

Testimony of
Liz Marcello, Campaign Manager, Reinvent Albany and
Member, NYC Transparency Working Group
before the
New York City Council Committee on Economic Development
Hearing on Oversight - Transparency & Reform of the New York
City Economic Development Corporation
on December 8, 2016

Good afternoon, I am Liz Marcello, Campaign Manager for Reinvent Albany. My organization has previously testified on EDC and IDA transparency issues in our role as co-chair of the NYC Transparency Working Group.

We greatly appreciate the intent behind all of these bills, and this Committee's efforts to increasing the transparency and accountability of New York City economic development subsidies. This said, the Committee should know that my group and other members of the Transparency Working Group only learned of this hearing last night. We know of many groups not present here today who are interested in this important topic.

Given the brief time we have had to review the three bills, we have short substantive comments.

Regarding Intro 1316-2016 (Garodnick)

First, we support adding the Comptroller to the board of the EDC and note that the Comptroller's Office has a large professional staff with the expertise to assess complex projects more thoroughly than the interested public. We are strong believers in the importance of independent oversight of public spending, especially economic development subsidies.

Second, we support putting all EDC project data on the City's Open Data Portal, which exposes it to a broader share of the public, and ensures it can be downloaded in a reusable format with informative metadata.

Finally, we support the idea behind mandating the ESD release impact statements at least thirty days prior to the commencement of any project. However, we strongly suggest that the release of this information be mandated before a project is *approved*, not *commenced*. The public and their representatives should be fully informed about a project while it is still being evaluated, not after it is approved and about to start. We suggest the sponsor consult with EDC and IDA staff to determine what point in the evaluation process this information becomes available to them, and can thus be published for the public's use.

Regarding Intro 1322-2016 (Johnson)

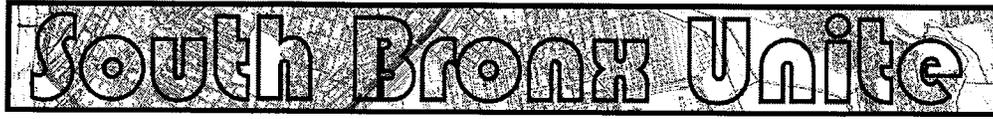
First, we strongly support adding mandatory recapture provisions to economic development contracts if the recipient of such assistance fails to comply with "material terms" of contract agreements. However, we suggest the sponsor consult with the EDC and IDA about whether this bill should implement a dollar-amount threshold for triggering recapture, since this may not make sense for some smaller contracts.

Second, given the limited time we had to evaluate this bill, we have questions about the specific bill language establishing the process for recapturing public funds. In particular we do not know if the key phrase in the bill—§1301(b-2)(5)(ii)—is taken from a best practice elsewhere or is the result of consultation with expert stakeholders or the EDC and IDA. Our take is that the phrase "promptly take all reasonable actions..." gives EDC and IDA a great deal of latitude how exactly they recapture funds. We note that EDC and IDA tends to have a collaborative relationship with recipient and that this phrase may need to be more specific and proscriptive to be meaningful.

Int 1337 (Rosenthal)

We have no comment on this bill and have not had time to assess its provisions.

Thank you for your time.



Testimony of Arthur Mychal Johnson | mychaljohnson@gmail.com | 212.810.0862

My name is A. Mychal Johnson. I am a co-founding member of South Bronx Unite, and I serve on the Board of Directors of the Bronx Council for Environmental Quality, the Community Advisory Board of Columbia University's NIEHS Center for Environmental Health in Northern Manhattan and the Board of Directors of the NYC Community Land Initiative. I am here to give testimony about my community's experience with EDC and to urge oversight and accountability of this entity that has pushed large scale developments with little to no input of the affected communities and/or local business interests.

Community involvement is essential to economic development, which must prioritize the needs and desires of the local community where a proposed project would be sited. Any city-sponsored economic development must take a holistic look at the community and account for the existing residents and businesses in short-term and long-term plans of the community. Rigorous engagement of the local community must be achieved during the evaluation and planning stages of any project. This means engaging the community well in advance of any approvals and funding being contemplated.

However, EDC has ignored this principle in the past - for example when it hurried through the relocation of FreshDirect to the South Bronx waterfront, a project which will bring an additional 1,000 diesel truck trips every day through a community with asthma rates eight times the national average.

