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To the District Managers of Manhattan Community Boards 1-12:

You have written to this office seeking advice regarding the conclusions of a draft report issued by the New York City Comptroller's office, dated December 6, 2021, entitled "Audit Report on the Twelve Manhattan Community Boards' Compliance with New York City Charter and New York City Administrative Code Requirements for Public Meetings and Hearings, and for Websites" (hereinafter "Draft Report"). The portions of the report with which you express concern relate to (a) the conduct of monthly public hearings by community boards, (b) the noticing of community board meetings and hearings, and (c) the broadcasting and cablecasting of community board meetings and hearings.

A. Monthly Public Hearings of Community Boards

Section 2800(h) of the New York City Charter (hereinafter "Charter") provides that "[e]xcept during the months of July and August, each community board shall meet at least once each month within the community district and conduct at least one public hearing each month." That subdivision further provides that, "[a]t each public meeting, the [community] board shall set aside time to hear from the public." In addition, Charter sec. 2800(d)(3) provides that each community board shall "[a]t its discretion, hold public or private hearings or investigations with respect to any matter relating to the welfare of the district and its residents[.]" The Draft Report states, at pages 9-10, that the public hearings of community boards must be separate and distinct from their public meetings, and that they must be devoted to one or more specific subjects.

The Charter provides little guidance on the conduct of community board hearings. There is no requirement of law that a community board's monthly public hearing be held on a different date from its public meeting, or that it be devoted to a specific subject or subjects. However, many public hearings conducted by City agencies, such as rulemaking hearings, ULURP hearings or revocable consent hearings, are by their nature limited to a single subject or set of related subjects. In addition, it is highly desirable that community boards follow substantially similar practices in conducting their public hearings, so that members of the public are afforded as

uniform opportunity to be heard in all community districts. Therefore, it is recommended that community boards take into account the following when conducting their public hearings:

1. If a community board holds its public hearing on the same day as its public meeting, the public hearing be held before rather than after the public meeting, so that community board members can be informed of the interests and concerns of residents of the community district and take them into account in their deliberations during the public meeting.
2. The public hearing be referred to as such, and not as a “public session”, in the agenda, notice and other materials issued by the community board.
3. In the portion of the agenda devoted to the public hearing, the community board list certain discrete subjects with regard to which it would be interested the hear the views of members of the public, making clear that those in attendance may speak on other subjects as well, to the extent they relate to the affairs of the community district. The subjects listed in the agenda may vary from month to month, depending on events.

Finally, it is our view that meetings of community board committees, at which members of the public are allowed to speak, do not qualify as community board hearings. The Charter provisions cited above intend that the public hearings of a community board be conducted by the entire body and not by a subset of members whose concerns and jurisdiction are limited.

B. Noticing of Community Board Meetings and Hearings

Charter sec. 2800(h) provides that [e]ach [community] board shall give adequate public notice of its meetings and hearings.]” Further, the New York State Open Meetings Law, to which all community boards are subject, requires that:

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given or electronically transmitted to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.
2. Public notice of the time and place of every other meeting shall be given or electronically transmitted, to the extent practicable, to the news media and shall be conspicuously posted inn one or more designated public locations at a reasonable time prior thereto.

New York State Public Officers Law (“POL”) sec. 104. The Draft Report states at page 13 that certain Manhattan community boards do not provide notice to the news media as required by these provisions, while others do not post their notices in a public location.

The Charter provides limited guidance as to the noticing of community board meetings and hearings. Instead, we can look to the requirements of the Open Meetings Law. According to that statute, community board notices must be (1) transmitted (electronically or otherwise) to news media outlets, and (2) posted in a public location. The “posting” of a notice, as commonly understood, refers to its placement in a physical location. Since community board meetings and

hearings, to our knowledge, are normally scheduled at least a week in advance, these requirements must be met at least 72 hours before the meeting/hearing.

In our view, the news media notice requirement of the Open Meetings Law is satisfied if a community board electronically transmits its notices to newspapers or other news outlets which are published or issued regularly and are intended to be read, heard or viewed by the general public. Their publication may be partly or entirely electronic. Community newspapers or borough-wide news outlets are ideal for this purpose. It is important to note that a community board is responsible only for notifying a newspaper or news outlet of its meetings/hearings. It is not responsible for ensuring that the notice is published or aired. See POL sec. 104(3) (“[t]he public notice provided for by this section shall not be construed to require publication as a legal notice”). When a community board notices one of its hearings, it is also advisable (though not required) that the notice also be published in New York City’s official publication, the City Record, even though this is not considered a newspaper or news outlet.

With regard to the public posting requirement, a community board need only place a paper notice of its meeting/hearing in a place that is accessible to the general public. It is advisable that the location be chosen so that the notice will be seen and attended to by those passing it.

It may be noted that the notice requirements of the Charter and Open Meetings Law are very basic. They do not require explicitly that the notice provide the agenda of a meeting or hearing. However, in view of the purpose and function of community boards, the Charter’s requirement that a community board provide “adequate notice” of its meetings and hearings should be read to include a reasonably detailed agenda.

C. Broadcasting and Cablecasting of Community Board Meetings and Hearings

Charter sec. 2800(h) requires that each community board “shall make [its] meetings and hearings available for broadcasting and cablecasting.” The Draft Report states, at page 14, that community boards should obtain access to a cable channel designated for government use pursuant to Charter sec. 1063(a), indicating that, at least with regard to cablecasting, community boards must act directly to satisfy the requirement.

In our view, the Charter requirement under discussion does not require that community boards themselves broadcast and/or cablecast all of their meetings and hearings. However, we believe that the Charter contemplates that a community board do more than passively allow reporters or anyone else in attendance to broadcast and/or cablecast those events. The Charter requirement would be satisfied, in our view, if a community board ensured that organizations or individuals likely to be interested in broadcasting or cablecasting its meetings and hearings were informed of them, perhaps at the same time that any notice of a meeting or hearing is transmitted.

If you would like to discuss further any of the matters presented in the Draft Report, please let me know. In addition, you may seek advice and assistance on any matter concerning

community boards from the Mayor's Community Assistance Unit and from Adele Bartlett, general counsel to the Manhattan Borough President.

Sincerely,

STEPHEN LOUIS
Chief
Division of Legal Counsel

cc: