



OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

**Testimony of Manhattan Borough President Gale A. Brewer
New York City Council Committee on Governmental Operations
Jointly with the Committee on Investigations
September 29, 2016**

Thank you Chairs Kallos and Gentile for having this important hearing on deed restrictions and the recent removal of the restriction on Rivington House. I am Manhattan Borough President Gale A. Brewer.

As we are all painfully aware, on November 10, 2015 the City issued a deed modification removing the restriction that limited the use and development of Rivington House in perpetuity to a not for profit “Residential Health Care Facility.” That restriction had been in effect for almost 25 years.

As we were reacting to the loss of Rivington House as an institution serving a public need, just three months later a deed restriction limiting use and ownership of property owned by the Dance Theater of Harlem to “Non-profit use by a community... organization offering cultural services to the community,” was similarly lifted. That restriction had preserved this property for a public use for almost 40 years.

These two losses -- in a Borough that is at risk of having its spirit crushed under the weight of luxury condo development -- are disastrous. With virtually no notice – and I do not consider publication for one day in the City Record as notice – the restrictions limiting these properties to public use were removed so that they could be developed by for profit real estate developers. No input was solicited from the communities or from the local elected officials, the planning experts on the City Planning Commission were not involved, and the City Council which is supposed to balance local concerns and citywide needs was not consulted.

Now the Administration has proposed a rule that would address some of the most obvious concerns. The proposed rule requires notice to the affected community board, borough president and council member as well as a public hearing. However, this rulemaking does not help us to get a handle on the range of deed restrictions that exist so that we can best formulate one or more processes for amending or removing them. In addition, it is a DCAS rule which can be changed without the approval of anyone but the agency involved and need not be maintained in subsequent administrations.

Int. No. 1182, proposed by Council Member Chin and me, would require the development over time of a searchable database of all former city properties with deed restrictions with as much

relevant information on those restrictions as can be assembled. In addition, the legislation mandates at least 60 days' notice to the community board and local elected officials and a hearing at least 20 and not more than 30 days prior to the removal of the restriction.

However, Council Member Chin and I, together with Council Speaker Mark-Viverito and Public Advocate James, have come to believe that there is a better process that should be applied to at least some deed restriction amendments or removals. That process is our City's very own Uniform Land Use Review Procedure or ULURP, and at a minimum this process should be applied to the removal or amendment of deed restrictions that limit former City-owned property to public uses for the benefit of the community or public at large. Section 197-c(12) of the City Charter provides that the City Council may, by local law, subject a category of actions affecting the use or development of real property, to ULURP. Pursuant to this section, I, together with Speaker Mark-Viverito, Council Member Chin and Public Advocate James have called upon the City Planning Commission to propose that the Council add modification or removal of certain deed restrictions to ULURP.

Deed restrictions that require property to be used for public purposes are closer to land use restrictions than to a business term in a contract. Yet the Mayor's proposed policy would still have DCAS spearheading the process of considering changes or removal of such restrictions, although with input from other agency representatives. The City Planning Commission should spearhead any process that could allow property required to be used for public purposes to be turned over to a private developer.

It shouldn't matter how a deed restriction was put in place, but rather why it was put in place. If its purpose was to benefit the public, then removing or altering it to allow a private developer to develop it should go through our City's land use review process and the City Council should have the final say on such actions. The best support for this position is found in what apparently happened with the parcel owned by the Dance Theater of Harlem. The City Council did not include this property in the 2012 downzoning of Harlem because we were under the impression it could only be used for cultural purposes. In light of that, how can anyone argue that the removal of this deed restriction was not a land use decision?

The ULURP process is far from perfect and can be cumbersome. But it is a tested and dependable process for making land use decisions, with ample provision for both public and government review and comment. Land in New York City is at a premium and developers stand to make steep profits. Using an existing process, known to all, seems to be a fair proposition. If there are actions on deed restrictions that are less substantive and more ministerial, section two of our legislation provides a process that does not subject these to a ULURP process but provides notice and opportunity for all to be heard.

Finally, I must add that I am very unhappy that the Administration has proceeded this week with rulemaking on its proposed new deed restriction process. I believe that the Speaker, Council Member Chin, the Public Advocate and I have come forth with some ideas worthy of serious consideration. I also believe that this Council hearing and your two Committees could develop further proposals or help to refine those that we have put forward. I feel it is a bit of a slap in the face that two days before this hearing, the Administration published its proposed rule on deed

restrictions. Not taking sufficient time to reach out to others and not seeking input is what got us into this situation. I do not think it is the correct recipe to get us out of it.