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Gale A. Brewer, Borough President

Testimony of Manhattan Borough President Gale A. Brewer for the 2019 Charter Revision Commission

Dear Members of the Charter Revision Commission: As promised when presenting my live testimony at your Commission's hearing, I submit here my complete testimony regarding proposed changes to the New York City Charter.

Real estate plays the most critical role in the physical shape of our city, so let me start with my suggestions for changing land use procedures, some of which were derived from the excellent work done by the Inclusive City Working Group.

One. The Charter should be amended to improve the current Uniform Land Use Review Procedure (ULURP) (§197-c) through a provision to allow pre-ULURP input from communities, community boards, and city elected officials during the pre-certification process.

Under this proposed change, prior to filing a ULURP application an applicant would be required to, 1. contact the affected community board (CB) and borough president (BP) prior to submission of an environmental scope; 2. request written feedback on a draft scope and the draft ULURP application from the affected CB and BP.

Upon receipt of the applicant's draft scope and application the affected CB and BP would have 60 days to respond in writing with their comments. The applicant would then have to

responding in writing to the comments. The comments and applicant responses would then be included with the full application prior to filing. To avoid delay, the 60 day review period would run concurrently with the pre-certification process.

This form of ULURP pre-planning would enable CBs and local elected officials to help shape a project in a timely way by identifying and raising concerns about an application prior to finalizing environmental scope and the starting of the ULURP "clock," thereby helping to ensure that community input is pro-active rather than reactive.

Two. In cases involving the designation of zoning districts and amendments to the Zoning Resolution, and in which a city agency or a local development corporation is the applicant or co-applicant, the procedure for submitting amended applications (e.g. an "a-text") during ULURP should be widened to allow the BPs to submit amended applications with their ULURP recommendations. Amended applications of this type should be restricted to the same geographic scope as the original and contain only those documents and provisions that pertain to the amendment, such as an amended text amendment or amended sketch map and zoning docket for a zoning map amendment.

This would allow BPs to play a more pro-active role in ULURP. Firstly, this would give the City Planning Commission (CPC) more options to choose from, as they would have both the original application as submitted by the agency or LDC and the BP's amended application. Secondly, this would allow place more options within the scope of ULURP and CEQR for the Council, as the BP's amended application would have been studied pursuant to CEQR and heard by the CPC. For instance, during the Inwood rezoning, this would have allowed the Manhattan BP to submit an amended zoning text amendment to propose retail size restrictions in portions of the rezoning area,

as both she and the community board recommended. Then the Council could have adopted these size restrictions as they would have been within the scope of ULURP and CEQR.

Three. Under the current Charter, the Director of the Department of City Planning also serves as Chair of the City Planning Commission. The Mayor appoints seven members of the Commission, and the five Borough Presidents and the Public Advocate each appoint one member (§192). I believe that the Charter should be amended to make the City Planning Commission (CPC) more independent through the following changes:

1. The Director of the Department of City Planning (DCP) should not also serve as Chair of the Planning Commission (CPC).
2. The appointment of the CPC Chair should require the advice and consent of the City Council. This provision would strengthen oversight and accountability of the Commission and heighten due diligence by Council Members.
3. To avoid conflicts of interest and ensure that proposals are independently reviewed by the Planning Commission, the Chair and Commissioners should be at "arms-length" from any involvement in the planning process at DCP.
4. To help ensure the independence of the Commission the Mayor's number of appointees should be reduced from 7 to 5. This change, in concert with a requirement for a Commission Chair independent of City Planning, would help limit actual or perceived undue influence in cases where the Commission is evaluating proposals drafted by City Planning at the direction of the Mayor's office.
5. In summary, to avoid conflicts of interest, and to ensure that plans developed by DCP are evaluated and modified impartially by the Commission, the Charter should mandate that the Commission be an independent body whose responsibilities are separate from those

of the DCP or the Office of the Mayor, and that the Chair of the Commission is not a member of the Department of City Planning.

At present, the independence of the Chair and Commission in such matters is facially compromised. In several recent complex and controversial re-zonings, the Commission has seemed unable to make decisions that conflict with Mayoral policy or the proposals of City Planning. In such cases, where affected communities have raised substantive objections or alternatives, the Commission's acquiescence with Mayoral preferences is now viewed as a *fait accompli*. Among the Charter's most important functions is to ensure that policy is made transparently and objectively, and that requirements to do so have the force of law. Where the Charter does not specify rules of procedure and compliance to further these aims, it contributes to abuses of the public trust, and to a loss of belief that government will act fairly, equitably, and transparently, and be answerable to the public and before the law.

