

Index No. 537131/2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of
JOHN LEYVA, DAVID LUTZ, and BRUCE MAZER,

Petitioners,

-against-

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION,

Respondent.

**RESPONDENT'S MEMORANDUM OF LAW IN
SUPPORT OF ITS VERIFIED ANSWER AND IN
OPPOSITION TO THE VERIFIED PETITION**

MURIEL GOODE-TRUFANT

*Corporation Counsel of the City of New York
Attorney for Respondent
100 Church Street
New York, N.Y. 10007*

*Of Counsel: Meghan O'Malley & Cindy
Singh
Tel: 212.356.3586*

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of
JOHN LEYVA, DAVID LUTZ, and BRUCE MAZER,

Index No.: 537131/2025

Petitioners,

Hon.

-against-

Motion Sequence No. 1

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION,

Respondent.

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**RESPONDENT’S MEMORANDUM OF LAW
IN SUPPORT OF ITS VERIFIED ANSWER
AND IN OPPOSITION TO THE VERIFIED
PETITION**

PRELIMINARY STATEMENT

The New York City Economic Development Corporation (“EDC” or “Respondent”), respectfully submits this memorandum of law in support of its Verified Answer and in opposition to the Verified Petition (“Petition” or “Pet.”). In this Article 78 proceeding, petitioners JOHN LEYVA, DAVID LUTZ, and BRUCE MAZER, (“Petitioners”) challenge the legality of the Vision Plan for the Brooklyn Marine Terminal (the “Vision Plan”), which was developed by the Brooklyn Marine Terminal Task Force (“Task Force”) through an exceptionally public and transparent engagement process, claiming that the Task Force meetings and approval vote violated New York State’s Open Meetings Law. Petitioners seek a preliminary injunction staying further implementation of the Vision Plan, as well as an order annulling the Vision Plan and enjoining EDC from proceeding with the multi-billion dollar redevelopment of Brooklyn Marine Terminal (“BMT”). However, the Vision Plan’s development was a uniquely open process, by which community stakeholders and elected officials had an opportunity to have a say, not just in the final

vote on the Vision Plan, but in the very process of creating it. While it was not legally required to do so, EDC engaged in a public process, rather than the customary practice of relying on EDC project staff, to create a redevelopment plan with the advice, review and consensus of the Task Force, comprised of 12 elected officials, four representatives of the affected industry and maritime organizations, and 12 representatives of affected local neighborhood, business, real estate, and tenant associations. *See* Answer (“Ans.”) ¶¶52-53. In addition to Task Force meetings, in a year-long effort, EDC staff facilitated drop-in information sessions, public workshops, webinars, involvement in regular community events such as Community Board meetings and street fairs, and online public surveys, among many other things. *See* Ans. ¶¶63-90. Six advisory groups, representing relevant interested communities, were created to expand the involvement of stakeholders even further. *See* Ans. ¶¶55-62. The Petition should be denied in its entirety because Respondent’s creation of the Vision Plan not only did not violate New York State Open Meetings Law, but was an demonstration of EDC’s meticulous care toward engaging the public and seeking to address the public’s concerns as part of the process. Petitioners’ request for annulment of the Vision Plan is unwarranted and Petitioners have failed to meet their burden to show they are entitled to injunctive relief.

STATEMENT OF FACTS

The Court is respectfully referred to the Respondent’s Verified Answer and its exhibits for a full statement of facts. A summary is provided for the Court’s convenience.

EDC is a New York not-for-profit corporation governed by a Board of Directors. The Brooklyn Marine Terminal (“BMT”) encompasses over 100 acres of waterfront property in the Red Hook and Columbia Waterfront Districts in Brooklyn, New York, including the Brooklyn

Cruise Terminal. Currently, BMT is an underinvested industrial area that closes the public off from the waterfront. Ans. ¶¶4, 43-45.

In May, 2024, Mayor Eric Adams, Governor Kathy Hochul, and the Port Authority announced a plan whereby EDC would oversee operations and management of BMT with the goal of creating a plan to revitalize and modernize the area. *Id.* ¶47; Answer Exhibit 1 (“Ans. Exh. 1”).

While it was within EDC’s inherent authority to create a plan for the redevelopment of BMT without public engagement, the City and EDC committed to the creation of a Task Force, as part of a multi-layered process, which included extensive, meaningful public engagement, to reach consensus on the Vision Plan for BMT. Ans. ¶49; Ans. Exh. 2.

The Creation of the BMT Task Force

The Task Force consisted of twenty-eight members, including elected officials, citywide planning organizations, local community groups, and maritime and industrial groups. Task Force members brought a balance of perspectives, interests, and expertise in maritime industry, labor and trade, environmental justice, sustainability, planning and community development. The Task Force’s responsibilities included approving the Vision Plan for BMT, supporting a robust stakeholder engagement process, and increasing community participation and engagement. Ans. ¶¶50-54; Ans. Exh. 2.

Advisory Groups

Six advisory groups were created to reflect different interests and areas of expertise. The Advisory Groups were: i) Community Development and Housing; ii) Maritime Industrial Workforce & Small/ Local Business; iii) BMT Tenants & Port Operators; iv) Environmental Justice, Resiliency & Waterfronts; v) Transportation, Mobility & Open Space; vi) NYCHA/ NYCHA Youth. Ans. ¶55-62; Ans. Exh. 2.

