



Statement of Edith Hsu-Chen, Director of the Manhattan Office of the New York City Department of City Planning, before the Land Use Committee of the City Council, on their oversight hearing on Privately Owned Public Spaces and Intro 1219

June 29, 2016

Good afternoon Chair Greenfield, Subcommittee Chairs Richards, Koo and Dickens, and other distinguished members of the Land Use Committee. Thank you for the opportunity to be here today to discuss Privately Owned Public Spaces or POPS, and the proposed Intro 1219 regarding reporting on the compliance status of privately owned public spaces by the Department of City Planning (DCP) and the Department of Buildings (DOB). I am joined here by my colleagues at DCP and DOB to testify on these matters.

Let me first present a brief overview and background on the history of POPS in the New York City Zoning Resolution and then comment on the legislative proposal before you. A Privately Owned Public Space is a public space located on private property. The first POPS were created from zoning regulations introduced in 1961 which incentivized the provision of public space as part of a private development in exchange for a floor area bonus. POPS are required to be open, accessible, and usable to the public, free of charge. Originally, POPS only included two types of spaces:

plazas and arcades. Over time, the POPS types and inventory grew. The term POPS now collectively refers to many types of enclosed and unenclosed spaces on private property that are provided for public use, including plazas, arcades, sidewalk widenings, open-air concourses, covered pedestrian spaces, through-block arcades, connections, and gallerias. Not all POPS generate bonus floor area. Some are required as part of a special permit or other approval. Plazas are perhaps the most well-known subset of POPS. There are many types of Plazas including "plazas" developed pursuant to the original, 1961, regulations which tend to be rather spare, and "urban plazas", "residential plazas" and "public plazas" which are all required to provide public amenities within the spaces such as seating and landscaping. More than 500 POPS have been created as part of over 300 buildings in the City. The vast majority of POPS are located in Manhattan, with a handful located in Brooklyn and Queens.

We very much believe these spaces are valuable to the general public. POPS provide public open space for rest, respite, and circulation. Many contain functional and visual amenities such as tables, chairs, and plantings provided for public use and enjoyment. POPS primarily exist in the City's high-density commercial and residential districts and provide light, air, breathing room, and green space to ease the predominately hardscaped character of the City's densest areas. They become valuable parts of the built environment. But while each of these spaces provides much-needed public open space in the dense neighborhoods of New York City, some of these POPS are deficient in their configuration, elevation, amenities, or other design features. When there are deficiencies, we believe they have been primarily attributable to the lack of specific design guidelines or outdated criteria regarding the design of successful public spaces.

Throughout the last half-century, since the first plaza was provided, the City has learned what works and what does not, and has frequently upgraded and improved the zoning regulations to ensure better spaces for the public. In 2007, the Department proposed, and the City Council adopted, a robust and comprehensive reform of the POPS regulations for all new plazas and for existing plazas that seek upgrading. These new standards represented a significant update to and consolidation of all previous plaza design regulations into one outdoor plaza designation – the “public plaza.” The 2007 zoning text amendment was intended to facilitate the design and construction of highly welcoming, attractive, and usable outdoor spaces that are look, feel, and act as truly public spaces. The 2007 reform was a forward looking measure designed to apply to new plazas and to improve the requirements and standards for the existing plazas that voluntarily return to City Planning for design changes. This type of reform and improvement of standards has been a constant effort from the Department since the inception of POPS over 50 years ago.

The proposed reporting bill has some practical issues and the frequency of reporting is not aligned with how DCP receives the small universe of compliance reports which are required for new POPS or existing ones that have gone through review since 2007. It is important to note that it is not unusual for existing POPS to come back for design updates. Even so, the vast majority are not required to report and were built pursuant to regulations that were different in the past. No law compels the owners of the sites built prior to 2007, and not modified since, to supply a report. Based on the dates of approvals, DCP is still in the process of receiving the reports we required as part of our recent reforms.

What the bill recommends would also require immense resources to inspect the over 500 POPS for compliance on a semi-annual basis and provide an annual report. It is logistically a challenge to inspect all locations that are under varied regulations. We believe that this is not the best use of resources and that a complaint-driven process that allows users of POPS to notify the property owner or City of any noncompliance is a more effective use of those limited resources.

In response to concerns about transparency, accessibility, and the overall effectiveness of POPS, the Department has worked collaboratively with APOPS, 'Advocates for Privately Owned Public Space', a nonprofit founded by Harvard Professor and prominent expert on POPS, Jerold Kayden. Our collaboration resulted in an interactive website, available since 2013, where the public can get info on all the POPS in the city-- where they are located, what amenities are required, what are the hours of access, etc. The website also allows for comments, ratings, and reporting of complaints. (The website APOPS.MAS.ORG) DCP is happy to provide information via this third party as we currently do, and we are actively refreshing the information as an open data resource. DCP will continue to give DOB guidance on compliance as they investigate complaints.

We welcome any opportunity to work with the Council and interested stakeholders to ensure POPS are maintained and compliant. We agree with the Council that in order to have a meaningful regulatory framework, the process of compliance must be one where the onus is on the property owner. We very much appreciate the Council taking up this oversight issue and look forward to working to further develop a measure that can achieve our shared goal of greater transparency and accountability.



