

**City Zoning & Land Use Priorities**  
**Historic Preservation, Environmentalism, Protecting Communities**

My name is John F. Manning. I am a civil servant and a resident of Brooklyn. I testified last fall to ask the Charter Revision Commission to prioritize the issue of protecting our City, and its communities, from the negative aspects of overdevelopment. Thank you for the opportunity to speak again.

I have read the Preliminary Staff Report. Control and policy input with the City's land usage and urban planning issues, that empowers Communities and respects the wishes of the citizenry, have become major topics for The Commission. When finalizing a reform proposal for the public to vote on this November, please consider historic preservation, environmental protection, and the sustainability of neighborhoods that working people call home, to be three vitally important concerns for the long-term future of our City. Through zoning and development policies and guidelines, we must require and empower the Department of City Planning, and the rest of City government, to address the overexploitation of our neighborhoods, the displacement of people of modest means, and the destruction of our national heritage.

The City of New York and the Greater New York Region have a rich heritage and a beautiful natural environment. This is the finest natural harbor

on the Atlantic seaboard. Large sections of the City still abound with low-rise historic and community friendly blocks and buildings. Lower Manhattan and Brooklyn are among the places where our nation's history began.

My neighborhood, Bay Ridge, is zoned so that buildings are not taller than 6 stories. It is a wonderful community to live in or visit. Brooklyn Heights, and other sections of Northern and Central Brooklyn, are national treasures. One block from my apartment building, there is a small Revolutionary War cemetery. Two blocks away there is a botanical garden maintained by community volunteers.

Due to the political power and influence enjoyed by the Real Estate Industry, General Contractors, other special interests, and their lobbyists, all over town there is an enormous square box high-rise going up. Many of these buildings are eyesores. Working class people and small business owners are being displaced. Communities that contribute a lot to the City are being destroyed. Apartments in these buildings are being peddled to foreign investors for \$2 million in what can be only described as a financial shell game. It is absurd that government policy encourages this while our mass transit and infrastructure needs are neglected.

In many European cities, during the post-World War Two reconstruction, there was a blend of modern buildings and the restoration of

centuries-old historic areas and city quarters. We can do that here. Historic preservation is not just one building. It should be an area. We meet tonight in a charming 200-year-old landmark. Two blocks away, at the South Street Seaport, is a living slice of 19<sup>th</sup> Century urban America. However, here in lower Manhattan, and in the Greater Downtown Brooklyn area, in almost every space that becomes available, garish, ugly high-rise glass towers are springing up all over.

Constructing new buildings and blocks that are aesthetically pleasing, neighborhood friendly and affordable for working people is something we can do. Small to medium size parks and gardens are vital to a stable community.

I ask the Charter Revision Commission, when drafting proposed City Planning and Land Use Law, to not be beholden to the rich and powerful, but to appreciate the need for a City that is enjoyable to live in, where people who work for a living have a secure place, and the importance of the legacy we will leave behind for future generations.

Thank you,

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## **Testimony before the 2019 Charter Revision Commission**

May 9, 2019

Good evening, I am Andrew Rein, President of the Citizens Budget Commission (CBC). CBC is a nonpartisan, nonprofit think tank that promotes constructive change in the finances and services of New York State and New York City governments. Thank you for the opportunity to testify.

The current City Charter provides a strong budgeting and financial management framework that has served the city well. New York City has produced nearly 40 balanced budgets and regained and maintained good standing in municipal credit markets since this framework was enshrined in the New York State Financial Emergency Act for the City of New York (FEA), and subsequently incorporated in the Charter. With this backdrop, CBC recommends this Commission exercise caution when proposing changes to the City's fiscal management structures and processes.

CBC supports two proposals that would strengthen this framework by allowing the City to better prepare for economic downturns and to meet future obligations. Otherwise, CBC recommends the current framework remain intact. Furthermore, as this Commission considers changes to the City's long-term land use and capital planning processes, two enhancements would be beneficial. Finally, the Commission should strongly consider putting its proposals, assuming they are diverse, before the voters as discrete proposal groups rather than as a single ballot question.

### **Charter Amendments That Would Improve the City's Long Run Financial Management**

Creating and permitting the use of a Rainy Day Fund (RDF) would be a significant improvement to the City's Charter-defined financial management framework. A recession comparable to the prior two would result in New York City facing cumulative tax revenue shortfalls of \$15 billion to \$20 billion over three years. During prior recessions, New York City cut services and increased taxes to balance the budget. Had a well-structured RDF been in place, the City would have been able to draw on resources set aside during periods of economic growth to mitigate some of the service reductions and counterproductive tax increases.

The Charter should be amended to exclude from its balanced budget requirements a deficit that is funded by an RDF that adheres to the sound principles laid out in CBC's recent



report [\*To Weather a Storm\*](#), appended to this testimony. In order to ensure the RDF is funded adequately and used properly, the Charter should include the following parameters:

- The RDF should have a target size sufficient to ameliorate the most damaging impacts of tax revenue losses due to a recession. The target size should be sufficient to cover an estimated two-year budget gap resulting from recession-driven revenue shortfalls and spending growth that would be significantly lower than historical averages.
- Minimum annual deposits into the RDF should be required during periods of economic growth. While the sum of these deposits might not reach the target size during most economic recoveries, they should be sufficiently large to accumulate a substantial RDF. Deposit requirements should be designed to capture more revenue in years of faster tax revenue growth, while still allowing sufficient revenue to fund City services.
- Withdrawals should be allowed only during an economic contraction or a severe emergency, which should be precisely defined; there should be a cap on the share of the RDF that can be withdrawn in the first year.

Modifying the Charter to create and allow for the use of an RDF is necessary but not sufficient. The City should work with the State to amend the FEA to permit use of an RDF. Furthermore, rules specifying the RDF target size, minimum deposit amount and timing, and withdrawal limits should be adopted in local law. CBC's [\*To Weather a Storm\*](#) includes recommendations for establishing an RDF and defining its specific parameters. While the needed changes to State law and City administrative code are outside of the purview of this Commission, a Charter amendment is essential and is a critically important first step to create momentum for this needed change.

Complementing the RDF, CBC recommends the Charter be amended to properly structure the Retiree Health Benefits Trust (RHBT), which is now imprudently considered a de facto RDF. Establishing the RHBT in the Charter can prevent its use as a de facto RDF by (1) requiring annual deposits of at least the current year cost (or PAYGO) of the relevant retiree health benefits plus some percentage, or the normal cost of those benefits, and (2) limiting RHBT disbursements to PAYGO. This proposal is a beneficial companion to the RDF proposal and would help ensure the RHBT is able to accrue resources for current obligations to be paid in the future.

Including the RDF and RHBT proposals on the ballot would empower voters to support prudent, long-term fiscal management for New York City.

### **Elements of the Budgeting Framework That Should Not Be Amended**

Three proposals before this Commission would change the current budgetary powers, discretion, and shared decision-making framework. CBC recommends:

- The Commission should not propose to modify the process and timeline for estimating non-property tax revenues, since the current framework has served the

City well by reducing risk of overestimation while allowing for substantial growth in spending over time;

- The Commission should not propose to create independent or formula budgets for certain offices, since they would not ensure these offices' independence and would undercut the City Council and Mayor's role in setting budgetary priorities; and
- The Commission should not propose to narrow the Mayor's power to impound funds. While CBC understands the impetus behind the proposal, this power rarely has been an impediment to good financial management and changing it may yield unforeseen negative consequences.

### **Planning Document Coordination and Alignment**

The Preliminary Staff Report recommends the Commission consider Charter amendments to clarify how the City's various land use and capital budget documents relate to one another. While the Staff Report did not include in its document list the capital asset inventory required by Charter Section 1110-a, any proposal the Commission pursues to improve the City's land use and capital planning documents should include expanding the Charter-defined components of the capital asset inventory to include all assets that meet capital financing eligibility criteria, currently \$35,000 and a five-year useful life, that are owned by an agency or authority that the City controls. In addition, if the Commission seeks to align the various planning documents, it also should require the capital budget Borough President allocations to align with the City's 10-year capital strategy.

### **Presentation to Voters**

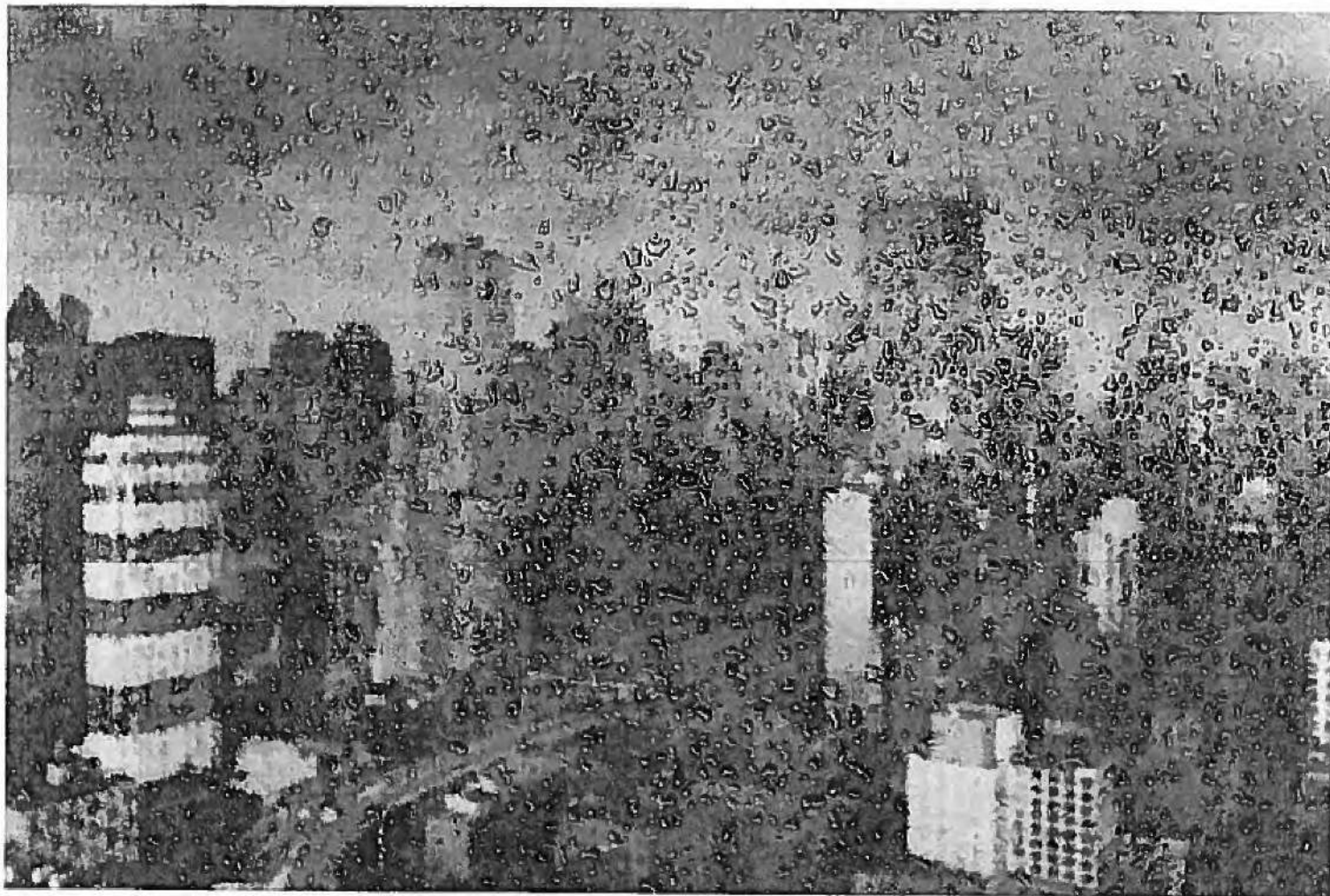
New York State's Municipal Home Rule Law empowers Charter Revision Commissions to present proposed amendments as a single ballot question or in two or more parts.<sup>1</sup> Since the Commission has a broad mandate and may present a diverse set of proposals, CBC recommends the Commission consider presenting them as discrete groups of like proposals so that voters can consider the worthiness of each.

### **Conclusion**

The Charter mandated financial management structures generally have served the city well and should for the most part remain intact. However, establishing the RDF and the RHBT, and making the City's capital inventory comprehensive would be important improvements.

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<sup>1</sup> Article 3, Section 26(5)(b) of the Municipal Home Rule Law of New York.



# To Weather a Storm:

Create an NYC Rainy Day Fund

April 2019







## FOREWORD

Founded in 1932 the Citizens Budget Commission (CBC) is a nonprofit, nonpartisan think tank devoted to influencing constructive change in the finances and services of New York State and New York City governments. A major activity of CBC is conducting research on the financial and management practices of the State and the City and their authorities.

CBC research is overseen by trustee committees. This report was prepared under the auspices of the Budget Policy Committee, which we co-chair. The other members of the Committee are Jay Badame, John H. Banks, Stephen Berger, Ann Berry, Renee Boicourt, John Breit, Elaine Brennan, Michael Britchkow, Lawrence B. Bittenwieser, Vishaan Chakrabarti, Rose Christ, Eileen Cifone, Edward F. Cox, Eric R. Dinallo, Jake N. Elghanayan, Gabrielle Facquet, Suzanne Finnegan, Ann Flynn, Arthur A. Gianelli, Kenneth D. Gibbs, Bud H. Gibbs, William J. Gilbane III, Martin Grant, Peter C. Hein, H. D. Hemmerdinger, Kent Hiteshew, William N. Hubbard, Rahul Jain, David A. Javdan, David Kaden, Steven J. Kantor, Elias Kefalidis, Eugene J. Keilin, Tom Kennedy, Marvin Krislov, Michael J. Kuh, Richard A. Levine, Eric Linzer, James L. Lipscomb, Evan McLaughlin, Haeda Mihaltses, Frances Milberg, Charles John O'Byrne, Edward V. Piccinich, Carol E. Rosenthal, Andrew Rothbaum, Tom Rousakis, Michael L. Ryan, Edward L. Sadowsky, Brian P. Sanvidge, Timothy Sheehan, William C. Thompson, Merryl H. Tisch, Matthew S. Washington, Kevin Willens, Michael A. Zarcone and Walter Harris, ex-officio.

This report was prepared by Charles Brecher, Senior Advisor for Health Policy; Thad Calabrese, Consultant; and Ana Champeny, Director of City Studies, under the research and editorial guidance of Andrew Rein, President. Maria Doulis, Vice President, provided input throughout the process. Laura Colacurcio edited the document, and Kevin Medina designed the graphics and publication.

A draft of this report was reviewed by staff at the New York City Office of Management and Budget, the Office of the New York City Comptroller, the Office of the New York State Comptroller, the New York State Financial Control Board, the New York City Independent Budget Office, and the Government Finance Officers Association. We are grateful for their comments and suggestions, though their willingness to review the work does not necessarily indicate agreement with its recommendations.

Alair Townsend, Co-Chair

Frederick Yosca, Co-Chair

April 18, 2019





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## EXECUTIVE SUMMARY

In New York City, a recession comparable to the last two would result in cumulative tax revenue shortfalls of \$15 billion to \$20 billion over three years, compared to the current financial plan. During prior recessions, New York City has cut services and enacted tax increases to balance its budget.

Rainy Day Funds (RDFs) are prudent fiscal management tools that provide stability during recessions by setting aside funds during good times to smooth out potential spending reductions during contractions. Current law, put in place in the wake of the City's mid-1970s fiscal crisis, prevents the City from using an RDF. Amending the law to permit an RDF would further enhance the City's fiscal management.

Absent an RDF, New York City officials have turned to alternative mechanisms to set aside resources: annual budget reserves, a surplus roll, and reduced deposits to from the Retiree Health Benefit Trust (RHBT). However, these alternatives are deficient—they are not large enough, are discretionary and not tied to the economy, and support imprudent use of the RHBT. An RDF would be superior.

CBC recommends that the City and State authorize the City to use an RDF by codifying its parameters and amending State law and the City Charter to permit it. Legislation to establish the RDF should specify the target size, required deposits, and permitted withdrawals.

- The target size of the RDF is 17.2 percent of the pre-recession year tax revenue. The target is designed to cover two years of recessionary tax revenue reductions and provide for modest 2 percent annual spending growth. In fiscal year 2020, the recommended RDF target size would be \$10.8 billion.
- Minimum required deposits should capture more revenue in years with faster growth, while also allowing sufficient revenue to fund City services. A clear approach that meets both objectives is to deposit at least 75 percent of the annual tax revenue growth in excess of 3 percent. If the RDF had been in place with this deposit requirement during the current nine-year expansion, the balance would now be \$8.5 billion.
- Withdrawals should be permitted during an economic contraction or a severe emergency. Withdrawal criteria should be specific to ensure the fund is used appropriately.

A well-funded and structured RDF would help New York City weather future recessions without harmful service cuts or counterproductive tax increases. While establishing the fund will require changes to State statute and the City Charter, such changes could be made in a way that would not undercut the beneficial legal requirements for sound budgeting that have served the City well since the 1970s fiscal crisis. City and State officials should work to establish a meaningful RDF in order to secure the City's long-term fiscal future in the face of economic uncertainty.

## Introduction

Economic downturns and unforeseen emergencies can disrupt municipal budgets by reducing expected revenues and imposing unplanned costs. The most prudent approach to avoid the harmful consequences of such events is to have a rainy day fund (RDF) with resources to cover a significant portion of the adverse developments. However, New York State law enacted in the wake of the City's fiscal crisis in the 1970s and provisions more recently incorporated into the City Charter require a balanced budget, which prevents New York City from using an RDF. The practices adopted by City officials to build reserves within the confines of legal restrictions are deficient. A better approach is to amend State law and the City Charter to permit use of an RDF, which should have:

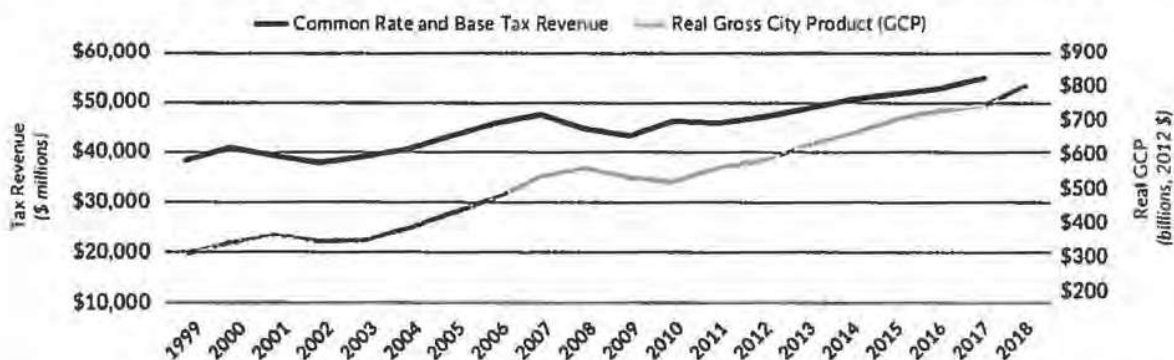
- Sufficient resources to ameliorate the most damaging impacts of tax revenue losses due to a recession;
- Requirements for regular deposits to build and to sustain an RDF balance; and
- Limits on withdrawals to periods of tax recession or emergency, and to no more than two-thirds of the total balance in the first withdrawal year.