The responsibilities of the Advisory Groups included: i) attending the meetings of their respective groups; ii) providing feedback on planning framework and priorities; and iii) helping to communicate information about the project, the engagement process, and opportunities for public input. Throughout the year-long planning process, the Advisory Groups held 23 meetings. Recordings of some advisory group meetings are on EDC's website. *Id.* ¶¶57-62.

Advisory Group members included individuals from various industry and community organizations. Petitioner Leyva was on the Community Development & Housing Advisory group, representing 63 Tiffany Place, and he regularly attended the meetings of this Advisory Group. *Id.* ¶¶58-60.

Public Engagement

The creation of the Vision Plan included robust public engagement. The BMT project team, consisting of staff members from EDC (among other organizations), summarized information from public engagement sessions for the Task Force.. Summaries of public engagement during the planning process are on EDC's website. Ans. ¶¶63-64; Ans. Exhs. 4; 5.

Public engagement included: i) 915 Survey Responses; ii) 27 Public Workshops; iii) 16 Information and Feedback Sessions; iv) 13 Stakeholder Engagements; v) 9 NYCHA Red Hook Houses East and West Engagements; vi) 11 Site Tours; vii) 5 Canvassing Efforts in Red Hook with Green City Force; viii) 3 Town Hall Meetings and ix) periodic newsletters sent by email to subscribers to a BMT project listserve. *Id.* ¶¶65; 89.

EDC issued a community survey from September 18, 2024 through October 21, 2024 and after Public Workshop 2 to collect feedback concerning community priorities, engagement consideration, and other community reflections. Ans. ¶66; Ans Exh. 4.

During the approximately one-year planning process, EDC hosted multiple sessions of seven different Public Workshops. Two sessions of Public Workshop 1 were held on September 28, 2024 and October 7, 2024. Two sessions of Public Workshop 2 were held on December 5, 2024 and December 16, 2024. Nineteen sessions of Public Workshop 3 were held between January 11 and January 21, 2025. Public Workshop 4 was held on March 24, 2025, and two sessions of Public Workshop 5 were held on May 6, 2025 and May 8, 2025. Public Workshop 6 was held in person and virtually on June 9, 2025, and Public Workshop 7 was held virtually on October 23, 2025. *Id.* ¶¶67, 72.

Notice for the Public Workshops was provided via email through the BMT project listserv, ads in the Red Hook Star Revue, and on the EDC website. Flyers were distributed to Task Force members for further dissemination. Flyers were also posted in the neighborhood, and EDC hired canvassers to publicize two Public Workshops. Anyone was welcome to attend the Public Workshops. Petitioners attended several Public Workshops. Ans. ¶¶68-69.

At the Public Workshops, information boards and printed materials were provided for discussion. EDC solicited feedback from attendees. Presentations from Public Workshops 2-7 and Information Boards from Public Workshop 1 are on EDC's website. Ans. ¶¶70;73; Ans. Exh, 4

At Public Workshop 1, an overview of the project's goals and aims was presented, including an overview of the process by which the Vision Plan would come to fruition. Attendees were asked to pose questions for the Advisory Groups and to share their priorities for the redevelopment of BMT. Ans. ¶74.

At Public Workshop 2, EDC discussed potential land uses at BMT such as maritime, flex maritime and industrial, parks and open spaces, and affordable housing. Feedback from prior

community engagement was shared, and attendees participated in break out groups to further share their opinions on land use priorities. *Id.* ¶75.

At Public Workshop 3, EDC emphasized that the community needed to find a compromise between financial stability, community benefits, and revenue positive uses. Attendees used a site planning tool to build their preferred scenario for the redevelopment of BMT. *Id.* ¶76.

At Public Workshop 4, EDC presented different scenarios for the redevelopment of BMT for the public to review. *Ans.* ¶77.

At Public Workshop 5, EDC reviewed and discussed the preferred site plan for the redevelopment of BMT and opportunities for improving the climate resiliency of BMT and for improving transportation in and around BMT. In discussing resiliency and transportation, EDC included feedback already acquired from the community on these topics. *Id.* ¶78.

At Public Workshop 6, EDC presented the final site plan and discussed commitments that the City sought to make as part of the redevelopment of BMT. A timeline of next steps including Environmental Review and governance of the project were also shared. *Id.* ¶79.

At Public Workshop 7, EDC discussed the vast public engagement involved during the planning process for this project. EDC also discussed how it worked with the Task Force to integrate stakeholder feedback. For example, the final site plan now called for more transit access, greater housing affordability and additional maritime industrial input for port planning, all in direct response to stakeholder engagement. *Ans.* ¶80.

EDC hosted 16 Information and Feedback Sessions between August 23, 2024 and June 12, 2025 at various locations. Information Sessions were open to the public and were held on multiple dates to accommodate as many people as possible. These information sessions were

intended to keep residents informed about the timeline, intent, and progress of the BMT planning project and solicit feedback from residents. Ans. ¶¶81-83.

