

**Testimony of Deputy Commissioner Jeffrey Shear**  
**City Council Finance and Government Operations Committee Hearing**  
**November 19, 2019**

Good afternoon Chair Dromm, Chair Cabrera and members of the City Council Finance Committee and Government Operations Committees. My name is Jeffrey Shear and I am Deputy Commissioner for Treasury and Payment Services at the New York City Department of Finance (DOF). I am here today to testify on three bills related to not for profit (NFP) organizations. They are Intro 245-A, Intro 1776 and Intro 1799. I am joined today by Jennifer Geiling, Deputy Director, Policy and Partnerships from the Mayor's Office of Contract Services to testify on Intro 1784 as well as by Andrew Rettig, Chief of Revenue Protection for the Bureau of Customer Services for the Department of Environmental Protection and Ted Oberman, Director of Commercial Exemptions from DOF's Property Exemption Administration to help me answer your questions.

I'd like to start off by talking about the great work DOF has done in the past few years to engage the NFP community and to ensure more NFPs renew their property exemptions on time. Through DOF's outreach including an NFP portal, letters and follow-up calls, we have achieved a 99% renewal rate for the past two years, which reflects an average of 13,000 renewals per year and an average of 92 non-responders. This means NFPs do not have to file a new application and their exemption has no break in period benefit. While we are pleased that the vast majority of NFPs renew their exemptions through this process, it is also important to point out that many of the non-responders have their exemptions renewed during the tax lien sale process. To further support our service to NFPs, DOF is looking into other mechanisms that could grant an exemption for non-responders that would have been eligible on the taxable status date up to three preceding years.

In addition, in October 2018, DOF launched our NFP Task Force to hear from advocates about the challenges they face when applying or renewing any city exemption. The Task Force meets about three times a year and we are pleased that the Department of Environmental Protection (DEP), the Mayor's Office of Contract Services (MOCS), the Department of Buildings (DOB), and Council Finance staff have joined us for these meetings. One of the recommendations and concrete outcomes from this task force is a draft NFP brochure for those seeking to apply for a DOF NFP exemption.

### **Intro 245-A**

Intro 245-A relates to NFPs and the DOF tax lien sale process. DOF broadly supports 245-A which aligns with our efforts to improve the customer service and flexibility of the tax lien sale process and codifies existing DOF practices. DOF also is asking the Council to make some minor changes to the bill.

State law exempts NFPs from paying property taxes if they annually confirm their not for profit status and show that they are using their property for an exempt purpose. In recent years, DOF has made great efforts to make the NFP exemption process as easy as possible. DOF realizes that many NFPs are small organizations staffed with part-time and/or volunteer workers that may find the exemption process challenging; especially when there has been turnover in the NFP's leadership. That is why we established the previously described NFP portal, why we sponsor about 100 community outreach events a year, and why we launched our NFP Task Force.

However, DOF recognizes that for the small number of NFPs that fail to renew their exemptions and wind up in the tax lien sale process, special attention is needed. That is why DOF's current practice is to remove an NFP from the tax lien sale at risk pool if it has received a previous exemption and submits an exemption for the current year that is substantially complete.

Intro 245-A creates a not for profit ombudsperson position within DOF, excludes properties from the tax lien sale if their owner has received a not for profit exemption in one of the two previous fiscal years, removes properties from the tax lien sale at-risk pool if they have made a good faith NFP application, and requires information on how to avoid having one's tax lien sold in NFP exemption denial letters. The ombudsperson position is aligned with DOF's creation of the Taxpayer Advocate's Office, which already has been handling the types of issues that 245-A highlights as needing an ombudsperson. DOF already excludes properties from the tax lien sale if the owner has received an NFP exemption in the prior fiscal year and is amenable to also looking at the prior fiscal year in making this determination. DOF also currently removes properties from the tax lien sale at risk pool if the owner has filed a good faith renewal application. And DOF agrees it is a good idea for NFP exemption denial letters to contain comprehensive information relating to the tax lien sale.

DOF proposes some minor changes to the bill to the Council. These include limiting the good faith application provision to organizations that have previously obtained an NFP exemption, authorizing DOF to include a property with a previous NFP exemption in the tax lien sale if it has information that the organization has ceased to operate, and not delaying the sale of a tax lien that pertains to debt that may have been

incurred prior to the acquisition of the property by the NFP, unless the NFP is pursuing actions to address the lien. Also, DOF finds it challenging to apply the provisions of the bill retroactively for reporting purposes and requests that the Council rely on the already extensive reporting that we perform on properties with previous NFP exemptions that are at risk of having their tax liens sold.

### **Intro 1776**

This legislation requires the Department of Finance to work with the Department of Environmental Protection to develop a single application form that not-for-profit organizations can submit to apply for both the not-for-profit real property tax exemption and the not-for-profit water and sewer tax exemption at the same time. We fully support the Council's goal of making the application process as simple as possible for NFPs. We do not believe that creating one form for two separate processes is the best way to do that. NFP exemptions for DOF and DEP are established by different state laws, which have different information requirements and standards. Some NFPs qualify for DOF exemptions, but not for DEP exemptions. Requiring all applicants to apply for both through a combined application would create more of a burden for NFPs that only qualify for a DOF exemption. This burden would be felt during the initial application process and during the annual renewal processes. Also, the DOF process is run annually whereas the DEP process is conducted every other year. A combined form would likely lead to NFPs submitting information to DEP when it was not required. DEP and DOF are committed to improving the application process. We are happy to work with the Council to do so.

**Intro 1799**

This legislation requires the Department of Finance to create and publish an informational brochure with information that would be useful to NFPs including information about relevant taxes and exemption. DOF supports this legislation and already has made significant progress in this area. As a part of the DOF NFP Taskforce, DOF has recently completed the final draft of the brochure on NFP exemption. A copy of the draft is attached to this testimony. In addition, DOF has property tax guides that include information about the notice of property value, the assessment process, exemptions and abatements, and how to appeal an assessment. DOF is currently updating these documents and is happy to consider including additional information relating to NFPs that is suggested by the Council. We would like to note that assessments do not change if a property is owned by an NFP; rather the NFP can apply for an exemption from real property taxes or water meter taxes for their property.

**Intro 1784**

As mentioned earlier, DOF's colleagues from the Mayor's Office of Contract Services will testify on this legislation.

Thank you for the opportunity to testify this afternoon. We are happy to answer any questions you may have.

### Other Exemptions You May Qualify For

Visit [www.nyc.gov/ownerexemption](http://www.nyc.gov/ownerexemption) for information about the tax exemptions available to New York City property owners. For example, clergy members who own property may qualify for an exemption.

To find out if you are eligible for an exemption from water and sewer charges, visit the Department of Environmental Protection at [www.nyc.gov/dep](http://www.nyc.gov/dep) and search "water sewer exemption."

### How to Get Help

**Online:** [www.nyc.gov/nfp](http://www.nyc.gov/nfp)

**Phone:** 311

**Mail:** New York City Department of Finance  
Not-for-Profit Exemptions Unit  
59 Maiden Lane, 22<sup>nd</sup> Floor  
New York, NY 10038

If due to a disability you need an accommodation in order to apply for and receive a service or participate in a program offered by the Department of Finance, please contact the Disability Service Facilitator at [www.nyc.gov/contactdofeeo](http://www.nyc.gov/contactdofeeo) or by calling 311.

**NYC**<sup>®</sup>  
Department of Finance

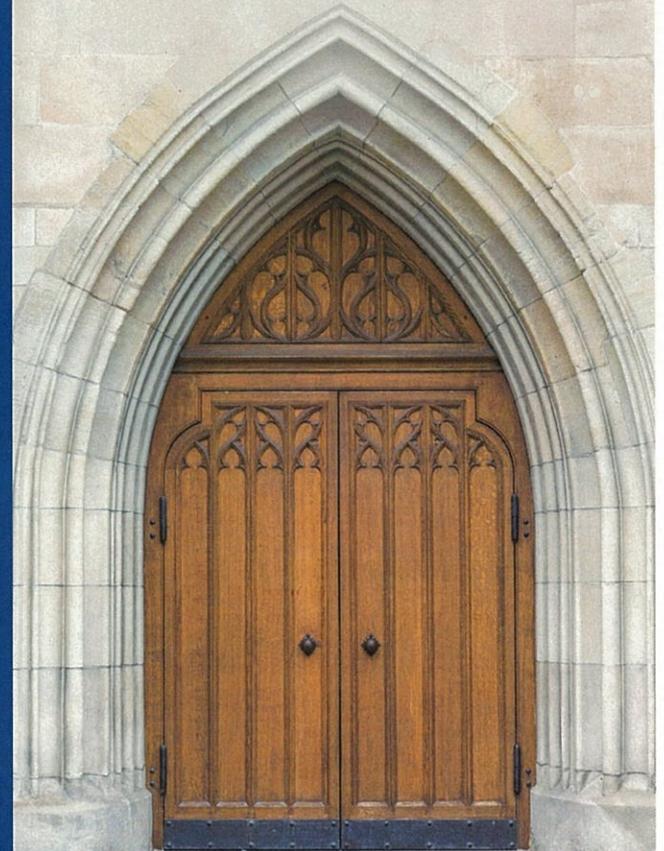


[nyc.gov/finance](http://nyc.gov/finance)

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# NOT-FOR-PROFIT

Property Tax Exemption



**NYC**<sup>®</sup>  
Department of Finance

Every day, across all five boroughs, not-for-profit organizations provide New Yorkers with life-changing programs and services. The City of New York is committed to helping not-for-profit organizations continue their much-needed and much-appreciated work. Your organization may qualify for a full or partial property tax exemption.

### Eligibility

A wide range of not-for-profits may qualify for a full or partial property tax exemption, including:

- Charitable and veterans organizations
- Hospitals and health clinics
- Educational institutions
- Houses of worship, religious organizations, and parsonages
- Historical societies, libraries, and museums
- Public playgrounds and cemeteries

To receive a tax exemption, the property's legal title must be in the name of a not-for-profit organization and the applicant must be the owner of the property. Federal 501(c)(3) status alone does not automatically qualify you for the exemption.

 Use the eligibility tool at [www.nyc.gov/nfp](http://www.nyc.gov/nfp) to determine whether you qualify.

### How to Apply

Visit [www.nyc.gov/nfp](http://www.nyc.gov/nfp) to download an application. Standard required documentation:

- Articles of incorporation
- Bylaws
- Deed, if not available in ACRIS

You may also need to submit:

- Lease
- Certificate of ordination
- Building plans, permits, or other documents, if your property is in the planning stage or under construction

### Deadline

New applications are accepted year-round.

### Renewing Your Exemption

You must renew your not-for-profit property tax exemption at [www.nyc.gov/commercialexemptions](http://www.nyc.gov/commercialexemptions) each year. In the fall before you are due to renew, you will receive a user ID and password from the Department of Finance. Be sure to renew as early as possible to avoid any disruption to your benefit.

 Renewals are due January 5.



**Testimony of Jennifer Geiling,  
Before the New York City Council Committee on Governmental Operations  
and Committee on Finance  
Intro 1784  
November 19, 2019**

Good afternoon Chair Dromm, Chair Cabrera and members of the City Council Finance Committee and Government Operations Committee. My name is Jennifer Geiling and I am the Deputy Director for Policy and Partnerships at the Mayor's Office of Contract Services (MOCS) and the Executive Director of the Nonprofit Resiliency Committee (NRC). I am joining the Department of Finance today to share how the Administration is partnering with and supporting the City's critical health and human service (HHS) nonprofit organizations.

This Administration deeply values the role that nonprofits play in delivering vital services to our City's communities, including our most vulnerable populations. There is no question that the health and well-being of our City is directly tied to the health and well-being of our nonprofits.

In recognition of this significant partnership, the Administration launched the NRC in September 2016 as a centralized body to hear directly from nonprofits about operational challenges, and then to design and implement sector-wide solutions with and for those same partners. As I will share in this testimony, Intro 1784 captures the spirit and work of the NRC. As such, we support institutionalizing the NRC and look forward to working with you and our partners

to define the right structure to continue this meaningful work. We appreciate the flexibility provided by the current draft of the legislation.

**Nonprofit Resiliency Committee: A Model for Partnership**

In the three years since its inception, the NRC has established itself as a center for purposeful engagement and policy reform that translates into results-oriented action. More than 100 nonprofit organizations volunteer to participate in our work, representing the diversity of the sector with a range in organization size, contracting portfolios, service areas, and populations served. The NRC has galvanized government leaders who oversee procurement, finance, programs and audit across the City's 40 mayoral agencies and the Department of Education. All key HHS agencies are active participants in the Committee's work, specifically the Department of Youth and Community Development (DYCD), Department for the Aging (DFTA), Department of Health and Mental Hygiene (DOHMH), Department of Social Services (DSS), and the Administration for Children Services (ACS).

Together, our City leaders work hand-in-hand with nonprofit leaders, to understand the everyday challenges of delivering services in a City of this size and operating businesses subject to disparate policies and practices across 41 agencies and hundreds of programs. We roll up our sleeves to do the hard work of unpacking difficult and long-standing problems, identifying opportunities for

mutually beneficial change and rebuilding policies and practices that can be effectively implemented and maintained. By inviting nonprofits to co-design the solutions to their challenges, we create reforms that make sense and can be successfully adopted.

This is a flagship model of partnership that is enabled through nurturing honest and transparent conversations and building trust and understanding. Through this open and committed dialogue, we have completed a range of projects that support our diverse sector and make it easier to do business with the City of New York. Initiatives are identified by providers and target opportunities to streamline administrative practices, collaborate on program design and build organizational financial strength. We are accountable to the sector and cultivate transparency and accessibility through publicly sharing our activities and adopted reforms on our website at [nyc.gov/nrc](http://nyc.gov/nrc). As you can see, the accomplishments we highlight reflect years of hard work to get the details of each initiative right, and hundreds of meetings to ensure we are hearing each other and developing relevant tools and policies that benefit the sector.

### **FY20: Policy Reforms that Create Breakthrough Change**

After years of collaboration, we now have a body of work we can all be proud of, and providers are experiencing legitimate relief in many areas. That

said, the initiatives that gather the most attention are those that focus on fiscal reforms – funding, more flexibility with funding, and receiving funding earlier. I'd like to highlight four significant achievements in this area, which in Fiscal Year 2020 (FY20) have come together to significantly strengthen the business environment for the City's HHS nonprofit sector.

First, FY20 saw the City's successful implementation of the NRC's policy for timely contract registration. This fiscal year, more than 80% of July 1 HHS contracts were ready for registration on time across our HHS agencies. With late registration as a long-standing pain point for the sector, this accomplishment was a break-through initiative with critical financial implications, targeting cash flow and greater liquidity. Established through an NRC working group, City agencies and nonprofit providers co-designed the registration process to initiate document collection and review earlier in the fiscal year and leverage HHS Accelerator technology to streamline practices. We centralized communications through HHS Accelerator Document Vault, consolidated practices and reduced duplication. The net result was more than 80% of July 1 HHS contracts ready for registration on time across our HHS agencies. Just this month, City agencies launched the FY21 registration process using this same model. Next year, we expect even stronger

results - further increasing the number of contracts ready for FY21 registration on time.

Timely registration enables providers to maximize a second NRC policy of 25% advances on all HHS annual budgets. For FY20, this means that the City paid nonprofits nearly \$1 Billion in advance payments in the first quarter of the fiscal year. For those who are unfamiliar with this issue, as a result of the NRC's work, nonprofits now receive up-front dollars to cover start-up and future expenses and maintain steady cash flow.

NRC policies further enable nonprofit financial management and planning through digital, centralized and standard contract management practices. In FY20 budgeting, invoicing and advance payments all happen more simply and quickly with a third NRC accomplishment - universal adoption of HHS Accelerator Financials, the City's electronic budgeting and invoicing platform for HHS contracts. This year, for the first time, over 90% of all eligible budgets are flowing through this digital system. Providers now have the transparency and consistency they have long requested.

Finally, the City established a standardized policy on indirect cost rates through the HHS Cost Policy and Procedure Manual (Cost Manual). The Cost Manual was developed through the NRC and forms the foundation of a

monumental commitment by the City Council and the Administration to fund indirect cost rates, effective this fiscal year.

### Sustaining Progress

There are numerous other accomplishments including guidebooks on best practices for program development and RFP design, work that was co-chaired by NYC Opportunity, a founding leader of the NRC, streamlining subcontracting processes to enable greater accessibility for small nonprofits and revising the standard human service contracts to create a more equitable partnership. Our work is applicable across all HHS contracts, regardless of the contracting agency, impacting nearly \$7 billion and more than 3,000 contracts annually. I'm happy to discuss these initiatives during our Question and Answer period and invite you to review our work at [nyc.gov/nrc](http://nyc.gov/nrc).

While there is still more work to be done, the robust and fruitful collaboration between the Administration and the nonprofit sector, through the NRC, is helping to establish a more supportive and sustainable operating environment for our critical HHS providers. And, the work has been continuous since we launched, ongoing even as we sit here today. Current NRC workgroups are focused on enhancing equity and access for community-based organizations, integrating a justice informed lens into programs and services and expanding the

Guides to Collaborative Communication and Standardized Audits. Because of our rapid deployment of policy reform, small, medium and large nonprofit organizations are already feeling shifts in their relationships with the City and greater financial stability. Under the current structure, MOCS remains committed to fulfilling its NRC management role and will continue to launch new solutions like the Procurement and Sourcing Solutions Portal (PASSPort) which ensures a predictable and transparent procurement experience.

Intro 1784 captures the spirit and work of the NRC – collaboration to identify and solve operational challenges critical to nonprofits, facilitating conversations between agencies and providers and creating useful supports and resources that empower nonprofit organizations in their relationship with the City. We support institutionalizing the NRC and look forward to working with you and our partners to define the right structure to continue this meaningful work. We appreciate the flexibility provided by the current draft of the legislation.

I am happy to take any questions you may have.

# Intro 1784

November 19, 2019

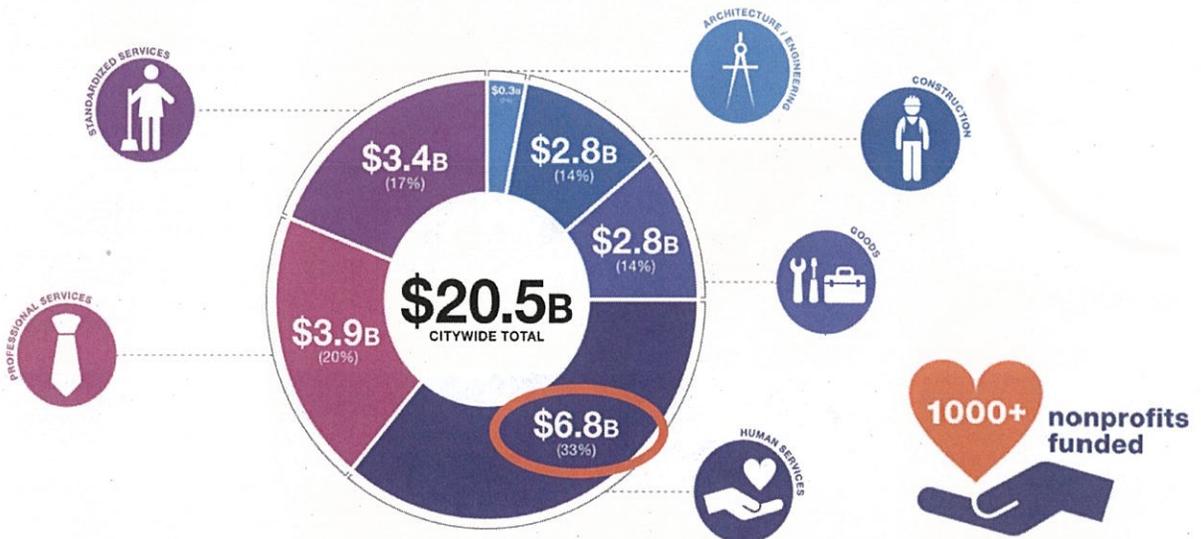
Jennifer Geiling

Deputy Director, Policy and Partnerships at Mayor's Office of Contract Services

Executive Director, Nonprofit Resiliency Committee



## Nonprofits Matter



## Nonprofit Resiliency Committee: A Model for Partnership

*A partnership to address a range of issues, from policy guidance to more operational matters.*

## FY20: Policy Reforms that Create Breakthrough Change



**NYC**  
HHS Accelerator

City of New York  
Health and  
Human  
Services

Cost Policy and Procedural Manual

80%+ July 1  
Timely Registration

25% Advances

93% Universal  
Accelerator Adoption

NYC HHS Cost Policy  
and Procedure Manual

# Sustaining Progress

NYC Nonprofits

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## Nonprofit Resiliency Committee

Nonprofit Resiliency Committee

Nonprofit Resiliency Committee Resources

Contact the NRC

Returnable Grant Fund

Support from City Agencies

Indirect Investment

Indirect Entryway Choice Form

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Print

### Nonprofits Matter

Each year, the City of New York awards billions of dollars to nonprofit organizations to deliver critical programs and services to over 3 million New Yorkers across the City.



