

# City of New York

## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## AUDITS AND SPECIAL REPORTS

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Deputy Comptroller for Audit

Audit Report on the City's Oversight over  
Privately Owned Public Spaces

SR16-102A

**April 18, 2017**

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, NY 10007

SCOTT M. STRINGER  
COMPTROLLER

April 18, 2017

To the Residents of the City of New York:

My office has conducted an audit to determine whether the City adequately oversees Privately Owned Public Space agreements (POPS) with building developers and owners. Two City agencies oversee different aspects of developers' and owners' compliance with their POPS agreements: the New York City Department of Buildings (DOB) and the New York City Department of City Planning (DCP). DOB enforces the City's Building Code and Zoning Resolution. In addition, DOB is responsible for issuing violation notices to owners when POPS are found to be out of compliance with applicable agreements. These violations carry penalties of \$4,000. In the event that the building owner defaults on this violation the penalty increases to \$10,000. DCP, the other agency that has responsibility for POPS, is responsible for overseeing land use in New York City. DCP currently certifies POPS' compliance with zoning regulations prior to a developer obtaining a foundation permit and conducts periodic compliance reviews for POPS compliance. We perform audits such as this to ensure compliance with agreements and applicable local laws and to improve the quality of life for New York City residents.

This audit found that the City is not adequately overseeing POPS agreements. We inspected all 333 POPS locations completed and built in New York City and found that more than half (182 of the 333) failed to provide required public access and/or amenities. In some cases, the required amenities simply did not exist; in others, they were non-functioning. We found cases where the general public was excluded from POPS because restaurants were allowed to use supposedly public spaces for restaurant seating and had cordoned off portions of the POPS that were contractually designated for public use. We also found cases where public access was otherwise impermissibly limited or denied entirely. In some instances, these violations had existed for years without any discernable enforcement action taken by the City.

The audit made eleven recommendations, including that DOB should inspect the 333 POPS locations to ensure that all POPS are still in existence, provide the required amenities, and offer full public access as required. DOB should also ensure the completion of an accurate database of all the POPS and ensure that it includes the type, size, hours of operations, and the specific amenities required. Further, DOB should schedule inspections of the outdoor POPS locations during warmer months when certain types of non-compliance would more likely be observed, such as use of a POPS by a restaurant for outdoor seating. The audit also recommended that DCP should develop an advertising campaign to inform the public about all POPS locations and the required amenities required to be provided at each.

The results of the audit have been discussed with DOB and DCP officials, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,



Scott M. Stringer

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# **THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER AUDITS AND SPECIAL REPORTS**

## **Audit Report on the City's Oversight over Privately Owned Public Spaces**

**SR16-102A**

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### **EXECUTIVE SUMMARY**

Privately Owned Public Spaces (POPS) are outdoor or indoor spaces, open for public use that are built and are maintained by the developers and owners of private buildings. POPS are created by building developers in exchange for New York City allowing them to construct buildings at greater heights and densities (and as a result, with greater floor area) than would otherwise be allowed by applicable zoning regulations. POPS may be required to include designated amenities within or outside their buildings. The Zoning Resolution of the City of New York in effect at the time that each of the City's POPS was created (the Zoning Resolution or ZR) sets the standards that govern each POPS. Currently property owners are benefiting financially from approximately 23 million square feet of additional (bonus) floor area in their buildings in exchange for providing POPS at 333 locations in New York City.

Two City agencies oversee different aspects of developers' and owners' compliance with their POPS agreements: the New York City Department of Buildings (DOB) and the New York City Department of City Planning (DCP).<sup>1</sup> DOB enforces the City's Building Code and Zoning Resolution. In addition, DOB is responsible for issuing violation notices to owners when POPS are found to be out of compliance with applicable agreements. Those violations carry penalties of \$4,000. In the event that the building owner defaults on a notice of violation the penalty increases to \$10,000. Challenges to notices of violation issued to a POPS are heard by the New York City Environmental Control Board (ECB), an administrative tribunal that provides hearings on various types of notices of violation issued by City agencies, including DOB. DCP, the other agency with responsibility for POPS, is responsible for overseeing land use in New York City. DCP currently certifies POPS' compliance with zoning regulations prior to the developer obtaining a foundation permit and conducts periodic compliance reviews for POPS created after 2007.

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<sup>1</sup> The agreements are the site plans that are approved by the Department of Buildings, City Planning Commission, the Chairperson of the City Planning Commission, and the Board of Standards and Appeals.

## Audit Findings and Conclusion

Our audit found that the City is not adequately overseeing POPS agreements. We inspected all 333 of the POPS locations and found that more than half (182 of the 333) failed to provide required public amenities. In some cases, the required amenities simply did not exist; in others, they were non-functioning. We found cases where the general public was excluded from POPS because restaurants were allowed to use supposedly public spaces for restaurant seating and had cordoned off portions of the POPS to restrict public use. We also found cases where public access was otherwise impermissibly limited or denied entirely. In some instances, the violations had existed for years without any discernible enforcement action taken by the City. A list of the 333 locations designated as POPS is annexed as the Appendix to this report. It identifies each POPS location by street address and notes where the auditors found violations of the Zoning Resolution during their visits.

Overall, we also found that:

- 275 (83 percent) of the 333 POPS locations had not been inspected by DOB for compliance with applicable requirements in at least four years.
- For the remaining 58 locations—those that had been inspected within the last four years—we found that DOB conducted 87 inspections (multiple inspections were made of several locations). Based on those inspections, DOB issued 18 violations to 10 of the POPS locations inspected.
- Based on our observations of the 58 POPS locations that had been inspected by DOB in the last four years, we found that 41 (71 percent) were not in compliance with their POPS agreements for one or more reasons at the time of our review.
- In 34 of the 87 inspections (39 percent) that DOB conducted in the last four years, we found that the inspections did not occur within 40 days of DOB having received a complaint, the time frame DOB has set as a goal for such inspections.
- Further, we found that although DOB has been responsible since 1961 for enforcing the Zoning Resolution that created POPS, it has not maintained a complete and accurate database of all the POPS' locations and their required amenities. Our findings suggest that, in some cases at least, the lack of a DOB database may have led inspectors to incorrectly indicate in DOB records that a site is not a POPS or that an amenity is not required. DOB informed us during the exit conference that within the past year it has created a unique POPS database.
- Finally, we note that 151 of the 333 POPS locations are not required by the Zoning Resolution to post signs identifying the locations as a POPS because they were built prior to signage requirements being put in effect. Without such signs, however, members of the public would be highly unlikely to know that a location is a POPS. During the period reviewed, DOB inspections were commenced only in response to individual complaints.

## Audit Recommendations

The Department of Buildings should:

1. Ensure the completion of an accurate database of all the POPS and ensure that it includes the type, size, hours of operations, and the specific amenities required.
2. Ensure that the database can be accessed by DOB inspectors.

3. Train inspectors on how to access the database to get information on the POPS.
4. Ensure that DOB's Buildings Information System identifies all POPS locations.
5. Develop a monitoring policy that requires all POPS to be inspected by DOB at sufficiently frequent intervals to ensure effective enforcement of the Zoning Resolution. Depending on history of compliance, some locations may require less frequent inspections, while others more frequent inspections.
6. Inspect the 333 POPS locations to ensure that all POPS:
  - a) Are still in existence;
  - b) Provide the required amenities;
  - c) Offer full public access as required.
7. Schedule inspections of the outdoor POPS locations during warmer months when certain types of non-compliance would more likely to be observed, such as use of a POPS by a restaurant for outdoor seating.
8. Ensure that inspections of a POPS complaint:
  - a) Are performed a time and day of the week that corresponds to the complaint;
  - b) Are performed within the time frame set as a goal by DOB for its response to these type of complaints;
  - c) Are performed during the time of year that corresponds to the complaint;
  - d) Are followed by a re-inspection to ensure that the violation is corrected.
9. Refer the apparent destruction of the POPS at 410 East 58<sup>th</sup> Street in Manhattan to the City Law Department to take appropriate action.

The Department of City Planning should:

10. Develop an advertising campaign to inform the public about all POPS locations and the required amenities required to be provided at each.
11. Consider:
  - a) Posting signs on the street identifying a space as a POPS, similar to that done when a location is identified as a historical site;
  - b) Creating a City website available to the public that identifies every POPS location and its required amenities;
  - c) Employing various means of making the availability of POPS and the amenities they should provide available to the public, including advertising the website on subways, buses and social media.

## Agency Response

In its response, DOB did not dispute the report's findings and stated that "[w]e . . . will use [the audit findings] as a guide to further improve our policies and procedures." DOB described specific steps it has taken to implement six of the nine recommendations. However, DOB disagreed with three recommendations related to its inspections of POPS locations. Specifically, DOB stated that: 1) it is unwilling to change its inspections protocol from one in which it conducts inspections only in response to complaints, to a pro-active systematic protocol that ensures that all POPS

locations are inspected on a regular schedule; 2) in response to the audit findings, it will not now inspect all 333 POPS locations to verify that they exist, contain all of the required amenities, and provide full public access in accordance with applicable requirements; and 3) it will not schedule inspections to correspond to the appropriate seasons cited in the complaints it receives to ensure that POPS locations are inspected at times relevant to the allegations.

In explaining its disagreement with these three audit recommendations, DOB contends that its current practices are sufficient because they “apply to all [DOB] inspectorial units” and “are consistent Citywide.” However, that response disregards the unrefuted evidence presented by this audit that the agency’s policies and practices fail to ensure that POPS are consistently providing the open space and amenities to the public required by law. Indeed, DOB acknowledges that it “understands the logic behind [the] recommendation” that inspections be conducted during the season when the inspectors are most likely to observe whether an alleged violation exists (such as inspecting a POPS location in the warm weather when the complaint alleges a restaurant is using it and denying access to the public). Yet, rather than agreeing to follow the audit’s recommendation to conduct its inspections during relevant times of the year, DOB instead rejects the recommendation because it contends that the recommendation “may not be a practical solution in most instances.”

The audit demonstrates that over half of the City’s POPS locations failed to provide required public amenities or denied access to the public. In some instances, the POPS violations have existed for years without any discernible enforcement action having been taken by the City. In many cases, the non-compliant building owners are not only profiting from the additional floor area they received in exchange for promising to provide additional public space, but may also be impermissibly profiting from renting out, using, or promoting the use of the POPS spaces by private businesses. And in one case, we found that the POPS does not exist at all. DOB’s refusal to modify its inspection protocol will only allow POPS locations to continue to be misused or neglected in violation of their agreements. We strongly urge DOB to reconsider its response and adopt all of the audit’s recommendations.

In their response, DCP officials did not dispute the report’s findings and described steps they have taken to implement the two recommendations addressed to them. However, DCP did not respond to the recommendation that it consider “posting signs on the street identifying a space as a POPS.” Instead, DCP indicated that “[i]n order for signage to be required at pre-1977 POPS, a local law mandating signage at all POPS would need to be enacted.” We urge DCP to pursue the avenues required to seek enactment of a local law mandating signage at all POPS locations.

# AUDIT REPORT

## Background

Privately Owned Public Spaces are outdoor or indoor spaces, open for public use that are built and maintained by the developers and owners of private buildings. POPS are created by building developers in exchange for New York City allowing them to construct buildings at greater heights and densities (and as a result, with greater floor area) than would normally be allowed by applicable zoning regulations. POPS may be required to include designated amenities within or outside their buildings. The Zoning Resolution in effect at the time that each of the City's POPS was created sets the standards that govern that POPS.

