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**HEARING BEFORE THE CITY COUNCIL
COMMITTEE ON TRANSPORTATION
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Good afternoon Chairman Liu and members of the Committee on Transportation. My name is Lori Ardito and I am the First Deputy Commissioner at the New York City Department of Transportation (DOT) and with me here today is Leon Heyward, DOT's Deputy Commissioner for Sidewalks and Inspection Management and David Woloch, DOT's Deputy Commissioner for External Affairs. I am happy to be here this afternoon to discuss the three items on today's agenda. Intros 73, 206 and 497 all address issues related to responsible and diligent sidewalk and roadway repair. Before we address these bills, let me first share with you our recent efforts to keep our City's streets and sidewalks in a state of good repair.

DOT's Roadway Repair and Maintenance division oversees the resurfacing and roadway maintenance programs for our City's vast network of roads. We conduct extensive milling and paving operations – the digging up of damaged or uneven pavement and laying of new asphalt in its place. These operations must continually keep pace with the wear of daily travel in order to maintain the quality of our streets. Resurfacing efforts are critical as we look ahead to the future where the City's population is expected to grow and our infrastructure will continue to age. This Administration is committed to pursuing a state of good repair for our 20,000 lane miles of City streets. Over the past two years, we have increased our funding for resurfacing by nearly 30%, raising the annual resurfacing target from approximately 700 to 900 lane-miles. DOT's Capital Commitment Plan for FY 2008 through 2017 provides for 9,000 lane miles of streets to be resurfaced, which is an increase of 1,450 lane miles from the previous Plan. Also, the Smart Fund in the Mayor's PlaNYC proposes over \$120 million in added funding- which would allow us to raise this target even further.

Unfortunately, it is impossible to resurface all our streets every year. We also have to focus on more routine maintenance. When Mayor Bloomberg first took office in January 2002, DOT's response to

pothole complaints stood at 70% of reported conditions repaired in 30 days or less. Since then, pothole response has improved dramatically. In fiscal year 2007, although the number of pothole complaints had more than doubled (since 2002?), DOT's 30 day response was almost 100%.

Beyond normal wear and tear, there are many challenges to maintaining our City's streets. At the same time that DOT is repaving and repairing the roadways, utilities, plumbers, contractors, other governmental agencies, and property owners all make street cuts and excavations in the course of business for work on infrastructure that lies beneath the streets. It is our job to address as best we can any adverse effects this work may have. We have an entire Highway Inspection and Quality Assurance (HIQA) Unit, dedicated to maintaining the integrity of our streets, increasing the level of safety for all users of our roadways, and expediting the flow of traffic, for both pedestrians and vehicles around construction. HIQA accomplishes this by enforcing the laws and rules that govern the way work is done on the City's sidewalks, roadways and highways. Inspectors also review work sites for compliance with permit stipulations, and issue violations when they find noncompliance with the laws and rules. To carry out its mission, HIQA employs staff throughout the five boroughs.

Over the past two years DOT has reduced the effects of illegal and inappropriate work on our roads through the implementation of "Take Back the Streets". This initiative has enabled us to more aggressively police contractors who work on City streets. Working with our colleagues at DOB, DEP, ECB and DOF, we took a three-fold approach to enforcing compliance; first, we refuse permits to contractors with the most egregious outstanding fines; second, we refuse permits to contractors who have left their sites in disrepair until they repair the site to our satisfaction; and third, DOF has been collecting assets from contractors who have serious outstanding fines and continue to work on our streets without a permit. And we have been successful. Since January of 2006, DOF has collected over \$2 million from 74 of these contractors. DOT has suspended permit issuance to 75 companies who have failed to make payments. We have also enhanced our inspections. DOT's construction and inspection unit has hired additional inspectors, almost doubling field forces from 83 inspectors to 161. This has allowed us to assign one inspector in each borough to follow the contractors paving trucks to make sure that the materials used for the base and final restoration meets DOT standards.

As well as ensuring a state of good repair on our roads, we are also committed to the maintenance of our sidewalks. Whether we drive or take transit, work here or are just visiting, every day almost everyone in the City travels our sidewalks; and there are approximately 674 million square feet of sidewalk Citywide. While DOT is responsible for inspecting work performed on these sidewalks, the New York City Charter and Administrative Code have always provided that property owners are responsible for repairing and maintaining the sidewalk adjacent to their property. Given the number of sidewalks in the City and the Agency's constraints, it is incumbent on property owners to bear responsibility for the sidewalk abutting their property. When they fail to do so, and DOT is forced to make a repair, a cost is imposed on the taxpayer. Although the City charges the property owner, with interest, the cost can often not be immediately recouped, [the charge may be entered as a lien on the property] and there are still additional costs associated with the work. As you know, in 2003 the Council passed Intro 193 which made four-plus-family and commercial property owners liable for injuries caused by sidewalk defects that they know about but fail to repair. Imposing responsibility on those who own commercial property or multiple residences, where most sidewalk falls take place, remains the best way to have a safer City. And there is no doubt that it is physically, financially, and practically impossible for DOT to fix all 12,000 miles of sidewalk, even in our lifetime.