[NYC.GOV/NRC](https://www.nyc.gov/nrc)



### Nonprofits Have a Voice

The Nonprofit Resiliency Committee (NRC), formed in 2016, gives the health and human service nonprofit community a direct voice for the first time in influencing the City of New York's business practices, policies, and technology solutions, from the RFP development process to timely contract negotiation. The NRC, comprised of more than 100 nonprofit organizations and coalitions, has galvanized City leadership across 40 mayoral agencies and the Department of Education to design and implement meaningful and systemic solutions. Based on NRC recommendations, the City has adopted contracting policies that have resulted in nonprofits receiving more money, earlier, and with greater spending flexibility.

Contact MOCS



# Nonprofit Resiliency Committee Resources

## Mayor's Office of Contract Services



The Mayor's Office of Contract Services (MOCS) manages and supports the policy initiatives of the NRC by designing and implementing technology solutions that drive policy success. For NRC questions, please contact the MOCS Help Desk at [help@mocs.nyc.gov](mailto:help@mocs.nyc.gov).

Read MOCS Director's letters to the nonprofit sector [here](#) and [here](#).

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## The Mayor's Office of Management and Budget



The Mayor's Office of Management and Budget (OMB) partners with the NRC to support fiscal policy initiatives. The Administration has made investments in the sector totaling more than \$600 million. The Fiscal Year 2020 Adopted Budget established an indirect cost rate funding initiative based on the City's Cost Manual.

View Human Service Sector Investments [here](#).

The Indirect Cost Rate Funding Initiative page can be found [here](#).

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## HHS Accelerator



The NRC leverages the HHS Accelerator technology platform to streamline, standardize, and digitize citywide business practices in an effort to make it easier to do business with the City of New York.

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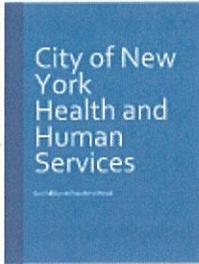
## Procurement and Sourcing Solutions Portal (PASSPort)



PASSPort digitized the VENDEX process and centralized responsibility determinations, greatly reducing processing time and eliminating paper waste. The next phase of PASSPort will digitize the contract registration process, enabling providers to see the status of their contracts and track the steps to registration. The NRC continues to serve as a valued partner of MOCS in the development and design of PASSPort.

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## HHS Cost Manual and Indirect Rate Guidance and Investment



City of New York  
Health and  
Human  
Services

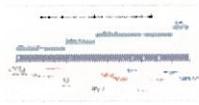
The City of New York Health and Human Services Cost Policies and Procedures Manual (“Cost Manual”) standardizes cost definitions and indirect cost rate policies to promote greater accessibility to City contracting. The FY20 Adopted Budget established an indirect cost rate funding initiative based on the Cost Manual. The City of New York is the first big city in the United States to implement comprehensive cost definitions and claiming flexibility in health and human service contracts.

The full policy and supporting documentation can be found [here](#).

More information on the indirect cost rate funding initiative can be found [here](#).

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## Timely Registration of Renewals, Extensions, and New Contracts



The City adopted the NRC’s recommendation to streamline, digitize, and standardize the collection of documents for human services renewals, extensions, and new contracts with the goal of realizing more timely registration and enhanced transparency.

Read the FY20 [policy](#) fact sheet and [timeline](#).

Access the [Authorization Letter Template](#) that consolidates the former signature authorization and board resolution documents into a single document.

Review the registration tips sheet found [here](#).

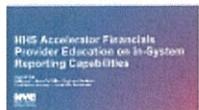
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## Advance Payment on Contracts



Contracts are eligible for advance payments of at least 25% of their annual budgets at the start of the fiscal year. Advance payments improve cash flow and can support new program start up.

## Financial Management — Reporting Functionality in HHS Accelerator



This conversation and tutorial delivers helpful guidance about leveraging the reporting capabilities of HHS Accelerator Financials to support your organization’s fiscal management and planning.

Watch the video [here](#).

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## Universal Use of HHS Accelerator Financials



HHS contract budgets are now managed through HHS Accelerator Financials, which enables advance payments to be requested and approved within minutes, budget modifications to be made quickly and simply, and invoices to be approved and paid within five days. HHS Accelerator also hosts the Document Vault which is an electronic document storage and sharing system that supports the NRC's streamlined and digital approaches to citywide procurement practices.

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## Automatic Budget Modifications



Providers may automatically modify their health and human service contracts up to 10% without pre-approval or delays in invoicing. Modifications may be made between categories of Personnel Services (PS) and Other Than Personnel Services (OTPS), maximizing budget flexibility.

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## Automatic Exemption from HireNYC Human Service Rider



Human service contracts with less than \$250,000 in annual Personnel Service (PS) spending are automatically exempt from the HireNYC Human Service Rider, thus eliminating the requirement that providers expressly request an exemption.

The HireNYC rider can be found [here](#). **Business Link** offers services that support nonprofits in identifying and recruiting qualified job candidates.

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## Digital Subcontractor Approvals and Template



The streamlined HHS subcontractor approval process reduces delays in contracting by eliminating written approvals and duplicative data requests and leveraging the City's technology platforms, including HHS Accelerator. At the request of providers, the City now offers a subcontracting agreement template that providers may use for subcontracting on HHS contracts.

The full policy can be found [here](#).

The subcontractor agreement template can be found [here](#).

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## Digital Audit Process with Standard Definitions



The standardized audit guide establishes a process and streamlines document collection through the HHS Accelerator Document Vault.

The Standardized Audit Guide can be found [here](#).

For step-by-step guidance on using the Document Vault, view the digital audit policy video [here](#).

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## Nonprofit Engagement in RFP Development



The Guide to Collaborative Communication with Human Services Providers outlines best practices and guidance for enhanced, earlier, and more frequent communications between the City and providers during program design and the RFP process.

The Guide to Collaborative Communication can be found [here](#).

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## Guidance for Performance-Based Contracting



The Guide to Performance-Based Contracting For Human Services Contracts provides a roadmap for City agencies to consider performance-based budgets when designing programs and offers guidance in identifying and using data to develop milestones and payment details. Should a City agency choose to adopt a performance-based budgeting model, the Guide provides support in using data to develop milestones and payment.

The Guide to Performance-Based Contracting can be found [here](#).

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## Standard Human Service Contract



The NRC, in collaboration with the New York City Law Department, streamlined and clarified the standard human services and performance-based contracts, strengthening privacy provisions, aligning language with state and federal guidance, and responding to operational feedback from nonprofit providers.

The contracts can be found [here](#).

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## Streamlined DOHMH Claims Verification



The Division of Mental Hygiene within Department of Health and Mental Hygiene (DOHMH) implemented a series of streamlining efforts for claims verification to relieve administrative burdens for providers. Their work was influenced by the principles of the NRC.

The full policy can be found [here](#).

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**TESTIMONY**  
New York City Council  
Committee on Finance jointly with the Committee on Governmental Operations  
Tuesday, November 19, 2019

Submitted by:  
MJ Okma  
Policy and Campaign Strategist  
Human Services Council of New York

Good afternoon, Chairperson Dromm, Chairperson Cabrera and members of the Committees on Finance and Governmental Operations. My name is MJ Okma and I represent the Human Services Council, a membership organization representing over 170 human services providers in New York City.

I am here today to share our perspective on Intro. 1784 and Intro. 1799 which would establish an Office of Not-For-Profit Services and create a guide for nonprofit organizations. Streamlining educational resources and assistance to nonprofits is a positive goal, especially for smaller and new nonprofits. However, these bills are a band-aid solution for a much larger problem that the Council must not lose sight of. The main issue facing New York City's human services nonprofit sector is not a lack of understanding of the City's policies and contracting processes, it's chronic underfunding.

The indirect funding initiative established in the FY20 Adopted Budget is a major step forward on the path towards right-sizing human services contracts, but more work needs to be done to address the crisis facing the sector. We need fundamental change to address the underfunded contracts and unfunded mandates that impact services across the City and stifle the wages of the human services workforce.

**State of the Sector:**

Providers are experts who are uniquely qualified to create cost-effective and impactful programs directly catered to their communities. They provide a myriad of services on behalf of the government, many of them mandated, and the sector can leverage private and philanthropic dollars and funding from the City, State, and federal government, to create dynamic programs at a bargain. But elected officials must not take that knowledge for granted or keep trying to cut back costs by refusing to listen to providers and undervaluing the services they provide.

Simply put, the City is not getting a deal by chronically underfunding homeless shelters, foster care agencies, food pantries, and senior centers; it is directly harming those who rely on government for help.

While the indirect funding initiative is a major step forward, other aspects of the nonprofit human services financial crisis still must be addressed:

1. Contracts are generally underfunded and do not cover program costs. It is not uncommon for City agencies to require an outright funding match from providers, or knowingly provide an inadequate rate per service unit, where providers must make up the difference.

2. Contracts do not provide for cost escalations for OTPS (other-than-personal services) costs, nor guarantee cost-of-living increases on the PS (personnel services) side. Contracts with government are often for five to seven-year terms, and even longer when RFPs are delayed, but providers are unable to account for unforeseen rising costs, such as a spike in electricity and water prices or an exceptionally cold winter, nor is there a mechanism to accommodate inevitable rising rent, health insurance, or other costs when contracts need to be extended.

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

The same report also outlines the extreme toll chronic underfunding is having on the sector outlining that **18 percent of New York City human services providers are insolvent.** This means that their liabilities exceed their assets, and many have less than a month of cash on hand. **Fifty percent of New York City human services nonprofits have less than two months of cash on hand and operating reserves,** meaning that one late payment can impact payroll, and one unforeseen event can put the provider out of business. Government relies on these providers to ensure that our communities have programs that promote wellbeing; yet is undermining their financial wellbeing.

Fifty-two percent of New York nonprofits report that local contracts do not cover the full cost of the services they are required to provide, and **56 percent report receiving indirect rates at 9 percent or less, with 91 percent reporting receiving 15 percent or less.**<sup>ii</sup>

This lack of funding fosters an unhealthy and unstable environment where providers across the City are forced to consolidate just to survive. With several high-profile nonprofits merging or closing in recent years, the sector itself came together in the *Call to Action* report, citing government underfunding as the main obstacle in planning for risk, and finding that government contracts were themselves a great risk to human services providers. The report drew upon the experience of sector leaders, and concluded that the underfunding of government contracts, including inadequate overhead, lack of cost-escalators, and low rates per unit, were main drivers to unstable organizations.<sup>iii</sup>

Unfunded mandates also compound these funding issues. Most recently, the Council passed Intro. 1321C without asking the Office of Management and Budget to prepare a fiscal analysis of its impact on human services contracts and pairing its passage with the appropriate budget increases on the capital and expense side to account for increased costs, despite concerns from the sector.<sup>iv</sup> The recent Administrative Employee Overtime Exemption minimum salary raise, that requires supervisory staff be paid a minimum of \$58,500 to be exempt from overtime, impacted programs across the City who saw no increase in funding to cover this mandate.

### **The Human Services Workforce:**

The nonprofit human services workforce has borne the brunt of underfunding. They are, in effect, an indirect government workforce yet they are some of the lowest compensated workers in the New York economy. **The only standard the City has for human services workers is a "living**

wage” of \$16.45 per hour, a pay rate below the poverty level. In addition, the state has rejected a minimal 2.9% COLA for human services workers 11 years in a row.

For human services nonprofits contracted by City and State government, underfunded contracts keep them from giving employees the raises they deserve. The Fiscal Policy Institute's *Undervalued and Underpaid: How New York State Shortchanges Nonprofit Human Services Providers and Their Workers* outlined the staggering results of this compounding crisis:<sup>v</sup>

1. **The average annual pay for human services workers in New York City is \$29,600, below the income needed to meet United Way's survival family budget needs while the average annual wage across all sectors in the City is \$85,742.**
2. **Pay is so low that 60 percent of those working in the sector utilize or had a family member utilizing some form of public assistance benefit such as Medicaid or food stamps.**
3. Women in the human services (\$15.40) and childcare (\$12.43) fields are generally paid much less than women in New York City's private sector overall (\$18.54).

New York's nonprofit human services workers are predominantly women, heavily women of color, well-educated and mostly full-time employees. **In New York City the human services workforce is 82% women and 80% people of color** who are making less than half compared to those outside the sector with similar credentials and experiences. Low and stagnant wages also lead to chronic staffing issues as provider struggle to hire and maintain qualified staff.

### **Conclusion:**

The chronic underfunding and unfunded mandates imposed on the human services sector has led to an environment where organizations across the City are being forced to scale back services or consolidate just to survive and the workforce is dramatically underpaid for their labor. While establishing an Office of Not-For-Profit Services and guide for nonprofits organizations are positive goals, they fall short to address the core issues that would be setting up those same organizations for failure. One out of five providers in New York City are technically insolvent. We need fundamental change to address the underfunded contacts and unfunded mandates that impact services across the City and stifle the wages of the human services workforce.

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<sup>i</sup> <http://seachange.org/wp-content/uploads/2016/03/SeaChange-Oliver-Wyman-Risk-Report.pdf>

<sup>ii</sup> <http://survey.nonprofitfinancefund.org/>

<sup>iii</sup> <http://www.humanservicescouncil.org/Commission/HSCCommissionReport.pdf>

<sup>iv</sup> <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3830891&GUID=26008717-5B5A-4CB3-936E-69ADE53F9EF6>

<sup>v</sup> <http://fiscalpolicy.org/wp-content/uploads/2017/03/Workforce-Report-.pdf>



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**Testimony of  
Lemuria Alawode-El  
AVP, StrengthenNYC  
United Way of New York City**

**Before the  
New York City Council  
Committee on Finance jointly with the Committee on  
Governmental Operations**

**Tuesday, November 19, 2019**

Good afternoon, Chairperson Dromm, Chairperson Cabrera and members of the Committees on Finance and Governmental Operations. Thank you for the opportunity to testify here today. My name Lemuria Alawode-El. I am the Associate Vice President of StrengthenNYC at the United Way of New York City, an organization that works with hundreds of nonprofit organizations in New York City. I am here today to share our thoughts regarding Int. 1784, which would establish an Office of Not-For-Profit Services.

**Strengthening Nonprofit Sector in New York City**

For 80 years, United Way of New York City has worked to support vulnerable New Yorkers throughout the five boroughs. We do this by partnering with community-based organizations, schools, businesses, and government agencies to address immediate and long-term needs around education and financial stability. United Way of New York City is currently working with over 700 non-profit organizations across the City.

United Way of New York City pays close attention to the needs of the nonprofit community in New York. When the executive director of a multi-service organization shares the challenges they are experiencing, we connect them to potential supports. When a food pantry is looking for extra hands to provide services, we leverage our corporate partnerships to find volunteers. When an organization needs to invest in infrastructure upgrades to better serve the local community, we provide operating grants to strengthen and build capacity. Our aim is to ensure that nonprofit organizations are stable, strong, and well-positioned to improve outcomes for New Yorkers.



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We commend the City Council for seeking to further support nonprofit organizations in New York City. These organizations fill an important role in providing critical social services for New Yorkers, often leveraging funding from City, State, and the federal government. Ensuring that there is ongoing two-way communication and collaboration between nonprofit organizations and the City is essential. In addition, we would also offer the following considerations for strengthening the nonprofit sector in New York City:

**Address chronic underfunding of nonprofit organizations**

Nonprofits need adequate and timely funding for their work:

- According to a report by *SeaChange Capital Partners and Oliver Wyman*, about 40% of nonprofit organizations in New York City have **cash and operating reserves of less than two months**. That means they have minimal amount of resources to cover immediate expenses and almost no margin for investments.<sup>1</sup>
- **Delayed payments for social service contracts create financial burdens**. Last January, Comptroller Scott Stringer’s office released a report showing that 89% of human services contracts in 2018 were sent to the comptroller for certification after the contract start date.<sup>2</sup> In April, *SeaChange Capital Partners* found that social service contracts were registered an average of 221 days after their start date, and estimated that the financial burden on nonprofits from registration delays added up to as much as \$744 million.<sup>3</sup>
- Even when funding is received, it **does not cover the full costs of providing services**, requiring non-profits to fill in the gaps by fundraising from private sources or foregoing essential needs. This directly contributes to low or stagnant wages for the human services workforce. Average annual pay for human services workers in New York City is \$29,600, far below the income needed to make ends meet.<sup>4,5</sup> Low wages in the sector primarily affect women: over 80% of the human services workforce are women, and 44% are women of color.<sup>6</sup>
- Nonprofit organizations need **additional opportunities to secure unrestricted operating funds** that allow them to make needed investments in infrastructure or systems. These kinds of investments increase nonprofit capacity and increase efficiencies but remain out of reach for many organizations.

<sup>1</sup> <http://seachange.org/wp-content/uploads/2016/03/SeaChange-Oliver-Wyman-Risk-Report.pdf>

<sup>2</sup> <https://comptroller.nyc.gov/reports/annual-analysis-of-nyc-agency-contracts/>

<sup>3</sup> <http://seachange.org/wp-content/uploads/2019/04/NYC-Contract-Delays-Vol.-2-1.pdf>

<sup>4</sup> <http://fiscalpolicy.org/wp-content/uploads/2017/03/Workforce-Report.pdf>

<sup>5</sup> Pearce, D.M. (2018). *Overlooked and Undercounted 2018 Series*. Seattle, WA: University of Washington. [https://action.unitedwaynyc.org/page/-/NYC18\\_KeyFindings\\_102518Lma.pdf](https://action.unitedwaynyc.org/page/-/NYC18_KeyFindings_102518Lma.pdf)

<sup>6</sup> <http://fiscalpolicy.org/wp-content/uploads/2017/03/Workforce-Report.pdf>



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**Streamline processes to ease administrative burden**

Over decades of working with nonprofit organizations, the United Way of New York City has witnessed the **administrative challenges that organizations experience** when applying for government contracts, contracting with the City, and submitting reports.

- Organizations working with multiple city agencies sometimes have to submit **separate applications through different portals** every year. For organizations that are dependent on government funding, this process takes multiple days of staff time that could otherwise be spent delivering services.
- Reporting or monitoring requirements can sometimes **force organizations to duplicate efforts**. We know of many nonprofit organizations that spend a lot of effort reporting to various agencies, each with their own data system, effectively submitting the same data in different formats.
- We also heard from nonprofit organization staff that when they wrestle with inefficiencies, they **do not feel like they have opportunities to propose solutions**. Many organizations are so dependent on City funding that they are afraid to voice concerns. Any new structure to support nonprofits must consider the power dynamics between the City and nonprofit organizations.

**Find opportunities to address challenges**

At the same time that nonprofit organizations are experiencing financial challenges, the need for services remains very high. Every four years, United Way of New York City, in collaboration with other partners, develops the New York City Self-Sufficiency Standard, which reviews the costs of living in the city and who is struggling to make ends meet. Last year’s report shows that **40% of New York’s working families are not making enough income to meet their basic needs** of housing, childcare, food, health care, transportation, and miscellaneous items.<sup>7</sup> Nonprofit organizations exist to serve this large share of New Yorkers and contribute to a stronger, more resilient city.

We encourage the City to find innovative solutions for addressing challenges that nonprofit organizations face. Chronic underfunding, increasing costs of doing business, and unmet demand for services will not be addressed by incremental improvements. What we need are **bold actions that are designed together with the nonprofit community** and that are responsive to the needs of New Yorkers and the organizations that serve them.

