoor plaza designation now known as
3 public plaza. The 2007 Zoning Text Amendment was
4 intended to facilitate the design and construction of
5 highly welcoming, attractive and usable outdoor
6 spaces that look, feel and act as truly public
7 spaces. The 2007 reform was a forward-looking
8 measure designed to apply to new plazas and to
9 approve the requirements and standards for existing
10 plazas that voluntarily come back to the City-- come
11 back to City Planning for design changes. This type
12 of reform and improvement of standards has been a
13 continuing effort from the Department. Now, to the
14 bill. The proposed reporting bill has some practical
15 issues. The frequency of reporting is not aligned
16 with how DCP receives the small universe of
17 compliance reports which are required for new POPS or
18 existing ones that have gone through review since
19 2007. It is important to note that it is not unusual
20 for existing POPS to come back for design updates.
21 Even so, the vast majority of POPS are not required
22 to report and were built pursuant to regulations that
23 were different in the past. Now law compels the
24 owners of the sites built prior to 2007 and not
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1 modified since to supply a report of compliance.
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3 Based on the dates of approval, DCP is still in the
4 process of receiving the reports we require as part
5 of our recent reforms. What the bill recommends
6 would also require immense resources to inspect the
7 over 500 POPS for compliance on a semi-annual basis
8 and then to provide an annual report. No two POPS
9 are alike. It is logistically a challenge to inspect
10 all locations that are under varied regulations. We
11 believe that this is not the best use of resources,
12 and that a complaint-driven process that allows users
13 of POPS to notify property owner or the City of any
14 non-compliance is a much more effective use of our
15 limited resources. In response to concerns about
16 transparency, accessibility and the overall
17 effectiveness of POPS, the Department has worked
18 collaboratively with APOPS or Advocates for Privately
19 Owned Public Space, a nonprofit founded by Harvard
20 Professor, my neighbor right here, and foremost
21 expert on POPS, Jerold Kayden. Our collaborations
22 resulted in an interactive website available since
23 2013 where the public can get information on all the
24 POPS in the City, where they are located, what
25 amenities are required, and what are the hours of

1 access, etcetera. The website also allows for
2 comments, for ratings and for reporting of
3 complaints. And as Council Member Kallos has already
4 plugged, you can find this website at apops.mas.org.
5 DCP is happy to provide information via this third
6 party as we currently do, and we are also actively
7 refreshing the information as Open Data resource.
8 DCP will continue to give DOB guidance and compliance
9 as they investigate reports. We welcome any
10 opportunity to work with the Council and interested
11 stakeholders to ensure POPS are maintained and
12 compliant. We agree with the Council that in order
13 to have a meaningful regulatory framework, the
14 process of compliance must be one where the onus is
15 on the property owner. We very much appreciate the
16 Council taking up this oversight issue and look
17 forward to working to further develop a measure that
18 can achieve our shared goal of greater transparency
19 and accountability. Thank you.

21 PATRICK WEHLE: Good afternoon, Chair
22 Greenfield and members of the Land Use Committee. I
23 am Patrick Wehle, Assistant Commissioner for External
24 Affairs at the New York City Department of Buildings.
25 I am joined by Joseph Ventour, the Department's Chief

1 of Special Operations, whose unit is charged with
2 enforcing privately owned public spaces or POPS
3 regulations. We're also pleased to be here with our
4 colleagues from the Department of City Planning. The
5 Department appreciates the opportunity to discuss our
6 enforcement role as it relates to POPS and to provide
7 comment on Introductory Number 1219, which requires
8 reporting by the Departments of City Planning and
9 Buildings on POPS. The Department's enforcement of
10 POPS regulations is entirely complaint-driven. The
11 Department receives a small number of complaints
12 through 311 and on occasion receives referrals of
13 non-compliant POPS directly from the Department of
14 City Planning. Allegations of non-compliance
15 typically relate to the closure to-- of closure to
16 the public, blocked egress or unauthorized commercial
17 activity. Inspections are typically performed the
18 same day they are received. Whether it is a
19 complaint through 311 or referral from the Department
20 of City Planning, the Department first reviews the
21 relevant plans and approvals coordinating with the
22 Department of City Planning where appropriate. From
23 there an inspector is routed to the site to conduct a
24 preliminary investigation to ascertain the validity
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1 of a non-compliance brought to the Department's
2 attention. This could include the taking of
3 photographs and measurements which are brought back
4 to the office for further review with supervisory
5 staff within the unit. Depending upon circumstances,
6 the inspection will be performed in plain clothes or
7 in uniform. As part of the inspection, the inspector
8 also looks for other non-compliant conditions not
9 mentioned in the complaint. Should the Department's
10 inspection reveal non-compliant conditions,
11 violations are issued. In the event the inspector
12 does not witness the infraction, if for example the
13 POPS was closed to the public and since reopened, the
14 inspector will attempt to locate a collaborating
15 witness willing to attest via signed affidavit that
16 they witnesses a non-compliant condition. With the
17 witness's affidavit and the willingness to appear in
18 court, the Department can pursue enforcement action.
19 Turning to Introductory Number 1219 as it relates to
20 the Department requires an annual report on the
21 number of POPS-related complaints received, whether
22 any enforcement action was taken, and whether any
23 closures were ordered due to the unsafe conditions or
24 permitted work. The information sought by this
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2 legislation was currently publicly available on the
3 Department's website. However, if the proposed
4 charter amendment is enacted by the City Council, the
5 Department can provide this information in an annual
6 report. Thank you for your attention and the
7 opportunity to testify before you today, and we
8 welcome any questions you may have.

9 CHAIRPERSON GREENFIELD: Thank you. Does
10 that conclude the testimony from the two city
11 agencies? Okay. We're going to ask the Professor to
12 testify now. Professor, just for the record, you
13 don't work for the City in any capacity do you?

14 JEROLD KAYDEN: No, I don't.

15 CHAIRPERSON GREENFIELD: Okay, thank you.
16 So, in your personal capacity and capacity as an
17 educator and an expert, we invite you testify,
18 please. Thank you.

19 JEROLD KAYDEN: Thank you very much,
20 Chair Greenfield and other members of the Council. My
21 name is Jerold Kayden, and indeed I am testifying in
22 two capacities, as a professor who has studied
23 privately owned public space in New York City and
24 around the world for more years than I'd like to
25 admit, as well as founder and President of Advocates

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2 for Privately Owned Public Space, which is a not-for-
3 profit that I originally set up in 2002. It's a
4 civic organization designed to advocate for the
5 public use and enjoyment of the City's privately
6 owned public spaces. Let me also add, though, that
7 although I don't work for the City I have worked with
8 the City and with incredibly outstanding and
9 wonderful public servants at both the Department of
10 City Planning and the Department of Building, and I
11 appreciate deeply over many, many years their
12 enormous expertise and heartfelt commitment to issues
13 regarding privately owned public space. Our goal
14 today it seems to me should be to ensure that to the
15 maximum extent possible, New York City's 540 or so
16 privately owned public spaces at 350 buildings
17 constructed in exchange for 23 million square feet of
18 financially valuable bonus zoning floor area and
19 other zoning concessions provide City residents,
20 workers and visitors with genuinely usable public
21 places for individual and collective enjoyment and
22 activities. I've been asked to address beyond
23 today's proposed City Council legislation what may be
24 done to help reinvigorate the City's POPS, and I'd
25 like to outline briefly a three-part POPS program

1 that relies on legal compliance with applicable legal
2 requirements, stewardship of the City's 540 or so
3 POPSS and upgrading of POPS which could be better
4 than they are right now. So, first, with regard to
5 compliance which has been in the news lately with
6 regard to some famous and some other spaces as well.
7 At any given time there are indeed a number of POPS
8 that are not in compliance with applicable legal
9 requirements either because of denial of access to
10 the public or annexation of public space by adjacent
11 private uses, or diminution or removal of amenities
12 such as seating or landscaping or public restrooms or
13 light. How large is this problem? I don't know. We
14 don't know. The last time a full survey was done of
15 all of the POPS was in 1998 and 99 and roughly 50
16 percent of all buildings that had a privately owned
17 public space was apparently out of compliance with
18 applicable legal requirements, 50 percent of the
19 buildings. Many owners observe the law and do a
20 wonderful job, but some others don't, and of course,
21 structurally the fox is guarding the hen house and
22 sometimes eats the hens, and this is especially
23 frustrating, I think, to members of the public to all
24 of us because the owners did receive this 23 million
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1 square feet of bonus floor area which is easily worth
2 north of one billion dollars in today's dollars, and
3 they continue to enjoy the bonus space even as the
4 public space is not necessarily adequately provided.
5 A deal is a deal. So how can make sure that the deal
6 is in fact a deal? Who should do the enforcement and
7 how should it be done? Now, the zoning resolution is
8 quite clear that the Department of Buildings is
9 responsible for enforcement of the zoning resolution,
10 and the Department of City Planning is not, but both
11 are indeed concerned with and have to be involved
12 with making sure that POPS deals are honors--
13 honored. And indeed, in past times the City Planning
14 Department has done a yeoman job sort of informally
15 to make sure that spaces that are out of compliance
16 are, you know, brought into compliance, either by
17 notifying the owner or by sending information over to
18 the Department of Buildings as was previously
19 referenced. You will find on some of the required
20 plaques posted at privately owned public spaces in
21 the city, sometimes some of these plaques say at the
22 bottom, "If you have a complaint, contact the
23 Department of City Planning and the Department of
24 Buildings." So, in prior times there has been a sort
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2 of ambiguity for multiplicity of who to contact, and
3 I think that expresses some of the issues of falling
4 between the cracks or having everybody involved even
5 as people have tried their hardest to do a great job.
6 So, I'd like to propose quickly six compliance ideas.
7 First of all, make the suggestion of primary reliance
8 on a complaint-driven reactive inspections regime,
9 which has been suggested by Edith Hsu-Chen here on
10 behalf of City Planning, more meaningful. The way
11 you make that more meaningful is first to better
12 equip members of the public with knowledge about the
13 locations and legal requirements at every privately
14 owned public space in the City as well as knowledge
15 about how to engage with the enforcement process so
16 that they can complain meaningfully. In addition, I
17 think that we need to better equip both the
18 Department of Building inspectors and lawyers with
19 prepared and digested information about the legal
20 requirements and plans governing POPS, something that
21 quite frankly the Department of City Planning is best
22 able to do. This is not, let me emphasize, a
23 criticism at all of the Department of Buildings who
24 have great experts there. It's simply a reflection
25 of a history of privately owned public space since

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2 1961 which required me and several other City
3 Planning staff members to spend literally thousands
4 of hours digesting literally thousands of plans,
5 special permits, certifications, authorizations,
6 modifications, and making judgments about what
7 occurred in 1973 when some of the plans have
8 mysteriously disappeared, whether it's from
9 Department of Building bins at that time or
10 Department of City Planning files. Specifically what
11 is needed to get the public more informed as well as
12 DCP and DOB working together, first maintaining
13 indeed an interactive website providing key
14 information about POPS, and this apops.mas.org
15 website does that, and yes it has been done working
16 with the Department of City Planning, but it is a
17 privately mounted, privately financed effort by my
18 little civic organization, and by the way, you're
19 looking at my little civic organization. I don't say
20 that proudly. We have a wonderful board with Brenda
21 Levin [sp?] who's here and Rebecca Robertson, and
22 Douglas Woodward helps out, but unfortunately a
23 professor from Cambridge is doing this, and that's
24 Massachusetts, not, you know, and that doesn't really
25 make a lot of sense finally. Although it's a good

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2 public private partnership. So that's got to be
3 really maintained whether I continue to do it or not.
4 We should, I think, require all owners, not just the
5 ones who have already posted plaques, but why not
6 require all owners of POPS including the ones that
7 were provided in the 60's when there were no such
8 plaque requirements to post a plaque saying it's a
9 public space. And by the way, that's not illegal.
10 It's not x-post facto. It's not a taking of private
11 property for public use without just compensation.
12 It can be done. It may involve some political
13 issues, but it can indeed be done. And make sure
14 that everybody recognizes what rules owner may impose
15 on users of space. The website, apops.mas.org, gets
16 a lot of comments and reports of issues. I was taking
17 a photograph in a space and was told I can't do that.
18 Is that true or not true? Well, I don't know.
19 Nobody knows. Post Zuccotti Park, you know,
20 Brookfield prepared rules. The Real Estate Board of
21 New York circulated those rules, and now you see
22 these plaques with rules posted everywhere about what
23 people can and cannot do. It's not only up to the
24 owner of privately owned public space to determine
25 what individuals can do, because this is no longer

1
2 pure private property. Owners made a deal and they
3 agreed to seed some of their rights, and yet, we
4 don't really know-- and it's not even the owner's
5 fault. They don't really know what they can say
6 individuals can do and individuals don't know what
7 they can do. I do think that the Department of
8 Buildings and the Department of City Planning can
9 earmark staff for POPS, and I know that the
10 Department of City Planning has posted a job for a
11 full time privately owned public space person. I
12 think that's absolutely terrific, and DOB does do a
13 good job, but I think we need people who become
14 expert in this. And there needs to be, I think, a
15 formalized cooperation between the Department of
16 Buildings and Department of City Planning with regard
17 to assembling the necessary information. This does
18 not mean that DCP staff is going out and inspecting.
19 That's DOB job, but the information to support this
20 kind of thing can be done by DCP. Community Boards
21 can be engaged. Community Board Six had interns go
22 out several summers ago and visit every single
23 privately owned public space in their district, and
24 they reported on them, and a lot of them had
25 problems. Community Board and BIDs, Business

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2 Improvement Districts, annual certifications by
3 owners, all of these ideas are possibilities to be
4 explored, but I think they're important to be
5 explored. I would also urge the consideration of a
6 more proactive inspection regime recognizing that
7 there are higher priorities than POPS, even for
8 Jerold Kayden who has had a lot of time on it. And
9 DOB should be more concerned with crumbling facades
10 and elevators that might fall and boilers that might
11 blow up. Those are more important health and safety
12 issues to be sure, but I'm sad about the binary; we
13 can either do one or the other, but not somehow come
14 up with ideas to do both, and I'd like to see some
15 sort of annual inspection kind of thing, whether
16 that's done by a formal agency or perhaps in
17 public/private partnership with a group like APOPS or
18 the Community Boards, etcetera. There are issues
19 related to ensuring efficient timely enforcement
20 procedures once legal violations are alleged. I'll
21 just mention with regard to Trump Tower, which I've
22 been involved with, that it was a year ago as we're
23 sitting here today that the initial notice of
24 violation was filed dealing with the two sales
25 counters which were annexing public space selling

1
2 Trump memorabilia as well as the removal of a public
3 bench which had been replaced by one of these sales
4 kiosks. These are not earth-shattering issues, I
5 understand that, but that public bench is still not
6 there a year later, and there's something a little
7 odd about that, and I hope finally it will be there
8 to make that space even better than it is and can be.
9 Performance bonds for existing POPS, more meaningful
10 penalties so that it actually is hurtful to an owner
11 who continues, by the way, especially repeat
12 offenders to violate, and then of course bringing
13 lawsuits when necessary. Back 16 years ago when this
14 book came out which was also written in collaboration
15 with, although yes, I wrote it, but with the City,
16 there were eight administrative actions and three
17 actual trial court actions in Supreme Court of New
18 York brought by the City of New York. Two other
19 quick things I want to mention in addition to
20 compliance. Compliance is an issue, but I think it
21 misses the bigger point which is that this is an
22 enormous asset for the City of New York. If you put
23 all of these POPS together they would cover 10
24 percent of Central Park. Is it too aspirational to
25 believe that these could seek to accomplish what

1 Central Park accomplishes, which is public space for
2 everybody? Unlike public parks and even Department
3 of Transportation plazas, POPS are orphans. They're
4 zoning orphans. Nobody is really looking out for
5 them in what I would call a stewardship fashion. So
6 I'd like to see the establishment of a public steward
7 for POPS. Designate someone or something as the
8 public steward who could promote public awareness and
9 encourage innovative cultural and educational and
10 recreational programs in cooperation with owners, who
11 could sponsor design competitions, which Councilman
12 Garodnick's office will be sponsoring with us when we
13 get around to it with regard to East Midtown POPS,
14 and also would be concerned about spreading the
15 benefits of POPS beyond their free-market, high-
16 market locations in the densest areas. As a market-
17 driven mechanism quite understandably, POPS appear in
18 high income areas. What about lower income areas,
19 which equally need public space? What about the
20 equitable consideration of spreading around these
21 benefits? How do we guarantee that POPS also benefit
22 people who are not in these high income areas? So,
23 compliance, public steward, and finally, encouraging
24 the physical upgrading of existing POPS. There are a
25

1 lot of POPS which through no fault of the owner are
2 simply not very, very good, and in many cases owners
3 would like to upgrade them. They weren't required to
4 do great POPS under the law at the time, and they met
5 the letter of the law. How about offering incentives
6 to these owners to improve POPS as sort of incentive
7 zoning for existing POPS and review existing zoning
8 procedures to be sure that in the review of proposals
9 to improve it's not so burdensome that owners don't
10 go and say I won't participate in this. And finally,
11 let's encourage the adoption of POPS by outside
12 institutions if such adoptions will improve them.
13 For example, the David Rubenstein Atrium which some
14 of you may have seen next to Lincoln Center actually
15 has been improved by Lincoln Center taking over a
16 POPS. The legislation, finally, a very good step, a
17 starting point as Chair Greenfield mentioned. I do
18 feel that every six months is a little bit
19 aggressive. The periodic compliance and compliance
20 reports cover less than 10 percent of the privately
21 owned public spaces, up to a maximum of 40, you know,
22 out of basically 340 buildings that have them, and
23 the existing website might be linked in. So, thank
24 you very much for this opportunity to speak.
25

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2 CHAIRPERSON GREENFIELD: Thank you,
3 Professor, and I want to recognize that we've been
4 joined by several of our colleagues, Council Members
5 Barron, Levine, Reynoso, Mendez, Williams, and
6 Lander. And I just, I want to start with a pretty
7 basic-- and Council Member Rose. Sorry, Staten
8 Island. I want to start with a pretty basic
9 question, and that is do we know exactly how many
10 POPS there are in the City, and who's keeping track?

11 EDITH HSU-CHEN: I'll answer that. We do
12 know exactly how many. There are 538 POPS, and
13 again, this encompasses plazas, arcades, covered
14 pedestrian space, you know, a variety of privately
15 owned public spaces, and they are located at 329
16 addresses. So, 329 buildings have-- some of them
17 have more than one POPS, but we have 538 of them.

18 CHAIRPERSON GREENFIELD: And I think you
19 mentioned in your testimony that there are a total of
20 three and a half million square feet of space?

21 EDITH HSU-CHEN: Yes, of--

22 CHAIRPERSON GREENFIELD: [interposing] Of
23 POPS space.
24
25

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2 EDITH HSU-CHEN: public space, yes, has
3 been generated through zoning for privately owned
4 public space.

5 CHAIRPERSON GREENFIELD: So, let me ask
6 you a question, Edith, something that I think you
7 alluded to in your testimony which was that you said
8 you were very pleased, which is certainly great, that
9 you work together with the professor and you have a
10 good relationship and you do in fact work together on
11 the APOPS private website. Our legislation would
12 require you, the Department of City Planning, to
13 actually have an interactive website with this
14 information. The reason we require this, quite
15 frankly, because in my opinion, and I haven't done a
16 survey so it's just my opinion, most New Yorkers have
17 no idea what a POPS even is, my opinion, and most New
18 Yorkers don't know how to utilize a POPS if there's a
19 POPS even nearby and what kind of access that POPS
20 has or doesn't have. And especially when you
21 consider the fact that we have a shortage of public
22 space and we constantly have aggressive building
23 happening in this City, to the Professor's point, we
24 want to see people utilize this space even more. So,
25 would the Department be opposed to creating this

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2 interactive map which would give us the locations and
3 details about these privately owned public spaces?

4 EDITH HSU-CHEN: We certainly would not be
5 opposed to that. We do have POPS information on our
6 website. It's not, you know, the state of the art
7 interactive website that, you know, APOPS or perhaps
8 what you are suggesting, and I think we can do
9 better. I think we can do better to improve the POPS
10 information on the DCP website.

