

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of NEW YORK PUBLIC
INTEREST RESEARCH GROUP, INC., CITY PROJECT, Index No. 122030/99
INC., and COMMON CAUSE/NY,

Petitioners,

for a Judgment pursuant to Article 78 of the Civil Practice Law
and Rules,

-against-

PETER VALLONE, as Speaker of the New York City Council;
THE NEW YORK CITY COUNCIL; RUDOLPH GIULIANI,
as Mayor of the City of New York; and the CITY OF NEW
YORK,

Respondents.

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**PETITIONERS' REPLY MEMORANDUM OF
LAW IN SUPPORT OF THE PETITION**

Respectfully submitted,

ANDREW GOLDBERG, ESQ.
BRIAN L. FLACK, ESQ.
9 Murray Street, 3rd Floor
New York, New York 10007
Tel 212-349-6460
Attorneys for Petitioners

PRELIMINARY STATEMENT

Petitioners submit this memorandum of law in support of the petition and in reply to respondents' answer.

Petitioners claim that N.Y. Municipal Home Rule Law ("MHRL") § 20(4) requires a proposed local law to be introduced in accordance with the rules of procedure adopted by the City Council, and after introduction to be in its "final form" and on the desks of Council members at least seven days (excluding Sunday) prior to its adoption. To adopt a local law more rapidly, the Mayor must issue a "message of necessity" and the Council must adopt the proposed law by a two-thirds majority vote.

In answering the petition, respondents admit that the Mayor did not issue a message of necessity prior to the City Council's adoption of Int 582 on June 30, as petitioners alleged. Verified Answer at ¶ 22. However, respondents claim that on the evening of June 21 Council staff placed a copy of the proposed local law on Council members' desks. *Id.* at ¶ 32. Under these unprecedented circumstances, respondents now argue that they have either actually or substantially complied with MHRL § 20(4) and the Rules of the New York City Council.

In reply, petitioners maintain that the interpretation of MHRL § 20(4) in respondents' answering papers directly violates recognized rules of statutory construction and is contrary to the Court of Appeals decision in Alscot Investing Corp. v. Laibach, 65 N.Y.2d 1042 (1985). In addition, petitioners state that the record fully supports its claim that the Council violated the City Charter and rules promulgated pursuant to the Charter, when Int 582 was adopted.

Point I

RESPONDENTS' INTERPRETATION OF MUNICIPAL HOME RULE LAW § 20(4) VIOLATES RECOGNIZED RULES OF STATUTORY CONSTRUCTION

By arguing that MHRL § 20(4) permits a proposed local law to be submitted to Council members in its "final form" prior to its introduction, respondents distort the plain meaning of the law and the Legislature's intent.¹

Petitioners maintain that "introduction" of a local law must precede the so-called "aging" requirement, while respondents argue that the two requirements are completely independent of one another. The issue is one of statutory construction and, when reduced to its simplest terms, the question is whether the word "such" in the second sentence of MHRL § 20(4) refers to the requirement in the preceding sentence that a proposed local law must be "introduced." Petitioners maintain that the established rules of construction require the word "such" in a statute to refer to an antecedent and that the proper construction of the statute may not render superfluous the

¹ MHRL § 20(4) states in relevant part:

A proposed local law may be introduced only by a member of the legislative body at a meeting of such body or as may be otherwise prescribed by the rules of procedure adopted by the legislative body. No such local law shall be passed until it shall have been in its final form and either (a) upon the desks or table of the members at least seven calendar days, exclusive of Sunday, prior to its final passage, or (b) mailed to each of them ... at least ten calendar days, exclusive of Sunday, prior to its final passage, unless ... the mayor in the case of a city ... shall have certified as to the necessity for its immediate passage and such local law be passed by the affirmative vote of two-thirds of the total voting power of the legislative body.

(Emphasis added).

Legislature's use of a word.