EDC held 13 additional stakeholder engagement events between September 6, 2024 and May 30, 2025, to spread awareness of the BMT planning project. Eight of these engagements were open to members of the general public; five engagement events were specifically for community organizations such as the Red Hook Community Alliance. *Id.* ¶84.

EDC held nine engagement events specifically for residents of NYCHA Red Hook Houses East and West. Ans. ¶85.

EDC also offered eleven site tours. Site tours offered on October 24, 2024 and October 31, 2024 were open to the Advisory Groups. Site tours offered on November 1, 7, 8 and 14, 2024 were open to the public and to the Advisory Groups. Additional site tours were provided for NYC Council Member Amanda Farias, City agencies, a local church group, and NYCHA Red Hook Houses East and West residents Ans. ¶86.

EDC hosted three Town Hall meetings which were open to the public on March 20, 2025, June 2 and 4, 2025. Petitioners Leyva, Lutz, and Mazer attended the Town Hall on June 4, 2025. *Id.*

Finally, EDC hired WXY Studio as a consultant to attend and facilitate public engagement on this project. Ans. ¶¶87-88; 90.

Task Force Meetings and the September 22, 2025 Vote on the Vision Plan

Between September, 2024 and June, 2025, the Task Force held 19 full meetings. Two meetings were also held on the BMT site planning tool; for these two meetings, the Task Force was split into two groups (but all members were invited). During this period, eight office hours were held, and all Task Force Members were invited to these office hours. Also during this period,

five small group discussions were held. Only subsets of Task Force members with relevant experience or those who expressed interest in the discussion topic were invited to the small group discussions. Office Hours and small group discussions allowed subsets of Task Force Members to discuss topics such as i) an overview of the environmental review process, including the Environmental Impact Statement; ii) Blue Highways; iii) guiding principles of the project; and iv) climate issues. Ans. ¶¶91-92.

Information learned from various public engagement sessions was summarized and shared by EDC with Task Force members. Task Force Meetings were closed to the public to allow free communication of ideas. After each Task Force meeting, meeting summaries were prepared by EDC staff and shared with Task Force members. Community Board 6 posted most summaries on its website. On September 22, 2025, the Task Force voted to approve the Vision Plan. Though this vote was not open to the public, the Task Force again considered the various sources of feedback and dialogue that had occurred between the Task Force, Advisory Groups, stakeholders, and members of the public. ¶¶93-97.

The BMT Vision Plan

The Vision Plan (Ans. Exh. 6) is publicly available on EDC's website. The Vision Plan sets forth the proposed plan for the revitalization and modernization of BMT. It intends to deliver, among other things, a sustainable all electric port, various modes of affordable housing, public open space, a new Brooklyn Cruise Terminal, a coastal protection strategy, and a pedestrian-first traffic and transit plan. The Vision Plan contemplates over 18 billion dollars in economic impact for the City and region. *Id.* ¶¶98-101.

Current Status of the BMT Project

Following the approval of the Vision Plan, the Task Force was dissolved, and the Brooklyn Marine Terminal Development Corporation (“BMTDC”) was formed. BMTDC is governed by a board of directors and is expected to provide input to EDC and Empire State Development (“ESD”) with respect to the BMT site plan, outlined in the Vision Plan, in connection with the General Project Plan (“GPP”) process described below, and in accordance with its corporate documents. BMTDC has thus far held two Board Meetings on December 1, and 19, 2025. Both meetings were preceded by public notice, open to the public, and records and meeting minutes are available on EDC’s website. Per the Vision Plan (at 48), BMTDC meetings will be subject to the Open Meetings Law and other reporting requirements. *Id.* ¶103-06.

Furthermore, as described in the BMT Vision Plan, EDC formed the Brooklyn Marine Terminal Advisory Task Force, which held one virtual meeting on October 23, 2025 to introduce its members and provide information about the upcoming environmental review process, part of the GPP process. There have been several public scoping meetings held by the Mayor’s Office of Environmental Coordination (“MOEC”) as lead agency. The presentation and scoping information made available on EDC’s website. *Ans.* ¶107.

Currently, the BMT project is undergoing an environmental review and the beginning of the ESD General Project Plan approval process, it is currently in the public comment period, which will close on March 31, 2026, after which a draft Environmental Impact Statement (“DEIS”) will be prepared and published by MOEC in the fall of 2026, followed by a public hearing on the DEIS. *Id.* ¶108.

June 10, 2025 Email from The Committee on Open Government

On June 9, 2025, the petition alleges that Petitioner Mazer emailed the New York Coalition on Open Government (“Coalition”) for an opinion on whether the Task Force was required to have

public meetings under the Open Meetings Law. Pet. ¶17. The Coalition referred Mr. Mazer to the New York State Committee on Open Government (“Committee”); on June 10, 2025, a member of that responded by email that the Task Force was required to comply with the Open Meetings Law. *Id.* ¶110; Ans. Exh. 10.