Currently property owners are benefiting financially from approximately 23 million square feet of additional (bonus) zoning floor area in their buildings, in exchange for providing 333 POPS locations in New York City.<sup>2</sup> Below is an example of one of the many POPS in New York City, as seen in a photograph taken on July 13, 2016.

### **Privately Owned Public Space at 26 Astor Place, Manhattan**



Two different City agencies oversee aspects of developers' compliance with their POPS agreements: the New York City Department of Buildings and the New York City Department of City Planning. Among other things, DOB enforces the City's Building Code and Zoning Resolution.<sup>3</sup> In addition, DOB is responsible for issuing violations to owners when POPS are found to be out of compliance with applicable agreements. These violations carry a penalty of \$4,000. In the event that the building owner defaults on this violation the penalty increases to \$10,000. Challenges to notices of violation issued to a POPS are heard by the New York City Environmental Control Board, an administrative tribunal that provides hearings on multiple types

<sup>2</sup> There are an additional 16 POPS locations that were either under construction or not yet built at the time of our audit; they were therefore not part of our audit.

<sup>3</sup> According to the 1961 Zoning Resolution, Article VII, Chapter 1 Enforcement and Administration, "The Commissioner of the Department of Buildings shall administer and enforce this resolution, except as otherwise specifically provided in the New York City Charter and in this resolution."

of notices of violation issued by City agencies, including DOB. For certain violations the Environmental Control Board may impose a reduced penalty. DCP, the other agency that has responsibility for POPS, is responsible for overseeing land use in New York City. DCP currently certifies POPS compliance with zoning regulations prior to the developer obtaining a foundation permit and conducts periodic compliance reviews for POPS created after 2007.

The City's Zoning Resolution sets forth the law that governs land use and development in the City, including the standards and legal framework for POPS. These regulations specify where POPS can be located, their size and dimension requirements, and what is allowed by the City in the spaces used as POPS. However, these regulations have been changed several times by the City and, thus, different requirements apply to different POPS depending on when they were established. For example, the 1961 Zoning Resolution permitted two types of POPS, plazas and arcades, but it did not require signage or otherwise specify how the public would know that a given space was a POPS. Further, POPS created in the 1960s and early 1970s were not required to provide any amenities and no reviews or approvals by the City Planning Commission or Board of Standards and Appeals were required. However, by April 1975, a City Planning Commission Report concluded that too many POPS "have merely been unadorned and sterile strips of cement . . . merely dividers of buildings, windy, lonely areas, without sun or life." As a result, the Zoning Resolution was amended to provide new requirements for POPS construction.

The first major changes came in 1977 when the Zoning Resolution was amended to require POPS to provide amenities, including seating, planting, and bicycle parking, as well as to put up plaques identifying the site as a public facility. On June 12, 1996, the City amended the Zoning Resolution to require the Chairperson of the City Planning Commission, who also holds the position of Director of DCP, to certify the compliance of proposed plans for POPS with the Zoning Resolution before DOB could issue a foundation permit.<sup>4</sup> In 2007, additional amendments were made to the Zoning Resolution that established detailed design requirements for public plazas, along with periodic compliance reporting to DCP and local Community Boards.

DCP maintains an electronic database that includes detailed information about each of the POPS, including the type, size, hours of operation and amenities required of each. According to DCP, there are currently 333 POPS locations in New York City, of which 161 (48 percent) were built between 1961 and 1976, 164 (49 percent) were built between 1977 and 2006 and 8 (less than 3 percent) were constructed after 2007.

While the rules and regulations governing the design and creation of POPS have changed over the years, DOB has continued to be responsible for enforcing the Zoning Resolution. It does so by inspecting POPS in response to complaints received through the City's 311 system or based on referrals from DCP.

## Objective

The objective of this audit was to determine whether the City adequately oversees Privately Owned Public Space agreements with building developers and owners.

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<sup>4</sup> The City Planning Commission is responsible for the conduct of planning relating to the orderly growth and development of the City, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population. The City Planning Commission meets regularly to hold hearings and vote on applications, as described above, concerning the use, development and improvement of real property subject to City regulation. Its consideration of these applications includes an assessment of their environmental impacts where required by law.

## Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit is all Privately Owned Public Spaces in New York City that were created on or before February 1, 2016.

## Discussion of Audit Results

The findings in this report were discussed with DOB and DCP officials during and at the conclusion of this audit. A preliminary draft report was sent to both DOB and DCP and was discussed at exit conferences held on March 9, 2017 with DOB officials and on March 13, 2017 with DCP officials. On March 21, 2017, we submitted a draft report to both DOB and DCP with a request for written comments. We received written responses from DOB and DCP on April 4, 2017.

In its response, DOB did not dispute the report's findings and stated that “[w]e . . . will use [the audit findings] as a guide to further improve our policies and procedures.” DOB described specific steps it has taken to implement six of the nine recommendations. However, DOB disagreed with three recommendations related to its inspections of POPS locations. Specifically, DOB stated that: 1) it is unwilling to change its inspections protocol from one in which it conducts inspections only in response to complaints, to a pro-active systematic protocol that ensures that all POPS locations are inspected on a regular schedule; 2) in response to the audit findings, it will not now inspect all 333 POPS locations to verify that they exist, contain all of the required amenities, and provide full public access in accordance with applicable requirements; and 3) it will not schedule inspections to correspond to the appropriate seasons cited in the complaints it receives to ensure that POPS locations are inspected at times relevant to the nature of the complaints.

In explaining its disagreement with these three audit recommendations, DOB contends that its current practices are sufficient because they “apply to all [DOB] inspectorial units” and “are consistent Citywide.” However, that response disregards the unrefuted evidence presented by this audit that the agency's policies and practices fail to ensure that POPS are consistently providing the open space and amenities to the public required by law. Indeed, DOB acknowledges that it “understands the logic behind [the] recommendation” that inspections be conducted during the season when the inspectors are most likely to observe whether an alleged violation exists (such as inspecting a POPS location in the warm weather when a complaint alleges a restaurant is using the POPS for seating and denying access to the public). Yet, rather than agreeing to follow the audit's recommendation in situations where the season of its inspection is likely to make a dispositive difference, DOB instead rejects the recommendation in its entirety because it contends that the recommendation “may not be a practical solution in most instances.”

The audit demonstrates that over half of the City's POPS locations failed to provide required public amenities or denied access to the public. In some instances, the POPS violations have existed for years without any discernible enforcement action having been taken by the City. In many cases, the non-compliant building owners are not only profiting from the additional floor area they

received in exchange for promising to provide additional public space, but they may also be impermissibly profiting from renting out the POPS spaces to private businesses. And in one case, we found that the POPS does not exist at all. DOB's refusal to modify its inspection protocol will only allow POPS locations to continue to be misused or neglected in violation of their agreements. We strongly urge DOB to reconsider its response and adopt all of the audit's recommendations.

In their response, DCP officials did not dispute the report's findings and described steps they have taken to implement the two recommendations addressed to them. However, DCP did not respond to the recommendation that it consider "posting signs on the street identifying a space as a POPS." Instead, DCP indicated that "[i]n order for signage to be required at pre-1977 POPS, a local law mandating signage at all POPS would need to be enacted." We urge DCP to pursue the avenues required to seek enactment of a local law mandating signage at all POPS locations.

The full text of DOB's and DCP's responses are included as addenda to this report.

## FINDINGS AND RECOMMENDATIONS

Our audit found that the City is not adequately overseeing POPS agreements. We inspected all 333 of the POPS locations and found that more than half (182 of the 333) failed to provide required public amenities. In some cases, the required amenities simply did not exist; in others, they were non-functioning. We found cases where the general public was excluded from POPS because restaurants were allowed to use supposedly public spaces for restaurant seating and had cordoned off portions of the POPS that were contractually designated for public use. We also found cases where public access was otherwise impermissibly limited or denied entirely. In some instances, these violations had existed for years without any apparent enforcement actions taken by the City.

### More Than Half of the Privately Owned Public Spaces Were in Violation of Their Agreements

Based on inspections of all 333 POPS locations, we found conditions at 182 (55 percent) that violated the requirements of the applicable Zoning Resolution. Among other things, auditors found:

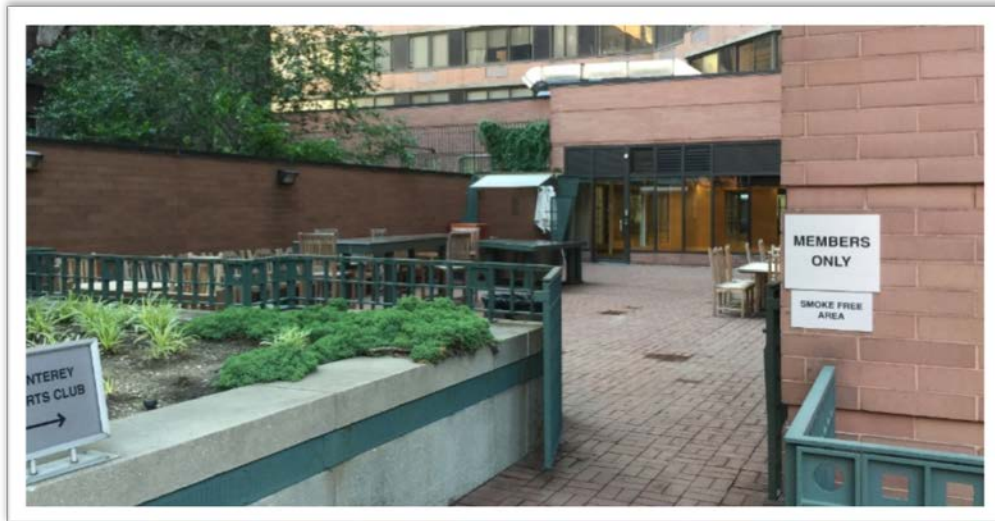
- Public access restricted through some type of fence, barricade or chain;
- Signage stating “For Private Use Only”;
- A lack of required amenities (e.g., artwork, bicycle parking, drinking fountain, elevator, lighting, litter receptacles, planting, plaque/sign, seating, tables, trees, and a sufficient number of chairs); and
- Restaurants occupying portions of POPS by using public space to place tables and chairs for their private patrons and excluding the public.

The purpose of the POPS is to provide a publicly accessible space that may include amenities. But we found that in the majority of POPS, property owners reaped the reward of additional floor space in their properties but did not fully meet their obligations under their POPS agreements.

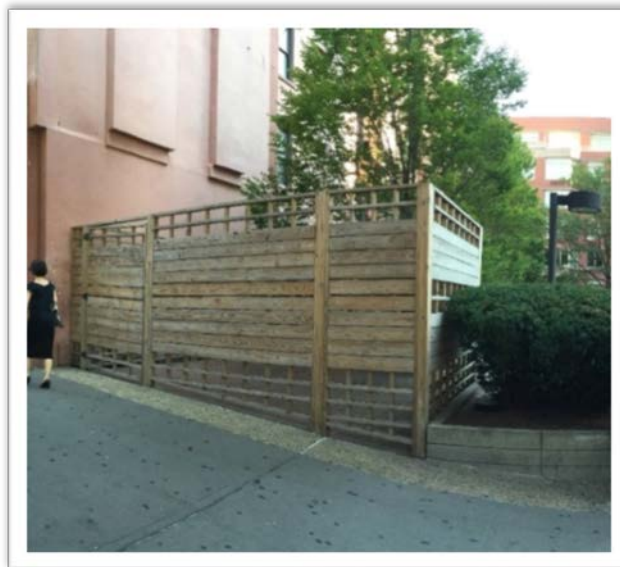
As an illustration of the types of violations we found, the following are three examples of non-complying conditions found at a single POPS located at 175 East 96<sup>th</sup> Street in Manhattan as seen in photographs taken on July 18, 2016. DOB officials agreed with our auditors that the conditions shown in these photos violated City regulations.