- The Fresh Direct project was announced by Mayor Bloomberg as a done deal two days before the sole public hearing on the nearly \$100 million subsidy package to the company. Local residents had no say in that decision making process.
- FreshDirect's entry-level jobs pay less than \$10 an hour because of successful lobbying efforts that exempted them from the living wage law for entities receiving subsidies of over \$1 million from the city. This online grocer's business plan is to put local grocers out of business while clogging our city streets with massive diesel trucks and using public parking spaces as sidewalk depots, so under-paid workers can schlepp carts to building after building. This is neither the type of business nor the type of employer that our tax dollars should be subsidizing, yet we had no say.
- EDC staff oversaw and approved the project's cursory environmental assessment process that relied on a 21 year old Environmental Impact Statement and concluded that a thousand additional diesel truck trips would not negatively impact this environmental justice community of color.
- FreshDirect touted environmental mitigation through the promise of 10 electric trucks to be added to its fleet from Smith Electric, another business subsidized by EDC/IDA to the tune of \$400,000 to relocate to the South Bronx. The company went bankrupt two months after entering into a contract with the city.
- EDC/IDA totally ignored the fact that the proposed Fresh Direct project conflicted with the two recent city rezonings in that Mott Haven/Port Morris area, which have ushered in significant residential development.
- And EDC thought it was ok to expand the largest Significant Maritime Industrial Area in the city even though this community has no waterfront access, in sharp contrast to the expanding waterfront access opportunities in the other parts of the City.



Testimony of Arthur Mychal Johnson | mychaljohnson@gmail.com | 212.810.0862

Then, the project received even more money and substantially expanded its footprint but received no additional oversight or review. EDC/IDA allocated \$14 million more to the project with no additional review, no recorded vote and no further documented authorization. Originally, the project was proposed to be a 500,000 square foot project, but now the project is 800,000 square feet (notably in a high-risk flood zone), but, again, there was no additional environmental review, no oversight and no public acknowledgment or engagement required of FreshDirect by EDC.

It is high time that City Council use its budgetary and oversight powers to rein in this abusive and destructive behavior. We ask City Council to use its powers to require meaningful public participation on the front end, monitoring, oversight, claw back provisions on the back end if the jobs and economic benefits never materialize and if the scope changes from what was originally proposed.

MAS Testimony to the New York City Council Committee on Economic Development regarding Transparency & Reform of the New York City Economic Development Corporation and Intros. 1316 and 1337

December 8, 2016

The Municipal Art Society of New York (MAS) supports Intros 1316 and 1337 with our recommendations included herein. The proposed legislations by the City Council would amend the City Charter and Administrative Code to improve transparency and accountability for actions undertaken by the New York City Economic Development Corporation (EDC) under contract with the New York Department of Small Business Services (SBS).

Background

Intro 1316 would require EDC to include the City Comptroller or the Comptroller's appointee on its board, share project data on the City's open data portal, publicly release reports on the fiscal, social, and environmental impacts of projects, and hold public hearings in the communities affected by projects it undertakes.

Intro 1337 would require EDC to submit a project description and budget to the local Community Boards, Council Members, Borough Presidents for review before project agreements can be executed or projects can be approved by the Mayor.

In addition to its primary function of stimulating economic development in New York City, EDC plays a significant role in many of the city's land use and planning projects and initiatives. Similar to the Department of City Planning (DCP) and the City Planning Commission (CPC), which are authorized under the City Charter to make discretionary planning decisions, EDC often serves as lead agency for actions subject to environmental review, coordinates with other city agencies, issues RFPs, selects consultants, facilitates public participation efforts, and represents the Mayor's Office in negotiations for actions subject to ULURP.

In terms of its land holdings, according to the *City-Owned and Leased Properties* dataset maintained by the Department of Citywide Administrative Services (DCAS), EDC manages a total of 160 properties, encompassing over 17 million square feet of land. Fifty-five of these holdings are categorized as properties with "no current use" and 97 are committed for sale or long-term lease. The full list of these holdings is provided as an attachment to this testimony.

However, according to its asset management online map, EDC manages over 20 million square feet of property and a total of 108 sites. Based on these informational discrepancies, we feel the improvements proposed under 1316 with regard to EDC's datasets are well warranted.

Position

Although MAS believes that amendments proposed under Intro 1316 and 1337 will improve transparency and accountability for certain actions undertaken by EDC, we feel they do not go far enough. Therefore, we propose the following recommendations.