Starting with the first sentence of MHRL § 20(4), it states that–

A proposed local law may be introduced only by a member of the legislative body at a meeting of such body or as may be otherwise prescribed by the rules of procedure adopted by the legislative body.

The next sentence begins with the words, "No such local law shall be passed" In statutory construction, the accepted rule is that the condition referred to by the use of the word "such" is generally antecedent to it.² As explained by the Appellate Division, First Department–

[t]he word "such" when used in a ... statute must, in order to be intelligible, refer to some antecedent, and will generally be construed to refer to the last antecedent in the context, unless some compelling reason appears why it should not be so construed.

American Smelting and Refining Company v. Stettenheim, 177 A.D. 392, 396 (1st Dep't 1917).

In MHRL § 20(4), the logical and only antecedent to the word "such" is the requirement that a proposed local law must be "introduced" – the prerequisite found in the sentence immediately preceding it. Where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used. Tucker v. Board of Education, 82 N.Y.2d 274 (1993); Patrolmen's Benevolent Association of the City of New York v. City of New York, 41 N.Y.2d 205 (1976). Therefore, an appropriate construction of MHRL § 20(4) is that a proposed local law must be introduced in the legislative body first and then remain in its "final form"

² In Black's Law Dictionary (Fifth Edition) the term "such" is defined as–

Of that kind, having particular quality or character specified. Identical with, being the same as what has been mentioned. [] "Such" represents the object as already particularized in terms which are not mentioned, and is a descriptive and relative word, referring to the last antecedent.

the requisite number of days, unless a message of necessity is secured and a two-thirds vote obtained.

In contrast to petitioners' interpretation, which is based on the plain meaning of the words used, respondents seek to interpret MHRL § 20(4) as if the word "such" were superfluous. They erroneously conclude that—

the second sentence of Home Rule 20(4) explicitly links the aging requirement to the act of passage of a local law, not to introduction of a local law.

Resp. Memo at 12. This interpretation, however, relies on the word "such" not having a practical meaning or purpose in the statute. By failing to take note of the Legislature's use of the word "such," respondents' interpretation violates yet another well-established rule of statutory construction, which asserts that—

[i]n the construction of a statute, meaning and effect should be given to all its language, if possible, and words are not to be rejected as superfluous when it is practicable to give each a distinct and separate meaning.

Bliss v. Bliss, 66 N.Y.2d 382, 389 (1985); New York State Bridge Authority v. Moore, 299 N.Y. 410, 415-16 (1949)(the word "entire" in apposition with the word "investment" implies a broader meaning than the word "investment" alone). In short, the City's interpretation cannot prevail unless this Court were to hold that the Legislature's use of the word "such" is superfluous, a construction that is not permitted.

Moreover, if the Legislature had intended the requirements of both the first and second sentence in MHRL § 20(4) to be independent of one another, then it would have drafted the statute differently. For example, the Legislature may have repeated the word "proposed" in place of the word "such" in the second sentence or it may have omitted the word "such" altogether. Both

alternatives would have established that the requirements of the first and second sentence may be performed independently of one another. Therefore, this Court should conclude from the words of the statute that the Legislature intended to give the term "such local law" a different and more specific meaning than the term "local law" alone. See New York State Bridge Authority v. Moore, 299 N.Y. at 415-16.

In conclusion, well-recognized rules of statutory construction cannot support respondents' interpretation of MHRL § 20(4). Instead, these rules together with the plain meaning of the words used – including the word "such" in the term "such local law" – substantiate petitioners' interpretation of the law.

Point II

THE PROCEDURE USED BY THE CITY COUNCIL TO ADOPT PRECONSIDERED INT 582 WAS REJECTED BY THE COURT OF APPEALS IN ALSCOT INVESTING CORP. v. LAIBACH

Respondents contend that the statutory requirements of Municipal Home Rule Law § 20(4) were met because a copy of the proposed local law was placed on the desks of Council members by Council staff on the night of June 21, which was eight days prior to its introduction and adoption by the full Council on June 30. The circumstances respondents rely on, however, were implicitly rejected by the Court of Appeals in Alscot Investing Corp. v. Laibach, 65 N.Y.2d 1042 (1985).

