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THE COUNCIL
REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION
ROBERT NEWMAN, LEGISLATIVE DIRECTOR
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COMMITTEE ON GENERAL WELFARE
Annabel Palma, Chair

July 27, 2011

PRECONSIDERED RES. NO.: By Council Members Vann, Palma and the Speaker
(Council Member Quinn)

TITLE: Resolution authorizing the Council of the City of
New York to intervene or file an amicus brief in
Chelsea Business & Property Owners' Association
v. City of New York, for the purpose of defending
provisions of the New York City Administrative
Code that limit the size of homeless shelters for
adults to two hundred persons.

The Committee on General Welfare, chaired by Council Member Gale Brewer, will meet on Wednesday, July 27, 2011 to hear and vote on a Preconsidered Resolution authorizing the Council to intervene or file an amicus brief in *Chelsea Business & Property Owners' Association v. City of New York*, (Index No. 113194/10).

Background

In 1998, the New York City Council (“Council”) enacted Local Law 57, which amended the Administrative Code by, among other things, creating population limits for shelters for adults.¹ Local Law 57 added section 21-312(b) of chapter 3 of title 21 of the Administrative Code, which prohibits adult shelters from operating with a census² of more than two hundred persons.³

In the instant case, captioned *Chelsea Business & Property Owners' Association v. City of New York*, (Index No. 113194/10), petitioner Chelsea Flatiron Coalition (“CFC”) is a “group of citizens who reside or work and own property in the Chelsea and Flatiron neighborhoods of New York.”⁴ On May 6, 2011, CFC filed an amended verified petition (“Petition”) pursuant to Article 78 of the Civil Practice Law and Rules⁵ against the City of New York and other Municipal Respondents.⁶ The Petition challenges the

¹ The New York State Social Services Law defines “adult shelter” as “an adult care facility established and operated for the purpose of providing temporary residential care, room, board, supervision, information and referral, and where required by the department or otherwise deemed necessary by the operator, social rehabilitation services, for adults in need of temporary accommodations, supervision and services.” N.Y. Soc. Serv. Law § 2; N.Y.C. Admin. Code § 21-312(b).

² Local Law 57 of 1998 defines “census” to mean “the actual number of persons receiving shelter at a shelter for adults.” *Id.* at § 21-312(a)(1).

³ *Id.* at § 21-312(b).

⁴ *Municipal Respondents' Memorandum of Law in Opposition to the Petition 1* (July 8, 2011)(on file with General Welfare Committee).

⁵ *Petitioner's Amended Verified Petition* (May 6, 2011)(on file with General Welfare Committee).

⁶ Respondents include the City of New York; Board of Standards and Appeals of the City of New York; Seth Diamond, Commissioner for the Department of Homeless Services of the City of New York (“DHS”); George Nashak, Deputy Commissioner for Adult Services for DHS; Robert D. Limandri,

proposed construction of a 328-bed, in-patient and out-patient drug, alcohol and mental health care facility and homeless shelter for the mentally ill at 127 West 25th Street in New York, New York.⁷ Among other arguments, the Petition asserts that neither the Department of Buildings (DOB), the Department of Homeless Services (DHS) nor the Board of Standards and Appeals (BSA) has enforced, or is willing to enforce, the statutory provision of the Administrative Code that limits homeless shelters to two hundred beds.⁸ On July 8, 2011, the Corporation Counsel of the City of New York filed a Verified Answer to the Petition⁹ and a Memorandum of Law in Opposition to the Petition (“Corporation Counsel Memo”)¹⁰ on behalf of the Municipal Respondents. With respect to the proposed shelter’s capacity, the Corporation Counsel Memo argues that (i) Administrative Code § 21-312(b) is preempted by New York State regulations and (ii) in the alternative, the proposed 328-bed facility does not violate the Administrative Code.¹¹

Preconsidered Res. No.

The Preconsidered Resolution authorizes the Council of the City of New York to intervene or file an amicus brief in *Chelsea Business & Property Owners’ Association v. City of New York*, for the purpose of defending provisions of the New York City Administrative Code which govern the census of newly constructed shelters for adults.

Commissioner for the Department of Buildings of the City of New York (“DOB”); Fatma Amer, P.E., First Deputy Commissioner for DOB; James P. Colgate, R.A., Assistant Commissioner for Technical Affairs and Code Development for DOB; Bowery Residents’ Committee, Inc.; 127 West 25th LLC; and Daniel Shavolian.

