

Introductory Remarks
New York City Council Charter Revision Commission
Expert Forum

Good evening, Commissioners. My name is Dan Symon and I am the Acting Director of the Mayor's Office of Contract Services (MOCS) and City's Chief Procurement Officer. Thank you for inviting me to share my views on procurement reform.

As I have publicly shared in the past, including at Council committee hearings, I agree that New York City procurement must be overhauled. I am glad that this matter is receiving the level of attention it deserves by the Commission and various stakeholder groups. My first-hand experience as both a beneficiary of, and leader in, procurement for well over a decade reinforces the need for the changes I am now charged to implement using best in class technology and bold process reforms. I have overseen programs at a City agency, served on its executive leadership team, and held the position of Agency Chief Contracting Officer (ACCO) before moving on to citywide transformation projects.

Reliance on paper, a patchwork of siloed agency systems, and a sometimes necessarily risk averse culture, combine to limit achievable results. We have, however, been able to show successful results with reforms brought about through HHS Accelerator – reducing paper and cost by moving RFP management

online and lowering review times for invoices drastically. We are also seeing the results achieved through Phase One of PASSPort. Cycle times for vendors filing required disclosure data has gone from one month, down to hours. Because agencies are now on a shared platform for their work, Responsibility Determinations now take roughly eight days, when they typically took six to seven weeks before PASSPort. And we're not done. We are moving full steam ahead through the remaining phases of PASSPort which will bring online the full end-to-end procurement process for all industries, establishing groundbreaking transparency into the process and transaction status for everyone involved.

To truly solve our decades-old procurement issues, we need radical new thinking and modern tools that enable transparency among stakeholders; easy access to actionable data for agency leadership; and a predictable, efficient set of clear processes for everyone. We are actively engaged in conceptual design for the most comprehensive phase of our procurement transformation efforts which will be implemented through PASSPort next March.

The transparency we will create will bring speed and establish new baselines for what to expect from procurement. We have seen results from this approach. With an end-to-end process captured and quality change management to drive adoption, we will achieve our shared goals.



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

**TESTIMONY OF
DEPUTY COMPTROLLER FOR CONTRACTS AND PROCUREMENT
LISA FLORES**

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

March 11, 2019

Thank you to the members of the Charter Revision Commission for the opportunity to submit testimony and answer questions on the City's procurement and contract registration processes. Having served as Deputy Comptroller for Contracts and Procurement for the past five years, and having spent several years prior working at the Mayor's Office of Contract Services, I have seen our contracting system work within two different agencies and under four different administrations. This has given me a unique vantage point to assess this process and think through possible improvements, which I am pleased to share with you today.

Let me begin by providing some context on our procurement system: in Fiscal Year 2018, New York City bought over \$19.3 billion worth of goods, services, and construction, making the City one of the largest procurement jurisdictions in the world. But despite the critical role procurement plays in keeping New York City running, our procurement process can be notoriously slow, bureaucratic, and opaque. Our inefficiencies hurt the vendors with which we contract, causing delays in contract implementation, driving up project costs and potentially causing real financial harm, particularly for non-profits, M/WBEs and smaller vendors.

The weaknesses in our procurement process, however, hurt us as a City. Every contract delay that leads to increased costs hurts our bottom line. Vendors pass those costs right back to us, as expenses increase over the life of a project or before a project even starts, by submitting an inflated cost estimate to the City in anticipation of a protracted contract registration process.

The City is well aware of its procurement problems and is attempting to address some of its inefficiencies through PASSPort, a technology tool that will streamline aspects of the system. However, without creating real accountability and transparency throughout the system, we will not get to the heart of the problem – the exceedingly long amount of time it takes to solicit, award, negotiate, execute, review and submit a contract for registration, and the lack of visibility vendors and the public have throughout the process.

Currently, there are no timelines for the numerous City agencies involved in contract oversight to complete their work. It can take months or even years from the time a vendor is awarded a contract until the City submits it for registration to the Comptroller's office, which legally allows a vendor to be paid. After the contracting agency decides what it needs to procure, up to five other City agencies perform oversight functions before the contract is submitted to the Comptroller's Office for registration: the Mayor's Office of Contract Services, Office of Management and Budget, Law Department, Department of Investigation and Department of Small Business Services. None of these agencies are required to perform their duties within a specified timeframe and there is no visibility into how long each agency takes to perform their tasks. As a result, the process lacks standardization and there is no way to learn how long it might take for any particular contract to be registered.

The scope of the problem has been documented in numerous reports by the Comptroller's Office. In FY18, ninety-six percent of the contracts registered by our office were registered within the initial 30 day review window. However, we found that 80 percent of all new and renewal contracts submitted to the Comptroller's Office for registration arrived after their start date had already passed. Forty percent of these contracts were late by six months or more. When looking only at human service contracts – a

sector that is particularly hard hit by contracting delays – that number increased to 89 percent, with 52 percent of those contracts arriving for registration more than six months late. And when looking at M/WBEs, we also found that 69 percent of new and renewal contracts arrived at the Comptroller's Office for registration after the contract start date had already passed, with 25 percent of these contracts arriving at least 90 days late.

These statistics have adverse impacts on City vendors. Some vendors, particularly construction firms, may elect not to start work until their contract is registered to avoid working at their own risk. This can mean slowed progress on City projects and costs that rise with time and delay. Other contractors may refuse to even bid on a contract due to the slow pace of City procurement, narrowing the pool of contractors the City can draw on and limiting competition. Non-profit organizations may not have the option of waiting to begin contracted work. This can mean taking bridge loans from the City, seeking other loans, or potentially having cash flow problems that threaten the stability of the organization and ultimately the services they provide to the most vulnerable among us.

Our office's recommendations to tackle this problem are straightforward, and we have been saying it for years.

First, the City should institute strict timeframes for City agencies with an oversight role in the procurement process to complete their tasks. The Comptroller's Office is currently the only agency with a role in the City's procurement process that performs its duties within a specified timeframe as required by the New York City Charter.

Second, the City should create a transparent contract tracking system that would allow vendors to view the status of their contracts. Vendors that do business with the City of New York have very limited visibility into the contracting process. The only real transparency in the contracting process happens when contracts are submitted to the Comptroller's office and the registration status automatically appears in checkbooknyc.com, the Comptroller's transparency website for City spending and contracts. To bring more transparency to the process, the City should create a tracking system that allows vendors to follow their contracts throughout each stage of the procurement process. With such a system, vendors would be able to see if their contracts are under review at the Mayor's Office of Contract Services, the Office of Management and Budget, or Corporation Counsel, and track how much time each agency is taking to execute their tasks.

The Charter Revision Commission is empowered to make changes to achieve transformative reforms and this is something that the City's procurement process desperately needs. I urge you to consider these proposals as part of the changes the Commission will put forward to revise the Charter.

Thank you for your attention to this crucial issue.



NEW YORK CITY COMPTROLLER
SCOTT M. STRINGER

Bureau of Policy and Research



January 2019

Still Running Late: An Analysis of NYC Agency Contracts in Fiscal Year 2018



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Executive Summary

New York City can be a tough place to do business, and when you are doing business with the City itself, it can be even tougher. The challenges of contracting with the City of New York are well known: a drawn out procurement process, multiple government agencies performing various oversight duties, and the inevitable delays that seem to haunt the vast majority of contracts from the time of award to the point of registration.

This lengthy procurement process is grounded in good intentions. The City has an obligation to spend public funds wisely and fairly, and to maximize tax dollars through a bid process that is both competitive and transparent. To achieve these goals, rigorous oversight from a number of agencies is required before a contract can be registered.

However, too often the City's procurement process gets mired in needless bureaucracy, causing hardship to vendors doing business with the City. It can delay the start of important construction projects, driving up costs, or stop projects midstream while change orders and contract amendments are processed. It can discourage minority and women-owned businesses from competing for City contracts, because the time it takes to get paid is too much for smaller businesses to bear. And it can drive non-profit organizations to the brink of financial collapse, because these mission-driven organizations will continue to provide critical services to New Yorkers in need, whether or not their contracts have been registered.

This report by New York City Comptroller Scott M. Stringer – the second annual analysis of its kind by the office – takes a data-driven look at the City's failure to register contracts in a timely fashion and finds, once again, that too often contracts are registered after the start date of the contract has passed. This is a critical shortcoming because a vendor can only be paid once a contract is registered. Like the Fiscal Year 2017 analysis, this report places particular emphasis on human service contracts and offers recommendations for speeding up City procurement without sacrificing crucial oversight.

For the first time this year, this report provides two separate analyses of late contracts: one that includes discretionary contracts and one that excludes them. This is being done to assess the impact of discretionary contracts on the City's contract registration crisis. Discretionary contracts are awarded by City Council members and Borough Presidents for projects within their districts, and are allocated in June when the budget for the coming year is adopted, with a contract start date of July 1. After the allocation, vendors must have their pre-qualification applications approved and negotiate a scope of work before contracts can be executed. This means that discretionary contracts are always submitted for registration late (or after their start date) due to the time-constrained manner in which they originate. By accounting for the impact of these contracts on the City's overall ability to register contracts on time, the Comptroller's Office is providing the most refined look to date at the universe of city contracts.

Key findings of this year's analysis include:

- In FY18, 80% of all new and renewal contracts arrived at the Comptroller's Office for registration after their start date had already passed. When removing discretionary contracts from the analysis, that rate improved only slightly to 75%.
- When examining human service contracts only, 89% arrived at the Comptroller's Office after the contract start date. This is a higher retroactivity rate than the city-wide average, suggesting that non-profit organizations wait longer for their contracts to be submitted for registration than vendors that do business with the City overall. When removing discretionary contracts from the analysis, that rate improved only slightly to 81%.
- In FY18, 40% of new and renewal contracts arrived at the Comptroller's office a full six months or more after their start date. When removing discretionary contracts from the analysis, this report found that over 23% of contracts were over six months late.
- The latest contracts are getting later. In FY18, all new and renewal contracts that were submitted for registration more than a year after their start date were on average 589 days late, compared to 558 days in FY17. Human services new and renewal contracts that were submitted more than one year after their start date in FY18 were on average 541 days late, compared to 504 days in FY17.

There are common sense solutions to these problems that would improve the contracting process for both vendors and the City. The City has launched the first phase of PASSPort – the “end to end” procurement system that the Mayor's Office of Contract Services has been developing to address some of these challenges – but more must be done to end the City's crisis of late contracts. With that in mind, the Comptroller's Office recommends the following:

- Agencies with an oversight role in the City's contract review process should be assigned a strict timeframe to complete their work, similar to the Comptroller's 30-day time limit for contract registration. This would provide clarity to the vendor community and hold city agencies accountable to complete their work expeditiously. In the absence of action towards this goal by the Administration, the 2019 Charter Commission should create a ballot measure to implement this reform.
- The City should create a public-facing tracking system that allows vendors to monitor the progress of their contract through each stage of the review process. This would introduce accountability to the City's oversight agencies and bring sunlight to a corner of government that is notoriously opaque.

Total Contract Actions Received by Comptroller's Office in FY18

The Comptroller's office registered a total of 19,381 contracts in Fiscal Year 2018, just over 1,000 more than the prior year. These contracts were submitted by all City agencies and included all procurement categories.

After a contract is submitted, the Comptroller's Office is mandated by the City Charter to either register it or return it to the submitting agency if questions arise, within 30 days. In Fiscal Year 2018, the Comptroller's office took an average of 20 days to register a contract. However, it can take months or even years for a contract to work its way through the various stages of review before arriving at the Comptroller's office for registration. The lengthy process involves months of drafting and negotiation between the vendor and the contracting agency, and is followed by additional oversights. Five other City agencies play a role in reviewing contracts before they are submitted to the Comptroller's Office: the Mayor's Office of Contract Services, the Corporation Counsel, the Department of Investigation, the Office of Management and Budget, and the Department of Small Business Services. Compounding the problem, there are currently no timeframes within which these agencies must perform their tasks.

To assess this process and its impact on contract registration, the Comptroller's office examined the "retroactivity" of each contract received in Fiscal Year 2018. Retroactivity refers to the length of time that passed between the contract's start date and its registration date. If a contract arrives at the Comptroller's Office for registration after the contract start date, it is considered retroactive.

This report provides two separate analyses of contract data: one that includes discretionary awards and one that excludes them. This is being done to highlight the impact of discretionary contracts (which are always submitted after their start dates) on the City's overall ability to submit contracts for registration on time. However, since vendors are negatively impacted by late contract registration regardless of the contract type, the primary focus of this report is the analysis that includes discretionary contracts.

Retroactivity Trends Among All City Contracts In FY18 (Discretionary Contracts Included)

To determine the retroactivity of each contract submitted in FY 2018, our office tracked each distinct contract action from the date it was first received by our office to the date it was ultimately registered. We then further narrowed that group of contracts to identify ones that were received by our office after the contract start date.

Of the 19,381 contract submissions registered in FY18, 17,355 – or 90% – were already retroactive by the time they reached the Comptroller’s office. However, that figure does not account for certain contract actions, like extensions or amendments to existing contracts, which can be difficult to isolate and arguably could make more contracts appear to be retroactive. To control for this dynamic, the Comptroller’s Office removed contract amendments and extensions from our analysis, allowing us to look at the retroactivity of only new and renewal contracts, which have start dates that can be easily identified. The analysis found:

- Of the 19,381 contracts that were registered in FY18, 6,440 were new or renewal contracts, known as CT1s.
- Of those 6,440 CT1 contracts, 5,179 – or 80% – were retroactive.

How retroactive were these contracts?

The following chart shows the length of time from contract start date until submission to the Comptroller’s Office for 5,179 retroactive CT1 contracts that were registered in FY18. The data is presented next to the FY17 data to provide a year over year comparison.

Chart I: Length of Retroactivity Among Registered CT1 Contracts, FY18 v FY17

| Fiscal Year 2018 | | | | | | | |
|------------------------------|----------|---------|---------|----------|-----------|----------|-------|
| Number of days | Under 30 | 31 – 60 | 61 – 90 | 91 – 180 | 181 – 365 | Over 365 | Total |
| Number of contracts | 1,520 | 552 | 273 | 777 | 1,381 | 676 | 5,179 |
| % of total | 29.3% | 10.7% | 5.3% | 15.0% | 26.7% | 13.1% | 100% |
| Average number of days retro | 1.6 | 43.4 | 75.0 | 136.2 | 269.7 | 589.0 | 178.3 |

| Fiscal Year 2017 | | | | | | | |
|------------------------------|----------|---------|---------|----------|-----------|----------|-------|
| Number of days | Under 30 | 31 – 60 | 61 – 90 | 91 – 180 | 181 – 365 | Over 365 | Total |
| Number of contracts | 1,680 | 462 | 328 | 873 | 1,247 | 558 | 5,148 |
| % of total | 32.6% | 9.0% | 6.4% | 17.0% | 24.2% | 10.8% | 100% |
| Average number of days retro | 3.6 | 44.0 | 75.6 | 132.9 | 267.0 | 557.7 | 157.6 |

As the above chart illustrates, of the 5,179 retroactive CT1 contracts that were registered in FY18, 40% were more than 180 days retroactive. The real life impact of this statistic is that vendors who were awarded those contracts could not receive payment for at least six months after the contract start date. For the unlucky vendors that were awarded the 13%

of contracts that arrived at the Comptroller's Office over one year late, the average length of retroactivity was an extraordinary 589 days. And the average length of retroactivity among all late CT1 contracts actually increased between FY17 and FY18 by an average of almost 21 days.

How much time does registration add to the process?

By comparison, in the vast majority of instances the contract registration process itself does not add significant time to the total processing and review time of a contract. For example, 96% of contract submissions in FY18 were registered by the Comptroller's Office within the initial 30 day review window, with 20 days being the average length of time to register one of those contracts. In certain instances, contracts were withdrawn or returned for clarification to the agency within the initial 30-day review window and had to be resubmitted to the Comptroller's Office for a second review. When a contract is resubmitted, another 30-day review window begins. In these instances, the length of time it takes to register the contract has been calculated from the date the contract was first submitted to the Comptroller's Office to the final date of registration, even if it involved more than one review period.

Chart II: Length of Time to Register a Contract Upon Submission to Comptroller's Office, FY18

| | Under 30 days | 31 – 60 days | 61 – 90 days | 91 – 180 days | 181 – 365 days | Over 1 year |
|------------------------------------|---------------|--------------|--------------|---------------|----------------|-------------|
| Number of contracts | 18,685 | 213 | 211 | 222 | 49 | 1 |
| % of total | 96.4% | 1.1% | 1.1% | 1.1% | 0.3% | 0.0% |
| Average number of days to register | 20.4 | 49.5 | 73.9 | 128.3 | 222.2 | 376.0 |

Retroactivity Trends Among Human Service Contracts In FY18 (Discretionary Contracts Included)

New York City relies heavily on non-profit human service organizations to meet the needs of children, families and communities. In many ways, they form the foundation of our City's social safety net, providing front-line services to thousands of New Yorkers in need. Services provided include everything from Pre-K and after-school programs, to job training, adult literacy, supportive housing, community-based mental health services, senior centers, homeless shelters, services for domestic violence survivors, and much more. These services, paid for through thousands of City contracts, essentially make non-profit organizations an extension of City government.