## A Rainy Day Fund is Desirable

Like most state and local governments New York City periodically faces fiscal hardships due to recessions. An RDF would provide stability by allowing New York City to smooth out spending during such contractions.

During the last two national recessions the city economy shrank; real dollar gross city product (GCP) fell 7.6 percent from calendar year 2000 to 2002 and did not return to pre-recession size until 2005, and it fell 9.0 percent from 2007 to 2009 and did not return to pre-recession size until 2013. (See Figure 1.)

**Figure 1: NYC Real Gross City Product and Common Rate and Base Tax Revenue, 1999 to 2018**



**Note:** Tax revenues are on fiscal year on a common rate and base, number in millions, as reported by the NYC Office of Management and Budget. Gross city product is on calendar year, real 2012 dollars, number in billions.

**Source:** City of New York, Office of Management and Budget, *Quarterly Report on Current Economic Conditions* (September 2018), and July 2016 edition, and data emailed to Citizens Budget Commission staff (November 30, 2018, December 4, 2018, and January 10, 2019)

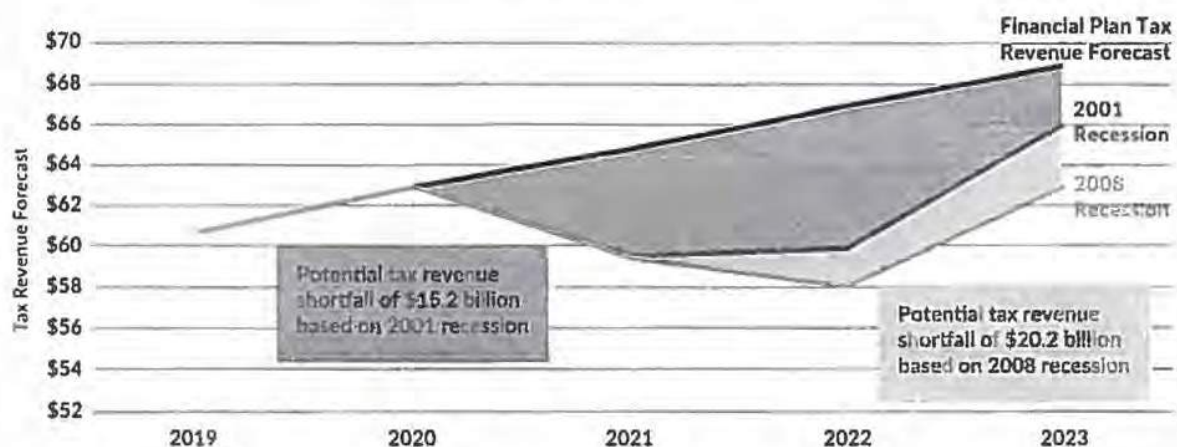


The economic contractions caused tax revenues to decline. Tax revenues, adjusted for changes in tax law known as "common rate and base," declined 5.4 percent and 5.5 percent in the first year following the 2001 and 2008 recessions, respectively. The second year after the 2001 recession saw sluggish growth of 0.5 percent, while the second year after the 2008 recession saw continued revenue declines of 2.4 percent.<sup>1</sup> Since the City's financial plans for those years assumed revenue growth, the tax losses generated even larger budget gaps.<sup>2</sup>

Absent sufficient reserve funds to offset the recession-related tax losses, New York, like other cities, faces painful choices. The federal government may enact counter-recessionary measures that include more intergovernmental aid to cities, but this often is insufficient to significantly ameliorate revenue losses and is counteracted by simultaneous cuts in state aid due to state revenue losses. In these circumstances a city must implement expenditure cuts, raise taxes, or imprudently rely on short-term borrowing to cover operating expenses. Each of these options is less desirable than being able to draw upon an RDF. Expenditure cuts typically lead to service reductions at a time when needs may increase; new taxes impose costs on residents and businesses at a time of economic difficulty and may lower a city's competitiveness. Borrowing short-term generally is impractical because sufficient revenue may not be available to repay the debt within a fiscal year.

Although New York City has developed mechanisms to accumulate reserves absent an RDF (described below), these resources have been insufficient to weather recessions, and the City has had to turn to less desirable options. A substantial RDF would reduce the need for these actions. In the 2001-2003 recession, which began shortly before the terrorist attacks of 9/11, the City raised property taxes significantly, implemented a surcharge on personal income taxes, reduced services and the City workforce by 6,000, and borrowed about \$2 billion in operating expenses related to the terrorist attack.<sup>3</sup> Service cuts included suspending metal, glass, and plastic recycling, reducing the uniformed police force, closing fire companies, and reducing funding for libraries.<sup>4</sup> In the 2008-

**Figure 2: Potential NYC Tax Revenue Shortfall from Recession**  
(dollars in billions)



Source: City of New York, Office of Management and Budget. *Preliminary Budget: Fiscal Year 2020: Revenue* (February 7, 2019), and emails to Citizens Budget Commission staff (November 30, 2018 and December 4, 2016).



2010 recession the City rescinded a property tax rate reduction passed the prior year, raised the local sales tax by 0.5 percentage points, and reduced services, including cuts to summer youth programs and ambulance services, and a 14,000 headcount reduction in the municipal workforce.<sup>5</sup>

A recent Citizens Budget Commission (CBC) analysis estimated that a recession comparable to the last two recessions would result in cumulative tax revenue shortfalls of \$15 billion to \$20 billion over three years, compared to the current financial plan. (See Figure 2.)

## **Legal Constraints to New York City's Use of a Rainy Day Fund**

The City of New York is effectively precluded from having an RDF by provisions of State law and the City Charter. As a consequence of the City's 1975 fiscal crisis, the State enacted the Financial Emergency Act for the City of New York (FEA). The statutory requirements have had beneficial effects helping local officials greatly improve the City's fiscal management and health; they were incorporated in the City Charter in 2005.

However, the requirement that the City prepare a balanced budget and achieve balance in year-end results in accordance with generally accepted accounting principles (GAAP), included in both the FEA and the City Charter, has precluded the creation of an RDF. GAAP balance requires that revenues must be at least equal to expenditures in the City's General Fund each year. Resources drawn from an RDF comprised of previously received funds would not count toward revenues in the year the draw is made because they would have been recorded as revenue in earlier years; they can only be counted as revenue once. Thus, while RDF funds would provide resources to fund current expenditures, there would be an imbalance between revenues and expenditures on a GAAP basis, which the FEA and City Charter preclude. Hence funding expenditures with RDF resources would still create a GAAP deficit and put the City in violation of State law and the City Charter.

### **Rainy Day Funds in Other Jurisdictions**

Rainy Day Funds are common among the states—48 of the 50 states have them—though the effectiveness varies in part due to how the funds are structured. Among cities such funds are less common but are recognized as good fiscal management. Well-designed RDFs may assist credit ratings.<sup>6</sup>

Nonetheless, more than a dozen U.S. cities have RDF requirements in City Charter or local laws. Seattle, for example, established a Revenue Stabilization Fund with a target balance of 5 percent of tax revenue and statutorily required deposits.<sup>7</sup> Other cities, such as Cincinnati and Houston require that a minimum level of reserves be set aside but do not require minimum annual deposits.<sup>8</sup>

However, given the size of the City's budget, the range of services it delivers, and the diversity of its tax base, RDF procedures and best practices for states serve as more appropriate guides than local practices. The Pew Charitable Trusts series on state RDFs recommend that target size be set based on historical revenue volatility, that deposits be based on a percentage of annual revenue growth in excess of typical levels, and that withdrawals be based on measurable conditions.<sup>9</sup> These best practices have guided the recommendations in this report.

Under the FEA as originally enacted, a deficit greater than \$100 million would trigger a State Financial Control Board (FCB) control period, which would include a loss of local autonomy and accountability to the public, for which no mayor would want to be responsible. While the FEA no longer permits automatic imposition of a control period, legislative action could reinstate the FCB's ability to impose one in the event of a deficit.<sup>10</sup> Furthermore, the City faces a substantial reputational risk—with bondholders, rating agencies, fiscal monitors, and the public—if it were to run a deficit.

## **New York City's Rainy Day Fund Alternatives**

Absent an RDF, New York City officials currently use three alternative mechanisms to set aside resources for use in troubled times: (1) annual budget reserves, (2) a "surplus roll," and (3) reduced deposits to the Retiree Health Benefits Trust (RHBT) fund.

### **Annual Budget Reserves**

In recent years the New York City budget has included appropriations for two budget reserves—the General Reserve and the Capital Stabilization Reserve. However, these are not available to be spent beyond the fiscal year in which they are established for the reasons described above.

The State law mandating the City's balanced budget also requires that the budget include as an expenditure item a General Reserve of least \$100 million; in recent years the Adopted Budget prudently has included a General Reserve greater than the minimum, often reaching or exceeding \$1 billion. The General Reserve is essentially a contingency fund in the City's operating budget: a line against which no specific expenditures have been programmed. During the course of the fiscal year, the General Reserve is eliminated gradually, with the funds shifted to pay for unanticipated spending or becoming part of the surplus roll, discussed below.

Beginning in fiscal year 2016 at the initiative of Mayor Bill de Blasio, the budget has also included a Capital Stabilization Reserve of \$250 million.<sup>11</sup> The purpose of the Capital Stabilization Reserve is to fund early stage capital project planning and design costs which do not qualify as capital investments eligible for funding from long-term borrowing, and to offset debt service costs due to rising interest rates. The Capital Stabilization Reserve generally has not been used and has been effectively available as a general reserve.

### **Surplus Roll**

The surplus roll is the term for a group of expenditures made at the end of the fiscal year to effectively transfer resources from one fiscal year to the next in compliance with GAAP. Unused resources that accumulate during a fiscal year are used to "prepay" items which otherwise would be paid for in the following year, essentially "rolling" resources across fiscal years. The penalties for incurring a deficit have led City officials to budget cautiously and accrue unused resources over the fiscal year that would be a substantial year-end surplus. The sources of the surplus are higher than



expected revenues and lower than planned spending.<sup>12</sup>

Surplus funds are used to prepay General Obligation (GO) and Transitional Finance Authority debt service, retiree health benefits costs, and subsidies to other legally distinct entities. These entities typically include NYC Health + Hospitals, the Metropolitan Transportation Authority, and the public library systems. The prepayments shift resources across fiscal years by paying next year's expenses in the current year, thereby reducing expenditure in the upcoming fiscal year. This type of transaction is permissible under GAAP and serves to keep most of the surplus funds available for future operating expenses.

The surplus roll has two components: From the point of view of the current fiscal year, the "roll in" is the amount transferred in from the previous fiscal year, and the "roll out" is the amount transferred out to the subsequent fiscal year. When the roll out is larger than the roll in, the given fiscal year essentially ran an operating surplus, with current expenditures lower than current revenues. Conversely, when the roll in is larger than the roll out, the given fiscal year essentially ran an operating deficit, with current expenditures higher than current revenues.

### **Retiree Health Benefits Trust**

The RHBT was created in fiscal year 2006 to accumulate resources to help pay for the future costs of health insurance and other benefits for retirees, referred to as other postemployment benefits (OPEB). The RHBT was a promising response to Government Accounting Standards Board (GASB) rules that require governments to report the cost of commitments to pay for retirees' health benefits; New York City's initial estimate in fiscal year 2006 was an unfunded liability of \$54 billion. The initial RHBT deposit in 2006 of \$1 billion was a start toward funding that obligation, and subsequent deposits in fiscal years 2007 and 2008 brought the balance to nearly \$2.7 billion. However during the subsequent recession the City used the RHBT as a de facto rainy day fund; between fiscal years 2009 to 2013 about \$2 billion was, in effect, diverted from deposits to the RHBT to pay for other City operating expenses.<sup>13</sup> Beginning in fiscal year 2014, the City resumed making annual deposits. At the end of fiscal year 2018, the RHBT balance was \$4.5 billion toward a liability that had grown to more than \$103 billion.<sup>14</sup>

### **New York City's RDF Alternatives Are Deficient**

These RDF alternatives have three key deficiencies: 1) the reserves and surplus roll are not large enough, 2) increases and decreases to the surplus roll are discretionary and not tied to the economy, and 3) use of the RHBT as a de facto rainy day fund is fiscally imprudent.

### **Budget Reserves and Surplus Roll Are Not Large Enough**

The combined resources of the General Reserve and Capital Stabilization Reserve are substantial and provide a significant cushion in the annual budget. However the total, although reaching \$1.25 billion annually, is well below what is needed to significantly mitigate revenue losses during a

recession, and those reserves would not be available for use in a future fiscal year. The \$1.25 billion pales in comparison to the potential three-year tax revenue decline during a recession—\$15 billion to \$20 billion—with tax revenue potentially \$5.3 billion below the financial plan in the first year and between \$7 billion and \$9 billion below the financial plan the following year. (See Figure 2.)

Even if reserves were large enough, the City cannot roll sufficient funds to substitute for an RDF. Since fiscal year 1999, the surplus roll exceeded \$4.0 billion in four years and was as high as \$4.7 billion.<sup>15</sup> (See Table 1.) Limits to the expenses that can be prepaid at the end of the fiscal year constrains the surplus roll. For example, debt service totals \$6.7 billion in fiscal year 2019; however, prepaying too much debt service would limit the City's ability to levy property tax revenue due to the operating limit.<sup>16</sup> Additionally, the subsidies that the City is able to prepay are limited; most of the City's expenditures, such as salaries, wages, and contract payments, cannot be prepaid. Furthermore, there is concern that some stakeholders view the roll as a surplus that the City could spend, which could be used to justify calls for additional spending on services, labor contracts, and reductions in State support for City programs.

### Additions and Subtractions to the Surplus Roll are Discretionary and Not Tied Directly to the Economy

The amount of the surplus roll in and surplus roll out each year are determined by the Mayor and the City Council. As a result, surplus roll resources can increase or decrease without regard to economic performance. Table 1 shows the roll in and out from fiscal years 1999 through 2018; for example, in fiscal year 2017, the City rolled in \$4.038 billion in resources from fiscal year 2016 and then prepaid \$4.180 billion of fiscal year 2018 expenses, essentially rolling that amount into the following year. While the City has added to the roll in most non-recession years, the size of the additions has varied in ways unrelated to patterns of economic growth; more importantly, the City used a portion of the surplus roll in fiscal years 2012 and 2014, when the City was not experiencing a recession.

**Table 1: Surplus Roll in the New York City Budget, FY 1999 to 2018**  
(dollars in millions)

	Surplus Rolled In from Prior Year	Surplus Rolled Out to the Next Year	Net Surplus Roll (Increase)/ Decrease
FY 1999	\$2,081	(\$2,615)	(\$534)
FY 2000	\$2,615	(\$3,187)	(\$572)
FY 2001	\$3,187	(\$2,944)	\$243
FY 2002	\$2,944	(\$681)	\$2,263
FY 2003	\$681	(\$1,417)	(\$736)
FY 2004	\$1,417	(\$1,923)	(\$506)
FY 2005	\$1,923	(\$3,529)	(\$1,606)
FY 2006	\$3,529	(\$3,751)	(\$222)
FY 2007	\$3,751	(\$4,663)	(\$912)
FY 2008	\$4,665	(\$4,635)	\$30
FY 2009	\$4,635	(\$2,914)	\$1,721
FY 2010	\$2,914	(\$3,646)	(\$732)
FY 2011	\$3,646	(\$3,742)	(\$96)
FY 2012	\$3,742	(\$2,462)	\$1,280
FY 2013	\$2,462	(\$2,807)	(\$345)
FY 2014	\$2,807	(\$2,006)	\$801
FY 2015	\$2,006	(\$3,601)	(\$1,595)
FY 2016	\$3,601	(\$4,038)	(\$437)
FY 2017	\$4,038	(\$4,180)	(\$142)
FY 2018	\$4,180	(\$4,576)	(\$396)

**Note:** Negative net roll means the surplus was increases during the year; positive net roll means part of the surplus was used during the year.

**Source:** Office of the New York City Comptroller, *Comprehensive Annual Financial Report of the Comptroller for the Fiscal Year Ended June 30, 2018* (October 2018), and fiscal year 2000 to 2017 editions



## **Imprudent Use of the Retiree Health Benefits Trust**

The Mayor and the City Comptroller view funds deposited into the RHBT as a potential resource to be used during a recession. However, this is an inappropriate use of the RHBT.<sup>17</sup> The Trust should accrue resources to pay for future OPEB obligations rather than requiring future generations to pay for retirement benefits promised to current workers providing current services.<sup>18</sup> Limiting annual deposits to the RHBT to pay for services during a recession leverages the RHBT as a de facto RDF and penalizes future generations in order to protect current residents.

## **Recommended Rainy Day Fund Design**

To fund adequately and use appropriately an RDF, the enabling legislation should specify the target size, required deposits, and permitted withdrawals. A well-designed RDF is superior to the current mechanisms because it would require minimum deposits to build up resources during a recovery and permit withdrawals only during a recession or significant emergency. Additionally, the language should comport with GASB standards for restricted fund balances for stabilization arrangements, which includes specific criteria for when funds can be used.<sup>19</sup> Lastly, changes to the FEA and the City Charter are necessary.

### **Target Size**

The target size should be attainable and sufficient to mitigate most disruptive service cuts and counterproductive tax increases. Having an RDF to cover all gaps driven by a recession would present significant challenges to ongoing operating budgets. Though the effects of a recession can last into the third or even fourth year, designing the RDF to accumulate sufficient funds to ameliorate the most drastic negative effects in the first two years is reasonable.

Based on prior recessions, an RDF of 17.2 percent of pre-recession tax revenue would be appropriate. This estimate is based on the 2001 recession when the tax revenue declines from the pre-recession baseline year (fiscal year 2001) were 5.4 percent in the first year and 4.8 percent in the second year.<sup>20</sup> While ideally funds would be available to support planned spending, resource constraints would be substantial and would make any spending growth challenging. However, given the City's budget obligations, contractual wage agreements, and greater need for services during economic contraction, the RDF should provide funds to permit a constrained level of spending growth. From fiscal year 2000 to 2018, City-funded spending grew an average of 5.3 percent each year; the RDF target should provide for annual spending growth of 2 percent. The 17.2 percent recommended size is also in line with the Government Finance Officers Association (GFOA) recommendation that municipalities keep reserves equal to at least 16.7 percent of expenditures.<sup>21</sup>

The absolute size of the RDF will increase over time as tax revenues increase during periods of economic growth. Applied to tax revenue projections for fiscal year 2020, the recommended size of the RDF would be \$10.8 billion, rising to \$11.9 billion in fiscal year 2023 under current tax revenue projections.

## Required Deposits

In order to fund an RDF of this size, deposits should be required during periods of economic growth. Since December 1982, economic expansions have averaged six years; reaching 17.2 percent of revenue over six years would imply annual deposits of roughly 2.87 percent of tax revenue (\$1.8 billion this year).<sup>22</sup>

However, such a deposit would be disruptive fiscally and would not reflect volatility in tax revenues. In light of this challenge, a practical approach is to require a mandatory minimum deposit of 75 percent of the tax revenue growth in excess of 3 percent annually. This minimum required deposit has two strengths. First, it leverages strong growth years by requiring larger deposits in years with high tax revenue growth and smaller (or no) deposits when tax revenue growth is more modest. Second, by excluding the first 3 percent of annual growth from deposits, it does not impede the City from having sufficient revenue growth to fund basic services, while prudently saving much of the elevated growth. For reference, common rate and base tax revenue grew an average 5.1 percent each year since fiscal year 2000, while inflation, measured by the Consumer Price Index averaged 2.3 percent each year from calendar year 2000 to 2018.<sup>23</sup>

Once the RDF reaches the target size, subsequent required deposits should be the amount needed to keep the RDF at 17.2 percent of tax revenues, up to the minimum required deposit.

