



2013

**POLICY
RECOMMENDATIONS
FOR NEW YORK CITY'S
NEXT MAYOR**

**NEW YORK
CITY BAR**



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EXECUTIVE SUMMARY

“In this age of snap judgments, sound bites and lightning quick communication, we tried to hold true to the City Bar’s time-honored process of asking groups of people to deliberate and reach a consensus viewpoint on something that collectively is important to them, and to convey that viewpoint in a way that not only advocates for change, but also invites others to think about and participate in the political process whether or not they agree with us.”

Carey R. Dunne, President, New York City Bar Association

The powers and responsibilities of the New York City Mayor are vast. According to the New York City Department of Citywide Administrative Services, the Mayor serves as the “Chief Executive Officer of the City.” Among other things, the Mayor appoints and can remove the commissioners of more than forty City agencies; is responsible for preparing and administering the City’s annual Expense and Capital Budgets and financial plan; manages the City’s relations with federal, state and local governing entities; has the power to veto local laws enacted by the City Council; appoints Criminal Court Judges, Family Court Judges and Interim Civil Court Judges; has powers and responsibilities relating to land use and City contracts; and collaborates with city, state and federal agencies responsible for the City’s economic development and infrastructure.¹ In addition to these official duties, the Mayor has unofficial powers. He or she can use the Mayor’s bully pulpit to weigh in on an astonishing array of issues, from the environment to gun control to immigration; can act as unofficial arbiter when diverse and competing interests collide; and can set broad new policy goals in conjunction with other levels of government.

It should thus come as no surprise that the Mayor’s policy choices affect the lives of all New Yorkers every day – on our streets and in our schools, subways, courts, prisons, homes and workplaces. So, as we approach a transition from Mayor Bloomberg’s twelve-year administration to a wholly new one, now is the time for the public to weigh in on what we have learned, what needs further study, what needs to change, and what remains as unfinished business in the City. This compendium represents the City Bar’s contribution to the important discussions that should take place throughout the City as the 2013 mayoral election draws near.

The New York City Bar Association (City Bar) is a voluntary association with over 24,000 members founded in 1870 in response to growing public concern over corruption among judges and lawyers in New York City. Its mission includes “harnessing the expertise of the legal profession to identify and address legal and public policy issues in ways that promote law reform, ethics and the fair and effective administration of justice.” The City Bar has over 150 committees that focus on a wide variety of legal practice areas and issues. Through reports, amicus briefs, testimony, statements and letters drafted by committee members, the City Bar, for the past 143 years, has taken positions on and educated the public about important public policy issues and legislation.

To create this report, City Bar committees were asked to identify legal and policy issues they believe the next Mayor should consider, and to recommend steps they believe he or she should take to address those issues. We did not intend to cover the entire landscape of issues facing the next Mayor. Rather, we looked at the Mayor's opportunities through a legal lens, befitting a bar association, and from the perspectives of lawyers who work daily on a variety of issues vital to the City's welfare.

The expansive nature of this report reflects the tremendous breadth of power enjoyed by the Mayor and the level of responsibility the electorate will entrust to the City's newly elected leader. We discuss topics ranging from public safety and civil liberties to social welfare, consumer protection, emergency preparedness, election law and animal law issues. Notwithstanding the variety of issues discussed, one theme emerges: the next Mayor can bring about significant change in this City, change that will have a beneficial impact on the environment, immigrants, the poor, crime victims and students, among others, all while ensuring that the City remains a vibrant place to live and work. Through the sheer power of the Mayor's office and the Mayor's relationship with agency commissioners and the City Council, he or she can change – for the better – the way New Yorkers access justice, the way police treat individuals whom they stop on the street, the way teachers are disciplined and schools are closed, the way people in poverty receive desperately needed assistance, the way cable and internet services are delivered to our homes, the way LGBT individuals and victims of domestic violence are treated by City agencies, the way people and things move around the City, and the way New York City is viewed by the world as an international city and the vital home of the United Nations.

Among other things, we make recommendations urging the next Mayor to:

- Encourage and empower City residents and commuters to reduce their carbon footprint;
- Reform stop-and-frisk;
- Support programs and initiatives to assist the tremendous number of unrepresented litigants in civil cases affecting housing, jobs and consumer debt;
- Champion policies that will reduce crime recidivism;
- Strengthen the City's commitment to punishing perpetrators of human trafficking;
- Strengthen the foster care system and promote greater child wellness;
- Continue to maintain the independence of judicial appointments;
- Enhance and expand consumer protection efforts in troubled sectors; and
- Study how to create a rational and fair property tax system.

We hope this report proves useful for the mayoral candidates, the public, and the City Council as each considers and prioritizes electoral issues. Regardless of who our next Mayor is, this is New York City – we may not always agree, but our political elections should always be an opportunity for open and informed dialogue.

May 2013

I. EDUCATING NEW YORK CITY'S YOUTH

The reality of mayoral control means that the incoming Mayor will assume responsibility for the education of approximately 1.1 million New York City schoolchildren. While economic times are challenging, the importance of providing a meaningful education that will allow *all* children to meet their potential and become thriving members of society and the workforce has never been greater. The policy choices facing the new administration are likewise vast. It is in that context that we make the following recommendations.

A. Continue Mayoral Control of Schools

One of the major achievements of Mayor Bloomberg has been gaining mayoral control of the New York City school system from Albany. This long-sought reform placed the responsibility for the over 1.1 million school children and over 1,700 schools² in our growing city squarely with the Mayor. The system is extraordinarily complex, as it reflects the cultural and language diversity of the City, and must address the great range of needs of our students while being responsive to the expectations of the City's numerous different communities. Given how prominent the Mayor's running of the school system has been in the public attention, it is easy to forget that this is a very recent innovation in the City's history.

The Mayor's role at the center of city government and as the most prominent citywide elected official combined with clear responsibility and authority for the success or failure of the schools ensures that education results are the center of any election campaign and of the next administration. The new Mayor has the advantage of inheriting Mayor Bloomberg's efforts, but must evaluate the New York City Department of Education's (DOE) efforts with fresh eyes and be able to both listen and lead. The bottom line will be the students' education results, and whether they are successfully prepared to contribute to their society and effectively undertake their civic responsibilities. To this end, the new Mayor will need to promote the values of accountability, transparency and parental involvement that are fundamental to the success of the New York City schools.

B. Reevaluate and Improve Upon Existing Policies

1. Update and Improve School Closure Policies to Achieve Better Outcomes

During his tenure, Mayor Bloomberg has closed more than 100 public schools and reopened many more in furtherance of his strategy to overhaul the New York City public school system. Last fall, the DOE put 36 elementary and middle schools and 23 high schools on notice that they may be closed due to poor performance. The next Mayor needs to work towards improving the City's school closure policies and the implementation of those policies by addressing all of the issues surrounding a school closure, including what will happen after a school is closed. In that way, the next Mayor will increase the likelihood that the closures will be effective and successful in improving student achievement.

The City's policy with respect to school closures is important because some City schools persistently fail to educate our students.³ Many high schools have four-year graduation rates under 60% and "[l]ess than a fourth of those who graduate are college-ready."⁴ This year, over 200 elementary and middle schools were given grades of F, D, or a third consecutive C on the City's annual progress reports.⁵

Studies of school closures indicate that there have been mixed results with regard to whether school closures improve student performance. Some evidence suggests that certain populations (special education and English Language Learners) are not adequately served when schools are closed.⁶ On the other hand, a study of New York City's school closing policy found that closing failing schools and replacing them with small schools "has led to actual improvements in measures that point directly to increased attainment, graduation rates, and college-readiness."⁷

The issue is one on which at least partial consensus may be possible. "Proponents [of the school closure strategy] argue that closing persistently low achieving schools will improve the overall quality of schools in a district, while opponents insist that the strategy is disruptive to communities, students and families."⁸ But one group that has been critical of the Mayor's school closure policy concedes that "there are instances in which school closure is the best option for a school that is too dysfunctional to improve."⁹ Weighing the evidence and considering the "facts on the ground" in New York City, we recommend the following improvements to the City's school closure policy:

Recommendations:

- Provide community members and affected families with meaningful information about the closure that includes, *e.g.*, data on student performance, dropout rates, attendance, violent incidents, teacher turnover, standardized test results, and the process the City uses to determine school closures. This measure may reduce parent and community opposition to closures that may be based on a lack of full information.
- Work with traditional public school principals, teachers, and charter school authorizers and management organizations to develop and implement best practices identified at high-performing traditional public and charter schools.¹⁰
- Improve transparency in transitioning students to other schools by educating families and the community in various languages about post-closing options (including the availability of English as a Second Language and bilingual programs and access to special education services, etc.).¹¹ These efforts should include forums that allow families to ask questions and discuss offerings with school representatives. Additionally, the next administration should ensure that the closure process does not leave any students without a school option.
- Ensure that special education and English language learner populations are adequately served during school closures. If small schools and/or charter schools are

to replace the larger schools, then the next administration must provide those schools with the resources to attract, enroll, assess, and support these populations previously attending the schools that are closed.

- Schools that accept more students, especially from at-risk populations, must have the resources to provide those students with the services to which they are entitled; the next administration should provide additional resources to existing schools that accept students from closed schools. In addition, the next administration should implement policies to avoid simply transferring students from one failing school to another low-performing school.
- Ensure that schools being closed have the necessary instructional support to serve the students who remain in the “old” school as it is phased out.¹²

2. Improve the Quality of the School Environment Through the Dignity for All Students Act, the Respect for All Initiative and the Disciplinary Code

In New York, as across the nation, LGBTQ students, and those perceived to be LGBTQ or gender nonconforming, are more likely to be the subject of bullying and harassment by their peers. As part of an attempt to address this problem, the State Legislature enacted the Dignity for All Students Act (DASA) which, *inter alia*, requires school systems to enact a variety of policies and guidelines designed to reduce bullying and harassment of all students.¹³ Among these requirements are mandates to collect data on and report bullying and harassment incidents to the State Education Department (NYSED), incorporate diversity and civility training into curricula, amend or adopt codes of conduct, and appoint Dignity Act Coordinators to respond to bullying-related incidents. Likewise, the DOE Respect for All initiative and Disciplinary Code consider bullying based on sexual orientation “injurious” and “harmful” behavior, and direct swift intervention.

The City Bar supports the DOE’s Respect for All initiative, a strong step towards implementing DASA and combating the epidemic of harassment and bullying in our country and city. However, there are areas in which the DOE could improve its efforts at DASA implementation.

Recommendation:

- The City can improve its DASA implementation through the way it reports bullying and harassment incidents and disseminates the resulting information to the public. Although DASA requires data reporting, we understand that NYSED does not intend to recommend any specific data collection system, leaving the choice to school systems. The City’s Online Occurrence Reporting System appears to be, and indeed may already be, an efficient method of such data collection. However, this method could be more transparent on the DOE website. Specifically, the site does not explain what must be entered into the system, or what the data is used for after it is entered. The dissemination of this information, along with outreach and education, would be

helpful in engaging parents – a core constituent group currently left out of DOE's DASA implementation – as well as students, educators, and community leaders.

C. Special Education Reform: More Work To Be Done

Based upon research indicating that special education students who attend school with general education peers have better outcomes, the DOE recently announced a reform requiring most of its 164,908 students with disabilities to attend the schools located in their home zones.¹⁴ The City Bar recommends that the new administration increase transparency with respect to the implementation of the reform, its measures of success, and the rights of parents. Moreover, safeguards against the misplacement of students with disabilities need to be put into place.

One of the challenges is to ensure that schools which, prior to the reform, were not equipped to accommodate students with disabilities have adequate resources to meet the needs of those children. But instead of addressing the issue of resources first, the DOE began with a mandate to re-evaluate every special education student's Individualized Education Program (IEP).¹⁵ This mandate to re-do the IEPs, in tandem with a lack of attention to resources, may encourage schools to take short-cuts in the types of accommodations that are provided to the students. These can be detrimental to some special needs students and may not fulfill the district's obligation to provide each student with an appropriate education in the least restrictive environment.

The DOE's goals in implementing this reform are estimable and the DOE needs to be clearer about how it will measure the success of this considerable reform. The DOE has stated that its goals are (1) to close the achievement gap between students with disabilities and their peers without disabilities; (2) to provide increased access to and participation in the general education curriculum; and (3) to empower all schools to have greater curricular, instructional, and scheduling flexibility to meet the diverse needs of students with disabilities.¹⁶ While some information regarding the results of Phase I of the reform, which involved 260 schools during the 2011-12 school year, has been released, the means of measuring the success of the district-wide implementation have not been disclosed. While the Phase I results do indicate a reduction in the number of IEP classifications, more access to the general education classroom, and professional development for teachers, they do not indicate how or if the achievement gap was closed or if the reform gave schools greater flexibility. They do not indicate how or if failures to truly accommodate individual students occurred nor how such failures would be addressed.

The progress of any child whose IEP has been changed needs to be scrupulously monitored, and the parents of these children need to have speedy recourse if they decide that the modified IEP does not provide an appropriate education in the least restrictive environment. Concurrently, the DOE should focus on improving curriculum for special education students who remain in self-contained classrooms.

Tools for measuring systematic successes and the means of responding to individual failures are especially necessary for a reform that forces schools to make many difficult decisions about how to accommodate the needs of children where resources at the school may not be adequate to meet those needs.

Recommendations:

- Increase transparency with respect to the implementation of DOE reform requiring most of its students with disabilities attend schools located in their home zones, its measures of success, and the rights of parents.
- Put in place safeguards against the misplacement of students with disabilities.

D. Reform the Teacher Disciplinary Hearing Process

Over the past year, the issue of teacher sexual misconduct has been in the spotlight due to a number of highly-publicized reports of inappropriate contact between teachers and students. The conflict has exposed a flaw in the disciplinary process for tenured teachers, and the incoming Mayor should take common sense steps to fix the problem. Under State law, tenured teachers accused of misconduct face a hearing before an arbitrator who is chosen by both the school district and the teachers' union. If the arbitrator finds that the teacher has committed sexual misconduct, the teacher is automatically terminated pursuant to a provision in the teachers' contract (a teacher is also terminated if found to have committed a crime). If the misconduct is not found to be "sexual," lesser sanctions may be imposed. The arbitrator's decision is binding. Last May, a new State law was proposed that would give the City's school chancellor (or a school superintendent, for districts outside of the City), the authority to override an arbitrator's decision in cases alleging sexual impropriety. The proposed law would treat the arbitrator's findings as recommendations only, giving the school chancellor the final say in whether to fire a teacher even if the arbitrator did not find him or her guilty of sexual misconduct.

One of the arguments in favor of the proposed law is that arbitrators feel that they must please both sides in order to secure future assignments, due to being jointly selected by the union and the City. This arrangement, the current administration argues, incentivizes them to punish teachers less harshly than may be appropriate. But the proposed law does not reach the root of this problem. If it is the case that the selection process for arbitrators is leading to unjust outcomes, then reforming the joint-selection process, which affects all arbitrations equally, presents a better opportunity for reform than passing a law that is specific to sexual misconduct allegations (of which there are only 30 to 35 per year out of a teaching population of 75,000).

Choosing arbitrators by lottery or first availability from an approved list created by a neutral third party would remove any threat that arbitrators are pressured to try to please both sides, and would have the added benefit of speeding up the hearing process. The practice of both sides agreeing to an arbitrator is common in arbitrations of all types, but is often a time-consuming, inefficient process. For districts outside of New York City, State law imposes a 15-day deadline for the parties to agree, or the commissioner chooses the arbitrator from a list provided by the American Arbitration Association, not the parties.¹⁷ In New York City, however, there is no such rule. Pursuant to an agreement between the union and the DOE, the parties must agree on each arbitrator in the panel of available arbitrators, and must agree again on the arbitrator for any specific case. This negotiated arrangement, under which the process of

selecting arbitrators can take months, creates the problem that the Mayor believes needs to be fixed. Changing the process for arbitrator selection is a superior reform because it addresses the root of the problem and affects all teachers equally.

Recommendation:

- The new administration should work toward revising the agreement with the union in order to place arbitrator selection in the hands of a neutral third party, such as the American Arbitration Association, that will select arbitrators fairly and efficiently.

E. Create New Educational Programming to Address Current Issues

1. Implement Teen Dating Violence Education and School Safety Policies

According to the Department of Justice, girls ages 16 to 24 are more vulnerable to intimate partner violence than any other age group – at a rate almost triple the national average.¹⁸ In New York City, one in three teens experiences some kind of abuse in romantic relationships.¹⁹ These frightening statistics are on the rise. According to the New York City Department of Health and Mental Hygiene (DOHMH), 10.6% of teen-age girls in the City have reported physical dating violence in 2008 – an almost 50% increase since 1999.²⁰ Each year, teen dating violence creates negative consequences that go far beyond the individuals in the relationship – it exacts a societal cost through the increased truancy, alcohol and drug use, and mental and physical health problems experienced by victims of intimate partner abuse. The senseless killings of three young New York residents, Danielle DiMedici, Jessica Tush, and Kari Ann Gorman, have shown all too clearly that teenage relationship abuse can turn fatal.

Meanwhile, adolescent and teenage populations in New York City have shown to be receptive to dating violence awareness and prevention programs. The New York City Mayor's Office Healthy Relationship Training Academy is an excellent example, but more is needed to combat the growing prevalence of teen dating violence. We recommend the incoming Mayor's office implement educational programming that will teach young people how to strive for and create healthy relationships free of violence. We believe it is the best tool to stop domestic violence and dating abuse.

Recommendations:

- Incorporate education on building healthy relationships and respect for all people into the annual curriculum framework for kindergarten through sixth grade.
- Incorporate dating violence education into the annual curriculum framework for students in grades seven through twelve.
- Ensure that all administrators, teachers, nurses, counselors, school safety officers, and health staff at each school receive teen dating violence training.

- Provide opportunities for parent trainings on the signs and ways to prevent teen dating violence.
- Create a model school policy on dating violence to assist schools in creating dating violence policies for dating violence reporting and response, including: (1) how to protect individual targets of abuse and harassment, (2) how to enforce civil and criminal orders of protection, (3) how to protect against violations of orders of protection, and (4) how to give notice to students of available resources and remedies. The policy should, subject to appropriate safeguards to the accused student's due process rights under the law, also include a provision authorizing a student or administrator to request the perpetrator of the violence be transferred to another school.

2. Strengthen the City's Commitment to Teaching Comprehensive, Medically-Accurate Sexuality Education in Public Schools

Under Mayor Bloomberg, the DOE mandated that sexual health education be taught during health education courses in both middle and high school. The next Mayor should ensure that this mandate is fully carried out by schools. New York State requires public schools to teach health education, but does not require comprehensive sexuality education. The City recognized the importance of adding a sexuality education component to its health education courses and began implementation of the program in middle and high schools in January 2012. Pursuant to the program, parents and guardians are notified by each school that their child is scheduled to receive sexuality education, and they have the ability to remove their child from certain components of the course, including lessons relating to HIV/STD prevention and birth control, but cannot remove their child from lessons relating to abstinence as a means of preventing sexually transmitted diseases and pregnancy.

Recommendation:

- The next Mayor should strengthen the City's commitment to teaching comprehensive, medically accurate sexuality education in New York City public schools. The DOE recommended, but did not require, the use of two curricula: *HealthSmart* and *Reducing the Risk*. Because discretion is given to principals to determine the curriculum, strong standards must be developed to ensure that alternate materials are in compliance with the City's mandate and do not reflect biased viewpoints. The next administration must also take steps to ensure that all curricula chosen comply with the non-discrimination provisions of DASA.

3. Develop Humane Education Programs

It is widely recognized that a first defense in combating animal abuse in our society is by cultivating empathy towards animals in children through the education process. Section 809 of the New York State Education Law requires that every elementary school under State control, or supported wholly or partly by public money of the State, provide instruction on the humane treatment and protection of animals and lessons on the importance of spaying and neutering.

Such instruction does not need to be a separate course in a school's curriculum but rather may be conducted in conjunction with work in "literature, reading, language, nature study or ethnology." The penalty for non-compliance with the humane education mandate is withdrawal of public school funding. Additionally, New York State legislation known as SAVE (Safe Schools Against Violence in Education) seeks to address violence prevention within New York State's schools by requiring a civility, citizenship and character education component in the K-12 course of instruction and requiring health curricula to address issues of violence prevention. Humane education is a perfect way to comply with these additional requirements, particularly since the evidence overwhelmingly supports the premise that animal abuse is oftentimes a precursor to violent crimes against humans.

Notwithstanding the above, it appears that many New York City public schools are not providing students with the instruction in humane education mandated by Section 809. This appears to be a result of a lack of awareness of the requirement, rather than any reluctance on the part of school administrators to provide such instruction.

Recommendations:

- The DOE should issue a memorandum to all New York City public schools that notifies them of the humane education mandate and require that all elementary school principals direct their teachers to act in accordance with the law.²¹
- Enormous opportunities exist for New York City to partner with qualified private organizations that are familiar with these issues and willing to provide materials and assistance to the schools in developing humane education curricula.²² Such public/private partnerships offer a cost effective means of promoting humane education and should be further explored by the next administration.

II. INFRASTRUCTURE, THE ENVIRONMENT AND EMERGENCY PREPAREDNESS

A. Continue to Pursue an Ambitious Environmental Agenda

The outgoing Mayor has pursued an ambitious environmental agenda in recent years, culminating in New York City's receipt of the Environmental Law Institute's 2012 Award for Achievement in Environmental Law, Policy and Management – the first municipality to be so honored. In addition to maintaining and building upon this work, there are more areas where City laws, regulations and policies should be reevaluated or revised to address new or evolving environmental problems.

The City Bar's recommendations are united by two themes. First, the next Mayor should build upon the successful environmental planning and accountability structures established by the outgoing administration, including, the Green Codes Task Force, PlaNYC, and more. Second, while substantial climate initiatives are already underway, the City should do more to reduce greenhouse gas emissions and to prepare for and protect the City – including the most vulnerable subgroups therein – from the foreseeable impacts of climate change.

1. Continue to Advocate for Municipal, National and Global Action on Climate Change

Over the last decade, New York City's leaders have played a prominent role in encouraging all levels of elected officials to take action on climate change, chairing the C40 Climate Leadership Group, participating in the International Council for Local Environmental Initiatives, and calling for federal action on global warming, most recently in the wake of Superstorm Sandy. As the leader of one of the world's most prominent cities, New York's Mayor has a unique ability to influence local, national, and global discussions of environmental issues through policy advocacy, impact litigation, and more. Under a new administration, New York City should continue to serve as a model and leading advocate for climate change mitigation and adaptation efforts.

2. Encourage and Empower New York City Residents and Commuters to Reduce their Carbon Footprint

In addition to participating in global and national bodies that strive to implement climate change regulations, the next Mayor should lead by example and empower New Yorkers to take steps as individuals to address climate change. To do so, the incoming Mayor should provide a platform that reduces the average carbon footprint of residents and commuters and highlights discrete measures that they can take to further reduce their carbon footprint (and likely save money at the same time). Through a comprehensive education and marketing effort, New York City's climate change efforts can be amplified and used to motivate individuals to participate in a meaningful way. Such a program, while not a replacement for government action, could also allow individuals to set a carbon reduction target, and to monitor their progress towards attaining it. Such efforts to inform and motivate individuals could, if successful, become a model for other municipalities in the United States and around the world.

3. Evaluate Parcel-Based Storm Water Billing Practices to Incentivize Green Infrastructure

In New York City, climate change is increasing both the frequency and intensity of rain storms, resulting in flooding and more polluted stormwater runoff in local water bodies. The traditional remedies for tackling this flooding, i.e. expansion of existing sewer and stormwater infrastructure, can be extremely expensive and fail to address the impervious spaces in the city that exacerbate the flooding and runoff impacts. As a result, several municipalities (including New York) have embraced green infrastructure to manage stormwater and flooding through porous pavements, rain barrels, green roofs, carefully-selected soils and plants, and other filtering and absorptive mechanisms that recreate natural hydrologic infiltration and evapotranspiration, or otherwise capture runoff for productive use. These practices also provide many other important benefits, such as cooling and cleansing the air, beautifying neighborhoods, reducing heat-related illnesses, lowering energy costs, and creating jobs. Individual property owners should be incentivized to employ green infrastructure techniques on their properties.

The next Mayor should consider a parcel-based water and sewer rate billing practice under which the New York City Department of Environmental Protection (DEP) charges

property owners water and sewer rates based entirely or in part on the amount of impervious area on their property. A property's utility rates would thus decrease as a property owner installs green infrastructure and other filtering and absorptive systems, creating more permeable area at the property and providing property owners with a financial incentive to pursue green infrastructure stormwater management practices. DEP should also evaluate whether additional incentives (e.g., low interest loans) could be provided to further empower property owners to install green infrastructure, and provide these if cost effective. Encouraging property owners to manage much of their own stormwater on-site with green infrastructure practices and infrastructure can reduce flooding impacts and polluted runoff during severe weather events, while reducing stormwater management costs for the city.

4. Support Energy Efficiency and Renewable Energy

The New York State Renewable Portfolio Standard set the target of expanding renewable energy sources to 30% of all statewide energy sources by 2015, but no such comparable City agenda has emerged. There is vast untapped potential in New York City for energy production that is natural, unlimited, and ubiquitous: solar-generated electricity and hot water, wind turbines and geothermal (beneath the ground) heating and cooling. For example, one highly detailed map developed by the City University of New York in 2011 (in conjunction with the City government) has shown that two-thirds of New York City's rooftops are suitable for solar panels and could jointly generate enough energy to meet half the City's demand for electricity at peak periods.

Recommendations:

- *Use new benchmarking data to tailor energy efficiency policy, promote targeted retrofits, and facilitate informed decision-making by private buildings.*

As a result of Local Law 84 of 2009, which requires publicly-owned buildings over 10,000 square feet and privately-owned buildings over 50,000 square feet to "benchmark" and report their energy usage, New York City has more information about its buildings' energy efficiency than ever before. In the years ahead, the City should use that benchmarking data to inform and tailor its energy policies, including the promotion of cost-effective building retrofits.

The first benchmarking report on private sector energy usage revealed that the lowest performing 5% of covered buildings used three to five times more energy than the most efficient buildings housing similar activities with similar levels of lighting and heating. The report concluded that efficiency improvements at such low-performing buildings could often be implemented "very cost-effectively" through improved operations and maintenance at a relatively small number of buildings.

There are a number of regulatory and non-regulatory options for promoting such improvements. For instance, Local Law 87 of 2009, which requires periodic energy audits and "retro-commissioning" of buildings over 50,000 square feet, could be amended to impose more stringent requirements for the least efficient buildings in a given category. The New York City Energy Efficiency Corporation, which assists building owners in securing financing for energy-

efficient retrofits, should also be maintained and supported with municipal funding to supplement federal and non-governmental funding, if needed.

