225 West 34th Street, Suite 1607
New York, NY 10122
212-983-4800
www.jcrcny.org

Testimony of David M. Pollock on behalf of the Jewish Community Relations Council of New York in opposition to Introduction 1253-2018

December 4, 2018

We thank the Council and especially, Hon. Costa Constantinides, Chair – who has always welcomed us to present our concerns -- for the opportunity to present our views. Please do not construe our opposition to some glaring omissions in this bill as a denial of climate change or the need for New York City to identify pathways for reductions in greenhouse gas emissions from buildings. We were honored to participate, and sign onto, the Urban Green 80x50 Buildings Partnership, ***Blueprint for Efficiency***.

To quote one of the findings of that report:

> "Owners of other affordable housing—and there are many types—often struggle with thin margins and have difficulty accessing financing. So, too, do many nonprofit organizations, like houses of worship and social service organizations, or schools that may have limited staff and no experience with energy management. With a public-interest mission, these sectors warrant a bigger helping hand: dedicated financing, technical support and streamlined access to incentives or subsidies (emphasis added)."

We are not opposed to the principles embraced by the bill. Rather, we are concerned that *Introduction 1253-2018* makes no provision for the "bigger helping hand."

According to an analysis of the NYC PLUTO database, there are approximately 4,100 nonprofit-owned properties in New York City larger than 25,000 square feet. That reflects approximately 12% of the total of the larger buildings in the city.

As a class, the nonprofit owners of buildings are a diverse group. A board of directors (who must be volunteers) governs each nonprofit owner and most organizations have staff with a primary focus on their nonprofit missions. They are pastors, educators and human service providers. They offer services that often supplement or supplant established governmental programs. They are mission-driven and comparatively few of the staff or the volunteer board members have the expertise or substantive experience in facility management. The very concept of energy efficiency is beyond their focus.

On the other hand, there are very large nonprofits (e.g., large universities, hospitals and cultural institutions) with staffers, which are often more sophisticated, and have a higher level of facility management. Although they, too, struggle with financial challenges they may have access to a cadre of the professionals and consultants necessary to operate in a highly efficient manner.

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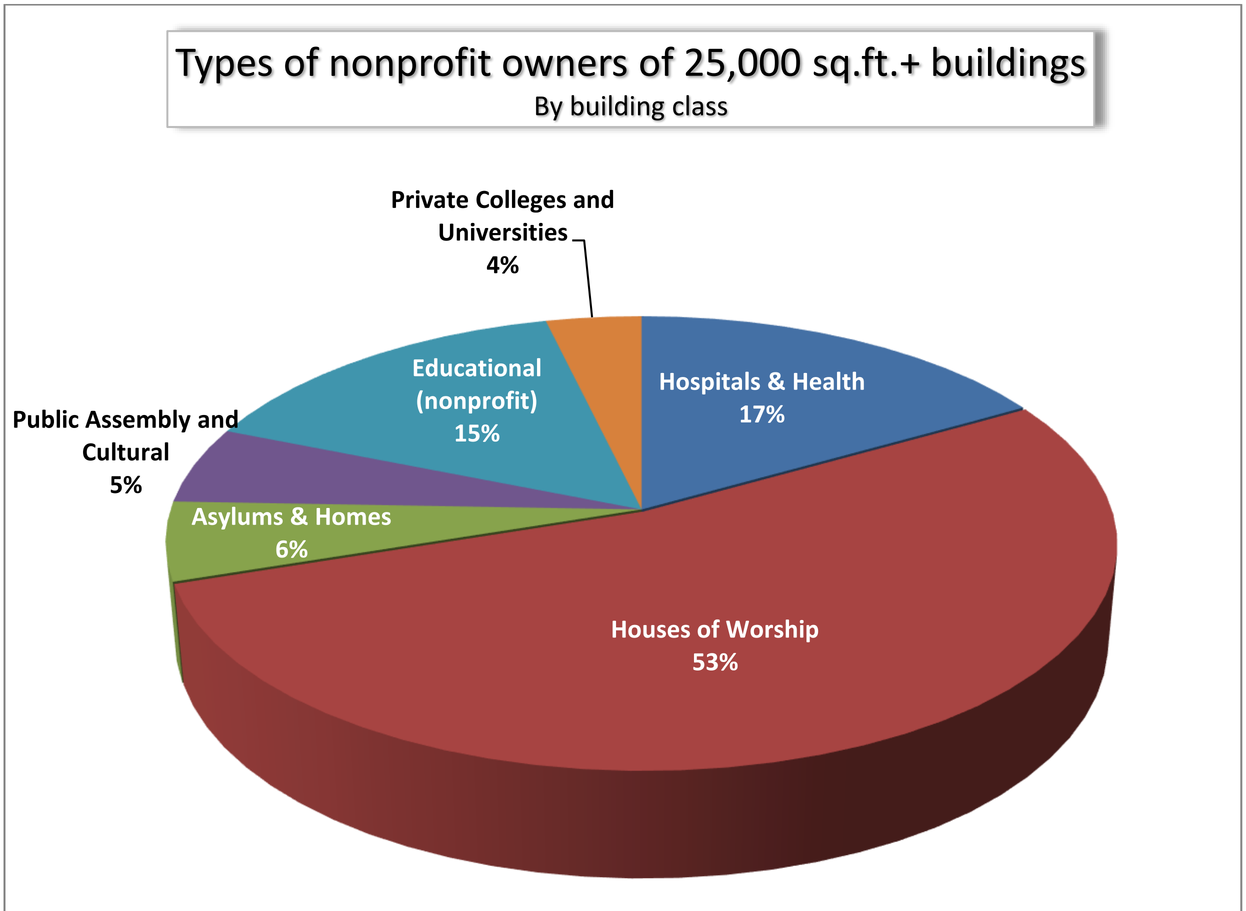

