

**Testimony of Angela Licata
Deputy Commissioner for Sustainability
New York City Department of Environmental Protection
before the
New York City Council Committee on Environmental Protection
concerning
Intros. 1300-2016 and 1653-A-2017 – In relation to construction noise mitigation
Committee Room, City Hall
September 25, 2017**

Good afternoon, Chairman Constantinides, and members. I am Angela Licata, Deputy Commissioner of Sustainability at the New York City Department of Environmental Protection (DEP). I am joined by Patrick Wehle, Assistant Commissioner for External Affairs at the Department of Buildings. Thank you for the opportunity to testify in support of Introductions 1300 and 1653-A.

DEP's mission is to protect public health and the environment by supplying clean drinking water, collecting and treating wastewater, and reducing air, noise, and hazardous materials pollution. These bills propose to address noise from construction sites, which results in large numbers of complaints to 311. We welcome the opportunity to work with the Council to better reduce the effects of construction noise on our neighborhoods.

DEP supports passage of Intro. 1300, which would require DEP to make all noise mitigation plans from construction sites publicly available by posting on DEP's website and require the posting of noise mitigation plans on the exterior of construction sites.

DEP also supports passage of Intro. 1653-A, which would require DEP to promulgate rules prescribing specific inspection time frames so that noise inspections occur at times when alleged noise occurs or is repeated, and to require annual reports on response to noise complaints.

The features of the bill that we believe will enhance DEP's response and most effectively result in reduction in construction noise include the following:

- Allowing the commissioner to set time frames for inspections in order to ensure that responses to complaints occur at times when a violation is most likely to occur or reoccur
- Requiring that noise mitigation plans and alternative noise mitigation plans be posted on the City's website
- Authorizing DEP to issue verbal and written stop-work orders for specific activities or equipment that create noise exceeding the standards set forth by the bill

Now, some of these cases will involve After Hour Variances (or AHVs), which are required in order to perform construction work outside the hours between 7am – 6pm Monday through Friday. AHVs are issued by DOB for reasons that include emergency work, public safety, City-managed construction projects, construction activities with minimal noise impact, and undue

hardship. The most important and common reason for the issuance of an AHV is public safety, when typically the work can be performed more safely when there is less pedestrian and vehicular traffic.

As stated before, we agree with the goals of the bill, but we do have some recommendations on how this legislation might be improved:

- The bill should authorize DEP to take readings from street level in front of the sensitive receptor when there is an AHV in effect; currently readings may only be taken from inside a complainant's dwelling, thereby slowing response time. We suggest that the bill reflect that readings may be taken from the public right of way as described in Section 24-228.
- For AHVs, when a specified mitigation in the noise mitigation plan is not implemented, the current bill requires DOB to rescind or refuse to renew the AHV until the condition is corrected. Given that the bill authorizes DEP to stop work for specific activities or equipment that create noise exceeding the standard, there is no reason to stop all work associated with the AHV, particularly for an AHV with a broad scope of work where much of it does not exceed the standard.
- We are still reviewing the impacts of several of the bill's amendments, including provisions related to stop work orders, revocation of AHVs, specific decibel level thresholds and the impact of those thresholds on certain construction projects, including street projects, and other provisions that would benefit from technical changes.

We look forward to further conversations with the Council in order to ensure that the proposed legislation accomplishes the goals of more timely inspection at construction sites and of establishing effective mechanisms to achieve reasonable noise levels.

Thank you again for the opportunity to testify today. We would be happy to address any questions you have.

Testimony in Favor of Resolution 1177

Thank you to Chairperson Constantinides and members of the Environmental Protection Committee for allowing me to offer testimony in favor of Resolution 1177.

On March 24th 2014, Governor Andrew Cuomo directed the Port Authority to establish aviation community roundtables. Governor Cuomo further directed the Port Authority to conduct a Federal Airport Noise Compatibility Planning Part 150 Study to better evaluate noise impacts to the communities surrounding JFK and LGA airports. I currently serve as Co-Chair of the New York Community Aviation Roundtable (NYCAR).