<sup>7</sup> Pearce, D.M. (2018). *Overlooked and Undercounted 2018 Series*. Seattle, WA: University of Washington. [https://action.unitedwaynyc.org/page/-/NYC18\\_KeyFindings\\_102518LMa.pdf](https://action.unitedwaynyc.org/page/-/NYC18_KeyFindings_102518LMa.pdf)



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- Understanding the experience of people working in nonprofit organizations is critical for designing solutions that make a difference. The City must **learn from nonprofit organizations**, and it must do this in a way that compensates people for the time they spend sharing insights and **addresses the power dynamics** at play between funders and grantees.
- The *SeaChange Capital Partners and Oliver Wyman* report identifies recruiting and retention issues and rising real estate costs as some of the persistent challenges for nonprofit organizations.<sup>8</sup> The City could help to design innovative approaches to **strengthen the sector by focusing on the most impactful issues**, for example around retaining staff or securing affordable space.

## Conclusion

Thank you again for the opportunity to share our thoughts on the challenges facing New York City's nonprofits. We believe that investing in organizations that serve New Yorkers is the right action to improve the lives of low-income New Yorkers for the benefit of all.

<sup>8</sup> <http://seachange.org/wp-content/uploads/2016/03/SeaChange-Oliver-Wyman-Risk-Report.pdf>



**TESTIMONY OF MARCIA R. EISENBERG, ESQ.  
ON BEHALF OF THE  
JEWISH COMMUNITY RELATIONS COUNCIL OF NEW YORK  
November 19, 2019**

My name is Marcia Eisenberg. I thank you for the opportunity to give testimony to the City Council Committees on Finance and Governmental Operations on several proposed bills: Intros. 245-A, 1776 and 1784.

I have been the Jewish Community Relations Council of New York's General Counsel and Director of its Legal Assistance for Jewish Organizations program for 33 years. I am also a member of the NYC Department of Finance's Nonprofit Task Force which was started a few years ago. Commissioner Jacques Jiha of the Department of Finance invited nonprofit professionals and representatives from NYC agencies to share issues and work on fixing systemic problems in order to ensure nonprofits could obtain the exemptions for which they were eligible and find ways to reduce the annual tax liens sales of nonprofits' properties.

Over the decades, I spent an enormous amount time working for Jewish communal and religious organizations as well as assisting churches and mosques solving exemption issues of NYC real property taxes, Department of Environmental Protection water & sewer charges and the Fire Department inspection fees and Department of Building's fees. In addition, the Exemption Unit of the Department of Finance as well as many other NYC agencies have spent a great deal of time working with churches, mosques, synagogues, schools and all types of nonprofit organizations unsnarling exemption messes for such organizations. Unfortunately, some messes don't ever get fixed, or the fixes cannot be implemented in time so charitable organizations' property liens get sold in the annual tax lien sales. Lien sales are a disaster for these organizations as well as their communities and they generally lead to a cascading of problems with other City agencies, a loss of funds and funders as well as reputation.

The Jewish Community Relations Council of New York thanks the sponsors of these bills for giving this important issue their attention. We support this effort and have some suggestions:

**Intro. 245-A - Nonprofit Protection from Tax Lien Sales**

Intro. 245-A is very important due to ongoing problems with lien sales and is a very welcomed and needed change. The proposal for exempting nonprofit-owned properties from a tax lien sale: when properties have been exempt within one of the two fiscal years before the date of the sale; if the properties' initial or renewal applications are pending; or if there is a pending appeal to the Tax Commission.

The idea for an Ombudsperson is a good one. However, this position needs to have more power than what is set out in the proposed bill. The Ombudsperson should have the ability to pull properties from a tax lien sale for other appropriately defined reasons as determined by an administrative law judge (or an analogous determining body). The Ombudsperson should also be able to ensure that any incorrectly levied taxes, charges or fees are canceled retroactively.

Additionally, I would propose that the City Council use its oversight power to require and monitor periodic reporting from the Department of Finance regarding the implementation of this law.

#### **Intro. 1776 – Single Application Form for Nonprofits**

A single exemption application for real property, water & sewer, fire inspections and any other miscellaneous taxes or fees would be a boon to both NYC nonprofit organizations and City agencies. A well-designed online portal could collect all of the required information and documents and inform nonprofit owners about their eligibility for real property tax exemptions, water and sewer exemptions, and Department of Buildings and FDNY fee exemptions.

Some of the City's agencies, i.e. the Department of Finance, already have the capability for organizations to up-load documents such as: certificates of incorporation, IRS exemptions, by-laws, etc. There are some different requirements under the different agencies, but basically it could be easily done.

A nonprofit is not eligible to get a water & sewer exemption unless it has a 100% exemption for real property tax. The water & sewer exempt categories are a subset of the Department of Finance's categories. There are exemptions for Fire Department's fees for safety inspection, which are closely aligned with and a subset of the Department of Finance's exemptions. Nonprofit organizations should not have to give three different agencies (or more) all of their documents to prove over and over that they are exempt. Some of the repetition is due to the fact that the required documentation is not kept by the agencies for any length of time – possibly due to storage costs. On-line archives like the deeds for properties kept by the City would be good for the City management and the nonprofit applicants.

#### **Intro. 1784 – NYC Nonprofit Services Dedicated Office**

The idea of providing support with an Administration dedicated address for nonprofit organization services is a good one. Nonprofit organizations are major providers of community based social services, healthcare, education, community organizing, a major "industry" in NYC and is as important as any facet of NYC's economy. It is time they get the assistance they need which will in turn make NYC a stronger and better place for all to work and live in. This office needs to be placed in NYC Small Business Services or in an analogous appropriate agency.

Thank you again for your work on this important problem.

**ADDRESS TO NYC CITY COUNCIL FINANCE COMMITTEE -- RE: Bill 245 Nov 19, 2019**

I want to thank the New York City Council Finance Committee for this hearing and providing me the time to speak before you.

I am the Rev. Dr. Robert Foltz-Morrison, the Executive Presbyter of the Presbytery of New York City. This Presbytery, like a diocese, is a regional body of 103 Presbyterian congregations in the five boroughs of this city, some more than 350 years old, some which began the past couple years as the needs of emerging demographic groups continues to change in our City.

I want to address a few issues relevant not only to Presbyterian congregations, but relevant to the estimated 6-8,000 religious organizations that exist in the City where different studies find 50-80% of our residents have some religious affiliation.

First, many operate with volunteers. They may not be on the premises seven days a week. They may miss changes as applying for exemptions for water and sewer tax. They may not understand the complexity of city processes or may be newly selected to maintain religious properties. One of your bills suggests an ombudsperson or advocate for such non-profits and guidelines. I encourage you to support this. Such an advocate may resolve issues earlier volunteers and city finance employees need not linger long.

Second, such an ombudsperson or advocate can also aid city employees who do not understand the differences among how different religious organizations work. For more than a year one Bronx Presbyterian congregational leader made over 20 visits to the Department of Buildings to address a violation and fines incurred. The Presbytery, the parent body, of which this congregation is a member, has title so DOB wanted to hear from the Presbytery. A letter from me, validating the right of the congregational member to act on behalf of the property of the church by the Presbytery, was written as we have done on other occasions. The employee with whom she spoke and an administrative judge said they wanted the Presbytery owner to appear. The Presbytery is a 13,000- member organization and has no single owner. The city continued to leverage fines. Our property consultant had to go through three persons, getting to the department head, before any semblance of religious organizational understanding was reached. Had this member of the congregation not persisted with our property consultant, it is likely that a lien would have been placed on the property. Fortunately, we have enough staff and persons who have worked with the City to prevent someone from taking the property away from the church. Many, many religious organizations do not and need more than an ombudsman; they need City employees who are better prepared to work with religious organizations that cannot afford expeditors to push things through.

Third, I don't know if you have ever heard of "the halo effect" that the average religious organization brings to our urban communities. A study, conducted by Partners for Sacred Places with Ram Cnaan, Director of the University of Pennsylvania's School of Social Policy and Practice, found that the average urban historic sacred place generates over \$1.7 million in economic impact annually—through employing staff, purchasing goods in the community to help those whose needs in the community are met through the services provided by religious organizations, and the value of volunteer hours given to help persons who come into their facilities. Put a different way, that economic value to the community can be lost when a religious organization finds itself without its knowledge on a tax lien list and is purchased by a developer with no interest in continuing its mission to the community.

A case in point: One of our congregations in Brooklyn that offers childcare and provides food and clothing for those who need it, came to our Presbytery trustees with a tax bill that had been growing. The church has a small membership and no cash reserves upon which to draw. When unpaid taxes amounted to as much as \$174,000, we all knew what would happen next, and it did: it got put on the tax lien list and was headed down the road to be purchased. This small congregation paid to have a tax expediter find out what was going on. He did. The City had made an error in its tax exemption classification and just kept running up the tab. The City made the error, yet the church was about to lose property even though it had filed tax exemption notices on time. Other religious congregations may not be so fortunate. Again, this is why bill 245 would be helpful in such cases.

Collectively, our Presbyterian congregations provide food and clothing to those who are hungry and homeless. They shelter homeless men and women and sponsor refugees. They provide venues for performing artists. They teach in state prisons. They visit and pray for persons who are sick and seek to bring hope to those in despairing situations. They provide childcare and programs for youth, adults just starting lives and adults whose ages need more care and attention. They are full of immigrants. And some of them will come here before City Council, travel to Albany or Washington DC as advocates for human rights for a wide range of persons. For us, this is what God asks of us: to do justice, show mercy, and walk humbly with God. And I am describing the collective impact of only 103 faith communities in this city.

I share this, to illustrate what is lost when one or many religious organizations close that had been responding to the human needs of its community, either because city policies work against its continuing contribution to the community of which it may have been part for 5 or 50 or 350 years--or religious leaders don't understand the process.

Add to that more paperwork, separating tax exemption and water exemption and sewer exemption. It is easy for paperwork to get misplaced or missed by volunteers just trying to keep up or a paid religious leaders overwhelmed by City procedures for which they did not receive seminary training. Guidelines for non-profits and religious organizations would be helpful and an ombudsperson.

I don't mean nor want to imply that religious organizations must not complete annually these processes. I am just asking for the City Council Finance Committee to be more merciful and recognize the halo effect that religious organizations have brought to New York City with economic, spiritual, and moral impact. I think the bills before you can contribute to religious organizations being more responsible to both the City's and their own organizational needs to maintain a responsible presence in our urban communities.

Thank you again for being willing to hear from one more of us who are supportive of this legislation. As one prophet directed: "Seek the welfare of the city where I have sent you and pray to the Lord on its behalf, for in its welfare you will find your welfare." Jeremiah 29.7.

Thank you.

The Rev. Dr. Robert Foltz-Morrison, Executive Presbyter  
Presbytery of New York City  
475 Riverside Drive, Suite 1600  
New York, NY 10115  
212-870-2221

# TAKEROOT JUSTICE

Testimony before the New York City Council Finance Committee  
November 19, 2019

Int. 245-2018 (Reynoso) to exempt charities from the Department of Finance (DOF) tax lien sale  
Int. 1784-2019 (Louis) to require the mayor to establish an Office of Not-For-Profit Services  
Int. 1799-2019 (Rivera) to require DOF to create a guide for nonprofit organizations  
Int. 1776-2019 (Ayala) to require Department of Environmental Protection and DOF to develop a single application for property tax and water/sewer charge exemptions.

Thank you so much to the Committee, its staff and the Members who introduced the bills we are here to talk about today. I particularly want to extend my personal gratitude to Council Member Reynoso and Asher Freeman on his staff for their partnership over the five years it has taken to bring the unnecessary risks of dispossession that New York City's charity organizations face to light before this Council at the hands of decades-old policies that it is past time to eliminate. I likewise would like to thank DOF Commissioner Jacques Jiha and Deputy Commissioner Jeffrey Shear for being good listeners and for their active engagement with members of the Protect Our Places coalition<sup>1</sup> over the last two years.

TakeRoot is a non-profit legal services organization that works with grassroots and community-based groups in New York City to dismantle racial, economic and social oppression. My practice, Equitable Neighborhoods, works with directly impacted communities to respond to City planning processes and private developers, helping to make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of "progress." Unfortunately, DOF's method of administering the mandatory New York

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<sup>1</sup> The Protect Our Places Coalition is the Mary Mitchell Family and Youth Center, Northwest Bronx Community & Clergy Coalition (NWBCCC), Al Muneer Foundation, Fifth Avenue Committee, Bangladeshi American Community Development and Youth Services (BACDYS), Fort Apache Youth Center, Haven Ministries, Masjid Al Aman, Judson Memorial Church, Bricks and Mortals NYC, St. Nicks Alliance, New York State Council of Churches, Interfaith Assembly on Homelessness and Housing, The New York Board of Rabbis, Lawyers Alliance for New York, United Methodist City Society, Nonprofit New York, the Presbytery of New York City & TakeRoot Justice.

State property tax exemption for charitable, religious and educational organizations practically ensures that such organizations will, in fact, be pushed out.

I have personally represented and counseled dozens of groups that own church buildings, community gardens, mosques and community centers that were on the brink of either foreclosure or losing tens of thousands of dollars in their dedicated program funds because they were trying to keep up with payments that DOF indicated they were required to make. It is bad enough that my clients regularly, over the last seven years, have received bills for money that they did not owe; what makes this devastating is that when they did not pay those bills, the City has been regularly selling the illusory debt as liens that can lead to foreclosure.

Our outreach and education partnerships with community-based organizations, the Manhattan Borough President's office, the former Public Advocate and current Attorney General, City College, Fordham Law School<sup>2</sup> and the DOF Tax-Payer Advocate's office have helped reduce the number of charity properties with illegal liens sold over the last few years, but that's not enough.<sup>3</sup>

The most recent lien sale included over 50 properties that have had property tax exemptions in at least one year since 2015, all of which have the same owner now as they did when DOF granted them the mandatory exemption.<sup>4</sup> That is fifty places too many!

Intro 245 will go a long way towards protecting our community fabric, but will only really work if the new Ombudsperson is adequately funded to do outreach and case work. Only sixteen (16) of the fifty properties on which liens were sold in 2019 would have been automatically exempt from the sale via the look-back provision in Intro 245. The others would have needed more detailed analysis and case handling in order to help their administrators avoid the sale. Further, the new Ombudsperson's office must be empowered to help organizations that have had liens placed on their properties in previous years request that those liens be defected

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<sup>2</sup> See e.g. the attached testimony from 596 Acres and Lincoln Square Legal Services from January 2017.

<sup>3</sup> Despite all our efforts, DOF sold at least 284 liens on charity properties between 2012 and 2017. Sixty-seven (67) properties were on the 10-day lien sale list in 2018; DOF did not publish a list of those sold in 2018.

<sup>4</sup> See [https://www1.nyc.gov/assets/finance/downloads/pdf/lien\\_sale/2019/final/nfp-notice.pdf](https://www1.nyc.gov/assets/finance/downloads/pdf/lien_sale/2019/final/nfp-notice.pdf)

and avoid foreclosure; and to assist groups that are entitled to refunds to get their money back. An amendment should be added connecting the Ombudsperson with the administrators of the NYC Housing Preservation and Development Third Party Transfer or a similar program so that, where charity organizations no longer have the capacity to steward real property, residents and the City as a whole can benefit from a controlled transfer to another responsible charity steward, as opposed to free fall into the open market which is the inevitable outcome of a tax lien trust foreclosure.

There are two additional changes that are key to a rational administration of the mandatory property tax exemption and must be added to the package of bills before the Council: (1) the Mayor's Office of Contract Services must be prohibited from using tax arrears as an indicator when doing a responsibility determination<sup>5</sup> for charities that contract to carry out the services that the city offers its residents and (2) for cases concerning charity properties, the Council must mandate that all past and future written decisions of the New York City Tax Commission,<sup>6</sup> which the appeals board where groups must apply to have DOF determinations examined and annulled, be published and made available to the public and those preparing future appeals.

Thank you again for being great partners. We all look forward to a future where how much our charity organizations contribute to the welfare of the City is reflected in how much the City contributes to *their* welfare and supports their administration.

**For further information, contact:**

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Equitable Neighborhoods Practice, TakeRoot Justice  
123 William Street, 16th Floor. New York NY 10038

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<sup>5</sup> This is done via the Procurement and Sourcing Solutions Portal (PASSPort), which reports unpaid property tax bills as issues that must be resolved before a contract can be registered, even if the organization is in the process of appealing the denial of exemption. Tax Commission appeals can take up to three years, forcing groups to pay taxes they do not owe or put their City contracts at risk.

<sup>6</sup> See Section 153 et seq. of the Charter of the City of New York.



## LINCOLN SQUARE LEGAL SERVICES, INC.

January 11, 2017

TO: New York City Council Member Julissa Ferreras-Copeland  
Mayor of the City of New York, Bill de Blasio  
New York City Council Committee on Finance

CC: Paula Segal, Executive Director, 596 Acres

FROM: Ashley Garcia & Jannon Stein, Student Lawyers, Lincoln Square Legal Services,  
Fordham Law School

RE: **Int. No. 1385. Sale of tax liens and notice to property owners of the mailing of  
property tax bills**

### Background

We are students at Fordham Law School's Community Economic Development Clinic who have researched the City's tax lien sale. Our findings dismay us, and we hope you will consider them. We were saddened to find that 89 not-for-profits had debts included in the 2016 sale<sup>1</sup> and are now facing the risk of foreclosures, if they fall behind on mounting fees and interest. One organization that faced a similar scenario—the Merrick Marsden Neighbors Association—collected over \$30,000 in small donations to resolve a tax lien and avoid foreclosure on their community garden property; all of which could have been invested into community services.

Not-for-profit organizations provide essential resources to those in need; when they are included in the tax lien sale with little guidance on how to avoid it, vital community assets are placed at risk. The proposed bill is insufficient to protect these resources and contravenes the clear intent of state law.

New notice mechanisms to such organizations are too weak. Furthermore, state law exempts charitable organizations from real property taxes in New York City from the date of deed and protects their major assets from being casually transferred into private hands. Yet due to the burdens of the City's annual exemption renewal process, debts for these properties end up in the tax lien sale, against the letter and the spirit of New York's Real Property Tax Law and Not-for-Profit Corporations Law.

### Recommendations

- (1) The bill should automatically exempt from the tax lien sale all property eligible for tax exemption pursuant to §§ 420-a, 420-b, 462, and 446 of the New York State Real Property Tax Law.
- (2) The bill should require more substantial outreach and more accurate and helpful informational materials so not-for-profit owners can resolve disputes with the City and avoid the tax lien sale.

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<sup>1</sup> See D.W. Gibson, *For Sale: Nonprofits*, Urban Omnibus (Nov. 9, 2016), <http://urbanomnibus.net/2016/11/for-sale-nonprofits/> (including a map of the affected properties).

- (3) The City should end the annual renewals for real property tax exemptions, as it needlessly burdens organizations the State Legislature intends to protect and needlessly puts them at risk of losing properties to foreclosure if they miss a single annual renewal.

### Impact

If not-for-profits are not better protected and informed, the communities that rely on them will suffer. The sector helps alleviate the government's burden of providing for those in need. While the tax lien sale benefits city revenues in the short term, its effect on the sector is causing lasting damage to the fabric of the city. Hurting not-for-profits that serve the disadvantaged and needy will shift more of the burden onto government, through increased social service costs or negative effects of neighborhood breakdown.

The New York State Legislature has repeatedly shown that it supports the vital role not-for-profits play in our society and the value they add to our city. The City of New York should make its support for our not-for-profit sector equally clear.

As a part of our legal clinical work, we partnered with the Department of Finance's Office of the Taxpayer Advocate and 596 Acres, Inc. to create an outreach presentation for not-for-profit property owners on property tax exemptions and the tax lien sale. In our research we learned that:

- (1) there is no exemption from the tax lien sale that not-for-profit owners can apply for as there is for owners of Class 1 properties and condominiums who are elderly, veterans, and members of other protected groups,
- (2) there is no automatic exemption from the tax lien sale for properties owned by not-for-profits eligible for tax exemption under state law, as there is for distressed and HDPC-owned properties,
- (3) the annual renewal requirement reinstated in 2012 is especially burdensome on small not-for-profits and those that may have had turnovers in leadership and staff,
- (4) many small not-for-profits are unaware of how to apply for property tax exemptions, and
- (5) there are few legal services providers that will represent not-for-profits in foreclosure actions, which leads to default judgments (i.e., an automatic loss of community resources) since the expense of litigation is far too costly for most not-for-profits.

These findings have guided our recommendations, explained further below.