The June 10 response appears to have been based on limited and misleading statements about the Task Force provided by Mr. Mazer. For example, Mr. Mazer stated in a conclusory fashion: “The Task Force is not advisory in nature. They will be voting on a final site plan. EDC does not have the ability to veto the plan.” As described above, EDC sought and received extensive public feedback, both directly from the public and indirectly through their elected representatives and community groups, which was incorporated into the Vision Plan. The BMT project is subject to various approval processes which will invite and involve more public engagement. *Id.* ¶113-114; Ans Exh. 10.

EDC was not provided a copy of the June 10, 2025 email from the Committee until this proceeding was commenced. *Id.* ¶112.

Petitioners seek to undo one year of public engagement, and the community’s collaborative development of a plan to reimagine 100+ acres of its waterfront space. Petitioners’ argument that they were denied information or the opportunity to express a voice in the process by having a certain subset of BMT meetings focused by topic, or limited to a Task Force of elected representatives and community leaders, is without basis in fact, and this vital public project to provide housing and economic development should be permitted to proceed to further levels of approval and community engagement. Ans. ¶115.

ARGUMENT

POINT I

EDC DID NOT VIOLATE THE OPEN MEETINGS LAW.

A. The Task Force Is Not a “Public Body” Subject to the Open Meetings Law.

New York State’s Open Meetings Law applies only to entities that qualify as a “public body” under New York Public Officers Law § 102(2). N.Y. Pub. Off. Law § 102(2). To fall within the statute, an entity must perform a “governmental function,” meaning that it must exercise some portion of the sovereign power of the State or its political subdivisions. *Matter of Poughkeepsie Newspaper Div. of Gannett Co. v. Mayor’s Intergovernmental Task Force*, 145 A.D.2d 65, 67–69 (2d Dep’t 1989). Courts have repeatedly rejected the notion that all bodies that discuss public issues or conduct public-facing activity are subject to the Open Meetings Law. *See Matter of Poughkeepsie*, 145 A.D.2d at 69; *Matter of Perez v. City Univ. of N.Y.*, 5 N.Y.3d 522, 528 (2005).

In determining whether an entity performs a “governmental function,” courts conduct a fact-based inquiry that considers “the authority under which the entity was created, the power distribution or sharing model under which it exists, the nature of its role, the power it possesses and under which it purports to act, and a realistic appraisal of its functional relationship to affected parties and constituencies.” *Matter of Perez*, 5 N.Y.3d at 528 (quoting *Matter of Smith v. City Univ. of N.Y.*, 92 N.Y.2d 707, 713 (1999)). Relevant considerations include how the entity was formed, whether members hold a fixed term and whether the parent body must await the entity’s recommendations before acting. *See id.*; *see also Goodson Todman Enters., Ltd. v. Town Bd. of Milan*, 151 A.D.2d 642, 643 (2d Dep’t 1989) (finding significant that “committee’s members do not hold fixed terms and the appellant need not wait for the committee’s recommendations in order to act.”); (*New York Pub. Interest Research Group, Inc. v. Governor’s Advisory Comm’n to Make Findings & Recommendations about Problems Relating to Liability Insurance*, 133 Misc. 2d 613 (Sup Ct, NY County 1986), *affd sub nom*, 135 A.D.2d 1149 (1st Dep’t 1987) (finding no

governmental function for a commission, “created by Executive Order; the Commissioners do not hold fixed terms; and there is no requirement that the Governor wait for the recommendations of the Commission before taking any action”).

Advisory, consultative, planning, and recommendation-based bodies do not perform a governmental function because they do not exercise sovereign power. *See Poughkeepsie*, 145 A.D.2d at 68–71; *Goodson* 151 A.D.2d at 643; *Matter of Am. Soc. for Prevention of Cruelty to Animals v. Bd. of Trustees of State Univ. of New York*, 165 A.D.2d 561, 565 (2d Dep’t 1991), *aff’d* 79 N.Y.2d 927 (1992). This stands in contrast with entities that are vested with “with decision-making authority to implement [their] own initiatives and, as a practical matter, operate[] under protocols and practices where its recommendations and actions are executed unilaterally and finally, or receive merely perfunctory review or approval.” *Matter of Smith*, 92 N.Y.2d at 714.

The presence of formal procedures, deliberations, or voting does not alone transform advisory deliberation into governmental action. *Matter of Poughkeepsie*, 145 A.D.2d at 68–71; *New York Pub. Interest Research Group*, 133 Misc 2d at 618 (finding no Open Meetings Law violation even though governor-established commission formally voted to adopt recommendations in a report); *Matter of Daily Gazette Co. v. North Colonie Bd. of Educ.*, 67 A.D.2d 803, 804 (3rd Dep’t 1979) (exempting standing committees of the board of education, which were established merely to make recommendations to the board).

EDC created the Task Force to coordinate a large-scale land use planning and public engagement process, to incorporate community and stakeholder feedback, and to formulate a Vision Plan for the BMT project, intended to guide subsequent public approval actions. *See* Ans. ¶54. The Task Force included both elected officials and community stakeholders, who were invited to join and did not hold a fixed term on the Task Force. Ans. ¶52. The Task Force was not vested

by statute, regulation, or charter with authority to implement governmental action, allocate public funds, confer rights, impose obligations, or otherwise exercise sovereign power.