Elected officials, community boards, governmental agencies, airlines, airport industry groups, business organizations and community stakeholders are Roundtable members. NYCAR represents more than 4 million residents of New York City and Nassau County who are negatively affected by operations at JFK and LGA airports. I'm also a member of the LGA Airport Part 150 Technical Advisory Committee (TAC).

Governor Cuomo's directive stated: "The Part 150 study helps to identify residences, schools, libraries, hospitals, nursing homes, and places of worship adversely impacted by aircraft noise.

Mitigation efforts taken at other airports that have done Part 150 studies include revamping of flight routes and approach procedures, encouraging airlines to use quieter aircraft and installing soundproofing to eligible properties."

Noise is defined as unwanted or objectionable sound. The FAA has formally adopted DNL as its primary metric to evaluate cumulative noise effects on people due to aviation activities. DNL is the 24-hour average sound level in decibels (dB) as derived from all aircraft operations during a 24-hour period. DNL adds a 10 dB noise penalty to each aircraft operation occurring during nighttime hours (10 p.m. to 7 a.m.).

The FAA currently uses 65 dBA DNL to determine the onset of substantial impact. The United States Environmental Protection Agency, the World Health Organization and others have recommended 55 DNL as a more appropriate noise level threshold.

Attached to my testimony is Appendix J for both JFK and LGA Airports. Appendix J details the noise contours as identified by the Part 150 Noise Exposure Maps. The study included 55 DNL for information purposes only, but the noise contours estimate the population and area impacted by both 65 DNL and 55 DNL. When 55 DNL is applied to the Part 150 Noise Exposure Maps, the population impacted by aircraft noise increases more than threefold.

The New York Community Aviation Roundtable supports Resolution 1177. However, while Resolution 1177 is viewed as an important first step, there is more that still needs to be done. NYCAR looks forward to partnering with the New York City Council in an effort to provide the residents of New York City and Nassau County with quiet skies.

Thank you.

Warren Schreiber

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APPENDIX J

Supplemental Noise Contours

This appendix includes the DNL 55 and 60 noise contours and population within those contours, requested by the public, provided for informational purposes only.

TABLE J-1
POPULATION WITHIN THE DNL 55-65 CONTOURS – 2016

| Noise Level | Population |
|--------------|----------------|
| DNL 55-60 | 635,650 |
| DNL 60-65 | 112,950 |
| Total | 748,600 |

NOTE: The household and population estimates provided above were developed using census data from the 2010 Decennial Census and New York City housing data.
SOURCE: Planning Technology, Inc. and Environmental Science Associates, 2016.

TABLE J-2
POPULATION WITHIN THE DNL 55-65 CONTOURS – 2021

| Noise Level | Population |
|--------------|----------------|
| DNL 55-60 | 588,500 |
| DNL 60-65 | 111,100 |
| Total | 699,600 |

NOTE: The household and population estimates provided above were developed using census data from the 2010 Decennial Census and New York City housing data.
SOURCE: Planning Technology, Inc. and Environmental Science Associates, 2016.

APPENDIX J

Supplemental Noise Contours

This appendix includes the Day-Night Average Sound Level (DNL) 55 and 60 contours and population for John F. Kennedy International Airport for 2016 and 2021. The contours and population estimates were requested by the public and are provided for informational purposes only.

TABLE J-1
POPULATION AND AREA WITHIN THE DNL 55-65 CONTOURS – 2016

| Noise Level | Population | Area (Square Miles) |
|--------------|----------------|------------------------|
| DNL 55-60 | 303,050 | 66.5 |
| DNL 60-65 | 117,850 | 24.7 |
| Total | 420,900 | 91.2 |

NOTE: The household and population estimates provided above were developed using census data from the 2010 Decennial Census and New York City housing data.

SOURCE: Planning Technology, Inc. and Environmental Science Associates, 2016.

TABLE J-2
POPULATION AND AREA WITHIN THE DNL 55-65 CONTOURS – 2021

| Noise Level | Population | Area (Square Miles) |
|--------------|----------------|------------------------|
| DNL 55-60 | 306,200 | 67.6 |
| DNL 60-65 | 121,200 | 25.1 |
| Total | 427,400 | 92.7 |

NOTE: The household and population estimates provided above were developed using census data from the 2010 Decennial Census and New York City housing data.