8 Spruce Street



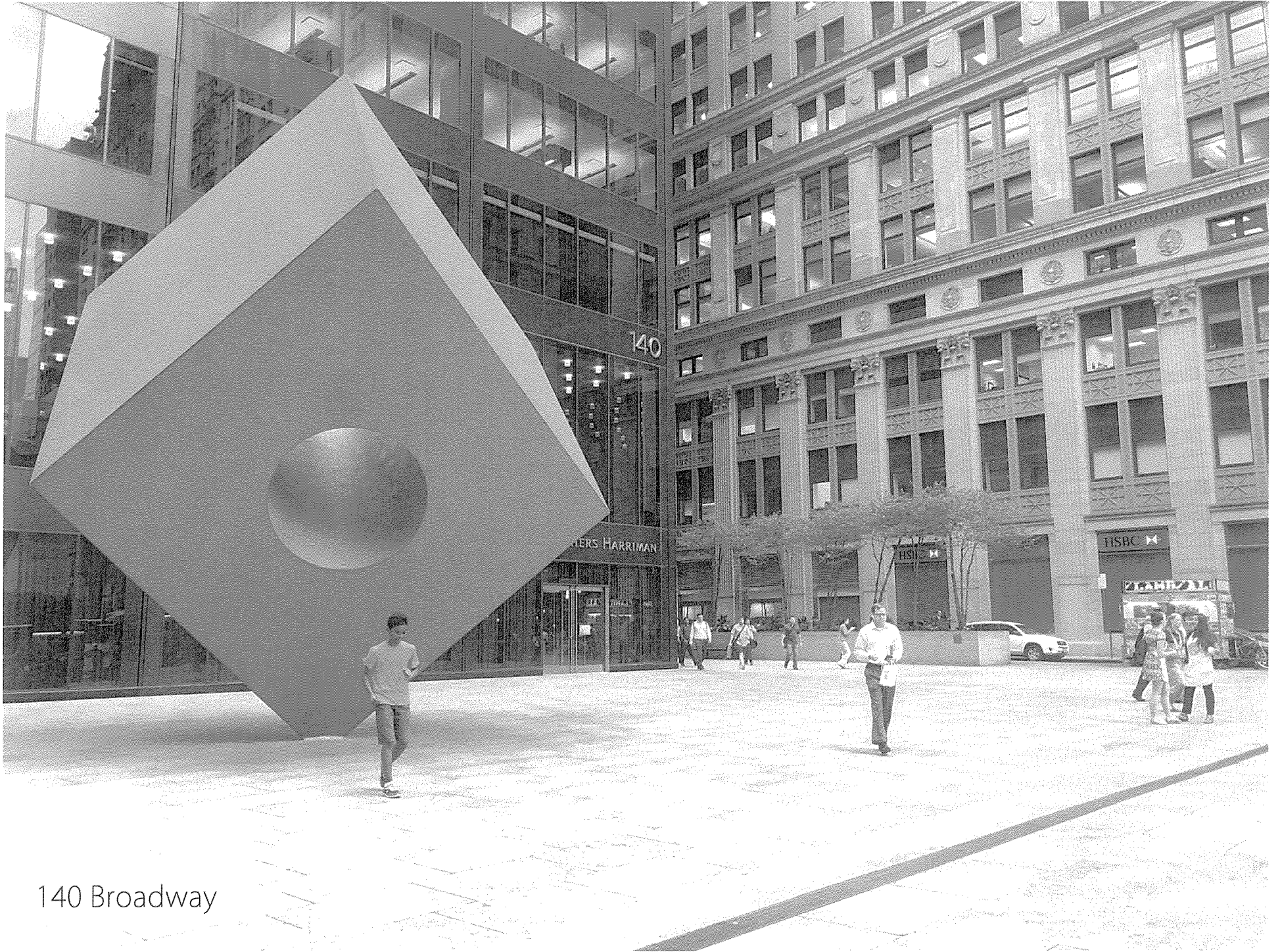
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1095 Sixth Ave



Grace Plaza



140 Broadway

**PATRICK A. WEHLE
ASSISTANT COMMISSIONER
NEW YORK CITY DEPARTMENT OF BUILDINGS**

**HEARING BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON LAND USE
JUNE 29, 2016**

Good afternoon Chair Greenfield and members of the Land Use Committee. I am Patrick Wehle, Assistant Commissioner for External Affairs at the New York City Department of Buildings (“Department”). I am joined by Joseph Ventour, The Department’s Chief of Special Operations, whose Unit is charged with enforcing Privately Owned Public Places (“POPS”) regulations. We are also pleased to be here with our colleagues from the Department of City Planning.

The Department appreciates the opportunity to discuss our enforcement role as it relates to POPS and to provide comment on Introductory Number 1219, which requires reporting by the Departments of City Planning and Buildings on POPS.

The Department’s enforcement of POPS regulations is entirely complaint driven. The Department receives a small number of complaints through 311 and on occasion receives referrals of non-complaint POPS directly from the Department of City Planning. Allegations of non-compliance typically relate to closure to the public, blocked egress or unauthorized commercial activity. Inspections are typically performed the same day they are received. Whether it is a complaint through 311 or a referral from the Department of City Planning, the Department first reviews the relevant plans and approvals, coordinating with the Department of City Planning where appropriate. From there an inspector is routed to the site to conduct a preliminary investigation to ascertain the validity of the non-compliance brought to the Department’s attention. This can include the taking of photographs and measurements which are

brought back to the office for further review with supervisory staff within the Unit. Depending on the circumstances, the inspection will be performed in plain-clothes or in uniform. As part of the inspection, the inspector also looks for other non-compliant conditions not mentioned in the complaint. Should the Department's inspection reveal non-compliant conditions, violations are issued.

In the event the inspector does not witness the infraction, if for example the POPS was closed to the public and since reopened, the inspector will attempt to locate a corroborating witness willing to attest via a signed affidavit that they witnessed the non-compliant condition. With a witness's affidavit and their willingness to appear in court the Department can pursue enforcement action.

Turning to Introductory Number 1219, which as it relates to the Department requires an annual report on the number of POPS-related complaints received, whether any enforcement action was taken and whether any closures were ordered due to unsafe conditions or permitted work.

The information sought by this legislation is currently publically available on the Department's website. However, if the proposed City Charter amendment is enacted by the City Council, the Department can provide this information in an annual report.

Thank you for your attention and the opportunity to testify before you today. We welcome any questions you may have.

**Testimony before the Committee on Land Use
of the New York City Council
Real Estate Board of New York
June 29, 2016
Re: Introduction No. 1219**

The Real Estate Board of New York is a trade association representing 17,000 owners, builders, brokers, managers and other professionals active in real estate in New York.

We would like to comment on the scope of this Intro as written, which is problematic, but perhaps unintended.