Four. Under §191-b of the Charter the Department of City Planning is charged with conducting continuous studies to serve as the basis for planning recommendations, assisting the Mayor in the preparation of strategic plans, and performing such functions as are assigned by the Mayor. The Mayor's office has periodically commissioned strategic plans such as *PlaNYC*, or topical plans like *Housing New York*, but DCP has not prepared a comprehensive city-wide plan since the 1960s.

Instead, DCP has adopted an ad hoc approach to neighborhood planning, and proceeded with rezonings where there is local political support. One result of these collaborations is that key decisions about whether or how to rezone a neighborhood for increased density, and who may benefit, are often made without a full, open public process.

Under the de Blasio administration neighborhoods selected for rezoning have been predominately those housing low income communities of color. To justify targeting these communities, DCP has cited their higher concentration of vacant lots, parking lots, and single-story buildings suitable for development, and the DCP's effort to minimize residential displacement when rezoning occurs. Despite this approach, current rezoning practices are incentivizing the displacement of residents in many low-income neighborhoods. By contrast, white middle class areas have succeeded in getting DCP to approve down-zonings or the creation of historic districts that restrict development. These policies are shocking in the face of a housing crisis with 60,000 homeless, a significant proportion of whom are low-income working families with small children.

It should be a primary goal of the city to address such disparities, and the ad hoc policies that create them, by directing the DCP to act under its Charter mandate to begin a comprehensive, long-term planning process. Among the benefits would be a highly public dialogue about how to, 1. implement such a process; 2. reform zoning practices; 3. identify and categorize all sites where new affordable housing could be developed. To this end, the authors of *Inclusive City*[1] remind us that a planning process should first identify community/district targets for housing creation and public facilities siting. If done city-wide, with local consultation and visioning, this approach would help ensure that site proposals for new housing are equitably allocated according to need regardless of neighborhood income level or racial composition.

Therefore, the Charter should be amended to require, 1. the Department of City Planning to prepare or revise, every ten years, a comprehensive, city-wide planning proposal (a "comprehensive plan"); 2. require a city-wide ULURP to approve the proposal prior to its adoption. Once adopted, the Charter should require, in compliance with State law, that subsequent rezoning proposals comply with the most recent version of the comprehensive plan.

[1] *Inclusive City,* January 2018, Regional Plan Association

Five. The review process for modifications to CPC Special Permits needs reform. Modifications to Special Permits that would increase the amount of floor area, or the height or bulk of buildings, or that would decrease the amount of open space constitute "major modifications" and must undergo a second ULURP.

At present, applications to modify Special Permits are reviewed by DCP staff to determine whether a modification is "major," and therefore subject to ULURP, or "minor," in which case it is approved or disapproved by vote of the CPC. For example, if a proposed modification to a Special Permit would have been allowed "as of right"- i.e., not requiring a waiver for changes to a building's height or set back - then it is ruled a "minor" modification. However, for large scale projects in which a new building is added to a site, changes to height, setback, and floor area ratio would be considered "major" modifications. However, neither the Charter nor the Zoning Resolution contains criteria for which modifications would be considered "minor." Such criteria also do not exist within the ULURP rules.

A timely example is the proposed Two Bridges mega development in Manhattan. The developer applied to modify a Special Permit to allow R10 zoning on the site. The zoning change will significantly increase allowable floor area for a project whose environmental impact statement identifies significant, unmitigated adverse impacts. Yet it was assigned "minor" status by the DCP, thereby avoiding ULURP. Many well-informed elected officials, including members of the City Council and the Manhattan Borough President, objected to this ruling.

The DCP's "rule of thumb" approach should be replaced with Charter-mandated standards that include provisions for public review and appeal and a procedure to challenge DCP staff determinations. A modification that differs substantially from what was presented during the public review process should go through ULURP. At a minimum, the charter should specify that any

modification to the site plan or zoning calculations that would increase the amount of floor area, decrease the amount of open space, or increase the height or bulk of buildings should go through ULURP, in addition to any other changes not provided for under the Zoning Resolution. The Department of City Planning could then submit an application to modify the Zoning Resolution to specify what would constitute a minor modification. For instance, a change in curb cut location might constitute a minor modification.