SOURCE: Planning Technology, Inc. and Environmental Science Associates, 2016.

Testimony on NYC Council Resolution Number 1177

by Susan Carroll

Thank you to Council Member Costa Constantinides and the Committee on Environmental Protection for giving me the opportunity to speak today. My name is Susan Carroll, and I am one of Queens Borough President Melinda Katz's representatives on the LaGuardia Airport Committee of the New York Community Aviation Roundtable. However, the opinions expressed here are solely my own.

From the day I was born till this past May, I resided in a high-rise apartment building in the downtown section of Flushing, Queens. Given its proximity to LaGuardia Airport, airplanes were always part of the din of this thriving community. Over the past five years, though, due to the introduction of more concentrated, satellite-based flight paths, along with changes made to how older flight paths are flown, and an increase in use of previously rarely used noise-intensive routes, life in Flushing became unbearable for me. Takeoffs and landings that formerly flew over Flushing Meadows-Corona Park were redirected over downtown Flushing, which has seen an explosion in population growth in recent years.

In the summer of 2014, the Port Authority of NY and NJ installed a portable noise monitor on the roof of my building, as part of Governor Andrew Cuomo's directive that year to the Port to double the number of noise monitors in neighborhoods around LaGuardia and John F. Kennedy International Airports. According to the readings on this monitor, the noise levels of planes overflying my building routinely exceed 80 decibels. On many days, the roar continues every minute for up to 18 hours at a time. However, due to a determination made by the Federal Aviation Administration in the 1970s, my former residence is not considered to be significantly impacted by LaGuardia operations.

Since the disco era, the FAA has used the 65 Day-Night Level, or DNL, threshold to determine whether or not a particular area is significantly impacted by aircraft noise and thus eligible for sound mitigation and noise abatement measures. My former home in Flushing is just outside what is called the '65 DNL contour.' Therefore, it will not be included as a candidate for soundproofing at the conclusion of the Port Authority's ongoing Part 150 noise

study, which adheres to strict federal guidelines and therefore only examines homes, schools, businesses, places of worship, and historic sites within the 65 DNL contour.

Why is it that the Environmental Protection Agency, the World Health Organization, and most of the developed world use the 55 DNL threshold, while the FAA continues to use 65? The world has advanced greatly since the 1970s. Studies have shown that noise is not simply an annoyance. Exposure to high levels of noise can have serious health consequences. In 2013, the Harvard School of Public Health published results from a study determining that elderly individuals living near airports under heavily used flight paths have a higher risk of being admitted to the hospital for cardiovascular disease.

My former residence in Flushing has a large number of senior citizens, as does much of downtown Flushing, all of who are being exposed to noise levels greater than what is recommended by most federal agencies for a healthy life. Currently, there is a debate on whether DNL, which represents an average, is even the best way to measure the true impact of repetitive aircraft noise. The FAA itself is conducting an ongoing, multi-year study on noise exposure and annoyance. In the meantime, though, they can, at the very least, join their colleagues in the federal government and reduce the noise threshold to 55 DNL. Doing so would perhaps lead to a change in how the FAA determines a significant impact. It would lead to an increase in properties eligible for soundproofing. Other alternatives that might occur as a result of a reduction to 55 DNL include a speedup in retirement of older, louder aircraft and a more equitable distribution of flight paths, so no single neighborhood bears the brunt of aircraft noise.

New York City is a progressive leader. As the landlord of the airports, it has an obligation to protect its residents, including and especially its most vulnerable ones. Yes, the airports are economic engines, but that fact should not override the ability of neighborhoods to be livable. Therefore, the NYC Council needs to take a proactive stance and pass resolution number 1177. It must join the chorus of elected officials across the nation and let Congress and the President know that it is time for the FAA to catch up with the rest of the world and adopt the 55 DNL threshold. Thank you.

ACOUSTILOG INC.

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September 24, 2017

New York City Council

Comments on:

Int. No. 1300 - In relation to public access to noise mitigation plans.

