

# **RECOMMENDATIONS TO THE NEW YORK CITY CHARTER REVISION COMMISSION**

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**MAY 2010**



Office of the  
**Manhattan Borough President**  
Scott M. Stringer



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**Office of the Manhattan Borough President Scott M. Stringer**

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**Table of Contents**

<b>Ensuring Meaningful Community-Based Planning and Community Governance: The Future of Community Boards and the New York City Charter .....</b>	<b>3</b>
History of Community Boards.....	3
The Role and Impact of Community Boards.....	5
Community Boards and Comprehensive Community-Based Urban Planning.....	8
Recommendation.....	10
Community Board Appointment Process.....	11
Recommendation.....	13
Training and Support for Community Boards.....	14
Recommendation.....	15
Clarification of Community Board Requirements and Procedures.....	15
Recommendation.....	16
 <b>Shaping the City’s Growth: Improving the City’s Ability to Perform Land Use Responsibilities and Planning in the New York City Charter .....</b>	 <b>19</b>
Ensuring a Mechanism for Long-Term Comprehensive Planning.....	19
Recommendation.....	22
Enhancing Independence and Oversight in Land Use Public Processes.....	23
Landmarks Preservation Commission (“LPC”).....	23
Board of Standards and Appeals (“BSA”).....	24
Recommendations.....	25
Reform and Update Existing Community Planning Mechanisms.....	25
Strengthen existing tools for community-based planning.....	25
Recommendation.....	26
Reforms to the Uniform Land Use Review and Procedure (ULURP).....	27
Disposition of City-owned air rights.....	27
Recommendation.....	28
Zoning text amendments.....	28
Recommendation.....	29
Disposition of City-owned property.....	29
Recommendation.....	30
Tracking Applications for Public Participation.....	30
Recommendation.....	31
 <b>Reforming Our City’s Agencies.....</b>	 <b>35</b>
The Office of Inspection.....	35
Current State of Affairs at the Department of Buildings.....	35
A History of Inefficiency.....	36
Past Attempts at Reform.....	37
Recommendation.....	38

Education.....	39
A Growing Student Population and a Failure to Plan.....	39
The “Blue Book”.....	40
The Department of City Planning.....	41
The New York City Comptroller.....	41
Recommendation.....	41
Department of Food and Markets.....	42
Recommendation.....	43

## **Borough Presidents and the Government of New York City: Fulfilling the Vision of the Charter and the Needs of City Governance .....**

Introduction.....	47
The Important Role of Boroughs and Borough Presidents in City Governance.....	49
The History of the Borough Presidency.....	49
The Borough Presidents’ Original Executive Role.....	49
Strengthening the Borough Presidents’ Responsibilities to Create a More Responsive City Government.....	50
Shifting Away from Service Administration.....	50
The Re-visioning of Borough Presidents and City Government.....	51
Reaffirming the Vision for the Office of Borough President.....	51
Responsibilities of the Borough Presidents.....	52
Land Use.....	52
Budget.....	53
Contracts.....	53
Strategic Planning.....	54
Additional Executive Oversight Responsibilities.....	54
Community Boards.....	56
Appointment Powers and Voting Capacities.....	56
Benefits of the Office of the Borough President.....	57
Land Use and Planning.....	57
Strategic Policy.....	59
Initiating Community-Based Environmental Sustainability Planning.....	59
Addressing Public School Overcrowding and Parental Involvement.....	60
Expanding Financial Justice.....	61
Improving Safety in Public Housing.....	61
Improving Tax Subsidies.....	61
Protecting the City’s Water Supply.....	61
Innovating Food Policy.....	62
Promoting Affordable Housing.....	62
Protecting Tenants’ Rights.....	63
Advocating Immigrant Rights.....	63
Combating Domestic Violence.....	63
Ensuring Responsible Investing.....	64
Budget Allocation.....	64
Capital Allocations.....	64
Expense Allocations.....	64

Contracts.....	64
Community Boards.....	65
Strengthening Community Board Training and Land Use Capacity.....	65
Creating a Standardized and Transparent Appointment Process.....	66
Increasing Representation of Diverse Communities and Backgrounds....	66
Value of the Borough Service Cabinet.....	66
Census Mobilization.....	66
Recommendations for Fulfilling the Role of the Office of the Borough President.....	67
Ensuring Independence.....	67
Recommendations.....	67
Budget Review and Recommendations.....	68
Incorporating Borough President Budget Recommendations.....	68
Borough-specific Budget Estimates.....	68
Borough President Input During Executive Budget Hearing Process.....	69
Recommendations.....	69
Land Use.....	70
Strengthening Borough President’s Role in ULURP.....	70
Function of Land Use Counsel.....	71
Borough Voice on Major Land Use Decision-Making Bodies.....	71
Recommendations .....	72
Strategic Policy Statement.....	72
Recommendations.....	73
Contracts.....	73
Contract Oversight.....	73
Borough President Input on Intent to Award Contracts.....	73
Meaningful Input on Franchise and Concession Review Committee.....	74
Recommendations.....	74
Clarification of the Scope of Responsibilities of the Borough Presidents.....	75
Conclusion.....	75





# **ENSURING MEANINGFUL COMMUNITY-BASED PLANNING AND COMMUNITY GOVERNANCE:**

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**THE FUTURE OF COMMUNITY BOARDS AND THE NEW YORK CITY CHARTER**



## **Ensuring Meaningful Community-Based Planning and Community Governance: The Future of Community Boards and the New York City Charter**

Community boards are a unique and integral part of New York City government envisioned to create effective democratic participation and local accountability in a city of tremendous size and diversity. Community boards were originally established as Community Planning Councils by Manhattan Borough President Robert F. Wagner in 1951 to function as local participatory bodies to conduct comprehensive community-based planning for the growth of the city. In 1975, the Charter Revision Commission formalized the current form of community boards by extending it citywide with 59 community boards representing the same number of districts. Community boards possess a wide range of responsibilities under the City Charter, including urban planning and zoning, oversight and monitoring of service delivery, budget analysis, capital needs analysis, public outreach, information dissemination and other functions. One of their central roles is to analyze and make recommendations concerning land use actions within their boundaries through the Uniform Land Use Review Procedure (“ULURP”). In addition, community boards are empowered to create comprehensive community plans under Section 197-a of the Charter.

Community boards, however, have historically lacked the resources, capacity and expertise to fulfill their community planning role in a consistently meaningful way. Subject to budget limitations set by the Mayor and City Council, community boards have only a small handful of staff to address all of their responsibilities including analyzing, researching and developing findings and recommendations on complex land use, policy and budget proposals. The Charter Revision Commission should rigorously review the current role and needs of community boards and recommend proposals to enable boards to fulfill their community-based planning role and provide a meaningful dimension of local governance in New York City.

### History of Community Boards

Community boards were established in their earliest form in the mid-twentieth century as part of a movement to ensure community-based planning and to decentralize power in New York City government. As early as the 1940s, civic and community groups had begun calling for a locally-based form of government to provide a mechanism for greater community planning and balance an overly bureaucratic City government. In 1951, Manhattan Borough President Robert F. Wagner created the first prototype of today’s community boards in response to these concerns. A total of twelve experimental “Community Planning Councils” were established to advise the Mayor on local planning and budgetary matters. Each council consisted of 15 to 20 members. The administrative boundaries of these councils were drawn to match boundaries created previously by the City Planning Commission (“CPC”) to facilitate delivery of public services.

These modest beginnings marked only the start of New York City’s rich tradition of community-based planning. In 1963, during Robert Wagner’s third term as Mayor, the City Charter was revised to adopt his neighborhood governance concept, establishing

“Community Planning Boards” with a total of 62 boards for the entire city. The boards’ responsibilities were to advise the borough presidents “in respect to any matter relating to the development or welfare of its district.”

The backdrop to these developments was a period of racial and ethnic strife and political activism, accentuated by the public sentiment that big government bureaucracy was silencing communities. In the 1960s and 1970s, lower income communities, communities of color and other minority communities began voicing their alienation through an active movement toward further decentralizing City government.

Elected in 1965, Mayor John Lindsay sought to emphasize community empowerment when he proposed a system of “Little City Halls” be opened in communities throughout the City. The purpose of the Halls was to create an ombudsman on behalf of communities that would cut through bureaucracy and refer feedback and complaints about City services directly to City officials. However, the City Council defeated the proposal, viewing it as an effort by Mayor Lindsay to shore up partisan and political power rather than instill a truly decentralized government.<sup>1</sup>

In 1970, Mayor Lindsay declared “the year of the neighborhood” and in 1971 successfully established the Office of Neighborhood Government (ONG) to advance his vision of decentralized City government. The ONG designated eight demonstration districts each headed by a district managers appointed by the Mayor. The district managers were intended to encourage more local planning as well as improve service delivery through “service cabinets” comprised of City agency officials. The demonstration districts were oriented toward facilitating service delivery and coexisted with community planning boards which continued to be oriented toward community-based planning. In 1972, Comptroller Abe Beame released a report charging misuse of funds by the ONG. When Beame became Mayor, he abolished the ONG and demonstration districts due in part to the prior management of the agency.

Although the ONG was phased out, the core principle behind it of strengthening neighborhood-level planning and input was nonetheless strengthened in New York City government. In 1975, voters by referendum approved a revised City Charter to establish the current community board system. New York City was organized into 59 districts, each approximately the size of Syracuse by population and each represented by a community board with broad-based responsibilities in City governance.

While community boards continue to serve many functions in government, they remain defined primarily by their purpose to provide community-based planning and technical advice. This role has become more essential over time as the locus for handling individual service complaints in the city has shifted to elected official’s offices and to 311. In light of the strong capacity for constituent services in other parts of government, community boards’ unique advisory duties and role to facilitate local planning have become more important.

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<sup>1</sup> Pecorella, Robert F. “Community Power in Postreform City: Politics in New York City.” New York: M.E. Sharpe, Inc., 1994. *Google Books*. Web. 12-13 April 2010.

The 1975 Charter revision, indeed, strengthened community boards' community planning powers with the creation of the Uniform Land Use Review Process (ULURP) and the addition of Charter Section 197-a. Through ULURP, community boards for the first time had Charter-mandated advisory responsibilities with respect to land use applications, including zoning actions, special permits, acquisition and disposition of City property, and urban renewal plans. With the addition of Charter Section 197-a, community boards acquired the power to establish formally recognized comprehensive neighborhood plans. Both changes envisioned boards to play a more proactive and influential role in land use and city planning. Community boards were also given a wide range of other advisory functions such as budget analysis and recommendations, capital needs recommendations, oversight of City service delivery, district needs assessments and autonomous authority in their operations.

However, the 1975 Charter revision as well as later revisions failed to equip community boards with sufficient resources and tools to fulfill these responsibilities. For example, relatively few neighborhoods have utilized the opportunity to develop 197-a plans under the Charter, and those that did faced substantial obstacles. In 1986, Manhattan Community Board 4 initiated the Chelsea plan under 197-a in response to rezoning and development pressures that threatened significant displacement and loss of neighborhood character. Because the proposed plan focused on zoning changes, the Department of City Planning ("DCP") ruled that it would need to conduct extensive environmental impact analysis in order to assess the plan's feasibility. Since community boards lack the financial resources or mandate to retain qualified professionals to conduct the environmental review, the proposed plan was stalled until 1989, when the 1989 Charter Revision assigned the financial cost of conducting certain environmental reviews to the DCP.

The 1989 Charter Revision Commission successfully proposed certain enhancements to the planning role of community boards. Specifically, the new Charter required the CPC to adopt rules that established minimum standards for form and content as well as a procedure and schedule for review of 197-a plans. In addition, community board representatives were granted the right to attend preliminary meetings between City agencies and land use applicants to determine the scope of environmental impact for proposed land uses. Furthermore, community boards were given the responsibility to review and make recommendations on a mandatory annual "Statement of Needs" relating to all plans for the opening and closing of City facilities in the two years going forward.

Despite these improvements related to community boards made by the 1989 Charter Revision, the changes fall short of providing boards with the tools and expertise required to fulfill their many government responsibilities.

### The Role and Impact of Community Boards

The City Charter provides community boards with a unique and critical role in New York City governance to ensure a participatory democratic process and enhance City

government's ability to meet the needs of local communities. As the chapter title for community boards in the Charter manifests, community boards are designed to be "City Government in the Community" having a highly comprehensive planning and policy purpose to engage virtually all areas of City government through strategic planning, policy development, capital allocation, oversight and program and service implementation similar to the centralized agencies of the City.

Community boards were therefore, thus, established to serve a primarily planning and policy role and to have a broad impact on the life of the City. Indeed, the Charter grants community boards 21 multifaceted responsibilities that require policy and technical expertise. These functions of community boards include:

- Preparing comprehensive and special purpose plans for the growth and economic development of the district
- Submitting annual reports including analyses of district needs to the Mayor and City Council
- Evaluating and proposing capital budget priorities
- Analyzing and making recommendations on Uniform Land Use and Review Procedures (ULURP) applications
- Evaluating the quality and quantity of City services
- Conducting oversight of programs and services
- Holding public hearings on budget and other matters
- Conducting substantial public outreach
- Transmitting information on behalf of City agencies
- Providing consultation to government agencies on the welfare of the district and numerous other responsibilities.

These Charter-mandated responsibilities are intended to enable community boards to improve the overall functioning of City government for local communities and to create local planning, policy and service benefits that centralized City agencies are not capable of achieving alone. Community boards have historically utilized these responsibilities to create important local and systemic improvements for individual communities. These improvements range from preserving the social and physical character of neighborhoods through board-initiated re-zonings, working with local businesses to address community concerns such as quality of life and noise reduction, and improving park conditions through in-depth community-based consultation and planning with City agencies. The following are a few noteworthy examples of community board accomplishments in recent years:

- Manhattan Community Board 9 developed and issued a 197-a plan with the support and guidance of the Manhattan Borough President's Office that influenced the expansion plans of Columbia University and shaped the goals of the current rezoning proposal for West Harlem.
- Manhattan Community Board 11 successfully advocated for the revision of a request for proposals (RFP) for economic development in East Harlem through a community-based task force that worked with the Economic Development

Corporation (EDC). The new RFP ensured community goals such as creating cultural space, space for local businesses, and affordable housing.

- Manhattan Community Board 11 also organized important community dialogue about the plan to grant independent schools exclusive access to substantial portions of Randall's Island sports fields, improving equity for public schools and the local community.
- Manhattan Community Board 1 successfully advocated for a significant expansion of the Lower Manhattan Development Corporation Small Firm Assistance Program, which is grant program that benefits Lower Manhattan businesses adversely affected by public construction projects.

Community boards were established not only to initiate growth and improvement strategies for communities but also to provide essential support and coordination for government agencies to fulfill their respective missions. Numerous City and State agencies rely on community boards to provide guidance and review for hundreds of formal agency decision-making processes each year. For example, according to Manhattan Community Board 2's 2009 Annual Report, the board issued 512 resolutions that year, including review of 147 applications for on-premise liquor licenses or beer/wine licenses, 115 applications for sidewalk cafés, 88 applications for street activity permits, and 85 applications to the Landmarks Preservation Commission. In addition, the DCP utilizes the planning and input of community boards for their land use determinations, discussed further in this report's chapter on Land Use. Community boards are thus incorporated in the review and decision-making processes of City government, enabling agencies to make responsible decisions by drawing on information, knowledge and community input that is often indispensable.

Community boards are also mandated by the Charter to serve a unique and critical coordinating function for City service delivery. As part of their Charter responsibility to monitor service delivery, community boards are required to hold monthly District Service Cabinet meetings with agency representatives. The cabinet is comprised of all City agencies that deliver services in the district including the Parks, Sanitation, Buildings, Transportation, Police and Fire Departments among many others. These meetings provide a forum for community boards to consult with agencies on local service delivery issues on behalf of their constituents, and allow agencies to provide information on new initiatives and programs to communities that will be affected. The District Service Cabinet framework fosters a collaborative multi-agency approach that is needed among agencies with distinct purviews and regulations. The Community Board District Service Cabinet provides the only mechanism in the Charter for integrating and coordinating agency policies and practices to serve communities.

The particular benefits and leverage that Community Board District Service Cabinets can achieve for communities is illustrated by a recent successful effort by Manhattan Community Board 3 to coordinate a multi-agency solution to a localized problem. In the district, three active construction sites on one block created road obstructions and sidewalk closures that were causing hazardous conditions and hurting local businesses. The agencies responsible for permitting and overseeing the activity – the Department of

Transportation (“DOT”), the Department of Buildings (“DOB”) and the Fire Department (“FDNY”) – had not fully addressed all of the harmful impacts on the community.

The District Manager of Community Board 3 took the initiative to convene a series of meetings to help understand the responsibilities of the agencies and contractors. Until that point, the actions of the various agencies were not necessarily clear to each other or to the community. For example, DOT permitted a partial street closing for construction that caused a safety issue for FDNY. Staging for cement trucks also permitted by DOT caused street usage problems for businesses. The board also discovered construction violations that resulted in Stop Work orders issued by DOB. In addition, DOB had not been involved in the permits for construction activity leading to street closures. As a result of the community board’s leadership, the agencies identified the intersection of their activities and devised a solution to address the community’s concerns. The community board’s coordinating and oversight responsibilities served as the catalyst for a nuanced solution in a local environment, helping the work of large citywide agencies.

Community boards have demonstrated over time their necessary role in the structure of New York City government. Community boards’ responsibilities in comprehensive planning for their neighborhoods, influencing the allocation of City resources, coordinating services, enabling the work of City agencies and many other functions to address the welfare of their districts indeed position them as “City Government in the Community”. The current Charter Revision Commission provides a special opportunity to assess how well community boards are equipped to fulfill their Charter-based vision of community-based planning and participatory governance.

### Community Boards and Comprehensive Community-Based Urban Planning

One of the central responsibilities of community boards is to enable community-based planning and analyze and make recommendations on land use. The Charter specifically provides that community boards review, analyze and make recommendations on land use applications that must undergo public input and approval through the Uniform Land Use Review Procedure (ULURP). The nature and types of matters requiring ULURP approval are wide-ranging and include special permits within the zoning resolution, designations of or changes in zoning districts, acquisitions and dispositions of City-owned property, and revocable consent.

Land use affects not only the city’s built environment, but also its economic development, quality of life, service delivery, public health and the general welfare of its neighborhoods. Despite the highly localized impacts of land use, the City’s land use process has always been strongly centralized with the Mayor and the CPC. The role of community boards, therefore, is of crucial importance in voicing neighborhood needs and informing City decision-making on land use proposals.

Community boards often have substantial influence in shaping the outcomes of land use matters and ULURP applications to address community needs. The impact of boards in



ULURP is illustrated by Manhattan Community Board 7's catalyst role in rezoning the West 97<sup>th</sup> – 110<sup>th</sup> Street area in 2007. Beginning in 2005, Community Board 7 formed an Upper West Side Rezoning Task Force to bring together community activists who were concerned about out-of-scale development in the neighborhood. The task force worked with elected officials and the DCP on a rezoning plan that introduced new building height limits and street wall requirements and applied the Inclusionary Housing Program to portions of the area. The rezoning plan to preserve community character and promote affordable housing was approved in large part due to Community Board 7's multidisciplinary community-based role of organizing, analyzing, planning and advocating. The approval of this and many other successful zoning and land use policies have been supported by the local work and technical analysis of community boards. In many cases, the successful end results could not have been achieved without the contributions of the community boards.

However, community boards often face challenges in their ability to fully and adequately review and analyze all land use matters due to a lack of resources and expertise, including extremely few staff and a volunteer membership. Without urban planners required to be on staff, community boards rely on their volunteer members to analyze land use proposals and their complex environmental impacts and to develop recommendations. Most boards do not have sufficient numbers of members with urban planning training to offer the skills, knowledge and time required to conduct in-depth analyses needed for the boards' many land use matters.

The 1989 Charter Revision Commission recognized the inadequate capacity of community boards to fulfill their many technical and planning functions. In response, it proposed the authorization of boards to hire not only a district manager, but also "other professional staff and consultants, including planners and other experts...." NYC Charter § 2800(f). While this measure acknowledged and addressed a critical need, it did not go far enough to allow community boards to perform their governmental mission at a consistently and uniformly high level.