Based on actual tax revenue collections, the minimum deposits that would have been required in fiscal years 2010 through 2018 are shown in Table 2. Over the first six years, the average timeframe for a recovery, the RDF would have accumulated \$6.3 billion, or 57 percent of the target balance.<sup>24</sup> Over the current exceptionally long nine-year expansion, the RDF would have built up \$8.5 billion, or 76 percent of the target balance. While these amounts do not meet the target, they would be a significant improvement over the current level of reserves.

The recommended deposit rule is a minimum that balances setting aside substantial resources with being fiscally manageable. However, as the data show, minimum deposits would not generate the level of reserves the City should aim to set aside; deposits in

**Table 2: Retrospective Projection of RDF Deposits Assuming Mandatory Minimum Deposits of 75% of Tax Revenue Growth in Excess of 3 Percent**  
(dollars in millions)

	<u>Tax Revenue</u>	<u>% growth</u>	<u>Minimum Deposit</u>
FY 2009	\$36,010.8		
FY 2010	\$37,201.0	3.3%	\$82.4
FY 2011	\$40,350.0	8.5%	\$1,524.7
FY 2012	\$42,111.0	4.4%	\$412.9
FY 2013	\$45,723.0	8.6%	\$1,761.5
FY 2014	\$48,375.4	5.8%	\$960.6
FY 2015	\$51,941.0	7.4%	\$1,585.7
FY 2016	\$53,620.6	3.2%	\$91.1
FY 2017	\$54,662.4	1.9%	\$0.0
FY 2018	\$59,103.9	8.1%	\$2,101.3
<b>6 years (2010-2015) RDF Deposits</b>			<b>\$6,327.8</b>
<b>9 years (2010-2018) RDF Deposits</b>			<b>\$8,520.1</b>

Source: Source: Citizens Budget Commission staff analysis of data from Office of the New York City Comptroller, *Comprehensive Annual Financial Report of the Comptroller for the Fiscal Year Ended June 30, 2018* (October 2018), and fiscal years 2009 to 2017 editions.

excess of the minimum should be encouraged, especially in years of substantial revenue growth when unexpected, one-time revenues are generated. For example, the deposit rules for California's Budget Stabilization Account require that, in addition to 1.5 percent of general fund revenues, the State deposit an amount equal to taxes on capital gains exceeding a certain level, capturing this volatile revenue source in years when it is high.<sup>25</sup>

The budget and all financial plan updates should include the projected RDF deposit expense based on the tax revenue forecast and should be updated throughout the fiscal year. Upon release of the Comprehensive Annual Financial Report (CAFR), the New York City Comptroller should be required to certify the required RDF deposit for the preceding fiscal year based on final audited tax revenue figures. Any shortfall between the certified required deposit and the amount deposited the previous fiscal year should be appropriated in the current year.<sup>26</sup> The deposit would be credited back to the prior year and would not reduce the required deposits in that year.

### Permitted Withdrawals

The third design element of an RDF is to limit withdrawals to ensure the RDF is used at appropriate times and not depleted in one year. There are two situations under which a withdrawal could be initiated:

1. An economic contraction defined as two quarters of declining real GCP; or
2. A severe emergency, such as a natural disaster or terrorist attack, accompanied by significant, unanticipated revenue loss or expenditure needs.<sup>27</sup>

Withdrawals would need to commence within 12 months of the triggering event and could continue until tax revenues exceed pre-contraction levels on a common rate and base as measured by the New York City Office of Management and Budget (OMB).

City officials should not be able to draw on the RDF when common rate and base tax revenues are growing or when tax revenues decline due to policy changes, based on common rate and base tax data maintained by OMB. Furthermore, withdrawals should be limited so that the entire RDF is not depleted in a single year. A reasonable limit on withdrawals is no more than two-thirds of the balance in the first fiscal year the fund is used.

### Required City Charter and State Law Changes

Current City and State requirements for balanced budgets using GAAP preclude the City from creating and using an RDF. The City Charter and the FEA would have to be amended to enable an RDF.<sup>28</sup>

Precedent exists for modifying the legal requirement of adherence to GAAP. A deviation from GAAP was enacted after GASB issued a rule, effective fiscal year 2009, that required pollution remediation expenses including those for asbestos removal be treated as operating expenses rather than capital investments. The FCB initially granted the City a two-year deferral of the requirement; in 2011 the City sought and obtained a permanent exemption.<sup>29</sup> The State legislature amended



the FEA to deem these pollution remediation expenses as capital and superseded the City Charter requirement for a GAAP balanced budget and actuals.<sup>30</sup>

State law and City Charter changes would require two parts. One is for the State and City to adopt laws establishing the RDF. This language would codify the target size, deposit requirements, permitted withdrawals, and maximum withdrawal levels. The other is to amend the FEA and City Charter to permit the RDF to be used. Two potential approaches to amending Section 8(1)(a) of the FEA are:

1. To exclude a deficit if it is funded by reserves from the RDF, or
2. To exclude from the calculation of a deficit expenditures funded by reserves from the RDF.<sup>31</sup>

## **Immediate Benefits**

The current expansion is in its ninth year, and it is extremely unlikely that a newly established RDF would accumulate sufficient resources before the next recession. Nevertheless, creating one at this time would be beneficial both in the short and long term. Any resources that the City is able to set aside in an RDF prior to the next recession would reduce the need to cut services and enact counterproductive tax increases. More importantly, having the legal framework in place when the next expansion begins would allow the City to make deposits as soon as tax revenue growth recovers sufficiently.

## **Conclusion**

New York City requires a substantial RDF in order to weather future recessions without harmful service cuts or counterproductive tax increases. The key elements for such an RDF are adequate balances, required deposits, and limits on withdrawals. Establishing such a fund requires changes to the City Charter and State statute. Such changes could be made in a way that would not undercut the beneficial legal requirements for sound budgeting that have served the City well since the 1970s fiscal crisis. Creating and funding an RDF will require fiscal discipline to allocate the needed funds from the City's operating budget but will benefit New Yorkers by helping the City provide needed services in good times and bad.

City leaders should address these challenges and commit to establishing a meaningful RDF in order to secure the City's long-term fiscal future in the face of economic uncertainty. The State should support the City's effort to maintain responsible fiscal management and prepare for economic downturns by facilitating statutory change in the FEA and viewing the RDF as an important fiscal tool for the City rather than as a resource justifying reductions in State assistance.



## ENDNOTES

- [1] City of New York, Office of Management and Budget, *Common Rate and Base Tax Revenue from 1999 to 2018*, emails to Citizens Budget Commission staff (November 30, 2018 and December 4, 2018).
- [2] Michael Dardia and Rachel Bardin, "How Much to Bank on? When it Comes to Revenue Forecasting, Better Safe Than Sorry," *Citizens Budget Commission Blog* (April 12, 2015), <https://cbcny.org/research/how-much-bank-when-it-comes-revenue-forecasting-better-safe-sorry>.
- [3] It is unlikely that this borrowing would have been approved due to the 2001 recession alone; the terrorist attack of September 11, 2001 had substantial negative impacts on New York City and its economy that called for unprecedented response. The long-term borrowing for operations was authorized by the State through the enabling legislation for the Transitional Finance Authority that issued the bonds; currently, long-term borrowing for operations is not permitted by the Financial Emergency Act for the City of New York or the City Charter. Douglas Offerman and Marcia Van Wagner, *The City's Budget Gap Since 9/11: Factors That Cause It, and Plans to Close It* (Citizens Budget Commission, March 3, 2003), <https://cbcny.org/research/citys-budget-gap-911>.
- [4] City of New York, Office of Management and Budget, *Financial Plan for Fiscal Years 2002-2006: Summary Book* (February 13, 2002), [www1.nyc.gov/assets/omb/downloads/pdf/sum1\\_02.pdf](http://www1.nyc.gov/assets/omb/downloads/pdf/sum1_02.pdf), and *November 2002 Financial Plan: Fiscal Years 2003-2006: Summary* (November 14, 2002), [www1.nyc.gov/assets/omb/downloads/pdf/sum11\\_02.pdf](http://www1.nyc.gov/assets/omb/downloads/pdf/sum11_02.pdf).
- [5] City of New York, Office of Management and Budget, *November 2009 Plan: Budget Summary* (November 5, 2008), [www1.nyc.gov/assets/omb/downloads/pdf/fp11\\_08.pdf](http://www1.nyc.gov/assets/omb/downloads/pdf/fp11_08.pdf), *January 2009 Financial Plan: Fiscal Years 2009-2013* (January 30, 2009), [www1.nyc.gov/assets/omb/downloads/pdf/tech1\\_09.pdf](http://www1.nyc.gov/assets/omb/downloads/pdf/tech1_09.pdf), and *Financial Plan Summary: Fiscal Years 2009-2013* (May 1, 2009), [www1.nyc.gov/assets/omb/downloads/pdf/sum5\\_09.pdf](http://www1.nyc.gov/assets/omb/downloads/pdf/sum5_09.pdf).
- [6] The Pew Charitable Trusts, *Rainy Day Funds and State Credit Ratings: How well-designed policies and timely use can protect against downgrades* (May 18, 2017), [www.pewtrusts.org/en/research-and-analysis/reports/2017/05/rainy-day-funds-and-state-credit-ratings](http://www.pewtrusts.org/en/research-and-analysis/reports/2017/05/rainy-day-funds-and-state-credit-ratings).
- [7] City of Seattle, *Charter of the City of Seattle, Title 5, Subtitle III - Funds, Chapter 5.80 Cumulative Reserve Funds* (accessed April 3, 2019), [https://library.municode.com/wa/seattle/codes/municipal\\_code?nodeId=TIT5REFITA\\_SUBTITLE\\_IIIFU\\_CH5.80CUREFU\\_5.80.020RESTFU](https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT5REFITA_SUBTITLE_IIIFU_CH5.80CUREFU_5.80.020RESTFU).
- [8] City of Cincinnati, *Ordinance 253-2015* (accessed April 3, 2019), [http://city-egov.cincinnati-oh.gov/Webtop/ws/council/public/child/Blob/43054.pdf?rpp=-10&m=2&w=doc\\_no%3D%27201501014%27](http://city-egov.cincinnati-oh.gov/Webtop/ws/council/public/child/Blob/43054.pdf?rpp=-10&m=2&w=doc_no%3D%27201501014%27); and City of Houston, *Adopted Operating Budget for the Period July 1, 2018 to June 30, 2019*, pp. I-14 - I-20, [https://www.houstontx.gov/budget/19budadopt/FY2019\\_Adopted\\_Budget.pdf](https://www.houstontx.gov/budget/19budadopt/FY2019_Adopted_Budget.pdf).
- [9] The FEA provision defining a control period includes language that a control period cannot extend

- beyond July 1, 2008; however, the FCB could ask the State to impose a control period in the case of a deficit. Section 2(12) of the New York State Senate, *New York State Financial Emergency Act for the City of New York 868/75, Unconsolidated Laws of New York* (accessed April 15, 2019), [www.nysenate.gov/legislation/laws/FEA/2](http://www.nysenate.gov/legislation/laws/FEA/2).
- [10] The Pew Charitable Trusts, *Fact Sheet: Rainy Day Fund Best Practices: Guidelines for deposits, withdrawals, and size* (April 10, 2017), [www.pewtrusts.org/en/research-and-analysis/fact-sheets/2017/04/rainy-day-fund-best-practices](http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2017/04/rainy-day-fund-best-practices).
- [11] In the Adopted Fiscal Year 2016 Budget, the Capital Stabilization Reserve was \$500 million for fiscal year 2016. This was replicated in the Adopted Fiscal Year 2017 Budget, with a \$500 million reserve for fiscal year 2017. Beginning with the Preliminary Fiscal Year 2018 Budget, the Capital Stabilization Reserve has been \$250 million per year in each of the financial plan years.
- [12] The sources of the surplus include low estimates of revenues, high assumptions about interest rates and volume of borrowing that yields lower debt service expenditures, high assumptions about increases in health insurance premiums for employees and retirees, current year savings from Programs to Eliminate the Gap or Citywide Savings Programs, agency underspending, unused resources in the budget reserves, and recognition of obligation booked in prior years that are being paid in the current year. The City recognizes a negative value for prior year payables in the current year, generally mid-year, which reflects expenditures being made during the year that were already booked in prior years, freeing up around \$400 million in current year resources annually.
- [13] Office of the New York City Comptroller, *Measuring New York City's Budgetary Cushion: How Much is Needed to Weather the Next Fiscal Storm?* (August 4, 2015), <https://comptroller.nyc.gov/reports/measuring-new-york-citys-budgetary-cushion-how-much-is-needed-to-weather-the-next-fiscal-storm/>; and Thad Calabrese, *The Price of Promises Made: What New York City Should Do About Its \$95 Billion OPEB Debt* (Citizens Budget Commission, October 25, 2017), <https://cbcny.org/research/price-promises-made>.
- [14] The Comprehensive Annual Financial Report for the City reported the balance at the end of fiscal year 2018 as \$4.8 billion, which included a \$300 million prepayment of fiscal year 2019 retiree health and welfare costs that have been netted out. Office of the New York City Comptroller, *Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018* (October 31, 2018), <https://comptroller.nyc.gov/wp-content/uploads/documents/CAFR2018.pdf>.
- [15] Table 1 reports only the surplus roll into and out of each year. In some years the City also deposits funds in the RHBT or defeases long-term debt. For example, in fiscal year 2007, in addition to rolling \$4.7 billion into fiscal year 2008, the City deposited \$1.5 billion in the RHBT and defeased \$1.3 billion in debt. The total surplus, including these two discretionary actions was \$7.5 billion.
- [16] The primary prepayment is debt service, which can cause the City to approach the operating limit for property tax. The City is authorized to levy a property tax to pay long-term debt service; the property tax levy for operating expenses is subject to the operating limit of 2.5 percent of the five-year average market value. Prepaying substantial GO debt service reduces the amount of the property tax that is used for debt service and increases the amount used for operating expenses, which can

- bring the City close to the operating limit; in fiscal years 2006, 2007, 2016, 2017, and 2018, the City used more than 98 percent of the operating limit. City of New York, Department of Finance, *Annual Report of the New York City Property Tax: Fiscal Year 2018* (April 2018), p. 53, [www1.nyc.gov/assets/finance/downloads/pdf/reports/reports-property-tax/nyc\\_property\\_fy18.pdf](http://www1.nyc.gov/assets/finance/downloads/pdf/reports/reports-property-tax/nyc_property_fy18.pdf).
- [17] Contributions to and use of funds within the RHBT have been consistent with the legal requirements set in Local Law 19 of 2006, <https://legistar.council.nyc.gov/View.ashx?M=F&ID=667718&GUID=BE279B59-AD32-417B-8366-4CE35A57838B>.
- [18] CBC recommends the City Charter be amended to mandate the RHBT, require annual deposits, and limit disbursements to the current year cost of retiree health and welfare benefits. Testimony of Andrew Rein, President, Citizens Budget Commission, before the 2019 Charter Revision Commission (March 11, 2019), <https://cbcny.org/advocacy/testimony-charter-defined-budget-and-management-practices>. Furthermore, CBC has recommended OPEB benefits be reduced to better align with the level of benefits provided by other municipalities while establishing appropriate funding arrangements. See: Thad Calabrese, *The Price of Promises Made: What New York City Should Do About Its \$95 Billion OPEB Debt* (Citizens Budget Commission, October 25, 2017), <https://cbcny.org/research/price-promises-made>.
- [19] GASB requires the "specific circumstances under which a need for stabilization arises" be identified and described, and that these "circumstances should be such that they would not be expected to occur routinely." Government Accounting Standards Board, *Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions* (February 2009), p. 9, <https://gasb.org/resources/ccurl/313/494/GASB5%2054.pdf>.
- [20] For the 2008 recession, the comparable percentage declines are 5.5 percent and 7.8 percent. City of New York, Office of Management and Budget, *Common Rate and Base Tax Revenue from 1999 to 2018*, emails to Citizens Budget Commission staff (November 30, 2018 and December 4, 2018).
- [21] The recommendation is for reserves to fund two months of spending. Government Finance Officers Association, *Fund Balance Guidelines for the General Fund* (accessed March 28, 2019), [www.gfoa.org/fund-balance-guidelines-general-fund](http://www.gfoa.org/fund-balance-guidelines-general-fund).
- [22] The average length of time between the last three recessions in New York State was 76 months. The expansion from December 1982 to March 1989 was 75 months, the expansion from November 1982 to December 2000 was 97 months, and the expansion from August 2003 to April 2008 was 56 months. State of New York, Department of Labor, *Recessions in New York State* (accessed April 3, 2019), [www.labor.ny.gov/stats/recessions\\_nys.shtml](http://www.labor.ny.gov/stats/recessions_nys.shtml).
- [23] City of New York, Office of Management and Budget, *Common Rate and Base Tax Revenue from 1999 to 2018*, emails to Citizens Budget Commission staff (November 30, 2018 and December 4, 2018); and U.S. Department of Labor, Bureau of Labor Statistics, *Consumer Price Index - New York-Newark-Jersey City, NY-NJ-PA (1982-84=100), All Urban Consumers (CPI-U)* (accessed April 15, 2019), [www.bls.gov/regions/new-york-new-jersey/data/xg-tables/ro2xgcpiny.htm](http://www.bls.gov/regions/new-york-new-jersey/data/xg-tables/ro2xgcpiny.htm).
- [24] The funds in the RDF would earn interest which would contribute positively to the balance and are



- not reflected in Table 2. Assuming a conservative return of 1.3 percent per year, the average return earned on the City cash reserves in fiscal year 2018, the RDF could have earned \$246 million over the first six years or \$536 million over the nine-year period. Office of the New York City Comptroller, *Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2018* (October 31, 2018), <https://comptroller.nyc.gov/wp-content/uploads/documents/CAFR2018.pdf>.
- [25] Mariana Alexander and Timothy Sullivan, *California Dreaming: NY Should Build Reserves to Prepare for a Rainy Day* (Citizens Budget Commission, March 12, 2018), <https://cbcny.org/research/california-dreaming>.
- [26] The legislation could allow for deposits to be spread over two years if the shortfall exceeds a certain threshold.
- [27] To comport with GASB 54, the circumstances should be those that are not expected to occur routinely. Furthermore, consideration should be given to codifying the definition of a natural disaster or emergency, including whether there needs to be an executive declaration of emergency. Government Accounting Standards Board, *Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions* (February 2009), p. 9, <https://gasb.org/resources/ccurl/313/494/GASB5%2054.pdf>.
- [28] Amending the City Charter is insufficient; the State FEA must be amended by the State legislature to permit the RDF. The City Charter can be amended through voter referendum or by the City Council; additionally, the State legislature can amend the Charter directly or can supersede the Charter, as was done when the GASB 49 exemption was added to the FEA.
- [29] Office of the New York City Comptroller, *Policies and Procedures Manual for the Implementation of Governmental Accounting Standards Board Statement No. 49 – Accounting and Financial Reporting for Pollution Remediation Obligations* (version 2.0, May 2010), <https://comptroller.nyc.gov/wp-content/uploads/2013/07/GASB-49-Policy-and-Procedure-Manual-revised.pdf>.
- [30] The relevant statutory language is, "Notwithstanding the foregoing and the provisions of any general or special state law or local law to the contrary, including but not limited to the New York City charter, all costs that would be capital costs in accordance with generally accepted accounting principles, but for the application of governmental accounting standards board statement number forty-nine, shall be deemed to be capital costs for the purposes of this chapter and any other provision of state or local law, including but not limited to the New York City charter, relevant to the treatment of such costs." See: Section 8(1)(a) of the New York State Senate, *New York State Financial Emergency Act for the City of New York 868/75, Unconsolidated Laws of New York* (accessed April 15, 2019), [www.nysenate.gov/legislation/laws/FEA/8](http://www.nysenate.gov/legislation/laws/FEA/8); and Charles Brecher, *What is a "Balanced Budget"?* (Citizens Budget Commission, November 8, 2011), <https://cbcny.org/research/what-balanced-budget>.
- [31] "The city's budget covering all expenditures other than capital items shall be prepared and balanced so that the results thereof would not show a deficit when reported in accordance with generally accepted accounting principles." Section 8(1)(a) of the New York State Senate, *New York State Financial Emergency Act for the City of New York 868/75, Unconsolidated Laws of New York* (accessed April 15, 2019), [www.nysenate.gov/legislation/laws/FEA/8](http://www.nysenate.gov/legislation/laws/FEA/8).