Six. The Charter should be amended to authorize the City Council to determine if modifications to a zoning proposal are within the scope of the existing application and environmental review. The Council has the expertise and experience to make scope determinations, as did the Board of Estimate. When ruling on a modification the Council has before it the same information as the Planning Commission and is fully capable of determining whether a modification is "in scope" and compliant with environmental and other restrictions. There is no need, therefore, to have City Planning serve as a watchdog over such modifications.

Currently however, under §197-d, if the CPC finds that a Council determination on a modification requires additional review pursuant to §197-c or additional environmental review, the Council's determination is not adopted. The Charter should be further amended to remove the CPC's power to overrule a Council determination in matters of this kind.

Seven. Two additional concerns that should be addressed by Charter amendment are Deed Restrictions and Zoning Lot Mergers. Regarding Deed Restrictions, the placement and removal of such restrictions has had a dramatic impact on community facilities and resources. To provide for a full review of such impacts, changes to Deed Restrictions should be required to go through ULURP.

In the matter of Zoning Lot Mergers, I recommend amending the Charter to require that requests for zoning lot mergers and Zoning Lot Development and Easement Agreements be made publicly accessible through an online map portal.

At present, property owners may create a merged zoning lot from two or more existing lots that are contiguous for at least 10 linear feet. This effectively allows underbuilt properties to transfer their unused development rights to another part of the merged zoning lot.

The transfer of development rights in zoning lot mergers often occurs as-of-right, and such transfers have played a major role in shaping the built environment of the city. Combining the development rights of a merged lot into one site often leads to taller buildings that stand out from their context and subvert the expectations of the community. However, these transactions are notoriously difficult to follow and analyze through the Automated City Register Information System (ACRIS) of the Department of Finance. Given the importance of zoning lot mergers and transfers of development rights, and in order to create more transparency and predictability, the administration should be required to create and maintain a navigable online platform dedicated to the accounting of development rights and that displays the geographic location of properties on a map.

Eight. The Charter should be amended to require the DCP to conduct a review of our Zoning Resolution every 10 years. The review should, at a minimum, encompass all the uses within the 18 use groups in the Zoning Resolution. In this review the Department should add uses that were not anticipated in the 1961 Zoning Resolution and remove uses that have become obsolete. The Department also should undertake comprehensive zoning reform on a decennial basis.

Under Charter §191-b, the DCP is charged with conducting continuous studies to serve as the basis for planning recommendations, assisting the Mayor in the preparation of strategic plans and

performing such functions as are assigned by the Mayor. Section 200 empowers the CPC to adopt a resolution to amend the zoning text.

The Zoning Resolution, as we know it today, took effect in 1961 and was the last citywide comprehensive review of zoning. Since then, new zoning approaches have been developed and advanced to deal with some of the problems and opportunities that have emerged. A combination of incentive zoning (e.g. Transit Improvement Bonus and Inclusionary Housing) and contextual zoning, to preserve neighborhood character, have been used to make zoning more responsive. However, uses have not been comprehensively reviewed, with the result that certain uses, such as gyms and dancing, are overly restricted.

Physical culture and health establishments, otherwise known as gyms and spas, require a special permit under the Board of Standards and Appeals. This was instituted in the 1970s in order to regulate adult establishments, which were proliferating in parts of the city. Today this restriction is not only outdated but poses an administrative burden on the Board of Standards and Appeals, which must consider and vote on each new physical culture establishment that is built in the City. Dancing is also restricted in the Zoning Resolution, despite the recent repeal of the Cabaret Law. These kinds of anachronisms would be eliminated with regular comprehensive review of the Zoning Resolution.

The DCP proposed Zoning for Quality and Affordability, a citywide zoning text change, three years ago. The zoning changes contained therein rationalized our building envelopes and enabled the development of affordable housing. The Department should undertake the same process for other use groups.

However, use groups are not the only issue. Too often we have seen workarounds where developers have created bizarrely-shaped zoning lots to evade the intent of the Zoning Resolution. As an example, this has let developers avoid following narrow street rules by arranging for a tiny

frontage on a wide street and slicing off the tip of the lot that abuts the narrow street. The definition of a zoning lot should therefore be tightened to prevent evasion of the intent of the Zoning Resolution.

The Zoning Resolution serves as a framework for the development of the city. Taking a comprehensive look at how it regulates bulk and use would further our ability to respond to changes in technology, policy shifts, and innovative design. Furthermore, 50 more years should not be allowed to elapse before the next comprehensive review. Periodic review of the Zoning Resolution should mirror that of the Census and be conducted every ten years.

