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By E-Mail

Rory I. Lancman, Chair
Committee on Justice System
New York City Council
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Council Member Stephen C. Levin
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Re: Post-Hearing Submission - M.A.R.C.H.
Multi-Agency Response to Community Hotspots
T-2019-3741 and Int 1156-2018 - February 11, 2019

Dear Chair Lancman and Council Member Levin:

Thank you very much for holding the oversight hearing of the Multi-Agency Response to Community Hotspots (M.A.R.C.H.) on February 11, 2018 and concerning legislation sponsored by Council Member Levin. I testified briefly for two minutes and requested and was granted the opportunity to submit post-hearing comments within a week. I fully support the intent of the proposed legislation.

I appreciate the opportunity to have learned a little more about the M.A.R.C.H. program, especially in the absence of publicly available City documents concerning the establishment and organization of the M.A.R.C.H. program and the limited response to the FOIL requests mentioned below.

Most of the hearing was dedicated to a panel of representatives from the New York Police Department (NYPD) the Fire Department of the City of New York (FDNY), the Department of Buildings (DOB), and the Department of Environmental Protection (DEP). The NYPD representative dominated that panel. The Mayor's Office of Criminal Justice, which purportedly directs the M.A.R.C.H. operation, was not represented at the hearing, as pointed out by Mr. Bookman in his statement.

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The FOIL Documents.

I refer to documents not formally submitted into the record which are documents in the response to Brian Abelson's FOIL Request of June 22, 2017 to the NYPD.¹ NYPD responded on February 28, 2018 by providing Operation Order #27 and data in the form of an Excel file (the FOIL Data.)

What is M.A.R.C.H.?

M.A.R.C.H. operations were first established, based on newspaper accounts, in 1998 by New York City's Mayor Giuliani, but with no publicly available Executive Order, organization memoranda, protocols, agency Rules and Regulations, no provision in Administrative Code, and no reference in the City Charter.

Based upon a search within NYC.gov and generally via Google, and as confirmed by the response to the Abelson FOIL, there appears to be no publicly available documentation as to the establishment and organization of M.A.R.C.H. If I am incorrect, I apologize for making this claim, but I have made a good faith attempt to locate such documentation.

The proposed legislation, without cross-reference to any other part of the City Charter, refers to "Multi-Agency Response to Community Hotspots operations." The Proposed legislation also references "the office's website and the city's open data portal," apparently intending to mean the Mayor's Office of Criminal Justice.²

The Mayor's Office of Criminal Justice is the Entity Supervising M.A.R.C.H., But Did Not Speak at the Hearing

The Operation Order states that M.A.R.C.H. was under the supervision of the office of criminal justice.

¹ The FOIL request was submitted to the NYPD on behalf of Mr. Abelson by Muckrock.com, which hosts the FOIL request and response documents at <https://www.muckrock.com/foi/new-york-city-17/multi-agency-response-to-community-hotspots-39017/#comms>. The documents requested included:

Any documents detailing M.A.R.C.H.'s organizational structure and procedural policies, including policies for why, when, how, and where M.A.R.C.H. intervenes, as well as official strategies for increasing the effectiveness of interventions.

A similar FOIL request was made by journalist Liz Pelly, which again elicited only one single document, Operation Order #27. I assume that the Committee on Justice System has received and reviewed those documents.

² The proposed legislation adds a section to Title 9, Chapter 3 of the City Charter. Section § 9-301 states, (omitting the needed language, that section 13 is Section 13 of Chapter 1 to the New York City Charter);

Office. The term "office" means the office of criminal justice as defined in section 13 of the charter or another office or agency designated by the mayor to implement the provisions of this chapter.

The proposed legislation should correct § 9-301 by adding the reference to Chapter 1.

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The proposed legislation states:

- a. The office shall submit to the council within 25 days of the end of each quarter and post to the office's website and the city's open data portal, in a machine readable form a report on Multi-Agency Response to Community Hotspots operations.

As noted above, there are no official documents or regulatory or statutory definition of "Multi-Agency Response to Community Hotspots." The proposed legislation should in some way define "Multi-Agency Response to Community Hotspots" with reference to a proper organization document.