11 CHAIRPERSON GREENFIELD: I also think that
12 similar to the APOP system, that website should be a
13 direct outlet for filing a complaint, so that instead
14 of sort of on the APOP system which is, "Oh, I have a
15 question," which I'll get to in a moment, "about, you
16 know, can I take a picture? Can I go inside? Can I
17 get a sandwich? Can I drink a cup of coffee?" which
18 I'll address in a moment. I think it's important that
19 the website allow for an easy way to, oh, you know,
20 here are the POPS, click on the POPS. Complaints,
21 click on the complaints, and now the complaint would
22 go in. So, to that end, the complaints, I think
23 we're going to shift now, go directly to the DOB? Is
24 that how it works?

1
2 PATRICK WEHLE: If that works for you, it
3 works for me.

4 CHAIRPERSON GREENFIELD: No, I'm asking
5 when someone today calls the City and complains, if
6 it's 311 who does it go to?

7 PATRICK WEHLE: A 311 complaint would be
8 submitted to the Buildings Department, yes.

9 CHAIRPERSON GREENFIELD: Okay. I will
10 tell you, honestly, from firsthand experience, we've
11 had people complain about POPS. We as Council
12 Members have had difficulty actually getting
13 complaints followed up on, and having the proper
14 process in place, and I think one of the challenges
15 that we face is that a lot of folks don't even know
16 who to complain to or how to complain, because my
17 understanding, correct me if I'm wrong, is, and
18 perhaps this is a little bit bizarre, but my
19 understanding is, is it correct that you're supposed
20 to complain to the landlord first? Is that part of
21 the process and then you're supposed to go to the
22 DOB? How does that work exactly?

23 PATRICK WEHLE: In terms of the process, I
24 don't think there's any sort of requirement that a
25 complaint be filed with the landlord first. What I

1
2 can tell you is that complaints are filed with 311.
3 The Department receives those complaints, and upon
4 receipt we dispatch an inspector pretty much
5 immediately to take a look.

6 CHAIRPERSON GREENFIELD: Okay. How many
7 complaints have you received in the last year?

8 PATRICK WEHLE: 2015, the Department
9 received 56 complaints at 45 locations.

10 CHAIRPERSON GREENFIELD: Okay, and how
11 many of those complaints ended up in action taken
12 against those locations?

13 PATRICK WEHLE: At those locations in
14 2015, eight violations were issued to six locations.

15 CHAIRPERSON GREENFIELD: Okay. So,
16 respectfully, I would argue the system doesn't work,
17 because we have a professor who studied the issue,
18 and yes, albeit it was a while ago, but I think it
19 should be somewhat comparable today. We've got over
20 500 POPs. If even conservatively 25 percent of them
21 are engaging in violations, we should be getting
22 hundreds of complaints, and I think the reason, in my
23 opinion, why we're not getting complaints has nothing
24 to do with DOB. People don't know how to find DOB.
25 They don't even know that you're in charge of the

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2 complaints. So remember, just from my lay
3 perspective-- I'm taking off my hat as the Chair of
4 the Land Use Committee. I'm taking off my hat as an
5 adjunct professor at Brooklyn Law School. I'm just a
6 regular Joe citizen, Joe citizen from Brooklyn, New
7 York who goes into Manhattan and wants to visit the
8 big city and is really excited and we're going to go
9 shopping and check it out, and we're going to go out
10 for dinner. They have no idea that POPS even exist.
11 Now, what happens is they're walking down the street
12 and they say, "Well, this interesting. The sign here
13 says public space." They walk into the public space,
14 which they think is a public space. They sit down on
15 the bench, and now they take out their sandwich.
16 Security guard comes over and says, "Oh, you can't
17 eat in here." Oh, okay. Then they take out their
18 can of soda. "Oh, no, you can't drink in here." Oh,
19 okay. Then they want to take a picture with their
20 friends because they're in the Big City. "Oh, you
21 can't take a picture in here." Most of those people
22 are just going to be like, "These are not welcoming
23 spaces." They're going to leave, and they're not
24 going to even know to file a complaint to the
25 Department of Buildings. I'm not-- I'm not-- I just

1 want to be clear. This isn't a complaint about the
2 DOB, because if you're not getting the complaints,
3 how do you-- how are you supposed to in fact enforce
4 them, which is why our legislation would actually
5 require inspections so that we can be sure that in
6 fact there is enforcement. And by the way, I
7 recognize, just to be fair, that this would require
8 more staff. Also, to be fair, in the last two and a
9 half years the Administration has added 25,000 new
10 employees to the City of New York. I imagine one or
11 two or more employees that can deal with this
12 particular issue that can provide service to
13 potentially millions of New Yorkers would be a fairly
14 good investment to do so. So, we're going to agree
15 to disagree on that point, because I think it's
16 something that you testified that you don't have the
17 resources, which we acknowledge now, but we're
18 certainly saying that we would want to provide the
19 resources. But my follow-up question to that is how
20 is anyone supposed to know what the rules are? Are
21 there consistent rules? Is there somewhere that we
22 can go or anyone can go to see, okay, here are the
23 rules for all POPS with an asterisk exception that
24 the following POPS have the following additional
25

1 rules or less rules? Is there a standard? And the
2 example that I'm going to use is the Parks
3 Department. The Parks Department has very clear
4 rules that everybody knows when you walk into a park
5 that every park has the same rules, whether it's a
6 beach or whether it's a small park or a big park or
7 Central Park, you know what the rules are and that
8 leads obviously to a situation where people can enjoy
9 the usage of the park, because they know, "Okay, I
10 can't grill, can't have alcohol, can't smoke, can't
11 be in the park after dark." That seems pretty simple
12 enough. It's also helpful for enforcement because
13 then the police and the Parks Police as well are able
14 to enforce because they know the rules as well. So,
15 I guess my question is does anybody keep track of
16 these rules? Is there one set of rules? If not, can
17 we create a set of rules, and how do we publicize
18 said rules either online or perhaps, even to speak to
19 the Professor's point, actually putting up signs in
20 these establishments saying that these are the rules
21 for POPS in New York City? It's an open question, so
22 anyone can take it.

24 EDITH HSU-CHEN: I'll answer.

25 CHAIRPERSON GREENFIELD: Thank you.

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2 EDITH HSU-CHEN: One set of rules
3 probably won't work for all the POPS. There are so
4 many different kinds of POPS, indoors, outdoors, you
5 know, different sizes, shapes, configurations with
6 different amenities, some have lawns, some have
7 seats, some are hardscape. So there's not going to
8 be a one-size-fits-all set of rules. However, these,
9 you know,-- this is a public space, so of course
10 there's expectation that there are certain rules of
11 conduct, what is allowed and what is not allowed.
12 Since these are public spaces we view that anything
13 that would be permissible in a park is generally--
14 generally should be permissible in a POPS. Of
15 course, there are some exceptions. You know, ball
16 playing may be allowed at a park, outdoor park, and
17 probably is not and should not be allowed in an
18 indoor space, indoor POPS. The practice at the
19 Department of City Planning has been to allow owners
20 to develop a set of reasonable rules of conduct, and
21 they can post these. They do post these at the
22 entrance of the POPS. Not every single POPS has this
23 sign, but the spaces that do have the rules generally
24 do post this sign stating the rules. Reasonable rule
25 of conduct, these-- a sign would not be allowed to,

1
2 for example, say "no loitering." I mean, the whole
3 point of these POPS is to allow for loitering, but it
4 may be allowed to say "no loud radio playing" or
5 something like that. Again, there's no one set of
6 rules that we have codified. It's a case by case
7 situation.

8 CHAIRPERSON GREENFIELD: Okay. So, I have
9 to follow-up questions to that. The first is why
10 doesn't every public space have a sign of rules?

11 EDITH HSU-CHEN: The POPS regulations have
12 evolved significantly over time. Over the 55 years
13 of zoning regulations pertaining to POPS we've seen a
14 lot of evolution in what is required of the POPS.
15 So, originally no sign was required. It wasn't
16 until, you know, into the 1970's that spaces started
17 to require times, and over time since the 1970's we
18 have actually demanded more to be shown on those
19 signs. At minimum those signs, you know, must show
20 that they must stay open to the public and show the
21 hours of access, and now you will see signs that list
22 all the amenities and the owner and who to contact in
23 case of a problem.

24 CHAIRPERSON GREENFIELD: Does the
25 Department of City Planning have the legal authority

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2 to unilaterally require signs? If you decided
3 tomorrow that, you know, we agree with Chair
4 Greenfield. We think it's a good idea. Every one of
5 these buildings should have rules. Can you send out
6 a letter and say, "As of September 1st, we'd like you
7 to have rules that are promulgated and printed on
8 each of these POPS," is that something that you have
9 the authority to do, or something that you'd like us
10 to do for you?

11 EDITH HSU-CHEN: We believe we do not have
12 the authority to do that, because those POPS were
13 created at a different time, and those rules have
14 been grandfathered. Those POPS have been
15 grandfathered.

16 CHAIRPERSON GREENFIELD: Okay. You
17 wouldn't have a problem with us doing that, though?

18 EDITH HSU-CHEN: Do not think so.

19 CHAIRPERSON GREENFIELD: Okay, great.

20 EDITH HSU-CHEN: Be nice to advertise
21 [sic] them.

22 CHAIRPERSON GREENFIELD: Let me ask you
23 this question, do you approve the language on those
24 signs?

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2 EDITH HSU-CHEN: If there's a sign that
3 will be posted at a POPS, that would come-- that
4 would be shown on a plan that yes, the Department of
5 City Planning approves.

6 CHAIRPERSON GREENFIELD: I'm referring to
7 the rules specifically. Do you approve? Do they
8 have to review their language of the rules with City
9 Planning? The obvious concern over here is that
10 otherwise essentially they can make up the rules as
11 they go along.

12 EDITH HSU-CHEN: No, they're not required
13 to vet the specific language with the Department of
14 City Planning. However, many of them, many
15 developers, property owners do come to us to consult
16 to make sure that they are within the realm of
17 reason.

18 CHAIRPERSON GREENFIELD: Is that something
19 that you can require as well? Is that something that
20 you would require us to require?

21 EDITH HSU-CHEN: We would be able to
22 require that.

23 CHAIRPERSON GREENFIELD: Okay. So, is
24 that something you're willing to consider,
25 potentially requiring the POPS owners to send you

1
2 their signs so that you can review them? There might
3 be something very obvious on the sign that right off
4 the bat you'll say, "Oh, that signs says no
5 loitering. Well you can't have that on the sign."
6 And the reason I bring this up again is because once
7 again the Greenfield layperson theory that the
8 average person doesn't know what the rules are. So
9 you could put any rules you want, and people would be
10 like, "Oh, that's okay."

11 EDITH HSU-CHEN: We would be open to look
12 into that.

13 CHAIRPERSON GREENFIELD: Okay, great. And
14 then as far as the signage regulations and the
15 ability of actually having a standard set of rules,
16 is it simply impossible? Is that what you're saying?
17 Is it difficult, or is it impossible, or is it
18 challenging? I really want to understand this because
19 I genuinely am concerned about this issue, and at the
20 very least would like that this interactive websites
21 would at least let you know the rules. So, for
22 example, obvious questions that come to mind, is it a
23 problem-- maybe you can answer these questions for
24 me, because you don't have a strict set of rules,
25 right? Can you drink in a privately owned public

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2 space? I don't mean alcohol. Can you drink any non-
3 alcoholic beverage in a privately owned public space?

4 EDITH HSU-CHEN: Yes.

5 CHAIRPERSON GREENFIELD: Can you eat in a
6 privately owned public space?

7 EDITH HSU-CHEN: Yes.

8 CHAIRPERSON GREENFIELD: Can you take
9 photographs in a privately owned public space?

10 EDITH HSU-CHEN: I don't see why not.

11 CHAIRPERSON GREENFIELD: Can you take a
12 video recording in a privately owned public space?

13 EDITH HSU-CHEN: I don't see why not.

14 CHAIRPERSON GREENFIELD: Okay, those are
15 four examples of specific examples of complaints that
16 we've got. We had a New York One reporter this week
17 who was actually thrown out of both-- interestingly
18 enough, Trump Tower was actually more accommodating.
19 Trump Tower said you can take video, but you can't
20 interview people. If you interview people, we're
21 going to throw you out. Next door, IBM said you can't
22 even take photos or videos, and then at 40 Broad
23 Street she got thrown out as well. We've had people
24 tell us that Le Park Meridien which has a public
25 space they can't drink coffee or eat sandwiches, for

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2 example. And I think that's our concern. So, my
3 question though is, I understands that it's very
4 complicated. Here's my suggestion. Perhaps we can
5 create a minimum set of regulations, right? So not
6 everything, but at a minimum the following rules and
7 regulations apply to all POPS. In every POP these
8 are the things that you can and cannot do, right?
9 You can eat. You can read a newspaper. You can drink
10 coffee. You can take photos. You cannot play ball,
11 alright? I mean, that we agree on every POPS, and
12 then hopefully working with legislation that myself
13 and Council Member Garodnick is already working on,
14 that we can actually craft legislation that would in
15 fact require that every POPS would have signage, but
16 at the very least it would be clear as to what the
17 default or minimum rules. It's like in the City of
18 New York, I actually passed legislation here, and
19 know this, I passed the legislation that lowered the
20 default speed limit in New York City 25 miles an
21 hour. What that means is we did that because it was
22 Vision Zero. I sponsored the legislation, and as a
23 result I'm very pleased to say together with the
24 Administration we saved over 100 lives in the past
25 year, because the default speed limit 25 hours,

1
2 except to post it otherwise, and sometimes it's
3 posted 15. Sometimes it's posted 30 or 40 or 50, but
4 that way everybody will know these are the minimum
5 regulations or requirements of what you can and
6 cannot do in each POPS. What say you?

7 EDITH HSU-CHEN: We would be very happy
8 to work with you on that.

9 CHAIRPERSON GREENFIELD: Okay, wonderful.
10 That's terrific. Thank you. So, I'm actually going
11 to turn it over to Chair Richards for some questions
12 to be followed by Council Member Kallos, the co-
13 sponsor, to be followed by Council Member Garodnick.

14 COUNCIL MEMBER RICHARDS: Thank you, Mr.
15 Chair, and I just want to follow up. So, I want to
16 go back to the violations. So, over 2,000 violations
17 between this last year-- oh, I'm sorry. Oh, in 2015
18 only 56, okay. I heard it wrong. You can tell me how
19 many-- so what was the average cost of a violation?

20 JOSEPH VENTOUR: I believe I can answer
21 that question. The average--

22 COUNCIL MEMBER RICHARDS: [interposing]
23 Can you just identify yourself, I'm sorry.

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2 JOSEPH VENTOUR: I'm Chief Joe Ventour
3 with the Special Operations Division, and I'm
4 responsible for the enforcement of the POPS.

5 COUNCIL MEMBER RICHARDS: ECB or DOB?

6 JOSEPH VENTOUR: DOB.

7 COUNCIL MEMBER RICHARDS: DOB, okay.

8 JOSEPH VENTOUR: The average penalty for
9 that violation is 4,000 dollars.

10 COUNCIL MEMBER RICHARDS: Say that again.
11 Sorry?

12 JOSEPH VENTOUR: The minimum penalty is
13 4,000 dollars.

14 COUNCIL MEMBER RICHARDS: Four thousand
15 dollars, and I'm assuming even with the violations
16 that there would have to be corrective actions taken,
17 right, as well to correct the violations?

18 JOSEPH VENTOUR: Can you repeat that
19 question, please?

20 COUNCIL MEMBER RICHARDS: So, after
21 they're fined, do they-- they would have to correct,
22 in particular, they would have to fix what they are
23 being fined for, am I correct?

24 JOSEPH VENTOUR: Absolutely.
25

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2 COUNCIL MEMBER RICHARDS: Alrighty, so
3 they would have to get basically some sort of
4 certificate.

5 JOSEPH VENTOUR: A certificate of
6 correction.

7 COUNCIL MEMBER RICHARDS: Alrighty. How
8 many certificates of corrections did DOB receive last
9 year or in 2015? Or in the past year.

10 PATRICK WEHLE: For the POPS violations
11 that we issued in 2015 that I mentioned, I don't have
12 the number of certificate of corrections. I'm happy
13 to get that and provide it for the committee.

14 COUNCIL MEMBER RICHARDS: Okay, Patrick
15 Wehle.

16 PATRICK WEHLE: Alright.

17 COUNCIL MEMBER RICHARDS: Alrighty. So
18 we're going to get that piece of homework. Alright,
19 that's a homework assignment for the Chair to get
20 back. Mr. Kayden, so you-- Professor Kayden, I'm
21 sorry. So you certainly heard about the therefore
22 lack of enforcement and responsiveness around this
23 particular issue. What are some-- what would be a
24 recommendation here around enforcement? What would
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1
2 you see as a correct enforcement tool to be used
3 here?

4 JEROLD KAYDEN: Well, there's the before
5 it gets to the Department of Buildings issue, again,
6 and then the after it gets to the Department of
7 Buildings issue. With regard to before it gets to
8 the Department of Buildings, which is indeed the
9 designated enforcement agency for the Zoning
10 Resolution of the City of New York, as I mentioned,
11 more public awareness about where POPS are, what the
12 legal requirements are and what people can do. That
13 will help, and informing the public how they might
14 report a problem with regard to use of a privately
15 owned public space.

16 COUNCIL MEMBER RICHARDS: I'm sorry to cut
17 in. Do you think the 4,000 dollar fine is stiff
18 enough?

19 JEROLD KAYDEN: Well, I'm going to get
20 there.

21 COUNCIL MEMBER RICHARDS: Okay.

22 JEROLD KAYDEN: As I mentioned in my
23 direct testimony, I don't think it's stiff enough. I
24 mean, it may be stiff enough as an initial kind of
25 fine, but it--

1
2 COUNCIL MEMBER RICHARDS: [interposing]
3 So, like a first fine.

4 JEROLD KAYDEN: Right.

5 COUNCIL MEMBER RICHARDS: A warning.

6 JEROLD KAYDEN: But once things get to the
7 Department of Buildings, the Department of Buildings
8 I have found responds very, very quickly. Mr.
9 Ventour does a very good job, and they are--

10 COUNCIL MEMBER RICHARDS: [interposing]
11 First I've ever heard that. Sorry.

12 JEROLD KAYDEN: Well, I'm just-- as I see
13 it. I've worked closely with them on Trump Tower and
14 other buildings. So I've been impressed. But I do
15 think that what ends up happening given the
16 procedures, the rules that govern DOB and its
17 connection to the Environmental Control Board that
18 you can have a lot of time go by. You can have
19 people show up at hearings and say, "I need a
20 lawyer." So that automatically continues the
21 hearing. You can have them not show up, and then say,
22 "I was caught in traffic." So, this ends up
23 promoting a sort of very, very long period of time,
24 which not to pick on Trump Tower, but as I said, you
25 know, the public bench which is required there which

1 was stated a year ago is still not there, and that's
2 sort of silly. It's silly for everybody. And that's
3 not DOB's fault or ECB's fault. It's actually the
4 rules need to be improved. So, I think higher
5 penalties for repeat offenders. I think a speedier
6 more efficient kind of process would help everybody
7 so that Mr. Ventour's inspectors are not sitting
8 around for two hours waiting for the respondent to
9 show up and they don't show up, and that inspector
10 has just now wasted two hours of his or her time.

12 COUNCIL MEMBER RICHARDS: Thank you so
13 much, Professor. DCP, so you said you're hiring.
14 Can you just go through the specific position again,
15 the new hire, the one inspector whoever it is?

16 EDITH HSU-CHEN: Well, we have a posting
17 up for a POPS Program Manager, and the ideal
18 candidate would be very familiar or become very
19 familiar with the extensive POPS Zoning Regulations,
20 would work with our planners in the borough offices
21 when vetting new plaza projects and when reviewing
22 POPS-- existing POPS, when the owners come in for
23 modification. This person we expect to be an expert
24 on POPS to consult with planners at DCP and with
25 outside parties.

1
2 COUNCIL MEMBER RICHARDS: And when is
3 this person anticipated to start or when are you-- so
4 this is a commercial for the public if you're
5 watching.