Every building or structure is built in accordance with the zoning resolution. Accordingly, the phrase “all other indoor and outdoor privately owned public spaces developed pursuant to the provisions of the zoning resolution” could apply to any space that an owner builds and to which the public is allowed.

An office building lobby or a shopping mall would be examples of space that are covered by this definition: they are privately owned spaces, built pursuant to the zoning resolution, and that are open to the public.

We ask that the Intro be amended to avoid, what we think, is an overly broad and unintended scope of this definition.

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**Manhattan Community Board Six Testimony before the
City Council Committee on Land Use
June 29, 2016**

Good afternoon, Council Member Greenfield and members of the City Council Committee on Land Use. My name is Jesús Pérez, and I am the District Manager of Manhattan Community Board Six.

Thank you for the opportunity to testify before you today on the matter of Privately Owned Public Spaces (POPS) and Int. No. 1219. Community Board Six takes a particularly keen interest in POPS because Community District 6, which stretches from 14th Street to 59th Street on the east side of Manhattan, is home to almost 15% of the city's over 500 POPS. Our district also has very little open space. A study cited in our 2008 POPS report found that Community District 6 has the least open space of any community district in Manhattan, at only 26 acres. When one considers that over 144,000 people call our district home, that means that 5,500 people share every acre of our open space, which includes our POPS. Additionally, the population of Manhattan doubles during the workday, and many of those people commute to our district and use our POPS, which is not reflected in the aforementioned figures. To put it plainly, Community District 6 is starved for open space.

Given that the 77 POPS in Community District 6 are unfortunately the only substitute we have for our significant scarcity of open space, we understand all too well the importance of ensuring that all of our POPS are in good condition and in compliance with the law. And we appreciate any measure that seeks to provide useful, actionable information and transparency, as the better informed we are, the better we can ensure that important commitments to our community are honored. Int. No. 1219 calls for various reports to be provided to the City Council. We hope that those reports can also be provided to the Community Boards and that, like with other municipal services, the inventory of POPS is done on a community district by community district basis.

In fact, Community Board Six has already been closely monitoring the compliance statuses of the POPS within our district. In 2008, Community Board Six undertook its first report on the POPS in our district. This report, which can be consulted on our website, cbsix.org, cataloged each of the 77 POPS in Community District 6 and noted whether they were truly accessible to the public, provided the required amenities, and were free of any encroachment by private uses. Working with the Department of Buildings and the Department of City Planning, violations were issued. Our subsequent observations revealed that some violations were addressed, some seem to have been ignored, and new nonconforming situations have arisen. The proposed legislation provides a mechanism for the City to provide information on POPS compliance, which communities can use to call for enforcement action for violators.

In closing, when one considers the additional floor area that a developer can be granted in exchange for the small concession of a POPS, these public spaces are revealed to be extremely valuable. They are valuable in both financial terms and in terms of quality of urban life. CB6 has demonstrated, through its POPS reports and continued observations, that we believe the terms of the use of POPS should not be ignored. We hope Int. No. 1219 will bring significant information and transparency to the greater discussion about POPS and enforcement of the terms under which they were granted.



Regional Plan Association testimony to the Committee on Land Use, June 29th, 2016 on Publically Owned Private Spaces in New York City

Thank you for the opportunity to submit testimony. My name is Moses Gates, and I represent the Regional Plan Association, which aims to improve the New York metropolitan region's economic health, environmental sustainability and quality of life through research, planning and advocacy. RPA has long been a supporter of vibrant and modern public spaces.

More and better public spaces are necessary in order to improve the city as a whole. RPA's vision for the region centers around a large amount of growth in the urban core. This growth cannot simply happen in isolation – improved urban infrastructure needs to accompany it, and accessible open space is a critical part of our urban infrastructure. And since much of the open space in our dense urban areas is, and will continue to be, Privately Owned Public Spaces (POPS), we need a smart and comprehensive plan as to how these will be developed and improved to accompany our job and residential growth in our urban core. We believe we have both an opportunity and obligation to improve the quality, as well as the quantity, of our arcades and privately owned public spaces over the next decades.

The recently passed Water Street special district underscores the upcoming focus on these improvements. While RPA applauds the addition of resiliency measures, the retaining of the 24-hour nature of the open spaces, and believes that the partial change from open space to commercial space is not something which should necessarily be off the table, we also think it is vitally important that the recent changes to this special district do not serve as a *de facto* template for the transformation of our POPS.

In lieu of this, RPA believe that there should be the **implementation of a citywide task force to study POPS and recommend zoning changes**, both for renovating and revitalizing our existing POPS, as well as for new POPS likely to be produced by new development. The Water Street POPS was the first of the older POPS revisited with a major text change, but this text change should not be treated as precedent. Instead of setting citywide policy through a zoning text change in a special district, a citywide task force on POPS should be convened to make overall recommendations on the older POPS, and how to best approach their modernization, before the initial changes are implemented. This task force could be made up of government agencies, non-profit organizations, academics or other experts, elected officials, and members of community boards with large amounts of POPS.

The Water Street special district represented a fundamental change in the way we address incentive zoning and privately owned public space. The idea behind privately owned public spaces has always been a permanent private benefit in exchange for a permanent public benefit, with private floor area is exchanged in return for public space. This text amendment, which reduced the amount of publicly accessible open space without reducing the amount of private bonus area given, represented a fundamental change to this agreement. To extrapolate this change to the city at large, no matter the additional benefits, is not something that should be undertaken without a great deal more engagement and study, on a citywide level. Moreover, it runs the risk of sending the message that public benefits meant to be permanent in the zoning code are, in fact, temporary and subject to revision.

RPA also urges the city to start off this conversation by committing to a **“no-net-loss” policy, with a one-to-one replacement of publicly accessible space.** State Parkland, through the public trust doctrine, has long had a *de facto* “no net loss” policy, and this policy should be extended to all publically accessible open space. If public open space is turned into commercial space, as with Water Street, or is otherwise lost, there should be a one-to-one replacement of this public space. This replacement does not necessarily need to be on the same lot, the replacement area could be expanded to the entire block, or even the Community Board.