The Charter also states that the DCP shall "provide community boards with such staff assistance and other professional and technical assistance as may be necessary to permit such boards to perform their planning duties and responsibilities...." NYC Charter § 191(b)(5). This provision also recognizes that community boards must possess the capacity and technical expertise to achieve their planning function, but has proven to be inadequate in ensuring this condition is met. DCP has historically not been able to afford the personnel to devote to the analyses and formulation of recommendations for which community boards are responsible. Indeed, community boards must nearly always rely on their own volunteer members, scarce staff and the resources of elected officials to assemble the capacity to conduct their planning work. Despite the Charter provision, community boards lack the authority or accountability mechanisms to ensure that DCP provides staff assistance when needed. In addition, since DCP is a Mayoral agency, the institutional independence that community boards are intended to have risks being compromised even when DCP staff is accessible. Reliance on other elected officials'

staff, particularly the borough presidents' offices which have planning staff, is inadequate due to the same institutional conflicts and resource constraints at such offices.

The 2010 Charter Revision Commission should recommend that the Charter mandate each community board to appoint its own full-time urban planner. The sole responsibility of this planner would be to support the board's analysis in developing recommendations on all land use matters before the community board and to coordinate community-based planning activities. The support and expertise of the urban planner would better enable community boards to conduct meaningful comprehensive community planning under Section 197-a of the Charter. This requirement would ensure that each community board has its own urban planner that is specifically accountable and available to that board with sufficient institutional independence and objectivity.

The benefit of designating urban planning staff for every community board has been demonstrated by the Community Planning Fellowship Program created by the Manhattan Borough President's Office in 2006. The fellowship supports community-based planning activities by placing a second year graduate student from the region's urban planning schools in each Manhattan community board office since 2006 and this year included two Brooklyn community boards. The planning students help the boards to better understand local planning issues and navigate public discussions about development more effectively. Fellows have conducted integral work including assessing affordable housing conditions to inform policy decisions, formulating workforce hiring strategies to secure jobs for local residents, creating evaluation tools for reviewing and encouraging more sustainable development projects, and preparing zoning applications to encourage development that meets community goals. Specific accomplishments by fellows include an analysis of residential conversion of Class B office space in Community Board 5, the updating and refining of Community Board 10's 197-a proposal for Central Harlem and an assessment of the development potential of underused properties in Community Board 12. The program has been widely regarded as enhancing community boards' performance of their core responsibilities.

Mayor Bloomberg has recognized the utility and potential of the Community Planning Fellowship Program by agreeing to work with all of its partners to expand the program citywide. With support from the Mayor's Office and the City University of New York, the program will be expanded to involve community boards from all boroughs.

### **Recommendation:**

**Community boards require dedicated support and expertise to fulfill their purpose of conducting community-based planning. The Charter should require that community boards appoint a full-time qualified urban planner with a degree in urban planning, architecture, real estate development, public policy or similar discipline and include the necessary budget appropriations to fund this position.**

## Community Board Appointment Process

In order to elevate the ability of community boards to fulfill their critical role in City government, the process of appointing community board members should help ensure that the most capable, qualified and representative members serve. Community board members are public officials with legal responsibilities in the key areas of government. Additionally, board members are agency heads in that the 50 members of each board collectively are the equivalent of the commissioner of a City agency, which, in this case, is the community board. Furthermore, community board members, by virtue of their Charter-mandated responsibilities, are public officers under New York State Law and thus have due process rights to their appointments and cannot be removed prior to the expiration of their terms without sufficient legal cause. Citywide, there are a total of 2,950 positions to be filled by the five borough presidents for community board membership, half of them requiring nominations from 51 council members. Therefore, the task of appointing community board members is a power with notable weight and challenge.

The Charter currently requires appropriately flexible eligibility criteria for community board membership that include a “residence, business, professional or other significant interest in the district.” In addition, the borough president is required to assure “adequate representation from the different geographic sections and neighborhoods within the community district” and consider “whether the aggregate of appointments fairly represents all segments of the community.” However, at the beginning of 2006, the Manhattan Borough President’s Office determined that many of the sitting board members had poor attendance or no longer had a connection to the district. Additionally, membership of many boards disproportionately favored a few constituencies and did not reflect the demographic make-up of their neighborhoods. Furthermore, many members of the public who are interested in serving on a community board are not aware of the process or timeline to demonstrate this interest or be considered for appointment.

In addition, even though the Charter provides a basic framework for appointment of board members annually and for filling vacancies as they emerge, many board seats in the city may remain vacant for long periods or indefinitely. The Charter provides that community board terms begin each year by April 1 and that vacancies be filled promptly by the borough president. However, in 2005, nearly 20 percent or 67 appointments on Manhattan community boards were vacant. The potential for such systematic gaps in appointment risk instability and diminished capacity in board membership and opacity in the appointment process.

In order to obtain the most qualified, engaged and diverse individuals to assume the serious responsibilities of community board membership and provide stability and capacity to the boards, the Charter should require greater standardization, transparency and outreach mechanisms for the appointment process.

First, the Charter should require borough presidents to administer a standardized open application process for community board appointments to broaden the pool for

appointments, make the appointment process more accessible to all members of the community and create more predictability and transparency in board appointments. The Charter should also require that all appointees be interviewed by the borough president's office prior to the determination to appoint or reappoint. Applications should be in writing, include clear instructions and require the applicant's name, personal address, business address and, if applicable, statement of other significant interest in the district to establish eligibility. The application should also request optional disclosure of key demographic information such as race, ethnicity, gender identity, age, disability status, and sexual orientation. This information combined with the applicants' other personal information would assist borough presidents in assuring fair and adequate representation from communities in the district.

Second, the Charter should require that borough presidents conduct substantial public outreach throughout the borough for the application process to ensure public awareness of the application opportunity, maximize the pool of applicants and ensure representative membership. The application should be required to be translated into at least the three largest language groups other than English in each district. Borough presidents should also be required to hold annually at least two information sessions open to the public to explain the process for applying to community boards and the responsibilities of board members. The Charter should require borough presidents to disseminate the application (1) by postal mail and email to a list of civic and community groups in the borough maintained and updated by the borough presidents (2) online by posting on the websites of each borough president, the city council and each relevant community board and (3) by being made physically available at the offices of the borough presidents, city council members and community boards. Currently, the Charter requires community boards to conduct substantial outreach by "identifying the organizations active in the community district [and] maintaining a list of names and mailing addresses of such organizations" NYC Charter § 2800(d)(1). The borough presidents should be required to incorporate these lists in their list of organizations for outreach on appointments and applications.

The Charter should require borough presidents to document efforts to achieve the representation goals required by the Charter. Borough presidents should be required to issue annual reports documenting (1) the demographic data of their community districts, broken down at a minimum by race, gender, sexual orientation and disability status; (2) the strategies employed to conduct outreach for community board applications with different segments of the community, including a list of associations, organizations and groups in the boroughs with which outreach is conducted and to which applications are disseminated; and (3) percentage of known changes in representation in certain categories such as race, gender, sexual orientation and disability status. Similar measures are employed in New York City's equal employment opportunity (EEO) policy to promote a diversity of applicant pool and employees at City agencies.

Lastly, the Charter should supplement the April 1 timeline for commencing community board terms with a specific deadline for borough presidents to finalize and send notice to appointees and community boards of all appointments on or in advance of April 1. In addition, the Charter should set a specific timeline by which borough presidents must fill

all board vacancies such as within 30 days of the vacancy. These mandatory timelines would help ensure that appointments and vacancies are promptly filled and community boards have greater predictability and stability in their membership and operations.

The Manhattan Borough President's Office successfully incorporated many of the above elements in reforming its community board appointment process. The office established an application process that draws hundreds of applications each year and fills all seats on every Manhattan Community Board. The office also convened an independent screening panel, based on the independent selection panels for judicial appointments, comprised of good government groups and not-for-profit organizations representing different communities which assisted with outreach and the selection process. The application and interview process with incumbent board members and applicants serves to reinforce their commitment and responsibilities as board members. The Manhattan Borough President's Office also conducts public information sessions for individuals interested in serving on community boards which has drawn significant attendance and increased interest in community board service. In addition, the Manhattan Borough President's Office created a training institute for board members, in areas such as conflicts of interest law, land use and parliamentary procedure to fulfill its Charter-mandated responsibility to train community board members.

Over the past five years, the Manhattan Borough President's office has received over 1,700 new applications and interviewed over 1,400 new applicants. Overall nearly 500 new members have been appointed since 2006. This process has resulted in a significant increase in African American, Latino, Asian American and LGBT representation on Community boards across the borough.

### **Recommendation:**

**To ensure quality, transparency and diversity in community board appointments, the Charter should set additional standards for a citywide process and timeline for community board outreach and appointments. Such requirements should include:**

1. A written application process administered by the borough presidents, requiring basic demographic information from applicants, a specific application timeline and interviews for all appointees.
2. Substantial public outreach conducted by the borough presidents including translating the application form into the largest three languages other than English in each district, holding at least two information sessions, making the application available in borough president, councilmember and community board offices and their websites and mailing applications to a list of civic and community groups.
3. Annual reports issued by each borough president on the composition of community board membership and strategies used to conduct outreach and recruitment.
4. Set specific timelines for borough president appointments of board members following term expirations and vacancies.

## Training and Support for Community Boards

As illustrated in the sections above, community boards play an integral role in City government and possess a multitude of complex responsibilities. In addition, each community board is responsible for the operations of its office; each board is an independent City agency with the authority to determine its own bylaws, policies, personnel actions and resolutions. The agency head of each community board is the collective group of all appointed community board members who are supported by the limited staff of the district manager. In addition to fulfilling their advisory, community and policy responsibilities, community boards must maintain efficient government operations that are in compliance with the many legal and procedural requirements of City government, including but not limited to audits and fiscal procedures. However, given the very few resources and staff of community boards and their reliance on volunteer members, the boards are often hindered in fulfilling their Charter-mandated functions while navigating the procedural requirements and management needs of an independent City agency.

Community boards require a Charter-mandated centralized resource for providing administrative and technical support to assist with operations, personnel, agency budget and other administrative needs. Other City agencies have their own offices of administration, finance and personnel in order to conduct City business appropriately. Community boards, however, lack a sufficient resource for support on personnel, administration and similar matters.

While the charter requires borough presidents to “provide training and technical assistance to the members of the community boards” it does not outline specific responsibilities or delegate the operational support that community boards require. In order to ensure that community boards are able to function, borough president offices assume many operational, personal and legal responsibilities over these external agencies. This includes:

- Processing payroll for community boards. In addition to managing the payroll for their own agency, each Borough President manages the payroll for the community boards in their borough. This includes the processing of weekly timesheets, leave balances, direct deposit, employee benefits and any employee requests related to payroll.
- Assisting community boards with the hiring process and other significant personnel actions for new employees.
- Training new district managers and community board chairs on the supervisory, procedural and operational responsibilities of their agency.

Additionally, numerous agencies rely on the borough presidents’ offices to serve certain functions and act as liaisons on behalf their agencies. For example:

- At the request of the City Law Department, the borough presidents' offices often serve as an intermediary between community boards and the Law Department on virtually all legal matters including personnel, contracts, procurement, and governance process.
- The borough presidents' offices serve as the liaison between community boards and the Conflicts of Interest Board to administer financial disclosure filing requirements.
- Pursuant to an opinion by the Law Department, borough presidents are required to serve as the Equal Employment Opportunity (EEO) officer for all community boards in their boroughs, which includes providing regular training and consultation to hundreds of board members.
- The Office of Labor Relations, the Department of Citywide Administrative Services (DCAS) and municipal employee unions rely on borough presidents' staff to provide personnel support for community boards, such as resolving staff disputes and grievances.

### **Recommendation:**

**The Charter should clearly outline the administrative support responsibilities for community boards that fall under the auspices of the borough presidents' offices. This requires:**

- 1) **Codifying the existing operational, administrative and legal practices performed out of necessity by borough presidents' offices.**
- 2) **Delegating the key responsibilities that remain unaddressed so that community board staff receive the same personnel and operational support as other City employees**

### Clarification of Community Board Requirements and Procedures

Community boards like other City agencies are subject to many requirements of the New York City Charter and other local and state laws in their legal authority, membership eligibility criteria and governance process. Certain important legal requirements governing the role and authority of community boards are not explicitly stated in the City Charter, but derive from formal opinions of the Corporation Counsel or intersections of City and State law and policy. For example, pursuant to the Charter and well-established Corporation Counsel opinion, community boards are required to approve personnel actions, including hires and terminations, by a majority vote of the full board and may not delegate such decisions to the board chair, district manager or executive committee.

Requirements such as these that have a pivotal impact on how boards operate should be expressly stated and emphasized in the Charter to ensure clarity for community boards. Given the large numbers of boards, their members citywide and the lack of a dedicated counsel for each board, a consistent understanding of legal requirements can be difficult to achieve and maintain among board members. The clear codification of certain critical

requirements will expedite board consensus on standards of process and lead to greater efficiency of decision-making and operations.

**Recommendation:**

**The Charter should expressly codify certain important and well-established legal requirements for community boards to promote clarity and efficiency and consistency of operations for all boards. The Charter Revision Commission should consider the following amendments:**

1. Amend §2801(b) to add a non-exhaustive list of actions that constitute “acts, determinations or decisions” of the board that require a majority vote of the board. These actions should include community board resolutions, hires, terminations, promotions, demotions, suspensions and discretionary changes in terms of compensation for employees of the boards.
2. Amend §2800(i) to clarify that persons who are not members of the board but who are appointed to a community board committee are entitled to vote on the committee. This provision should also be clarified to state that the community board may determine the number or limit of such persons to appoint to each committee.
3. Amend §2800(i) to clarify that a quorum is required for a committee to adopt a resolution or make a recommendation of the committee to the board.

**The Charter Revision Commission also should conduct a series of meetings and hearings with community boards and their members to solicit input and dialogue about potential amendments and clarifications that would assist community boards with their operations and responsibilities.**



# **SHAPING THE CITY'S GROWTH:**

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**IMPROVING THE CITY'S ABILITY TO PERFORM LAND USE RESPONSIBILITIES  
AND PLANNING IN THE NEW YORK CITY CHARTER**



## **Shaping the City's Growth: Improving the City's Ability to Perform Land Use Responsibilities and Planning in the New York City Charter**

The Charter Revision Commission provides a unique opportunity to take a critical look at how the City shapes and develops its urban landscape. Over the last 20 years, since the last Charter Commission was created, New York has experienced significant residential growth – gaining over a million residents.<sup>1</sup> As in other times of rapid expansion, communities, governmental bodies and elected officials have struggled to anticipate changes in neighborhoods and appreciate the larger context in which these changes are occurring. Stakeholders have been concerned about the lack of a comprehensive strategy to anticipate, mitigate and channel growth to meet larger policies during expansion periods. Even during periods of slower growth, stakeholders remain concerned that the City lacks a comprehensive strategy for shaping development patterns and ensuring adequate provision of necessary services.

Smart urban planning holds the key to improving the quality of life for New Yorkers and must be a primary focus for the City over the coming years. The future success of New York City will come from its government's ability to anticipate needs, coordinate services, plan comprehensively, and provide opportunities for meaningful community involvement. Specifically, the current Charter Commission must explore new ways for the City to prepare comprehensive plans and development strategies, ensure that land use decision-making bodies are inclusive, and strengthen existing mechanisms for land use planning.

### Ensuring a Mechanism for Long-Term Comprehensive Planning

Comprehensive planning is a basic tool of local governments for assessing its needs, providing a framework for growth and development, and informing public policy. Other cities have recognized the need for comprehensive planning and have created planning documents, such as London's Spatial Development Strategy. Created in October 2009, London's plan outlines necessary infrastructure improvements, and initiatives for preservation, economic growth, and greening the city.<sup>2</sup> Closer to home, the Regional Plan Association's Third Regional Plan for the New York City metropolitan area has provided context and support for regional infrastructure projects such as the NJ Transit/Port Authority of New York and New Jersey's Trans Hudson Passenger Rail tunnel.<sup>3</sup>

The New York City Charter requires the preparation of a total of 33 separate performance and accountability-related planning and reporting documents.<sup>4</sup> These exercises are meant to inform the public, community boards, borough presidents, the city council and other City agencies about key planning issues. These documents are not consolidated and are difficult to track. For this

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<sup>1</sup>U.S. Census Bureau

[http://factfinder.census.gov/servlet/SAFFPopulation?\\_event=Search&geo\\_id=16000US3403940&\\_geoContext=01000US%7C04000US34%7C16000US3403940&\\_street=&\\_county=new+york+city&\\_cityTown=new+york+city&\\_state=04000US36&\\_zip=&\\_lang=en&\\_sse=on&ActiveGeoDiv=geoSelect&\\_useEV=&pctxt=fph&pgsl=160&\\_submenuId=population\\_0&ds\\_name=null&\\_ci\\_nbr=null&q\\_r\\_name=null&reg=null%3Anull&\\_keyword=&\\_industry=Census](http://factfinder.census.gov/servlet/SAFFPopulation?_event=Search&geo_id=16000US3403940&_geoContext=01000US%7C04000US34%7C16000US3403940&_street=&_county=new+york+city&_cityTown=new+york+city&_state=04000US36&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=160&_submenuId=population_0&ds_name=null&_ci_nbr=null&q_r_name=null&reg=null%3Anull&_keyword=&_industry=Census)

<sup>2</sup> <http://www.london.gov.uk/thelondonplan/>

<sup>3</sup> [http://www.rpa.org/pdf/Third\\_Regional\\_Plan\\_Summary.pdf](http://www.rpa.org/pdf/Third_Regional_Plan_Summary.pdf)

<sup>4</sup> Toward A Performance and Accountability Management System for New York City Government: A Report to the New York City Charter Revision Commission, Jacob B. Ukeles, Ukeles Associates., Inc .July 2005

reason, the 2005 Charter Revision Commission's consultant recommended pursuing strategies for consolidating Charter-mandated plans.<sup>5</sup>

The Department of City Planning ("DCP") is responsible for assisting the mayor in generating a report on the social economic and environmental health of the city,<sup>6</sup> a strategic policy statement<sup>7</sup>, and a ten-year capital plan.<sup>8</sup> In addition, the City Planning Commission ("CPC") is responsible for generating a "Zoning and Planning Report" every four years to be submitted to the mayor, city council, borough presidents and community boards. The Charter requires that the Commission's report (1) explain how zoning and planning can be utilized to meet the three aforementioned mayoral planning documents and any existing 197-a plans, (2) include a summary of the plans and zoning studies undertaken by the DCP, (3) provide an analysis of the portions of the New York City Zoning Resolution that merit reconsideration, and (4) suggest specific land use proposals which can implement DCP's strategic policy statement.<sup>9</sup> The "Zoning and Planning Report" would be the closest document to a comprehensive plan required by the Charter.

However, rather than producing the "Zoning and Planning Report," DCP produces a "Strategic Plan," which has been organized to highlight the agency's guiding principles in such areas as "world city opportunities," "sustainable city," "city of neighborhoods," "comprehensive planning for significant sites," "vibrant waterfronts and public open spaces," and "urban design excellence"<sup>10</sup> and describes large development projects and zoning proposals that exemplify those principles.<sup>11</sup> Although the "Strategic Plan" provides some broad-based planning and visioning, it does not include all of the elements of the Charter-mandated "Zoning and Planning Report" such as consideration of larger citywide policies, capital needs, or social indicators, and it does not represent a comprehensive planning strategy for New York City. Furthermore, the "Strategic Plan" is not ratified by the CPC, and is not officially disseminated to all the players in the City's land use review process.

DCP and CPC have conducted an exceptional amount of work on developing and evaluating discrete zoning proposals, including some that have covered large areas and promote broad policy objectives. Since 2003, DCP has achieved 100 rezonings<sup>12</sup> and reviewed more than 500 zoning applications each year.<sup>13</sup> Other elements that are typical to comprehensive planning are handled separately by other City agencies. For example, most transportation planning is conducted by the Department of Transportation; the Department of Parks and Recreation is largely responsible for open space planning; economic development is under the purview of the Mayor's Office and the Economic Development Corporation; and for the most part, the City's housing policy is set by the Department of Housing Preservation and Development.

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<sup>5</sup> IBID

<sup>6</sup> New York City Charter §16

<sup>7</sup> NYC charter §17

<sup>8</sup> NYC charter §215

<sup>9</sup> NYC charter §192(F)

<sup>10</sup> <http://www.nyc.gov/html/dcp/html/about/strategy.shtml>

<sup>11</sup> IBID

<sup>12</sup> <http://www.nyc.gov/html/dcp/html/rezonings/index.shtml>

<sup>13</sup> <http://www.nyc.gov/html/dcp/html/subcats/about.shtml>

While substantial work has been accomplished with a wide range of discrete planning efforts, the City should still articulate a fully integrated and comprehensive strategy for meeting citywide growth goals. For example, currently, there is concern that additional coordination of strategies is needed to enable the City to achieve the goals of the Mayor's long term plan for the city, PlaNYC 2030. A recent study by New York University's Furman Center for Real Estate and Public Policy demonstrated that recent rezonings initiated by the City will result in 80,000 out of the 270,000 new housing units called for in PlaNYC.<sup>14</sup> The City will need to consider additional comprehensive strategies, including possibly a new approach to rezonings, to realize PlaNYC's housing goals.