6 EDITH HSU-CHEN: It's a very good
7 commercial. Thank you, Council Member Richards. We--
8 -

9 COUNCIL MEMBER RICHARDS: [interposing]
10 Want to be the POP Director of New York City.

11 EDITH HSU-CHEN: We have the resumes and
12 we expect that we will have a candidate selected in
13 about a month.

14 COUNCIL MEMBER RICHARDS: And do you
15 really think one person is enough,--

16 EDITH HSU-CHEN: [interposing] No, frankly
17 I do not.

18 COUNCIL MEMBER RICHARDS: or do you see
19 this as the beginning of the conversation?

20 EDITH HSU-CHEN: This is-- I do not think
21 it's enough. I think it would be great if we could
22 have more.

23 COUNCIL MEMBER RICHARDS: Alrighty, I'm
24 going to-- I'm not going to stay on here long. Just
25 want to go back to the Professor for one second, and

1
2 I appreciate you flying back. I think you were Boston
3 and you flew back here all the way for POPS, so we
4 appreciate that. So when do you believe in
5 particular a POPS should be converted to a commercial
6 purpose? Is there any reason for it to be converted,
7 or if there's a reason for it to be converted into
8 commercial, when would you-- what do you think of
9 that? What is your opinion around that?

10 JEROLD KAYDEN: My two findings required
11 before doing that would be first that the existing
12 public space is irredeemable in terms of its
13 performance as a public space for City residents,
14 workers and visitors for everyone. That it simply
15 could not be redeemed. I'm sorry to say that there
16 are spaces out there like that, and they are legal
17 spaces. They were created under laws that were
18 incredibly undemanding, and so owners could meet the
19 letter the law, developers could meet the letter of
20 the law and produce a rotten space. We have quite a
21 number of those as Edith has mentioned earlier. So,
22 first finding, irredeemable. They cannot be upgraded
23 and improved to make them useful as a public space
24 for the public. Second, that whatever is done with
25 regard to the public space, including the insertion

1
2 of commercial uses will actually produce a better
3 condition for the public. Water Street has been
4 example of this. I'm not speaking specifically about
5 Water Street, but the claim has been made that those
6 arcades were irredeemable, although that word wasn't
7 use, I wish it had been, and that by inserting retail
8 everything will be better in the neighborhood. We
9 can discuss that. But finally, finally, that going
10 forward, if the owner is to get new commercial uses
11 which produce income, that's like giving the owner a
12 new zoning bonus. It's actually incentive zoning for
13 the retail in Water Street or incentive zoning for
14 somebody else. In return for that, the City should
15 seek to get as much as possible in terms of return
16 costs imposed on the developer such that the
17 developer is not emerging or the owner is not
18 emerging with an unnecessary windfall. So, it may be
19 great that these commercial activities-- open air
20 cafes, who doesn't like them? That's terrific. They
21 do exclude people. They force people who don't have
22 money to be excluded from public space; that's a
23 problem. But sometimes, in answer to your specific
24 question about commercial activities, commercial
25 activities can indeed make the remaining public space

1 better or a neighborhood better. I just want to make
2 sure that the space is irredeemable as a public
3 space, and/or that whatever is provided is provided
4 in a way that the owner is required to provide as
5 much as possible in terms of his or her money for
6 public use. So for example, in Water Street it may
7 have been the case, I'll just mention that in
8 furtherance of an inclusionary kind of approach, one
9 could have imagined some of the arcade space which
10 becomes commercial being dedicated to below market
11 rate retail, community uses. You know, could that
12 have been done? Would owners have still provided
13 retail in those arcades? I don't know, but I would
14 have analyzed that financially, and I think that can
15 be analyzed, by the way. So, those would be my
16 standards.

18 COUNCIL MEMBER RICHARDS: Last question,
19 and I think this is something important you alluded
20 to in your testimony, in particular, and this is for
21 DCP. What are we doing to ensure that communities of
22 color historically who do not have the additional
23 public space or a lot of public open space, what are
24 we doing to ensure that we generate and create more
25 opportunities around POPS for communities of color

1
2 historically who are disenfranchised who may not have
3 that much park space in their communities? How are
4 we working with new developers coming in? In
5 particular, I guess I'll throw out the areas being
6 rezoned. Are we looking at opportunities in these
7 communities to create more public open space?

8 EDITH HSU-CHEN: POPS are associated with
9 a bonus, with more floor area, which usually result--

10 COUNCIL MEMBER RICHARDS: [interposing]
11 Sounds like ZQA and MIH. I'm sorry, but go ahead.

12 EDITH HSU-CHEN: A lot of acronyms.

13 COUNCIL MEMBER RICHARDS: ZQA.

14 EDITH HSU-CHEN: But POPS is associated
15 with a bonus generally which translates into bigger
16 buildings, taller buildings. You know, we have
17 applied POPS incentives in high density districts.
18 So we have many, as Council Member Greenfield noted,
19 south of 96th Street in Manhattan, many in Lower
20 Manhattan--

21 COUNCIL MEMBER RICHARDS: [interposing]
22 Saddened [sic] by that.

23 EDITH HSU-CHEN: many in Midtown. These
24 are the high density district, district where we
25 believe can, handle the density certainly, but you

1
2 know, also with this density comes, you know, the
3 need for some relief, you know, lighting, air,
4 respite, etcetera. So, this is where POPS have
5 traditionally--

6 COUNCIL MEMBER RICHARDS: [interposing] So
7 is it feasible to look at moderate-- we're going to
8 be doing rezoning's, like I said. We just did East
9 New York. Is it possible to look at also moderate
10 areas as well as we go forward?

11 EDITH HSU-CHEN: It is possible to look
12 at--

13 COUNCIL MEMBER RICHARDS: [interposing]
14 Okay.

15 EDITH HSU-CHEN: to look at that.

16 COUNCIL MEMBER RICHARDS: Okay. So, I'll
17 just say this before I get out of here, and I guess
18 this is political, I hope Trump replaces the bench
19 that has not been replaced. We are pleading with you
20 to return public space back to the conditions it
21 should be, Mr. Trump, in New York City. We will not
22 vote for you if you do not return the bench. I don't
23 think we'll vote for you either way, but the point
24 is--

25 EDITH HSU-CHEN: [interposing] Yeah, yeah.

[laughter]

COUNCIL MEMBER RICHARDS: we're definitely not voting for you without the bench being returned. This is the plea to the Republican party to make sure all benches are returned before you entertain Mr. Trump. Thank you.

CHAIRPERSON GREENFIELD: Okay, with that we are going to turn it over to Council Member Kallos. I didn't know it was possible for Donovan Richards to even consider Donald Trump, but now I know how Donald Trump could get-- how Donald Trump can get Donovan Richards to vote for him. All it takes is a bench. It's unbelievable. To get the Mayor's support he had to rezone your neighborhood, provide millions of dollars of infrastructure, come in and actually make a difference. All you're asking Donald Trump is for a bench, wow. Alright, Council Member Ben Kallos.

COUNCIL MEMBER KALLOS: Thank you. I'd like to just thank Jerold Kayden for all the great work you did for the great book you've written for apops.mas.org, which I've used. I've actually had a chance to meet with some of your staff who you worked with who worked at MAS. My understanding is they

1
2 actually would go on a weekly basis down to
3 Department of City Planning, go through documents,
4 scan those documents, put that back on. So, is that
5 accurate to say that it's hundreds of man and women
6 hours of time that went into your site?

7 PATRICK WEHLE: It is accurate, and in
8 fact the Department of City Planning has happily in
9 collaboration hosted an APOPS/MAS fellow for the past
10 several years. They've actually provided and our
11 fellows live at City Planning with a desk, a phone,
12 an email address, etcetera.

13 COUNCIL MEMBER KALLOS: So having done
14 all this work, do you support this legislation that
15 would replace it with a City version of that same
16 website?

17 PATRICK WEHLE: I think it's' a little
18 bit odd in the sense of replacing. I mean, I think
19 there's-- there's a problem for us quite frankly that
20 we have to address. I mean, APOPS is a private not-
21 for-profit New York State corporation. It has points
22 of view of me, my board of directors, etcetera. It
23 also has this secular neutral accurate data on every
24 single privately owned public space in the City
25 notwithstanding that nobody knows it's there.

1
2 Although we're getting a lot of email traffic quite
3 frankly, and that's thanks to Water Street and Donald
4 Trump and other kinds of issues. I mean, it's
5 getting a lot of traffic.

6 COUNCIL MEMBER KALLOS: Would you be
7 willing to share that secular data with the City--

8 PATRICK WEHLE: [interposing] No question
9 about it.

10 COUNCIL MEMBER KALLOS: so we don't have
11 to start from scratch?

12 PATRICK WEHLE: The only thing that's
13 difficult is it has a point of view, but it also has
14 secular neutral data. So how-- you know, we have to
15 work together. I'd be totally happy to, and the City
16 knows this, you know, that it's-- instead of doing
17 the exact same thing that we did which cost about
18 40,000 dollars by the way to do.

19 COUNCIL MEMBER KALLOS: Wow, okay. That
20 is the least expensive website I've ever heard of in
21 my life. That is amazing. In terms of Department of
22 City Planning, would you accept that secular data in
23 order to give you a jump on implementing this
24 legislation?

1
2 EDITH HSU-CHEN: The secular data comes
3 from the Department of City Planning, so we certainly
4 accept it. I just want to reiterate we have worked
5 very-- we've worked collaboratively with APOPS, and
6 excuse me, I was remiss earlier not to credit the
7 Municipal Art Society for hosting the APOPS website.
8 Yes, we just as Jerold said, we would be very happy
9 to continue to work together. We certainly don't
10 want to have redundant work. Today, the APOPS
11 website is a terrific, terrific resource and we do
12 direct the public to go to the APOPS website.

13 COUNCIL MEMBER KALLOS: And in terms of
14 the records, are the records on the Open Data
15 platform? Are they in a file on a shelf? How does
16 one look up what the rules are of APOP if you want to
17 see the original documents?

18 EDITH HSU-CHEN: Well, certainly the
19 easiest way is to go to the website where you can see
20 what is required of each space, what are the hours of
21 access, what are the required amenities, etcetera.

22 COUNCIL MEMBER KALLOS: And in terms for
23 the source documents, where are those located?

24 EDITH HSU-CHEN: The source documents are
25 located at both Department of Buildings and DCP. So

1
2 we have records, you know, going back to the 1960's,
3 you know, these are primary source documents, zoning
4 calculations essentially, plans, and site plan.

5 COUNCIL MEMBER KALLOS: Would you be
6 willing to move those documents digitally into ACRIS
7 [sic] or another repository you already have, so when
8 you're on ACRIS you can see all the other information
9 there as well as the POPS information? Or is there a
10 better repository? I oversee a small agency called
11 DORIS. Not a lady, it's an agency, and they have
12 municipal archives.

13 EDITH HSU-CHEN: We are moving towards--
14 moving the primary sources into Open Data. This is a
15 huge undertaking, so it will take some time, but yes,
16 we are moving towards providing this information on
17 Open Data.

18 COUNCIL MEMBER KALLOS: Thank you. And
19 over to DOB, Patrick Wehle, thank you for joining us.
20 How many inspectors does DOB have devoted to POPS, or
21 are you just dealing with it as a-- on a complaint
22 basis?

23 PATRICK WEHLE: There are 19 inspectors at
24 the Department who focus on POPS.

25 COUNCIL MEMBER KALLOS: Wow.

1
2 PATRICK WEHLE: I should add that's not
3 their only focus, but they do other work as well,
4 but--

5 COUNCIL MEMBER KALLOS: [interposing] So
6 19 folks, but who investigated roughly 50 something
7 complaints and wrote eight violations. Given that
8 you have 19 folks, I was actually even just going to
9 suggest us taking one person and making it their job
10 every day to inspect the 329 locations. Two a day
11 means they could do all of them twice a year, and
12 then if we just wrote the eight violations with a
13 minimum fine of 5,000 dollars, that position might
14 pay for itself if not multiple.

15 PATRICK WEHLE: Well, as I mentioned, the
16 Special Operations Unit and Chief Ventour could speak
17 to this a little more. POPS clearly isn't their only
18 focus, and they focus on a lot more than just POPS.

19 JOSEPH VENTOUR: In relations to, you
20 know, a couple questions you asked, the first being
21 that one inspector to perform a POPS inspection is a
22 very timely process because of the nature and length
23 of-- the list of amenities that comes with a POPS
24 location. So each POPS location would take an
25 average of about an hour, an hour and a half, in some

1 cases maybe longer. So, for one inspector to
2 complete 500 plus sites biannually is a daunting task
3 in and of itself. As far as the inspectors that's
4 allocated to special operations, there's no specific
5 inspector in special operations that actually focuses
6 on POPS because the unit is responsible for
7 conducting inspections across all facets of based on
8 the agency needs. So any one of the inspectorial
9 staff within that unit can respond to a POPS
10 inspection.

11
12 COUNCIL MEMBER KALLOS: How much does an
13 inspector make a year would you say without fringe
14 and everything else?

15 JOSEPH VENTOUR: I believe the average
16 salary of an inspector is about 60,000.

17 COUNCIL MEMBER KALLOS: So, while it may
18 seem daunting even if they just went to one POP every
19 day, they would be able to proactively do enforcement
20 at all of them in our city, so I would love to work
21 with you, our Land Use Chair, our Land Use Division
22 on looking at proactive enforcement and the fact that
23 folks would know that somebody's going to come by.
24 Is that something you'd be interested in doing,
25 actually getting one of your inspectors out to every

1
2 POP in the City as we're working on this legislation
3 and other items?

4 JOSEPH VENTOUR: So, I think our role
5 here as a ways to POPS is to ensure that owners stick
6 to their commitments, and I think when we in fact
7 receive those complaints, we do an excellent job
8 making sure that happens. Some of the testimony that
9 was provided today by Mr. Kayden and certainly Chair
10 Greenfield's remarks are very well taken that perhaps
11 the general public does not have an adequate
12 understanding of what's allowed at POPS and what's
13 not, and so to the extent to which we could have them
14 be better-- have a better understanding of those
15 regulations, that's something that's very well
16 received, because if that happens, then perhaps more
17 complaints will be filed, and when that happens we
18 can provide better, more extensive enforcement.

19 COUNCIL MEMBER KALLOS: At 5,000 dollars
20 a violation, this seems to be something that can pay
21 for itself. I'm an attorney and I have gone through
22 ACRIS records. I've gone through a lot of the
23 properties in my district, and the poor Land Use
24 Division and getting hundreds, many emails from me
25 saying can we look at this space, can we look-- Julie

1
2 Luben [sp?] is an amazing attorney as is Raju and the
3 rest of the team, just they're great, but even I as
4 an expert I have to go in and try to figure out
5 exactly what's going on. There's some places that
6 were on the APOPS website. They've been taken off
7 the APOPS website, so their status may be
8 questionable, and even I as an attorney and with the
9 full resources as a Council Member can't get to the
10 bottom of it, but if we had DOB doing proactive
11 enforcement you could. I don't think saying we will
12 do reactive enforcement is the right way to do it
13 when the Professor has reported that 50 percent of
14 the locations aren't complying. So, hopefully this
15 legislation will help the public, but I think
16 proactive enforcement is the way to go.

17 CHAIRPERSON GREENFIELD: Thank you,
18 Council Member Kallos. We're going to ask Council
19 Member Garodnick to ask some questions to be followed
20 by a statement from Council Member Williams, brief
21 statement that I will make on his behalf, and then
22 Council Member Lander.

23 COUNCIL MEMBER GARODNICK: Thank you very
24 much, Mr. Chairman. I really want to thank you for
25 this hearing. I have many POPS in my East Side

1
2 Midtown District and high levels of development with
3 a real lack of open space. So the idea that we are
4 thinking about ways to both inform members of the
5 public as to what the rules are and also to keep
6 building owners in compliance with the rules I think
7 is important. I'll just share one quick story which
8 was I was campaigning for my own re-election to the
9 City Council, standing in a POPS, and the security
10 guard of a residential building came out, told me
11 that I had to leave, and I observed to him that there
12 was a sign on the wall which said "open to the
13 public," and he said, "Yeah, but you can't do that
14 here." And I said, "Well, I'm not going anywhere,"
15 and he told me that he was going to call the police,
16 which he did, called the police, and the police came.
17 I observed to them that I was conducting, you know,
18 core first amendment activity in a space that was
19 open to the public as per the sign that was posted on
20 the way, and they said, "Councilman, you're right,
21 and we'll tell him to back off," and he did. But all
22 of that is to say that, you know, your point about
23 what are the rules and who knows them, you know,
24 obviously I was exercising a high level of confidence
25 in that situation, but not everybody is. So--

1
2 CHAIRPERSON GREENFIELD: [interposing] I
3 want to meet this security guard and recognize him
4 for calling the police on a sitting member of the New
5 York City Council who represents the building that
6 the Council Member was standing in. That should
7 certainly become security guard of the year material.
8 That's quite something.

9 COUNCIL MEMBER GARODNICK: It was a real
10 winner move. There's no question about it.

11 COUNCIL MEMBER KALLOS: I'm also curious
12 about your highest level of education that you were
13 so firm in your legal rights.

14 COUNCIL MEMBER GARODNICK: I will note
15 that the building is now in Council Member Kallos'
16 district.

17 [laughter]

18 COUNCIL MEMBER GARODNICK: Let me just--

19 CHAIRPERSON GREENFIELD: [interposing] Not
20 by coincidence I will add. The redistricting,
21 Council Member Garodnick got rid of it.

22 COUNCIL MEMBER GARODNICK: So, let me ask
23 my actual questions. My questions are about the
24 follow-- there's no follow-up inspections. Once
25

1
2 somebody has submitted that certificate, there's no
3 follow up from DOB, is that correct?

4 JOSEPH VENTOUR: Actually, there is. We-
5 - the agency conducts audits on all CFC submitted to
6 the Department. So once a certificate of correction
7 has been submitted on any compliance for a violation,
8 the agency proactively does an audit on those CFC's.

9 COUNCIL MEMBER GARODNICK: It's right,
10 right then. You do it. It comes in and then you
11 send somebody out?

12 JOSEPH VENTOUR: No, well the audit
13 actually-- the audit is on all CFC's. So we will
14 take a percentage of all the CFC's and do a random
15 audit. So, that violation may end up as part of that
16 audit, as well as it may not.

17 COUNCIL MEMBER GARODNICK: When you say
18 you will do random on all of them, I mean, there were
19 only eight violations issued in 2015--

20 JOSEPH VENTOUR: [interposing] On all
21 violations issued, period.

22 COUNCIL MEMBER GARODNICK: At all-- in
23 the entire system of DOB you do a random audit.

24 JOSEPH VENTOUR: Well, when I say random,
25 more strategically. Sorry.

1
2 COUNCIL MEMBER GARODNICK: Okay. So you
3 do a strategic limited audit of completed
4 certificates of correction.

5 JOSEPH VENTOUR: That's correct.

6 COUNCIL MEMBER GARODNICK: So that could
7 mean that none of the POPS were in that group.
8 Correct?

9 JOSEPH VENTOUR: Correct.

10 COUNCIL MEMBER GARODNICK: Okay. SO
11 there's no system for DOB to go out and follow up
12 specifically as to POPS when there has been an issue
13 presented and where there has been a violation
14 issued, is that correct?

15 JOSEPH VENTOUR: That's correct.

16 COUNCIL MEMBER GARODNICK: Okay. Let's
17 talk about these reports, and I think this is a City
18 Planning question, and Professor, this may be for you
19 too. The reports which have to-- the self-
20 certification reports where buildings are saying,
21 yes, I'm in compliance as I understand it. Does
22 anybody ever say I am out of compliance?

23 EDITH HSU-CHEN: No, because I think the
24 purpose of the compliance report is to, you know,
25 motivate certainly the owners to make sure they're in

1
2 compliance, but we have not heard from an owner
3 volunteering that they're out of compliance.

4 COUNCIL MEMBER GARODNICK: And with an
5 estimated 50 percent out of compliance estimate-- and
6 we'll just work with that. I know that's a historic,
7 you know, or an older number. Do these certificate
8 self-certifications have real value here or would we
9 be better off doing as Council Member Kallos was
10 suggesting, just have one inspector whose job is to
11 go and check them out affirmatively?