The public space would also not necessarily need to be at street level. Existing roof or terrace space, or even enclosed or inaccessible ground-floor lobby space, could be utilized, as long as it was made reasonably publicly accessible. San Francisco has long has a program where public plazas leveraged by incentive zoning are allowed above ground, and other cities, most notably London, are currently leveraging significant publicly accessible above-ground space as part of the incentive zoning process.

In the case a POPS is converted to a commercial space, or the space is otherwise lost, any costs for this one-to-one replacement should be borne by the building owners. This should not be financially onerous for owners, and would likely represent win-win scenarios. POPS, almost by definition since they are used to obtain more square footage, are in high-market areas where square footage is very valuable and commands high rents. Commercial conversions mean building owners are gaining valuable street-level commercial square footage in a high-market area, and further enhancing their existing overall commercial investment through a more attractive street-level design. Exchanging this square footage for roof, terrace or lobby space which is not currently income-producing would still represent a likely financial benefit for the owners.

This policy of “not-net-loss” should also be extended not just to the amount of open space, but also to the accessibility of this open space, in terms of amount of time accessible, and quality and amenities in the space as well. New York, and especially the high-density areas where POPS are prevalent, is a 24-hour place, and public access is valuable at all hours of the day. Losing time is as important as losing space, and losing quality as important as losing quantity.

Thank you for the opportunity to testify.

Moses Gates
Director of Community Planning and Design
Regional Plan Association



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Gale A. Brewer, Borough President

**Testimony of Manhattan Borough President Gale A. Brewer
New York City Council Committee on Land Use
Oversight: Privately Owned Public Spaces and Int. 1219-2016
June 29, 2016**

My name is Gale Brewer and I am the Manhattan Borough President. Thank you for the opportunity to speak today in favor of Int. No. 1219, to require tracking of the compliance status of all POPS, or Privately Owned Public Spaces.

POPS are the product of one of the city's oldest incentive zoning models. We should not take their availability and their implementation lightly, because the exchange they represent – development rights or additional floor area in exchange for a public good – is the same basic exchange we see in any of our many other incentive zoning models, whether they are intended to benefit landmarks, the transit network, or the creation of affordable housing. Anytime the delivery of promised public benefits is undermined in one of these programs, all these programs are undermined.

In Manhattan, which is home to over 300 such spaces, developers have continually reaped more benefits through POPS programs since 1961, yet many of the original spaces the public received in return have produced fewer actual benefits to the public. Prior reiterations of the POPS regulations held no requirements for a variety of seating, or banal details like sufficiently deep planter beds for trees to grow and flourish. The earliest provisions did not require signs alerting the public to these spaces, though even then it was envisioned that these spaces remain open at all hours, seven days a week. There were no requirements for universal accessibility – earlier options under the plaza regulations permitted sunken or elevated plazas that New Yorkers with disabilities could find it hard or impossible to access.

The patchwork of rules from different programs and eras can make it difficult for the public to ascertain what requirements apply. Given the myriad rules and POPS types, it is important to clarify for the public which spaces are in compliance with the rules that applied at the time of their construction, and which spaces are not. This bill is a good idea.

A common thread throughout the POPS programs over the years was accessibility for the public at all times. So, while the POPS constructed under the earlier provisions may not meet today's exacting standards or match what one may think of as a successful urban space, they must remain open to the public. However, when information is lacking and required signage not posted, many of our residents do not know about these spaces. Even when they do, it is unclear what recourse they may have to bring an inaccessible or misused POPS back into compliance.

Last week my office launched a borough-wide POPS survey to update and build upon the great work Community Boards 1, 5, 6, and 8 have done previously in their neighborhoods.

Attached to my testimony is a status update on a sample of Upper West Side POPS for the Department of City Planning to act on.

Of the 18 Upper West Side POPS in our initial sample area, six have no signs posted to indicate they are open to the public. One POPS had a sign posted that limited the site's accessible hours, a clear violation. Another was dominated by the eyesore of a dead tree, and yet another designed to provide a shady respite was locked and literally inaccessible. To be sure, the patchwork of rules can make it difficult in the field to ascertain what requirements apply, but more worrisome is what happens once it is found that even the most obvious, basic, universal requirements are not being met. That's why tracking compliance is a start, but it is not enough.

To further serve the public, the database envisioned by the legislation under discussion today should clearly denote the access hours for each plaza. In addition to requiring the tracking of compliance status, when compliance reports are required they should be made available electronically as well. However, compliance reports are only required for those plazas that have undergone design changes in the last decade. So this provision of the bill, even if amended, would only capture about two dozen POPS in the Borough of Manhattan. And since so many of the Manhattan POPS have not undertaken design changes, the Department of City Planning and Department of Buildings should work toward digitizing the plans for existing plazas that fall outside of the current compliance reporting requirement.

It's important to note that even when POPS are accessible and comply with the relevant rules, they can wind up underutilized and fail to deliver the public benefits that, in theory, were supposed to justify the additional development rights they conferred. In my previous role as Councilmember for the Upper West Side, I took particular interest in remedying these situations. One example is the David Rubenstein Atrium, formerly known as the Harmony Atrium, located at West 62nd Street and Broadway. This space was underutilized at one point during my tenure in the Council and had become a gathering place for homeless individuals. I suggested that Lincoln Center take over the space and refurbish it, which they did, to their credit. They worked with the co-op that benefited from the additional floor area conferred by the creation of the POPS, and Lincoln Center, with capital funding support from my office, allocated \$22 million to the POPS at that location. It is now a heavily-utilized public space, with free WiFi, regular cultural programming and events free of charge, and an affordable café. This example underscores the need to review each POPS carefully and, when they are underutilized, work diligently to remedy the situation.

Thank you to Chair Greenfield for holding this hearing and introducing this bill with Council Member Kallos. My office is committing to an annual survey of all Manhattan POPS and expects expedient responses to any complaints or violations raised by our office or that of the Community Boards to the Departments of City Planning and Buildings. We continue to have broader policy concerns about how to address spaces that are not well designed or well utilized, but Int. 1219 represents an important first step to ensuring public access and monitoring of these public assets.