The City's current system of planning should offer more support for the ability of communities, government representatives and City agencies to evaluate and make intelligent decisions and to envision the larger purpose and cumulative impact of individual proposals. In addition, comprehensive planning is required to coordinate agency efforts to ensure government efficiency in service delivery and facility siting. Finally, many community-based planning documents, such as District Needs Statements, rezoning proposals, and 197-a Plans, are not utilized to understand how such plans connect or contradict with larger citywide goals.

A case-by-case planning process was not intended by the Charter. The Charter provides DCP with staff to perform strategic planning, such as a Deputy Director for Strategic Planning.<sup>15</sup> Further, DCP is structured and staffed to undertake planning activities in various disciplines that should be part of a strategic plan, such as through their Transportation Planning Division<sup>16</sup>, even though the responsibility for transportation planning primarily falls under the Department of Transportation.

Unfortunately, it will be difficult in the existing governmental structure for any single City agency to produce a comprehensive citywide plan. Each City agency currently has discrete responsibilities, and no single agency has the authority to direct another agency's planning actions. When the City seeks to undertake comprehensive planning efforts, such as the large area rezoning plans for Hudson Yards and 125<sup>th</sup> Street, such plans can become incomplete and unsuccessful because mayoral goals may not align with community priorities and inadequate mechanisms exist for integrating community input. These gaps in planning structure have created a crisis of confidence in many neighborhoods regarding how comprehensive planning can be performed through mayoral agencies that lack sufficient framework and tools to synthesize community needs and concerns with a broader policy vision.

Although DCP's "Strategic Plan" provides important long-term planning elements, it does not provide the comprehensive scope required in the "Zoning and Planning Report." A new neutral entity that is independent of and capable of coordinating diverse agency agendas should be created to ensure the preparation of a comprehensive citywide plan.

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<sup>14</sup> <http://furmancenter.org/research/publications/>

<sup>15</sup> NYC Charter §191(7)

<sup>16</sup> <http://www.nyc.gov/html/dcp/html/transportation/main.shtml>

## **Recommendation:**

### **The Charter Revision Commission should recommend establishing a new Independent Planning Office (“IPO”).**

*Comprehensive Planning* – The primary function of the IPO will be to generate a citywide comprehensive plan based on agency needs, citywide development goals, mayoral policies, borough presidents’ Strategic Policy Statements, and community board plans, such as 197-a Plans. This plan should replace some of the 33 plans currently required by the City Charter that would no longer be necessary, such as the CPC’s “Zoning and Planning Report.”

As either a sub-section of the comprehensive plan or as a separate document, the IPO should coordinate the development of a Consolidated Statement of District Needs. This document would analyze and integrate the Statements of District Needs issued by each of the 59 community boards. During discretionary land use approval processes, such as those for applications to site City facilities, any departure from policies or plans contained in the Consolidated Statement should be justified by the decision-making body, i.e., the City agency.

*Independence* – The independence of the IPO will provide it with the credibility necessary to establish a comprehensive plan while bringing together the perspectives of disparate agencies, similar to the Independent Budget Office’s (“IBO”) reports during the budget cycle. Like the IBO, the IPO would perform independent analysis for communities and elected officials. Funding for this organization should come from reductions of redundant staffing levels at City agencies, currently responsible for the production of the plans required by the City Charter that would no longer be necessary. A director of the IPO should be appointed in a similar fashion as that for the IBO director. The IBO director is appointed by a committee of elected officials; a similar committee should be established for the IPO director. The new appointment committee should have five members with representation from the mayor, the city council, the borough presidents, the public advocate and the comptroller.

*Dissemination of Information* – In order to provide sufficient context for the development of a comprehensive citywide plan, City agencies must be mandated by the Charter to provide the IPO with information on existing conditions such as as-of-right developments; any known environmental, economic, social service, land use and zoning impacts; and long term agency needs and goals. The IPO would use this information to generate the citywide plan and to assist community boards in developing District Needs Statements and other community-based planning documents.

*Ratification of comprehensive plan* – To ensure that the comprehensive plan truly represents New York City’s interests and is formally adopted as policy, the IPO’s comprehensive plan must be ratified through a public review process. The Charter should establish a process similar to ULURP for reviewing and adopting the comprehensive citywide plan. Community boards and the borough presidents should have the power to review and make recommendations on the plan, and the city council should have the authority to amend and adopt the plan. The mayor should review the plan and alter it as needed. As with ULURP, if the mayor alters any city council

action, the Council should have the authority to overturn the mayoral changes with a vote by two-thirds of the city council.

### Enhancing Independence and Oversight in Land Use Public Processes

A system of checks and balances is one of the foundations of democracy, promoting a balance of power, providing stability in decision-making from administration to administration, and encouraging greater inclusion of diverse constituencies. In the decades since the 1989 Charter Revision Commission, the City has moved towards a ‘strong mayor’ system of governance, particularly with land use processes. The Charter Revision Commission recognized the need to increase non-mayoral representation in the City Planning Commission (“CPC”). However, the composition of other land use decision-making bodies such as the Landmarks Preservation Commission and the Board of Standards and Appeals were not changed, leaving open the questions of appropriate representation on those bodies.

In order to encourage greater participation in key land use decisions and provide more stability between administrations, the basic governance structures of the Landmarks Preservation Commission (“LPC”) and Board of Standards and Appeals (“BSA”) should be revised to ensure more balanced and diverse representation.

#### *Landmarks Preservation Commission (“LPC”)*

The LPC consists of 11 members, all appointed by the mayor.<sup>17</sup> LPC commissioners must have specific professional backgrounds and include at least one representative from each borough.<sup>18</sup> The responsibility of the LPC is to identify, designate, and approve the modification of landmarks and historic districts.<sup>19</sup> Only the LPC has the authority to designate landmarks. No change to any landmark structure or historic district may occur without the LPC’s authorization.<sup>20</sup> While, the LPC’s authority is broad, a significant portion of its approval is based on aesthetic values.<sup>21</sup> Aesthetic criteria used to determine the appropriateness of landmark applications are qualitative and normative and, therefore, often subject to controversy. As a result, developers have criticized the system for being an anti-development tool, while preservationists argue that the system is too lenient.<sup>22</sup>

While the designations of landmarks and historic districts are subject to city council oversight, no such review mechanism exists for the LPC’s Certificates of Appropriateness, which may permit the alteration or demolition of landmarks or buildings in historic districts.<sup>23</sup> After a series of critical articles in the *New York Times* in 2008, the newspaper’s editorial board recommended

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<sup>17</sup> NYC Charter §3020 (1-2)

<sup>18</sup> NYC Charter §3020 (1)

<sup>19</sup> NYC Charter §3020 (6), NYC Administrative Code 25-304

<sup>20</sup> NYC Administrative Code 25-305

<sup>21</sup> NYC Administrative Code 25-307

<sup>22</sup> Preservation and Development, Engaged in a Delicate Dance, *New York Times*, December 1, 2008, [http://www.nytimes.com/2008/12/02/arts/design/02landmarks.html?pagewanted=1&\\_r=1](http://www.nytimes.com/2008/12/02/arts/design/02landmarks.html?pagewanted=1&_r=1)

<sup>23</sup> NYC Charter §3020 (9)

reform of the LPC in part due to the body “enjoying little political independence.”<sup>24</sup> For example, that year community groups instigated a lawsuit against LPC after waiting 79 months for the LPC to respond to a request for evaluation of the Park Slope Historic District Extension.<sup>25</sup> The New York State Supreme Court held that the LPC was acting in an arbitrary and capricious manner in how it determined landmarks.<sup>26</sup> The trial court decision, however, was later overturned and the LPC’s position was upheld by the Appellate Court based in part on the lack of a legal requirement for a specific process to designate property.<sup>27</sup>

### *Board of Standards and Appeals (“BSA”)*

Similar to the LPC, all of the BSA’s five members are appointed by the mayor.<sup>28</sup> The BSA has several important responsibilities including issuing special permits, ruling on appeals to laws relating to construction, and permitting variances from the Zoning Resolution.<sup>29</sup> The variance process is one of the most important decision-making powers. In 1916, when New York City established the nation’s first comprehensive zoning ordinance, the BSA was established to provide property owners a means to appeal zoning measures that would make use of their property financially infeasible.<sup>30</sup> This appeals process ensured that zoning would not constitute an uncompensated taking (akin to eminent domain) as prohibited by the Article 5 of the United States Constitution. Owners must meet strict criteria in order to qualify for a variance from the zoning. And like some LPC decisions, BSA decisions are final.<sup>31</sup>

The Charter intended the BSA to make decisions apart from the political process, and stresses that the BSA should be an “independent board.”<sup>32</sup> History, however, has demonstrated that the BSA is not necessarily independent from the mayor. Reports have concluded that previous iterations of the BSA “bowed to political pressure,” while the current administration prefers to “remain aloof” from BSA decisions.<sup>33</sup>

Some critics still argue that the relative independence of the BSA under the current administration can still be strengthened.<sup>34</sup> For example, they cite that the BSA approved 93% of all variance applications filed in 2001 and 2002,<sup>35</sup> a rate that is 10% higher than the next highest

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<sup>24</sup> Improving the Landmarks Process, New York Times, December 6, 2008, <http://www.nytimes.com/2008/12/06/opinion/06sat3.html>

<sup>25</sup> An Opaque and Lengthy Road to Landmark Status , ROBIN POGREBIN, November 25, 2008 [http://www.nytimes.com/2008/11/26/arts/design/26landmarks.html?\\_r=1&scp=1&sq=Citizens%20Emergency%20Committee%20to%20Preserve%20Preservation&st=cse](http://www.nytimes.com/2008/11/26/arts/design/26landmarks.html?_r=1&scp=1&sq=Citizens%20Emergency%20Committee%20to%20Preserve%20Preservation&st=cse)

<sup>26</sup> IBID

<sup>27</sup> New York Landmarks Agency Is Upheld on Appeal, New York Times, March 4, 2010 [http://www.nytimes.com/2010/03/05/arts/design/05arts-NEWYORKLANDM\\_BRF.html](http://www.nytimes.com/2010/03/05/arts/design/05arts-NEWYORKLANDM_BRF.html)

<sup>28</sup> NYC Charter §659(a)

<sup>29</sup> NYC Charter §666

<sup>30</sup> About the BSA, <http://www.nyc.gov/html/bsa/html/mission/mission.shtml>

<sup>31</sup> §72-21 of the New York City Zoning Resolution outlines the criteria for a Variance from Zoning including that the property is unique, the owner has a financial hardship, the proposed building is in character with the neighborhood, the owner is not responsible for the condition leading to the financial hardship, and that the proposed variance is the minimum necessary to produce a financially sound construction.

<sup>32</sup> NYC Charter §659(a)

<sup>33</sup> Who shapes New York, City Limits, March 15, 2004, [http://www.citylimits.org/news/article.cfm?article\\_id=3060&comments=1](http://www.citylimits.org/news/article.cfm?article_id=3060&comments=1)

<sup>34</sup> IBID

<sup>35</sup> Zoning Variances and the New York City Board of Standards and Appeals. Municipal Art Society of New York, Inc. March 2004. <http://mas.org/images/media/original/MAS%20BSA%20Report.pdf>



number of applications ever approved which was in 1979.<sup>36</sup> Many communities are concerned that the high number of approved variances in certain neighborhoods change underlying conditions and result in de facto rezonings.<sup>37</sup> Without Charter revision of the appointment structure of the LPC and the BSA, both bodies will continue to risk in perception and practice the need for more political independence and better ability to respond to broader constituencies.

## **Recommendation:**

**The Charter Revision Commission should recommend that the Landmarks Preservation Commission and the Board of Standards and Appeals include members appointed by each Borough President and the Public Advocate, while maintaining a majority of Mayoral appointments.**

In order to provide the political independence and the diversity of opinion necessary to make the LPC more responsive, the Charter should be amended to require that the LPC and BSA each include an appointee from each borough president and public advocate, with the remaining members being a majority of mayoral appointees. Under the current system, all 11 members of the LPC are appointed by the mayor and all five members of the BSA are appointed by the mayor.

The proposed system mirrors the structure of the CPC which has additional representation appointed by elected officials other than the mayor. The CPC has thirteen members – seven appointed by the mayor and one appointed by each borough president and the public advocate.<sup>38</sup> The proposed system would allow elected officials and their constituencies to have an increased voice in the decision-making process and an opportunity to work to reform the bodies, where necessary, from an official capacity. Furthermore, this system would provide the necessary checks to create more independent, inclusive bodies like the CPC.

## Reform and Update Existing Community Planning Mechanisms

The Charter requires a public review process for many land use actions. These processes have not been re-examined since the 1989 Charter Revision. The current Charter Revision Commission has a new opportunity to consider whether current land use processes should be strengthened, expanded or made more responsive to new technologies.

### *Strengthen existing tools for community-based planning*

The Charter currently provides limited tools for community planning. Statements of District Needs and 197-a Plans enable community boards to evaluate and set policies for their district's neighborhoods. The Charter requires community boards to complete Statements of Community District Needs annually. These documents lay out current and probable future needs and

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<sup>36</sup> IBID

<sup>37</sup> A Zoning Board's Quiet Work Has Neighbors Making Noise, New York Times, April 12, 2004  
<http://www.nytimes.com/2004/04/12/nyregion/a-zoning-board-s-quiet-work-has-neighbors-making-noise.html?scp=6&sq=&pagewanted=1>

<sup>38</sup> NYC Charter §192(a)

recommendations for programs, projects or activities to meet those needs.<sup>39</sup> Section 197-a of the Charter provides for community-based plans for the development, growth, and improvement of the city, borough or community districts.<sup>40</sup> These plans are typically developed by community boards but seldom occur since they require significant amounts of resources and time to produce.<sup>41</sup>

The Statements of Community District Needs and 197-a Plans are policy mechanisms meant to guide the city's growth. However, these planning documents lack processes for implementation and enforcement. While the 1989 Charter Revision authorized community boards to hire staff to help conduct this work, it provided no funding or mechanism to ensure the hires, no access to agency data to assess service delivery or perform proactive planning analysis, and no other resources to ensure high quality, substantive planning.<sup>42</sup> In addition, the Charter does not require City agencies to take any measures to consult with or adopt elements of Statements of Community District Needs. The result is that these important planning statements are rarely reviewed or considered by agencies and are weakened as a community planning tool.

Moreover, to the extent that communities can garner the resources to produce 197-a Plans, there is no means of compiling such plans for a comprehensive analysis and synthesis; nor is there means for immediate public access to 197-a Plans. The Charter should require establishing accountability mechanisms for 197-a Plans. Printed copies of 197-a Plans are currently available through the Department of City Planning. They are not available online or in electronic format. All 197-a Plans should be made publicly available online.

### **Recommendations:**

- **All 197-a Plans should be made publicly available online.**
- **Any departure in agency policy from an approved 197-a Plan should be justified.** 197-a Plans should be submitted to all relevant City agencies and such agencies should formally review and respond to such plans, and integrate them as much as possible in their policies. Any departure in agency policy from an approved 197-a Plan should be justified in writing with an opportunity for the community board and public to respond. All ULURP actions should also require consideration of integrating 197-a Plans when practicable and any inconsistencies should be formally justified in the application materials.
- **Strengthen the role of community boards' Statements of District Needs.** In order to strengthen Statements of District Needs, agencies should be required to respond in writing to the community board's assessment of local conditions. Further, an independent entity, such as the proposed IPO (see "Ensuring a Mechanism for Long-Term Comprehensive Planning"), should review all proposals for the siting of City facilities to determine consistency with local Statements of District Needs. The statement should also be expanded to increase its value to City agencies by including neighborhood criteria or targets for siting of City facilities. Any

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<sup>39</sup> New York City Charter §2800 (10)

<sup>40</sup> New York City Charter §197-a

<sup>41</sup> The State of 197-a Planning, Municipal Arts Society. <http://mas.org/presscenter/publications/the-state-of-197-a-planning/>

<sup>42</sup> Ibid.

departure from the criteria established in the Statement of District Needs should be justified in writing.

- **The Charter should ensure that every community board be allocated the resources needed to appoint a full, time qualified urban planner.** A 197-a Plan can only be completed if community boards are provided with the technical assistance necessary to perform the plans. Community boards have a significant role in the planning process and are increasingly expected by City agencies and the general public to participate in proactive planning. However, resources for community boards have been consistently reduced. This trend must be reversed, and the Charter should be updated to require that every community board receive the resources needed to appoint a qualified urban planner as a full time staff member. The dedication of urban planning staff to each community board has proven to be successful and beneficial to the work of community boards through the Manhattan Borough President's Community Planning Fellowship Program.

### Reforms to the Uniform Land Use Review and Procedure (ULURP)

The 1976 Charter Revision Commission established the Uniform Land Use Review and Procedure (ULURP). At that time, however the process was limited to zoning changes.<sup>43</sup> Thirteen years later, as part of the 1989 Charter Revision, the list of actions subject to ULURP has been expanded in recognition of the impact that land use actions other than zoning changes have on the type, density and height of development, as well as demands on City services.

#### *Disposition of City-owned air rights*

However, other land use actions that have the potential to result in significant impacts are not subject to the full ULURP process. These include the disposition of City-owned air rights and zoning text amendments. The disposition of air rights is similar to the disposition of City-owned land. The transfer of City-owned air rights usually results in new larger developments that create demands on City services, increase intensity of land uses, and present significant policy issues.

In a recent example, the City had acquired a property at 35 East 4<sup>th</sup> Street for the Third Water Tunnel.<sup>44</sup> During negotiations for acquisition, the City decided to sell air rights associated with 35 East 4<sup>th</sup> Street parcel to an adjacent property. Revenue derived from the transfer of these air rights was intended primarily to offset the acquisition costs for the tunnel site and facilitate the creation of a new pocket park on the unused portion of the 35 East 4<sup>th</sup> Street parcel. No public review occurred for the sale of air rights.

While the public was generally in favor of these benefits, the sale also resulted in the construction of a building at 39 East 4<sup>th</sup> Street that is larger than it otherwise could have been.<sup>45</sup> While the local community was concerned about the size of the new proposed building, there was no opportunity to publicly weigh the impacts of selling the air rights.

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<sup>43</sup> <http://www.nyc.gov/html/dcp/html/luproc/ulpro.shtml>

<sup>44</sup> ULURP # C 010126 PCM

<sup>45</sup> Skidmore Houses, ULURP, C 060525 ZSM: <http://www.nyc.gov/html/dcp/pdf/cpc/060525.pdf>

A similar situation arose at 50 West Street, where the City sold air rights from the Brooklyn-Battery Tunnel Approach for cash into the general fund.<sup>46</sup> The transfer of air rights was intended to increase the allowed floor area of a new high-rise apartment building. Despite the added localized burden of a larger development, the City's decision to sell air rights required no consideration of any potential incremental environmental impacts or increased demands on the area's social and physical infrastructure.

### **Recommendation:**

**The Charter Revision Commission should recommend that the disposition of City-owned air rights undergo full ULURP review and approval similar to the disposition of City-owned land. In order to regulate the City's disposition of air rights, mergers of City-owned zoning lots with privately owned zoning lots should be included in the list of actions requiring ULURP in section 197-c of the Charter.**

### *Zoning text amendments*

Zoning text amendments also present significant policy determinations that warrant public review. Zoning text establishes the rules for use and development of property within zoning districts designated on the zoning map.<sup>47</sup> Zoning map changes require full ULURP review because it has been accepted since the inception of ULURP in 1976 that significant changes to land uses, density, bulk restrictions, and other regulations related to zoning should receive full public review. However, while zoning map changes are subject to the ULURP process, zoning text changes are not.<sup>48</sup> As a result, revisions to the zoning map, which is designed to reference laws in the zoning text, require greater public review and analysis than revising the actual zoning laws.

Under the current system, the City Planning Commission typically refers out text amendments for 30 to 60 days to provide community boards an opportunity to hold public hearings and vote on a proposed text change. However, the City Charter requires that text amendments only require that community boards and borough boards receive notice of a text change and be provided with an opportunity to testify at a public hearing with as little as ten days notice.<sup>49</sup> If the laws underlying a zoning district can be changed without full public review, the intent of the Charter to require a full public review of land use decisions such as zoning map changes is undermined.