Although the Task Force voted to approve the Vision Plan, the Task Force had no authority to dictate the final approval of the GPP by ESD or any other discretionary approvals associated with the project that will be made by public agencies and officials. Ans. ¶102 & Exh. 5 (“The BMT Vision Plan and its associated commitments listed below are contingent on an approved [GPP], which will reflect the environmental review, and final approval by the Public Authorities Control Board (PACB), unless otherwise noted. The port and waterfront components of the BMT Vision Plan will also require approvals from the Army Corps of Engineers and the State Department of Environmental Conservation, unless otherwise noted.”). The Task Force’s approval did not effectuate zoning or other land use changes, authorize construction, allocate funds, confer approvals, or compel any governmental body to act. Each of those actions will require further public action and review. By contrast, the Vision Plan operates as a foundational planning framework to be further acted upon by agencies and public authorities as the development process of the BMT project continues.

Because the Task Force’s determinations lacked delegated sovereign authority, its activities remained advisory in nature. Accordingly, the Task Force was not performing a governmental function, and is not a public body subject to the Open Meetings Law, and the Petition should be denied and dismissed in its entirety.

POINT II

ANNULMENT OF THE VISION PLAN IS AN UNWARRANTED AND EXTREME REMEDY

The New York State’s Open Meetings Law reflects the Legislature’s intent to promote public confidence in governmental decision-making by ensuring that the formulation of public

policy occurs in a manner that is open, transparent, and accessible to the public. N.Y. Pub. Off. Law § 100. The statute requires that public business be conducted openly so that citizens may observe deliberations and decisions. *Id.* At the same time, the Legislature intended the Open Meetings Law to be applied in a practical and functional manner that facilitates, rather than impedes, the orderly conduct of government business. *Matter of Gordon v. Vill. of Monticello*, 87 N.Y.2d 124, 126 (1995) (“The Open Meetings Law... was intended... to open the decision-making process of elected officials to the public while at the same time protecting the ability of the government to carry out its responsibilities.”). Although the Open Meetings Law provides the right for the public to observe, it does not “assure public participation.” *Puka v. Greco*, 119 Misc. 2d 696, 701 (Sup Ct, Nassau County 1983), *aff’d*, 104 A.D.2d 362 (2d Dep’t 1984).

Public Officers Law § 107(1) vests courts with discretion to fashion appropriate relief and expressly provides that actions taken in violation of the statute “may be voided,” not that they must be voided. N.Y. Pub. Off. Law § 107; *Matter of New York Univ. v. Whalen*, 46 N.Y.2d 734, 735 (1978). The Court of Appeals has held that this discretionary language “makes it abundantly clear that not every breach of the Open Meetings Law automatically triggers its enforcement sanctions.” *Id.* Judicial relief is warranted only upon a showing of good cause. *See Matter of New York Univ.*, 46 N.Y.2d at 734.; *Matter of Roberts v. Town Bd.*, 207 A.D.2d 404 (2d Dep’t 1994). The burden to show good cause falls on petitioners. *See Matter of New York Univ.*, 46 N.Y.2d at 734.

Consistent with this legislative intent, courts have emphasized that the Open Meetings Law is designed to prevent secrecy in the formation of public policy—not to invalidate agency action or impose sanctions where the public has been meaningfully informed and involved. *See Matter of Gordon*, 87 N.Y.2d at 127-8 (“purely technical and non-prejudicial infractions or wholly

unintentional violations do not rise to the level supporting an award of attorney's fees") (internal citations omitted); *Matter of Concerned Citizens to Rev. Jefferson Valley Mall v. Town Bd. of Town of Yorktown*, 83 A.D.2d 612, 613–14 (2d Dep't. 1981), *appeal dismissed*, 54 N.Y.2d 957 (1981) (finding no "good cause" to nullify challenged action, "particularly in view of the ample opportunity for public comment and resulting modifications" to the proposal in question); *Matter of Burgher v. Purcell*, 87 A.D.2d 888, 888 (2d Dep't 1982) (declining to void actions where the body did not view itself as subject to the Open Meetings Law and there was an absence of bad faith).

Accordingly, courts must assess whether annulment would further the statute's legislative purpose or merely punish technical or non-prejudicial noncompliance. In exercising this discretion, courts examine the nature of the alleged violation, the degree of public prejudice, and whether the governmental conduct undermined the transparency values the statute was intended to protect. *Matter of New York Univ.*, 46 N.Y.2d at 734; *Matter of Gordon*, 87 N.Y.2d at 124; *see also Matter of Sanna v. Lindenhurst Bd. of Ed.*, 85 A.D.2d 157, 162–63 (2d Dep't 1982), *aff'd sub nom. Matter of Sanna v. Lindenhurst Bd. of Educ.* 58 N.Y.2d 626, 627 (1982); *Matter of Concerned Citizens to Rev. Jefferson*, 83 A.D.2d at 613; *Matter of Burgher*, 87 A.D.2d at 888. Even where a court finds that an Open Meetings Law violation has occurred, sanctions are generally unwarranted absent evidence of bad faith, public prejudice, or a persistent pattern of deliberate evasion of the statute's requirements. *Matter of Goetschius v. Bd. of Educ. of Greenburgh Eleven Union Free Sch. Dist.*, 281 A.D.2d 416, 417 (2d Dep't 2001); *Matter of Griswald v. Village of Penn Yan*, 244 A.D.2d 950 (4th Dep't 1997).