The Operation Order states that M.A.R.C.H. is under the supervision of the office of criminal justice.

The Mayor's Office of Criminal Justice Has No Authority to Engage in a Multi-Agency Operation That Includes Non-Criminal Justice Agencies.

The Mayor's Office of Criminal Justice Has No Authority to Engage in a multi-Agency Operation that includes non-criminal justice agencies as clearly shown in New York City Chapter 1, Section 13.

13. Office of criminal justice.

There is established in the executive office of the mayor an office of criminal justice, to be headed by a coordinator of criminal justice appointed by the mayor.

The coordinator shall:

- (1) advise and assist the mayor in planning for increased coordination and cooperation among agencies under the jurisdiction of the mayor that are involved in criminal justice programs and activities;
- (2) review the budget requests of all agencies for programs related to criminal justice and recommend to the mayor budget priorities among such programs; and,
- (3) perform such other duties as the mayor may assign.

Section 13 provides no authority for the M.A.R.C.H. operations and applies only to agencies "involved in criminal justice programs and activities." M.A.R.C.H. operations, based upon the testimony of the panel at the hearing, included participation by the following non-criminal justice agencies: FDNY, DOB, DEP, and the State Liquor Authority.

What we have here is an effort by NYPD and the Office Of Criminal Justice to criminalize DOB civil regulations. These are not criminal justice programs. Indeed, M.A.R.C.H. is essentially an operation to criminalize civil violations.

There appears not to be no authority in the City Charter for the M.A.R.C.H. operations to be under the supervision of Office Of Criminal Justice.

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It would be essential that any follow up hearing include the attendance of the coordinator of criminal justice from the Office of Criminal Justice and to provide substantiation for the M.A.R.C.H. program including a statement of authority, description of responsibilities etc.

The Proposed Legislation Reporting Requirements.

The legislation should require separately a textual periodic report describing the operations of the M.A.R.C.H. with summary of statistical and other information, and include a description in the Mayor's annual report. In earlier reports, DEP provided a section in the annual report relating to M.A.R.C.H. as in this 2002 Report:

The Department, {DEP} continued its participation in the City's Multiple Agency Response to Community Hotspots (M.A.R.C.H.) initiative, which coordinates agency responses to quality-of-life problems in locations identified by communities. DEP works in collaboration with the New York City Police Department and other agencies to inspect these locations; it also enforces compliance with the appropriate sections of the air and noise code. DEP participated in 13 M.A.R.C.H. inspections citywide during the first four months of Fiscal 2002. The Department has participated in a total of 242 inspections since the inception of M.A.R.C.H. in Calendar 1997.³

This reporting practice was abandoned – it should be reinstated for each participating agency in the Annual Report and in a report by the Office of Criminal Justice.

The proposed legislation properly requires that a M.A.R.C.H. report should be included in the City's Open Data Portal as described in Title 23, Chapter 5 of the Administrative Code. We suggest that each participating agency prepare its own Data Set relating to M.A.R.C.H. operations, perhaps adding to a current dataset such as the DOB's DOB Violations Public Dataset and the DOB ECB Violations Dataset.

Indeed, the FOIL Data appears to be a subset of information of a DOB internal dataset. The only violations shown in this FOIL Dataset as provided by NYPD are violations issued by the DOB and then heard by the Environmental Control Board. Missing from the FOIL Data are violations issued by the NYPD, FDNY, DEP, and SLA. So, the NYPD's response was highly disrespectful.

The FOIL Response Database shows that the primary violations found in M.A.R.C.H. operations are violation of Department of Buildings rules concerning Certificates of Occupancy and Public Assembly Permits and Certificates and Department of Environmental Protection Regulations. There seems to be no current Public Dataset for DEP violations that would cover the typical noise violation. As to the Occupancy and Public Assembly Certificates and Permit, current Public Datasets appear to be

³ https://www1.nyc.gov/html/ops/downloads/pdf/mmr/0202_vol1.pdf.

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incomplete, such as the “DOB NOW: Build – Approved Permits” Dataset. These deficiencies echo the hearing comments of Attorney Muchmore as to the unfairness of M.A.R.C.H. operations issued violations in relation to these permits and certificates and having to respond to violations when the City and its record keeping may be at fault.