12 EDITH HSU-CHEN: We think that inspections
13 that are requested from complaints is actually a much
14 more effective response to compliance problems?

15 COUNCIL MEMBER GARODNICK: Why? Why is
16 that? I really don't understand that, and I don't
17 understand Mr. Wehle's answer either. Why is it more
18 effective for the City to sit back and wait and hope
19 that a well-informed member who doesn't know what the
20 rules are anyway, calls 311 to ask for an inspection
21 as opposed to a well-informed inspector who knows
22 precisely the rules as the particular POP, you can
23 walk around with the Professor's book if he wants,
24 and actually take a look and through the course of
25

1
2 year we'll actually make sure that everybody's in
3 compliance?

4 EDITH HSU-CHEN: With all due respect to
5 my colleagues at DOB, I think that the inspection is-
6 - would require many, many, many hours in fact-- when
7 we have done inspections together, when we worked
8 with DOB to investigate a potential violation, first
9 it takes-- you know, we supply the information to
10 DOB, and we make sure all the legal requirements are
11 assembled, and clearly, you know, laid out for DOB to
12 make the inspection. Sometimes that takes a long
13 time. Then, you know, the inspector goes out
14 etcetera. In the past when we have done proactive
15 inspections, as Professor Kayden had mentioned, we
16 had armies of interns and staff going out. We had, I
17 believe, over two or three dozen volunteers go out
18 over a summer to look at the POPS. It is a huge
19 undertaking. So, I think given our resources and
20 given our priority to focus on health and safety
21 matters, the reality for us is that it is more
22 effective. It is not as effective to do a proactive
23 inspection regime, because it's impractical for us.

24 COUNCIL MEMBER GARODNICK: My reaction to
25 that is, if it is such a heavy legal lift for DCP to

1
2 provide a DOB inspector with the information about
3 what the rules are for a particular POPS for which
4 there's been a complaint, then the rules are just too
5 complicated, and if an inspector can't go out there
6 and know either because he is or she is the
7 designated inspector of POPS and knows what they're
8 supposed to be looking for, then, you know, I think
9 that's really the core of the problem here. I
10 understand the practicality of what you're describing
11 in the situation today, but it seems to me like it
12 shouldn't have to be that complicated.

13 EDITH HSU-CHEN: We agree with that. The
14 reality-- many of these spaces were created in past
15 and pursuant to older regulations, and again, you
16 know, the regulations have evolved. So there's not
17 one set of go-to regulations that we use when we do
18 inspections. These spaces are very idiosyncratic.
19 Again, there are no two spaces that are alike.
20 Everyone is different. They have different amounts
21 of amenities. They have different amenities. They
22 have different shapes and sizes, accessibility
23 requirements. We do have an awful lot of
24 information. We have good information, but it does
25 take a little bit of time to make sure that all the

1
2 information is assembled in a way that makes these
3 inspections efficient and correct.

4 COUNCIL MEMBER GARODNICK: Yeah, I think
5 what-- I think what you are-- and you can correct me
6 if I'm wrong. I think what you're thinking of when
7 you're talking about the precise legal requirements
8 is, is the bench 12 inches off the wall and the
9 planter is two feet from the bench or whatever it is
10 that the rules require. I'm really thinking along the
11 lines of is it closed off? Is it inaccessible to the
12 public? Is the sign there? Those are things which,
13 you know, you don't need a legal memo to be able to
14 figure out. So, I think that's where the disconnect
15 is, because I understand your point about the precise
16 technicality, and DOB tell me if I'm wrong here, that
17 the complaints that you get from the public are not,
18 "Hey, the benches are more than 24 inches away from
19 the wall." They're more, "Hey, this is a public
20 space that, you know, the grocery store is using for
21 a loading dock." Is that fair?

22 PATRICK WEHLE: That is correct,
23 Councilman, and depending on the circumstances this
24 can be somewhat of a, you know, time consuming
25 process. With that said, speaking sort of, you know,

1 big picture from the Buildings Department
2 perspective, we do feel we strike the right balance
3 here in terms of a complaint-driven process, and if
4 that process could be enhanced with a more well-
5 informed public so that they're aware of what these
6 problems are and they can report them to the
7 Buildings Department. Then we could be more
8 aggressive in going out there and enforcing, issuing
9 violations where appropriate. Within the Special
10 Operations Unit, within the Department as a whole,
11 we're tasked with focus on many things that really
12 have the ability to imperil the health, wellbeing and
13 safety of the public. And so our decision here as
14 the Department is to prioritize those things and
15 focus those resources on things like structural
16 instability, illegal conversions, things like that.
17 So again, you know, this is something we do take
18 seriously, but we do think through a complaint-driven
19 process we are striking the right balance here.

21 COUNCIL MEMBER GARODNICK: Okay. So, I
22 have a number of more questions, but I'm not going to
23 hog the microphone here, but I do want the Professor,
24 who has worked for the City but does not work for the
25 City, to react to what you hear in the colloquy back

1
2 and forth with members of the Council here about
3 affirmative enforcement versus more passive
4 enforcement, complaint-driven. What do you think?

5 JEROLD KAYDEN: I think in the ideal
6 world, one would have a proactive, periodic
7 monitoring in which each space would be visited
8 periodically at least once a year. I can't speak to
9 priorities and scarce resources, and I don't think
10 that POPS are as important as a façade crumbling or
11 an elevator falling, or a boiler blowing up, as I
12 said, but I'm not certain and it's not for me to make
13 the decision that one has to choose between one and
14 the other. So with appropriate funding for staff,
15 this can be done. And to be quite clear, I think
16 Councilman Garodnick, you had it exactly right. On
17 the complexity of whether it's 24 inches or 30 inches
18 in terms of the bench or the seat, that isn't-- that
19 isn't easily accessible or as easily accessible, but
20 we have absolutely clear records about the spaces
21 required to provide 28 moveable chairs and 260 linear
22 feet of fixed seating and a water element and two
23 restrooms and public art and such and such square
24 feet of landscaping. That is listed and it has been
25 listed since 2000. It's in a database that I created

1
2 and the Department of City Planning created and the
3 Municipal Art Society created. It took thousands of
4 hours to do. It is there. We have recently updated
5 it, I working with the Department of City Planning,
6 and it's an unbelievable resource, and it indeed
7 populates the APOPS website, but it exists
8 independently, and this is the basis upon which quite
9 frankly the Department of Buildings would go out and
10 do these sorts of inspections. So I can't speak to
11 the broader issues that my colleagues at the
12 Department of Buildings or Department of City speak
13 to in terms of resources or priorities. That's, to
14 me, you know, a political and policy issue which you
15 are all very capable of moving on.

16 COUNCIL MEMBER GARODNICK: Thank you very
17 much.

18 CHAIRPERSON GREENFIELD: Thank you, and
19 I'll have a round two for members who are interested.
20 I just wanted to just add to Council Member
21 Garodnick's point. I think that the choice of one
22 versus the other is a false choice. We have a robust
23 city. We have an 83 billion dollar budget. I think
24 what we're suggesting is something very specific
25 which is that the City of New York hire one new

1 person. That new inspector be the POPS inspector, and
2 I think that's actually ideal because then you'll
3 have someone who knows the rules and knows the
4 regulations and is not taking away. Nobody can say
5 it's taking away from falling facades or buildings
6 that are crumbling, right? It's a very clear
7 expenditure. All in if we're talking with fringes,
8 100,000 dollars a year from my vantage point as a
9 member of the leadership team, the budget negotiating
10 team and the Chair of the Land Use Committee, it's a
11 very good investment to ensure that three and a half
12 million square feet of public space are properly
13 utilized, and I would argue that the reason you
14 actually need inspectors is because the rules are so
15 varied and quite frankly convoluted that the average
16 citizen cannot make reports and cannot complain
17 because they don't know what to complain about.
18 Because if you as the average citizen don't know the
19 rules and you don't know if they're breaking the
20 rules or not, and unless you happen to be a Council
21 Member Garodnick, a sitting member of the City
22 Council who is an attorney who is educated and expert
23 in the field, when a security guard comes to you and
24 says get out, you're getting out. I think that's the
25

1
2 problem. That's really why I think we do need
3 proactive inspections, because this is not like a
4 simple kind of thing where, oh, there's a pothole in
5 the street. Everybody knows what a pothole looks
6 like. Everybody knows who you call. You call 311.
7 They report the pothole. Pothole goes to DOT. DOT
8 knows what to do. They come. They send a crew out.
9 Next thing you know, most potholes within 30 days are
10 repaired. Thank you, 311. That's fantastic. It's
11 not the same process. I, as a layperson, I don't
12 know if in fact something was violated or was not
13 violated. I don't know who to make a complaint to. I
14 don't know how to follow up on that complaint either,
15 and so that's why I think it's a little bit
16 different. So, as a matter of policy my question, I
17 guess, Edith is if we put money in the budget for
18 this particular position and it did not take away
19 from any other resources, would either you or the DOB
20 have an objection to the Council in the next budget
21 cycle putting in 100,000 dollars to hire a POPS
22 inspector?

23 PATRICK WEHLE: Speaking for the
24 Buildings Department, we could certainly consider
25 that. Take it from there.

1
2 CHAIRPERSON GREENFIELD: City Planning
3 have any objection?

4 EDITH HSU-CHEN: Department of City
5 Planning, we are not an enforcement agency, so we
6 defer to DOB--

7 CHAIRPERSON GREENFIELD: [interposing] But
8 you'd have to--

9 EDITH HSU-CHEN: with no objection.

10 CHAIRPERSON GREENFIELD: work with this
11 individual. So I just want to be sure that would be
12 okay.

13 EDITH HSU-CHEN: No objection.

14 CHAIRPERSON GREENFIELD: Okay.

15 EDITH HSU-CHEN: No objection to that.

16 CHAIRPERSON GREENFIELD: Very good. Thank
17 you. And so I'm actually-- Council Member Lander
18 stepped out for a moment, but Council Member Williams
19 asked me to read a statement on his behalf. He had
20 to leave, and so I'm just reading a brief statement
21 on behalf of Council Member Williams. This is from
22 Council Member Williams: "I spent a lot of time
23 OWS," which I believe is Occupy Wall Street, "at
24 Zuccotti Park. I saw blatant disregard to posted
25 rules, including hours of operations and assembly.

1
2 Some had no visible sign and/or no posted signs
3 conspicuously. Some tried to change the rules in
4 real-time. There was no way to force compliance of
5 the rules." Thank you, Council Member Williams in
6 abstentia for your statement. But I think the point
7 that he is making really goes back to a lot of what
8 we said today which is Council Member Williams, City
9 Council Member, engaging in his free speech and free
10 assembly rights at Zuccotti Park, even he didn't know
11 what the rules were or what the rules weren't. He's
12 saying that the rules were changed in real-time, and
13 so I think this is a very good example of the
14 frustration that people have, and once again, we're
15 not blaming anyone. We're just speaking to a reality
16 in how we can solve it that folks have when they
17 attempt-- when they attempt to utilize a privately
18 owned public space. So, we're going to go now to
19 Council Member Chin, and then we're going to go back
20 to a couple of the Council Members when they return.
21 Council Member Chin for some questions.

22 COUNCIL MEMBER CHIN: Thank you, Chair
23 Greenfield, and thank you for your leadership on this
24 issue by having this hearing. My question is that, I
25 mean, on the Water Street POPS, the text amendment,

1 we were able to get the local, the applicant Downtown
2 Alliance to commit to doing an annual inspection
3 survey and reporting it to the City Council and
4 worked with the property owner to fix all the
5 violation and everything, but I think this is really
6 important that the city agency takes that
7 responsibility because these privately, you know,
8 these publicly-- it's public space. It's publicly
9 accessed, right, accessible space. It's a value to
10 the City, and these developers, these building
11 owners, they got something in return. So, I think
12 this is important that DCP have to-- you should
13 annually inspect making sure that they are complying
14 what they agree to, because they got something out of
15 it, right? They got their bonus, floor area bonus,
16 and that's the deal. They have to provide this
17 public resource. So, I think it makes sense that
18 annually DCP should make sure that they are still
19 complying with the rules. Because I have about-- in
20 preparing for this hearing, I looked through-- my
21 staff looked through all the POPS that I have. I
22 have 47 POPS in my district, and some are very nice.
23 Some are terrible. So, it doesn't make sense for us
24 to sort of just rely on public complaint, because I
25

1
2 have been going around because of the Water Street
3 looking at all the one that I've seen in my district
4 there, and they are taking back space for privately
5 [sic] use. I have people who actually block off some
6 of the arcade space as their outdoor café for their
7 restaurant. Right? The public don't know that's
8 legal or not legal, and they wouldn't complain. But
9 I think it's two things. It's that the agency really
10 need to take that responsibility, and I think that
11 the recommendation that was put forth by the Chair, I
12 mean, we need staff to do that. It's just like
13 restaurant inspection. Right? Every year no matter
14 what every restaurant get inspected. So, I mean, we
15 can do these inspection survey once a year,
16 minimally, and find out whether they're in compliance
17 or not. And Department of Building can still do your
18 complaint-driven, and we still have to educate the
19 public about what these space are, where are the
20 rules, and the website. I think we need to put some
21 resources to make sure that the website that the
22 Professor put together with the City is updated
23 regularly. I think it hasn't been updated since 2014,
24 right? So, resources need to be put into that so
25 that we know what's available and the public can be

1
2 educated about these space, but the annual
3 inspection, like what the Professor said, proactive,
4 I think that is so critical. I couldn't get that in
5 the Water Street from DCP, but I think that maybe
6 legally, I mean on the legislation-wise, Chair
7 Greenfield, we might be able to do that legislatively
8 to mandate that DCP and DOB do that inspection
9 annually.

10 EDITH HSU-CHEN: The Department of City
11 Planning, we are not a compliance enforcement agency.
12 We care very deeply about POPS, and we think they're
13 a very valuable resource and asset to the public. We
14 do not have the requirement or the resources to
15 proactively inspect every single POPS.

16 COUNCIL MEMBER CHIN: But let's put aside
17 resource, okay? We said that we figure out a way to
18 put some resource in. You're not required? When you
19 were saying that you're not required to do that?

20 ANITA LAREMONT: Councilwoman, I'm Anita
21 Laremont, and I'm the Counsel at City Planning, and I
22 just want to just sort of, you know, refresh people's
23 recollection about the framework. Here under the
24 City Charter we're charged with providing the zoning
25 framework, and the Department of Buildings is charged

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2 with ensuring compliance. So, our view is that with
3 respect to POPS, we have a very robust responsibility
4 in ensuring that we have provided the Department of
5 Buildings with very clear understanding about what is
6 required with respect to every single POPS that we
7 have and working very closely and collaboratively
8 with them in that regard, but that with respect to
9 the insurance of compliance that that is something
10 that we defer to other agencies with respect to, but
11 that we would take a very active role in making sure
12 that the requirements are understood. And toward
13 that end, we even would be very happy to continue the
14 discussion about how we can play a role in that
15 robust education of the public about what is actually
16 required.

17 PATRICK WEHLE: And from the Buildings
18 Department perspective I'd add again from where we
19 stand, a complaint-driven process with a better
20 informed public is the way to go. Restaurants, for
21 example, are inspected regularly because if they're
22 not, it has a potential to harm the public safety,
23 the public welfare. Non-compliance in a POP does not
24 present a safety hazard, and so that's the reason we
25

1
2 think the right balance is a complaint-driven
3 process.

4 COUNCIL MEMBER CHIN: Well, but the POPS
5 is a major resources for the City. I mean, tax-
6 payer-- this is what was given back for what these
7 property owner got in return. So it is a city
8 investment. This is our public space just like our
9 public parks. So, I think it's really important that
10 the city agencies value this resource and make sure
11 that we check on it, that they are in good shape and
12 the public are benefitting from them, because some of
13 these POPS, as the professor said, 50 percent are not
14 in compliance. I mean, some of them, they don't have
15 chairs, they don't have table, they don't have
16 anything. And meanwhile, I mean, that's supposed to
17 be a public resource. I think we need to step up on
18 that. I mean, I know that City Planning, I mean, each
19 of you were saying, you know, complicated, but once
20 you have everything sort of written down it's very
21 simple. So we have staff working together with the
22 Buildings Department. Easily you could do that
23 annual inspection, and we can accompany that with
24 complaint-driven, and then you can generate more
25 revenue from that because a lot of these POPS are not

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2 in compliance. So, I hope that you will work with us
3 on that to make sure that every single POP in our
4 city is in compliance and is doing what they're
5 supposed to do benefitting the public. Thank you,
6 Chair.

7 CHAIRPERSON GREENFIELD: Thank you,
8 Council Member Chin. Council Member Dickens?

9 COUNCIL MEMBER DICKENS: Thank you,
10 Chair. Good afternoon. Thank you for your
11 testimony. I think that compliance and oversight is
12 important, but in having said that, that when we
13 talk-- and in my district we don't have a lot of POPS
14 in Harlem. However, my colleague mentioned the
15 African burial ground which there was no oversight
16 for that, and if it had not been actually for Council
17 Member Barron, Charles Barron, that building would
18 have been sold. That site would have been sold, and
19 construction would have been done there and there
20 would not have been any oversight. However, when
21 we're talking about compliance and oversight, there
22 is a cost attributable to that that the City Council
23 have to take into consideration. Plus, when we talk
24 about compliance, I mean, there's not-- they're not
25 set for compliance, and that's understood, but I

1
2 don't know what agency would be, because when we talk
3 about even DOB, if it's a historic district, somebody
4 else has oversight. If it's HPD or is it going to be
5 EDC? Is it going to be HCD? I mean, we got all
6 these acronyms and all these agencies set up in the
7 City of New York, and I don't know if even you could
8 figure out whether who would really have oversight
9 and be able to give proper oversight and compliance
10 and effectiveness in giving the violations that we
11 like to talk about giving owner a lot of violations.
12 So, can you tell me, Patrick, if there is any way
13 that you could figure out if it was in a historic
14 district or if it really had been done-- the fact
15 that it was set up as a POP was done through EDC or
16 HCD or HPD? Or maybe the Professor can really
17 provide, maybe he can provide better since he really
18 has a clear understanding about POPS that the rest of
19 us don't.

20 PATRICK WEHLE: I would add, I mean, I
21 don't think as the Department of Buildings we really
22 honestly thought through what it might look like, but
23 certainly I think there would be some challenges that
24 we need to explore further.

1
2 COUNCIL MEMBER DICKENS: Professor, you
3 really have better understanding I think than
4 anybody.

5 JEROLD KAYDEN: Right. The legal
6 requirements attached to privately owned public
7 spaces have been analyzed. They are presented right
8 now clearly in an up-to-date fashion in a database
9 that is owned by the Department of City Planning, the
10 Municipal Art Society and me. And it is there. It
11 is synthesized information and it provides the basis
12 for any inspector at the Department of Buildings to
13 go out and determine whether not this space is in
14 compliance with applicable legal requirements, except
15 for very technical types of requirements. So, that
16 information is there. I can't speak, however, to
17 whether or not the Department of Buildings would want
18 to endorse a proactive inspection regime. We're
19 hearing that it has some hesitations about that, and
20 I'm not speaking to that other than I personally
21 happen to think from my experience with POPS that a
22 proactive inspection regime combined with a
23 complaint-driven reactive inspection regime would
24 ultimately be the best kind of system, but I'm not
25

1
2 allocating resources or making decisions on personnel
3 and money.

4 COUNCIL MEMBER DICKENS: The reason I
5 was asking, in a historic district where it's not the
6 building or the property itself is not landmarked,
7 but it's within a historic district. DOB doesn't not
8 have really effective oversight the way maybe they
9 should unless it's a building that's about to
10 collapse or there's extraordinary circumstances
11 surrounding that. How would that be effected?