Text amendments could radically change the laws governing development and, therefore, should go through the same public review as similar matters. For example, since 2008, DCP has proposed and approved text amendments in Manhattan to: restrict curb cuts in residential districts;<sup>50</sup> alter parking regulations;<sup>51</sup> alter use and bulk regulations for properties fronting

<sup>46</sup> <http://www.nyc.gov/html/dcp/pdf/cpc/070414.pdf>

<sup>47</sup> [http://www.nyc.gov/html/dcp/html/zone/zh\\_abouttext.shtml](http://www.nyc.gov/html/dcp/html/zone/zh_abouttext.shtml)

<sup>48</sup> <http://www.nyc.gov/html/dcp/html/luproc/ulpro.shtml>

<sup>49</sup> NYC Charter §2001

<sup>50</sup> N 100139 ZRY <http://www.nyc.gov/html/dcp/html/rsp/index.shtml>

DeLury Square Park;<sup>52</sup> modify the types of zoning lots eligible for bonuses in the Special West Chelsea District;<sup>53</sup> exempt density for supermarkets;<sup>54</sup> create a site plan and parking regulations for the Eastern Rail Yards;<sup>55</sup> alter the rules and densities associated with the inclusionary housing program;<sup>56</sup> change regulations related to development on the waterfront;<sup>57</sup> require new buildings to incorporate bicycle parking;<sup>58</sup> alter rear-yards requirements;<sup>59</sup> require street tree plantings;<sup>60</sup> increase the size of stairwells;<sup>61</sup> alter use and bulk regulations, locations of subway entrances, and transparency requirements in Hudson Yards Special District;<sup>62</sup> alter the theatre bonus in the Clinton Special District;<sup>63</sup> reduce the total height and density in the 125<sup>th</sup> Street Special District,<sup>64</sup> and alter design regulations for privately-owned public plazas.<sup>65</sup>

While many of these text amendments were not controversial, they will transform the city by shaping land uses, density, height, bulk, and the streetscape more than almost any zoning map change has. The Charter did not require these changes to undergo full ULURP review, thereby limiting public participation and undermining the goal to have land use decisions receive full public review. The Charter should be revised to require full ULURP review for zoning text changes.

### **Recommendation:**

**The Charter Revision Commission should recommend that all proposals to amend the Zoning Resolution, including zoning text amendments, be approved through a full ULURP process similar to zoning map changes.**

### *Disposition of City-owned property*

Furthermore, some actions subject to ULURP have no criteria by which to determine the appropriateness of an application. One example is the sale of City-owned properties. Currently, the City is able to dispose of City-owned properties for a public purpose or by auction. The City, however, is not required by law to justify the reason behind the disposition. This has created conflicts in the past, as it did with the proposed sale in the recent past of two City-owned firehouses – one in East Harlem and one on the Lower East Side.<sup>66</sup> In both cases, the City decided to dispose of the City-owned land and buildings for auction. While the mayor's office

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<sup>51</sup> N N 100119 ZRM <http://www.nyc.gov/html/dcp/pdf/cpc/100119.pdf>

<sup>52</sup> N 090509 ZRM <http://www.nyc.gov/html/dcp/pdf/cpc/090509.pdf>

<sup>53</sup> N 090243 ZRM <http://www.nyc.gov/html/dcp/pdf/cpc/090243.pdf>

<sup>54</sup> N 090412 ZRY <http://www.nyc.gov/html/dcp/html/fresh/index.shtml>

<sup>55</sup> N 090211 ZRM <http://www.nyc.gov/html/dcp/pdf/cpc/090211.pdf>

<sup>56</sup> N 090316 ZRY [http://www.nyc.gov/html/dcp/html/inclusionary\\_housing/index.shtml](http://www.nyc.gov/html/dcp/html/inclusionary_housing/index.shtml)

<sup>57</sup> N 090239 ZRY <http://www.nyc.gov/html/dcp/html/waterfront/index.shtml>

<sup>58</sup> N 090191 ZRY [http://www.nyc.gov/html/dcp/html/bicycle\\_parking/index.shtml](http://www.nyc.gov/html/dcp/html/bicycle_parking/index.shtml)

<sup>59</sup> N 080078 ZRY <http://www.nyc.gov/html/dcp/html/yards/index.shtml>

<sup>60</sup> N 080081 ZRY [http://www.nyc.gov/html/dcp/html/street\\_tree\\_planting/index.shtml](http://www.nyc.gov/html/dcp/html/street_tree_planting/index.shtml)

<sup>61</sup> N 080149 ZRY <http://www.nyc.gov/html/dcp/html/stairwells/index.shtml>

<sup>62</sup> N 080184 ZRM, N 080184A ZRM <http://www.nyc.gov/html/dcp/html/hyards/implementation.shtml>

<sup>63</sup> N 080184(B) ZRM <http://www.nyc.gov/html/dcp/html/hyards/implementation.shtml>

<sup>64</sup> N 090031 ZRM <http://www.nyc.gov/html/dcp/html/125th/125th10.shtml>

<sup>65</sup> N 090317 ZRY <http://www.nyc.gov/html/dcp/pdf/cpc/090317.pdf>

<sup>66</sup> East Harlem Fire House, C 07033PPM: <http://www.nyc.gov/html/dcp/pdf/cpc/070133.pdf>  
Henry Street Fire House: C 070132 PPM: <http://www.nyc.gov/html/dcp/pdf/cpc/070132.pdf>

ultimately agreed to work with the local communities to dispose of the properties for a public purpose, they were not required to do so.

Policy shifts in the 1990s resulted in the City's aggressive divestment in *in rem* properties while a significant inventory of City-owned building and lots were targeted to serve a range of public needs such as affordable housing and community facilities. As a result, 98% of the vacant, *in rem* City-owned properties have been disposed.<sup>67</sup> Now, however, vacant and underutilized City-owned property has become too scarce for the City to continue disposing of them without mandated guiding principles.

### **Recommendation:**

**The Charter Revision Commission should recommend that City agencies provide a statement of purpose prior to disposing of City-owned property and that the Department of City Planning establish objective findings in the Zoning Resolution for consideration of a proposed disposition of City-owned property.**

### *Tracking Applications for Public Participation*

Many land use applications involve multiple agencies and public process approvals. To determine when and where public discussions and relevant meetings are occurring that pertain to a project involving a "simple" ULURP action, a concerned citizen would need to review multiple information sources, including community board websites as well as those of the City Planning Commission and the city council.

A more complex approval process may also include multiple hearings at the Landmarks Preservation Commission or Board of Standards and Appeals. The obstacles to searching for information about participating in the land use approval processes are often compounded for those attempting to track multiple projects across neighborhoods. Furthermore, several decision-making bodies post hearing agendas only a few days prior to public hearings. Therefore, missing a public notice by just a day or two may remove any opportunity for a community member to become informed of the public process.

A centralized information source would facilitate full public participation in public review and decision-making processes. Centralized access to notices and other information about land use matters would allow the average citizen and civic groups to easily track a single project or multiple projects, ultimately improving public participation in such decisions.

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<sup>67</sup> The New Housing Market Plan: Reaching the Halfway Mark, 2008, <http://www.nyc.gov/html/hpd/downloads/pdf/NHMP-2008-Progress-Report.pdf>

**Recommendation:**

**The Charter Revision Commission should recommend mandating a centralized citywide website for the posting of public notices for hearings and meetings on matters being considered by the CPC, LPC, BSA and other bodies making land uses. The hearings and/or meetings should be at minimum searchable by date, type of action, project name or community district.**





# **REFORMING OUR CITY'S AGENCIES**



## Reforming our City's Agencies

In announcing the formation of the current Charter Revision Commission, Mayor Bloomberg called for a sweeping review of the entire City Charter to identify “any possible amendments that would improve” New York City governance structure and operations.<sup>1</sup>

The current Charter Commission cannot fulfill this mandate for a top-to-bottom review of City government without closely examining City agencies. If the Charter Commission fully realizes its mandate, it is likely to find many opportunities to improve the efficiency and service of government agencies. In 1988, for example, the Ravitch Commission identified the need to create the Conflicts of Interest Board. The 2001 Charter Commission established the Human Rights Commission, the Office of Immigrant Affairs, and the Office of Emergency Management as charter agencies and merged the Department of Health and the Department of Mental Health into one agency.

This Charter Commission should take a hard look at City agencies to determine where they are failing and how they should change to best serve New Yorkers. The Commission should address gaps in City government, as well as instances where government unnecessarily deters the market from operating at its full potential. Most importantly, the Commission should determine what the city's most pressing needs are and whether City government is best equipped to address them. As part of this process, those with expertise in certain issue areas should lend their knowledge to propose and give feedback on improving our City agency structure. Below are recommendations to improve our City's agencies in areas that the Manhattan Borough President's Office has focused on during Borough President Stringer's administration: the Department of Buildings, School Overcrowding, and Food Policy.

### The Office of Inspection

#### *Current State of Affairs at the Department of Buildings*

New York City has a comprehensive building code intended to preserve our built environment and to safeguard the health, safety and well-being of the people who live, work, and inhabit our buildings.<sup>2</sup> Currently, the responsibility of the Department of Buildings is to enforce the building code as well as zoning and other rules related to the safe and lawful use of over 975,000 buildings and properties in the five boroughs.

Over a 34 day period in the fall of 2009, the Office of the Manhattan Borough President conducted an extensive review of open Department of Buildings (“DOB”) and Environmental

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<sup>1</sup> *News from the Blue Room*. Office of the Mayor, 3 Mar. 2010. Web. 19 Apr. 2010.

<[http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor\\_press\\_release&catID=1194&doc\\_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2010a%2Fpr096-10.html&cc=unused1978&rc=1194&ndi=1](http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2010a%2Fpr096-10.html&cc=unused1978&rc=1194&ndi=1)>.

<sup>2</sup> *1968 BUILDING CODE OF THE CITY OF NEW YORK*. NYC Department of Buildings, July 2008. Web. 19 Apr. 2010.

<[Http://www.nyc.gov/html/dob/html/reference/code\\_internet.shtml](http://www.nyc.gov/html/dob/html/reference/code_internet.shtml)>.

Control Board (“ECB”) violations on 41,992 lots throughout the borough.<sup>3</sup> In total, it found 177,518 open DOB violations and 45,270 ECB violations in New York City’s database – nearly a quarter of a million open building violations in Manhattan alone.

Of the open ECB violations, 33 percent are classified as “hazardous” or “Class-1,” which pose a “threat that severely affects life, health, safety, property, public interest or persons so as to warrant immediate corrective action.”<sup>4</sup>

And yet, despite the seriousness and severity of this situation, the average time period during which each of these serious violations has remained open is nearly five years.

The story of the DOB is at best one of erratic enforcement and at worst one of gross negligence on the part of the City administration. Tens of thousands of Manhattan buildings have safety or structural violations that go unresolved for years due to a failed building enforcement system, threatening the city’s public health, safety, and infrastructure.

### *A History of Inefficiency*

The study by the Manhattan Borough President’s Office is not the first time the inadequacy and inefficiency of the Buildings Department has received attention. In recent years, dangerous incidents that fall under the DOB’s regulatory purview have become routine. On March 15, 2008, a crane collapsed at a construction site in East Midtown, killing seven people. DOB had issued 13 violations for this site – a number that Mayor Bloomberg described as “not unusual.”<sup>5</sup> About one month later in April 2009, a crane collapsed in the Upper East Side, killing two people at a construction site with 14 ECB violations.<sup>6</sup> On April 30, 2009, a five story building collapsed in Tribeca only days after DOB issued a round of violations.<sup>7</sup> A lengthy backlog of open DOB and ECB violations prior to the collapse has been the common denominator in these and other recent disasters.

Bribery and corruption scandals have also plagued the DOB for decades. As recently as March of this year a former chief crane inspector for the DOB pleaded guilty to taking bribes from a company in exchange for falsely certifying cranes that had not been inspected and issuing crane operator’s licenses to people who had not completed examinations.<sup>8</sup> In September 2009, at least

<sup>3</sup> *Falling Apart at the Seams*. The Office of Manhattan Borough President, Jan. 2010. Web. 19 Apr. 2010. <<http://www.mbp.org/uploads/buildingreportfinal.pdf>>.

<sup>4</sup> *1 RCNY 102-01 Chater 100: Subchapter B Enforcement*. NYC Department of Buildings. Web. 19 Apr. 2010. <[http://www.nyc.gov/html/dob/downloads/rules/1\\_RCNY\\_102-01.pdf](http://www.nyc.gov/html/dob/downloads/rules/1_RCNY_102-01.pdf)>.

<sup>5</sup> “Crane Collapse.” *NY1 News*. New York 1, 15 Mar. 2008. Web. 19 Apr. 2010. <[http://www.ny1.com/1-all-boroughs-news-content/top\\_stories/?SecID=1000&ArID=79456](http://www.ny1.com/1-all-boroughs-news-content/top_stories/?SecID=1000&ArID=79456)>

<sup>6</sup> *Complaint & Violation Summary for 335 East 91st Street*. NYC Department of Buildings, 30 May 2008. Web. 19 Apr. 2010. <[http://graphics8.nytimes.com/packages/pdf/nyregion/20080530\\_VIOLATIONS.pdf](http://graphics8.nytimes.com/packages/pdf/nyregion/20080530_VIOLATIONS.pdf)>.

<sup>7</sup> Paddock, Barry, and Jonathon Lemire. “Building Collapse at Lower Manhattan Construction Site.” *Nydailynews.com*. NY Daily News, 30 Apr. 2009. Web. 19 Apr. 2010. <[http://www.nydailynews.com/ny\\_local/2009/04/30/2009-04-30\\_building\\_collapse\\_at\\_lower\\_manhattan\\_construction\\_site.html](http://www.nydailynews.com/ny_local/2009/04/30/2009-04-30_building_collapse_at_lower_manhattan_construction_site.html)>.

<sup>8</sup> Eligon, John. “Former Chief Crane Inspector Admits Taking Bribes for Lies.” *Www.nytimes.com*. The New York Times, 23 Mar. 2010. Web. 19 Apr. 2010.

six City building inspectors, some with ties to a powerful crime family, were arrested on charges of taking bribes.<sup>9</sup> In 1993, 18 DOB plumbing inspectors were arrested for extorting payoffs from plumbing contractors<sup>10</sup> and in 1991, 14 construction inspectors were charged with extortion.<sup>11</sup>

Sectors of the construction industry, advocates, elected officials and city residents have long voiced complaints about the DOB. The most significant complaints relate to DOB inspections, specifically the quality of inspectors, lack of training for inspections, inconsistent inspections, and a lack of enforcement capability. Indeed, DOB Commissioner Robert LiMandri remarked during questioning at a September 21, 2009 meeting of the City Council Committee on Housing and Buildings that “what this department consistently needs is stronger enforcement policies.”<sup>12</sup>

### *Past Attempts at Reform*

The City has explored reform of the DOB in the past. Over the last several decades, the City has convened special commissions and blue ribbon panels and has hired outside consultants to help improve the agency. To address corruption scandals, Mayor Giuliani created a high level task force in September 2000 to perform a comprehensive review of the DOB and develop recommendations for change.<sup>13</sup> In announcing its recommendations, the task force called the DOB “an antiquated, overly bureaucratic institution in need of a well-defined mission, stronger leadership and additional resources.”

The Giuliani Task Force review included analyzing the “possibility of shifting certain responsibilities, particularly inspections, to a newly created agency or other City agencies”<sup>14</sup> and ultimately proposed shifting inspection and enforcement functions to the Fire Department (“FDNY”). A similar recommendation to divide the responsibilities of the DOB was made in a joint report by the Association of Builders and Owners of Greater New York (“ABO”), the Building Trades Employers’ Association, and the Real Estate Board of New York (“REBNY”). The report, prepared in response to a public hearing on the Buildings Department held by Mayor

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<sup>9</sup> Weiss, Murray. “Buildings Graft Shocker.” *Www.nypost.com*. New York Post, 8 Sept. 2009. Web. 19 Apr. 2010. <[http://www.nypost.com/p/news/regional/buildings\\_graft\\_shocker\\_3FyDTCEPvamziXbKSCeOZL](http://www.nypost.com/p/news/regional/buildings_graft_shocker_3FyDTCEPvamziXbKSCeOZL)>.

<sup>10</sup> McKinley Jr., James C. “18 Inspectors Arrested on Bribe Charges.” *Www.nytimes.com*. The New York Times, 1 Oct. 1993. Web. 19 Apr. 2010. <<http://www.nytimes.com/1993/10/01/nyregion/18-inspectors-arrested-on-bribe-charges.html?pagewanted=1>>.

<sup>11</sup> Wolff, Craig. “Officials Held In Extortion Of Developers.” *Www.nytimes.com*. The New York Times, 3 Apr. 1991. Web. 19 Apr. 2010. <<http://www.nytimes.com/1991/04/03/nyregion/officials-held-in-extortion-of-developers.html?pagewanted=1>>.

<sup>12</sup> *Transcript of the Minutes of the Committee on Housing and Buildings*. City Council of the City of New York, 21 Sept. 2009. Web. 19 Apr. 2010. <<http://legistar.council.nyc.gov/View.ashx?M=F&ID=748684&GUID=1BE79A1E-ABEE-4B0C-AFD6-B8FA31B0F7E8>>.

<sup>13</sup> *MAYOR RUDOLPH W. GIULIANI ANNOUNCES TASK FORCE TO*. Mayor's Press Office, 28 Sept. 2000. Web. 19 Apr. 2010. <<http://www.nyc.gov/html/om/html/2000b/pr372-00.html>>.

<sup>14</sup> *MAYOR RUDOLPH W. GIULIANI ANNOUNCES TASK FORCE TO*. Mayor's Press Office, 28 Sept. 2000. Web. 19 Apr. 2010. <<http://www.nyc.gov/html/om/html/2000b/pr372-00.html>>.

Guiliani in November 2000, recommended that the City establish a non-profit entity responsible for construction inspection functions, along with other duties.

The Giuliani Task Force proposal to give inspection responsibility to the FDNY was then extensively considered by the 2001 Charter Commission. The Commission did not adopt this proposal for charter revision, saying that “due to the complexity of this recommendation, it was unable to reach a consensus,” but in its analysis of the DOB found that the “areas that were identified as being in need of immediate reform were those of construction and safety inspection and enforcement.”<sup>15</sup>

It is clear that between lax enforcement, construction safety incidents, and decades of corruption scandals, the system has been paralyzed for years. New York City’s built environment is not indestructible. Our building stock is the backbone of our urban infrastructure and is necessary, just like the expansive network of bridges, roads, railways, utilities and water tunnels, for our City to function. If we are not vigilant about maintaining this vital asset, it will deteriorate.

### **Recommendation:**

**The Charter Revision Commission should recommend reducing the mission of the DOB and establishing a separate New York City Office of Inspection (“OOI”), which will be responsible for building inspection and remediation.**

The OOI would be a quasi-governmental authority that would take responsibility for all building inspection and remediation duties from the DOB.<sup>16</sup> It would house the entire City’s building inspectors and be responsible for the issuance and remediation of all buildings violations. Other responsibilities of the DOB, such as plan examinations, issuing construction permits, and certificates of occupancy would remain with the DOB.

The OOI would provide a much needed streamlining of government resources to help remove the many layers of government bureaucracy at the DOB. In its current form, the DOB is simply responsible for more that it has proven able to handle.<sup>17</sup> Moreover, there is an inherent conflict between DOB’s mission to promote development and simultaneously enforce adherence to the building code. The issuing and enforcing of violations is vital to maintaining our residents’ safety and allowing development to continue – the City has no choice but to revamp its regulatory structure and divide the Department’s duties.

Funds that are currently apportioned to the DOB for buildings inspection operations should be shifted to the OOI. Most importantly, the revenue collected from OOI violations and

<sup>15</sup> *Making Our City's Progress Permanent: An Overview*. NYC Charter Revision Commission, 2001. Web. 19 Apr. 2010.

<[http://www.nyc.gov/html/charter/downloads/pdf/2001\\_final\\_report.pdf](http://www.nyc.gov/html/charter/downloads/pdf/2001_final_report.pdf)>.

<sup>16</sup> Quebec’s *Commission de la construction du Québec (CCQ)* employs a similar model.

<sup>17</sup> The Department’s current responsibilities involve performing plan examinations, issuing construction permits, Certificates of Occupancy, and Place of Assembly permits; responding to complaints, conducting physical inspections, issuing violations, and licensing trades. DOB issues and enforces its own violations. DOB also issues ECB building violations, which are adjudicated by ECB.

enforcement should go directly into OOI's budget. Under the current system, revenue raised from DOB violations goes into the City's general fund rather than back into the DOB budget. This budgeting change will allow OOI to pay building inspectors at markedly higher rates, thereby attracting inspectors with greater qualifications, talent, and consistent training. In addition, the office would demand higher levels of accountability among the City's buildings inspectors. The ECB will still adjudicate all building violations issued by OOI so that there is a check on OOI's power and to help prevent overzealous issuance of building violations as a revenue generator.