MBPO POPS Survey Sample

Upper West Side, Manhattan – Week of June 20, 2016

POPS Address	Signage	Amenities	Compliance Status*
200 West 79th Street	None posted	None required	Appears to comply
75 West End Avenue	Yes	Yes	Appears to comply
201 West 70th Street	Yes	None required	Appears to comply
2025 Broadway	None posted	None required	Appears to comply
145 West 67th Street	Yes	Yes	Appears to comply
1991 Broadway	Yes	Yes	No - dead tree in planter bed
130 West 67th Street	Yes	None required	Appears to comply
200 West 60th Street	None posted	Yes	No - gate locked during public access hours
61 West 62nd Street	Yes	Yes	Appears to comply
44 West 62nd Street	None posted	None required	Appears to comply
30 West 61st Street	Yes	Yes	Appears to comply
45 West 60th Street	Yes	Yes	Appears to comply
80 Central Park West	None posted	None required	Appears to comply
2 Lincoln Square	Yes	Yes	Appears to comply
10 West 66th Street	Yes	None required	No - posted sign states private property not POPS
1 Lincoln Plaza	None posted	None required	Unclear - DCP to confirm whether portion of plaza used as building driveway is permitted.
1886 Broadway	Yes	Yes	Appears to comply
One Central Park West	Yes	Yes	No - sign posted for limited hours from 10 am - 6pm when POPS is required to be open 24 hours.

*Pending analysis of permit history

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MAS Testimony to the Committee on Land Use Regarding Reporting on the Compliance Statuses of Privately Owned Public Spaces by the Department of City Planning and Department of Buildings. INT 1219-2016

June 29, 2016

Position

The Municipal Art Society of New York (MAS) supports Intro 1219, but proposes a series of modifications to strengthen the City's oversight powers for New York's privately-owned public spaces (POPS).

Background

In our city-wide review of POPS conducted in 2000, MAS and partner Professor Jerold S. Kayden gave 41% of POPS a "marginal" rating and found that over 50% were in some way out of compliance. Despite our findings, City government and community stakeholders still lack a comprehensive and transparent set of mechanisms and oversight processes to ensure that POPS are kept open to the public, in good condition, and in alignment with the needs of the community.

The recent debate about the future of the Water Street POPS underscores the need for better oversight of these cherished public spaces. When POPS are allowed to fall into disrepair or disuse, as happened along the Water Street corridor, the public risks losing these spaces altogether to retail or other private uses without fair compensation to the public benefit. The passage of Water Street Upgrades Text Amendment N 160166 ZRM earlier this month demonstrates that New York City can no longer settle for a hands-off approach to POPS.

Recommended Modifications

As such, MAS supports Intro. 1219 proposed by Council Members Greenfield and Kallos, but we also believe there is an opportunity to improve the city's POPS further.

We propose the following modifications:

1. Extend Oversight and Reporting Requirements to all POPS

The reporting requirements described in Intro. 1219, should be applied to all POPS in the inventory.

2. Launch a Multi-Stakeholder POPS Working Group

The Working Group would comprise relevant agencies such as Department of City Planning, Department of Buildings, New York City Economic Development Corporation, and non-governmental organizations and be empowered to develop policy recommendations that:

a. Establish a Public Review Process for POPS

A comprehensive review of all POPS is long overdue and should commence as soon as practicable. Moreover, a regular schedule of repeated review should be set to reduce the burden on City staff and ensure POPS that fall into disrepair or become

underutilized are quickly detected. Appropriate action may then be taken to enforce requirements and improve the space on a timely basis. The Working Group would determine specific metrics to gauge POPS performance that would generally measure design quality, compliance with existing permit objectives, public utilization, and connectivity with the surrounding community and opportunities for improvement.

b. Require POPS Owners to Calculate Public Benefits

The 1961 Zoning Resolution allowed for the creation of POPS by granting property owners additional FAR in exchange for the inclusion of public space on their land. As conceived, both the additional FAR and public space were intended to exist in perpetuity. However, there may be instances in the future when, following the proposed public review process, it is determined that a POPS either needs modification, reduction or removal from the inventory. At present the rules governing POPS do not require property owners to complete a full accounting of their costs and benefits in exchange for making any changes to their POPS. Such an economic analysis – of every POPS – would allow for better decision making by City officials about individual POPS and the program in general. It would also assure New Yorkers that these public spaces are valued, as well as protected, and that public benefit is maintained if changes are made to specific POPS.

c. Prioritize POPS within City Government

City government needs the organizational capacity, incentive programs, and enforcement mechanisms to make POPS a priority. The Working Group should develop strategies that integrate these new processes into existing agencies so that is not overly burdensome.

FOR THE RECORD



**New York City Council Committee on Land Use
POPs Reporting Legislation
June 29, 2016
Tupper Thomas, Executive Director**

Good afternoon, I am Tupper Thomas, Executive Director of New Yorkers for Parks, the citywide independent organization championing quality parks and open spaces for New Yorkers in all neighborhoods.

I'm here today to strongly support the proposed legislation to require semiannual reporting on the compliance statuses of privately owned public spaces by the Department of City Planning and the Department of Buildings. We applaud the move to create transparency and to make this reporting, which tracks compliance, violations and enforcement actions, available to the public.

There has been much attention in recent months focused on the quality and use of the plazas and arcades that are privately operated public spaces. New Yorkers for Parks believes that improving the quality of these POPs is important, and to do so requires understanding the existing conditions more thoroughly, and that starts with knowing whether they may actually be accessed by the public.

We are pleased that the City Council is proposing new checks that will help the city understand how and if these public spaces are performing, but we are concerned that they do not go far enough, and that is especially troubling now. At this time, all over the city, we are seeing the loss of public spaces due to development and increasing privatization.