## To Weather A Storm:

Create An NYC Rainy Day Fund

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Report ■ April 2019

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**Sara Lind**  
**Testimony for Manhattan Borough Hearing**  
**Thursday, May 9th**

My name is Sara Lind and I am on the Executive Committee of Manhattan Community Board 7, I'm a Manhattan Borough Director for Amplify Her – an organization dedicated to electing progressive women – a member of the Voting Reform Initiative of the League of Women Voters, and a member of the LetNYVote Coalition.

I first learned about Ranked Choice Voting during my Masters program at Columbia SIPA. The more I studied different voting systems, and the more I learned about Ranked Choice Voting, I became convinced that this is the best and most democratic voting system.

As part of the leadership team of Amplify Her, I implemented Ranked Choice Voting for our Endorsement votes. We've used it several times and it has always been easy to understand, user friendly, and seamless on the back-end.

We're a diverse group of women and we often have varied opinions on the best candidate to endorse. Ranked Choice Voting allows us all to express our preferences and to feel bought in on the result. In fact, thinking through and talking through how we would each rank the candidates and why, often illuminates things about our own preferences that thinking in stark winner-take-all terms never would.

Amplify Her supports Ranked Choice Voting because we know that it is the best voting system for empowering candidates who might otherwise be outside the mainstream. By giving people the chance to vote their true preferences without worrying about causing a "spoiler" effect, it is truly the most democratic voting system. It is the best way to ensure that we elect more women, but also more people of color, and more people who truly represent the many ways that New Yorkers are diverse.

I believe that RCV should be used for all municipal elections. The municipal elections in 2021 will feature dozens of open seats with likely crowded primary fields. Ranked Choice Voting is essential to ensure that the candidates who ultimately come out of those primaries have majority support. Additionally, if we only used RCV for citywide offices it would necessitate a ballot with some RCV and some traditional voting – this would be more confusing for voters than one that is purely RCV. And speaking of potential confusion, it's essential that the city commit to robust voter education and outreach along with the implementation of RCV, particularly in communities that already struggle with low voter turnout.



In summation:

- Our democracy is stronger when the winner has built a strong consensus base of support throughout the district, borough or city.
- Ranked Choice Voting will bring NYC together. Instead of targeting just enough voters to win, candidates will vy for every vote. Ultimately, our elected officials will represent all of their constituents.
- Ranked Choice Voting is needed for all elected officials. Citywide offices, the only offices that trigger an instant runoff, represent just 5% of our local elected officials, leaving the balance, 95% of our elected representatives, untouched.
- The threshold for majority support needs to be 50% + 1 of the vote.
- With the adoption of a 50% + 1 threshold, candidates would move to the general election with majority support from their district. Elected officials benefit from a broader base of support.
- Ranked Choice Voting will improve campaigns and our elections. RCV has the effect of reducing negative campaigning. Campaigns no longer operate from a winner-takes-all mentality. Candidates are not only vying for to be first choice, but second as well. Smearing other candidates hinders this effort.
- Candidates spend their time campaigning in all communities, not just in the community that is their natural base of support.
- Save money. The city would save millions of dollars by avoiding the occasional, but costly run-off election for citywide offices. Run-off elections are typically low turnout elections.

I am encouraged to see Ranked Choice Voting in the Preliminary Staff Report. I truly believe Ranked Choice Voting will profoundly improve our elections, but only if we adopt the broadest possible model and only if it's in place for the 2021 election cycle. That's why I'm testifying in support of Ranked Choice Voting, **specifically a top 5 ranking model for all city offices in primary and special elections.**

I hope and trust that this commission will put top 5 Ranked Choice Voting – for all municipal offices in primary and special elections – on the ballot this November, and that New Yorkers will vote to pass it.

Sincerely,

Sara Lind

Manhattan Community Board 7 Co-Secretary  
Amplify Her Manhattan Borough Director  
Member, League of Women Voting Reform Initiative  
Member, LetNYVote Coalition

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### Bringing Communities Together

- In fact, even more startling- there's a clear tipping point, **once a primary election fields 4 or more candidates there is a precipitous decline in majority support winners**. Just 13.7% of multi-candidate primaries with 4 or more candidates produced majority support winners.

This means the majority of our elected officials win their primaries — which virtually guarantees election in November — without majority support in their districts from the primaries. That's not really democratic representation.

### RANKED CHOICE VOTING (RCV) IS THE SOLUTION

Instead of voting for a single candidate in our sprawling primary or special elections, voters will rank their top 5 candidates from first to last choice on the ballot. **A candidate who collects a majority of the vote, fifty percent plus one, wins.**

If there's no majority, then the last place candidate will be eliminated and votes reallocated. The process is repeated until there's a majority winner.

With Ranked Choice Voting, our electoral outcomes will dramatically improve. What's more, **we know it works**. A growing body of research shows RCV will:

- **Bring New York City together.** Instead of targeting just enough voters to win, candidates will vy for every vote. Ultimately, our elected officials will represent all of their constituents.
- **Produce consensus candidates.** Candidates would move to the general election with majority support from their district. Elected officials benefit from a broader base of support.
- **Reduce negative campaigning.** Campaigns no longer operate from a winner-takes-all mentality.
- **Save money.** The city would save money by avoiding the occasional, but costly run-off election.

### THE TIME FOR REFORM IS NOW

New York City has a unique opportunity to bring transformative change to how New Yorkers vote. The **2019 Charter Revision Commission** is considering Ranked Choice Voting as a possible recommendation to be approved on the ballot by voters in November.

**RCV:NYC strongly urges the Commission to recommend a top five candidate Ranked Choice Voting system for all local races for all primary and special elections.**

RCV:NYC is a campaign run by [Common Cause/NY](https://www.commoncause.org/) to bring Ranked Choice Voting to NYC.  
**Visit [rcv.nyc](https://rcv.nyc) to learn more!**





**Ranked Choice Voting NYC**

**Bringing Communities Together**

#### **CITY PUBLIC HEARINGS**

The 2019 Charter Revision Commission is considering Ranked Choice Voting (RCV) as a possible recommendation to be approved on the ballot by voters in November. They need to hear from the public what's the best RCV model for New York, AND that New Yorkers, like you, care about this issue! **Please RSVP at [rcv.nyc/hearings](https://rcv.nyc/hearings) to attend and/or testify at the borough hearing**, where the Commissioners will actively listen to public testimony, so we can demand real change for our local elections. You can attend any borough hearing, regardless of which borough you live in. You can also submit written testimony by sending it to [info@charter2019.nyc](mailto:info@charter2019.nyc).

##### **Queens Borough Hearing**

**Tuesday, April 30, 6:00 PM**  
Jamaica Performing Arts Center  
153-10 Jamaica Avenue  
Jamaica, NY 11432

##### **Bronx Borough Hearing**

**Tuesday, May 7, 6:00 PM**  
Lehman College  
250 Bedford Park Blvd, West  
Speech & Theatre Bldg., Lovinger  
Theatre  
Bronx, NY 10468

##### **Staten Island Borough Hearing**

**Tuesday, May 14**  
6:00 PM  
College of Staten Island  
Center for the Arts  
2800 Victory Blvd.  
Building 1P - Room.116, Williamson  
Theatre  
Staten Island, NY 10314

##### **Brooklyn Borough Hall Hearing**

**Thursday, May 2, 6:00 PM**  
Brooklyn Borough Hall  
209 Joralemon St.  
Brooklyn, NY 11201

##### **Manhattan Borough Hearing**

**Thursday, May 9, 6:00 PM**  
City Hall, Council Chambers  
City Hall Park  
New York, NY 10007

**Our theory of change is simple: give New Yorkers a meaningful say in their local elections, and our elected officials will truly represent and serve all of our communities.**

#### **OUR PRIMARY ELECTIONS ARE BROKEN**

The data is clear, the outcomes from our primary and special elections do not reflect our democratic ideals. Entire communities are ignored during elections as candidates stick to tribal bases, voters are reluctant to vote their true preference, and winners emerge with threadbare support from their constituents in a multi-candidate primary.

Multi-candidate primaries, races with three or more candidates that account for the majority of our primaries, have an abysmal track record of producing winners with majority support. Research shows:

- **A mere 36% of multi-candidate primaries were won with more than 50% of the vote during the last three election cycles.** Worse, still, 29.8% of multi-candidate primaries were won with less than 40%, and 7.7% were won with less than 30% of the vote.

RCV:NYC is a campaign run by [Common Cause/NY](https://CommonCauseNY.org) to bring Ranked Choice Voting to NYC.  
**Visit [rcv.nyc](https://rcv.nyc) to learn more!**





## **THE LEAGUE OF WOMEN VOTERS OF THE CITY OF NEW YORK**

4 WEST 43rd STREET, SUITE 615, NEW YORK, NY 10036  
PHONE: (212) 725-3541 • FAX: (212) 725-3443  
WWW.LWVNYC.ORG • OFFICE@LWVNYC.ORG

### **Ranked-Choice Voting for New York City Elections May 9, 2019**

Good evening, Commissioner Benjamin and members of the Charter Revision Commission.

My name is Bella Wang, and I am the Chair of the Voting Reform Initiative at the League of Women Voters of the City of New York.

The League of Women Voters is a multi-issue, nonpartisan political organization that promotes informed and active participation in government at the national, state and local level.

We are very pleased to see that the Commission is exploring possibilities for ranked-choice (also known as instant runoff) voting for New York City elections. We have supported some form of ranked-choice voting since 2010, and we currently recommend that it be used for all primary and special elections within the city, including City Council and citywide positions.

#### **Advantages of ranked-choice voting**

As the Commission's preliminary staff report summarized, there are many benefits to RCV, both as a cost saver and for better, more democratic elections. For instance, the 2009 and 2013 citywide Democratic primaries required runoff elections after no Public Advocate candidate received 40% or more of the vote. These elections cost the city \$13 million dollars each, yet in 2013, only 7% of the eligible voters turned out for the Public Advocate runoff. Meanwhile, this year's Public Advocate special election had no runoff due to its special election status, resulting in a winner who captured only 33% of the vote. RCV preserves the democratic advantages of an in-person runoff, without incurring the turnout reduction or financial costs of one.

RCV has other benefits. It allows voters to express their preferences more fully than they can in the existing electoral system. Exit surveys conducted in Santa Fe's 2018 municipal elections indicated increased voter confidence in the quality of the result. Santa Fe observers also reported a decrease in the quantity of negative campaigning, since every candidate wants to be a voter's second choice, even if not their first choice. Lastly, voters take advantage of the option to rank votes; 80% of voters for Governor in Maine's June 2018 primary selected at least 2 candidates, as did 87% of voters for Mayor of Minneapolis in 2017.

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## **Implementation details**

The Charter Revision staff recommends an investigation into implementation details that would be included in a fall ballot proposal, including scope, tabulation method, the possibility of a hybrid RCV/runoff system, and number of candidates to rank. We have the following recommendations based on our research into this voting system.

First, ranked-choice voting should apply to primaries and specials for all city offices. Special non-partisan elections historically have very low turnout with many candidates. Primaries also frequently have enough candidates vying for office that the winner gets far less than 50% of the vote, thereby requiring costly, low-turnout runoffs.

Second, the following instant runoff tabulation method should be used. When the votes are tabulated, the first candidate to reach a majority of over 50% is elected. If no candidate reaches more than 50%, the candidate with the fewest votes is removed from the count, and the ballots of those voters for whom that candidate was first choice are then re-allocated to the voters' second choice. This elimination and redistribution process continues until one candidate achieves a majority.

Third, RCV should instead happen in lieu of any head-to-head runoffs that might otherwise have occurred. A hybrid RCV/runoff system would not solve the cost-incurring and turnout drop-off problems incurred by a runoff.

Fourth, voters should have the option to rank at least three and at most six candidates for a given office. A survey of RCV around the United States suggests that the imposition of a limit is a common feature of implementation. Having a limit on the number of candidates that may be ranked also makes ballot design easier in such cases as the most recent Public Advocate special election, where there were seventeen candidates on the ballot.

Lastly, adequate funding should be provided for training, equipment, staff, and voter education. RCV has been run in Maine on a shoestring budget of an additional \$110,000 beyond regular election costs, but more money is preferable to ensure that voters understand the new system. One possibility is to follow the example of Minneapolis, which conducted a "test election" to try out a ballot design, kick off voter outreach, and improve ballot counting quality. In addition, the Civic Engagement Commission, Campaign Finance Board, and Board of Elections should be required to take an active role in informing voters about changes to the system.

Thank you for the opportunity to speak.

Bella Wang

Member of the League of Women Voters of the City of New York



## **How to Strengthen Conflict of Interest Rules in the City Charter**

Lynn Ellsworth  
Chair, Humanscale NYC  
[www.humanscale.nyc](http://www.humanscale.nyc)  
[lynnellsworth@outlook.com](mailto:lynnellsworth@outlook.com)  
May 9, 2019

### **What to do When the Fox is Guarding the Henhouse?**

When representatives of a regulated industry rule the agencies that are supposed to do the regulating, foxes are guarding the henhouse and management by recusal will not help. Such is the case with Department of City Planning (DCP) and the Board of Standards and Appeals (BSA). Professional lobbies have also infiltrated our community boards. We urge the Charter Commission to repair the situation. The fix is simple:

Create rules that forbid people with systemic and professionalized conflicts of interest from serving on community boards and city agencies in which an industry has a stake in their decisions. This means ruling out professional lobbyists, advisors to the affected industry, and employees of organizations within the industry who regularly do business with the city.

Consider three cases.

#### **The Case of the Department of City Planning (DCP)**

Of the 13 appointed Commissioners, one is a former lobbyist for the real estate industry. Six are developers. One is a large donor to the Mayor as well as a hedge fund investor working on a \$75 million real estate “opportunity fund” in Brooklyn. Another manages the Grand Central Partnership, a Big Real Estate BID that drove the heavily contested Midtown East and Vanderbilt upzoning. Three others have prior experience as real estate developers for large government projects that also faced substantial community opposition. Only two have degrees in urban planning.

#### **The Case of the Bureau of Standards and Appeals (BSA)**



The BSA became infamous in 2011-2 for approving over 97% of appeals to them from the real estate industry<sup>1</sup>. The long-serving Chair of the BSA responsible for that record went on to serve as Chair of the Landmarks Preservation Commission (LPC) and soon left the LPC for a full time lobbyist position at Kramer Levin, a firm which regularly lobbies both agencies.

The current Chair of the BSA was a long-time full partner at the law firm Bryan Cave who advises – according to their website - “over 50% of the world’s largest real estate private equity investors.”. The Vice-Chair of the BSA comes from the lobbying firm of Capalino and Company.

## **The Case of Manhattan Community Boards**

A scan in the fall of 2018 of Manhattan Community Board committee chairs and executive teams found 29 questionable appointments. These include:

- Senior lobbyists from REBNY, Capalino, Three Square Land Use Consultants, New York Hospitality Alliance, West Side Federation for Senior and Supportive Housing, Insight Associates Land Use Consulting, NYC BID Managers Association, Nightlife Association founders, and a consultant to the Taxi Medallion industry.
- Senior employees at Big Real Estate dominated BIDS and Development corporations such as Long Island Partnership, Downtown Alliance, Hudson Yards Hells Kitchen Alliance, Washington Heights BID, and Harlem Valley Heights Corporation.
- Our scan showed four District Leaders, 1 Political Club Founder, and a senior executive team member of the Manhattan Democratic party official.
- Members of Permanent Government, meaning senior staff at governmental agencies and recycled former staffers for City politicians. The agencies include Empire State Development Corporation, the MTA, and the Javits Center.
- We also found several high level, senior real estate brokers working for firms that also do real estate development, as well as “modernist” architects working for large firms such as ShOP serving on landmarks committees or land use committees. Recall that ShOP is a firm that has major contracts with the city for controversial projects. Architects with training in historic preservation were excluded from our tally.

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<sup>1</sup> <http://thenewyorkworld.org/2012/05/02/council-members-seek-stronger-community-review-of-zoning-exemptions/>

## **How to Reform ULURP**

**Human-scale NYC**

**[www.humanscale.nyc](http://www.humanscale.nyc)**

**May 9, 2019**

In 1976, a sociologist wrote a famous essay describing an Urban “Growth Machine” composed mostly of real estate developers and their dependent politicians. Economist Jason Barr calls the same thing a “skyscraper industrial complex.” Some just call it the real estate lobby, which includes architects, big construction firms and real estate’s many lawyers, advisors, and lobbyists.

The problem we face in reforming any kind of planning in NYC is that this Growth Machine has seized the reins everywhere and twisted our planning processes to its own ends. It dominates the Campaign Finance system and has an ideological hold at many city agencies and real estate funded think tanks that have to do with land use.

Therefore, tweaking ULURP won’t be a panacea, but it could help a bit. That said, we support the creation of a new ULURP we dub a “Notification of Intent to Consider a Rezoning,” to take place at least one year prior to any “certification”. It would be a two page form, consisting of a brief statement of whatever public purpose the possible rezoning might fulfill, a short paragraph describing the rezoning idea, and on page 2, a map of the area under consideration and a list of who requested the rezoning or brought the idea to the attention of City Planning. It would immediately trigger a speculation real estate tax on all transfers until the question is resolved.

Such a notification would take place before anything else “official” is done, before an EIS, before an EIS scoping session, before any studies are done at all. The form would be published on the DCP website and distributed to Councilmembers, community boards, and Borough Presidents. It would allow the public time to react and prepare their own counter proposals.

We do not think assigning land use staff to unelected community boards is useful at all, nor do we support allowing unelected community boards any additional say in land use until their democratic legitimacy is strengthened.