In Alscot, the facts regarding the enactment of a local law by the Village of Rockville Center were not in dispute; however, the Court of Appeals and the Appellate Division had very different opinions of their significance. On September 29, 1976, the village attorney transmitted a proposed local law to the village mayor and members of the village board. On October 14, at a meeting of the

board, the proposed law was never actually introduced by a member, but instead at the same meeting the full board directed the village attorney to prepare a notice of hearing. On October 18, the village attorney mailed to the mayor and board members the proposed law with the same text as the original. The village attorney also included a public notice stating that a public hearing was calendared for November 1. On November 1, the mayor introduced the proposed law at the commencement of the hearing and a member moved for the local law's adoption at the conclusion of the hearing.

In the Appellate Division, Alscot Investing Corp. v. Laibach, 109 A.D.2d 718 (2d Dep't 1985), the lower court held that the challenged local law satisfied the requirements of MHRL § 20(4) because on November 1, 1976, it was introduced by the mayor at the commencement of the public hearing and a member of the village board "formally" moved for its adoption at the close of the hearing. Id. at 718-19. In so holding, the Appellate Division endorsed a procedure that allowed for the introduction and adoption of a proposed local law on the same day without a message of necessity – just as respondents assert in this case – because the final text of the proposed law was already before the members. The Court of Appeals, however, viewed the situation and the legal issues quite differently.

On appeal from the Appellate Division, the Court of Appeals identified two relevant issues: One was whether the proposed local law was "introduced" by a member of the village board within the meaning of MHRL § 20(4). The second was whether the proposed law was in the possession of the members in its final form sufficiently in advance of its adoption to comply with MHRL § 20(4).³ The Court of Appeals framed the issues as:

The departures [from the Municipal Home Rule Law] here claimed [as

³ The Court identified two other issues that are not relevant in this proceeding.

invalidating the local law] are that the local law was not introduced by any member of the Village Board [and] that the text of the law as adopted was not in possession of Board members for the period required by Municipal Home Rule Law § 20 (4) prior to adoption

Alscot, 65 N.Y.2d at 1044. Thereafter, the Court of Appeals held that the proposed local law was in fact "introduced" on October 14 at the village board meeting and not November 1 when a hearing on the bill was held and the legislation was adopted. The Court said:

The October 14, 1976 direction of the Board to the Village Attorney to prepare notice of hearing of the local law, the text of which was in the possession of all of its members, was a "substantial and sufficient compliance" with the requirement that such a law be introduced by a member of the Board at a meeting of the Board, and sufficient vote to hold a public hearing [citations omitted]. The more particularly is this so in view of the unanimous vote for adoption at the November 1, 1976 meeting [citations omitted]. Nor, in view of the above facts, is there any question that the text of the law as adopted was in the possession of the Board members well in advance of the 10-day period⁴ provided for in Municipal Home Rule Law § 20 (4).

Id. at 1044, emphasis added.

Thus while the two courts reached very different conclusions as to when the proposed law was introduced, both agreed that "substantial and sufficient compliance" with the "introduction" requirement under MHRL § 20(4) did not require literal and technical compliance with it. Therefore, had the Court of Appeals also concluded like the Appellate Division that the "aging" requirement and the "introduction" requirement operate independently of one another, as respondents argue here, the higher court may simply have affirmed the Appellate Division's result on the lower court's analysis alone. However, the Court of Appeals did not affirm the lower court's reasoning, holding instead that

⁴ Since the village attorney in Alscot mailed the proposed local law to members rather than place a copy on the desks of the village board members, advanced notice of ten days rather than seven days (exclusive of Sundays) is required under MHRL § 20(4).

the proposed local law was introduced on October 14 and not on November 1, as the Appellate Division maintained.