Pro. Int. No. 1653-A - In relation to responses to noise complaints.

Res. No. 1177 - Calling on the United States Congress to pass and the President to sign legislation that would require the Federal Aviation Administration to reduce the threshold for what constitutes a significant noise impact under the Federal Aviation Regulation, Part 150, Airport Noise Compatibility Planning Program, from 65 Day-Night Decibels to 55 Day-Night Decibels.

See below for my comments:

INT. NO. 1300 - PUBLIC ACCESS TO NOISE MITIGATION PLANS.

I support this measure.

I had to have an attorney and myself call DEP multiple times to get inspectors to verify if a construction project had a Noise Mitigation Plan at all. The process took a month and cost thousands of dollars, while residents were being disturbed. It turns out there was no plan, as suspected, and a violation was issued. Had the requirement for a posted or online plan been in effect, all of this would have been unnecessary. More important, an effective plan would have reduced noise during the construction.

The plan has to be EFFECTIVE. The Code presently says:

"The plan shall provide in detail the noise mitigation strategies, methods, procedures and technology..."

But it doesn't make people do that nor does it require any readings or photographs showing effective compliance.

In one case, construction made the noise level in a doctor's office unbearable. It went to court, where tremendous energy was spent arguing over the fact that there is simply no requirement for the plan to have to do its job.

Under the current system, there is no teeth to the plan requirement and certainly no need for it to be effective. This is especially true indoors, as the plan is entirely geared toward outside noise. In

both of the 2 examples mentioned above, the noise was indoors and was more severe than typical outside noise complaints.

There is widespread non-compliance with the requirements for effective noise mitigation methods like simple blankets. Because the response time is so slow, it can take more than 6 months to get DEP or court action on a noise problem that may last 6 months.

The plan should be filed BEFORE, not 30 days "after the commencement of construction". This is already been standard operating procedure for installation of an air conditioner; you can't get a permit until you file a TR-1 form attesting that it will meet the Noise Code.

The list of equipment in § 2. Subdivision (a) of section 24-219 that can cause noise complaints and is listed on the Construction Noise Mitigation Plan Form is inadequate.

Add the following:

- Drills (not just auger drills)
- Ordinary hammering (not just jackhammers)
- Ordinary electric saws (not just concrete saws)
- Pickup trucks
- Garbage trucks
- Dumpsters and containers that can cause noise when material is dropped into it or when these are moved

All noise mitigation plans should be REVIEWED by qualified personnel.

The Contact number of the responsible party on the Noise Mitigation Plan form doesn't account for after hours contact, which is often necessary.

PROPOSED INT. NO. 1653-A RESPONSES TO NOISE COMPLAINTS

I support this measure.

The DEP makes almost no visits late at night or on weekends, when the loudest noises occur and when they are most disturbing.

I receive many calls that relate to this and this is one of them. A person called me on September 13 saying "I live next to a music hall which plays loud music at night. I have called 311 and DEP to complain but to no avail. I'll like to know what other steps I can take."

The person told me that they had to wait 6 months to get a late night appointment. For this reason, the response time has to dramatically improve.

Do not leave it up to the commissioner to simply "adopt rules", make sure they include these off-hours times.

You ask them to report "(vi) the number of such violations which were dismissed" but the reason for dismissal is also important.

It is not necessary for such a long one year DEP information-gathering period, or a 120 day period for the law to take effect. A large amount of data is already known and the results of the information provided by DEP must be quickly acted on. Even if some improvements need to be studied, others can and should be quickly implemented.

The main problem is a lack of qualified inspectors -

- There are not enough inspectors.
- They are not well trained. For example, I frequently get violations dismissed because inspectors are not trained well enough, wasting time and money for both sides.
- They are giving tickets on unimportant complaints. Also, inspector resources are squandered where restaurants' noise leaks harmlessly onto the sidewalk, the subject of last year's proposed Int. No. 186 which has not been implemented yet.
- The citizen's complaint is never honored. I should be able to bring a violation case without an inspector. I have attempted to do this and was stymied by the Department. Also, I believe that 24-261 has errors in the listing of the applicable sections.