Nine. I am a strong believer in our most local form of government: Community Boards. I have worked hard to make these bodies the best that they can be. My office has developed online applications and thorough and impartial interviewing practices. My advocacy has enabled the appointment of 16 and 17 year-old members to the boards. We match appointments to the demographics of the neighborhood, and in my five years as Borough President we have had a 60% change in membership through robust outreach, natural turnover, and attention to attendance. And my office has instituted in-service training for board members on everything from land use to data science to parliamentary procedure.

Community Boards are our front line in promoting neighborhood planning and in defending neighborhoods from developers who seek only maximum profit from their projects in our communities. Longtime members build up the knowledge and expertise that enable boards to negotiate effectively with very seasoned developers and lobbyists. (This is why I oppose term limits for CB members and, since that measure passed on the ballot this fall, I urge this Commission to reverse this policy—which will only benefit developers, and not local communities or the city as a whole.)

The Charter should be amended to increase the planning capacity of community boards with assignment of one full-time urban planner at each board. At present the Charter specifies that community boards shall have district managers and may have other professional staff and consultants. (§2800(f)) However, it is rather rare for community boards to have a full-time planner on staff. This limits the ability of the boards to analyze land use actions and to conduct pro-active planning.

Community Boards need greater technical capacity to both analyze proposed land use actions and to conduct pro-active community planning. At present boards that have members with technical expertise and spare time can craft much more thoughtful recommendations on proposals than Boards without such expertise and can also generate their own proposals for the future of their community districts. However, all Community Boards should have a baseline level of planning expertise, adequate to address the complexity of the zoning process.

The Charter now requires that each borough president provide technical assistance to the community boards within the borough. Given that borough presidents' offices already contain professional planning staff and are charged with providing technical expertise, they are well-positioned to hire planners for their respective community boards. Furthermore, if the planners could split their time between the boards' offices and the borough presidents' offices, they could have access to further technical and legal expertise at their respective borough president's office while also conducting the community planning work at the community board.

Ten. I would also like to address the role of the Landmarks Preservation Commission. The Charter currently requires that the commission be comprised of, among others, at least three architects, one historian and one city planner or landscape architect (§3020). The participation of architects and planners is essential, but there should also be at least two trained preservationists on

the commission. The Charter §3020 should be amended to require this. The commissioners should also receive a stipend (as do City Planning Commissioners).

Eleven. I turn next to budgeting as another key part of governance. In the last major charter revision, the New York City Council was given a robust role in setting spending priorities. The Mayor's preliminary budget is presented to the Council (§235) and it conducts in-depth hearings on every aspect of the proposed budget (§247). The Council then makes findings and recommendations, and it may propose changes down to every "unit of appropriation" in the budget (§247b). However, the ability of the Council to effectively analyze and shape budget priorities is sharply limited by the language and interpretation of "units of appropriation," which allows an agency to include its entire budget expenditure in a single "unit of appropriation" (§100c).

By requiring the full breakdown and details of what the Council is being asked to approve—including a reconciliation of year-over-year changes—and by prohibiting an agency from categorizing all of its spending in one unit of appropriation, the Council could actually play a key role in the most basic form of governance – determining exactly how and when the taxpayers' money should be spent.

Similarly, requiring service-level information and performance measures for each unit of appropriation in the budget would add to transparency and, therefore, to more-informed decision making. This change would also enable the Borough Presidents and Community Boards to make effective and informed comments on the preliminary budget.

The Charter should require that the Mayor provide final revenue estimates earlier than is currently mandated. Under the current plan, the Mayor has until June 5th each year to present the estimated amount of revenue available for the budget (§1515). However, the City Council's hearings and recommendations on the budget must be concluded by May 25th (§253). The Charter should

require that the Mayor's revenue estimate be made available to the Council before the May 25th date, so that their budget proposals are based on the most recent Mayoral estimate.

One final item that is budget-related: about a year ago, New York City became the first municipality in the nation to begin funding legal representation in civil cases – specifically for low income tenants who face eviction. Even though the program has been rolled out in only 15 zip codes throughout the city, it has provided services to nearly 90,000 New Yorkers facing eviction, nearly 85% of whom were thereby able to avoid eviction and remain in their homes. As we search for answers to our homeless crisis, this one piece of the puzzle, preventing eviction (and thereby the loss of affordable apartments) is being realized. I believe that in order to ensure that we can fully promote justice and prevent homelessness through the newly-created Office of Civil Justice and the Universal Access program, the office and program must be Charter-mandated.