### **Privately Owned Public Space at 175 East 96<sup>th</sup> Street, Manhattan**

The POPS at 175 East 96<sup>th</sup> Street is a Residential Plaza intended for public use but as can be seen in the photo below, a *Members Only* sign has been posted on the site, which indicates that the area is not open to the public.



As reflected in this next photograph below, we also saw that various access points to the POPS had been blocked off. A large wooden fence restricted access to the POPS in one area.



In addition, as reflected in the photograph below there were cable fence barriers at numerous entry points.



Although the property owner of this location built an additional 68,157 square feet in permissible floor area in exchange for establishing a POPS, the owner has failed to comply with its POPS agreement.

We discussed our findings for this location with DOB officials who inspected the POPS on November 9, 2016 and agreed with our assessment. They issued two violations to the property owner for non-compliance with the Zoning Resolution. DOB cited the owner for violations of ZR section 27-113, “[a]ll primary spaces, residential plazas or urban plazas shall be accessible to the public at all times,” and ZR section 37-625 which requires “design changes to existing plazas may be made only upon certification by the Chairperson of the City Planning Commission that such changes would result in a plaza, residential plaza or urban plaza that is in greater accordance with the standards set forth in Section 37-70 (PUBLIC PLAZAS), inclusive.”

By way of another example of non-compliance, the property owner of 200 East 64<sup>th</sup> Street in Manhattan has received the benefit of an additional 26,108 square feet in floor area in the building since 1969 in exchange for providing the POPS.<sup>5</sup> But as is reflected in the photographs that follow, the owner has failed to fully provide required amenities. As in our previous example, DOB officials agreed that existing conditions violated the applicable Zoning Resolution.

#### **Privately Owned Public Space at 200 East 64<sup>th</sup> Street**

The photo below taken on July 11, 2016, reflects that planters creating a barricade have been placed preventing public access to part of the POPS. During our inspections, we observed that this area was used as a backyard for restaurant staff, and for storage of a ladder and bicycles.

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<sup>5</sup> A Board of Standards and Appeals variance was granted on September 10, 1985 allowing the property owner to restrict the hours the POPS was open in exchange for providing additional amenities.



As reflected in the photo below also taken on July 11, 2016 we also observed broken benches and observed that there was no plaque informing the public that the space was a POPS.



When DOB officials inspected this site on November 9, 2016, they found conditions that violated the Zoning Resolution, and issued the POPS four non-compliance violations. DOB officials noted multiple non-compliant conditions, including straight benches that were replaced with round benches; planters positioned as barricades separating the plaza into north and south sections; an obstruction to the south section created by bales of hay, chairs and bikes stored in bike racks, along with tables and chairs for the restaurant; poorly maintained round seating, and an open air

café operating within the POPS. DOB cited the owner for violations of ZR section 37-625 which states, “design changes to existing plazas may be made only upon certification by the Chairperson of the City Planning Commission that such changes would result in a plaza, residential plaza or urban plaza that is in greater accordance with the standards set forth in Section 37-70 (PUBLIC PLAZAS), inclusive,” and ZR section 11-62, entitled “Failure to Comply with Special Permits, Variances, Authorizations or Certifications.”

## **The Majority of POPS Have Not Been Inspected in Years**

DOB does not have a pro-active inspection program whereby it inspects all POPS on a regular schedule to ensure that they are in compliance with the Zoning Resolution. Rather, it inspects POPS only in response to individual complaints it receives. At the exit conference, DOB confirmed that it only monitors a POPS' compliance with its agreement when there is a complaint and stated that it has no legal obligation to perform pro-active inspections.

However, despite the fact that there is no express legal mandate for DOB to conduct pro-active inspections of POPS compliance, it is required to enforce the zoning resolution, which cannot be done effectively without pro-active inspections. As previously noted, 151 POPS locations are not required to have signage indicating that they are POPS, and some even have signs that indicate that they are not open to the public. Thus, there is very little chance that members of the public would or could know that a violation existed and so would have no reason to make a complaint. Based on DOB's records, there have not been complaints lodged against a majority of POPS sites.

As a result of the low number of complaints, a majority of POPS have not been inspected in years, which has allowed violating property owners to avoid providing required amenities while at the same time they have reaped the financial rewards of extra space in the buildings. We reviewed all of the complaints lodged against POPS received by DOB from July 1, 2011 through December 31, 2015, a 4½ year period, and found that 96 complaints were registered against 58 POPS locations. Although DOB inspected all of the 58 POPS locations, the remaining 275 (83 percent) of the City's POPS locations did not have a compliance inspection during the more than four-year period we analyzed.

Of the 275 POPS locations that had not been inspected for at least 4½ years, we found conditions of non-compliance with the Zoning Resolution at 141 (51 percent) of the POPS. The conditions of non-compliance included arcades obstructed by tables from multiple restaurants; non-working drinking fountains; deterrents installed to discourage public seating; POPS covered almost entirely with flower beds which made access impossible; signs stating that the property is private; garbage stored in a plaza; and portions of the POPS closed to the public.

One example of such violations can be found at 825 Third Avenue, Manhattan, which contains a POPS. This POPS was established as a plaza. However, we found that two restaurants had been allowed to take over a portion of the site for their private use. The two restaurants were using the POPS to seat and serve their patrons. Both had cordoned off an area of the site with partitions to enclose tables, chairs, and umbrellas for use by private customers.

The pictures below were taken at 825 Third Avenue in Manhattan, on July 13, 2016, and November 2, 2016, respectively. The property owner for this location has received the benefit of having an additional 39,411 square feet in floor area since 1969 in the building, but has not complied with the POPS agreement by providing open space for the public.

**Privately Owned Public Space at 825 Third Avenue, Manhattan**

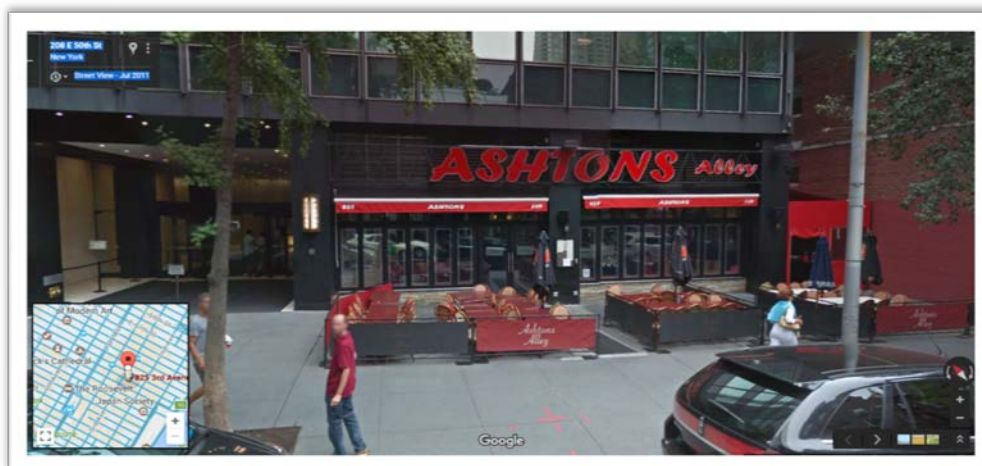


Moreover, the pictures below posted by Google Maps, show that one restaurant has been appropriating this space since at least 2007, while the other restaurant has been using the space since at least 2011.

**Google Maps Picture dated September 2007 Showing One Restaurant with Outdoor Seating Blocking a Portion of the POPS**



**Google Maps Picture dated June 2011 Showing Another Restaurant with Outdoor Seating Blocking a Second Portion of the POPS**



**Conditions Were Not Corrected Even after POPS Violations Were Issued**

Of the 58 POPS locations that DOB inspected as a result of complaints, we found that non-complying conditions continued to exist at 41 (71 percent) of the sites after the DOB inspections. In some but not all of those instances, fines were levied on the property owners. While all of the fines were paid, we found that in some instances it does not appear that the non-complying conditions for which an owner was cited were corrected.<sup>6</sup>

One example of such a situation was found at the POPS located at 108 5<sup>th</sup> Avenue in Manhattan. The owner of that location has received the benefit of having an additional 11,455 square feet in floor area since 1986 in exchange for providing a POPS with specific amenities. However, the owner was not providing the required amenities at the time DOB inspected the POPS or later when it was inspected by the auditors.

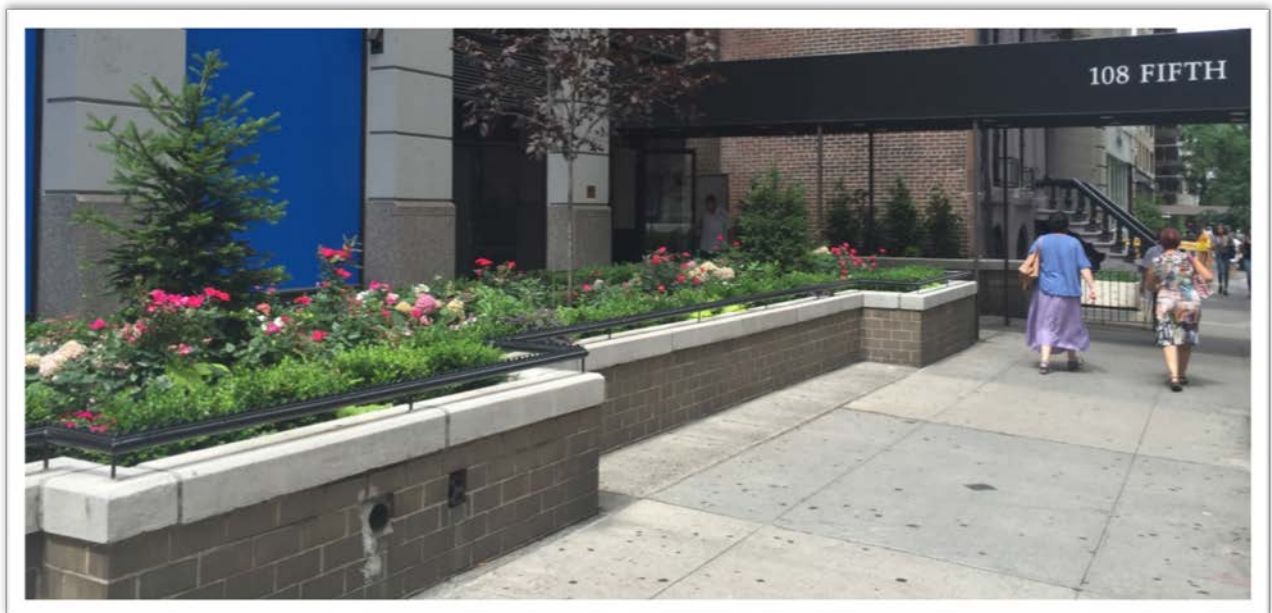
DOB received a complaint about this POPS location on July 16, 2013, in which a caller alleged that public seating had been removed. A DOB inspection on July 24, 2013 resulted in two violations being issued. DOB inspectors noted that none of the required seating was present, and that a sign indicating the existence of a public plaza was also missing.