The data collected under Local Law 84 also present a low-cost and powerful tool for encouraging more efficient energy consumption choices by private building managers. The City should consider how to best promote the active use of the benchmarking data by these end-users, including, among other things, disseminating user-friendly spreadsheets which allow for easy cross-comparisons of the benchmarking data; providing a context for covered buildings by identifying median energy usage figures by building use, size, and age; and publicly recognizing the most efficient energy buildings in each of these categories.

- *Accelerate the work of the Green Codes Task Force*

The Green Codes Task Force (GCTF) was created in 2008 at the request of the Mayor and City Council Speaker to recommend “green” changes to the codes affecting buildings in New York City. In February 2010, GCTF issued a compilation of over 100 proposals, each of which contained a description of an issue, proposed code changes, and cost/benefit analysis. While many of these proposals have since been adopted, other, relatively low-cost energy saving and emissions reducing proposals have yet to be enacted.²³ As the infrastructure and culture of the City’s built environment respond to the code changes, and as available technology (e.g., semi-transparent solar panels) continues to develop, GCTF’s remaining proposals should be promptly evaluated for adoption. Moreover, GCTF itself should be funded to continue its work, with periodic evaluations and reports on the City’s progress and remaining objectives and updated recommendations as warranted.

- *Pursue renewable energy development on closed landfills and other strategic locations*

With limited space available for large-scale renewable energy generation, New York City should pursue and encourage such opportunities where they do exist, such as the pending proposals for utility-scale solar and wind development at the former Fresh Kills landfill on Staten Island and the proposed expansions of existing tidal energy installation in the East River. The City should establish a process for identifying additional in-City sites where concentrated renewable energy development may be feasible. Such projects not only have the potential to diversify and reduce the greenhouse gas emissions produced by the City’s energy portfolio, but also provide an educational destination and a tangible reflection of the City’s environmental commitments.

5. Maintain and Build Upon Existing PlaNYC Objectives and Programs

PlaNYC is an unprecedented effort to meet the challenges of a growing population, aging infrastructure, changing climate, and evolving economy. Since 2007, the Mayor’s Office of Long-Term Planning and Sustainability has successfully brought together more than 25 City agencies to develop, implement, and track the progress of PlaNYC initiatives. Annual reports detail the City’s progress in achieving long-term initiatives through the completion of short-term milestones. PlaNYC’s mandated four-year report indicated challenges in attracting investments in efficient and alternative electricity generation due to the recession of 2008, but reported major strides to improve energy distribution (reporting Con Edison upgrades to improve reliability), and the reduction of greenhouse gas emissions to 13% below 2005 levels. Also, nearly all (97%)

of the 127 initiatives in PlaNYC were launched within one year of PlaNYC's release, and almost two-thirds of the 2009 milestones have been achieved "or mostly achieved."²⁴ This progress includes: (1) an agreement with the State that will enable the City to invest \$187 million in green infrastructure over the next three years, (2) the launch of the East River Ferry service, and (3) the opening of the 200th Schoolyard to Playground site, bringing over 240,000 additional New Yorkers within a ten minute walk of a park. Many more PlaNYC efforts are still underway, and new goals continue to be added to the PlaNYC agenda.

Some observers believe PlaNYC suffers from foundational defects because it does an end-run around the New York City Charter.²⁵ Section 197-a of the City Charter requires the independent City Planning Commission to develop long-term comprehensive planning, and requires review and approval that includes a hearing process by the "affected" community boards, which in the case of PlaNYC would encompass all of the City's 59 community boards. Some observers believe there is disconnect between the centralized or "top down" orientation of PlaNYC and the neighborhoods that engage in planning. The PlaNYC/OLTPS process has done well to integrate and consolidate "vertically," grouping subject areas and, thus, regulatory functions together for planning synergies. However, some believe it has neglected integration of planning "horizontally," and, therefore, has not broadened participation "on the ground," at the very points where the plans are implemented – in neighborhoods and communities.

Recommendations:

- The incoming Mayor should affirm his or her commitment to long-term (2030) PlaNYC goals, continue working towards existing milestones, and add new medium- and long-term goals and milestones as new information and the incoming Mayor's environmental priorities dictate.²⁶
- Going forward, PlaNYC should make a greater effort to involve communities.
- The next Mayor should convene a representative working group to recommend a credible, participatory, inclusive and time-efficient process for evaluating City development plans, as intended by §197-a, while also staying true to the goals of PlaNYC. Such a group would include PlaNYC's creators and administrators, neighborhood activists, energy and city planning experts, civic leaders, and city attorneys familiar with the City Charter.

B. Superstorm Sandy: A Call to Action

In light of the damage caused by Superstorm Sandy and the need to prepare for increasingly frequent and intense climate impacts in the future, the incoming Mayor will be expected to address many of the environmental, structural and procedural issues that became apparent in the Storm's aftermath. The issues sounding Superstorm Sandy are extensive and far reaching - what follows are recommendations covering a few areas that we believe should receive attention during the new Mayor's first term.

1. Increase Preparedness and Build Resilience to Anticipated Climate Change Impacts

As discussed earlier in this report, New York City has been proactive in combating the effects of climate change. However, the storms of the past few years have shown us that, despite these efforts, more needs to be done to protect the City and its residents.

Recommendations:

- *Continue to evaluate and promote the role of storm barriers and buffers, such as dunes, oyster reefs and wetlands, in protecting the City from severe flooding during future storm events.*

The presence of barrier dunes in Long Island, Brooklyn, and New Jersey prevented catastrophic damage in protected communities during Superstorm Sandy, and damage from flooding may have been lessened if coastal wetlands had not been filled in. If it is determined that restoration, construction, or preservation of certain natural barriers and buffers could provide useful protection from severe flooding, the City should take appropriate action to restore, construct, or preserve barrier dunes and wetlands in the New York City area, to the extent not already planned.

- *Ensure that utilities are well equipped to deal with and respond to the impacts of major storm events, in order to minimize power outages to homes, businesses, and other infrastructure.*

Such measures may include reviewing current protocols for cutting power to vulnerable substations, erecting or bolstering flood barriers around power plants, and accelerating plans to flood-proof sensitive infrastructure. While such improvement may impose new costs on utilities and ratepayers, the City should weigh those costs against the costs of inaction and ensure that these and other appropriate measures are assessed and, if feasible, implemented by local utilities. The City should also encourage owners or managers of buildings in flood prone areas to ensure that critical utility equipment is protected against the risk of flood damage (e.g., by encasing it in waterproof compartments or installing it above ground level).

- *Appoint a commission to consider the feasibility of constructing storm surge barriers to prevent severe flooding*

As set forth in New York State's post-Sandy NYS 2100 Commission Report, the incoming Mayor should appoint a commission to consider the feasibility of constructing storm surge barriers to prevent severe flooding.²⁷ While the costs of such barriers (estimated by the NYS 2100 Commission at up to \$7-29 billion) would likely require city, state, and federal cooperation, government officials have also stated that impacts from Superstorm Sandy alone could cost New York State \$42 billion. In addition, there are other benefits to the City that may be realized if a storm surge barrier is constructed, including benefits to commerce, infrastructure, and human safety. The environmental and financial impacts of action, and of inaction, warrant further analysis by a balanced panel of experts and stakeholders, building upon the work done by the Climate Change Adaptation Task Force. If constructing a storm surge barrier is found to cost-effectively reduce the risk to people and

property and sharply reduce the cost of severe storms like Sandy, the City should work with State and federal authorities to implement a strategy to see that such a barrier is built.

2. Provide Environmental Justice

The incoming Mayor should set standards for land-use and environmental planning that clearly incorporate environmental justice into the City Environmental Quality Review (CEQR) process and establish or improve procedures for assisting disadvantaged communities that could be disproportionately impacted by environmental events. Environmental justice concerns are inseparable from many of the issues discussed above, as reflected in Superstorm Sandy's disproportionate impacts on disadvantaged communities in Red Hook, the Rockaways, and Coney Island.

While the CEQR Technical Manual cross-references New York State Department of Environmental Conservation (NYSDEC) Commissioner Policy 29 on enhanced public participation for "environmental justice communities," it does not currently provide guidance about conducting the substantive analysis of disproportionate impacts that a project may have upon these communities. In July 2012, NYSDEC adopted regulations regarding the assessment of environmental justice issues in the siting of major electric generating facilities pursuant to the Public Service Law Article 10.²⁸ The framework set forth in such NYSDEC regulations can serve as a foundation for developing substantive analyses requirements for any project evaluated under CEQR, including, for example, how a project's construction or operation may disproportionately impact an environmental justice community, cumulative impact analyses of environmental impacts on these communities, and a detailed comparison of the community in which a project is to be located and neighboring communities. Such steps would help ensure that such impacts are identified and evaluated by an applicant upfront as part of the CEQR process rather than deferring such issues until the public participation phase, when they may or may not be raised.

The Mayor is also in a unique position to implement recovery- and adaptation-based policies that mitigate the disparate impact of natural disasters on those least equipped to cope with them, and help those same communities better prepare for future natural disasters.

Recommendations:

- In terms of recovery efforts, the City Council and Mayor can coordinate community-based clean-up and rebuilding initiatives in disadvantaged communities; advise groups on topics ranging from safely disposing of household hazardous waste to properly eradicating mold; and send representatives to test potentially contaminated water, soil, locally-grown food sources, or the like.
- From an adaptation standpoint, the City Council can assess whether certain disadvantaged communities are particularly vulnerable to climate impacts and promote better preparedness through pre-storm education of residents; evacuation plans for those who lack transportation and/or affordable refuge options (including public housing residents); policies to grant tenants a brief extension when the disaster occurs on or near a rent-due day; and assisting local residents to obtain jobs in

disaster-relief organizations to integrate the community more fully into citywide disaster planning. This multi-pronged approach to disaster relief would help ameliorate the heavy burden that natural disasters impose on the most vulnerable residents of New York City.

3. Enhance the City's Emergency Management Response

Over half of the deaths occurring as a result of Superstorm Sandy in the City were in the Zone A mandatory evacuation area.²⁹ Article 2-B of the New York Executive Law permits the Mayor to declare a state of emergency, which includes the power to order mandatory evacuation of specific zones within the City.³⁰ Furthermore, State law dictates that any person who knowingly violates such a local emergency order is guilty of a class B misdemeanor.³¹ Even without criminal enforcement - which would be difficult - the next Mayor should make clear to the public that such a law exists, and beyond that, work with the State Legislature to amend Executive Law § 24 to clarify that, in addition to criminal penalties for those that refuse orders, residents who ignore a disaster warning may be civilly liable for the costs of rescue.

In addition, the next Mayor should implement or support policies to (1) undertake “softer” evacuation measures, such as making “reverse 911” calls (contact with residents to warn about the urgent need to leave), having emergency personnel travel through neighborhoods with loudspeakers, going house-to-house to warn residents, or requesting next-of-kin information from those who refuse to leave; (2) set up as-needed, “requirements” contracts in advance for critical supplies such as generators and light towers, in addition to shelter provisions; and (3) consider reform of the zoning code to adapt to recent flooding in coastal regions. Amended zoning requirements could include requiring additional fill, mandatory pumping facilities, and mandatory rooftop generators for potentially affected areas.

Of grave importance, Superstorm Sandy and its aftermath necessitated the evacuation of over 5,500 elderly and disabled residents of nursing homes and adult homes in at least 29 facilities in Brooklyn and Queens. Most of these residents were evacuated into temporary shelters and other facilities over a three-day period following the storm. In many cases, residents arrived at shelters with no clothes, no identification, and no medical records or directives. We provide the following recommendations to help ensure that, in the event of another disaster on this scale, residents in these institutions will have access to a safer and more organized evacuation plan that respects their dignity, choices, and needs: (1) convene a workgroup to gather stakeholder input and recommend reforms concerning nursing/adult home evacuation; (2) appoint an executive decision-maker to determine if long-term care facilities should evacuate in the event of another regional disaster; and (3) establish a comprehensive plan for evacuation of long-term care facilities in the event of another regional disaster.

4. Protect Residents of Public Housing During Environmental Crises

Residents of public housing suffered severely in the wake of Superstorm Sandy. Many were left without basic services and many were trapped in their homes when the storm surged and the lights went out. New York City's aging public housing complexes were not prepared for the storm and the New York City Housing Authority (NYCHA) failed to respond to the

emergency needs of residents who were unable or unwilling to flee. Weeks after the storm, dozens of frail, elderly and disabled residents were still being found trapped in their high-rise apartments which had lost elevator services, electricity, heat and hot water. After the storm, 402 buildings, housing over 77,000 residents, lost power with most losing heat and hot water as well. Power was not restored system-wide for over two weeks. Superstorm Sandy exposed to the larger public the daily plight of NYCHA residents, but now that the storm has passed and the spotlight has dimmed, we must ensure that those residents are not forgotten.

The damage caused by the storm only added insult to injury for many NYCHA residents. It has been reported that there is a backlog of over 400,000 repair requests for residents of NYCHA apartments. While the current Mayor has repeatedly made vows to clear this backlog, the residents of NYCHA still wait. As the nation's largest landlord, with over 400,000 residences, NYCHA houses many who are among the City's most vulnerable. NYCHA must live up to its promise of safe and affordable housing for low and middle income New Yorkers.

Recommendation:

- To ensure that the mission of NYCHA is fulfilled, the next Mayor must seek and allocate adequate funding to maintain and service all of NYCHA's facilities and to make the needed improvements to ensure that the suffering of many NYCHA residents in the wake of Sandy is never repeated.

5. Monitor Sandy-Related Consumer Protection Cases and Develop Programs as Needed

In the aftermath of Superstorm Sandy, landlord / tenant disputes have emerged as one of the most common legal issues affecting victims. The storm damaged nearly 77,000 tenancies in public housing alone. Practitioners anticipate that a significant number of disputes regarding rent abatements and security deposits where tenants have vacated the premises will be litigated in Small Claims Court. New York City should fund dedicated legal assistance to Superstorm Sandy victims and ensure enhanced capacity in this critical practice area.

C. Transportation for the 21st Century

New York City is not only a transportation hub; it is the "great equalizer" of public transportation, given the immense scale and reach of its network and the size of the population it serves. But the City needs to keep looking forward or it will stall. In that spirit, we recommend the following:

1. Investigate New Revenue Streams for New York City's Transit System

The Metropolitan Transit Authority's (MTA) finances rely on revenue streams that are sensitive to economic downturns and political uncertainty - as evidenced by the near-annual fare hikes during the past few years. There is a better way to ensure the transit system's health - the City needs to create sustainable and permanent funding streams. One approach worth considering is the "Fair Plan" proposed by former City Transportation Commissioner Sam

Schwartz.³² The Fair Plan seeks to create an equitable transportation pricing structure for all New Yorkers through a market-based approach to achieve congestion relief on city streets. For example, the Fair Plan calls for tolling the East River bridges and using that revenue to, among other things, (1) reduce tolls on bridges that do not lead to Manhattan's Central Business District, (2) provide dedicated transit revenue to, among other things, reduce bus fares in "transit deserts;" and (3) redesign existing roadways to reduce the number of heavy trucks traveling on city streets. Implementation of a permanent funding system such as the Fair Plan would require enabling legislation from the State. Other proposals, including a commuter tax, with fares dedicated to the transit system, should also be studied and reconsidered.

2. Push for More Rapid Development of Select Bus Service

The City has provided leadership which has driven innovations in bus service, such as dedicated bus lanes, raised platforms, and off-bus ticket purchases. The routes that receive these treatments have grown in popularity while simultaneously shortening travel times. The demand for Select Bus Service is great, especially in transit-starved areas of the City. Unfortunately, the pace of the rollout of these improvements has been very slow. Because of funding limitations, the City and MTA currently plan to add only two new Select Bus Routes every two years. The next Mayor should commit to expanding the number of Select Bus Service routes, while also increasing the tempo at which these routes are established.

3. Adopt a Policy for Taxi Cab Accessibility

Over the years, the City Bar has issued multiple comments recommending that all new yellow cabs be accessible.³³ Our position has been reinforced by a dramatic increase in Access-A-Ride spending, the paratransit system required by the Americans with Disabilities Act (ADA) for those that cannot use mass transit. The current budget of Access-A-Ride is \$500 million, about \$225 million more than in our first report on this issue in 2005. This dramatic increase in Access-A-Ride spending, which now equals the cost of running the Metro-North Railroad, is caused by growing demand, extended life expectancies and rising fuel, vehicle maintenance and labor costs. The average cost of Access-A-Ride is \$66 per trip borne by New York City Transit (NYCT). Slowly, at the urging of the disability community, NYCT has begun shifting rides to taxis from larger, heavier, less fuel efficient, and more expensive Access-A-Ride vans; however, accessible yellow cabs are not available to NYCT for this purpose since only 1.7% of the City's 13,000 cabs are wheelchair accessible. Were yellow cabs to be accessible, the 20% of Access-A-Ride riders that use wheeled mobility aids could be diverted to the taxi system, saving tens of millions of taxpayer dollars annually.

Moreover, Medicaid spends approximately \$200 million a year on ambulette services for medical trips for Medicaid recipients.³⁴ This cost could be significantly reduced by transferring Medicaid riders to accessible taxis, benefitting both the wheelchair user whose ride would be more enjoyable and easier to obtain and the taxpayer as the cost per trip would be reduced.

Despite these cost-saving benefits, the Bloomberg Administration and Taxi and Limousine Commission (TLC) chose an inaccessible model, the Nissan NV200, for its Taxi of Tomorrow instead of an accessible model which could have served all New Yorkers and visitors.

TLC is committed to a dispatch program, which will, by its nature, require users of accessible cabs to wait to receive service far longer than people who can walk because only a percentage of taxis will be made accessible. A number of reasons have been given for perpetuating the inaccessibility of the large majority of yellow cabs, including: 1) it is dangerous for wheelchair users to hail taxis, 2) the average rider will find the ride uncomfortable in an accessible ride and 3) wheelchair users will not establish a dialogue with drivers and will therefore be poor tippers. We believe this reasoning lacks merit or supportive research and contradicts the law. It is currently both an ADA and City Human Rights Law violation for a cab driver to refuse service to a wheelchair user (assuming the wheelchair is manual and can be folded and stored in the trunk of an inaccessible cab).

The City Bar recommends that the new Mayor consider an alternative to the Taxi of Tomorrow scheme and adopt a policy that replaces each yellow cab as it ages out of service in the ordinary course of business with an accessible model.

4. Champion a Speed Cameras Program

Speeding drivers kill more New Yorkers than drunk and drivers using cell phones combined. Thirty percent of 2012 New York City traffic deaths – 81 New Yorkers – were caused by speeding drivers. Because speeding is illegal, each of these crashes could have been prevented with enforcement.

Speeding drivers are more likely to cause crashes, because it takes them longer to slow down. And crashes where the drivers exceed the speed limit are more severe because of the physics involved. If a pedestrian is hit by a car at the 30 mph speed limit, there is a 70% chance the pedestrian will survive, but if the driver strikes a pedestrian at 40 mph, just 10 mph over the speed limit, there is a 70% chance the pedestrian will be killed.

Preventing crashes by slowing down speeding drivers will make our streets safer. More than 120 American cities and towns utilize automated speed enforcement. Scientific analysis indicates that cities which establish speed camera programs should expect a 30-40% reduction in fatal or serious injury crashes – and some do much better. These cities have realized they can't rely on traditional enforcement alone to solve the speeding problem - they needed consistent, predictable, citywide enforcement. Speed cameras can help provide that enforcement.

The New York State constitution does not grant the Mayor and the City Council final authority to enforce traffic laws on the City's streets and highways. Instead, that authority is conferred on the State Legislature. Unfortunately, despite the current Mayor's support, recent attempts at the State level to establish a speed camera demonstration program in New York City have failed.³⁵ The proposed program would place a maximum of 40 cameras throughout the five boroughs in locations where speeding and speed related crashes, injuries, and fatalities are prevalent. Liability would be placed on the owners of vehicles found to be driving in excess of the posted speed limit. Owners would not be subject to points on their license. Violations would be administered under the Parking Violations Bureau and individuals would still have the right to contest their tickets. Photos would only be taken of license plates and not of the driver.³⁶

The next Mayor should continue to support the adoption of speeding enforcement cameras in New York City.

5. Unlock Greater Efficiencies in Rail and Marine Freight Transportation

The next Mayor should support the development of systems which reduce the City's reliance on trucks to transport goods. The growth of rail and marine freight transportation promises to make our streets safer, reduce traffic congestion, preserve our road infrastructure, and reduce consumption of fossil fuels (thereby improving air quality). That promise remains unrealized however, because enhanced rail and marine freight transportation would require significant facility investments. In order to unlock federal funds and other sources of revenue necessary to build these facilities, it is necessary to first stoke demand at the local level. To this end, the next Mayor should explore creative methods to encourage the use of rail and marine modes.

Specifically, the next Mayor should leverage the City's position as the region's biggest consumer by requiring that the use of rail and marine transport modes be a factor in the procurement decisions as is now the case with procurement guidelines that mandate the consideration of the proportion of businesses owned by minorities and women involved with a prospective bid, or with NYS Executive Order 4 which requires agencies to report on the recycled content in materials they have purchased.³⁷

For the purchase of large quantities of goods procuring agencies should be required to request that bidders specify the distances that the materials they propose to supply will be transported by rail, ship or barge, or truck, so that the procuring agency can readily determine which bid will produce the least number of truck miles traveled to effectuate final delivery. These procurement guidelines should include mechanisms (e.g., potential price preferences based on ton-miles traveled) to provide a competitive advantage to bids that produce the least number of truck miles traveled.

Reductions in truck miles traveled would also be encouraged by making the ton-miles traveled by truck an explicit factor in the State Environmental Quality Review Act and the City Environmental Quality Review processes. Entities seeking approvals to build or modify facilities should be required to specify their proposed use of rail and marine services and the number of ton-miles that goods would be transported by truck, both during the construction and operation phases of their projects. Reviewing agencies would be required to make a determination as to whether the proposed mix of rail, marine, and truck modes – and the total ton-miles traveled – represented the option that minimized adverse impacts and maximized social, environmental, and economic benefits to the greatest extent practicable.

Finally, the next Mayor should lobby the federal government for funds necessary to jump start these facility improvements.

6. *Parking Reform: Placards*

The City of New York issues approximately 118,000 parking placards each year – yet there are no published rules or regulations guiding agencies in deciding which employees need parking placards, and which don't. In addition, there are many tens of thousands of counterfeit placards on dashboards across the City. In some neighborhoods, surveys indicate that one in four parking placards is counterfeit. The over-distribution of official placards, and the lax enforcement against counterfeit placards, encourages driving and compounds congestion. The next Mayor should commit to reducing the number of authentic and other parking placards by requiring an annual inventory of official parking placards, issuing regulations to guide the issuance of placards, and developing a plan to reduce the number of placards issued over time. Finally, agencies should be directed to redesign placards in order to reduce the number of counterfeit placards.

III. PUBLIC SAFETY AND CIVIL LIBERTIES

A. Continue to Champion Gun Control Measures

At this critical juncture in our nation's history, it is imperative that New York City's Mayor continue to lead the effort to strengthen our State's and country's porous gun laws. The spate of recent mass shootings resulting in the death and injury of so many innocent Americans makes painfully clear the urgent need for the adoption of effective gun control measures. In the last few years, brutal shootings throughout our country and in New York City have demonstrated that our political leadership cannot wait to act to protect our citizens. Recent mass shootings involving assault and semi-automatic weapons are all too well known: Newtown, Connecticut, December 14, 2012, 27 people killed, including 20 children; Aurora, Colorado, July 20, 2012, 12 people killed and 58 injured; Oak Creek, Wisconsin, Sikh Temple August 5, 2012, six people killed and four injured; Tucson, Arizona, January 8, 2011, six people killed and 13 injured, including Congresswoman Gabrielle Giffords.

In New York City, gun violence continues unabated, resulting in deaths and injuries, including children and young adults: for example, on January 5, 2013, a 16-year old was shot and killed for his coat on the Lower East Side of Manhattan;³⁸ on January 6, 2013, a 36-year old was shot and killed outside a nightclub in Queens;³⁹ on August 13, 2012, four teenagers were shot at a playground in Brooklyn; on August 2 and July 6, 2012, two shopkeepers in Brooklyn were shot and killed; on July 29, 2012, six people were shot, including a two-year old, in a drive by shooting in Brooklyn; on July 27, 2012, a 14-year old boy was shot and killed in a public park in the Bronx; on July 25, 2012, five people were shot at a basketball tournament in Harlem; on July 22, 2012, a four-year old child was killed and several others were injured when gunmen exchanged fire following a basketball tournament in the Bronx; on July 4, 2012, a 21-year old young man was shot and killed a few blocks from his mother's house in Brooklyn.⁴⁰ According to the National Center for Injury Prevention and Control, firearms are used to kill over 30,000 people in the United States every year, including more than 1,000 annually in New York State.⁴¹

Although stemming the tide of gun violence requires state and federal legislation, continued advocacy by urban leaders is vital. Mayor Bloomberg has been a national leader in

stressing the importance of curbing gun violence, highlighting its impact in urban areas. New York City should remain in the forefront of this critical effort. We urge our next Mayor to make his or her voice heard in support of effective gun control measures.

To that end, first, the next Mayor should voice his or her support for legislation that will expand even further the laudable protections afforded by the recently passed SAFE Act. Specifically, the Mayor should support amendments to the SAFE Act which will strengthen its reach and impact, namely, 1) defining 50-caliber weapons as illegal "assault weapons"; 2) limiting the number of magazines one can purchase; 3) requiring gun licensees to pass a safety course; and 4) clarifying the effect mental health difficulties may have on gun licensees. Second, the next Mayor should voice support for State legislation that would: 1) establish a longer ten-day waiting period for the purchase of any firearm;⁴² 2) prohibit the purchase of more than one firearm during any thirty-day period;⁴³ 3) require microstamping on new semiautomatic firearms sold;⁴⁴ and 4) redefine the terms "armor piercing ammunition" and "disguised gun".⁴⁵ Third, the next Mayor should voice opposition to any attempts on the federal level to override state gun control measures, e.g., H.R. 578, which would override New York's strict requirements regarding conceal and carry permits. At a time when the ability to pass effective measures at the federal level remains extremely difficult - as demonstrated by the U.S. Senate's recent failure to pass a law requiring universal background checks on gun purchases, limiting the size of ammunition magazines and reinstituting a ban on the sale of military-style assault weapons - it is more important than ever that urban mayors speak out on the importance of enacting common sense laws to curb gun violence in our country. Mayor Bloomberg's leadership role in this area should not be for naught. He has created an opportunity that we can ill-afford to squander.

