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

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

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

Lenox Hill Neighborhood House, one of New York’s premier not-for-profit organizations, is a 125-year-old settlement house that provides an extensive array of effective and integrated human services—social, educational, legal, health, housing, mental health, nutritional and fitness—which significantly improve the lives of 15,000 people in need each year, ages 3 to 103, on the East Side of Manhattan. Lenox Hill Neighborhood House owns several properties, including our historic headquarters which was built for us in 1928 and has operated continuously as a settlement house serving New Yorkers in need since that time. We also own and operate a supportive housing residence for 54 formerly homeless, mentally ill adults in East Harlem. We are fully familiar with both the not-for-profit real property tax exemption and the
not-for-profit exemption from water and sewer charges and have long-standing organizational exemptions from both. I have closely examined the legislative history of the statutory water and sewer exemption and the case law addressing several disputes between New York City and not-for-profit owners that have resulted in litigation. I have also spoken with other not-for-profit real estate owners in the City to discuss their challenges with, and fairness of, the City Department of Environmental Protection’s (“DEP”) application of the water and sewer exemption process.

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

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

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

A very brief history of the water and sewer exemption is important in order to appreciate the current state of the problem that many not-for-profits encounter with the water
and sewer tax exemption and to point the way to a legislative solution. First, charitable organizations are generally exempt from taxation because they confer a public benefit.\footnote{See, e.g., \textit{Bob Jones Univ. v United States}, 461 US 574, 591 (1983).} Water and sewer charges, however, have been considered a utility rather than a tax.\footnote{See, e.g., \textit{Silkman v Board of Water Commissioners} (water rate fees distinguished from a tax because water rate fees are charged based on use rather than as “a tax for an anticipated benefit arising from the presence of water in the city” (152 NY 327, 331 (1897))).} New York State though exempted many charitable organizations from water charges in 1887:

\textbf{The several hospitals, orphan asylums and homes for the aged, now existing in the city of New York} (or which may hereafter be established therein), \textbf{are hereby exempted from the payment of any sum of money whatever said city, for the use of water taken by the same from said city,} and water shall be supplied to the same by said city, in sufficient quantity for all purposes for which it is now used by said societies and institutions, or which may be necessary to be used by the same, free of all charge whatsoever, and the real estate necessarily used as an hospital, orphan asylum or home for the aged, of any such institutions aforesaid, is hereby released, discharged and exempted from all lien and charge for water heretofore used, and remaining unpaid for at the time of the passage of this act, or which may hereafter be used by any such institution, society or corporation.\footnote{1887 N.Y. Laws, ch. 696.} (emphasis added)

The original 1887 law has been amended more than a dozen times in the succeeding century to expand the types of not-for-profit organizations which are exempt from water and sewer charges.\footnote{The exemption from water use fees is also applicable to related sewer use fees (“any real property which is entitled to an exemption from the payment of water rents or charges shall also be exempt from payment of the sewer rents or charges imposed hereunder”; NYC Administrative Code 24-514).} “Social Settlements,” such as Lenox Hill Neighborhood House, were specifically exempted in 1902, 117 years ago;\footnote{1902 N.Y. Laws, ch. 605, amending 1887 N.Y. Laws, ch. 696.} other not-for-profits now exempt include Day Care Centers and Nursery Schools; Non-Public Schools; Dispensaries; Orphanages; Emergency Relief Centers; Places of Public Worship; Free Circulation Libraries; Public Baths; Shelters; Homes for the Aged;
Hospitals; Veteran Firemen’s Associations; Medical Research Centers; Voluntary Ambulance Corps; and Military Veterans Associations.

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

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

Former Mayor Koch unfortunately issued such an Executive Order, Number 43, ten years later in 1980.7

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

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

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

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

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

Not-for-profits that are of sufficient size may be positioned to obtain legal counsel to challenge both the process and the determinations by DEP, another cost and administrative burden for these beleaguered organizations. Some not-for-profits, however, are not able to obtain counsel and therefore start paying unnecessary water and sewer fees that detract from their important missions. It is important to note that when New York courts have examined these issues, the statutory water and sewer exemption has been “fairly, liberally, and
reasonably construed;”¹⁸ DEP’s narrow construction of which not-for-profits are eligible has not been found to be dispositive;⁹ and DEP’s revocation of longstanding exemptions has been found to be arbitrary and capricious.¹⁰

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

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

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¹⁸ Associated Ym-Ywha’s of Greater NY v D’Angelo, 38 Misc 2d 1082, 1083 (Sup Ct, NY County, 1963).
¹⁰ Id.
¹¹ Brandeis, L., Other People’s Money and How the Bankers Use It (1914).
capricious. We would therefore encourage these Committees to investigate this issue and to require the DEP to report to the Council all relevant information so that the Council can understand and determine whether the statutory not-for-profit exemption is being fairly administered and applied by DEP. Without such critical information, including, for example, the list of not-for-profits who have been denied water and sewer tax exemptions and the underlying justification for DEP’s determinations, it is impossible to ensure that New York’s not-for-profits are receiving the intended benefits of the statutory exemption.

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

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