However, the condition remained uncorrected as of July 13, 2016. Specifically, during the auditors' 2016 inspection, we observed that many of the required amenities were absent, including artwork, seating, a drinking fountain, litter receptacles and a plaque that identifies the location as a POPS. We also observed that seating deterrents such as metal railings with spikes were affixed to the planter ledges, which could have provided some public seating.

<sup>6</sup> Based on complaints DOB received from July 1, 2011 through December 31, 2015, DOB conducted 87 inspections of 58 POPS locations. As a result, 18 violations were issued to 10 of these POPS locations. The dollar amount of the fines are set at either \$4,000 or \$10,000. The total dollar amount of the fines issued and paid for these violations was \$50,600, based on adjustments made by the ECB.

The photographs below taken on July 13, 2016 of the POPS location at 108 Fifth Avenue reflect those non-complying conditions found by the auditors that existed even after the owner was cited for non-compliance and paid a fine.

**Privately Owned Public Space at 108 Fifth Avenue**



Pictures from Google Maps, shown below, indicate that this lack of amenities dates back to at least 2007.

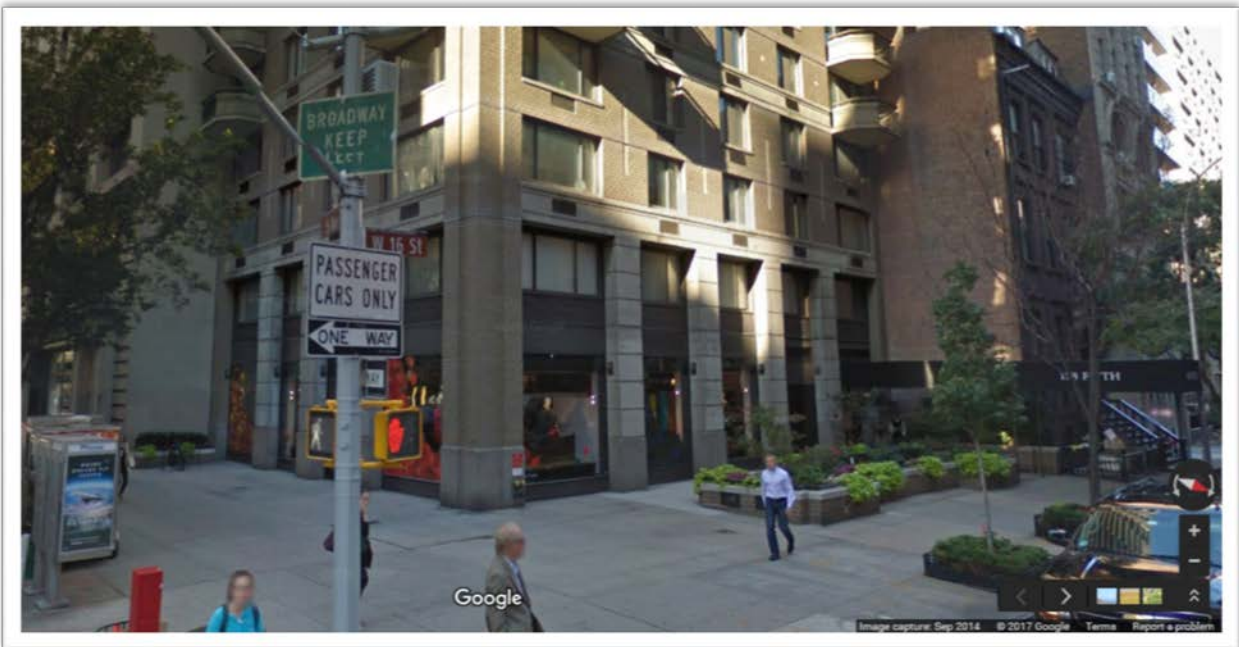
**Google Maps Picture dated September 2007**



**Google Maps Picture dated September 2013**



### Google Maps Picture dated June 2014



## **DOB's Complaint-Driven Enforcement of POPS Agreements is Not Effective**

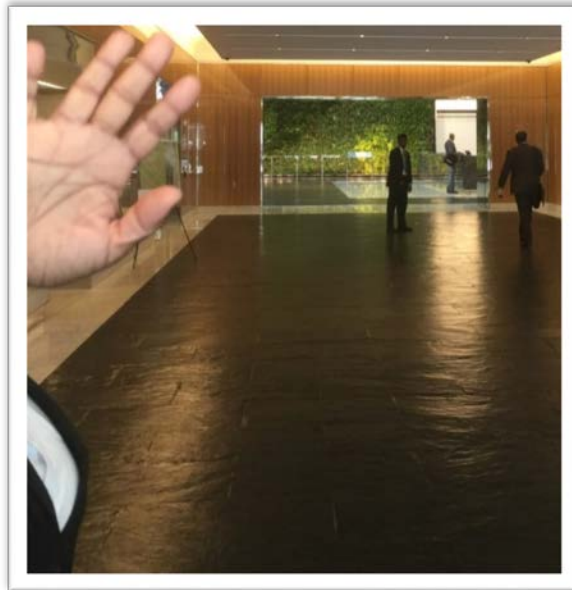
DOB's practice of conducting compliance inspections of POPS locations based solely on public complaints is inherently flawed, ineffective, and contributes to the lack of oversight at these sites. As noted, for 151 of the 333 POPS (45 percent), there is no requirement that the owners post signs to inform the public that the location is a POPS and that public access is required. Accordingly, it is highly unlikely that a member of the public would know that the space should be accessible to the public and that a complaint of non-compliance would be made. Moreover, for the POPS constructed before the 1977 changes to the Zoning Resolution, no specific amenities are required. Thus, with regard to these 151 locations, it is clear that DOB's inspection protocol, which is driven solely by public complaints, is an ineffective system for monitoring compliance with POPS agreements.

At the exit conference, DOB informed us that it is responsible for over 1 million buildings and contended that it does a very good job investigating all complaints, including POPS-related complaints. DOB officials said that the agency is not mandated to perform pro-active inspections, but is rather only mandated to investigate complaints. However, we note that DOB is responsible for enforcing the Zoning Resolution. By failing to perform pro-active inspections, DOB has allowed non-compliance to continue for years without consequence.

The POPS location at 101 Barclay Street in Manhattan is one example of a POPS location where no signage or amenities are required but where public access has been denied and no complaints have been made to DOB. The photograph below shows that POPS location as closed to the public. The property owner has not received either DCP or DOB approval for this closure.

Auditors who attempted to inspect the site were stopped, an attempt was made to prevent photographs, the auditors were escorted to the security office and questioned, and were informed that they were prohibited from further entry into the building's lobby, notwithstanding the fact that it is a POPS location and so a public space.

**Privately Owned Public Space at 101 Barclay Street**



At the time of the auditors visit to the location on July 20, 2016, building security informed the auditors that this lobby has been closed to the public for at least 15 years and is only open to Bank of New York staff. Auditors were not allowed to take any further pictures of the lobby and were asked to leave this POPS location.

In addition, as reflected in the photograph below, the auditors observed a notice prominently posted on the door that stated that the lobby is private property and intended for use only by employees and invited guests.



However, the owner of 101 Barclay Street in Manhattan received a permit allowing modification of height and setback regulations in the building in exchange for providing a public lobby. While the owner has failed to provide the required public lobby, DOB has not issued any violations. Without scheduling regular inspections, DOB officials cannot ensure that property owners are honoring their agreements to maintain POPS as required.

## **DOB's Inspectional Response Time to POPS Complaints Frequently Exceeds DOB's Goals**

We found that in 39 percent of sampled cases, DOB inspectors failed to respond to POPS complaints within the time frame set by the Department as a goal. Our review of complaints lodged against POPS between July 1, 2011 and December 31, 2015 revealed 96 complaints that were supposed to be investigated by DOB inspectors. All these complaints were assigned priority code B, meaning that DOB's goal was to inspect them within 40 days. Our review disclosed that DOB personnel actually inspected 87 POPS locations and of these inspections, 34 (39 percent) were not performed timely, when measured against the Department's 40-day goal.<sup>7</sup> Rather, these 34 complaints were inspected between 41 and 272 days after DOB received the complaint. In some cases these inspections were particularly ineffective because as a result of the lag time between when a complaint was made and when it was investigated, the seasons changed. As a result, the original alleged POPS violation, for example, a lack outdoor seating, would no longer be evident because the weather was too cold for outdoor seating.

For example, in one case, we found that a complaint was received on May 9, 2012 in which the complainant stated that barriers of obstruction were erected around one of two cafes in the Plaza portion of the POPS located at 1114 Sixth Avenue in Manhattan. These barriers created private

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<sup>7</sup> DOB inspectors did not inspect the remaining 9 complaints but rather referred to the disposition of other complaints that were investigated at the same locations.

reserved seating for restaurant patrons at the expense of the public, which no longer had use of the space. DOB officials inspected this location on October 17, 2012, and reported that they did not witness any barriers or obstructions. As a result, they issued no violations. However, out-of-door seating for restaurant patrons would typically have been used during warmer weather months before the site was inspected. With a more timely response, the non-compliance could have been identified.

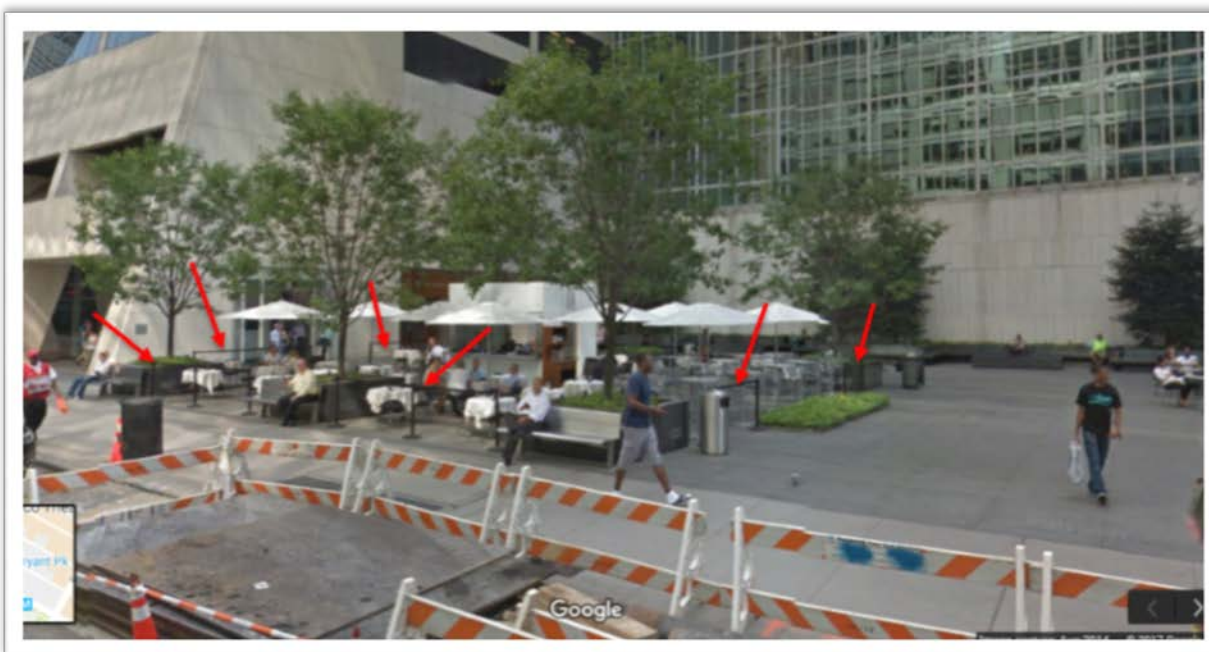
Our observation of this POPS location on July 13, 2016, confirmed that were, in fact, barriers obstructing access to a portion of the POPS. We identified reserved seating for the restaurant inside these barriers, as the original complaint had stated in May, 2012. Had DOB responded to the 2012 complaint within the 40-day timeframe set by DOB as a goal, inspectors may have found these non-complying conditions cited in the complaint because the weather would have been more appropriate for having a barrier enclosing outdoor seating for the restaurant.

