



# **Final Report of the 2019 New York City Charter Revision Commission**

**July 24, 2019**

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# EXECUTIVE SUMMARY

The 2019 New York City Charter Revision Commission was created by Local Law 91 of 2018, which was passed by the New York City Council on April 11, 2018 and approved by the Mayor on April 30, 2018. This is the first charter revision commission in the City's history that was not either entirely appointed by the Mayor or appointed at the direction of the New York State Legislature. The Commission consists of 15 members appointed by nine separate elected officials: four members were appointed by the Mayor, four by the Speaker of the Council, and one apiece by the Public Advocate, the Comptroller, and each Borough President. Collectively, the appointed commissioners possess over a century's worth of experience in and with the City's government. The Commissioners' professional biographies are provided immediately following this Executive Summary.

As set forth more fully in this final report, the Commission, with the support of its staff, conducted a thorough review of the entire Charter and the functions and processes of City government. Following an extensive research, expert consultation, and public engagement, the Commission has decided to present to the voters of the City at the November 5, 2019 general election the following proposed amendments to the Charter in five ballot questions:

## **Elections**

- Implementing ranked choice voting in all primary and special elections for City offices
- Changing the timing of special elections
- Changing the timing of the redistricting process

## **Civilian Complaint Review Board (CCRB)**

- Changing the structure of the Board
- Establishing minimum standards related to CCRB's budget
- Changing requirements related to notification and explanations regarding the Police Commissioner's deviations from disciplinary recommendations
- Allowing CCRB to investigate and recommend discipline regarding potentially false material statements made by a police officer who is the subject of a CCRB investigation
- Allowing delegation of the Board's subpoena power to CCRB's Executive Director

## **Ethics and Governance**

- Extending the post-employment appearance ban for elected officials and certain senior appointed officials
- Changing the structure of the Conflicts of Interest Board (COIB)
- Limiting political activity by board members of COIB
- Changing the structure of the Minority and Women-Owned Business Enterprise program

- Requiring City Council advice and consent for the Mayor’s appointment of the City’s Corporation Counsel

## **City Budget**

- Allowing the City to create a “rainy day fund” and use that fund once impediments in State law are removed
- Providing guaranteed minimum budgets for the Public Advocate and each Borough President
- Changing the timeline for the Mayor to submit a yearly revenue estimate to the City Council during the budget process
- Requiring the Mayor to file proposed budget modifications in conjunction with the Mayor’s periodic financial plan updates to the Council

## **Land Use**

- Establishing a Uniform Land Use Review Procedure (ULURP) pre-certification notice period to affected Community Boards and Borough Presidents
- Providing for additional ULURP review time for Community Boards during certain parts of the year

This report includes background information on the City Charter and charter revision commissions, including this Commission. It also outlines the public engagement and solicitation process that the Commission undertook; provides information and analysis on the proposals the Commission decided to place before the voters; and includes the ballot questions, abstracts, and Charter amendment text for each proposal, which can be found in the appendices to this final report.

# **BACKGROUND**

The Charter of the City of New York (the Charter) serves as the local constitution and establishes the structure of City government. It sets forth the key institutions and processes of the City’s political system and broadly defines the authority and responsibilities of City agencies and elected officials, such as the Mayor, Public Advocate, Comptroller, Borough Presidents, and City Council Members.

The Charter can be amended in a number of ways: through local legislation (with or without a voter referendum), New York State legislation, a voter-initiated petition process, and the establishment of a charter revision commission under the State Municipal Home Rule Law (MHRL). The MHRL and the Charter outline specific areas of law that can only be amended after approval through a referendum; such a referendum can be initiated by local legislation, a petition process, or a charter revision commission.<sup>1</sup> In other areas the Charter can be, and often is, amended by the Council through the normal local legislative process.

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<sup>1</sup> Municipal Home Rule Law § 23; Charter § 38

The MHRL allows charter revision commissions to be created in several ways: by petition, by the locality's mayor, or by local law.<sup>2</sup> They may also be established by the State Legislature. Historically, charter revision commissions for the City have been created by either the Mayor or the State Legislature. For example, the 1897 Charter that consolidated New York City was enacted pursuant to a commission created by the State Legislature. A charter revision commission must review the entire Charter, hold at least one public hearing, and may issue findings and recommendations together with draft Charter amendments for presentation to the voters for approval.

## **PUBLIC OUTREACH AND PUBLIC PARTICIPATION**

Since its inception in June 2018, the Commission – supported by its staff – embarked on an extensive public engagement process and outreach effort, with the goal of receiving input from as many people and organizations as possible in order to best inform its deliberations. These efforts included the Commission holding hearings in each borough to gather ideas from the public; the creation of the Commission's website, [www.charter2019.nyc](http://www.charter2019.nyc), which livestreamed all of the Commission's meetings and where members of the public were able to submit their thoughts and ideas directly to the Commission; a robust social media presence on platforms such as Twitter, Instagram, and Facebook; and staff presentations at community events and to local organizations.

### **Fall 2018 Borough Hearings**

Many New Yorkers shared their ideas on how to make the City's government a better one. In Fall 2018, the Commission heard almost 20 hours of public testimony over the course of hearings in each of the City's five boroughs, with over 150 people testifying in person. The Commission solicited and received input from members of the public, City agencies, elected officials, community-based organizations and good government groups, academics, and other interested parties. Throughout the course of the Fall 2018 hearings, the Commission received over 300 proposals for changes to the Charter.

The Commission's commitment to hearing from New Yorkers of diverse backgrounds, beliefs, and boroughs drove its multifaceted approach to community engagement. One key goal of its outreach efforts was to establish strong partnerships with community based organizations, social and legal services providers, faith leaders, and community base-building groups from the very start of the revision process. In addition to connecting by phone and email, staff engaged directly with a broad range of organizations across the five boroughs by attending meetings where multiple organizations were represented, including coalition meetings organized by the Human Services Council, LiveOn NY, the Supportive Housing Network of New York, and the Bronx Immigration Partnership (BIP), to

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<sup>2</sup> Municipal Home Rule Law §§ 36, 37.

name a few. Staff also presented at Borough Board meetings, connected with tenant associations and housing advocates like the Association for Neighborhood and Housing Development (ANHD), canvassed on CUNY campuses, and tabled at cultural institutions like the Schomburg Center for Research in Black Culture.

Staff also leveraged existing civic education opportunities and presented at events hosted by public library branches across the five boroughs and partnered with organizations like NYPIRG, Common Cause, the League of Women Voters, Citizens Committee for New York City, and “Let’s Talk Democracy.”

A theme that emerged from the public as a result of these engagement efforts, including the Fall 2018 public hearings, was a desire for a more transparent, efficient, responsive, and accountable City government. There were calls for neighborhoods to have a stronger voice in how City government interacts with and affects their communities, to improve police accountability, to improve the City’s election processes, and to make the City’s land use processes and planning for the City’s future better, to name a few.

## **Focus Criteria and Adoption of Focus Areas**

Following the Fall 2018 public hearings, in December 2018, the Commission unanimously adopted the following “focus criteria” for staff to consider in its review and evaluation of the over 300 ideas and proposals received, in order to formulate its recommendations to the Commission concerning those ideas that warranted further study:

- 1) Focus on ideas and proposals that likely would not be accomplished by local law without a referendum—in other words, changes that would likely require a Charter Revision Commission or referendum to accomplish.
- 2) Focus on ideas and proposals that are not precluded by federal or state law, or the federal or state constitution.
- 3) Focus on ideas and proposals that would (a) improve government effectiveness, transparency, accountability, or efficiency; (b) encourage meaningful participation by New Yorkers; or (c) provide for balance between local and citywide interests.
- 4) Focus on ideas and proposals that affect how policy decisions are made, and by whom, rather than ideas and proposals that would involve making particular policy decisions directly.
- 5) Focus on ideas and proposals that would not reverse the decisions of the voters in recent referenda.

In January 2019, based on these “focus criteria,” staff recommended and the Commission adopted 23 “Focus Areas” for further study that were organized into four thematic “buckets”: Elections, Governance, Finance, and Land Use.<sup>3</sup>

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<sup>3</sup> See 2019 Charter Revision Commission, [Focus Areas](#).

Proposals in the Elections bucket included further study of instant runoff voting/ranked choice voting systems and related election reform processes; the Council redistricting process; and an alternative public campaign financing system, such as a “democracy voucher” system.

The Governance bucket focus areas called for additional study of ideas such as the applicability of the “advice and consent” process for the appointment of certain government officials; improving systems of police accountability; enhancing the role of the Borough Presidents and borough-level governance; clarifying the role and accountability of the Corporation Counsel, particularly with respect to non-mayoral entities; examining the role of the Public Advocate and considering proposals to modify the powers of that office; and examining the structure of the Conflicts of Interest Board (COIB) and lobbying by certain officials after their public service has ended.

The Finance bucket advanced further study of City budgetary issues, including how the City’s budget is structured, how to clarify or improve the tools employed by both the Mayor and the Council in the City’s \$89 billion expense budget (e.g., structuring units of appropriation, budget modifications, revenue estimates); whether certain officials or public agencies should have some form of an independent budget; how to improve the public pension systems; and how to streamline the City’s public procurement and contracting processes.

The Land Use bucket included the further study of proposals related to comprehensive planning for the City as a whole; evaluating the existing Uniform Land Use Review Procedure (ULURP) in relation to potential reforms to allow earlier and more meaningful involvement by communities, Community Boards, and Borough Presidents, such as through a pre-ULURP process; and review of other land use-related bodies and their work, including the Board of Standards and Appeals (BSA), the Franchise Concession Review Committee (FCRC), and the Landmarks Preservation Commission (LPC).

## **Expert Forums**

After adoption of the Focus Areas, the Commission held a series of forums to receive further information from experts in each area under consideration. During these forums – which were held in public session in February and March 2019 and included over 20 hours of testimony – the Commission engaged with a wide range of distinguished panelists, including past and present agency heads, commissioners and deputy mayors in City government, community stakeholders, and academics with expertise in City government and land use, as well as past members and staff of previous charter revision commissions. Viewpoints from beyond the City’s limits were heard from experts from Seattle, California, Denver, North Carolina, and Massachusetts on issues such as police accountability, ranked choice voting, and comprehensive planning. These forums produced lively and spirited debate by and among the Commissioners and the panelists.



## The Preliminary Staff Report

Subsequent to the Expert Forums, on April 24, 2019, Commission staff released its report to the Commission and the public. The Preliminary Staff Report made recommendations to the Commission concerning ideas and proposals that staff believed warranted further exploration by the Commission, including having the Commission receive additional public feedback on which proposals should be pursued and how those proposals might be framed for potential inclusion on the ballot for the November 2019 general election.<sup>4</sup>

## Spring 2019 Borough Hearings

To solicit public feedback and comment on the recommendations included in the April 2019 Preliminary Staff Report and issues raised during the Expert Forums, the Commission held a series of public hearings throughout the five boroughs. At the hearings, the Commission heard hours of testimony regarding the benefits, best practices, and potential pitfalls associated with the proposals under consideration. The Commission also continued to receive public input via its website portal, dedicated email address, and various social media accounts.

## Additional and Upcoming Outreach

Throughout Spring 2019, Commissioners and outreach staff maintained a strong community presence and continued connecting with New Yorkers through diverse channels, including presenting at the New York City Bar Association, tabling at a Community Action for Safe Apartments (CASA) meeting in the Bronx, sharing information at a Queens Civic Congress meeting, presenting to the Brooklyn Voter's Alliance, and connecting with College of Staten Island students by partnering with NYPIRG on voter education initiatives.

Overall, the Commission's strong community partnerships amplified its reach and, notably, led to a significant number of coalition-submitted proposals, many of which spoke to the needs and interests of historically disenfranchised New Yorkers. Commissioners and staff look forward to continued engagement with New Yorkers through both large and small-scale community information sessions and continued partnership with community leaders and stakeholders as Election Day approaches.

## COMMISSION RECORDS

The Commission wishes to sincerely thank all New Yorkers who took the time to engage in this process. Whether through in-person testimony, written submissions, letters, emails, or tweets, this input proved invaluable to the Commission's work. All of the Commission's public documents, including public testimony and transcripts of the Commission's meetings and hearings, can be found online at [www.charter2019.nyc](http://www.charter2019.nyc).

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<sup>4</sup> See 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#).

A discussion of the proposals that the Commission has decided to place before the voters at the November 2019 general election follows. The specific ballot questions, together with explanatory abstracts and the specific amendment language to the Charter, can be found in the appendices to this final report.

# THE COMMISSIONERS

**GAIL BENJAMIN – CHAIR.** *Appointed by Speaker Corey Johnson.* Chair Benjamin has 36 years of experience dealing with land use matters, during the last 25 of which she served as the Director of the New York City Council Land Use Division. In that capacity, she provided advice, analysis, and expertise to the Speaker of the Council, the Chairs of the Land Use Committee and Subcommittee, and the 51 members of the Council on land use policy and practice as well as on projects that were subject to review by the Council. Prior to her time at the Council, Benjamin served as Co-Director of the City Environmental Review Procedure and as a Representative to the now-defunct NYC Board of Estimate. She continues to be actively involved in land use and serves on a variety of committees and boards.

**SAL ALBANESE.** *Appointed by Brooklyn Borough President Eric Adams.* Commissioner Albanese was a New York City public school teacher for 11 years. He is a former New York City Council Member who served the people of southwestern Brooklyn from 1983 until 1998, after which he became a candidate for New York City Mayor. In the Council, he was a member of the Public Safety, Education, and Transportation committees. Albanese worked with community leaders to put more officers on patrol and improve community-police relations. His other legislative and advocacy work includes introducing the New York City Living Wage Bill, being the original sponsor of a campaign finance reform bill that would permanently remove big money from the political process, and helping pass one of the first bills in the nation that prohibited housing and employment discrimination based on sexual orientation. He has worked in the private sector in the legal and financial fields for the past 19 years.