B. Review and Expand New York Police Department Policies

1. Reform Stop and Frisk

The New York Police Department's "stop, question and frisk" policy has been a major, highly controversial feature of policing under the Bloomberg Administration. The use of this tactic, which grew exponentially during the first decade of Bloomberg's mayoralty, has resulted in nearly five million stops over the past decade, a stark increase from its prior use. The number of reported stops grew from 97,296 in 2002 to 685,724 in 2011, before dropping to 533,000 in 2012. The current administration lauds the stop-and-frisk policy as a significant component of the City's successful effort to reduce violent crime, a means of keeping guns off the street and improving the quality of life in the neighborhoods most affected. Indeed, through a variety of strategies, the crime rate in the City has been reduced substantially over the past 20 years.

However, the stop and frisk policy has raised a number of important concerns, such as the high volume of stops, the overwhelming number of stops that do not result in an arrest or violation, and the disparate impact of the stops on people of color. Given the nature of most of these encounters - stops and searches without arrest or other consequence - the City's stop-and-frisk policy has over the years eluded judicial scrutiny, leaving many to believe they were illegally detained without any effective remedy. In recent years, a number of class action lawsuits have been filed against the City on behalf of individuals who have been subject to the

policy: lawsuits which seek to challenge the legality of the searches on a mass scale. These litigations ultimately will address whether the practices at issue comply with the law.

Despite the eventual impact these litigations will have, given that these practices are having negative impacts on many communities in our City now, and the resulting ill will that is generated toward the police and law enforcement, we believe it would be imprudent for the City to await a court-determined outcome of the lawsuits before making changes to avoid the destructive social consequences of these stops. Indeed, recent measures taken by the Police Commissioner suggest that the NYPD itself acknowledges the need to better administer its stop-and-frisk policy. We recognize the impossibility of precisely ascertaining the percentage of legally valid, but fruitless, stops in which police have acted in good faith and with the requisite informational predicate. Our concern, then, is finding ways to ensure that all street encounters are conducted in accordance with the law. To this end, the City Bar offers the following practical recommendations to better ensure that officers who are sent out on the street understand the basics of street-encounter law consistent with not only their safety concerns but the individual liberty, dignity, and privacy interests of the persons stopped.

Recommendations:

- *Improve Training*

We recognize that the law governing street encounters, including the constitutional requirements and the levels set forth in *De Bour*, is complicated. We acknowledge the efforts the NYPD is making, as set forth in a letter from Commissioner Kelly's to Speaker Quinn, to enhance training efforts.⁴⁶ However, we are concerned that the training being provided may not be accurate or frequent enough, particularly for newer officers. Our concerns were articulated by Judge Scheindlin in her recent decision in *Ligon v. New York*. For example, Judge Scheindlin found that the training video widely shown in police precincts misstates the law regarding what constitutes a *Terry* stop, by not employing the basic concept that the test for a *Terry* stop "is not the use of force: it is whether a 'reasonable person' would feel free 'to disregard the police and go about his business.'"⁴⁷

Training materials need to be improved and training needs to be reinforced, in a framework where officers can seek feedback about how to conduct the stops without disciplinary consequences. In addition, the training should include training officers in sensitivity to community perspectives.

- *Measure Performance*

In recent years, the NYPD has relied increasingly on metrics to guide its activities. We are concerned that some of these metrics pressure officers to produce a high volume of stops without adequate focus on whether such stops are being conducted in a lawful manner. Meeting or exceeding the NYPD's performance goals is extremely important to any police officer's career, yet there do not appear to be any consequences for those whose stops are found to be unconstitutional or whose arrests cannot stand up in court. Although the NYPD has access to the results of all their arrests – such as whether the case was dismissed or, like many trespass cases,

the District Attorney's Office declined to prosecute – historically it has not used this information for training or discipline purposes. Since officers are not informed that the District Attorney's office would not prosecute their arrest, a pattern of inappropriate stops is not identified or employed as a teaching device to change a particular officer's conduct.⁴⁸

NYPD Operations Order Form 52, dated October 17, 2011, expressly spells out a quantitative requirement of “proactive enforcement activities,” for officers for each shift, including “the stopping and questioning of suspicious individuals.”⁴⁹ Officers are required to keep a log of these activities, which is reviewed weekly, and at the end of every month supervisors complete a report “indicating the total activity for the month.”⁵⁰ During performance evaluations, “a high degree of review and consideration will be given to member's daily efforts” at engaging in proactive enforcement activities in specific locations.⁵¹ And “[u]niformed members of the service who remain ineffective, who do not demonstrate activities impacting on identified crime and conditions, or who fail to engage in proactive activities, despite the existence of crime conditions and public safety concerns, will be evaluated accordingly and their assignments re-assessed.”⁵²

We question whether the number of stops is an appropriate criterion for performance assessment. Rather, we believe that criteria should be developed that measure performance by effectiveness. For example, we believe more focus should be placed on the “hit rate” of the stops, however defined, so that the results of the stops rather than just the number of stops are gauged.⁵³ Similarly, reprimanding officers for illegal or unlawful stops rather than for failing to meet performance incentives would encourage better policing and fewer constitutional abuses. This would not compromise crime-fighting as, despite the high number of stops, only 6% result in an arrest and only 2% in the recovery of a weapon. We will not presume to make specific recommendations in this area,⁵⁴ but suspect that other ways can be developed and used to more effectively monitor officer performance and effectiveness.

- *Change the UF-250 Forms and Procedure*

Recent reports have revealed problems with the check-box UF-250 form that was adopted by the NYPD as part of a 2002 lawsuit settlement.⁵⁵ Police list “furtive movements” as the top reason for stopping and frisking someone. Because the UF-250 form permits officers to check this category without elaborating further, it is difficult to assess whether police had good reason to stop an individual. The New York Times reported that 44% of the time, the NYPD recorded a “furtive movement” as the basis for a stop. The next most commonly checked boxes are “Appears to be ‘casing’” (28%) and “Other” (20%). Among the lowest percentage of boxes checked by police are “Apparent drug deal” (9.9%) and “Violent crime indication” (7.4%).⁵⁶ We believe that, at the least, police officers should be required to fill in the narrative box on the form to provide a meaningful description as to the reason for the stop, and this requirement should be enforced.⁵⁷ The term “furtive movements,” for example, is so vague and subjective as to provide no sense at all of the activity on which a police officer acted. A narrative form is more useful in that it requires an officer to articulate exactly what the person did. Such a requirement would deter officers from making stops based on less than reasonable suspicion. In addition, it would make more meaningful the internal review of the UF-250 forms that is conducted by NYPD supervisors, and where relevant would facilitate judicial review. We note that an NYPD

memorandum dated March 5, 2013 to “Commanding Officers, all Patrol Boroughs” requires that “the circumstances or factors of suspicion **must be elaborated** on in the **Additional Circumstances/Factors** sections of the ‘*Stop, Question and Frisk Report*’ and *Activity Log* (i.e., if the Furtive Movements caption is checked off, then a description of that movement **must** be specified).” (Emphasis in original). This requirement, if properly supervised and enforced, should accomplish this result.

We commend the NYPD for the initiative to provide greater scrutiny of the UF-250 forms by supervisors and we believe the NYPD should report to the public on its efforts and the results of those efforts.⁵⁸ At the least there should be a high-level monitor in each precinct to review the forms, plus citywide analysis and coordination of the reviews.

- *Change the Law Regarding Marijuana Possession*

The NYPD’s Operations Order Number 49 prohibits officers from charging individuals who publicly display small amounts of marijuana with misdemeanor possession when they have produced the marijuana in response to an officer’s search or directive.⁵⁹ Despite Operations Order Number 49, however, arrests for possession decreased only approximately 20 percent between 2011 and 2012. The problem should be addressed by amending the Penal Law. Section 221.10 currently reads as follows:

A person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses: (1) marihuana in a public place, as defined in section 240.00 of this chapter, and such marihuana is burning or open to public view; or (2) one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams.

We support striking the “or open to public view” provision, leaving the remainder of the section intact. This amendment would effectively end the practice and provide the requisite clarity to officers on the job. We note that Governor Cuomo and Mayor Bloomberg support decriminalizing possession of 25 grams or less of marijuana in public view.⁶⁰ In addition, in his 2013 State of the City address, Mayor Bloomberg also announced that anyone arrested for possessing a small amount of marijuana who can present an ID and clear a warrant check will be issued a desk appearance ticket rather than being detained overnight.⁶¹ While this change means that the arrested person will not have to spend the night in jail, the arrest will still take place. The necessary fix would be a change in the law. The City Bar also supports striking section (1) of PL § 221.10 entirely as part of a more comprehensive approach to addressing the problems inherent in a marijuana enforcement regime.

- *Consider Video Recording of Police Stop-and-Frisk Activity*

Police departments around the country regularly are videotaping interactions during vehicle stops. Police departments laud the benefits to the departments of this procedure.⁶²

Thought should be given to videotaping street encounters as well. While we recognize such stops are of a different nature than vehicle stops, the heavy use of patrol cars in making these stops could permit incorporation of video into the procedure as for highway stops. In addition, the technology exists for officers to wear video recording devices.⁶³ We acknowledge that there are operational issues to address, but believe a limited pilot project to test this procedure may be useful to the Department for evidentiary purposes and as a teaching tool. We believe official videotaping is particularly appropriate given the ease with which the public can and does videotape these encounters.

- *Provide Additional Oversight of NYPD*

The pattern of stop-and-frisk policing has extended for over a decade and, despite recent changes by the NYPD, we remain concerned by the large numbers of people stopped who are found to have done nothing wrong, and the racial disparity of stop-and-frisk practices. Similar concerns were raised in the 1990's, and the U.S. Commission on Civil Rights, in its August, 2000 report, recommended that there be established "an independent monitor to monitor the police in New York City..."⁶⁴ No such monitor was established at the time and, although the NYPD interacts with many law enforcement agencies, there is no specific monitor to review the workings of the NYPD. We believe this recommendation remains valid today, and even more so since the NYPD has taken on increased surveillance responsibilities – apparently unique among local police departments – in the aftermath of the September 11th attacks.

Two agencies have been established in the past 20 years that review police operations, the Civilian Complaint Review Board and the Commission to Combat Police Corruption. But both have limited responsibilities and cannot provide the extensive oversight and reporting capability of an overall monitor of the NYPD.⁶⁵

We note there is proposed City Council legislation to establish an inspector general for the NYPD.⁶⁶ There are models for establishing inspector general or other departmental monitoring entities at the local, state and national levels. While we are not endorsing a particular approach in this report, we believe such a monitor would serve the important role of enhancing public confidence in the City's police force.

The use of an inspector general or other monitor is common in the federal government, as over 70 agencies have inspector general's, including the Departments of Defense, Justice and Homeland Security, as well as at the state level. There is thus much experience to guide implementation. An inspector general or other monitor should have no authority to implement policy or discipline. However, such a monitor should have independent stature and should have reporting responsibilities to the Mayor and City Council and to the public, as well as to the NYPD.

2. Continue to Strengthen Relationships with and Understanding of LGBTQ Citizens and Increase the Number of LGBTQ Officers in the Ranks

The NYPD must continue to build a positive relationship with LGBTQ individuals and communities and integrate LGBTQ individuals into its ranks. LGBTQ individuals and

communities should feel safe from police abuse, misconduct, harassment and unlawful stops and frisks, so that they can openly express their gender and sexuality. In order to accomplish these goals, the City Bar urges the next administration to continue the NYPD LGBT Advisory Panel currently in place, and to work to ensure full implementation of the June 2012 NYPD Patrol Guide revision clarifying that discrimination against and harassment of transgender and gender nonconforming individuals is prohibited and that such individuals must be treated with respect if detained.

Similar to the problem of profiling, certain LGBTQ individuals have reported being arrested or detained for prostitution simply based on their possession of condoms. Such arrests have negative personal safety and public health consequences, providing a disincentive for individuals who may be at high-risk from using protection when engaging in sex. The Committee urges the next administration to support State and local legislative initiatives to prohibit police and prosecutors from using condom possession as evidence of prostitution and related offenses; and to issue written and verbal instructions to officers to cease the confiscation of condoms from suspected sex workers or anyone else, and discipline those who do so.

3. Enable Tracking and Monitoring of Lawsuits Against the NYPD

In Fiscal Year 2010, the City paid out \$137.3 million in settlements and judgments for claims against police officers.⁶⁷ In Fiscal Year 2011, the total soared to \$185.6 million.⁶⁸ In a single year, tort claims against the NYPD – an overwhelming majority of which consist of claims for civil rights violations – increased by an astounding 35%.⁶⁹

Despite the huge sums paid out to victims, these awards seem to have failed to deter the very police misconduct responsible for precipitating them. To the contrary, the dramatic increase in the sum the City has had to pay each year as a consequence clamors for reform. In 2000, we released a report that addressed this very issue: “The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change.”⁷⁰

Our present purpose is to revisit one of that report’s more modest proposals: implementing and maintaining a “Civil Right Lawsuit Database.” The NYPD should establish and maintain a database for all civil rights lawsuits that plaintiffs file against its officers. The system should assure that the New York City Law Department, whose attorneys generally defend these claims, report each lawsuit to the NYPD, which would, in turn, enter each suit into the Civil Rights Lawsuit Database. The tracking and reporting of these cases would yield immediate benefits: (1) allowing the NYPD to identify those officers with a possible propensity for violating and/or disregarding New Yorkers’ civil rights; (2) notifying and deterring repeat offenders by marking their personnel files; (3) assisting the NYPD in unearthing practices among officers or department-wide policies that precipitate recurring misconduct; and in the long term, (4) saving the City millions of dollars.

Tracking allegations of police misconduct has proven effective at curbing abuses and forestalling future suits. For instance, when the Los Angeles County Sheriff’s Department began tracking lawsuit filed against its deputies in the aftermath of the Rodney King assault, recidivism

among offending deputy sheriffs plummeted.⁷¹ The precipitous drop saved Los Angeles County \$30 million from 1992 to 1996.⁷²

By tracking and monitoring claims against police officers, the NYPD can identify problem officers, discern patterns of misconduct, and take corrective action accordingly. Such benefits not only promise to reduce the fiscal costs lawsuits exact but also to bolster the public's confidence and trust in the NYPD.

C. Review Department of Corrections Policies

1. Further Restrict the City's Collaboration on ICE Detainers

In recent years, New Yorkers have suffered economic and social harms because of the City's collaboration with U.S. Immigration and Customs Enforcement (ICE) by holding immigrant New Yorkers subject to ICE detainers. This collaboration has cost the City millions of dollars, as individuals with detainers are held in City jails for an average of 73 days longer, including those with a valid claim to U.S. citizenship. City compliance with ICE detainers also undermines basic principles of fairness and due process, erodes community trust, raises concerns of racial profiling, interferes with the workings of the criminal justice system, endangers New York's large, vital immigrant community, and hampers public safety. In May 2012, ICE expanded its use of detainers in the City under the federal "Secure Communities" program.⁷³ As a result, ICE detainers are now issued earlier in the criminal justice process, including at bookings and arraignments, to hold individuals otherwise subject to release.

We applaud the City Council and the Mayor for taking on this important issue and enacting recent legislation to limit the New York City Department of Correction's (DOC) and NYPD's collaboration with ICE in our City. Moreover, based on our collective view of the scope of the problems posed by the current ICE detainer policy, we would support even more robust measures to limit this collaboration in light of the harm it causes New York immigrants and the criminal justice system as a whole. Those harms include the following: (1) ICE detainees are routinely sent far from the City and forced to defend removal charges without counsel, evidence, or witnesses. Consequently, they suffer unfavorable outcomes in their deportation cases at a much higher rate than noncitizens who are released and represented, and cannot participate in alternatives-to-incarceration programs; (2) Threat of automatic detainer and fear of deportation chill crime reporting and undermine trust between the police and immigrant communities, thereby compromising safety throughout the City; (3) In domestic violence cases, cross-arrests and cross-orders of protection are common, and vindictive false reporting can easily ensnare a victim. Because current law permits ICE detainers for people with prior assault or contempt charges, victims of domestic violence may be chilled from reporting crimes because of the threats of automatic detainer and deportation; (4) Current law allows ICE detainers for individuals whose names appear in databases of known gang-members or possible terrorists. Because information in these databases is often faulty, this raises serious civil liberties concerns.

This issue is likely to continue to be of critical importance to future City officeholders, and we urge the next Mayor to continue to protect the rights of this City's vital immigrant population.

2. Improve Mental Health Services and Medical Care for People in New York City's Criminal Justice System

A recent study by the Justice Center of the Council of State Governments documents the increasing overrepresentation of people with mental health conditions in our jails.⁷⁴ While one-quarter of City jail detainees were identified as people with mental health conditions in 2005, that figure grew in 2011 to fully one-third of the jail population. Forty percent of women in the jails have mental health needs. The Justice Center study also found that incarcerated people with mental health conditions had a much longer average length of stay (112 days) compared to only 60 days for people without mental health conditions. This situation is both harmful to detainees with mental health conditions and costly to DOC.

Mayor Bloomberg appointed a task force in 2011 to assess this situation and to recommend measures that would (1) reduce the number of people with mental health conditions in the criminal justice system, and (2) improve the quality and coordination of their care in order to avoid criminal justice intervention and expedite their return to the community for appropriate treatment. Based upon the work of the task force, the Mayor announced an initiative in December 2012 to create court-based intervention and resource teams in each borough that will collect and relay information on individuals involved in the criminal justice system, perform an assessment of each individual's mental health needs, risk of flight and risk of re-offense, and recommend appropriate judicial responses based upon each individual's risk assessment and mental health needs.

We applaud this initiative and hope it will rationally reduce both the average length of stay for people with mental health conditions and the jail population overall. This plan will require resources and significant coordination among City agencies. It likely will not be fully implemented before the upcoming election, so it is important that the next Mayor be committed to this project in order for it to be successful.

In addition, more can be done to address the needs of people with mental health conditions who are at risk for criminal justice involvement.

Recommendations:

- *Police-based diversion of individuals with mental health conditions:* Across the country, jurisdictions have developed crisis intervention teams (CIT) within their police departments to respond to calls regarding people in psychiatric crisis. Use of these teams frequently leads to fewer arrests of people with mental health conditions, which creates a significant fiscal benefit. Neither the NYPD nor Mayor Bloomberg has adopted the CIT concept. We urge candidates to reconsider NYPD's policies and practices concerning how the police deal with persons in psychiatric crisis.
- *Mental health services in the City jails and enhanced discharge planning:* Both public officials and community advocates have raised concerns about the quality of mental health services in the jails and the adequacy of efforts to link soon-to-be-

released individuals with community-based mental health services. The Justice Center analysis demonstrated that people with mental health needs in the jails often experience greater incidents of violence and are more often placed in solitary confinement, resulting in significantly longer stays than those individuals who do not have a mental health condition. Candidates for office should consider measures to ensure that the release of incarcerated persons requiring mental health services is not unnecessarily delayed, and that appropriate connections to community-based mental health services are made prior to release. Such measures are likely to result in net savings to the City, because the DOC will have to devote fewer resources to mental health care and to the challenge of maintaining custody of people with mental health conditions.

- *Implementation of the Brad H settlement:* This settlement agreement entitles individuals who have received mental health treatment in the City jails to a discharge summary that explains the individual's mental health diagnosis, what services are needed, and the plan that has been set up while the person is still in jail to make sure that the patient can get those services when he or she is released. Future City officeholders must ensure that there are sufficient community-based mental health resources available to provide services to those individuals being diverted from the criminal justice system and those individuals who have been incarcerated in the City jails, but who are now returning to their communities for care.

3. Prevent Sexual Abuse of LGBTQ Inmates

As various reports and litigation have confirmed, LGBTQ individuals in the City's detention centers suffer sexual abuse at alarming rates – both at the hands of fellow inmates and at the hands of correctional employees. The problem of sexual abuse in correctional facilities is not unique to the City. To address the problem, Congress enacted the Prison Rape Elimination Act (PREA) in 2003, P.L. 108-79, and, in May 2012, the U.S. Department of Justice (DOJ) promulgated standards to detect, prevent, reduce and punish sexual abuse in prisons and jails, lockups, community confinement facilities, and juvenile detention centers (hereinafter “jails”). The City is mandated to comply with these standards, which recognize the particular dangers to LGBTQ detainees.

Recommendations:

- *Develop compliance protocols that meet and go beyond DOJ minimums, so as to maximize dignity and equality for all detained in City jails.* Responsibility for compliance should be vested in coordinators at each institution. These coordinators should be charged with providing a meaningful measurement of reform success or failure; reporting these observations on a regular basis to their superiors and to their fellow employees at their host institution; and assuring that existing protocols are administered more effectively, tweaked as needed, or replaced by new practices altogether. Data and results should be made publicly available in order to ensure accountability. We urge the next Mayor to take an early and strong position on the appointment of effective standards coordinators.

- *Ensure DOC provides effective staff training.* A key piece to eliminating sexual abuse in the City's jails is effective staff training. Detainees must be able to communicate freely with correctional staff as to the sexual abuse risks and sexual harassment they face. Staff members should feel comfortable reporting concerns about sexual abuse and sexual harassment up the chain of command. Communications training should include an LGBTQ-specific module so that staff must understand the particular risks faced by LGBTQ inmates and receive training on how to encourage open communication with this population through sensitive and respectful inquiries and reactions at the moment of intake and throughout detention.
- *Revisit the City's policies on housing for transgender and other non-gender-conforming detainees.* DOC currently only considers a detainee's genital sex in making prisoner placement. DOC must develop a protocol that considers gender expression – both as a matter of respect for detainees, and as a matter of securing their safety. PREA and the DOJ standards obligate DOC and other City agencies to make individualized sexual-abuse risk assessments in making placements, as well as to make ongoing situation-specific accommodation upon learning of the risk of sexual abuse.

D. Champion Policies that will Reduce Recidivism and Address Reentry Issues

Alternatives to Incarceration (ATI) and reentry programs can significantly reduce recidivism among people with criminal convictions. According to the 2012 ATI/Reentry Coalition Services Report, fewer than 20% of participants in an ATI or reentry program have a new criminal conviction within two years – a significantly lower percentage than non-participants – and these programs save the City and State over \$100 million annually on the costs of incarceration, hospitals, emergency rooms and homeless shelters.⁷⁵

Recommendations:

- *Increase funding and support development of alternatives to incarceration.* Incarceration should be reserved to punish the most serious crimes. Many people commit crimes to support or further a drug or alcohol habit: for some, this habit results from or is accompanied by mental illness. Community placement and supervision that includes a combination of sanctions and access to treatment and other services, especially for individuals who have an addiction or mental illness, have proven successful. New York City should pursue these alternatives – which are generally less costly than incarceration – that will help ensure more effective and just outcomes.
- *Support and fund programs that connect people to stable employment starting with education and job training while in jail.*
- *Eliminate unfair bars to public housing.* U.S. Department of Housing and Urban Development (HUD) Secretary Shaun Donovan has encouraged public housing

authorities to eliminate overbroad and unfair HUD regulations that permit and even encourage public housing authorities to reject applicants with criminal records and their families from project housing and Section 8 rental assistance. NYCHA should engage in an individual assessment of each applicant based on relevant factors: (1) seriousness and nature of the criminal conviction; (2) relevance of that conviction to the tenancy; (3) length of time that has passed since the conviction; and (4) evidence of rehabilitation.

E. Strengthen the City's Commitment to Punishing the Perpetrators of Human Trafficking and Provide Supportive Services to its Victims

We recommend that the next Mayor strengthen the City's commitment to punishing the perpetrators of human trafficking and providing supportive services to trafficking victims. Human trafficking is a form of modern-day slavery where people profit from the control and exploitation of others. Women and girls are trafficked into many different industries, often compelled through sexual, physical and/or psychological violence. The City Bar advocates for the end of all human trafficking, including both labor and sex trafficking. The following statistics illustrate the scope of the problem:

- At least 20.9 million adults and children are bought and sold worldwide into commercial sexual servitude, forced labor and bonded labor.⁷⁶
- Almost six in ten identified trafficking survivors were trafficked for sexual exploitation.⁷⁷
- Identified cases of labor trafficking has doubled in the last four years.⁷⁸

As human trafficking occurs domestically as well as across international borders, victims of trafficking – both U.S. citizens and foreign-born nationals – are especially prevalent in New York City. While the number of trafficking victims in New York City is hard to determine because of its underground nature, some statistics that show the prevalence of trafficking include:

- Lifeway Network and the Department of Sociology at Hofstra University found that private service providers had interacted with at least 11,268 survivors of human trafficking between the years 2000 to 2010 in the New York City Metropolitan area.⁷⁹
- The Office of Child and Family Services estimates that 2,200 children are trafficked annually in New York City.⁸⁰

New York State has one of the most comprehensive trafficking laws, which makes both sex and labor trafficking a felony (Class B felony for sex trafficking and Class D felony for labor trafficking). Yet despite this comprehensive law, New York City has a very low prosecution rate for trafficking. Only five arrests for labor trafficking were made in New York City in 2012.⁸¹ While New York City made 50 arrests for sex trafficking in 2012, only five of those arrests resulted in a conviction.⁸²

Recommendations:

- *Work with the police commissioner to prioritize the investigation and arrest of both sex and labor traffickers by the NYPD.* Arrests for traffickers remain remarkably low in New York City compared to the estimated number of individuals who are trafficked here. The NYPD must make the investigation and arrest of traffickers a priority in order to increase the arrest and prosecution rates. The police department should address this issue by conducting trainings that would help officers identify trafficking victims in their communities and also instruct officers in better methods for investigating and targeting traffickers who are higher up in the criminal enterprise. As police are usually trafficking victims' first contact with the criminal justice system, police should also be sensitized to working with them to ensure that the victims will help prosecute their traffickers instead of being afraid to talk to government representatives.
- *Recommend that every district attorney's office create a human trafficking unit.* While several district attorney's offices have designated attorneys to work on human trafficking cases, not all offices have dedicated human trafficking units. Human trafficking cases are similar to drug trafficking cases, which means they are incredibly complex and often involve months of investigation and coordinated efforts between the police and district attorney's offices. More traffickers would be arrested and prosecuted if each district attorney's office had a unit dedicated to prosecuting human trafficking cases.
- *Provide more resources for trafficking victims.* Many organizations that work with trafficking victims find that their biggest hurdle is the lack of available resources needed to help victims get away from their traffickers. Many trafficking victims are homeless and severely traumatized. The victims need a safe house where they can live and receive psychological treatment that is far enough away from their traffickers that they do not feel either pressured or threatened to return to them. Trafficking organizations need more funding to secure these safe houses and treatments for victims.
- *Expand the reach of the Family Justice Center.* The Family Justice Center Initiative of the Mayor's Office to Combat Domestic Violence is a great resource for victims of domestic violence in New York City. Currently, however, the office serves few human trafficking victims. In order to expand the reach of the Family Justice Center, staff members with trafficking expertise should be hired and the goals of the Family Justice Center should be broadened to allow human trafficking victims to access these wonderful resources.