You ask them to report in section 15 "non-violation resolutions to complaints". Many complaints cannot be rectified without the location of the complainant being made known to a defendant. Due process, at least in criminal cases, requires a defendant being entitled to confront the accuser, but the DEP, in always taking the role of the accuser, does not allow any information to be given that will allow a defendant to know in which direction the sound is supposedly traveling. Not only is this unfair, but a resolution to a problem requires knowing this information. I can put up a sound barrier between my fan and the complainant if I know which direction they are in. Otherwise, am I supposed to just guess, and put up sound barriers all over?

In section (i) [8] "5 dB(A) above the ambient sound level as measured in any residential receiving property dwelling unit

[(with windows and doors that may affect the measurement closed)],"

should be changed to

"the windows and doors being open or closed as appropriate"

or it will be endlessly argued.

Also:

The amendment does not differentiate between impulsive and non-impulsive noise in the 5 dBA requirement. This is a glaring omission.

5 dBA is too low.

You have to say "the sound level attributable to the construction".

Protection must be assured for offices, which are also affected by after hours noise.

Ambient noise has never been clearly defined in the Code, which is a major problem in determining whether a violation exists or not.

RES. NO. 1177 - CALLING ON THE UNITED STATES CONGRESS TO PASS AND THE PRESIDENT TO SIGN LEGISLATION THAT WOULD REQUIRE THE FEDERAL AVIATION ADMINISTRATION TO REDUCE THE THRESHOLD FOR WHAT CONSTITUTES A SIGNIFICANT NOISE IMPACT UNDER THE FEDERAL AVIATION REGULATION, PART 150, AIRPORT NOISE COMPATIBILITY PLANNING PROGRAM, FROM 65 DAY-NIGHT DECIBELS TO 55 DAY-NIGHT DECIBELS.

I am not in favor of this legislation.

We all want the City to be quieter, but not at the expense of safety. First, I must disclose that I have been a private pilot for 25 years. Aircraft make most noise during takeoff. As a pilot, I know that the most important factor in a safe takeoff is to apply full power and to climb away from the ground as soon as possible. Altitude is the key to safety in the event of an emergency, because it gives the pilot more time to consider options. Anyone who watched the movie Sully knows this.

Reducing power to quiet the plane reduces safety.

Planes must take off into the wind, also for safety. If the wind is coming from the ocean, great. The plane heads out over the ocean as it begins to climb. But there are other planes to avoid, so turns are required. If the wind is coming from a direction with lots of residents, the plane must initially take off in that direction.

It is easy to say "just lower the noise level", but not easy to say. You can't just proclaim it without repercussions.

Is the Ldn 55 reasonable in New York City? Not in many areas of the city. HUD defines the "acceptable" level at 65 Ldn or less. 55 Ldn is half as loud as that, and would be appropriate in suburban or rural areas. But in most of the city, the noise from other sources makes this goal hard

to achieve even without aviation. We live in a noisy city that is getting noisier; more about that later.

First, a little technical definition. DBA is the most common and partially simplistic measure of noise, but it primarily measures the midrange noise, not the low frequency booming bass sounds from trucks, motorcycles, trains and music. Ldn means the average sound level, with 10 decibels quieter after 10 PM.

An Ldn of 55, which this resolution calls for, implies that the average sound level at night is 45 decibels (actually 45 dBA). This means outdoors.

But the sound going inside a fully open window is at least 10 decibels below that, or 35 dBA. And if the window is closed, it is much lower. A typical window drops the sound level by lopping off 20 dBA. So, 45 dBA outside, minus the effect of a closed window, would be 25 dBA inside. That is super quiet. And it gets even quieter when you are not right next to the window regardless of whether it is open or closed. Compared to 3 feet inside a window, 8 feet from the window is 4 dBA less and that is subjectively 24% quieter.

But you would never achieve that in New York City. I measure sound all the time in apartments with windows open and closed. The fact is, most neighborhoods are more than 55 dBA outside at night, and more than 65 dBA during the day, even without any planes around.

