

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  
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Ruben Wills  
Deborah L. Rose  
Donovan J. Richards  
Inez D. Barron  
Andrew Cohen  
Ben Kallos  
Antonio Reynoso  
Ritchie J. Torres  
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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 44<sup>th</sup> 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 96<sup>th</sup> 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

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

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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 an 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](http://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

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2 consolidation of all previous plaza design regulation  
3 into one outdoor plaza designation now known as  
4 public plaza. The 2007 Zoning Text Amendment was  
5 intended to facilitate the design and construction of  
6 highly welcoming, attractive and usable outdoor  
7 spaces that look, feel and act as truly public  
8 spaces. The 2007 reform was a forward-looking  
9 measure designed to apply to new plazas and to  
10 approve the requirements and standards for existing  
11 plazas that voluntarily come back to the City-- come  
12 back to City Planning for design changes. This type  
13 of reform and improvement of standards has been a  
14 continuing effort from the Department. Now, to the  
15 bill. The proposed reporting bill has some practical  
16 issues. The frequency of reporting is not aligned  
17 with how DCP receives the small universe of  
18 compliance reports which are required for new POPS or  
19 existing ones that have gone through review since  
20 2007. It is important to note that it is not unusual  
21 for existing POPS to come back for design updates.  
22 Even so, the vast majority of POPS are not required  
23 to report and were built pursuant to regulations that  
24 were different in the past. Now law compels the  
25 owners of the sites built prior to 2007 and not

1 modified since to supply a report of compliance.

2 Based on the dates of approval, DCP is still in the  
3 process of receiving the reports we require as part

4 of our recent reforms. What the bill recommends

5 would also require immense resources to inspect the

6 over 500 POPS for compliance on a semi-annual basis

7 and then to provide an annual report. No two POPS

8 are alike. It is logistically a challenge to inspect

9 all locations that are under varied regulations. We

10 believe that this is not the best use of resources,

11 and that a complaint-driven process that allows users

12 of POPS to notify property owner or the City of any

13 non-compliance is a much more effective use of our

14 limited resources. In response to concerns about

15 transparency, accessibility and the overall

16 effectiveness of POPS, the Department has worked

17 collaboratively with APOPS or Advocates for Privately

18 Owned Public Space, a nonprofit founded by Harvard

19 Professor, my neighbor right here, and foremost

20 expert on POPS, Jerold Kayden. Our collaborations

21 resulted in an interactive website available since

22 2013 where the public can get information on all the

23 POPS in the City, where they are located, what

24 amenities are required, and what are the hours of  
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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](http://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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2 of a non-compliance brought to the Department's  
3 attention. This could include the taking of  
4 photographs and measurements which are brought back  
5 to the office for further review with supervisory  
6 staff within the unit. Depending upon circumstances,  
7 the inspection will be performed in plain clothes or  
8 in uniform. As part of the inspection, the inspector  
9 also looks for other non-compliant conditions not  
10 mentioned in the complaint. Should the Department's  
11 inspection reveal non-compliant conditions,  
12 violations are issued. In the event the inspector  
13 does not witness the infraction, if for example the  
14 POPS was closed to the public and since reopened, the  
15 inspector will attempt to locate a collaborating  
16 witness willing to attest via signed affidavit that  
17 they witnesses a non-compliant condition. With the  
18 witness's affidavit and the willingness to appear in  
19 court, the Department can pursue enforcement action.  
20 Turning to Introductory Number 1219 as it relates to  
21 the Department requires an annual report on the  
22 number of POPS-related complaints received, whether  
23 any enforcement action was taken, and whether any  
24 closures were ordered due to the unsafe conditions or  
25 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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1 of ambiguity for multiplicity of who to contact, and  
2 I think that expresses some of the issues of falling  
3 between the cracks or having everybody involved even  
4 as people have tried their hardest to do a great job.  
5 So, I'd like to propose quickly six compliance ideas.  
6 First of all, make the suggestion of primary reliance  
7 on a complaint-driven reactive inspections regime,  
8 which has been suggested by Edith Hsu-Chen here on  
9 behalf of City Planning, more meaningful. The way  
10 you make that more meaningful is first to better  
11 equip members of the public with knowledge about the  
12 locations and legal requirements at every privately  
13 owned public space in the City as well as knowledge  
14 about how to engage with the enforcement process so  
15 that they can complain meaningfully. In addition, I  
16 think that we need to better equip both the  
17 Department of Building inspectors and lawyers with  
18 prepared and digested information about the legal  
19 requirements and plans governing POPS, something that  
20 quite frankly the Department of City Planning is best  
21 able to do. This is not, let me emphasize, a  
22 criticism at all of the Department of Buildings who  
23 have great experts there. It's simply a reflection  
24 of a history of privately owned public space since  
25