Other Suggestions As To The M.A.R.C.H. Inspections.

We would like to suggest alternative approaches to defining the requirements for public disclosure.

- The Office shall establish a Public Data Set covering M.A.R.C.H. operations including the activities of all agencies participating in the M.A.R.C.H. operations.
- The Public Data Set should be established on or before July 1, 2019.
- The Office shall publish a data dictionary containing a plain language dictionary of all fields or elements proposed to be included in the database in accordance with Local Law 107 of 2015.
- The update frequency of the Public Data Set shall be one week or less.
- Each participating agency should provide Public Data Sets identifying all violations issue as part of a M.A.R.C.H. inspection.
- The Public Data Set should provide direct links to data sets maintained by each participating agency:⁴
- The Public Dataset should include links and information with respect to the inspected establishment for :
 - The current Certificate of Occupancy.
 - The current Certificate of Public Assembly.
 - The current Public Assembly Permit.
- The elements of the M.A.R.C.H. Public Data Set might include
 - The name of the establishment as shown on street signage for the establishment. [The establishment name should be on the Public Assembly Permit.]
 - The Precinct.
 - The Council District.
 - The starting and finishing time of the inspection.

⁴ DOB Violations are found in the Open Data “DOB Violations” Dataset.
<https://data.cityofnewyork.us/Housing-Development/DOB-Violations/3h2n-5cm9>.

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- The initials of the person in charge of the inspection.
- The final disposition of any violations, including fines paid.
- The number of members of each agency participating in the inspection.
- The Cross-Streets.
- The number of law enforcement members participating in the inspection with body armor, helmets, or weapons other than handguns.

311 Processes Criminalizes Noise Complaints From Clubs, Bars, And Restaurants.

The NYC Open Data Portal hosts the “311 Service Requests from 2010 to Present” Public Dataset. The NYPD claims that 311 complaints are the cause of many M.A.R.C.H. inspections. Review of the 311 Dataset shows that 311 refers all complaints of loud music from clubs, bars, and restaurants only to NYPD and not to DEP as well. This serves to criminalize noise complaints and the complaints are not, it seems, transferred to DEP, if the 311 Dataset is correct.

It would be useful if that Dataset also included the unique BIS number so that data could easily be imported into a M.A.R.C.H. database.

Other Suggestions as to M.A.R.C.H.

- Videotape all inspections – NYPD team to include videographer - no editing allowed. Upon complaint by establishment, save all bodycam recordings.
- Require Office of Criminal Justice to Approve all M.A.R.C.H. inspections in writing approving a written request by each participating agency.
- Paramilitary/swat type officers may not be utilized absent justification of danger and express approval Office of Criminal Justice
- Establishments are to be provided with written notice of a M.A.R.C.H. inspection.
- Pre M.A.R.C.H. warnings to be in writing.

Lack of Transparency Shown By NYPD Testimony.

Further, to this observer at the hearing, the NYPD acted in an obstructive and disrespectful manner way in its presentation of NYPD statistics, and its response to the M.A.R.C.H. Excel Data. As to its own statistics, the NYPD embarrassed itself in trying to mislead the Council that the number of operations was the same as number of inspections, until forced to admit that there could be as many as 4-5 inspections in one operation. Second, NYPD referred to the small percentage of operations as compared to the total number of licensed drinking in establishments in the City, rather than the total number of night clubs, a far smaller number.

As to M.A.R.C.H. Data, NYPD produced this data in a FOIL response and because it had been mentioned in the Town Halls at which NYPD was present. The NYPD

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witnesses were well aware of the data presented by its own legal office. It was an affront to the Council for the NYPD to show up at this hearing and act like it had never seen the data.

Finally, NYPD should be required to provide the fields and description of all Datasets that is currently maintains that include data about the M.A.R.C.H. program, including the datasets from which the FOIL Data was derived and the datasets upon which the NYPD based its testimony at the hearing.

Thank you for allowing me the opportunity to submit this post-hearing statement. Please contact me should you have any questions or if I have not been clear.

Sincerely,



Alan D. Sugarman

cc:

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