In some neighborhoods we are seeing city agencies like HPD and authorities like NYCHA surrender public open spaces, including community gardens and children's playgrounds, for residential development. In other neighborhoods, the development of new residential units is creating an additional burden for existing open spaces, particularly in communities undergoing zoning changes, where increased population density is being contemplated without the necessary acquisition of land for new parks and open spaces. In this moment, the POPs of New York City are increasingly more critical elements of the public realm, and part of what makes this a livable city.

The plazas and arcades created through the tool of incentive zoning represent creative thinking; balancing a benefit for developers with a benefit for the public. Obviously the additional heights allowed for development have been realized, and it is important that each and every POP provide

the public benefit intended when the development incentive was granted. The New York City Plaza Program through the Department of Transportation has modeled in recent years how well new plazas and arcades can function as popular and much-needed open spaces in communities.

The City has for too long let the POPs function without basic oversight, resulting in privatization of these spaces in some cases, neglect or inaccessibility in others. We cannot let these open spaces be lost, but believe that getting a handle on each one with regularly reporting is a good first step.

Thank you.



The City of New York

FOR THE RECORD

Manhattan Community Board 1

Catherine McVay Hughes CHAIRPERSON | Noah Pfefferblit DISTRICT MANAGER

**New York City Council
Committee on Land Use
Oversight – Privately Owned Public Spaces (POPS)
Testimony by Diana Switaj, Director of Planning and Land Use
Committee Room, City Hall
Wednesday, June 29, 2016, 1:00PM**

Good afternoon. I am Diana Switaj, Director of Planning and Land Use for Manhattan Community Board 1 (CB1). Thank you for the opportunity to comment on Int. No. 1219 to amend the charter and the administrative code of the city of New York, in relation to reporting on the compliance statuses of privately owned public spaces (POPS) by the Department of City Planning (DCP) and the Department of Buildings (DOB).

This bill would require DCP to provide a report to the City Council twice per year about every POPS, including whether the space is required to file a periodic compliance report, whether the report was filed, and whether the filing was in compliance. DCP would also be required to create an online map displaying that information, to be updated twice per year. DOB would be required to provide an annual report to the City Council about the compliance status of every POPS. The report would include the number of complaints filed about each space, whether enforcement action was taken by DOB for a violation of the City's Zoning Resolution for each space, and whether DOB authorized any closure due to an unsafe condition construction.

Community District 1(CD1) has a concentration of POPS in 1.5 square miles. With limited outdoor open recreational space, we place a high value on these public spaces. Our Board conducts its own research on the status and health of the POPS in our district, but we have limited resources and are unable to do this regularly. We believe that the regular collection and dissemination of data on POPS would be an invaluable resource to us and to other Community Boards throughout the City.

With dozens of POPS in our district, we have had issues with non-compliant POPS, portions of POPS being illegally used for a commercial purpose, or POPS being poorly maintained. However, DOB is already overburdened and under-resourced, and it is difficult or timely to get such issues resolved. We therefore have concerns about the ability of DOB to undertake such a large task of the regular monitoring and reporting of the status of every POPS throughout the City. We are further concerned that stretching already limited resources at DOB may affect the ability of DOB to address existing issues in our district.

CB1 supports the concept of regularly collecting and reporting on POPS data, but is left with the following concerns and suggestions regarding this proposed legislation:

- CB1 requests that the Council clarify the purpose and intent of this legislation.
- Will the adoption of this legislation prompt an increase in funding for DOB and DCP?
- The issue of enforcement must be addressed in the legislation, including which agency is responsible for enforcement, and it must include strict penalties that will ensure POPS are kept in compliance.
- Maintenance of POPS must also be addressed in the legislation.
- CB1 requests that DCP and DOB report to Community Boards annually on the data collected on POPS in each district, so Boards can provide a qualitative balance to the technical data gathered with the goal of creating a more comprehensive report on the overall health of these public spaces.

Thank you for the opportunity to comment today on this important proposed legislation.

Community Advocates for Public Space

New York City Council: Land Use Committee

Oversight: Privately Owned Public Space Intro: No. 1219

Testimony: Alice Blank, Community Advocates for Public Space

June 29th, 2016

Good afternoon Chair Greenfield and Council Members:

My Name is Alice Blank. I am a member of Community Board 1 and co-chair of the Tribeca Committee. Today I am speaking to you as an architect, and as a member of Community Advocates for Public Space.

We are pleased to see the City Council fully engaged on the issue of reporting on our City's privately owned public spaces. However, we are troubled that this legislation comes only days after City Council unanimously approved the elimination of 110,000 square feet of privately owned public space in the passing of the Water Street Text Amendment. We sincerely trust the City Council members will make good on their promise that the Amendment will not be treated as a precedent, or act as a means to justify further conversions of public space for private profit.

The proposed law before us today is a beginning. But to be useful and effective in safeguarding our public space, the law must include mechanisms for enforcing compliance and maintenance of the City's POPS.

More specifically, the legislation should:

- 1) State explicitly that the purpose of the law is to improve and preserve privately owned public spaces. The law should not leave open the inference that it is intended to promote the use of data showing non-compliance as a predicate to eliminating public use of the spaces as was accomplished on Water Street.
- 2) Describe a mechanism for enforcing maintenance and compliance of the POPS and state a time limit for owners to respond to concerns.
- 3) Establish a process for maintaining POPS that are not subject to the reporting requirement in the legislation.
- 4) Incorporate links to key supporting documents such as CPC resolutions and deed restrictions on the City Planning's interactive map.

- 5) Identify POPS that have restrictive declarations, for example related to special permits or street de-mappings, in addition to those with zoning bonus requirements on the City Planning's interactive map. Ideally there should be a data base of the restrictive declarations of each POPS.
- 6) Incorporate Community Board reports on compliance and maintenance issues on neighborhood POPS in DCP's semiannual reports.
- 7) Describe how the burden of further reporting and enforcement on the part of the DCP and DOB will be managed.

We sincerely hope that all owners of POPS across New York City will heed Council Member Greenfield's recent exhortation to Donald Trump about Trump Tower, stating " Trump should make the public space in Trump Tower great again by welcoming in the public and by allowing benches and by making sure it's not used for any other purpose except to service the public."

Thank you.