**Privately Owned Public Space at 1114 Sixth Avenue dated July 13, 2016**



In addition, an August 2014 photo of the site taken from Google Maps (below) shows the same barriers around the seating.

### Google Maps Picture dated August 2014



## **DOB's Inspections of POPS Complaints Are Not Scheduled to Ensure That the Alleged Condition Will Be Observed**

Our review found that DOB inspectors did not always schedule their inspections of a POPS location to correspond to the time or day of week about which the complaint was received. Specifically, in 12 of the 87 complaints, inspectors scheduled the inspection during the week and during the day, even though the 12 complaints alleged that the POPS locations were impermissibly closed during the weekend or at night.

For example, DOB received a complaint on December 7, 2013 stating that the plaza located at 1114 Sixth Avenue in Manhattan had a sign stating it was open 24 hours and no times when it would be closed. The complainant reported being denied access on a weekend by a security guard who stated that the POPS was not open on weekends. On Monday, December 16, 2013, a DOB inspection found that the POPS was fully open to the public. However, the complaint did not allege a denial of access on a weekday, but rather alleged that access was denied on the weekend.

## **After Decades of Enforcing the 1961 Zoning Resolution, DOB Only Recently Commenced Creation of a POPS Database**

Although DOB has been responsible for enforcing POPS' compliance since the early 1960s, it is only recently that the agency began to create a unique POPS database.<sup>8</sup> As part of the audit in

<sup>8</sup> At the exit conference, Department officials informed us that in the fall of 2015 they began creating a database of all POPS and their required amenities and finished the database as of December, 2016.

early 2016, we requested a list of all POPS, plus corresponding information such as space type and size. On October 20, 2016, six months after our initial request, DOB officials provided us with what they represented was a complete list of POPS and informed us that they had received it from DCP. Our review, however, found that the list DOB provided had incorrect square footage for individual sites when we compared it to DCP's POPS information. In addition, we reviewed DOB's public online query system, the Buildings Information System (BIS), to find out whether all the POPS in existence as of May 6, 2016, were identified as POPS. We found that BIS did not properly identify 19 sites as POPS when in fact they are. DOB officials informed us that they utilize information in BIS in connection with their responses to complaints about POPS, conducting inspections and making decisions.

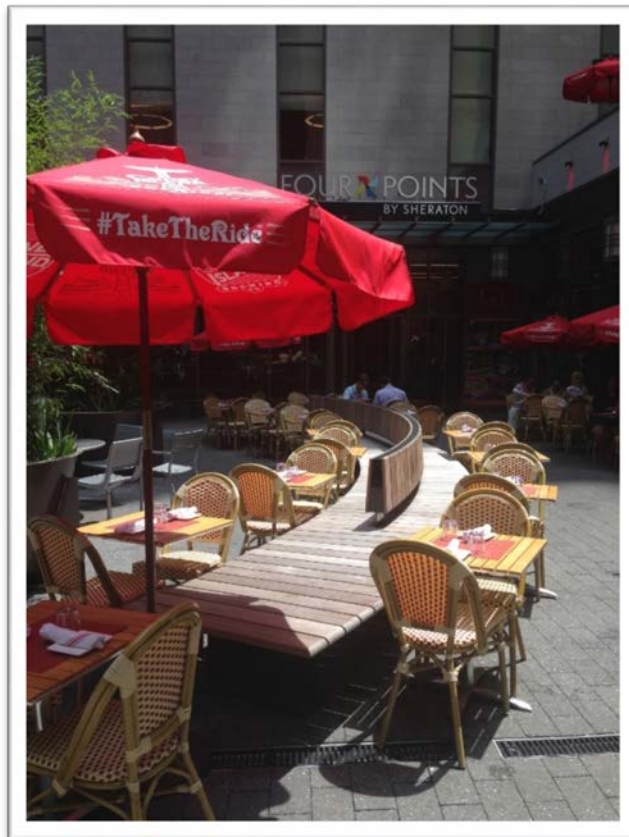
However, without a complete and accurate database of all POPS, DOB inspectors might not be aware that a location contains a POPS and the amenities it must provide. In 3 of the 87 DOB inspections we reviewed, an inspector incorrectly recorded that there were no POPS located at the site, and thus no violation was warranted, when in fact the location was a POPS.

In one case, a complaint was received on September 21, 2015 that an urban plaza located at 2 Gold Street in Manhattan had no times of public access posted for the plaza. The complainant reported being told to leave the plaza by the manager of a restaurant located at 2 Gold Street. On January 27, 2016 a DOB inspector recorded the disposition as "complaint unsubstantiated based on department records." The comment underneath the disposition was "No Privately Owned Public Space @ Premise." However, according to DCP's Public Space Records, 2 Gold Street is indeed a POPS with an Urban Plaza that was built in 2005.<sup>9</sup> The required amenities include seating, artwork, planting and 3 informational plaques. The inspector was apparently unaware that the POPS existed. Our inspection of this site on July 12, 2016 (see photos below) found two restaurants using part of the urban plaza for restaurant seating.

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<sup>9</sup> As of December 5, 2016, BIS identified this location as a POPS location. However, we do not know what information BIS had on this location as January 27, 2016 when the inspection was performed.

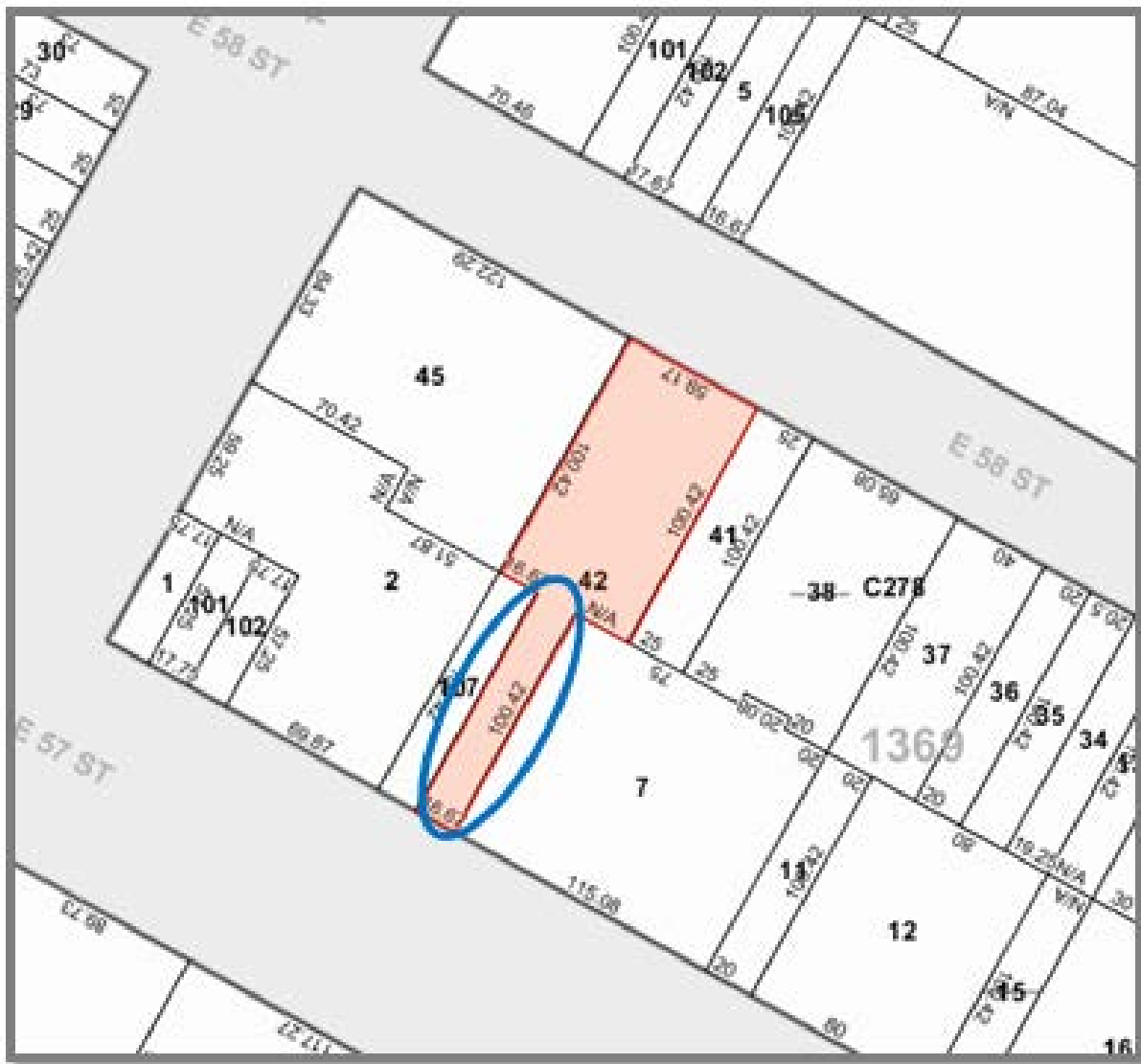
**Privately Owned Public Space at 2 Gold Street, Manhattan**



In a second POPS location at 410 East 58<sup>th</sup> Street in Manhattan, we found that DOB allowed a POPS to be entirely eliminated when a permanent, private structure was built on top of it. When auditors asked DOB officials whether a building permit had been issued for the structure built on the POPS, they said the department was investigating the matter. But whether or not a building permit had been issued, DOB allowed the building owner to build a lobby on a POPS location.

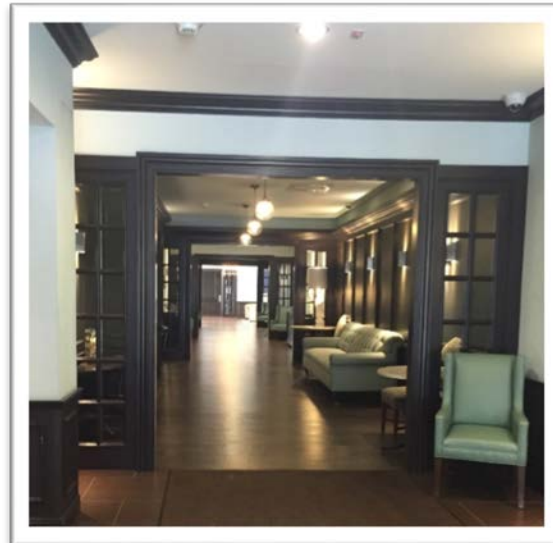
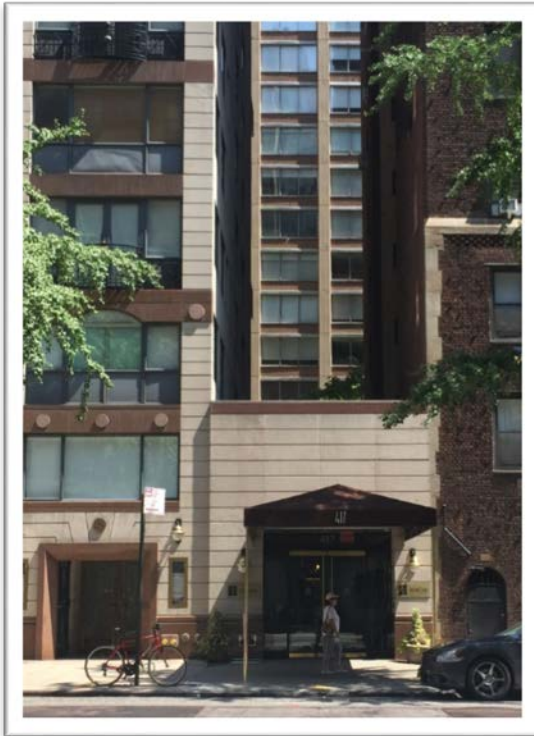
Pictured below is a NYC Department of Finance Digital Tax Map image of property identified by Borough, Block and Lot (BBL) 1-1369-42. The highlighted area, encircled, is where the building is located and also depicts where a plaza-type POPS is supposed to be located, at 410 East 58<sup>th</sup> Street in Manhattan.