⁷ *Petitioner’s Amended Verified Petition* 9-20 (May 6, 2011)(on file with General Welfare Committee).

⁸ *Id.* at 97-105.

⁹ *Verified Answer to the Amended Petition* (July 8, 2011)(on file with General Welfare Committee).

¹⁰ *Municipal Respondents’ Memorandum of Law in Opposition to the Petition* (July 8, 2011, on file with General Welfare Committee).

¹¹ *Id.* at 24-29.

Preconsidered Res. No.

Resolution authorizing the Council of the City of New York to intervene or file an amicus brief in *Chelsea Business & Property Owners' Association v. City of New York*, for the purpose of defending provisions of the New York City Administrative Code that limit the size of homeless shelters for adults to two hundred persons.

By Council Members Vann, Palma and the Speaker (Council Member Quinn)

Whereas, In 1998, the Council of the City of New York ("Council") passed Local Law 57, which, among other things, added what is now section 21-312(b) of the Administrative Code, which provides that "[n]o shelter for adults shall be operated with a census of more than two hundred persons;" and

Whereas, Local Law 57 defines "census" to mean "the actual number of persons receiving shelter at a shelter for adults;" and

Whereas, New York Social Services Law defines a "shelter for adults" as "an adult care facility established and operated for the purpose of providing temporary residential care, room, board, supervision, information and referral, and where required by the department or otherwise deemed necessary by the operator, social rehabilitation services, for adults in need of temporary accommodations, supervision and services;" and

Whereas, On May 6, 2011, the Chelsea Business & Property Owners' Association, LLC, d/b/a Chelsea Flatiron Coalition ("CFC") filed an amended verified petition, pursuant to Article 78 of the Civil Practice Law and Rules, against the City of New York; the Board of Standards and Appeals of the City of New York; Seth Diamond, Commissioner for the Department of Homeless Services of the City of New York ("DHS"); George Nashak, Deputy Commissioner for Adult Services for DHS; Robert LiMandri, Commissioner for the Department of Buildings of the City of New York

(“DOB”); Fatma Amer, P.E., First Deputy Commissioner for DOB; James Colgate, R.A., Assistant Commissioner for Technical Affairs and Code Development for DOB; Bowery Residents’ Committee, Inc.; and Daniel Shavolian (the “Petition”); and

Whereas, The Petition challenges the construction of a 328-bed, in-patient and out-patient drug, alcohol and mental health care facility and homeless shelter for the mentally ill at 127 West 25th Street in Manhattan (“Proposed Facility”) and seeks to compel the City to perform obligations enjoined upon it by law, including the limitation on the size of homeless shelters contained in the Administrative Code; and

Whereas, The Petition alleges that “neither DOB, DHS nor BSA have enforced, or are willing to enforce, the statutory provision of the Admin Code that limits homeless shelters to 200 beds;” and

Whereas, On July 8, 2011, the Corporation Counsel of the City of New York filed a Verified Answer to the Amended Petition (“Answer”) and a Memorandum of Law in Opposition to the Petition on behalf of the Municipal Respondents (“Corporation Counsel Memo”); and

Whereas, The Answer states that “DHS procured a contract with BRC to operate a temporary, emergency shelter for up to 200 single adult men” at the Proposed Facility; and

Whereas, The Answer states that DHS and BRC plan to locate a 96-bed Reception Center for street homeless clients at the Proposed Facility; and

Whereas, The Answer states that “BRC plans to operate several other social services programs” including a “32-bed detoxification program for individuals with alcohol or substance abuse addiction” at the Proposed Facility; and

Whereas, The Corporation Counsel Memo argues that Administrative Code § 21-312(b) is preempted by state law; and

Whereas, The Corporation Counsel Memo further argues that the Proposed Facility does not violate the Administrative Code; and

Whereas, The Council has a profound interest in defending Administrative Code § 21-312 from constitutional challenge and ensuring that the laws governing the size of homeless shelters are faithfully executed in a manner consistent with the purpose for which they were passed; and

Whereas, The case is currently pending in New York Supreme Court, New York County; now, therefore, be it

Resolved, That the Council of the City of New York is authorized to intervene or file an amicus brief in *Chelsea Business & Property Owners' Association v. City of New York*, for the purpose of defending provisions of the New York City Administrative Code that limit the size of homeless shelters for adults to two hundred persons.

JPM
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