1. An Exemption from the Tax Lien Sale for Not-for-Profits Is Justified Because the Legislature Intends to Protect Not-for-Profit Property

To protect not-for-profits, the City should provide an automatic exemption that specifically excludes them from the tax lien sale. The sale burdens these charitable organizations with mounting debts, which if paid reallocate resources away from communities in need, and if not paid, place vital assets at risk of foreclosure. Including such debts in the sale minimizes the high value not-for-profits provide to communities throughout the city and ignores substantive protections provided in state law.

- a. *The New York State Legislature intends to fully protect qualifying not-for-profits in New York City from property taxes*

Section 494-a of the New York State Real Property Tax Law (“RPTL”) clarifies the timing of property tax exemptions in New York City.<sup>2</sup> The State Legislature intended to provide qualifying not-for-profits with property tax exemptions from the date of deed, rather than the date of application. The authors of the legislation were concerned that even the most diligent not-for-profits could have up to 18 months of tax liability. This reform was intended to ensure that a not-for-profit owner of property that qualifies for a §420-a or §420-b exemption would never have to pay property taxes, going forward.

Even Mayor Michael Bloomberg supported the bill when it was proposed in 2007, urging the Legislature to take note of the importance of the city’s nonprofit sector and characterizing the solution as providing “tax relief that is vital to many nonprofit organizations.”<sup>3</sup>

We urge the City to follow state law and make sure the provisions for the tax lien sale fully comply with its intent to protect exempt charitable property from the date of its acquisition by a not-for-profit owner. If the City does not create an automatic exemption from the sale, it should at least create an opportunity for not-for-profit administrators to apply for an exemption once noticed.

- b. *The intent of New York’s Not-for-Profit Corporation Law (“NPCL”) is to protect charitable assets for the community and reduce the risk that they are exploited for profit*

The New York City Tax Lien Sale circumvents state laws governing the real property of charitable organizations and undermines what scholars call the “nondistribution constraint”<sup>4</sup>—the principle that nonprofits cannot distribute their assets to any person as a profit or a share and must take great care to devote such assets towards charitable purposes.

New York’s laws capture this principle in many rules for charitable not-for-profit corporations, including ones on institutional funds,<sup>5</sup> the sale of major assets,<sup>6</sup> and on how corporations may dissolve.<sup>7</sup> When selling or disposing of its real property, a New York charitable not-for-profit must get approval from an appropriate percentage of the Board or the Members.<sup>8</sup> Disposing of substantially all of the assets requires additional mandatory approval by the Attorney General’s Charities Bureau or a court.<sup>9</sup> Such restrictions protect these assets for future public benefit—and also protect the intent of donors who gave their resources to the organization so they could be used for charitable ends.

If a not-for-profit gets a tax lien that is sold to the tax lien trust, it must devote its assets to paying substantial fees and interest to the private investors who have purchased this debt. It becomes a fundraiser not for its own charitable mission but for these private investors’ profit interest. The design of the tax lien sale violates the spirit of the law. Not-for-profits must ensure their assets are devoted to charitable ends,

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<sup>2</sup> The legislative history of this law can be viewed and downloaded from the New York State Archives at [http://digitalcollections.archives.nysed.gov/index.php/Detail/Object/Show/object\\_id/24133](http://digitalcollections.archives.nysed.gov/index.php/Detail/Object/Show/object_id/24133).

<sup>3</sup> See *id.* Additionally, the State Department of Parks, Recreation, and Historic Preservation supported the law, stating it would save the state money in partnerships with not-for-profits to purchase and hold land for conservation, public access, and development.

<sup>4</sup> See Henry B. Hansmann *Reforming Nonprofit Corporation Law*, 129 U. Pa. L. Rev. 497 (1981).

<sup>5</sup> See NCPL Article 5-a, also known as the New York Prudent Management of Institutional Funds Act (2010).

<sup>6</sup> See NCPL §§509, 510.

<sup>7</sup> See NCPL §1001(d)(3).

<sup>8</sup> See *e.g.*, NCPL §509.

<sup>9</sup> See NCPL §511(a)(3).

yet here debts are wholly needlessly incurred and do not represent any investment in a charitable mission but rather a diversion of funds into private hands.

If it falls behind, a small not-for-profit could lose its major asset to a foreclosure and subsequent auction, where the highest bidding developer can buy a property that state law otherwise protects for public benefit and shields from commercial exploitation. At such an auction, the property is sold without any approval by the not-for-profit's Board of Directors or the Attorney General, as would normally be required for such substantial transactions of real property owned by a not-for-profit.

Including property owned by not-for-profits in the New York City Tax Lien Sale recklessly puts vital community resources at risk in ways that undermine the will of charitable donors and the principles of state law. Any new reauthorization of the tax lien sale must exclude such property automatically, or at least provide administrators an opportunity to apply for exemption on a case-by-case basis.

2. If the Tax Lien Sale is to Include Nonprofits, Much More Substantial Notice Mechanisms Must Be Required Than Those in the Proposed Bill

Any new authorizing legislation must make the City's commitment to not-for-profits more explicit. These organizations deserve much more accurate and helpful informational materials than those provided or proposed, so they can resolve disputes with the City in ways that let them avoid the tax lien sale.

The current and proposed notification requirements are completely inadequate without a corresponding exemption from the tax lien sale for owners of properties potentially eligible for real property tax exemption pursuant to §§ 420-a, 420-b, 462, and 446 of the RPTL. Those currently notified are presented with no choice but to pay the improperly accrued debt to avoid its sale to a speculative trust.

A more robust notification and outreach regime is a necessary reform—either to make sure those that would be exempt from the sale under a newly created exemption actually apply for the exemption or to inform property owners of the underlying real property tax exemptions they may already be eligible to receive. The optional notification and outreach proposed in the bill is insufficient to serve this purpose or to protect not-for-profit assets from disappearing from our communities due to collection activity of buyers in the tax lien sale.

a. *The proposed online list of §420-a exempt owners falls far short of adequate notification*

The key provision of the proposed bill that must be improved is the new online posting, no less than 90 days before the sale, of the borough, block, and lot number of any property in receipt of a real property tax exemption pursuant to §420-a of the RPTL within the preceding five fiscal years.<sup>10</sup> Although this measure would help identify some not-for-profits, it is still inadequate because it does not include properties with property tax exemptions pursuant to §§ 420-b, 462, and 446.

Furthermore, the proposed provision is optional: the bill is clear that it has no effect on the validity of a lien sold. The new law should require that a failure to notify administrators of not-for-profits via phone or email or to post the list of impacted properties online will invalidate the sale of a lien.

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<sup>10</sup> See §6(2) of the proposed bill (Int. No. 1385) which amends subdivision a of section 11-320 of the Administrative Code of the City of New York.

Additionally, the provision is flawed because it does not notify nonprofits that have not applied for property tax exemptions of their potential exemption eligibility. The notification requirements in the tax lien reauthorization should mandate outreach to all those potentially eligible for exemption, not just those who have held exemptions in past years.

- b. *The City is already in violation of its legal obligation to notify not-for-profit property owners of their eligibility for exemption from real property tax as part of the tax lien sale*

An existing provision in the authorizing law (included in the new proposed bill) requires the City to alert owners to their potential eligibility for real property tax exemptions prior to any installment agreements for noticed debt.<sup>11</sup> Any new authorization of the tax lien sale should be more explicit about how this requirement applies to not-for-profit owners so as to ensure compliance by the Department of Finance.

Currently, a pending lien notice arrives with an attached lien sale property exemption application form—yet the form includes no information about real property tax exemptions for not-for-profits.<sup>12</sup> No information about exemptions under RPTL §420-a or §420-b has regularly been communicated to not-for-profit owners. Not-for-profit organizations like the Merrick Marsden Neighbors Association are given no indication that they may qualify for such exemptions or how to apply for them. There is no evidence that City has been complying with its legal duty to notify not-for-profits of their eligibility for these exemptions when communicating with them about the debts that are securitized in the tax lien sale.

The proposed legislation does not strengthen this ignored provision, but in fact weakens it through the new online notice mechanism restricted only to those owners who have already be recognized as exempt under RPTL §420-a, rather than the broader category of all not-for-profit owners who might be eligible under §§420-a, 420-b, 462, and 446.

- c. *The City must notify not-for-profit property owners of their eligibility for refunds for taxes already paid*

Under RPTL §494-a, not-for-profits that have paid taxes they did not properly owe due to exemption eligibility may be able to receive complete refunds. The City must create a proper notice mechanism that ensures that such owners know about their ability to request and receive crucial community funds back from the Department of Finance as well as about how to protect their properties from the lien sale and the risk of foreclosure.

- d. *Not-for-profits deserve direct outreach efforts*

Another provision of the proposed bill, which encourages the City to engage in outreach to taxpayers affected by the lien sale, should explicitly direct the City to include not-for-profit property owners in outreach programs because of the important role they play in providing essential resources to communities throughout the city. As written, the current provision recommends outreach aimed

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<sup>11</sup> See New York City Administrative Code §11-332(b).

<sup>12</sup> See New York City, Department of Finance, Lien Sale Property Exemption Application Form, [https://www1.nyc.gov/assets/finance/downloads/pdf/lien\\_sale/lien\\_sale\\_appl.pdf](https://www1.nyc.gov/assets/finance/downloads/pdf/lien_sale/lien_sale_appl.pdf).

exclusively at residential property owners. Not-for-profits in the city deserve much more substantial and direct outreach and support.

Although the new bill expands notice mechanisms to include phone and e-mail, we recommend that more outreach systems be implemented to inform not-for-profits that they are entitled to property tax exemptions—and after they have applied for these, that they may be able to receive property tax refunds. The refunded monies will be redirected into our communities.

### 3. The Annual Renewal of Exemptions is Burdensome and Contrary to Legislative Purpose

Additionally, the City should end its annual renewal requirement, which was reimplemented in 2012. Since then, there has been a huge uptick in the amount of debt improperly billed to not-for-profits exempt from property taxes under state law and an increase in the number of not-for-profits included in the tax lien sale.

Specifically, the Director of Commercial Exemptions and Abatements at the Department of Finance, who administers not-for-profit exemptions, boasts that the reimplementation of the annual renewal process has resulted in restoration of approximately \$500 million to the tax rolls and increased collection of more than \$35 million.<sup>13</sup> This means that \$35 million has been redirected from the City's not-for-profits and up to \$465 million in uncollected debt still threatens these organizations and communities they serve. Some have opted to sell their churches and community center properties out of fear of mounting debts.<sup>14</sup>

If a small not-for-profit misses the annual renewal window between the beginning of October and the first week of January and ends up with a tax bill, it must devote significant time and resources to resolving the problem, seeking a refund, potentially seeking to defect a sold lien, or even marshalling and paying for legal representation to prevent foreclosure. Additionally, the annual renewal process is particularly burdensome for small organizations, as it requires juggling official hard copy mail as well as an online system during a relatively short period of the year that is packed with religious and secular holidays.

The annual renewal requirement violates of the legislative intent of RPTL §494-a to protect qualifying not-for-profits from all property taxes starting from the date of deed and for the duration of their ownership. Removing or altering the renewal requirement to make it substantially less burdensome would stop the first domino in this sequence from falling and go a long way towards providing vital community resources the protection they deserve.

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<sup>13</sup> See Theodore Oberman's public profile on LinkedIn, <https://www.linkedin.com/in/theodore-oberman-5b8176b9>, last visited 12/31/2016, 11:45pm.

<sup>14</sup> See Gibson, *supra* note 1.



FOR THE RECORD

**NYC COUNCIL TESTIMONY  
November 19, 2019**

- **Int. 245-2018** (Reynoso) Exempt charities from Department of Finance (DOF) tax lien sale
- **Int. 1784-2019** (Louis) to require the mayor to establish an Office of Not-For-Profit Services
- **Int. 1799-2019** (Rivera) to require DOF to create a guide for nonprofit organizations
- **Int. 1776-2019** (Ayala) to require Department of Environmental Protection and DOF to develop a single application for property tax and water/sewer charge exemptions.

My name is Frank Lang. I am the Director of Housing for St. Nicks Alliance a 44-year-old community development organization in North Brooklyn. St. Nicks provides besides providing critical services which impact more than 17,000 residents annually in the areas of housing, education, employment and health.

I am here today to support the above noted legislation which will help prevent the foreclosure of not-for-profit properties due to arrears for unforeseen real estate taxes assessed incorrectly by the Department of Finance.

In 2017, St. Nicks was alerted to the sale of a tax lien on the Devoe Street Baptist Church, a 115-year-old religious institution in Williamsburg Brooklyn. A Lien of over \$200,000 was already sold through the tax lien sale process and \$35,000 in additional real estate taxes were stated due by the church.

St. Nicks worked with Take Root Justice to assess the situation and contact the appropriate office at the Department of Finance to review the matter. The church put off the collection agencies which purchased the tax lien. Fortunately, the situation was corrected and the church's exemption was restored.

However, without the timely alertness by Take Root Justice and the efforts of St. Nicks staff members the church would likely been taken into foreclosure. A costly legal proceeding would have commenced and even if successful would have severely impacted the financial stability of the institution.

I implore the NY Council to pass legislation which can properly safe guard these errors from occurring and insure that legitimate tax exempt institutions are not erroneously lost through foreclosure.

Thank you for your time and attention to this matter today.

Frank Lang  
Director of Housing – St. Nicks Alliance  
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Email: [flang@stnicksalliance.org](mailto:flang@stnicksalliance.org)

# #PROTECT OUR PLACES COALITION

## Testimony before the New York City Council Finance Committee

November 19, 2019

Int. 245-2018 (Reynoso) to exempt charities from the Department of Finance (DOF) tax lien sale

Int. 1784-2019 (Louis) to require the mayor to establish an Office of Not-For-Profit Services

Int. 1799-2019 (Rivera) to require DOF to create a guide for nonprofit organizations

Int. 1776-2019 (Ayala) to require Department of Environmental Protection and DOF to develop a single application for property tax and water/sewer charge exemptions.

Thank you to the Committee for hosting this important hearing on an issue that has negatively impacted the fabric of NYC's communities for too long. My name is Mara Kravitz and I have been part of the campaign to remove charity-owned properties from the annual tax lien sale for the past four years, starting while working at 596 Acres. I have witnessed the Protect Our Places Coalition, comprised of impacted charities and their support organizations, grow, alongside the leadership of our elected advocates. The number of charity-owned properties that go through the sale each year has been decreasing--but *any* number is still too many. Thank you so much to Councilmember Reynoso for bringing this issue to the Council's attention and to Councilmembers Louis, Rivera and Ayala for introducing bills that will further support the city's nonprofits so they can keep providing for all of us and especially the most vulnerable New Yorkers.

Since 2016, I've supported community gardeners, houses of worship, and other active charity organizations across the city as they became aware of, and then scrambled to pay off debt they never should have owed, in order to keep their spaces. The stories from charities who have faced this tremendous burden that we hear today make the case clear. It seems very obvious that active charity organizations should *not* be getting caught in this tax lien sale. I am thankful for the elected officials leading on this matter, as well as the community members. I am glad we are here to halt such an obviously wrong scheme. It's a no brainer.

What seems less obvious is what happens when charity organizations no longer have the capacity to steward real property. Charity-owned assets reflect years of public investment, through direct government funds as well as foundation support that provides private donors with governmental tax benefits in exchange for their gift to the common good. It is therefore vital that these spaces remain for the common good beyond the individual tenure of one charity--both to ensure that we make the most of

public investment, and simply to do what is right for NYC, given the scarcity of affordable community space created by unbridled market conditions.

An amendment should be added connecting the new Ombudsperson that will be created with the administrators of the NYC Housing Preservation and Development Third Party Transfer or a similar program so that, where charity organizations no longer have the capacity to steward real property, residents and the City as a whole can benefit from a controlled transfer to another responsible charity steward, as opposed to free fall into the open market which is the inevitable outcome of a tax lien trust foreclosure, to quote Paula Segal of TakeRoot Justice. Several fellow Protect Our Places coalition members here today have been actively leading on the questions of what to do with underused charity-owned space, to ensure that it best serves a local community purpose. These groups should be invited to help guide the approach today and through ongoing conversations as well.

NYC's charity organizations provide New York City with so much value. From growing food, to childcare, to worship, to arts and culture, and more, protecting space for these very humanizing activities is essential to a strong NYC population. Thank you so much for hosting this hearing today. Let's pass these laws, end this problem for good--and continue to do everything we can to make it easier on the caregivers of our city to have the space to give us care for the long-term.

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**#PROTECT  
OUR PLACES  
COALITION**



LENOX HILL NEIGHBORHOOD HOUSE  
SINCE 1894

**Testimony of Lenox Hill Neighborhood House Before  
The New York City Council Committees on Finance and Governmental Operations**

**Presented by Alexandra Brandes, Esq., MPH  
Policy and Advocacy Manager**

**November 19, 2019**

Good afternoon, Chairs and Members of the Committees on Finance and Governmental Operations. My name is Alexandra Brandes and I am the Policy and Advocacy Manager at Lenox Hill Neighborhood House. Thank you for the opportunity to testify today at this joint hearing considering Int. 1776-2019 to amend the Administrative Code of the City of New York in relation to requiring the development of a single application form for the not-for-profit real property tax exemption and the not-for-profit exemption from water and sewer charges.

Lenox Hill Neighborhood House, one of New York's premier not-for-profit organizations, is a 125-year-old settlement house that provides an extensive array of effective and integrated human services—social, educational, legal, health, housing, mental health, nutritional and fitness—which significantly improve the lives of 15,000 people in need each year, ages 3 to 103, on the East Side of Manhattan. Lenox Hill Neighborhood House owns several properties, including our historic headquarters which was built for us in 1928 and has operated continuously as a settlement house serving New Yorkers in need since that time. We also own and operate a supportive housing residence for 54 formerly homeless, mentally ill adults in East Harlem. We are fully familiar with both the not-for-profit real property tax exemption and the

not-for-profit exemption from water and sewer charges and have long-standing organizational exemptions from both. I have closely examined the legislative history of the statutory water and sewer exemption and the case law addressing several disputes between New York City and not-for-profit owners that have resulted in litigation. I have also spoken with other not-for-profit real estate owners in the City to discuss their challenges with, and fairness of, the City Department of Environmental Protection's ("DEP") application of the water and sewer exemption process.

First, we applaud the Committees' focus on easing the burden on New York's not-for-profits by streamlining the application and renewal process for these critical exemptions and whole-heartedly endorse Int. 1776-2019.

Today, I would like to focus our attention on a related, significant water and sewer exemption issue which is critical to the entire City not-for-profit sector and one that requires examination and redress by these Committees and the Council.

As you and your colleagues recognize, New York's not-for-profit community delivers critical human service programs for millions of New Yorkers, often at the behest of government; many of these services are, in fact, the result of constitutional and legislative mandates and most are paid for by the public fisc. It is also widely acknowledged that not-for-profit organizations are stretched beyond measure and the freedom from unnecessary financial and administrative burdens is of critical importance not only to the not-for-profit organizations, but more importantly to the New Yorkers they serve and the City as a whole.

A very brief history of the water and sewer exemption is important in order to appreciate the current state of the problem that many not-for-profits encounter with the water

and sewer tax exemption and to point the way to a legislative solution. First, charitable organizations are generally exempt from taxation because they confer a public benefit.<sup>1</sup> Water and sewer charges, however, have been considered a utility rather than a tax.<sup>2</sup> New York State though exempted many charitable organizations from water charges in 1887:

**The several hospitals, orphan asylums and homes for the aged, now existing in the city of New York** (or which may hereafter be established therein), **are hereby exempted from the payment of any sum of money** whatever said city, **for the use of water taken by the same from said city**, and water shall be supplied to the same by said city, in sufficient quantity for all purposes for which it is now used by said societies and institutions, or which may be necessary to be used by the same, free of all charge whatsoever, and the real estate necessarily used as an hospital, orphan asylum or home for the aged, of any such institutions aforesaid, is hereby released, discharged and exempted from all lien and charge for water heretofore used, and remaining unpaid for at the time of the passage of this net, or which may hereafter be used by any such institution, society or corporation.<sup>3</sup> (emphasis added)

The original 1887 law has been amended more than a dozen times in the succeeding century to expand the types of not-for-profit organizations which are exempt from water and sewer charges.<sup>4</sup> “Social Settlements,” such as Lenox Hill Neighborhood House, were specifically exempted in 1902, 117 years ago;<sup>5</sup> other not-for-profits now exempt include Day Care Centers and Nursery Schools; Non-Public Schools; Dispensaries; Orphanages; Emergency Relief Centers; Places of Public Worship; Free Circulation Libraries; Public Baths; Shelters; Homes for the Aged;

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<sup>1</sup> See, e.g., *Bob Jones Univ. v United States*, 461 US 574, 591 (1983).

