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**TESTIMONY OF STATE SENATOR BRAD HOYLMAN TO THE NEW YORK CITY COUNCIL  
COMMITTEE ON TRANSPORTATION REGARDING INTRO 1109**

**MARCH 30, 2016**

Thank you for the opportunity to testify. I am grateful to Council Members Garodnick and Johnson for their introduction of this legislation, as well as Council Members Lander, Rodriguez, Torres and Chin for their cosponsorship of the bill. I am also grateful to Manhattan Borough President Brewer, Community Board 5, and the Times Square Alliance for their collaboration in this effort. As the State Senator representing the Times Square area, as well as a number of smaller pedestrian plazas throughout my district, I fully support this legislation and encourage the Council to vote in its favor.

Pedestrian plazas demonstrate our city's commitment to creating spaces for the public good, and have proliferated citywide over the last decade. As more streets close to vehicular traffic to make way for plazas, we must carefully consider how we inhabit and regulate them. Rules currently in place have not kept pace with the reality of development and commerce, and Intro 1109 is an important step towards modernizing our ability to maintain and enhance these public spaces.

Intro 1109 provides a useful road map for addressing our problems in a manner that appropriately balances the interests of local residents, businesses, and visitors while continuing to respect the rights of free assembly and expression. As such, it will also help make Times Square a more welcoming destination for the millions of tourists who visit it every year, as well as local residents and businesses.

Under current law, pedestrian plazas that consist of formerly active streets remain classified as streets for the purposes of management and regulation. This leaves the Department of Transportation (DOT) unable to regulate them as the true multifunctional public spaces they are, since DOT's current powers relate to managing traffic flow, from the creation and maintenance of turning lanes to the designation of parking spaces. DOT does all of this very well, but it is not what we need in order to

reduce the chaos of pedestrian plazas. Intro 1109 fills in this gap by giving DOT a similar authority for place, time and manner zoning in the plazas.

This would impact 71 existing plazas and give DOT the ability to designate new pedestrian plazas in the future. Once designated, DOT would have rulemaking authority around site-specific use and the flexibility to create individualized frameworks that account for the needs of local stakeholders. For example, Intro 1109 notes factors DOT should take into account before designating rules, including the individual needs of a plaza, pedestrian traffic and congestion, public safety, size, current and potential uses, competing uses, plaza aesthetics, economic development, and the regulation of commercial activity or expressive matter vending. Additionally, Intro 1109 specifically mandates public notice for the designation of any pedestrian plaza and allows for the consideration of comments from Council Members, Community Boards, and Borough Presidents regarding such pedestrian plazas. Moreover, the legislation notes that the DOT must consult with any pedestrian plaza partners in developing rules for a specific plaza. Of course, each of these elements will take on varying weights depending on the plaza in question. As the Senator representing the Times Square area, I am particularly concerned about the regulation of commercial activity or expressive matter vending.

Activities like panhandling, solicitation, and street performance are protected by the First Amendment, and Intro 1109 does not ban these activities from public spaces and does not specify how to regulate any expressive activities. Rather, the legislation simply gives DOT the authority to determine where and when, within the relevant spaces, such expressive activities are appropriate. Any specific regulations proposed under this framework would still have to pass constitutional muster.

Bestowing a city agency with rulemaking authority over a public space has ample legal precedent. In the 1981 Supreme Court case *Heffron v. International Society for Krishna Consciousness*, the Court determined that a state may require an organization seeking to distribute literature and solicit donations to conduct those activities only at an assigned location. This decision noted that a place and manner restriction may exist if the “venue” provides reasonable alternative channels for expressive activity. The ability of DOT to designate activity zones would not unnecessarily limit the right of an individual or group to engage in protected speech in the Times Square area. The *Heffron* decision emphasized that regulations “must be assessed in light of the characteristic nature and function of the particular forum involved,” and I believe Intro 1109 specifically grants DOT the flexibility to abide by this requirement.

Various Second Circuit cases have affirmed the government’s significant interest in regulating public spaces for the common good. *Bery v. City of New York* (1996) noted that New York City “has a significant interest in keeping its public spaces safe and free of congestion,” and *Mastrovincenzo v. City of New York* (2006) reiterated that “reducing

sidewalk and street congestion in a city with eight million inhabitants, constitute[s a] 'significant governmental interest.'" *Bery* further acknowledged the reality that a city can limit expressive activities through targeted regulations intended to address "particular areas of the City where public congestion might create physical hazards and public chaos." In a later case, *Lederman v. New York City Department of Parks & Recreation* (2013), the Second Circuit ruled that, even in public spaces, "the government may impose reasonable content-neutral restrictions on the time, place, or manner of protected speech." Intro 1109 is explicitly content-neutral.

We have a responsibility to protect our public plazas and the ability of diverse communities and stakeholders to use them. Intro 1109 will empower DOT to engage in targeted regulation, as laid out in the *Bery*, *Mastrovincenzo*, and *Lederman* cases, to best organize the active and passive functions that make our public plazas the destinations they are.

The legislation you are considering today is an important step towards ensuring our public plazas are maximally utilized by the public they were built to serve. Intro 1109 balances the need to preserve, enhance, and optimize our public spaces with the need to anticipate and appropriately plan for future street developments. Most importantly, this legislation will not infringe anyone's First Amendment rights. Without such a regulatory framework, the very plazas meant to benefit surrounding communities become chaotic and burdensome. As pedestrian spaces proliferate throughout New York City, this legislation will give our city the flexibility it needs to make each pedestrian plaza true assets for their communities.

Thank you for your time and consideration of my comments.