So, the other noise sources in New York equal or exceed the level that is presently used by the FAA, namely, 65 Ldn, even without the planes. Planes are also getting quieter for both noise and emissions reasons, and according to the FAA jets have become 1/4 as loud in the past 20 years.

Before reducing safety by trying to get aviation quieter than the other city noises, reduce the city noises. I have suggestions on how to do that. Here are some of the problems:

- The 2014 Building Code, specifically Section BC 1207, reduced the required soundproofing of floors and walls by as compared to the older code section, 27-768.
- The promised "new technology" of the 2005 new Noise Code was never fully adopted and the inspectors were not properly trained to use it.
- The proliferation of louder sound systems in cars, home theatres, and nightclubs.
- The basic inconsideration of people screaming and laughing late at night in certain areas.
- The greater number of cars and road rage leading to more honking cars.
- The ever present motorcycle or muscle car showoff.
- The increased real estate values leading people to feel that for this much money they can do whatever they want in their apartment.

- The increase in popularity of loud bass music.

Here is an example of a problem and a proposed solution:

When one person turns up the sound in their car and drives through the city, it can easily disturb 5,000 people in a single hour. I have an idea.

14 years ago I sent this idea to DEP Director Gerry Kelpin. Nothing happened. The idea was to make a couple of camcorder/sound level meter kits that showed the sound level going up as you got closer to the sound source- in this case a car sound system. In stuck traffic, the police officer simply starts the camera, walks up to the car, as the sound level goes up and peaks at the vehicle, the officer issues the ticket.

No one would bother fighting ironclad evidence like this. Immediate \$250 ticket. Sound installers can easily show the car owners how loud they are when they are getting their 2000 watt subwoofers installed so they can be forewarned. I know Diana Williams at Eyewitness News, and she'll show the first crackdown on Canal Street and the City will immediately get quieter.

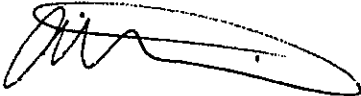
CONCLUSION

There are many other problems with the present Noise Code and its lack of protections for everyone in New York City, which I would be glad to provide you with examples of and speak about in the future.

If I can be of further assistance, please call.

Yours Truly,

Alan Fierstein



President
acoustilog1@verizon.net

All readings re: .0002 microbar. Readings taken with Bruel & Kjaer 2260/2270 Analyzer, Bruel & Kjaer 4135, 4145, 4165, 4189 or 4190 Microphone, Acoustilog 232A Reverberation Timer. Calibrated to Bruel & Kjaer 4220 Sound Source or Quest CA-15A.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

Date: _____

(PLEASE PRINT)

Name: Angela Licata

Address: NYCDEF

I represent: _____

Address: _____

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Name: Resaldine Kelpin

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I represent: DEP

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Name: Patrick Wehle

Address: Assistant Commissioner

I represent: DOB

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Name: Mar Chantreau

Address: 183-181 Dalny Rd.

I represent: NY CAR

Address: _____

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I intend to appear and speak on Int. No. ¹³⁰⁰~~1652~~ Res. No. _____

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Name: ALAN FIERSTEIN

Address: 96 ACOUSTILOG, 19 MERCER ST, NY 10013

I represent: "

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in favor in opposition

Date: 9/25/17

(PLEASE PRINT)

Name: Susan Carroll

Address: 4802 Carroll Ave. 2nd Fl. Gt Neck NY 11770

I represent: 114 Community Aviation Roundtable

Address: Great Neck NY

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Name: WARREN SCHREIBER

Address: 1324 BELL BLVD, BAYSIDE, NY 11366

I represent: NEW YORKS COMMUNITY ACTION ROUNDABLE

Address: QUEENS, NY

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in favor in opposition

Date: 25 Sept. 2017

(PLEASE PRINT)

Name: ROBERTO GAUTIER

Address: 140 CADMAN PLAZA WEST

I represent: SELF

Address: 140 CADMAN PLAZA WEST

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 1200

in favor in opposition

Date: Res 1653
1177

(PLEASE PRINT)

Name: Arline L. Brody

Address: 5035 79 St NYC

I represent: _____

Address: _____

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