**DR. LILLIAM BARRIOS-PAOLI.** *Appointed by Speaker Corey Johnson.* Commissioner Barrios-Paoli serves as a Senior Advisor to the President of Hunter College with a focus on special projects and community partnerships. Previously, Barrios-Paoli was appointed by Mayor Bill de Blasio as Chair of the New York City Health + Hospitals Board and served from 2015–2016. She served as Deputy Mayor for Health and Human Services from 2014–2015. She was a former Commissioner of the New York City Department for the Aging under Mayor Bloomberg. More recently, she was President and CEO of Safe Space NYC, Inc. Prior to this, she served as Senior Vice President and Chief Executive for Agency Services at United Way of New York City. Barrios-Paoli previously served in government as agency commissioner for the Department of Employment, the Department of Personnel (now DCAS), the Department of Housing Preservation and Development, and the Human Resources Administration. Barrios-Paoli is a former Trustee of the New School; and she serves on the JPB Foundation Poverty Advisory Committee, the SEEDCO Board, and the Good Shepherd Services Board of Directors.

**LISETTE CAMILO.** *Appointed by Mayor Bill de Blasio.* As Commissioner of the Department of Citywide Administrative Services (DCAS), Lisette Camilo leads the agency that handles New York City government's real estate, procurement, contracts, personnel, and Civil Service. She was appointed to this post in January of 2016. Camilo has a long history of

public service. She was appointed as the Director of the Mayor's Office of Contract Services (MOCS) and City Chief Procurement Officer by Mayor Bill de Blasio in April of 2014, where she ensured Mayoral agencies' compliance with all legal and regulatory requirements related to the City's procurement of billions of dollars of goods and services. Commissioner Camilo began at MOCS in 2011 in the legal unit, and later served as its Acting General Counsel. Prior to MOCS, Camilo served as Legislative Counsel to the New York City Council committees of Contracts, Juvenile Justice, and General Welfare where she drafted legislation and coordinated oversight hearings. Previously, Camilo was an attorney practicing Immigration law at a private law firm. She began her legal career as Counsel for UNITE HERE Local 100, which represents hotel, restaurant, and commercial cafeteria food service workers. Born and raised in Washington Heights, Lisette Camilo is a graduate of Columbia College, Columbia University, and George Washington University School of Law.

**JAMES CARAS.** *Appointed by Manhattan Borough President Gale Brewer.* Commissioner Caras is Special Counsel to the Manhattan Borough President's Office, having previously served as General Counsel and Land Use Director for that Office. Previously, he worked for more than two decades in the New York City Council in multiple roles, including as Finance Counsel, Acting Director of the Finance Division, and Deputy General Counsel with responsibility for all legislation. Caras's work includes two published articles on the functioning of city government: "Twenty-Five Years of the Council-Mayor Governance of New York City: A History of the Council's Powers, the Separation of Powers and Issues for Future Resolution," Elizabeth Fine and James Caras, 58 N.Y.L. Sch. L. Rev. 119 (2013-2014) and "The New York City Council's Approach to Ensure Compliance with Conflicts of Interest Laws in the Discretionary Funding Process," Elizabeth Fine and James Caras, 24 Municipal Lawyer 13 (Winter 2010). Prior to his government service, Caras practiced law at the law firms of Simpson Thacher & Bartlett and Akin Gump Strauss Hauer & Feld.

**EDUARDO CORDERO, SR.** *Appointed by Queens Borough President Melinda Katz.* Commissioner Cordero spent over 25 years as a union activist and member of the United Food & Commercial Workers International Union (UFCW). He organized and represented workers for 18 years with UFCW Local 1500, where he served as Vice President, Assistant Political Director, and Director of Organizing. During his tenure, Cordero represented members at employee and labor-management meetings, arbitration hearings, and unfair labor practice hearings. He served as Union Representative and Political Director for UFCW Local 2013, formerly Local 348-S. Cordero was also an Executive Board Member for the Labor Council for Latin American Advancement and the United Latinos of the UFCW, and for over 30 years he was a member and officer of the Hispanic Labor Committee, an advisory committee of the AFL-CIO New York City Central Labor Council.

**STEPHEN J. FIALA.** *Appointed by Staten Island Borough President James Oddo.* Commissioner Fiala serves as the 40<sup>th</sup> County Clerk and Commissioner of Jurors for Richmond County. Fiala also holds the titles of Clerk of the Supreme Court and County Register. Fiala was appointed by Mayor Bloomberg to serve on the 2004 and 2010 Charter Revision Commissions. He served as Chairman of Staten Island Borough President James Oddo's Transition Committee, which sought to organize the structure and staffing of the

Staten Island Borough President's office. Fiala is a former New York City Council Member and served as Minority Whip within the Council. He was the ranking Council Member on the Consumer Affairs, Contracts, Environmental Protection, Education, and Governmental Operations Committees. While serving in the Council, Fiala focused on environmental protection and educational reforms. He served on the boards of American Humanics, Inc., the Staten Island Historical Society, and Turn Around Friends, Inc.; and as a member of the President's Advisory Council for Pace University. Fiala serves on the Advisory Board for the Court Families Assistance Fund.

**PAULA GAVIN.** *Appointed by Mayor Bill de Blasio.* Commissioner Gavin serves as the New York City Chief Service Officer responsible for NYC Service, a division of the Office of the Mayor that promotes volunteerism. From 2012 to 2013, she served as the Executive Director of New York City's Fund for Public Advocacy. From 2007 to 2012, she served as President of National Urban Fellows. During Gavin's tenure as President, National Urban Fellows created America's Leaders of Change program and the Public Service Leadership Diversity Initiative. From 2004-2007, she served as the founding Executive Director of the New York City Center for Charter School Excellence. Gavin was President and CEO of the YMCA of Greater New York from 1990-2004. Prior to her position with the YMCA, Gavin held multiple executive positions at AT&T, culminating her 20-year AT&T career as Vice President of Network Operations. Gavin has served as an adjunct professor at the NYU Wagner School of Public Service and previously taught Master's level nonprofit management courses at the New School and Columbia University.

**LINDSAY GREENE.** *Appointed by Mayor Bill de Blasio.* Commissioner Greene currently serves as a Senior Advisor to the Deputy Mayor for Housing & Economic Development in the New York City Mayor's office. She works closely with the New York City Economic Development Corporation, the Brooklyn Navy Yard Development Corporation, the Department of Consumer Affairs, and the Department of Small Business Services. Greene has worked on projects including the launch of the City's new ferry transit system and developments in the Brooklyn Army Terminal and Bush Terminal. Prior to her City roles, Greene served as Director of Sales and Sales Operations at The Chia Company. Before this, she was the Category Merchant at FreshDirect. She spent six years at Goldman Sachs in real estate private equity and investment banking. Greene serves on the Advisory Boards of several fresh food consumer product brands and has worked as a mentor and speaker with various food startup accelerators. Since college, she has been a one-on-one mentor to assist young women of color in navigating academic years.

**ALISON HIRSH.** *Appointed by Comptroller Scott Stringer.* Commissioner Hirsh has been working for 32BJ SEIU since 2007 and became Vice President in May 2018. In 2008, she served as Ohio State Director for the Change to Win/SEIU campaign to elect President Obama. Prior to joining 32BJ, Hirsh served as Chief of Staff to New York State Assemblyman Vito J. Lopez and as the Policy and Legislative Director for the New York League of Conservation Voters. She was raised in Baltimore, Maryland. Hirsh sits on the boards of Coro NY and Avodah, the Jewish social justice corps.

**REV. CLINTON MILLER.** *Appointed by Speaker Corey Johnson.* Commissioner Miller is from Brooklyn. After college, he taught for the Board of Education. He served for two academic years in Brownsville and was later assigned as youth minister at Abyssinian Baptist Church in Harlem. While serving there, he taught for two years at Thurgood Marshall Academy and served as Dean. In 2001, Rev. Miller was installed as the Pastor of the Brown Memorial Baptist Church in the Clinton Hill section of Brooklyn. He also helped begin the Brown Community Development Corporation, which currently does work relating to education, HIV/AIDS education, and service delivery. Rev. Miller has served on the boards of Harlem YMCA, Bedford YMCA, the American Red Cross Brooklyn chapter, and the Child Development Support Corporation. He has also served on the Board of Governors of Bishop Loughlin High School and as Chaplain for the New York Liberty of the WNBA.

**SATEESH NORI.** *Appointed by Public Advocate Letitia James.* Commissioner Nori is the Attorney-in-Charge at the Queens Neighborhood Office of the Legal Aid Society, where he oversees a staff of 70 attorneys and paralegals who assist low-income residents of Queens with civil legal issues. He was previously involved with the Legal Aid Society in the Harlem Community Law Office as a Senior Staff Attorney and in the Brooklyn Neighborhood office as a Staff Attorney, dealing primarily with tenant issues. Nori also was Director of Housing Litigation at Bedford-Stuyvesant Community Legal Services. He is currently a member of the Mayor's Committee on City Marshals and served as a member of the Housing Court Advisory Council from 2015-2017. His writing on tenants' legal rights, housing programs, and landlord best practices have been published in several legal journals. Nori is also an Adjunct Professor at New York University School of Law.

**DR. MERRYL H. TISCH.** *Appointed by Speaker Corey Johnson.* Commissioner Tisch, currently Vice Chair of the State University of New York, served at the helm of New York State's governing body for education from 2009 to 2016 as Chancellor of the New York State Board of Regents. She previously worked as a first-grade teacher at New York City's Ramaz School and the B'nai Jeshurun School. Tisch serves as co-chairperson of the Metropolitan Council on Jewish Poverty. She is on the board of the Metropolitan Museum of Art and is the Met's representative on the Public Design Commission. She also sits on the executive committees of The Washington Institute for Near East Policy and the Citizens Budget Commission. Furthermore, Tisch serves on the board of The Trust for Cultural Resources of the City of New York and the Graduate School of Education's Board of Overseers at the University of Pennsylvania. She founded the Tisch Cancer Institute at Mt. Sinai Hospital in 2008.

**JAMES VACCA.** *Appointed by Bronx Borough President Ruben Diaz Jr.* Born in the Bronx, Commissioner Vacca is a product of NYC public schools. He served as District Manager of Bronx Community Board 10 from 1980 to 2005. Vacca also served as President of the Northeast Bronx Senior Citizen Center from 1975 to 2005. He was a New York City Council Member from 2006 through 2017, serving as Chair of the Transportation Committee and Chair of the Technology Committee as well as Deputy Leader and a member of the Council's budget negotiation team. He was the prime sponsor of legislation dealing with human rights, algorithm transparency, transportation services for the disabled, tenant

rights, and open data. Vacca is currently a Distinguished Lecturer of Urban Studies at Queens College, where he teaches courses on NYC government and public administration.

**CARL WEISBROD.** *Appointed by Mayor Bill de Blasio.* Commissioner Weisbrod is currently a Senior Advisor at HR&A and recently served as Chairman of the New York City Planning Commission and Director of the New York City Department of City Planning. Prior to this, he was a Partner at HR&A, where he managed the successful rezoning of the Hudson Square area in Manhattan. Previously, Weisbrod led efforts to revitalize Times Square from the late 1970's through the early 1990's and Lower Manhattan both pre- and post-9/11. His former positions include President of New York State's 42nd Street Development Project, Founding President of the New York City Economic Development Corporation, Director of the Lower Manhattan Development Corporation, Founding President of the Alliance for Downtown New York, and President of the Real Estate Division for Trinity Church and Executive Vice-President of Trinity Church-St. Paul's Chapel. Weisbrod is the former chairman of the New York State Health Foundation. He is also a former Trustee of the Ford Foundation and the Urban Land Institute, as well as a former faculty member at New York University's Schack Institute of Real Estate, where he served as Academic Chair of the Concentration in Global Real Estate. He is also a Senior Fellow at NYU's Marron Institute of Urban Management.

# THE COMMISSION STAFF

**EDWARD ATKIN, EXECUTIVE DIRECTOR.** Before joining the Commission, Atkin was the Deputy Director of Infrastructure for the New York City Council, where he supervised a team of attorneys and policy analysts responsible for conducting the affairs of eight legislative/oversight committees (Housing and Buildings, Public Housing, Economic Development, Environmental Protection, Sanitation, Parks and Recreation, Waterfronts, and Technology). Prior to that, Atkin served as Assistant Deputy Director for Infrastructure and Counsel to the Committees on Housing and Buildings and Public Housing. He has degrees from Fordham University School of Law and Rutgers University.

**ANNE MCCAUGHEY, GENERAL COUNSEL.** McCaughey has more than 20 years of experience in the public and private sectors. She previously served as general counsel to the New York City Council's Land Use Division. McCaughey advised Council Members on citywide land use matters and development projects. Outside of her governmental role, she represented clients in private practice on law use and real estate matters. She received her law degree from Fordham University School of Law and her undergraduate degree from CUNY's Baruch College.

**DAVID SEITZER, DEPUTY GENERAL COUNSEL.** Seitzer comes to the Commission from his position as an Assistant Deputy Director in the Council's Legislative Division. He previously served as Counsel to various committees of the Council, including Governmental Operations, Technology, and Health. He is a graduate of the NYU School of Law and Clark University.

**JONATHAN MASSERANO, POLICY AND RESEARCH DIRECTOR.** Before joining the Commission, Masserano served as a Senior Legislative Policy Analyst in the Legislative Division of the New York City Council, focusing on transportation issues. He previously served as a staffer to Council Member James Vacca. He is a graduate of Georgetown University with a degree in Government.

**JOANNE WASSERMAN, COMMUNICATIONS DIRECTOR.** Before joining the Commission, Wasserman was the Creative Director at the NYC Department of Education where she oversaw creative content about the public schools. She is a former Communications Director for the NYC Administration for Children's Services where she oversaw the agency's public affairs. Prior to her city service, Wasserman had a long career in journalism, working at the New York Daily where she became its Brooklyn Bureau Chief. Wasserman is a graduate of SUNY Purchase.

**INDIANA PORTA, DIRECTOR OF OUTREACH AND COUNSEL.** Previously, Porta served as Legislative Counsel to the New York City Council's Committee on Immigration working on legislation, policies, and funding initiatives for the rights of immigrant New Yorkers. Before that, Porta practiced immigration law at the New York Legal Assistance Group. She received her law degree from American University Washington College of Law, and has a B.A. from Southern Methodist University.