## Education

### *A Growing Student Population and a Failure to Plan*

From 2000 to 2008, new buildings alone have added at least 40,000 new apartments to Manhattan.<sup>18</sup> The fastest growing population segment in Manhattan is children under the age of five, which has increased by 32 percent since 2000 according to the U.S. Census.<sup>19</sup> With widespread agreement that nearly a million residents will come to New York in the next two decades, there is every reason to expect this upward trend in school-age population to continue.<sup>20</sup>

For the past two years, the Manhattan Borough President's Office has been actively calling attention to how the City's planning process for new school construction fails to address this growing population and as a result, our public school students are faced with overcrowded classrooms, growing waitlists, and at times no seats in their neighborhood schools.

In April 2008, the Manhattan Borough President's Office released the first comprehensive borough-wide analysis of residential development and its relationship to local school capacity in a report entitled "Crowded Out." The report's findings show that in four Manhattan neighborhoods at critical risk for serious overcrowding, the City issued permits for enough new buildings between 2000 and 2007 to add more than 2,300 new elementary and middle school students to neighborhood schools, while increasing school capacity in these neighborhoods by only 143 seats.<sup>21</sup>

An updated report, "Still Crowded Out," issued by the Manhattan Borough President's Office in September 2008 addressed new buildings approved by the City between January and August

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<sup>18</sup> Derived by adding up the number of units in new buildings approved by the Department of Buildings in Manhattan between 2000 and 2007, according to the Department of Buildings' "My Community" website: [http://a810-bisweb.nyc.gov/bisweb/my\\_community.jsp](http://a810-bisweb.nyc.gov/bisweb/my_community.jsp), accessed January and February 2008.

<sup>19</sup> Roberts, Sam. "In Surge in Manhattan Toddlers, Rich White Families Lead The way." *New York Times*, March 23, 2007.

<sup>20</sup> According to Mayor Bloomberg's PlaNYC 2030 report, "[b]arring massive changes to immigration policy or the city's quality of life, by 2010, the Department of City Planning projects that New York will grow by another 200,000 people. By 2030, our population will surge past nine million, the equivalent of adding the entire population of Boston and Miami combined to the five boroughs." PlaNYC 2030 Report, April 22, 2007. Introduction, Pages 6-7. [http://www.nyc.gov/html/planyc2030/downloads/pdf/report\\_introduction.pdf](http://www.nyc.gov/html/planyc2030/downloads/pdf/report_introduction.pdf), accessed April 10, 2008.

<sup>21</sup> *Crowded Out: School Construction Fails to Keep Up With Manhattan Building Boom*. The Office of Manhattan Borough President, Apr. 2008. Web. 19 Apr. 2010. <<http://www.mbpo.org/uploads/SCHOOLSREPORT.pdf>>.

2008. The report found that new development had continued to add hundreds of new public school students to neighborhood schools over the course of 2008, but the City had still not planned to meet this expected demand.<sup>22</sup>

In September 2009, the office released “School Daze,” a report focusing on the accuracy of the ten-year enrollment projections between 2007 to 2016, which provided the basis for the Capital Plan developed by the New York City School Construction Authority (“SCA”) and adopted by the City Council and the Mayor in 2009. The report sharply disagreed with the ten-year enrollment projections used by the Department of Education (“DOE”), finding a substantial increase in the borough’s school-aged population over the coming decade, while SCA forecasts small declines.<sup>23</sup>

Finally, this month, a catalogue of firsthand experiences reported to the Manhattan Borough President’s Office found that more than four out of ten (43 percent) of Manhattan elementary and middle schools suffer the negative consequences of the Department of Education’s inadequate planning for public school space needs.<sup>24</sup>

### *The “Blue Book”*

The DOE’s official data on public school enrollment and capacity is contained in a report issued each year by the SCA known as the “Blue Book.” The SCA develops its forecasts of student enrollment in collaboration with two outside consultants: the Grier Partnership and Statistical Forecasting, LLC.

There is empirical evidence of problems with DOE enrollment forecasting. In November 2007, Statistical Forecasting predicted a reduction of 386 pre-kindergarten students in Manhattan schools. Two months later, in January 2008, Grier projected a reduction of 209 pre-kindergarten students. When in 2009 the consultants updated the actual enrollment figures for the 2007-08 school year, the corrected figures showed an increase of 929 pre-K students in Manhattan, or the equivalent of 69 to 73 additional classrooms for Manhattan’s pre-kindergarten population.<sup>25</sup>

For the overall school population during the 2007-08 school year, Grier had forecasted a decline in enrollment of 3,263 students<sup>26</sup>, and Statistical Forecasting had predicted a decline of 2,767

<sup>22</sup> *Still Crowded Out: School Construction Fails to Keep Up with Manhattan Building Boom*. The Office of Manhattan Borough President, Sept. 2008. Web. 19 Apr. 2010.  
<<http://www.mbp.org/uploads/StillCrowdedOut.pdf>>.

<sup>23</sup> *School Daze: Fuzzy Numbers Mean Overcrowded Schools*. The Office of Manhattan Borough President, Sept. 2009. Web. 19 Apr. 2010.  
<<http://www.mbp.org/uploads/schooldaze.pdf>>.

<sup>24</sup> *Individual Schools Reporting Problems Relating to Physical Facilities*. The Office of Manhattan Borough President, Apr. 2010. Web. 19 Apr. 2010.  
<<http://www.mbp.org/uploads/SchoolNarrativesCatalogue2.pdf>>.

<sup>25</sup> *School Daze: Fuzzy Numbers Mean Overcrowded Schools*. The Office of Manhattan Borough President, Sept. 2009. Web. 19 Apr. 2010.  
<<http://www.mbp.org/uploads/schooldaze.pdf>>.

<sup>26</sup> The Grier Partnership, January 2008, Appendix B pg 17 and Appendix C “Manhattan”  
[http://source.nycsca.org/pdf/capitalplan/2009/GPPProjections-PK-12\\_2008-17.pdf](http://source.nycsca.org/pdf/capitalplan/2009/GPPProjections-PK-12_2008-17.pdf)



students.<sup>27</sup> Actual enrollment figures later showed a small borough-wide increase of 20 students.<sup>28</sup>

In addition, DOE claims that it develops its own enrollment projections and needs assessments but has declined to make this information public. Thus, there is no oversight or opportunity to comment on this data which has contained flaws.

### *The Department of City Planning*

Given the crisis of confidence in DOE's ability to accurately project enrollment, responsibility for enrollment projections and oversight of the DOE's school construction planning should be given to the Department of City Planning ("DCP"). DCP employs staff with expertise in projecting student enrollment, such as demographers, and the Department is already responsible for determining the impacts developments may have on student enrollment at local schools.

### *The New York City Comptroller*

After school enrollment is projected, a needs assessment must be conducted with goals to reduce overcrowding and class size to determine where to best allocate resources.

Enrollment projections predict the number of students expected to be enrolled in the City's public schools in a given year. A needs assessment is a tool to relieve overcrowding and meet other goals related to school space such as the need for more cluster rooms or eliminating the use of trailers. The assessment examines enrollment projections and the existing level of overcrowding alongside a set of goals. It then sets forth what is needed in the school capital plan in order to achieve the set goals.

As Chief Financial Officer of the City of New York, the City Comptroller is responsible for making recommendations on City operations and fiscal policies. Concomitantly, the Comptroller is also responsible for auditing City agencies to ensure that money is being spent in the right way. The Comptroller is, therefore, well situated to provide oversight as to how the DOE and SCA should spend its capital budget on school construction and perform the necessary needs assessment for the City's school system.

### **Recommendation:**

**The Charter Revision Commission should recommend requiring (1) DCP to provide annual enrollment projections based on an appropriate range of data and a public input process to ensure accurate enrollment projections and (2) the City Comptroller to periodically conduct a needs analysis of school capacity within goals to reduce class size and overcrowding. Specifically:**

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<sup>27</sup> Statistical Forecasting, November 2007, pg 46,

<sup>28</sup> Number derived by comparing tables in Statistical Forecasting November 2007, pg 46, and Statistical Forecasting February 2009, pg 4,

- DCP should provide enrollment projections on a yearly basis, predicting what enrollment will be one year, five years, and ten years in the future. The enrollment projection should be based on, but not limited to: birth rate data, residential development data, existing enrollment trends, surveys of local pre-Ks and day care centers, and census data showing changes in family in-migration and out-migration rates.
  - The projections should predict changes in enrollment citywide, by district, and by school enrollment zones.
  - The projections, along with data sources and methodology, should be made available to the public and posted on-line each fall as part of the capital planning process, before DOE's annual amendment to the school construction capital plan.
  - The DCP should respond to any comments and suggestions that will be posted on-line as well, and come up with a revised version each spring, before the final vote on the capital plan amendments.
- The City Comptroller should be directed to periodically develop a needs analysis estimating the number of new school seats needed five and ten years into the future. The analysis should take into account the need to reduce class size, provide sufficient cluster space, and improve enrollment projections.
  - The City Comptroller should complete the needs assessment at least two months prior to the City Council vote on the capital plan each spring. Before and after that vote, the City Comptroller should assess or "certify" whether the capital proposed by DOE is likely to achieve its stated goals.

### Department of Food and Markets

Food is at the intersection of some of the city's most daunting challenges, including public health, hunger, and the economy.

New York City is outpacing the nation in obesity and its other related health problems. Both obesity and diabetes rates rose by 17 percent between 2002 and 2004 among city residents.<sup>29</sup> The severity of health problems associated with food cannot be denied: being overweight or obese is often accompanied by a rise in the risk of heart disease, hypertension, depression, type II diabetes and other health problems. These trends are more prevalent in low-income neighborhoods and among Black and Latino adults.

Unbalanced development has left entire communities in "food deserts" without sufficient access to fresh food and saddled with the deadly pairing of obesity and hunger.<sup>30</sup> As the unemployment

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<sup>29</sup> Van Wye G, Kerker BD, Matte T, Chamany S, Eisenhower D, Frieden TR, et al. Obesity and diabetes in New York City, 2002 and 2004. *Prev Chronic Dis* 2008; 5(2). <[http://www.cdc.gov/pcd/issues/2008/apr/07\\_0053.htm](http://www.cdc.gov/pcd/issues/2008/apr/07_0053.htm)>.

<sup>30</sup> NYC Department of City Planning. *Going to Market: New York City's Neighborhood Grocery Store and Supermarket Shortage*; see [www.nyc.gov/html/dcp/pdf/supermarket\\_access/presentation\\_2008\\_10\\_29.pdf](http://www.nyc.gov/html/dcp/pdf/supermarket_access/presentation_2008_10_29.pdf)

rate rises, fewer families are able to afford a healthy diet. Last year, 1.6 million New Yorkers received food stamps and 3.3 million had trouble paying for food.<sup>31</sup> Most of these New Yorkers are vulnerable populations: children, seniors, people with disabilities, and the working poor. Yet increasingly, middle income New Yorkers are seeking food assistance as well. The current recession has resulted in a greater need for food assistance, shrinking philanthropic support for emergency food programs and tightening city and state budgets.

The key to long-term improvement is not simply increased funding for emergency food services, but sustainable economic development. Thousands of New Yorkers make their living in food industries, including farmers, manufacturing workers, drivers, restaurant workers, and entrepreneurs. At a time when a worsening recession forces policymakers to focus on job creation and retention, there is an opportunity to expand our workforce around this fundamental human need and economic staple.

Just as our municipal government oversees transportation, education, and sanitation, so too should it ensure that city residents have access to healthy and sustainable food. Mayor Bloomberg has already taken important steps in the right direction by creating an Office of Food Policy, which helps reduce hunger and increase access to healthy food, and through the Health Department's pioneering steps to ban trans fats and calorie count requirements for chain restaurants. While City government has initiated a number of policies to promote food access and the food economy, these efforts have been piecemeal and inadequate to address the great impact food has on our City residents. The City must make a paradigm shift to expand its role in food policy, so that every relevant agency's policies are informed by and strategically focused on a shared goal: to create a sustainable food system which provides economic, social, environmental, and health benefits.

In order for food and agricultural policies and programs to be systematically established, a Department of Food and Markets must coordinate all of these efforts. Without central oversight and coordination of these activities, their success is vulnerable to changes in leadership and department culture, budgetary constraints, and competing policy aims.

### **Recommendation:**

**The Charter Revision Commission should recommend establishing a Department of Food and Markets, an independent new agency of equal status to other City departments to promote access to healthy affordable food, strengthen the food economy, and improve the city's food infrastructure, among other objectives.<sup>32</sup>**

The Department of Food and Markets would be responsible for:

- Coordinating policy and programmatic changes across City agencies, including:

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<sup>31</sup> The Economist. "Food and Poverty: The Big Apple is Hungry," January 14, 2010.

<[http://www.economist.com/research/articlesBySubject/displaystory.cfm?subjectid=348876&story\\_id=15271055](http://www.economist.com/research/articlesBySubject/displaystory.cfm?subjectid=348876&story_id=15271055)>

<sup>32</sup> "FoodNYC: A Blueprint for a Sustainable Food System," Manhattan Borough President's Office. Available: <http://www.mbpo.org/uploads/FoodNYC.pdf>

- Working with the State Department of Agriculture and Markets, the New York State Food Policy Council, and the United States Department of Agriculture.
  - Working with the Health Department to ensure that their goals are consistently conveyed throughout the city by promoting consumption of healthy food by City-funded entities and improving nutrition education in public schools, for example.
- Addressing hunger in New York City by:
  - Coordinating social service programs and ensuring that enrollment is available at soup kitchens and food pantries so that clients can apply for several programs simultaneously, including public health insurance, childcare subsidies and nutrition programs.
  - Eliminating the fingerprinting requirement as part of the requirement to apply for food stamps in order to increase the number of eligible New Yorkers using food stamps.
- Fostering economic development by:
  - Cultivating the food economy using a focused economic development strategy.
  - Developing and coordinating a job incubator program in conjunction with an urban agriculture education program to connect job training with the food industry.
- Promoting urban and regional agriculture, such as:
  - Identifying land in the five boroughs and in the foodshed (a geographic area such as a 200-mile radius surrounding the city where food can be sourced) that can be used for agriculture;
  - Promoting and identifying space for community gardens and facilitating the development of rooftop agriculture;
  - Improving upstate farmers' access to New York City as a market destination; and
  - Setting a requirement to promote and support outdoor farmers markets.

# **BOROUGH PRESIDENTS AND THE GOVERNMENT OF NEW YORK CITY:**

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**FULFILLING THE VISION OF THE CHARTER AND THE NEEDS OF CITY GOVERNANCE**



## **Borough Presidents and the Government of New York City: Fulfilling the Vision of the Charter and the Needs of City Governance**

### Introduction

New York City and its government are distinct from all other cities of the nation in its size, diversity, economic force and urban vitality. Greater New York City was formed over a century ago as a consolidation of cities, counties, towns and territories to establish a new locality that was, in effect, a regional government. New York City is the only city in the U.S. to be comprised of boroughs, all five large enough to be major cities on their own. Staten Island alone, for example, is as large as Pittsburgh and larger than Buffalo. In addition, New York plays an unmatched role in its region, constituting a far higher percentage of state population, employment or personal income than any other major city.<sup>1</sup>

New York City's size and complexity necessitate a unique form of government to integrate local community needs and prevent an overly centralized distribution of power. Unlike other U.S. cities which generally have only an executive and local legislature, New York City has borough presidents who serve as an intermediary and balance of power between local communities and the mayor and city council. This model of decentralized local governance is nonetheless a common and growing approach throughout the world.<sup>2</sup> When the City was consolidated in 1898, borough presidents were established as integral offices to ensure a responsive, representative and comprehensively functioning New York City government. The borough presidents were intended to have, and have always maintained, a significant intermediate executive role with core powers in the comprehensive planning of the city, including land use, budget, policy and contracts. In 1989, however, the U.S. Supreme Court held that the voting system of the Board of Estimates, which included the borough presidents, mayor, comptroller and city council president, was unconstitutional, necessitating a change in the decision-making roles of borough presidents.

The 1989 Charter Revision Commission was charged with the mission of re-visioning city governance, a central component of which was to ensure a substantial borough voice in the new government. The Commission vigorously supported preserving and enhancing a vital and influential role for borough presidents as strong executives, particularly in the traditional core powers of land use, budget, strategic policy and contracts. The 1989 Commission laid out a vision for borough presidents to have broad, proactive powers in these major decision-making areas of City government to ensure borough and community needs were incorporated into the goals and decisions of the central powers. The Commission specifically intended borough presidents to have a key

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<sup>1</sup> See Richard Briffault, *The New York City Charter and the Question of Scale*, 42 *N.Y.L. Sch. L. Rev.* 1059 (1998).

<sup>2</sup> Major cities, including some of comparable size and stature to New York, in other nations that have intermediate city executive structures of municipal government include Amsterdam, Netherlands; Seoul, South Korea; Rome, Italy; Tokyo, Japan; Mexico City, Mexico; and Berlin, Germany.

role in long term strategic planning for the City by requiring that they prepare a strategic policy statement every four years to submit to the mayor, city council and community boards. The Commission also envisioned borough presidents to have an instrumental say in the formulation of the City budget by giving them powers to make recommendations and hold hearings on the budget and have control over portions of the capital and expense budgets. In addition, the Commission intended borough presidents to have substantial authority in land use decision-making and planning through the Uniform Land Use Review Procedure (ULURP) and other mechanisms of comprehensive planning that tie local neighborhoods to borough and city developments. Finally, the Commission sought to give borough presidents a fundamental role in evaluating and providing input on all City contracts in their borough to improve the overall functioning of government.

Two decades later, we have the opportunity to evaluate how well the 1989 Charter revision has fulfilled its vision to ensure borough presidents are meaningfully integrated in major areas of government decision-making. Although the 1989 Charter provisions have allowed borough presidents to have important positive impacts and provide a unique perspective in City government, the Charter has fallen short of its goals of enabling the offices to have a concrete impact on many decisions. Borough presidents have lacked the authority and tools under the Charter to fully develop their substantial functions in policy, comprehensive planning, budget and other important areas. First, although borough presidents are designed to be independent as a check and balance to the mayor and city council, the borough presidents' budgets are determined year-to-year entirely by the mayor and council, undermining the stability of borough president office resources and the independence they have from these citywide powers. Second, although borough presidents are mandated to prepare strategic policy statements every four years to inform the policy-making of the mayor and council, these statements verge on becoming empty exercises due to the lack of accountability mechanisms to ensure serious consideration and incorporation of the analysis and recommendations. Third, borough presidents are authorized to make budget recommendations to the mayor and council with the purpose of having their recommendations rigorously considered and, if viable, adopted. However, borough presidents lack the procedural leverage to compel public discussion and serious consideration of their proposals. Lastly, the 1989 Charter Commission intended an extensive role for borough presidents in contract evaluation and oversight, but did not provide the tools and structure to support this complex function.

The current Charter Revision Commission faces the need to assess the history, purpose and future potential of New York City government and how to improve its unique strength of meaningful borough governance. The experience of the past two decades shows that more needs to be done to enact the vision of the 1989 Charter Revision Commission and meet the needs of governing New York City. This report provides an analysis of the history, role and responsibilities of the borough presidents. It also identifies similar municipal governance structures in other parts of the world that demonstrate the value of intermediate, diversified city executives. Finally, it identifies in more detail the shortcomings of Charter provisions regarding borough presidents and outlines the Manhattan Borough President's Office's recommendations for achieving the purpose and potential of borough presidents in City government.