12 JEROLD KAYDEN: It isn't effected. The
13 540, roughly, 538 privately owned public spaces were
14 created pursuant to the zoning resolution and there
15 are thousands of plans and special permits and
16 certifications, authorizations, modifications that
17 govern that space, and its' without regard to the
18 Landmarks Preservation Law or historic districts or
19 anything else. So that, that information exists.
20 It's actually been analyzed, thousands of hours of
21 lawyers and planner's time doing it. I did it.
22 Edith Hsu-Chen did it, and others did it in I think a
23 pretty incredible job, because it was forensic
24 accounting going back literally 55 years or at that
25 time 40 years. So that information exists. It's been

1
2 done. So now it's a question of simply leveraging
3 that information.

4 CHAIRPERSON GREENFIELD: Thank you very
5 much. Now that we're done with the first round I
6 just want to ask you a few follow up questions. Then
7 if there are any other questions we'll take them, and
8 if not we'll move onto the second panel. I want to
9 focus specifically on, I guess I'm going to go with
10 the top five complaints that we've received as
11 Council Members, and perhaps you can tell us what's
12 being done about it. So, Trump Tower, I think we
13 know with Trump what's been happening with Trump
14 Tower. They recently got a fine when they didn't
15 show up to a hearing, and I wanted to just actually
16 flag another item on Trump Tower, and I specifically
17 chose. As I chose Crain's, an article in Crain's New
18 York Business. There's a lot of different
19 publications that have spoken about this issue, but
20 you know, Donald Trump has discounted publications
21 like the New York Times. I don't want anyone to think
22 that we're part of a grand conspiracy. So we're
23 picking a pro-business, pro-friendly, perhaps even
24 pro-Donald Trump publication that is Crain's New York
25 Business. They wrote an article, "Donald Trump has a

1
2 Secret Garden.” And what they wrote in the article
3 that is finding the garden isn’t easy. Well, and
4 getting into them can be even harder. Should you
5 enter them you’ll find that much of the flora is
6 dead. Then they go on to say that entering the
7 garden requires you to pass the elevators which
8 requires you to get past security guards who seem to
9 specialize in shooing people away. So, this is just
10 a very good example of a privately owned public
11 space, in this particular case a fourth floor public
12 garden that is usually not open, that is usually not
13 accessible, and that you have to sneak through
14 security guards to get through. So, this is a
15 perfect example of a privately owned public space
16 that’s not accessible to the public. What if
17 anything is the City doing about this, and what can
18 you be doing about this in particular?

19 PATRICK WEHLE: At the Buildings
20 Department we never received a complaint concerning
21 that story.

22 CHAIRPERSON GREENFIELD: Ah-ha, ha, thank
23 you. See, I love it. You’re feeding right into what
24 I’ve been saying all day. Never receives a
25 complaint, and if you don’t’ receive a complaint

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2 there's no action and people don't even know the
3 garden even exists much less how to get there. So
4 why would you even get a complaint, right? Which is
5 what comes back to our point of why we think there
6 needs to be enforcement. Consider this an official
7 complaint. So now that you have an official
8 complaint from the Chairman of the Land Use Committee
9 of the New York City Council, what are you planning
10 on doing? I just want to understand the process.

11 JOSEPH VENTOUR: Well, we'll definitely
12 assign an inspector to go out and look at that
13 location to address whatever those concerns are as
14 stated.

15 CHAIRPERSON GREENFIELD: But how is the
16 inspector going to address the concern that there's
17 no public signage? There are security guards there
18 that are not letting people go through, and
19 separately that the space according to Crain's isn't
20 open usually during the hours that they're supposed
21 to be open? So there are three separate issues. I
22 just want you to address, and I don't know if you can
23 or cannot address all of them, or just so I
24 understand. The first is there's no signage
25 indicating that there is in fact a public garden on

1
2 the fourth floor. The second is that there are
3 security guards who prevent you from getting on the
4 elevator to get to the fourth floor, and the third
5 which is that even if somehow you manage to figure it
6 out, slip through security guards, and get to the
7 fourth floor, you're likely to find that the garden
8 is actually closed.

9 JOSEPH VENTOUR: Well, all of those
10 issues would be addressed individually. So, to
11 address the first concern which is whether or not
12 there was any signage that would be reflected in the
13 approval by DCP. Additionally, if it's an issue of
14 access, we actually conduct undercover investigations
15 where we'll send inspectors in plain clothes to
16 actually visit a site acting as a member of the
17 public to determine whether or not the access was
18 denied. Once the inspector gets to that location,
19 then he can find and determine whether or not that
20 condition actually exists in terms of accessing that
21 space, and if it isn't I'll be found in violation at
22 that point.

23 CHAIRPERSON GREENFIELD: Okay. Now, let
24 me give you-- I'm just going to run through the top
25 five. 325 Fifth Avenue, a publicly-- privately owned

1 public space that has been shut down for years. When
2 we reached out it took us quite a while to figure out
3 how to work through this. The DOB told us, well,
4 they are doing some façade repairs, façade repairs
5 for years, and just to be fair there's no other this
6 building that are closed. So it seems like they are
7 specifically choosing to close a privately owned
8 public space based on an excuse that they have some
9 sort of permit to do, some sort of façade repairs. I
10 mean, that seems somewhat arbitrary honestly. Can
11 you give us some details about 325 Fifth Avenue
12 perhaps?
13

14 JOSEPH VENTOUR: 325 Fifth Avenue, I do
15 recall that address actually. They are in the
16 process of doing some repairs. Unfortunately, the
17 Department cannot expedite the repair process. So,
18 the construction work in the interest of public
19 safety. So, however long an owner takes to do the
20 repairs, that's up to them as long as the permits
21 remain active, and that repair continues to be
22 ongoing.

23 CHAIRPERSON GREENFIELD: I know, but
24 that's a very-- I mean, this speaks to a very simple
25 loophole, right, that all you have to do is-- you've

1
2 given them a gaping loophole. All they have to do is
3 simply apply for a permit and say that they're
4 engaging in some sort of repairs. They're been doing
5 it for years. Objectively, there's no reason why it
6 should take that long, and as long as they have a
7 permit, you're going to say, okay, you don't have to
8 open up this privately owned public space, and that's
9 an area of midtown that does very few public spaces.
10 I mean, we got multiple complaints about that, and I
11 guess the question is, is a permit automatic? The
12 minute you have a permit for repairs, that means that
13 automatically the public space becomes inaccessible.
14 I mean, why is that the case? Are we being overly
15 cautious, perhaps, I guess is my first question. And
16 my second question is how is it fair to simply allow
17 a building to just keep extending a permit, and as a
18 result-- I don't care if they have a permit, but as a
19 result they're shutting down a public space literally
20 for years. I think it's been three years at this
21 point.

22 JOSEPH VENTOUR: Well, typically public
23 space would only be-- will only be closed to the
24 public during construction if that construction
25 presents an immediate risk to the public, and because

1
2 our primary focus is the public safety, if we believe
3 that that construction activity is going to present a
4 risk to the public, then we're more in favor of
5 closing that space as opposed to having that space
6 open. Secondly, again, we don't dictate how long a
7 construction project takes or whether or not we
8 should-- the owner should actually expedite that
9 construction process. We issue a permit and we
10 review the permit in relation to the work scope
11 that's being performed and how that work scope
12 affects the surrounding areas, and if the public
13 plazas happens to be one of those areas that's
14 effected by the construction operations, then we
15 determine whether or not the level of risk that
16 construction activity would present as to pose-- in
17 relations to keeping that space open.

18 CHAIRPERSON GREENFIELD: The problem, Joe,
19 is that according to multiple neighbors they haven't
20 done any construction. So, here's another good
21 example of their utilizing a system which you're
22 inadvertently allowing them to do where they are
23 pulling permits for construction that's not actually
24 happening. If it was happening it would have been
25 completed by now, right? It doesn't take three years

1
2 to do some basic façade repairs, and therefore
3 they're shutting this down. So what I would ask is
4 that potentially considering that this is not a
5 traditional case like a regular building where who
6 cares if they continuously pulling permits. I guess I
7 would say with the exception of sidewalk Chez [sic],
8 which is another annoyance, but is not the topic of
9 today's hearing, so I'm not going to discuss that,
10 but I guess if we don't-- we don't generally care,
11 but in this case specifically because it is shutting
12 down a very important public resource, perhaps DOB
13 should consider not allowing them to renew their
14 permit, and saying, "Sorry, you've had the
15 opportunity to make the repairs. You cannot make the
16 repairs in a timely fashion, and therefore we're not
17 going to issue you a permit, because if we issue a
18 permit you're just going to continue to close what is
19 a vital public space in Midtown New York."

20 PATRICK WEHLE: The consequence of that
21 action, Council Member, could result in a negative
22 impact on the public. If there's obterian [sic]
23 façade [sic], they don't have permits to do work, and
24 that façade fails, there could be a problem.

1
2 CHAIRPERSON GREENFIELD: I understand,
3 but once again, I'm not the expert. You are. This
4 is why we have the Department of Buildings. Someone
5 there can make the determination whether they're
6 simply pulling permits for the sake of having a
7 permit or whether they're actually planning on doing
8 any construction, and if one of two scenarios is
9 happening, if either they have a permit and they're
10 not doing construction, then in my opinion, the
11 public space should be open. Or if they are pulling
12 a permit without any intention of doing construction,
13 then let's not give them the permit to begin with.
14 You see what I'm saying? It just seems like the
15 automatic shutting down of a public space simply
16 because they pulled a permit is really unfair to the
17 neighbors of this particular location who for the
18 last three years have not had a public space.

19 JOSEPH VENTOUR: With regards to an
20 individuals or respondent pulling a permit and not
21 performing any work, the hazard that exists that
22 resulted in them pulling a permit to begin with
23 continues to exist, and closing the public space is
24 actually one of the mitigating factors to address
25 some of those con-- those safety con-- those

1
2 immediate safety concerns. If-- as long as they have
3 an active permit and there's a potential that they
4 should be--

5 CHAIRPERSON GREENFIELD: [interposing]

6 We're going around and around, I agree. So, my point
7 is, if they're not planning on using this permit,
8 don't give them a permit. If they're not utilizing
9 the permit, why are we giving them a permit?

10 Normally, there is no loss to the City. Who cares?

11 When they're filing the fees, we're giving them the
12 permit. In this case, we're losing public space

13 because they're dragging their feet on a project, and
14 a project that they may or may not ever complete.

15 I'm not asking for an answer. I'm simply asking for

16 you to consider this. I want to move on to 40 Broad

17 Street, third of five items. After the condo

18 conversion, the seating and the plants were moved and

19 used as a parking lot for the building and staff.

20 Are you familiar with what's happening on 40 Broad

21 Street? Have you taken any actions over there?

22 JOSEPH VENTOUR: Unfortunately, I'm not
23 familiar with that address.

24 CHAIRPERSON GREENFIELD: Okay. Consider
25 this another complaint and please look into it.

1
2 EDITH HSU-CHEN: I happened to walk by 40
3 Broad Street this morning on my way to work, and it
4 is an active construction site. The POPS that you
5 refer to does have construction shed and construction
6 containers and construction vehicles adjacent to it.

7 CHAIRPERSON GREENFIELD: Okay. So you're
8 saying as a result of it being an active construction
9 site, it's not accessible as a public space? So I
10 just want to be clear, they view as that's
11 permissible, you can use a public space as a dock or
12 a location to engage in construction? Are you saying
13 that it happens to be part of a construction site, or
14 that's sort of the space that is being utilized to
15 launch the construction?

16 EDITH HSU-CHEN: I don't know the
17 specifics of the construction staging, but the space
18 was covered with a construction shed, which I assume
19 for safety.

20 CHAIRPERSON GREENFIELD: Okay. I would ask
21 the Department of Buildings to look into this. From
22 the reports that we've gotten and from the video that
23 we see, it seems like it might actually be used as a
24 staging area. Is that something that would be
25 allowed or would that be permission would have to be

1
2 granted for that in order to use a public space as a
3 staging area for construction?

4 EDITH HSU-CHEN: We'd have to look into
5 that.

6 CHAIRPERSON GREENFIELD: Okay. I mean, if
7 you can get back to us on 40 Broad, whether they have
8 permission to do so, I don't-- I don't' know that
9 they do or don't. It would be helpful to understand
10 that. For example, if there was permission for them
11 to use it as a staging area, the same question which
12 goes back to 325 Fifth Avenue is how long are they
13 going to have the ability to do that. Le Parker
14 Meridien Hotel, we've gotten multiple complaints.
15 There's no indication that the lobby is actually open
16 to the public, and when people go in and they try to
17 either eat or drink food, they are thrown out. You
18 familiar with this? Have you received complaints?
19 I'm just giving you the top hits, the most
20 complaints. We actually spent time and we've
21 compiled the most popular complaints that we've
22 gotten on POPS, and we're giving you our top five.

23 PATRICK WEHLE: Do you have the address
24 for the hotel?

1
2 CHAIRPERSON GREENFIELD: The address for
3 the hotel, my--

4 UNIDENTIFIED: [off mic]

5 CHAIRPERSON GREENFIELD: 119 West 56th
6 Street, there you go. Thank you. Love the audience
7 participation here today.

8 PATRICK WEHLE: We're not aware of that.
9 We're happy to take a look.

10 CHAIRPERSON GREENFIELD: Great. Please
11 consider that as a formal complaint. 40 Rector
12 Street, similar issues. It used to be a small plaza.
13 It now apparently is a one-story metal building
14 extension housing a city police station. I don't
15 know if you're familiar with this, but apparently
16 it's a-- I guess it's some sort of police substation.
17 Are you familiar with this particular location?

18 JOSEPH VENTOUR: No, I'm not familiar
19 with that location.

20 CHAIRPERSON GREENFIELD: Okay. So,
21 apparently the-- apparently, I would appreciate it if
22 both City Planning and the Department of Buildings
23 looked into it. Apparently when they built this
24 police substation, they built it on privately owned
25 public space, and I guess that leads to the question

1
2 of enforcement in terms of A., a developer, and both
3 in terms of the information which leads me to my next
4 question of how is a developer supposed to know when
5 a developer is developing a site, and where does the
6 enforcement fall on what if a developer is in fact
7 building on a public space, because it appears that
8 has happened on 40 Rector Street? Is that something
9 that DOB would enforce? Is that something that City
10 Planning would advise? What would that look like?

11 JOSEPH VENTOUR: Typically, when a
12 developer presents a project to be built, those plans
13 get reviewed and approved. In this case, I'm not
14 sure how this commission would have occurred other
15 than maybe they went through BSA to get a variance.
16 So we'll definitely look into this one.

17 CHAIRPERSON GREENFIELD: Okay, so where
18 is the public repository for all these rules and
19 regulations? If the typical member of the public
20 wants to find out what the rules are on a POPS, where
21 do they go and where do they find this information,
22 and is all the information accessible publicly?

23 EDITH HSU-CHEN: The rules and
24 regulations you can find in the zoning resolution,
25 but for many of the spaces that were created through

1
2 special permits or authorizations or modifications of
3 those approvals, you could find those rules in those
4 documents, and again, the APOPS website does list the
5 requirements. So that is a good place to start.

6 CHAIRPERSON GREENFIELD: Okay, so it's not
7 all necessarily in one location, is that correct?

8 EDITH HSU-CHEN: The APOPS website has a
9 lot of information. It doesn't have everything. For
10 example, it doesn't show the site plans, the approved
11 site plans. It doesn't have the approved special
12 permits. It doesn't have those documents. It is a
13 summary of the legal requirements.

14 CHAIRPERSON GREENFIELD: Okay, and that
15 summary is for all POPS?

16 EDITH HSU-CHEN: Yes.

17 CHAIRPERSON GREENFIELD: And it's up to
18 date in real time?

19 EDITH HSU-CHEN: Yes.

20 CHAIRPERSON GREENFIELD: Okay, great. Any
21 of my colleagues have any other questions they'd like
22 to ask? Council Member Kallos?

23 COUNCIL MEMBER KALLOS: On behalf of
24 Nancy Ploeger, a former Chair of the Manhattan
25 Chamber of Commerce, I'd like to add to the list of

1
2 complaints 200 East 89th Street. It is listed on the
3 APOPS website as a "zoning compliance issues
4 continued to be a problem here." And even notes that
5 DOB has written previous notice of violations at this
6 location. It is ugly. It is dreary. It is barbed-
7 wire fenced off, and there are numerous locations
8 which my office will be forwarding to-- I guess, so
9 just to be clear, when we get the complaint, are we
10 supposed to call 311? Or, how do we get the problem
11 to the right person? How do anyone watching at home
12 on the live stream or video, how do they-- if they
13 are not the Land Use Chair or a Council Member, how
14 do they get DOB to show up, because with only 50-
15 something complaints, it seems like more people
16 should be complaining. So, how do we get the
17 complaint out there?

18 PATRICK WEHLE: Like for all complaints,
19 a complaint should be filed with 311. Now that these
20 have been made-- we've made aware of these instances,
21 we're happy to go out and take a look.

22 COUNCIL MEMBER KALLOS: Okay.

23 CHAIRPERSON GREENFIELD: Does it have to--
24 just to follow up, to interject. Does it have to--
25 does the 311 complainant need to know any magical

1 words? Right? Do they have to say it's a POPS
2 complaint or it's an access complaint, or what do
3 they say? I mean, what is like the magic word to
4 make sure that it ends up in the right division,
5 right? Because Buildings is a huge agency. So when
6 someone's calling and said, "I tried to get into a
7 building and they wouldn't let me in," what happens
8 then? I mean, is there some sort of indicia? Is
9 there a secret handshake that's necessary to make
10 sure it gets to the right Department? Very
11 seriously, because I'm concerned in terms of the
12 trying to make it simpler for folks to actually field
13 these complaints?

14
15 JOSEPH VENTOUR: I think if a member of
16 the public wishes to make a complaint regarding a
17 POPS location, it's in their best interest to
18 specifically indicate that it's a POPS location and
19 what the nature of the complaint in relation to the
20 POPS location is.

21 CHAIRPERSON GREENFIELD: Okay, that's
22 helpful. Thank you. Council Member Kallos, any
23 other questions?

24 COUNCIL MEMBER KALLOS: Yes. I would
25 just say that a quick query of this 311 database

1 indicates that they need to say the words that it is
2 a public plaza complaint and POPS also works, but if
3 they use other vocabulary, it's unlikely to work for
4 the operator. For folks who are watching at home,
5 basically we have thousands and thousands of
6 operators. When you call they don't know everything,
7 unlike some of our Council Members, and what ends up
8 happening-- and that was meant as a compliment,
9 sorry. Council Members are in a position where
10 constituents stop us every day and they expect us to
11 know everything off the top of our head, but with a
12 311 operator, they tend to a key word search of what
13 the person's saying on the phone. So, they do a
14 search so that is why we're asking about the key
15 word. So public plaza works; POPS works. So, I've
16 shared the additional plaza. So, just to follow up
17 on my initial line of questionings followed by
18 Council Member Garodnick followed by Greenfield, in
19 our line of questioning, it seems like the plaza
20 requirements are somewhat complex. Would everyone
21 agree that they are somewhat complex and hard for an
22 ordinary person to know or understand?

24 EDITH HSU-CHEN: The zoning regulations
25 may be complex, but at the end of the day, what is

1 required of each POPS is very straightforward.
2 There's a list that's available, you know, how many
3 seats, how many trees, how much planting, etcetera.
4 So, certainly that is very easily comprehensible--
5 comprehensible information.
6

7 COUNCIL MEMBER KALLOS: Okay. So I'm
8 looking at 200 East 89th Street. I'm looking at it
9 on the apops.mas.org website /pops/850, and so I
10 guess the question is whether or not I think that it
11 would be hard for an individual member of the public
12 to have to do this, but whether or not a DOB, one of
13 those 19 members, perhaps one of them could be given
14 a higher title to focus on this and work with the
15 other 19 members to just go out and say, "Okay, is
16 there bicycle parking spaces? No, there's no bicycle
17 parking spaces. Is there a drinking fountain? No,
18 there is no drinking fountain. Is there lighting?
19 No, there is not lighting. Are there litter
20 receptacles? No, there's no litter receptacle. Is
21 there planting? No, there are no plantings. Are
22 there plaques or signs? No, there are no signs. Is
23 there seating? Not nearly enough. Are there trees?
24 No. Are there trees within the space? No, they're
25 all dead." And just write a violation of every

1
2 single-- I'm literally just looking at the photo from
3 the APOPS website, and even maybe the folks from your
4 division could look at APOPS, go through all of them,
5 and then use that to do targeted enforcement. Would
6 you consider that?