Non-profits usually struggle the most with delayed contract registration due to tight budgets and the need to deliver services to vulnerable populations regardless of payment. An emergency shelter does not shut its doors to homeless families if its City contract is not registered. And the organization providing home delivered meals to seniors doesn't fail to show up for its clients, even when the City is months late in providing payments for those services.

To examine the unique impact of contract registration delays on non-profit organizations, our office looked at contract retroactivity among the seven City agencies that contract for the majority of human service programs: Administration for Children's Services (ACS), Department of Education (DOE), Department of Youth & Community Development (DYCD), Department for the Aging (DFTA), Department of Homeless Services (DHS), Human Resources Administration (HRA), and Department of Health and Mental Hygiene (DOHMH).

In Fiscal Year 2018, these seven agencies registered a total of 4,920 Type 70 contracts – the contract category that is primarily used for human service programming. Of those 4,920 contracts 4,639 – or 94% – were already retroactive by the time they reached our office. When isolating only new and renewal contracts (CT1s) to paint a more refined picture of retroactivity rates among human service contracts, a total of 2,543 contracts were registered for the seven agencies, and 2,262 – or 89% – were retroactive by the time they reached the Comptroller's Office.

This is a higher percentage than the 80% retroactivity rate that was found among new and renewal contracts across all City agencies, suggesting that non-profit organizations wait longer for their contracts to be submitted for registration than vendors that do business with the City overall. This is problematic for several reasons. First, many non-profit organizations have smaller budgets and rely more heavily on government funding for their revenue than corporate vendors, making cash flow tighter. But more significantly and as mentioned previously, non-profit organizations often begin work *before* a contract is registered so as not to interrupt the provision of critical services to vulnerable clients. This can put non-profit vendors in the position of having to take loans in order to make payroll while waiting for their contracts to be registered.

How retroactive were these contracts?

The following chart shows the length of time from contract start date until first submission to the Comptroller's Office for the 2,262 retroactive CT1 human service contracts that were registered in FY18. The data is presented next to the FY17 data to provide a year over year comparison.

**Chart III: Length of Retroactivity Among Registered
CT1 Human Service Contracts, FY18 v FY17**

| Fiscal Year 2018 | | | | | | | |
|------------------------------|----------|---------|---------|----------|-----------|----------|-------|
| Number of days | Under 30 | 31 – 60 | 61 – 90 | 91 – 180 | 181 – 365 | Over 365 | Total |
| Number of contracts | 382 | 226 | 99 | 378 | 732 | 445 | 2,262 |
| % of total | 16.9% | 10.0% | 4.4% | 16.7% | 32.4% | 19.7% | 100% |
| Average number of days retro | 5.3 | 42.3 | 76.6 | 138.0 | 268.1 | 540.6 | 224.7 |

| Fiscal Year 2017 | | | | | | | |
|------------------------------|----------|---------|---------|----------|-----------|----------|-------|
| Number of days | Under 30 | 31 – 60 | 61 – 90 | 91 – 180 | 181 – 365 | Over 365 | Total |
| Number of contracts | 428 | 158 | 155 | 371 | 709 | 403 | 2,224 |
| % of total | 19.2% | 7.1% | 7.0% | 16.7% | 31.9% | 18.1% | 100% |
| Average number of days retro | 7.1 | 45.1 | 76.5 | 133.7 | 269.7 | 504.0 | 209.5 |

As this chart illustrates, of the 2,262 retroactive CT1 human service contracts that were registered in FY18, 52% were more than 180 days retroactive – an even higher rate than FY17. Again, this means vendors are waiting more than six months for payment on services they have already been delivered. For the almost 20% of vendors who waited more than one year for their contracts to be registered, the average length of retroactivity was 540 days, 37 days more on average than the prior fiscal year.

Reviewing the Numbers by Agency

The following chart shows the number and percentage of CT1 human service contracts that were already retroactive when submitted to the Comptroller's Office in FY18, by individual agency, in aggregate. DHS submitted over 98% of these contracts retroactively. However, HRA, DFTA and DOE did not do much better. HRA submitted over 97% of CT1 contracts retroactively and DFTA and DOE both submitted over 94% retroactively.

Chart IV: Retroactivity Among Registered CT1 Human Service Contracts by Agency, FY18

| Agency | # of Contracts | # Retroactive | % Retroactive |
|--------|----------------|---------------|---------------|
| DHS | 176 | 174 | 98.9% |
| HRA | 227 | 221 | 97.4% |
| DFTA | 271 | 256 | 94.5% |
| DOE | 468 | 441 | 94.2% |
| DOHMH | 462 | 425 | 92.0% |
| ACS | 62 | 56 | 90.3% |
| DYCD | 877 | 689 | 78.6% |

The following chart shows the length of time from contract start date until submission for the 2,262 retroactive CT1 human service contracts that were submitted for registration to the Comptroller's Office in FY18, broken down by individual human service agency. It is worth noting that several agencies submitted a large number of contracts more than six months retroactively: 50% of ACS contracts, 52% of DFTA contracts, and over 65% of HRA and DYCD contracts were retroactive by more than six months. Over 22% of DYCD and HRA contracts were retroactive by more than a year.

Chart V: Retroactivity of CT1 Human Service Contracts, Agency By Agency Breakdown, FY18

| | | Under 30 days | 31 – 60 days | 61 – 90 days | 91 – 180 days | 181 – 365 days | Over 1 year | Total |
|-------|---------------------|---------------|--------------|--------------|---------------|----------------|-------------|-------|
| DHS | Number of contracts | 27 | 52 | 10 | 23 | 34 | 28 | 174 |
| | % of total | 15.5 | 29.9 | 5.7 | 13.2 | 19.5 | 16.1 | 100% |
| HRA | Number of contracts | 16 | 18 | 19 | 24 | 95 | 49 | 221 |
| | % of total | 7.2 | 8.1 | 8.6 | 10.9 | 43.0 | 22.2 | 100% |
| DFTA | Number of contracts | 65 | 18 | 0 | 40 | 79 | 54 | 256 |
| | % of total | 25.4 | 7.0 | 0.0 | 15.6 | 30.9 | 21.1 | 100% |
| DOE | Number of contracts | 142 | 86 | 25 | 38 | 67 | 83 | 441 |
| | % of total | 32.2 | 19.5 | 5.7 | 8.6 | 15.2 | 18.8 | 100% |
| DOHMH | Number of contracts | 87 | 26 | 16 | 101 | 122 | 73 | 425 |
| | % of total | 20.5 | 6.1 | 3.8 | 23.8 | 28.7 | 17.2 | 100% |
| ACS | Number of contracts | 6 | 3 | 4 | 15 | 27 | 1 | 56 |
| | % of total | 10.7 | 5.4 | 7.1 | 26.8 | 48.2 | 1.8 | 100% |
| DYCD | Number of contracts | 39 | 23 | 25 | 137 | 308 | 157 | 689 |
| | % of total | 5.7 | 3.3 | 3.6 | 19.9 | 44.7 | 22.8 | 100% |

How much time does human service contract registration add to the process?

By comparison, in the vast majority of instances, contract registration by the Comptroller's office does not add significant time to the overall contract review process. Over 96% of all human service contract submissions for these seven agencies were registered within the initial 30 day review window, with 20 days being the average length of time to register. In instances where contracts were returned to or withdrawn by the agency, the length has been calculated from the first date of submission to the final date of registration, even if it involved more than one review period.

Chart VI: Average Length of Time to Register a Human Service Contract Upon Submission to Comptroller's Office, FY18

| | Under 30 days | 31 – 60 days | 61 – 90 days | 91 – 180 days | 181 – 365 days | Over 1 year |
|------------------------------------|---------------|--------------|--------------|---------------|----------------|-------------|
| Number of contracts | 4,731 | 75 | 62 | 45 | 7 | 0 |
| % of total | 96.2% | 1.5% | 1.3% | 0.9% | 0.1% | – |
| Average number of days to register | 20.3 | 50.6 | 73.4 | 124.2 | 226.0 | – |

The Impact of Discretionary Contracts

Discretionary contracts are always registered after the contract start date due to the way funding for these contracts is allocated. Discretionary contracts are awarded by City Council members and Borough Presidents for projects within their districts, and are typically allocated in June, with a contract start date of July 1. After the allocation, vendors must have their pre-qualification application approved and negotiate a scope of work before contracts can be executed. Due to the length of time this process takes, discretionary contracts are never submitted for registration before July 1. By examining the impact of these contracts, we get a clearer understanding of the retroactively rates among *non-discretionary contracts*, which should theoretically not need to be submitted late for registration. Excluding discretionary contracts from this report's calculations improved retroactivity rates, but not by a huge amount.

Retroactivity Trends Among City Contracts In FY18 (Discretionary Contracts Excluded)

Of the 6,440 CT1 contracts registered in FY18, 5,179 – or 80% – were retroactive. However, 1,424 of these CT1 contracts were discretionary awards, and after removing

them from the calculation, we were left with 5,016 non-discretionary CT1 contracts, of which 3,765 – or 75% – were retroactive.

The following chart shows the length of time from contract start date until first submission to the Comptroller’s Office for the 3,765 retroactive *non-discretionary* CT1 contracts that were registered in FY18. The data is presented next to the comparable FY17 data.

Chart VI: Length of Retroactivity Among Registered CT1 Contracts - Excluding Discretionary Contracts, FY18 v FY17

| Fiscal Year 2018 | | | | | | | |
|------------------------------|----------|---------|---------|----------|-----------|----------|-------|
| Number of days | Under 30 | 31 – 60 | 61 – 90 | 91 – 180 | 181 – 365 | Over 365 | Total |
| Number of contracts | 1,498 | 551 | 267 | 574 | 609 | 266 | 3,765 |
| % of total | 39.8% | 14.6% | 7.1% | 15.2% | 16.2% | 7.1% | 100% |
| Average number of days retro | 1.7 | 43.4 | 74.8 | 133.1 | 263.2 | 673.2 | 122.8 |

| Fiscal Year 2017 | | | | | | | |
|------------------------------|----------|---------|---------|----------|-----------|----------|-------|
| Number of days | Under 30 | 31 – 60 | 61 – 90 | 91 – 180 | 181 – 365 | Over 365 | Total |
| Number of contracts | 1,663 | 461 | 321 | 753 | 598 | 261 | 4,057 |
| % of total | 41.0% | 11.4% | 7.9% | 18.6% | 14.7% | 6.4% | 100% |
| Average number of days retro | 3.7 | 44.1 | 75.5 | 131.5 | 259.2 | 623.0 | 115.2 |

As Chart VI illustrates, over 23% of the 3,765 retroactive non-discretionary CT1 contracts that were registered in FY18 were more than 180 days retroactive. For the vendors that were awarded the 7% of contracts that arrived at the Comptroller’s Office over one year late, the average length of retroactivity was 673 days, or roughly 22 months. This is compared to an average of 623 days among contracts that were over one year retroactive in FY17, meaning contracts that were submitted more than one year late in FY18 were on average 50 days later than in the prior fiscal year. Overall, retroactive contracts were on average submitted one week later in FY18 than in FY17.

Retroactivity Trends Among Human Service Contracts In FY18 (Discretionary Contracts Excluded)

Of the 2,543 CT1 human services contracts registered in FY18, 2,262 – or 89% – were retroactive by the time they reached the Comptroller’s Office. However, 1,071 of the CT1 contracts were discretionary awards, and after removing them from the calculation, we were left with 1,472 non-discretionary CT1 contracts, of which 1,191 – or 81% – were retroactive.

Chart VII: Length of Retroactivity Among Registered CT1 Human Service Contracts - Excluding Discretionary Contracts, FY18 v FY17

| Fiscal Year 2018 | | | | | | | |
|------------------------------|----------|---------|---------|----------|-----------|----------|-------|
| Number of days | Under 30 | 31 – 60 | 61 – 90 | 91 – 180 | 181 – 365 | Over 365 | Total |
| Number of contracts | 382 | 226 | 93 | 194 | 189 | 107 | 1,191 |
| % of total | 32.1% | 19.0% | 7.8% | 16.3% | 15.9% | 9.0% | 100% |
| Average number of days retro | 5.3 | 42.3 | 76.2 | 131.3 | 263.0 | 561.1 | 129.2 |

| Fiscal Year 2017 | | | | | | | |
|------------------------------|----------|---------|---------|----------|-----------|----------|-------|
| Number of days | Under 30 | 31 – 60 | 61 – 90 | 91 – 180 | 181 – 365 | Over 365 | Total |
| Number of contracts | 428 | 158 | 151 | 265 | 237 | 150 | 1,389 |
| % of total | 30.8% | 11.4% | 10.9% | 19.1% | 17.1% | 10.8% | 100% |
| Average number of days retro | 7.1 | 45.1 | 76.2 | 130.4 | 271.5 | 498.7 | 140.7 |

As Chart V illustrates, 25% of the 1,191 retroactive CT1 *non-discretionary* human service contracts that were registered in FY18 were more than 180 days retroactive. For the vendors that were awarded the 9% of human service contracts that arrived at the

Comptroller's Office over one year late, the average length of retroactivity was 561 days, or almost 19 months. Among human service contracts that were over a year retroactive, the average length of retroactivity was 499 days in FY17, meaning contracts that were submitted more than one year late in FY18 were on average 62 days later than in the prior fiscal year. However, overall, retroactive *non-discretionary* human service contracts were submitted an average of 11 days earlier in FY18 compared to FY17 – a small but welcome improvement.

Recommendations

The needlessly slow pace of New York City procurement process causes unnecessary hardship to the City's vendors, but our broken procurement system can be repaired. The City should consider the following recommendations to create a more efficient procurement process.

Institute strict timeframes for City agencies with an oversight role in the procurement process to complete their tasks.

The Comptroller's Office is currently the only agency with a role in the City's procurement process that performs its duties within a specified timeframe as required by the New York City Charter. All other oversight agencies perform their tasks without mandated timeframes, or with timeframes that can be easily waived. This leads to a drawn out process and a lack of accountability among agencies.

Instituting strict timeframes for City agencies with an oversight role in the procurement process to complete their tasks would both standardize the length of the process so vendors know what to expect, and ensure agencies complete their tasks promptly. Last year, this report recommended that the New York City Procurement Policy Board (PPB) adopt rules to this effect. The PPB has failed to consider this proposal but there are other avenues to achieve this reform. The 2019 Charter Revision Commission is currently exploring which areas of the City Charter to amend and this proposal should be considered as part of that effort.

Create a transparent contract tracking system that would allow vendors to view the status of their contracts.

Vendors that do business with the City of New York have very limited visibility into the contracting process. Most vendors typically wait many months or longer for a contract to be registered, but have no idea what is actually happening to their contract during that time. The only real transparency in the contracting process happens when contracts are submitted to the Comptroller's office and the registration status automatically appears in

checkbooknyc.com, the Comptroller's transparency website for City spending and contracts.

To bring more transparency to the process, the City should create a tracking system that allows vendors to follow their contracts throughout each stage of the procurement process. With such a system, vendors would be able to see if their contracts are under review at the Mayor's Office of Contract Services, the Office of Management and Budget, or Corporation Counsel, and track how much time each agency is taking to execute their tasks.

Conclusion

New York City's procurement process is in need of real reform, and as two years of contract retroactivity data show, the slow pace of procurement has not improved in FY18. The City has already launched the first phase of PASSPort – the "end to end" procurement system that the Mayor's Office of Contract Services has been developing – but more must be done to end the City's crisis of late contracts. Creating timeframes and transparency during contract review would help the City's thousands of vendors strengthen their operations and deliver crucial services to the public, while helping the City contain costs and deliver projects on time.

Acknowledgements

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New York City Charter Revision Commission 2019
Monday, March 18, 2019
Testimony by Janelle Farris, CEO, Brooklyn Community Services

Thank you for this opportunity to speak to you, the representatives of the 2019 Charter Revision Commission. My name is Janelle Farris and I am the Executive Director of Brooklyn Community Services.

Founded just after the conclusion of the Civil War and now in its 153rd year of service, BCS has always worked to support and empower low income children, families, and adults, including those with developmental disabilities and mental illness, in Brooklyn. Funded primarily by government contracts, BCS runs a network of programs at 30 different sites in underserved neighborhoods throughout the borough. A staff of over 600 including 280 full time professionals run a host of programs including early childhood day care, after school programs, intensive counseling for at risk families, extensive services for mentally ill and developmentally disabled adults, intergenerational community centers, a high school for over-age youth who have dropped out or failed to complete high school, and the only shelter for young women aged 18-24 in New York City. 25% of Brooklyn households are at or below poverty level, and the vast majority of BCS clients live in poverty.

Basic economic education teaches that the non-profit sector exists primarily to fill the gap between that which the for-profit sector will not provide due to economic viability and that which government does not have the capacity to provide due to limited resources. It's a simple leap then to understand why so many of the services provided to low-income families, adults, youth and children who are living slightly above, at or below the poverty line are provided by non-profits. It also makes clear why it is in the best interest of society in general, that government partner with the non-profit sector. The Government and nonprofit sector are collaborators in the provision of human services, and the extent to which services provided are of high quality and sustainable is directly related to the quality of that collaboration. Strong cities facilitate a strong non-profit sector.