**LOUIS CHOLDEN-BROWN, SENIOR ADVISOR TO THE EXECUTIVE DIRECTOR.** Cholden-Brown previously served as the Director of Policy for the New York City Council and Deputy Chief of Staff for Legislation, Planning & Budget to Council Member—now Speaker—Corey Johnson. Prior to that, he served as an executive officer of Manhattan Community Board 7. Cholden-Brown holds a dual B.A. from Columbia University and the Jewish Theological Seminary and is a J.D. candidate at Fordham University School of Law.

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**THE NEW YORK CITY LAW DEPARTMENT.** The New York City Law Department, under the leadership of Corporation Counsel Zachary W. Carter, has served as counsel to the Commission. The Commission staff would like to thank Kwame Akosah, Martha Alfaro, Bryan Berge, Andrea Berger, Andrea Fastenberg, Spencer Fisher, Olivia Goodman, Steven Goulden, Noah Kazis, Rebecca Lipman, Stephen Louis, Alan Mitchell, Eric Phillips, Michael Smilowitz, and Joshua Wertheimer for their insights and assistance.

# **DISCUSSION OF PROPOSALS**

# BALLOT QUESTION #1 – ELECTIONS

The Commission proposes an “Elections” ballot question encompassing three proposed Charter amendments: (1) implementing ranked choice voting in all primary and special elections for Mayor, Public Advocate, Comptroller, Borough President, and City Council; (2) extending the required time period to hold special elections if an office becomes vacant during a term; and (3) adjusting the timing of the redistricting process, which establishes Council district boundaries. The ballot question, explanatory abstract, and text of the proposed Charter amendment can be found in Appendix A to this report.

## Ranked Choice Voting for Primary and Special Elections

### Background

New York City utilizes two distinct election systems for primary elections. Like all municipal general elections, Borough President and City Council primary elections use a traditional “plurality” system, also known as first-past-the-post, in which voters select one candidate for each race on their ballots and the candidate with the most votes wins, regardless of the share of the vote that candidate receives.<sup>5</sup> However, primary elections for the three citywide officials – Mayor, Public Advocate, and Comptroller – require a run-off election to take place if no candidate receives more than 40% of the total vote. Until recently, a run-off primary election was held two weeks after the September primary between the top two primary vote-getters, with the winning candidate proceeding to the general election.<sup>6</sup> Recent State law changes that moved the primary date to June now also provide that a run-off must occur four weeks later.<sup>7</sup> From 2001 to 2017, five primary run-off elections occurred.<sup>8</sup>

Special elections, which occur when a municipal office becomes vacant during an official’s term due to resignation, removal, incapacity, or death, also use a plurality voting system to elect a winner.<sup>9</sup> These elections occur within a relatively short period of time after the office’s vacancy and no political party primaries are held to select candidates to run in the special election; rather, a potential candidate must secure a minimum number of signatures by certain registered voters in order to qualify for the special election ballot. For example, 17 candidates were listed on the ballot in the recent February 26, 2019 Public

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<sup>5</sup> Charter §§ 25, 81.

<sup>6</sup> Prior to 2019, the run-off was held two weeks after the primary; Election Law §§ 6-162, 8-100(1)(b).

<sup>7</sup> Election Law § 8-100(1)(b)

<sup>8</sup> Staff analysis of New York City Board of Elections 2009, 2013, and 2017 primary and general certified election results, all offices.

<sup>9</sup> For Mayoral special elections only, a run-off special election takes place if no candidate receives more than 40% of the vote.

Advocate special election, compared to an average of three candidates for the 2017 City Council primary elections.<sup>10</sup>

Previous charter revision commissions, as early as 2003, have considered replacing the current electoral system with ranked choice voting (RCV), also known as instant run-off voting. In an RCV election, voters rank candidates in order of preference, instead of selecting only one candidate in each race. A common RCV vote tabulation process proceeds as follows: (1) if a candidate receives a majority of highest-ranked votes, he or she wins; or (2) if no candidate receives a majority of highest-ranked votes, the last place candidate is eliminated and votes cast for that candidate are transferred to the next ranked candidate on those ballots. This process repeats in rounds until two candidates remain, with the candidate with the most votes at that point winning the election. RCV would eliminate the need for citywide primary run-off elections because a run-off is simulated as candidates are successively eliminated until two remain in the final round. A sample RCV ballot designed by FairVote is shown below.

**Rank Candidates In Order of Choice**  
*No more than one oval per candidate.*  
*No more than one oval per column.*

		1st Choice	2nd Choice	3rd Choice	4th Choice	5th Choice
Danielle Alvarez	(Housewarming Party)	(1)	(2)	(3)	(4)	(5)
Tony Samuels	(Block Party)	(1)	(2)	(3)	(4)	(5)
Jennifer Lee	(Dinner Party)	(1)	(2)	(3)	(4)	(5)
Sean Johnson	(Graduation Party)	(1)	(2)	(3)	(4)	(5)
	Write-in	(1)	(2)	(3)	(4)	(5)

Source: FairVote, [Ranked Choice Voting Sample Ballot](#).

As noted in the Preliminary Staff Report, RCV is currently used in one state and 11 U.S. localities, with four other jurisdictions planning implementation before 2021.<sup>11</sup> Maine uses RCV for all statewide primary elections and in general and primary elections for the U.S. Senate and the U.S. House of Representatives. Cities such as San Francisco and Minneapolis use RCV for municipal elections.<sup>12</sup> An additional five states and one city allow military and overseas voters to use RCV for some or all elections requiring run-offs.<sup>13</sup>

New York City has used voting systems other than plurality and run-off elections in the past. For example, from 1969 to 1999 (before mayoral control of schools was implemented), candidates for Community School Boards ran at-large for nine seats on each of 32 Boards, and elections were conducted using an unusual voting method called “choice

<sup>10</sup> New York City Board of Elections, [Statement and Return Report for Certification, Special Election Public Advocate – 02/26/2019](#); Staff analysis of New York City Board of Elections City Council 2017 primary certified election results.

<sup>11</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 9.

<sup>12</sup> Ranked Choice Voting Resource Center, [Where Ranked Choice Voting Is Used](#).

<sup>13</sup> FairVote, [Ranked Choice Voting in US Elections](#).

voting.”<sup>14</sup> Like in RCV elections, choice voting allowed voters to rank candidates. However, unlike in RCV elections, candidates won based on exceeding a certain vote threshold.<sup>15</sup> Community School Boards were created to “enhance minority representation and community involvement” in schools and, as Esmerelda Simmons of the Center for Law and Justice noted at a Commission Expert Forum, were successful in achieving representation for racial and ethnic minority groups on the Boards in proportion to their share of the population.<sup>16</sup> Also, for a brief period of time, from 1937 to 1945, members of the Council were elected boroughwide, with party affiliation but with no primaries. The voting system was unique because one member was elected for every 75,000 votes received, which meant the size of the body fluctuated based on voter turnout.<sup>17</sup>

The Preliminary Staff Report discussed two ways in which RCV would be an *immediate* improvement over plurality voting.<sup>18</sup> First, RCV would save the City money by eliminating the cost associated with administering run-off elections. A Fiscal Policy Institute study calculated that the 2013 Public Advocate Democratic primary run-off cost the City \$10.4 million for election administration and \$742,332 for candidate public matching funds payments – over \$11 million total.<sup>19</sup> In testimony to the Commission, RepresentUs pointed out that the 2013 Public Advocate run-off cost \$50 per vote cast.<sup>20</sup> Using current estimates for the cost of a citywide election in 2019, eliminating primary run-off elections could save at least \$16 million in election administration costs per election.<sup>21</sup>

Second, RCV would permit the same voters who vote in the primary election to determine the winning candidate without having to vote four weeks later in a separate election. As shown in the table below, the turnout for the last three primary elections that resulted in run-offs was significantly higher than for the corresponding run-off election.

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<sup>14</sup> FairVote, [A Roadmap to Ranked Choice Voting in NYC](#), (May 2008), at 12; Max Rubin, [Community School Board Elections in New York City: A Report to the New York State Commissioner of Education](#), (Dec. 1973), at 5-7.

<sup>15</sup> Lynette Holloway, [This Just In: May 18 School Board Election Results](#), The New York Times, (Jun. 13, 1999).

<sup>16</sup> *Id.* at 1 and 17; [Written testimony of Esmerelda Simmons, Executive Director of the Center for Law and Social Justice](#), Public Meeting of the 2019 Charter Revision Commission, (Feb. 20, 2019), at 4-5.

<sup>17</sup> FairVote, [A Roadmap to Ranked Choice Voting in NYC](#), (May 2008), at 12.

<sup>18</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 8-10.

<sup>19</sup> David Dyssegaard Kallick and Jonas Shaende, [\[?\] Ranked Choice Voting: Saving Money While Improving Elections](#), Fiscal Policy Institute (Jun. 28, 2019), at 2.

<sup>20</sup> [Written testimony of Jack Noland, Policy Research Specialist, RepresentUs New York](#), Public Meeting of the 2019 Charter Revision Commission, (May 14, 2019), at 1.

<sup>21</sup> New York City Office of Management and Budget, [February 2019 Financial Plan Detail Fiscal years 2019-2023](#), at E-85.

Voter Turnout Democratic Primary vs. Run-off			
Election	Primary Turnout	Run-off Turnout	Turnout Drop-off
2013 Public Advocate	530,089	202,647	61%
2009 Comptroller	371,018	241,206	35%
2009 Comptroller	366,917	233,206	36%

Source: New York City Board of Elections, Statement and Return Reports for Certification.

Furthermore, analysis of 2013 Public Advocate Democratic primary run-off voters by FairVote showed that, due to the turnout drop-off in run-off elections, the demographics of the voters who participated in the run-off were less diverse in terms of race and ethnicity, and were older and more highly educated than both initial primary voters and registered Democrats on the whole.<sup>22</sup>

It may be instructive to note that, while one criticism the Commission heard about RCV centers on “ballot exhaustion” (which refers to instances when a ballot is not included in the final count because all of the candidates ranked on that ballot have been eliminated during the vote counting process), others have pointed out to the Commission that the drop-off in turnout in run-offs can be seen as akin to ballot exhaustion in RCV elections.<sup>23</sup>

Additional issues common to the existing plurality voting system have been raised by good government groups as well as by members of the public. Of particular concern were the issues of vote-splitting, or “the spoiler effect” (when two like-minded candidates split votes), and consequent strategic voting, when a voter decides to support a candidate other than the voter’s first choice preference in order to prevent a third undesirable candidate from winning.<sup>24</sup> In testimony to the Commission, organizations such as RepresentUs, Amplify Her, and the League of Women Voters argued that RCV allows voters to “vote their true preferences” without the risk of “wasting” their vote on their preferred candidate who they believe is less popular with voters overall.<sup>25</sup> Under RCV, that voter should feel more confident voting for the less popular but more personally-preferred candidate, because if their preferred candidate is eliminated in the first round of tabulation, their vote would be transferred to their next preferred choices.

<sup>22</sup> FairVote, [New York City Democratic Primary Runoff Turnout: Older, Whiter, Wealthier Voters, and Low Turnout Overall: An Analysis of the 2013 Public Advocate Democratic Primary Runoff Election](#), (Apr. 2013).

<sup>23</sup> [Written testimony of FairVote](#), Public Meeting of the 2019 Charter Revision Commission, (May 3, 2019), at 30.

<sup>24</sup> David P. Myatt, On the Theory of Strategic Voting, *The Review of Economic Studies*, Vol. 74, No. 1 (Jan. 2007), pp. 255-281.

<sup>25</sup> [Written testimony of Sara Lind representing Amplify Her](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 26; [See Written testimony of Jack Noland, Policy Research Specialist, RepresentUs New York](#), Public Meeting of the 2019 Charter Revision Commission, (May 14, 2019), at 1-2; [See Written testimony of Bella Wang, Chair of the Voting Reform Initiative, The League of Women Voters](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 30-31.



RCV was considered by past charter revision commissions in 2003, 2010, and 2018, but each time was not submitted to voters as a ballot proposal.<sup>26</sup> The 2010 and 2018 Charter Revision Commissions recommended that further research be conducted on the potential impact of RCV on racial and ethnic minority voters, military and overseas voters, and candidates for office.<sup>27</sup> The 2018 Commission also emphasized the importance of voter education and outreach to any successful implementation of RCV. Throughout the course of its work and since releasing the Preliminary Staff Report, the Commission has conducted research and received feedback from the public and experts regarding many of the issues raised by the 2010 and 2018 Commissions.

## **Racial, ethnic, and language minority voters**

One issue related to racial and ethnic minority voters is whether RCV would dilute their ability to elect their own candidates. In written testimony received by the Commission, FairVote provided academic articles addressing the impacts of RCV on racial and ethnic minority voters.<sup>28</sup> For example, one recently published study assessed the ability of all voters to understand RCV when compared to plurality voting, and then broke down the impact into racial and ethnic demographics. While the study found that all voters found RCV to be slightly more confusing than plurality elections, it found “no differences within RCV cities between whites and people of color in reports of understanding voting instructions.”<sup>29</sup> Additionally, surveys of voters conducted by San Francisco State University after the 2005 citywide RCV election found that Hispanic/Latino, Asian/Pacific Islander, and African American/Black voters were more likely to rank three candidates, the maximum allowed, compared to white voters.<sup>30</sup>

San Francisco is the largest and most diverse city that uses RCV, and research comparing RCV elections to plurality elections reached illuminating conclusions regarding voter turnout in RCV elections across different racial and ethnic groups. One study showed that voter turnout was higher in San Francisco’s 2005 ranked choice voting election for Assessor-Recorder compared to the plurality election that occurred in 2001 for City Attorney.<sup>31</sup> A study focusing on San Francisco’s 2005 Assessor-Recorder race showed that turnout in San Francisco’s poorest and most racially diverse neighborhoods had the highest

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<sup>26</sup> See 2003 Charter Revision Commission, [Enhancing Access, Opportunity & Competition: A Blueprint for Reform](#), Sep. 4, 2003.