The significance of moving the date of "introduction" back from November 1 to October 14 is obvious. Under the Court of Appeals rendition of the facts, the proposed local law would have been introduced at a board meeting and then in the members possession in excess of ten days subsequent to its introduction. Under the Appellate Division's rendition of the facts, the proposed local law would have been in the members possession in excess of ten days prior to its introduction. In all other material respects, the holdings of the Court of Appeals and the Appellate Division are indistinguishable.

Clearly, the Court of Appeals was troubled by the Appellate Division's interpretation of § 20(4) and its holding is inescapable: under MHRL § 20(4), a proposed local law must be introduced in the legislative body first and then remain in its final form the requisite number of days before the legislative body may adopt it into law without a message of necessity. Therefore, with respect to this proceeding, Alscot constitutes a controlling decision of the Court of Appeals.

Point III

THE DOCTRINES OF "SUBSTANTIAL COMPLIANCE" AND "LIBERAL CONSTRUCTION" DO NOT APPLY TO A CLEAR VIOLATION OF THE MUNICIPAL HOME RULE'S PROCEDURAL LAW

As explained in petitioners first memorandum of law, legislative bodies are required to comply with the procedural prerequisites of the Municipal Home Rule Law and other applicable laws. See generally, Petitioners' Memorandum of Law in Support of the Petition at 7-10. The City Council is a creation of the City Charter and its powers are derived therefrom. New York City Charter § 21.

Its acts are valid and will be upheld only to the extent they comply with the procedures set forth in the Charter and Municipal Home Rule Law. See Matter of McCabe v. Voorhis, 243 N.Y. 401 (1926)(New York City local law struck down under Home Rule Law because, inter alia, its title was defective); Matter of Tylec v. Niagara County Legislature and County of Niagara, 175 A.D.2d 676 (4th Dep't 1991) (redistricting plan was invalidated under MHRL § 20(4) because it was in its final form and before the members of the legislature for too few days before its enactment); 41 Kew Gardens Associates v. Tyburski, 124 A.D.2d 553 (2d Dep't 1986) (invalidating local law because of insufficient notice of public hearing); and Barile v. City Comptroller of City of Utica, 56 Misc.2d 190, 194 (Sup. Ct. Oneida County 1968) (the statutory procedural requirements for amending local laws or charters must be observed).

While some courts including the Court of Appeals have upheld a legislative body's "substantial" compliance with a governing statute, in the absence of its actual compliance, see, e.g. Alscot Investing Corp. v. Laibach, 65 N.Y.2d 1042, this exception is limited to cases where the noncompliance was technical rather than substantive, the legislation was uncontroversial and enacted unanimously by the legislative body, and the noncompliance complained of was unquestionably inadvertent. In each of these regards, the adoption of Int 582 was dramatically different. While Int 582 was quite obviously very controversial and its adoption was by a divided City Council, the most notable distinguishing factor is the undisputed intentional nature of the Council's departure in substance from the formula described by MHRL § 20(4), the City Charter and the Rules of the City Council. These distinctions are fatal to any claim respondents may make that they substantially complied with all applicable laws.

Furthermore, the present case is distinguishable from Alscot in another important respect.

As the Court of Appeals points out, the full and unanimous village board on October 14 directed placement of the proposed local law on the agenda for the November 1 meeting. Here, in contrast, Council staff acting without any formal direction by the Council placed proposed Int 582 on the Members' desks for consideration.

Similarly, respondents reliance on MHRL § 51 is inappropriate. This section states the Municipal Home Rule Law "shall be liberally construed;" however, as explained in Barile v. City Comptroller of City of Utica, 56 Misc.2d 190, liberal construction is not without its limits. In Barile, the common council passed a local law in late December authorizing salary increases that would commence in January of the coming year. The proposed law, however, was vetoed by the mayor for fiscal reasons on December 27 and returned to the city clerk. Thereafter, the council called a "special session" on December 30 to override the veto and the clerk returned the proposed law to the council at the "special session." While noting that the applicable provision of the Second Class Cities Law mandated the return by the city clerk of a mayoral veto at the "next regular meeting," and did not authorize its return at a "special session," the court held that—

[t]he distinction is meaningful. Noncompliance is not a mere irregularity. The power delegated by the Legislature for home rule must be exercised in accordance with the procedural requirements of the statute.

