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Gale A. Brewer, Borough President

Testimony of Manhattan Borough President Gale A. Brewer In Response to The 2019 Charter Revision Commission Preliminary Staff Report

Good evening, Members of the 2019 Charter Revision Commission. Thank you for the opportunity to be here. I submit the following comments and suggestions in response to the Preliminary Staff Report issued by your Commission.

First, I would like to commend the members of the Commission and the staff for the tremendous work being done. It's clear that you are genuinely dedicated to identifying the best proposals for reform of our City Charter. The testimony from experts, and your questioning, have both added to our understanding of the issues, and sharpened the choices you face.

I would like to first address the land use issues, since that is a major area of responsibility of my office.

I believe your staff identified the significant issues around the current Uniform Land Use Review Procedure (ULURP) (§197-c). I again strongly urge the commission to adopt proposals to change the procedure to allow pre-ULURP input from communities, community boards, and city elected officials during a pre-certification process.

Such a ULURP pre-planning process would enable CBs and local elected officials to more effectively 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.

Although not addressed in the staff report, I reiterate my argument that the Charter should be amended to provide that, 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 (i.e., 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. They would also be limited to amendments that could be fully studied within the ULURP timetable.

This would allow BPs to play a more pro-active role in ULURP, by enabling them to provide the City Planning Commission (CPC) with options to choose from, and by allowing them to 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.

Regarding the proposal that I, and I know many others, made for regularized, comprehensive city-wide planning, the Preliminary Staff Report, while noting that the Charter currently includes approximately a dozen different processes for borough or city-wide planning, reported significant disillusionment and confusion among the public relating to comprehensive planning for development. I believe that the various planning provisions in the current Charter support the need and public desire to see comprehensive, fair, comprehensive, cohesive city-wide planning.

The need is, I believe, made starkly clear during this current period when the city is undertaking an *ad hoc* approach to neighborhood planning, and in fact has proceeded with substantial rezonings in diverse neighborhoods where there may be support from local elected officials, but not from other neighborhood stakeholders and residents. A result of these undertakings 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, at least in the public's perception.

Under this 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 cited their 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.

Therefore, I continue to urge the commission to propose amendments to the Charter to require the Department of City Planning to prepare or revise, every ten years, a comprehensive, city-wide planning proposal that examines the appropriateness of development locations based on density, resources, need and all other appropriate factors to ensure fairness to all our communities.

Additional Land Use Reform

I'm disappointed that the preliminary staff report does not address a number of my suggestions for important changes to the Charter:

1. The placement, and even more importantly, the removal of existing City Deed Restrictions have had a dramatic impact on community facilities and resources. Currently, a lack of transparency has disrupted communities and undermined their faith in local government. To provide for a full review of such impacts, changes to Deed Restrictions should be required to go through ULURP.

2. 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 and notice provided to local community boards. Today, 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.

3. The process and standards for modification of CPC Special Permits must be clarified. 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.

The DCP’s current approach must be replaced with Charter-mandated standards. 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 must 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.

4. 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 amended to remove the CPC’s power to overrule a Council determination in matters of this kind.

I further urge the Commission to propose a Charter amendment requiring decennial review of the Zoning Resolution.

DCP/CPC Reform

In addition to changes in Charter provisions relating to land use review and zoning, I strongly urge the Commission to consider proposals for reform of the CPC itself.

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. 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.
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 number of Mayoral 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.

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.

Ranked Choice Voting

I strongly support the Staff's recommendation for further consideration of Ranked Choice Voting ("RCV"). However, I urge the Commission to propose adoption of RCV. I also suggest that the proposal include creation of a body charged with its eventual implementation, whose job will also be to ensure that whatever method and details adopted for the program achieve the goals of fairness and inclusivity.