We oppose the creation of “AstroTurF” advisory groups, working committees, and other ad-hoc planning groups under the control of the appointing politicians. We do support allowing 501c(3) non-profit groups to prepare their own 197-a plans for submission to community boards, and support a rule change that would allow communities to appeal to the City Council if DCP reacts negatively to their 197-a plan.



## **How to Strengthen Conflict of Interest Rules in the City Charter**

Lynn Ellsworth  
Chair, Humanscale NYC  
[www.humanscale.nyc](http://www.humanscale.nyc)  
[lynnellsworth@outlook.com](mailto:lynnellsworth@outlook.com)  
May 9, 2019

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~~Want you  
out of  
the  
house~~

**Conflicts of Interest and Can**

**Kirsten Theodos, Secretary of**  
**May 9, 2019**

**Kirsten Theodos, Secretary of Humanscale NYC**  
**May 9, 2019**

Preventing politicians from making questionable appointments to city agencies or to community boards cannot be solved only through changes to the conflict of interest rules. We have to help them to stop feeling obligations to whatever industries dominate their campaign funding, which is mainly real estate. The Charter Commission should fix that problem by tweaking the Campaign Finance Law. How so? Lower the maximum donation to a tenth of 1% of the median NYC household income. This year, that would make the largest contribution just \$560. Such a figure has the virtue of having a logic to it and empowering the middle class rather than the wealthy. We ask the City Charter Commission to take on this change because the City Council is not capable of legislating such a maximum on its own, it is too much against their own immediate self interest, as we have learned from one Councilmember who was sympathetic to our position. Therefore, the change would need to come from the Charter Commission.

Tweaking the law would immediately weaken the influence of real estate and other wealthy interest groups on our politicians.

A live example is

**Addendum:**

The list of donors to Brad Lander's current campaign for comptroller can be made available on request. We provide a sample below for the official record:

### **CEOs, Wealthy Corporate “Behind the Scenes Power” Elite Types:**

- George Soros, \$5,000
- Herb Sturz, Advisor to George Soros, \$500
- Stephen Hindy, Founder. Brooklyn Brewery, \$5,100
- Michael Braner, private equity investor (in real estate as well), \$5,100
- Thomas Ochs, consultant to JustLeadershipUSA (the Close Rikers people). \$2,500
- Joseph Douek, hedge fund investor with a \$75 million Brooklyn "Opportunity fund" DCP Commissioner, CEO of. Willoughby's, \$1,000



- William Campbell, retired big banker, now financial advisor to many, Chair of Brooklyn Academy of Music
- Ben Jones, CEO of neuroscience tech company, \$5,100
- James Weiss, CEO Redstone Road LLC private equity, \$500
- Stephanie Ingresia, Board President, Brooklyn Museum, \$2000
- James Katz, CEO of Propel Capital: \$2,000 (they give grants to "anti mass incarceration activists")

### **Real Estate and their surrogates at PR, Big Law Firms**

- Eric Sloan at Gibson Dunn, \$5,000
- Jonathan and Allison Schippert, (gentrifiers of brownstone brooklyn specializing in flipping houses, evicting tenants in row houses and turning them into single family luxury dwellings), \$10,000
- Valerie Berlin, of Berlin Rosen (lobbying firm with Board of Governors of REBNY as clients), \$2500
- Joseph Barnett, real estate attorney, \$5,100
- Ilya Vilnits, architect at gentrifying firm of "The Brooklyn Home Company": \$3,000
- Thomas Houghton, President Gateway Housing ("affordable" housing developer active in Brooklyn) \$1,000
- Susan Plum and Ronald Weiss of Skadden Arps LLP, a big law firm with large real estate practice: \$3,000
- Various Staff at Skadden, Arps, a big law firm with a large real estate client list: \$5,000
- Various staff from Greenberg Traurig, lobbying firm for big real estate, including their PAC: \$700
- Mitchell Korby, land use attorney, \$400
- Brenda Levin, land use consultant: \$400
- Thomas McMahan, TLM Associates (lobbying firm): \$400
- Mary Ann Gilmartin of Forest City Ratner and Member of Lippmann Commission, \$250
- Paul Gangsei at lobby firm of Manatt Phillips: \$250
- Sarah Gerstenzang, wife of Michael, managing partner at Cleary Gottlieb: \$2,000
- Elizabeth Chung, Lobbyist, \$400
- Mike Pratt, President of Sherman Foundation who gives major grants to "affordable" housing developers, \$2,000
- various donations, Mega Construction and Contracting: \$1,000



### **People Linked to Gowanus Rezoning or Brooklyn Bridge Park Scandal**

- Hilary Cohen, landscape architect with contracts at Gowanus Conservancy (a pro up zoning group): \$5,000
- Samara Daly, Lobbyist for building housing on Brooklyn Bridge Park. \$300
- Kyle Kimball, at Con-Ed now, was at EDC overseeing the Brooklyn Bridge Park mess: \$400
- Henry Gutman, Board member of Brooklyn Bridge Park (that gave away public space for private luxury housing): \$2,500



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Gale A. Brewer, Borough President

## **Testimony of Manhattan Borough President Gale A. Brewer In Response to The 2019 Charter Revision Commission Preliminary Staff Report**

Good evening, Members of the 2019 Charter Revision Commission. Thank you for the opportunity to be here. I submit the following comments and suggestions in response to the Preliminary Staff Report issued by your Commission.

First, I would like to commend the members of the Commission and the staff for the tremendous work being done. It's clear that you are genuinely dedicated to identifying the best proposals for reform of our City Charter. The testimony from experts, and your questioning, have both added to our understanding of the issues, and sharpened the choices you face.

I would like to first address the land use issues, since that is a major area of responsibility of my office.

I believe your staff identified the significant issues around the current Uniform Land Use Review Procedure (ULURP) (§197-c). I again strongly urge the commission to adopt proposals to change the procedure to allow pre-ULURP input from communities, community boards, and city elected officials during a pre-certification process.

Such a ULURP pre-planning process would enable CBs and local elected officials to more effectively help shape a project in a timely way by identifying and raising concerns about an

application prior to finalizing environmental scope and the starting of the ULURP “clock,” thereby helping to ensure that community input is pro-active rather than reactive.

Although not addressed in the staff report, I reiterate my argument that the Charter should be amended to provide that, in cases involving the designation of zoning districts and amendments to the Zoning Resolution, and in which a city agency or a local development corporation is the applicant or co-applicant, the procedure for submitting amended applications (i.e., an “a-text”) during ULURP should be widened to allow the BPs to submit amended applications with their ULURP recommendations. Amended applications of this type should be restricted to the same geographic scope as the original and contain only those documents and provisions that pertain to the amendment, such as an amended text amendment or amended sketch map and zoning docket for a zoning map amendment. They would also be limited to amendments that could be fully studied within the ULURP timetable.

This would allow BPs to play a more pro-active role in ULURP, by enabling them to provide the City Planning Commission (CPC) with options to choose from, and by allowing them to place more options within the scope of ULURP and CEQR for the Council, as the BP’s amended application would have been studied pursuant to CEQR and heard by the CPC.

Regarding the proposal that I, and I know many others, made for regularized, comprehensive city-wide planning, the Preliminary Staff Report, while noting that the Charter currently includes approximately a dozen different processes for borough or city-wide planning, reported significant disillusionment and confusion among the public relating to comprehensive planning for development. I believe that the various planning provisions in the current Charter support the need and public desire to see comprehensive, fair, comprehensive, cohesive city-wide planning.



The need is, I believe, made starkly clear during this current period when the city is undertaking an *ad hoc* approach to neighborhood planning, and in fact has proceeded with substantial rezonings in diverse neighborhoods where there may be support from local elected officials, but not from other neighborhood stakeholders and residents. A result of these undertakings is that key decisions about whether or how to rezone a neighborhood for increased density, and who may benefit, are often made without a full, open public process, at least in the public's perception.

Under this administration, neighborhoods selected for rezoning have been predominately those housing low income communities of color. To justify targeting these communities, DCP has cited their higher concentration of vacant lots, parking lots, and single-story buildings suitable for development, and cited their effort to minimize residential displacement' when rezoning occurs. Despite this approach, current rezoning practices are incentivizing the displacement of residents in many low-income neighborhoods. By contrast, white middle class areas have succeeded in getting DCP to approve down-zonings or the creation of historic districts that restrict development. These policies are shocking in the face of a housing crisis with 60,000 homeless, a significant proportion of whom are low-income working families with small children.

It should be a primary goal of the city to address such disparities, and the *ad hoc* policies that create them, by directing the DCP to act under its Charter mandate to begin a comprehensive, long-term planning process.

Therefore, I continue to urge the commission to propose amendments to the Charter to require the Department of City Planning to prepare or revise, every ten years, a comprehensive, city-wide planning proposal that examines the appropriateness of development locations based on density, resources, need and all other appropriate factors to ensure fairness to all our communities.

### **Additional Land Use Reform**

I'm disappointed that the preliminary staff report does not address a number of my suggestions for important changes to the Charter:

1. The placement, and even more importantly, the removal of existing City Deed Restrictions have had a dramatic impact on community facilities and resources. Currently, a lack of transparency has disrupted communities and undermined their faith in local government. To provide for a full review of such impacts, changes to Deed Restrictions should be required to go through ULURP.

2. In the matter of Zoning Lot Mergers, I recommend amending the Charter to require that requests for zoning lot mergers and Zoning Lot Development and Easement Agreements be made publicly accessible through an online map portal and notice provided to local community boards. Today, property owners may create a merged zoning lot from two or more existing lots that are contiguous for at least 10 linear feet. This effectively allows underbuilt properties to transfer their unused development rights to another part of the merged zoning lot.

The transfer of development rights in zoning lot mergers often occurs as-of-right, and such transfers have played a major role in shaping the built environment of the city. Combining the development rights of a merged lot into one site often leads to taller buildings that stand out from their context and subvert the expectations of the community.

3. The process and standards for modification of CPC Special Permits must be clarified. At present, applications to modify Special Permits are reviewed by DCP staff to determine whether a modification is "major," and therefore subject to ULURP, or "minor," in which case it is approved or disapproved by vote of the CPC. For example, if a proposed modification to a Special Permit would have been allowed "as of right"- i.e., not requiring a waiver for changes to a building's height

or set back - then it is ruled a “minor” modification. However, for large scale projects in which a new building is added to a site, changes to height, setback, and floor area ratio would be considered “major” modifications. However, neither the Charter nor the Zoning Resolution contains criteria for which modifications would be considered “minor.” Such criteria also do not exist within the ULURP rules.

The DCP’s current approach must be replaced with Charter-mandated standards. At a minimum, the charter should specify that any modification to the site plan or zoning calculations that would increase the amount of floor area, decrease the amount of open space, or increase the height or bulk of buildings must go through ULURP, in addition to any other changes not provided for under the Zoning Resolution. The Department of City Planning could then submit an application to modify the Zoning Resolution to specify what would constitute a minor modification. For instance, a change in curb cut location might constitute a minor modification.

4. The Charter should be amended to authorize the City Council to determine if modifications to a zoning proposal are within the scope of the existing application and environmental review. The Council has the expertise and experience to make scope determinations, as did the Board of Estimate. When ruling on a modification, the Council has before it the same information as the Planning Commission and is fully capable of determining whether a modification is “in scope” and compliant with environmental and other restrictions. There is no need, therefore, to have City Planning serve as a watchdog over such modifications.

Currently however, under §197-d, if the CPC finds that a Council determination on a modification requires additional review pursuant to §197-c or additional environmental review, the Council’s determination is not adopted. The Charter should be amended to remove the CPC’s power to overrule a Council determination in matters of this kind.



I further urge the Commission to propose a Charter amendment requiring decennial review of the Zoning Resolution.

### **DCP/CPC Reform**

In addition to changes in Charter provisions relating to land use review and zoning, I strongly urge the Commission to consider proposals for reform of the CPC itself.

Under the current Charter, the Director of the Department of City Planning also serves as Chair of the City Planning Commission. The Mayor appoints seven members of the Commission, and the five Borough Presidents and the Public Advocate each appoint one member. I believe that the Charter should be amended to make the City Planning Commission (CPC) more independent through the following changes:

1. The Director of the Department of City Planning (DCP) should not also serve as Chair of the Planning Commission (CPC). 2. The appointment of the CPC Chair should require the advice and consent of the City Council. 3. To avoid conflicts of interest and ensure that proposals are independently reviewed by the Planning Commission, the Chair and Commissioners should be at “arms-length” from any involvement in the planning process at DCP. 4. To help ensure the independence of the Commission, the number of Mayoral appointees should be reduced from 7 to 5. This change, in concert with a requirement for a Commission Chair independent of City Planning, would help limit actual or perceived undue influence in cases where the Commission is evaluating proposals drafted by City Planning at the direction of the Mayor’s office.

In summary, to avoid conflicts of interest and to ensure that plans developed by DCP are evaluated and modified impartially by the Commission, the Charter should mandate that the Commission be an independent body whose responsibilities are separate from those of the DCP or

the Office of the Mayor, and that the Chair of the Commission is not a member of the Department of City Planning.

### **Ranked Choice Voting**

I strongly support the Staff's recommendation for further consideration of Ranked Choice Voting ("RCV"). However, I urge the Commission to propose adoption of RCV. I also suggest that the proposal include creation of a body charged with its eventual implementation, whose job will also be to ensure that whatever method and details adopted for the program achieve the goals of fairness and inclusivity.

### **The CCRB**

The Civilian Complaint Review Board (CCRB) plays a vital role in ensuring that everyone in our city receives equal protection of the law and provides a fair and effective process for handling complaints of police misconduct. I strongly agree with the proposals made in the Preliminary Staff Report for reforms to the Charter affecting the CCRB, including changes to the appointment of the members of the Board, the imposition of obligations on the Police Commissioner to provide explanation for deviations in recommended discipline and adoption of a disciplinary matrix, the delegation of subpoena power to senior staff and the granting of permission to the Board to investigate and impose discipline in cases of false representations during ongoing CCRB investigations. These are all necessary reforms that will make the Board a more effective body. However, I urge the Commission to also consider two other reforms:

The Charter should be amended to codify the current Memoranda of Understanding (MOUs) that provide for the Administrative Prosecution Unit and that set forth the duty of the New York Police Department (NYPD) to cooperate with the Board beyond the investigation stage of a proceeding.

It is equally important that the CCRB's budget should be set permanently at 1% of the NYPD budget. By tying the two budgets, we ensure that as NYPD's resources grow or change, the CCRB can continue to fully carry out its responsibilities and investigate and pursue new issues that arise. If our city is serious about ensuring fair and equal treatment for all citizens, we must ensure that the body charged with making that promise a reality is funded sufficiently to do so.

#### **Corporation Counsel and Conflicts of Interest Board**

Independent and unconflicted legal counsel is essential to effective government. Because the Office of the Corporation Counsel provides legal guidance not only to the Mayor, but to all of city government including the heads of mayoral and non-mayoral agencies, as well as other elected officials, I agree with the recommendations in the Preliminary Staff Report that the appointment of the Corporation Counsel require approval of the City Council. I also agree with the proposal that the Law Department promulgate rules, to be formally adopted, pertaining to conflicts of interest and procedures to be followed in the event such conflict arises between opposing parties represented by the Department.

Similarly, the Mayor currently appoints all five members of the Conflicts of Interest Board ("COIB") and designates the Chair. The Board is one of the city's most dynamic resources, providing vital advice and education to all city employees in ethics, propriety and avoiding violation of our laws against conflicts of interest. As one of our most sensitive offices, we must never allow even a perception that the Board is unduly influenced by any sitting Mayor. Therefore, I support the recommendation of the Staff Report that the structure of the COIB be adjusted to include members appointed by the Public Advocate and Comptroller, whether by increasing the number of Board members or changing the appointing authority of the existing five members.



### **Landmarks Commission**

The Landmarks Preservation Commission is another important body within the structure of our city government which I strongly believe requires reform through Charter revision. The Charter currently requires that the commission be comprised of, among others, at least three architects, one historian, and one city planner or landscape architect. I believe the Charter should also require the inclusion of city planners and at least two trained preservationists on the commission.

### **Borough Presidents**

As noted by the Preliminary Staff Report, the offices of the five Borough Presidents are granted specific obligations and authority within the current Charter, but the powers to execute those duties are somewhat stunted. I fully support the proposals to require city agencies to provide the Borough Presidents with requested documents, and to ensure that agencies cooperate through meaningful engagement in borough services cabinet meetings. However, as I first testified, there are other crucial issues in the area of Borough President offices that should be addressed.

In the 1989 Charter Revision, when the Board of Estimate was abolished, a funding formula was established by which each Borough President would receive capital funding to disburse in their borough to community-based organizations, schools, and parks. The formula was arrived at based on the land area and population of each borough. While this formula may seem reasonable on its face, the Borough of Manhattan is grossly shortchanged by it. According to a recent NYU study, Manhattan's population doubles each workday as approximately 2 million commuters from the throughout the tri-state area enter Manhattan to use (and wear out) its infrastructure. This dramatic daily population spike is ignored in the current funding formula and it must be amended to reflect this reality.

In addition, as I previously testified, the budget of each Borough President should include funding for the positions of Borough Engineer as well as a Compliance Officer, now necessary due to new reporting mandates under Personal Identification and Privacy Laws, implementation of sexual harassment prevention programs, and new Diversity and Equal Employment programs.

### **City Budget**

As noted in the Preliminary Staff Report, in the last major charter revision, the New York City Council was given a robust role in setting spending priorities. However, the elastic interpretation of “units of appropriation”, continues to stymie that role.

The Charter should be amended to clarify that city agencies are required to submit a full breakdown and details of what the Council is being asked to approve—including a reconciliation of year-over-year changes—rather than permitting an agency to categorize all of its spending in one unit of appropriation.

Although not part of the Staff recommendation, I believe the Charter should be amended to require that the Mayor provide final revenue estimates earlier than is currently mandated.

I also urge the Commission to reconsider my original recommendation that the Office of Civil Justice and the Universal Access Program be included as a Charter-mandated part of the city government.

### **Community Boards**

Community Boards are our front line in promoting neighborhood planning and in defending neighborhoods from developers who seek only maximum profit from their projects in our communities.

The Charter should be amended to increase the planning capacity of community boards with assignment of one full-time urban planner at each board. Community Boards need greater technical

capacity to both analyze proposed land use actions and to conduct pro-active community planning. All Community Boards should have a baseline level of planning expertise, adequate to address the complexity of the zoning process.

Thank you for the opportunity to testify, and for your contribution to the critical work of revising the Charter to improve the city's governance and provision of services, and to ensure that the Charter embodies our best ideas and highest values.

