



Legislation Text

File #: Res 1124-2011, **Version:** *

Preconsidered Res. No. 1124

Resolution authorizing the Council of the City of New York to bring or join in an action or proceeding against the New York City Department of Homeless Services and its Commissioner, to enjoin the adoption, implementation, or enforcement of Procedure No. 12-400, which sets forth new standards by which DHS Single Adult Intake facilities would determine whether individuals who apply for Temporary Housing Assistance are eligible for temporary emergency shelter.

By Council Member Palma, the Speaker (Council Member Quinn) and Council Members Arroyo, Barron, Chin, Dickens, Ferreras, Jackson, Koslowitz, Lander, Mark-Viverito, Recchia, Rose, Sanders Jr., Van Bramer, Williams, Vann and Mendez

Whereas, The City Administrative Procedure Act (“CAPA”), New York City Charter §1043, states that “No agency shall adopt a rule except pursuant to this section;” and

Whereas, A “rule” is defined by section 1041(5) of the Charter as “the whole or part of any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency...;” and

Whereas, Section 1041(5) further explains that a rule “shall not include any (i) statement or communication which relates only to the internal management or personnel of an agency which does not materially affect the rights of or procedures available to the public; (ii) form, instruction, or statement or communication of general policy, which in itself has no legal effect but is merely explanatory; (iii) statement or communication concerning the allocation of agency resources or personnel...” (emphasis added); and

Whereas, On or about November 3, 2011, the New York City Department of Homeless Services (“DHS”) issued Procedure No. 12-400, with an “Effective Date” of November 14, 2011; and

Whereas, Currently, as set forth on DHS’s website, most single adults seeking shelter are required to go to one of three intake centers after which staff assess their needs and determine an appropriate shelter

placement, but they are not required to undergo a formal eligibility determination process; and

Whereas, In contrast, Procedure No. 12-400 sets forth new standards by which DHS Single Adult Intake facilities would determine whether individuals who apply for Temporary Housing Assistance (“THA”) are eligible for temporary emergency shelter; and

Whereas, More specifically, the new standards established by Procedure No. 12-400 state that DHS will “investigate whether the applicant has other available housing or the means to obtain other housing;” and

Whereas, All applicants for THA would be required to cooperate with DHS’s investigation “by providing all information and documentation necessary to determine that applicant’s eligibility for THA. If the applicant is unable to produce required documentation, s/he must explain the reason. Without a valid reason, failure to produce documentation constitutes a failure to cooperate;” and

Whereas, “All applicants must cooperate in completing an assessment of their need for THA by, among other things, providing information regarding their prior housing arrangements and financial resources;” and

Whereas, Procedure 12-400 states that “when an individual or family fails to cooperate in completing the assessment, and the failure is not due to a verified mental or physical incapacity of the individual or family member, [DHS] must deny THA;” and

Whereas, Procedure 12-400 also establishes criteria for determining eligibility, including that “DHS shall investigate all residences where the individual has resided in the year prior to the date of the application for temporary housing assistance;” and

Whereas, Procedure 12-400 further states, “An individual cannot elect to be homeless, for eligibility purposes, by not utilizing other resources to obtain housing. DHS may explore a housing resource for availability and propose additional actions, either on the part of the individual or primary tenant, to make the housing option suitable for the applicant to reside there...;” and

Whereas, “A primary tenant’s claim, oral or written, that the applicant can no longer reside in the viable housing option is not, by itself, sufficient to establish that the housing is no longer available;” and

Whereas, The stated purposes of Procedure No. 12-400 are to “ensure that THA is being provided only to persons who have no other available housing or the means to secure other housing; and the applicant has responsibilities to cooperate with the assessment conducted by the City and to use available resources and/or seek necessary assistance to avoid homelessness wherever possible; therefore each applicant must clearly demonstrate that s/he is faced with an immediate need for THA, has made reasonable efforts to secure housing and cannot access any other housing even on a temporary basis;” and

Whereas, DHS will utilize Procedure No. 12-400 “to determine whether an applicant for THA is an eligible homeless person. This determination will be based on an assessment of whether the applicant has a viable housing option where s/he can live even on a temporary basis and/or whether s/he possesses sufficient financial resources to secure such housing;” and

Whereas, Procedure No. 12-400 “also sets forth the requirements with which applicants for shelter must comply in order to receive THA;” and

Whereas, Procedure No. 12-400 falls within the definition of a “rule” under the City Administrative Procedure Act; and

Whereas, DHS did not follow the procedure for rulemaking set forth in section 1043 of the New York City Charter, including (a) publishing the full text of Procedure No. 12-400 in the City Record at least thirty days prior to the date set for a public hearing or the final date for receipt of written comments; (b) electronically transmitting Procedure No. 12-400 to the Office of the Speaker of the Council, the Council’s Office of Legislative Documents, and each Council Member; (c) transmitting to the Speaker of the City Council the certification and analysis; or (d) providing the public with the opportunity to comment on Procedure No. 12-400 guaranteed by section 1043(e) of the New York City Charter; and

Whereas, DHS has not asserted that Procedure No. 12-400 was adopted as an “emergency procedure” pursuant to section 1043(i) of the New York City Charter; now, therefore, be it

Resolved, That the Council of the City of New York is authorized to bring or join in an action or

proceeding against the New York City Department of Homeless Services and its Commissioner, to enjoin the adoption, implementation, or enforcement of Procedure No. 12-400, which sets forth new standards by which DHS Single Adult Intake facilities would determine whether individuals who apply for Temporary Housing Assistance are eligible for temporary emergency shelter.

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