<http://www.ny1.com/nyc/all-boroughs/politics/2016/06/27/trump-tower-s-public-space-violation-highlights-trend-in-city-s-private-property-dealings.html>



THE ADVOCATE FOR NEW YORK CITY'S HISTORIC NEIGHBORHOODS

232 East 11th Street New York NY 10003
tel (212) 614-9107 fax (212) 614-9127 email hdc@hdc.org

June 29, 2016

Statement of the Historic Districts Council
City Council Subcommittee on Land Use

Int. No. I219

Council Members Greenfield and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to reporting on the compliance statuses of privately owned public spaces by the Department of City Planning and the Department of Buildings

The Historic Districts Council is the advocate for New York City's designated historic districts and neighborhoods meriting preservation.

The majority of landmarks and historic districts are private properties which serve as a direct public benefit to the City. Similarly, POPS are supposed to serve as public amenities in which the public can occupy spatially, as a trade off for development rights. In the recent past, HDC and the public had the opportunity to review examples of making POPS more inviting, including accessibility improvements to the Ford Foundation's garden; adding furniture to One Chase Manhattan Plaza; and also the creation of a new plaza at the Marble Collegiate Church site, former site of the now-demolished Bancroft building. While these POPS enter the public realm because they are subject to review, there are a number of POPS outside individually landmarked properties and historic districts that remain hidden and therefore underutilized. The omission of POPS from the NYC City Map is unacceptable, as nearly every other public amenity--even spray fountains in playgrounds—is mapped, yet our largest collection of public spaces other than parks remains missing. HDC fully supports mapping them to increase their visibility for the public.

There have been several examples lately of the elimination of public benefits for the sole good of the private. For instance, the LPC Certificate of Appropriateness at 346 Broadway may allow an interior landmark to become a private luxury condominium; the lack of enforcement and/or variances in Special Zoning Districts; the lifting of the deed restrictions at Rivington House in the Lower East Side and the Dance Theater of Harlem; and most recently, the text amendment which allowed the POPS at Water Street to convert to retail, double dipping in a real estate bonus. In the case of a loss of POPS to a private, restricted use, it should be required that a new public space of equal square footage and accessibility be provided to offset the loss, which could disincentivize the privatization in the first place. HDC encourages the regulation of POPS as every other public amenity is regulated, and this should commence with real enforcement of violations. As proposed in this bill, these violations reported to City Council should not die in a report, but rather actively dealt with via a task force. In the end, increasing POPS accountability and transparency is a necessary start to improving these spaces and increasing their use.

FRIENDS

of the UPPER EAST SIDE
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EXECUTIVE DIRECTOR

June 29, 2016

The New York City Council Committee on Land Use Public Hearing Testimony by Rachel Levy Re: Intro. 1219-2016

Thank you for the opportunity to testify. My name is Rachel Levy, and I am the Executive Director of FRIENDS of the Upper East Side Historic Districts.

The pockets of open space amidst our dense city grant us an intermission from the bustle of the every day, a function that is integral to urban quality of life. The preservation and maintenance of these spaces is critical in ensuring the vitality and stability of New York City's great neighborhoods. While the establishment of privately owned public spaces (POPS) in the 1961 Zoning Resolution gave rise to a unique opportunity to trade density in exchange for a public amenity, it also posed a host of challenges regarding long term compliance.

Though we tend to think of POPS as a feature of commercial centers like Midtown and the Financial District, they are also important to densely developed residential neighborhoods. Parks and open space represent only one percent of the land use on the Upper East Side, yet the area is home to 73 POPS, the majority of which are residential in nature. These make up nearly 20% of all the POPS in Manhattan, and, like their commercial counterparts, they are often poorly maintained and underutilized.

Intro. 1219 is a positive first step in increasing transparency and enforcing regulation of existing POPS. FRIENDS is pleased to see the inclusion of an interactive map as part of the bill. However, in the spirit of good government, all POPS should be required to report biannually, not just those required under their original agreements to file compliance reports. FRIENDS would also like the City to undertake a holistic study of existing POPS, and consider a program for incentivizing upgrades, enforcing regulation beyond reporting, and devising and implementing a streamlined, open review process for redesign.

POPS are the result of a trade between private owners and the City to achieve a public amenity in exchange for the loss of light and air from additional density. As long as the developer benefits from an increase in building size, the public deserves access to well-maintained, high quality public spaces to enhance the physical quality of our City's neighborhoods. Intro. 1219 is an overdue first step toward holding such owners accountable.

Thank you.

Brian Nesin, Friends of Privately Owned Public Space (F-POPS) June 29, 2016

1. Thank you for the opportunity to speak today and to comment on the proposed local law. I am glad that the Council is thinking about POPS.
2. First I want to address the POPS interactive map. This is a long overdue first step in making this public space known to the public. One recommendation: Many of the original plazas are not required to be identified with any signage. The city council could retroactively require all POPS owners to post signs identifying their spaces, hours, and required amenities. Or, and this might be simpler, the city could simply post signs, on the sidewalk, identifying each POPS. These could be similar to the Landmark District signs and would allow any passerby to be aware that the space she sees is open to the public.
3. On the other hand, I do not understand how the proposed reporting measure will be effective because the city lacks adequate personnel who deal with POPS. As far as I know, City Planning might have a single person who deals with POPS part time. DOB has no inspectors with expertise on POPS.
4. My experience with POPS began in 2009, at Le Parker Meridien an upscale midtown hotel. The hotel, in violation of its special permit, had installed a cafe within its POPS, and told me that I must make a purchase to enjoy the seating. This is when I did some research, learning that the special permit allowed the building to be built 8 stories taller than would be allowed by zoning. (I recently calculated how much revenue the hotel gets from those 8 stories - almost \$30M a year.)
5. I contacted DCP. The CB5 planner, Raju Mann, went and checked out the situation and notified DOB. The DOB inspector issued an ECB violation. From the text of the violation, I highly doubt that the inspector had read the special permit, so was not aware of the requirements for the space. I attended the ECB hearing, but unfortunately the inspector did not, so the hearing was adjourned. On the DOB site it says that the hearing was dismissed, the violation was resolved and no penalty was imposed.
6. How would this property report on your annual report? There are no current violations listed on the DOB website. The cafe is still there. The special permit reads "Any alteration in the premises...shall cause an immediate termination of the special permit."
7. Perhaps the city should order the hotel to remove its top 8 floors. A better idea would be to treat the cafe as a concession and charge the hotel a hefty fee for use of the public space for private purposes. This fee could be paid into a city wide POPS fund.
8. What the city needs are POPS COPS, inspectors whose sole responsibility is POPS, familiar with the zoning resolution, with access to all special permits and other agreements that have generated the 500+ POPS. These POPS could be paid out of the POPS fund.
9. The DOB has been an abject failure for the past 50 years at enforcing POPS rules. Perhaps it is time to give the Parks Department responsibility for POPS.
 - a. Parks has ample experience with public space
 - b. Parks has its own inspection program
 - c. Parks has enforcement patrol officers
 - d. Parks has expertise in dealing with concessions.