<sup>27</sup> 2018 Charter Revision Commission. [Final Report of the 2018 New York City Charter Revision Commission](#), (Sep. 6, 2018), at 107-112; 2010 Charter Revision Commission, [Preliminary Staff Report and Recommendations to the Chair of the 2010 Charter Revision Commission](#), (Jul. 9, 2010), at 28-34.

<sup>28</sup> [Written testimony of FairVote](#), Public Meeting of the 2019 Charter Revision Commission, (May 3, 2019), at 28, 34-35, and 37-39.

<sup>29</sup> Todd Donovan, Caroline Tolbert, and Kellen Gracey, [Self-Reported Understanding of Ranked-Choice Voting](#), *Social Science Quarterly*, (Apr. 23, 2019), at 8-9.

<sup>30</sup> Francis Neely, Corey Cook, and Lisel Blash, [An Assessment of Ranked-Choice Voting in the San Francisco 2005 Election](#), (Jul. 2006), at 14.

<sup>31</sup> These races were deemed to be comparable because they are both contested citywide elections; New America Foundation and FairVote, [Instant Runoff Voting and its Impact on Racial Minorities](#), (Jun. 2008) at 4-6.

increase in voter participation compared to when the city conducted a run-off election for City Attorney in 2001.<sup>32</sup> Notably, not all studies have shown an increase across racial and ethnic groups; one study focusing only on San Francisco mayoral elections from 1995 to 2011 showed that RCV decreased turnout among black and white voters, though Hispanic voters showed no change and Asian voter turnout actually increased.<sup>33</sup>

Community groups that testified before the Commission have focused on the fact that candidates in an RCV election will be compelled to campaign for second and third place votes among the broader voting age population, rather than among just their expected base voters. In support of including RCV in the Commission's final proposals, Amy Torres, the Director of Policy and Advocacy at the Chinese-American Planning Council, stated that candidates would be more likely to reach out to the Asian American and Pacific Islander (AAPI) community and possibly print campaign materials in languages spoken by those voters.<sup>34</sup> Torres further observed that RCV could potentially "increase the power of the AAPI electorate because we would be engaged on the same issues that the rest of the electorate is engaged on, but in a way that is nuanced and tailored to our community."<sup>35</sup> The Minkwon Center for Community Action, a Korean American advocacy group, and Chhaya CDC, a South Asian community group, have also signed on to supporting the RCV proposal through the larger RCV:NYC campaign.<sup>36</sup>

The Commission also concluded that it is unlikely that an RCV proposal would violate the Voting Rights Act of 1965. Section 2 of the Act prohibits jurisdictions from adopting a voting qualification or practice – including voting systems like RCV – that result in the denial or abridgement of the right to vote based on race, color, or membership in a language minority.<sup>37</sup> Research revealed no federal appellate court decision finding an RCV system, or other similar system in which voters rank candidates by preference, to be per se unlawful.<sup>38</sup> Rather, RCV has been used as a tool by federal courts to remedy violations of Section 2 of the Voting Rights Act.<sup>39</sup> For example, in 2019 the Department of Justice entered into a consent decree with the city of Eastpointe, Michigan, in which the city agreed to enact RCV to remedy a Voting Rights Act violation caused by their at-large

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<sup>32</sup> Christopher Jerdonek, [Ranked Choice Voting and Voter Turnout in San Francisco](#), (Feb. 4, 2006), at 5.

<sup>33</sup> See Jason A. Mcdaniel, [Writing the Rules to Rank the Candidates: Examining the Impact of Instant-Runoff Voting on Racial Group Turnout in San Francisco Mayoral Elections](#), *Journal of Urban Affairs*, 38:3, (Nov. 2016), pp. 387–408.

<sup>34</sup> Ryan Brady, [Advocates Push for Ranked-Choice Voting](#), *Queens Chronicle*, (Apr. 28, 2019).

<sup>35</sup> *Id.*

<sup>36</sup> RCV:NYC, [Who Supports Ranked Choice Voting in NYC?](#).

<sup>37</sup> 52 U.S.C. §§ 10301, 10303(f).

<sup>38</sup> It is worth noting that in a concurrence in *Holder v. Hall*, Justices Thomas and Scalia wrote approvingly of RCV noting that "[there is] nothing in our present understanding of the Voting Rights Act [that] places a principled limit on the authority of federal courts that would prevent them from instituting a system of cumulative voting as a remedy under § 2 [of the Voting Rights Act], or even from establishing a more elaborate mechanism for securing proportional representation based on transferable votes," i.e., another term for RCV. 512 U.S. 874, 910 (1994).

<sup>39</sup> FairVote, [Jurisdictions Using Fair Representation Voting](#).

multi-member voting districts which diluted the votes of African-American voters.<sup>40</sup> Political scientists and legal experts have also argued that courts should impose RCV, and other forms of preference voting, in such vote dilution cases to ensure fairer electoral outcomes for minority voters.<sup>41</sup> New York City's own history with the Voting Rights Act also supports the conclusion that RCV helps provide minority voters with fair opportunities to elect candidates of their choice. In 1998, the Department of Justice took action under the Voting Rights Act to block a New York State law that would have ended choice voting in community school board elections, finding that eliminating the practice would have made it harder for minority voters to elect their chosen candidates.<sup>42</sup> Taken together, these factors support the Commission's conclusion that the RCV proposal is fully consistent with the Voting Rights Act.

## Impacts on candidates

As was noted in the Preliminary Staff Report, RCV can reduce negative campaigning.<sup>43</sup> Numerous studies have shown that RCV encourages candidates to appeal to a broader electorate instead of just their own natural support base. As pointed out by Amplify Her and other advocates, "Candidates are not only vying to be first choice, but second as well."<sup>44</sup> Academic researchers conducted surveys in Minneapolis, MN; St. Paul, MN; and Cambridge, MA in 2013 and found that voters in these RCV jurisdictions perceived fewer negative campaigns than voters in plurality jurisdictions. They hypothesized that there was more civility because candidates are encouraged to build broader coalitions of voters and align with opponents who share their same views in order to garner second and third choice votes.<sup>45</sup>

Furthermore, research by academics on behalf of FairVote's Representation 2020 group, which suggested that RCV is beneficial to female candidates and candidates of color,

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<sup>40</sup> U.S. Department of Justice, [Justice Department Reaches Agreement with City of Eastpointe, Michigan, Under the Voting Rights Act](#), (Jun. 5, 2019).

<sup>41</sup> See Andrew Spencer et al., [Escaping the Thicket: The Ranked Choice Voting Solution to America's Districting Crisis](#), Cumerland Law Review, (Jun. 22, 2016) at 400-01; See also Steven J. Mulroy, [Alternative Ways Out: A Remedial Road Map for the use of Alternative Electoral Systems as Voting Rights Act Remedies](#), N.C.L. Rev., (1999) at 1923-24 (concluding that "preference voting" is the best system to remedy districts that violate the Voting Rights Act because it "maximizes proportionality of representation" for minority voters).

<sup>42</sup> "Further, the information we have indicates that . . . the ability of minority voters to elect their-candidates of choice will be considerably reduced under the submitted change in voting method." U.S. Dep't of Justice, [Voting Rights Act Section 5 Enforcement Letter](#), (Feb. 4, 1999); See also Juan Cartagena, [Voting Right in New York City: 1982-2006](#), Review of Law and Social Justice, 17:2, pp. 512-514.

<sup>43</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 9.

<sup>44</sup> [Written testimony of Sara Lind representing Amplify Her](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 27.

<sup>45</sup> See Caroline Tolbert, [Experiments in Election Reform: Voter Perceptions of Campaigns Under Preferential and Plurality Voting](#), (Prepared for presentation at the conference on Electoral Systems Reform, Stanford University, Mar. 15-16, 2014); See also Todd Donovan, Caroline Tolbert, and Kellen Gracey, [Campaign Civility Under Preferential and Plurality Voting](#), Electoral Studies 42, (Jun. 2016).

cited conclusions from these same studies on civility and coalition building.<sup>46</sup> These academics theorized that less negative, more cooperative campaigning was key to both encouraging more women to run for office and electing more female candidates.<sup>47</sup> As noted in the Preliminary Staff Report, in San Francisco, Berkeley, Oakland, and San Leandro, RCV increased the probability that female candidates and candidates of color would win elections, as compared to plurality elections.<sup>48</sup> In testimony before the Commission, the New York Public Interest Group (NYPIRG) noted that the study on the four California cities with RCV elections showed that “RCV has produced more diverse candidates and engaged more diverse communities and as a result we see more democratic representation in the halls of government.”<sup>49</sup>

The Commission received a letter of support from 28 elected officials (who represent the City in the Council, State Senate, and State Assembly) supporting an RCV proposal that would apply to primary and special elections, allowing voters the ability to rank five candidates, for the 2021 elections.<sup>50</sup> They noted that “successful implementation of RCV in Oakland, Berkeley, and San Francisco allowed for more voters to have a say in the final electoral outcome.” They also cited increased candidate diversity in those cities as evidence that “female candidates and candidates of color were able to run without voters fearing a spoiler effect.”<sup>51</sup>

## **Military, overseas, and absentee voters**

In New York City, run-off elections occur four weeks after the corresponding citywide primary election (an increase from the former two-week period allowed before recent State law changes moved the primaries to the fourth Tuesday in June). Regardless, this is an extremely short time frame to mail ballots to military and overseas voters and others who receive absentee ballots.<sup>52</sup> These absentee ballot voters must then receive, mark, and postmark their ballots by the day before the run-off election, in time to be received by the New York City Board of Elections (BOE) within seven days after the election.<sup>53</sup> The Ranked Choice Voting Resource Center noted to the Commission that “international mail takes time, so the deployed military and overseas voters of these jurisdictions may not have time

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<sup>46</sup> See Representation 2020, [The Impact of Ranked Choice Voting on Representation: How Ranked Choice Voting Affects Women and People of Color Candidates in California](#), (Aug. 2016); See also Sarah John, Haley Smith, and Elizabeth Zack, [The alternative vote: Do changes in single-member voting systems affect descriptive representation of women and minorities?](#) Electoral Studies, Volume 54, (Aug. 2018).

<sup>47</sup> John, Smith, and Zack, at 100.

<sup>48</sup> *Id.* at 90-102; Representation 2020, at 9-10; 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 10-11.

<sup>49</sup> [Written testimony of Tousif Ahsan, Civic Engagement Coordinator, NYPIRG](#), Public Meeting of the 2019 Charter Revision Commission, (May 14, 2019), at 7.

<sup>50</sup> See [Written testimony of “A Coalition of New York City Elected Officials,”](#) to the 2019 Charter Revision Commission, (Jun. 10, 2019), at 158.

<sup>51</sup> *Id.* at 157-159.

<sup>52</sup> New York City Board of Elections, [Recommended Revisions in the New York Stat Election Law 2018](#), (Mar. 8, 2018), at 39.

<sup>53</sup> Election Law §§ 8-412, 10-114.

to receive, complete, and return a run-off ballot before the day of the election.”<sup>54</sup> In testimony to the Commission, NYPIRG observed that “in low turnout elections such as a municipal run-off, these absentee voters can easily be the margin of victory or defeat,” and it stated that the BOE does not have enough time to mail and receive these ballots.<sup>55</sup> NYPIRG also cited the timing issue as a main reason why Arkansas, Louisiana, and South Carolina, among other states, allow military and overseas voters to use RCV for elections requiring run-offs.<sup>56</sup> The BOE itself has asserted that the former two-week time frame makes it “virtually impossible” to conduct a run-off election.<sup>57</sup>

The Commission observes that by eliminating separate run-off elections, RCV elections would make it more feasible for military and overseas City voters to fully participate in every citywide primary and special election. It also notes that voters who normally receive absentee ballots, including a significant number of seniors and New Yorkers with disabilities, would similarly benefit.

### **Voter education & outreach**

Many organizations and members of the public highlighted the importance of a robust voter education campaign if a RCV system is adopted in their testimony. In particular, the League of Women Voters suggested requiring the City’s existing voter assistance programs – the BOE, the Campaign Finance Board (CFB), and the recently created Civic Engagement Commission – to lead outreach and voter education campaigns around RCV.<sup>58</sup>

In its response to the Preliminary Staff Report, FairVote cited research which showed that the comprehension of RCV voting instructions in other jurisdictions did not vary by education level. The same study also noted that voter education campaigns could be highly effective for older voters, who reported understanding RCV voting instructions less than plurality voting instructions.<sup>59</sup> Surveys conducted after the 2005 San Francisco citywide RCV election indicated that voters with prior knowledge of RCV were more likely to understand voting instructions, indicating that the information transmitted by voter education and outreach campaigns can carry through to voters’ experiences at the ballot box.<sup>60</sup>

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<sup>54</sup> Information provided by Karen Brinson Bell, Ranked Choice Voting Resource Center to Commission staff, (May 24, 2019).

<sup>55</sup> [Written testimony of Tousif Ahsan, Civic Engagement Coordinator, NYPIRG](#), Public Meeting of the 2019 Charter Revision Commission, (May 14, 2019), at 7.

<sup>56</sup> *Id.* at 7; Ranked Choice Voting Resource Center, [Where Used](#).

<sup>57</sup> New York City Board of Elections, [Recommended Revisions in the New York State Election Law 2018](#), (Mar. 8, 2018), at 39.

<sup>58</sup> [Written testimony of Bella Wang, Chair of the Voting Reform Initiative, The League of Women Voters](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 31.

<sup>59</sup> Todd Donovan, Caroline Tolbert, and Kellen Gracey, [Self-Reported Understanding of Ranked-Choice Voting](#), *Social Science Quarterly*, (Apr. 23 2019), at 7-9.

<sup>60</sup> Francis Neely, Corey Cook, and Lisel Blash, [An Assessment of Ranked-Choice Voting in the San Francisco 2005 Election](#), (Jul. 2006), at 14.