<sup>2</sup> See, e.g., *Silkman v Board of Water Commissioners* (water rate fees distinguished from a tax because water rate fees are charged based on use rather than as “a tax for an anticipated benefit arising from the presence of water in the city” (152 NY 327, 331 (1897))).

<sup>3</sup> 1887 N.Y. Laws, ch. 696.

<sup>4</sup> The exemption from water use fees is also applicable to related sewer use fees (“any real property which is entitled to an exemption from the payment of water rents or charges shall also be exempt from payment of the sewer rents or charges imposed hereunder”; NYC Administrative Code 24-514).

<sup>5</sup> 1902 N.Y. Laws, ch. 605, amending 1887 N.Y. Laws, ch. 696.

Hospitals; Veteran Firemen’s Associations; Medical Research Centers; Voluntary Ambulance Corps; and Military Veterans Associations.

In 1970, however, the State legislature added a provision to a longer bill to permit the Mayor of New York, by Executive Order, to limit the water and sewer tax exemption under certain circumstances if he or she so desired:

**[T]he mayor of the city of New York, by executive order, may provide that such institutions, society or corporation shall not be exempt from payment for the use and supply of water, except that such executive order shall apply only with respect to those institutions, societies or corporations who are eligible to receive reimbursement from *either the United States, the state of New York, or the city of New York, or any agency thereof, for payments for the use and supply of water.*<sup>6</sup> (emphasis added)**

Former Mayor Koch unfortunately issued such an Executive Order, Number 43, ten years later in 1980.<sup>7</sup>

This brings us to the present Mayoral administration and the DEP’s management of the water and sewer tax exemption process for not-for-profits. DEP’s system is opaque and unnecessarily complex and, we fear, unfair and harmful to not-for-profits. Upon information and belief, DEP currently requires some not-for-profits with water and sewer tax exemptions to recertify “periodically.” It is not clear whether DEP asks all, or only some, not-for-profits to

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<sup>6</sup> 1970 N.Y. Laws, ch. 167, amending 1887 N.Y. Laws, ch. 696.

<sup>7</sup> “Pursuant to the Provisions of Chapter 167 of the Laws of 1970, all institutions, societies or corporations which are eligible to receive reimbursement from either the United States, the State of New York, of the County of New Yor[k], or any agency thereof for the use and supply of water, shall not be exempt from payments for such use and supply of water.” Executive Order No. 43, February 13, 1980

recertify for their water and sewer exemptions. It is not clear how DEP selects the not-for-profits they choose to recertify. It is not clear even what the definition of “periodically” is for DEP.

More significantly, based upon Mayor Koch’s Executive Order No. 43, DEP requires those not-for-profits to submit supporting documentation that attests that the not-for-profits do not receive reimbursement for water and sewer charges from “*any* government agency” with their recertifications. In addition to being overly burdensome and, frankly, often impossible to achieve, it is not clear that DEP requires all not-for-profit owners to submit documentation from all government agencies with which they contract. Some eligible not-for-profits have hundreds of individual government contracts with city, state and federal agencies.

DEP has revoked water and sewer exemptions, even when the not-for-profit is clearly eligible for the exemption as, for example, when there has been no change to the not-for-profit’s mission, service provision or funding. DEP’s process therefore seems intended to create barriers to deny in the first instance or to revoke exemptions for not-for-profit organizations in order to increase funding for the New York City Water Board.

Not-for-profits that are of sufficient size may be positioned to obtain legal counsel to challenge both the process and the determinations by DEP, another cost and administrative burden for these beleaguered organizations. Some not-for-profits, however, are not able to obtain counsel and therefore start paying unnecessary water and sewer fees that detract from their important missions. It is important to note that when New York courts have examined these issues, the statutory water and sewer exemption has been “fairly, liberally, and

reasonably construed;”<sup>8</sup> DEP’s narrow construction of which not-for-profits are eligible has not been found to be dispositive;<sup>9</sup> and DEP’s revocation of longstanding exemptions has been found to be arbitrary and capricious.<sup>10</sup>

This system cries out for remedy. We would therefore recommend that the City Council require the Mayor to repeal Executive Order 43 so as to allow not-for-profit owners to avail themselves of the statutory water and sewer exemption that has been enshrined in New York law since 1887. All funds paid by not-for-profits, who are otherwise eligible for this exemption, to DEP and the Water Board are being unnecessarily transferred away from supporting the millions of New Yorkers whose lives depends on these not-for-profit organizations. This straightforward remedy would also have the related benefit of saving DEP and countless City agencies and not-for-profits significant administrative time and burden.

In the absence of a repeal of Executive Order 43, we would urge the Committees and the Council, in accordance with your desire to simplify the application process through Int. 1776-2019, to investigate and redress the confusing and apparently disparate treatment of not-for-profits seeking to obtain or retain water and sewer tax exemptions. In the words of Supreme Court Justice Brandeis, “[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”<sup>11</sup> Fairness and consistency are the hallmarks of good government; processes shrouded in secrecy with disparate determinations are, by definition, arbitrary and

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<sup>8</sup> *Associated Ym-Ywha's of Greater NY v D'Angelo*, 38 Misc 2d 1082, 1083 (Sup Ct, NY County, 1963).

<sup>9</sup> *Matter of Phoenix House Foundation, Inc.*, 2013 NY Slip Op 31658[U], \*3-5 (Sup Ct, Queens County 2013).

<sup>10</sup> *Id.*

<sup>11</sup> Brandeis, L., *Other People's Money and How the Bankers Use It* (1914).

capricious. We would therefore encourage these Committees to investigate this issue and to require the DEP to report to the Council all relevant information so that the Council can understand and determine whether the statutory not-for-profit exemption is being fairly administered and applied by DEP. Without such critical information, including, for example, the list of not-for-profits who have been denied water and sewer tax exemptions and the underlying justification for DEP's determinations, it is impossible to ensure that New York's not-for-profits are receiving the intended benefits of the statutory exemption.

If Executive Order No. 43 is not repealed, we would also encourage the Committees to continue to improve the process and require a reduction in the administrative burden on not-for-profits seeking to receive or maintain an exemption. It is incredible that DEP's stated process is to require not-for-profits to receive letters from *all* government funders to confirm that they do not provide water and sewer payments in order to receive or maintain an exemption. As these Committees recognize, most government agencies do not even acknowledge that they received such a request from a not-for-profit, let alone respond to that request. If DEP actually requires all eligible not-for-profit owners to obtain these documents, there would be thousands upon thousands of such requests inundating city, state and federal agencies, for limited government purpose. If verification is determined to be required, DEP should be able to move into the 21<sup>st</sup> century and verify using other methods which might include contacting their sister agencies themselves. Not-for-profit owners could be asked to "self-certify" that they do not receive payments for water and sewer taxes, similar to how New York City permits private landlords and developers to self-certify many more critical things related to the operation of their buildings. All reductions in unnecessary administrative burdens

on not-for-profits will help ensure a better functioning not-for-profit system and government.

Thank you again for the opportunity to testify today in support of simplifying the water and sewer exemption process for not-for-profits. We encourage you to continue the examination of this topic in support of better government and better services for all those New Yorkers who depend on not-for-profit organizations. Not-for-profit owners need a just and simple process—and they mostly need the exemption from these fees. For questions, I can be reached at 212-218-0450 or [abrandes@lenoxhill.org](mailto:abrandes@lenoxhill.org).

L A W S  
OF THE  
T A T E O F N E W Y O R K,  
PASSED AT THE  
ONE HUNDRED AND TENTH SESSION  
OF THE  
LEGISLATURE,  
BEGUN JANUARY FOURTH, AND ENDED MAY TWENTY-SIXTH, 1887,  
IN THE CITY OF ALBANY.



ALBANY:  
BANKS & BROTHERS, PUBLISHERS.  
1887.

## Chap. 696.

AN ACT to provide hospitals, orphan asylums and other charitable institutions in the city of New York with water, and remitting assessments therefor.

PASSED June 25, 1887; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Certain hospitals, asylums, etc., exempt from payment to city, for use of water.  
Release from liens for unpaid water rates.

SECTION 1. The several hospitals, orphan asylums and homes for the aged, now existing in the city of New York (or which may hereafter be established therein), are hereby exempted from the payment of any sum of money whatever to said city, for the use of water taken by the same from said city, and water shall be supplied to the same by said city, in sufficient quantity for all purposes for which it is now used by said societies and institutions, or which may be necessary to be used by the same, free of all charge whatsoever, and the real estate necessarily used as an hospital, orphan asylum or home for the aged, of any such institutions aforesaid, is hereby released, discharged and exempted from all lien and charge for water heretofore used, and remaining unpaid for at the time of the passage of this act, or which may hereafter be used by any such institution, society or corporation.

Exemption of real estate of certain institutions, from assessments for use of water.  
Proviso, in case of sale of real estate.

§ 2. The real property situate in the city of New York, necessarily now in use, or which may hereafter be necessarily used and devoted to an hospital, orphan asylum or homes for the aged, which has for its objects either the care, support or education of orphans or of the sick, the infirm or aged, shall be and hereby is declared discharged and exempt from all assessments laid or made for use of water and sales thereunder, and from all such assessments hereafter, so long as the same shall be owned by any such corporation, society or institution aforesaid, and used for the purposes herein mentioned, and whenever a sale and conveyance thereof shall be made to any person or corporation, other than those mentioned in this act, thereupon the real estate, so sold and conveyed and not so used, shall be thereafter subject to assessment in the same manner as other real estate situate in the city of New York.

## Chap. 697.

AN ACT to lay out and establish an exterior street along a portion of the East river, in the city of New York, and to alter the map or plan of the city of New York to conform thereto.

PASSED June 25, 1887; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Exterior street, establishing of.

SECTION 1. There shall be laid out and completed upon and after the filing of a plan therefor, and as provided by this act, an exterior street of one hundred and fifty feet in width, extending along the westerly shore of the East river, in the city of New York, from the center line

### Chap. 605.

AN ACT to amend chapter six hundred and ninety-six of the laws of eighteen hundred and eighty-seven, entitled "An act to provide hospitals, orphan asylums and other charitable institutions in the city of New York with water, and remitting assessments therefor," and the acts amendatory thereof.

Accepted by the city.

Became a law, April 15, 1902, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Act amended.

Section 1. Chapter six hundred and ninety-six of the laws of eighteen hundred and eighty-seven, entitled "An act to provide hospitals, orphan asylums and other charitable institutions in the city of New York with water, and remitting assessments therefor," and the acts amendatory thereof, are hereby amended to read as follows:

Certain hospitals, asylums, etc., exempt from payment to city, for use of water.

§ 1. The several hospitals, dispensaries, orphan asylums, homes for the aged, houses or homes for the reformation, protection or shelter of females, day nurseries or corporations or societies for the care and instruction of poor babies and needy children, and industrial homes, and any benevolent or charitable corporation owning or maintaining public baths, for free school societies or free circulating libraries and any social settlement, whether incorporated or unincorporated, which shall own or lease for a term not less than three years, a building or buildings devoted exclusively to the purposes of such social settlement, now existing or hereafter established in the city of New York, are hereby exempted from the payment of any sum of money whatever to said city, for the use of water taken by same from said city, and water shall be supplied to the same by said city, in sufficient quantity for all purposes for which it is now used by said corporations, societies and institutions, or which may be necessary to be used by the same, free of all charge whatsoever, and the real estate necessarily used for any hospital, dispensary, orphan asylum, home for the aged, free school or free circulating library, house or home for reformation, protection or shelter of females, day nurseries or corporations or so-

Release from liens for unpaid water rates.

cieties for the care and instruction of poor babies and needy children, or industrial home, or social settlement, or occupied for such public bath, owned or leased for a term of not less than three years, or held under any renewal or extension of such lease by any such corporations, societies and institutions aforesaid, is hereby released, discharged and exempted from all lien and charge for water heretofore used or which may hereafter be used by any such institution, society or corporation.

§ 2. The real property situate in the city of New York, necessarily now in use, or which may hereafter necessarily be used and devoted to any hospital, dispensary, orphan asylum, home for the aged, house or home for the reformation, protection or shelter of females, day nurseries or corporations or societies for the care and instruction of poor babies and needy children, industrial home, public baths, free school or free circulating library, or society which has among its objects either the care, support or education of orphans, or of the sick, the infirm or aged, free education or free circulation of books, or social settlement, shall be and hereby is declared discharged and exempt from all assessments laid or made for use of water and sales thereunder, and from all such assessments hereafter, so long as the same shall be owned or leased for a term of not less than three years, or held under any renewal or extension of such lease, by any such corporation, society or institution aforesaid, and used for the purposes herein mentioned, and whenever a sale and conveyance thereof shall be made to any person, association or corporation, other than those mentioned in this act, or the same shall cease to be held under lease as herein provided, thereupon the real estate so sold and conveyed, or ceasing to be so held, and not so used, shall be thereafter subject to assessment in the same manner as other real estate situate in the city of New York.

Exemption of real estate of certain institutions, from assessments for use of water.

Proviso, in case of sale of real estate.

§ 2. This act shall take effect immediately.

(1) Notwithstanding any other provision of law to the contrary, any city having a population of one million or more is hereby authorized and empowered to adopt and amend local laws imposing in any such city a tax such as the legislature has or would have the power and authority to impose on persons occupying premises in such city for the purpose of carrying on or exercising any trade, business, profession, vocation or commercial activity, measured by the rent paid for the use of occupancy of such premises, but, for periods embraced in the period beginning June first, nineteen hundred sixty-three and ending May thirty-first, nineteen hundred seventy, not to exceed two and one-half percentum of such rent where the rent is not in excess of twenty-five hundred dollars per year or where the rent is for a period of less than one year and would not exceed twenty-five hundred dollars for the year if it were paid on an equivalent basis for the entire year and not to exceed five percentum of such rent where the rent is in excess of twenty-five hundred dollars per year or where the rent is for a period of less than one year and would exceed twenty-five hundred dollars for the year if it were paid on an equivalent basis for the entire year. For periods beginning after May thirty-first, nineteen hundred seventy such tax shall be imposed at the rates shown in the following table. Where the rent is for a period of less than one year, the rate shall be determined by assuming that the rent is on an equivalent basis for the entire year:

Where the annual rent is: But not more than: The rate shall be:

0	\$ 2499	2½% of the rent
\$ 2500 or over	\$ 4999	5% of the rent
\$ 5000 or over	\$ 7999	6¼% of the rent
\$ 8000 or over	\$10999	7% of the rent
\$11000 and over		7½% of the rent

§ 2. Subdivision five of section one of such chapter is hereby repealed.

§ 3. This act shall take effect immediately.

## CHAPTER 167

AN ACT to amend chapter six hundred ninety-six of the laws of eighteen hundred eighty-seven, entitled "An act to provide hospitals, orphan asylums and other charitable institutions in the city of New York with water, and remitting assessments therefor"

Became a law April 22, 1970, with the approval of the Governor. Passed on message of necessity pursuant to article III, section 14 of the Constitution by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section one of chapter six hundred ninety-six of the laws of eighteen hundred eighty-seven, entitled "An act to provide hospitals, orphan asylums and other charitable institu-

tions in the city of New York with water, and remitting assessments therefor," as last amended by chapter four hundred thirty-three of the laws of nineteen hundred fifty-seven, is hereby amended to read as follows:

§ 1. The several hospitals, dispensaries, orphan asylums, homes for the aged, houses or homes for the reformation, protection or shelter of females, day nurseries or corporations or societies for the care and instruction of poor babies and needy children, any corporation which was created by an act of congress of the United States to be non-profit and without capital stock and organized exclusively for the purpose of furnishing volunteer aid to the sick and wounded of armies in time of war and to continue and carry on a system of national and international relief in time of peace and to mitigate the suffering caused by fire, floods and other great national calamities, and industrial homes, and any benevolent or charitable corporation owning or maintaining an institution for medical research, public baths, for free school societies or free circulating libraries or veteran firemen's associations, and any social settlement, whether incorporated or unincorporated, which shall own or lease for a term not less than three years a building or buildings devoted exclusively to the purposes of such social settlement work or any religious society owning or leasing for a period of not less than three years a building devoted exclusively to social settlement work, now existing or hereafter established in the city of New York, or the real estate owned by any religious corporation located in the city of New York as now constituted, actually dedicated and used by such corporation exclusively as a place of public worship, or the real estate owned by an association of honorably discharged soldiers, sailors, or marines, devoted exclusively to patriotic and charitable purposes, are hereby exempted from the payment of any sum of money whatever to said city, for the use of water taken by same from said city, and water shall be supplied to the same by said city, in sufficient quantity for all purposes for which it is now used by said corporations, societies and institutions, or which may be necessary to be used by the same, free of all charge whatsoever, and the real estate necessarily used for any hospital, dispensary, institution for medical research, orphan asylum, home for the aged, free school or free circulating library, veteran firemen's association, house or home for reformation, protection or shelter of females, day nurseries or corporations or societies for the care and instruction of poor babies and needy children, or any corporation which was created by an act of the congress of the United States to be non-profit and without capital stock and organized exclusively for the purpose of furnishing volunteer aid to the sick and wounded of armies in time of war and to continue and carry on a system of national and international relief in time of peace and to mitigate the suffering caused by fire, floods and other great national calamities, or industrial homes, or social settlements maintained or conducted by any incorporated or

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

unincorporated social settlement, church or religious society, or occupied for such public bath, owned or leased for a term of not less than three years, or held under any renewal or extension of such lease by any such corporation, societies and institutions aforesaid, or the real estate owned by any religious corporation located in the city of New York, as now constituted, actually dedicated and used by such corporation exclusively as a place of public worship, is hereby released, discharged and exempted from all lien and charge for water heretofore used or which may hereafter be used by any such institutions, society or corporation. *Notwithstanding the foregoing provisions, the mayor of the city of New York, by executive order, may provide that such institutions, society or corporation shall not be exempt from payment for the use and supply of water, except that such executive order shall apply only with respect to those institutions, societies or corporations who are eligible to receive reimbursement from either the United States, the state of New York, or the city of New York, or any agency thereof, for payments for the use and supply of water.*

§ 2. This act shall take effect immediately.

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## CHAPTER 168

AN ACT to amend the tax law, in relation to taxes administered by cities of one million or more

Became a law April 22, 1970, with the approval of the Governor. Passed on message of necessity pursuant to article III, section 14 of the Constitution by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section twelve hundred one of the tax law, as last amended by chapter four of the laws of nineteen hundred sixty-nine, is hereby amended by adding thereto a new subdivision, to be subdivision (h), to read as follows:

*(h) Notwithstanding the provisions of this article or of any other law, any local law adopted by a city of one million or more, imposing a tax authorized by subdivision (g) of this section may provide that such tax shall be administered and collected by the commissioner of motor vehicles or his agents. In the event that such local law does so provide, such tax shall not be imposed upon an application for the re-registration of a motor vehicle, and further, the commissioner of motor vehicles shall enter into an agreement with the finance administrator or other appropriate fiscal officer of such city, which agreement shall govern the administration and collection of any such tax and which agreement shall have the force and effect of a rule or regulation of the commissioner and shall be filed and published in accordance with any statutory requirements relating thereto. Notwithstanding any other provision of law, such agreement shall provide for the exclusive method of*

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**Laws of the Regular Session**

**Chapters 1 to 700**

**ST. PAUL, MINN.  
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public health law shall be made on or before May first, nineteen hundred eighty-one; such consultants shall provide the methodology to be used to determine the trend factors as provided for in this act to the commissioner and the state hospital review and planning council on or before July first, nineteen hundred eighty-one.

§ 3. This act shall take effect immediately.

§ 2. This act shall take effect on the same date as a chapter of the laws of nineteen hundred eighty as proposed in legislative bill number A. 9523<sup>1</sup> relating to extending the provisions of chapter five hundred seventeen of the laws of nineteen hundred seventy-eight.

<sup>1</sup> 1980 McKinney Session Laws, Ch. 891.

Charitable Institutions—Assessments

*Memoranda relating to this chapter, see Legislative and Executive Memoranda, post*

CHAPTER 893

An Act to amend chapter six hundred ninety-six of the laws of eighteen hundred eighty-seven, entitled "An act to provide hospitals, orphan asylums and other charitable institutions in the city of New York with water, and remitting assessments thereof", in relation to establishing certain changes.