**Privately Owned Public Space at 410 East 58<sup>th</sup> Street, Manhattan**



However, a structure was built over the POPS space (see photos below). The space is now occupied by a hotel lobby. DOB allowed this POPS plaza to be completely eliminated during a

time when DOB did not have any database to track POPS locations. A database would have allowed DOB personnel to check whether this location was a POPS before issuing a building permit. Therefore, the lack of a database likely contributed to complete elimination of the POPS at this location.



The pictures above were taken during our inspection on July 18, 2016. These pictures show a hotel lobby that is now located on what should be a POPS plaza, and so should be an open area accessible to the public. The property owner for this location has reaped the benefit of having an additional 15,226 square feet in floor area since 1974 in the building, in exchange for providing a POPS that no longer exists and the public has been deprived access to this space.

In a third instance, DOB received a complaint on December 21, 2015 that a through block connection located at 120 (alternatively identified in DCP's records as 125) West 55 Street in Manhattan had no signage and was closed off to the public at various times most nights. On February 9, 2016, DOB indicated that no violation was warranted based on its inspection. The Department commented that the plaza was open and in compliance, and that signs were not mandatory. Based on our review of DCP records, however, these comments were inaccurate; this POPS location is required to have 4 plaques/signs, and we found only one plaque on site.

## Recommendations

The Department of Buildings should:

1. Ensure the completion of an accurate database of all the POPS and ensure that it includes the type, size, hours of operations, and the specific amenities required.

**DOB Response:** “The Department agrees with this recommendation. The Department of City Planning is in the process of producing a shared database with physical storage parameters to include POPS information as noted in your recommendation.”

2. Ensure that the database can be accessed by DOB inspectors.

**DOB Response:** “Please refer to response # 1. Also, the database will be available for use by DOB inspectors.”

3. Train inspectors on how to access the database to get information on the POPS.

**DOB Response:** “The Department agrees with this recommendation, and will provide additional training for its inspectors.”

4. Ensure that DOB’s Buildings Information System identifies all POPS locations.

**DOB Response:** “The Department agrees with this recommendation. Upon completion of the shared database, DOB will validate the information in BIS to ensure accuracy.”

5. Develop a monitoring policy that requires all POPS to be inspected by DOB at sufficiently frequent intervals to ensure effective enforcement of the Zoning Resolution. Depending on history of compliance, some locations may require less frequent inspections, while others more frequent inspections.

**DOB Response:** “The Department disagrees with this recommendation. The Department’s guidelines for inspections are consistent Citywide, and apply to all inspectorial units; thus, the Department will continue to follow its current inspection protocol. A change to the current process would be a change in Department’s policy.”

**Auditor Comment:** DOB’s refusal to change its policies and procedures will increase the likelihood that the public will continue to be deprived of full access to POPS locations. We found full or partial non-compliance with applicable requirements (access or amenities or both) in more than half of the POPS locations that currently exist. In some instances, these violations had existed for years without any apparent enforcement actions taken by the City. We urge DOB to reconsider its refusal to follow our recommendation that it inspect these sites at regularly scheduled intervals to ensure effective enforcement of the Zoning Resolution.

6. Inspect the 333 POPS locations to ensure that all POPS:

- a) Are still in existence;
- b) Provide the required amenities;
- c) Offer full public access as required.

**DOB Response:** “The Department disagrees with this recommendation. A change to the current process would be a change in Department's policy. The Department will continue to follow its current inspection protocol. (Please refer to recommendation # 5 above).”

**Auditor Comment:** DOB's refusal to conduct inspections of all of its POPS locations ensures that the denial of required access and/or amenities we cite in the audit will be more likely to continue to exist in more than half of the POPS locations. In this report, we identified 182 POPS locations that were not in compliance with the Zoning Resolution. At very least, DOB should treat these findings as complaints and inspect those 182 locations. We see no logical basis for doing otherwise. However, based on its response, DOB has indicated that it will ignore the audit findings and will not inspect the 182 locations identified as non-complying by the audit. We urge DOB to reconsider its position.

7. Schedule inspections of the outdoor POPS locations during warmer months when certain types of non-compliance would more likely to be observed, such as use of a POPS by a restaurant for outdoor seating.

**DOB Response:** “The Department disagrees with this recommendation. While the Department understands the logic behind this recommendation, it may not serve to be a practical solution in most instances. The Department will continue to make its best efforts to respond appropriately to all complaints of non-compliance and address each accordingly.”

**Auditor Comment:** As shown by this audit, DOB's responses to complaints of non-compliance were not always scheduled to correspond to the time frames and conditions, including weather conditions, when violations were alleged to have occurred (e.g., a restaurant occupying an outdoor POPS location for warm-weather service). In such instances DOB's inspections were conducted in a manner that was foreseeably unlikely to enable the inspectors to observe whether the alleged violations existed. DOB does not refute the logic of conducting inspections at times when time-specific violations are alleged to have occurred. Thus, we urge DOB to reconsider its response to this recommendation.

8. Ensure that inspections of a POPS complaint:
  - a) Are performed a time and day of the week that corresponds to the complaint
  - b) Are performed within the timeframe set as a goal by DOB for its response to these type of complaints;
  - c) Are performed during the time of year that corresponds to the complaint;
  - d) Are followed by a re-inspection to ensure that the violation is corrected.

**DOB Response:** “The Department partially agrees with this recommendation. Our mandate is to address public-safety complaints first, so we cannot commit to inspecting POPS complaints at times that precisely correspond to the nature of the complaint. However, the Department will continue to make every effort to respond to POPS complaints in a timely manner.”

9. Refer the apparent destruction of the POPS at 410 East 58<sup>th</sup> Street in Manhattan to the City Law Department to take appropriate action.

**DOB Response:** “The Department agrees with this recommendation. The Department will consult with the City's Law Department for further directions, and to see what appropriate action, if any, can be taken.”

The Department of City Planning should:

10. Develop an advertising campaign to inform the public about all POPS locations and the required amenities required to be provided at each.

**DCP Response:** “DCP is committed to enhancing its on-line POPS database to include updated information and an interactive map that will provide more detail and greater ease of access for the public, and to making the existence of the database and POPS information more prominent on the DCP website. While DCP does not perform that function with regard to any aspect of zoning, DCP will explore additional ways to enhance public access to information about POPS, including public service announcements to broaden the public's awareness of POPS and promoting POPS on social media.”

11. Consider:

- a) Posting signs on the street identifying a space as a POPS, similar to that done when a location is identified as a historical site;

**DCP Response:** “DCP may only require signage at those POPS where the applicable zoning text mandates signage. As the Draft Audit indicates, POPS developed pursuant to zoning provisions in place prior to 1977 did not require signage, and DCP has no legal authority to impose such a mandate. In order for signage to be required at pre-1977 POPS, a local law mandating signage at all POPS would need to be enacted.”

**Auditor Comment:** As shown by this audit, there is a need for signage identifying all POPS locations and the required amenities. Therefore, we urge DCP to pursue the avenues required to seek enactment of a local law mandating signage at all POPS locations.

- b) Creating a City website available to the public that identifies every POPS location and its required amenities;

**DCP Response:** “DCP agrees to enhance its POPS database on the DCP website and to provide information about required amenities along with an interactive map.”

- c) Employing various means of making the availability of POPS and the amenities they should provide available to the public, including advertising the website on subways, buses and social media.

**DCP Response:** “See response to Recommendation 10.”

## DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit includes all POPS created on or before February 1, 2016.

We met with DOB officials and DCP officials to obtain an understanding of controls and processes in place with regard to the City monitoring compliance by property owners who received permission to build greater floor space and building height than would normally be allowed, up to 20 percent more, in exchange for providing a POPS, an open area accessible for public use. We reviewed the 1961 Zoning Resolution of The City of New York to obtain an understanding of the original zoning regulations governing land use and development as it pertains to enforcement and administration of POPS. We also reviewed subsequent amendments to the Zoning Resolution, including text changes approved by the City Council as of October 13, 2016. Additionally, we reviewed provisions of the New York City Charter as it pertains to the functions of DOB.

We requested and received from DOB and DCP information we deemed necessary to conduct this audit. One such item was a list of all POPS in New York City, with corresponding borough, block and lot number, address, year completed, space type and square footage.

We obtained a list from DCP on May 6, 2016 of all POPS currently located in New York City. The list indicated a DCP assigned Public Space Record (PSR) number for each location. The list showed 349 building addresses, the year the POPS were built and the type of POPS at each location. Some locations contained more than one type of POPS. Of the 349 addresses, however, 16 were either under construction or not yet built. Thus, we conducted our analysis of POPS located at the remaining 333 building addresses.

DCP also maintains a database that contains information pertaining to each POPS. Within this database, each POPS location is assigned a PSR number and contains a corresponding file. Each PSR file includes information such as a building address, all public space types at the location, the year completed, the legal basis for the public space, actions taken such as the issuance of a City Planning Commission Special Permit, zoning computations pertaining to floor area, required hours of access and any required amenities. We received a copy of this DCP database on June 1, 2016.

To assess the reliability of the DCP database, we analyzed the information, taking into consideration all POPS that are required to provide amenities, their locations, and the decades when the sites were designated. Then, using a method of stratification based on the decade in which the POPS were created, we judgmentally selected 10 POPS building locations, identifiable by PSR number, and obtained from DCP the site plans for those buildings locations. These plans are the architectural blue prints which contain drawings and textual information spelling out the design features—including amenities—that should be at each POPS. They also indicate the amenities that the building owner/developer agreed to provide. Next, we tested this information by comparing these agreements to the information that had been entered into DCP's database

and was shown on the PSRs. In this way we were able to verify that the amenities approved in the architectural drawings and plans corresponded to those in DCP's database, as well as other information. As a result, we concluded we could reasonably rely on the DCP data.

We also developed an audit observation package, to assist us when visiting each of the 333 POPS locations. This enabled our auditors to identify any conditions that appeared to be in violation of the agreement between the City and the building owner/developer, as well as any applicable legal requirements. The package included an observation record page to record the date, time, location and conditions seen at individual POPS. It also included pages from the PSR for each POPS to show specific information such as building address, required hours of access, required amenities and any additional amenities permitted. The package also included a copy of a map to be used by auditors to establish the location and layout of a POPS at a given address.<sup>10</sup> We took pictures at each location to document conditions that constituted a violation of the agreement between the City and the building owner. We discussed our observation results for 14 POPS locations with DOB, and its inspectors visited 6 of these 14 locations. During three of those visits, DOB officials confirmed the auditors' observation of non-compliance and issued violations. For the remaining locations the conditions observed by the auditors were not observed by DOB inspectors at the time of their visits.