7 PATRICK WEHLE: Once again, if we get a
8 complaint, we're going to respond to the complaint.
9 Once we hear about it and learn about it, we will go
10 out and inspect.

11 CHAIRPERSON GREENFIELD: I think actually
12 in the interim, Council Member, I want to suggest one
13 of the ideas perhaps we could do as Council Members
14 is that in our communications with our constituents
15 such as our websites and twitter feeds and
16 newsletters, we should encourage our constituents to
17 make specific complaints in the short term, while we
18 work on making the legislative changes to get us to a
19 place where we can have consistent inspections.

20 PATRICK WEHLE: Would you consider a radio
21 show?

22 CHAIRPERSON GREENFIELD: More than
23 welcome to come on my show and chat about it,
24 absolutely.

1
2 PATRICK WEHLE: I was suggesting with the
3 professor perhaps.

4 CHAIRPERSON GREENFIELD: Oh, absolutely.
5 That would be a-- certainly a thrill and an honor,
6 and I will have my Communications Director follow up
7 with him. So, thank you. Final question if you're
8 done, Council Member Kallos? Final question that I
9 have, it's a two-part question, and it really jumps
10 on one of the points that the Professor made, and
11 that is that obviously the City is getting more
12 dense. How do we encourage property owners to
13 upgrade the POPS, and is there anything right now
14 that prevents them from doing so in a relatively easy
15 manner, right? So, what would it trigger in terms of
16 the review or at what level would it trigger a
17 certain review? And obviously, you know, once you
18 hit certain levels if you're like ULURP [sic] that
19 might discourage some folks from making changes.
20 We're not referring to the main changes, of course.
21 So, can you speak to both of those which is one, how
22 can we encourage more folks to upgrade their POPS,
23 and is it difficult now, and can we make it easier
24 for folks to do so, property owners in particular?

1
2 EDITH HSU-CHEN: We have seen many owners
3 just come in voluntarily wanting to upgrade their
4 space, to modernize it, to make it more usable, to
5 make it more attractive. So, there is a significant
6 group of POPS, existing POPS, that have come in for
7 upgrades voluntarily. We have a process for updating
8 existing POPS, and it is a certification process. It
9 is not ULURP. So, it is a-- it's a non-ULURP
10 approval process, or at the end of the day, design
11 change. We'd have to get a certification.

12 CHAIRPERSON GREENFIELD: Okay, great. And
13 that would allow them to do what kind of upgrades at
14 that level? What kind of upgrades are we discussing
15 when we say upgrades?

16 EDITH HSU-CHEN: Ideally the space would
17 introduce-- if the space does not have, for example,
18 seating or planting or trees. That would be
19 something that the Department-- oh, excuse me-- the
20 owner may be interested in providing to make the
21 space much more attractive and usable and modern.
22 You know, there could be other improvements to the
23 space. Again, these are-- the design changes are
24 proposed by the developer with the develop-- or the
25

1
2 property owners, architect, landscape architect. We
3 review for compliance.

4 CHAIRPERSON GREENFIELD: Is there anything
5 that we can do--

6 EDITH HSU-CHEN: [interposing] Of the
7 zoning regulation.

8 CHAIRPERSON GREENFIELD: Is there
9 anything that we could do to encourage upgrading
10 these spaces. An example that comes to mind, and
11 it's not a perfect example, of course, but just an
12 example is parks. So, for many years the City of New
13 York was not investing in its parks, and so Council
14 Members secured funding from the pots of capital
15 funds that the City Council has, and we've invested
16 literally hundreds of millions of dollars to upgrade
17 parks through the funding that we've secured. Not so
18 simple in this case because they're still privately
19 owned, but would it be possible to have some sort of
20 program or some sort of funding that could either be
21 overseen by your agency or a different agency to
22 encourage folks and to say, okay, you know, we'll pay
23 for-- I'm just picking a number here-- 5,000 dollars
24 in upgrades, right? Putting a couple of benches,
25 maybe a water fountain, you know, something that an

1 owner might do if there was some sort of incentive
2 perhaps to actually to get that done, would that--
3 would that be a possibility within the current
4 framework that exists, or you think it would be too
5 difficult to do because of the fact that they're
6 privately owned? Or is there some other opportunity
7 to encourage privately owned-- publicly owned private
8 space developers to actually upgrade their POPS?
9

10 EDITH HSU-CHEN: The maintenance and
11 upgrade of POPS we firmly believe is the
12 responsibility of the owner, of the property owner.
13 However, you know, we are open to hearing about new
14 ways of encouraging property owners to improve their
15 spaces. Professor Kayden mentioned, for example, the
16 David Rubenstein Atrium in the Upper West Side. That
17 was a very novel partnership with Lincoln Center, and
18 that space which was once very derelict space in a--
19 a very underwhelming derelict space is now one of the
20 most treasured indoor spaces in the Upper West Side,
21 if not in the City, due to this very interesting
22 partnership with Lincoln Center and with APOPS, the
23 space has been completely regenerated and has
24 wonderful amenities and is very attractive.
25

1
2 CHAIRPERSON GREENFIELD: Okay. So, we'll
3 keep thinking about that. We'll ask some of our next
4 panelists, some of the nonprofit groups, perhaps they
5 have some ideas. I just want to point out, Edith,
6 that the-- we also thought it was responsibility of
7 the Parks Department to upgrade the parks, but they
8 didn't agree with us, and so, you know, I'm sure we
9 think that the developers should upgrade the public
10 space, but you don't have to agree with us, and
11 there's nothing really to require them to do so,
12 right? And it would-- I think it's worth considering
13 at least potentially trying to find some incentives
14 for them to do so, because many of these spaces are
15 in fact underutilized. I do want to thank the entire
16 panel. I want to thank you for your indulgence. I
17 want to thank all of you for the outstanding work
18 that you do at the Department of City Planning, at
19 the Department of Buildings, and I want to thank you,
20 Professor, for the many hours and time and effort and
21 money that you put into APOPS and just to your
22 passion about this issue and for coming down here and
23 visiting with us today, and thank you all, and we're
24 going to dismiss you and move onto our next panel.
25 So, thank you very much.

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PATRICK WEHLE: Thank you.

EDITH HSU-CHEN: Thank you.

CHAIRPERSON GREENFIELD: We are going to invite now up for our second panel, Basha Gerhards-- if I mispronounced that I apologize-- from Manhattan Borough President Gale Brewer's Office. If I mispronounce your name you can pronounce it correctly for the record. Rachel Levy from the Friends of the Upper East Side Historic District, Marcel Negret from the Municipal Art Society of New York, Kelly Carroll from the Historic Districts Council. Is everybody here? And Brian Nesin from Friends of Privately Owned Public Spaces. And we're going to ask if possible if you can keep your remarks to three minutes, and we will start with the woman on the right who's pouring the water. Whenever you're ready you can just tell us who you are and you can begin. Thank you.

BASHA GERHARDS: We'll try that again.

Hello, Council Members. My name is Basha Gerhards, Deputy Director of Land Use for Manhattan Borough President Gale Brewer. I'm here to deliver the remarks on her behalf. "My name is Gale Brewer and I am the Manhattan Borough President. Thank you for the

1
2 opportunity to speak today in favor of Intro Number
3 1219 to require tracking of the compliance status of
4 all POPS or privately owned public spaces. POPS are
5 the product of one of the City's oldest incentive
6 zoning models. We should not take their availability
7 and their implementation lightly, because the
8 exchange they represent, development rights or
9 additional floor area in exchange for a public good,
10 is the same basic exchange we see in any of our many
11 other incentive zoning models, whether they are
12 intended to benefit landmarks, the transit network or
13 the creation of affordable housing. Anytime the
14 delivery of promised public benefits is undermined in
15 one of these programs, all these programs are
16 undermined. In Manhattan, which is home to over 300
17 such spaces, developers have continually reaped more
18 benefits through POPS programs since 1961, yet many
19 of the original spaces the public received in return
20 have produced fewer actual benefits. Prior
21 reiterations of the POPS regulations held no
22 requirements for a variety of feeding or banal [sic]
23 details like sufficiently deep planter beds for trees
24 to grow and flourish. The earliest provisions did
25 not require signs alerting the public to these

1 spaces, though even then it was envisioned that these
2 spaces remain open at all hours, seven days a week.
3
4 There were no requirements for universal
5 accessibility. Earlier options under the plaza
6 regulations permitted sunken or elevated plazas that
7 New Yorkers with disabilities could find it hard or
8 impossible to access. The patchwork of rules from
9 different programs and eras can make it difficult for
10 the public to ascertain what requirements apply.
11 Given the myriad rules and POPS types, it is
12 important to clarify the public which spaces are in
13 compliance with the rules that applied at the time of
14 their construction and which spaces are not. This
15 bill is a good idea. A common thread throughout the
16 POPS programs over the years with accessibility for
17 the public at all times. So, while the POPS
18 constructed under the earlier provisions may not meet
19 today's exacting standards or match what one may
20 think of as a successful urban space. They must
21 remain open to the public. However, when information
22 is lacking and required signage not posted, many of
23 our residents do not know about these spaces. Even
24 when they do, it is unclear what recourse they may
25 have to bring a inaccessible or missed used POPS back

1
2 into compliance. Last week, my office launched a
3 borough-wide POPS survey to update and build upon the
4 great work Community Board One, Five, Six, and eight
5 have done previously in their neighborhoods.
6 Attached to my testimony is a status update on a
7 sample of Upper West Side POPS for the Department of
8 City Planning and DOB to act on. Of the 18 Upper
9 West Side POPS in our initial sample area, six have
10 no signs posted to indicate they are open to the
11 public. One POPS had a sign posted that limited the
12 sites accessible hours, a clear violation. Another
13 was dominated by the eyesore of a dead tree, and yet
14 another designed to provide a shady respite was
15 locked and literally inaccessible." If I may
16 continue?

17 COUNCIL MEMBER KALLOS: As long as I
18 Chair, yes.

19 BASHA GERHARDS: Thank you. "To be sure
20 the patchwork of rules can make it difficult in the
21 field to ascertain what requirements apply, but more
22 worrisome is what happens once it is found that even
23 the most obvious, basic universal requirements are
24 not being met. That's why tracking compliance is a
25 start, but it is not enough. To further serve the

1 public, the database envisioned by the legislation
2 under discussion today should clearly denote the
3 access hours for each plaza. In addition to
4 requiring the tracking of compliance status, when
5 compliance reports are required, they should be made
6 available electronically as well. However,
7 compliance reports are only required for those pauses
8 that have undergone design changes in the last
9 decade. So, this provision of the bill, even if
10 amended, would only capture about two dozen POPS in
11 the borough of Manhattan, and since so many of the
12 Manhattan POPS have not undertaken design changes,
13 the Department of City Planning and Department of
14 Buildings should work toward digitizing for existing
15 plazas that fall outside of the current compliance
16 reporting requirement. It's important to note that
17 even when POPS are accessible and comply with the
18 relevant rules, they can wind up underutilized and
19 fail to deliver the public benefits that in theory
20 were supposed to justify the additional development
21 rights they conferred. Many in the prior panels and
22 the Council Members already spoke to the wonderful
23 example that is the David Rubenstein Atrium, formerly
24 known as the Harmony Atrium located at West 62nd and
25

1
2 Broadway. This space was underutilized at one point
3 during my tenure in the Council and become a
4 gathering place for homeless individuals. I
5 suggested that Lincoln Center take over the space and
6 refurbish it, which they did to their credit. They
7 worked with the co-op that benefitted from the
8 additional floor area conferred by the creation of
9 the POPS and Lincoln Center with Capital funding
10 support from my office allocated 22 million to the
11 POPS at that location. It is now a heavy utilized
12 public space with free Wi-Fi, regular cultural
13 programming and events free of charge and an
14 affordable café. This example underscores the need
15 to review each POPS carefully, and when they are
16 underutilized work diligently to remedy the
17 situation. Thank you to Chair Greenfield for holding
18 this hearing and introducing this bill with Council
19 Member Kallos. My office is committing to an annual
20 survey of all Manhattan POPS and expects expedient
21 responses to any complaints or violations raised by
22 our office or that of the Community Board to the
23 Departments of City Planning and Buildings. We
24 continue to have broader policy concerns about how to
25 address spaces that are not well designed or well-

1
2 utilized, but Intro 1219 represents an important
3 first step to ensuring public access and monitoring
4 of these public assets.”

5 COUNCIL MEMBER KALLOS: If I was willing
6 to make 20 of my interns available to match 50 of
7 your interns, would you be willing to partner with
8 Community Board Eight on doing a survey of POPS on
9 the East Side?

10 BASHA GERHARDS: Absolutely.

11 COUNCIL MEMBER KALLOS: And would you
12 commit to filing the numerous 311 complaints that
13 might be necessary so that we could perhaps quintuple
14 or some other magnitude the number of complaints DOB
15 is receiving on this such, that if they will not do a
16 proactive canvas, that at least we can do it?

17 BASHA GERHARDS: We are happy to file any
18 complaints on the Council Member's behalf.

19 COUNCIL MEMBER KALLOS: Great. Looking
20 forward to our partnership as always, and thank you
21 for your support on MIH, ZQA. Friends of the Upper
22 East Side Historic Districts, Rachel Levy?

23 RACHEL LEVY: Good afternoon, and thank
24 you for the opportunity to testify. My name is
25 Rachel Levy, and I'm the Executive Director of

1 Friends of the Upper East Side Historic Districts
2 which is a nonprofit organization dedicated to
3 preserving the architectural history, livability and
4 sense of place on the Upper East Side. The pockets
5 of open space amidst our dense city grant us an
6 intermission from the bustle of the everyday, a
7 function that is integral to urban quality of life.
8 The preservation and maintenance of these spaces is
9 critical in ensuring the vitality and stability of
10 New York City's great neighborhoods. While the
11 establishment of privately owned public spaces in the
12 1961 Zoning Resolution gave rise to a unique
13 opportunity to trade density in exchange for a public
14 amenity, it also posed a host of challenges regarding
15 long term compliance. Though we tend to think of
16 POPS as a feature of commercial centers like Midtown
17 and the Financial District, they are also important
18 to densely developed residential neighborhoods.
19 Parks and open space represent only one percent of
20 the land use on the Upper East Side, yet the area is
21 home to 73 POPS, the majority of which are
22 residential in nature. These make up nearly 20
23 percent of all the POPS in Manhattan, and, like their
24 commercial counterparts, they are often poorly
25

1 maintained and underutilized. Intro 1219 is a
2 positive first step in increasing transparency and
3 enforcing regulation of existing POPS. Friends is
4 pleased to see the inclusion of an interactive map as
5 part of the bill. However, in the spirit of good
6 government, all POPS should be required to report
7 biannually, not just those required under their
8 original agreements to file compliance reports.
9 Friends would also like the City to undertake a
10 holistic study of existing POPS, which it sounds like
11 the Borough President is doing, and consider a
12 program for incentivizing upgrades, enforcing
13 regulation beyond reporting, and devising and
14 implementing a streamlined, open review process for
15 redesign. POPS are the result of a trade between
16 private owners and the City to achieve a public
17 amenity in exchange for the loss of light and air
18 from additional density. As long as the developer
19 benefits from an increase in building size, the
20 public deserves access to well-maintained, high
21 quality public spaces to enhance the physical quality
22 of our City's neighborhoods. Intro 1219 is an
23 overdue first step toward holding such owners
24 accountable. Thank you.
25

1
2 COUNCIL MEMBER KALLOS: Thank you. Next?

3 MARCEL NEGRET: Good afternoon. My name
4 is Marcel Negret. I'm Project Manager with the
5 Municipal Art Society of New York. MAS supports Intro
6 1219, but proposes a series of modifications to
7 strengthen the City's oversight powers for New York's
8 privately owned public spaces. In our city-wide
9 review of POPS conducted in year 2000, MAS and
10 partner Professor Jerold S. Kayden gave 41 percent of
11 POPS a marginal rating and found that over 50 percent
12 were in some way out of compliance. Despite our
13 findings, City government and community stakeholders
14 still lack a comprehensive and transparent set of
15 mechanisms and oversight processes to ensure that
16 POPS are kept open to the public, in good condition,
17 and in alignment with the needs of the community. As
18 such, MAS supports Intro 1219 proposed by Council
19 Members Greenfield and Kallos, but we also believe
20 there is an opportunity to improve the city's POPS
21 further. We propose the following modifications:
22 First, extend oversight on reporting requirements to
23 all POPS. The reporting requirements described in
24 Intro 1219 should be applied to all POPS in the
25 inventory. Second, launch a multi-stakeholder POPS

1
2 working group. The Working Group would be-- would
3 comprise relevant agencies such as DCP, DOB, EDC, and
4 non-governmental organizations and be empowered to
5 develop policy recommendations that: A., Establish a
6 public review process for POPS. A comprehensive
7 review of all POPS is long overdue and should
8 commence as soon as practicable. Moreover, a regular
9 schedule of repeated review should be set to reduce
10 the burden on City staff and ensure POPS that fall
11 into disrepair or become underutilized are quickly
12 detected. Appropriate action may then be taken to
13 enforce requirements and improve the space on a
14 timely basis. The Working Group would determine
15 specific metrics to gauge POPS performance that would
16 generally measure design quality, compliance with
17 existing permit objectives, public utilization, and
18 connectivity with the surrounding community and
19 opportunities for improvement. B., Require POPS
20 owners to calculate public benefits. The 1961 Zoning
21 Resolution allowed for the creation of POPS by
22 granting property owners additional FAR in exchange
23 for the inclusion of public space on their land. At
24 present, the rules governing POPS do not require
25 property owners to complete a full accounting of

1
2 their costs and benefits in exchange for making any
3 changes to their POPS. Such an economic analysis of
4 every POPS would allow for better decision making by
5 City officials about individual POPS and the program
6 in general. It would also assure New Yorkers that
7 these public spaces are valued, as well as protected,
8 and that public benefit is maintained if changes are
9 made to specific POPS. Last, prioritize POPS within
10 City Government. City government needs the
11 organizational capacity, incentive programs, and
12 enforcement mechanisms to make POPS a priority. The
13 Working Group should develop strategies that
14 integrate these new processes into existing agencies
15 so that is not overly burdensome. Thank you very
16 much.

17 KELLY CARROLL: Good afternoon. I'm Kelly
18 Carroll with the Historic Districts Council. I'm the
19 Director of Advocacy and Community Outreach. Thank
20 you very much to Council Members Greenfield and
21 Kallos for hearing us today. Majority of landmarks
22 and historic districts are private properties which
23 serve as a direct public benefit to the City.
24 Similarly, POPS are supposed to serve as public
25 amenities in which the public can occupy spatially as

1 a trade-off for development rights. In the recent
2 past, HDC and the public had the opportunity to
3 review examples of making POPS more inviting,
4 including accessibility improvements to the Ford
5 [sic] Foundations Garden, adding furniture to One
6 Chase Manhattan Plaza, and also the creation of a new
7 plaza at the Marble Collegiate Church site, former
8 site of the now demolished Bancroft building. While
9 these POPS enter the public realm because they are
10 subject to review, there are a number of POPS outside
11 individually landmarked properties and historic
12 districts that remain hidden and therefore
13 underutilized. The omission of POPS from the New
14 York City map is unacceptable as nearly every other
15 public amenity including even spray fountains and
16 playgrounds is mapped. Yet, our largest collection
17 of public spaces other than parks remains missing.
18 HDC fully supports mapping them to increase their
19 visibility for the public, and I want to make a point
20 about this living as a GIS would be very important to
21 be able to layer different data sets and see how
22 these-- which might facilitate how these POPS are
23 used better. For instance, what is their proximity
24 to public schools? If there's a class outing, they
25

1
2 can occupy these spaces. So, having it live on a
3 website is one thing, but having it actually as a
4 dataset included in a layered GIS system, I think
5 would be very helpful. To continue, there have been
6 several examples lately of the elimination of public
7 benefits for the sole good of the private. For
8 instance, the LPC's Certificate of Appropriateness at
9 346 Broadway may allow an interior landmark to become
10 a private luxury condominium, the lack of enforcement
11 or variances in special zoning districts, the lifting
12 of deed restrictions at Rivington House, and most
13 recently this text amendment which allowed the POPS
14 at Water Street to convert to retail, doubling
15 dipping in a real estate bonus. In the case of a
16 loss of a POPS to a private restricted use, it should
17 be required that anew public space of equal square
18 footage and accessibility to be provided to offset
19 this loss which could disincentivize the
20 privatization in the first place. HDC encourages the
21 regulation of POPS as every other public amenity is
22 regulated as we've heard today something like how
23 parks are regulated, and this should commence with
24 real enforcement of violations. As proposed in this
25 bill, these violations reported to City Council

1
2 should not die in a report but rather actively dealt
3 with via a taskforce or a paid employee or something.
4 In the end, increasing POPS accountability and
5 transparency is a necessary start to improving these
6 spaces and increasing their use. Thank you.