Since the passage of this legislation, DOT's Office of Sidewalk Management has been better able to concentrate its efforts on repairing City-owned properties. Let me take a moment to briefly describe how our sidewalk program works. DOT places for bid, via the Department of Design and Construction (DDC), seven Sidewalk Repair contracts annually [Manhattan-1, Bronx-1, Brooklyn-2, Queens-2 Staten Island-1]. Sidewalk Repair contractors are then assigned to community boards based on the number of eligible violations issued to community boards that were not addressed under recent repair contracts and City-owned properties in need of sidewalk repair. On average, we repair sidewalk in 2-4 community boards per borough every year. DOT has \$20 million allocated annually for these operations. From FY '04 through FY '08 (to date) DOT has repaired sidewalk on 691 City owned properties for a total of \$51.3 million. This includes over 300 schools, 130 parks, 80 HPD and 19 NYCHA properties. As school safety is a major priority of the Agency, in FY 07' \$6.2 million was spent repairing 67 Department of Education facilities. A Citywide Sidewalk Contract for \$4.5 million was registered and awarded in 2006 to address

safety locations City-wide. We have also hired five new inspectors that have been assigned to addressing 311 complaints.

Between our sidewalk program, street reconstructions, and enforcement initiatives targeting work being done on City streets, DOT is working aggressively to meet the many demands on our street infrastructure. Now that you have some insight into our current operations, let me turn to the bills.

Intro 73 requires that all sidewalk reinstallations, reconstructions, repavings or repairs to an existing sidewalk flag must be completed by DOT if not undertaken by the responsible property owner within 90 days following the issuance of a Notice of Violation (NOV). To grasp the implications of this bill, it is important to understand DOT's current practice. In the past year, DOT has received over 6,000 sidewalk complaints. Each location alleging a defective sidewalk is inspected within 15 business days. Where defects are found, an NOV is issued to the property owner. The property owner then has 45 days to address the defect. Should they choose not to, this bill shifts the burden back on the City to make the repair. And although the bill gives DOT 90 days from the issuance of the NOV to make the repair, in fact it will only amount to 45, as the owner first has 45 days after the NOV is issued to perform the work.

The timeframe specified in Intro 73 presents a mandate the City could not fulfill. First, the cost to the Agency to maintain every sidewalk, City-wide, within 45-days would be astronomical. In 2003, the Council passed legislation, rightfully acknowledging the capacity of the Agency and existing law, which transferred obligation to owners of four-plus properties. By requiring DOT to address repairs at these locations, Intro 73 would veer away from the very legislation that unburdened the Agency of responsibility over those sidewalks. In addition to expanding the scope of our operations, the 45-day deadline to perform repairs makes the cost of compliance prohibitively expensive. The cost of our contracts would sky rocket. Instead of bidding out seven large contracts each year covering the City, we would have to bid out several small contracts in each borough. Currently, what keeps costs down is the clustering of repairs based on location. It is far more efficient for the contractors to go out and perform repairs in one community board; in order to meet the new deadline they would have to have to go out to scattered locations. We estimate the inefficiency in operations will result in a \$99 million cost versus the \$20 million in our current Capital program. If we continue to address City owned properties at an annual cost of \$14

million, our projected annual budget will be \$133 million, annually. Additionally, we estimate staffing increases of at least 5 inspectors, 5 clerical workers, and 3 Construction Project Managers, accruing a cost of over \$930 thousand annually. Further, contractors cannot perform work in the winter months due to freezing and other weather conditions that prevent City contractors from making repairs. As our operations are only in effect 7 months a year, depending on when a complaint is reported, it may be impossible to meet the deadline.

In addition to incurring high costs, the 45-day time frame required in Intro 73 will encourage property owners to shirk responsibility for repairs, as they know if they just wait, the City will make them. Simply put, under no circumstance could the Agency assume responsibility over the approximately 12,750 miles of sidewalk City-wide. To give you a better sense, our sidewalks, if laid end to end, would cover half of the earth's circumference. The cost and inefficiencies associated with Intro 73 are just too great. Placing this burden on DOT, rather than properly keeping it distributed among the many property-owners City-wide, will not result in efficient or equitable results. These repairs will need to be funded, and that exorbitant cost will be felt by all tax-payers, spread throughout the City.