Following the publication of the Preliminary Staff Report, the Commission received specific feedback from organizations and members of the public regarding the following six specific RCV considerations.<sup>61</sup>

### **Which types of elections should be subject to RCV (i.e., primary elections, special elections, and/or general elections)?**

Testimony received by the Commission reflected a variety of views on whether RCV should be utilized in primary, special, and/or general elections. While individuals and organizations generally felt that the benefits of RCV applied equally to all types of elections, some recommended against using RCV in general elections due to New York State permitting “fusion voting,” or the ability of one candidate to appear on multiple party ballot lines in the general election. In testimony before the Commission, Common Cause of New York recommended only implementing RCV in primary and special elections due to “the peculiarities of [New York’s] ballot that the BOE insists laying out a certain way,” and argued that implementing RCV in general elections would be confusing given the way the ballot currently accommodates fusion voting.<sup>62</sup>

The League of Women Voters, while not opposed to RCV in general elections, argued that the priority should be primary and special elections because more candidates typically run in those elections, making the benefits of RCV more obvious. Others, such as Reinvent Albany and the Green and Libertarian parties, recommended utilizing RCV in all types of elections, including general elections.<sup>63</sup>

### **Which offices should be subject to RCV?**

Nearly all testimony that the Commission received on the issue recommended that RCV be implemented for all City offices – Mayor, Public Advocate, Comptroller, Borough President, and City Council. As discussed in the Preliminary Staff Report, while the current plurality run-off model for citywide primaries for Mayor, Public Advocate, and Comptroller is designed to mitigate instances of a candidate winning with only a small percentage of the vote, analysis by Common Cause of New York shows that this is a common occurrence in both Borough President and City Council races.<sup>64</sup> In testimony before the Commission, many organizations and members of the public referenced Common Cause’s data showing that Borough President and City Council primary races can be decided by small winning

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<sup>61</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 11.

<sup>62</sup> 2019 Charter Revision Commission, [Transcript of Apr. 30, 2019 Public Meeting](#), at 105.

<sup>63</sup> [Written testimony of Tom Speaker, Policy Analyst, Reinvent Albany](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 2; [Written Testimony of Jim McCabe representing the Green Party of New York State](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 69; [Testimony of Ilya Schwartzburg representing the Libertarian Party](#), Public Meeting of the 2019 Charter Revision Commission, (Apr. 30, 2019), at 9.

<sup>64</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 7; Common Cause of New York, [The Case for Ranked Choice Voting in New York City](#), at 2.



percentages as a result of plurality voting.<sup>65</sup> Using the Common Cause data, Commission staff calculated that in the 73 Borough President and Council primary elections with three or more candidates, 32% of those elections were won with less than 40% of the vote, and 66% were won with less than 50% of the vote.<sup>66</sup>

### **When should implementation begin and should there be any phase-in period?**

Testimony received by the Commission indicated strong support for implementation of RCV for the 2021 municipal elections. In 2021, each citywide and borough office will be up for election, and 35 of the 51 Council districts will be “open seats,” with no incumbent running due to term limits. Common Cause cited data collected by the CFB to the Commission, which estimated that as many as 500 candidates will be running for office in 2021.<sup>67</sup>

Common Cause and other members of the public also noted that they do not recommend a phase-in and believe there is sufficient time before the June 2021 primaries to allow the City BOE to receive the necessary approvals of voting machine software changes from the State BOE.<sup>68</sup> In written testimony provided to the Commission, the Ranked Choice Voting Resource Center observed that Elections Systems and Software, LLC (ES&S), the election system vendor used by the BOE, has supported multiple RCV election implementations, most recently in Maine in November 2018, and is therefore well-equipped to turn around system updates.<sup>69</sup>

### **Should a hybrid RCV/run-off system be used under which, for example, if no candidate receives more than 40% of the total ballots cast in the final tabulation round, the race proceeds to a traditional run-off?**

Organizations and members of the public were strongly opposed to using a hybrid RCV/run-off system. In testimony to the Commission, the League of Women Voters noted that “a hybrid RCV/run-off system would not solve the cost-incurring and turnout drop-off problems incurred by a runoff.”<sup>70</sup> Common Cause was also opposed to this and asserted

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<sup>65</sup> [Written testimony of Jack Noland, Policy Research Specialist, RepresentUs New York](#), Public Meeting of the 2019 Charter Revision Commission, (May 14, 2019), at 1; [Written testimony of Tom Speaker, Policy Analyst, Reinvent Albany](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019) at 1-2.

<sup>66</sup> Staff analysis of Common Cause of New York data, [The Case for Ranked Choice Voting in New York City](#).

<sup>67</sup> New York City Campaign Finance Board, [Testimony of Amy Loprest, Executive Director of the New York City Campaign Finance Board, to the City Council Committees on Finance and Governmental Operations](#), (May 7, 2019).

<sup>68</sup> 2019 Charter Revision Commission, [Transcript of Apr. 30, 2019 Public Meeting](#), at 106; [Written testimony of Frank Morano](#), Public Meeting of the 2019 Charter Revision Commission, (Apr. 30, 2019), at 11-12.

<sup>69</sup> Information provided by Karen Brinson Bell, Ranked Choice Voting Resource Center to Commission staff, (May 24, 2019).

<sup>70</sup> [Written testimony of Bella Wang, Chair of the Voting Reform Initiative, The League of Women Voters](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 31.

that a hybrid RCV/run-off system “combines the worst of both systems and should not be considered.”<sup>71</sup>

FairVote pointed out to the Commission that an RCV election outcome where the winner receives less than 40% of the total ballots cast (accounting for ballot exhaustion) is exceptionally rare – “Of 165 RCV elections that have taken place in the California Bay Area (limited to three rankings), only three elections (about 1.8% of elections) were won by a candidate who earned less than 40% of the total ballots cast.”<sup>72</sup> FairVote further noted that even in those limited circumstances, a succeeding run-off election would suffer from a significant decrease in voter turnout.<sup>73</sup>

### **How many candidates should a voter be able to rank on the ballot?**

Testimony by stakeholders regarding the number of candidates to rank on the ballot largely coalesced around allowing voters to rank four to five candidates. The League of Women Voters advocated for voters to be able to rank at least three and no more than six candidates in order to make ballot design easier.<sup>74</sup> Reinvent Albany recommended ranking three candidates in the early stages of the Commission’s deliberations but then also cited a recent Center for Civic Design study that recommended a ranking “sweet spot” of between five to eight candidates.<sup>75</sup> This Reinvent Albany report noted that the range from five to eight rankings would not overwhelm “novice rankers” or discourage “power rankers.”<sup>76</sup>

As discussed in the Preliminary Staff Report, ranking a larger number of candidates can help ameliorate the issue of ballot exhaustion, where a ballot is not included in the final count because all of the candidates ranked on that ballot have been eliminated during the vote counting process.<sup>77</sup> In written testimony to the Commission, FairVote advocated allowing voters to rank five to six candidates because “ballot exhaustion is especially uncommon when voters can rank a reasonable number of candidates.”<sup>78</sup> In similar testimony, Represent.Us also recommended allowing voters to rank five candidates on the

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<sup>71</sup> [Written testimony of Susan Lerner, Executive Director, Common Cause of New York](#), Public Meeting of the 2019 Charter Revision Commission, (Apr. 30, 2019), at 19.

<sup>72</sup> [Written testimony of FairVote](#), Public Meeting of the 2019 Charter Revision Commission, (May 3, 2019), at 30.

<sup>73</sup> *Id.* at 33.

<sup>74</sup> [Written testimony of Bella Wang, Chair of the Voting Reform Initiative, The League of Women Voters](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 31.

<sup>75</sup> [Written testimony of Tom Speaker, Policy Analyst, Reinvent Albany](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 3.

<sup>76</sup> The Center for Civic Design, [Recommendations for Introducing Ranked Choice Voting Ballots](#), (Jul. 2018), at 4.

<sup>77</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 9-10.

<sup>78</sup> [Written testimony of FairVote](#), Public Meeting of the 2019 Charter Revision Commission, (May 3, 2019), at 31.



basis that “if the number of candidates a voter can rank is increased from three to five or even beyond, the risk of ballot exhaustion naturally declines.”<sup>79</sup>

## **What type of tabulation method should be used?**

Tabulation method refers to the way in which ranked choice ballots are counted and a winner is determined according to certain thresholds and processes.<sup>80</sup> Certain methods, such as machine counting, can be used based on the type of ballot or voting machine used by a jurisdiction. For instance, as pointed out by Common Cause and the Ranked Choice Voting Resource Center, because the City BOE uses ES&S’s DS200 machines, the same voting machines used in Maine and Minneapolis RCV elections, specific software can be used to machine tabulate results exported from the machine.<sup>81</sup>

An important aspect of tabulation is determining how many candidates are eliminated at a time and when vote distribution rounds should end. One possible method, called a “top two” count, eliminates all but the top two vote-getters in the first round. In its testimony to the Commission, Reinvent Albany rejected a “top two” counting method and instead endorsed a “bottom up” counting method, meaning that, in general, one last place candidate is eliminated and those votes are distributed in each round of counting until just two candidates remain in the final round.<sup>82</sup> Some jurisdictions, including Maine and Minneapolis, incorporate “batch elimination” in order to minimize having to conduct multiple rounds to eliminate candidates with such low vote totals (such as various write-in candidates receiving little more than a few votes) that it would be mathematically impossible for any of those candidates to win.<sup>83</sup> Batch elimination allows those candidates to be eliminated simultaneously in a single round of tabulation.

## **Proposed Amendment to the Charter**

After careful consideration of public input and academic and government research, as well as examination of best practices and expert feedback as described above, and in light of the many potential benefits an RCV system would provide, the Commission proposes a Charter amendment implementing RCV in all primary and special elections for Mayor, Public Advocate, Comptroller, Borough President, and City Council that occur on or after January 1, 2021. Voters would be able to rank in order of preference up to five candidates, including a write-in candidate; they would be free to rank as many or as few candidates as they wish. No separate run-off elections would occur.

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<sup>79</sup> [Written testimony of Teri Hagedorn representing RepresentUs New York](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 12-13.

<sup>80</sup> Ranked Choice Voting Resource Center, [Tabulation & Results](#).

<sup>81</sup> [Written testimony of Susan Lerner, Executive Director, Common Cause of New York](#), Public Meeting of the 2019 Charter Revision Commission, (Apr. 30, 2019), at 19; Information provided by Karen Brinson Bell, Ranked Choice Voting Resource Center to Commission staff, (May 24, 2019).

<sup>82</sup> [Written testimony of Tom Speaker, Policy Analyst, Reinvent Albany](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 3-4.

<sup>83</sup> Drew Penrose, [What is batch elimination and how did it affect Maine’s ranked choice voting races?](#), FairVote, (Nov. 19, 2018).

The Commission's proposal provides that the winner in an RCV election would be determined in one of two ways. If a candidate receives an outright majority of highest-ranked votes, he or she would win the election. However, if no candidate receives an outright majority of highest-ranked votes, tabulation would occur in rounds in which the candidate with the fewest number of highest-ranked votes would be eliminated and each vote cast for that candidate would be added to the totals of the next ranked candidate on those ballots. This process would be repeated until only two candidates remain and the candidate with the most votes would win the election.

This proposal would also require the use of batch elimination, unless it would result in only a single candidate remaining, in which case only the last place candidate would be eliminated in that round. As noted above, batch elimination allows all candidates for whom it is mathematically impossible to win the election – because such candidate's vote total in a round, plus all votes that could possibly be transferred to such candidate in future rounds would not be enough to win the election – to be eliminated simultaneously in the same round.

The proposal would provide for each ballot to be counted as a vote for the *highest-ranked* candidate who has not been eliminated. This means that in instances where a voter does not mark the ballot in a straightforward manner, a ballot would be counted as follows:

- Marking One Candidate With Multiple Ranks: If a voter marks Candidate A as rank 1 and as rank 2, and marks Candidate B as rank 3, the voter's ballot would be treated as marking Candidate A as rank 1 and Candidate B as rank 2 – essentially, marking more than one ranking for the same candidate would simply count in the same way it would have if only the highest of those ranks was marked.
- Skipped Ranks: If a voter skips rank 1, marks Candidate A as rank 2, skips ranks 3 and 4, and marks Candidate B as rank 5, the voter's ballot would be treated as marking Candidate A as rank 1 and Candidate B as rank 2 – essentially, those skipped ranks would be ignored.

Ballots that assign the same rank to more than one candidate would not count when that rank is reached. These so-called “overvotes” make it impossible to know which candidate the voter actually prefers. So, if a voter marks Candidate A as rank 1, Candidate B and Candidate C as rank 2, and Candidate D as rank 3, the voter's ballot would be treated as if they only marked Candidate A as rank 1, with ranks 2 and 3 ignored because it would be impossible to know which candidate the voter actually preferred for rank 2. But, if a voter marks two candidates as rank 1, the ballot would simply not count for that race.

The proposal would provide that, in an RCV election, when the New York City Board of Elections releases its initial, unofficial tally of ballots, it would have the discretion to release either the total number of those ballots on which each candidate was ranked first or the round-by-round tabulation results based on those ballots. However, when it certifies the results of an RCV election, it must release the round-by-round tabulation results to ensure that there is a complete record of results.

The proposal would also require the New York City Board of Elections to submit a report to the Mayor and Speaker of the Council describing the Board's plan for implementing RCV for all covered elections beginning January 1, 2021. This report would be due no later than June 1, 2020. If the Board failed to submit this report, the proposal establishes a rebuttable presumption that the Board is declining to implement RCV as required.

Taking into consideration the importance of voter education in cultivating public understanding of RCV, the Commission's proposed amendment would also require the Campaign Finance Board to conduct a voter education campaign to familiarize voters with the new system. The Commission strongly urges the City to support these efforts with the necessary resources to insure a vigorous and thorough education program for all City voters in time for the first RCV election in 2021.