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## TESTIMONY ON LAND USE TO THE CHARTER REVISION COMMISSION

By Meryl Brodsky, Turtle Bay Association Board Member,  
District Leader, 73<sup>rd</sup> AD, Part A, May 9, 2019

Good evening. I am Meryl Brodsky, a Turtle Bay board member and district leader in the area spanning the UN to Grand Central Station, north to Bloomingdale's and the East 60s. I address two land use questions of interest to Turtle Bay:

First, should the Charter include a "city plan"? ULURP, a charter amendment of 1975 devised to limit Robert Moses' mega-projects, abandoned city-wide planning. The Bar Association's Charter Revision Task Force states, "The ... Charter establishes a variety of planning processes under ... Sec. 197-a ... but does not require the creation of a single 'Comprehensive Plan' to guide land use ... We think this ought not be changed at this time absent careful study..." <https://www.nycbar.org/member-and-career-services/committee>

We generally agree. However, if the disposition of land is unfair, planning might address inequities. For example, East Midtown Rezoning in 2017 compelled a council subcommittee to vote on elements of the Plan. Complaints from Turtle Bay caused lawmakers to nix five blocks on the east side of Third Avenue altogether. Remaining were two hotly contested elements concerning the sale of unused development rights by property owners, including St. Patrick's Cathedral, and "how much dough the city would take from each transaction." The Plan proposed a floor price as a guarantee "that money would flow into the public-realm improvement fund." Property owners and the Real Estate Board of New York opposed the idea saying, "It would stifle sales in soft markets." [https://www.crainsnewyork.com/article/20170727/REAL\\_ESTATE/170729899/city-council-approves-midtown-east-rezoning-that-will-allow-taller-towers](https://www.crainsnewyork.com/article/20170727/REAL_ESTATE/170729899/city-council-approves-midtown-east-rezoning-that-will-allow-taller-towers)

Emanating from developers' profits, the "public-realm improvement fund," would be used for infrastructure. But infrastructure requires massive input from Con Ed, communication, construction and engineering entities, exceeding any developer's capacity. Cost overruns would preclude infrastructure. Planning that overhauls some developer's zoning rights or mandates affordable housing might be better.

Second, should ULURP pre-certification be extended? The 2018 Charter Commission did not change the seven-month timeline. A former Chair of the City Planning Commission recommends 30 extra days for community boards in complex cases and allowing the Department of City Planning to enforce zoning laws. Also, a

grievance procedure for too-tall, as-of-right buildings might be incorporated into ULURP. Despite excessive height, a building on East 51<sup>st</sup> Street and 2<sup>nd</sup> Avenue received DOB permits until a fatal crane collapse abruptly stopped construction. Since community board term limits dampen involvement, Turtle Bay feels strongly they be removed. Each board by majority vote should decide term limits or not. <https://www.gothamgazette.com/city/8385-charter-revision-commission-hears-expert-testimony-on-land-use-and-planning>, [https://en.wikipedia.org/wiki/303\\_East\\_51<sup>st</sup>\\_Street](https://en.wikipedia.org/wiki/303_East_51st_Street)

Conversely, an independent Planning Commission comprised of developers and agencies would allow the fox to guard the henhouse, diluting public input. Legislation that adds developers to the “doing business” database prior to certification is also a bad idea since it would inform lobbyists of impending projects, attracting them like bees to honey.

[https://static1.squarespace.com/static5bfc4cecf7fde7d3719c06/t/5c797278f9619a55e45e3b2b/1551463048427/Hearing\\_Testimony\\_9\\_27\\_18\\_Part\\_3.pdf](https://static1.squarespace.com/static5bfc4cecf7fde7d3719c06/t/5c797278f9619a55e45e3b2b/1551463048427/Hearing_Testimony_9_27_18_Part_3.pdf)  
<http://www.gothamgazette.com/city/7541-council-member-to-propose-campaign-finance-changes>

To conclude, Turtle Bay favors elements of a plan that redress inequities; longer pre-certification for community boards and term limits decided by majority vote of each board. Thank you for listening to our concerns.



**THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER**

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**TESTIMONY OF  
COMPTROLLER'S OFFICE CHIEF DIVERSITY OFFICER  
WENDY GARCIA**

**BEFORE THE  
NEW YORK CITY CHARTER REVISION COMMISSION 2019**

**May 9, 2019**



Thank you to the Charter Revision Commission for allowing me to testify tonight. My name is Wendy Garcia, and I'm the Chief Diversity Officer for the Office of New York City Comptroller Scott M. Stringer.

I'm here tonight because the preliminary staff report did not go far enough. Anything less than enshrining a Chief Diversity Officer in City Hall, every City Agency, and in the City Charter is simply not enough to tackle the problems our city faces.

We need a government that prioritizes closing the racial and economic gaps in New York – and to establish real consequences for inequality.

A Chief Diversity Officer as a top official in City Hall will be able to address the pervasive patterns of discrimination that have plagued our agencies for decades. They would set a tone of inclusion at the top and with the support of CDOs in every mayoral agency, they could hold city government accountable every day.

By conducting internal audits and assessments, a CDO could reveal new data about discrimination patterns in workforce and procurement. They could use that data to show that when people say, "we have tried our best," it's simply not good enough. And they would work closely with the Mayor and agency commissioners to implement effective programs with transparency, metrics, goals, and accountability.

As I've said, this role must be supported by Chief Diversity Officers at City agencies reporting to commissioners. Agency CDOs will be able to take a look under the hood – and have a microscopic view of how that specific agency must address systemic inequities.

We believe that this will stop the pattern from repeating itself. Because what we have learned from history – is that we have not learned from history.

Of the 6700 certified MWBEs, almost 80% of them still are not getting contracts from the City. Of the \$19 billion dollars the City spends – only 5% is going to MWBEs. Of the 32 City agencies that are graded by the Comptroller's office on M/WBE spending through our "Making the Grade Report." Just 7 have Chief Diversity Officers – and only 4 of them report to commissioners.

The need for reform is clear – because it works. When Comptroller Stringer first took office, we created the first CDO in the city who reported directly to the Comptroller with a team of equity experts. We grew spending with M/WBEs from 11 percent to 29 percent – nearly triple in just 4 years.

That was in procurement. We also looked at our pension fund. With new initiatives and attention, we brought the asset allocation to M/WBEs from \$8.9 billion to \$12.5 billion. To make sure this progress is sustainable, we hired a Director of Asset Management Diversity in the Bureau of Asset Management who reports directly to the Chief Investment Officer – who will give it structure and accountability.

And we launched a campaign that impacted the nation. We asked firms that we invest with to disclose the racial and gender composition of their board of directors – and used this data to push for more

diverse seats at the table. And it worked! Since we started, 54 new diverse directors have been elected to the boards of some of the biggest companies in the world.

These are just a few examples of how you can make equity a core structure of any office in city government.

But make no mistake – this is hard work. It's the kind of work that can make people uncomfortable, but we're in this line of work to do what is hard – especially when it's right.

So the Charter has a unique position today – to take the step on behalf of all New Yorkers – and give them this robust plan for equity and inclusion. Let's create a New York that is held accountable for bringing everyone to the table – and let's give New Yorkers the chance to vote on it – Nov 6.

**Alida Camp**  
**Chair**

**Will Brightbill**  
**District Manager**



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## **The City of New York** **Community Board 8 Manhattan**

**Testimony of Community Board 8 Manhattan Chair Alida Camp**  
**Before the New York City Council Charter Review Commission**  
**May 9, 2019**

My name is Alida Camp. I am Chair of Community Board 8 Manhattan. CB8M has testified at prior Charter Revision Commission hearings. Thank you to Chair Benjamin, members of the Commission, and their staff for their work here and providing this opportunity to comment.

CB8M is concerned that there is insufficient public input into the Land Use process. We ask for more time, and an earlier time, to review and comment.

The purpose of ULURP is to allow communities input into land use decisions that impact our neighborhoods. Therefore, we urge the Commission to include a pre-ULURP review period for Community Boards. We believe that we could have better, more informed input into decisions while the project is in planning stages.

In addition, we need 45 additional days beyond the 60 required as part of ULURP to allow us to provide public notice and have sufficient time to evaluate and vote on the applications. Community Boards meet once a month. If the application comes in just after a Board meeting, it will be approximately 28 days (or longer) before we meet again. That is simply insufficient for meaningful review and comments.

The clock should not begin to run until whichever happens later: City Planning certifies the application as complete; or, City Planning does not certify the application as complete until submission of the final, impartially prepared EAS with a negative declaration.

In addition, if the community discovers an inaccuracy in the application, we ask that the clock start again so that we could evaluate a corrected application.

There are other concerns with ULURP. For instance, an EIS, written by an environmental company or law firm who is paid for and engaged by the developer, is not impartially-prepared. We ask that the environmental company or law firm be paid by the developer, but be drawn from a list maintained by the City to ensure greater objectivity.

Because ULURP is designed to provide for public input and an analysis of the various impacts of the project at issue upon the community, we ask that as-of-right buildings notify Community Boards of filings and that the DOB notify Boards before approving plans. We believe communities would benefit from this information. Boards would then be able to have an opportunity to communicate with developers, make recommendations, and therefore have a positive impact on development.



We ask that there be greater transparency in the RFP process and that communities participate in RFP development. In other words, the RFP process should be treated more like ULURP because the impact on communities is just as great.

We have made these points in our December 21 and March 22 resolutions, attached for your convenience.

While growth is important, there are other parts of city life that have equal value – affordable housing, quality education, effective and efficient infrastructure, small business vitality, neighborhood preservation, and vibrant communities. We are concerned that these values have eroded in favor of an exclusive interest in growth. Articulation of these values in the document that governs New York City would help ensure that the City remains a vibrant urban environment. If we have learned anything from our shared challenges — whether it be housing, transportation, or climate — it's that growth must be sustainable. CB8M's suggestions draw on our experience and provide a blueprint for what we need to attain sustainable growth in New York City.

Accordingly, CB8M believes a comprehensive plan that recognizes the importance of issues other than growth, such as neighborhood preservation, displacement, and infrastructure is essential to a livable city. Current thinking appears to be that the poorly coordinated reports and ordinances now in place constitute a Plan for New York City. We need a coordinated plan that addresses these and other issues largely ignored by City Planning. We further ask that the Plan be regularly reviewed and updated.

We ask that mayoral zoning overrides be prohibited. They pre-empt discussion and can abuse and ignore the letter and spirit of the ULURP process and Zoning Resolution.

CB8M supports the Charter Revision Commission's staff recommendations relating to the Office of the Borough President.

Again, thank you for hearing my testimony this evening.

**Alida Camp**  
**Chair**

**Will Brightbill**  
**District Manager**



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**The City of New York**  
**Community Board 8 Manhattan**

March 22, 2019

Gail Benjamin  
Chair  
Charter Revision Commission 2019  
250 Broadway  
New York, NY 10007

Dear Chair Benjamin,

At the Full Board meeting of Community Board 8 Manhattan held on March 20, 2019, the board approved the following resolution by a vote of 38 in favor, 0 opposed, 0 abstentions, and 0 not voting for cause.

**WHEREAS** Community Board 8 Manhattan has a number of topics that it asks the Charter Commission of 2019 to consider in determining which Charter provisions merit revision;

**WHEREAS** the Charter Review Commission of 2019 asked Community Boards to comment on the City Charter;

**WHEREAS** CB8M is concerned about the balance of power in New York City and the land use process;

**WHEREAS** CB8M is concerned about the lack of deference given to Community Board decisions;

**WHEREAS** in December 2018, CB8M articulated its views on what topics the Charter Commission of 2019 should consider, and CB8M attaches and reiterates the letter it sent to the Charter Commission of 2019 here;

**THEREFORE BE IT RESOLVED** that Community Board 8 Manhattan asks that the Charter Commission consider the following recommendations for modifications of and revisions to the NYC Charter:

- **Variances and Zoning**
  - Require that developers must go before Community Boards prior to seeking construction variances from the Department of Buildings, and that where a variance is sought on an emergency basis, the developer must subsequently go before the Community Board; and
  - Prohibit the use of Mayoral Zoning Overrides.
- **Board of Standards and Appeals:**
  - Amend the composition of the Board of Standards and Appeals (BSA) to add representation from other elected officials, such that the BSA, which currently has five members, be expanded to 11 members, with each Borough President appointing one member, the Speaker of the City Council appointing one member, and the mayor appointing five members; and
  - That the appraiser used in BSA financial analyses must be made by a licensed appraiser, who will be assigned from a pool of licensed appraisers approved by the BSA;
- **City Environmental Quality Review (CEQR):**
  - Ensure that the CEQR includes displacement (from both rent-regulated and market-rate housing) and neighborhood demographic changes as impacts to address during CEQR;
  - Require that the Environmental Impact Statement (EIS) be prepared and reviewed by an impartial environmental agent, drawn from a pool approved by City Planning;
  - Require that an EIS be released to the public.
- **Implement a process for comprehensive planning, including:**
  - Create an independent, long-term planning office to develop a comprehensive citywide plan (the "Citywide Plan"), to be ratified by the City Council;

- o Require the Citywide Plan to be updated every ten years; and
  - o Establish the position of Deputy Mayor for Infrastructure and require annual assessments of the City's infrastructure needs, including but not limited to schools, housing, parks, and transportation.
- Landmarks Preservation Commission:
  - o Expand the Landmarks Preservation Commission (LPC) to thirteen members, and require that two of those members be preservationists; and
  - o Require an impartial entity vet appointees to the LPC.
- Uniform Land Use Review Procedure (ULURP):
  - o Establish a "pre-ULURP" mechanism to require review of the City's RFPs by communities, Community Boards, Borough Presidents, and other relevant stakeholders, prior to their issuance and prior to the beginning of the formal ULURP process;
  - o Require that the ULURP process ensure the mitigation of the impacts of construction and development, including but not limited to sociological, environmental, and health impacts;
  - o Expand and strengthen the ULURP process, including requirements that all sales of air rights and all City development, changes to the zoning text, and changes to deed restrictions must be subject to ULURP review; and
  - o Permit Borough Presidents to include an alternative ULURP application to be considered alongside an application originating with the City or City-affiliated entities.
- As-of-right developments:
  - o Require that Community Boards and elected officials be notified of, and provided with, plans for as-of-right developments upon filing of plans with the Department of Buildings, and again upon the issuance of building permits;
- Self-certification:
  - o Audit all self-certifications.
- Agency communication and information-sharing:
  - o Require that City agencies, upon receipt from a developer or property owner of documents regarding developments, share those documents with all other relevant City agencies; and
  - o Establish a database to which all relevant City agencies have access, and to which all documents regarding developments are submitted.
- City Planning Commission:
  - o That where any Community Board has disapproved an application, a supermajority of the City Planning Commission be required to approve an application.
- Franchising:
  - o Creating a ULURP-like process for all City franchises.

**BE IT FURTHER RESOLVED** that Community Board 8 opposes proposals to (1) compensate members of the LPC, (2) transfer the LPC to the City Planning Commission, and (3) require that a planning analysis or approval consider economic factors.

Please advise us of any action taken on this matter.

Sincerely,

  
Afida Camp  
Chair

cc: Honorable Bill de Blasio, Mayor of the City of New York  
 Honorable Carolyn Maloney, 12<sup>th</sup> Congressional District Representative  
 Honorable Gale Brewer, Manhattan Borough President  
 Honorable Liz Krueger, NYS Senator, 28<sup>th</sup> Senatorial District  
 Honorable Dan Quart, NYS Assembly Member, 73<sup>rd</sup> Assembly District  
 Honorable Rebecca Seawright, NYS Assembly Member 76<sup>th</sup> Assembly District  
 Honorable Ben Kallos, NYC Council Member, 5<sup>th</sup> Council District  
 Honorable Keith Powers, NYC Council Member, 4<sup>th</sup> Council District



**Alida Camp**  
**Chair**

**Will Brightbill**  
**District Manager**



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**The City of New York**  
**Community Board 8 Manhattan**

**December 21, 2018**

**Gail Benjamin**  
**Chair**  
**Charter Revision Commission 2019**  
**250 Broadway**  
**New York, NY 10007**

**Dear Chair Benjamin,**

At the Full Board meeting of Community Board 8 Manhattan held on December 18, 2018, the board approved the following resolution by a vote of 32 in favor, 0 opposed, 0 abstentions, and 0 not voting for cause.

Whereas Community Board 8 Manhattan has a number of topics that it asks the Charter Commission of 2019 to consider in determining which Charter provisions merit revision;

Whereas the Charter Review Commission of 2019 asked Community Boards to comment on the City Charter;

Whereas CB8M is concerned about the balance of power in New York City and the land use process;

Whereas CB8M is concerned about the lack of deference given to Community Board decisions;

Therefore be it resolved that Community Board 8 Manhattan asks that the Charter Commission consider the following recommendations for modifications of and revisions to the NYC Charter:

That Community Boards be transitioned from being advisory in nature to having actual power in City decision-making, including developing and implementing land use decisions.

That Community Boards have access to urban planners with a degree in urban planning, architecture, real estate development, public policy or similar discipline, and that such urban planner have no ties to either the City administration or the real estate industry.

That New York City adopt a long-term plan that shall be examined, and modified where necessary, on a regular, determined basis and that any such plan be ratified by the City Council with public input.

That the Charter Commission codify the process for future charter revisions to allow for two years, a sufficient time for review of, suggested revisions for, and public input into the process, and allow advocacy in favor of and opposed to specific charter revision proposals.

That the Charter Commission examine the power balance between the Mayor, Borough Presidents, and City Council for certain commissions and departments, such as the Landmarks Preservation Commission, Board of Standards and Appeals, and Department of City Planning. Appointments to these Commissions and Board should be made by the Public Advocate, Council, and Borough Presidents, as well as by the Mayor.

That the Charter Commission review the charges and missions of all City Departments, including stakeholder identification.

That transparency into the RFP process be increased and that Community Boards participate in RFP development.

That the Charter Commission review budget protocols, including mandates to integrate Community Board priorities into budget decisions.

That the Charter Commission review contract bidding protocols to mandate competitive bidding and require transparency, among other issues.

That payment to city vendors on a timely basis be mandated.

That the Civic Engagement Commission and community board term limits be re-examined.

That regulatory changes to departments that reduce the input of Borough Presidents be prohibited.

With respect to land use, that the ULURP process be expanded and strengthened, including requirements that all development must go before community boards, all sales of air rights and that all City development, changes to the zoning text, and changes to deed restrictions each be subject to ULURP review.

That communities have a broader role in land use planning and decision-making.

That where any Community Board has disapproved an application, a supermajority of the City Planning Commission be required to approve the application.

That the reasons for the use of a Mayoral Zoning Override be codified and limited further.

That the Community Board, City Council, and Borough President for the relevant district agree on land use decisions.

That loopholes in the Zoning Resolution be closed.

That the Charter include provision for a City agency to supervise, regulate and respond to matters relating to street vendors. The agency would include representatives from all other City agencies that have specific responsibilities with various aspects of street vending and the ability to establish vendor enforcement officers.


That the Commercial Rent Tax be eliminated.

That regulations and taxes throughout New York City be uniform.

That the Commission review and define the mandate for the office of the Public Advocate.

That the Charter require City agencies to provide responses within a specified time frame to Community Board resolutions and recommendations.

Sincerely,

  
Alida Camp  
Chair

cc: Honorable Bill de Blasio, Mayor of the City of New York  
Honorable Carolyn Maloney, 12<sup>th</sup> Congressional District Representative  
Honorable Gale Brewer, Manhattan Borough President  
Honorable Liz Krueger, NYS Senator, 28<sup>th</sup> Senatorial District  
Honorable Dan Quart, NYS Assembly Member, 73<sup>rd</sup> Assembly District  
Honorable Rebecca Seawright, NYS Assembly Member 76<sup>th</sup> Assembly District  
Honorable Ben Kallos, NYC Council Member, 5<sup>th</sup> Council District  
Honorable Keith Powers, NYC Council Member, 4<sup>th</sup> Council District

**May 9, 2019 – Manhattan Borough Hearing on NYC Charter Revision**  
**Written testimony submitted by Amy Jeu (amyjeu@gmail.com)**

Good evening.