We have entered a new era for non-profit organizations. In the distant past, society looked upon the work of non-profits as "God's work"; individuals, corporations and government gave freely and easily in support of such organizations. In the recent past, non-profits were considered agents of government, and were strongly supported and regulated, by long-term government contracts. Today, non-profits are considered businesses, entities that must prove their worth through data and efficiency. This is, in many ways, a positive outcome. It's important for organizations to demonstrate their effectiveness and to define success. What is problematic is that this change has not come paired with a rational view of the non-profit

sector; non-profits are required to perform as businesses within an environment that does not support them as such.

Today non-profits are being asked to do more with less, to work on contracts that pay less than the cost of doing business, to demonstrate results with data without support to build an IT infrastructure, to scale up services to lower costs (disenabling small organizations the ability to compete), to compete with city government programs that pay union scale wages with rich benefit and pension packages, to frequently perform work for payments that may be provided as much as a year or more after the work is complete and all of this with-in the back drop of a transformed tax governance environment that guarantee a dramatic decrease in private sector donations. The effect of the current environment on the sector is an increase in the number of closures and mergers, and may mean a future without non-profits in a growing number of lines of service delivery.

Underfunding contracts for work in the human service industry has become a standardized practice. No for-profit business would offer service for less than 100% of the cost of doing business, and yet nonprofits are expected to raise funds to cover the costs of labor. Typical city contracts pay approximately 3-10% overhead costs, yet the actual cost of overhead for most organizations ranges from 12-15%. Add to that, the rate of pay that nonprofits are able to offer based on contract funding, is significantly lower than what the City is able to provide for the same positions. In child care for example, though the same salaries are offered for the same level of credentialed staff, non-profit programs run for 3-6 hours longer per day and run 12 months per year compared to 9 months in programs run by the City. This inequity is further compromised by the fact that the city provides pension programs and health insurance far beyond what any non-profit organization is able to contemplate. The competition for teachers, social workers, and even administrative staff is fierce, with non-profit providers frequently sacrificing the role of administrative support in an effort to attract higher credentialed staff who are required to be on site by regulation. The rate of retention for non-profit staff can be traced to the initiation of new programs at the City level that offer higher salaries and benefits.

The City Charter is in a unique position to strengthen the non-profit sector, to fortify the relationship between government and non-profit organizations to ensure the strength of the city and its' populous. The Charter's role to establish the basic structure of the City's procurement process includes methods that agencies can use to make procurements. From powers of the Mayor and the Comptroller and the Procurement Policy Board, to the general oversight role of the City Council, the Charter can be revised once again to fortify the non-profit sector for the sake of a stronger New York City. The Charter should create a dynamic that emphasizes the importance of and the City's commitment to the nonprofit sector.

Below are recommendations that BCS fully supports as a member of the Human Service Council and as an organization that has partnered with the City for over 150 years to serve communities in need.

Recommendation 1: Timeframe for Contract Packages Submitted to Comptroller¹

BCS experience in contracting with City government has mirrored those of other nonprofits. Long delays in contract registration do not align with the amount of time given by to perform the contracted work. We have in more than one occasion been reimbursed a year after performing the service. Funders should not expect non-profits to perform prior to having funding in place to hire staff and pay rent.

System improvements, in HHS Accelerator, and the very recently introduced Passport system, are designed to reduce the significant delays in contract registration that severely cripple non-profits causing some organizations to teeter on the brink of financial solvency. And yet, HSC's members have stated that delays are getting worse and they are having a more difficult time working with City Agencies towards registration, even as the City has added staff to increase efficiency.

The City Charter creates a timeframe for the Comptroller to register a contract (30 days) and we believe a timeframe should also be created for City agencies to deliver the contract package to the Comptroller. There are many steps from the announcement of the award to registration. Given the mission of the Passport system, recently activated by the Mayor's office of Contracts, to alleviate redundancies in the contracting system it should be possible to reduce the amount of time it take for the city to submit a complete package to the Comptroller's office -- 60 days seems more than appropriate. The City would have 60 days from the communication of an award to a bidder to submit the complete contract package to the Comptroller.

Recommendation 2: Interest on Late Payments

Contracts should be subject to interest if they are sent to the Comptroller's Office after 60 days. Although interest will not typically high enough on individual contracts to significantly impact agency budgets, given the number of contracts proffered by each agency, the overall impact on agencies could be severe if contracts move slowly. This mechanism could hold the City to a timeframe for registration, and reduce the pain that nonprofits experience as the gear up to provide services while waiting for initial payments.

Most non-profits maintain revolving loan funds that help to bridge the gap between contract start dates and contract payments. Although we are assured payments over time, the cost of borrowing funds to make ends meet is one that is not considered in our contracts. Requiring agencies to pay interest could help to defray the costs of such loans. Current City policies around the payment of interest simply do not work; providers are almost never granted interest for late payments. Therefore, we recommend

¹ The recommendations presented here, with the exception of recommendation 4(a), were developed by The Human Services Council (HSC) and The Lawyers Alliance for New York. BCS is a member of HSC and fully supports the proposals as proffered by HSC.

that Section 332 (payment procedure) include a requirement that the City is responsible for interest on late payments, including late payments due to late contract registration.

Recommendation 3: Transparency

The Charter's role is to establish checks and balances within the government system. Holding Agencies accountable for turning contracts around with alacrity can be checked by broadening transparency within the system. Chapter 1, section 12(b)(5) of the City Charter should be amended to require the Mayor to include in the Mayor's Management Report, a statement of the number and percentage of client services contracts that are registered before the contract's start date, one day to three months after the start date, three months and one day to six months after the start date, six months and one day to nine months after the start date, nine months and one day to one year after the start date, and more than a year after the start date.

In addition, the Charter should provide for the PPB and City Council to review this information and seek remedies. Thus, Chapter 2, Section 30 of the Charter should be amended to add timeliness of client services contract registration to the City procurement policies and procedures that the City Council will periodically review. Similarly, Chapter 13, section 311(c) and 311(g) of the Charter should be amended to require the Procurement Policy Board to take such registration delays into account in its annual review of compliance with its own rules, policies and procedures, and in its recommendations to the Mayor and Council regarding the organization, personnel structure and management of the agency procurement function.

Recommendation 4: Procurement Policy Board

The Procurement Policy Board (PPB) was established to be a critical regulatory body for contracting, and ensuring that regulations are relevant and effective. Yet there is no guidance on how often the PPB must meet, or any mechanism for transparency of PPB decision making. But the Board does not regularly meet in a way that the public can engage and address critical issues. Therefore, Section 311 should include a requirement that the PPB meet four times per year and hold public hearings.

The PPB should address this issue of underfunding nonprofit organizations. Charter section 311, sets out principles for the PPB and should be amended to include language requiring that procurements reimburse providers for reasonable costs by adding language to Section 311.d "(iv) rules requiring all agencies to reimburse nonprofit client services providers for at least the reasonable cost of providing the contracted services."

Recommendation 4 (a): Pay Equity

While it is not appropriate for the Charter to set pay rates, it is appropriate for the Charter to set the tone for the City to consider equity in the rates that it pays. The Charter does so in Section 312 (1) which states that "Prior to issuing an invitation for bids....the agency shall determine whether such contract will directly result in the displacement of any city employee..." and if displacement is likely the comptroller must be alerted.

The impact of proposals and new government initiatives on the nonprofit sector should be taken into account. The PPB could review such impact at its quarterly meetings and make a summary of its findings available to the public, prior to public hearings. The City should be concerned with its own impact upon the sector that it relies upon to serve its most vulnerable citizens.

Recommendation 5: Sample Budget

Chapter 13 of the Charter instructs the City on the procurement process, When the City releases requests for proposals for human services programs, there should be a sample budget included that lays out the cost expectations of the contract, using the methodology through which they determined the amount available for the service. While human services contracts are typically competitive bid contracts, the rates and program design are predominately prescriptive in nature, and the rates often do not reflect the real costs of running programs and meeting deliverables. The City should include a rationalization, through a sample budget, for the rates set forth in the RFP. Chapter 13 of the Charter should include language that "Prior to issuing an invitation for bids, requests for proposals, or other solicitations that set forth proposed rates, the agency shall undertake an analysis of the costs associated with performing the service, including employee costs, and include the analysis as a sample budget in the bid or request for proposal documents."

Recommendation 6: Survey of Current Vendors

New York City outsources the bulk of human services programs to nonprofit vendors, and many of these providers compete for contracts for programs in which they have previously held contracts at the City level, as well as from other levels of government and private funders. When the City develops a request for proposal for a set of contracts that are expiring, or developing a new RFP that is substantially similar to existing contracts, the City should survey current vendors to receive information on rates, deliverables, and outcome measurement. Current contractors hold vital information on the real costs of running programs, what works and what does not in the current program design, and what deliverables are being met. The City charter should include in Section 312 language requiring City agencies to survey current vendors, or vendors who hold substantially similar contracts, when creating a bid or request for proposal. "Prior to issuing an invitation for bids, requests for proposals, or other solicitations, the agency shall undertake a survey of vendors who currently hold a contract for the service being bid, or those who hold substantially similar contracts, to assess the current rate structure and costs associated with the service, and the measurement of deliverables prescribed to the contract."

Recommendation 7: Capital Appropriations

Nonprofits apply for and receive capital appropriations for important infrastructure needs so that they can safely serve communities, as well as for technology and equipment that are essential to running effective programs. The appropriations themselves are made by the borough presidents and by the City Council in the form of discretionary funding. However, capital appropriations can languish for many years before the City is ready to release the funding.

City agencies should process capital appropriations at least as quickly as they process program appropriations. Borough presidents and the City Council members should be regularly briefed on where

their awards are within the processing of the capital funds they have appropriated. Charter section 214, which already requires the Mayor to include in the executive capital budget a list of all pending capital projects, should be amended as follows: "a. The executive capital budget shall set forth separately each capital project, including the capital projects proposed by the borough presidents in accordance with section two hundred eleven, and shall include: ... (2) A listing of all pending projects, and a description of the status of each one; ..."

Recommendation 8: Comptroller Registration

The Comptroller has 30 days to register a contract once the office has received the contract package, but if the package is rejected by the Comptroller, the time clock restarts, meaning that if a package is rejected on day 29, once it is re-submitted to the Comptroller, there is another 30 day period for registration. This can increase delays and we suggest that the time should pause, not restart, with language in Section 328 that reads "All contract packages submitted to the Comptroller shall be deemed complete by the Mayor's Office of Contracts. The Comptroller shall have a total of thirty days from the submission by the Mayor's Office of Contracts to review each contract and register such contract or the contract shall be deemed registered."

We recognize that the Comptroller is the only Office to have a time limit in the City Charter as it relates to contract registration. Other components in the procurement process should also be subject to time requirements, but we believe those should be laid out by the Procurement Policy Board, as they vary by agency and action.

Conclusion

Imagine the City with only one or two Amazon-like monolith's providing nonprofit services. That is indeed the direction that the sector is heading, one where only economies of scale enable organizations to survive. Imagine New York City after the loss of entire lines of human services as provided by nonprofits, no community based services for the mentally-ill for example, or no subsidized daycare except for pre-k. This is a dark future; a city that would eventually experience a significant decrease in economic growth. The nonprofit sector is in red-alert status and I am grateful that the Commission is aware and considering the opportunity it has to solidify the City's support of its important service partner.

Nonprofit human service providers play a critical role in the economic vitality of the City. It is in the best interest of not just the poor, but of all residents, that the nonprofit sector thrives. Thank you for the opportunity to present this testimony and for your work on behalf of the City of New York.

New York City Charter Revision Commission 2019

March 11, 2019

Testimony by the Human Services Council

Michelle Jackson

Deputy Executive Director

On behalf of the Human Services Council of New York (HSC), I would like to thank the Commission for this opportunity to submit testimony and answer questions on the Finance and Budget Related Matters area of the Charter Revision Commission's areas of focus. My name is Michelle Jackson and I am the Deputy Executive Director of HSC.

HSC is a membership association representing New York's leading nonprofit human services organizations, including direct service providers and umbrella and advocacy groups. HSC strengthens New York's nonprofit human services sector, ensuring all New Yorkers, across diverse neighborhoods, cultures, and generations reach their full potential. Our members provide essential supports to a broad spectrum of New Yorkers, including children, seniors, those experiencing homelessness, people with disabilities, individuals who are incarcerated or otherwise involved in the justice system, immigrants, and individuals coping with substance abuse or other mental health and behavioral challenges. We serve our membership as a convener, a coordinating body, and an advocate. We are also an intermediary between the human services sector and government, fostering cross-sector collaboration. We help our members better serve their clients by addressing matters such as government procurement practices, disaster preparedness and recovery, government funding, and public policies that impact the sector.

The Human Services Sector

The nonprofit human service sector plays an essential role in the daily lives of millions of New Yorkers. These vital community services, ranging from homeless services, senior care, to employment training, assist approximately 2.5 million New Yorkers annually. Nonprofits are government's partner in delivering services to New Yorkers from all walks of life, and the procurement process, substantially defined in the New York City Charter, is the prime mechanism for creating, funding, and awarding contracts to human services providers. The contracting system is complex, and a lack of collaboration and transparency in the development of request for proposals, coupled with this complex process creates an inadequately funded set of programs and extensive delays in contract registration and payment.

The New York City Comptroller's report, *Still Running Late: An Analysis of NYC Agency Contracts*, demonstrates that much more needs to be done - and quickly - to improve the timeliness of human services contract registration.

This is the second report, and overall contracts are registered late 80 percent of the time across the City, and human services contracts are registered late 89 percent of the time, with the percentage going down slightly when discretionary awards are removed. I am sure every industry could tell the Commission how delays adversely affects them, and what I can tell you is that there is a real, detrimental impact on providers. First, providers cannot wait to begin services, like other contractors. A construction project could potentially be delayed until documents are in order, but a summer youth program has to start in the summer, and parents rely on a particular start date. For contract renewals, which are also delayed, providers cannot close a program while waiting for renewal documents; closing a domestic violence shelter for 2-3 months each year would be extremely problematic. This means providers take enormous fiscal and legal risks by signing leases, hiring staff, and starting programs without a contract, or continuing to operate services on the verbal agreement that things will get sorted out. Retroactivity also creates cash flow issues for providers, who have to put off paying vendors, take out lines of credit that they must pay interest on or utilize the loan fund, because providers cannot get paid until the contract is registered.

The City and its residents ultimately bear the brunt of these problems, when highly qualified providers cannot afford to take on City contracts, or when those providers must close programs or go out of business altogether because of the financial strains imposed by the City's late payments. The result is that communities lose access to cherished neighborhood institutions and essential services, and the City is unable to carry out its human services programs.

The Charter

The Charter establishes the basic structure of the City's procurement process, including the methods that agencies can use to make procurements. Under the Charter, the Procurement Policy Board is responsible for promulgating rules to effectuate the Charter's procurement requirements, and for periodically reviewing those rules to ensure that they are achieving their intended purpose. The Charter gives the City Council an oversight role, too. It requires essential procurement documents to be publicly available, so that the public can conduct oversight as well.

The Charter Revision process presents an opportunity to tackle some of the issues human services providers face in late contract registration, as well as with procurement overall. Below we have presented a set of recommendations to amend the City Charter.

Recommendation 1: Timeframe for Contract Packages Submitted to Comptroller

It has been clear for years that the vast majority of City contracts with nonprofit human services providers are registered months or even years after the nonprofits have begun providing services. System improvements, most notably HHS Accelerator, have been put in place but nonprofits still report significant delays in contract registration, and beyond the Comptroller's report detailing delays, HSC's membership have stated that delays are getting worse and they are having a more difficult time working with City Agencies towards registration, even as the City has added staff.

The City Charter creates a timeframe for the Comptroller to register a contract (30 days) and we believe a timeframe should also be created for City agencies to deliver the contract package to the Comptroller.

There are many steps from the announcement of the award to registration, and we would be open to working with the City to identify the best timeframe. We know that many actions can happen simultaneously, and nonprofits have to submit many of the substantive documents required at registration when they bid for a contract, so we would suggest 60 days. The City would have 60 days from the communication of an award to a bidder to submit the complete contract package to the Comptroller.

Recommendation 2: Interest on Late Payments

Building off recommendation one, there needs to be a mechanism to hold the City to a timeframe for registration. The Comptroller has 30 days to approve a contract package or the contract is deemed registered, but an incomplete contract package from a City agency would be rejected by the Comptroller and would not serve the public interest. We suggest that all contracts should be subject to interest if it is sent to the Comptroller's Office after 60 days.

Regardless of the recommendation to change the Charter to include timeframes, we also suggest amending the Charter so that nonprofits can actually collect interest when the City pays late. Gaps between contract start date and contract payment force nonprofits to take on costly loans and lines of credit, resulting in significant interest payments that are currently not reimbursed. While the ultimate goal is that no contracts should ever start before payments are made, nonprofits should not bear the cost of any late payments. Current City policies around the payment of interest simply do not work; providers are almost never granted interest for late payments. Therefore, we recommend that Section 332 (payment procedure) include a requirement that the City is responsible for interest on late payments, including late payments due to late contract registration.