Unlike Intro 73, Intros 206 and 497 do not impose any additional costs or burdens to the City. They address irresponsible work being performed on our City's streets. Given our efforts to make certain quality work is being done on our sidewalks and roads, we are pleased to see the Council focused on this issue, though we are not convinced either bill is necessary.

Intro 206 requires the party that digs up a street to restore and maintain it until the City resurfaces or reconstructs it again. Existing law mandates that the party responsible for digging up a street repair it, however they are only charged with maintaining it for 3-5 years. On a non-protected street (streets not resurfaced/reconstructed by DOT in the last 5 years) permittees are responsible for maintaining the cut for 3 years after the permit expires. On protected streets (streets that have been resurfaced/reconstructed in the last 5 years) the permittee is responsible for maintaining the cut for the balance of the protection period or 3 years after the permit expires, whichever is longer. Our time frames for maintenance exist to guarantee work is done correctly. Intro 206 proposes an extension of this period which would impose large and potentially unnecessary costs on contractors and property owners. Conversely, it will relieve certain parties of their existing responsibilities as the City may take up a street in

advance of the minimum period they are currently responsible for. However, we have taken the recommendation under advisement. DOT has recently been working with EDC to initiate a study in order to determine Best Practices for Restoring Street Cuts. The purpose is to look at our practices, practices of other locales and the engineering behind our current procedures in order to assess what improvements should be made. We request the Council wait until it is complete so we can determine whether the requirements of the bill are appropriate.

In another effort to guarantee safe and efficient repair of our streets, Intro 497 outlines certain requirements for permittees during street openings and excavations. It mandates that the installation of plating and decking over street openings be securely placed to create a minimum amount of noise; that the permittee certifies that the plating and decking was properly installed; and institutes penalties for non-compliance. Additionally, it requires notices with the permittee's name and phone number to be posted within a 1-block radius of the project and upon receiving a complaint, they must repair any defect within 24-hours. It also mandates that all plating and decking must be removed, and the street repaired within 24-hours of completion of the project.

Although the aim of the bill is commendable, we believe our current operations not only satisfy the requirements, but far exceed them. Existing DOT Highway Rules make the permittee responsible for the safety and security of plating and decking, and grant DOT enforcement capabilities to make sure these Rules are followed.

Section 2-11 of DOT's Rules already require the securing and ramping of plating and decking, and require the permittee to install and fasten plating that is safe and adequate to carry the load of vehicles, and requires that the size of the plating be large enough to span the opening and be sufficiently ramped. Further than what is required in Intro 497, the rules require that plating and decking have a skid-resistant surface to give bicyclists and pedestrians additional traction as they cross over them. Also, in the winter months, permittee's must post signs to warn snow plow operators that a metal plate lies ahead. This reduces the likelihood that plates are inadvertently moved by a snow plow in times of bad weather.

In addition to more rigorous standards for plating and decking, our penalties are far stricter for a first violation in comparison to the proposed legislation. In 2003, when a hearing was held on a previous version of this bill, Intro 226, Deputy Commissioner David Woloch testified that we were contemplating increasing the fine, which at the time was \$400 – and we have. While the bill only calls for a \$250 initial fine, the current ECB fine schedule provides for a \$1200 fine for each failure to pin and ramp plates. Failure to have a skid-resistant surface renders a \$1,000 fine.

One thing current law does not incorporate is a repeat offender clause, because this is problematic from an adjudication standpoint. Before a violation could be issued in an amount double the previous violation, the first violation would first need to be adjudicated. However, the adjudication process at the Environmental Control Board takes approximately 60 to 90 days per violation. This is too long a period to wait before being able to issue another violation, and in many cases the street work will have been completed and the contractor will have moved on. Under current practice, we continue to issue a violation to the permittee each day that the situation is not rectified.

Finally, I would like to address the requirement of Intro 497, which mandates that complaints must be addressed within 24-hours. Currently, complaints are fielded through 311. DOT has staff available 24/7 to contact the permittee once a complaint is made. We do this particularly because in order to ensure safety, these complaints need to be addressed as soon as possible. For that reason, the component of the bill which gives permittees 24-hours to respond is problematic. As I said, when complaints are made, depending on the condition reported, they may need to be addressed immediately - 24-hours is far too long to wait to address a condition that may be dangerous.

In sum, as well intentioned as Intros 206 and 497 are, our current operations are sufficient for safe, responsible and efficient street maintenance.

As we look toward a sustainable future, maintaining a state of good repair for our City's vast network of streets and sidewalks is a major priority of the Agency, and the Administration. Thank you for this opportunity to testify before you today and I would be happy to answer any questions at this time.