As such, annulment should be disfavored and considered a drastic remedy where invalidation would not advance meaningful public access to governmental decision-making.

A. EDC'S Actions to Meaningfully Involve the Public in the Formulation of the Vision Plan Far Exceeded Any Custom or Obligation.

EDC went beyond what was legally required to meaningfully involve stakeholder and public engagement in shaping the Vision Plan. Typically, for a public redevelopment project like the BMT Project, the process would start with project staff developing and drafting a project plan. Although staff often do, for major projects, seek community input through e.g., a presentation at a Community Board meeting or a publicly noticed meeting for the approval of the project plan, the entire purpose of the Task Force was to engage with the public and the affected communities in a novel, robust way. Neither the creation of the Task Force nor the development and adoption of a Vision Plan was a prerequisite to forming the BMTDC or proceeding in advancing the BMT project into the GPP process, and yet every facet of the Task Force's actions, down to its very composition and lengthy timeline, was created to offer multiple methods and forums to affected members of the public to ensure that their voices could be heard, not just by EDC providing answers to questions, but rather, by Task Force members discussing feedback received from groups and individuals prior to any approval of the Vision Plan. *See* Ans. ¶54. EDC voluntarily designed and implemented a comprehensive, community-centered engagement framework to ensure that the BMT developed in a manner informed by local needs, priorities, and expertise. *See* Ans. ¶42; Ans. Exh. 2.

This engagement framework was deliberately multi-layered, consisting of four coordinated components: the Task Force, Advisory Groups, the Project Team, and a series of Public Workshops. *See* Ans. ¶¶50-90; Exh. 2. Together, these components were designed to promote transparency, facilitate sustained dialogue, and embed community input directly into the formulation of the Vision Plan. *Id.*

EDC convened a Task Force of twenty-eight elected officials, community and neighborhood stakeholders, local and citywide nonprofit organizations and industry expert, selected to ensure broad representation of local and citywide interests. *See* Ans. ¶¶50-54; Ans. Exh. 6. Task Force members were encouraged to solicit feedback from their constituents on BMT development and Vision Plan drafts and bring those perspectives directly into the planning process, ensuring that community concerns were not merely heard but actively addressed early and often. *See* Ans. Exhs. 2; 6. In other words, rather than having public comment considered after the plan was already finished, feedback from the public and affected stakeholders was considered in real time during the actual development of the Vision Plan itself.

EDC further conducted a series of Public Workshops, which served as public-facing forums to present planning updates, solicit feedback, and refine draft Vision Plan recommendations. *See* Ans. ¶¶63-90; Exhs. 2; 6. Over approximately one year, EDC held multiple hybrid-format Public Workshops and information sessions across twenty-seven separate dates—an unusually sustained level of public outreach. *Id.* The workshops created an ongoing feedback loop amongst EDC, the Task Force, and the public by allowing community members to directly observe and influence the development of the Vision Plan. *See* Ans. ¶¶68-93; Exhs. 2; 6.

EDC established six Advisory Groups composed of members with “different interest and areas of expertise” and that had “a willingness to participate and commit to the community planning process.” *See* Ans. ¶¶55-62. Engagement was further supplemented through weekly newsletter, site tours, tabling events, and community surveys, extending participation well beyond formal meetings. *See* Ans. ¶¶81-90.

The Task Force was only one layer of a robust multi-layered, multi-disciplinary engagement process that placed community involvement at the center of the Vision Plan’s

formation. In the true spirit of the Open Meetings Law, EDC went above customary procedure to ensure that the public was not merely observing the development of the Vision Plan but actively shaping it.

B. Petitioners Have Not Met their Burden to Demonstrate Good Cause or Prejudice.

Petitioners have failed to establish good cause to annul or halt implementation of the Vision Plan or that they have suffered any prejudice because the Task Force meetings, a subset of the community engagement for the Vision Plan, were not open to the general public. The overall development of the Vision Plan was not merely an open process—it was highly interactive. *See* Ans. ¶¶62-87. Members of the public were afforded meaningful opportunities not only to observe the process but to participate directly in shaping the goals and objectives ultimately adopted. This is not to say that every piece of feedback and every public wish was incorporated but that community stakeholders were heard and their feedback considered. *Id.*

Petitioners have not established that EDC acted in a manner to intentionally exclude public involvement. To the contrary, EDC implemented a multilayered and year-long engagement framework specifically designed to maximize community involvement. Petitioners' reliance on a June 10, 2025 email sent by the Committee on Open Government ("Committee") is unavailing. *See* Pet. ¶17; Pet. Exh. A. As an initial matter, this is not an advisory opinion, and even assuming that it were, Committee advisory opinions are non-binding and not entitled to greater deference than an agency's own decision-making. *Matter of Reese v. Daines*, 20 Misc. 3d 1145(A) (Sup Ct, Erie County 2008) (citing *Matter of John P. v Whalen*, 54 N.Y.2d 89, 96 (1981); *see Matter of Buffalo News v Buffalo Enter. Dev. Corp.*, 84 N.Y.2d 488, 492, (1994)). Furthermore, Petitioners did not provide this email to EDC prior to the commencement of this proceeding. Most significantly, Petitioners failed to include the original request submitted to the Committee, which provides only conclusory allegations and conflates the Task Force's role in the overall BMT

development process. *See* Ans. ¶116; Ans. Exh. 9. Petitioner Mazer’s correspondence and mischaracterizations undermine both the factual premise and persuasive value of the opinion sent by the and preclude any inference of intentional noncompliance.