Recommendation 3: Transparency

Solving this late registration problem requires public access to information about which City agencies have the longest contract delays, and which types of contracts are delayed the most. Chapter 1, section 12(b)(5) of the City Charter should be amended to require the Mayor to include in the Mayor's Management Report a statement of the number and percentage of client services contracts that are registered before the contract's start date, one day to three months after the start date, three months and one day to six months after the start date, six months and one day to nine months after the start date, nine months and one day to one year after the start date, and more than a year after the start date.

In addition, the Charter should provide for the PPB and City Council to review this information and seek remedies. Thus, chapter 2, section 30 of the Charter should be amended to add timeliness of client services contract registration to the City procurement policies and procedures that the City Council will periodically review. Similarly, chapter 13, section 311(c) and 311(g) of the Charter should be amended to require the Procurement Policy Board to take such registration delays into account in its annual review of compliance with its own rules, policies and procedures, and in its recommendations to the Mayor and Council regarding the organization, personnel structure and management of the agency procurement function.

Recommendation 4: Procurement Policy Board

The Procurement Policy Board (PPB) is a critical regulatory body for contracting, and ensuring that regulations are relevant and effective. Yet there is no guidance on how often the PPB must meet, or any mechanism for transparency of PPB decision making. Some of the issues HSC presents to the City could be appropriately addressed by the PPB, but the Board does not regularly meet in a way that the public can engage and address critical issues. Therefore, we recommend amending Section 311 to include a requirement that the PPB meet four times per year and hold public hearings.

Additionally, as detailed below, the underfunding of human services contracts is the most pressing issue impacting the sector. The PPB should be the body to address this issue. Charter section 311, sets out principles for the PPB and should be amended to include language requiring that procurements reimburse providers for reasonable costs by adding language to Section 311.d “(iv) rules requiring all agencies to reimburse nonprofit client services providers for at least the reasonable cost of providing the contracted services.”

Underfunding of the Sector

While the Charter is not a document structured to set rates, the nonprofit sector has struggled for decades with how competitive procurements impact the systemic underfunding of programs, to the detriment of the financial health of nonprofits. There are ways that the Charter could structure procurements to better ensure equitable rates, and while this Commission has many recommendations before it, there are real and insurmountable financial hurdles that the current system has placed on providers.

Nonprofits provide a myriad of services on behalf of the government - many of them mandated - and the sector is able to leverage private and philanthropic dollars and funding from the City, State, and federal government, to create dynamic programs at a bargain. Providers are experts who are uniquely qualified to create cost-effective and impactful programs directly catered to their communities. The City is not getting a deal by chronically underfunding homeless shelters, foster care agencies, food pantries, and senior centers; it is directly harming those who rely on government for help. The nonprofit human services financial crisis must be addressed:

1. Contracts are generally underfunded for the program, asking for an outright match from providers, or with a low rate per service unit, where providers must make up the difference.
2. Contracts do not provide an appropriate indirect cost reimbursement rate. The Stanford Innovation Fundⁱ estimates that the average nonprofit indirect cost rate is between 15-25 percent – still substantially lower than the private sector, where the lowest rates start at 30 percent – but the City pays around ten percent, and that new rate and investment to ten percent has only recently been put in to place.
3. Contracts neither provide for cost escalations on the OTPS (other-than-personal services) side, nor cost-of-living increases on the PS (personnel services) side. Contracts with government are often for five to seven year terms, and even longer when RFPs are delayed, but providers are

unable to account for unforeseen rising costs, such as a spike in electricity and water prices or an exceptionally cold winter, nor is there a mechanism to accommodate rising rent, health insurance, or other costs when contracts need to be extended. Policy changes also add unfunded mandates to contracts, whether it is professional training that requires out of office time or the change in Exempt Employee Overtime where nonprofits must make staffing and salary changes that impact how much the program costs to operate.

These are not new issues, nor is government unaware that these are real concerns with which nonprofits grapple each month. A string of recent reports outlines this underfunding clearly, with survey data, anecdotal information from the sector, and by looking at the numbers in actual contracts and financial reports.

One of the most alarming pieces of information comes from the *SeaChange Capital Partners/Oliver Wyman* report, which found that 18 percent of New York City human services providers are insolvent, based solely on IRS 990 data.ⁱⁱ This means that their liabilities exceed their assets, and many have less than a month of cash on hand. Fifty percent of New York City human services nonprofits have less than two months of cash on hand and operating reserves, meaning that one late payment can impact payroll and one unforeseen event can put the provider out of business. Government relies on these providers to ensure that our communities have programs that promote wellbeing.

The *SeaChange* report also points out that the financial health of the sector is government's problem. Eighty percent of the largest human services organizations have budgets that are 90 percent or more dependent on government funding. The largest five percent of nonprofits provide almost 50 percent of services in New York City, and are also mostly dependent on government funding. If these organizations fail, it will be difficult for the network of providers to pick up these contracts; government is uniquely responsible for the fiscal viability of these organizations.

The sector's health is in severe crisis, and providers report that underfunded contracts are the main driver of their financial struggles. Fifty-two percent of New York nonprofits report that local contracts do not cover the full cost of the services they are required to provide, and 56 percent report receiving indirect rates at 9 percent or less, with 91 percent reporting receiving 15 percent or less.ⁱⁱⁱ

In the child welfare sector, a study of over 80 child welfare providers in New York offers a stark picture that resonates across the full human services sector.

"Ninety-five percent of respondent organizations reported receiving a government contract that fails to pay the full cost of providing the contracted services. Eighty-six percent of respondents stated that they use their private fundraising to offset the deficits their government contracts create. In addition, 83% report that they cut program costs to make up the deficits of government contracts. Even while taking these measures, 69% of the organizations in our sample stated that they simply run these programs at a deficit; presumably, they are hoping they will be able to raise necessary private funds eventually and are loathe to cut off their needy clients. Finally, the organizational impact of running chronic program deficits is both widespread and widely

acknowledged among New York's child welfare nonprofits: 67% report they anticipate a year-end organizational deficit that can only be made up with private fundraising."^{iv}

With a number of high profile nonprofits merging or closing in recent years, the sector itself came together in the *Call to Action* report, citing government underfunding as the main obstacle in planning for risk, and finding that government contracts were themselves a great risk to human services providers. The report drew upon the experience of sector leaders, and concluded that the underfunding of government contracts, including inadequate overhead, lack of cost-escalators, and low rates per unit, were main drivers to unstable organizations.^v

Recommendation 5: Sample Budget

Chapter 13 of the Charter instructs the City on the procurement process, and when the City releases requests for proposals for human services programs, there should be a sample budget included that lays out the cost expectations of the contract, using a similar methodology. While human services contracts are typically competitive bid contracts, the rates and program design are predominately prescriptive in nature, and the rates often do not reflect the real costs of running programs and meeting deliverables. The City should include a rationalization, through a sample budget, for the rates set forth in the RFP.

Chapter 13 of the Charter should include language that "Prior to issuing an invitation for bids, requests for proposals, or other solicitations that set forth proposed rates, the agency shall undertake an analysis of the costs associated with performing the service, including employee costs, and include the analysis as a sample budget in the bid or request for proposal documents."

Recommendation 6: Survey of Current Vendors

New York City outsources the bulk of human services programs to nonprofit vendors, and many of these providers compete for contracts for programs in which they have previously held contracts at the City level, as well as from other levels of government and private funders. When the City develops a request for proposal for a set of contracts that are expiring, or developing a new RFP that is substantially similar to existing contracts, the City should survey current vendors to receive information on rates, deliverables, and outcome measurement. Current contractors hold vital information on the real costs of running programs, what works and what does not in the current program design, and what deliverables are being met and move towards the outcomes the City seeks when designing a program. The City charter should include in Section 312 language requiring City agencies to survey current vendors, or vendors who hold substantially similar contracts, when creating a bid or request for proposal. "Prior to issuing an invitation for bids, requests for proposals, or other solicitations, the agency shall undertake a survey of vendors who currently hold a contract for the service being bid, or those who hold substantially similar contracts, to assess the current rate structure and costs associated with the service, and the measurement of deliverables prescribed to the contract."

Additional Recommendations

Recommendation 7: Capital Appropriations

Nonprofits apply for and receive capital appropriations for important infrastructure needs so that they can safely serve communities, as well as for technology and equipment that are essential to running

effective programs. The appropriations themselves are made by the borough presidents and by the City Council in the form of discretionary funding. See NYC DDC, Not-for-Profit Application Process, <https://www1.nyc.gov/site/ddc/contracts/application-process.page>. However, capital appropriations can languish for many years before the City is ready to release the funding. See *Center for an Urban Future, Slow Build: Creating a More Cost-Effective Capital Construction Process for Cultural Organizations and Libraries in New York City*, pp. 30-31 (2017) (noting that the process takes between 11 and 36 months), https://nycfuture.org/pdf/CUF_Slow_Build.pdf.

We recommend the following changes to the Charter to speed up the process.

First, City agencies should process capital appropriations at least as quickly as they process program appropriations. Second, each borough president and the City Council should be told about delays in the processing of the capital funds they have appropriated. This can be effected by amending Charter section 214, which already requires the Mayor to include in the executive capital budget a list of all pending capital projects, as follows: “a. The executive capital budget shall set forth separately each capital project, including the capital projects proposed by the borough presidents in accordance with section two hundred eleven, and shall include: ... (2) A listing of all pending projects, and a description of the status of each one; ...”

Recommendation 8: Comptroller Registration

The Comptroller has 30 days to register a contract once the office has received the contract package, but if the package is rejected by the Comptroller, the time clock restarts, meaning that if a package is rejected on day 29, once it is re-submitted to the Comptroller, there is another 30 day period for registration. This can increase delays and we suggest that the time should pause, not restart, with language in Section 328 that reads “All contract packages submitted to the Comptroller shall be deemed complete by the Mayor’s Office of Contracts. The Comptroller shall have a total of thirty days from the submission by the Mayor’s Office of Contracts to review each contract and register such contract or the contract shall be deemed registered.”

We recognize that the Comptroller is the only Office to have a time limit in the City Charter as it relates to contract registration. Other components in the procurement process should also be subject to time requirements, but we believe those should be laid out by the Procurement Policy Board, as they vary by agency and action.

Conclusion

Providers play the essential role in the City’s complex human services delivery system, and they face many challenges in the contracting process. They operate in the context of a broken contracting system. Only if we address the underlying causes of contractor instability—problems at the government level—will we be able to ensure a robust nonprofit community that can continue to deliver quality services to our community. The Charter Revision Commission is an important opportunity for the City to correct issues with procurement, and to standardize good practices undertaken by some agencies. Thank you for your work and for providing us with this opportunity to share our recommendations with you.

⁴ https://ssir.org/articles/entry/the_nonprofit_starvation_cycle

¹¹ <http://seachangeap.org/wp-content/uploads/2016/03/SeaChange-Oliver-Wyman-Risk-Report.pdf>

¹¹¹ <http://survey.nonprofitfinancefund.org/>

¹¹¹¹ https://www.researchgate.net/publication/269103151_A_Deficit_Model_of_Collaborative_Governance_Government-Nonprofit_Fiscal_Relations_in_the_Provision_of_Child_Welfare_Services?enrichId=rgreq-e79c7ca8a17894b9c2034939bf6a8ed0-

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^v <http://www.humanservicescouncil.org/Commission/HSCCommissionReport.pdf>

**2019 CRC Expert Forum
Charles Brisky Testimony
March 11, 2019**

Thank you, members of the Charter Revision Commission for inviting me to speak today. My name is Charles Brisky. I am the Deputy Director for Expense and Capital Budget Coordination for the Mayor's Office of Management and Budget. I am joined by Francesco Brindisi, OMB's Deputy Director for City Revenues, Economics, and Policy.

The Charter Commission's proposals must be evaluated in light of New York City's financial history, and the potential impact on our fiscal stability.

After the fiscal crisis of the 1970s, the State Legislature passed the Financial Emergency Act to impose fiscal discipline on the City. The City followed by enacting changes to the Charter that strengthened the role of the executive, yet maintained a balance of power between the Mayor and City Council. In part, they were intended to increase Mayoral accountability.

These changes are based on principles of sound fiscal management, have been proven over 40 years of practice, and led to 39 balanced budgets. Fiscal monitors and ratings agencies agree. For example, last month, Moody's increased our GO bond credit rating to Aa1, their second highest level, citing "strong governance and financial best practices, including conservative revenue forecasting, tested through periods of fiscal stress, and strong liquidity."

Changing our fiscal discipline practices will cause unintended and, perhaps, adverse consequences. A good example is shifting responsibility for making the City's revenue forecast.

The Mayor must be able to set realistic revenue estimates without "negotiation." Because the Mayor is legally responsible for balancing the budget, and accountable to citizens if vital services are not delivered, he must be responsible for the revenue forecast.

Shifting the responsibility to deliver a cautious revenue forecast will cause structural imbalance, leaving the Mayor accountable to an external and possibly flawed process. And consequences are severe. For example, if the budget is imbalanced by even one-tenth of one percent at our current revenue and spending level, the City could lose control of its finances to the Financial Control Board.

By comparison, while many states have adopted consensus revenue estimates, they can change tax law and do not have the City's stringent budget and accounting standards.

Also, altering the Mayor's authority to impound City funds severely limits his ability to implement immediate, short-term fixes in response to severe shortfalls. The capacity to take decisive action supports budget resiliency, and assures the public and our investors that the City can maintain fiscal stability.

The examples I have discussed today are important, though we are concerned about other proposals that will compromise the City's budget process, fiscal strength and financial autonomy.

To conclude, I want to emphasize that the Charter provisions governing the City's fiscal management have been tested over decades and have served us well. Making fundamental change now puts financial stability and progress at risk and will be critically received by fiscal monitors and ratings agencies.

Thank you. I look forward to taking your questions, and please note that we may submit written testimony in the future.



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March 1, 2019

Dear Chair Benjamin:

Thank you for asking IBO to comment on suggested changes to the City Charter that the Commission has received thus far. We have had a chance to review the proposals put forward by the Commission, the City Council, the Comptroller and others. We hope our comments on these proposals will be helpful to the commissioners as they go through the process of narrowing down and then fully developing specific amendments to the city's Charter to be placed on the ballot for the city's voters to consider in November.

At the outset, we should make clear that IBO as an institution relies on the availability of information on the city's budget and fiscal condition and the operations of city agencies in order to fulfill our Charter mandate of providing non-partisan information to the city's elected officials and citizens. Our ability to meet this mandate is directly related to both access to information and also the quality of the data available. As our mission makes us especially sensitive to transparency issues, we are in favor of any change to the Charter that will improve the openness of the city's budget. Transparency and accountability would also be enhanced by increasing IBO's and other oversight agencies' access to information from city-affiliated entities, such as the New York City Housing Authority, New York City Transit, the Economic Development Corporation, and Health + Hospitals.

Although the Charter provision allowing IBO access to budget information is strongly worded, it does not explicitly extend to these city-affiliated entities. As a result, our ability to get information from organizations that fall into this category is limited. One exception to this limitation is IBO's access to information from the Department of Education (DOE). The authority to access DOE data and other information was granted by the 2009 state law extending Mayoral control of the school system. As a result of this law, IBO has the ability to analyze and report on a broad scope of education funding and programs. The Commission could consider whether broader information access authority for some of the other city-affiliated entities could be granted through changes to the Charter. You have heard testimony from elected officials, including Council Member Kallos, regarding the need for increased oversight of these agencies—IBO is clearly not the only governmental institution that would benefit from more information from this group of organizations. We would encourage you to keep this in mind as you look to make changes to the Charter that improve the ability of elected officials and the public to fully assess the city's budget and fiscal condition.

In light of our support for any Charter amendment that improves the transparency of the city's budget and budget process, we will focus our comments here on a handful of proposals that have been put forward by the Council's Committee on Governmental Operations, individual Council Members, the Comptroller's Office and others that we believe would do the most to improve opportunities for oversight and increase accountability.

Unit of Appropriation Structure

As the Commission, the Comptroller, and others have noted, the Charter provision governing the unit of appropriation structure for the city's budget calls for far more clarity about the city's funding choices than is actually provided in practice. Units of appropriation often do not represent the funding for a "particular program," as the Charter requires. As the budget is presented and administered, funding for many programs is often contained in a single unit of appropriation, while at other times components of a program are spread among many different units of appropriation. In either case, analysis and oversight of spending is more difficult. A possible solution to this would be to expand use of OMB's Budget Function Analysis, an alternative presentation of the operating budget that provides a more programmatic view of the budgets of selected agencies. This would require extending the Budget Function Analysis to cover all agencies and linking it to budget administration. In short, budget appropriations need to be tied to distinct programs, whether by aligning the units of appropriation to programs, extending the Budget Function Analysis or some other means. IBO would support any effort to move in this direction.