F. Continue to Address the Scourge of Domestic Violence

Domestic violence continues to be a longstanding national, state and New York City problem and the number one cause of injury to women in the United States. Yet the

consequences of domestic violence reverberate far beyond the individual victim to the survivor's children, who are repeatedly traumatized by the violence in their homes, and to society at large, which shoulders the cost of medical bills, lost days of work and social services. For these reasons, we believe it is important that the next administration continues to tackle issues related to domestic violence.

While much reform for victims of domestic violence has taken place at the federal and state levels, these initiatives are given real meaning only when implemented at the local level. Some of the most effective reforms have come from action at the mayoral level. New York City's Mayor's Office to Combat Domestic Violence remains at the forefront of our City's efforts to provide effective protection for victims of domestic violence. The Family Justice Centers established through the Mayor's Office serve as a model for how a metropolitan center can respond to the needs of domestic violence victims. These centers provide, in a single location, access to services from a myriad of providers who can help a victim address all of the needs that must be met in order for her to achieve safety. In conjunction with dedicated Integration Domestic Violence court parts, victims have more resources than ever before.

These strides are the result of mayoral leadership. Outspoken mayoral commitment is among the greatest contributions a Mayor can bring to this effort. For example, at former Mayor Giuliani's initiative, in 1994 the NYPD adopted a comprehensive police policy, Strategy No. 4, that among other things required arrest when there was probable cause that a crime of domestic violence had been committed (this policy has been continued under Mayor Bloomberg). Shortly after that, the State Legislature passed the Family Protection Domestic Violence Intervention Act. At the center of this groundbreaking law was a well crafted mandatory arrest provision, a key component of domestic violence prevention.

The most effective step the next Mayor can take is to adopt a zero-tolerance policy towards domestic violence. The next Mayor should insist upon a close working relationship among the NYPD, the District Attorneys, the Administration for Children's Services, the Department of Housing, the Health and Hospitals Corporation, DOC, DOE and the local courts, as well as all other agencies that regularly interact with families. There must be clearly articulated common goals concerning domestic violence, and identification of the responsibility and role of each agency in realizing those goals. Awareness and educated response can go far toward eradication.

1. Promote Collaboration on U-Visa Certification Policies

The City Bar urges the next Mayor to strengthen partnerships between agencies that certify U-visas and immigrant crime victim advocates. The U-visa is a critical form of immigration relief for immigrant women, children and survivors of domestic violence, sexual assault, human trafficking and other forms of violence. Its purpose is to give victims of certain crimes temporary legal status and work eligibility in the United States for up to four years. The U-visa certification is a mandatory piece of evidence that the immigrant victim must include in her U-visa application.⁸³ The certification verifies that the immigrant has been a victim and that she has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of criminal activity.⁸⁴

In New York, agencies and officials authorized to sign U-visa certifications include the District Attorneys, Family Court and Criminal Court judges, the Administration for Children Services and the NYPD. While certain agencies have significantly improved their U-Visa certification process, across all agencies there is a lack of clarity when it comes to how and where to obtain the certification, and whether it will be signed. This can result in long delays before learning the status of necessary certifications. These inconsistencies and delays can create mounting problems for immigrant domestic violence victims who fear being deported and separated from their families and communities. The Mayor's Office can play a critical leadership role in encouraging and providing opportunities for stakeholders to come together and discuss what is working, what isn't working, and whether model policies should be created.

By providing certifying agencies with information about the U-visa certification process and tools to implement policies, misinformation about certification can be clarified and the process can be simplified and expedited. We urge the Mayor to use his or her leadership to encourage and support law enforcement and district attorney offices in this critical area.

2. Protect Domestic Violence Victims' Access to Public Housing

According to the U.S. Department of Housing and Urban Development, domestic violence is the third leading cause of homelessness among families.⁸⁵ To escape abuse, many domestic violence victims are forced to leave their homes and to struggle without the financial assistance previously provided by their abusers. In the midst of their crisis, they must secure new housing for themselves and their children. In a city where housing is scarce and expensive, this is no easy task. When survivors are unable to find or afford new housing they may choose to return to the violence, or else risk becoming homeless. Plus, the housing crisis in New York has been exacerbated by Superstorm Sandy; the City faces a housing crisis similar in scale to New Orleans after Hurricane Katrina⁸⁶

In order to provide safety for domestic violence victims amidst this housing crisis, the next Mayor should support a change in policy which will establish alternative requirements for domestic violence victims to qualify for N-1 Priority Access to NYCHA housing accommodations. NYCHA currently provides priority placement for domestic violence victims able to provide specific documentation showing that they suffered more than one violent act and reported those acts through official channels. The documentation requirements are specific as to content, nature, and timeliness. For example, a victim will qualify for priority if she has: (1) a criminal court order of protection documenting physical violence or threat of physical violence that occurred in the past 12 months; (2) a domestic incident report documenting violence within the past 24 months with the same perpetrator but a different physical incident; and (3) a letter from a social services provider.

Such strict requirements leave many victims without an avenue for relief. For example, a victim of domestic violence subject to frequent physical abuse for a period of ten years, who made one police report in the current year and one three years ago, but who did not file for an Order of Protection, would not be eligible for NYCHA domestic violence priority status. Many victims do not report the abuse to law enforcement, for fear of increased violence or uncertainty

as to government outcomes. This is especially true within immigrant and minority communities. The result is that victims are denied safe and secure housing away from violence. Many return to the violence, while others linger in the shelter system. This is socially and financially costly to our society.

A modest change in policy would suffice, one that allowed victims to qualify for priority placement by submitting an application and two sworn statements: one from the applicant and one from a qualified domestic violence service provider. This would allow victims who choose not to seek relief through the legal system nevertheless to leave the violence without the threat of homelessness.

In addition, the housing crisis does not bode well for domestic violence victims with pets in their homes. Studies of domestic violence victims seeking shelter services shows that up to 48% of them report that they delayed leaving a dangerous situation because they feared for their pets' safety.⁸⁷ Pets have been found to be a source of comfort and stability to children in domestic violence households. Animals are often used to victimize children and the family, and domestic violence victims may stay in an abusive environment to protect the animal, if they are not able to move to safe housing with the animal.⁸⁸ Domestic violence victims and their children should not be deprived of affordable housing because they have a pet or pets.

We urge the next Mayor to take a leadership role with NYCHA and to support City and/or State legislation that improves housing access for all domestic violence victims.

3. Create Supervised Visitation Facilities

Currently, families facing domestic violence have a dearth of services available in New York City to monitor safe visitation between the abusive parent and the children. As a result, Family Courts increasingly allow unsupervised visitation between a child and an abusive parent. Faced with this crisis, the City should spearhead creation of standardized, professional, and court-responsive supervised visitation centers in each borough.

Visitation services include monitored exchange programs and supervised visitation programs, both of which can encourage healthy parent-child relationships while ensuring the safety of adults and children. Monitored exchange programs provide a safe and secure location for dropping off and picking up children before and after visits. This service can, in many cases, decrease the chance of an angry exchange or the likelihood of inappropriate behavior in front of children. In turn, fewer angry moments between parents and around children help to preserve and promote healthy relationships for the future.

The current inability to monitor a family in a safe environment over a prolonged period of time undercuts all other reforms in the court and in City agencies. The Family Justice Centers that are already flourishing citywide might form an ideal partner for such a venture. While supervised visitation centers could not be physically located in the Justice Centers, they provide a centralized center for domestic violence resources and could provide the expert oversight needed for these centers. When safe, long-term resolution of family matters can be achieved

through front-loading of resources, the savings achieved in reduced re-arrests, prosecutions and Administration for Children's Services interventions offset the expense.

IV. ACCESS TO JUSTICE

A. Ensure Quality Representation in Criminal Cases

New York City has a responsibility under law to provide funding such that criminal defendants without means who are constitutionally entitled to be represented by counsel should receive high-quality representation. New York City has many providers of these services with proven track records, and also has a panel of lawyers available for court appointments under Article 18-b of the County Law. It is essential that the quality of this representation be maintained. Fifty years after the Supreme Court established the right to counsel in *Gideon v. Wainwright*, we must continue to make sure that is not an empty promise.

B. Support Initiatives to Decrease the Number of Unrepresented Litigants in Civil Cases

The City Bar recommends that the next Mayor support programs and initiatives to facilitate greater access to justice in civil cases for New Yorkers of low and moderate means. Funding for legal services, though significantly increased by the State in recent years, is still far less than necessary to provide services to individuals in desperate need of assistance to stave off eviction, obtain benefits they are entitled to, address a serious family issue or defend and pursue other rights. This problem is being exacerbated by federal funding cuts and reallocation of federal Legal Services Corporation funding to faster growing areas of the country will reduce the City's share by as much as 30%. City government has been providing assistance in some areas, notably with regard to the needs of immigrants. The incoming Mayor must be attuned to the legal needs of the City's poverty population, and understand that increasing funding for legal services generates economic benefits that exceed the costs. Legal services funds spent to keep families intact and in their homes not only saves funds that the City would otherwise expend to provide shelter and other services, but also better equips that family to contribute to the City's economy. In addition, New York City residents who have legal assistance are better able to claim federal and state benefits for which they are eligible, thus directly raising income levels within the City.⁸⁹

Even with increased funding, many low and moderate income New Yorkers will be forced to navigate their legal issues without legal representation. Currently, virtually all tenants in the City's Housing Courts, and virtually all consumer debtors in the City's Civil Courts, represent themselves. Statewide, over two million New Yorkers appeared in court unrepresented in 2010 and 2011.⁹⁰ Unrepresented litigants generally are unprepared to represent themselves competently, have worse outcomes and strain the resources of our over-burdened courts and agencies. Many nonprofit organizations and bar associations, including the City Bar, recruit and train volunteers to provide a full range of assistance, from direct representation, to running legal clinics, to staffing assistance tables in the City's courthouses. The next administration should foster these volunteer legal assistance programs, such as the coordinated volunteer legal work

that is being provided to victims of Superstorm Sandy. There are other opportunities to facilitate such assistance,

One example of where such assistance would be useful is in the matrimonial parts of the Supreme Court, where a significant percentage of litigants, who are unable to afford counsel, represent themselves throughout their often difficult and contentious divorce proceedings. Where represented parties may rely on counsel to competently handle matters ranging from the preparation of pleadings to trying cases, the unrepresented are left to fumble through the process. As self-represented parties are often unfamiliar with the litigation process, judges and court personnel are often left to try to understand what the unrepresented are trying to accomplish through filings and during appearances, which depletes the parts' limited resources and prevents the expeditious resolution of cases.

The Office of the Mayor could utilize available resources to establish, in each borough, a weekly panel of volunteer matrimonial attorneys to assist self-represented litigants with discrete issues, such as preparing summonses, complaints, orders to show cause, affidavits and net worth statements, and to answer basic questions regarding procedure and appearances before the matrimonial parts. The volunteer attorneys would undertake no obligation to handle the self-represented litigants' cases moving forward, but only would provide advice within the confines of the panel, and give unrepresented litigants the opportunity to receive guidance prior to appearing in court.

C. Maintain a System of Independent Judicial Appointments Based on Merit

The Mayor has the important responsibility of appointing judges to the City's Family and Criminal Courts, and interim appointments to the City's Civil Courts. These courts are extremely busy, and their decisions vitally affect the lives of hundreds of thousands of New Yorkers each year. It is essential that appointments to these courts be on the basis of merit, devoid of political considerations. It is equally important that the judges so appointed operate with complete judicial independence. It therefore is essential that the next Mayor utilize a careful merit selection process and refrain from attempting to condition appointments or reappointments based on his or her disagreements with judge's rulings. Fortunately, there is strong precedent for this. Mayor Bloomberg has continued the procedure of his predecessors in establishing the Mayor's Advisory Committee on the Judiciary to evaluate and recommend candidates for appointment, and in selecting only candidates recommended by the Commission. In addition, Mayor Bloomberg followed the practice of refusing to appoint anyone found "Not Approved" by the New York City Bar Association's Judiciary Committee. That committee, which works with the county bar associations in each of the City's five boroughs, performs its own independent evaluation of candidates recommended by the Mayor's Committee. This process has worked well, and has resulted in strong, diverse appointments to the City's courts. We urge that the mayoral candidates pledge to continue this procedure. We also respect that Mayor Bloomberg has not used his appointing authority to attempt to exercise undue influence on his judicial appointees. That is essential to maintain public confidence in the judiciary as affair and impartial arbiter of disputes. It is vital that the next Mayor do the same.

V. CONSUMER PROTECTION

A. Enhance and Expand Consumer Protection Efforts in Troubled Sectors

Year in, year out, certain sectors generate the leading number of consumer complaints to the New York City Department of Consumer Affairs (DCA). These industries include used car dealers, debt collectors, and debt relief companies. Litigants defending themselves in Civil Court cases routinely experiences scams, predatory practices, and abuses by businesses involved in these sectors. Enhanced and expanded efforts – involving both stepped up enforcement and strengthened protections – could help New Yorkers, particularly vulnerable consumers. Moreover, stepped up consumer protection enforcement could also reduce improper filings in the Civil Court, thereby reducing the strain on limited court resources.

1. Promote Fair Debt Collection Practices

In the wake of the Great Recession, many New Yorkers have fallen victim to the practices of debt collectors. These practices have made life even more burdensome for New York families, particularly middle-class and underprivileged citizens, who continue to suffer from the effects of the economic downturn and Superstorm Sandy.

In 2011, the Federal Trade Commission identified debt collection as the second most common consumer complaint in New York State.⁹¹ Since the recent recession, some businesses have sought to account for lost profits by pursuing old, even time-barred debts (sometimes without notifying consumers that the debt is past the statute of limitations for court actions). Furthermore, creditors have sold such debts to collection agencies for pennies on the dollar. However, some credit card companies and debt collector agencies have used “robo-signing” and other shortcut methods, haphazardly pursuing debtors without proper documentation and using illegal practices to collect these monies.

Several fraudulent practices have led to consumer abuse. The practice of “sewer service,” which was the subject of a 2009 class action, entails filing a false affidavit of service in court, attesting that a debtor has been given notice of the proceeding.⁹² Creditors use this fraud to deceive courts into believing that debtors were served with papers notifying them to appear in court when in fact no such notice was received. In 2010 New York City⁹³ enacted legislation that placed tougher restrictions on process servers.⁹⁴ Although New York City’s new law and regulations require process servers and agencies to maintain documentation (including GPS data) that can demonstrate that a consumer was not properly served, documents filed for default judgment are often reviewed by court clerks as opposed to judges.⁹⁵

Furthermore, because of the lack of legal counsel, fear of the legal process, and/or the logistical difficulties of appearing in court, many consumers do not appear in court. Default judgments are thus returned against them, which can lead to garnishment of wages and to other hardships. When consumers do contest collection suits, courts often find that the creditors bringing suit lack proper evidence to collect against the alleged “debtors.” One New York City judge, Noach Dear, told The New York Times that 90% of debt collection lawsuits brought before him by credit card companies failed due to lack of evidence. Frequently, creditors attempt

to file affidavits that appeared to be fraudulent, and produce witnesses who could only provide vague or generic allegations.⁹⁶

Finally, many consumers try to avoid debt collectors and alleviate their debt by enrolling in what may turn out to be deceptive debt settlement services, which may leave these consumers in no better position than before, and sometimes even worse off due to fees and charges collected by debt settlement providers, who do not provide the debt settlement services promised.⁹⁷

Recommendations:

- Study current regulations for process service and evaluate how courts and advocates can use GPS data and other reports that servers and agencies are required to maintain, instead of merely relying on sworn affidavits. For example, require process servers to give detailed accounts of their efforts to serve process, and to give physical descriptions of any individual served with a complaint. Ensure that DCA continues to make debt collection oversight a top priority. Increase civil and criminal penalties for fraudulent service of affidavits. Advocate for laws to hold debt collector agencies accountable for illegal process service, including automatic dismissal of action with prejudice, regardless of whether service was outsourced to another company.
- Support policies that require collection agencies to communicate these options to the debtor when the debtor is served with notice of a civil action. Also, advocate for tougher laws and enforce fines for agencies that bring frivolous suits against consumers, or without proper documentary evidence. Advocate for laws that require companies to compensate consumers for the inconvenience and disruption of having to defend against frivolous lawsuits.

2. Address the Burden of Student Loans

Student loans are the primary vehicle through which students attend college. Today, *\$1 trillion* of student loan debt exists nationwide.⁹⁸ With the many universities located in New York City, it is essential that students who attend such institutions understand the financial burdens that they are undertaking.

Those who wish to pursue a higher education find that the cost of attending college is growing every year. For many students, the easiest and often only option in funding their education is through borrowing. With the federal government offering up to \$18,500 per student per year in subsidized and unsubsidized loans, and then transferring these loans to various third party loan servicers, the trail of loan ownership can become confusing.

Recommendations:

- In New York City, the Office of Financial Empowerment within DCA runs at least 20 Financial Empowerment Centers (Centers) throughout New York City which offers free counseling. These Centers should be continued and even expanded in number and location, budget permitting.

- In addition to the Centers' other essential duties, all university and graduate students who matriculate to colleges in New York City (as well as college-bound New York City high school students and their parents or guardians) and who apply for or are receiving student loans, should be encouraged to attend a class or receive counseling that is available at the Centers to understand their potential student loan debt. Students need to be educated on the financial responsibilities that such loan burdens will demand, as well as the potential for rising interest rates and their effect on each individual's debt. It is important that all students who take on such debt understand the loan repayments that will be required of them, in conjunction with their potential earning power based on their prospective major.

3. Review Existing Cable/Internet Provider Franchise Agreements

Telecommunication issues affect all New York City residents. With ever-increasing technological advances in a deregulated industry comes a need to ensure that New Yorkers are given sufficient and clear options when choosing a provider, so that consumers can make informed purchasing decisions. Currently, several telecommunications companies operate within the five boroughs, but not all of these companies' services are available to all New Yorkers. Specifically, consumer options are broad in the market for telephone services, yet similar options in the cable and internet market remain limited, for the following reasons.

Telecommunications issues are within the jurisdiction of New York City's Department of Information Technology and Telecommunications (DOITT). DOITT negotiates Franchise Agreements with the major cable and telecommunications providers. While the DOITT states that it is protecting consumers,⁹⁹ the effect of these Franchise Agreements between New York City and the telecommunications companies (Verizon, Time Warner, and Cablevision) has been essentially to partition the five boroughs. While the financial benefits to New York City are generous,¹⁰⁰ there is a question of whether the agreements are providing a "fair and vibrant marketplace" for consumers. A map of the results of these Franchise Agreements showing the coverage areas over the five boroughs is included as Appendix A.¹⁰¹

These telecommunications companies have agreed to provide more WiFi access and to create more than 40 public computer centers.¹⁰² However, the telecommunications options to household consumers, in terms of which cable and internet companies from which to choose, will still remain restricted by these Franchise Agreements. The aforesaid partition ensures no choice between Time Warner and Cablevision in parts of New York City. However, the Franchise Agreement with Verizon FiOS, signed in 2008, did schedule Verizon to cover 54% of premises throughout New York City by the end of 2010 and all New York City premises by the end of June 2014, an obligation Verizon recently stated it would meet.¹⁰³

Recommendations:

- Franchise Agreements concerning the telecommunications sector should be reviewed by DCA for potential impacts on the individual or household consumer, and the review findings should be published by both DCA and DOITT on their websites. The

existing franchise agreements should be posted on both websites immediately, allowing consumers to bypass the Freedom of Information Law process. The Franchise Agreements currently in effect with the three major cable companies expire in 2020.¹⁰⁴ While there are several customer service-related provisions in the current Agreements,¹⁰⁵ reviews by both DCA and DOITT will likely ensure the fairest possible Franchise Agreements for the future.

- DCA should periodically review changes in consumer internet or cable service and publish an electronic newsletter and use social media on how company-mandated changes will affect household consumers. They should fully explain which state and local agencies serve as appropriate conduits for resolving service availability or charging issues.¹⁰⁶
- Currently, Local Law 40 of 2011 requires City agencies to post certain memoranda of understanding (MOUs) and similar agreements entered into among governmental agencies. We believe there should be a memorandum of understanding between DOITT and DCA regarding the consumer protection elements of telecommunications-related Franchise Agreements.¹⁰⁷ We have not seen evidence of such an MOU posted.¹⁰⁸ We believe that such an MOU, which should include DCA Franchise Agreement reviews, will result in better negotiated agreements and ultimately allow consumers to choose freely their preferred telecommunications company.
- Both DOITT and DCA should engage in a formal Franchise Agreement renegotiation process and hold periodic public forums whereby consumers would be able to weigh in on practices that, under federal law¹⁰⁹, would allow New York City to withdraw from, or possibly amend, an existing Franchise Agreement. The New York State Public Service Commission states on its website that the cable renewal process is generally an informal process that can start as early as 36 months prior to the termination of an existing agreement.¹¹⁰ Engaging in the formal process of creating a public record when the time comes to renegotiate could provide for more consumer-friendly Franchise Agreements, especially since New York City is preempted by federal law from engaging in rate setting.¹¹¹ Periodic public forums would create the requisite record for possible future changes in these agreements, including possibly granting all cable operators five-borough Franchise Agreements.

VI. ELECTION LAW ISSUES

New York City has become infamous for its low voter turnout rates, including in the recent November 2012 election.¹¹² Nonetheless, according to historical trends, most of those who have registered to vote do vote.¹¹³ This strongly suggests that the prerequisite of voter registration in advance of voting is a key barrier to voting turnout.

While the conduct of elections is basically a state function, the City has a role and an interest in assuring that the largest number of eligible voters participate in the all-important process of choosing the City's leaders. The City is responsible for funding the New York City

Board of Elections, and also has significant authority to regulate New York City elections, as it has demonstrated with its nationally-recognized system of public financing of City elections. The City can take and indeed has taken measures to promote voter participation, including developing how City agencies provide voter registration materials (much of which follows the requirement of the federal “Motor Voter” Act) and creating the Voter Assistance Commission, now incorporated within the City’s Campaign Finance Board, to increase voter participation and awareness. The next Mayor can undertake or advocate for important measures to increase electoral participation, and we urge that the Mayor do so.

The City Bar recommends the following actions¹¹⁴ against this backdrop.

A. Establish In-Person Early-Voting

The majority of states allow early voting without voter “excuse” or explanation, but New York limits eligibility to voters with a permitted “excuse.”¹¹⁵ The City should study the feasibility and benefits of early voting from the one prior case in the State where the full electorate of the Village of Port Chester was allowed one week of in-person early voting before a scheduled election date in June 2010 (as part of a consent decree resolving a lawsuit against the Village).

B. Permit No-Excuse Absentee Ballot Applications

Proposals to adopt “no excuse” absentee balloting primarily involve amending the State Constitution, which sets forth absentee voting requirements. However, the State Legislature, on several occasions, worked around the constitutional barrier by allowing “special ballots” that essentially permit absentee voting for reasons beyond those offered by the State Constitution.¹¹⁶ This creates a framework for New York City to extend institution of special ballots to those who simply wish to vote for their city officials by absentee, which should become the regular practice. The City Bar has previously taken the position that revising the City Charter to provide “Special Municipal Election Ballots” would pass muster under the constitutional and case law, and would lead to increasing turnout in municipal elections. The measures by New York’s and New Jersey’s governors¹¹⁷ to accommodate voters displaced or distressed due to Superstorm Sandy are instructive regarding legal powers for avoiding disenfranchising of voters and, tellingly, no claims of “voter fraud” emerged. This is significant because the better practice to plan for contingencies is well in advance, not “the moment Plan A falls through.”¹¹⁸

C. Provide for Same-Day Election Day Registration and Automatic or Online Voter Registration

The law in New York establishes 25 days before an election as the cut-off date to register,¹¹⁹ though “same day registration” in New York City (and alternatively automatic registration) would clearly increase voter turnout.¹²⁰ Although New York State requires a constitutional amendment to enact same day Election Day registration (EDR) for federal and State [non-municipal] elections, a revision of the Charter, for the scope of municipal elections only, can allow *new* registrants to register and vote on Election Day (or primary day).¹²¹ EDR is worth further study weighing logistical and capacity challenges, with a view toward a trial or

pilot program. One constraint on EDR however would be the requirement that same-day registrants vote by affidavit ballot and be subject to self-identification scrutiny.

D. Institute an Instant Run-Off

Candidates for citywide office must win 40% of the primary vote to advance to the general election otherwise the two highest vote getters compete in a run-off election. The runoff serves a valuable purpose of assuring that in multi-candidate primaries, the candidate who emerges has substantial support within her or his party. However, runoff elections are fraught with duplication of a crippling number of tasks only two weeks after the primary election, yet tend to draw especially low turnouts. A simple solution to having the benefit of a runoff without the administrative difficulties is to employ “instant runoffs,” which enable voters to vote their first *and* second choice on the ballot during the primary. If no candidate garners 40% of the first-place votes, the second choice votes of candidates with the lowest vote counts can be re-allocated among the leading candidates to determine a winner. This requires candidates to seek to appeal beyond their base, and rewards candidates with broader support.

E. Pre-Register 16 Year Olds to Vote

The City should introduce a system enabling children, once turning 16, to register to vote if they choose. The registration becomes effective when the new “voter” turns 18 (and after voter information is verified).¹²² Citizens ages 18 to 24 register at the lowest rate of any age group in New York (59% of all eligible voters in age group), and the successful track record of this legislation in other states suggests that pre-registration of students before age 18 in New York City will increase voter participation among the youngest segment of the electorate.¹²³

F. Improve Poll-Worker Training

Filling 36,000 work slots can be daunting, as New York City must each Election Day in staffing poll workers. There are simple steps we recommend that would go far in assisting in this task, for example, expanding the pool of poll-workers by incentivizing students, 17 year olds (permitted by law) and government employees, and offering greater schedule flexibility (such as split shifts in 16 hours Election Day). More funding also should be committed to “professionalize” the training process – making it universal citywide if not statewide, consolidating the trainings and paying poll-workers for going to training.

VII. PROTECTING THE SOCIAL WELFARE AND EQUAL PARTICIPATION OF ALL NEW YORKERS

The next Mayor must focus attention on the City’s responsibility to all of its constituents, including those in need of assistance or special consideration.