My name is Amy Jeu. I am a citizen and resident of Brooklyn. I am in full support of the GIS charter amendments to Chapter 48: Department of Information Technology and Telecommunications (NYC DoITT). I support the works of GISMO (NYC Geospatial Information Systems and Mapping Organization) and the larger GIS community.

By professional, I am a Geoscience College Laboratory Technician at Hunter College, City University of New York (CUNY). I received a BA in Geography from Hunter College and a terminal professional MGIS degree (Masters of Geographic Information Science degree) from the University of Minnesota – Twin Cities campus.

In 1998, I founded the Theta Pi Chapter of Gamma Theta Upsilon, an international honor society in geography and continue to serve as the chapter's President and Coordinator.

In 2001 while at the University of Minnesota, a Geographic Information Science Student Organization (GISSO) was formed using grassroots organizing efforts. I had the honor and privilege of serving as the organization's Founding President. I held the position for one year due to graduation and handed over the reins to the next cohort of MGIS students and GIS practitioners. To this day, GISSO remains a thriving organization with a strong sense of community and ties to the University's Department of Geography, Environment and Society; ESRI; the MN GIS/LIS Consortium; and the state of GIS in Minnesota.

Also serving as the Professional Staff Counselor (PSC) / CUNY Grievance Counselor, Delegate, and Vice Chair of the College Laboratory Technicians (CLT) Chapter; and as a NYSUT and AFT Delegate, I understand the critical importance and need for a Chief Geospatial Information Officer (GIO) within local government, and its relationship to other city agencies, students in academia, GIS practitioners, various industries, community volunteers, and residents of this great city. The values added are to our good and welfare; cost savings in the billions on scales ranging from local to global; data accuracy and accessibility; strategic planning; emergency preparedness and response; civic engagement and public participation.

What attracted me to GIS was the ability to model the real world inside a computer system. I was fascinated with all the things one could do with a GIS: map making, modeling, forecasting future events, location analysis, decision support, marketing, routing applications, and visualization.

The need for geospatial intelligent systems is a high priority and inherent to any discussion related to the strength and resilience of NYS critical infrastructure (Source: NYS2100 Commission's report entitled, "*Recommendations to Improve the Strength and Resilience of the Empire State's Infrastructure*"; released in 2013 at the behest of Governor Cuomo). The ability to convey information in clear and concise ways is immeasurable. Related to that are standards, metadata, accuracy and accessibility.



I am privileged to be working with the best of the best in this golden age of geospatial big data, digital and information revolutions, and advanced technologies. The wealth of information we are collecting is resounding and beyond human comprehension for just one single person.

We live in a dynamic world where the tensions of our interactions, connections, and relationships are being tested at every juncture. The world has experienced significant increases in natural disasters, changes in sea level rise, climate change, and school shootings to name a few, and if we (humans) do not reverse our course, these trends will continue to advance as we move forward.

I concur with all my colleagues who have testified before you, and I would like to add:

My family owned several businesses and homes throughout our lifetime, one to include a 25 year run in Coney Island. I am a survivor. I survived events to include,

- The Great Nor'easter of December 1992 that washed away 100 feet of Steeplechase Pier in Coney Island;
- Hurricane Sandy in 2012 that flooded my house with six feet of water; and
- Hurricane Maria in 2017 that also affected my home in Puerto Rico.

Having been on different sides of the fence, I can give you a first-hand account and ground level assessment of where we can all do better, but I want to testify today about the vital role that city government has played in disaster mitigation, emergency management, relief and recovery efforts, helping neighborhoods and communities rebuild, and the human toil in healing.

9/11 was one of the darkest days in America and in spite of the horrific tragedy and the trauma we endured; the GIS community was rallied together by a single email sent out by GISMO Founder, Dr. Jack Eichenbaum, asking for volunteers to assist in the mapping efforts.

The GIS community sprang into action, accepted the challenge and worked together towards common goals and a shared mission.

In essence, the networks of partnerships, friendships and alliances that were built up over the years and decades were galvanized and we reacted and responded by pulling together all our expertise and placing calls to get key stakeholders to get them on board and to get the job done and to save lives. We collaborated at federal, state, local, regional, and international levels.

One of the greatest lessons learned from 9/11 was the absolutely critical and essential need for coordination of efforts at the local government level. It takes a uniquely qualified top city official to do the job --- someone who is intimately familiar with NYC geography, protocols, policy and procedures; geospatial data; data acquisition and dissemination; data interoperability; data standards; QA/QC processes; information science; legacy systems; GIS technologies; remote sensing; aerial photography; photogrammetry; sensors; GPS; surveying; ground-truthing and field methods. Such an individual embodied as the NYC Chief, would manage not only technological equipment and devices, but the human interactions among technology constituents - this is commonly referred to as exchange technology.

When a disaster strikes, we put into action the strategic plan we have been developing all along. That is the critical moment we jump as we are called into action to respond and to respond with great urgency and efficiency.

Today, we are nearly 20 years from 9/11 and local government is without a Commissioner to assume this vital role and responsibility at the NYC DoITT level. Of greatest concern is our safety and security. NYC is the financial capital of the world and we do not want to be caught with our pants down again.

In closing, we are calling on this body to seriously consider and codify into the City Charter the position of a Chief Geospatial Information Officer (GIO) and to also support in full the additional GIS charter amendments outlined below:

- The appointment of a Deputy Commissioner for Geospatial Information Systems
- The formation of a GIS steering committee composed of City agency GIS managers and outside experts
- A requirement for the development and maintenance of a GIS strategic plan
- Responsibility for ensuring that spatially enabled open data is interoperable and easy to use
- The formation of an underground utility data interoperability steering committee composed of representatives of public and private utility companies and agencies

Thank you.

**STATEMENT OF HOWARD SLATKIN, DEPUTY EXECUTIVE DIRECTOR FOR STRATEGIC PLANNING,  
NYC DEPARTMENT OF CITY PLANNING  
MAY 9, 2019**

Good evening, Commissioners. My name is Howard Slatkin, and I am the Deputy Executive Director for Strategic Planning at the Department of City Planning.

Thank you for the opportunity to speak before you again. My comments are directed toward the specific recommendations for land use in the Commission's staff report, which relate to the ULURP and pre-ULURP process, and to citywide planning.

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**ULURP**

The Department is sensitive to the demands the ULURP process places on Community Boards. Their step is the first in the ULURP process, giving them less lead time than the other parties in the process to prepare for their review. We see it as a reasonable change to extend the time allotted to CBs for their review of ULURP items by 15 days during those times when scheduling can be particularly challenging.

The Department encourages early interaction between applicants and Community Boards and Borough Presidents prior to ULURP. Most applicants already do this, and certainly the Department conducts extensive engagement for our own actions. The idea of requiring applicants to provide 30 days' notice of an upcoming ULURP item to CBs and BPs is a reasonable one, in order to further promote early dialogue without undermining the functioning of the ULURP process.

However, this should be advance notice about the basic parameters of the upcoming application, and not an additional formal comment period requiring submission of drawings or other detailed application materials:

- The advisory recommendations in the ULURP process are delivered to decision makers – the CPC and Council – to inform those decisions. This additional period would deviate from that structure. The new 30-day “comment period” would be followed immediately by a 60-day comment period by the same CB.
- A formalized “pre-review review” stage would introduce a structural incentive to delay the start of ULURP, which is contrary to the purpose of the process.
- By definition, discussions prior to certification cannot be informed by complete and accurate application materials. Certification is the act of DCP verifying that the information provided is complete and suitable for public review.

**Citywide Planning**

Regarding the citywide planning documents laid out in the Charter, the staff report outlines an approach in which planning documents can be coordinated and streamlined. This would be conducive to citywide strategic planning that informs and shapes further actions, without presupposing the future actions of the parties authorized by the Charter to make decisions.



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We take issue, however, with the recommendation that these citywide plans “describe contemplated short-term, intermediate, and long-term changes to land use and development in communities, such as reasonably anticipated neighborhood rezonings.” It would be neither reasonable nor desirable to generate and disclose a list of future neighborhood rezoning plans in a citywide planning document, without the opportunity for sufficient engagement with affected communities.

A citywide planning document can identify existing plans and planning processes that are underway. It can also describe growth trends, broad needs for the future, and the types of strategies that can address these needs – e.g., criteria for areas where increases in housing capacity should be considered. But prematurely suggesting potential projects that have not been the subject of engagement would be needlessly provocative, would undermine productive engagement with communities, and could have unintended side effects, such as unwarranted and undesirable land speculation.

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## **City Charter Amendment-DOITT (Chapter 48)-Public Hearing Statement**

**Noreen Whysel, COO, Decision Fish**

**Board of Directors, NYC GISMO**

**Coordinator, Coalition of Geospatial Information Technology Organizations**

**May 2, 2019**

Bio: I am resident of Manhattan, a digital researcher, archivist, teacher, and entrepreneur. I am an advisor on several information and data mentoring projects that provide introductions and resources for companies and individuals working with government entities. I am also a member of an international project of the Open Geospatial Consortium to develop a data model for underground infrastructure. Currently, I serve on the Board of Directors of the NYC Geospatial Information Systems and Mapping Organization (GISMO) where I coordinate activities for the Coalition of Geospatial Information Technology Organizations (or COGITO), on whose behalf I am speaking today.

COGITO is an informal alliance of non-governmental practitioners and researchers who are interested in the geospatial technology environment New York City. This group includes researchers and data centers at many of the City's public and private universities (CUNY: Hunter College, Lehman College, the geospatial center at Bronx Community College's CREST Institute, John Jay College, BMCC, and at the New School and Cornell Tech, and Columbia's Center for International Earth Science Information Network (CIESIN) as well as spatial data centers at Columbia, Pratt Institute, CUNY Graduate School and NYU Tandon). It also includes professional associations and civic groups like the American Geographical Society, the NY State GIS Association, the Society of Women Geographers, Open Geospatial Consortium, Beta NYC, URISA and other, informal meetups and regional interest groups.

I came to speak today about the need for oversight of geographic tools and data. The 2012 Open Data Law allowed our City to create a robust community of civic data consumers, adding a great deal to NYC economic development, operations and citizen services. Applications for academic research, civic accountability and citizen services have exploded in the last several years, with new businesses and citizen-led initiatives created and supported by the NYC geodata ecosystem and City programs like the Big Apps Challenge.

While the data portal has done a good job making agency data sets available to the public, and efforts are moving toward more structured data formats, data standards are not rigorously enforced. Most of the data produced by the City is geocoded which requires management by a central governing entity can ensure that processes and data are standardized and interoperable data across all City departments, and ensure the protection of sensitive data and ensure that location based data in particular is not inadvertently harming citizens and their privacy. We are proposing that a Chief Geospatial Information Officer along with a GIS Steering Committee at

DOITT would make the data more useful to business, City partners and the public and that these processes and overall strategy would support our growing and vibrant civic data communities.

Some of you may be wondering why can't this role be covered by the City's Chief Data Officer? The Mayor's Office of Data Analytics was created in 2013 by Executive Order 306 with a limited mandate to analyze and share City data with the public. It is not equipped to address Citywide operational challenges that require coordinated efforts among City departments, service vendors and non-government partners, such as a massive emergency/9-11 type event. While it is certainly true that MODA could oversee data formats and delivery of public-facing geospatial data, a DOITT role, codified in the City Charter, would also cover sensitive geospatial data that is not publicly available, such as underground infrastructures and emergency and safety operations.

In light of the above and on behalf of COGITO, I support amendments to Chapter 48, DOITT of the City Charter as follows:

- The appointment of a Deputy Commissioner who serves as the City's Chief Geospatial Information Officer
- The establishment of a GIS Steering Committee comprised of Agency GIS leaders and other experts.
- A requirement that the City produce and keep up to date a GIS strategic plan.
- A requirement that the spatial data connecting most of the City's open data be standardized, interoperable and easy to use.
- The establishment of an underground infrastructure steering committee comprised of representatives from City infrastructure agencies and private utilities, to guide the improvement of utility data so it can be quickly accessed and used during routine operations and emergencies.



Testimony of Jim McCabe before the NYC Charter Revision Commission - May 9, 2019

Hello, my names is Jim McCabe. I'm a 24 year resident of Manhattan and I currently serve as secretary of the Green Party of New York State.

Although the Green Party has been a statewide ballot access party since 2010, we still do not have a seat on the Board of Elections, so we welcome these hearings on improvements that can be made here in New York City.

I am here today to support ranked choice voting and to address the questions posed in the staff's preliminary report.

Ranked Choice Voting

Ranked Choice Voting should become the standard for all municipal elections in New York City: Mayor, Public Advocate, Comptroller, Borough President, City Council. It makes no sense and would complicate tabulations to have one set of rules for special elections and party primaries, and another for general elections. This is a matter of expanding voter choice, of moving beyond the current winner take all system where voters often feel their choice is limited to voting for the "lesser of two evils" rather than the candidate who has the policy positions they agree with most.

As a third party, the Green Party rarely holds party primaries, aside from when they are forced upon us by the opportunity to ballot provision in the state election law which should be banned.

When it comes to general elections, third parties are acutely aware of accusations of "splitting the vote" levied at us by the major parties in situations where their candidate fails to appeal to enough voters to win an election. We are told that our votes are wasted, that we should have voted for the big money candidate with the best chance of winning, not who we wanted to win.

If we want to move away from cynicism and voter apathy toward increased civic engagement, voter turnout, and voting our hopes and not our fears, ranked choice voting is the way to go for all elections, especially general elections.

RCV will incentivize candidates to appeal to the electorate more broadly while campaigning. It will demonstrate stronger consensus support for the eventual winner. And it will eliminate the cost of holding separate runoff primaries.

On the issue of ballot exhaustion, there is no compelling reason to limit the number of candidates that a voter can rank. Voters should have the right to rank the candidate they most prefer and all other candidates who are acceptable to them in order of preference.

Limiting the voter's ability to rank all candidates is undemocratic and only increases the chances that ballots may be exhausted before any candidate surpasses the 50 percent threshold. That defeats the value of ranked choice voting.

With respect to electoral fusion, unlike the major parties and their fusion allies, the Green Party rarely engages in it. We run our own candidates and offer voters an independent, electoral alternative. While we would like to see an end to fusion in New York State, the existence of fusion is not a valid justification for keeping ranked choice voting out of general elections. Indeed, those who argue otherwise may be more interested in keeping the entrenched, two-party system, rather than expanding voter choice.

Voters are used to seeing a ballot that lists some candidates on only one party line and other candidates on multiple party lines.

With ranked choice voting, a voter can, for example, vote for an independent third party candidate as their first choice, vote for a major party candidate appearing on a third party line as their second choice, vote for that same candidate on the major party line as their third choice, and so on. They can stop their rankings there or continue to rank any other candidates that are acceptable to them. Voters do not have to rank candidates who are unacceptable to them.

It would greatly simplify matters if the municipal elections ballot were reconfigured so that a candidate is listed only once and all party line endorsements are listed underneath the candidate's name. This was once the case here in New York City.

Ranked choice voting ought to be implemented for the 2021 municipal elections. If there are any special elections before then, those could potentially be used as a test bed.

I have additional points in my written testimony in support of lowering the signature requirements to get on the ballot, and opposing non partisan elections which appear to be of interest to some commissioners.

#### Signature Requirements

The Commission should cut in half, from 5% to 2.5%, the number of signatures needed to get on the ballot for New York City municipal elections to somewhat level the playing field between the major parties, third parties, and independent candidates.

The 2010 New York City Charter Revision Commission amended section 1057-b of the City Charter to reduce by half the *maximum* number of signatures needed for NYC municipal races from what is required under section 6-136 for designating petitions and 6-142 for independent nominating petitions of the state election law.<sup>1</sup> However, it did not similarly cut in half the election law's alternative option to obtain signatures from 5% of active, enrolled voters in the political unit for the race in question for ballot access parties, or 5% of the votes last cast for governor in that political unit in the case of independent candidates. Under the election law, candidates have the option of choosing the lower of the two numbers.

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<sup>1</sup> Final Report of the 2010 Charter Revision Commission, Page 18.  
[https://www1.nyc.gov/assets/charter/downloads/pdf/final\\_report\\_of\\_the\\_2010\\_charter\\_revision\\_commission\\_9-1-10.pdf](https://www1.nyc.gov/assets/charter/downloads/pdf/final_report_of_the_2010_charter_revision_commission_9-1-10.pdf)

The upshot of this is that in New York City municipal races Democrats and Republicans can get on the ballot with signatures from less than 1% of their enrolled members, whereas all other ballot access parties have to get anywhere from 3.6% to 5% and independent candidates 5%.

I compared the February 2019 active enrollment figures on the state board of elections website for New York City against the signature requirements. For the 3 citywide races of mayor, comptroller and public advocate, the two major parties would obtain 3,750 signatures, the maximum number required. For Democrats, this represents .1% of active enrolled Democrats across New York City. For Republicans, it is .8% of their active, enrolled members.

The only other ballot access party with sufficient enrollment to use the maximum number is the Independence Party, for whom 3,750 signatures is 3.6% of their citywide enrollment. The Conservative, Working Families, Libertarian, and Green Parties all would need to get signatures from 5% of their enrolled members.

In practical terms, the major parties and independent candidates typically stand a street corner to gather the signatures that they need. Conversely, third parties need to purchase phone lists, make calls, and do house visits to track down and obtain signatures from enrolled party members. This is an onerous task, particularly as BOE lists often contain information that is outdated. Lowering the 5% to 2.5% would reduce the burden and be more equitable.

#### Non Partisan Elections

In these discussions, the issue of non partisan elections has been raised. A better option would be to institute proportional representation in New York City as was once the case. If we implement ranked choice voting, it will help to address the concern of voters who have chosen not to enroll in a political party. At a minimum it should be up to the political party to decide if it wants to hold an open or closed primary.

As it stands, it is confusing to have special elections be non partisan and all other elections be partisan. Candidates who choose not to align themselves with an established political party may always run as independents.

It doesn't logically follow that simply because party primaries are taxpayer funded that blanks who have voluntarily chosen not to enroll in a party should have a vote in either major party primaries or third party primaries.

Political parties invest a lot of resources to develop identities, platforms, rules, and infrastructure to attract voters to their ranks. Freedom of association is a first amendment right for all of us.

Jim McCabe

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## Testimony Thriving Communities ~~Advocates~~ Carmen Talking Points

Good afternoon, my name is Carmen Vega-Rivera, and I am a CASA leader with the Thriving Communities Coalition here today. I witnessed firsthand through the Jerome Avenue rezoning how broken the current system is and the need to change it to better serve communities like mine in the South Bronx.

The city's current land use process severely underestimates displacement. For example, the EIS projected that only 18 residents would be directly displaced in a 92-block rezoning. Rent stabilized tenants, tenants with section 8 or other vouchers are not considered in this assessment when often we are the most impacted.

We know that previous rezonings have displaced Black and Brown residents. After the Williamsburg rezoning, the Latino population decreased from 59% in 2000 to 34% in 2014 while the white population increased from 37% to 54%. In the 125<sup>th</sup> (Harlem) rezoning, the Black population decreased from 73% in 2000 to 56% in 2010 while the white population increased from 4% to 16%. Despite these numbers the city continues to rush through rezonings and refuses to acknowledge the valid concerns of communities.