Approved Nov. 26, 1980, effective as provided in section 3.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section one of chapter six hundred ninety-six of the laws of eighteen hundred eighty-seven entitled "An act to provide hospitals, orphan asylums and other charitable institutions in the city of New York with water, and remitting assessments therefor", as amended by chapter one hundred sixty-seven of the laws of nineteen hundred seventy, is amended to read as follows:

§ 1. The Except as otherwise provided in section three of this act, the several hospitals, dispensaries, orphan asylums, homes for the aged, houses or homes for the reformation, protection or shelter of females, day nurseries or corporations or societies for the care and instruction of poor babies and needy children, any corporation which was created by an act of congress of the United States to be non-profit and without capital stock and organized exclusively for the purpose of furnishing volunteer aid to the sick and wounded of armies in time of war and to continue and carry on a system of national and international relief in time of peace and to mitigate the suffering caused by fire, floods and other great national calamities, and industrial homes, and any benevolent or charitable corporation owning or maintaining an institution for medical research, public baths, for free school societies or free circulating libraries or veteran firemen's associations, and any social settlement, whether incorporated or unincorporated, which shall own or lease for a term not less than three years a building or buildings devoted exclusively to the purposes of such social settlement work or any religious society owning or leasing for a period of not less than three years a building devoted exclusively to social settlement work, now existing or hereafter established in the city of New York, or the real estate owned by any religious corporation located in the city of New York as now

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constituted, actually dedicated and used by such corporation exclusively as a place of public worship, or the real estate used exclusively for education through and including the twelfth grade which is owned by any corporation or association entitled to exemption under the provisions of paragraph (a) of subdivision one of section four hundred twenty-one of the real property tax law, or the real estate owned by an association of honorably discharged soldiers, sailors, or marines, devoted exclusively to patriotic and charitable purposes, are hereby exempted from the payment of any sum of money whatever to said city, for the use of water taken by same from said city, and water shall be supplied to the same by said city, in sufficient quantity for all purposes for which it is now used by said corporations, societies and institutions, or which may be necessary to be used by the same, free of all charge whatsoever, and the real estate necessarily used for any hospital, dispensary, institution for medical research, orphan asylum, home for the aged, free school or free circulating library, veteran firemen's association, house or home for reformation, protection or shelter of females, day nurseries or corporations or societies for the care and instruction of poor babies and needy children, or any corporation which was created by an act of the congress of the United States to be non-profit and without capital stock and organized exclusively for the purpose of furnishing volunteer aid to the sick and wounded of armies in time of war and to continue and carry on a system of national and international relief in time of peace and to mitigate the suffering caused by fire, floods and other great national calamities, or industrial homes, or social settlements maintained or conducted by any incorporated or unincorporated social settlement, church or religious society, or occupied for such public bath, owned or leased for a term of not less than three years, or held under any renewal or extension of such lease by any such corporation, societies and institutions aforesaid, or the real estate owned by any religious corporation located in the city of New York, as now constituted, actually dedicated and used by such corporation exclusively as a place of public worship, or the real estate used exclusively for education through and including the twelfth grade which is owned by any corporation or association entitled to exemption under the provisions of paragraph (a) of subdivision one of section four hundred twenty-one of the real property tax law, is hereby released, discharged and exempted from all lien and charge for water heretofore used or which may hereafter be used by any such institutions, society or corporation. Notwithstanding the foregoing provisions, the mayor of the city of New York, by executive order, may provide that such institutions, society or corporation shall not be exempt from payment for the use and supply of water, except that such executive order shall apply only with respect to those institutions, societies or corporations who are eligible to receive reimbursement from either the United States, the state of New York, or the city of New York, or any agency thereof, for payments for the use and supply of water.

§ 2. Such chapter is amended by adding a new section three to read as follows:

§ 3. a. As used in this section, the word site means parcels, a parcel or any part of a parcel of land, with or without improvements thereon, which is owned or otherwise controlled by any entity enumerated in section one of this act. Any parcel or parcels owned by the same entity which are in geographical proximity to one another and used for a

specific purpose, such as, but not limited to, the operation of a hospital or place of learning, shall be construed to be a single site. Commonly owned parcels, geographically separated from one another but used for a similar purpose, such as, but not limited to, the operation of a school or house of worship, are to be considered as a single site in each instance and the value of water supplied to each site shall not be added to, or combined with, the value of water supplied to any other site.

b. In the event that the value of water supplied to any site owned or otherwise controlled by any entity enumerated in section one of this act exceeds the sum of five thousand dollars per annum, the exemption granted by this act shall not apply to such site and full water rent shall be paid therefor; provided, however, that if the value of the water so supplied exceeds the sum of five thousand dollars per annum but does not exceed the sum of ten thousand dollars per annum, any entity enumerated in section one of this act shall be required to pay only one-half of the value of the water supplied.

§ 3. This act shall take effect immediately and any entity which shall become liable for the payment of water rents or sales as a result of this enactment shall become liable therefor as of the thirtieth day of June, nineteen hundred eighty.

### Charitable Institutions—Water Charges

*Memoranda relating to this chapter, see Executive Memoranda, post*

#### CHAPTER 894

An Act to amend a chapter of the laws of nineteen hundred eighty as proposed in legislative bill number S. 10215 amending chapter six hundred ninety-six of the laws of eighteen hundred eighty-seven relating to certain water charges, in relation to certain charges imposed by such chapter and the effective date thereof and to repeal section three of such chapter relating thereto.

Approved Nov. 26, 1980, effective Jan. 1, 1981.

Passed on message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law § 44.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Section three of a chapter of the laws of nineteen hundred eighty, amending chapter six hundred ninety-six of the laws of eighteen hundred eighty-seven, relating to certain water charges, as proposed in legislative bill number S. 10215,<sup>1</sup> is repealed and two new sections three and four<sup>2</sup> are added to read as follows:

§ 3. The charges imposed pursuant to this act shall not be due and payable prior to September first, nineteen hundred eighty-one and shall be deemed allowable operating costs in the determination of reimbursement rates pursuant to section twenty-eight hundred seven of the public health law, provided, however, that the costs incurred for this purpose during the rate years nineteen hundred eighty-one and nineteen hundred

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## Ch. 894

## LAWS OF NEW YORK

eighty-two shall be reflected in the respective reimbursement rates for each such year.

<sup>1</sup> 1980 McKinney Session Laws, Ch. 893.

<sup>2</sup> So in original.

§ 4. This act shall take effect on January first, nineteen hundred eighty-one.

§ 2. This act shall take effect on the same date as a chapter of the laws of nineteen hundred eighty as proposed in legislative bill number S. 10215<sup>1</sup> amending chapter six hundred ninety-six of the laws of eighteen hundred eighty-seven relating to certain water charges.

<sup>1</sup> 1980 McKinney Session Laws, Ch. 893.

### Labor—Unemployment Insurance Benefits

*Memoranda relating to this chapter, see Legislative Memoranda, post*

### CHAPTER 895

An Act to amend the labor law, in relation to limiting reduction of unemployment insurance benefits.

Approved Nov. 26, 1980, effective as provided in section 4.

Passed on message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law § 44.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Paragraph (a) of subdivision seven of section six hundred of the labor law, as added by chapter three hundred sixty-two of the laws of nineteen hundred eighty, is amended to read as follows:

(a) When a reduction for retirement payments is required by the federal unemployment tax act<sup>1</sup> as a condition for full tax credit, in which event the provisions of subdivisions one through six of this section shall not be operative, the benefit rate of a claimant who is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on his previous work, shall be reduced by the largest number of whole dollars which is not more than the pro-rated weekly amount of such pension, retirement or retired pay, annuity, or other payment, and the provisions of subdivisions one through six of this section shall not be operative as hereinafter provided, if such payment is made under a plan maintained or contributed to by his base period employer and, except for payments made under the social security act<sup>2</sup> or the railroad retirement act of 1974,<sup>3</sup> the claimant's employment with, or remuneration from, such employer after the beginning of the base period affected his eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity, or other similar periodic payment.

<sup>1</sup> 26 U.S.C.A. § 3301 et seq.

<sup>2</sup> 42 U.S.C.A. § 301 et seq.

<sup>3</sup> 45 U.S.C.A. § 231 et seq.

§ 2. Paragraph (b) of subdivision seven of section six hundred of such law is relettered paragraph (c).

35/80-1570

EXECUTIVE ORDER NO. 43  
February 13, 1980  
WATER CHARGES

By the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Payment for Use and Supply of Water. Pursuant to the Provisions of Chapter 167 of the Laws of 1970, all institutions, societies or corporations which are eligible to receive reimbursement from either the United States, the State of New York, of the City of New York, or any agency thereof for the use and supply of water, shall not be exempt from payments for such use and supply of water.

§2. Prior Orders Revoked. Executive Order No. 12, (1970) and Executive Order No. 77 (1973) are hereby revoked.

§3. Effective Date. This order shall take effect on March 1, 1980.  
EDWARD I. KOCH, Mayor

Executive Order # 12 (1970) and  
Executive Order # 77 (1973) revoked.

**Document:** Matter of Phoenix House Found., Inc. v. New York City Water Bd., ...

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**Matter of Phoenix House Found., Inc. v. New York City Water Bd., 2013 N.Y. Misc. LEXIS 3214**

Copy Citation

Supreme Court of New York, Queens County

July 11, 2013, Decided

9934/12

**Reporter**

**2013 N.Y. Misc. LEXIS 3214** \* | [2013 NY Slip Op 31658\(U\)](#) \*\*

[\*\*1] In the Matter of the Application of PHOENIX HOUSE FOUNDATION, INC., Petitioner, - against- NEW YORK CITY WATER BOARD and NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, Respondents. Index No. 9934/12

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Core Terms

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exemptions, water charge, funding, social settlement, applications, reimbursement, operational expenses, water and sewer, properties, neighborhoods, Settlement, receives, charges, families, arbitrary and capricious, communities, addiction, charitable organization, rational basis, individuals, provides, recertification, holistic, services, alcohol, qualify

**Judges:** [**\*1**] Present: HONORABLE [DARRELL L. GAVRIN](#) ▼, J.S.C.

**Opinion by:** [DARRELL L. GAVRIN](#) ▼

Opinion

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Phoenix House is a non-profit drug and alcohol rehabilitation organization operating 150 locations throughout the country, including nine properties in New York City. Phoenix House receives 95% of its funding from the New York State Office of Alcohol and Substance Abuse Services (OASAS) and Medicaid, and 5% from private philanthropic support. Pursuant to [Internal Revenue Code § 501 \(c\) \(3\)](#), Phoenix House is a charitable organization exempt from taxation.

The New York City Water Board (the Water Board) is an autonomous public benefit corporation empowered to set

water and sewer rates sufficient to support New York City's water and sewer systems (Public Authority Law § 1045[f], [j]). The New York City Department of Environmental Protection (DEP) serves as the agent of the Water Board and is responsible for billing and collecting water and sewer charges, maintaining accounts, and issuing determinations upon applications for water and sewer exemptions. Properties located within New York City that are exempt from water charges are also exempt from sewer charges.

In 1887, the New York State Legislature deemed charitable organizations [\*2] located within [\*\*2] New York City exempt from water charges, in "an act to provide hospitals, orphan asylums and other charitable institutions in the City of New York with water, and remitting assessments thereof." 1887 N.Y. Laws, ch. 696.

The law was amended in 1980 by the "Silver Bill," which provides:

Any social settlement, whether incorporated or unincorporated, which shall own or lease for a term not less than three years a building or buildings devoted exclusively to the purposes of such social settlement work . . . are hereby exempted from the payment of any sum of money whatever to said city, for the use of water taken by same from said city, and water shall be supplied to the same by said city, in sufficient quantity for all purposes for which it is now used by said corporations, societies and institutions, or which may be necessary to be used by the same, free of all charge whatsoever, and the real estate necessarily used for any . . . social settlements maintained or conducted by an incorporated or unincorporated social settlement . . . is hereby released, discharged and exempted from all lien and charge for water heretofore used or which may hereafter be used by an such institution, [\*3] society or corporation.

1980 N.Y. Laws, ch. 893, amending 1887 N.Y. Laws, ch. 696.

By Executive Order No. 43, dated February 13, 1980, former Mayor Edward I. Koch ordered that all institutions, societies, or organizations that are eligible to receive reimbursement from the United States, the State of New York, the City of New York or any agency for their water charges would not be exempt.

It is undisputed that: (1) the DEP has granted water exemptions to Phoenix House since 1970, categorizing it as a social settlement; (2) the DEP advised Phoenix House that water exemptions would continue for as long as Phoenix House owned or leased the properties and used them in a manner that would qualify for an exemption; and (3) Phoenix House never received reimbursements from any government agency for water charges.

In response to a 2008 audit and programmatic review of all exemptions, the DEP requested resubmission of all exemption applications for New York City properties currently exempt. [1] In September 2010, Phoenix House resubmitted applications for exemptions of water charges on all nine properties, applying under the "social settlement" exemption category. On the recertification applications, [\*4] the DEP requested the following information: "Describe any funds you receive from an agency of the federal, state or city government to pay for water charges" and Phoenix House answered, "OASAS contract funding for operations of the facility."

[\*\*3] In October and December 2010, the DEP revoked Phoenix House's exemptions from water charges on all nine properties. Initially, the DEP informed Phoenix House that it had been denied exemptions because: (1) "residential properties are not eligible for exemption;" [2] and (2) "funding is included for operational costs" and "water and sewer charges are considered normal operating expenses."

Phoenix House appealed this decision by the DEP. By letter dated October 17, 2011, the DEP denied the appeal, claiming the properties no longer qualify for exemptions because Phoenix House receives funding from a governmental agency. The DEP further advised that "[w]hile the Water Board understands that water and sewer charges [\*5] may not have been included in this year's budget request, they should be included in the next budget request."

On November 16, 2011, Phoenix House appealed the DEP's decision upholding its denial of water and sewer exemptions, and claimed, "[d]espite no significant change in (a) the law governing exemptions, (b) the nature of Phoenix House's programs or (c) the source of Phoenix House's funding, the DEP revoked Phoenix House's exemptions in October 2010."

By letter dated January 10, 2012, the Executive Director denied this appeal. The Executive Director found that the subject properties were not entitled to exemptions from water charges because: (1) Phoenix House provides a specific service, addiction treatment, and Phoenix House is not a social settlement; and (2) applications submitted indicate that Phoenix House receives governmental funding for operational expenses, and water and sewer charges are an operational expense.

Having exhausted its administrative remedies, Phoenix House brings this Article 78 proceeding for judicial review of the final determination of the Executive Director. Phoenix House seeks a judgment: (1) reversing the determination of the Executive Director; (2) declaring [\*6] Phoenix House a social settlement, exempt from New York City water and sewer charges; and (3) canceling the unpaid assessments.

In an Article 78 proceeding, the court reviews the decision of an agency to determine if it was in violation of a lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of discretion. The court is not to substitute its judgment for that of the agency being reviewed, but is to determine whether proper procedures have been followed. (*Matter of Nawaz v State Univ. of N.Y. Univ. at Buffalo Sch. of Dental Medicine*, 295 AD2d 944, 744 N.Y.S.2d 590 [4th Dept 2002].)

If the petition alleges that the decision was arbitrary and capricious, the court must examine whether the action taken by the agency had a rational basis (*Matter of Peckham v Calogero*, 12 NY3d 424, 911 N.E.2d 813, 883 N.Y.S.2d 751 [2009]). A court will overturn an administrative action where it is "taken without sound basis in reason" or "regard to

the facts" (*id. at 431*). A rational basis exists [\*\*4] where the determination is "[supported] by proof sufficient to satisfy a reasonable [person], of all the facts necessary to be proved in order to authorize the determination" (*Ador Realty, LLC v Div. of Hous. and Community Renewal*, 25 AD3d 128, 139-140, 802 N.Y.S.2d 190 [2d Dept 2005], [\*\*7] quoting *Matter of Pell v Bd. of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 313 N.E.2d 321, 356 N.Y.S.2d 833 [1974]). If the court concludes "that the determination is supported by a rational basis, the court must sustain the determination even if [this Court] concludes that it would have reached a different result than the one reached by the agency" (*Matter of Peckham*, 12 NY3d at 431).

Phoenix House avers that the Executive Director unjustifiably denied it exemptions from water charges in an attempt to generate more revenue, prompted by a 2008 audit and programmatic review of all exemptions. Phoenix House claims that the determination of the Executive Director that Phoenix House is not a social settlement and that there was a "change" in its recertification applications was arbitrary and capricious.

In opposition, the Executive Director maintains that Phoenix House is not a social settlement as that term is defined by the DEP because it is an addiction treatment center, and assuming *arguendo* that Phoenix House is in an exempt category, its applications for exemptions of water charges were denied because it receives government funding, a portion of which [\*\*8] is intended to cover operational expenses, and water is an operating expense.

The court will first review the determination of the Executive Director that Phoenix House is not a social settlement. In support of its petition, Phoenix House relies on the "2004 General Instructions" provided by the DEP in its application for an exemption of water charges, which defined a social settlement as:

[A] charitable organization that provides moral and physical support to communities. It must provide services to all ages and races, without regard to religion or national origin. The purpose of the organization should be to develop individual potential and to achieve the best possible neighborhood life. Social [s]ettlements need not be located in poor neighborhoods to qualify. The organization must strive to improve the quality of life in the neighborhood in which it is located.

Phoenix House claims that it is a charitable organization that provides holistic services to individuals addicted to alcohol and/or drugs and strives to improve their lives, as well as their families and communities; therefore, it falls within the definition of a social settlement cited by the Executive Director in his final [\*\*9] determination letter: "[A] [s]ocial [s]ettlement is distinguishable from other social service agencies not by the type of services they provide but by their holistic approach to strengthening neighborhoods and families." Phoenix House avers that the Executive Director failed to provide a rational basis for treating substance abusers differently from recipients of other charities.

Phoenix House maintains that all nine facilities qualify as social settlements because [\*\*5] they are dedicated to improving the lives of New York City's men, women, and children regardless of their origin, race, creed, or economic status through substance abuse education, prevention, and treatment. Its goal has always been to provide people with the skills and resources necessary for their development as healthy individuals who maintain functional and productive relationships with their families, schools, workplaces, and neighborhoods. Thus, the goals of Phoenix House fit squarely within the Court's own interpretation of those of social settlements which "help the individual develop to his fullest potential and to achieve the best possible family and community life" (*Matter of Associated YM-YWHA'S of Greater N.Y. v D'Angelo*, 38 Misc 2d 1082, 1083-84, 239 N.Y.S.2d 722 [Sup Ct, NY County 1963]).

However, [\*\*10] the Executive Director puts forth his reasoning that:

[A]n addiction treatment center is not a [s]ocial [s]ettlement. Social [s]ettlements are defined institutions . . . a [s]ocial [s]ettlement is distinguishable from other social service agencies, not by the type of service they provide but by their holistic approach to strengthening neighborhoods and families. Social [s]ettlements develop citizens - not only those with specific problems - within a geographically defined area. In contrast, Phoenix House provides a specific service, addiction treatment; and Phoenix House is not a [s]ocial [s]ettlement.

The court notes that social settlements have been evolving to meet the needs of the communities in which they serve:

Settlement houses were characterized not by a set of services but by an approach: that initiative to correct social ills should come from indigenous neighborhood leaders or organizations. Settlement workers were not dispensing charity; they were working toward the general welfare . . . Settlement houses take on the needs of the time . . . Settlement houses today are more professionalized and more institutionalized than their predecessors, although the idea of neighborhood [\*\*11] access hasn't changed.

(Barbara Trainin Blank, *Settlement Houses: Old Idea in New Form Builds Communities*, The New Social Worker, Summer 1998, <http://www.socialworker.com/settleme.htm>.)

The court takes judicial notice that alcohol abuse and drug addiction are social ills plaguing our country, with little regard for age, ethnicity, race, religion, or economic status. Drug addiction is impacting society with devastating effects on individuals, families, and communities:

The trafficking and abuse of illicit drugs in the United States has created a drain on the economic, physical, and social health of American society. In 2007 alone, the estimated cost of illicit drug use to society was \$193 billion, including direct and indirect public costs related to crime, health, and productivity, with the majority of [\*\*6] costs attributable to lost productivity.

(National Drug Intelligence Center, United States Department of Justice, Product No. 2011-Q0317-001, *National Drug Threat Assessment 2011*, at 4 [2011].)