A. Ensure Access to Subsistence Benefits for the Neediest New Yorkers

New Yorkers seek out cash assistance to get through difficult times that are often caused by a change of circumstances such as unemployment, the onset of disabling medical and mental

health conditions, domestic violence, homelessness or even the unmet need for child care. They usually have two goals. In the short-term, they seek to obtain and maintain subsistence income so they can keep a roof over their heads or end a period of homelessness and feed their children. In the long-term, they seek a path to a more stable income, whether through acquiring skills and education that will facilitate employment, finding paid employment directly or obtaining a more adequate level of public benefits they may qualify for such as Social Security.

With the advent of welfare reform brought about by the Personal Responsibility and Work Opportunity Reconciliation Act (PRA) of 1996, states have enjoyed increased flexibility in the ways in which cash welfare, known generally in New York as “Cash Assistance,” is administered.¹²⁴ The primary constraint imposed upon the states is the mandate to meet work participation rates imposed by the PRA at the risk of financial penalty for noncompliance.¹²⁵ The ways in which local social services districts, including New York City, meet these goals are largely prescribed by state law. Nevertheless, there are key areas in which the City, under the leadership of the new Mayor and the commissioner of the New York City Human Resources Administration (HRA), has discretion to make choices that will have a positive impact for the poorest New Yorkers and at the same time facilitate the State’s ability to meet the federal mandates. We encourage the candidates to consider carefully the issues and solutions outlined below.

1. Remove Administrative Barriers to Accessing Cash Assistance

It is harder than ever to obtain and maintain cash assistance in New York City. The reality is that our safety net is not accessible to many low income New Yorkers who need it. While the number of individuals who are receiving Food Stamps and Medicaid has increased in response to need,¹²⁶ many of individuals who are living in poverty are denied access to cash assistance and, thus, are unable to pay for rent and utilities and basic necessities.

The sheer number of mandatory eligibility appointments represents a significant barrier to access, particularly to clients who are seeking out cash assistance due to a financial crisis caused by housing instability, domestic violence, sudden loss of a job or the onset of a new medical or mental health condition. In addition, before these individuals can access the support they need, they are required to participate in work activities, usually in the form of a “job search” program operated by a vendor. The program consists of between 26 and 36 required appointments spread over a period of 30 or 45 days, depending on whether the clients have children. Clients engage in these activities for seven hours a day, five days a week.

Although State regulations permit local social services districts to require applicants to participate in work activities, the State does not mandate participation for a set number of hours in a structured program as the City is imposing.¹²⁷ Meanwhile, HRA requires most applicants to engage in a job search and related activities while waiting for applications to be approved for 35 hours a week, despite the fact that this is not required by either State nor federal law. Moreover, a single, unexcused absence may result in the client being denied for public assistance. The primary source of attendance information is what the vendors report to HRA via computer. Errors occur in these attendance reports and HRA has no authority to correct them. In that case, an eligible client is forced to re-start the entire application process over again.

Beyond the number of appointments an applicant must attend, the application process is unnecessarily complex, requiring in-person appointments at various locations. Beginning in early 2000, HRA put into action highly effective outreach campaigns and implemented online enrollment options aimed at increasing access to the federal Supplemental Nutrition Assistance Program (SNAP) and Medicaid. The same procedures could be implemented for Cash Assistance applications.

Recommendations:

- Give applicants the ability to communicate with HRA by phone, fax or mail or via an online interface, for appointments that are not mandated by the State to be conducted in person.
- Eliminate any appointments that are not required by State law, such as HRA's "Bureau of Eligibility and Verification" (fraud detection) appointments, the purpose of which can be realized in other ways.
- Either reduce the number of hours applicants are required to participate in structured "job search activities" so as not to exceed the minimum required of recipients of cash assistance, permit satisfaction of the job search requirement in unstructured settings or dispense with the pre-acceptance mandated job search requirements entirely.
- Require increased transparency and access to vendor attendance reporting policies, which often result in applicants' cases being erroneously rejected, including for allegedly missing just one day of job search.

2. Remove Administrative Barriers to Maintaining Benefits: Sanctions and Resulting Case Closings

While the automation of HRA's appointment attendance and notice issuance system represents an achievement of the current administration in many ways, the system needs to be changed to avoid inordinate harm to clients and to comply with State law. Currently, the system is designed to assume clients did not attend an appointment, and initiates the sanction process automatically unless a worker accurately records attendance. This method of administration is called "autoposting" and has aspects that unfairly penalize recipients of cash assistance. One is the automatic generation of a "failure to report" or "failure to comply" (FTR/FTC) code, unless an HRA staff person affirmatively records the recipient's attendance in the correct computer system. After the FTR/FTC code is automatically generated, a conciliation appointment is automatically generated without any investigation by the agency into whether the alleged non-compliance was "willful", as required by State law.¹²⁸ Although one may resolve the infraction by demonstrating "good cause" at the conciliation, many people do not attend the conciliation appointment because the notice suggests that the appointment is not mandatory and some disabled clients cannot get to the appointment for the same reasons they could not get to the original appointment. The "autoposting" system then enters a finding of "no good cause" against the client.

From that point forward, the only way to avoid a sanction is to request a fair hearing, or self-initiate a conference at which the client can try to persuade the agency that a mistake was made. These fact-finding endeavors often reveal that sanctions were imposed in error. In State administered fair hearings, New York City has a poor track record in defending its initial decisions to sanction. The statistics speak volumes: in 2010, 63% of the time, HRA opted not to continue with a sanction and to resolve issues related to work activities in clients' favor before or at scheduled hearings. In contrast, the withdrawal rate in the rest of the State was about half that, or 29%. Moreover, in that same year, when HRA did proceed with the fair hearing, it won only 10% of the time (compared to a success rate of 49% in the rest of the State). HRA's success rates were similarly low in the two years prior, with an affirmation rate of only 20% in both 2008 and 2009.¹²⁹

Sanctions carry real costs, including loss of assistance for up to six months or more, and loss of momentum towards finding employment or completing an educational degree. Disqualification for lengthy periods of time runs counter to the goal of assisting clients in enhancing their work skills and in moving expeditiously into private, paid employment. The high number of recipients being sanctioned can also make it harder for the State to meet the federally mandated participation rates.

Moreover, HRA policies imposed during the last decade have made it harder to get out of sanction status. HRA has chosen to send many sanctioned recipients to a special center called the "Intensive Case Services Center," also referred to as "Center 71."¹³⁰ Clients from all over the City are sent to Center 71, where they are subject to increased eligibility call-ins and a "demonstrated compliance" program which requires ten consecutive daily appointments for lecturing and make-work activities. Clients who miss a mandatory eligibility appointment have their cases closed. Clients who are assigned to demonstrated compliance who miss any of their appointments are required to start over, continuing the cycle of hardship and leading to more unnecessary appointments, all the while remaining under sanction.

The result of Center 71 system is that many clients referred there simply end up getting their cases closed. These so called eligibility call-ins imposed on sanctioned clients at Center 71, were at one point resulting in the closing of nearly 1,000 cases each month.

Recommendations:

- Re-program autoposting to assume attendance unless a worker indicates non-attendance and eliminate autoposting for disabled clients;
- Come into compliance with State law by also re-programming autoposting with respect to conciliation appointments by requiring HRA to investigate whether an alleged infraction was willful and without good cause even if the client fails to attend conciliation;

- Eliminate appointments not required by law such as mandatory eligibility appointments (e.g., Bureau of Eligibility Verification appointments) at regular Job Centers and at Center 71;
- Cease the “demonstrated compliance program,” and stop transferring persons with sanctions to Center 71;
- Convert Center 71 into a regular Job Center.

B. Ensure Availability of Emergency Food Aid and Provide Greater Access to Affordable and Nutritional Food

As of 2011, half of all households in New York City with an annual income of less than \$25,000 had difficulty affording food.¹³¹ Many of these families are forced to rely on emergency food sources such as soup kitchens and food pantries, which together served more than 1.4 million New York City residents last year.¹³² Nevertheless, New York City has seen an overall decline in the number of food pantries and soup kitchens since the beginning of the Great Recession,¹³³ which has strained already limited resources and led to food shortages and outright denials of service.

In addition, many of the working poor in low-income neighborhoods in New York City have limited access to nutritional and affordable foods. These so-called “food deserts”¹³⁴ are, in turn, associated with a higher incidence of obesity and other public health problems among local residents. Public programs supported by the City, such as the Health Bucks program, Green Cart program, and Healthy Bodegas Initiative, and private programs such as Greenmarket, spearheaded by the privately-funded nonprofit organization GrowNYC, are examples of effective ways to help ensure widespread access to affordable and nutritional foods.

Recommendations:

- The next Mayor should provide sufficient funding of the City’s emergency food sources to ensure that the minimal food requirements continue to be met.
- The next Mayor should continue to develop incentives for the creation of new private programs, and attempt to amplify and expand existing public programs in order to reach more of the City’s low-income residents living in food deserts.

C. Develop Policies that Move Individuals and Families from Homelessness Into Housing

In a major shift from the policies of every other Mayor and his earlier homeless policy, the Bloomberg Administration eliminated the City’s rental assistance program for homeless families. The City currently has no housing program in place to move homeless families out of shelters. Consequently, the length of shelter stays is increasing. Families with children spent an average of 355 days in shelter in 2012 - up 40 days since the previous year.¹³⁵ The City’s homeless shelter population has increased to a new high of 50,135, up nearly a fifth from the

year before. Families constituted the majority of residents and about 40% of those in City shelters were children.¹³⁶ According to the New York City Independent Budget Office, last Christmas Eve, over 37,000 men, women, and children were sleeping in New York City shelters.¹³⁷ New York City has a responsibility to stem the rising tide of homelessness.

The fiscal impact of more people and longer shelter stays is enormous. In November, the Mayor added \$42.9 million in city, state, and federal funds to the budget for family shelters, bringing the total budget for 2013 to \$466.5 million.¹³⁸ The Independent Budget Office estimates that providing families with emergency shelter will cost the City an additional \$42 million more than the Bloomberg Administration has budgeted for 2013. Costs for emergency shelter for homeless single adults have also risen.

Recommendations:

- *Restore priority referrals of homeless families for Section 8 and New York City Housing Authority (NYCHA) apartments.* The Independent Budget Office estimates “that if a total of 5,000 families a year were moved out of shelter through priority referrals for NYCHA and Section 8, family shelter costs would be \$29.4 million lower, of which \$11 million would be savings of City funds.”¹³⁹
- *Create a new rental subsidy program to help transition families out of shelter and into appropriate permanent housing.* Although homelessness is surging, permanent housing placements have dropped dramatically due, in part, to the elimination of the Advantage Rental Assistance Program in April 2011. The Advantage Program subsidized one or two years of rent support to households that met certain eligibility requirements, helping 25,000 families make the transition to permanent housing over a four-year period.¹⁴⁰ Although the State previously funded the program, the City should not wait for the State to reinstate funding and must, instead, focus on reestablishing the Advantage Program directly through City appropriations or the use of public/private partnerships. In fact, housing these same families in City shelters can cost the City up to \$33,000 per family per year, which is substantially more than subsidizing rental payments through the Advantage Program.¹⁴¹ Thus, reinstating the Advantage Program will help families obtain permanent housing, and will save the City money in the long run and ease the burden on the City’s shelter system.
- *Designate at least 10% of City-assisted apartments, those renovated or created under the auspices of the Department of Housing and Preservation, for homeless families and individuals.* Currently, only 4% of these units are allocated for the homeless under the Mayor’s plan.¹⁴²

D. Implement New Tools to Promote Child Wellness

Child wellness is best achieved when children are raised in tolerant environments where culturally sensitive and socially appropriate behaviors are modeled. With proper care and guidance, many children can flourish even in spite of difficult circumstances. Healthy relationships and guidance facilitate a child’s growth into a responsible and independent adult.

The next Mayor should continue the current administration's success in using child abuse and neglect prevention services to decrease the number of children who must be placed into foster care. Home visiting, early childhood education programs and after-school programs have all been proven to reduce the reliance on these more costly, more intrusive and more traumatic systems. Notably, these preventive-type services are cost-effective and have a greater return on investment.

However, where foster care becomes necessary, the City Bar recommends the Mayor's Office promote the following policies:

1. Increase Foster Parent Recruitment Throughout New York City

A substantial outreach for foster parent recruitment should include seeking out foster parents of diverse backgrounds. With the passing of same-sex marriage within the New York in 2011 through the Marriage Equality Act, New York City should also be seeking to ensure that foster parent recruitment specifically occurs within the LGBTQ populations. Any such outreach should use all forms of mass-media available, including digital media, public awareness meetings, and advertisements via radio, television, the internet, and print. Specifically targeted outreach efforts to community groups and media should be made while utilizing the five most frequently spoken languages in New York.

With greater outreach to different groups, children of diverse backgrounds in foster care will be better able to be placed in loving and culturally sensitive homes without delay, parents may be able to reunify more quickly with their children, and more foster parents will be readily available.

2. Increase Availability of Foster Parent Trainings and Certifications

Where foster care is necessary, New York State can and should consider alternative virtual or digital methods of ensuring that MAPP (Model Approach to Partnerships in Parenting) trainings and foster parent certifications are made available to all New Yorkers who seek them. Increasing the availability of foster care trainings and the methods of providing such trainings could create a substantial increase of viable foster parents. The next Mayor should create a Task Force to explore the possibility of ushering foster parent training and certification into the 21st century by exploring any and all options currently available to New York.

3. Strengthen Support and Accountability for Foster Children Whose Permanency Goal is "Another Planned Permanent Living Arrangement"

Another Planned Permanent Living Arrangement (APPLA) is an approved permanency plan option for foster children under the federal Adoption and Safe Families Act.¹⁴³ Examples of other "planned permanent living arrangements" include custody with a non-relative, independent living, and adult residential care.¹⁴⁴ For foster children whose goal is (APPLA), their needs are often very different from those of other foster children. As a result, it is vital that appropriate educational, vocational, and housing referrals and resources are made readily available to

APPLA youth. Providing such services will permit APPLA youth to achieve their independence in a timely and responsible fashion. We recommend that a website compiling services available to APPLA youth in New York City should be made available to all APPLA youths. Such a website would serve as a centralized clearing house for information upon which the public, attorneys, foster children, community organizations, and foster care workers could rely. In doing so, APPLA youth will have the greatest opportunity to succeed as they transition into independent adulthood.

4. Simplify and Expand Housing Options for APPLA Youth

Foster children of New York City who are otherwise capable of living independently should receive greater resources for housing. Currently, when a child has a permanency goal of APPLA while in foster care, their housing options are: (1) a foster home placement, (2) NYCHA housing, (3) New York/New York III housing, or (4) a housing subsidy. Unless the child is in a foster home, all of these programs are restricted currently to New York City. The Housing Subsidy is limited to a monthly amount of only \$300 per month until a foster child turns 21. If not utilized, that amount is in essence waived. We recommend Housing Subsidy payments be raised to permit a maximum of \$660 monthly.

Additionally, an exception via the Housing Subsidy or an equivalent Housing Subsidy program should be created for promoting placements outside of New York City if maintaining such a residence would support an APPLA youth's continuity of environment via school, work, or other community ties.

5. Establish a Program to Allow Foster Children to Remain in their School of Origin

The federal McKinney-Vento Homeless Program addresses schooling of homeless youth.¹⁴⁵ Among other requirements, the Program demands that local educational agencies make school placement determinations on the basis of the "best interest" of the child or youth and to the extent possible, keep homeless youth in their school of origin. There are additional provisions of the Program that require the State and its local educational agencies to ensure the provision of transportation to these schools of origin.¹⁴⁶

However, while a step in the right direction, this program only addresses a portion of the vulnerable youth in New York City. In New York City, children are placed in foster care on a daily basis and while children who are awaiting foster care placement are considered homeless and thus eligible for McKinney-Vento services,¹⁴⁷ children who are already in foster care are not considered homeless and thus not eligible for services. The children caught up in the foster care system are not only taken from their parents, their homes and the only lives that they ever knew, but they are also often taken from their friends and teachers when forced to change schools because their foster placement is in a different district or borough. Students who are forced to change schools repeatedly have been shown to have lower test scores and lower overall academic performance than their peers who have not changed schools.¹⁴⁸ Therefore, while there is obvious cost involved in ensuring transportation of foster care children to their school of origin, there is also a high cost in constantly changing a child's educational institution – a cost to the child and

to the City as these students' non-performance reflects badly on the schools that they are attending and undercuts their ability to be productive contributors to society. It has been shown that allowing students to remain in their school of origin and receive transportation to and from these schools has greatly increased school stability and educational continuity.¹⁴⁹ Accordingly, it is our recommendation that a program, akin to the McKinney-Vento Program, be established in order to allow children in foster care to maintain some consistency in their lives and allow them the opportunity for academic success.

E. Improve the Relationship Between Social Welfare Agencies and Vulnerable New Yorkers

1. Individuals with Disabilities

Screening welfare recipients for disabilities is required by Federal law, including the Americans with Disabilities Act. Yet the current screening process is cursory at best and almost solely focused on establishing if a person is eligible for an exemption from work requirements. HRA acknowledges that a significant portion of its caseload includes clients with disabilities. Among the most common are learning disabilities and mental-health related disabilities. However, HRA's application process is so onerous and includes so many appointment requirements that it is extremely difficult for disabled clients to successfully navigate through the system. There are several reasons.

First, the autoposting system discussed above has extremely harsh consequences for clients with disabilities. Clients with disabilities have more difficulties making it to appointments, and often have to re-schedule appointments because of illness or medical appointments. When a client reschedules an appointment, if the worker does not timely enter the rescheduled appointment, the client will face a sanction or case closing. Once again, the default runs against the client.

Second, HRA does not have communication systems in place which would allow clients with disabilities to communicate with HRA any other way than appearing in-person at a HRA Job Center, waiting for hours and seeing a worker in person – often just to present a document. Clients who attempt to drop off documents or attempt to fax or mail them to HRA risk having their cases closed or rejected when the papers never make to the right worker.

Third, HRA does not offer disability screening for clients. HRA relies on clients to self-report disabilities when it is well-known that a significant number of clients have undiagnosed medical, mental health and learning disabilities which impede their ability to secure the benefits to which they are entitled. HRA's lack of a screening mechanism is short-sighted since it also hinders the agency's ability to identify and assist clients to secure Federal disability benefits.

Recommendations:

- HRA should institute a disability screening tool that is used early in the application process to identify disabilities and offer appropriate accommodations and exemptions from application and work requirements. Where a disability is indicated, HRA

should offer a more in-depth evaluation of physical, mental health, and learning disabilities.

- HRA should establish a receipt system to enable clients to communicate with HRA reliably via phone, mail, fax, email or in person.
- Many appointments now required to be done in person by HRA, including conciliation, dispute-resolution and other conferences, could be handled via telephone.

2. Survivors of Domestic Violence

A large percentage of welfare recipients have experienced domestic violence. New York City places many burdensome requirements on victims of domestic violence to provide cumbersome evidence that may further endanger their safety.

The federal government provides states the option of giving special consideration to the safety needs of domestic violence survivors when they created the Family Violence Amendment. New York State adopted the Family Violence Option, which requires local social service districts to provide universal screening for domestic violence and to create domestic violence liaisons within the Job Centers,¹⁵⁰ the Family Violence Option also requires the notification of the availability of waivers from certain program requirements when domestic violence is present, and calls for the creation of domestic violence liaisons (DVL). HRA's protections and screening protocols fall far short of what is required.

There are several problems with the screening process. First, HRA fails to screen everyone who applies for public assistance and self-identifies as a victim of domestic violence; and it often fails to refer them to a DVL when they do. Second, when individuals are referred to a DVL, they often receive only the bare minimum support, such as the provision of a DV Hotline Number. This represents a lost opportunity to educate victims of domestic violence about valuable resources for their safety. Third, although screening is to be made in a confidential setting by a DVL, in practice, the HRA caseworkers will ask details of the domestic violence in an open setting, instead of making the referral for the waiver assessment by a DVL.

HRA also imposes more stringent standards than the Family Violence Option requires. The Family Violence Option allows for only a sworn statement that a welfare applicant/recipient is a victim of domestic violence. In practice, if a victim of domestic violence shows up for an assessment without several kinds of hard evidence such as multiple police reports, hospital reports, orders of protection, court orders, documents relating to child protective services, letters from social services agencies and psychologists, they are denied a domestic violence waiver from HRA's work and child support requirements.

Finally, domestic violence victims are unable to renew their waivers at the end of their waiver period unless they prove recent incidents of domestic violence, i.e., in the last four months, by way of making police reports or providing hospital reports of injuries sustained by continued domestic violence. Orders of protection are not considered to satisfy this requirement,

which is arbitrary, onerous and difficult to meet. Rather, the message given to DV victims is that they have to put themselves in harm's way again in order to obtain a renewal. The next Mayor should direct HRA to address these serious policy failures.

Recommendations:

- Ensure that caseworkers correctly interview the welfare applicants to ensure that domestic violence screening is not overlooked.
- Make greater efforts to inform welfare applicants/recipients about the Family Violence Option and the DVLs. There should be at least one DVL for each Job Center, and the City should ensure that every applicant/recipient who self-identifies as a victim of domestic violence is referred to a DVL, without exception. The DVLs should have the power to grant waivers the same day, especially full waivers, while a domestic violence victim is in their office.
- DVLs should not demand extensive, and only recent, domestic violence documentation at the waiver screening.

3. Sponsored Immigrants

HRA implemented a new policy during 2012 pursuant to which it has started to seek reimbursement for the Cash Assistance benefits used by immigrants from those immigrants' sponsors. New York City, beacon to so many immigrants from around the world, is the only locality in the United States to implement such a policy. The cost savings are anticipated to be minimal,¹⁵¹ but the harm to sponsored immigrants is great. Elderly, needy immigrant clients are deciding to forego benefits, lest their children or other close relatives be charged for their care. Other immigrants are afraid to apply for benefits they sorely need. The City has been imposing the obligation against sponsors who are themselves needy, including those whose income is at or near the federal poverty level and in some cases, receiving public assistance themselves. In addition, HRA has not published the rules governing collections made under this policy, and offers no more than minimal protections to prevent HRA from jeopardizing the safety of sponsored immigrants where there is a history of domestic violence or abuse between the sponsored immigrant and the sponsor.

Recommendation:

- The new administration should suspend this policy – unique to New York City – and protect sponsored immigrants from the loss of benefits they desperately need.

4. LGBTQ individuals

- *HRA and LGBTQ clients:*

HRA has faced multiple lawsuits in the past few years based on its treatment of transgender and gender non-conforming individuals. According to the lawsuits, HRA employees

made disrespectful comments about the clients' gender identity, declined to process requests to change gender and name, and refused to refer to the clients by the correct pronouns and legal name despite numerous requests.

These reports are concerning given that HRA is an agency tasked with helping those in need. Transgender individuals should be able to receive benefits and services from HRA without fear of being ridiculed or harassed. The City should take steps to train HRA staff on providing services for transgender individuals, and should also adopt a clear procedure consistent with contemporary medical standards for transgender individuals to correct the gender markers on their benefit documents.

- *Administration for Children's Services and LGBTQ Youth:*

LGBTQ youth are more likely to be homeless and/or involved in the juvenile justice or child welfare system than their heterosexual peers. According to recent research, one out of every five homeless youth identifies as gay, lesbian or bisexual, and an estimated 4-10% of youth in the juvenile justice and child welfare systems are LGBTQ. This increased prevalence arises from multiple factors, including family rejection, harassment in schools, emotional and sexual abuse, and intolerance from their community.

Once in custodial care, LGBTQ youth often experience increased risk of exposure to violence and rejection. The Administration for Children's Services (ACS) has implemented progressive measures to combat homelessness within the LGBTQ youth community such as sensitivity training, diversity recruitment and retention of qualified parents to house and mentor them. ACS should continue to earmark funding for these programs and policies. There are, however, a number of ways in which ACS could improve its services for LGBTQ youth.

First, the unique obstacles LGBTQ youth face within the juvenile justice and child welfare system are difficult to address without reliable data from ACS. The City Bar supports a change in policy which would require ACS to add sexual orientation and gender identity to the demographic data they collect from those they serve within the child welfare and juvenile justice systems. This policy change would align with existing State and City human rights laws, and existing ACS policies and directives that serve to promote safe environments for LGBTQ youth.¹⁵²

In addition, the City Bar recommends comprehensive training and enforcement as to nondiscrimination policies for employees and contractors within agencies working with ACS, including the Department of Youth and Community Development, NYPD and DOE. Such oversight will ensure this vulnerable population is treated in a respectful and culturally competent manner, and that LGBTQ youth are given the tools to succeed.

- *Department of Health and Mental Hygiene and LGBTQ Birth Certificate Policy:*

The City Bar recommends that the City's Department of Health and Mental Hygiene revise its outdated birth certificate policy, which currently requires transgender individuals to undergo "convertive surgery" in order to correct the gender designation on their birth

certificates. This requirement is contrary to contemporary medical standards of care, which recognize that surgical intervention is not an appropriate treatment for all transgender individuals. In addition, the cost of such surgery often poses an insurmountable barrier to the ability of transgender persons to obtain birth certificates that are consistent with their gender identity and consistent with their other identity documents. Presenting a birth certificate with an incorrect gender for identification purposes can lead to confusion, discrimination, and harassment.

The U.S. State Department, the U.S. Office of Personnel Management, the U.S. Department of Veterans Affairs, the U.S. Citizenship and Immigration Services, and the states of Vermont, California, and Washington, as well as the New York State Department of Motor Vehicles, all have modern policies that reflect that certification from physicians and other health professionals attesting to clinically appropriate treatment or authenticity of a person's gender identity should be sufficient to correct the gender marker on identity documents. New York City should likewise update its policy and improve transgender New Yorkers' ability to access identity documents that recognize and respect their gender identity.

F. Support Work-Family Policies

1. Protect Pregnant Workers

We recommend that the next Mayor support the enactment of stronger legal protections for pregnant workers in need of temporary workplace accommodations so they can stay healthy and on the job. Pregnant employees need explicit legal protection so they cannot be pushed out on unpaid leave or terminated simply because they require a stool to sit on or extra bathroom breaks.

The New York City Human Rights Commission interprets the disability provision in the current New York City Human Rights Law to cover pregnancy. However, explicit statutory protection would clarify employees' rights and employers' obligations, and provide a critical proactive tool for pregnant women, so they are less likely to have to resort to agency involvement or litigation (a daunting notion for many women who fear retaliation) in order to obtain reasonable workplace accommodations. Accordingly, we urge the next Mayor to support the enactment of such explicit protections that do not diminish rights available to pregnant women under current City Commission on Human Rights precedent.