Twelve. While working to keep our laws as effective and reflective of our values as possible, we must not overlook the role of the Charter in ensuring the just implementation, interpretation and enforcement of the law. Thus, independent and unconflicted legal counsel is essential to effective government. The Office of the Corporation Counsel provides legal guidance not only to the Mayor, but to all of city government including the heads of mayoral and non-mayoral agencies, as well as other elected officials. (§394)

However, the position of Corporation Counsel should not continue to be solely a Mayoral appointment. (§6a; 391) Among the ten most populous cities in the U.S., only three - New York, Phoenix and Chicago - have a city attorney appointed only by the mayor. The remaining seven provide that the city attorney, at a minimum, have city council approval. New York City needs and deserves an independent Law Department. We have certainly learned the importance of this principle recently while observing the meddling and attempt to control our Federal Department of

Justice. At present, I believe that the capacity of the Law Department to provide unbiased, independent guidance to members of city government is compromised when its leadership, the Corporation Counsel, is appointed by a single person. For this reason, I recommend that the appointment of the Corporation Counsel require the advice and consent of the City Council.

Similarly, the Mayor currently appoints all five members of the Conflicts of Interest Board and designates the Chair (§6a; 2602). The Board is one of the city's most dynamic resources, providing vital advice and education to all city employees in ethics, propriety and avoiding violation of our laws against conflicts of interest. The Board also receives, sometimes anonymously, questions and information regarding potential conflict violations. As one of our most sensitive offices, we must never allow even a perception that the Board is unduly influenced by any sitting Mayor. With all members serving at the pleasure of a single individual, the Mayor, the danger of undue influence or its appearance is ever-present. Therefore, I recommend that the Charter require that the City Council appoint at least two members of the Conflicts of Interest Board, and the Comptroller appoint one member.

The Civilian Complaint Review Board (CCRB) plays a vital role in ensuring that everyone in our city receives equal protection of the law and provides a fair and effective process for handling complaints of police misconduct. In order to truly fulfill its mandate, some changes should be made to the Charter provisions governing it (§440). The current Memoranda of Understanding (MOUs) that provide for the Administrative Prosecution Unit and that set forth the New York Police Department's (NYPD) duty to cooperate with the Board beyond the investigation stage needs to be codified and made permanent in the charter.

Most importantly, the CCRB's budget should be set permanently at 1% of the NYPD budget. By tying the two budgets, we ensure that as NYPD's resources grow or change, the CCRB can

continue to fully carry out its responsibilities and investigate and pursue new issues that arise. In addition, the Charter should provide CCRB staff with subpoena power to help ensure that investigations include all relevant facts and evidence.

Thirteen. Given the city's experience with both the dismal voter turn-out and exorbitant expense of run-off elections when a candidate fails to receive over 50% of the vote, I urge this Commission to propose the adoption of instant run off, or "ranked choice voting" for all primary and special elections in the city.

Fourteen. Finally, I will take up several issues pertaining to the position of Borough President. In the 1989 Charter Revision, when the Board of Estimate was abolished, a funding formula for was established by which each Borough President would receive capital funding to disburse in their borough to community-based organizations, schools and parks. The formula was arrived at based on the land area and population of each borough. The capital funding distribution is an important role of Borough Presidents, and my office has funded park renovations, street improvements, and other infrastructure projects. But according to a recent NYU study, Manhattan's population doubles each day as an additional 2 million commuters from the entire tri-state area flock to Manhattan to use (and wear out) its infrastructure. This dramatic daily population spike is not reflected in the funding formula for Borough Presidents, and it should be. We bear what is now a hidden cost to mitigate the impact on city infrastructure and provide amenities (from parks and pedestrian plazas to street safety improvements) that benefit millions of daily commuters and 60 million tourists per year. The funding formula must be amended to reflect these costs.

In addition, the budget of each Borough President should include funding for the positions of Borough Engineer as well as and a Compliance Officer, now necessary due to new reporting

mandates under Personal Identification and Privacy Laws, prevention of sexual harassment programs and new Diversity and Equal Employment programs.

Thank you for the opportunity to testify, and for your contribution to the critical work of revising the Charter to improve the city's governance and provision of services, and to ensure that the Charter embodies our best ideas and highest values.

January 3, 2019