1  
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

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

1  
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

1  
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

1  
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

1  
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 POPSs. 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

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

24 EDITH HSU-CHEN: I'll answer.

25 CHAIRPERSON GREENFIELD: Thank you.

1  
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

1  
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 1<sup>st</sup>, 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?

25

1  
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

1  
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

1  
2 example. And I think that's our concern. So, my  
3 question though is, I understand 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.

24

25

1  
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

1  
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  
25

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  
2 was stated a year ago is still not there, and that's  
3 sort of silly. It's silly for everybody. And that's  
4 not DOB's fault or ECB's fault. It's actually the  
5 rules need to be improved. So, I think higher  
6 penalties for repeat offenders. I think a speedier  
7 more efficient kind of process would help everybody  
8 so that Mr. Ventour's inspectors are not sitting  
9 around for two hours waiting for the respondent to  
10 show up and they don't show up, and that inspector  
11 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 96<sup>th</sup> 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](http://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

1  
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

1  
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

1  
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?

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

21  
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.

25

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 56<sup>th</sup>  
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 of enforcement in terms of A., a developer, and both  
2 in terms of the information which leads me to my next  
3 question of how is a developer supposed to know when  
4 a developer is developing a site, and where does the  
5 enforcement fall on what if a developer is in fact  
6 building on a public space, because it appears that  
7 has happened on 40 Rector Street? Is that something  
8 that DOB would enforce? Is that something that City  
9 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 89<sup>th</sup> 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?  
23

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

7 COUNCIL MEMBER KALLOS: Okay. So I'm  
8 looking at 200 East 89<sup>th</sup> Street. I'm looking at it  
9 on the [apops.mas.org](http://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 62<sup>nd</sup> 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 Eschelmann [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  
2 the details of the hearing and invite the  
3 Administration, so that takes time. So, it's a fair  
4 point, and we will take it back, but we did-- we  
5 publicized it a couple weeks ago, and New York One  
6 actually did a preview of this hearing on Monday  
7 where they actually-- where they actually did a news  
8 clip to preview the hearing that was going to be had.  
9 So, we tried, but it's an imperfect system which we  
10 recognize.

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

1  
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

1  
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 14<sup>th</sup>  
19 Street to 59<sup>th</sup> 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

1  
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

1  
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  
25

1 know, we don't want to be rigid about it, but we have  
2 long had a no net loss policy for park land, and if  
3 we're going to accompany the kind of growth we  
4 envisioned, we need that for public space as well.  
5 And then lastly, I would just very much encourage the  
6 Council not to get caught in a false dichotomy of  
7 quantity versus-- improving quantity versus improving  
8 quality of our privately owned public spaces. And to  
9 kind of echo the value-- I didn't want to say value  
10 capture, but to echo the point that these POPS are  
11 necessarily in high-market areas, in ones in which  
12 commercial space is quite valuable, and that you can  
13 have that commercial space which adds value to the  
14 entire area. You can have some of that go towards  
15 improving the existing public space, but you should  
16 also have enough that it can go towards replacing the  
17 private space also, improving both the quality and  
18 quantity of the space.

19  
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

1  
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

1  
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

1  
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,

1  
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

1  
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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1  
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

1  
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

1  
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.

1  
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 29<sup>th</sup>, 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