2. Extend Accommodations for Breastfeeding Mothers in College

We recommend that the next Mayor support the extension of accommodations for breastfeeding mothers needing to express milk, set forth in New York Labor Law § 206-c, to all New York City college and university students. The American Academy of Pediatrics recommends that mothers breastfeed exclusively for their baby's first six months of life and continue breastfeeding through their baby's first year of life as breast milk has proven to have important health benefits for children.¹⁵³ Breastfeeding can also reduce costs associated with formula and health care visits.¹⁵⁴ In fact, total medical expenditures are approximately 20% lower for breastfed than for formula-fed infants.¹⁵⁵

In 2007, the New York Legislature passed NY Labor Law § 206-c, or the “Expressing at Work” Law, which requires employers to “provide reasonable ...break time to express milk for her nursing child” and to “make reasonable efforts to provide a room or other location, in close proximity to the work area, where an employee can express milk in privacy.”¹⁵⁶

While colleges and universities are currently required to provide their employees such accommodations for expressing breast milk, their students are not afforded the same protections by law. They are often unable to choose their class schedule, are typically only assigned ten-minute breaks between classes, and cannot determine the length of time needed to adequately express milk. Sometimes, too, breastfeeding students must pack many classes into one day in order to afford childcare and optimize the amount of time they can spend with their children while pursuing their education. While schools are required to provide private, sanitary space for employees to express milk, students are often left with no assigned space or are forced to use unsanitary bathroom stalls or private bathrooms. Moreover, unless they express breast milk during the day, breastfeeding students cannot maintain their milk supply and may be forced to stop breastfeeding, often sooner than the mother would have liked.

Nationwide, campuses are beginning to recognize the importance of breastfeeding and are implementing programs and policies to support their breastfeeding students.¹⁵⁷ The City should ensure that students are provided with adequate time and private, sanitary conditions where they may properly express breast milk.

3. Enhance Public Education About a Nursing Mother’s Right to Express Breast Milk in the Workplace

We recommend that the next Mayor enhance public education around the Expressing at Work Law by working with New York City hospitals and maternal health care facilities and workplaces to disseminate information about the Law.

In 2009, the New York State Legislature passed the Breastfeeding Mother’s Bill of Rights (BMBOR).¹⁵⁸ The BMBOR mandates that maternal health care facilities provide information to mothers who have recently given birth about the benefits of breastfeeding and their rights to breastfeed.¹⁵⁹ The bill does not, however, explicitly require the dissemination of information about the rights of nursing mothers to pump breast milk in the workplace pursuant to the Expressing at Work Law. This information is critical and must be disseminated. A woman is far more likely to continue breastfeeding efforts if she knows that she will be able to express breast milk when she returns to work.

We commend the City on its efforts to support mothers who choose to breastfeed their children, including the “Latch On NYC” initiative launched by the DOHMH in May 2012. The Latch On NYC initiative calls for a voluntary commitment by City maternity hospitals to support mothers who choose to breastfeed by ending the distribution of promotional formula and materials during a mother’s hospital stay and upon discharge, unless medically indicated or requested by the mother.¹⁶⁰ The initiative also includes a public awareness campaign to inform women of their rights to receive education about breastfeeding if they choose to do so.¹⁶¹ This

initiative, along with the policies established by the BMBOR, provides a significant opportunity to disseminate information about the Expressing at Work Law to new mothers who choose to breastfeed and plan to return to work.

We applaud these and DOHMH's other efforts to enhance public education regarding the benefits of breastfeeding and the ability to express breast milk upon returning to work and encourage the next Mayor to support and continue these efforts. In that spirit, we have created a flyer outlining the provisions of the Expressing at Work Law and what is required for compliance. A copy of the flyer is attached as Appendix B. We recommend that this flyer or something similar be distributed to new mothers during their hospital stay or upon discharge.

4. Support Paid Sick Days

We recommend that the next Mayor support the passage and implementation of the Paid Sick Time Act.¹⁶² The Paid Sick Time Act would require private sector businesses in New York City with 15 or more employees to provide those employees with five days of paid sick leave each year, earned at the rate of one hour of leave for every 30 hours worked. Employees would be able to use this leave to attend to their own health needs, or to those of a spouse, domestic partner, parent, or child. The Paid Sick Time Act also protects the jobs of workers at businesses with fewer than 15 employees for up to five days per year of unpaid sick leave. Any type of paid leave already provided by the employer counts for purposes of complying with the law, and employers can determine usable time increments, agree with employees to use shift exchanges rather than paid sick time, and decide when the paid sick time will be allotted (i.e., at the beginning of the year or accrued as per 30 hours work time). There is no "cash out" required for unused paid sick time if the employee leaves employment.

In addition to addressing the obvious public health issues associated with sick workers handling food or taking care of children or the elderly, we view the Paid Sick Time Act as particularly important for female employees and even more so for female employees in low-wage jobs (where they are less likely to be receiving paid time off). The care of sick children falls disproportionately upon women¹⁶³ so the impact of not being able to take a day off from work to care for a sick child falls disproportionately upon women. That impact can take the form of the loss of a day's wages, sending a sick child to school or daycare, or in those cases where employees simply must miss work, loss of a job.

In addition to tending to a child's illness and having routine physicals, it is recommended that adult women receive annual gynecological checkups, and many gynecologists will not write prescriptions for birth control if a woman has not had a physical exam.¹⁶⁴ Paid sick leave will enable more women to make and keep the appointments necessary to meet their routine health needs and family planning needs.

The most recent amendments to the Paid Sick Time Act were meant to – and, indeed, do – respond to concerns raised by small businesses. Greater flexibility has been built into the legislation, e.g., newly opened small businesses with fewer than 20 employees will have an 18-month grace period after the April 1, 2014 effective date before being covered by the law. Plus, the law takes nothing away from employers who already provide at least 5 days of paid time off

to their employees – they will automatically comply with the law and nothing further will be required of them.

VIII. ANIMAL LAW ISSUES

A. Enforce the Spaying/Neutering of Dogs and Cats

At the present time, Section 17-804 of the New York City Administrative Code provides that all dogs and cats must be sterilized prior to adoption from a full service shelter or a shelter requiring a license pursuant to the New York City Health Code.¹⁶⁵ The law further requires pet shops to sterilize all dogs and cats prior to purchase by a consumer. Unfortunately, the pet shop provision of the law has not been enforced due to preemption language in the New York State Pet Dealer Law.¹⁶⁶ The City Bar applauds the City's aggressive approach to mandating spay/neuter and encourages the City to work with the State Legislature to enable the City to enforce the pet shop provision of its spay/neuter law.¹⁶⁷

The spay/neuter initiatives offered by such private organizations as the ASPCA, New York City Feral Cat Initiative, and the Toby Project (to name a few) have been instrumental in lowering the number of stray and homeless dogs and cats entering the City shelters. Similarly, the performance of Trap-Neuter-Return (TNR) activities in all five boroughs has begun to control the feral and stray cat overpopulation crisis in the City, consequentially lowering the number of these cats entering the City shelter system.¹⁶⁸ While private organizations have worked and are continuing to work cooperatively with City agencies to perform TNR services on City property (the TNR project on Riker's Island being a prime example), many City agencies are unfamiliar with TNR and its efficacy.

Recommendations:

- The City should embrace TNR as its official policy for the management of feral cats.
- All agencies should be educated about the TNR policy, and encouraged to utilize the private services available to remediate issues involving feral cats.¹⁶⁹

B. Phase Out Horse-Drawn Carriages

One of the most contentious and politicized animal-related issues in New York City is the treatment of the City's carriage horses. These animals are the most visible demonstration to the world of New York City's attitude toward animals. Unfortunately, the message that is sent is not a positive one for our City. Other major cities, including Las Vegas, Pompano Beach, and Tel Aviv, have implemented bans on carriage horses, a step which the City Bar applauds.¹⁷⁰

Presently, the City's carriage horses by law may be worked nine hours a day, seven days a week, in temperatures ranging from a low of 18 degrees to a high of 90 degrees Fahrenheit (such temperatures do not take wind chill factors or humidity into account).¹⁷¹ In addition, there is no provision to allow carriage horses an opportunity to graze or exercise unfettered by a harness.¹⁷² The City Bar, in various comment letters, has urged the City to implement regulations

or enact legislation to ameliorate the extremely harsh conditions under which our City's carriage horses are forced to work and live.¹⁷³

Although we have endorsed bills seeking to improve the living conditions for carriage horses, we have consistently taken the position that the only true humane solution to the carriage horse issue is through the ban of the industry in its entirety. It should be noted that this recommendation has been predicated upon the severe safety concerns posed to the public at large by carriage horses as well as the animal welfare issues discussed above. Repeatedly and increasingly, incidents occur in which horses, spooked by traffic, bolt through the City's congested streets putting their passengers, drivers and pedestrians, as well as the horses themselves, at risk. Just recently, a frightened carriage horse near Columbus Circle ran away, dumping the driver and two passengers, hitting two cars, and running for blocks until caught.¹⁷⁴

We believe that there are viable alternatives to the use of carriage horses that will avoid the safety and quality of life issues currently faced by New York residents, tourists, and the City's horses. In this regard, City Council Intro. 86A-2010 has been proposed which calls for the phase-out of horse drawn carriages in New York City, replacing them with the 21st Century fully electric vintage replica vehicle called the "Horseless Carriage." This electric car will provide rides for tourists, offer jobs to workers currently in the carriage horse industry with the potential for higher wages, and maintain the historic and romantic feel of the tours. The elimination of the carriage horse industry in favor of the "Horseless Carriage" also will spotlight New York City as the leader in cruelty-free urban ecotourism.

We support the elimination of the use of carriage horses in New York City and encourage the City to take whatever action is necessary to accomplish this goal. In the interim, we continue to urge the City to endorse any and all bills which will serve to improve the current living and working conditions of the carriage horses.

C. Adopt Non-Lethal Geese Control Methods

The City Bar recommends the City terminate its current contract between the New York City Department of Environmental Protection and the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) for \$208,512¹⁷⁵ for the lethal removal of Canada geese (the Program) and instead adopt non-lethal, long-term strategies for preventing collisions between aircraft and birds ("bird strikes").

There is growing agreement among aviation experts and biologists that killing geese and other birds has no long-term impact in reducing the risk of bird strikes and may exacerbate existing threats by creating vacant desirable habitat thereby inviting other birds. Among the critics of the USDA's lethal methods are Jim Hall, former Chairman of the National Transportation Safety Board, and Ron Merritt, biologist and former chief for the Air Force's Bird Aircraft Strike Hazard team.¹⁷⁶ Both Hall and Merritt maintain that killing birds is an ineffective means of protecting the public from bird strikes and that it is necessary to address environmental factors and other issues.¹⁷⁷ The New York City Audubon also opined that "[t]he blanket approach of lethal control will not significantly reduce the risk birds pose to aviation safety" and that other measures are necessary.¹⁷⁸

One reason that killing resident populations is ineffective is that Canada geese tend to quickly re-colonize newly vacant habitat subsequent to being killed by the USDA. For example, 107 Canada geese were counted in Prospect Park five weeks after the 2010 removal of the all but four of the park's 368 geese.¹⁷⁹ In addition, killing resident geese is likely to be ineffective because bird strikes may be caused by migratory populations that are impossible to fully control. The geese that were responsible for the crash of the U.S. Airways plane in 2009 were migratory geese¹⁸⁰ that are not affected by the current Program because they do not live in New York City in the summer when the geese are killed.

Under the Program, USDA employees remove the geese from public land in summer when the geese are molting, raising their young, and cannot fly. The flightless geese are corralled by USDA biologists into netted pens, put into crowded crates, and either asphyxiated by carbon dioxide or delivered several hours away in hot weather to slaughter facilities. In July 2012, hundreds of geese were taken from Jamaica Bay Wildlife Refuge to slaughter, an unprecedented removal of previously protected wildlife on federal lands.

The process is inhumane. According to wildlife biologist Stephanie Boyles, goose “[r]oundups cause immeasurable stress – separating lifetime mates from each other and from their young goslings.”¹⁸¹ Veterinarian John G. Hynes stated, “Carbon dioxide asphyxiation used by the USDA is an especially cruel process that slowly strangles geese as they struggle to breathe and compete for oxygen.”¹⁸²

The next Mayor should end the Program.

IX. NEW YORK AS AN INTERNATIONAL CITY

The United Nations and the diplomatic community play an important role in the life, economy and image of New York City, even though by definition they do not take part in the local political discourse nor do they represent a voting bloc. While not intended to be an in-depth analysis, we have attempted to identify achievable ways in which the incoming City administration can meet the continuing and developing needs of the United Nations and the diplomatic community by improving, initiating and enhancing the relationship between the City and the diplomatic community, to aid the furtherance of the community's mission in New York, and more importantly to improve New York City for all New Yorkers.

When referring to the United Nations and diplomatic community (the “Diplomatic Community”) we are speaking of the largest community of its type in size and diversity that exists in any world capital. It consists of 193 missions to the UN¹⁸³; 113 foreign consulates¹⁸⁴; the United Nations Secretariat and offices of certain specialized agencies, UN programs, and organs, such as UNICEF, UN Development Programme; 75 foreign trade missions¹⁸⁵; many tourist offices and cultural centers; hundreds of non-governmental organizations associated with the United Nations; media offices and the like.

Given the year-round meetings, permanent employment rosters, interim meeting attendees, space leases and purchases of goods and services, and attendant hotel and tourism

related expenditures, the Diplomatic Community is an economic engine and a very significant sector of the City's economy. Unfortunately, current metrics to demonstrate its economic impact are lacking. The most recent official study, The Economic Impact of the Diplomatic Community on the City of New York, (the "Report") was prepared by the then New York City Commission to the United Nations and Consular Corps in December 1989, based on 1988 statistics.

The lack of current information presents challenges to preparing an updated analysis. However, by applying an inflation factor to the 1988 data, an order of magnitude of the total 2012 net benefit to the City from the operations of the Diplomatic Community in the City can be approximated.

The 1989 Report found that the estimated benefits to the City in 1988 were \$857,301,000; the costs and lost revenues to the City were \$26,502,000; and the total net benefit to the City was \$830,799,000. A breakdown of benefits and costs to the City is attached as Appendix C. Applying an inflation factor of 94.1%¹⁸⁶ to the 1988 figures, the benefits to the City in 2012 would be \$1,663,830,649; the costs and lost revenues to the City would be \$51,434,490; and the total net benefit to the City economy of the Diplomatic Community's operations would be \$1,612,396,159.

Recognizing that lost real estate taxes and the budget for the Office did not increase by 94.1% over the period, and that costs and lost revenues such as parking fines in fact declined, this calculation demonstrates that the total net benefit to the City derived from the operations of the Diplomatic Community remains large and continues to be an important sector of the City's economy.

A. Support a Full Economic Impact Review of the Benefits and Costs of Hosting the Diplomatic Community in New York City

We urge the new administration to support, encourage and cooperate with the UN and other entities in undertaking a full economic impact review of the benefits and costs of the Diplomatic Community, and promptly update the last official report compiled in 1989. Given the imputed benefits this sector delivers to the City, it is not sufficient to simply assume its economic impact. Rather, to support the funding, planning and allocation of resources the City dedicates to the sector, the City needs a clear understanding of how significant the Community is, both directly and indirectly, to the economy of the City, as it does for other sectors such as tourism, construction, etc.

B. Facilitate the Completion of the UN Development Plan

The creation by the New York State Legislature in 1968¹⁸⁷ of the United Nations Development Corporation (UNDC) to fund, manage and execute the UN expansion plans has proven to be a boon permitting the UN to add needed space within the UN District. The last element of its expansion plan referred to as DC5 is the construction of a "consolidation building" on the southeast corner of First Avenue and 42nd Street. After many years of delay and discussion on the State and local levels, UNDC, the City and other interested parties have reached a mutually agreeable plan for the building's construction and associated community

amenities. Further, plans for the building have taken into account environmental, traffic and security issues, and will permit the UN to economically consolidate in the building many of its offices currently spread out in the surrounding area. Poised for construction to begin, there remain certain City reviews and approvals to be completed. Once the final approvals of the construction's plans and parameters are agreed to by the United Nations Administration, it is imperative that the new City administration be prepared to timely implement steps in support of the project and have the relevant agencies carry through their responsibilities concerning it efficiently and expeditiously. This project will permit the UN to operate more efficiently and cost effectively, and return a significant cash payment to the City. We note that the project will be funded in substantial part by *taxable* bonds. Should the project be unduly delayed, financing for the undertaking will likely significantly increase should capital markets turn and bond rates increase, as expected. The project will benefit from the involvement of the UNDC's seasoned, knowledgeable staff, which is deeply invested and experienced with the UN development plan and highly capable of managing the construction and attendant issues associated with a major development. As soon as the United Nations Administration approves the pending final project plans, we urge the City, and especially its various agencies, to proceed with alacrity to permit this project to begin construction and complete the UN development plan.

C. Continue Aggressive Efforts to Provide Security to the UN

The current administration and the NYPD must be commended for their efforts, especially since the events of 9/11, in assuring the safety and security of the UN, its visiting dignitaries, and the diplomatic community generally. Under the Federal Mission Protection Act, the City has been assured that the Federal Government will now reimburse it for certain extraordinary security costs. However, we understand that Washington remains in arrears for a substantial amount of funds that are to be reimbursed to the City. We urge the new administration to continue its aggressive efforts along with the City delegation in Washington, and to also seek creative solutions to the payment of these reimbursements.

D. Revitalize a "Hospitality" Corps

For many years, the City Commission to the United Nations and the Consular Corps had a robust group of vetted volunteers that would welcome and meet with newly arrived diplomats and their families. In part an official "welcome" by the City, the group's more substantive work was to assist both senior and junior diplomats and families to better integrate into life in New York City, which, for many foreigners, can be a complex and confusing place. Issues of housing, leases, schooling for children, public amenities, special needs, outlets for professional spouses who cannot work in the City, can be made all the more difficult when complicated by a new language and an unfamiliar culture. They can be best addressed by knowledgeable, trained and vetted New Yorkers on a one-to-one basis. Over the past several years, this vital person-to-person diplomacy has waned to the point it is now almost non-existent, except for some minor efforts being made at the UN itself. Even though we live in a world of the Internet, we do not believe it can serve as a suitable substitute for new diplomatic arrivals and their families attempting to create a fruitful and engaging life in the City. We urge the new administration to revitalize a "hospitality" corps to be overseen directly by the Office, or in cooperation with other groups such as the UN Foundation or UNA-NY, both of which advocated strongly for such an

undertaking and both of which volunteered to work with the Office of International Affairs to re-establish such a program. This corps can ease the everyday life burdens of the diplomatic community and assure that when they leave, many for senior leadership positions in their home countries, they do so with favorable impressions of life in the United States and a sense of having contributed to the fabric of New York City. The aim of hospitality should also extend to the leadership of the City. Regular mayoral receptions and invitations to Gracie Mansion or City Hall for the UN diplomats, consular officials, and visiting dignitaries will powerfully and directly communicate the City's welcome and sense of value of this special community.

E. Take Advantage of UN Educational Resources

As life continues to become more global, and New York citizens need to understand and navigate the new world environment, the presence of the UN and the diplomatic community in our City offers many opportunities for education and the exchange of ideas. We urge greater efforts be made by the Department of Education and the K-12 schools to actively draw upon the international community and the UN for speakers, visits and cultural exchanges. Further, we would encourage City agencies to have their experts reach out to and become more directly involved with their counterpart experts that attend the various special convocations and meetings at the UN, to share their experiences, learn from counterparts, share ideas and plans and develop better approaches to problems and best practices, be it in areas of city planning, education, health and safety, environmental issues or security. For similar reasons we would encourage the continued investment in the Sister City/Global Partners Program, as a vehicle for exchange of ideas and tourist development.

X. NEW YORK CITY'S PROPERTY TAX SYSTEM

For better or worse, the property tax has been the fiscal mainstay of municipal government in the U.S. since its inception and will remain so for the foreseeable future.¹⁸⁸ A full 41% of New York City's tax receipts in 2011 emanated from property taxes – the City's single largest revenue source.¹⁸⁹

In 1993, the Grayson Commission concluded that "New York City's multi-class property tax system is inordinately complex and is poorly understood by taxpayers. Inordinately complex taxes suffer inherently from the appearance of unfairness. Further, the property tax in New York City not only appears unfair, it is unfair."¹⁹⁰ This inequity continues today. It has long been known that the tax is regressive, in that its burden falls disproportionately on the poor and middle class.¹⁹¹ In addition, there are questions of fairness in the apportionment of the tax burden among particular classes of property.

There are various reasons why the property tax has its current structure. While we are not recommending specific changes, we urge the next mayoral administration to undertake a full review of how property taxes are imposed in the City, in a process that is open and invites public input. Current policy bases for the tax structure should be challenged and new approaches considered to develop a system that most benefits the City. We note only a couple of concerns below.

The current system provides significant discounts to home owners, particularly of high-priced condos and co-ops in Manhattan, to the detriment of renters.¹⁹² In Fiscal Year 2011, the effective tax rate (ETR) for rentals (Class 2 property) was over five times that of one to three family homes (Class 1 property), condominiums, and co-operatives.¹⁹³ There are further differences between the treatment of one to three family homes and that of condominiums and co-operatives which may not have a sound basis. These differences should be examined with a view toward whether tax treatment of different classes should be rationalized and modernized, as the current tax structure pre-dates the explosion in the number of condominiums and co-operative apartments in the City.

The City taxes land and improvements to the property using the same rates and method. This may be counterproductive, as taxing improvements to a property may discourage investment in that property; for example, landlords may permit residential buildings to deteriorate rather than maintain and improve the buildings, thus contributing to the deterioration of neighborhoods and negatively affecting the quality of life for the families and neighborhoods involved. Other municipalities have contemplated and/or experimented with the “two-rate” or “split-rate” property tax reform. This approach would tax each parcel of property at two discrete rates, a higher one for the land’s value, and a lower one for the value of its structures/building. The theory is that the decrease in the latter rate would offset the increase in the former to preserve revenue-neutrality in the immediate term. Over the long-term, however, the lower rate on buildings/structures has the potential to encourage economic development, increase available housing, and rejuvenate blighted neighborhoods while discouraging absentee landowners from forgoing improvements. This approach should be considered as part of a property tax review.

Finally, any review of the City’s current approach to property taxation must consider the over \$13 billion in property tax exemptions that have been granted, how the City should approach tax exemptions going forward, and whether/how to allow voluntary payments or an increase in payments in lieu of the taxes.

CONCLUSION

The City Bar believes deeply in what New York City represents. It is a place of great diversity, tolerance, vibrancy and opportunity. It is our professional home and the home of many of our members. Likewise, the City Bar believes deeply in the process of deliberation and public debate, which takes on heightened importance as we approach a change in political leadership. This report represents our contribution to the dialogue. We hope that these policy recommendations are considered seriously by the Mayoral candidates and the public, and that they will help guide the decisions made by the next administration.

¹ Description of the Office of the Mayor, N.Y.C. Citywide Administrative Services, at <http://a856-gbol.nyc.gov/gbolwebsite/390.html> (last visited April 18, 2013).

² *Frequently Asked Questions*, N.Y.C. Dept. of Education, at <http://schools.nyc.gov/AboutUs/faq/default.htm> (last visited April 16, 2013).

³ See *What is a Persistently Lowest Achieving School?*, New York City Department of Education, at <http://schools.nyc.gov/community/planning/changes/PLA.htm> (last visited March 22, 2013); Rachel Cromidas & Geoff Decker, *State names 123 city schools to improve or close by 2015*, Gotham Schools, Aug. 30, 2012, at <http://gothamschools.org/2012/08/30/state-names-city-schools-to-improve-or-close-by-15/> (last visited March 22, 2013); NYC Teaching Residency Program, *About Us*, (“In the lowest performing schools in New York City, these rates are even more critical with low-income and minority students performing, on average, several grade levels below their more affluent peers on standardized tests.”), at <http://nycteachingresidency.ttrack.org/AboutUs/TeachingInLowPerformingSchools.aspx> (last visited March 22, 2013).

⁴ See Cromidas & Decker, *supra* note 1; Jill Colvin, *Graduation Rate Increases but Students still not College Ready*, Data Show, DNAinfo.com New York, June 11, 2012, at <http://www.dnainfo.com/new-york/20120611/new-york-city/graduation-rate-up-19-percent-since-2008-city-says> (last visited March 25, 2013).

⁵ See Ben Chapman, Tanyanika Samuels & Rachel Monahan, *217 City Elementary and Middle Schools Could Face Closure After Earning Bad Grades on Department of Education Report Cards*, N.Y. Daily News, Oct. 1, 2012, available at <http://www.nydailynews.com/new-york/education/269-city-elementary-amp-middle-schools-bad-report-cards-article-1.1172051> (last visited March 25, 2013).

⁶ *Id.*; Gail L. Sunderman & Alexander Payne, *Does Closing Schools Cause Educational Harm? A Review of Research*, Mid-Atlantic Equity Center, at 8, Dec. 2009, available at <http://www.eed.state.ak.us/stim/pdf/doesclosingschoolscauseeducationalharm.pdf> (last visited March 25, 2013).

⁷ Howard S. Bloom, Saskia Levy Thompson & Rebecca Unterman, *Transforming the High School Experience*, MDRC, at xii, June 2010, available at http://www.mdrc.org/sites/default/files/full_589.pdf (last visited March 25, 2013); Howard Bloom, Rebecca Unterman, *Sustained Positive Effects on Graduation Rates Produced by New York City’s Small Public High Schools of Choice*, MDRC, Jan. 2012 (Critics of this study note that “it is not clear that [the small schools] serve the same population [of students that were in the closed schools].”), available at <http://www.mdrc.org/sustained-positive-effects-graduation-rates-produced-new-york-city%E2%80%99s-small-public-high-schools> (last visited March 25, 2013). *Id.*

⁸ Jacob Mishook, *School Turnaround*, A+ NYC, at <http://aplusnyc.org/school-turnaround/> (last visited March 25, 2013).

⁹ *School Closures: A Shell Game with Students*, N.Y.C. Coalition for Educational Justice, at 1, at <http://www.nyccej.org/wp-content/uploads/2012/01/school-closures-report.pdf> (last visited March 25, 2013).

¹⁰ See generally Massachusetts Charter Public School Association at <http://www.masscharterschools.org/> (last visited Dec. 18, 2012).

¹¹ See Advocates for Children of New York, *Empty Promises: A Case Study of Restructuring and the Exclusion of English Language Learners in Two Brooklyn High Schools*, June 2009, available at <http://www.advocatesforchildren.org/Empty%20Promises%20Report%20%206-16-09.pdf?pt=1> (last visited March 25, 2013).

¹² See *No Closer to College: NYC High School Students Call for Real School Transformation, Not School Closings*, Urban Youth Collaborative, at 6, April 2011 (noting that at-risk populations attending schools at risk of closure are

more numerous than city averages), available at <http://www.urbanyouthcollaborative.org/wp-content/uploads/2011/05/No-Closer-to-College-Report.pdf> (last visited March 25, 2013).