Revenue Estimate

Like the Charter provision currently governing unit of appropriation structure, the provision dictating the revenue estimate process as it relates to budget adoption is not working as intended. As a result, the Council has no opportunity to negotiate the final revenue estimate, and no choice but to accept it. The Council has proposed an alternative that would require the Mayor to submit an estimate earlier in the budget negotiating process. Borough President Brewer has also noted this issue in her testimony to the Commission. Under the Council's proposal, the budget process would be revised so that the Mayor and the Council must agree on a revenue estimate through negotiation and the Mayor would be required to submit their agreed-upon estimate to the Council by May 25. The Council would then be required to approve the estimate—without amendment—no later than June 5. In the event that this does not happen, the binding revenue estimate for budget adoption would be an estimate provided by IBO on June 6.

IBO is the only City agency other than the Mayor's office required by Charter to produce a revenue estimate. Currently, IBO produces this estimate as a part of our Charter-mandated report issued in response to the Mayor's Executive Budget sometime in May. An alternative to the Council's proposal would be to require IBO to update the revenue forecast contained in this May report in the event that the Mayor and the Council do not agree on a revenue number by May 25. Realistically, this process would require at least five days. It would have the advantage of allowing IBO to update its forecast to

reflect changes in tax collections. As the Council noted in its recommendation, it would also diminish the ability of the Mayor's office to politicize the revenue estimate, and encourage more responsible forecasting practices.

Rainy Day Fund

In their recommendations to the Charter Commission, the Council has suggested that the city establish a true rainy day fund. The Council proposal recognizes that this will not be possible in advance of the full expiration of the Financial Emergency Act in 2033. Nevertheless, we agree that Charter revision presents an opportunity to plan for this eventuality, and to begin to reevaluate how the city manages its reserve funds and mechanisms used to "roll" excess revenue from the current fiscal year to the next while adhering to Generally Accepted Accounting Principles (GAAP) mandates in the Financial Emergency Act and the Charter.

Implementing a true rainy day fund would require appropriate rules for mandating deposits during economic expansions and allowing for withdrawals when the economy contracts. The Charter Commission might consider an amendment to the Charter now that would require the Mayor and the Council to devise some of these rules through local law for portions of the existing mechanisms the city uses now to "roll" excess revenue. For example, rules could be devised to apply to withdrawals from and deposits to the Retiree Health Benefits Trust (RHBT) that would more closely align with traditional rainy day fund objectives and could be tied to the city's fiscal health in general, not just the cost of providing health benefits for retirees in the current year. This change would likely require amendments to the local law authorizing the RHBT and also the trust document. But it would be a first step in changing the way elected officials and other budget stakeholders think about the allocation of surplus revenues.

Capital Budget Transparency

As with the city's expense budget and unit of appropriation structure, the transparency of the city's capital budget process suffers from a disconnect between the Charter's requirements and budget practice. IBO recently testified before the City Council on several proposed local laws designed to address this disconnect and improve access to information on the city's capital planning and budgeting, including information on ongoing capital projects. Because we often receive questions about the history of changes to the city's capital projects, their status and original estimated costs, we are particularly attuned to the deficiency of information on project delays and cost overruns.

In our testimony at the Joint Finance and Subcommittee on Capital Budget hearing on February 12th, we suggested that the Council might consider expanding an existing tool that tracks Parks Department capital projects—the online Capital Project Tracker—to cover additional agencies. The Commission could look to this existing tool to promote capital budget transparency and accountability. Providing more detailed information on the current status of the city's capital projects is essential to reforming and improving the city's long-term capital planning process.

There are multiple additional topics on the Commission's list that we believe would enhance the transparency of city government, and the ability of oversight organizations, like IBO, to provide a fuller picture of how the city uses its budget resources. We would propose also considering changes to the Charter provision delineating the powers and duties of the Financial Information Services Agency (FISA). Although charged with providing information to "officers, employees, or agencies of the city responsible for organizing, compiling, coordinating and reporting upon the city's central financial records, data and other related information" which clearly includes IBO and the City Council, the current make-up of FISA's board leaves such agencies at a disadvantage when seeking information and new reports from FISA. IBO's experience when requesting new reports or access to restricted information maintained by FISA is that our requests are subject to approval by OMB and not infrequently rejected. Adding two additional members to the FISA board, one appointed by IBO and one appointed by the City Council, would address this situation by giving these agencies a voice in the management of FISA and ensure that their requests are treated appropriately.

We would be happy to discuss these topics with you in more detail. Thank you for asking us to participate in this important process.

Sincerely,



Ronnie Lowenstein

Hi, my name is Jon Kaufman, and since 2014 I have been the Chief Operating Officer at the Department of City Planning for the City of New York. Prior to taking this position, I had an extensive career in the private sector where I was a partner in a global management consulting firm, where I focused on helping large corporations pursue performance improvement and organizational effectiveness opportunities.

In my current role, I have a variety of responsibilities but most relevant to today's panel is my direct supervision of two agency divisions essential to our collaboration with other agencies, and citywide planning more generally.

The first of these is a division called Planning Coordination. This division is responsible for helping disseminate City planning data, expertise and tools to other agencies, planners and the public at large. Some of you may be familiar with DCP's Community District Profile Portal, an online 'one-stop-shop' for the public to easily understand their community districts and City activity occurring within them – the creation and maintenance of this sits within Planning Coordination. In conjunction with OMB, Planning Coordination also is responsible for soliciting and synthesizing all 59 Community Boards' statements of need and budget request submissions, and sharing it effectively with the 29 agencies that get typically get requests each year.

The second division is our Capital Planning division. In this Administration, City Planning has made substantial contributions to improved capital planning processes. Based on the recommendations around capital planning I have seen from this charter review process, I wanted to share some of the City's 'normal' capital planning practices. With a limit on time, let me just highlight five areas of contributions, and solid planning, that some of the public may not be aware is already taking place.

Firstly, with our partners at OMB, we have revamped the Ten-Year Capital Strategy, making plain the principles and priorities of how City capital agencies plan their capital investment. Previous editions did not do justice to the detailed coordination and consideration of relevant planning inputs in major capital agencies. Secondly, DCP now convenes a quarterly Capital Planning Forum with the six largest capital agencies, where we share planning practices, identify opportunities for coordination or cost synergies, and evaluate the portfolio of City investments in specific neighborhoods. Thirdly, we have dedicated capital planners working with our borough planning teams and sister agencies to consider capital infrastructure investments needed in each of our neighborhood-wide studies – helping ensure that we make financial plans for infrastructure and public amenities concurrent to any planning for additional growth and density. Fourthly, we have increased the effort in and frequency of recurring planning sessions with the two largest capital agencies, SCA and DEP, such that they are more easily able to plan for

growth with the most current views on development and demographic trends. Lastly, among the many public data tools City Planning has launched in recent years, we have several ones geared to help capital planners in the City better understand and utilize and planning data and relevant inputs in a more consistent fashion. One example of this is the aforementioned Community District Profiles Portal. Another is the Facilities Explorer, which maps the 36,000 public facilities or program sites across the five boroughs funded or licensed by the City, State or Federal Government.

With respect to the handful of proposals in front of this Charter Review Commission on the topic of capital planning, they seem to intimate that somehow the City is not considering future growth when planning infrastructure. I can assure you there is already deep consideration of growth in every capital agency – and they rely on City Planning to be a strong partner in providing relevant data and expertise around where and when that growth may occur. I don't believe additional charter mandates will lead to materially increased collaboration. The notion that City Planning should develop the budget INSTEAD of OMB is a little confusing – we are planners, not budgeters. We continue to look to strengthen our partnership with OMB to ensure we are planning financially to meet each neighborhoods' future needs, but feel we are best used as budget advisors rather than budget creators.

I look forward to elaborating on any of this with the commissioners, as helpful.

Testimony of Carol Kellermann to NYC Charter Review Commission

March 11, 2019

Good evening. My name is Carol Kellermann and I very much appreciate the opportunity to participate in this panel. My fellow panelists are mostly people with whom I have worked over many years and I am flattered to be included among this knowledgeable, thoughtful group.

I just stepped down from serving as President of the Citizens Budget Commission for the past 11 years. For those who are not familiar with CBC it is a nonprofit, nonpartisan organization dedicated to assuring the wise and effective expenditure of taxpayer dollars in NYC and NYS. I have also served as Assistant and Deputy Commissioner of the NYC Finance Department, and have managed several nonprofit service provider organizations in a variety of areas including homeless housing, public school parent engagement and disaster recovery. I think this variety of roles has given me a unique perspective on City government and I am speaking here today from that perspective as an individual, not on behalf of CBC, whose President will be on the next panel.

This Commission has been given an extremely broad charge to consider the structure of City government from top to bottom. I urge you to conduct your deliberations with two principles in mind.

First, do no harm. Particularly with respect to the budget process, the current system has for the most part served the City quite well for the last 30 years. As a result of the fiscal crisis in the 70s and the enactment of the Financial Emergency Act in state law, New York City has the most

transparent, professional and sound fiscal management and budgeting process of any state or city in the country. Let's not fix what isn't broken.

Second, don't use the charter to do things that can be done by statute. The Charter is a governing document; it should define core powers, structures and processes. Most changes to current rules and procedures can and should be made through council law making. The Charter is already cluttered with hundreds of outdated provisions and those that belong in local law. Do not add to that clutter.

Now, with respect specifically to the proposals that are under discussion pertaining to the city's budget and budgeting process, I will limit my opening remarks to some of the most salient ones.

Rainy Day Fund. There should be a way for the City to set aside funds to be used in the event of an economic downturn or a crisis that reduces revenue so that spending would not have to be drastically cut or taxes increased to maintain a balanced budget. The Financial Emergency Control Act doesn't allow for such a fund, so while it is appropriate to include one in the Charter, it would also require state law to implement it. Such a fund should, in my view, be in addition to the Retiree Health Benefit Trust, which already exists but is regarded by some as a de facto Rainy Day Fund. Both of these funds should have specific criteria for mandatory deposits and limitations on withdrawals so that money is steadily deposited in good times and can only be withdrawn under set conditions.

Capital Budgeting. The Charter should be amended to assure that the capital budgeting process is more transparent, comprehensive and effective. In particular, the AIMS report should be expanded to include

all city and city controlled public authority capital assets with at least a five year life and a minimum replacement cost low enough to cover most assets, including computer equipment and moveable assets. This more comprehensive report should be cross- referenced to the Ten Year Capital Strategy and the Capital Commitment Plan so it is possible to assess whether enough is being invested to keep all City infrastructure in a state of good repair.

Revenue Estimating. The City Office of Management and Budget is generally cautious in its revenue estimates, as it should be in order to mitigate downside risk. This has not unduly constrained spending; the city budget has grown an average of more than 5% a year over the last 18 years. Moreover, there are several other forecasts published during budget season including that of the IBO, the Office of the State Special Deputy Comptroller and the City Comptroller. All of these estimates are compared and contrasted as part of the Mayor's negotiation of the city budget with the Council. A more formal procedure for the Council to adopt or reject the OMB revenue estimate would not, in my view, result in less political forecasting; quite the opposite. Indeed, you can see how political the revenue estimating process can become by looking at what has just happened in the NYS process.

Formula Budgeting. There are proposals to enable the Public Advocate, Comptroller, Borough Presidents and several other agency heads to self-determine their budgets, in some cases according to a formula that gives them a set percentage of another agency's budget as is now the case for the IBO. This 'formula budgeting' should not be expanded to so many entities. It would dilute the power of the Council to set spending priorities by, in effect, taking a range of positions and functions of city

government out of the control of those democratically elected to oversee the budget.

Thank you for this opportunity. I look forward to the discussion and would like to reserve the option to submit more lengthy testimony addressing additional points at a later date.

TESTIMONY CITY BUDGET

Testimony on Charter-Defined Budget and Management Practices

Testimony Before the 2019 Charter Revision Commission

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March 11, 2019

Thank you for the opportunity to submit testimony on behalf of the Citizens Budget Commission (CBC). CBC's mission is to achieve constructive change in the finances and services of New York State and New York City government.

While many worthwhile ideas will be proposed to and discussed by this Commission, CBC believes the Commission will serve New Yorkers best by focusing on and proposing only those changes essential to the Charter's purpose, which is to define the core structures, powers, and processes of New York City government. Furthermore, the Commission should consider removing administrative provisions not appropriate for the Charter or vestigial elements that are no longer relevant.

The current Charter generally provides a strong budgeting and financial management framework that has served the city well and has helped produce balanced, on-time budgets since the early 1980s. CBC recommends the Charter be modified selectively and offers five specific proposals for budgeting and financial management. CBC also has identified four areas where the current processes should be maintained and three areas of legitimate concern for which the solutions require managerial and operational changes, rather than Charter amendments. Finally, external to fiscal management, CBC urges caution when considering governance changes.

Improvements to the Charter's Budgeting and Management Provisions

1. Allow for and Create a Rainy Day Fund: The Charter's balanced budget requirement in Section 258(a) is the foundation of good financial management in New York City.¹ However, it precludes the City from having a Rainy Day Fund (RDF) since the use of prior year revenues to fund current year expenditures would result in a deficit as defined by generally accepted accounting principles (GAAP). This requirement and limitation also are in State law and perhaps in certain bond covenants.²

RDFs allow municipalities to accumulate reserves during good economic times to help weather economic contractions. A recent CBC analysis <https://cbcny.org/research/nyc-revenues-recession> estimated that a recession could result in a tax revenue shortfall between \$15 billion and \$20 billion over three years, measured against current projections.³ In a downturn an RDF would reduce the City's need to enact harmful spending cuts that reduce needed services and counterproductive tax increases to maintain a balanced budget.

The Charter should be amended to make an exception to the balanced budget requirement to permit use of an RDF. To ensure the City appropriately funds and expends the RDF, the Charter ultimately should require mandatory deposits and provide guidelines for withdrawals. CBC understands the Commission intends to limit itself to proposals that do not require State action to take effect. However, amending the Charter first may create momentum for State law changes and would allow the City to make deposits to and use an RDF without delay once State law and perhaps bond covenants are changed.

2. Charter mandate the Retiree Health Benefits Trust Fund (RHBT) and pave way for funding a reduced liability: In 2006 the City created the RHBT to accumulate resources to fund the liability associated with other postemployment benefits (OPEB), comprised of retiree health and welfare benefits.⁴ Unlike pensions, the City pays retiree health bills as they come due rather than as the benefits are earned by employees. While annual pension fund payments are determined actuarially to ensure sufficient resources to pay the pensions of current and future retirees, there are no rules governing deposits to the RHBT. As a result, the City has made inconsistent deposits and used the RHBT as a de facto RDF. After the 2008 recession the City deposited less into the fund than the current year (or PAYGO) cost of retiree health benefits and used previously accumulated resources in the RHBT to pay the annual expense, effectively using the RHBT as an RDF. As a result, the fund's balance declined from \$3.2 billion in fiscal year 2008 to \$1.4 billion in fiscal year 2013. The current administration has increased the RHBT's balance to \$4.5 billion, just 4.4 percent of the \$103.3 billion liability at the end of fiscal year 2018. The Mayor has stated the fund could serve again as an RDF during a recession.⁵

The City's enormous OPEB liability is due largely to the generous nature of those benefits, and reform of those benefits would improve the City's long-term fiscal health. With a reasonable set of OPEB benefits, the City annually should deposit the normal cost (the actuarially estimated incremental cost of future benefits for current employees accrued that year) into the RHBT; currently such a requirement is unrealistic.⁶

The Charter should be amended to 1) mandate the RHBT, 2) require annual deposits into the fund of at least the PAYGO amount plus some percentage, or the normal cost, and 3) limit RHBT disbursements to the PAYGO cost of retiree health and welfare benefits. These amendments would pave the path to fund the current and future liability while precluding the use of the RHBT as an RDF.

3. Expand capital inventory to include all assets: Section 1110-a of the Charter requires an inventory of fixed capital assets or buildings with a historical cost of at least \$10 million and useful life of at least 10 years and requires reporting the estimated cost of bringing to or keeping those assets in a state of good repair. This inventory is not comprehensive; it excludes several important asset classes including the water and sewer system, mayoral-controlled authorities (such as New York City Health + Hospitals and the New York City Housing Authority), most fixed and movable equipment, and the City's computer systems.

The Charter should be amended to make the City's capital inventory and needs assessment more comprehensive; that is, to include all assets that meet capital financing eligibility criteria, currently \$35,000 and a five-year useful life, owned by an agency or authority that the City controls. The needs assessment should inventory capital assets, identify their condition, and estimate the investment needed to bring them to or keep them in a state of good repair.

4. Focus the Borough President capital budget role on identifying needs and providing recommendations: A capital budget based on a comprehensive needs assessment and appropriate community input will result in the most efficient and effective allocation of capital dollars. The Charter provides Borough Presidents with the opportunity to identify boroughwide needs and City Council members to advocate for the concerns of their constituents when approving the capital budget. In addition the Charter specifies that Borough Presidents receive 5 percent of proposed capital budget appropriations; this carve out reduces an efficient and effective citywide allocation of total capital resources.

