

**Testimony of the Landmarks Preservation Commission  
before the Land Use Committee of the City Council on Intro. 775 and Intro. 837  
September 9, 2015**

Good morning Chair Greenfield, Landmarks Subcommittee Chair Koo, and Members of the City Council Land Use Committee. I am Meenakshi Srinivasan, Chair of the Landmarks Preservation Commission. I am here today with Sarah Carroll, our Executive Director and Mark Silberman, our General Counsel. Thank you for giving us the opportunity to testify on two bills to amend the Landmarks Law: Intro. 775, which would establish time periods for the Commission to take action on items calendared for potential landmark designation; and Intro. 837, which would require the agency to publish an on-line database of all designated items and items under consideration for designation.

I will address each bill in turn, but first I would like to acknowledge our support for the goals of these bills, which seek to enhance the efficiency, predictability and transparency of the Commission's processes. These are admirable and important characteristics of good government, we embrace them and, in fact, we have implemented several reforms and policy changes to achieve these objectives. However, as a threshold matter, because the bills seek to regulate and dictate internal agency processes, we believe the goals are best achieved through internal policy changes and, if necessary, agency rulemaking. Rulemaking, which requires public notice and a hearing allowing stakeholders a voice, has traditionally been the mechanism to regulate policies and procedures, is a more efficient way to implement binding requirements, and is more agile in responding to stakeholders needs and to changing conditions that render the rule less effective..

In addition, we believe that both bills, as currently drafted, are unworkable and have the potential to undermine the Landmarks Law and the agency's ability to work efficiently. With respect to Intro. 775, our greatest concern is the 5-year moratorium provision to recalendar properties, which would severely compromise the agency's ability to carry out its mandate to designate historically significant sites. We are also concerned that there is no provision to extend the deadlines for designation under certain circumstances. With respect to Intro. 837, we believe the bill is far too broad by treating properties identified in internal staff surveys or

the subject of a Request for Evaluation submitted by the public, as “considered for designation”. Such properties are not the same as calendared properties that are actively considered for designation. This treatment in the context of an on-line database could potentially be misinterpreted and set unclear expectations for the public, and the mandate to create such a database would be expensive and take away resources from agency mandates, including on-going designations and processing of permit applications.

**Intro. 775:**

I would like to now discuss Intro. 775 in more detail. The Landmarks Preservation Commission’s authority to identify and designate historically, architecturally and culturally significant sites is one of our agency’s primary functions and is at the core of our mission. We believe that establishing reasonable timeframes would assist the agency in meeting its statutory mandate in a responsible manner.

I want to affirm my commitment as Chair to advance proposed items through the designation process efficiently and fairly. Since assuming this position, I have introduced reforms to make the designation process more transparent and timely. In fact, every Individual landmark that has been calendared under my tenure (including Stone Avenue branch of Brooklyn Public Library, Stonewall Inn and the Bank of Manhattan Tower, aka Queens Clocktower) has been designated within two months of calendaring. Similarly, we designated Chester Court Historic District in two months, and the Mount Morris Historic District Extension, which was calendared in April, is scheduled for vote in late September --approximately five months from calendaring. This commitment applies equally to the agency’s backlog of calendared properties. When I became Chair, I found that 95 properties had been calendared for more than 5 years, 85% of which had been calendared for more than 20 years. On July 8, the agency released a detailed plan for addressing these 95 items. In summary, this plan set outs a process for notification and public input on the backlog properties, and then advances such properties to Commission action within a timeframe of 18 months.

While these reforms address past practices, we understand the need to ensure that such reforms continue under different administrations and provide future accountability. However, as I already stated, we believe that the goals of Intro. 775 would be best addressed by the Commission promulgating rules to establish timeframes.

As for the specific provisions of Intro. 775, we have the following concerns on details of the proposed legislation:

First, regarding the timeframes from calendaring to action, we believe a one-year timeframe is reasonable for individual, interior and scenic landmarks, but that three years, instead of two, is more appropriate for historic districts. Potential districts vary in size from less than a 100 buildings to more than a thousand, and the extent of research and public outreach, including the need to have multiple public hearings, vary as well. The additional time will ensure a fair, transparent and, if necessary, iterative process for property owners and other stakeholders.

Furthermore, we believe that the requirement that a public hearing be held not later than halfway between calendaring and the action date is overly prescriptive. The Commission determines the public hearing date based on various factors including accommodating property owners or a change in ownership, staff assignments and agency resources, and the Commission's schedule. In addition, one of my reforms with respect to the designation process includes conducting a significant amount of research prior to the public hearing -- this allows for a potentially briefer time period between a public hearing and a vote. Therefore, while overall timeframes may be reasonable, we believe the agency needs to have the flexibility to determine when to hold a hearing within that timeframe.