June 29, 2016



**HEARING TESTIMONY FROM
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF GREATER NEW
YORK:**

A Local Law to amend the charter and the administrative code of the city of New York, in relation to reporting on the compliance statuses of privately owned public spaces by the Department of City Planning and the Department of Buildings

OVERSIGHT: PRIVATELY OWNED PUBLIC SPACES

Good afternoon Chair Greenfield and esteemed members of the Committee. My name is Daniel Avery, and I am the Director of Legislative Affairs for the Building Owners and Managers Association of Greater New York (BOMA/NY). I thank you for the opportunity to testify here today.

First, some background on my organization. BOMA/NY is a trade association that represents more than 750 owners, property managers, and building professionals who either own or manage 400 million square feet of commercial space. We are responsible for the safety of over 3 million tenants, generate more than \$1.5 billion in tax revenue, and oversee annual budgets of more than \$4 billion. BOMA/NY is the largest Association in the BOMA International Federation.

As owners and managers of commercial real estate, BOMA/NY members are responsible for managing many privately owned public spaces (POPS). We do so with a great sense of responsibility and an understanding that good stewardship of these spaces improves the lives of all who live or work in New York City. We also understand that they are an appreciated amenity for our tenants and those who visit our buildings.

It is important to keep in mind that ensuring that these spaces remain safe and clean environments for the public to enjoy and use requires developing and posting rules of use for these spaces. We work closely with the City of New York in developing these rules, and they are always mindful of the land use agreements that created the space in

question. The rules are then conspicuously posted in the POPS so that all users can understand and follow them. Rules might include the hours the space is open, a prohibition against sleeping in the space, a ban on skateboarding, and others that protect the integrity of the space and public safety.

The ability to reasonably control these spaces while maintaining their public availability is critical to our ability to manage them in a way that is safe and fair. We would ask the Council not to infringe on that ability. We look forward to working closely with you moving forward on this topic, and will be glad to provide any technical guidance on how these spaces are managed.

Thanks you once again for allowing BOMA/NY to testify today.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1219 Res. No. _____

in favor in opposition Other

Date: 6/29/2016

(PLEASE PRINT)

Name: Lo van der Valk

Address: _____

I represent: Carnegie Hill Neighbors

Address: 170 E. 91st St., NY NY 10128

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in favor in opposition

Date: _____

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Name: Eric Edward Stern

Address: 16 W 16 St. Apt. 11DS

I represent: Manhattan Community Board Five

Address: _____

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I intend to appear and speak on Int. No. _____ Res. No. _____

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Name: MARCEL NEGRET

Address: _____

I represent: THE MUNICIPAL ART SOCIETY OF NEW YORK

Address: _____

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Name: BASHA GERHARDS

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I represent: GALE BREWER, Manhattan BP

Address: _____

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in favor in opposition

Date: 29 JUN 2016

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Name: JESSE PETERSON

Address: 866 UN Plaza Suite 308

I represent: Manhattan Administration Building

Address: _____

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THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Edith Hsu Chen

Address: _____

I represent: DCP Manhattan office

Address: _____

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Appearance Card

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in favor in opposition

Date: 6/29/16

(PLEASE PRINT)

Name: Jerald Kayden

Address: Harvard GSD 48 Quincy St.

I represent: Cambridge MA 02138

Address: _____

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in favor in opposition

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Name: Alice Blank

Address: _____

I represent: Community Advocates for Public Space

Address: _____

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

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Name: Anita Laremont

Address: DCP

I represent: _____

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Name: Patrick Wehle

Address: DOB

I represent: _____

Address: _____

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 in favor in opposition

Date: 6/29/16

(PLEASE PRINT)

Name: Patrick Jobe Kentour

Address: DOB DOB

I represent: _____

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DIANA SWITA

Address: 1 CENTRE ST

I represent: COMMUNITY BOARD 1 - MANHATTAN

Address: _____

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THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6.29.16

(PLEASE PRINT)

Name: CHARLES ESHEZMAN

Address: 376 BROADWAY

I represent: MYSELF

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Brian Nesin

Address: 361 Irving Ave S.O. NJ 07079

I represent: Friends of Privately Owned Public Space

Address: NYC

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1211 Res. No. _____

in favor in opposition

Date: 6/20/16

(PLEASE PRINT)

Name: Rachel Levy (Friends of the Upper

Address: 960 Lexington) East Side Historic

I represent: Avenue J & K Districts

Address: _____

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in favor in opposition

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(PLEASE PRINT)

Name: Kelly Carroll

Address: _____

I represent: Historic Districts Council

Address: 232 E. 11 St NY NY 10003

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Name: Trapper Thomas

Address: _____

I represent: New Yorkers for Parks

Address: _____

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Date: _____

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Name: Jonathan Crouchi

Address: 488 Madison Ave

I represent: MASNYC

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. POPS Res. No. _____

in favor in opposition

Date: 6-29-2016

(PLEASE PRINT)

Name: Moses Gates

Address: 4 Irving Place

I represent: RPA

Address: _____

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