The Charter should be amended to focus the Borough Presidents' roles on identifying borough-based needs and advising the Mayor and the City Council on how best to address those needs. The Charter should be amended to eliminate the capital budget Borough President allocations.

5. Require resident feedback survey: The Charter does not require the City to solicit comprehensive, consistent, and quantifiable resident feedback. Input on City services is received through multiple channels including 311. While these data are valuable, they often are skewed toward complaints or reporting of problems. The City conducted a citywide survey on municipal services and quality of life in 2008; CBC repeated this survey in 2017. The surveys generated citywide and community district data about municipal services and quality of life. Such data are valuable to policymaking, service improvement, and accountability.

CBC recommends the Charter require the City to solicit resident feedback on quality of life and City service delivery in a manner that produces statistically valid results at the community district level at least every four years. These data would serve as an important complement to performance indicators included the Charter mandated Mayor's Management Reports (MMRs).

Areas Where Current Process Should Be Maintained

1. Maintain current revenue forecast process: The Charter directs the Mayor to prepare and provide the City Council with projections of City receipts in the ensuing fiscal year from non-property tax revenues, miscellaneous revenues, and federal and State grants by June 5.⁷ Following adoption of the budget, the City Council uses these projections to set the property tax rate in order to fund fully the expense budget.

The Office of Management and Budget (OMB) has been reasonably conservative in its estimates of non-property tax revenues. Under the current requirements, if receipts come in above estimates throughout the year, the City Council approves their use through the budget modification process described in Section 107(e).

This system has contributed to the City's fiscal stability by reducing the likelihood that the forecast is overly optimistic, particularly when the economy slows or contracts. While conservative revenue estimates could limit the City's ability to provide services it can afford, the current system does not have this problem. City-funded spending grew 5.3 percent annually on average over the last 18 years, well more than twice the 2.3 percent rate of inflation.⁸

A City Council report proposed the Mayor be required to submit non-property tax revenue estimates by May 25, which would then be subject to Council approval.⁹ If consensus cannot be reached on the forecast by June 5, the binding revenue estimate for the upcoming year would be determined by the Independent Budget Office on June 6. The current process for estimating revenues has served the City well and should not change.

2. Preserve mayoral and Council authority to set budgets for special entities: A City Council report proposes creating self-determined budgets for the citywide elected offices of the Public Advocate and Comptroller and formula budgets for the Borough Presidents, Community Boards, and the Civilian Complaint Review Board. Collectively, these entities received \$182 million in funding in fiscal year 2019.¹⁰ Adopting formula or self-determined budgets for these entities would restrict mayoral and Council discretion over budget priorities and could lead to spending increases without appropriate oversight.

3. Maintain mayoral flexibility in modifying budgets: Section 107(b) of the Charter allows for movement of funds from one unit of appropriation (UA) to another, subject to Council approval. A City Council report proposes the Council be granted the authority to increase, decrease, otherwise amend, and apply terms and conditions to these funding transfers. This could impede nimble management during the year. The Council approves the amount and terms and conditions for UAs when the budget is adopted, which provides important and sufficient oversight.

4. Retain the current role of the Comptroller in procurement: The Charter prescribes the City Comptroller's role in registering contracts is to ensure sufficient funds exist to pay for the contract, integrity in the contract award process, and that the vendor is not corrupt (Section 328). Proposals from Council and Comptroller reports would provide the Comptroller "pre-audit" responsibility that would allow the Comptroller to review a contract before it is approved.¹¹ An additional review may lengthen an already cumbersome procurement process and is inconsistent with the Charter-defined role of the Comptroller in procurement. The terms and conditions of a contract are matters of executive discretion.

Improvements Best Addressed Outside City Charter

1. More meaningful and limited Units of Appropriation with robust performance metrics: Some UAs do not reflect specific programs or services. Reports by the City Council and City Comptroller have proposed amending the definition of a UA or placing certain restrictions on how much of an agency's budget can be in a single UA. Currently, the Charter defines a process for the City Council and Mayor to co-determine UAs.¹² It is unnecessary to amend the Charter's UA definition since a change process already exists, and the benefits of proposed remedies are uncertain.

The Council and Comptroller reports also recommend the Charter require performance metrics for each UA. The Charter already includes some requirements for performance reporting, which is often not sufficiently tied to spending. The solution to the problem, however, rests first with improving the UA structure, and second, enhancing the metrics being reported.¹³ It is unclear that the Council and Comptroller recommendations would achieve, or are necessary to achieve, the performance reporting improvements desired. Cooperative action by the Council and Mayor could improve the UA structure and metrics without Charter changes.

2. Improving capital project needs assessments and budget management: The Charter lays out a comprehensive capital planning process and requires the executive capital budget include a description of each capital project, appropriations previously adopted for the project, and the funds required to complete the project (Section 214). However, the requirement for project-based reporting is not followed in practice. Clarifying the definition of capital project will not likely result in improved capital project status reporting; rather, greater adherence to current requirements is needed. Similarly, making the capital inventory and needs assessment the cornerstone of capital planning will require broadening its scope as recommended above, but effective planning also requires improving the rigor of the needs analysis already mandated.

3. Speeding up the procurement process: CBC recently released a report <<https://cbcnyc.org/research/9-things-new-yorkers-should-know-about-how-new-york-city-buys-stuff>> that highlighted the negative effects of a cumbersome procurement process, including reduced competition and higher costs.¹⁴ It is not clear that placing time limits for specific reviewers, as City Council and City Comptroller reports have proposed, would improve the process. These timeframes could be rendered irrelevant since reviewers could return contracts for revisions to avoid violating time restrictions. Proposals to require greater transparency during the review process to help identify bottlenecks and allow the Mayor's Office of Contract Services, elected officials, vendors, and the public to hold reviewers and agencies accountable have merit and are appropriate to pursue legislatively and administratively.

Governance

In addition to considering the Charter-defined budgeting, procurement, and capital planning procedures, this Commission also intends to consider governance proposals regarding the powers of the Borough Presidents, Public Advocate, and advice and consent powers of the City Council. In considering these proposals, CBC urges caution. New York City government generally has functioned well under the current Charter: The Mayor executes policy and is responsible for service delivery; the City Council enacts laws representing 51 geographic constituencies and provides oversight; and the Comptroller, Borough Presidents, and Public Advocate function according to the Charter. Modifying these roles could prove counterproductive by blurring the lines of accountability.

Conclusion

The budgeting procedures laid out in the Charter generally have served the City well. These processes and structures could be improved by allowing an RDF, addressing a reduced OPEB liability through deposit and withdrawal policies for the RHBT, making the City's capital inventory comprehensive, limiting the Borough Presidents' capital budget roles to need identification, and regularly assessing resident satisfaction with core public services. Other proposals should not be pursued since they could weaken the processes' current strengths or attempt to solve problems better dealt with in law or administrative practice.

Footnotes

[1] Section 258(a) of the Charter states, "The operations of the city shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles." See: New York City Charter, Chapter 10, Section 258, amended through March 1, 2019, (accessed March 3, 2019). [http://library.alegal.com/next/gateway.dll/New%20York/admin/newyorkcityadministrativecode?ftemplates&fn=default.htm\\$3.05&vid=alegal:newyork_ny](http://library.alegal.com/next/gateway.dll/New%20York/admin/newyorkcityadministrativecode?ftemplates&fn=default.htm$3.05&vid=alegal:newyork_ny).

[2] New York State Financial Emergency Act for the City of New York 86B/75 (accessed March 3, 2019). www.nysenate.gov/legislation/laws/FEA <<http://www.nysenate.gov/legislation/laws/FEA>>

[3] Ana Champeny, "NYC Revenues in a Recession: Quantifying the Potential Shortfall," *Citizens Budget Commission Blog* (February 26, 2019). <https://cbcnyc.org/research/nyc-revenues-recession> <<https://cbcnyc.org/research/nyc-revenues-recession>>.

[4] The RHBT is established in local Law No. 9 (2006), which sets out that the "sole purpose of the trust fund... shall be to fund the health and welfare benefits of retired city workers and their dependents." See: Local Law No. 9 of 2006 (June 19, 2006) <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4460456&GUID=FA4B31E6-CB28-4BDC-A84C-5241234FEE91&Options=6&Search=>

- [5] City of New York, Mayor's Office of Management and Budget, *Preliminary Budget for Fiscal Year 2020, Summary* (February 7, 2019), p. 16, <https://www1.nyc.gov/assets/omb/downloads/pdf/sum2-19.pdf> <<https://www1.nyc.gov/assets/omb/downloads/pdf/sum2-19.pdf>>
- [6] In fiscal year 2018, the normal cost of the OPEB benefit was \$4.9 billion and the PAYGO cost was \$2.4 billion. See: Thad Calabrese, *The Price of Promises Made: What New York City Should Do About Its \$95 Billion OPEB Debt* (Citizens Budget Commission, October 2017), <https://cbcny.org/research/price-promises-made> <<https://cbcny.org/research/price-promises-made>>
- [7] New York City Charter, Chapter 1515(a), amended through March 1, 2019 (accessed March 3, 2019), [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal.newyork.ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal.newyork.ny)
- [8] U.S. Department of Labor, Bureau of Labor Statistics, *Consumer Price Index – New York-Newark-Jersey City* (accessed March 3, 2019), All Urban Consumers – (CPI-U), www.bls.gov/regions/new-york-new-jersey/data/xg-tables/r02xgcpny1967.htm <<http://www.bls.gov/regions/new-york-new-jersey/data/xg-tables/r02xgcpny1967.htm>>
- [9] New York City Council, *Report to the 2019 New York City Charter Revision Commission* (January 2019), <http://council.nyc.gov/wp-content/uploads/2019/02/NYC-Council-Report-to-the-2019-Charter-Revision-Commission.pdf> <<http://council.nyc.gov/wp-content/uploads/2019/02/nyc-council-report-to-the-2019-charter-revision-commission.pdf>>
- [10] City of New York, Mayor's Office of Management and Budget, *Preliminary Budget for Fiscal Year 2020, Financial Plan Expense* (February 7, 2019), www1.nyc.gov/assets/omb/downloads/pdf/feb19-fp.pdf <<https://www1.nyc.gov/assets/omb/downloads/pdf/feb19-fp.pdf>>
- [11] Office of the New York City Comptroller, *A New Charter to Confront New Challenges* (September 2018), <https://comptroller.nyc.gov/wp-content/uploads/documents/A-New-Charter-to-Confront-New-Challenges.pdf> <<https://comptroller.nyc.gov/wp-content/uploads/documents/a-new-charter-to-confront-new-challenges.pdf>>
- [12] New York City Charter, Chapter 6, Section 100(c), amended through March 1, 2019 (accessed March 3, 2019), [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal.newyork.ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal.newyork.ny)
- [13] The preliminary management report shall contain for each city agency "an appendix indicating the relationship between the program performance goals included in the management report, and the corresponding expenditures made pursuant to the adopted budget for the previous fiscal year." See: New York City Charter, Chapter 1, Section 12(b)(6), amended through March 1, 2019 (accessed March 3, 2019), [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal.newyork.ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal.newyork.ny)
- [14] Ana Champeny, *9 Things New Yorkers Should Know About How New York City Buys Stuff* (Citizens Budget Commission, February 2019) <https://cbcny.org/research/9-things-new-yorkers-should-know-about-how-new-york-city-buys-stuff/> <<https://cbcny.org/research/9-things-new-yorkers-should-know-about-how-new-york-city-buys-stuff/>>

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Testimony on Charter-Defined Budget and Management Practices

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**REMARKS BY
ANTHONY E. SHORRIS
BEFORE THE
2019 CHARTER REVIEW COMMISSION**

March 11, 2019

Thank you for inviting me this evening and allowing me to make brief opening remarks.

My name is Anthony Shorris. I'm currently the Weinberg Visiting Professor at Princeton University's Woodrow Wilson School of Public and International Affairs, teaching in the graduate program in public affairs. Today, I also serve as a member of the New York State Advisory Group for the Federal Reserve Bank of New York, as an Advisory Board Member for the New York City Independent Budget Office, and a member of the Executive Committee of the Regional Plan Association. I should note that the views I express today are mine alone.

Prior to my current teaching role, I served four years as First Deputy Mayor of New York City. Other positions I have held of relevance include Executive Director of the Port Authority of New York and New Jersey, New York City Commissioner of Finance, and Deputy Chancellor of the Department of Education.

The Commission has before it numerous notions that are worthy of serious consideration and I applaud your work.

As you go forward, I'd like to suggest a few factors that might help frame your thinking.

First, as someone who's not a "strict constructionist" or "originalist", I believe the City Charter should be subject to periodic comprehensive review. The reason for this is clear: the world changes, and unless the structure of our government changes with it, New Yorkers risk being disadvantaged. Just as we shouldn't allow our physical infrastructure to deteriorate or become outdated, the same holds true for our governmental infrastructure.

Today, we see New York City operating in an environment that has changed in several major ways from the context in which it was subject to its last major revision.

- The city now competes in a far more *globalized environment*. That's true not only of its economic activity — we all know national and global firms now dominate our business structure as never before — but also as our people and culture have become as international as at any time in a hundred years.
- Equally familiar to us all is that the rate of *technological change* facing the government and our people is dramatically faster than ever. That means the shifting nature of economic activity demands new regulatory and policy approaches — as well as operational changes — at a pace we have never had to manage.

Testimony of Anthony E. Shorris

- Finally, and closely related to both the pace of globalization and technological change, we now have an economy that has become extraordinarily successful for some while failing many others, creating *indefensible gaps in opportunity* that are — and should be — driving more and more of the public mission.

We need a government that reflects this changing context. That means a government that responds more rapidly than ever to changing economic circumstance and which adapts to a constantly shifting globalized population and business structure. And most of all, it means an empowered government that can tackle the core issues of inequality with strength and passion, even if that means more of us must contribute more, sacrifice more.

In doing so, we need to address directly some of the core tensions of governmental structure in this context. I just want to mention two challenges that are facing all democracies in this rapidly changing environment.

We're always testing the balance between the needs of communities and the needs of the city as a whole. Most of the time, they are coterminous — great communities are what make a great city and local neighborhoods do not prosper in a weak urban environment. But from time to time, the needs of individual communities may not align with the needs of the greater city, and the stewards of the greater public trust in the end have to side with the most vulnerable who need housing they can afford, jobs with wages that can support their families, and transit systems that connect them to opportunity. Not every community can have every amenity, nor can every community be devoid of every disamenity — that's what being part of a great metropolis means.

We're also always testing the balance between the executive and legislative roles. Of course, no one would support an unchecked executive, but neither does anyone envy the gridlock that has paralyzed too many other democratic governments, especially given the context of change we discussed before. Governmental paralysis is not a neutral force. It benefits those with privilege when it puts the parochial before the universal, and weakens the faith of voters in the efficacy of democracy itself when it fails to respond to change. Paralysis can foster the rise of anti-democratic forces overseas and even here in America. Democratic government has to show it can work — especially in a time when alternatives to democracy are asserting themselves.

For these reasons, I'd urge to Commission to consider carefully how various changes under consideration would perform in this shifting environment. We have a pretty good structure in many ways — our city today is economically strong, operationally sound, and trying to move in a progressive direction, albeit too slowly. We have survived terrorism, economic crashes, and natural disasters. We know we could surely do could be better, which is why I'm glad you're here. But as we seek to make changes to the government's form in ways that are designed to last for decades to come, modesty about the risk of unintended consequences should frame our thinking. We can't afford to impede the growth of opportunity, the pace of our response to change, or our shared commitment to social justice.

Testimony of Anthony E. Shorris

I look forward to your questions -- and wish you only the best on the work ahead.



Testimony to the 2019 Commission on Charter Reform

Emily Goldstein, Association for Neighborhood & Housing Development

March 11th, 2019

ANHD is a coalition of community groups across the city working to build community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. We are excited at this commission's willingness to consider changes across a range of topic areas, and particularly encourage you to pursue changes in the charter that would ensure that our Land Use and Budgeting processes are responsive to the challenges New York City faces now and will likely encounter into the future. In particular, ANHD believes significant updates to the City Charter must be made in order to address growing inequality, and the affordability and displacement crises that have persisted despite various policy interventions. Action must be taken to ensure New York City continues to serve as a beacon of opportunity for both current and future residents of *all* socio-economic backgrounds.

The proposals we describe in this testimony were developed in conjunction with the Thriving Communities Coalition, which ANHD convenes. The coalition includes grassroots organizing, advocacy, policy, and legal services organizations who work at the neighborhood and citywide level, and who are committed to pursuing reforms to the City Charter that will advance the following principles:

Fair distribution of resources and development

Our communities call for an equitable allocation of burdens and benefits related to investment, infrastructure, new growth, and economic development that correct for historic disinvestment, marginalization, and displacement pressure to eliminate disparities across race, geography, and income.

Enforceable commitments – No more empty promises

Our communities call for the enforcement of commitments made to mitigate impacts from development and investment.

Integration without displacement

Our communities call for the right to stay in and access neighborhoods with quality housing, good-paying jobs, and cultural and social connections.