Furthermore, the court answered the respondents assertion of liberal construction under MHRL § 51, stating that—

Respondents claim the new home rule law is to be liberally construed [under Municipal Home Rule Law, § 51]. That direction applies to interpreting the powers of municipal corporations, not to the procedural formalities for implementing those powers.

In the present case, like in Barile, petitioners challenge the procedural formalities for adopting Int 582

and not the substance of the proposed local law.

Respondents rely extensively on Joseph Realty Co. v. Town of Babylon, 250 A.D.2d 614 (2d Dep't 1998), but this case is easily distinguishable. In Joseph Realty Co., the petitioner argued that the town had failed to comply with the notice requirement set forth in Town Law § 54(3), which required mapping, financing and other information to be disclosed in a notice of public hearing, when a town intends to create a "special improvement district." In a brief decision, the Appellate Division held that the "hearing was properly noticed ... under Town Law § 54(3)." In dicta, however, the Court added that petitioner under no circumstances would have been prejudiced because it participated at the hearing and was given additional time to submit evidence.⁵ Joseph Realty Co., therefore, is a case where the legislative body in fact complied with state law, unlike the present case.

Respondents reliance on Pete Drown, Inc. v. Town Board of the Town of Ellenburg, 188 A.D.2d 850 (3rd Dep't 1992) is also misplaced. In Pete Drown, the petitioner sought to operate a medical waste incinerator. In response, the town board passed a resolution unanimously opposing the plan and took up legislation to ensure that an incinerator would not be built. Although the proposed local law was submitted to board members in advance, at the town board meeting some minor amendments were made, enlarging some of the definitions, before the proposed law was adopted. On these facts, petitioner claimed that the proposed law was not in its "final form" seven days ahead of its adoption. The court nevertheless disagreed, holding that MHRL § 20(4) was not violated because the changes "were not substantial." Id. at 852.

⁵ While respondents believe it is significant that petitioners testified before the Council on Int 582, this fact has no bearing on whether the Council has complied with MHRL § 20(4) and Rules derived from the City Charter. Nevertheless, in actuality petitioner City Project Inc. testified on June 21, petitioner New York Public Interest Research Group, Inc. testified on June 21 and June 24, and petitioner Common Cause/NY testified at neither hearing. See Respondents Exhibits C and K.

There is a vast difference between Pete Drown, where minor changes were made to the language of a proposed law at the same meeting at which it was adopted, and the present situation, where an unprecedented procedure was used by the City Council to quickly enact a controversial proposed local law. And once again, the action the court ratified was approved by a full and unanimous decision of the town board, which is a dramatically different situation from the adoption of Int 582.

In summary, the doctrines of "substantial compliance" and "liberal construction" do not apply to a clear violation of procedure under MHRL § 20(4).

Point IV

NEITHER THE CITY CHARTER NOR THE RULES OF THE CITY COUNCIL AUTHORIZED COUNCIL STAFF TO HAVE PLACED PROPOSED LEGISLATION ON THE MEMBERS' DESKS ON JUNE 21 FOR THE PURPOSE OF COMPLYING WITH MHRL § 20(4)

Municipal Home Rule Law § 20(4), the Charter of the City of New York and the Rules of the City Council establish a specific and mandatory procedure for the adoption of a local law by the New York City Council.