Petitioners would have this Court believe that they were systematically excluded by EDC from the early BMT project development. That claim is belied by both the extensive engagement process developed by EDC and Petitioner’s own documented participation. Petitioner Leyva regularly attended meetings for the Housing and Community Development Advisory Group, representing 63 Tiffany Place. Ans. ¶60. Petitioner attended the Town Hall meeting on June 4, 2025 and attended several Public Workshops. Ans. ¶88. Without including any of these details in their filings, Petitioners now seek to stretch the Open Meetings Law beyond its intended purpose in an inequitable attempt to derail a project that they participated in and that is designed to benefit their community, the City and the State.

Finally, the BMT project remains in the early stages of a multi-year development process. BMTDC has committed to compliance with the Open Meetings Law and held its first Board of Directors meetings on December 1 and 19, 2025. *See* Ans. ¶106. In addition, as part of the environmental review and GPP process, Petitioners—and the public—will continue to have meaningful access and opportunities for participation as the project advances. Ans. ¶108.

C. Annulment is An Extreme and Drastic Remedy Which Would Derail Development of the Brooklyn Marine Terminal.

Annulment of the Vision Plan—or an injunction halting further implementation of the Vision Plan as sought by Petitioners — would not advance the legislative intent of the Open Meetings Law, because public participation in this case has already been robust, meaningful and remains ongoing. Instead, such relief would impose profound, unnecessary financial and logistical

disruption, effectively unwinding over a year of intensive planning and community-driven engagement.

The development of the BMT project represents a generational opportunity to reimagine and revitalize the Brooklyn Waterfront to deliver lasting public benefit at the local, City, and State levels. Ans. Exh 1. The Vision Plan is a foundational first step towards the development of a sustainable, all-electric port, expanded access to affordable housing, public open space and waterfront access, and towards providing for thousands of temporary and permanent jobs, and securing hundreds of millions of dollars for NYCHA Housing and related infrastructure. *See* Ans. ¶100; Ans. Exh. 6. The anticipated impact of the development of BMT's local economy, housing stability, pedestrian safety and climate change cannot be overstated.

Since September 22, 2025, the Task Force has been dissolved and BMTDC has been formed. Ans. ¶103. BMTDC has publicly noticed and held two open meetings and will continue to do so. Ans. ¶105. Beyond the creation of BMTDC, a new Advisory Task Force has been formed and the BMT project is now in the process of an environmental review as part of the ESD GPP approval process. Ans. ¶¶107-08. Annuling the Vision Plan or issuing an injunction does not just undo a year's worth of meaningful public engagement but could impact or potentially suspend these coordinated efforts, jeopardize the timeline of the GPP process for the BMT project and potentially postpone the BMT redevelopment altogether.

In sum, neither annulment nor injunctive relief is required nor warranted here. The record demonstrates that EDC not only complied with the Open Meetings Law core purpose of transparency, but affirmatively exceeded required development practice, by implementing an unusually robust, multi-layered public engagement process that meaningfully incorporated public feedback into the formulation of the Vision Plan. Petitioners fail to establish either good cause or

any cognizable prejudice, and the requested relief would not advance the Open Meetings Law’s legislative purpose but would instead impose sweeping financial and logistical harm and possibly derail the BMT development altogether. Annulment here would punish rather than vindicate the transparency values that the Open Meetings Law was enacted to protect—and must be denied.

POINT III

PETITIONERS ARE NOT ENTITLED TO INJUNCTIVE RELIEF BECAUSE THEY DO NOT HAVE A MERITORIOUS CLAIM, HAVE NOT DEMONSTRATED IRREPARABLE HARM AND EQUITIES TIP DECIDEDLY IN EDC’S FAVOR.

Petitioners’ application for a preliminary injunction should be denied because it has failed to meet any of the required elements.

The decision whether to grant injunctive relief is a matter of discretion for the trial court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988). The movant must demonstrate: “(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party’s favor.” *Id.*; *1234 Broadway LLC v. West Side SRO Law Project*, 86 A.D.3d 18, 23 (1st Dep’t 2011). “Conclusory statements lacking factual evidentiary detail warrant denial of a motion seeking a preliminary injunction.” *1234 Broadway*, 86 A.D.3d at 23. “Preliminary injunctive relief is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and undisputed facts found in the moving papers.” *Koultukis v. Phillips*, 285 A.D.2d 433, 435 (1st Dep’t 2001). As set forth below, Petitioners cannot make the required showing for a preliminary injunction.