¹³ Educ. L. §§ 10-18, and 801, effective July 1, 2012.

¹⁴ N.Y.C. Dept. of Education, *Statistical Summaries*, available at <http://schools.nyc.gov/AboutUs/data/stats/default.htm>; and *Educating All Students Well: Special Education Reform in New York City Public Schools*, Office of the Public Advocate, Aug. 31, 2012, at 27, available at http://fundforpublicadvocacy.org/wp-content/uploads/2012/08/Special-Ed-Report_August-2012.pdf (last visited April 26, 2013).

¹⁵ *The System Wasn't Working: A New Effort to Mainstream Special Education Students*, 44 CSANews, March 2011, at 6.

¹⁶ See generally, *A Shared Path to Success: Special Education Reform NYC Public Schools*, NYC Dept. of Education, at <http://schools.nyc.gov/Academics/SpecialEducation/tellmemore/spedReform.htm> (last visited March 25, 2013).

¹⁷ N.Y. Educ. L. § 3020-A(3)(a).

¹⁸ Callie Marie Rennison, *Intimate Partner Violence and Age of Victim, 1993-99*, U.S. Dept. of Justice, Bureau of Justice Statistics, Oct. 2001, rev. Nov. 28, 2001, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1003> (last visited March 26, 2013).

¹⁹ Carolyn Tucker Halpern, Selene G. Oslak, Sandra L. Martin, Mary L. Young & Lawrence L. Kupper, *Partner Violence Among Adolescents in Opposite-Sex Romantic Relationships: Findings from the National Longitudinal Study of Adolescent Health*, American Journal of Public Health, 91(10), 1680, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446854/> (last visited March 26, 2013).

²⁰ *Intimate Partner Violence Against Women in New York City*, N.Y.C. Dept. of Health & Mental Hygiene, 2008, available at <http://www.nyc.gov/html/doh/downloads/pdf/public/ipv-08.pdf> (last visited March 25, 2013).

²¹ See generally N.Y.C. Council Res. No. 497-2006.

²² For example, the not-for-profit charity HEART (Humane Education Advocates Reaching Teachers) presently works with educators, administrators and community leaders in New York City, among other localities, to help them comply with Section 809 and the Safe Schools Against Violence in Education Act.

²³ See *NYC Green Codes Legislative Tracker*, Urban Green Council (see proposals EE9, EE11, EE14, EE25, EE27, EE28, EF10, EO3, EO4, and EO5), at www.urbangreencouncil.org/ProposalStatus (last visited March 25, 2013).

²⁴ Press Release, New York City Mayor, Mayor Bloomberg Presents an Update to PlaNYC: A Greener, Greater New York (April, 21, 2011), available at http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2011a%2Fpr129-11.html&cc=unused1978&rc=1194&ndi=1 (last visited March 25, 2013).

²⁵ Alyssa Katz & Eve Baron, *Participatory Planning: The Sustainability Plan's Missing Piece*, Gotham Gazette, May 2011, available at <http://old.gothamgazette.com/article/landuse/20110511/12/3525> (last visited March 25, 2013).

²⁶ See Environmental Law Committee, *PlaNYC 2030 Update: 2011*, New York City Bar Association, Jan 5, 2011 (provides specific examples of program building opportunities) available at <http://www.nycbar.org/pdf/report/uploads/20072035-ReporttotheMayorsOfficeReNewYorkCitysEnergyPlanPlaNYC2030.pdf> (last visited March 25, 2013).

²⁷ *Recommendations to Improve the Strength and Resilience of the Empire State's Infrastructure*, NYS 2100 Commission, Jan. 2013, available at <http://www.governor.ny.gov/assets/documents/NYS2100.pdf> (last visited March 22, 2013).

²⁸ At 6 N.Y.C.R.R. Part 487.

²⁹ See Josh Keller, *Mapping Hurricane Sandy's Deadly Toll*, N.Y. Times, Nov. 17, 2012, at <http://www.nytimes.com/interactive/2012/11/17/nyregion/hurricane-sandy-map.html> (last visited March 25, 2013).

³⁰ N.Y. Exec. L. § 24(1)(b).

³¹ N.Y. Exec. L. § 24(5).

³² Available at <http://samschwartz.com/> (last visited March 29, 2013).

³³ Legal Issues Affecting People with Disabilities Committee, *Report Urging Legislation to Require Taxicab Accessibility in New York City*, New York City Bar Association, Feb. 2005, available at http://www.nycbar.org/pdf/report/TAXICAB_ACCESSIBILITY_IN_NYC.pdf, and Jan. 2011, available at <http://www.nycbar.org/pdf/report/uploads/20072036-ReportUrgingLegislationreTaxicabAccessibility.pdf> (last visited March 25, 2013).

³⁴ Kathy Kuhmerker, Mary Beth Pohl, Chris Park & Kavita Choudhry, *Medicaid Transportation in New York: Background and Options*, Medicaid Institute at United Hospital Fund, Nov. 16, 2010, available at <http://www.uhfnyc.org/publications/880712> (last visited March 25, 2013).

³⁵ See John Del Signore, *Speed Cameras Die in Albany and Bloomberg Wants Blood*, Gothamist, March 28, 2013, available at http://gothamist.com/2013/03/28/speed_cameras_die_in_albany_and_blo.php (last visited March 29, 2013).

³⁶ A.4327, 236th Session (N.Y. 2013). See also Amanda Conto, *Bill would put speed cameras across NYC*, LegislativeGazette.com, March 25, 2013, available at <http://www.legislativegazette.com/Articles-Top-Stories-c-2013-03-25-83143.113122-Bill-would-put-speed-cameras-across-NYC.html> (last visited March 29, 2013).

³⁷ N.Y.S. Exec. Order No. 4 (April 24, 2008), available at http://www.governor.ny.gov/archive/paterson/executiveorders/eo_4.html. See also <http://www.ogs.ny.gov/EO/4/Default.asp> (last visited March 29, 2013).

³⁸ Colin Moynihan & Daniel Krieger, *Teenager Fatally Shot In New York*, N.Y. Times, Jan. 6, 2013, at A21, available at <http://cityroom.blogs.nytimes.com/2013/01/05/on-lower-east-side-corner-mourning-young-athlete-killed-by-a-gunman/> (last visited March 25, 2013).

³⁹ Barry Paddock, *Man Shot to Death Outside Queens Nightclub After Argument with Other Partygoers, Cops Say*, N.Y. Daily News, Jan. 6, 2013, available at <http://www.nydailynews.com/new-york/man-shot-death-queens-nightclub-argument-party-goers-cops-article-1.1234224> (last visited March 25, 2013).

⁴⁰ N.Y.C Council Res. No. 1494–2012.

⁴¹ *Id.*

⁴² A.3181/S.571, 236th Session (N.Y. 2013).

⁴³ A.3186/S.572, 236th Session (N.Y. 2013).

⁴⁴ A.3244/S.68, 236th Session (N.Y. 2013).

⁴⁵ S.4175, 236th Session (N.Y. 2013) and A.3485, 236th Session (N.Y. 2013) (respectively).

⁴⁶ Letter from Ray Kelly, Commissioner, N.Y.C Police Dept., to Christine Quinn, Speaker, N.Y.C. Council (May 16, 2012), available at <http://www.scribd.com/doc/93944600/NYPD-Commissioner-Kelly-s-letter-to-Speaker-Quinn-on-Stop-and-Frisk-Changes> (last visited March 25, 2013).

⁴⁷ *Ligon v. City of New York*, slip op. at 123-5. In addition, Judge Scheindlin opined, regarding a training video developed by the NYPD, that “[t]he Video is incorrect in its more general suggestion that an officer must deploy something resembling physical force or the threat of such force in order for an encounter to constitute a stop.” *Id.* at 124.

⁴⁸ *Supra* note 46. We note that Commissioner Kelly, in his May 16, 2012 letter to Speaker Quinn, said “The Department is also in the process of developing a quantitative mechanism to identify officers who receive a baseline number of stop-related complaints in comparison to officers in similar assignments.” This is a promising initiative and we urge the NYPD to report on the progress it has made in implementation, and on the approach it is taking.

⁴⁹ N.Y.C Police Dept., *Operations Order Number 52*, Oct. 17, 2011, available at http://www.nyclu.org/files/releases/NYPD_Operations_Order_52_10.27.11.pdf (last visited March 25, 2013).

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 5.

⁵² *Id.* at 4.

⁵³ For an examination of the utility of using “hit rate” to evaluate police conduct in street encounters, see L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 Indiana L.J. 1143 (2012).

⁵⁴ We acknowledge that there are justifications for police stops that do not result in arrests or seizure of contraband. The concern is that measuring the number and not the quality of the stops is an inappropriate emphasis.

⁵⁵ In 1999, following the shooting death of Amadou Diallo, a lawsuit was filed by the Center for Constitutional Rights, *Daniels, et al. v. The City of New York, et al.*, seeking to disband the NYPD’s Street Crime Unit (SCU). In 2002, Judge Shira Scheindlin approved a settlement agreement in the *Daniels* case. The agreement required the NYPD to maintain a written anti-racial profiling policy that complies with the Federal and State Constitutions and is binding on all NYPD officers, and to audit officers who engage in stops and frisks and their supervisors and determine whether and to what extent the stops and frisks are based on reasonable suspicion and whether and to what extent they are being documented. The NYPD was also required to engage in public education efforts, including joint public meetings with class members and representatives on its racial profiling policy, provide workshops at approximately 50 city high schools on the legal rights of those subjected to stops and frisks and develop handouts on these issues for distribution at these and other events. *Daniels, et al. v. The City of New York, et al.*, available at http://ccrjustice.org/files/Daniels_StipulationOfSettlement_12_03_0.pdf (last visited April 23, 2013).

⁵⁶ The use of “furtive movements” as the sole criterion for a stop has been called into question by Judge Shira Scheindlin in her recent opinion in *Ligon v. City of New York*:

“[F]urtive movement” is a problematic basis for a trespass stop, especially when it is offered as a stand-alone justification. If an officer is unable to articulate *anything* more specific than that the person displayed “furtive movement,” including anything *about* the person’s furtive movement that suggested trespass, then the statement that the person displayed “furtive movement” is nothing more than an unparticularized suspicion or hunch, and does not constitute reasonable suspicion.

Ligon v. City of New York, Slip op. at 143 (Jan. 8, 2013) (emphasis in original).

We understand that the current check-box UF-250 form was the result of the settlement in *Daniels*, but the plaintiffs in *Floyd* represented by the same organization are seeking to move away from the check-boxes and require officers to detail an articulable basis for their actions in any given stop-and-frisk, as the law requires.

⁵⁷ Billy Wharton, *Stop and Frisk stats place New York atop civil rights violators*, Examiner.com, Feb. 28, 2011, available at <http://www.examiner.com/article/stop-and-frisk-stats-place-new-york-atop-civil-rights-violators> (last visited April 3, 2013).

⁵⁸ *Supra* note 46.

⁵⁹ N.Y.C Police Dept. Operations Order Number 49, Sept. 2011, available at <http://www.wnyc.org/articles/wnyc-news/2011/sep/23/police-commissioner-calls-nypd-stop-improper-marijuana-arrests/> (last visited April 4, 2013).

⁶⁰ Freeman Klopott, *Cuomo Seeks Decriminalization of Small Amounts of Marijuana*, Bloomberg, June 4, 2012, available at <http://www.bloomberg.com/news/2012-06-04/cuomo-said-to-seek-decriminalization-of-small-amounts-of-pot.html> (last visited April 3, 2013).

⁶¹ Press Release, New York City Mayor, Mayor Bloomberg Delivers 2013 State of the City Address (Feb. 14, 2013), available at http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2013a%2Fpr063-13.html&cc=unused1978&rc=1194&ndi=1 (last visited April 4, 2013); *see* N.Y.C Police Dept. Operations Order Number 13, issued March 26, 2013 (requiring officers to issue DATs rather than detain qualifying arrestees charged with P.L. §221.10[1]).

⁶² *The Impact of Video Evidence on Modern Policing*, International Association of Chiefs of Police, available at <http://www.theiacp.org/LinkClick.aspx?fileticket=5k3IK9SZuz4%3D> (last visited April 4, 2013).

⁶³ *See* Randall Stross, *Wearing a Badge, and a Video Camera*, N.Y. Times, April 6, 2013, available at http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html?_r=0 (last visited April 23, 2013). *See also supra* at note 53.

⁶⁴ *See* Executive Summary, *Police Practices and Civil Rights in New York City*, U.S. Civil Rights Commission, Aug. 2000, available at <http://www.usccr.gov/pubs/nypolice/exsum.htm> (last visited March 25, 2013).

⁶⁵ The Civilian Complaint Review Board, established in its current all-civilian form in 1993, is responsible for receiving, investigating and making findings regarding complaints of police misconduct involving use of force, abuse of authority, discourtesy or use of offensive language. City Charter Section 440; Rules of the Civilian Complaint Review Board, Section 1-02. The Commission to Combat Police Corruption, established in 1995 by Mayoral Executive Order 18, has a mandate to monitor the efforts of the NYPD “to gather information, investigate allegations, and implement policies designed to deter corruption.” Neither has been equipped with the authority to conduct the extensive, systemic investigations that a monitor should undertake.

⁶⁶ N.Y.C. Council Int. No. 0881-2012.

⁶⁷ *Claims Report Fiscal Year 2011*, City of New York, Office of the Comptroller, Dec. 27, 2012, available at http://www.comptroller.nyc.gov/bureaus/bla/pdf/2012_Claims_Report.pdf (last visited March 25, 2013).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ New York City Affairs Committee, *The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change*, New York City Bar Association, March 2000, available at http://www2.nycbar.org/Publications/reports/show_html.php?rid=32 (last visited March 25, 2013).

⁷¹ *Supra* note 67.

⁷² *Id.*

⁷³ Under the “Secure Communities” program, fingerprint information collected at arrest and booking is automatically shared with the U.S. Department of Homeland Security. Based on this information, ICE will lodge a detainer request on anyone it believes is removable, regardless of whether that person has a substantial challenge to the removal charges or is eligible for discretionary relief from removal.

⁷⁴ *Improving Outcomes for People with Mental Illnesses Involved with New York City’s Criminal Court and Correction Systems*, The Council of State Governments Justice Center, Dec. 2012, available at http://consensusproject.org/documents/0000/1633/FINAL_NYC_Report_12_22_2012.pdf (last visited March 22, 2013).

⁷⁵ *NY ATI/Reentry Coalition Services Report*, NY ATI/Reentry Coalition Services, Spring 2012, available at <http://www.ati-ny.org/files/2012ATIbooklet.pdf> (last visited March 22, 2013).

⁷⁶ *ILO Global Estimate of Forced Labour 2012: Results and Methodology*, International Labour Organization, June 1, 2012, at 13, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf (last visited March 25, 2013).

⁷⁷ *Global Report on Trafficking in Persons*, United Nations Office on Drugs & Crime, Feb. 2009, at 7, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf (last visited March 25, 2013).

⁷⁸ *Id.*

⁷⁹ Gregory M. Maney et. al., *Meeting the Service Needs of Human Trafficking Survivors in the New York City Metropolitan Area: Assessment and Recommendations*, Lifeway Network, 2011 at 4, 16, available at <http://lifewaynetwork.org/wp-content/uploads/2011/11/Hofstra-University-LifeWay-Network-Report-2011.pdf> (last visited March 25, 2013).

⁸⁰ *New York Prevalence Study of Commercially Exploited Children*, N.Y.S. Office of Children & Family Services, April 18, 2007, at 23, available at <http://www.ocfs.state.ny.us/main/reports/csec-2007.pdf> (last visited March 25, 2013).

⁸¹ Information available through the N.Y.S. Dept. of Criminal Justice Services, Computerized Criminal History System. Note that these statistics are as of 12/26/2012 and include all events where a N.Y.P.L. 135.35 charge appeared as a top or underlying arrest or charge.

⁸² *Id.* Note that these statistics are as of 12/26/2012 and include all events where a N.Y.P.L. 230.34 charge appeared as a top or underlying arrest or arraignment charge.

⁸³ See Legal Momentum, *U-Visa Fact Sheet*, available at <http://www.legalmomentum.org/assets/pdfs/wwwuvisafactsheet-2.pdf> (last visited March 25, 2013).

⁸⁴ INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (outlines four statutory requirements for U-visa eligibility and contains non-exhaustive list of qualifying criminal activities); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

⁸⁵ Press Release, HUD No. 10-248, Donna White, U.S. Dept. of Housing & Urban Development, HUD Strengthens Protections for Victims of Domestic Violence (Oct. 27, 2010), available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-248 (last visited March 25, 2013).

⁸⁶ Laura Nahmias, *In New York, Up To 40,000 Might Need Housing*, Wall Street Journal (Metropolis), Dec. 4, 2012, available at <http://blogs.wsj.com/metropolis/2012/11/04/up-to-40000-might-need-housing-cuomo-bloomberg/> (last visited March 25, 2013).

⁸⁷ Sherry Ramsay, Mary Lou Randour, Nancy Blaney & Maya Gupta, *Protecting Domestic Violence Victims by Protecting their Pets*, Today: A Publication of the National Council of Juvenile and Family Court Judges, Spring 2010, available at <http://awionline.org/sites/default/files/uploads/legacy-uploads/documents/DV-NCJFCJArticleSpring2010-040611-1302122112-document-38932.pdf> (last visited March 25, 2013).

⁸⁸ See *Domestic Violence and Animal Abuse*, N.Y.S. Office for Prevention of Domestic Violence Bulletin, Summer 2010, available at http://www.opdv.ny.gov/public_awareness/bulletins/summer2010/summer2010_bulletin.pdf (last visited March 25, 2013).

⁸⁹ See generally Task Force to Expand Access to Civil Legal Services in NY, *Report to the Chief Judge of the State of New York*, Nov. 2012, available at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf (last visited March 29, 2013).

⁹⁰ *Id.* at 34.

⁹¹ Federal Trade Commission, *Consumer Sentinel Network Data Book January – December 2011*, Feb. 2012, available at <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2011.pdf#3> (last visited March 26, 2013). The FTC and the Consumer Financial Protection Bureau enforce the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

⁹² Martha C. White, *Is Credit-Card Debt Collection the New Robo-Signing Scandal?*, Time Magazine, Aug. 17, 2012, available at <http://business.time.com/2012/08/17/is-credit-card-debt-collection-the-new-robo-signing-scandal/#ixzz2BrPVdIDL> (last visited March 26, 2013).

⁹³ Int. 0006-2010, N.Y.C. Council (enacted). See Sara Kugler, *NYC cracks down on process servers with new law*, Bloomberg BusinessWeek, March 25, 2010, available at <http://www.businessweek.com/ap/financialnews/D9ELTNN00.htm> (last visited March 26, 2013). DCA spearheaded this new legislation and regulations strengthening protections from improper debt collection. They require licensing for debt buyers, and also require any debt collection agency attempting to collect a debt from a New Yorker to provide substantial proof the debt is owed, at the consumer's request. The collector must provide a copy of the original debt document or original written confirmation of the transaction resulting in the debt; a copy of the final account statement of the debt, and a document itemizing the remaining amount due, including any additional fees or charges claimed to be due and the bases of the consumer's obligation to pay them. The new law and regulations also require a collector to disclose the consumer's rights regarding the statute of limitations when attempting to collect on an expired debt; send written confirmation of any debt payment schedule or settlement within 5 business days of the agreement, and provide a phone number answered quickly by a live person. DCA has prosecuted unlicensed debt collectors, debt collectors who violate the licensing law, and those who engage in deceptive collection practices, and as a result of its mediation efforts, debt collection agencies have cancelled millions of dollars in purported consumer debt.

⁹⁴ The City's amended process server laws and rules increase the responsibility of process serving agencies for the conduct of their process servers, impose enhanced recordkeeping requirements, and are the first ones in the U.S. to require process servers to carry GPS devices to record services. DCA has enforced the new laws and rules through investigation and prosecution of process servers and agencies, license denials and revocations, and comprehensive settlements that impose duties on servers and agencies that go beyond legal requirements. DCA posts its settlements at nyc.gov/consumers to help the public know about wrongdoers and use such evidence at traverse hearings; works with advocates and courts to gather information about process servers engaged in wrongdoing, and conducts process server training for judges and lawyers.

⁹⁵ See Consumer Affairs Committee & Civil Court Committee, *Report on Legislation by the Consumer Affairs and Civil Court Committees - Consumer Credit Fairness Act*, New York City Bar Association, Reissued Feb. 2013, at 4,

available at <http://www.nycbar.org/pdf/report/uploads/20071915-CommentonConsumerCreditFairnessActReissued.pdf> (last visited March 29, 2013).

⁹⁶ Jessica Silver-Greenberg, *Problems Riddle Moves to Collect Credit Card Debt*, Dealbook, N.Y. Times, Aug. 12, 2012, <http://dealbook.nytimes.com/2012/08/12/problems-riddle-moves-to-collect-credit-card-debt/> (last visited March 26, 2013).

⁹⁷ Civil Court Committee & Consumer Affairs Committee, *Profiteering From Financial Distress: An Examination of the Debt Settlement Industry*, New York City Bar Association, May 2012, at 1, available at <http://www2.nycbar.org/pdf/report/uploads/DebtSettlementWhitePaperCivilCtConsumerAffairsReportFINAL5.11.12.pdf> (last visited March 26, 2013).

⁹⁸ Elizabeth Shell, *The Growing Student Loan Debt Load*, The Rundown, PBS Newshour, Oct. 18, 2012, available at <http://www.pbs.org/newshour/rundown/2012/10/the-growing-student-loan-debt-load.html> (last visited March 26, 2013).

⁹⁹ Dept. of Information Technology & Telecommunications, *Annual Report 2011, Enabling the Connected City: Year in Review*, March 2012, at 27, available at http://www.nyc.gov/html/doitt/downloads/pdf/doitt_2011_annual_report.pdf (last visited March 26, 2013).

¹⁰⁰ *Id.* at 27-28 (more than \$216 million collected).

¹⁰¹ *Supra* note 140, at 28.

¹⁰² *Id.*

¹⁰³ See Todd Spangler, *Cutting Into the Big Apple*, Multichannel News, Sept. 27, 2010, available at <http://www.multichannel.com/content/cutting-big-apple>; Karl Bode, *Verizon Again Confirms No Future FiOS Expansion*, DSL Reports, Sept. 26, 2012, available at <http://www.dslreports.com/shownews/Verizon-Again-Confirms-No-Future-FiOS-Expansion-121365> (last visited March 26, 2013).

¹⁰⁴ Fernanda Santos, *Cable Contract Has Fines For Late Service Calls*, N.Y. Times, Sept. 15, 2010, at A22, available at http://www.nytimes.com/2010/09/15/nyregion/15cable.html?_r=0 (last visited March 26, 2013).

¹⁰⁵ *Id.*

¹⁰⁶ For example, the Department of Public Service oversees telecommunications, but for cable it only deals with service issues and outages; the Attorney General oversees internet-related issues, and the City oversees the Franchise Agreements.

¹⁰⁷ DOITT and DCA currently report to different Deputy Mayors, which underscores the need for greater coordination on this issue.

¹⁰⁸ N.Y.C. Dept. of Citywide Administrative Services, Interagency MOUs, at <http://www.nyc.gov/html/dcas/html/about/mous.shtml> (last visited March 26, 2013).

¹⁰⁹ Section 626 of the Communications Act of 1934, as amended (47 U.S.C. 546) states, *inter alia*, that as a condition of Franchise Agreement renewal, a Franchise Authority – in this case, the City – may consider [whether]:

(a) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(b) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(c) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(d) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

¹¹⁰ See N.Y.S. Public Service Commission, *Cable Franchising - Franchise Renewal Process*, at <http://www3.dps.ny.gov/W/PSCWeb.nsf/0/C78B41436EA6BB9E85257687006F3A65?OpenDocument> (last visited March 26, 2013).

¹¹¹ See 47 U.S.C. 532(c)(4)(A).

¹¹² Less than one in five New Yorkers of voting age (18.4%) voted in the 2009 general election for mayor, and in the 2010 federal midterm and New York state election, turnout was much lower (28%) than the rest of the state (53%) and nationally (46%). See New York City Campaign Finance Board, *Who Votes? Voter Turnout in New York City*, June 11, 2012, available at http://www.nyccfb.info/PDF/issue_reports/WhoVotes.pdf (last visited March 25, 2013). A preliminary count showed about 2.1 million New York City voters voting in the November 2012 election (49% of eligible voters), compared with 2.6 million in November 2008 (59%). Sam Roberts, *Voter Turnout Was Lower Than in 2008, According to Early Count*, N.Y. Times, City Room Blog, Nov. 7, 2012, available at <http://cityroom.blogs.nytimes.com/2012/11/07/voter-turnout-was-lower-than-in-2008-according-to-early-count/> (last visited March 25, 2013).

¹¹³ 89.6% of registered voters nationally voted in the 2008 election compared with 88.5% in 2004; the rate escalated in every presidential election year from 1996 to 2008. U.S. Census Bureau, *Voting and Registration in the Election of November 2008*, July 2012, at 2, available at <http://www.census.gov/prod/2010pubs/p20-562.pdf> (last visited March 25, 2013).

¹¹⁴ Many of these recommendations are adopted from a prior City Bar joint committee report. See *Recommendations on Governmental Structure and Election Issues for the 2010 Charter Revision Commission*, New York City Bar Association, June 2010, available at <http://www.nycbar.org/pdf/report/uploads/20071967-RecommendationsonGovernmentalStructureandElectionIssues.pdf> (last visited March 25, 2013).

¹¹⁵ Voting in-person before Election Day is possible in New York only by “absentee voting,” which requires such voter to state in writing and under oath that he or she will either be out of the city on Election Day, or be unable to vote at the polling place due to disability or illness. N.Y. Constitution art. II. §2.

¹¹⁶ Typically these “special ballots” allow absentee voting by Board of Elections personnel, those whose religious beliefs prevent them from entering a particular polling place and certain victims of domestic violence.

¹¹⁷ Governor Cuomo signed an executive order allowing storm-affected New Yorkers to vote at any poll site in the state if they complete an affidavit ballot. N.Y.S. Exec. Order No. 47 (Oct. 26, 2012), available at <http://www.governor.ny.gov/press/11052012Facilitating-Voting> (last visited March 29, 2013). New Jersey allowed displaced voters to vote via email or fax. Press Release, State of New Jersey, Governor Chris Christie, Christie Administration Announces E-Mail and Fax Voting Available to New Jerseyans Displaced by Hurricane Sandy (Nov. 3, 2012), available at <http://www.nj.gov/governor/news/news/552012/approved/20121103d.html> (last visited March 29, 2013).