MHRL § 20(4) commands that the "introduction" of a local law must be "at a meeting of such body or as may be otherwise prescribed by the rules of procedure adopted by the legislative body." In New York City, the latter of the two options apply because the City Council has promulgated such rules. In fact, petitioners assert and respondents admit that these procedures are derived from the New York City Charter, including Charter § 46 which directs the City Council to promulgate rules. See Verified Answer at ¶¶ 30, 33-35, 38; Respondents' Memorandum of Law in Opposition to the

Petition ("Resp. Memo") at 3, 5, 6, 8. See also Petitioners' Memorandum of Law in Support of the Petition ("Petitioners' Memo") at 3-7.

In addition, petitioners have annexed to the Reply Affirmation of Andrew Goldberg Esq., a copy of an affidavit made by Richard M. Weinberg, Esq., sworn to on December 6, 1994, in Council of the City of New York v. Giuliani, Supreme Court, New York County (Index No. 410034/94). Mr. Weinberg, who was and remains General Counsel of the Council of the City of New York, therein explained at ¶ 37 that—

[u]nder Section 46 of the Charter, the Council is directed to adopt rules in order to ensure the orderly procedure of its business.

(Emphasis added) Indeed, as explained previously in Petitioners' Memorandum of Law, the Council Rules establish procedures for both the ordinary as well as the expedited adoption of a local law in order to – in the words of Mr. Weinberg – "ensure the orderly procedure of its business." Petitioners' Memo at 3-7. Absent from these rules, however, is a procedure to govern the extraordinary procedure of submitting legislation in its "final form" to Council members prior to its "introduction" at a Stated Meeting of the City Council. On this subject, the rules are completely silent because all necessary alternative procedures are incorporated already and covered by the Rules.

Indeed, the most revealing aspect of respondents' answer to this Article 78 Petition is their complete and total failure to identify and explain by what procedure – and at whose direction – Council staff were acting when they placed copies of Int 582 on the Council members' desks late on the night of June 21.⁶ Since respondents entire defense to this proceeding is that Int 582 was on the

⁶ The affirmation of Ramon Martinez, III, Special Assistant to the Speaker, dated June 24, 1999, states that Terzah N. Nasser, Counsel to the Committee on Housing and Buildings, Kathleen Cudahy, Legislative Counsel to the Speaker, and he placed copies of Int 582 on the desks of Council
(continued...)

desks of the Members ahead of its introduction, respondents failure to elaborate or explain the relevant circumstances should be viewed unfavorably by the Court.

It is well settled that "where an adversary withholds evidence in his possession or control that would be likely to support his version of the case, the strongest inferences may be drawn against him which the opposing evidence in the record permits." Noce v. Kaufman, 2 N.Y.2d 347, 353 (1957) (citations omitted); Overton v. New York City Housing Authority, 54 A.D.2d 865 (1st Dep't 1976). See also 57 N.Y. Jur.2d, Evidence, § 123 ("when a party fails to produce evidence which is within his control and which he is naturally expected to produce, a presumption or inference may be drawn that such evidence would have been unfavorable to him. Stated even more emphatically, it has been said that where an adversary withholds evidence in his possession or control that would be likely to support his version of the case for which support is needed, the strongest inferences may be drawn against him which the opposing evidence in the record permits"). Here the "opposing evidence" in the record compels the conclusion that the Council's actions were unprecedented.

In short, MHRL § 20(4) requires introduction of a proposed law by the rules of procedure adopted by the City Council and City Charter § 46 requires the promulgation of such procedural rules. Since the uncontradicted record establishes that the City Council has no procedure to support

⁶(...continued)

members. Here too respondents contention is directly at odds with the Rules of the City Council because Rule § 5.80 states that among the "duties" of the Sergeants-at-Arms is that—

[t]hey shall also place on the desks of the President and other members, before each meeting, the journals containing the Proceedings of the Council, the calendars and agendas provided for in these Rules, papers and the proposed local laws and resolutions.