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- Based on EDC's involvement in major city planning efforts and the extent of its land holdings, MAS strongly recommends that the City Charter should be further amended to define EDC's role with regard to planning and ULURP.
- The proposed amendments should apply to EDC contracts with all city agencies, and not be limited to only those with SBS.
- Intro 1337 should include specific steps and mechanisms by which comments and feedback from Community Boards, Council Members, and Borough Presidents would be incorporated into the planning process for projects undertaken by EDC.
- Similar to Intro 1132 (introduced by the Council in August), which would establish a tracking database for all city commitments for any city-sponsored applications subject to ULURP, MAS recommends that Intro 1316 and 1337 should define tracking procedures for commitments made by EDC, including, but not limited to, Community Benefit Agreements (CBAs) and Memorandums of Understanding (MOUs).
- MAS recommends that the proposed legislation specifically address the disclosure of financial analysis and lease terms undertaken by EDC for each site within their purview.

MAS is currently monitoring several ongoing EDC initiatives including the Brooklyn Queens Connector (BQX), neighborhood planning studies in Inwood and Downtown Far Rockaway, and transactions/leases for developments in the South Street Seaport.

We are hopeful that the Council will include our recommendations so that necessary regulatory changes would apply to these projects.

Thank you for this opportunity to testify on this important matter.

MEMORANDUM OF ANALYSIS

BILL: 1322
SUBJECT: A Local Law to amend the New York City Charter, in relation to the recovery of financial assistance for economic development in cases of noncompliance with the terms of such assistance
SPONSORS: Corey D. Johnson, Daniel R. Garodnick, and Helen K. Rosenthal
DATE: December 8, 2016

REBNY represents over 17,000 owners, developers, managers and brokers of real property in New York City. We support the overall goals of this bill to ensure lawful compliance with the requirements for receiving economic assistance, with exceptions as noted below.

Our members recognize that these economic development programs are vital components in spurring economic activity in geographic areas or in industries that are important in a five borough economic development agenda. The beneficiaries must comply with all its applicable requirements if the purpose of these programs is to be achieved. Applicants who willfully ignore their obligations must be held accountable for non-compliance.

However, we must acknowledge that there can be varied reasons for an applicant's non-compliance, which may be completely beyond the control of the applicant. Taking the same approach for all these varied situations, namely immediately recapturing the benefits, may not be the best course of action and may be counterproductive.

For instance, job creation is often the primary goal of the Industrial Development Agency (IDA); however the creation of jobs depends on a number of factors not expressly in the control of the business, such as the overall state of the economy and the particular market conditions of the business's industry. Changes in the economy or the market for the business' product may eliminate the need and capability of the company to satisfy its primary objective like the employment growth it committed to at the time the benefit was approved. In this circumstance, the business is not complying willfully because economic and market conditions make it untenable. This is an important distinction.

In these situations, we understand that New York City Economic Development Corporation (EDC) tries to work with businesses to retain the business's current job count and the investment or economic assistance the EDC has made. The time restraints established by this bill could jeopardize the existing jobs and potentially result in the City's inability to reclaim these benefits. Such hasty action in these

circumstances is both imprudent and counter-productive, particularly for smaller companies where economic conditions could disproportionately have an adverse impact on their operations.

Another area of economic assistance may be capital for substantial renovation of new development. The compliance here could be a commitment to a completion date. Likewise, the economy or the market could thwart the timing of completion. In this situation, we think it is better to work with the beneficiary to complete the project than rescind the benefits in the timelines proposed.

To be clear, we are not suggesting that businesses that have the financial capability to comply should be excused from compliance because the economy is not as ideal as they would like. In these situations, EDC should take all prudent actions to ensure compliance to the best of its ability, including the revocation of benefits.

A certain degree of discretion must be afforded in the decision to re-claim benefits extended to a business. This proposed legislation, while well-intentioned, could deprive the dispensing agency from exercising that discretion to the detriment of smaller businesses and the city's economy.

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I represent: Northwest Bronx Community + KARA

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Date: 12/8/2016

Name: Marcel Negret (PLEASE PRINT)

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I represent: Municipal Art Society

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I represent: South Bronx Unit

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I represent: About the Army

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Date: 12/08/2016

(PLEASE PRINT)

Name: Liz Marcella

Address: 148 Lafayette 12th Floor

I represent: Reinvent Albany

Address: _____

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