## State law considerations

The City's authority to enact local legislation creating an RCV system for local offices derives from the New York State Constitution and the Municipal Home Rule Law (MHRL). Article IX of the State Constitution and section 10 of the MHRL authorize the City to adopt local laws relating to its government and the mode of selection of its officers, provided that these laws are consistent with the State Constitution and general State laws.<sup>84</sup> The Court of Appeals in Bareham v. City of Rochester, 246 N.Y. 140 (1927) interpreted the power to adopt local laws related to the mode of selection of officers as meaning that "a municipality may define the precise method by which either an election or appointment shall be effected."<sup>85</sup>

To carry out an RCV system, the Commission is proposing to explicitly supersede certain provisions of the State Election Law, but only to the degree necessary to implement this important innovation of its democracy. To the extent the proposed Charter amendment is superseding the Election Law, it is able to do so in part because of authority granted by Election Law section 1-102. Election Law section 1-102 states that "[w]here a specific provision of law exists in any other law which is inconsistent with the provisions of [the Election Law], such provision shall apply unless a provision of [the Election Law] specifies that such provision of [the Election Law] shall apply notwithstanding any other provision of

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<sup>84</sup> N.Y. Const. Art. 9, § 2(c)(i),(ii)(1) ("[E]very local government shall have the power to adopt and amend local laws . . . relating to . . . [the] mode of selection . . . of its officers . . . ."); Municipal Home Rule Law § 10(1)(i),(ii)(a)(1); ("[E]very local government . . . shall have power to adopt and amend local laws . . . relating to . . . [the] mode of selection . . . of its officers . . . ."); N.Y. A.G. Informal Opinion 2018-1; ; Roth v. Cuevas, 158 Misc. 2d 238 (N.Y. Sup. Ct. 1993), *aff'd*, 197 A.D.2d 369 (1st Dep't 1993), *aff'd*, 82 N.Y. 2d 791 (1993) ("N.Y. Mun. Home Rule Law §10(1)(ii)(a)(1) empowers a city to adopt and amend local laws, which are not inconsistent with constitutional or state law, relating to the . . . mode of selection and removal, and terms of office of its officers and employees."). The State Legislature has recognized that a "law" may include a "charter" or "local law." MHRL § 2(6).

<sup>85</sup> 246 N.Y. 140, 146 (1927).

law.”<sup>86</sup> The import of this provision is that where the City is acting within its home rule authority, for example with respect to the selection of its own officers, it may enact local legislation that deviates from the precise requirements of the Election Law.

Consistent with the flexibility afforded by Election Law section 1-102, New York courts have repeatedly recognized a locality’s paramount interest in experimentation with its own democracy. In Bareham, the Court of Appeals affirmed the broad grant of home rule power to local governments in shaping local elections.<sup>87</sup> In Johnson v. City of New York, 274 N.Y. 411 (1937), the Court of Appeals upheld a proportional representation system that enabled voters to rank candidates in a manner similar to how they would rank candidates in a modern RCV system.<sup>88</sup> In Blaikie v. Power, 13 N.Y.2d 134 (1963), the Court of Appeals upheld adoption of a “limited voting” system in the City, stating that “New York’s latest experiment in limited voting, approved by its inhabitants, is one which the Constitution permits it to make.”<sup>89</sup> In Resnick v. Ulster County, 44 N.Y.2d 279 (1978), the Court of Appeals again found that municipalities “were accorded great autonomy in experimenting with the manner in which their local officers . . . were to be chosen . . . .”<sup>90</sup> In light of this long-standing body of case law supporting local innovation in democracy, and provisions of the State Constitution, the MHRL, and Election Law section 1-102, the Commission believes that the City has the home rule authority to amend its Charter to create an RCV system.

In particular, the proposed amendment would supersede the Election Law in the following ways:

Sections 6-150 and 6-152 of the Election Law concern a vacancy created when a nominee, who has received a plurality of the vote, dies or is disqualified from serving as the nominee in a general or special election. Existing procedures would apply to a ranked choice election, except that for a ranked choice election, such nominee would be chosen by the tabulation procedures in this proposal.

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<sup>86</sup> N.Y. Election Law § 1-102; See City of New York v. New York City Board of Elections, Index No. 41450/91 (Sup. Ct., N.Y. Co.), aff’d, -- A.D.2d -- (1st Dep’t), appeal dismissed, leave to appeal denied, 77 N.Y.2d 938 (1991) (“[T]he Election Law gives way to inconsistent local law provisions.”). The Court of Appeals found in Bareham that the local law at issue did not supersede the Election Law with sufficient clarity. See Bareham, 246 N.Y. at 149-151. The present ranked choice voting proposal, by contrast, specifies its own relationship with the Election Law.

<sup>87</sup> Bareham, 246 N.Y. at 140 (holding that cities in New York State possess the authority to establish nonpartisan election systems); See also Johnson v. Etkin, 279 N.Y. 1 (1938) (finding that the City of Schenectady had the home rule power to adopt a system of proportional representation, and permitting a voter petition proposing such a system to be submitted to the voters).

<sup>88</sup> Johnson, 274 N.Y. at 430 (“If the people of the city of New York want to try the system, make the experiment, and have voted to do so, we as a court should be very slow in determining that the act is unconstitutional . . . .”).

<sup>89</sup> Blaikie, 13 N.Y.2d at 144.

<sup>90</sup> Resnick, 44 N.Y.2d at 286 (holding that vacancies in county offices may be filled by appointment in accordance with local laws that conflict with the state County Law).

Section 6-162 requires a primary run-off when, in a primary for Mayor, Public Advocate, or Comptroller, no candidate receives 40% or more of the vote. This proposal supersedes section 6-162 in its entirety, and, as specified in subdivision b of the proposed amendment, no run-off election would occur for a primary for these offices.

Article 7 generally concerns the design of ballots. As explained in paragraph 3 of subdivision c of the proposed amendment, certain provisions of such article are superseded, with subdivision d of the proposed amendment specifying how ballots are to be designed for RCV elections. Moreover, there is currently legislation awaiting signature by the Governor – the Voter Friendly Ballot Act (A. 2682-A / S. 2300-A (2019-20)) – that would amend certain Election Law provisions concerning design of ballots. Subparagraph (a) of paragraph 3 of subdivision c of this amendment specifies the sections of the Election Law that would be wholly superseded if the Voter Friendly Ballot Act is not enacted, and subparagraph (b) of paragraph 3 of subdivision c specifies the sections of the Election Law that would be wholly superseded if the Voter Friendly Ballot Act is enacted.

Paragraph b of Section 8-100 specifies the timing of a primary run-off election, if required. Paragraph 4 of subdivision c of the proposed amendment supersedes paragraph b of section 8-100 of the Election Law because, as explained above, no run-off election would occur for a primary election for Mayor, Public Advocate, or Comptroller under this proposal.

Article 9 generally concerns canvassing of ballots, both by election inspectors at poll sites and by the City Board of Elections and State Board of Elections. In particular, sections 9-100 to 9-126 of the Election Law concern canvassing of ballots by elections inspectors at poll sites and the unofficial reporting of results. Given the technological limitations of counting and reporting votes at individual poll sites, the proposed amendment provides that inspectors would count only the number of ballots that rank each candidate as rank number 1, recognizing that although this information will be insufficient to tabulate the final results, it will nonetheless inform the public about whether a candidate likely won the election outright by receiving a majority of the votes in the first round. The Board of Elections would then have the discretion whether to publish, as the unofficial tally, the number of ballots that rank each candidate as rank number 1, or the full tabulation results pursuant to the proposed amendment.

Specifically, section 9-102 contains multiple provisions concerning the counting of ballots by election inspectors. With respect to hand counting of ballots, this proposal would delegate authority to the Board of Elections to promulgate rules concerning how to hand count ballots, as needed, in a ranked choice election, given that recording all ranks on such ballots are necessary to ensure tabulation in accordance with subdivision e of this section of the Charter. In addition, at times, election inspectors at the poll site must read or announce the results. In plurality elections, the inspectors simply read the number of votes for each candidate. This proposal provides that, in an RCV election, they instead inspect, read, and announce the number of ballots that rank each candidate as rank number 1, with the recognition that, for determining the winner, such ballots must be

tabulated in accordance with subdivision e of the proposed amendment. When portable memory devices record the total votes cast, such devices would now be required to record all of the ranks on each ballot. Finally, there is currently legislation awaiting signature by the Governor – the Uniform Election Night Procedure Act (A. 2264 / S. 2346 (2019-20)) – that would create a uniform statewide canvassing procedure at polling sites by eliminating subdivision 1-a of 9-102, which relates to procedures applicable only in the City of New York. The proposed amendment anticipates this potential change by modifying both subdivisions 1 or 1-a, if applicable to ranked choice elections.

Section 9-110 concerns hand counting of ballots. As noted above, for an RCV election, this proposal would delegate to the Board of Elections the authority to promulgate rules concerning how to hand count ballots, as needed, given that recording all ranks on such ballots are necessary to ensure tabulation in accordance with subdivision e of the proposed amendment.

Section 9-112 concerns determining the validity of a ballot. Existing procedures would apply to a ranked choice election, except that all references to a “vote” would mean a vote cast in a round of tabulation pursuant to subdivision e of the proposed amendment, and that, to the extent provisions of section 9-112 bar voters from ranking multiple candidates for a single ranked choice office, those provisions would be superseded.

Section 9-114 concerns objections to the validity of a ballot. Existing procedures would apply to a ranked choice election, except that when marking that a ballot was “Counted for” a candidate, inspectors would mark that it was “Counted for” the candidate who is ranked as the highest rank on such ballot.

Section 9-116 concerns the tallying of individual ballots. Existing procedures would apply to a ranked choice election, except that, when reporting the total number of votes for each candidate, inspectors would report the total number of ballots that marked each candidate as the first choice for that ranked choice office.

Section 9-120 concerns the canvass by inspectors at individual poll sites. Existing procedures would apply to a ranked choice election, except that, when reporting the total number of votes cast for all candidates, inspectors would report the total number of ballots cast for all candidates.

Section 9-122 concerns the proclamation of results by inspectors at individual poll sites. Existing procedures would apply to a ranked choice election, except that, instead of proclaiming the number of “votes” each candidate receives, inspectors would proclaim the total number of ballots that marked each such candidate as the first choice for that ranked choice office.

Section 9-126 concerns the reporting of unofficial tally of results by the Board of Elections. Existing procedures would apply to a ranked choice election, except that instead of reporting the number of “votes received by” each candidate, the Board of Elections would be vested with the discretion to report – as the “unofficial tally” – either (1) the number of first choice votes received by each candidate or (2) the full tabulation of results of all

ballots then in their possession, including the round-by-round results, using the tabulation procedures pursuant to subdivision e of the proposed amendment.

Sections 9-200 to 9-216 concern the official reporting of results and determining the winner of an election. When reporting the official results – and determining the winner of a ranked choice election – this proposed amendment requires the Board of Elections to report the round-by-round tabulation conducted pursuant to subdivision e of the proposed amendment, and to determine the winner pursuant to such tabulation procedures, which is a departure from the current practice whereas ballots only indicate a single candidate. Under current law, tabulation occurs at disparate polling locations and results are individually reported to the Board of Elections. Under this proposal, tabulation would require recording every rank on every ballot for every candidate, and, in a departure from current practice, would require tabulation at a single, central location.

Specifically, section 9-200 concerns the canvass of primary results by the Board of Elections. Existing procedures would apply to a ranked choice election, except that reporting of results and determination of the winner would occur as described in the proposed amendment.

Section 9-202 concerns the canvass of primary results by the State Board of Elections. Existing procedures would apply to a ranked choice election, except that reporting of results and determination of the winner would occur as described in the proposed amendment.

Section 9-206 concerns the canvass of election district returns of general and special elections. Existing procedures would apply to a ranked choice election, except that tabulation of results would occur pursuant to subdivision e of the proposed amendment.

Section 9-208 concerns recanvassing of votes in election districts. Existing procedures would apply to a ranked choice election, except that when reviewing and comparing the “number of votes” on the tabulated results tape pursuant to subdivision 3, there would now be a review and comparison of the total number of ballots recorded on the tabulated results tape.

Section 9-209 concerns canvassing of absentee, military, and other ballots. Existing procedures would apply to a ranked choice election, except that that the manual counting of these ballots would occur in compliance with the tabulation procedures prescribed by subdivision e of the proposed amendment and any hand counting rules promulgated by the Board of Elections pursuant to subdivision g of the proposed amendment.

Section 9-210 concerns statements of the election results by the Canvassing Board. Existing procedures would apply to a ranked choice election, except that when reporting the number of votes cast for each candidate, the Board would report the number of votes cast for each candidate for that ranked choice office for each round of tabulation, as tabulated pursuant to subdivision e of the proposed amendment, and except that when filing electronic records, the Board would file a record of how each ballot ranked each candidate.

Section 9-212 concerns determining the winner. Existing procedures would apply to a ranked choice election, except that the winner would be determined by the tabulation procedures contained in subdivision e of the proposed amendment.

## Timing of Special Elections

### Background

Special elections are held to temporarily fill vacancies in an elected office in the event of an official's resignation, removal, death, or permanent incapacitation. In New York City, special elections for City offices are unique because they are single, non-partisan elections, meaning that more candidates typically run than in a normal primary or general election. In the last two decades, over 25 special elections have been held for municipal offices, although the last mayoral special election occurred in 1950.<sup>91</sup>

The Charter requires the Mayor, or the person acting as Mayor, to proclaim a special election for a vacated office within three days of the vacancy.<sup>92</sup> For the offices of Public Advocate, Comptroller, Borough President, or Council Member, the special election occurs on the first Tuesday at least 45 days after the office has been vacated.<sup>93</sup> In the event of a mayoral vacancy, the special election occurs on the first Tuesday at least 60 days after the office has been vacated.<sup>94</sup>

The Charter also does not allow special elections to be held between the primary and general election dates each year.<sup>95</sup> Prior to the recent changes to State law, this generally meant that special elections could not be scheduled between the second Tuesday in September (the City's old primary date) and the second Tuesday in November; rather, the special election was required to be held on the same day as the November general election. However, that period of time each year is now longer because a recent change to State law moved the primary election date from September to June, which under current Charter requirements could result in an office remaining vacant longer before a special election could be held to fill it.<sup>96</sup>

At the Commission's March 18, 2019 Public Meeting, BOE Executive Director Michael Ryan stated that the BOE has "almost no time" to prepare for a special election.<sup>97</sup> To conduct a special election, the BOE must select and set up polling sites, assign poll workers to sites, prepare voting machines, and administer the actual election. It is also tasked with determining which candidates qualify for the ballot and adjudicating whether the

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<sup>91</sup> Staff analysis of New York City Board of Elections certified special election results 1999-2019; Robert D. McFadden, [Vincent Impellitteri is Dead; Mayor of New York in 1950's](#), The New York Times, (Jan. 30, 1987).

