

Statement to the New York City Charter Revision Commission

Fiscal Responsibility Forum and Public Input Session
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Submitted by:

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About the Author

Edmund J. McMahon is an adjunct fellow at the Manhattan Institute* and founding senior fellow of the Empire Center for Public Policy. He writes on regional, state, and local issues, recommending policy changes and reforms to increase economic growth. His work has focused on New York's statewide economic trends, tax and budget policies, public pension and retiree health care costs, and the outmigration of New York residents to other states.

*The Manhattan Institute and Empire Center do not take institutional positions on legislation, rules, or regulations. Although my comments to the Charter Revision Commission draw upon my research as a scholar, the views represented today are solely my own, not those of the Manhattan Institute or the Empire Center.

Good evening and thank you for this opportunity to provide input on ways of promoting fiscal responsibility in city government via revision of the City Charter.

From an historical standpoint, this hearing is well-timed. New York is approaching the 50th anniversary of the worst fiscal crisis in its modern history, which did so much to shape the budget process we are discussing today.

The key budget process provisions of the 1989 charter update, including safeguards originated in the state Financial Emergency Act of 1975, were adopted to ensure that nothing like that crisis could ever happen again. These provisions have paid enduring dividends – but in light of subsequent experience, updates clearly are in order.

Many good reform ideas already have been presented at this hearing. In particular, I'd like to express my agreement with the recommendations for mandated rainy day fund deposits accompanied by withdrawal and balance rules, improved legislative financial impact statements and financial plan estimates, and a cap on city debt service.

For my part, I would like to focus on three areas of concern.

The first stems from what's become the largest wild card in New York's long-term financial plan – last year's City Council expansion of the Family Homelessness & Eviction Prevention Supplement program, or FHEPS. Five-year cost estimates for this expansion range from a low of \$10.6 billion (the Council's figure) to more than \$17 billion (the mayor's). Even if the lower figure is accurate, this may rank as the single most expensive initiative ever launched by the Council.

As Commissioner Wasow stated in her December letter to Deputy Council Speaker Ayala, the local laws in question “raise substantial financial, operational and legal issues.” Putting these issues aside, the way the FHEPS expansion came about – via four local laws passed outside the budget process – clearly violated the spirit if not the letter of the City Charter's budget provisions.

As you know, the city now faces a class action lawsuit aimed at forcing the mayor to implement the FHEPS expansion. The plaintiffs' legal brief in that case asserts, among other things, that “no New York City Charter provision supports the notion that a Local Law must be specifically funded by an appropriation for its implementation to be valid.” It could be argued in response that the charter *implicitly* requires an appropriation – but in any case, lawsuit aside, the issue should be clarified once and for all.

What follows are three recommended charter provisions to address the issue:

- **No local law requiring additional city funds expenditures shall take effect unless supported by a separate and distinct item of appropriation.**
- **No local law requiring a separate and distinct appropriation for any purpose shall become effective until the fiscal year commencing at least 12 months following the effective date of the law, unless such item is (a) included by the mayor in the next budget, or (b) included as a separate appropriation item in the executive budget introduced by the mayor 180 days or more following council passage of the law.**
- **No separate and distinct appropriation with a certified fiscal impact of \$100 million or more in additional city funds spending when fully effective shall begin to take effect in any year *unless* contingent upon and linked to reductions totaling the same or greater amount in other city funds expenditures. Provided, however, that this requirement could be waived by the mayor.**

My next recommendation is intended to deal with the now-routine, systematic underestimation of certain expense requirements in the mayor's financial plan. Both the city and state comptrollers classify these underestimates as "risks," but they might be more accurately described as pre-programmed budget gaps. Egregious examples in the mayor's FY 2025 plan include overtime costs, which the city comptroller projects will be \$1 billion higher this year and next, and welfare cash assistance, which the comptroller says the mayor is low-balling to the tune of \$500 million next year.

I note that CBC also has a solid recommendation addressing this issue. I would only add a requirement for greater transparency to begin sooner in the process – at the mayoral level – as follows:

- **Any budget line for which the mayor's financial plan forecasts a year-to-year expenditure decrease shall be accompanied by a detailed supporting statement explaining why and how such a decrease is expected to materialize. This statement shall include all projected changes to underlying unit costs, benefits eligibility standards, staffing levels, and other relevant factors.**

My final recommendation aims to close a significant loophole in the existing charter. It involves the financial original sin underlying the 1975 fiscal crisis – the use of long-term borrowing to pay operating expenses.

Section 217c of the charter stipulates that "the city may issue capital debt only to finance capital projects, and that "the capital budget may not include expense items that are properly includable only in the expense budget."

Nonetheless, in fiscal years 2002 and 2003, the city's budget *was* balanced in part by the proceeds of \$2.1 billion in "fiscal recovery notes" issued by the Transitional Finance Authority in the wake of 9/11.

That bond issue was approved by the state Legislature within days of the World Trade Center attack. But as quickly became apparent, while the human cost of 9/11 was incalculable, the net impact on city finances of recovery and rebuilding expenses would be absolutely minimized by federal assistance, which Congress and the Bush administration began to approve within days of the state's emergency authorization. The TFA borrowing nonetheless went forward – \$1 billion in October 2001, and \$1.1 billion in summer 2002. The proceeds served mainly to paper over out-year gaps already projected in Mayor Giuliani's final budget before 9/11. Maturing in 2022, the TFA bonds added up to \$180 million a year to the city's debt service costs for two decades. As recently as 2019, \$558 million in recovery bonds were still outstanding.

The state financial control board chose to turn a blind eye to this clear violation of the state Financial Emergency Act. And so a precedent was created – one Mayor de Blasio sought to exploit during the pandemic crisis of 2020 by asking the state to approve \$5 billion in TFA-backed deficit financing to cover expected revenue shortfalls. That request was sidetracked by then-Governor Cuomo in the summer of 2020, and it proved to be unnecessary after repeated infusions of billions of dollars in time-limited federal stimulus aid in late 2020 and early 2021.

The charter should shut the door on this borrowing precedent, once and for all. This can be accomplished by adding the following provision:

- **Proceeds of long-term bonds and notes shall in no case be used to pay for operating expenses.**

Thank you again for the opportunity to present these ideas.