The underlying data for this chart are from the NYC PLUTO database which contains extensive land use and geographic data from multiple NYC agencies, at the tax lot level. PLUTO does not include DOF exempt property data, so this chart uses DOB "Building class" definitions which are not always comparable to exempt property classifications.

Specific needs of the nonprofits

An examination of the EUI numbers, based on existing benchmarking data, seems to indicate that some of the very large nonprofits are already ahead of the curve. Yet, in order for the bulk of the larger nonprofits to comply with any required mandates for retrofits and upgrades, most nonprofits will need an array of assistance:

Financing

Short term. Any major renovation requires upfront costs, e.g. a NYSERDA-compliant energy audit, consultants, loan initiation fees, appraisal costs and legal costs. Note: There will be no savings until the upgrades are in place. Such costs represent a major drain on a nonprofit's [1] cash flow and a serious challenge to their operations related to their core missions. NYC should provide to nonprofit owners grants, through EDC or other governmental agencies, to cover these costs.

[1] Nonprofits are exempt from most forms of taxation so that they cannot "write off" such expenses to achieve tax savings.

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Long term. The PACE/ENERGIZE NY loans should be roughly analogous to a mortgage that may be funded through ultimate energy savings that result from the upgrades. However, there are several identified problems with this proposed vehicle:

- *Fading Savings.* Experience teaches that expert projections of savings are often illusory. A nonprofit board would have to tread carefully before committing to such borrowing.
- *Liens***.** Many nonprofits, especially religious organizations, are averse to placing a lien on their most significant assets, their house of worship and schools. These loans would not be appropriate for such entities.
- *Regulatory concerns.* Most nonprofits will not be able to enter into such financing agreements without approval from the New York State Attorney General. To streamline the process, it would be wise to develop the financing mechanisms in consultation with this office.
- *Constitutional questions.* The funding for houses of worship may not be constitutional. The recent *Trinity Lutheran* case reaffirmed the principle that, "denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion." That principle seems to apply to PACE financing. However, *Tilton v. Richardson* (1971), held that a federal program that provided construction grants to colleges and universities but prohibited grantees from using the funds to construct facilities "'used for sectarian instruction or as a place for religious worship'" or "'used primarily in connection with any part of the program of a school or department of divinity'" was constitutional.

  Before any legislation moves forward, the NYC Corporation Counsel should prepare a formal Memorandum opining on this issue.

Expertise
In order for this program to be successful, nonprofit owners should have access to a portal that can readily provide a wide array of expertise to building owners at no cost. Similar access can also be provided to other smaller commercial and residential owners who also lack such technical expertise.

Waiver
The proposed legislation defers to a proposed Advisory Board to develop standards for a waiver. We urge that the Council set such standards.

The New York City Landmarks Preservation Commission has a similar process, called "hardship." While for-profit owners have a well-defined standard based on ROI, nonprofits have no such bright line. There should be a clear standard for nonprofits, one that clearly respects the primacy of the nonprofit's mission. Moreover, the administrative agency should make a recommendation, but an ALJ at the EPB or OATH should make the ultimate determination.

Finally, we believe the process should specifically reflect the special needs of the nonprofit sector and address the framework of our concerns within legislation rather than waiting for rulemaking.

Thank you for your concern and attention.