(Emphasis added)

the one asserted in answer to this Article 78 Petition, and respondents have not offered an explanation of any kind, the Court ought to deem the act of placing copies of Int 582 on the desks of Members as a legal nullity for the purpose of complying with MHRL § 20(4). Furthermore, to the extent that respondents assert a "presumption" of regularity,⁷ citing Commission of Public Charities of City of Hudson, 255 A.D. 241, 245 (3rd Dep't), aff'd, 279 N.Y. 711 (1938), such presumption has been fully rebutted by petitioners on the present record.

Finally, in a last ditch effort to gloss over their inability to explain what has occurred, respondents inappropriately assert that this Court's "review of a legislature's internal rules is not justiciable." Resp. Memo at 17-19. This argument, however, obviously fails because there is no "internal rule" to interpret.

Moreover, among the cases cited by respondents on the question of "justicability," they have in fact omitted a case that is particularly relevant to the present case, and one that was decided unfavorably to the Council. In Council of the City of New York v. Giuliani, 163 Misc.2d 681 (Sup. Ct., New York Co. 1994), the Council sought a court injunction to enforce, among other things, its "internal rules" against the Mayor to resolve a budget dispute. The Council argued that the Mayor pursuant to Council Rule § 6.00 had untimely withdrawn a budget modification, which he had presented to the Council. While the Council tried to make a similar argument to the one it asserts here, the Court pointed out that--

the City Council claims that its application of [Council Rule §] 6.00 must be determinative, because a Legislature is considered to be the ultimate arbiter of its own rules. ... Here, however, no such issue is presented since rule 6.00 ... is wholly inapplicable. No conceivable reading of the rule would require the City Council to ignore a letter

⁷ See Respondents Memo at 9-10.

withdrawing a proposal. Therefore, no interpretation of an internal rule is involved.

163 Misc.2d at 690-91 (emphasis in original).

In the present case, where the Council has failed to identify the applicable Council Rule and the ones referred to do not authorize the procedure used,⁸ the court's rationale in Council of the City of New York v. Giuliani is controlling. More importantly, this line of defense is completely off the point of petitioners' claims because petitioners are not attempting to impose a specific rule of procedure on the Council; instead, they are simply asking this Court to apply MHRL § 20(4) and provisions of the City Charter. This is an entirely different line of legal inquiry, and one that is appropriate for the courts to address.⁹

CONCLUSION

In conclusion, petitioners interpretation of MHRL § 20(4) is consistent with well-recognized rules of statutory construction and respondents interpretation is in conflict with these rules. Under similar circumstances, the Court of Appeals in Alscot Investing Corp. v. Laibach has implicitly interpreted MHRL § 20(4) in a manner that is consistent with petitioners interpretation and inconsistent with respondents'. The principles of "substantial compliance" and "liberal construction" of the Municipal Home Rule Law are inapplicable under the present circumstances because there was a clear violation of MHRL § 20(4)'s procedural rules. And finally, neither the New York City

⁸ In their answer and in their Memorandum of Law, respondents refer to Council Rules §§ 2.10, 6.00, 6.20, 6.30 and 7.80. Verified Answer at ¶¶ 30, 33, 34 and 37; Respondents Memo at 17-18.

⁹ See Petitioners' argument and the cases cited above at pages 8-9 explaining that legislative acts are valid and will be upheld only to the extent they comply with the procedures set forth in the Municipal Home Rule Law and the City Charter.

Charter nor the Rules of the City Council authorized Council staff to have placed proposed legislation on the desks of City Council members on June 21 for the purpose of complying with MHRL § 20(4).

Therefore, respondents have both actually and substantially violated MHRL § 20, the Charter of the City of New York § 46, and the Rules of the City Council. Petitioner therefore requests a judgment pursuant to Article 78 of the Civil Practice Law and Rules to vacate and annul Local Law 38 of 1999.

Dated: New York, New York
December 1, 1999

Respectfully submitted,

ANDREW GOLDBERG, ESQ.
BRIAN L. FLACK, ESQ.
9 Murray Street, 3rd Floor
New York, New York 10007
Tel 212-349-6460
Attorneys for Petitioners