<sup>92</sup> Charter §§ 10(c)(1), 24(c)(1), 25(b)(1), 81(e)(1), 94(c)(1).

<sup>93</sup> Charter §§ 24, 25, 81, 94.

<sup>94</sup> Charter §§ 4, & 10.

<sup>95</sup> Charter §§ 10, 24, 25, 81, 94.

<sup>96</sup> Election Law § 8-100(1)(a).

<sup>97</sup> 2019 Charter Revision Commission, [Transcript of Mar. 18, 2019 Public Meeting](#), at 128.



signatures on a candidate's nominating petitions qualify. Both actions occur within a very tight timeframe. State law dictates that nominating petitions, which must contain the signatures of a minimum number of certain registered voters, must be submitted to the BOE within 12 days of the Mayor proclaiming a special election.<sup>98</sup> Lastly, each special election costs the City a significant amount of money; the recent Public Advocate special election cost the City \$15 million to administer.<sup>99</sup>

Executive Director Ryan recommended to the Commission that the Charter be amended to provide that the timeline for special elections match the State Public Officers Law time period for special elections to fill vacancies in State elective office.<sup>100</sup> This law stipulates that, for all offices other than the Governor or Lieutenant Governor, the election occur not less than 70 days and not more than 80 days after a Governor's proclamation.<sup>101</sup> In other testimony before the Commission, NYPIRG noted that unifying State and City timelines may create efficiencies for special elections to occur on the same date in situations where multiple vacancies occur at once, for example when elected officials assume new offices on January 1<sup>st</sup> and vacate their former offices within the elected term.<sup>102</sup>

In addition to alleviating election operations issues experienced by the BOE, extending the special election timeline would also give the BOE more time to comply with federal and State laws regarding military and overseas voter ballots. Federal law allows anyone serving in the military, along with their spouses and/or dependents, to register as "military voters," which permits them to automatically be mailed ballots for every federal, State, and local election based on their City residence.<sup>103</sup> Federal law requires the BOE to mail or otherwise distribute ballots to military voters no later than 45 days before a special election; under State law, the BOE must mail these ballots at least 46 days before a special election.<sup>104</sup>

The Commission observes that the special election timeline requirements in the Charter appear to be currently incompatible with this State law because the BOE must wait until candidates collect and submit nominating petitions and the ballot is finalized, which often results in mailing absentee ballots much later than the now required 46 days before the election. For example, for the February 26, 2019 Public Advocate special election, the

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<sup>98</sup> Election Law § 6-158(7).

<sup>99</sup> Rich Calder, [Here's how much NYC's public advocate election will cost taxpayers](#), New York Post, (Jan. 2, 2019).

<sup>100</sup> Public Officers Law § 42.

<sup>101</sup> It should be noted that, unlike the Charter which requires the Mayor to call a new election within 3 days of a vacancy, the Governor generally has discretion regarding when and if to proclaim a new election.

<sup>102</sup> [Written testimony of Tousif Ahsan, Civic Engagement Coordinator, NYPIRG](#), Public Meeting of the 2019 Charter Revision Commission, (May 14, 2019), at 8.

<sup>103</sup> The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), P.L. 99-410, 100 Stat. 924 (1986); Military and Overseas Voter Empowerment Act (MOVE Act), P.L. 111-84, 123 Stat. 2190.

<sup>104</sup> Military and Overseas Voter Empowerment Act (MOVE Act), P.L. 111-84, 123 Stat. 2190; Election Law §§ 10-114, 10-108(1)(a).

ballot was not finalized until January 30, 2019, 27 days before the special election.<sup>105</sup> Military and overseas ballots must be postmarked by the day before a special election and received by the BOE no later than 13 days after a special election. This means that military and overseas voters have a very short time frame to receive, mark, and return their ballots to the BOE for special elections.<sup>106</sup>

Lastly, the Commission recognizes that extending the special election timeline would also provide a longer period for special election candidates who participate in the public matching funds program to qualify for public funds. There are two thresholds a candidate must meet to qualify for public funds: (1) minimum funds raised; and (2) minimum number of City contributors (in-borough for Borough President and in-district for City Council).<sup>107</sup> It can take a long time for candidates to meet these thresholds to qualify for public funds. It has been noted to the Commission that the short special election period benefits candidates who already hold (or recently left) elected office and who have ready access to private donations. These candidates are also more likely to be able to quickly meet these thresholds. The Commission believes that expanding the special election period would give candidates more time to raise money and give the CFB more time to audit those contributions and pay out public funds, and could potentially encourage a larger, more diverse field of candidates.

## **Proposed Amendment to the Charter**

The Commission believes that extending the special election timeline would have several positive effects for the administration of these elections and for New York City voters and candidates. It would give election officials more time to organize and properly administer the special elections; it would give candidates increased time to explore a potential run as well as the opportunity to participate in the City's public matching fund program; and it would give voters more time to meaningfully participate in the election, including additional time to examine the candidates running for office. It would also increase the ability for military, overseas, and absentee voters to have sufficient time to receive and timely return their ballots to the BOE. Therefore, the Commission proposes an amendment to the Charter to extend the time between a vacancy and the resulting special election from (1) the current 45 days for the Public Advocate, Comptroller, Borough Presidents, and Council Member vacancies and (2) the current 60 days for mayoral vacancies, to 80 days for all of these offices.

The proposed amendment would also remove the current Charter requirement that a special election that would otherwise fall between the scheduled primary and general election dates be automatically held on the general election date instead; due to the State having moved the primary date from September to June, this time period is now

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<sup>105</sup> Samir Khurshid, [Public Advocate Special Election Ballot Finalized with 17 Candidates](#), Gotham Gazette, (Jan. 30, 2019).

<sup>106</sup> Election Law § 10-114.

<sup>107</sup> New York City Campaign Finance Board, [Important Dates and Deadlines for the 2019 Public Advocate Special Election](#).

significantly longer. The Commission believes this change is necessary to avoid excessively long vacancies in these elected offices.

The amendments to the required timelines for special elections, if adopted by the voters, would take effect immediately.

## Timing of Redistricting

### Background

After each decennial federal census, a Districting Commission appointed by the Mayor and the City Council redraws the 51 Council district boundaries in a 14-month process commonly referred to as “redistricting.”<sup>108</sup> Council districts are reapportioned by the Districting Commission based on population or demographic changes in New York City, as evidenced by the census. For voters, their representative Council district may change in order to reflect the new population and/or demographics. For Council candidates, any changes may impact which candidates run in a given district and, consequently, where those candidates must gather petitions and focus their fundraising efforts.

Certain important dates in the redistricting timeline are outlined in the Charter. Following the 2020 Census, the current Charter provisions require the Mayor to convene a meeting by January 7, 2022 to establish “a screening and selection process for ensuring that the racial and language minority groups in New York City will be fairly represented on the commission.”<sup>109</sup> Districting Commission appointments must be finalized by the Council majority and minority party delegations by May 7, 2022 and by the Mayor by June 7, 2022.<sup>110</sup> Following those appointments, the Districting Commission must begin its work drafting new district maps and receiving feedback from City residents through a series of required public hearings.<sup>111</sup> The first districting plan is due to the Council by November 7, 2022. If the Council objects, the Districting Commission must prepare a new plan, which must ultimately be submitted to the Council by March 7, 2023.<sup>112</sup> The revised districting plan then goes into effect without further opportunity for Council action.<sup>113</sup>

Recent State Election Law changes have significant implications for the feasibility of the Districting Commission timeline currently outlined in the Charter. In early 2019, the State Legislature passed reforms that resulted in a number of changes affecting the City, including:

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<sup>108</sup> Charter §§ 50–52.

<sup>109</sup> Charter § 50(b)(2).

<sup>110</sup> Charter § 50(c).

<sup>111</sup> Charter § 52.

<sup>112</sup> Charter § 51(d) & (e).

<sup>113</sup> Charter § 51.

- 1) moving City primary elections three months earlier, from the second week of September to the fourth Tuesday in June;<sup>114</sup>
- 2) adding 10 days of early voting time, including before primary and general elections;<sup>115</sup> and
- 3) moving the last day primary election candidates can submit nominating petitions to the BOE three weeks earlier.<sup>116</sup>

These State law amendments have resulted in changes to the BOE's election calendar which specifies the dates by which candidates must start gathering signatures by certain registered voters for their petitions to be placed on the ballot for the ensuing primary election. The new dates are as follows:

Election Calendar 2023	
Date	Event
2/28/2023	Petition gathering start date
4/6/2023	Last possible day to file designating petitions
6/17/2023	Primary Election Early Voting Begins
6/27/2023	Primary Election
10/28/2023	General Election Early Voting Begins
11/7/2023	General Election

Source: Election Law §§ 6-134(4), 6-158, 8-100, and 8-600.

The redistricting timeline deadlines outlined in the Charter were designed with the expectation that City primary elections would be held the second week of September, and that the Districting Commission would submit its final district map to the Council about three months before the start of petition collection by candidates. However, taking into consideration the State's recent changes to the Election Law, the Charter timeline dictates that the final district map will be due about 10 days into the 37-day petitioning period. Therefore, candidates running for the 51 Council seats up for election in 2023 would have no advance notice of the new districts and relatively little time to gather petition signatures after the new district boundaries have been set.

Petitioning is highly dependent upon the district boundaries of the Council district because potential Council candidates must obtain petitions signed by at least 5% of enrolled party voters in the relevant Council district (or by at least 450 voters if there are more than 9,000 such enrolled party voters in the district).<sup>117</sup> Gathering nominating petitions is a labor-intensive process and Council candidates would be disadvantaged by insufficient advance notice of new district lines.

<sup>114</sup> Election Law § 8-100(1)(a).

<sup>115</sup> Election Law § 8-600(1).

<sup>116</sup> Election Law § 6-158; § 6-134(4).

<sup>117</sup> Election Law § 6-134(4).

Changes to district boundaries might also alter how new candidates and/or current Council Members running for reelection focus their fundraising in order to collect enough in-district contributions to qualify for public matching funds.<sup>118</sup> Additionally, candidates might need to decide whether to move into a new home in cases where they wished to run for election or re-election but their current residence had been “districted out” into another district. Lastly, voters whose district lines have changed should also have ample time to learn about potential candidates who are circulating petitions.

## Proposed Amendment to the Charter

The Commission believes that the three-month period between the Districting Commission submission of its final map and the start of petition gathering should be maintained as closely as possible in the face of the recently enacted State law changes noted above. Therefore, the Commission proposes a Charter amendment that would move the deadlines for Districting Commission appointments and all districting plan map submissions to three months earlier so that voters and candidates would have approximately the same amount of advance notice concerning the boundaries of their districts as they would have had before the State’s recent changes to the Election Law. This amendment would take effect for the Districting Commission to be convened in 2022, and for all future districting commissions following the decennial federal census.

Proposed Redistricting Deadlines		
Proposed Deadline	Current Deadline	Event
1/7/2022	1/7/2022	Mayor convenes meeting to establish screening and selection process for Districting Commission appointments
2/7/2022	5/7/2022	Last day for Council Delegations to make appointments
3/7/2022	6/7/2022	Last day Mayor can make appointments to the Commission
8/7/2022	11/7/2022	Last day Districting Commission can submit its first districting Plan to the Council
10/7/2022	1/7/2023	Last day Districting Commission can make revised districting plan available for public comment
12/7/2022	3/7/2023	Last day Districting Commission can submit its final districting plan to the Council
1/6/2024	1/6/2024	Districting Commission term ends

Source: Charter §§ 50-51.

<sup>118</sup> New York City Campaign Finance Board, [Limits and Thresholds](#).

# BALLOT QUESTION #2 – CIVILIAN COMPLAINT REVIEW BOARD (CCRB)

The Commission proposes a “Civilian Complaint Review Board” ballot question that encompasses five Charter amendments related to: (1) the structure and appointment of the Board and its Chair; (2) establishing minimum standards related to the CCRB’s budget; (3) changing requirements related to notification and explanations regarding the Police Commissioner’s deviations from disciplinary recommendations; (4) investigations of potentially false material statements made by police officers who are the subject of a CCRB complaint; and (5) delegation and enforcement of the CCRB’s subpoena power to its Executive Director. The ballot question, explanatory abstract, and text of the proposed Charter amendment can be found in Appendix B to this report.

## Background

Systems of police accountability are meant to uphold police integrity, deter misconduct, and enhance public confidence in policing.<sup>119</sup> A mechanism for increasing police accountability is civilian oversight, which involves one or more individuals outside the sworn chain of command of a police department reviewing police conduct.<sup>120</sup> Contrasted with internal accountability mechanisms commonly found in law enforcement (e.g., internal affairs), civilian oversight offers a method of civilian involvement in accountability that is external to the police department.<sup>121</sup> Independence from the police department and the sworn chain of command that it seeks to hold accountable allows civilian oversight to address a wide range of concerns without actual or perceived bias, and to ensure that policing is responsive to the needs of the community.<sup>122</sup>

The New York City Police Department (NYPD) is the largest municipal police department in the country.<sup>123</sup> The NYPD employs approximately 36,000 uniformed officers and 19,000 civilians.<sup>124</sup> In New York City, different entities share responsibility for various aspects of oversight of the NYPD and its officers, including the Civilian Complaint Review Board (CCRB), the Office of the Inspector General of the NYPD (OIG-NYPD), an independent monitor, and the NYPD’s Internal Affairs Bureau (IAB).<sup>125</sup>

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<sup>119</sup> United Nations Office on Drugs and Crime, [Handbook on Police Accountability, Oversight, and Integrity](#), Criminal Justice Handbook Series, (2011), at 9.

<sup>120</sup> National Association for Civilian Oversight of Law Enforcement, [Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models](#), (Joseph De Angelis et. al. eds., 2016), at 3.

<sup>121</sup> National Association for Civilian Oversight of Law Enforcement, [Guidebook for the Implementation of New or Revitalized Police Oversight](#), (Brian Buchner et. al. eds., 2016), at 15.