A. Petitioners Fail to Establish A Likelihood of Success on the Merits of Their Single Cause of Action Against EDC.

It is impossible for Petitioners to show a likelihood of success on their single cause of action here. As discussed above, there is no merit to Respondent's contention that EDC violated the New York State Open Meetings Law. The Task Force was not performing a "government function" but, was one of many components, working together to create, develop and refine the policy goals and commitments for the BMT project and site plan that are contained in the Vision Plan. Furthermore, the Petitioners failed to demonstrate any good cause to annul or any prejudice given the significant meaningful public access and contributions that went into the Vision Plan.

B. Petitioners Have Not Shown Irreparable Harm.

A party seeking an injunction must establish that it will suffer irreparable injury without the injunction. *Family-Friendly Media, Inc. v. Recorder Tel. Network*, 74 A.D.3d 738, 739 (2d Dep't 2010). "Because irreparable harm is generally so important 'the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered.'" *VOOM HD Holdings LLC v. Echostar Satellite LLC.*, No. 600292/08, 2008 N.Y. Misc LEXIS 9855, at *4 (Sup. Ct. N.Y. Co. April 23, 2008) (quoting *Rodriguez by Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1998)); see also *Stamulis v. Mordred Realty Corp.*, No. 07-11333, 2009 N.Y. Misc. LEXIS 5850, at *5 (Sup. Ct. Nassau Co. June 9, 2009) ("The threat of irreparable injury is a sine qua non. . . . If there is no irreparable injury, there can be no preliminary injunction."). Petitioners have not met their burden of demonstrating any irreparable harm.

Petitioners allege they were injured by their inability to participate in, observe, and attend all Task Force meetings, including the September 22, 2025 meeting. See Pet. ¶31. They further assert that the public is entitled to a "fair and open process" before permanent changes are made to public land. See Pet. ¶33. These allegations fail to establish irreparable harm. They ignore both the substantial public engagement facilitated by EDC throughout the Vision Plan process and

Petitioners' own documented involvement in the project's development. As described above, Petitioner Leyva was an active member on the Housing and Community Development Advisory Group and all Petitioners attended several Public Workshops. *See* Ans. ¶¶59, 91. Moreover, Petitioners remain able to participate fully in the ongoing multi-year planning and approval process, which will provide continuing opportunities for public input. Accordingly, the claimed injury is speculative, remediable, and insufficient to warrant injunctive relief.

C. The Balance of Equities Weighs Decisively Against Injunctive Relief.

Finally, the balance of equities weighs decisively against injunctive relief. As described above, enjoining the Project would halt a multi-year public development initiative, disrupt community interests, and impose sweeping financial and logistical harm on the City and the public, while Petitioners have not shown any cognizable prejudice since they have, and will continue to have, input into BMT's redevelopment.

POINT IV

**THE PETITION IS TIME-BARRED TO THE
EXTENT IT CHALLENGES MEETINGS
OCCURRING PRIOR TO JUNE 22, 2025**

Even if the Court were to reach the merits of Petitioners' claims, those claims are time-barred to the extent they challenge meetings occurring outside the four-month limitations period.

An Article 78 proceeding alleging violations of the Open Meetings Law must be commenced within four months of the challenged action. CPLR § 217(1); *Matter of Save the Pine Bush, Inc. v. City of Albany*, 70 N.Y.2d 193, 202 (1987). The limitations period runs from the date of the allegedly improper meeting or action—not from when a petitioner later objects to the outcome. In the Open Meetings Law context, the alleged wrong—exclusion from or improper conduct of a meeting—is complete when the meeting occurs.

This proceeding was commenced on October 22, 2025. Accordingly, any claim predicated upon a meeting occurring prior to June 22, 2025 is untimely as a matter of law. The penultimate Task Force meeting held on June 20, 2025—along with all earlier meetings—falls outside the four-month statute of limitations and cannot be challenged in this proceeding. The only meeting within the limitations period is the September 22, 2025 meeting and vote.

Petitioners cannot revive time-barred claims by characterizing the Task Force process as ongoing. The continuing effects of an alleged wrong do not extend the statute of limitations. *See Matter of De Milio v. Borghard*, 55 N.Y.2d 216 (1982). Each meeting constitutes a separate and independently actionable event for purposes of CPLR § 217(1). Petitioners acknowledge that they were aware of the Task Force meetings well before September 2025. *See* Pet. ¶17; Pet. Ex. A. Having failed to commence a timely proceeding following those meetings, any claims arising from meetings held prior to June 22, 2025 must be dismissed. CPLR § 3211(a)(5); § 217(1).

CONCLUSION

For the reasons set forth herein and in the Verified Answer, the Court should deny the application in its entirety and dismiss the Petition.

Dated: New York, New York
February 2, 2026

Respectfully submitted,

MURIEL GOODE-TRUFANT
Corporation Counsel of the City of New York
Attorney for Respondent
100 Church Street, Rm 3-247
New York, New York 10007
maomalle@law.nyc.gov
csingh@law.nyc.gov

By /s/ _____
MEGHAN O'MALLEY
CINDY SINGH

Assistant Corporation Counsel

TO: VIA NYSCEF
Michael C. Pope, Esq.
Attorney for Petitioners
3229 Greenpoint Avenue PMB323
Long Island City, New York 11101
mike@mikepopelaw.