## The Important Role of Boroughs and Borough Presidents in City Governance

### *The History of the Borough Presidency*

Present day New York City was founded at the turn of the century as “Greater New York,” a regional consolidation of diverse cities, towns and villages that was intended as an unprecedented expansion of city government and function.<sup>3</sup> On January 1, 1898, when the City was consolidated, the New York Tribune proclaimed, “The sun will rise this morning upon the greatest experiment in municipal government that the world has even known—the enlarged city.”<sup>4</sup> Indeed, New York became a metropolis of virtually unparalleled scope, tripling its area and doubling its population from its original boundaries of Manhattan.<sup>5</sup> The City integrated Brooklyn, which alone was already the third or fourth largest city in the United States, as well as the newly constructed boroughs of Queens, Bronx and Staten Island<sup>6</sup>, producing five disparate boroughs ranging from urban areas to farmlands. New York’s expansion made it by far the largest city in the nation and second largest in the world next to London.<sup>7</sup>

### **The Borough Presidents’ Original Executive Role**

Essential to the design of Greater New York was the system of boroughs and borough presidents. In a city of such diversity and magnitude, borough governance was intended to help ensure a representative city government that could address the needs of local communities and prevent the over-centralization of city power.<sup>8</sup> The first Charter of New York City in 1897 provided for independently elected borough presidents who had advisory responsibilities for local “public improvements,” consisting mainly of city infrastructure such as water supply, streets, sewers, buildings and procurement. The borough presidents represented their boroughs on the Board of Public Improvements, a key innovation of the 1897 Charter that included the heads of major departments of public works and several executive officials.<sup>9</sup> A primary purpose of the Board of Public Improvements was to create accountability and transparency in administering important government services. The borough presidents, who came to be viewed as “local mayors,” were thus initially provided a role of an executive nature in City government.<sup>10</sup>

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<sup>3</sup> See David C. Hammack, Reflections on the Creation of the Greater City of New Yorker and its First Charter, 1898, 42 *N.Y.L. Sch. L. Rev.* 693, 710 (1998).

<sup>4</sup> See Edward Robb Ellis, *The Epic of New York City: A Narrative History* 454 (1966).

<sup>5</sup> See *id.* at 453.

<sup>6</sup> See Jonathan Holub & Irina Gonikberg-Dolinskiy, The Borough President: Community Leader or Excess Political Baggage, 42 *N.Y.L. Sch. L. Rev.* 1197, 1198 (discussing how the Bronx was created from a portion of old New York City combined with parts of Yonkers and some towns and villages of lower Westchester County. The borough of Queens was formed out of Long Island City and the western portion of Queens County. The former counties of Brooklyn, Manhattan and Richmond (now Staten Island) became boroughs).

<sup>7</sup> See Ellis, *supra* note 3.

<sup>8</sup> See generally Briffault, *supra* note 1.

<sup>9</sup> See The Bureau of City Betterment & Citizens Union, *How Manhattan is Governed: Facts You Should Know about the Administration of the Borough of Manhattan* 12 (1906) [hereinafter *How Manhattan is Governed*].

<sup>10</sup> See Ellis, *supra* note 3, at 453.

### **Strengthening the Borough Presidents' Responsibilities to Create a More Responsive City Government**

Concern grew very quickly, however, that the Board of Public Improvements and the borough presidents' role were not providing adequate borough representation or fair treatment of individual borough needs. There was a movement to strengthen borough presidents' executive powers and further decentralize City government. In 1901, the Charter was revised to abolish the Board of Public Improvements and increase the powers of borough presidents. Borough presidents gained the power to directly administer and implement public works of the City and appoint a public works commissioner for the borough.<sup>11</sup> This revamped structure was intended in large part to make services more responsive to local parts of the city.

The 1901 Charter also enhanced the responsibilities of borough presidents by making them a part of the Board of Estimate, a body with broad legislative, administrative and budget powers and regarded as the most powerful institution of City government.<sup>12</sup> The Board of Estimate had power to approve franchises and other major contracts, including those that were not competitively bid. In addition, the board was responsible for the disposition of City land, land use and zoning decisions and budget approval.<sup>13</sup> With this role, borough presidents assumed a quasi-legislative function.<sup>14</sup>

### **Shifting Away from Service Administration**

After 1936, borough presidents' responsibilities shifted away from administration of City services and rested more in the functions of the Board of Estimate such as planning, budget and land use decision-making. In 1936, many of the borough presidents' direct powers over public works were reduced and centralized with the new Department of City Planning and to the City Planning Commission for administrative efficiency purposes.<sup>15</sup> In 1961, the borough presidents' remaining powers over streets and sewers were transferred to centralized City agencies.<sup>16</sup> However, the influence of the borough presidents on the decision-making matters of the Board of Estimate remained and grew proportionally to five votes compared to the citywide officials' six.<sup>17</sup>

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<sup>11</sup> See *How Manhattan is Governed*, supra note 8, at 16-17.

<sup>12</sup> See Holub & Gonikberg-Dolinskiy, supra note 5, at 1200 (noting that the other members of the Board consisted of the mayor, the comptroller and the president of the Council (known today as the public advocate), each with two votes.); see also Briffault, supra note 1, at 1062 ("The five borough presidents were given a total of seven votes – the presidents of Manhattan and Brooklyn had two votes apiece while the other presidents each had just one vote – and the citywide officials had a total of sixteen votes.").

<sup>13</sup> See Bruce R. Berg, *New York City Politics: Governing Gotham 181-182* (2007); see also Frederick A. O. Schwarz, Jr. & Eric Lane, 1998 Symposium: One-Hundredth Anniversary of the Charter of the City of New York: Past, Present, and Future, 1898-1998 Panel Two: 1989: Charter Commission's Policies, Process, Choices, and Strategies *THE POLICY AND POLITICS OF CHARTER MAKING: THE STORY OF NEW YORK CITY'S 1989 CHARTER*, 42 *N.Y.L. Sch. L. Rev.* 723, 767.

<sup>14</sup> See Holub and Gonikberg-Dolinskiy, supra note 5, at 1199.

<sup>15</sup> See Briffault, supra note 1, at 1062.

<sup>16</sup> See *id.* at 1063.

<sup>17</sup> See *id.*

## **The Re-visioning of Borough Presidents and City Government**

In 1981, the New York Civil Liberties Union (NYCLU) filed a federal lawsuit challenging the voting system of the Board of Estimate as violating the U.S. Constitution's principle of one person-one vote. The U.S. Supreme Court ultimately decided in Board of Estimate v. Morris in March 1989 that "because the boroughs have widely disparate populations – yet each has equal representation on the board," the Board's structure violated the one person-one vote requirement implicit in the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.<sup>18</sup> The populations of the boroughs at the time ranged from Staten Island with the lowest at about 350,000 to Brooklyn with the most at 2.2 million and Queens, Manhattan and the Bronx in between with 1.9 million, 1.4 million and 1.1 million respectively. As a result, "each Staten Island resident had six times more representative power than a Brooklyn resident" and "six times the access to their borough president."<sup>19</sup> This system was similar to that of the United States Senate which gives equal representation to protect smaller states. However, the U.S. Constitution specifically provides for the U.S. Senate system but not for analogous systems in states and localities.

In response to the Supreme Court decision, the Charter Revision Commission appointed by Mayor Koch in 1989 voted to eliminate the Board of Estimate and reconstitute City government.<sup>20</sup> Although the decision in Board of Estimate v. Morris ruled that the board's voting system was unconstitutional, it did not rule that the Board of Estimate as an institution was unconstitutional. Therefore, the Commission considered arguments to preserve the Board of Estimate with a modified weighted voting system. The Commission ultimately determined to end the board for legal and governance reasons and to redistribute the powers of the Board in important areas such as land use, budget and contracts.

### *Reaffirming the Vision for the Office of Borough President*

The 1989 Commission was firmly committed to preserving the office of borough president in the revised New York City government for numerous reasons. Borough governance remained a necessary balance to a strong mayoral and central government and to provide a prominent borough-wide voice that city council member delegations could not offer.<sup>21</sup> In addition, the history and inherent role of borough communities and identity in New York City life helped compel the commissioners to sustain the borough presidency. As the 1989 Commission Chair, Frederick Schwarz, and Executive Director, Eric Lane, stated, preserving borough presidents was never in question.

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<sup>18</sup> Schwarz & Lane, *supra* note 12, at 739.

<sup>19</sup> See *id.* at 740.

<sup>20</sup> See generally *id.*

<sup>21</sup> Frederick A. O. Schwarz & Eric Lane, 1998 Symposium: One-Hundredth Anniversary of the Charter of the City of New York: Past, Present, and Future, 1898-1998 Panel Two: 1989: Charter Commission's Policies, Process, Choices, and Strategies PART II. THE STRUCTURE AND PROCESSES OF THE NEW GOVERNMENT, 42 *N.Y.L. Sch. L. Rev.* 775, 812 (1998) [hereinafter *The Structure of the New Government*].

New York's history, our view of the needs of the City in 1989, the seemingly uniform view of commissioners, political reality, and possible issues under the Voting Rights Act, led us to assume throughout that there should be a borough voice, and that it should not be expressed only through Council borough delegations. The issue was not whether, but how, a borough voice would be expressed in the post-Morris era with no Board of Estimate.<sup>22</sup>

This view was shared by much of the public who weighed in during the public process of the 1989 Charter revision. The vast majority of diverse testimony received by the Commission "urged a meaningful borough role" and only a few sought elimination of the borough presidents. Indeed, the Commission concluded not only that borough presidents were historically important, but also that they were necessary to the functioning of New York City government in light of the city's vast scope. As Commission Chair Schwarz stated,

If [the borough presidents] didn't exist, we would want to invent something akin to them, because what they provided is an intermediate role between those who are elected in the smallest constituencies and those who are elected in the city as a whole. And with [a] government as big as ours, covering as large a physical area, covering as many people, we need that intermediate voice. And we need it substantively... [not] because one is focusing on what do you do about people who are in current positions.<sup>23</sup>

The Commission sought to redefine the borough presidency with the intent to give it significant and meaningful power while achieving the proper balance with the mayor and city council. The Commission crafted a new borough presidency that was meant to: (1) restore a proactive, executive role for the boroughs and (2) continue their responsibilities in the critical areas they had covered on the Board of Estimate which were identified as land use, budget modification and contracts.

### *Responsibilities of the Borough Presidents*

#### **Land Use**

One of the most significant powers of the borough presidents under the 1989 Charter revision is its role in land use and planning. Under the old Charter, the Board of Estimate had plenary control over the land use decisions in the city.<sup>24</sup> The 1989 Charter assigned most of the Board's final review powers over land use to the city council and the mayor.<sup>25</sup> However, the Charter grants borough presidents a significant voice in the Uniform Land Use Review Procedure (ULURP) to review and make recommendations on matters early in the process with an opportunity to influence the development of a project. In addition, each borough president appoints one member to the thirteen-member City Planning Commission. Borough presidents also are authorized to issue 197-a plans

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<sup>22</sup> See *The Structure of the New Government*, supra note 20, at 809.

<sup>23</sup> See *id.* at 811.

<sup>24</sup> See Holub & Gonikberg-Dolinskiy, supra note 5, at 1205.

<sup>25</sup> See *id.*

to the City Planning Commission, which allows them to have a role in comprehensive community-based planning and to shape the agenda of the City. Furthermore, borough presidents are mandated to maintain a topographical bureau for the borough with an appointed director and consulting engineer to maintain official maps and monitor construction projects.

### **Budget**

The 1989 Charter Revision Commission believed it was essential to ensure a meaningful role for borough presidents on budget allocations to help ensure a strong borough voice. The importance of the borough presidents' role in budget is demonstrated by the revised Charter requirement that borough presidents maintain a budget office to analyze and make proposals on the City budget. The Commission specifically decided to (1) require the mayor to include in the executive expense and capital budgets items recommended by the borough presidents, amounting to 5% of all discretionary increases in executive expenses and in capital spending and distributed to each borough president according to a formula based on population and need;<sup>26</sup> (2) authorize borough presidents to make recommendations to the mayor and city council on the mayor's preliminary budget and executive budget; (3) require the mayor to consult with borough presidents on the executive budget; (4) require the mayor to submit borough president budget recommendations to the city council with an explanation of why any recommendations were not adopted; and (5) require the city council to hold hearings on and act upon the borough presidents' recommendations. These functions were meant to give the borough presidents an executive but non-legislative role in shaping the budget and the ability to do so.

### **Contracts**

The 1989 Commission also maintained a role for the borough presidents in contract approval and oversight. Prior to 1989, the borough presidents had significant power in decisions to approve certain non-competitively bid contracts and franchises. The 1989 Commission found the previous procedure had little impact on City policy as review came at the end of the decision-making and contracting process.<sup>27</sup> The Commission revised the Charter to ensure borough presidents continued to have a role in contract review as well as provide for more collective input at the beginning of the contracting process.<sup>28</sup>

An important means for guaranteeing borough president input on contracts was the creation of the Franchise and Concession Review Committee (FCRC) to review and approve the granting of franchises and concessions.<sup>29</sup> The FCRC consists of four mayoral appointees, the comptroller and the borough president of the borough that will be affected by the franchise or concession. In the event that more than one borough will be

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<sup>26</sup> See *The Structure of the New Government*, supra note 20, at 847 (“Discretionary spending increases were defined basically as increased expenditures over which the City had discretion, but not including increased costs of existing programs or increases due to federal or state mandated programs.”).

<sup>27</sup> See Holub & Gonikberg-Dolinskiy, supra note 5, at 1206.

<sup>28</sup> See *id.*

<sup>29</sup> See N.Y. City Charter ch. 14 373-374 (2004) (describing concessions as grants by a City agency to a private individual or organization to use City-owned property for private use).

affected, the borough presidents who are affected select one borough president to represent and vote for them. This process preserves a role for borough presidents to give input on and approve franchises and similar contracts in their boroughs.

The 1989 Charter Commission also sought to ensure borough presidents could monitor and provide oversight for City contracts. The revised Charter provided that borough presidents “monitor and make recommendations regarding the performance of contracts providing for the delivery of services in the borough and, when the borough president deems it appropriate, require that a hearing be held in the borough by a contract performance panel.”<sup>30</sup> The contract performance panel consists of the public advocate, comptroller and the mayor, or their designees.<sup>31</sup> However, even though the Charter requires borough presidents to establish a budget office and planning office for those key functions, it does not address capacity for the office’s contracts function.

### **Strategic Planning**

An important goal of the 1989 Charter revision was to provide the borough presidents with a meaningful executive role in strategic planning for the boroughs and the city. The Board of Estimate had been criticized for not being able to plan long-term in advance of decision-making and for relying on last-minute deal-making.<sup>32</sup> The Commission sought to change this dynamic by creating “an opportunity for borough presidents to be involved in the often overlooked, but all important, mid-term and long-term planning process.”<sup>33</sup> The Charter specifically gives borough presidents the duty to prepare a strategic policy statement every four years that includes (1) a summary of the most significant long-term issues faced by the borough (2) policy goals related to such issues and (3) proposed strategies for meeting such goals. The borough presidents are required to consult with community boards in developing this statement and to issue it to the mayor, council and community boards.<sup>34</sup> The strategic planning role of the borough presidents is accentuated by the Charter requirement of the borough presidents to maintain a planning office to plan for the “growth, improvement and development of the borough,” work that includes and goes beyond land use.<sup>35</sup>

### **Additional Executive and Oversight Responsibilities**

Borough presidents possess a number of additional responsibilities under the Charter to fulfill their executive role and their government and service oversight function. For example, borough presidents are authorized to:

- Hold public hearings on matters of public interest
- Make recommendations to the mayor and to other city officials in the interests of the people of the borough
- Have power to have legislation introduced in the council

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<sup>30</sup> See N.Y. City Charter ch. 4 82(10) (2004).

<sup>31</sup> See N.Y. City Charter ch. 13 333 (2004).

<sup>32</sup> See Schwarz & Lane, *supra* note 12, at 772.

<sup>33</sup> See Holub & Gonikberg-Dolinskiy, *supra* note 5, at 1208.

<sup>34</sup> See N.Y. City Charter ch. 4 82(14) (2004).

<sup>35</sup> See N.Y. City Charter ch. 4 82(9) (2004).

- Provide technical assistance to the members of the community boards
- Oversee the coordination of a borough-wide public service complaint program and report to the mayor, public advocate and public on recurring complaints of borough residents and the borough president's recommendations for improving the city's response to such complaints.

Furthermore, as part of the vision of producing a strong borough voice, the Charter assigns borough presidents the formal responsibility to be the facilitator, coordinator and coalition-builder of different interests and communities of each borough. To achieve this, the Charter makes the borough presidents the chairpersons of the borough boards and borough service cabinets. The borough board consists of the borough's council members and community board chairs and is primarily responsible for comprehensive planning and community development. Among its numerous duties are to:

- Prepare comprehensive and special purpose plans for the physical growth, improvement and development of the borough
- Review and make recommendations with respect to applications and proposals of public agencies and private entities for the use, development or improvement of land located in more than one community district
- Mediate disputes and conflicts among two or more community districts in the borough
- Submit a comprehensive statement on the expense and capital budget priorities and needs of the borough
- Evaluate the progress of capital developments within the borough and the quality and quantity of services provided by agencies within the borough

Borough service cabinets serve a City agency and service oversight function and consist of officials of City agencies conducting service delivery but typically also include community board district managers and city council member representatives. Borough service cabinets are required to:

- Coordinate at the borough level service delivery functions and programs of agencies that provide services in the borough
- Consider interagency problems and impediments to the effective and economic delivery of services in the borough
- Plan and develop programs that address the needs and priorities of the borough and its residents
- Consult with residents of the borough and representatives of the community boards about service problems and activities

Borough presidents also have substantial powers to appoint to a wide range of boards and agencies. This function is consistent with their policy-shaping, executive role in City government. Through these many appointments, the borough presidents are granted the ability to determine the representatives who will develop agendas and form decisions in a broad set of policy and planning areas ranging from education to pension investments to business development. The borough president as an intermediate official, in contrast to

the mayor or an individual councilmember, is uniquely suited for this responsibility. The borough president is intended to have a comprehensive and multidisciplinary perspective on policy planning for the borough, which necessarily integrates local community interests with broader visions for the entire city. Borough presidents' knowledge of and grounding in local communities also give them the planning perspective and local connections to identify diverse and capable representatives for these significant governmental bodies.

### **Community Boards**

Most prominently, borough presidents appoint all members of all community boards in their borough, with half of such members nominated by council members. This power was formalized in its recent form with the 1975 Charter revision which established today's system of community boards. Borough presidents are also required to provide technical assistance to support the work of community boards. This office proposes, in the first chapter of this report entitled "Ensuring Meaningful Community-Based Planning and Community Governance: The Future of Community Boards and the New York City Charter," strengthening and expanding the support that borough presidents provide to community boards to ensure that boards have the resources needed to function.

### **Appointment Powers and Voting Capacities**

Borough presidents also have appointment powers or representation on a continuum of local decision-making bodies that affect all parts of city life. The borough presidents specifically appoint members or representatives to the following citywide bodies:

- Department of Education's Panel for Education Policy (PEP)
- City Planning Commission (CPC)
- Economic Development Corporation (EDC)
- Industrial Development Agency (IDA)
- Franchise and Concession Review Committee (FCRC)
- New York City Employees Retirement System (NYCERS)
- In Rem Foreclosure Board
- New York City Transit Riders Council
- New York City Soil and Water Conservation District
- Department of Youth and Community Development Community Advisory Board
- Department of Youth and Community Development Joint Planning Council
- HIV Prevention Planning Group

Borough presidents also have representation or appointments on various major cultural institutions of their boroughs such as museums and performance centers and on the following local boroughwide or community-based advisory bodies:

- Community Education Councils (CECs)
- Public Hospital Community Advisory Boards (CABs)
- Business Improvement Districts (BIDs)
- Neighborhood Advisory Boards



- Solid Waste Advisory Board (SWAB)

The Manhattan Borough President's Office sits on Manhattan-specific advisory bodies:

- Governor's Island Advisory Council
- Hudson Yards Development Corporation
- Theater Subdistrict Council
- Hudson River Park Trust
- East 91<sup>st</sup> Street Waste Transfer Station Community Advisory Group

The Charter envisioned borough presidents to have a significant and meaningful executive role of a multidisciplinary nature in the planning, policy development and oversight of the boroughs. While the 1989 Commission and Charter sought to preserve a strong mayoral role with centralized accountability and efficiency, they determined that this form of government could only be legitimate, responsive and comprehensive in functioning for a city as vast and complex as New York if it had a strong system of borough governance. To sustain longstanding core powers of the borough presidents but at the same time reform processes that existed under the Board of Estimate, the 1989 Commission emphasized borough responsibilities in land use, budget, strategic planning and oversight while requiring a more proactive planning role for borough presidents in shaping the policies of the City. The current Charter Revision Commission has the opportunity to examine the implementation of this vision for borough presidents and determine what is needed to fulfill it.

### Benefits of the Office of the Borough President

The borough presidents' offices have created many important positive impacts for New York City and its communities as a result of their fundamental role in government. Since its inception at the founding of Greater New York, the borough president administrations of all five boroughs have generated many benefits locally and citywide in land use, policy development, service implementation, civic participation and other areas. This section focuses on ways in which the current Manhattan Borough President's Office has utilized its intermediate role between local communities and citywide perspectives to enable important projects and initiatives to come to fruition while improving benefits for local communities and the city as a whole.