Transparency and accountability

Our communities call for transparent planning shaped by early and ongoing community engagement.

Real community power and ownership

Our communities call for self-determination in the planning process, community-led development, and solutions that are responsive to our identified needs and opportunities.

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Focus Area: Land Use – ULURP

Mandate a regular and public process to make changes to the CEQR Technical Manual.

In recent years, we and many other organizations have criticized the methodology used to evaluate potential indirect displacement impacts in the EIS process. Unfortunately, there is no public process or mechanism by which we can actually have our concerns heard because the Charter currently has no requirements regarding updates to the CEQR Technical Manual. In the example of displacement, this has contributed to distrust in and frustration with ULURP, and the feeling that the negative impacts of certain land use actions are not being properly identified, let alone addressed. In other subject areas, changing facts on the ground and updated science similarly would seem to demand updated methodology. For example, climate change projections are rapidly shifting, while the methodology for evaluating environmental impacts is not.

While we do not believe that specific technical methodologies should be enshrined in the Charter itself, the Charter should ensure that the methodologies used to evaluate the impacts of proposed land use changes are regularly evaluated and updated. We propose a requirement that a CEQR Technical Manual revision process occur at minimum every five years. The process should be overseen by an appointed Commission, utilizing an expert panel to review and propose updates. Commissioners should be appointed by elected officials including the Mayor, Borough President, City Council Speaker, and Public Advocate, with no elected official appointing a majority of the total seats. The public should be able to participate in the revision process via a comment period and public hearings, before the updated manual is adopted by a vote of the Commission.

Require a Detailed Analysis of Direct and Indirect Residential Displacement in every EIS

Currently there are thresholds that must be met before a detailed analysis of direct and indirect residential displacement is required in an EIS. That means a detailed displacement analysis is often not done. We believe the charter should require a detailed displacement analysis any time an EIS is required.

Require an Enforceable Mitigation Plan Following an EIS

Currently NYC's environmental review process requires disclosure of a project's impacts, and when a significant adverse impact is found, potential mitigations are identified. However, there is no requirement that the identified mitigations be proportional to the impacts, nor that any mitigations actually be executed.

We propose that the Charter require a comprehensive mitigation plan be drafted and publicly shared following an EIS. This mitigation plan will identify any negative impacts found in the EIS analysis and propose a plan to mitigate those negative impacts through binding and enforceable mechanisms (such as deed restrictions, zoning text, a set-aside fund, etc). The charter should require that a final mitigation plan be enacted concurrent to any land use change. All mitigation plans, regardless of enforcement mechanism, should be a formal part of the land use record, associated with dedicated funding sources

and/or formally included in budgeting processes where relevant, and subject to progress reporting by the Mayor's Office of Operations and oversight by the New York City Council. A city agency – we suggest the Mayor's Office of Environmental Coordination (MOEC) – would need to be empowered to litigate against land owners that failed to comply with required mitigations.

Reform Public Land Disposition

Public land is an extraordinarily valuable resource, and should be used only for purposes beneficial to the public. To the extent that land remains in public control, we can assume this to be the case, or have recourse through existing public processes (agency oversight hearings, budgets, etc) to address problems. However, the Charter should include greater restrictions on the disposition of public land to private entities, as once land ownership has passed out of public hands, public accountability likewise diminishes.

We recommend that all public land disposed of to a private entity have a covenant running with the land in perpetuity with requirements for local and targeted hiring in both construction and permanent jobs. In addition, in any instance where public land is disposed of to a private entity to build housing, there must be a covenant requiring developments to remain 100% affordable to an outlined range of AMI levels, and under non-profit control (including community land trusts, limited-equity cooperatives, and mutual housing associations), in perpetuity.

Require ULURP for NYCHA land

Currently, NYCHA land is not required to go through the same public review and decision making process as sales or leases of other public land. We propose that the Charter require NYCHA land to go through ULURP in order to promote transparency, and give residents and local elected officials a clearer say in the process. NYCHA land would simply follow the same public review process other city-owned land must go through when it is disposed of to a private entity.

Focus Area: Land Use – Comprehensive Planning

The Charter should require the City to engage in a Comprehensive Planning process every Ten Years.

Our purpose in proposing this massive undertaking are to make land use and budgeting decisions more transparent; place equity goals front and center in the City's land use and budgeting processes; have thorough and accurate analyses of our communities' needs; and create clear pathways for those needs to be addressed in the City's land use and budgeting decisions.

Step 1: Planning Mandate & Principles

We propose that the mandate for Comprehensive Planning in the charter specify the following guiding principles:

- Responsive and proactive planning that seeks to correct historic divestment, meet the needs of current low-income residents of the City, and plan for growth in a way that will allow New York to continue to serve as a beacon of opportunity for future residents of all socio-economic backgrounds. To best meet current and future needs, planning must be coordinated with budgeting and policymaking such that all parts of the planning process and the resources of the City are aligned toward the same goals.
- Fair distribution of resources and development. An equitable allocation of burdens and benefits related to investment, infrastructure, new growth, and economic development that correct for historic disinvestment, marginalization, and displacement pressure to eliminate disparities across race, geography, and income. The goal of planning should be to ensure that every New Yorker has equal access to opportunity, regardless of where they live. To achieve this, planning must focus on real outcomes for communities and people – not identical planning treatment or level of investment, but strategies tailored to address existing inequality and help to ensure that all people can thrive.
- Integration without displacement. The right to stay in and access neighborhoods with quality housing, good-paying jobs, and cultural and social connections.
- Transparency and accountability. Planning should be shaped by early and ongoing community engagement. The goal is not only to enable New Yorkers to participate, but to ensure that agency and City officials are accountable to the communities they serve, and to the principles outlined by this planning process.
- Real community power and ownership. Community-led planning and community-controlled development responsive to identified needs and opportunities should be supported and encouraged. Communities must be equal partners in the planning process, with the goal of planning by, not only for, communities.
- A Right to Housing. The goal of the City's planning processes must be to ensure long-term and not just temporary solutions to the affordability and homelessness crisis. A right to housing would direct city policy to focus on permanent housing solutions, with a focus on serving the lowest-income New Yorkers, people who are homeless, and those most at risk of displacement. The City must plan for and create deeply affordable housing in every community and adopt a housing strategy that centers the needs of those with greatest need, i.e. people who are homeless and extremely low-income.
- A balance between local self-determination and strategies that make every community a partner in building the future our City needs. Each community has deep expertise and experience and knows its own needs best – and everyone must do their part to ensure that our City has what it needs to become a thriving, equitable city.

We propose that the Comprehensive Planning process be led by a Citywide Steering Committee. The Steering Committee would collaborate with City officials to develop the specific criteria used to assess community-level needs, opportunities, and risks; help generate goals that account for both current need, and future growth; and help select from among potential land use frameworks and provide ongoing support for implementation of local plans. To broaden participation engagement in the process,

we also propose Borough Committees, which would help to oversee and coordinate efforts at the community district level, and work with the Borough President to identify cross-district priorities.

Both the Steering Committee and Borough Committees should be representative of New York City's diversity, and include people of color, low-income renters, immigrants, youth, and others historically marginalized in planning processes. The Citywide Steering Committee should also include community planners, affordable housing advocates, and other subject matter experts who can support the committee in discussions of technical information.

Step 2: Needs Assessment

A. Community-Level Assessment of Existing Needs, Access to Opportunity, and Displacement Risk

The City's comprehensive planning process must start with a community-level assessment of each area's opportunities, unmet needs, and existing displacement risk. This assessment should include both quantitative data – a common framework of information that will permit comparison among communities, and enable progress to be tracked over time – and qualitative data – narratives from community members on the ground who are most directly impacted by the City's planning processes. Both types of data should then be considered when goals related to programming, investment in facilities & infrastructure, and growth are set for each community district.

We recommend that these local needs assessments be carried out by our Community Boards, building on the current Community District Needs Assessments. To effectively carry out the responsibility of assessing local needs, community boards need to accurately represent the communities they are serving and ensure they have the necessary resources to effectively engage the public. To ensure better representation, the charter should mandate alignment between community board composition and the demographics of the district, based on available data. To ensure better engagement, funding for community boards should be increased alongside increased requirements for outreach and engagement, including but not limited to:

- Website management, social media, advertising in local press, events, direct resident engagement, translation services as well as childcare, and refreshments at meetings
- Yearly report from CBs on demographic changes, new projects etc (like a more robust community district profile)

In addition, community boards need increased staffing support to help them navigate the complex process of planning. Importantly, these staff should be hired by community boards themselves, not the Department of City Planning, to allow local communities to operate as independent and equally empowered partners in planning. We emphasize that these recommendations supplement and build upon the changes made to Community Boards in the 2018 Referendum.

Quantitative Analysis

The quantitative assessment process must be designed to produce results that allow City actors and everyday New Yorkers to answer the questions: which areas need what, and where should future growth be directed? Each indicator must produce data that contributes to planning that meaningfully addresses the needs of existing residents, increases access to opportunity, reduces neighborhood inequality, and plans for future growth in a way that limits the risk of displacement.

The creation of a comprehensive plan every ten years will allow the City to align its planning process with the release of federal Census data, which occurs every ten years. To the extent possible, the City should seek to account for known flaws in Census data, such as the undercounting of undocumented people, and use community data where available and sound.

This analysis must include examination of community-level determinants of social, economic, and physical well-being across the following topic areas, which should be identified in the charter: Housing, Jobs & Industry, Education & Community, Transportation, Health, and Sustainability & Resilience.

Displacement Risk

The quantitative analysis should specifically seek to identify communities where risk of displacement is greatest. Among other indicators, data collected should assess:

- The share of moderate and low-income residents who are housing cost burdened or overcrowded
- Number and share of rent-stabilized units
- Any increase or decrease in the number of rent-stabilized units since the last such assessment
- Sale prices of residences in the community
- Alteration and demolition permits issued by the Department of Buildings
- Evictions executed
- Existing development potential in the community, based on the amount of development allowed by current zoning
- Median rent relative to the overall city average

Outcomes

Where the “access to opportunity” analysis would measure determinants that the City can directly affect through strategies such as affordable housing development or investment in transportation infrastructure, this portion of the analysis would focus on the outcomes for community members: what is actually happening in people’s day-to-day lives, and are the City’s strategies having the intended effect? We believe that such an assessment is a critical part of developing equitable planning strategies that focus on the greatest areas of need, as opposed to examining narrowly whether investment has been equal. Indicators in this category could include factors such as average wages, poverty rate, levels of educational attainment, and school performance.

Revealing Disparities

The City should analyze disparities across two axes:

- Geographic communities with large people of color and immigrant populations. After identifying the communities at greatest risk of displacement, with the least access to opportunity, and with the highest needs, the City should then identify which communities are majority people of color or immigrant communities.
- Marginalized populations, including people of color, immigrants, children, seniors, and people without a high school degree. This would require disaggregation of information collected during the “outcomes” analysis.

Disclosure of these disparities would enable City actors and members of the public to gauge the extent to which already-burdened populations continue to be negatively impacted by the City’s planning strategies, a factor that must be considered as projects and plans are prioritized.

B. Borough-Level Hearings and Strategy Statements

After data at the community level is collected and discussed locally, each Borough President should conduct a hearing where borough residents can learn the results of the assessments across their borough. This hearing would present an additional chance for residents to testify about the issues they view as most important – feedback that would be reviewed, along with the community-level data, in subsequent stages of the process. Each Borough President would be invited to prepare a statement summarizing the borough’s most critical needs and proposed policies, investments, and other strategies that could address such needs.

C. Citywide Assessment of Projected Future Needs

Where the community- and borough-level assessments would focus primarily on *today’s* needs – needs that reflect decades of disparate investment in neighborhoods and people, and that point toward strategies designed to correct such inequalities – the citywide assessment should seek to project anticipated growth in the next 10 years, and the *future* needs that are likely to arise as a result of this growth. This projection of future needs should be conducted by the Department of City Planning and mirror the same categories of need assessed at the community district level – including housing, jobs & industry, and the other focus areas named above.

Step 3: Goal-Setting Based on Needs

A. Growth & Investment Goals by Community District

At this stage of the process, the City would establish community-district level goals that would take into account both existing community needs, and projected citywide needs.

Importantly, we believe that the charter should require the City to direct the majority of future growth to communities where displacement risk is low, and to direct investment – in infrastructure, services, and meaningful anti-displacement strategies – to communities where access to opportunity is lowest and need, as indicated by outcomes, is highest.

We believe that a requirement that directs growth to communities with low displacement risk and investment to areas that most need it balances the City’s responsibility to plan for underserved communities who are already here, while also creating opportunities for future residents of the City. As it plans for investment, the City should especially prioritize communities with populations that have been specifically and structurally disadvantaged over time.

We propose that the Steering Committee work with the Department of City Planning and other agencies to set land use, budgeting, and policy goals for each community district. Again, these goals would both seek to meet current needs, and account for each community’s share of projected future needs, including growth needs. Community district targets would include targets related to:

- The total amount of housing, and amount of deeply affordable housing, to be created in each community
- The creation or upkeep of community facilities such as parks, libraries and shelters
- Investment in infrastructure such as schools, transportation and health facilities
- Investment in anti-displacement strategies

The Charter would require that these draft community district-level goals be released publicly, followed by series of required, borough-based information sessions & opportunities for the public to provide feedback and suggested revisions. This process would be similar to, and expand upon, the review process already required for the Citywide Statement of Needs.¹ As with that process, members of the public, the borough presidents, and each community board would be invited to submit comments and proposals. The Steering Committee would make any modifications in response to the feedback, and then the Steering Committee, City Planning Commission, and City Council would vote - in that order - to adopt the goals.

The Steering Committee should also set goals related to improving life outcomes for disadvantaged communities and populations throughout the City. These goals would be addressed with near-term investments in City services responsive to those needs. Again, these draft goals would be released publicly and made available for comment before potential modification by the Steering Committee, and a final vote to adopt by the Steering Committee, City Planning Commission, and City Council.

¹ New York City Charter Chapter 8: City Planning, Section 204(f): Citywide Statement of Needs.

This process would build on the existing requirement in the Charter that the Mayor annually create and report on both the poverty rate and the City's efforts to reduce it,² and disclose "short and long term plans, organized by agency or by issue, for responding to the significant problems and disparities evidenced by the data presented."³

Step 4: Creation of the Comprehensive Plan

Guided by the approved goals, the City would then create a Comprehensive Plan consisting of four parts:

- A land use and infrastructure framework to set guidelines & targets for future development in each community
- A strategic policy statement to guide future policy and budgeting decisions
- A Ten-Year Capital Plan to guide future decisions about capital spending
- A Four-Year Expense Program for Service Delivery to guide agency spending on contracts for services to communities.

A. Land Use & Infrastructure Framework

The Department of City Planning would create a high-level land use and infrastructure framework to guide future planning and development across the City. We propose that DCP be required to create several alternative frameworks among which the Steering Committee could choose. All of the alternatives would be required to respond to the community district-level goals outlined during the "goal-setting" portion of the planning process.

The City would then perform a Generic Environmental Impact Statement for the Steering Committee's preferred framework. Pursuant to the GEIS process, there would be opportunities for public hearings, comments, and potential revisions before the GEIS was finalized. This process would not create a detailed zoning framework for each community district, but would instead provide a high-level outline of the amount and type of development planned for each community.

Finally, the City would create a list of infrastructure projects required to address existing needs and mitigate future impacts disclosed during the GEIS process for the preferred land use framework.

B. Strategic Policy Statement

The Charter already requires that every four years, the Mayor issue a strategic policy statement that identifies the most significant long-term issues faced by the City, policy goals, related to those issues,

² New York City Charter Chapter 1: Mayor, Section 16(b): Report on Social Indicators and Equity. [http://library.amlegal.com/nxt/gateway.dll/New%20York/charter/newyorkcitycharter/chapter1mayor?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$anc=JD_16](http://library.amlegal.com/nxt/gateway.dll/New%20York/charter/newyorkcitycharter/chapter1mayor?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=JD_16)

³ Example here: <https://www1.nyc.gov/site/opportunity/reports/social-indicators-report.page>

and proposed strategies for meeting the goals.⁴ We propose that the Charter be amended to require the strategic policy statement to describe what policies and strategies will be used to advance the goals identified as part of the comprehensive planning process, and how. As is already required in the charter, the Mayor would be required to consult the strategic policy statements developed by borough presidents, and confer with the Department of City Planning in preparing this statement.⁵

C. Budgeting (See Equity in Budgeting Proposal below)

Step 5: Implementation, Tracking & Accountability

A. Implementation

The Land Use & Infrastructure framework would guide all future community land use plans and zoning actions, whether City-sponsored, developer-led, or community-led.

Each community district would be required to create a community land use plan. Each community land use plan would include proposed zoning changes, and proposed siting of infrastructure projects deemed necessary to meet each community's current and future needs.

Community members would be deeply involved in the creation of local community plans, supported by strengthened community boards and the independent planners hired to work with each CB. In creating each community district's local plans, each community would be given the opportunity to consider several potential scenarios developed by their local community board's planner. The scenarios could vary, for instance, in proposed locations for facilities or new housing development – but all scenarios would be required to advance the community district level goals identified and approved in the “goal setting” phase of comprehensive planning, and to align with the higher-level land use framework. Through local hearings and other community engagement that would include, but not be limited to, hearings at the community board level, the community would select a preferred scenario, which would be adopted as the community land use plan.