¹¹⁸ Emily Lippolis, *Hurricane Sandy and Election Day in New York: What Can We Learn from Disaster?* William & Mary Elec. Law Society, Jan. 23, 2013, available at <http://electls.blogs.wm.edu/2013/01/23/hurricane-sandy-and-election-day-in-new-york-what-can-we-learn-from-disaster/> (last visited March 25, 2013).

¹¹⁹ N.Y. Elec. L. § 5-210 (McKinney 2011). Apart from statutory requirements, the state Constitution (art.2, §5) requires voter registration 10 days before Election Day.

¹²⁰ EDR states historically lead the nation in turnout rates generally 10-12% higher than non-EDR states. New York State Bar Association, *Report of Special Committee on Voter Participation*, Dec. 4, 2012, at 14-15, available at <http://www.nysba.org/Content/NavigationMenu42/January252013HouseofDelegatesMeetingAgendaItems/VoterPart>

[icipationreport3.pdf](#) (last visited March 25, 2013).

¹²¹ *Supra* note 114, at 10.

¹²² Currently, the Board of Elections allows 17 year olds to pre-register by recording them in the Voter File as PreReg. This designation shifts to Active when the individual reaches eligible age. This system can easily be used for 16 year olds who pre-register, greatly lessening any burden of implementation.

¹²³ *Supra* note 120, at 25-26.

¹²⁴ U.S. Pub. L. 104-193, 110 Stat 2105 (Aug. 22, 1996)

¹²⁵ 42 U.S.C. § 607(a)(i)(2).

¹²⁶ In the midst of the recession, during a March 2010 City Council budget hearing, current HRA Commissioner Robert Doar stated that the welfare case load is the lowest since 1963. He juxtaposed this with the jump in Food Stamp caseload and the agency's accomplishment of reaching more Food Stamp eligible households. From March 2006 to March 2011 the number of Supplemental Nutrition Assistance Program (SNAP —formerly Food Stamp) recipients in NYC increased by 66% and the Medicaid roles increased by 10%. By comparison, during that period the public assistance caseload dropped 12%.

¹²⁷ Soc. Serv. L. § 336(1) (“Social services districts may. . . . require applicants for . . . public assistance to participate in a variety of activities . . .”). It should be noted that the State only prescribes minimum hours of work requirement participation for recipients of cash assistance, not applicants. *See* 18 N.Y.C.R.R. § 385.8.

¹²⁸ Soc. Serv. L. § 341.

¹²⁹ *Utilization of Fair Hearing Outcome Data, 2011 Winter NYPWA Conference, Albany, NY, Feb. 2, 2011*, available at http://onlineresources.wnyc.net/FairHearingResources/docs/utilization_of_fh_outcome_data_02-02-11_.pdf (last visited April 12, 2013). *See, e.g.*, Chart16 (herewith attached as Appendix D).

¹³⁰ Center 71 originated in conjunction with the State “Intensive Case Services Program” which has since ceased.

¹³¹ *See* Gail Quets & Astrid Spota, *NYC Hunger Experience 2011: Sacrifice and Support*, Food Bank for New York City, 2011, at 10-11, available at http://foodbanknyc.org/files//dmfile/NYCHungerExperience2011_SacrificeandSupport.pdf (last visited March 25, 2013).

¹³² Gail Quets, Astrid Spota, Triada Stampas, & Zemen Kidane, *Serving Under Stress Post-Recession: The State of Food Pantries and Soup Kitchens Today*, Food Bank for New York City, Nov. 19, 2012, at 1-2, available at http://foodbanknyc.org/files//dmfile/FINAL_ServingUnderStressPost-Recession2.pdf (last visited March 25, 2013).

¹³³ *Id.* at 10.

¹³⁴ *See* Michele Ver Ploeg, et al., *Access to Affordable and Nutritious Food—Measuring and Understanding Food Deserts and Their Consequences: Report to Congress*, U.S. Dept. of Agriculture, Administrative Publication No. AP-036, June 2009, at 1, available at http://www.ers.usda.gov/media/242675/ap036_1_.pdf (last visited March 25, 2013).

¹³⁵ Doug Turetsky, *Homeless for the Holidays, and Beyond*, Independent Budget Office web blog, Jan. 7, 2013, at <http://ibo.nyc.ny.us/cgi-park/?p=595> (last visited March 25, 2013).

¹³⁶ Anjali Raval, *Housing Crisis Deepens for New Yorkers*, Financial Times, March 12, 2013, available at <http://www.ft.com/intl/cms/s/0/04bb55fe-884d-11e2-b011-00144feabdc0.html#axzz2QpIrxYai> (last visited April 18, 2013).

¹³⁷ *Id.*

¹³⁸ *From Superstorms to Labor Settlements: Despite Modest Budget Gap Projections, Significant Challenges Remain*, N.Y.C Independent Budget Office Fiscal Outlook, Dec. 2012, at 10, available at <http://www.ibo.nyc.ny.us/iboreports/fisacoutlookdec2012.pdf> (last visited March 29, 2013).

¹³⁹ Letter from Ana Champeny, Supervising Analyst, Housing, Environment, & Infrastructure, Independent Budget Office, to Patrick Markee, Senior Policy Analyst, Coalition for the Homeless (June 14, 2012), available at <http://www.ibo.nyc.ny.us/iboreports/dhspriorityletter61412.pdf> (last visited March 25, 2013).

¹⁴⁰ Editorial, *More Children in Homeless Shelters*, N.Y. Times, Sept. 26, 2012, at A26, available at <http://www.nytimes.com/2012/09/26/opinion/more-children-in-homeless-shelters.html> (last visited March 25, 2013).

¹⁴¹ Michael Howard Saul, *City Wins on Subsidies*, Wall Street Journal, Sept. 14, 2011, available at <http://online.wsj.com/article/SB10001424053111904265504576569350661826650.html>; see also Leslie Kaufman, *City Shifts View on Homelessness*, N.Y. Times, June 16, 2004, available at <http://www.nytimes.com/2004/06/16/nyregion/16homeless.html> (last visited March 25, 2013).

¹⁴² *Oversight - Overview of DHS Family Shelters: Hearing Before the N.Y.C Council, Committee on General Welfare*, Sept. 25, 2012 (testimony of Patrick Markee, Senior Policy Analyst, Coalition for the Homeless & Joshua Goldfein, Staff Attorney, Homeless Rights Project, Legal Aid Society, *Record Number of Family Homelessness and the Need for Targeted Housing Assistance*, available at http://coalhome.3cdn.net/dcc8d2228f24598d45_olm6i28lh.pdf (last visited March 26, 2013)).

¹⁴³ U.S. Pub.L. 105-89 (Nov. 19, 1997).

¹⁴⁴ Memorandum from Nicholas Scoppetta, Commissioner, N.Y.C. Administration for Children's Services, to Executive Directors, Contract Foster Care Agencies, ACS Staff, "Implementation of the Adoption and Safe Families Act, Part IV – Guidelines for Choosing a Child's Permanency Plan" (May 16, 2011), available at http://www.nyc.gov/html/acs/downloads/pdf/asfa_4.pdf (last visited April 18, 2013).

¹⁴⁵ Originally authorized in 1987 and reauthorized by the No Child Left Behind Act of 2001, the McKinney-Vento Program is authorized under Title VII-B of the McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq).

¹⁴⁶ See U.S. Dept. of Education, *Education for Homeless Children & Youth Program, Title VII-B of the McKinney-Vento Homeless Assistance Act, As Amended by the No Child Left Behind Act of 2001: Non-Regulatory Guidance*, July 2004, available at <http://www2.ed.gov/programs/homeless/guidance.pdf> (last visited March 26, 2013).

¹⁴⁷ See § 725(2)(B)(i) of the McKinney-Vento Act

¹⁴⁸ See U.S. Dept. of Education, *Education for Homeless Children and Youth Program Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act, Report to Congress*, Fiscal Year 2000, available at <https://www2.ed.gov/programs/homeless/resources.html> (last visited March 26, 2013).

¹⁴⁹ See U.S. Dept. of Education, *Education for Homeless Children and Youth Program Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act, Report to Congress*, Fiscal Year 2006, available at <https://www2.ed.gov/programs/homeless/resources.html> (last visited March 26, 2013).

¹⁵⁰ 03-ADM-2, "Desk Reference Guide for Domestic Violence Screening Under FVO," 99 ADM-8, "Domestic Violence Final TANF Regulations FVO," and 98 ADM-3, "Domestic Violence FVO Under the Welfare Reform Act of 1997."

¹⁵¹ The projected savings for 2013 published in the 2012 Agency Gap Closing Programs was \$2,067,000, with a dramatic drop off to less than \$1 million for 2014, and approximately \$400,000 for 2015.

¹⁵² See ACS Policy #2011/05 “Promoting a Safe and Respectful Environment for LGBTQ Youth and their Families Involved in the Child Welfare System” and ACS Division of Youth and Family Justice Direction 01/2011 “Guidelines for Promoting a Safe and Respectful Environment for LGBTQ Youth and their Families Involved with DYFJ,” available at http://www.nyc.gov/html/acs/downloads/pdf/policy_newsletter_q2_2011.pdf (last visited March 26, 2013). See also N.Y. Exec. L. §§ 291, *et seq.*; N.Y.C. Admin. Code § 8-102(23).

¹⁵³ American Academy of Pediatrics, *Policy Statement: Breastfeeding and the Use of Human Milk*, Pediatrics Vol. 129 No. 3, March 1, 2012, e827-e841, available at <http://pediatrics.aappublications.org/content/129/3/e827.full> (last visited March 26, 2013).

¹⁵⁴ See Dept. of Health & Human Services, Office on Women’s Health, *HHS Blueprint for Action on Breastfeeding*, 2001, at 11, available at <http://www.womenshealth.gov/archive/breastfeeding/programs/blueprints/bluprntbk2.pdf> (last visited March 26, 2013).

¹⁵⁵ *Id.*

¹⁵⁶ N.Y. Labor L. § 206-c (2007).

¹⁵⁷ Adam K. Raymond, *Another Kind of Dining Hall*, NYU Livewire, at <http://journalism.nyu.edu/publishing/archives/livewire/archived/lactation/index.html> (last visited March 26, 2013). For example, Columbia University recently opened a lactation facility equipped with wall outlets for breast pumps and refrigerators for storing milk. The University of Iowa, the University of Michigan, the University of California Berkeley and the University of Arizona have all taken similar steps to accommodate breastfeeding students. Unfortunately, though, many New York City schools needlessly create challenges for their breastfeeding students by not providing baseline accommodations for expressing milk.

¹⁵⁸ N.Y. Publ. Health L. § 2505-a.

¹⁵⁹ See *id.* § 2505-a(3).

¹⁶⁰ See N.Y.C. Dept. of Health & Mental Hygiene, *Latch On: A hospital-based initiative to support a mother’s decision to breastfeed*, May 2012, available at <http://www.nyc.gov/html/doh/downloads/pdf/ms/initiative-description.pdf> (last visited March 26, 2013).

¹⁶¹ *Id.*

¹⁶² In late March 2013, as a result of a legislative compromise, aspects of the proposed legislation changed. While the revised bill was not made publically available prior to the printing of this report, the compromise is reported to be focused upon the size of companies subject to the Paid Sick Time Act and when the Paid Sick Time Act will take effect. Other aspects of the bill described here are taken from the previous, latest-available version of the proposed legislation.

¹⁶³ See Kristin Smith and Andrew Schaefer, *Who Cares for the Sick Kids? Parents’ Access to Paid Time to Care for a Sick Child*, Carsey Institute Issue Brief No. 51, Spring 2012, University of New Hampshire, available at <http://www.carseyinstitute.unh.edu/publications/IB-Smith-Paid-Sick-Leave-2012.pdf> (last visited March 26, 2013).

¹⁶⁴ See Amy Norton, *Women seeking birth control get unneeded pelvic exams*, Reuters, Nov. 22, 2010 (reporting on a survey reported in *Obstetrics and Gynecology*, December 2010), available at http://www.reuters.com/article/2010/11/22/us-birth-control-idUSTRE6AL67X20_101122 (last visited March 26, 2013).

¹⁶⁵ This City law is more stringent than the requirements set forth in N.Y. § 377-a Agric. & Mkts. L. which authorizes the adoption of dogs and cats from designated entities prior to sterilization provided the adopter has

signed an agreement to have the animal spayed or neutered within a specified amount of time and leaves a deposit of not less than \$35.

¹⁶⁶ § 400-a Agric. & Mkts. L. provides, in pertinent part, that its provisions “shall supersede any local law, rule or ordinance regulating or licensing pet dealers as defined in the article.” Insofar as Article 26-A (Care of Animals by Pet Dealers) does not require the sterilization of animals prior to their sale from pet dealers, it has been held that the City’s sterilization requirement relative to pet stores is unenforceable.

¹⁶⁷ N.Y.C. Local Law 59 (2011) also provides that every owner of a cat who allows such cat to leave the interior of the owner’s dwelling must have the cat sterilized.

¹⁶⁸ *Id.* defines TNR as “a program to trap, vaccinate for rabies, sterilize and identify feral cats and return them to the locations where they were found.”

¹⁶⁹ *Id.*, codified in 2012, requires that the DOH post on its website the names of organizations that offer TNR information and conduct TNR activities.

¹⁷⁰ See, e.g., Las Vegas, NV Municipal Code § 11.39.030, Pompano Beach, FL Code of Ordinances § 115.03 & Kenneth City, Florida, Code of Ordinances § 14-2; see also Reuven Weiss, *Tel Aviv bans horse-drawn carriages*, ynet.com, Nov. 8, 2009, available at <http://www.ynetnews.com/articles/0,7340,L-3799424,00.html> (last visited March 26, 2013).

¹⁷¹ N.Y.C. Administrative Code § 17-330.

¹⁷² *Id.*

¹⁷³ For example, the City Bar supports a shorter work day for the horses, a maximum allowable work period within a week, a redefinition of permissible working conditions to take temperature/humidity index and wind/chill factors into account, weight restrictions on carriage loads, a prohibition on the sale of any carriage horse for slaughter, and a requirement that stables comply with the New York State Department of Agriculture & Markets Horse Health Assurance Guidelines.

¹⁷⁴ See Vivian Yee, *Draft Horse that Bolted May End Up on Easy Street*, N.Y. Times, Aug. 17, 2012, available at http://www.nytimes.com/2012/08/18/nyregion/carriage-horse-that-bolted-may-end-up-on-easy-street.html?_r=0 (last visited March 26, 2013).

¹⁷⁵ The term of the City’s current contract with U.S.D.A. ends June 30, 2014; it is available at <http://www.scribd.com/doc/122350674/Contract-between-NYC-and-USDA-Canada-Geese-June-2011-June-2014> (last visited March 26, 2013). The current contract was preceded by a contract with the USDA for \$100,070 commencing June 1, 2009. The 2009 contract is available at <http://www.scribd.com/doc/62987573/NYC-Contract-for-CANADA-GOOSE-Removal-via-Comptroller-FOIL> (last visited March 26, 2013).

¹⁷⁶ Perry Chiaramonte, *Airport Experts Flock to Find Solution to Bird, Plane Collisions*, Fox News, Aug. 5, 2012, available at <http://www.foxnews.com/us/2012/08/05/bird-strike-summit-as-planes-hit-by-fowl-on-rise/#ixzz2GB34bcnz> (last visited March 26, 2013).

¹⁷⁷ *Id.* (In an interview with Fox News, Jim Hall stated, “I have not seen where [culling] has been effective as a long-term solution . . . What should happen is an effort to eliminate causes for the hazards, but it seems like politics is trumping safety.” Ron Merritt stated, “Killing 1,000 geese really isn’t going to do anything . . . If you kill them, nature will fill that vacuum and a new species will pop up in its place.”)

¹⁷⁸ F. Portman, *Encouraging Better Management of Canada Geese in New York City*, New York City Audubon, available at <http://www.nycaudubon.org/issues-of-concern/canada-goose-extriation> (last visited March 26, 2013).

¹⁷⁹ Cate Doty, *Where Geese Were Thinned, Their Population Thickens*, N.Y. Times, Aug. 17, 2010, available at <http://cityroom.blogs.nytimes.com/2010/08/17/where-geese-were-thinned-their-population-thickens> (last visited March 26, 2013).

¹⁸⁰ *Scientists Determine Geese Involved in Hudson River Plane Crash Were Migratory*, Smithsonian Science, July 10, 2009, available at <http://smithsonianscience.org/2009/07/scientists-determine-geese-involved-in-hudson-river-plane-crash-were-migratory> (last visited March 26, 2013).

¹⁸¹ Geoff Shackelford, *PETA Leader Speaks Out*, *Golfdom*, Feb. 2006, at 49, available at <http://archive.lib.msu.edu/tic/golfd/article/2006feb48.pdf> (last visited March 26, 2013).

¹⁸² *700 Geese From Jamaica Bay Wildlife Refuge To Be Euthanized*, CBSNewYork, July 10, 2012, available at <http://newyork.cbslocal.com/2012/07/10/700-geese-from-jamaica-bay-wildlife-refuge-to-be-euthanized> (last visited March 26, 2013); See also American Veterinary Medical Association, *AVMA Guidelines on Euthanasia of Animals: 2013 Edition*, 2013, at 19 (Birds such as Canada geese “have a great capacity for holding their breath and anaerobic metabolism. Therefore, induction of anesthesia and time to loss of consciousness when using inhaled agents may be greatly prolonged.”), available at <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf> (last visited March 26, 2013).

¹⁸³ Mayor’s Office of International Affairs, *Consular Affairs*, available at <http://www.nyc.gov/html/unccp/html/consular/main.shtml> (last visited February 2013).

¹⁸⁴ *Id.*

¹⁸⁵ Information gained from interviews with staff at the Mayor’s Office of International Affairs.

¹⁸⁶ Inflation rate is based on the inflation calculator, available at <http://www.usinflationcalculator.com/> (last visited March 26, 2013).

¹⁸⁷ United Nations Development Corporation, *Mission Statement*, available at <http://www.undc.org/default.asp> (last visited March 26, 2013).

¹⁸⁸ John Joseph Wallis, *A History of Property Tax in America*, Dept. of Economic, University of Maryland & National Bureau of Economic Research, available at <http://econweb.umd.edu/~wallis/MyPapers/PTFinal.pdf> (last visited March 26, 2013).

¹⁸⁹ *Tax Revenue Forecasting Documentation, Financial Plan Fiscal Years 2011-2015*, N.Y.C. Office of Budget & Management, April 24, 2012, at 19, available at http://www.nyc.gov/html/omb/downloads/pdf/methodology_2012_04.pdf (last visited March 26, 2013).

¹⁹⁰ Hope Cohen & Rosemary Scanlon, *Assessing New York City’s Property Tax—Yet Again*, Manhattan Institute, Mar/Apr 2009, available at http://www.manhattan-institute.org/email/crd_newsletter04-09.html (last visited March 26, 2013).

¹⁹¹ See *Who Pays New York Taxes?*, N.Y.S Legislative Tax Study Commission, Aug. 16, 1985 (the local property tax is highly regressive, particularly the owner-occupied component); see also Casey Cabalquinto & Matthew Gardner, *Achieving Adequacy: Tax Options for New York in the Wake of the CFE Case*, Institute on Taxation & Economic Policy, April 2005, at 5 (New York’s property tax is regressive), available at <http://finance.tc-library.org/Content.asp?abstract=true&uid=934> (last visited March 26, 2013).

¹⁹² Elizabeth A. Harris, *As Prices Soar to Buy a Luxury Address, the Tax Bills Don’t*, N.Y. Times, Oct. 15, 2012, available at <http://www.nytimes.com/2012/10/16/nyregion/many-high-end-new-york-apartments-have-modest-tax-rates.html?hp> (last visited March 26, 2013).

¹⁹³ *Twenty-Five Years After S7000A: How Property Tax Burdens Have Shifted in New York City*, Independent Budget Office, Dec. 5, 2006, at 25, available at <http://www.ibo.nyc.ny.us/iboreports/propertytax120506.pdf> (last visited March 26, 2013).

APPENDIX A

We Are Helping Consumers

- **Cable Franchise Renewal** - The City approved cable television franchise renewal agreements with Time Warner Cable and Cablevision Systems, providing a range of public benefits, estimated at approximately \$60 million.

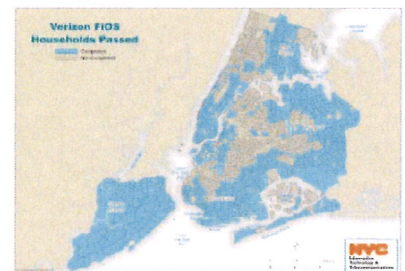
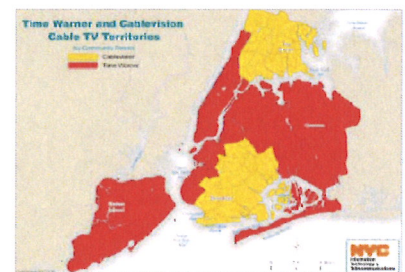
- **Broadband Expansion**

- **Wi-Fi in City Parks**

- Together, the City and AT&T are providing free Wi-Fi service in 20 New York City parks across the five boroughs, including Battery Bosque in Battery Park, the north-end playground in Joyce Kilmer Park in the Bronx and around the recreation center at Thomas Jefferson Park in East Harlem. Additional locations will be added in 2012.
 - Time Warner Cable and Cablevision Systems will also spend approximately \$10 million over the next two years to equip City parks across the five boroughs with Wi-Fi service and maintain the systems through 2020.

Public Computer Centers - Time Warner Cable will create 40 public computer centers, in partnership with local not-for-profit organizations, to provide free broadband access to low-income communities across the City. Cablevision Systems will provide free commercial-grade Internet service to all public libraries in its service area.

- **Expansion of Broadband in Underserved/Industrial Areas** – The companies will invest nearly \$2 million per year to bring communications infrastructure to currently underserved commercial/industrial/manufacturing locations in support of the City's economic development initiatives.



Inspector Arief, Franchise Enforcement.

APPENDIX B

NEW MOTHERS:

"Express Yourself" & Pump Breast Milk at Work!



Mothers who return to work after having a baby have the right under New York law (Labor Law Sec. 206-c) to pump breast milk at work for up to three years following childbirth.

You have the right to take reasonable unpaid breaks at work so that you can pump your breast milk. You also are allowed to use your paid break and meal times for this purpose, but you are not required to.

Your employer is required to make reasonable efforts to provide a private room or other location that is close to your work area that you may use for this purpose. N.Y. DOL guidelines say that a bathroom is not an acceptable private room for pumping breast milk.

Your employer may not discriminate against you based on your decision to express breast milk at work.

For more information about federal and state law regarding the right to express milk at work see:

U.S. Department of Labor

<http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>

N.Y. Department of Labor

<http://labor.ny.gov/workerprotection/laborstandards/nursing-mothers.shtm>

N.Y. Department of Health

http://www.health.ny.gov/prevention/nutrition/wic/breastfeeding/back_to_work_moms.htm **and**
<http://www.health.ny.gov/community/pregnancy/breastfeeding>

"Making it Work Toolkit: For Moms" available at
<http://www.breastfeedingpartners.org/images/pdf/ForMomsFINAL.pdf>

**To report a violation, write the New York City District Office of the
N.Y. Department of Labor's Division of Labor Standards,
75 Varick Street, New York, NY 10013 or call 212.775.3880.**

**NEW YORK
CITY BAR**

Prepared by the New York City Bar Association, Committee on Sex and Law

PARA LAS MADRES LACTANTES:

“Eyprésense”

¡Usen el extractor de leche en su trabajo!



Cualquier madre que haya regresado a trabajar luego de tener un bebé tiene derecho, a tenor con la ley de Nueva York (Ley Laboral, Sec. 206-c), a usar el extractor de leche en el trabajo hasta tres años después del parto.

Usted tiene derecho a tomar recesos razonables sin paga en su trabajo para usar el extractor de leche. Aunque usted no está obligada, también puede usar sus períodos de descanso pagados o sus períodos para tomar alimento con ese propósito.

Su empleador está obligado a realizar esfuerzos razonables para proveerle un cuarto privado u otro lugar cerca de su área de trabajo con ese propósito. Las reglas de N.Y. DOL establecen que un baño no es una lugar privado aceptable para utilizar un extractor de leche.

Su empleador no puede discriminar contra usted basándose en su decisión de expresarse o usar el extractor de leche en su trabajo.

Para más información acerca de las leyes federales y estatales sobre el derecho de expresarse o usar el extractor de leche en su trabajo refiérase a:

Departamento del Trabajo de E.U.

<http://www.dol.gov/whd/regs/compliance/whdfs73.pdf>

Departamento de Trabajo de N.Y.

<http://labor.ny.gov/workerprotection/laborstandards/nursing-mothers.shtm>

Departamento de Salud de N.Y.

http://www.health.ny.gov/prevention/nutrition/wic/breastfeeding/back_to_work_moms.htm y

<http://www.health.ny.gov/community/pregnancy/breastfeeding>

“Materiales - Haciendo que Trabaje: para Madres” disponible en
<http://www.breastfeedingpartners.org/images/pdf/ForMomsFINAL.pdf>

Para reportar una violación, escríbale a la Oficina de Distrito de la Ciudad de Nueva York, División de Normas Laborales, Departamento del Trabajo de N.Y.
75 Varick St. New York, NY 10013
o llame al 212-775-3880

**NEW YORK
CITY BAR**

*Preparado por la Asociación de Abogados de la Ciudad de Nueva York,
Comité sobre Género y la Ley*

APPENDIX C

Benefits to NYC – 1988

UN Expenditures in NYC – 1988	
UN Budget in NYC	\$352,000,000
Subsidiary UN Programs	130,997,000
Specialized UN Agencies in NYC	2,387,000
Staff visits to NYC	178,000
Sub-Total:	\$485,562,000
UN Mission & Consulate Expenditures -1988	\$371,739,000
NGO Expenditures	[Indeterminate]
Total Benefits to NYC – 1988	\$857,301,000

Costs to NYC – 1988

Expenditures	
Education	\$3,900,000
NYC Commission to the UN	645,000
Extraordinary Police Protection (reimbursed)	7,000,000
Lost Revenues	
Real Estate Exemptions	\$20,400,000
Uncollected Parking Fines	1,500,000
Uncollected Towing Fees	57,000
Sub-Total:	\$33,502,000
(Less Reimbursement)	7,000,000
Total Costs to NYC – 1988	\$26,502,000
<u>Total Net Benefit to NYC – 1988</u>	<u>\$830,799,000</u>

*Information appeared in the December 1989 report by the NYC Commission to the United Nations and Consular Corps, *The Economic Impact of the Diplomatic Community on the City of New York*.

APPENDIX D