#### *Land Use and Planning*

Providing input on land use decisions is one of the key roles of the borough president and requires an integrated view of local community needs with the broader growth and planning strategies of the borough and city. The presence of borough presidents provides for greater opportunity for public input and review and recognition of community needs. In addition, the borough presidents can utilize their knowledge of and expertise with systemic issues to enhance local projects. The Manhattan Borough President's Office

since 2006 has facilitated and produced many beneficial developments for the community.

For example, during the Columbia University/Manhattanville rezoning, many community members acknowledged the citywide economic benefit that Columbia's expansion would provide. Despite the positive benefits, concern remained that the project would have negative impacts on the surrounding neighborhood. The Manhattan Borough President recognized that if the city were going to accommodate Columbia's expansion as a new economic engine in West Harlem, significant protections for the neighborhood must also be created. During negotiations with Columbia and the City, the Manhattan Borough President helped obtain a number of commitments to benefit the community including a \$20 million affordable housing fund; open space improvements; the creation of small business space; a construction mitigation plan; local hiring and wage standards; and a plan for the City to begin a neighborhood-oriented zoning process, the largest scale rezoning in that area since 1961, to implement key land use goals of the local community board's 197-a Plan. These commitments greatly improved the Columbia/Manhattanville project and provided significant support for approval by the City Planning Commission and the city council.

Indeed, the recommendations of the Manhattan Borough President's Office at the early stages of land use review have substantially improved proposed development projects. The office shaped major development projects such as the expansion of Fordham University on the Upper West Side where the Borough President's recommendation secured significant alterations to the massing, total parking spaces and overall density of the project. Furthermore, the office's land use recommendations have also improved smaller projects such as securing a construction mitigation plan for the development of residential project at 311 West Broadway in SoHo to protect the homes of neighbors living in historic loft buildings located in a flood plain zone. The Manhattan Borough President's experience with similar projects in other neighborhoods with high water tables helped identify the need for and generation of such construction mitigation plans. Similarly, the Manhattan Borough President's involvement in developing urban design solutions that worked to reconcile community concerns with the programmatic needs of large scale projects elsewhere in the borough informed the modifications to Fordham's plan. Projects such as Fordham University and 311 West Broadway were greatly improved by the boroughwide perspective of the Manhattan Borough President.

In addition, the Manhattan Borough President's unique perspective has helped identify and prevent negative impacts to the community. For example, in a ULURP application to facilitate the redevelopment of a residential loft building at 102 Greene Street, the Manhattan Borough President's Office utilized its boroughwide knowledge and experience with similar developments to identify the potential impact this development would have on rent-stabilized tenants. As a result of its research, the Borough President's Office found rent-stabilized tenants living in the building and that the proposed project, for technical reasons, would have likely led to the eviction of these tenants. The Manhattan Borough President's Office was able to uniquely identify this issue due to its combination of community-level awareness and boroughwide policy insights. The

Borough President's finding alerted the City Planning Commission to resolve concerns with the tenants' status with the New York State Department of Housing and Community Renewal before taking any action on the application.

The Manhattan Borough President's Office is also uniquely able to bring communities together from across different jurisdictions of elected officials and community boards to tackle large scale development and planning matters. One example is the Community Task Force on New York University (NYU) Development convened by Borough President Stringer in 2006. The Task Force has sought to engage the community in ongoing discussions with NYU around its physical planning and to work with campus planners on developing strategies that addresses the university's needs while also taking into account community concerns. Although many of NYU's facilities are concentrated around Greenwich Village, both local residents and the university have recognized the need for NYU to pursue alternative locations for university facilities. The Task Force is comprised of a broad consortium of community groups, elected officials and community boards ranging from lower Manhattan to east midtown – an area represented by nearly a dozen elected officials.

Working together, the Task Force members have used their distinct neighborhood perspectives to inform dialogue with NYU on matters such as guidelines for community outreach, construction mitigation and community priorities for future development. Since the Task Force's formation, the university has revised its expansion plans to include half of its growth outside of Greenwich Village, launched a construction website to share information with the community about projects and agreed to provide space for a new public school to address overcrowding in Greenwich Village. In March 2010, the Task Force published recommendations on NYU's recently announced campus expansion plan to guide future discussions.

### *Strategic Policy*

The borough presidents also generate important policy strategies that address the needs of local communities and coordinate them with citywide frameworks and initiatives. The borough presidents have a core function to conduct strategic policy planning in all areas of the city, to plan for the “growth, improvement and development of the borough,” and to evaluate a vast range of City contracts. In addition, borough presidents have appointments and representation on many advisory and decision-making bodies in diverse areas such as education, health care and economic development. These responsibilities necessitate a comprehensive and proactive mode of policy analysis and planning for the borough presidents to enhance City policy in a way that highlights the particular needs at the community level. The Manhattan Borough President's Office has demonstrated the innovative and impactful role that the office can have in improving the planning, visioning and implementation of City policies.

### **Initiating Community-Based Environmental Sustainability Planning**

A major initiative of the Manhattan Borough President's Office has been “Go Green,” a coalition-based environmental sustainability campaign launched in three communities:

East Harlem, Lower East Side and Washington Heights / Inwood. The office's position as the steward for the borough has allowed it to leverage citywide resources towards these neighborhoods where environmental disparities are most acute.

The Borough President's Office's ability to tie local concerns and needs with borough and citywide agency support and resources has been invaluable. In each of the neighborhood-based initiatives, "Go Green East Harlem," Go Green Lower East Side," and "Go Green Washington Heights / Inwood," the Borough President's Office convened community-based organizations and leaders and linked them with City agencies and other broader resources to develop specific actions for the neighborhoods to promote sustainability. Go Green has specifically produced the following outcomes:

- In collaboration with Mayor Bloomberg and the City Department of Health & Mental Hygiene, Go Green East Harlem established a \$3.5 million state of the art asthma center for excellence to address the disproportionate rate of asthma in the area.
- Go Green East Harlem published the Go Green East Harlem Cookbook, a bilingual Spanish and English cookbook that promotes healthy eating and contains healthy recipes from the community.
- Go Green East Harlem and Washington Heights / Inwood generated capital funding for the planting of hundreds of trees on streets and public housing projects that will create a tree canopy and help to reduce the heat island effect.
- Go Green East Harlem created the Go Green Farmers Market in collaboration with Harvest Home, Inc. to establish the first ever weekend farmers market in East Harlem.
- All three Go Green projects launched the Go Green CFL Bulb Giveaway Program to widely distribute more energy efficient light bulbs throughout the communities.
- Go Green Lower East Side piloted the Go Green Cooking Oil Recycling Program to assist restaurants with recycling their used cooking oil and converting it to bio-diesel fuel. Restaurants also receive a tax deduction by participating. This has since expanded to all three Go Green areas.
- Go Green East Harlem launched the Go Green East Harlem Youth Bucks Program to provide youth with coupons to spend at local farmers markets and promote among them awareness of and access to healthy, sustainable and locally grown foods.
- Go Green East Harlem and Washington Heights / Inwood launched the Go Green Energy Survey and Green Loan Program to assist small businesses and provide them with incentives to employ greater energy efficiency and save money in the long term.

### **Addressing Public School Overcrowding and Parental Involvement**

In recent years, the Manhattan Borough President's Office has convened "war rooms" to bring together parents, the Department of Education, and elected officials to address severe overcrowding problems in Manhattan public schools. The collaborative work between parents and the DOE in these meetings exemplifies the kind of engagement

school communities must have for schools to successfully educate children. The result of these efforts includes the creation of new public schools in various neighborhoods.

### **Expanding Financial Justice**

Bank On Manhattan is a public/private partnership led by the Manhattan Borough President's Office. The initiative is a two year pilot that aims to help thousands of unbanked New Yorkers – those lacking a checking and a savings account – save money and increase their financial security. The Borough President is in a unique position to help the unbanked in Manhattan by leveraging strong ties to the community – ties developed through community boards and office-wide engagement with community-based organizations (CBOs) serving all regions of the borough. To date, the Manhattan Borough President has engaged over two dozen financial institutions and CBOs and has plans to help 10,000 unbanked New Yorkers open accounts in the first year of the initiative.

### **Improving Safety in Public Housing**

The Manhattan Borough President's Office's interaction with local neighborhood concerns in public housing led to its release of an investigative report that focused attention on the egregious safety problems with New York City Housing Authority (NYCHA) elevators. Within just a few short months of the reports release, a combined \$182 million in NYCHA capital funds and federal stimulus dollars were pledged to elevator replacement and repair in NYCHA buildings. Additionally, the New York Legal Assistance Group chose to partner with the Borough President on this issue, filing an important disability discrimination lawsuit related to NYCHA elevators through which NYCHA residents are seeking a resolution of their concerns.

### **Improving Tax Subsidies**

The Manhattan Borough President's Office's report on the Industrial and Commercial Incentive Program (ICIP) highlighted many of the program's weaknesses at a time when the City and the State legislature were considering reforms to what was by most accounts an extremely wasteful tax benefit program. Nearly \$9.5 million in City property tax breaks for Manhattan businesses went to major chain stores, gas stations and fast food restaurants. Following the Borough President's findings and recommendations, the State legislature passed a bill reforming ICIP by eliminating subsidies for certain companies that did not need them. The office continues to fight for recommendations to save city taxpayers hundreds of millions of dollars over the next decade.

### **Protecting the City's Water Supply**

In 2009, Borough President Stringer initiated a proactive analysis and campaign to protect New York City's water supply. The Borough President released a report titled, "Uncalculated Risk," warning of the potential health and environmental dangers associated with a proposed drilling method called "hydraulic fracturing" that uses a mixture of toxic chemicals under extreme pressure to extract natural gas from shale deposits thousands of feet underground. The report was issued nine months prior to the findings of the U.S. Department of Environmental Protection which reaffirmed the

Borough President's findings. That year, the Borough President launched the "Kill the Drill" campaign, to urge the State to ban drilling in the Catskill/Delaware watershed region, which supplies New York's water supply. In November, the Borough President along with several elected officials drew a crowd of more than 400 community members to a rally before a public hearing on the issue and testified once again about the need for an outright ban. In December 2009, the Borough President submitted substantial written comments on the environmental impact study of the New York Department of Environmental Conservation (DEC) opposing drilling in the New York City watershed.

DEC recently announced that the State will create a two-tier process for allowing hydraulic fracturing to occur in New York, with the intent of leaving practical and financial obstacles in place to prevent commercial interests from drilling in New York City's watershed. This change is an important step toward protecting the city's water supply and saving the City and State over \$10 billion that would have been required to construct a water filtration plant. The Borough President continues to seek the full protection of the water supply that the city needs which requires a full ban of drilling in the watershed. This outcome demonstrates the valuable role that borough presidents may play in identifying critical local impacts of broader policies and mobilizing communities to action.

### **Innovating Food Policy**

The Manhattan Borough President has organized a large community-based movement to create innovative food policy for the city. The office helped connect a large community of food advocates with government at two important conferences, the Politics of Food at Columbia University in 2008 and the NYC Food and Climate Summit at NYU in 2009. Both events engaged hundreds of community members, advocates, business owners, and policy makers in a discussion about how to improve the city's food system. Each was followed by a comprehensive report, detailing policy recommendations and laying out policymakers' roadmap to creating a more sustainable, healthier, and more affordable food system. The office's efforts have fostered relationships across city, state, and federal levels, which has led to the creation of a strong regional food agenda. This agenda has contributed to important steps and accomplishments of various elected officials such as a federal appropriations request by U.S. Senator Gillibrand to fund a study of the New York City foodshed, a one hundred mile radius of food production around the city; a law that legalizes beekeeping in the city; and an initiative to expand access by underserved communities to supermarkets and affordable and healthy foods.

### **Promoting Affordable Housing**

In 2007, Borough President Stringer, in collaboration with Picture the Homeless, undertook the first ever survey of Manhattan's vacant property to identify underutilized space that could be used for affordable housing. The survey found enough vacant space to create almost 24,000 housing units. The report contributed to a City and State legislative agenda aimed at promoting the development of Manhattan's vacant property. In July 2008, the State passed a law that will encourage the development of new affordable housing in Northern Manhattan by eliminating the tax advantage for allowing usable land to lie vacant.

### **Protecting Tenants' Rights**

The Manhattan Borough President played a critical role in the lawsuit to preserve rent stabilization in the thousands of apartments in Stuyvesant Town & Peter Cooper Village. In 2007, the tenants of Stuyvesant Town / Peter Cooper Village filed suit against their landlords challenging the rent destabilization of their apartments. Borough President Stringer supported the challenge by filing an amicus brief on behalf of the tenants at the trial level and then at the appellate division and the Court of Appeals, playing a pivotal role in the victory of the lawsuit. The Borough President contributed unique arguments and research of law and policy that were cited by the appellate division and used by the tenants' attorneys in their oral argument to support the plaintiffs. The Borough President was uniquely positioned to play this role by having the capacity to research and draft the briefs and to be sufficiently connected to the community level to discern impacts.

The Manhattan Borough President also initiated a vital public education campaign to inform Northern Manhattan and Bronx residents of a housing scam that defrauded nearly two dozen individuals. The victims each paid thousands of dollars to a person who promised to help them use Section 8 vouchers to rent private apartments that were in fact unavailable. Borough President Stringer worked with the NYPD and Manhattan District Attorney to obtain a successful indictment of the alleged perpetrator. The Borough President's office also worked with NYCHA, the Department of Housing Preservation and Development and the Human Resources Administration to have Section 8 vouchers reissued for all of the victims and offer financial assistance to those who lost their homes.

### **Advocating Immigrant Rights**

The Manhattan Borough President convened an Immigrant Rights Task Force in 2006 immediately upon entering office to develop boroughwide initiatives and collaborations among immigrant community organizations and the Borough President's Office. The Task Force partnered with the CUNY Citizenship and Immigration Project to provide free citizenship assistance to people throughout the borough. The simultaneously local and boroughwide scope of the Borough President allowed the office to mobilize numerous citizenship assistance days in various large immigrant communities such as the Lower East Side, Chinatown, Washington Heights and East Harlem. In addition, the Borough President, utilizing input from the Task Force, founded Civic Leaders of Tomorrow in 2008, a fellowship program that places undergraduate students in internships at immigrant rights organizations throughout the borough. The purpose of the program is to promote future involvement in public service, particularly with immigrant rights as a heavily underserved area, to enhance the capacity of immigrant organizations and to provide support for immigrant students who may not be eligible for all forms of financial aid.

### **Combating Domestic Violence**

Borough President Stringer began in 2006 a collaboration with the Manhattan District Attorney's Office, the New York City Police Department (NYPD), Harlem Legal Services and CONNECT, a not-for-profit organization, to administer a \$900,000 grant from the U.S. Department of Justice to provide more services to women and families threatened by domestic violence in the home. After two years, the success of the

program led to an increase in the grant to a \$1.2 million annually. The Borough President also convenes a monthly task force of advocates, attorneys and impacted families to develop ways to address domestic violence.

### **Ensuring Responsible Investing**

The borough presidents each have a seat on the New York City Employee Retirement System (NYCERS), the largest of the five City pension funds. The board approves major decisions regarding the investment policy of the pension fund. The Manhattan Borough President initiated with District Council 37 adoption of innovative policy to further implement the Principles for Responsible Investment (PRI) at NYCERS, promoting stronger long term returns for the fund.

### *Budget Allocations*

By virtue of their unique role, borough presidents have several allotments of funding over which they have significant discretion and use to leverage funding that enables important projects.

### **Capital Allocations**

The Charter provides that borough presidents have discretion over five percent of new capital appropriations proposed by the mayor. The borough president's ability to allocate capital dollars to worthwhile projects in their boroughs is critical for several reasons. First, borough presidents typically fund projects undertaken by chronically under funded City agencies such as Parks, NYCHA, CUNY, public libraries and public schools. Second, capital allocations to eligible projects undertaken by the City are often necessary to plug a budget gap or leverage state or federal funds or private grant programs. For example, while the Department of Housing Preservation and Development (HPD) has many statutory grant and loan funds, many important HPD projects need borough president allocations to fill gaps and continue the project. The broader perspective of the borough president allows the office to identify where needs exist.

### **Expense Allocations**

Charter-mandated borough expense allocations support many discretionary projects carried out by the borough presidents, including the drafting of 197-a plans and programs such as the Manhattan Borough President's partnership with the award winning not-for-profit, Accion NYC, to promote lending to small businesses. In addition, borough presidents recommend expense funding through select agencies such as Department for the Aging (DFTA). These DFTA funds provide critical support for safety net programs such as senior nutrition, soup kitchens and legal services for the elderly.

### *Contracts*

The presence of a borough voice in contracts has improved outcomes for local communities and citywide in this area. On the Franchise and Concession Review Committee (FCRC), the borough presidents have a vote on franchises and concessions to provide additional perspective to that of the mayor. One matter in which this perspective



was critical was the Parks Department's concession with Randall's Island Sports Foundation to renovate and expand the island's sport fields. This concession proposed to receive funding from a consortium of private schools to pay for the improvements and to provide these schools exclusive access to the vast majority of the fields during prime afterschool hours. Borough President Stringer identified the inequity and barriers this would create for public schools and community organizations in East Harlem and surrounding neighborhoods that need access to fields but lacked the opportunity to participate in this concession. Following significant mobilization of the community, town hall meetings and discussions with the Mayoral administration, the Parks Department agreed to revise the concession substantially to ensure meaningful access for public schools and the local community, including a much higher percentage of fields guaranteed for public schools and community organizations, free transportation to the fields and greater resources for public school leagues. Ultimately, the concession was invalidated by a successful lawsuit by community members who challenged the public process used to approve the matter.

The borough presidents have historically and continued to have an important role in improving the impact of franchises for cable television services in the city. The Manhattan Borough President and other borough presidents have sought to improve customer service delivery and fair buildout of services for the boroughs. In addition, borough presidents have served a key role in supporting and enhancing community access channels that provide for diversity and independence of media. Borough President Stringer also worked with the Manhattan Neighborhood Network, the borough's public access organization, to establish a Civic Community Channel that is the first to ever air community board meetings to promote awareness and engagement in community governance.

### *Community Boards*

Since taking office in 2006, Borough President Stringer has used his appointment and technical assistance powers with community boards in Manhattan to enhance the capacity and expertise of boards, increase board diversity and representation of historically underrepresented constituencies and reform and standardize the appointment process.

### **Strengthening Community Board Training and Land Use Capacity**

The Borough President established a comprehensive training institute to train board members in land use, conflicts of interest, governance process and other areas to strengthen the overall functioning of community boards. The Borough President also established a boroughwide Community Planning Fellowship Program that places a second year urban planning graduate student in each community board to provide a dedicated resource land use and planning. Fellows have conducted integral work including supporting more affordable housing, workforce hiring strategies for local residents and sustainable development projects. Mayor Bloomberg has recognized the value and potential of this Fellowship Program by agreeing to work with all of its partners to expand the program citywide.

### **Creating a Standardized and Transparent Appointment Process**

Borough President Stringer also established a standardized application process with an independent screening panel, modeled after judicial screening panels, to promote a broad applicant pool and greater transparency and accountability in the appointment process. Over the past five years, the Manhattan Borough President's Office has received over 1,700 new applications and interviewed over 1,400 new applicants. Overall, nearly 500 new members have been appointed since 2006, resulting in a significant increase in diversity in many areas.

### **Increasing Representation of Diverse Communities and Backgrounds**

The Borough President's unique borough-wide perspective and ability to work with elected officials and civic organizations that cross community district lines has allowed the office to analyze boroughwide trends and utilize relationships to inform targeted recruitment. These efforts have resulted in significant increases in the number of African American, Asian American, Latino and LGBT individuals on community boards in the borough, as well as increased diversity of profession and expertise. Furthermore, it has helped raise civic awareness among constituencies that historically have faced obstacle to engagement. The Manhattan Borough President has also successfully expanded the professional and skills diversity of community boards by appointing individuals of urban planning, architectural and other helpful backgrounds to enhance the expertise of boards.

Among the most noteworthy improvements has been the increase in Asian American representation in Community Board 3. According to the 2000 census, Asian Americans comprise 35% of the district. When Borough President Stringer took office in 2006, there were only four Asian Americans on the Board 3. Following targeted outreach and recruitment, there are now 10 Asian American members comprising 20% of the board.

### **Value of the Borough Service Cabinet**

Through the Borough Service Cabinet, which the Borough President chairs, community boards raised the issue of whether it was legal to locate ATMs on sidewalks, consuming valuable public space. The Borough President's Office had the capacity to investigate the issue and determine that the practice did violate sidewalk furniture regulations and that the Department of Transportation (DOT) and Department of Buildings (DOB) had enforcement powers. The Borough Service Cabinet forum made possible the identification of an issue that was happening city-wide and work with the agencies to take action. The Borough President's Office gathered data and issued a report on the prevalence of the issue and DOT committed to conduct enforcement. DOT and DOB now conduct regular inspections, issue violations, and many ATMs have been removed from the streets as a result.