Our society is in need of drug treatment centers that will toil to improve the general welfare of individuals, their families, and our communities. In order to qualify as a social settlement, it is [\*12] not necessary that an organization confine its activities to furnishing the bare necessities of life, namely, food, shelter, and clothing (*Matter of Associated YM-YWHA'S of Greater N.Y.*, 38 Misc 2d at 1083-84).

The Executive Director determined that Phoenix House was not a social settlement on the ground that it is a drug treatment center, without offering a rational basis why the two are mutually exclusive. The Executive Director never contested the charitable nature of Phoenix House nor did he dispute its holistic approach to strengthening individuals, families, and communities. Although the Executive Director specifically stated, "a [s]ocial [s]ettlement is distinguishable from other social service agencies, not by the type of service they provide but by their holistic approach to strengthening individuals, neighborhoods and families," he determined that Phoenix House was not a social settlement on the ground that it provides a specific type of service, drug treatment. His determination completely disregarded the definition of a social settlement cited in his final determination letter.

Furthermore, the Executive Director stated that the denial was not due to a change in Phoenix House's [\*13] operations. Phoenix House has always provided drug and alcohol treatment, and the DEP has categorized it as a social settlement for 40 years. Regardless, the Executive Director failed to provide a reason for the change in Phoenix House's categorization. When an agency decides to alter its prior stated course, it must set forth its reasons for doing so. Unless an explanation is furnished, a reviewing court will be unable to determine whether the agency has changed its prior interpretation of the law for valid reasons. Absent such an explanation, failure to conform to agency precedent will, therefore, require reversal on the law as arbitrary. (*Matter of Field Delivery Serv. v Roberts*, 66 NY2d 516, 488 N.E.2d 1223, 498 N.Y.S.2d 111 [1985].)

The decision of the Executive Director that Phoenix House is not a social settlement was arbitrary and capricious; it was made without a sound basis in reason or regard to the facts. Given the social, educational and charitable work provided by Phoenix House, the organization comes within the DEP's definition of a social settlement; thus, the determination of the Executive Director that Phoenix House is not a social settlement, is reversed.

The court next reviews the decision of the Executive [\*14] Director denying Phoenix House an exemption from water charges on the ground that it receives government funding for operational expenses and alleging that water charges are an operational expense.

Phoenix House maintains that its source of funding has not changed, nor is there [\*\*7] evidence that it receives government funding for the reimbursement of water charges. Phoenix House avers that the DEP acknowledged that Phoenix House does not receive government funding for reimbursement of water charges in its October 17, 2011 letter, suggesting that it should request reimbursement for water charges in future budgets. Phoenix House claims that the Executive Director's decision was arbitrary and capricious, lacking any rational basis to deny Phoenix House exemptions from water charges.

The Executive Director stated in his determination letter:

[T]he new or recertification applications submitted indicate that Phoenix House receives governmental funding for operational expenses, and water and sewer charges are an operational expense. Previous applications affirmatively indicated that Phoenix House received no funding for water and sewer expenses. Therefore, the denial of the exemptions was based [\*15] on a change in the new or recertification applications submitted; it was not due to a change in Phoenix House operations.

The DEP now claims that Phoenix House is barred from asserting, for the first time in this Article 78 proceeding, that it is not actually eligible to receive funding. This argument is unavailing to the court as the administrative record reveals that Phoenix House has continuously maintained that there has been no change in the source of its funding.

Furthermore, the DEP has not provided a scintilla of evidence that Phoenix House receives, or claims to have ever received, government funding for reimbursement of water charges. Its New York City properties have been exempt from paying water charges since their inception; thus, water charges have never been operational expenses of Phoenix House. Moreover, it is well-known that charitable organizations can receive government funding for operational expenses, as well as exemptions from water charges. However, the Executive Director arbitrarily decided to revoke Phoenix House's exemptions from water charges because it receives government funding.

Moreover, the Executive Director's reasoning that there was a "change" in the [\*16] recertification applications submitted by Phoenix House is not supported by facts, nor is it based in law. As evidence to support this decision, the Executive Director asserts that Phoenix House affirmatively stated in earlier applications that it did not receive any government funding for reimbursement of water charges. Specifically, a Phoenix House application dated April 19, 1985, for property located at 480 East 185 Street and 2340 Washington Avenue, County of Bronx, was attached as an exhibit by each party. Interestingly, the following questions appeared on that application: "Is the institution eligible to receive reimbursement from the United States, the State of N.Y. or the City of N.Y., or any agency thereof, for payments for the use and supply of water?" Phoenix House answered, "No." "Is the institution receiving reimbursement from any government agency, for any reason?" Phoenix House answered, "No."

[\*\*8] Indeed, the court agrees that there was a change, a change in the questions asked by the DEP on its application for an exemption from water charges. The court notes that Phoenix House did not affirmatively state in the 2010 resubmission application that it did not receive government [\*17] funding for reimbursement of water charges because that specific question was not asked. The law is well-settled that an omission is not considered to be sufficient evidence unless the omission is in response to the same question. The Executive Director cannot impeach Phoenix House simply by showing that it omitted to state a fact, or to state it more fully at a different time. It need

also be shown that at the prior time, the attention of Phoenix House was called to the matter and it was specifically asked about the facts embraced in the question at issue. (*People v Bornholdt*, 33 NY2d 75, 305 N.E.2d 461, 350 N.Y.S.2d 369 [1973].) Having failed to ask the same question on the DEP's 2010 exemption application, the Executive Director's explanation that his decision was based on Phoenix House's failure to affirmatively state that it received no funding for the reimbursement of water charges has no sound basis in reason nor regard to the facts.

For the above stated reasons, the determination of the Executive Director neither adheres to the agency's own precedent nor indicates a sound basis in reason for reaching a different result on essentially the same facts and is, therefore, arbitrary and capricious (*Matter of Field Delivery Serv.*, 66 NY2d at 520). [\*18] An exemption from New York City water charges for a charitable organization should be fairly, liberally, and reasonably construed with a view to maintain the spirit of the law and the intention of the legislature (*Matter of Associated YM-YWHA'S of Greater N.Y.*, 38 Misc 2d at 1083-84). The decision of the Executive Director that government funding for operational expenses precludes Phoenix House from receiving an exemption from water charges is arbitrary and capricious.

**ORDERED AND ADJUDGED** that the decision or the Executive Director is reversed; and it is further

**ORDERED AND ADJUDGED** that Phoenix House is a social settlement; and it is further

**ORDERED AND ADJUDGED** that under the Silver Bill, Phoenix House is exempt from water and sewer charges; and it is further

**ORDERED AND ADJUDGED** that all unpaid water assessments are canceled.

Accordingly, petitioner is to serve a copy of this judgment with notice of entry on the Executive Director of the Water Board within 20 days.

Dated: July 11, 2013

DARRELL L. GAVRIN ▼, J.S.C.

**Footnotes**

1 ▼

This is an excerpt from the letter of the Executive Director dated January 10, 2012.

2 ▼

The Executive Director subsequently abandoned this argument in his final determination letter, stating "the residential issue is not dispositive of the case."

**Content Type:**

**Terms:**

**Narrow By:** -None-

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**Document:** Associated Ym-Ywha's of Greater New York v. D'Angelo, 38 Misc. 2d 1082 [Actions ▾](#)

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Page

Page #



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**◆ Associated Ym-Ywha's of Greater New York v. D'Angelo, 38 Misc. 2d 1082****Copy Citation**

Supreme Court of New York, Special Term, New York County

April 15, 1963

No Number in Original

**Reporter****38 Misc. 2d 1082 \*** | [239 N.Y.S.2d 722 \\*\\*](#) | [1963 N.Y. Misc. LEXIS 2130 \\*\\*\\*](#)

In the Matter of Associated YM-YWHA'S of Greater New York, Inc. (With Relation to Its Affiliate Mosholu-Montefiore Community Center), Petitioner, v. Armand D'Angelo, as Commissioner of the Department of Water Supply, Gas and Electricity of the City of New York, et al., Respondents

**Disposition:** [\[\\*\\*\\*1\]](#) Accordingly, the application is granted.**Core Terms**

exemption, neighborhood, social settlement, community center, activities, charitable, families, purposes, lessee, lease, rents, legislative intent, spirit of the law, three year, unincorporated, disqualify, settlement, well-to-do, affiliate, provides, resident, nursery, entity, sewer, taxes

**Case Summary****Procedural Posture**

Petitioner lessee filed an application pursuant to N.Y. C.P.L.R. art. 78 against respondents, the Commissioner of the Department of Water Supply, Gas and Electricity of the City of New York and city officials, to grant exemption from water taxes and sewer rentals and to cancel unpaid assessments in relation thereto.

**Overview**

The lessee leased property from a hospital for 99 years, rent free, and erected a building thereon as a community center. The lessee filed an application under N.Y. C.P.L.R. art. 78 against the Commissioner and officials for an exemption from water taxes and sewer rentals and to cancel unpaid assessments in relation thereto on the ground that the lessee was a social settlement under 1957 N.Y. Laws ch. 433. The Commissioner and officials argued that the lessee was not the actual occupant of the property and that the occupant was neither the owner nor lessee of the property. The court held that the legislative intent of ch. 433 included the lessee and its work. The lessee had been granted exemption from United States income taxation, from city sales tax, and from real estate taxes. From the setup of its structure and the myriad social, educational, and charitable work carried on therein, the center carried on laudable purposes. The organization that ran the center was an affiliate of the lessee, and the reason the lease was not taken in its name was its inability to assume the financial obligation for the cost of the construction of the building.

**Outcome**

The court granted the lessees' application for an exemption from water taxes and sewer rentals and to cancel unpaid assessments in relation thereto.

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**HN1** Under New York law, any social settlement, whether incorporated or unincorporated, which shall own or lease for a term not less than three years a building or buildings devoted exclusively to the purposes of such social settlement work are hereby exempted from the payment of any sum whatever to said city, for the use of water taken by same from that city. 1957 N.Y. Laws ch. 433. New York City, N.Y., Admin. Code § 82d9-9.1(f) provides that any real property exempted from water rents shall be exempt from sewer rents. [More like this Headnote](#)

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**HN2** Exemptions

In New York, a statute providing tax exemption for a charitable institution should be fairly, liberally, and reasonably construed with a view to maintaining the spirit of the law to the end of arriving at the intention of the Legislature.

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**HN3** Formation

It is not necessary, in order to qualify as a charity, that an organization confine its activities to the furnishing of the bare necessities of life, namely, food, shelter and clothing. An activity is equally a charity when it affords some of the amenities of a decent life to those who are unable to pay anything at all, or the full price thereof. [More like this Headnote](#)

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## ▼ Headnotes/Summary

**Headnotes**

**Taxation -- exemption -- water and sewer rents -- petitioner which erected community center on leased land was granted exemption from water and sewer rents despite fact that center was operated by unincorporated affiliate -- lack of resident workers and location not in blighted area did not disqualify it**

**-- fact that beneficiaries were not impoverished did not disqualify it.**

1. The lessee of land for a term of 99 years, upon which it erected a community center, which was operated by an unincorporated affiliate, was granted exemption from water rentals and sewer rents under chapter 433 of the Laws of 1957, which granted exemption from payment for water use to "any social settlement" owning or leasing a building devoted to "social settlement work", and subdivision f of section 82d9-9.1 of the Administrative Code of the City of New York which exempted from sewer rents real property exempted from water rents. That petitioner was the lessee of the center and that it was run by another did not disqualify petitioner.
2. That the center had no resident workers did not disqualify it from exemption.
3. That the center was not in a blighted [\[\\*\\*\\*2\]](#) area did not disqualify it.
4. That the beneficiaries of the center's work were not impoverished did not disqualify it.

**Counsel:** *Schur, Handler & Jaffin* (Theodore S. Jaffin and Herbert Feiler of counsel), for petitioner.

*Leo A. Larkin, Corporation Counsel* (Russell D. Scott of counsel), for respondents.

**Judges:** Joseph A. Gavagan, J.

**Opinion by:** GAVAGAN

## Opinion

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**[\*1082]** [\[\\*\\*723\]](#) This is an application by the Associated YM-YWHA'S of Greater New York, Inc., for an order pursuant to article 78 of the Civil Practice Act, to grant exemption from water taxes and sewer rentals and to cancel unpaid assessments in relation thereto. The petitioner leased property in the West Bronx from Montefiore Hospital for 99 years, rent free. It was to, and did, erect a building thereon as a community center at a cost in excess of three-quarters of a million dollars. An affiliate, the Mosholu-Montefiore Community Center, an unincorporated entity, is the actual occupant of the property and is operating the community center. It is averred and not disputed that a deficit in its operation of about \$ 120,000 per year is met by contributions from the petitioner and the Federation of Jewish Philanthropies.

[\[\\*\\*\\*3\]](#) [HN1](#) Under State law "any social settlement, whether incorporated or unincorporated, which shall own or lease for a term not less than three years a building or buildings devoted exclusively to the purposes of such social settlement work \* \* \* are hereby exempted from the payment **[\*1083]** of any sum whatever to said city, for the use of water taken by same from said city" (L. 1957, ch. 433). Subdivision f of section 82d9-9.1 of the Administrative Code of the City of New York provides that any real property exempted from water rents shall be exempt from sewer rents.

[\[\\*\\*724\]](#) The petitioner applied to the respondents for such exemption on the ground that it is a social settlement; from the denial thereof, it has instituted this proceeding.

The respondents deny that petitioner is a social settlement used exclusively for such purposes on the ground that it lacks resident workers, that it is in a well-to-do neighborhood, and that the Legislature did not intend to grant exemption in such cases. It is then argued that the social settlement is neither the owner nor lessee of the property herein involved.

[HN2](#) A statute providing tax exemption for a charitable institution should be fairly, [\[\\*\\*\\*4\]](#) liberally, and reasonably construed with a view to maintaining the spirit of the law to the end of arriving at the intention of the Legislature.

As evidence of the charitable character of the activities of the center, it is noted that it has been granted exemption from United States income taxation, exemption from city sales tax, and its land and building are exempt from real estate taxes.

With respect to the arguments of the respondents, the fact that the center does not have resident workers will not disqualify it. While such was undoubtedly the manner in which these settlement houses were originated in England in 1884, in the United States this has not been true. It is noted that writers on the subject have stated that the term "neighborhood house" is more characteristically American, free from any implication of class distinction, and that such settlement or neighborhood center serves a neighborhood area. It works with individuals, groups and families, giving service to all ages and both sexes, without regard to national origin, race, creed or economic status, in order to help the individual develop to his fullest potentiality and to achieve the best possible family and neighborhood [\[\\*\\*\\*5\]](#) life. From the setup of its structure and the myriad social, educational, and charitable work carried on therein, the center comes directly within these laudable purposes. As to the fact that it is not in a blighted area, people in all economic levels need

and can benefit from social services which petitioner offers. It cannot be denied that working with families in any area to help them improve the life of their community, to aid and counsel elderly citizens, to provide a day nursery and nursery school, to provide education classes, clubs and other activities, is useful in any area regardless of its economic level, where people have [\*1084] concern for their families and neighborhood. Nor will the fact that the beneficiaries here are not impoverished disqualify the petitioner. [HN3](#) "It is not necessary, in order to qualify as a charity, that an organization confine its activities to the furnishing of the bare necessities of life, namely, food, shelter and clothing. An activity is equally a charity when, as in the case of petitioner, it affords some of the amenities of a decent life to those who are unable to pay anything at all, or the full price thereof \* \* \* We need not [\*\*\*6] consider whether respondent's tax status would be different if [\*\*\*725] most of its beneficiaries were well-to-do." ( [District of Columbia v. Friendship House Assn.](#), 198 F. 2d 530, 531.)

Giving fair and liberal construction to this statute and considering the spirit of the law, the legislative intent must be held to have included the petitioner and its work.

Finally, while the statute provides that exemption will be granted to an owner or lessee for three years, the fact that the petitioner is the lessee and that the center is run by another entity will not defeat this application. It is amply shown that the organization running the center is an affiliate of the petitioner, that it has independent existence, and that the reason the lease was not taken in its name was its inability to assume the financial obligation for the cost of the construction of the building. However, it has been and is running the center since its inception. Accordingly, the application is granted.



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## APPLICATION FOR EXEMPTION FROM WATER AND SEWER CHARGES

Please read thoroughly:  
General Instructions (pages 1 through 4)  
Required Documentation Checklist (page 5) and  
the Application (pages 6 and 7).

You may print the form and complete it by hand or  
type your responses in online and then print the  
document.

Before submitting your documents to the DEP, please  
remember to notarize your application and keep copies  
of all documents you are submitting with the  
application.

This is a cover page.  
Contained within are seven numbered pages.



## GENERAL INSTRUCTIONS AND INFORMATION ON EXEMPTION FROM WATER AND SEWER CHARGES

### **I. ORGANIZATIONS MUST APPLY FOR AN EXEMPTION**

In order for an eligible organization to receive an exemption from water and sewer charges, it must file an application with the NYC DEP Bureau of Customer Services. Having a NYC Not-For-Profit Property Tax Exemption does not automatically qualify the organization for an exemption from water and sewer charges. Eligible organizations that occupy multiple properties must submit an application for each property. Eligible organizations that occupy the same property must each file separately. **Please mail or deliver the completed Exemptions Application Required Documentation Checklist (Page 5) and Exemptions Application Line by Line Instructions (Pages 6 through 7) with all required documents to the following address:**

**BUREAU OF CUSTOMER SERVICES, EXEMPTION UNIT**  
**59-17 Junction Boulevard, 7th Floor**  
**Flushing, NY 11373-5107**

**The completed Application must be signed by someone with the authority to act on behalf of the applying organization and notarized before submission.**

**Please call the EXEMPTION UNIT with any application related questions at (718) 595-7803.**

### **II. DURATION OF EXEMPTIONS**

1. A water and sewer exemption is not permanent and is subject to periodic renewal and recertification at the request of DEP. Failure to comply fully with requests for access and/or documentation from DEP may result in the revocation of an existing exemption.
2. In order to maintain exempted status, the qualifying organization must continue to occupy and operate at the specific location in the manner defined in the original application.
3. Applying organizations and those already exempt must comply with all DEP and New York City Water Board Rules and Regulations, including but not limited to, those pertaining to the metering of water service(s) provided to their respective properties.

### **III. THE LEGAL AUTHORITY FOR EXEMPTIONS**

1. New York State law (Chapter 696 of the Laws of 1887, as amended by Chapter 893 and 894 of the Laws of 1980, also called the “Silver Bill” after its legislative sponsor) established exemptions from water charges for certain types of organizations (Section IV below). This law also places LIMITS on the exemption if an organization’s water use exceeds certain levels or if the organization is eligible to receive reimbursement for water and sewer charges. Applicants must check to determine if these limitations apply to them.

**Please Note: Your organization is responsible for all charges prior to the date of approval.**

2. The New York City Administrative Code (Section 24-514 e) provides an exemption from sewer charges for all organizations with an exemption from water charges. Therefore, no separate application for exemption from sewer charges is required.

The Department of Environmental Protection is mandated by the New York City Charter to determine the water and sewer charges for properties using the municipal water and sewer systems. Therefore, DEP grants the exemptions defined in the state law and Administrative Code.

#### **IV. WHAT TYPES OF ORGANIZATIONS MAY QUALIFY FOR AN EXEMPTION**

Under New York State Law, the following types of organizations may qualify for an exemption from water and sewer charges:

- |  |  |
|--|--|
| 1. Day Care Centers or Nursery Schools | 10. Non-Public Schools Pre-K to Grade 12 |
| 2. Dispensaries                        | 11. Orphan Asylums                       |
| 3. Emergency Relief Centers            | 12. Places of Public Worship             |
| 4. Free Circulation Libraries          | 13. Public Baths                         |
| 5. Free School Societies               | 14. Shelters                             |
| 6. Homes for the Aged                  | 15. Social Settlements                   |
| 7. Hospitals                           | 16. Veteran Firemen's Associations       |
| 8. Medical Research Centers            | 17. Voluntary Ambulance Corps            |
| 9. Military Veterans Association       |  |

A brief description of these 17 categories follows. If your organization is not one of the 17 types listed above, **DO NOT APPLY FOR AN EXEMPTION FROM WATER AND SEWER CHARGES; YOUR APPLICATION WILL BE DENIED.** YOUR APPLICATION MUST INCLUDE YOUR CERTIFICATE OF INCORPORATION, WHICH STATES THE NATURE OF THE ORGANIZATION.