7 BRIAN NESIN: Hi, my name is Brian Nesin
8 from a group called Friends of Privately Owned Public
9 Space. Thank you Councilman Kallos and Greenfield
10 for holding this hearing. I think it's long overdue.
11 First, just by way of introduction, my group came up
12 with an idea that we proposed to Community Board Five
13 for a network of pedestrian passageways through the
14 POPS in Midtown that got built by Department of
15 Transportation as Sixth and a Half Avenue. We've
16 also tried to, you know, draw attention to rogue POPS
17 like Le Parker Meridien by holding a parade through
18 Le Parker Meridien and having a hula-hoop event at 40
19 Broad Street. I want to react to some of the
20 proposals--

21 CHAIRPERSON GREENFIELD: [interposing] I'm
22 not that good at hula-hoops, but I'd love to
23 participate next time. Can I get an invitation for
24 the next hula-hoop event?

25 BRIAN NESIN: Sure.

1
2 CHAIRPERSON GREENFIELD: I don't know how
3 long I'm going to last, but it just sounds like it's
4 a lot of fun.

5 BRIAN NESIN: I'm a terrible-- I'm a
6 terrible hula-hooper as well.

7 CHAIRPERSON GREENFIELD: Okay, fair
8 enough. Thank you.

9 COUNCIL MEMBER KALLOS: You'd also find
10 the City Council hard-pressed to say no to an
11 invitation to a party. We could be there with
12 banners.

13 BRIAN NESIN: Great, great. Thank you.

14 CHAIRPERSON GREENFIELD: You might even be
15 able to get a sound truck.

16 BRIAN NESIN: So, I want to address the
17 issue of the POPS map, and I think-- I really applaud
18 Professor Kayden's suggestion that-- or the
19 suggestion at this hearing that owners be required--
20 pre-signage required owners be now required through a
21 Local Law or some other City Council action to
22 provide signage. I think another way to go about it
23 is to instruct Department of Transportation to put
24 signs on the public sidewalk which would actually be
25 more effective, because you don't need the owner's

1
2 approval. You can have a standardized, you know,
3 graphic very much like the landmark district signs,
4 and a lot of these signs for the POPS you have to go
5 into the POPS in the first place to look for it to
6 see the requirements. Put the sign on the sidewalk
7 it's going to be very cheap. It's going to be much
8 more effective, and you could have a "refer to the
9 website" on the sign. That's the first thing. I
10 have a lot of experience with Le Parker Meridien.
11 They added eight floors. They got eight floors added
12 to the building because of the special permit which I
13 have here. I complained about their adding their
14 café. I ended up-- I actually, I spoke to Raju Mann
15 when he was with Community Board Five, the planner.
16 He notified Department of Buildings. They-- there
17 was an ECB violation. I went to the hearing at ECB
18 court and the inspector didn't show up. It was
19 adjourned for six months. So, I don't think it's
20 just--

21 CHAIRPERSON GREENFIELD: [interposing] You
22 know, on av-- in all fairness, on average they have
23 to file around six violations a year. So,
24 considering that there are six violations a year and
25 there's only 17 inspectors, it's certainly possible

1
2 that they all were not available on that one day to
3 show up to the ECB hearing.

4 BRIAN NESIN: So, my recommendation would
5 be because Department of Buildings really has very
6 little interest in public space and interest in parks
7 and has really not done a great job in enforcing
8 these POPS, I think the job of enforcing and managing
9 and dealing with POPS should go to the Parks
10 Department. The Parks Department has ample
11 experience with parks and public space. It has its
12 own inspection program for parks. It has its own
13 enforcement patrol officers. Additionally, if a POPS
14 wants to add something like a café, and like that
15 café in Le Parker Meridien, I'm not saying it's a bad
16 idea. Maybe it's the best use for that space, but
17 they should be paying the public rent for use of
18 that. And Parks Department has--

19 CHAIRPERSON GREENFIELD: [interposing] Or
20 they should give free coffee on Wednesday mornings.

21 BRIAN NESIN: Right. Well, when I used
22 to go there and sit there, they used to hand me a
23 plate so that the other customers didn't know that I--
24 - because I had gone there and told them, you know,
25 you can't kick me out. They'd give me a plate to

1 kind of hide me so the other paying customers
2 wouldn't know that it's a POPS. But Parks Department
3 has the expertise in dealing with concessions so that
4 they can be-- right now, Parks Department collects, I
5 think, 40 million dollars a year in concessions. They
6 could be collecting concessions in POPS and I think
7 that in a way these privately public spaces should
8 become privately owned public parks. Thank you.

10 CHAIRPERSON GREENFIELD: Thank you very
11 much. So, the question I actually-- sorry? Oh,
12 thank you. The question that I'd like to ask you
13 about your idea in terms of transferring it to the
14 Parks Department is that some of the resistance that
15 we actually have gotten, and we actually have
16 explored the idea. Some of this that we've gotten is
17 that we're told especially by the folks at DCP that,
18 you know, you need to have this specialized
19 knowledge, right, because it's very complicated.
20 There are these plans and authorizations and special
21 permits and zoning changes, and so how do you think
22 that would work in terms of the parks employees?
23 Because in fairness, they're not experts in enforcing
24 codes, right? They can enforce, you know, the 10
25 rules everybody knows you can and cannot do in the

1
2 park, but beyond that, they don't have the ability to
3 do that. So, I do want to flush out this idea for a
4 moment.

5 BRIAN NESIN: Right. Well, I mean, I
6 think they can hire people who-- I mean, it's not--
7 you don't need to go to school for this. You can
8 read the Kayden book. You can become familiar with
9 the laws. You need access to the special permits. I
10 don't think the DOB inspectors are very knowledgeable
11 about a lot of these rules. The one who wrote this
12 up said the issue was that a liquor bar is not a
13 permitted obstruction in Le Parker Meridien POPS.
14 But what does a permitted obstruction mean? In the
15 Le Parker Meridien special permit, it says "any
16 alteration in the premises or in the manner of
17 operation which departs from any of the here and
18 before specified conditions shall cause an immediate
19 termination of the special permit." So, basically,
20 there's no permitted obstruction.

21 CHAIRPERSON GREENFIELD: What do you think
22 of our concept of creating a website that on the
23 website all the information would be there and you
24 could just click through on the website with the
25 location like the Parker Meridien? You could just

1
2 click through and then actually specify your
3 complaint, right? "I went to Le Parker Meridien
4 today," and that would go directly to the DOB
5 inspector, hopefully if we're successful who would be
6 the fulltime inspector. I got your answer because
7 you already said it was great, but what do you folks
8 think about the debate that we've had here before in
9 the prior panel on the question of whether we should
10 have proactive enforcement or reactive enforcement?
11 Do any of you have opinions on that that you'd like
12 to share as folks who are very engaged in this
13 particular area of public service?

14 BASHA GERHARDS: The Borough President's
15 experience is you need a combination of both. You're
16 not going to catch someone locking their gate if
17 you're only going once a year, and they're actually
18 doing it only at certain times of the day or certain
19 times of the year. That's where you really do need a
20 more proactive and complaint-based system because
21 that's the only way to really keep eyes on all of
22 these public assets as many times as possible. That
23 being said, it does seem like you do need some type
24 of dedicated resource for this type of-- whether it's
25 complaint-based or proactive enforcement just because

1
2 of the complexities of the rules and the individual
3 needs of these spaces.

4 CHAIRPERSON GREENFIELD: I would actually
5 add as we're chatting about it that I think what's
6 also important about having proactive enforcement is
7 that people are actually afraid someone is going to
8 show up. I mean, right now if you're playing the
9 odds, the odds are one in ten that you're going to
10 get reported. Those are pretty good odds, right?
11 Versus if you knew that at least once a year-- see
12 we've already taken the feedback from Department of
13 City Planning, said that twice a year is too much.
14 So, if at least once a year you had someone who was
15 inspecting at a random time, then you might be
16 concerned that if that inspection would happen that
17 you might actually fail, that would give you an
18 incentive as well. Council Member Kallos?

19 COUNCIL MEMBER KALLOS: Thank you. It's
20 good to be working together on this and thank you to
21 all the preservationists for being here. I had asked
22 a question to the Borough President's office.
23 Obviously, the Borough President and I have staff.
24 We also have a platoon of interns between the two of
25

1
2 us. Would your organizations individually be
3 interested in--

4 CHAIRPERSON GREENFIELD: [interposing] I'm
5 sorry, I have to ask this question. You say a
6 platoon. Just for the record, how many interns do you
7 have this summer?

8 COUNCIL MEMBER KALLOS: I have 20 and I
9 believe Gale has over 100, and I--

10 CHAIRPERSON GREENFIELD: [interposing] How
11 many do you-- how many do you have in your office?

12 BASHA NESIN: Too many to count.

13 CHAIRPERSON GREENFIELD: Too many to
14 count. That's interesting. You know, in the Jewish
15 community when people have a lot of children and they
16 don't want to, and they're afraid of what's known as
17 the "evil eye" and they don't want people to know,
18 they ask, "How many kids do you have?" You say, "We
19 have too many to count." So, there you go. You
20 don't want the evil eye on your interns. You want to
21 protect them. So, we are--

22 BASHA NESIN: [interposing] We do. We do.

23 CHAIRPERSON GREENFIELD: We are grateful
24 for that. I would just state for the record that
25 when I served in the Council and Gale Brewer was a

1 Council Member, in all fairness to DOB, Gale Brewer's
2 interns were violating every single building code by
3 actually working in the hallways, working on the
4 porches, potentially even working in the bathrooms
5 and the elevators, and there was so many interns
6 overflowing that you could not walk down the hallway
7 at 250 Broadway without tripping over a Brewer
8 intern. So, I guess we don't want the DOB to always
9 enforce every code exactly to the letter of the law,
10 because in that case we might have had some occupancy
11 violations.
12

13 COUNCIL MEMBER KALLOS: And just to be--

14 BASHA GERHARDS: [interposing] I will say
15 that now that Gale has a dedicated Land Use Division,
16 there are no building code violations in regards to
17 the placement of our interns.

18 CHAIRPERSON GREENFIELD: Well done. Well
19 done. Yes, Council Member?

20 COUNCIL MEMBER KALLOS: And to be clear,
21 based on the clear military terms, I have a platoon.
22 Gale would have a company. I have between 15 and 30;
23 that's a platoon, and Gale has between 80 and 150
24 which would be a company. So, that being said, for
25 the nonprofits and advocacy groups, would you be

1
2 willing to partner with us in doing something this
3 summer and verifying that these items are there and
4 generated in the complaints, and working with us to
5 follow up with DOB to verify that they actually
6 showed up? So, you'd be helping with canvas, and we
7 would probably be doing our job of making sure the
8 311 complaints actually get resolved.

9 RACHEL LEVY: Just from the Friends
10 perspective, we'd be more than willing to work with
11 you on that. We've actually since the winter sort of
12 doing our own on-the-ground survey to sort of follow
13 up on the Kayden work. So we have current photos of
14 just about every POPS in our office. We're working
15 on processing all of that information, but so that's
16 something that we would very happy to do with you.

17 KELLY CARROLL: I know that the East Side
18 has a ton of POPS, so it makes sense for Rachel. One
19 of the issues that I had yesterday was actually
20 determining where these intersect with districts and
21 landmarks. So, I'm in a position right now where I
22 don't even know how many POPS fall within landmark
23 districts, which is what we deal with. But and we
24 also only have one intern, not a platoon. So, I'd be

1
2 happy to continue this conversation, but I can't
3 commit to 311 calls.

4 COUNCIL MEMBER KALLOS: I think what it
5 may look like because all of you are membership
6 organizations is working with the Borough President,
7 perhaps Land Use Chair to pick one day, one weekend,
8 one evening where folks are going to go take that
9 walk and see where the compliance looks like, where--
10 with the expertise of the Borough President and our
11 Land Use Division, we have a checklist and folks go
12 out and we do the canvas, and we get it all done, and
13 then spend the rest of the summer with our platoon
14 and company of interns to enter the data, analyze it,
15 generate the 311 complaints, which would probably be
16 the longest piece of it.

17 KELLY CARROLL: Sounds good.

18 UNIDENTIFIED: Sounds great. Thanks.

19 COUNCIL MEMBER KALLOS: Thank you.

20 CHAIRPERSON GREENFIELD: Well, we really
21 want to thank you, and we want to thank you for your
22 persistence. Like we said, it's a relatively new
23 practice since I've become Chair of the Land Use
24 Committee to actually do oversight and policy-based
25 hearings, and just the reality is we've got so much

1
2 going on in the Land Use world that it just gets
3 challenging to do it all. And once again, I want to
4 take the opportunity to thank our staff as well. I
5 want to thank you all, and we'll dismiss you, and
6 we'll call up the next--

7 COUNCIL MEMBER KALLOS: [interposing]
8 Question? Sorry.

9 CHAIRPERSON GREENFIELD: panel. Yes?

10 COUNCIL MEMBER KALLOS: To the extent
11 that the legislation at Section 25-115, is non-
12 specific in terms of the type of information that
13 should be on the website, and I think a lot of us are
14 assuming that they might just adopt the APOPS
15 website. If your organizations could come together
16 and provide a recommendation on specific language and
17 specific items that we would want to see added to the
18 website, perhaps based on the APOPS website or even
19 going further, we would welcome that please. And I
20 promise I'm done with this panel.

21 CHAIRPERSON GREENFIELD: Thank you very
22 much, Council Member. Thank you, panelists, and we
23 will now call up our final panel. If you don't hear
24 your name and you want to testify, please let us
25 know. Eric Edward Stern from Manhattan's Community

1 Board Five; Lo van der Valk from Carnegie Hill
2
3 Neighbors; Jesús Pérez from Manhattan Community Board
4 Six; Alice Blank from Community Advocates for Public
5 Space; Moses Gates from-- I'm sorry? From RPA, and
6 Charles Eschelman [sp?] representing himself. If we
7 missed anyone, please speak now or forever hold your
8 peace. We good? If you have a written statement
9 that you would like to submit as a written testimony,
10 please give it to the Sergeant of Arms who will then
11 give it to us. If you don't have a written
12 statements, that's okay. You can obviously do it
13 verbally. Why don't we start with the gentleman on
14 the left, my left, in the lovely blazer? That would
15 be you, yes. If you don't mind, why don't you get us
16 started? Once again, it's three minutes on the clock
17 and to be followed by Q&A from the Council Members.

18 LO VAN DER VALK: My name is Lo van der
19 Valk. I'm President of Carnegie Hill Neighbors.
20 We're a neighborhood preservation and quality of life
21 organization in the Upper East Side, and we're glad
22 to be here. I just want to say that I only learned
23 about this committee hearing, which I think is a
24 great thing to have, and I understand it was in
25 preparation for one year, but we only heard about it

1
2 last night at a Community Board meeting, and I can
3 claim some failure for that on my side, but still I
4 think-- I've heard from other people who heard about
5 it quite recently. This is a big deal in the City,
6 and I think this should have been more publicity, but
7 generally speaking--

8 CHAIRPERSON GREENFIELD: [interposing] So,
9 you know, just to respond to that point, we
10 publicized it a couple weeks ago. The practice of
11 the Council is that we can't put a hearing on the
12 calendar until we get space. As you can imagine, I
13 think there are some 30-odd committee. Kallos knows
14 exactly how many committees, because it vexes being
15 that there are so many committees. How many
16 committees are there in the City Council?

17 COUNCIL MEMBER KALLOS: I believe 48, 48
18 committees and taskforces.

19 CHAIRPERSON GREENFIELD: Okay, 48
20 committees, taskforces and subcommittees. The reason
21 that's relevant is because there's a limited amount
22 of space where we can hold hearings, and so we are
23 subject to space requirements, right? So, we can
24 plan-- we can want to have a hearing, but until we
25 can actually lock down the hearing and then agree on

1 the details of the hearing and invite the
2 Administration, so that takes time. So, it's a fair
3 point, and we will take it back, but we did-- we
4 publicized it a couple weeks ago, and New York One
5 actually did a preview of this hearing on Monday
6 where they actually-- where they actually did a news
7 clip to preview the hearing that was going to be had.
8 So, we tried, but it's an imperfect system which we
9 recognize.
10

11 LO VAN DER VALK: Well, I appreciate-- I
12 appreciate your taking the time to address this,
13 because-- can I widen it? Other meetings in the City
14 Council are often very hard to track if you're not
15 inside the immediate loop of people that would be
16 testifying. So, I would just urge that the City
17 Council consider improving its own website and
18 improving ways in which it can keep the public
19 informed, because that's what you're here for.

20 COUNCIL MEMBER KALLOS: I-- David was
21 actually one of the architects as a Council Member of
22 the City Council's Rules Reform Package that he let a
23 Council Member elect have a small say in it, and so
24 as part of the City Council's Open Technology Plan,
25 you hopefully will one day be able to, at least

1 during the term, my first term, you'll be able to
2 subscribe and say, "I care about preservation. I
3 care about Land Use bills," and you'll be able to
4 learn about the bills as they come up, whether it is
5 Intro 775 or Introduction 1219.
6

7 LO VAN DER VALK: Okay, great. Thank
8 you. Now--

9 CHAIRPERSON GREENFIELD: [interposing]
10 And in fact, anybody here who would like to be on the
11 list for future hearings, if you send me an email, we
12 will get you on that list so that you can know of all
13 future Land Use hearings. And don't worry about the
14 clock because we've been engaging back and forth, so
15 we're going to reset the clock for three minutes.

16 LO VAN DER VALK: Okay, great. Thank you.

17 CHAIRPERSON GREENFIELD: Thank you.

18 LO VAN DER VALK: Appreciate it. Well, I
19 think you raised the issue of reactive or proactive
20 inspections of the parks. I would just suggest that
21 we utilize the Community Boards perhaps to review
22 POPS once a year, and so that the-- I would agree
23 with the MAS and other recommendations that the
24 reviews be done once a year and not twice, but we
25 would urge that the Community Boards be incorporated

1 in this, because you know, people can meet at night,
2 and they can come to meetings, and they are the local
3 users of the POPS. So, just as we review outdoor
4 cafes twice-- once every two years, we should review
5 POPS once a year at the Community Boards. Then,
6 yeah, we might consider bike-- you know, where do we
7 put the city bike racks? One of the advantages of
8 POPS is that they have this open sidewalk which
9 doesn't need trash to be put on it regularly and
10 which is more accessible, and maybe if the bikes
11 could be near the POPS, the POPS would be utilized
12 more. So, that's just a suggestion to throw out.
13 We're very much in favor of improving the website of
14 the POPS, and we think there should be a POPS app so
15 that if you're-- you could say, "Where's the nearest
16 POPS?" And then once you get to the POP, "What are
17 the criteria that govern this pop?" And if there are
18 any violations you could register them on the app.
19 Maybe it'll take a private industry or a grant,
20 foundation grant, to create that, but that would be a
21 worthwhile thing we would think. I think that-- oh,
22 and on the map, this is a general comment on all maps
23 of Manhattan. Why are maps of Manhattan always being
24 read at a 30 degree angle so that you can never
25

1
2 straighten? You have to straighten it out or you
3 have to flip part of the map. Can't you as the City
4 Council require City Planning to create maps that are
5 readable in a vertical way?