### *Census Mobilization*

To ensure that the communities of Manhattan receive the tax dollars they deserve, the Manhattan Borough President formed a 2010 Complete Count Committee (CCC) for the borough. The Borough President was well suited to convene and galvanize residents and leaders from each of the 12 community board districts regarding the census and response

rates. The active work of the Manhattan CCC has resulted in improving the mail-in response rate to surpass that of the 2000 Census and coordinate outreach that combines citywide and neighborhood efforts.

### Recommendations for Fulfilling the Role of the Office of Borough President

Despite the many ways in which borough presidents are positioned to produce positive impacts on city governance and policy, the Charter does not provide the tools for borough presidents to fulfill their intended core functions in government. These structural shortcomings exist particularly in the pivotal responsibilities of land use, budget, planning and contracts.

#### *Ensuring Independence*

The responsibility of the borough presidents to represent the interests of their boroughs and balance the power of the mayor and other elected officials requires sufficient institutional independence. Borough presidencies were established to provide a unique and independent perspective and voice for the boroughs. The borough presidents' ability to be autonomous and carry out their charter mandated duties – in such contentious areas as land use, budget and community boards – can be undermined by having to negotiate their office budgets with the mayor and city council each year. In addition, the ability of the mayor and city council to reduce the resources of the borough presidents risks preventing the borough presidents from executing their functions and places power inappropriately in the hands of the larger political entities to reduce the role of charter-mandated offices without a democratic process.

The full operational and personnel budgets of the borough presidents should be appropriated and baselined in an independent manner that takes into account the scope of the offices' work. Currently, borough presidents receive two streams of City funds that are calculated as a percentage of City expense dollars and based on demographic data (borough allocations for capital money and borough allocations for discretionary). The full operating budgets for borough presidents should be determined and guaranteed in a similar way.

#### **Recommendation:**

**The Charter should be revised to guarantee borough presidents an independently determined base-lined budget for their offices calculated according to a formula that takes into account demographic information for each borough.**

**Section 102 b of the New York City Charter should be amended to provide that:**

**The appropriations available to pay the expenses of the borough presidents during each fiscal year shall not be less than a determined baselined percentage of the net total expense budget of the city. Not later than ninety days after the close of each**

**fiscal year, each of the borough presidents shall submit to the mayor and the council a public detailed accounting of the office’s expenditures during such fiscal year.**

### *Budget Review and Recommendations*

One of the central powers of borough presidents that the 1989 Charter Revision Commission intended to ensure was input on the City budget. As Schwarz and Lane recapitulated,

[O]ur view was to try ‘to find a way to let the Borough Presidents exercise a discretion similar to what they exercise [prior to 1989].’ On the budget front, this meant we had to find a way for the borough presidents to have a meaningful opportunity to seek for their boroughs certain amounts of money from the capital and expense budgets.<sup>36</sup>

However, the budget responsibilities currently afforded to borough presidents do not enable them to have a sufficient impact on budget modifications. Although borough presidents have the authority to make recommendations on the preliminary and executive budget and have their recommendations submitted by the mayor to the city council, these mechanisms, as currently constituted, do not give borough presidents the role needed to influence the budget.

### **Incorporating Borough President Budget Recommendations**

The Charter requires the mayor to explain why borough president recommendations were not incorporated into the executive budget, but does not specify what information is to be included in such explanations.<sup>37</sup> As a result, the mayor typically provides only perfunctory statements to fulfill this requirement. In addition, the city council is required to hold hearings on the borough presidents’ budget recommendations. Public hearings are also required for the budget recommendations of community boards and borough boards.<sup>38</sup> In addition, the Charter lacks a requirement for the city council to explain the reasons for not adopting any recommendations of the borough president when they approve the final executive budget.

### **Borough-specific Budget Estimates**

Furthermore, the Charter requires borough presidents to articulate their budget recommendation with calculations specific to their boroughs but does not provide borough presidents access to the financial information needed to conduct this work. The Charter states, “If increases in appropriations within the borough are recommended, offsetting reductions in other appropriations **within the borough** must also be recommended.”<sup>39</sup> (emphasis added). However, borough presidents are not able to fulfill this function since City agencies’ departmental estimates do not provide borough-specific information. Borough-specific departmental estimates are necessary to enable borough

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<sup>36</sup> See *The Structure of the New Government*, supra note 20, at 847.

<sup>37</sup> See N.Y. City Charter ch. 10 250(12) (2004).

<sup>38</sup> See N.Y. City Charter ch. 10 247 (2004).

<sup>39</sup> See N.Y. City Charter ch. 10 231 (2004).

presidents to conduct complete analyses and make recommendations on the budget needs of their boroughs.

### **Borough President Input During Executive Budget Hearing Process**

Lastly, the Charter lacks a sufficient role for borough presidents to provide input during the budget hearing process. The Charter authorizes borough boards, chaired by the borough presidents, to hold hearings during the preliminary budget deliberations and to require agency officials to attend. However, in practice, the negotiations over budget heighten after the executive budget has been released with more specific and advanced details. Therefore, a public hearing to allow borough presidents to meet with agency officials during the critical phase of negotiations at the executive budget hearings is necessary to ensure meaningful consultation and input for the borough presidents.

To promote accountability and transparency in budget formulation and ensure fulfillment of the intended governmental role of borough presidents, the Charter should strengthen the mechanisms of consultation for borough presidents.

### **Recommendations:**

- **The Charter should be revised to ensure greater consideration of borough presidents' budget recommendations by the mayor and city council. Specifically, Section 250(12) should be revised to require the mayor to provide additional details on the reasons for not incorporating borough president recommendations. For example, the explanation should outline what specific method of consideration was given to the proposal, what factors were used in the evaluation, what budgetary analysis was conducted and what changes would be required in the budget to allow for incorporation of the borough presidents' recommendations.**
- **In addition, Section 254 should be amended to require city council to issue "a statement of the extent to which the budget incorporates the revisions to the executive budget recommended by the borough presidents, in accordance with section two hundred fifty-one and the reasons why any other recommended revisions were not incorporated into the executive budget."** This statement should also include the details outlined above for the mayor's explanation.
- **In order to allow borough presidents to make realistic budget recommendations in the interests of their borough, the Charter should be revised to require City agencies or the Office of Management and Budget to provide departmental budget estimates that are broken down by borough.**
- **The requirement that city council hold hearings on the borough presidents' budget recommendations should be strengthened to ensure stronger consideration of these proposals. First, Charter Section 247 should be revised to require that such hearings include a publicly disseminated agenda**

**that lists each matter, including borough president recommendations, to be discussed at the hearing. The council should also be required to send a written notice at least ten calendar days in advance to each borough president inviting them to attend and be heard at the hearing on the topic of their recommendations. The same notice requirements should apply to the mandated hearings for community board and borough board budget recommendations in Section 247.**

- **Furthermore, the Charter should require that the borough presidents hold public hearings during the executive budget consideration in May with City agencies to discuss budget recommendations. The Charter should require that “officials of agencies, when requested by the borough presidents, shall appear and be heard” at such hearings.**

### *Land Use*

One of the borough presidents’ most significant roles is in the land use process. ULURP requires public review of many actions including changes to the City map, special permits, site selection for capital projects, disposition or acquisition of City-owned land and zoning map changes. ULURP provides for the community board and borough president to make recommendations on such actions to the City Planning Commission (CPC), bringing in local perspectives to improve the projects. After considering the recommendations of the borough president and community board, CPC must (1) approve (2) approve with modifications or (3) disapprove the action by a simple majority vote (seven of the 13 members). However, in the case of a site selection for which the community board and borough president both recommend disapproval and the borough president identifies an alternative site, CPC can only approve the action with a supermajority, a vote of nine members. After CPC approval, ULURP actions are subject to either a mandatory or optional review by the city council. City council approval can be vetoed by the mayor, and the council can overturn the mayoral veto by a two-thirds vote of the council.

### **Strengthening Borough President’s Role in ULURP**

While the community board and borough president make advisory recommendations and do not have authority to approve or disapprove a project, the Charter provides that the community and borough perspective be significant factors in shaping land use outcomes for the mutual benefit of local communities and the broader city. The Charter requires serious consideration of these recommendations when requiring that “[a]ny action of the city planning commission which modifies or disapproves a written recommendation of the community board, borough president or borough board shall be accompanied by a written explanation of its reason for such action.”<sup>40</sup>

The borough president’s recommendation, as an intermediate voice, provides a unique opportunity to reshape a land use project in a way that reconciles the interests of the local community with those of the city as a whole. With a constituency that is much broader

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<sup>40</sup> See N.Y. City Charter ch. 7 197-c(h) (2004).

than one local district, the borough president can integrate multiple views in assessing a project. At the same time, the borough president is more connected to the local community than any citywide official or agency and can be a stronger, more informed advocate for local needs. The scope and stature of a borough president, typically greater than that of an individual councilmember, combined with the office's community-based focus make the borough president an excellent mediator for negotiating land use matters that have a complex array of impacts. Without the borough president's informed recommendations to improve the planning of a project's design in the early phase, CPC and the city council may not have the opportunity or ability to achieve consensus at a later stage of decision-making. As a result, projects that have many beneficial impacts for the responsible development of communities and the city may be prevented.

The important, beneficial role of the borough president and community board in improving land use actions should be strengthened to ensure serious consideration of their recommendations by citywide bodies and land use applicants. The Charter currently does not provide adequate incentive for consideration of borough president and community board recommendations in ULURP. Although borough presidents have appointees on CPC, the requirement of a majority vote for nearly all ULURP actions does not provide them with sufficient leverage to influence a decision. The Charter should provide a new voting system that requires a supermajority of CPC to approve an application that has been disapproved by both the community board and borough president. This would require at least two non-mayoral appointees to vote in favor of the action to overcome the objections of the local community and borough. This voting system has a precedent in the nine votes that are required to approve site selections for which the borough president and community board both have recommended disapproval.

This voting structure should be applied to all discretionary actions such as zoning map changes, text amendments, disposition of City-owned property, site selection and acquisition of City-owned property with the exception of special permits. Special permits require the CPC and city council to approve an application if the findings are met and no other quantitative method for analyzing the application can be found. The less discretionary nature of special permits is appropriate for the current rule of a simple majority approval.

### **Function of a Land Use Counsel**

In addition, while CPC or the city council may modify land use applications as a basis for approval, such modifications sought by community boards or borough presidents lack a practical means to establish enforceable covenants, even with an applicant's agreement. The responsible and effective enforcement of these important modifications and related covenants requires consistent legal monitoring through borough president administrations. A land use counsel is necessary to provide the technical expertise and structural capacity to protect and promote the terms negotiated for the benefit of the city. A Charter requirement for such a position in the borough presidents' offices will ensure the provision of this resource.

### **Borough Voice on Major Land Use Decision-Making Bodies**

Furthermore, borough presidents do not have representation or direct influence on two major land use decision-making bodies, the Landmarks Preservation Commission (LPC) and Board of Standards and Appeals (BSA). Under the current system, all 11 members of the LPC are appointed by the mayor, and all five members of the BSA are appointed by the mayor. In order to provide the political independence and the diversity of opinion necessary to make these bodies more responsive and to more fully realize the responsibilities of borough presidents in land use, the Charter should be amended to require that the LPC and BSA each include an appointee from each borough president and public advocate, with the remaining members being a majority of mayoral appointees.

The proposed system mirrors the structure of the CPC which has additional representation appointed by elected officials other than the mayor. The CPC has thirteen members – seven appointed by the mayor and one appointed by each borough president and the public advocate.<sup>41</sup> The proposed system would allow elected officials and their constituencies to have an increased voice in the decision-making process and an opportunity to work to reform the bodies, where necessary, from an official capacity. This recommendation is also addressed in the Manhattan Borough President's specific report and recommendations on land use.

### **Recommendations:**

- **The Charter should be revised by amending Section 197-c(h) of the New York City Charter to require that the City Planning Commission approve a discretionary action, where the community board and borough president recommended disapproval, by a vote of 9 members of the commission.**
- **The Charter should be revised to require borough presidents to appoint a land use counsel in their planning offices to effectively monitor and responsibly enforce commitments related to land use projects.**
- **The Charter Revision Commission should recommend that the Landmarks Preservation Commission and the Board of Standards and Appeals include members appointed by each Borough President and the Public Advocate, while maintaining a majority of Mayoral appointments.**

### *Strategic Policy Statement*

The 1989 Charter Commission recognized the importance of borough presidents in developing long-term policy strategies and planning for the city. This responsibility is fundamental to the office's role as an executive and intermediary of local and city interests. The Charter requires the borough president to prepare a strategic policy

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<sup>41</sup> See N.Y. City Charter ch. 8 192(a) (2004).



statement every four years that includes “(i) a summary of the most significant long-term issues faced by the borough; (ii) policy goals related to such issues and (iii) proposed strategies for meeting such goals.”<sup>42</sup> The Charter, however, does not provide the mechanisms to ensure this responsibility has its intended impact on City policy formation. Although the Charter requires the submission of the strategic policy statement to the mayor, city council and community boards, it does not specify a process of deliberation for the statement. The Charter should enhance the policy planning voice of the borough presidents by requiring more rigorous public engagement around and City consideration of the strategic policy statement.

### **Recommendations:**

- **The Charter should be revised to require that (1) the city council hold a well-publicized public hearing for the borough presidents to present and the public to discuss their strategic policy statements; and (2) the mayor provide a public analysis of each policy statement with written explanations of departures from the strategies and goals recommended in the statements.**

### *Contracts*

#### **Contract Oversight**

The 1989 Charter Revision Commission sought to preserve contract review as one of the core responsibilities of the borough presidents. As discussed previously, the borough president has the authority to monitor and make recommendations regarding contracts for service delivery and to hold public hearings on such matters. Section 333 of the Charter provides a meaningful process for the borough president to make recommendations on the performance of contracts, authorizing him or her to convene a panel and public hearing and compel the appearance of an agency official. However, to conduct such oversight for a wide range of complex City contracts requires an enhancement in the capacity and technical expertise of borough presidents’ offices. The Charter should require borough presidents to establish an office of contract evaluation similar to the budget and planning offices required by the Charter to fulfill those core functions.

#### **Borough President Input on Intent to Award Contracts**

Borough presidents are also limited in their opportunity to evaluate contracts by the lack of consultation and information available to them during the initial award of most contracts. The Charter requires agencies to provide to the comptroller and city council, but not borough presidents, the reasons, analysis and all supporting documentation for a contract prior to the award of the contract.<sup>43</sup> In order to enhance borough presidents’ function in this area and to allow them to evaluate the vast scope and details of contracts in the city, the borough presidents should be provided greater access to information regarding the intent to award contracts.

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<sup>42</sup> See N.Y. City Charter ch. 4 82(14) (2004).

<sup>43</sup> See N.Y. City Charter ch. 13 312(a)(3) (2004).

### **Meaningful Input on Franchise and Concession Review Committee**

The borough presidents also have a vote on the Franchise and Concession Review Committee (FCRC) to review and approve franchises and concessions. The input of the borough presidents on the FCRC becomes meaningful only through a sufficiently expansive and inclusive process of deliberation, which is currently not guaranteed by the Charter. The Charter requires the FCRC to approve concessions granted without competitive and public bidding. Currently, if an agency seeks to grant a concession without the usual competitive process, the FCRC makes two separate reviews and approvals. First, it votes on whether to approve the process of selecting without competition. Second, if a non-competitive process is approved, the FCRC will then review and vote on the actual proposed concession agreement. This “two step” procedure allows an opportunity for members of the FCRC to receive public comment on and separately consider the discrete issues of the solicitation process and the terms of the concession agreement. The procedure also provides for a necessary check and balance to the mayor by allowing the borough presidents as well as the comptroller to review the information and varied impacts of a decision to avoid competitive bidding and the value of that outcome for the city. However, these rules may be changed by the FCRC which is controlled by a majority of mayoral appointees. As a result, the rules and procedures for approving concessions granted without competition can be changed unilaterally by the mayor to reduce meaningful opportunity for review by the committee as a whole, including the borough perspective of the borough presidents. This important process of review and decision-making for the FCRC should be codified in the Charter.

### **Recommendations:**

- **The Charter should be revised to require borough presidents to establish a contracts evaluation office with a director of contracts to fulfill the office’s contract oversight function.**
- **The Charter should be revised to require that borough presidents be provided the reasons, analysis and all supporting documentation for the intent of an agency to award a contract in the same manner and at the same time as the comptroller and city council.**
- **The Charter should be revised to require that the FCRC provide separate processes of approval for (1) the proposed utilization of non-competitive procedures for granting a concession and (2) the proposed concession agreement to be granted without competition.** This would codify the existing practices of the FCRC.

### *Clarification of the Scope of Responsibilities of the Borough Presidents*

The borough president is intended to be an executive official with broad-based responsibilities in the comprehensive planning and needs of the city. In order to fulfill

their diverse duties in land use, strategic policy planning, comprehensive budget analysis, contract evaluation and related areas such as economic development and service delivery, the Charter should ensure that borough presidents have the flexibility and discretion of authority they need. The scope of the borough presidents' jurisdiction and their integral function in government should be further clarified with more specific and expansive Charter statements of their role. In addition, the work of borough presidents should be more clearly supported with requirements for agency collaboration and provision of information.

- **The Charter should be revised to clarify the scope of advisory responsibilities of the borough president by adding that the “borough president from time to time in his or her discretion may, and whenever required by law or requested by the mayor and the council, shall advise the mayor and the council on the policies of the city and make such recommendations, comments and criticisms and conduct activities for such purposes in regard to the operations, policies and financial transactions of the city as he or she may deem advisable in the public interest.”** This proposal is based on a similar description of duties of the comptroller, who also has broad-based responsibilities.
- **To assist borough presidents in preparing their recommendations, the Charter should be revised to clarify that “Each agency shall furnish promptly to each borough president on request any information or assistance necessary for the borough president’s work. Each agency shall also report periodically to each borough president on its service activities and programs within the borough.”** This requirement is modeled after the Charter requirement for the same information sharing for community boards in §2800(e).

### Conclusion

As outlined above, numerous revisions are needed in the Charter to strengthen borough presidents' offices and fulfill their intended government role. First, an independently determined based-lined budget must be provided to borough presidents to ensure their independence and stability. Second, the budget process should require additional mechanisms for evaluating borough president recommendations and giving the borough presidents input during the hearing process. Third, the contracts responsibilities of borough presidents should be supported with a Charter-mandated contracts evaluation office, the opportunity to review intents to award contracts and a guaranteed process for input on the FCRC. Fourth, consideration of the borough presidents' strategic policy statement should be strengthened through required hearings and detailed public responses to the statements from the mayor. Fifth, the borough presidents' role in land use should be strengthened with greater leverage in ULURP discretionary actions, the required appointment of a land use counsel and appointments of borough president representatives on the Landmarks Preservation Commission and Board of Standards and Appeals. Lastly, the comprehensive scope of borough presidents' responsibilities should be clarified to ensure the borough presidents have the flexibility and jurisdiction needed to perform their intermediate executive function. These recommendations are not intended

to be exhaustive but provide at a minimum an outline of key areas where action is needed. The Charter Revision Commission of 2010 should explore and address the analyses and recommendations of this report in its review of City government.

Borough presidents have performed a quintessential role in the democratic vision of New York City government to help make New York one of the most participatory and integrated cities in the world. Having emerged from the goal of founding a Greater New York, a regional government that better serves its interrelated areas, borough presidents have historically brought City government decision-making closer to local communities and brought communities together to develop long-range reforms for the city. Borough presidents have continuously possessed and had reaffirmed through many Charter revisions fundamental government functions ranging from determining the disposition of government resources and services in budget allocations and contracts to the long term planning of communities in the context of the greater city such as in land use, urban planning and strategic policy. The 1989 Charter Revision Commission made deliberate efforts to ensure that borough presidents continued to have a robust role in these areas and as independent executives for all matters of their boroughs. Twenty years following this official experiment of building a strong future for borough governance, we have seen the significant impacts that borough presidents deliver for the city as well as the shortcomings of a Charter foundation for incorporating independent borough voices in the comprehensive planning and decisions of government. To provide New York with the government and borough president function that has long been envisioned and needed, a serious examination of the Charter structure of decision-making processes and responsibilities must be undertaken. This Charter Revision Commission brings the city this opportunity to further realize these longstanding goals.





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