Community plans would not be automatically accompanied by concurrent rezoning actions. But once DCP or community board decided to advance the proposed zoning changes, they would move forward per an expedited timeline, once they were confirmed as being in compliance with the land use framework.

⁴ New York City Charter Chapter 1: Mayor, Section 17: Strategic Policy Statement.
[http://library.amlegal.com/nxt/gateway.dll/New%20York/charter/newyorkcitycharter/chapter1/mayor?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$anc=ID_17](http://library.amlegal.com/nxt/gateway.dll/New%20York/charter/newyorkcitycharter/chapter1/mayor?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=ID_17)

⁵ New York City Charter Chapter 8: City Planning, Section 191(b)(6): Department and Director of City Planning.
[http://library.amlegal.com/nxt/gateway.dll/New%20York/charter/newyorkcitycharter/chapter8/cityplanning?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny\\$anc=ID_191](http://library.amlegal.com/nxt/gateway.dll/New%20York/charter/newyorkcitycharter/chapter8/cityplanning?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny$anc=ID_191)

In areas where rezoning actions based on community plans had not yet been passed, private and public actions deemed in compliance with the more general land use framework for that community would be permitted to move on in expedited process. Local councilmembers, with the support of the Speaker, would have the option of calling up any specific actions they disagreed with. Creating this fast track for actions deemed to in compliance with the broader land use framework would have the dual benefit of expediting actions that advance the community district level growth goals, and incentivizing communities that wish to direct growth at a more granular level to create community plans. Ideally there would also be additional incentives or disincentives set up to encourage land use actions to comply with the Comprehensive Plans.

The four-year Strategic Policy Statement would be used by the Mayor, City Agencies, and City Council to guide future policy decisions in alignment with the goals of the Comprehensive Plan. To improve transparency and accountability, the Charter should require that policy proposals include a written explanation of how the policy in question advances the goals, and meets the needs, identified in the community planning process.

B. Tracking

We propose that as part of the comprehensive planning process, agencies be required to collect and disclose capital and, to the extent possible, programmatic investments designed to advance the community district-level goals identified in the comprehensive planning process. To the greatest extent possible, this information should be mapped in a way that allows community members understand the investments in their neighborhoods and progress toward completion of multi-year capital projects.⁶ Much agency reporting is not organized this way today, making it difficult for everyday people to know what is going on (and not) in their community.

C. Accountability

We believe that the comprehensive planning process we have outlined will succeed only if the City creates oversight bodies to ensure the plan's success, dedicates resources to these oversight bodies, and relies on deep and meaningful community participation to help see through the successful implementation of the multi-faceted components of each community plan.

We are still working to develop a long-term vision for oversight and accountability. As initial ideas, we suggest that both the citywide Steering Committee, and borough-level committees we have envisioned be supported as permanent bodies supportive of comprehensive planning, rather than appointees who would serve only during the period in which the comprehensive plan is created.

These bodies should be required to host annual community hearings where progress toward district-level goals can be discussed and priorities for the forthcoming year identified. In addition, we propose

⁶ A similar idea, a NYC Capital Projects Tracker, has been proposed by Councilmember Brad Lander as [Intro 113](#). The Thriving Communities Coalition suggests that a Capital Projects Tracker not only be established, but *required* as part of the comprehensive planning process within the charter.

that the City create an inter-agency coordinating group to help facilitate the actions of agencies as they carry out the plan.

Focus Area: Finance – Comprehensive Planning Budget Component

The City's budget process must align with any new Comprehensive Planning process. Our proposals are designed as a part of our Comprehensive Planning proposal (above), and we encourage that the two be adopted together. However, this proposal for Equity in Budgeting can be advanced on its own with minor modifications if necessary, and would still have an immediate and positive impact.

We believe that an equitable approach to budgeting requires that resources be directed based on existing needs. Investment to address the needs of existing populations and communities must be distinguished from investment designed to accommodate future needs, and should never be dependent on a community or elected official's acceptance of increased density.

Our Comprehensive Planning proposal (above) includes a set of guiding principles, a needs assessment process, and a process for setting local and citywide goals based on the existing needs identified by every community district, prioritized to address disparities across neighborhoods and populations. Goals would also take into account projected future needs.

The Charter should require the Ten Year Capital Plan to advance the local and citywide goals laid out in the Comprehensive Planning process.

Community boards, borough presidents, and agencies - all of which play a part in setting the City's capital priorities - should be required to respond within the budgeting process to the identified needs and explain how their recommendations advance the identified goals. For example, today, when agencies prioritize projects within the capital plan, program, and budget, they frequently use a matrix that looks at revenue, cost, timing, and other factors. Progress toward the goals identified in comprehensive planning would now have to be included as a selection criterion and given weight when prioritizing capital projects. Agencies would be required to disclose how specific decisions in the Ten Year Capital Plan were intended to advance the goals.

Agencies should be required to align annual capital budget decisions with the Ten Year Capital Plan.

The Charter should require the creation of a new Four-Year Expense Plan for longer-term planning of expense budgeting.

Today, planning for contracts for City services occurs annually as part of the expense budgeting process, but there is no longer-term, cross-agency vision for how service contracts will be deployed. We propose that the charter mandate a *new* Four-Year Expense Program to align City contracts for services with the areas and populations that most need them, as identified in the needs assessment process. Like the existing Four-Year Capital Program, the Four-Year Expense Program would set forth a detailed vision for several years rather than only one, allowing competing priorities to be weighed thoughtfully and

encouraging long-term investments in critical programming to be planned over a longer period rather than only year to year.

Agencies should be required to align Annual Contract Budgets with the Four Year Expense program.

The Charter should require an Equity Fund in each year's Contract Budget.

We believe a percentage of each year's Contract Budget should be reserved for the communities with the greatest identified need. This Equity Fund would help to guarantee that a certain share of each year's budget would go to the places and people that need it most. This requirement would parallel the current requirement in the charter that allocates 5% of each year's capital budget among the five boroughs based on population and geographic area.

Agencies should be required to collect and disclose expenditures, and track and map this information in a way that would allow community members understand the investments in their neighborhoods and progress toward meeting the greatest needs. The Administration should also be required to track and disclose data related to equality of opportunity and quality of life for different groups across the City, keeping track of this information over time to highlight process and surface areas of ongoing need.

**2019 CRC Expert Forum
Supplemental Written Testimony
NYC Mayor’s Office of Management and Budget
March 29, 2019**

Introduction

The Office of Management and Budget urges the Commission to refrain from altering budgetary provisions of the City Charter which, along with the New York State Financial Emergency Act for the City of New York, have provided the statutory framework for the City’s prudent financial management since the fiscal crisis of the 1970s.

The current Charter was heavily influenced by the fiscal crisis which brought the City to the verge of bankruptcy. The 1989 Charter revisions recognized that fiscal controls and strong Mayoral accountability are essential to the fiscal health of the City. Although our fiscal outlook has improved significantly since the 1970s, we must not undermine the sound groundwork that has helped the City grow and prosper.

The history of the City’s financial management under the Charter is evidence of the soundness of its current structure. As required by the Charter, the City has balanced its budget for the past 39 years, and has a rigorous program to ensure that no operating expenses are included in the capital budget or financed with bond proceeds. The City has progressed from a period of inability to access public capital markets to achieving the highest bond ratings in its history with investors purchasing billions of dollars of its bonds annually to support its capital programs. Last month, Moody’s Investors Service increased the City’s bond rating to Aa1, their second highest level, citing “strong governance and financial best practices, including conservative revenue forecasting, tested through periods of fiscal stress, and strong liquidity.”

This Commission has the broadest mandate to revise the Charter in nearly 30 years. OMB urges the commission to reject the proposed budgetary changes which threaten to undermine the hard-earned fiscal health of the City.

The City’s Revenue Estimates Should Not Be Subject to Negotiation

The Charter grants the Mayor the ability to determine the City’s revenue estimates. The significance of this allocation of responsibility and its relationship to the other budgetary provisions of the charter should not be discounted.

The Mayor is required to prepare a budget that is in balance in accordance with Generally Accepted Accounting Principles. In order to comply with this critical Charter mandate, the Mayor must be able to establish revenue estimates.

Subjecting the revenue estimation process to negotiation with the legislative branch will introduce a political process into the determination of revenue estimates. It is clear that the result of this political process will be revenue estimates that are less likely to be achieved and are more likely to result in budgetary imbalance.

The consequences of an imbalance are severe. If an imbalance is not addressed before the end of the fiscal year, the Mayor will have violated the law. Further, New York State Financial Control Board could be given control of the City's budget. The only way to avoid such an outcome should the imbalance become evident late in the fiscal year would be draconian cuts to vital services and workforce reductions.

The record of prudent establishment of revenue estimates and the resulting history of achieving budget balance proves the importance of Mayoral control of this governmental function. The City's fiscal monitors and the rating agencies regularly praise the cautious Mayoral revenue forecasts, and recently cited them as support for increasing the City's bond rating.

The Mayor's Authority to Impound Funds Permits Flexible and Timely Response to Fiscal Problems and Should Not be Limited

Altering the Mayor's authority to impound City funds would severely limit his or her ability to act promptly to address future, previously unforeseen, revenue shortfalls resulting from economic distress, and could have devastating consequences. The purpose of this power, along with the power to establish revenue estimates, is designed to provide the Mayor with tools to ensure that the budget is balanced, even in difficult times.

However, the balance requirement is not limited to a forecast balanced budget; the budget must end in balance each fiscal year. Economic disruptions can occur very suddenly, with precipitous consequences, as the City experienced in 2001 and in 2008. The impoundment power is designed to provide the Mayor with the ability to address such sudden disruptions. This power goes hand-in-hand with the Mayor's ability to set revenue estimates as a means of ensuring that ongoing budget balance is achieved.

It would be impossible to develop a set of criteria to reasonably limit the Mayor's impoundment powers. Any such criteria will be artificial and unrelated to the circumstances that cause the underlying economic stress. Future Mayors will need flexibility to employ their impoundment powers in a way that addresses fiscal strains that we cannot know today. The fact that we do not know when an economic crisis might hit illustrates the difficulty in developing functional criteria. Maintaining the range of options available to the executive is essential to address downturns that may happen in future economic cycles.

Ratings agencies, investors and the public, rely on the Mayor's ability to make swift decisions when necessary to reduce spending to avoid budget deficits. They recognize that the impoundment power is an essential element of the Mayor's ability to manage the City.

Under the Charter, the Mayor must provide a written disclosure to the Council that explains reasons for the impoundment if the Mayor is forced to take that unusual step. This provision ensures transparency and accountability, and is an appropriate and sufficient constraint on the Mayor's impoundment powers.

Expanding Terms and Conditions Impedes the Legislative Process

Expanding the power of the Council to impose terms and conditions within the budget will result in the budget being used to leverage unrelated political goals. As we have seen at other levels of government, the power to attach unrelated legislation to budget appropriations may have negative consequences. Proposed legislation should be evaluated on its merits through the political process rather than implemented by leveraging the need to adopt a budget.

Narrowing the Scope of Units of Appropriation Impairs the Executive's Ability to Carry Out Programs Efficiently

The Charter already provides an appropriate definition for use in developing units of appropriation. Charter Section 100 provides:

Each proposed unit of appropriation shall represent the amount requested for personal service or for other than personal service for a particular program, purpose, activity or institution; provided, however, that a single unit of appropriation for personal service or a single unit of appropriation for other than personal service may represent the amount requested for more than one particular program, purpose, activity or institution if the council has adopted, on the recommendation of the mayor, or if the council has adopted on its own initiative and the mayor has approved, a resolution setting forth the names, and a statement of the programmatic objectives, of each program, purpose, activity or institution to be included in such a single unit of appropriation.

Placing additional constraints on units of appropriation will create obstacles in the event that funds need to be moved from one artificially small unit of appropriation to another. Narrower units of appropriation would inhibit the ability of agencies to implement the programs financed by those units of appropriation, and inappropriately involve the Council in program operations. In addition, they will result in an unworkable need to constantly return to the Council to seek budget modifications to change units of appropriation. It is simply impossible to predict the precise amount of spending at such an extremely granular level. In a city as large as New York, it is essential to maintain flexibility to address inevitable areas in which spending is faster or slower than expected without constantly returning to the legislative process.

To the extent that the Council seeks additional information about units of appropriation, amendment of the Charter is not the solution. OMB will continue to work with the Council to address their concerns about specific units of appropriation that they believe are overly broad without unnecessarily revising the City's Charter.

The Proposed Adjustments to the Capital Budget Process Would Reduce Flexibility and Slow Project Delivery

The City works with the Council each year to increase the number of budget lines in a manner that allows agency flexibility. Narrowing budget lines without maintaining flexibility for agencies slows project completion dates.

Contingency funding must be determined by the complexity of the project, not by fixed formula as proposed by the Charter Commission. This would delay both projects and payments to contractors pending Council approval of Agency budgets.

Finally, the Department of City Planning (DCP) should not be put in charge of the capital budget. OMB has decades of experience managing the capital budget, which is directly connected to the expense budget as it relates to debt service, as well the City's bond and financing programs. DCP's mission is wholly unrelated to capital budget management. De-linking management and oversight of these budgets and programs is therefore unwise. It is important to note that at the Charter Commission hearing DCP testified in favor of maintaining OMB management of the capital budget.

Fixed Budgets for Certain Agencies Reduce Flexibility and Divert Resources that Should be Allocated through the Budget Process

Determining the appropriate level of funding for City agencies is the most important aspect of the budget process established by the Charter. That process currently works in an efficient manner to prioritize funding among many competing needs. Legislatively establishing fixed budgets for certain agencies without regard to the City's budget process undermines the ability to set appropriate funding levels on a year by year basis. It would also diminish the ability of the Mayor and the Council to meet demands by allocating funds in a manner that meets the City's most pressing needs. For example, fixed budgets cannot be altered and will structurally limit choices a Mayor can make in an emergency or recession to preserve core services.

Pre-Funding the City's Other Post-Employment Benefits (OPEB) Liabilities Should Not Be Mandated at a Specific Level

The City currently funds OPEB, principally retiree health benefits, each year based on the actual costs of such benefits in that year. In addition, the City has established a trust fund currently funded at \$4.5 billion to address future OPEB costs. On an actuarial basis, the costs of funding the City's future OPEB liability would be over \$90 billion. It is important to note that in calculating this liability the actuaries are required to make estimates about the growth in cost of these health benefits including the medical trend and who will be responsible for what kind of care many decades into the future. While making these assumptions is necessary for the calculation of this required estimate, there is very significant room for error. Mandating that the City contribute now to such future liability will severely impair the City's ability to fund its other current programs and would result in a reduction in spending for City services. Although we recognize that there are significant future OPEB

needs, the City should continue to make progress toward future needs to the extent that sufficient funds are available based on then-current conditions rather than specifically mandated amounts.

Rainy Day Fund

OMB supports a rainy day fund in principle. However, we believe that the matter should be handled legislatively, as there are budgetary concerns that should be carefully vetted by the Mayor and Council. Further, even if passed via Charter revision or local law, a rainy day fund is not consistent with state law.

Expanding the Asset Management Program (AIMS) is Unnecessary

The Charter Commission has proposed that the City expand the scope of the AIMS report in regards to both types of infrastructure and the amount of the asset. This revision is unnecessary, as AIMS is already a sufficiently comprehensive analysis.

AIMS is a Charter-mandated program to report on “State of Good Repair” of the City’s major fixed infrastructure. State of Good Repair is defined as what is necessary to maintain the structural integrity of the asset, unconstrained by availability of funding. Assets with a replacement cost of at least 10 million dollars and a useful life of at least 10 years are included in the inventory. This is a broad and comprehensive review of 4,570 assets, with an average of 135 new assets added each year. The condition of the components reported in AIMS become the building blocks of a future capital project when Agencies develop meaningful scopes to address their programmatic needs as well as existing conditions.

The Commission has also proposed that the Ten-Year Capital Strategy and Commitment Plan cross-reference the AIMS report and the City’s Statement of Needs, including details for when and how the City will make investments necessary to fund new and expanded facilities and maintain infrastructure in a state of good repair. This is unnecessary, as the City already produces reconciliation report every Spring that shows the correlation of needs to planned agency capital and expense funding for the next four years.

Conclusion

The current City charter has ensured a stable budget structure that has provided fiscal strength through decades of both economic cycles and political change. The provisions of the Charter were well thought-out, providing an interlocking framework for sound fiscal management that has left the City in a strong fiscal position that is the envy of most municipalities. Changing the budgetary provisions of the Charter is short-sighted and dangerous. The proposed changes would represent a tectonic shift in the balance of responsibilities that currently exist between the branches of City government, resulting in the inability of future Mayors to manage our complex city in both ordinary times and periods of fiscal stress. Therefore, we urge you to reject the amendment of the budgetary provisions to the charter.