1. **DAY CARE CENTERS OR NURSERY SCHOOLS** In order to qualify as a day care center or nursery school a not-for-profit organization must be licensed by the New York State Department of Social Services. They are facilities that provide care for three or more children away from their homes. Day care centers and/or nursery schools that receive reimbursement for water charges through Federal, State and/or City funding are not eligible for exemption. (See also Section V regarding ineligibility for exemption because of funding.)
2. **DISPENSARIES** In order to qualify as a dispensary, an organization must be a not-for-profit and licensed by the New York State Office of Health System Management. Services provided must be free, or any fee must be based on the ability to pay. (See also Section V regarding ineligibility for exemption because of funding.)
3. **EMERGENCY RELIEF CENTERS** The only organization that qualifies under this category is the Red Cross.
4. **FREE CIRCULATION LIBRARIES** In order to qualify under this heading, a not-for-profit organization must be properly licensed and registered. Services must be provided free of charge, and the organization must be funded through charitable sources. (See also Section V regarding ineligibility for exemption because of funding.)

5. **FREE SCHOOL SOCIETIES** In order to qualify as a free school society an organization must be a not-for-profit and registered with the New York State Education Department. (See also Section V regarding ineligibility for exemption because of funding.)
6. **HOMES FOR THE AGED** Homes for the Aged must be licensed by the New York State Department of Social Services. These homes must be run by a not-for-profit corporation that provides services exclusively to elderly people who do not need nursing care, but cannot live alone. Residential Health Care Facilities that provide nursing and medical care to ill or disabled persons may also qualify. Such organizations must be not-for-profit and licensed by the New York State Department of Health. In order to qualify for exemption, Homes for the Aged must provide care exclusively to elderly persons. If the premises is also used for the care of young people, the exemption will be denied. (See also Section V regarding ineligibility for exemption because of funding.)
7. **HOSPITALS** In order to qualify as a hospital, an organization must be a not-for-profit facility licensed by the New York State Department of Health to dispense medicine and medical care. A hospital must be accredited by the Joint Commission on Accreditation of Hospitals. A hospital provides in-patient care 24 hours a day and provides diagnostic and therapeutic services to sick and injured persons. (See also Section V regarding ineligibility for exemption because of funding.)
8. **MEDICAL RESEARCH CENTERS** In order to qualify under this category an organization must be a not-for-profit corporation whose primary purpose is medical research. (See also Section V regarding ineligibility for exemption because of funding.)
9. **MILITARY VETERANS ASSOCIATION** In order to qualify under this category, the organization must be a duly chartered Veterans Association organized under the New York Benevolent Orders Law. Premises must be used solely for patriotic and charitable purposes. The building must be owned by the applying organization and any portion of the building that is used for social purposes will be ineligible. Also eligible under this category are homes for veterans who are elderly or indigent, widows and parentless children of veterans. (See also Section V regarding ineligibility for exemption because of funding.)
10. **NON-PUBLIC SCHOOLS PRE-K TO GRADE 12** The property must be used exclusively for education through and including the twelfth grade, certified by the NYS Education Department, and the property must be owned by a corporation or association entitled to exemption under section 420-a 1.(a) of the Real Property Tax law. (See also Section V regarding ineligibility for exemption because of funding.)
11. **ORPHAN ASYLUMS** In order to qualify as an orphan asylum, an organization must have been issued an operating certificate by the New York State Department of Social Services. An orphan asylum must be run by a not-for-profit corporation. It must be a residential program that cares for children away from their homes. The children can be destitute, delinquent, abandoned, neglected, and/or orphaned. (See also Section V regarding ineligibility for exemption because of funding.)
12. **PLACES OF PUBLIC WORSHIP** In order to qualify, the organization must be a religious organization, incorporated under the Laws of New York State. The premises must be owned by the same religious organization using the premises and be used exclusively as a place of public worship. If any portion of the building is used for other non-exempt purposes, the premises will not be eligible for exemption unless the non-exempted portion is separately metered and billed. All denominations are eligible. Clergy residences are NOT eligible except when clergy is also the caretaker of the premises and resides on or adjacent to the property, in which case a maximum of one caretaker apartment is allowed. (See also Section V regarding ineligibility for exemption because of funding.)

13. **PUBLIC BATHS** The statute includes a provision for the exemption of water charges to public baths. (As public baths no longer exist in New York City, this category is no longer applicable.)
14. **SHELTERS** To qualify, a shelter must be operated by a not for profit organization that provides temporary shelter to runaways, homeless, battered persons and/or the indigent. (See also Section V regarding ineligibility for exemption because of funding.)
15. **SOCIAL SETTLEMENTS** A Social Settlement is a charitable organization that provides moral and physical support to communities. It must provide services to all races, without regard to religion or national origin. The main purpose of a settlement is the development and improvement of a neighborhood or cluster of neighborhoods. If property location is not owned by applying organization, Lease must be for more than three years. (See also Section V regarding ineligibility for exemption because of funding.)
16. **VETERAN FIREMEN’S ASSOCIATIONS** To meet exemption requirements, the organization must have been organized for charitable purposes to benefit Veteran New York City Firemen. If the organization is run for social purposes, it will not be eligible for exemption. (See also Section V regarding ineligibility for exemption because of funding.)
17. **VOLUNTARY AMBULANCE CORPS** To meet exemption requirements, Voluntary Ambulance Corps must be registered with the New York State Department of Health. (See also Section V regarding ineligibility for exemption because of funding.)

**V. SPECIAL INSTRUCTIONS FOR ORGANIZATIONS RECEIVING FUNDING FROM ANY GOVERNMENT AGENCY**

Organizations which receive reimbursement of water and sewer charges by any governmental agency are not eligible for exemption from water and sewer charges. These organizations must pay their bills and receive reimbursement from the funding agency.

**IF YOUR ORGANIZATION IS ELIGIBLE FOR REIMBURSEMENT FOR WATER AND SEWER CHARGES, DO NOT APPLY FOR EXEMPTION; YOUR APPLICATION WILL BE DENIED.**

**ORGANIZATIONS WHICH RECEIVE FUNDING FROM ANY GOVERNMENT AGENCY FOR ANY PURPOSE MUST APPLY TO THAT AGENCY FOR REIMBURSEMENT OF WATER AND SEWER CHARGES.** If the agency that grants funding denies the request, the organization may then apply for an exemption from the Bureau of Customer Services. Written verification of the denial must be submitted with the application. **DO NOT APPLY WITHOUT VERIFICATION OF DENIAL-YOUR APPLICATION CANNOT BE REVIEWED UNTIL VERIFICATION IS RECEIVED.**

**VI. NOTE: INSTRUCTION FOR VACANT OR UNDER CONSTRUCTION PROPERTY**

If the property is vacant or under construction DO NOT apply; you are not eligible. You may reapply when the property is fully occupied.



# EXEMPTION APPLICATION REQUIRED DOCUMENTATION CHECKLIST

NAME OF ORGANIZATION

**ALL APPLYING ORGANIZATIONS MUST SUBMIT THE FOLLOWING:**

1. Signed and notarized application (Pages 6 and 7); plus this documentation checklist (Page 5).
2. Certificate of Incorporation and any other incorporation documents. (\*Note: For Non NYS Organizations, authorization to do business in NYS is required.)
3. Proof of Charitable 501(c)(3) status.
4. Verification of funding supporting your response to #19 of the application (Page7).

**THE APPLYING ORGANIZATION MUST OWN OR LEASE THE PROPERTY AS EXPLAINED BELOW:**

- If owned, provide:
  - Proof of property ownership (\*Note: In accordance with the Silver Bill, Places of Public Worship and Military Veterans Associations must be owned by the applying organization) **AND**
  - Copy of Property Exemption for the applying property
- OR**
- If leased, a copy of the current lease is required. (\*Note: In accordance with the Silver Bill, Non-Public Schools Pre-K to Grade 12 that lease must also provide a copy of the Property Exemption for the applying property)

**THE FOLLOWING ORGANIZATIONS MUST ALSO PROVIDE THE DOCUMENTS CITED BELOW:**

**Day Care Centers or Nursery Schools**

License from NYS Dept. of Social Services

**Dispensaries**

License from NYS Office of Health System Management

**Free Circulation Libraries**

Registered with NYS Libraries  
 Must meet Regents requirements

**Free School Societies**

Registered with NYS Education Dept.

**Homes For The Aged**

License from NYS Dept. of Social Services  
 License from NYS Dept. of Health, if applicable

**Hospitals**

License from NYS Dept. of Health  
 Accreditation from Joint Commission

**Military Veterans Association**

Chartered by Veteran’s Assoc. and organized under NY Benevolent Orders Law  
 Proof of Ownership  
 Copy of Property Exemption

**Non-Public Schools Pre-K to Grade 12**

NYS Education Dept. Certification  
 Copy of Property Exemption

**Orphan Asylums**

Operating Certificate from NYS Dept. of Social Services

**Places of Public Worship**

Proof of Ownership  
 Copy of Property Exemption

**Social Settlement**

Copy of Lease (Term must be 3 years or longer)  
**OR**

Proof of Ownership  
 Copy of Property Exemption

**Veteran Firemen’s Associations**

Verification organization was set up for charitable purposes to benefit Veteran NYC Firemen

**Voluntary Ambulance Corps**

Registered with NYS Dept. of Health



## EXEMPTION APPLICATION LINE BY LINE INSTRUCTIONS

**All items on this application (Pages 6 and 7) must be completed. Follow instructions carefully when completing this application. Additional pages may be attached to this application if necessary:**

1. Write the name of the organization as it appears on the Certificate of Incorporation.  
\_\_\_\_\_
2. Write the address of the property applying for exemption.  
\_\_\_\_\_
3. Write the Borough, Block and Lot Number and DEP Account #.  
\_\_\_\_\_
4. Provide daytime contact phone numbers, including area code.  
\_\_\_\_\_
5. Write the name and title of the individual completing and signing this application.  
\_\_\_\_\_
6. Does the organization own or lease the property? If owned, is the property for sale?  
\_\_\_\_\_
7. Does the organization rent or sublease any part of the property to another entity?  
\_\_\_\_\_
8. State how long the organization has owned or leased the property and occupied it for an exempt purpose.  
\_\_\_\_\_
9. Describe any commercial use or any commercial portion of the building.  
\_\_\_\_\_
10. Categorize your organization to be considered for an exemption by selecting the appropriate category from the list of 17 eligible categories in Section IV of the General Instructions and Information on Exemptions from Water and Sewer Charges.  
\_\_\_\_\_
11. Describe by floor and organization, all activities conducted on or at the property. If you responded “Yes” to #7 above, also describe the space rented or sublet by your organization to other entities.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# EXEMPTION APPLICATION-continued LINE BY LINE INSTRUCTIONS

12. What kind of educational instruction is offered, if any? State what grades are taught.

13. Describe any religious instruction being offered on or at the property.

14. Are there any tuition charges? If yes, describe the amount(s).

15. Are there any medical or surgical services available? If yes, explain.

16. How many members are registered to this location? \_\_\_\_\_

17. What is the age range of the members? \_\_\_\_\_

18. List the number of full time employees, part time employees, and total annual payroll budgeted (in dollars) for the current calendar year.

19. List all sources of revenue received by your organization and for governmental sources of funding, provide supporting documentation from each source.

Source	% of Revenue
_____	
_____	
_____	

20. In the past, has your organization applied to any other entity for reimbursement of water and sewer charges? If yes, include a copy of your last request submitted and response received.

21. NOTARIZATION: Subscribed and sworn to before me this \_\_\_\_\_ day

of \_\_\_\_\_ 20\_\_\_\_.

Notary Stamp

22. \_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Print Name Clearly

# NONPROFIT NEW YORK

A relentless,  
collective  
force for good.

## WRITTEN TESTIMONY New York City Council Joint Committees of Government Operations and Finance Meeting November 19, 2019

Hearing on Intro 245 2018 Exemption from Sale of Tax Lien, Intro 1776 2019 Streamline Property Tax and Water/Sewer Charge Exemptions Application, Intro 1799 2019 Department of Finance Guide for Nonprofits, and Intro 1784 2019 Mayoral Office of Not-For-Profit Organizations Services

### Submitted on behalf of Nonprofit New York

Dear Councilmember Cabrera and Councilmember Dromm,

We appreciate the opportunity to submit written testimony to the Committee on behalf of Nonprofit New York and our 1,600 nonprofit members in support of Intros 245, 1776, 1799, and 1784. Nonprofit New York works to strengthen and unite the nonprofit sector, working with more than 2,200 nonprofit organizations in the New York City area. We provide the education and resources to keep nonprofits well managed, and advocacy to strengthen the entire nonprofit sector. At Nonprofit New York, we are guided by our Declaration of Nonprofit Rights, the rights nonprofits need to thrive and serve our communities well. These include: 1) a right to sustainable financial resources; 2) a right to engage in advocacy and share our expertise; 3) a right to champion equity and an equitable workforce; and 4) a right to be powerful forces for change.

New York City is home to close to 47,000 nonprofits. These organizations provide incredible value to our city. Nonprofits are promoting arts and culture<sup>1</sup>, a clean environment, advocating on behalf of marginalized communities, providing spiritual nourishment, fulfilling the government's statutorily required services<sup>2</sup>, and trying to solve some of society's largest challenges. In addition to doing work with the mission of benefiting the public, nonprofits employ 18% of the private workforce in New York City<sup>3</sup> - contributing to the economy and the tax base. However, the vast majority of nonprofits operate on a lean budget, with most resources focused on mission and programs. Small nonprofits and all-volunteer organizations without General Counsel or dedicated compliance staff may have a particularly challenging time keeping up with city and state compliance. Given the services and interventions that nonprofits provide to New York City residents, it is in the City's interest to

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<sup>1</sup> New York State Arts and Cultural Affairs Law.

<sup>2</sup> New York State Social Services Law articles 1 through 11.

<sup>3</sup> New York State Office of the Comptroller. (July 2019). *Nonprofit Organizations in New York State: Profile of Employment and Wages*. Retrieved from <https://www.osc.state.ny.us/reports/economic/nonprofits-in-nys-2019.pdf>

streamline compliance issues, and provide compliance support, wherever possible. These bills do that.

Based on our extensive history and experience with nonprofit organizations in New York City, we offer our perspective and recommendations on these issues for your consideration:

**1. Intro 245 will exempt nonprofits from the City's sale of tax liens**

Intro 245, which among many things would create an ombudsperson position within the Department of Finance and exempt nonprofit properties from the City's lien sale if the nonprofit received a property tax exemption under Sections 420-a, 420-b, 446 and 462 of the New York State Real Property Tax Law in at least one of the prior two fiscal years. The bill would also exempt property where the owner has, in good faith, submitted a pending initial or renewal application for a nonprofit property tax exemption. This legislation is necessary because nonprofits do not always know that they are required to submit regular applications for property tax exemptions and, when they do not do so, can face the loss of their property, one of the few assets the nonprofit may have. For nonprofits that have qualified for this exemption, the loss of property as a penalty for failing to recertify is harsh and unnecessary. In most cases, nonprofits need reminders and education about the process. The ombudsperson would be in a position to assist nonprofits in making the correct initial or renewal application, saving both the City and nonprofits the cost of legal fees and staff time. With the assistance of the Ombudsperson, nonprofits can remain in compliance with City law and put more resources to their missions. We urge City Council to pass this bill.

**2. Intros 1776 and 1799 would streamline property tax and water/sewer charge exemptions applications, and create a Department of Finance guide for nonprofits**

Intros 1776 and 1799 would require a single application form for nonprofit real property tax exemption and exemption from water and sewer charges, and require the Department of Finance to create a guide for nonprofit organizations. By requiring a single form, nonprofits will have a more efficient process with which to comply, and make it more likely that more nonprofits would be able to qualify from the exemptions to which they are required. The guide will help nonprofits accurately provide the information to the City that it needs for such applications for exemption. We urge City Council to pass this bill.

**3. Intro 1784 would create a Mayoral Office of Not-for-Profit Organization [Services] to support New York's critical nonprofit sector**

Intro 1784 would create a Mayoral Office of Not-for-Profit Organization Services. A centralized office to serve as a resource for the sector will streamline the regulatory information nonprofits must be aware of and allow them to comply more efficiently and effectively. We make the following recommendations for this bill:

- The office must have the power to implement policy reforms regarding nonprofit regulation, funding, and all other issues impacting the sector.
- The office prioritize the chronic underfunding of city-funded nonprofit contracts and the impact on the workforce
- These policy reforms must be crafted with input from the sector.

We suggest the following additions to the legislation:

4. Study conditions affecting the not-for-profit sector in the city and assess its health and economic well-being, **specifically chronic under-funding in government contracts and its impact on the nonprofit workforce;**

5. Recommend to the mayor or head of such department wherein the office has been established policies, programs and projects which promote the well-being, **specifically including the financial well-being,** of not-for-profit organizations in the city;

Again, we appreciate the opportunity to submit this testimony and we are willing to meet to discuss these recommendations. Nonprofit New York looks forward to continuing to work with City Council and the future Office of Not-for-Profit Organization services in these efforts.

Thank you,



Chai Jindasurat  
Policy Director

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Jean Corubic, Deputy Dir. of MFB

Address: \_\_\_\_\_

I represent: DOF

Address: 55 Maiden Lane, NYC

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 11/19/19

(PLEASE PRINT)

Name: LUCY SEXTON

Address: 160 Sixth Ave #2 NYC NY 10013

I represent: New Yorkers for Culture & Arts

Address: 160 Sixth Ave #2 NYC 10013

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 11/19/19

(PLEASE PRINT)

Name: Jeffrey Shear / Ted Oberman

Address: \_\_\_\_\_

I represent: NYC DOF

Address: 1 Centre St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Andrew Rettig

Address: 59-17 Junction Boulevard Flushing NY 11373

I represent: Department of Environmental Protection (DEP)

Address: 59-17 Junction Boulevard Flushing NY 11373

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. all Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Paula Segal

Address: \_\_\_\_\_

I represent: Take Root Justice

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Jennifer Beiling

Address: 753 Broadway - 9th Fl

I represent: MOCS

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1784 + 1749 Res. No. \_\_\_\_\_

in favor     in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: MJ Okma

Address: \_\_\_\_\_

I represent: Human Services Council of NY

Address: 130 East 59<sup>th</sup> St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor     in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Demuria Aawode-E

Address: 205 E. 42nd Street, NY NY 10017

I represent: United Way of NYC

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 245, 1784, 1777, 1776 Res. No. \_\_\_\_\_

in favor     in opposition

Date: 11/19/19

(PLEASE PRINT)

Name: Mara Kravitz

Address: 10 Prospect Pl Brooklyn NY

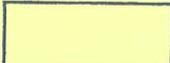
I represent: Protect Our Places Coalition

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/19/19

(PLEASE PRINT)

Name: Theodore Oberman

Address: 192 State St. Brooklyn

I represent: Department of Finance

Address: 59 Maiden Lane

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 0245 Res. No. \_\_\_\_\_

in favor  in opposition

Date: Nov 19, 2019

(PLEASE PRINT)

Name: Rev Robert Feltz-Morrison

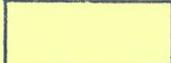
Address: 3050 Cedar Ave, Apt 402, Bronx, NY 10463

I represent: Presbytery of New York City

Address: 475 Riverside Dr, St 1600, NY, NY 10115

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 245-2018 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: FRANK LANGR

Address: 2 KINGSLAND AVE BROOKLYN

I represent: ST NICKS Alliance

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1776 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12/19/2019

(PLEASE PRINT)

Name: ALEXANDRA FRANCES

Address: ~~3300 CRESCENT ST ASTORIA~~ 3300 CRESCENT ST ASTORIA  
OR 97103

I represent: LENOX HILL NEIGHBORHOOD HOUSE

Address: 331 E 70th ST NY NY 10021

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. All Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: The Reverend Peter Cook

Address: 1580 Central Avenue, Albany

I represent: New York State Council of Churches

Address: 1580 Central Avenue

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. all Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Kobir Chowdhury

Address: \_\_\_\_\_

I represent: Masjid al aman

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. all Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Yasir Saleem

Address: \_\_\_\_\_

I represent: al-Muneeb Foundation

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. All Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11.19.2019

(PLEASE PRINT)

Name: Marcia Eisenberg

Address: \_\_\_\_\_

I represent: Jewish Community Relations

Address: Council of NY  
225 W 34th St

Please complete this card and return to the Sergeant-at-Arms