6 CHAIRPERSON GREENFIELD: Alright. We're
7 going to take that under advisement.

8 LO VAN DER VALK: Okay, thank you.

9 CHAIRPERSON GREENFIELD: That's not
10 directly related--

11 LO VAN DER VALK: [interposing] Okay--

12 CHAIRPERSON GREENFIELD: to our subject
13 today.

14 LO VAN DER VALK: I said that [sic].

15 CHAIRPERSON GREENFIELD: And if you're
16 done, we're going to move onto the next person to
17 testify. Thank you.

18 ALICE BLANK: Good afternoon, Council
19 Members. My name is Alice Blank. I'm a member
20 Community Board One, and I'm here today speaking to
21 you as an architect and a member of Community
22 Advocates for Public Space. We're pleased to the
23 City Council fully engaged now on the issue of the
24 City's privately owned public spaces. However, we
25 are troubled that the legislation comes only days

1
2 after City Council unanimously approved the
3 elimination of 110,000 square feet of privately owned
4 public space in the passing of the Water Street text
5 amendment. We sincerely trust that the City Council
6 members will make good on their promise that the
7 amendment will not be treated as a precedent or act
8 as a means to justify further conversions of public
9 space for private profit.

10 CHAIRPERSON GREENFIELD: Ma'am, I
11 apologize respectfully. We held hearings on that and
12 there was plenty and ample opportunity to review it.
13 This hearing is not about that. You feel free to use
14 your time, but we're not going to respond.

15 ALICE BLANK: I'm not asking you to
16 respond--

17 CHAIRPERSON GREENFIELD: [interposing]
18 We're--

19 ALICE BLANK: to it. I just feel--

20 CHAIRPERSON GREENFIELD: not going to
21 respond to that, and I honestly would ask that you
22 respect the hearing and focus on the focus of the
23 actual hearing.

24 ALICE BLANK: I am. I am.
25

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2 CHAIRPERSON GREENFIELD: We had many
3 discussions and conversations about that item, and
4 we'd appreciate it if you focus--

5 ALICE BLANK: [interposing] The concern is
6 just that it's not seen as a precedent.

7 CHAIRPERSON GREENFIELD: I understand, but
8 it's really-- this is not the appropriate forum for
9 that. Thank you.

10 ALICE BLANK: I apologize. The proposed
11 law before us today is the beginning but to be useful
12 and effective in safeguarding our public space, this
13 law must include mechanisms for enforcing compliance
14 and maintenance of the City's POPS. More
15 specifically, the legislation should state explicitly
16 that the purpose of the law is to improve and
17 preserve privately owned public spaces. The law
18 should not leave open the inference that is intended
19 to promote the use of data showing non-compliance as
20 a predicate to eliminating public use of spaces. The
21 law should describe the mechanism for enforcing
22 maintenance and compliance at the POPS and state a
23 time limit for owners to respond to concerns. We'll
24 ask you to establish a process for maintaining POPS
25 that are subject to the reporting-- that are not

1 subject to the reporting requirement in the
2 legislation. The legislation should incorporate
3 links to the key supporting documents such as CPC
4 resolutions and deed restrictions on the City
5 Planning's interactive map. The legislation should
6 identify POPS that have restrictive declarations, for
7 example, related to special permits or street mapping
8 in addition to those with zoning bonus requirements
9 on the City Planning's interactive map. The
10 legislation should incorporate Community Board
11 reports on compliance and maintenance issues on the
12 neighborhood POPS and DCP's reports. And lastly, the
13 legislation should describe how the burden of further
14 reporting and enforcement on the part of the DCP and
15 DOB will be managed. We sincerely hope that all
16 owners of POPS across New York City will heed Council
17 Member Greenfield's recent exhortation [sic] to
18 Donald Trump about Trump Tower stating, "Trump should
19 make the public space in Trump Tower great again by
20 welcoming in the public, by allowing benches, and by
21 making sure it's not used for any other purpose
22 except to service the public." Thanks.
23
24
25

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2 CHAIRPERSON GREENFIELD: Thank you very
3 much, and Trump should make the public spaces great
4 again.

5 ALICE BLANK: Yes, we--

6 CHAIRPERSON GREENFIELD: [interposing]
7 Thank you. I would be okay, by the way, if he sold
8 those hats in the privately owned public space. If
9 the hat said, "Make public spaces great again," I
10 think would give him a waiver to do that, and then it
11 should be #supportourpops.

12 JESUS PEREZ: Good afternoon, Council
13 Members Greenfield and Kallos, Committee Council. My
14 name is Jesús Pérez, and I am the District Manager of
15 Manhattan Community Board Six. Thank you for the
16 opportunity to testify before you today. Community
17 Board Six takes a keen interest in POPS because
18 Community District Six, which stretches from 14th
19 Street to 59th Street on the east side of Manhattan
20 is home to almost 15 percent of the City's over 500
21 POPS. Our district has very little public space
22 also. A study cited in our 2008 POPS report found
23 that Community District Six has the least open space
24 of any community District in Manhattan at only 26
25 acres. When we consider that over 144,000 people

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2 call our district home that means that 5,500 people
3 share every acre of our open space, which includes
4 POPS. Additionally, the population of Manhattan
5 doubles during the work day. Many of those people
6 commute to our district and use our POPS which is not
7 reflected in the aforementioned figures. To put it
8 plainly, Community District Six is starved for open
9 space. Given that the 77 POPS in Community District
10 Six are unfortunately the only substitute we have for
11 our significant scarcity of open space, we understand
12 all too well the importance of ensuring that all of
13 our POPS are in good condition and in compliance with
14 the law, and we appreciate any measure that seeks to
15 provide useful actionable information and
16 transparency. As the better informed we are, the
17 better we can ensure that our important commitment--
18 that important commitments to our community are
19 honored. Intro Number 1219 calls for various reports
20 to be provided to the City Council. We hope that
21 those reports can also be provided to the Community
22 Boards and that like with other municipal services
23 the inventory of POPS is done on a Community District
24 by Community District basis. As Professor Kayden
25 mentioned earlier, Community Board Six has already

1
2 been closely monitoring the compliance statuses of
3 the POPS within our district. In 2008, we undertook
4 our first report on POPS in the district. This
5 report, which can be consulted on our website,
6 CB6.org, catalogued each of the 77 POPS in our
7 district and noted whether they were truly accessible
8 to the public, provided the required amenities and
9 were free of any encroachment by private uses. In
10 closing, when one considers the additional floor area
11 that a developer can be granted in exchange for the
12 small concession of a POPS, these spaces are revealed
13 to be extremely valuable. They are valuable in both
14 financial terms and in terms of quality of urban
15 life. CB6 has demonstrated through its POPS reports
16 and continued observations that we believe that the
17 terms of the use of POPS should not be ignored. We
18 hope Intro Number 1219 will bring significant
19 information and transparency to the greater
20 discussion about POPS and enforcement of the terms
21 under which they were granted. Thank you.

22 MOSES GATES: Thanks, Councilman. I'll
23 be quick. My name's Moses Gates. I'm from the
24 Regional Plan Association. Don't get used to seeing
25 me too much as a regional, you know, as a member of

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2 Regional Plan Association. We try not to focus, you
3 know, too much on specific municipal issues, but we
4 want--

5 CHAIRPERSON GREENFIELD: [interposing]
6 You're welcome, however. We're very happy to have
7 you here.

8 MOSES GATES: Thank you.

9 CHAIRPERSON GREENFIELD: The entire
10 panel, I will just state, that it goes without
11 saying, but it's worth saying, that each and every
12 one of you are civically involved and take the time
13 out to care about your neighborhood and your city,
14 and we're truly grateful. So I don't want to
15 discourage you. If you'd like to come back, all of
16 you are welcome to come back any time.

17 MOSES GATES: Thank you. We will take
18 you up on that. I wanted to just come down to day to
19 kind of give a little bit of a perspective from our
20 organization as one who supports and has a vision of
21 a lot of population growth in the region, a lot of
22 population growth in the urban core where we just
23 came out with our vision, and it too, you know, in
24 excess of nine million people in Vision Four, the
25 five boroughs of New York by 2040. And you know, we

1 view the chance to improve our public spaces as a
2 vital component of improving that urban
3 infrastructure that needs to accompany all the
4 population growth. And you know, I will skip over
5 previously settled special districts, but I will say
6 that that was the impetus to kind of come down here
7 in hopes that this would be the beginning of a
8 process where we would engage the nonprofit
9 community, the Community Boards and kind of thinking
10 about privately owned public space and improving
11 older privately owned public spaces in a
12 comprehensive citywide way, not as a kind of case by
13 case scenario. And as part of that, in addition to
14 kind of echoing a couple of my previous colleague's
15 call for a citywide taskforce on this, you know, we
16 would also say that we need to start with the policy
17 of no net loss of public space for privately owned
18 public spaces. An answer [sic] to that, I would
19 stress in a flexible way one in which the replacement
20 of public space lost to commercial could be, you
21 know, in a different part of the building by opening
22 a lobby, by having, similar to Trump Tower, terrace
23 space, or even for paying for the accessibility of
24 other space somewhere in the Community District. You
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1
2 know, we don't want to be rigid about it, but we have
3 long had a no net loss policy for park land, and if
4 we're going to accompany the kind of growth we
5 envisioned, we need that for public space as well.
6 And then lastly, I would just very much encourage the
7 Council not to get caught in a false dichotomy of
8 quantity versus-- improving quantity versus improving
9 quality of our privately owned public spaces. And to
10 kind of echo the value-- I didn't want to say value
11 capture, but to echo the point that these POPS are
12 necessarily in high-market areas, in ones in which
13 commercial space is quite valuable, and that you can
14 have that commercial space which adds value to the
15 entire area. You can have some of that go towards
16 improving the existing public space, but you should
17 also have enough that it can go towards replacing the
18 private space also, improving both the quality and
19 quantity of the space.

20 ERIC EDWARD STERN: Chair Greenfield,
21 thank you so much for holding this hearing and taking
22 the time to listen to this testimony. My name is
23 Eric Edward Stern, and I Chair the Land Use, Housing
24 and Zoning Committee of Manhattan Community Board
25 Five. The Manhattan Community Board Five, our

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2 Community District has the largest number of POPS of
3 any Community District in the City. We are acutely
4 aware of many of the challenges with POPS and we want
5 to make three main points. The first is that there
6 should be regular inspections of all POPS in the City
7 by DOB, not just some but all POPS. POPS allow for
8 an FAR bonus, and it's critical for the City to make
9 sure that a private owner is not getting the benefit
10 of bonus floor area without following through on
11 their end of the bargain. Two, there should be a
12 meaningful way for the public to document violations.
13 For example, by sending in photographs with a time
14 stamp or video and to have that evidence be
15 sufficient for some sort of violation to be issued.
16 And three, even if inspections are as good as we
17 could hope for here, there needs to actually be a
18 penalty for non-compliance, and a real penalty for
19 non-compliance. And you know, 4,000 dollars, you
20 know, if that's the general fine is a cost to big
21 business, and it's unacceptable. This fine does not
22 deter bad behavior. So, you know, we suggest perhaps
23 a three strikes policy where let's say the first
24 violation is a fine of 20,000 dollars. The second
25 violation is a fine of 25,000 dollars, if we're

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2 thinking within the ECB sort of framework, and the
3 third violation could be a temporary removal of a
4 certificate of occupancy for the bonus floor area of
5 a building, and that may seem somewhat draconian
6 here--

7 CHAIRPERSON GREENFIELD: [interposing] I
8 actually thought for a second you were going to take
9 your pinky, put it to your mouth, and say, "One
10 billion dollars." So, I'm happy we didn't go there.

11 ERIC EDWARD STERN: But and I would just
12 add on this issue--

13 CHAIRPERSON GREENFIELD: [interposing]
14 Austin Powers reference for those of you who are not
15 up to date on pop culture. Thank you.

16 ERIC EDWARD STERN: Thank you. If the
17 penalty for failure to provide a POPS space is purely
18 monetary, it's purely monetary, then we find
19 ourselves in a situation whereby an owner of a site
20 can use bonus floor area in exchange for paying a
21 fee. What does that sound like? That's zoning for
22 dollars, fundamentally, and that's not a place where
23 we should be in here. I'll just add a few quick
24 points. This bill is a very important first step.
25 We think it could be improved by, you know, requiring

1 inspection of all POPS, but it's not enough and needs
2 to go further and needs to consider how to actually
3 have real penalties here. One might think about
4 structuring a penalty so that-- or a violation such
5 that an inspector can issue a violation upon seeing
6 something and then having an owner perhaps appeal
7 that violation by providing evidence, but you know,
8 having it go to the ECB does not necessarily have to
9 be the only way here. Something like an HPD
10 violation that could be given on the spot is
11 something to think about here. And I would also
12 suggest that the City think about its regulatory
13 powers more creatively. You know, we've heard a lot
14 of talk about incentives here, and you know, POPS
15 program has really built--

17 CHAIRPERSON GREENFIELD: [interposing] I'm
18 going to ask about that. So if you can just wrap up
19 your testimony, please. Thank you.

20 ERIC EDWARD STERN: Sure. But I would
21 just say not to limit yourself to incentives, and I'm
22 happy to answer any questions on that. For instance,
23 even though different POPS have come about at
24 different times when the zoning resolution has
25 required different sort of, you know, rights of

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2 access, one might-- you know, it might be possible
3 for the City through the modification to the zoning
4 resolution or through the administrative code to
5 require a basic bill of rights for people in New York
6 City to have it all POPS, and maybe that would
7 require that some, you know, POPS allow certain
8 things in some locations that right now--

9 CHAIRPERSON GREENFIELD: [interposing] We
10 discussed that earlier today. That was our
11 discussion earlier--

12 ERIC EDWARD STERN: [interposing] I wasn't
13 here for the beginning of it.

14 CHAIRPERSON GREENFIELD: Okay, so that
15 was in fact, it was a lengthy back and forth between
16 myself and the Department of City Planning asking
17 them to do exactly that which is to promulgate rules
18 of what is and is not allowed at POPS and then to
19 legislatively require that those rules actually be
20 posted on those locations. So we're on the same
21 page. I will just tell you that I agree with you on
22 the fines. I do think that the fines need to be
23 increased for two reasons. One is that, you know, in
24 some cases, 4,000 dollar fine is actually a day's
25 worth of rent in Midtown Manhattan, right? So,

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2 that's really not a lot of money, and quite frankly,
3 it would then pay for the required inspections,
4 right? So if we had folks who are coming in all the
5 time who had a dedicated inspector and we had
6 reasonable fine structure, it would dissuade people
7 from doing it, and it would cover the cost, and so I
8 don't see how anyone could then object to actually
9 getting that done. And from a policy perspective, I
10 think it's the right thing to do. I want to open up
11 this question and ask what folks think about, which
12 you touched upon, which was the general question that
13 we had before, is what if anything should we be doing
14 to encourage the upgrades of POPS?

15 ERIC EDWARD STERN: Well, I think that
16 the challenge that at least I've seen on Manhattan
17 Community Board Five is that we get an application by
18 an owner of the building to basically privatize parts
19 of their POPS. This is what we've mostly seen in our
20 community. This is within the past 12 months, and we
21 have an applicant come and say this part of the POPS
22 is not so heavily utilized. We want to put café
23 seating here. We have a challenge, let's say,
24 working with City officials to make sure that that
25 café seating is actually open to the public and not

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2 exclusively serving patrons of that private
3 operation, but while that conversation is going on
4 about really privatizing that public space, and we
5 want to ask for an additional sign to be put on the
6 POPS to, you know, provide some additional insight to
7 folks walking by that this is public space. That's
8 off the table. And so I would say that this idea
9 that only-- that we can only get improvements when a
10 private owner decides that they want to get something
11 else is not necessarily framework that we have to
12 work with.

13 CHAIRPERSON GREENFIELD: Yeah, sure.

14 ERIC EDWARD STERN: We may have
15 grandfathering as a general policy for these POPS--

16 CHAIRPERSON GREENFIELD: [interposing]
17 Yeah.

18 ERIC EDWARD STERN: but there's no reason
19 that the Council cannot--

20 CHAIRPERSON GREENFIELD: [interposing] We
21 discussed that this morning.

22 ERIC EDWARD STERN: Okay.

23 CHAIRPERSON GREENFIELD: Earlier today as
24 well, and in fact--

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2 ERIC EDWARD STERN: [interposing] I would
3 encourage. I would encourage on behalf of the City--

4 CHAIRPERSON GREENFIELD: [interposing] And
5 in fact we discussed requiring signs everywhere, and
6 we had a very good suggestion bout placing signs in
7 the sidewalk, which I think is a very good idea as
8 well, because right now the signs may not be easily
9 accessible or apparent. That way, for example, if
10 you're a tourist and you're walking down the street
11 you can say, oh, our public space here, you know, and
12 anybody can go check that out. Any other suggestions
13 in terms of how we can encourage improvements of
14 existing POPS? Yes, sir?

15 LO VAN DER VALK: Well, if you have the
16 annual--

17 CHAIRPERSON GREENFIELD: [interposing] Can
18 you just speak into the microphone? That way they can
19 pick you up. Thank you.

20 LO VAN DER VALK: Lo van der Valk,
21 Carnegie Hill Neighbors. If you have an annual
22 review process, as I suggested earlier, that could be
23 the Community Board acting as an advisory to the
24 overall review, then the owners would show up once a
25 year and they would hear the community speak about

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2 that POP, and I think once you get that conversation
3 going, there's going to be an inclination on a part
4 of the owners to listen to it and to listen to ideas
5 to improve. So, it, you know-- I agree with the
6 concept mentioned earlier. It shouldn't be that you
7 have to give an incentive to really actually comply.
8 I mean, there should be other mechanisms.

9 CHAIRPERSON GREENFIELD: To be clear,
10 we're not referring to compliance. We're referring
11 to upgrades, right?

12 LO VAN DER VALK: Upgrades, yeah.

13 CHAIRPERSON GREENFIELD: Some POPS right
14 now are bare bones, minimal POPS. What we're asking
15 is how can we get some of the POPS owners who don't
16 have a requirement to upgrade those POPS who perhaps
17 in the 1960's it was simply enough just to give an
18 empty space to maybe put in some seats and benches
19 and tables and to just have a better use of that
20 POPS, right? So we certainly agree with you on
21 compliance. I think what we're discussing is, is
22 there a way to encourage owners to upgrade their
23 POPS.

24 LO VAN DER VALK: You could have-- you
25 could have a kind of a contest or a kind of where you

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2 would say the three best improved POPS get some
3 publicity during-- at a certain time, and maybe with
4 that you could also encourage funding from
5 foundations to help that along.

6 CHAIRPERSON GREENFIELD: Great. Thank
7 you.

8 ALICE BLANK: I would add I would be a
9 little more optimistic. I would agree with Edith Hsu
10 from Department of City Planning saying that many of
11 these upgrades have been done voluntarily, that many
12 owners of these properties that begin to undergo
13 conversions, for example to residential use, have it
14 their own interest in making these spaces nicer, and
15 you see it happening all over.

16 CHAIRPERSON GREENFIELD: Sure [sic].

17 ALICE BLANK: So, I do think you have to
18 allow for some, you know, positive understanding that
19 people will try to make better what's around them
20 when they are converting these spaces which many of
21 them of course being converted. So I would just add
22 that as a method rather than the incentive of
23 privatizing these spaces which really does pose some
24 dangers.

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2 ERIC EDWARD STERN: If I could just add
3 one final point. The point about signage is
4 illustrative of what the Council could and what the
5 City could do. One could say for the old, for the
6 first round of POPS, the City could say we think
7 there should be a bench, you know, a seating
8 requirement for those old POPS, and the City could
9 think about ways to require that, not to incentivize
10 it but to require it. In the same way that private
11 property owner right now has to comply with, you
12 know, new building codes and has to comply with new
13 regulations that the City sets. There's no reason
14 that the City would not be able to, you know, say
15 that for health, safety, wellness, it's important
16 that there be some basic upgrades to older POPS.

17 CHAIRPERSON GREENFIELD: Okay, great. I
18 want to thank all of you. I want to thank everybody
19 who came out today. Thank you to the panel for your
20 service and for your great work, and this concludes
21 the Land Use hearing for Wednesday, June 29th, 2016.

22 [gavel]

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COMMITTEE ON LAND USE

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date July 12, 2016