Second, as noted earlier, we strongly oppose the five-year moratorium to reconsider an item for designation if the Commission fails to meet the public hearing timeframe, or votes not to designate or fails to designate an item at the end of the timeframe. We believe that there is no public policy objective served by curtailing the Commission's ability to rehear an item that is meritorious, and such provision interferes with our ability to carry out our legal mandate to protect historically significant properties. There may be several impediments to designation (or lack of action), including the need for more research or owner outreach, significant opposition,

or lack of political support, none of which relate to the merits of the item, and therefore reconsideration may be warranted in the near future. Even when the Commission has voted not to designate, which is a vote on the merits, the Commission should be able to reconsider based on new information previously not in the record.

Third and finally, we strongly believe that the legislation should include a provision to allow the Commission to extend the timeframe for designation under certain conditions including accommodating an owner's needs.

**Intro. 837:**

Moving now to Intro. 837, we concur that information on designated and calendared properties should be available to the public. I have introduced several reforms to increase transparency in all aspects of the agency's work, including providing a searchable database of all designated properties, putting designated properties on CityMap (the City's on-line map portal) with links to the Commission's designation reports. We are also posting all public hearing permit application presentations (including modifications) as well as Commission decisions on these applications. We launched the designation database in September 2014, and the permit presentations in March 2015. We have also been providing information on our website about recently calendared items.

We support the goal of providing more information about properties under active consideration. To clarify, the Commission formally considers a property for designation only when it votes to calendar a property at a public meeting. We believe that adding all calendared items to the online database of designated items, along with any scheduled hearing or meeting dates, and information on the significance of each item, would enhance the public's knowledge of the Commission's work as well as allow for more robust discussions at designation hearings. Calendared buildings should be added to CityMap, and we are prepared to do this immediately. However, it should be stressed again that many of these changes are already in place or in the

works and should not be the subject of legislation, but instead can be accomplished by the agency's commitment to implement these changes within an agreed upon timeframe.

With respect to the specifics of the bill, we have serious concerns about the scope of properties covered by the definition of "items under consideration for designation." As defined in the bill, this includes items officially calendared by the Commission as well as "properties or neighborhoods surveyed," and buildings and districts for which a member of the public has submitted a "Request for Evaluation" or "RFE." By treating surveyed or RFE properties as properties under consideration for designation, the bill manifests a misunderstanding of the Commission's process for identifying and proposing items to be considered for designation.

An RFE is a request by the public to evaluate a building or district to determine eligibility for possible designation. It is not an application, nor the first step in the designation process. Similarly, surveys are internal, non-final and non-public research documents and planning tools, and the agency constantly evaluates, analyzes, and updates these surveys. While, both are effective tools to assist the Commission in identifying meritorious buildings and districts, they neither automatically nor directly lead to designations, and therefore should not be characterized as "items under consideration." The process of identifying, analyzing and prioritizing items for consideration is far more nuanced. To flag these properties on an on-line database would not enhance transparency but, rather, convey misinformation to the public, set unclear expectations, and result in ambiguity about the Commission's intentions.

It could also unnecessarily put such buildings at risk. While it doesn't happen very often, there have been instances in the past where property known or thought to be under consideration by the Commission has been modified or even demolished in an attempt to avoid designation.

Finally, the requirement that the Commission create and maintain a database of RFE's and agency surveys, and post a significant amount of information, including "copies of relevant documents" related to each item would be extremely burdensome. We receive over 200 RFE's

and survey over 2,000 properties each year. We see little justification for expending scarce agency resources on compiling, uploading and maintaining updated information about properties that are not under active consideration.

In conclusion, we support the underlying goals of Intro. 775 and Intro. 837, have been advocates for good government practices, and have implemented reforms related to designation timeframes and the backlog, as well as provided information to the public on calendared and designated properties. While we believe that changes in these areas are most appropriately accomplished through the agency rulemaking process and internal policies, we hope that our serious concerns regarding the moratorium, the lack of provision for the Commission's discretion to extend the timeframes for certain circumstances, and the requirement to maintain a database of items beyond those that are calendared, will be given serious consideration and incorporated in any approved legislation and we are open to working with the Council toward this end.

Thank you for giving us the opportunity to testify before you today, and we are happy to take any questions.