To determine whether DOB investigates POPS complaints in a timely manner and in accordance with its standards, we obtained DOB's classification of complaints and the required response times based on classification. We also obtained a list from DOB of all complaints received from July 1, 2011 through December 31, 2015. We extracted all complaints from that list categorized as "Privately Owned Public Space Non-Compliance," and matched those addresses to the POPS addresses listed on DCP's Public Space Records. This enabled us to verify that a location was, in fact, a POPS. We then extracted only those POPS locations that corresponded to the 333 we visited. Using the complaint number provided in DOB's records, we obtained the "Overview for Complaint" form from DOB's BIS to ascertain the date each complaint was received, the date DOB performed each inspection to investigate the complaint, and the disposition. We also obtained from DOB the time of day that inspections were performed. For those complaints that resulted in a violation being issued, we obtained the "ECB Violations Details" forms from BIS to determine the penalty amounts that were imposed and the penalty amounts that were paid. The ECB, a City-run adjudicative body, is an administrative tribunal that provides hearings on notices of violation issued by City agencies such as DOB.

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<sup>10</sup> The map was obtained from APOPS (Advocates for Privately Owned Public Space) website. This website includes an information profile about each POPS in New York City. General information provided includes space type(s), size required, space location, year completed, building architect and whether there is access for the physically disabled. Additional requirements, such as mandatory hours of access and required amenities, are provided as well. The New York City Department of City Planning in collaboration with the Municipal Art Society of New York and Harvard Professor Jerold S. Kayden developed an electronic database with an informational profile about each POPS created as a result of the incentive zoning program.

## Compliance Status for 333 POPS Locations Visited by Auditors

	Building Address	Full Compliance Yes/No?
1	101 Barclay Street	No
2	130 Liberty Street	Construction
3	1 Liberty Plaza	No
4	140 Broadway	No
5	33 Maiden Lane	Yes
6	100 William Street	No
7	200 Water Street	No
8	180 Water Street	Construction
9	88 Pine Street	No
10	175 East 96th Street	No
11	180 Maiden Lane	No
12	110 Wall Street	Construction
13	100 Wall Street	No
14	95 Wall Street	Yes
15	111 Wall Street	Yes
16	77 Water Street	Yes
17	86 Water Street	No
18	40 Broad Street	Construction
19	55 Broad Street	No
20	55 Broadway	No
21	52 Broadway	No
22	45 Broadway	No
23	90 Washington Street	No
24	7 Hanover Square	No
25	55 Water Street	No
26	125 Broad Street	Yes
27	115 Broad Street	No
28	85 Broad Street	No
29	1 New York Plaza	Construction
30	1 State Street	Construction
31	17 State Street	No
32	1 Battery Park Plaza	Yes
33	160 Water Street	No
34	32 Old Slip	No
35	388 Greenwich Street	Construction
36	10 Liberty Street	Yes
37	59 Maiden Lane	Yes

## APPENDIX

	Building Address	Full Compliance Yes/No?
38	175 Water Street	No
39	17 Battery Place	No
40	40 Rector Street	No
41	1 Wall Street	Construction
42	75 Wall Street	No
43	60 Wall Street	No
44	55 Church Street	No
45	105 Duane Street	Construction
46	15 Cliff Street	No
47	2 Gold Street	No
48	123 Washington Street	No
49	8 Spruce Street	No
50	375 Pearl Street	Construction
51	376 Broadway	No
52	60 East 8th Street	Yes
53	300 Mercer Street	Yes
54	375 Hudson Street	Yes
55	99 Jane Street	No
56	246 Spring Street	Yes
57	26 Astor Place	Yes
58	51 Astor Place	Yes
59	555 West 57th Street	Yes
60	347 West 57th Street	No
61	322 West 57th Street	No
62	825 Eighth Avenue	No
63	330 West 56th Street	No
64	1000 Tenth Avenue	Yes
65	36 Central Park South	Yes
66	767 Fifth Avenue	No
67	500 Park Avenue	Yes
68	499 Park Avenue	Yes
69	110 East 59th Street	Yes
70	115 East 57th Street	No
71	9 West 57th Street	No
72	58 West 58th Street	No
73	211 West 56th Street	Construction
74	1548 Broadway	Yes
75	114 West 47th Street	No
76	151 West 54th Street	Yes

## APPENDIX

	Building Address	Full Compliance Yes/No?
77	425 Fifth Avenue	Construction
78	125 West 55th Street	Yes
79	774 Sixth Avenue	No
80	11 West 53rd Street	Yes
81	325 Fifth Avenue	Construction
82	888 Seventh Avenue	Yes
83	835 Sixth Avenue	No
84	118 West 57th Street - Le Parker Meridien	No
85	40 West 57th Street	Yes
86	725 Fifth Avenue - Trump Tower	No
87	590 Madison Avenue	Yes
88	450 Park Avenue	No
89	230 West 27th Street	Yes
90	550 Madison Avenue	No
91	1370 Sixth Avenue	No
92	230 West 55th Street	No
93	1345 Sixth Avenue	No
94	1350 Sixth Avenue	Yes
95	535 Madison Avenue	No
96	520 Madison Avenue	No
97	1330 Sixth Avenue	Yes
98	825 Seventh Avenue	No
99	1700 Broadway	No
100	810 Seventh Avenue	Yes
101	1301 Sixth Avenue	Yes
102	51 West 52nd Street	No
103	10 East 53rd Street	No
104	55 East 52nd Street	No
105	345 Park Avenue	Yes
106	645 Fifth Avenue	No
107	650 Fifth Avenue	Yes
108	1285 Sixth Avenue	No
109	1633 Broadway	Construction
110	457 Madison Avenue	No
111	560 Lexington Avenue	No
112	437 Madison Avenue	No
113	1251 Sixth Avenue	Yes
114	1221 Sixth Avenue	No
115	280 Park Avenue	No

## APPENDIX

	Building Address	Full Compliance Yes/No?
116	299 Park Avenue	Yes
117	1211 Sixth Avenue	Yes
118	1185 Sixth Avenue	No
119	575 Fifth Avenue	No
120	245 Park Avenue	No
121	1166 Sixth Avenue	No
122	1515 Broadway	Yes
123	1155 Sixth Avenue	Construction
124	1133 Sixth Avenue	Yes
125	1114 Sixth Avenue	No
126	6 East 43rd Street	Yes
127	120 Park Avenue	No
128	1095 Sixth Avenue	No
129	101 Park Avenue	No
130	445 Fifth Avenue	No
131	1411 Broadway	No
132	1 Pennsylvania Plaza	No
133	3 Park Avenue	No
134	475 Park Avenue South	Construction
135	1250 Broadway	Yes
136	2 Pennsylvania Plaza	Yes
137	41 Madison Avenue	Construction
138	5 East 22nd Street	No
139	108 Fifth Avenue	No
140	50 Lexington Avenue	No
141	156 West 56th Street	Yes
142	135 West 52nd Street	Construction
143	712 Fifth Avenue	Yes
144	899 Seventh Avenue	Yes
145	611 Fifth Avenue	No
146	135 East 57th Street	No
147	235 West 48th Street	No
148	420 Fifth Avenue	Yes
149	1325 Sixth Avenue	No
150	1755 Broadway	Yes
151	146 West 57th Street	No
152	65 East 55th Street	Construction
153	31 West 52nd Street	Yes
154	40 East 52nd Street	No

## APPENDIX

	Building Address	Full Compliance Yes/No?
155	145 West 44th Street	Yes
156	1535 Broadway	Yes
157	489 Fifth Avenue	Yes
158	407 Park Avenue South	Construction
159	45 East 25th Street	Yes
160	12 East 49th Street	No
161	155 East 29th Street	No
162	155 East 31st Street	Yes
163	150 East 34th Street	No
164	166 East 34th Street	Yes
165	115 East 34th Street	No
166	132 East 35th Street	No
167	560 Third Avenue	Yes
168	600 Third Avenue	Construction
169	201 East 17th Street	Yes
170	200 East 24th Street	No
171	240 East 27th Street	No
172	200 East 33rd Street	No
173	240 East 38th Street	Yes
174	222 East 39th Street	No
175	250 East 40th Street	Yes
176	300 East 34th Street	Yes
177	330 East 38th Street	No
178	330 East 39th Street	No
179	311 East 38th Street	No
180	728 Second Avenue	No
181	630 First Avenue	No
182	622 Third Avenue	No
183	140 East 45th Street	No
184	141 East 48th Street	Construction
185	780 Third Avenue	Yes
186	800 Third Avenue	Yes
187	599 Lexington Avenue	Yes
188	153 East 53rd Street	No
189	900 Third Avenue	Yes
190	950 Third Avenue	Yes
191	150 East 58th Street	Yes
192	245 East 40th Street	No
193	235 East 40th Street	No

## APPENDIX

	Building Address	Full Compliance Yes/No?
194	212 East 42nd Street	No
195	201 East 42nd Street	Construction
196	685 Third Avenue	No
197	240 East 47th Street	Yes
198	212 East 47th Street	Yes
199	747 Third Avenue	Yes
200	885 Second Avenue	Yes
201	767 Third Avenue	Yes
202	777 Third Avenue	Yes
203	255 East 49th Street	No
204	805 Third Avenue	No
205	825 Third Avenue	No
206	875 Third Avenue	Yes
207	885 Third Avenue	No
208	909 Third Avenue	Yes
209	245 East 54th Street	No
210	919 Third Avenue	Yes
211	309 East 48th Street	Yes
212	3 United Nations Plaza	No
213	303 East 43rd Street	Yes
214	320 East 46th Street	Yes
215	333 East 45th Street	No
216	301 East 45th Street	No
217	866 Second Avenue	Yes
218	100 United Nations Plaza/871 United Nations Plaza	Yes
219	300 East 54th Street	Yes
220	360 East 57th Street	Construction
221	300 East 59th Street	No
222	429 East 52nd Street	No
223	420 East 54th Street	No
224	400 East 54th Street	Yes
225	415 East 54th Street	No
226	400 East 56th Street	No
227	425 East 58th Street	Yes
228	243 Lexington Avenue	Yes
229	418 East 59th Street	No
230	401 East 34th Street	No
231	137 East 36th Street	Yes
232	285 Lexington Avenue	Yes

## APPENDIX

	Building Address	Full Compliance Yes/No?
233	200 East 32nd Street	Yes
234	353 East 17th Street	Yes
235	410 East 58th Street	No
236	425 Lexington Avenue	No
237	200 West 79th Street	Yes
238	201 West 70th Street	Yes
239	2025 Broadway	Yes
240	80 Central Park West	Yes
241	130 West 67th Street	Yes
242	2 Lincoln Square	No
243	10 West 66th Street	No
244	1 Lincoln Plaza	Construction
245	1886 Broadway	No
246	61 West 62nd Street	No
247	44 West 62nd Street	Yes
248	45 West 60th Street	No
249	30 West 61st Street	No
250	One Central Park West/Trump International Hotel	No
251	145 West 67th Street	No
252	1991 Broadway	No
253	200 West 60th Street	Yes
254	75 West End Avenue	Yes
255	118 East 60th Street	No
256	167 East 61st Street/Trump Plaza	No
257	980 Fifth Avenue	No
258	188 East 64th Street	Construction
259	160 East 65th Street	Construction
260	733 Park Avenue	Yes
261	200 East 61st Street	No
262	200 East 62nd Street	No
263	200 East 64th Street	No
264	220 East 65th Street	No
265	200 East 65th Street	Yes
266	265 East 66th Street	No
267	254 East 68th Street	Yes
268	205 East 95th Street	Yes
269	220 East 72nd Street	Yes
270	300 East 62nd Street	No
271	304 East 65th Street	Construction