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Throughout the ULURP process, hundreds of Bronx residents testified to voice strong opposition and concerns to the Jerome Avenue rezoning. However, we were repeatedly ignored including in public hearings while the process was fast tracked. Communities need substantial accountability process that doesn't allow the city to ignore concerns.

Lastly, after the Rezoning was passed, the majority of the housing that will be built is not affordable to the majority of residents many who already pay 50% or more of their income in rent, we were promised only two schools in an already overcrowded school district. These commitments are not enough and should not be only given in exchange for rezonings.

We need the city to take responsibility for its Land Use actions and the time is now, through the City Charter Revision Commission. The Jerome Avenue Rezoning is a perfect example of how flawed the current system is, due to a lack of responsible 'displacement' assessment, transparency, community engagement, and substantial commitments. The city needs to and must intentionally plan and invest for communities if it wants to assure an equitable, diverse, and thriving future for the city. The city will get it, when it plans accordingly, with the voices of all communities.

# Testimony

## Thriving Communities ~~Advocates~~ Carmen Talking Points

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# NYCLU

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**Testimony of Michael Sisitzky on Behalf of the New York Civil Liberties Union  
Before the 2019 New York City Charter Revision Commission**

**May 9, 2019**

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following comments in connection with the 2019 Charter Revision Commission Manhattan Borough Hearing. The NYCLU appreciates having been invited to testify at the March 7, 2019, Police Accountability Expert Forum.<sup>1</sup> We reiterate our recommendations concerning the City Charter’s role in promoting police oversight and accountability and add additional comments in response to the recommendations issued in the Charter Revision Commission’s April 2019 Preliminary Staff Report.

**I. The City Charter Must Ensure Independent and Effective Oversight of Police Misconduct**

Local and independent civilian oversight is a necessary component for promoting fair and accountable policing, and the NYCLU has long supported efforts to ensure such oversight for the NYPD. But as we noted in our March 7, 2019, testimony before this Commission, such oversight is lacking in New York City. While the CCRB has authority to investigate and, pursuant to a 2012 memorandum of understanding, prosecute certain cases of police misconduct, its recommendations on disciplinary outcomes are ultimately not binding on the NYPD. The police commissioner’s exclusive authority to decide and impose discipline for officers stems from the City Charter, with Section 434 providing that the commissioner’s cognizance and control extends to the “disposition and discipline of the department.”<sup>2</sup> This authority is reinforced in the Charter section governing complaints filed with the CCRB, which states that its provisions “shall not be construed to limit or impair the authority of the police commissioner to discipline members of the department.”<sup>3</sup>

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<sup>1</sup> Testimony of the NYCLU before the 2019 New York City Charter Revision Commission Regarding Police Accountability, Mar. 7, 2019, available at <https://www.nyclu.org/en/publications/testimony-regarding-police-accountability>.

<sup>2</sup> N.Y.C. Charter § 434(a).

<sup>3</sup> N.Y.C. Charter § 440.



Together with the provisions of the City Administrative Code that provide additional structure to the Charter's mandate,<sup>4</sup> these provisions empower the police commissioner with full discretion to accept, modify, or outright reject the findings and recommendations of the CCRB. In practice, the exercise of this discretion is serious cause for alarm.

In 2017, the most recent year for which we have full data, the police commissioner imposed penalties weaker than those recommended by the CCRB in the majority of cases.<sup>5</sup> For the majority of misconduct cases, where the CCRB recommended disciplinary penalties that would not lead to a full departmental trial, the commissioner departed from CCRB recommendations 58 percent of the time; the CCRB noted that this was the highest rate of NYPD rejection of its recommendations since 2013.<sup>6</sup> In the most serious misconduct cases that involved full administrative trials, the police commissioner imposed discipline consistent with CCRB recommendations in just 27 percent of cases.<sup>7</sup>

The low rate of concurrence with CCRB recommendations has been a persistent problem across administrations and has not been tied to any one police commissioner. It is a result of structural powers more than it is the result of any one commissioner's view of or relationship to the CCRB. In 2007, an NYCLU report that analyzed data from 2000 to 2004—a period that included the tenures of three separate police commissioners—found that the NYPD rejected CCRB recommendations at a rate of 63 percent.<sup>8</sup>

Noting the persistence of this problem across administrations, the NYCLU has previously called on the City to remove the commissioner's exclusive authority to decide disciplinary outcomes and to transfer that power to an independent, civilian oversight agency.<sup>9</sup> The NYPD has proven time and again its willingness to ignore calls for outside oversight and its unwillingness to hold itself to the high standards of accountability that the public expects of its police force. While state laws may restrict the amount of information that the public may currently access related to disciplinary decisions and has some bearing on where disciplinary trials currently must take place, the Charter is the primary source of the commissioner's plenary power and the best vehicle through which to impose restrictions on its exercise.

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<sup>4</sup> N.Y.C. Admin. Code §§ 14-115, 14-123.

<sup>5</sup> Civilian Complaint Review Board, *2017 Annual Report*, 34, [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2017\\_annual.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 35.

<sup>8</sup> *Mission Failure*, *supra* note 1 at 2.

<sup>9</sup> Testimony of the NYCLU before the New York City Council Committee on Public Safety and the Committee on Civil Rights regarding the Civilian Complaint Review Board and Civilian Oversight of Policing, March 9, 2007, available at <https://www.nyclu.org/en/publications/civilian-complaint-review-board-and-civilian-oversight-policing>.



### **A. The Preliminary Recommendations Do Not Go Far Enough in Promoting Accountability**

In the April 2019 Preliminary Report, the staff for the Charter Revision Commission made a number of recommendations related to the CCRB. These recommendations include proposals for allowing non-mayoral appointments to the CCRB, requiring the police commissioner to provide variance memoranda in all cases in which the commissioner imposes a disciplinary penalty that departs from a recommendation by the CCRB or Deputy Commissioner for Trials, mandating the development of a non-binding disciplinary matrix, allowing the CCRB to delegate its subpoena power to staff, and permitting the CCRB to assert jurisdiction with respect to false official statements made by officers in connection with an ongoing CCRB investigation or prosecution.<sup>10</sup>

A number of these proposals are consistent with the recommendations of the Independent Panel on the Disciplinary System of the New York City Police Department, which was convened by Police Commissioner O'Neill in 2018 and charged with conducting a review of the Department's disciplinary policies and practices. The panel's report,<sup>11</sup> issued in January 2019, was harshly critical of the NYPD's lack of transparency regarding disciplinary processes and decision-making. Notably, the panel's recommendations included providing variance memoranda any time the commissioner departs from a disciplinary recommendation, the adoption of a disciplinary matrix, and more rigorous enforcement of the Department's rules against false official statements.

If enacted, these proposals may well lead to some modest improvements in the public's understanding of the disciplinary process and in easing some of the administrative burdens facing the CCRB, but only one of these Preliminary Report's recommendations—to allow for jurisdiction with respect to false official statements—expands the CCRB's actual authority in any real way beyond the status quo.

The NYCLU urges the Commission to consider additional revisions to the Charter that will address the underlying structural concerns related to police accountability in New York City. We reiterate our earlier support before this Commission for expanding the CCRB's authority to receive complaints related to misconduct committed by school safety officers. And even if the Commission is unwilling to consider removing and reassigning the commissioner's complete discretion to decide disciplinary outcomes, the NYCLU recommends that such discretion not be allowed to persist unfettered. The Preliminary Report's recommendation to consider a non-binding disciplinary matrix, for instance, could be strengthened to clarify that the commissioner's ultimate decision-making using such a matrix must be bound by the factual determinations of the CCRB,

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<sup>10</sup> 2019 CHARTER REVISION COMMISSION PRELIMINARY STAFF REPORT 14-23 (2019), <https://static1.squarespace.com/static/5bfc4cccfef7fde7d3719c06/t/5cc20da7085229f4fcd80f1c/1556221355492/Preliminary+Staff+Report.pdf>.

<sup>11</sup> The Honorable Mary Jo White et al., THE REPORT OF THE INDEPENDENT PANEL ON THE DISCIPLINARY SYSTEM OF THE NEW YORK CITY POLICE DEPARTMENT (2019), <https://www.independentpanelreportnypd.net/assets/report.pdf>.

allowing for the commissioner's departure only in cases of clear error.<sup>12</sup> Public confidence in the integrity of the Department's disciplinary system requires that the Charter no longer enable the NYPD to remain accountable only to itself.

## **II. The City Charter Must Require Public Oversight of Surveillance Technology**

Efforts to promote fair and accountable policing are further undermined when the police are able to engage in secretive and unchecked surveillance, and the NYPD has a long and troubling history of engaging in surveillance tactics that target political dissent, criminalize communities of color, and jeopardize all New Yorkers' privacy.<sup>13</sup> While we do not know the full extent of surveillance tools and technologies at the NYPD's disposal, we do know that the Department makes use of numerous forms of powerful, invasive, and covert technologies capable of capturing vast amounts of information about New Yorkers. To date, most of what we know regarding the NYPD's use of surveillance technologies is based on costly Freedom of Information Law litigation by the NYCLU and other organizations, investigative journalism, and inquiries by the criminal defense community.

The secretive process by which the NYPD obtains and uses these technologies runs counter to good governance principles and threatens the digital security of all New York City residents and visitors. The NYPD is able to acquire and deploy these devices in secret because, unlike police departments in Seattle, Washington;<sup>14</sup> Oakland, California;<sup>15</sup> and Cambridge, Massachusetts,<sup>16</sup> the Police Department is not required to seek City Council approval before obtaining new surveillance technologies. The NYPD further relies on federal grants and private donations to thwart what little transparency is already required under procurement rules, and the information that does exist is of little value, in part due to the Charter's treatment of units of appropriation in agency budgets.

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<sup>12</sup> See Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON HALL L. REV. 1033, 1048 (2016).

<sup>13</sup> The NYCLU has litigated many cases involving NYPD surveillance abuses, including *Handseu v. Special Services Division* (challenging surveillance of political activists), *Raza v. City of New York* (challenging the NYPD's Muslim Surveillance Program), and *Millions March NYC v. NYPD* (challenging the NYPD's refusal to respond to a FOIL request seeking information about whether the NYPD is using invasive technology to infringe on the protest rights of Black Lives Matter advocates).

<sup>14</sup> ACLU of Washington, "Seattle Adopts Nation's Strongest Regulations for Surveillance Technology," Aug. 8, 2017, <https://www.aclu-wa.org/news/seattle-adopts-nation%E2%80%99s-strongest-regulations-surveillance-technology>.

<sup>15</sup> ACLU of California, "Oakland Becomes Latest Municipality to Reclaim Local Control over Surveillance Technologies Used by Local Law Enforcement," May 2, 2018, <https://www.aclunc.org/news/oakland-becomes-latest-municipality-reclaim-local-control-over-surveillance-technologies-used>.

<sup>16</sup> ACLU of Massachusetts, "Cambridge Passes Law Requiring Community Control of Police Surveillance," Dec. 10, 2018, <https://www.aclum.org/en/news/cambridge-passes-law-requiring-community-control-police-surveillance>.

**A. The Preliminary Recommendations May Improve Transparency, but the Commission Should Further Limit Acquisition of Invasive Surveillance Technologies**

In the Preliminary Report, the staff for the Charter Revision Commission noted the lack of transparency with respect to exactly how agencies appropriate and spend money on specific programs. The Charter requires executive agencies to include costs relating to “a particular program, purpose, activity or institution” within “units of appropriation,” but provides no additional explanation as to what these terms mean in practice.<sup>17</sup>

The NYPD was cited in the report as an example of how these units of appropriation enable agencies to evade budgetary oversight. The report pointed to a proposed “unit of appropriation” in the Department’s proposed Fiscal Year 2020 Preliminary Expense Revenue Budget entitled “Operations,” worth more than \$3.4 billion; this single unit was described as providing support for NYPD functions as diverse and nonspecific as communications, support services, and street patrol and investigatory services.<sup>18</sup> The report noted that this amount is equal to 61% of the NYPD’s budget.<sup>19</sup> This approach blurs together the majority of the Department’s spending and makes it challenging for the public and the Council to engage in a more granular review of how the NYPD operates and how it chooses to spend limited taxpayer dollars.

In its discussion of the problem, the Preliminary Report notes the tension between arguments that such broad units of appropriation allow for agencies to implement programs without needing to constantly return to the Council for approval on the one hand, while making it much more difficult to engage in any real Council oversight or policy-making decisions on the other.<sup>20</sup>

The Preliminary Report recommends consideration of ballot proposals to clarify and better define the structure and size of agency units of appropriation. For the NYPD in particular, clarifying the required degree of specificity can help ensure better oversight of the Department’s spending of its considerable budget. Given the severe threats to privacy and civil liberties from unchecked and unaccountable surveillance practices, the NYCLU recommends that the Commission pay particular attention to the NYPD’s acquisition of and spending on surveillance technologies. The broad categorizations currently used by the NYPD enables the Department to avoid closer scrutiny of its spending on surveillance tools and technologies by including them in broadly framed units of appropriation. The public and the Council need more information on the extent to which the NYPD is spending money on invasive surveillance tools deployed against New Yorkers.

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<sup>17</sup> PRELIMINARY STAFF REPORT at 57-58.

<sup>18</sup> *Id.* at 59.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 58.



But beyond requiring additional transparency through better defined units of appropriation, the Commission should consider requiring the NYPD to seek individual approval separate from the overall budget process any time the Department intends to acquire or deploy new surveillance technologies. Such an approach would recognize the often extreme costs and risks associated with surveillance tools and would build on similar measures that have been implemented across the country as communities have demanded greater control and oversight over police surveillance technologies.

Legislation supported by the NYCLU and currently pending in the City Council would require the NYPD to disclose the types of surveillance tools currently used against New Yorkers and to engage with the public before acquiring new types of surveillance technologies in the future.<sup>21</sup> While this is an important measure within the City Council's authority to pursue, the Charter Revision Commission can go even further. The Commission should explore amending the Charter to set up a process similar to what exists in Seattle, Oakland, and other municipalities<sup>22</sup> that have acted to curb abusive surveillance practices by providing that such technologies can only be acquired with express City Council approval. Such procedures should mandate that this approval would only happen following an opportunity for the public as a whole to review and comment on proposed policies for their use and to assess whether adequate safeguards are in place. And if, following this public engagement, New Yorkers and their elected representatives are not satisfied that these technologies are worth the costs to our budget and our privacy, the Council should be empowered to prevent the NYPD from going forward with acquisition.

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We thank the Charter Revision Commission for the invitation to present testimony on the topic of police accountability. The NYCLU looks forward to working with the Commission as it finalizes its proposals for strengthening and improving our framework for local government.

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<sup>21</sup> Int. 487-2018.

<sup>22</sup> ACLU, "Community Control over Police Surveillance," <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance?redirect=feature/community-control-over-police-surveillance>.

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**Comments for the Charter Revision Commission**  
**May 9, 2019**

I am a recently retired city worker with 26 years of experience in city government and 7 years as a business lobbyist. I was a Policy Analyst and then Senior Policy Analyst for the City Council; then at NYCHA for 14 years - starting as the Assistant Director for Management Analysis and subsequently serving as the Deputy Director for Strategic Planning & Change Management, and Director of Strategic Initiatives, Director of Change Management for NGO, and Interim Audit Director.

**Public Advocate subpoena power**

**Oppose** staff recommendation to give Public Advocate subpoena power.

1. Public Advocate investigations often cost agencies thousands of staff hours to compile data
2. Investigations can be politically motivated
3. Instead, the proposed staff requirement to require greater transparency (e.g. Budget) and more indicators in the MMR if necessary will reduce the time to collect and process special information and allow the Public Advocate, as well as others to see what agencies are doing
4. Even without the Public Advocate there is already significant oversight. Oversight is conducted by the City Council, both in substantive committees and during the budget hearings; DOI, internal audits, state & federal agencies, and newspapers

**Recommend** – The City Council has proven itself competent at oversight, therefore I recommend removing the role of ‘watchdog’ from the Public Advocate and recasting the role as more of an advocate to ensure New Yorkers get the services needed from government – take complaints, investigate the complaints and work with agencies to ensure residents receive needed services. The Public Advocate is also responsible for taking over if the Mayor is unable to perform his/her duties. To perform the later role better it is advisable that the Public Advocate and the Mayor be working closer together. The ‘watchdog’ role pits them against each other.

**Planning**

I think it is not only necessary to have a roadmap for planning, but that the City needs to be clear on its critical priorities (which I will call “**Priority City Goals**”); and that ALL land use proposals and local laws need to explicitly explain how they would impact these **Priority City Goals**.

In lieu of a “Master Plan” the Charter should explicitly include **Priority City Goals** which I believe should be as follows:

1. **Improving Environmental Sustainability**
2. **Advancing Economic/Environmental Justice**
3. **Expanding Housing (especially for those with incomes at or below 50% of AMI)**

### **Require Assessment of Priority City Goals as follows:**

1. Stakeholder analysis
2. True risks and benefits of the proposed change vs. maintaining the current status quo as it pertains to the Priority City Goals
3. For policies (laws and regulations) the analysis should include a risk assessment - weighing the risks and benefits based on the likelihood of the incurring the possible costs and benefits – more like actuarial assessments than the current budget analysis that only looks at the costs of the new proposal to the city
  - a. For example, looking only at the risks and not the benefits, and not assessing the likelihood of the risks, has led to have very restrictive laws regarding the use of basements for living spaces based largely on threats of fire and lack of fresh air. I think a true risk assessment would result in a downgrading of the threats these pose, and increasing the costs (in health and quality of life) of not housing families in these spaces.

It is difficult to evaluate the efficacy of the various planning exercises without knowing how the information is used, but a couple of examples from my work at NYCHA can point to the costs of over-understanding needs without any reason to believe the needs will be addressed. Annually NYCHA generates a list of sidewalks that need to be repaired by the city (given to DOT). NYCHA must include all the sidewalk needs and prioritize them. There can be hundreds of sidewalks on the list for each borough, approximately \$40M in needs the last time I was involved. Of these DOT does about \$1M each year. This exercise is labor and time intensive for NYCHA, but little comes of it. A brief meeting to spend \$1M would be a better use of staff time. Likewise the physical needs assessment conducted in 2017 by NYCHA cost millions of dollars and results in our knowing that from Years 1-5 the need is \$31.8 billion; \$45.2 billion in need is estimated for Years 1-20. Unfortunately NYCHA will not be receiving even a small fraction of the needed funds. One must ask if the cost of acquiring the information in detail is better spent developing the information or used to address some additional work. I use this as an example, the physical assessment is a HUD requirement so nothing we do here will affect it, but it serves to illustrate the real costs of developing the data needed for planning and begs the question of whether less planning and more work is a better use of funding. I believe it's important to use data and plan but one should be realistic about the opportunity loss of over-planning.

I am very conscience that time is money in planning and that a slow process dramatically increases costs. None of my suggestions seek to bureaucratize that process, rather to provide explicit direction to those planning the City's future so that the City is clear on its priorities and what kind of analysis is needed to proceed. Making the system clear can help avoid continually asking for more information, or putting forward projects or laws that do not conform to the City's priorities.

I find it interesting that there is no discussion of the City Council and how it uses or doesn't use planning data/information. I think the report should reflect the City Council activities as well.

I would be happy to answer any questions or help work on any of these solutions.