The CCRB

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. I strongly agree with the proposals made in the Preliminary Staff Report for reforms to the Charter affecting the CCRB, including changes to the appointment of the members of the Board, the imposition of obligations on the Police Commissioner to provide explanation for deviations in recommended discipline and adoption of a disciplinary matrix, the delegation of subpoena power to senior staff and the granting of permission to the Board to investigate and impose discipline in cases of false representations during ongoing CCRB investigations. These are all necessary reforms that will make the Board a more effective body. However, I urge the Commission to also consider two other reforms:

The Charter should be amended to codify the current Memoranda of Understanding (MOUs) that provide for the Administrative Prosecution Unit and that set forth the duty of the New York Police Department (NYPD) to cooperate with the Board beyond the investigation stage of a proceeding.

It is equally important that 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. If our city is serious about ensuring fair and equal treatment for all citizens, we must ensure that the body charged with making that promise a reality is funded sufficiently to do so.

Corporation Counsel and Conflicts of Interest Board

Independent and unconflicted legal counsel is essential to effective government. Because 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, I agree with the recommendations in the Preliminary Staff Report that the appointment of the Corporation Counsel require approval of the City Council. I also agree with the proposal that the Law Department promulgate rules, to be formally adopted, pertaining to conflicts of interest and procedures to be followed in the event such conflict arises between opposing parties represented by the Department.

Similarly, the Mayor currently appoints all five members of the Conflicts of Interest Board ("COIB") and designates the Chair. 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. As one of our most sensitive offices, we must never allow even a perception that the Board is unduly influenced by any sitting Mayor. Therefore, I support the recommendation of the Staff Report that the structure of the COIB be adjusted to include members appointed by the Public Advocate and Comptroller, whether by increasing the number of Board members or changing the appointing authority of the existing five members.

Landmarks Commission

The Landmarks Preservation Commission is another important body within the structure of our city government which I strongly believe requires reform through Charter revision. 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. I believe the Charter should also require the inclusion of city planners and at least two trained preservationists on the commission.

Borough Presidents

As noted by the Preliminary Staff Report, the offices of the five Borough Presidents are granted specific obligations and authority within the current Charter, but the powers to execute those duties are somewhat stunted. I fully support the proposals to require city agencies to provide the Borough Presidents with requested documents, and to ensure that agencies cooperate through meaningful engagement in borough services cabinet meetings. However, as I first testified, there are other crucial issues in the area of Borough President offices that should be addressed.

In the 1989 Charter Revision, when the Board of Estimate was abolished, a funding formula 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. While this formula may seem reasonable on its face, the Borough of Manhattan is grossly shortchanged by it. According to a recent NYU study, Manhattan's population doubles each workday as approximately 2 million commuters from the throughout the tri-state area enter Manhattan to use (and wear out) its infrastructure. This dramatic daily population spike is ignored in the current funding formula and it must be amended to reflect this reality.

In addition, as I previously testified, the budget of each Borough President should include funding for the positions of Borough Engineer as well as a Compliance Officer, now necessary due to new reporting mandates under Personal Identification and Privacy Laws, implementation of sexual harassment prevention programs, and new Diversity and Equal Employment programs.

City Budget

As noted in the Preliminary Staff Report, in the last major charter revision, the New York City Council was given a robust role in setting spending priorities. However, the elastic interpretation of “units of appropriation”, continues to stymie that role.

The Charter should be amended to clarify that city agencies are required to submit a full breakdown and details of what the Council is being asked to approve—including a reconciliation of year-over-year changes—rather than permitting an agency to categorize all of its spending in one unit of appropriation.

Although not part of the Staff recommendation, I believe the Charter should be amended to require that the Mayor provide final revenue estimates earlier than is currently mandated.

I also urge the Commission to reconsider my original recommendation that the Office of Civil Justice and the Universal Access Program be included as a Charter-mandated part of the city government.

Community Boards

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.

The Charter should be amended to increase the planning capacity of community boards with assignment of one full-time urban planner at each board. Community Boards need greater technical

capacity to both analyze proposed land use actions and to conduct pro-active community planning. All Community Boards should have a baseline level of planning expertise, adequate to address the complexity of the zoning process.

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.