## APPENDIX

	Building Address	Full Compliance Yes/No?
272	353 East 72nd Street	Yes
273	300 East 74th Street	Yes
274	300 East 75th Street	No
275	400 East 70th Street	Construction
276	400 East 71st Street	No
277	1385 York Avenue	No
278	1365 York Avenue	No
279	985 Fifth Avenue	No
280	900 Park Avenue	No
281	50 East 89th Street	No
282	45 East 89th Street	Construction
283	40 East 94th Street	No
284	178 East 80th Street	No
285	171 East 84th Street	No
286	185 East 85th Street	No
287	111 East 85th Street	No
288	1065 Park Avenue	No
289	115 East 87th Street	Yes
290	182 East 95th Street	No
291	200 East 82nd Street	No
292	250 East 87th Street	Construction
293	201 East 87th Street	No
294	200 East 89th Street	Yes
295	200 East 90th Street	No
296	301 East 79th Street	No
297	345 East 80th Street	No
298	303 East 83rd Street	No
299	353 East 83rd Street	No
300	351 East 84th Street	No
301	300 East 85th Street	Construction
302	301 East 87th Street	No
303	340 East 93rd Street	Construction
304	345 East 93rd Street	No
305	300 East 93rd Street	Yes
306	401 East 80th Street	Construction
307	401 East 84th Street	No
308	444 East 86th Street	No
309	1675 York Avenue	No
310	1725 York Avenue	Construction

## APPENDIX

	Building Address	Full Compliance Yes/No?
311	515 East 79th Street	Construction
312	1520 York Avenue	Construction
313	60 East End Avenue	No
314	303 East 60th Street	No
315	524 East 72nd Street	Yes
316	455 East 86th Street	No
317	525 East 72nd Street	Yes
318	211 East 70th Street	Yes
319	301 East 94th Street	Construction
320	200 East 69th Street	No
321	235 East 95th Street	Construction
322	1850 Second Avenue	Construction
323	400 East 84th Street	No
324	330 East 75th Street	No
325	422 East 72nd Street	No
326	750 Lexington Avenue	No
327	130 Livingston Street	Construction
328	350 Jay Street	No
329	MetroTech Center	No
330	230 Ashland Place	No
331	343 Gold Street	Yes
332	1 Court Square	No
333	61-01 Junction Boulevard	Yes



Rick D. Chandler, P.E.  
Commissioner  
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April 4, 2017

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**Re: Audit Report of the City's Oversight Over Privately Owned Public Spaces  
(SR16-102A)**

Dear Deputy Comptroller Landa:

Thank you for the opportunity to respond to the recommendations in the above-captioned audit report. We view your input as assistance in furthering our commitment to providing quality public service while maximizing our resources.

As your report indicates, the objective of the audit was to determine whether the City adequately oversees Privately Owned Public Space (POPS) agreements with building developers and owners. We appreciate the opportunity to address your audit findings and concerns, and will use it as a guide to further improve our policies and procedures.

Following are the Department's responses to the nine (9) recommendations, as well as clarifying comments.

**Clarifying Comments:**

***DOB's Inspectional Response Time to POPS Complaints Frequently Exceeds DOB's Time Goals.***

The Department is committed to operating efficiently and equitably distributing its resources to meet the safety and service needs of residents in all five boroughs. The Department realizes that conditions can change on a seasonal basis and will do its best to respond to POPS complaints in a timely manner. However, complaints related to public safety must always take precedence. We classify reports of immediate hazards as "A Complaints" and we route inspectors to address these complaints within minutes. POPS complaints generally do not involve public safety and thus are considered "B Complaints". Please note that the Department has made significant progress in addressing Priority B complaints quickly – indeed, our average response time for B complaints is currently well below our 40-day target.

**RESPONSE TO RECOMMENDATIONS**

**Recommendation #1:**

**Ensure the completion of an accurate database of all the POPS and ensure that it includes the type, size, hours of operations, and the specific amenities required.**

Ms. Marjorie Landa  
April 4, 2017  
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**Agency Response:** The Department agrees with this recommendation. The Department of City Planning is in the process of producing a shared database with physical storage parameters to include POPS information as noted in your recommendation.

**Recommendation #2:**

**Ensure that the database can be accessed by DOB inspectors.**

**Agency Response:** Please refer to response # 1. Also, the database will be available for use by DOB inspectors.

**Recommendation #3:**

**Train inspectors on how to access the database to get information on the POPS.**

**Agency Response:** The Department agrees with this recommendation, and will provide additional training for its inspectors.

**Recommendation #4:**

**Ensure that DOB's Buildings Information System identifies all POPS locations.**

**Agency Response:** The Department agrees with this recommendation. Upon completion of the shared database, DOB will validate the information in BIS to ensure accuracy.

**Recommendation #5:**

**Develop a monitoring policy that requires all POPS to be inspected by DOB at sufficiently frequent intervals to ensure effective enforcement of the Zoning Resolution. Depending on history of compliance, some locations may require less frequent inspections, while others more frequent inspections.**

**Agency Response:** The Department disagrees with this recommendation. The Department's guidelines for inspections are consistent Citywide, and apply to all inspectorial units; thus, the Department will continue to follow its current inspection protocol. A change to the current process would be a change in Department's policy.

**Recommendation #6:**

**Inspect the 333 POPS locations to ensure that all POPS:**

- a) Are still in existence;**
- b) Provide the required amenities;**
- c) Offer full public access as required.**

**Agency Response:** The Department disagrees with this recommendation. A change to the current process would be a change in Department's policy. The Department will continue to follow its current inspection protocol. (Please refer to recommendation # 5 above.)

**Recommendation #7:**

**Schedule inspections of the outdoor POPS locations during warmer months when certain types of noncompliance would more likely to be observed, such as use of a POPS by a restaurant for outdoor seating.**

**Agency Response:** The Department disagrees with this recommendation. While the Department understands the logic behind this recommendation, it may not serve to be a practical solution in most instances. The Department will continue to make its best efforts to respond appropriately to all complaints of non-compliance and address each accordingly.

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**Recommendation #8:**

**Ensure that inspections of a POPS complaint:**

- a) Are performed a time and day of the week that corresponds to the complaint
- b) Are performed within the timeframe set as a goal by DOB for its response to these types of complaints;
- c) Are performed during the time of year that corresponds to the complaint;
- d) Are followed by a re-inspection to ensure that the violation is corrected.

**Agency Response:** The Department partially agrees with this recommendation. Our mandate is to address public-safety complaints first, so we cannot commit to inspecting POPS complaints at times that precisely correspond to the nature of the complaint. However, the Department will continue to make every effort to respond to POPS complaints in a timely manner.

**Recommendation #9:**

**Refer the apparent destruction of the POPS at 410 East 58<sup>th</sup> Street in Manhattan to the City Law Department to take appropriate action.**

**Agency Response:** The Department agrees with this recommendation. The Department will consult with the City's Law Department for further directions, and to see what appropriate action, if any, can be taken.

Thank you, once again, for giving us the opportunity to respond to this draft audit report. We look forward to receiving your final version.

Sincerely,



Rick D. Chandler, P.E.  
Commissioner

cc: George Davis, III, Mayor's Office of Operations  
Archana Jayaram, Department of Buildings  
Kerry Castro, Department of Buildings  
Anita Laremont, Department of City Planning  
Jon Kaufman, Department of City Planning



DEPARTMENT OF CITY PLANNING  
CITY OF NEW YORK  
OFFICE OF THE DIRECTOR

April 4, 2017

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**Re    Audit Report of the City's Oversight Over  
      Privately Owned Public Spaces  
      SR16-102A (Draft Audit Report)**

Dear Ms. Landa:

The Department of City Planning (DCP) is in receipt of the above-referenced Draft Audit Report regarding the City's Oversight Over Privately Owned Public Spaces (POPS). DCP agrees that these spaces play a valuable role in providing open space for the enjoyment of the public in the dense urban environment that is characteristic of those parts of the City where POPS are located. As the City agency responsible for land use, DCP has consistently recognized the value of such spaces, and has promulgated zoning text that incentivizes the establishment of such spaces. From the adoption of the 1961 Zoning Resolution, which provided for the earliest POPS, to the present, the City's zoning has encouraged the provision of such spaces, with the enactment of a number of modifications to the POPS zoning text reflecting evolving standards for such spaces. The zoning text establishes the requirements for such spaces, and since 1977, mandates the provision of amenities (such as seating and plantings) and the posting of signage identifying the space as a POPS. Subsequent zoning text amendments have, among other things, required the signage to delineate amenities, have established detailed design requirements, and have required the Chair of the City Planning Commission to certify

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the compliance of POPS plans with zoning requirements as a prerequisite to the issuance of a foundation permit. The City's Department of Buildings (DOB) enforces the Zoning Resolution and, as part of that responsibility, issues violations to POPS owners when POPS are determined to be out of compliance with applicable requirements.

In addition to discharging its responsibilities under the zoning text regarding POPS, DCP maintains an electronic database containing detailed information about all 333 POPS currently located in the City.

Throughout the course of the Comptroller's audit review, DCP staff worked to ensure that the Comptroller's office developed a clear understanding of the zoning framework and requirements governing the POPS located throughout the City.

The Draft Audit Report contains the following two recommendations directed at DCP. Following each recommendation is DCP's response related thereto.

**Recommendation 10**<sup>1</sup>: Develop an advertising campaign to inform the public about all POPS locations and the required amenities required to be provided at each.

**Response**: DCP is committed to enhancing its on-line POPS database to include updated information and an interactive map that will provide more detail and greater ease of access for the public, and to making the existence of the database and POPS information more prominent on the DCP website. While DCP does not perform that function with regard to any aspect of zoning, DCP will explore additional ways to enhance public access to information about POPS, including public service announcements to broaden the public's awareness of POPS and promoting POPS on social media.

**Recommendation 11**: Consider:

- a) Posting signs on the street identifying a space as a POPS, similar to that done when a location is identified as a historical site;
- b) Creating a City website available to the public that identifies every POPS location and its required amenities;
- c) Employing various means of making the availability of POPS and the amenities they should provide available to the public, including advertising the website on subways, buses and social media.

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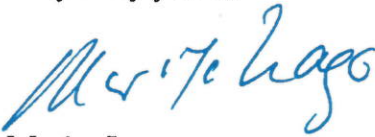
<sup>1</sup> Recommendations 1 through 9 are addressed to DOB.

April 4, 2017

**Response:**

- a) DCP may only require signage at those POPS where the applicable zoning text mandates signage. As the Draft Audit indicates, POPS developed pursuant to zoning provisions in place prior to 1977 did not require signage, and DCP has no legal authority to impose such a mandate. In order for signage to be required at pre-1977 POPS, a local law mandating signage at all POPS would need to be enacted.
- b) DCP agrees to enhance its POPS database on the DCP website and to provide information about required amenities along with an interactive map.
- c) See response to Recommendation 10.

Very truly yours,



Marisa Lago  
Director

C: Anita Laremont, General Counsel, Department of City Planning  
Jon Kaufman, Chief Operating Officer, Department of City Planning  
Joshua Florsheim, Director, Buildings Analytics Team, Department of Buildings  
Kerry Castro, Analyst, Audits, Department of Buildings