<sup>122</sup> *Id.*

<sup>123</sup> Mary Jo White et. al., [The Report of the Independent Panel on the Disciplinary System of the New York City Police Department](#), (Jan. 25, 2019), at 3.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 2-3.

Civilian oversight of the police in New York City dates back to the 1950s, and has since gone through several structural changes. In 1993, the City Council passed legislation creating the present-day CCRB.<sup>126</sup> The CCRB was structured to be independent of the NYPD's organizational structure. The Charter stipulates that the CCRB is responsible for receiving, investigating, hearing, making findings, and recommending actions concerning "complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability."<sup>127</sup> This jurisdiction is collectively referred to as **FADO**.

The CCRB consists of a 13-member Board; five members, one from each borough, are designated by the City Council; three members with law enforcement experience are designated by the Police Commissioner; and the remaining five members are selected by the Mayor.<sup>128</sup> The Charter gives the Mayor the power to make all 13 appointments and to select one of the members to serve as the chair.<sup>129</sup> The Board is empowered by the Charter to appoint an Executive Director who, in turn, is responsible for all matters related to the hiring of the CCRB staff, its organizational structure, and the day-to-day operations.<sup>130</sup> The Charter gives the CCRB the power to investigate complaints and make findings regarding matters that fall under its FADO jurisdiction.<sup>131</sup>

The CCRB's staff is responsible for processing and investigating civilian complaints against police officers. Once an investigation has been completed, a closing report is generated and reviewed by a panel made up of three Board members, or in certain instances the full Board. Review panels are typically composed of one member from each of the designating entities (i.e., Mayor, City Council, and Police Commissioner).<sup>132</sup> Panels, or the full Board, also review truncated investigations and complaints disposed of through mediation.<sup>133</sup> The Board uses a "preponderance of the evidence" standard of proof to evaluate each allegation of misconduct, and as a result the Board may:<sup>134</sup>

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<sup>126</sup> Local Law 1 of 1993.

<sup>127</sup> Charter § 440(c)(1).

<sup>128</sup> The City Council chooses five members and the Mayor makes the official appointments to the Board; The Police Commissioner chooses three members with law enforcement experience and the Mayor makes the official appointments to the Board; Charter § 440(b)(1).

<sup>129</sup> Charter § 440(b)(1) & (c)(1).

<sup>130</sup> N.Y.C. Rules, title 38-A, chapter 1, § 1-53(b); See Charter § 440(c)(5).

<sup>131</sup> Charter § 440(c)(1).

<sup>132</sup> See Charter § 440(c)(2); N.Y.C. Rules, title 38-A, chapter 1, § 1-31.

<sup>133</sup> Mediation is an alternative to a formal CCRB investigation. Mediation allows the complainant to speak with the accused officer in person. The process does not lead to formal discipline, but may resolve a complaint. In 2017, 49% of the cases in which mediation was attempted were closed as completed.

<sup>134</sup> N.Y.C. Rules, title 38-A, chapter 1, § 1-33(b).

1. Determine that an allegation is substantiated, unsubstantiated, or unfounded;
2. Refer the complaint to another investigative agency if it determines that the allegation is not within its jurisdiction, such as complaints within the purview of the NYPD's IAB or the applicable District Attorney's Office;
3. Find that a case cannot be pursued because a witness is unavailable, unidentifiable, or uncooperative (truncated investigations); or
4. Indicate that the complaint has been resolved through an alternative means, such as mediation.

When the Board substantiates allegations of misconduct, it may recommend one of the following types of discipline in descending order of severity:

1. Charges and Specifications (which is followed by an administrative prosecution, discussed below, and can result in loss of vacation days, suspension, or termination);
2. Command Discipline (which can result in loss of vacation days); or
3. Instructions or Formalized Training (which can result in required training at the command level or the Police Academy or Legal Bureau).<sup>135</sup>

Regardless of the level of discipline ultimately recommended by the CCRB (or by the NYPD Deputy Commissioner of Trials), under the Charter the Police Commissioner has final control over the discipline of all NYPD police officers and can, at his or her discretion, accept and impose the recommended discipline on an officer, or impose lesser or greater discipline, or no discipline at all.

When the CCRB recommends Charges and Specifications for substantiated complaints, an administrative prosecution ensues, and the case is prosecuted before the NYPD's Deputy Commissioner of Trials by CCRB attorneys – known as the Administrative Prosecution Unit (APU). The APU was created by a Memorandum of Understanding (MOU) between the NYPD and the CCRB in 2012; this agreement sets forth the provisions allowing the CCRB to bring formal charges against a police officer.<sup>136</sup> The MOU effectively allows CCRB attorneys, instead of NYPD attorneys, to act as prosecutors in cases in which the Board has recommended Charges and Specifications. To date, the APU has closed more than 400 disciplinary cases, prosecuted more than 250 members of the NYPD, and taken pleas from more than 180 additional members of the NYPD.<sup>137</sup>

For cases that do not result in an administrative prosecution, the Board's findings and recommendations are submitted to the Police Commissioner, who then determines what, if any, discipline is warranted. The Police Commissioner has a duty to report back to the

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<sup>135</sup> New York City Civilian Complaint Review Board, [Police Discipline](#).

<sup>136</sup> [Memorandum of Understanding](#) Between the Civilian Complaint Review Board and the New York City Police Department, (Apr. 2, 2002).

<sup>137</sup> New York City Civilian Complaint Review Board, [The Administrative Prosecution Unit](#).



CCRB on any action taken in cases in which the Board submitted a finding or disciplinary recommendation.<sup>138</sup> The Charter does not contain an express provision outlining the time period within which the Police Commissioner must act on the Board's recommendation.

For all complaints within its jurisdiction that are filed and investigated, the CCRB tracks what is known as the "Concurrence Rate," which indicates how often the Police Commissioner imposes the same level of discipline as recommended by the Board.

The Commission notes that in cases where the CCRB recommended that Command Discipline or Instructions or Formalized Training be imposed on an officer, the Concurrence Rate decreased from 65% in 2016 to 42% in 2017, before rising to 54% in the first half of 2018.<sup>139</sup> In the more serious instances where Charges and Specifications were recommended and prosecuted by the APU, the Police Commissioner imposed the recommended discipline in 26% of these cases in the first half of 2018; in previous years the Concurrence Rate for Charges and Specifications cases was 27% in 2017 and 40% in 2016.<sup>140</sup>

Overall, the CCRB received an average of 4,680 complaints per year from 2013–2017.<sup>141</sup> Complaints peaked at 7,663 in 2006 when the CCRB grappled with stop-and-frisk tactics employed by the NYPD.<sup>142</sup> The number of complaints has been in decline for some years, but in 2017 the CCRB experienced an increase of complaints, which CCRB believes could possibly be due to its own increased outreach efforts.<sup>143</sup>

## Proposed Amendment to the Charter – Structure of the CCRB

As noted above, the Charter currently gives the Mayor sole authority to appoint all 13 members of the Board for staggered three-year terms, but five are "designated" by the Council and three (with law enforcement experience) are "designated" by the Police

Commissioner.<sup>144</sup> The Mayor does not have to accept a particular person designated by the Council or the Police Commissioner; the Mayor may reject (and has in the past rejected) proposed designees and may require the designation of someone else who would be mutually agreeable to the designator and the Mayor.<sup>145</sup> The Charter also gives

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<sup>138</sup> Charter §440(d)(3).

<sup>139</sup> New York City Civilian Complaint Review Board, [Annual Report](#), at 3 (2017); New York City Civilian Complaint Review Board, [Semi-Annual Report January-June 2018](#), (2018), at 46.

<sup>140</sup> CCRB, [Annual Report](#), (2017), at 3.

<sup>141</sup> New York City Civilian Complaint Review Board, [Annual Report Statistical Appendix](#), (2017), at 11.

<sup>142</sup> New York City Civilian Complaint Review Board, [Annual Report Statistical Appendix](#), (2009), at 1; Stephen Clarke, [Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How it Fails](#), Columbia Journal of Law and Social Problems (2009), at 29; New York City Civilian Complaint Review Board, [Annual Report](#), (2015), at 57.

<sup>143</sup> New York City Civilian Complaint Review Board, [Annual Report](#), (2017), at 4.

<sup>144</sup> Charter § 440(b)(1).

<sup>145</sup> See *Mayor of City of New York v. Council of City of New York*, 696 N.Y.S.2d 761, 766–67 (N.Y. Sup. Ct. 1999), rev'd, 721 N.Y.S.2d 39 (N.Y. App. Div. 1st Dept. 2001).

the Mayor power to designate one of the members to serve as Chair of the Board, who has regularly been a direct mayoral appointment.<sup>146</sup>

In the Commission's view, and as noted in the Preliminary Staff Report, it is important that the independent civilian oversight body responsible for investigating and making disciplinary recommendations to the Police Commissioner not be entirely appointed by the Mayor. Denver's Independent Monitor Nicholas Mitchell recommended that the Commission assess whether any potential proposal concerning civilian oversight "enhances public trust in the independence and effectiveness of the [civilian] oversight agency."<sup>147</sup> The same sentiment was echoed by Brian Corr, the President of the National Association for Civilian Oversight of Law Enforcement (NACOLE), which in a similar vein identifies independence as an effective feature of police oversight.<sup>148</sup>

In order to enhance the CCRB's independence and further ensure that diverse viewpoints are part of its deliberations, the Commission proposes a Charter amendment to change the structure of the CCRB by expanding the Board to 15 members; requiring that the Public Advocate appoint one new member to the Board; requiring that the second new member be jointly appointed by the Mayor and the Speaker of the Council and serve as the Board's chair; and requiring that the Council appoint members directly rather than designate them for mayoral approval. The Commission further proposes that members of the Board serve until their successors have been appointed and qualified. In the event of a vacancy, a successor would be appointed within 60 days of the vacancy by the applicable appointer; and in the event the office of the Chair is vacant, the Mayor would appoint an interim chair from amongst the current members until the vacancy is filled by the joint appointment of the Mayor and the Speaker. The amendment, if adopted by the voters, would take effect on March 31, 2020, except that the two new members would be appointed by May 6, 2020, with their terms beginning on July 6, 2020, in order to align with the expiration of the current Board Chair's term.

## **Proposed Amendment to the Charter – Establishing Minimum Standards Related to the CCRB's Budget**

The Commission received testimony that, since the CCRB is tasked with independent oversight functions over the largest police department in the country, its budget should be some fixed percentage of the NYPD's budget.<sup>149</sup> Some posited that an oversight body should be proportional in size to the agency it oversees and have a measure of insulation from the usual annual budget negotiations involving the Mayor and the City Council.

As noted in the Preliminary Staff Report, CCRB Executive Director Jonathan Darche asserted before the Commission the benefits of linking CCRB's budget to NYPD's in light of

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<sup>146</sup> Charter § 440(b)(1).

<sup>147</sup> 2019 Charter Revision Commission, [Transcript of Mar. 07, 2019 Public Meeting](#), 56–57.

<sup>148</sup> 2019 Charter Revision Commission, [Transcript of Mar. 7, 2019 Public Meeting](#), 63–64; National Association for Civilian Oversight of Law Enforcement (NACOLE), [Police Oversight](#).

<sup>149</sup> See 2019 Charter Revision Commission, [Transcript of Mar. 7, 2019 Public Meeting](#).

what he argued was a historical underfunding of CCRB compared to other peer agencies.<sup>150</sup> NACOLE President Brian Corr similarly emphasized the importance of a guaranteed budget to the Commission, stating that such a structure ensures that an agency like the CCRB can conduct its oversight effectively.<sup>151</sup> The City currently has a similar model with respect to the Independent Budget Office (IBO), which must be allocated a budget that is at least 12.5% of the amount of that of the Office of Management and Budget.<sup>152</sup> The IBO was the only agency to which the 1989 Charter Commission gave Charter budget protections to forestall a situation where “a future mayor and speaker, each jealous of their monopoly on budget information and analysis” would seek to reduce the effectiveness of the IBO by manipulating its budget “because they feared a non-partisan, independent, competent rival.”<sup>153</sup>

The Commission notes that San Francisco’s Department of Police Accountability (DPA) is similar in function to the CCRB and is subject to a specific minimum headcount for its investigatory staff proportional to the number of police officers it oversees. The San Francisco Charter states that “the staff of DPA shall consist of no fewer than one line investigator for every 150 sworn members [of the police department],”<sup>154</sup> the equivalent of 0.67%. In practice, the actual ratio has been higher, around 1% in each of the last few years.<sup>155</sup> The City’s adopted budget for Fiscal Year 2020 gives the NYPD a headcount of 36,113 uniformed members and the CCRB a total of 212 employees, a 0.587% ratio.<sup>156</sup>

The Commission believes that in light of the vital role that the CCRB plays in providing oversight and accountability with regard to the NYPD, it is important that the CCRB receive sufficient resources to properly carry out its functions. Therefore, the Commission proposes a Charter amendment to require that, beginning with Fiscal Year 2021, the personnel budget of the CCRB be at a minimum sufficient to fund CCRB personnel headcount at least equal in number to 0.65% budgeted headcount of uniformed members the Police Department, as determined to be consistent with published budgeted headcount documents of the Office of Management and Budget, unless the Mayor makes a written determination of fiscal necessity setting forth in detail (1) the basis for that determination and (2) that the proposed failure to meet the required headcount level for the CCRB is part of an overall plan to address a downturn in City revenues or unforeseen financial circumstances.

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<sup>150</sup> [Written Testimony of Jonathan Darche, Executive Director, New York City Civilian Complaint Review Board](#), Public Meeting of the 2019 Charter Revision Commission, (Mar. 7, 2019), 2-4.

<sup>151</sup> 2019 Charter Revision Commission, [Transcript of Mar. 7, 2019 Public Meeting](#), at 67.

<sup>152</sup> [See](#) Charter §259(b); NYS Edu. Law §2590-u(2).

<sup>153</sup> Frederick A. O. Schwarz, Jr. & Eric Lane, *The Policy and Politics of Charter Making: The Story of New York City’s 1989 Charter*, 42 N.Y.L. Sch. L. Rev. 723, 903 (1998).

<sup>154</sup> San Francisco City Charter §4.136 (c).

<sup>155</sup> Commission staff analysis of County and City of San Francisco Salary Ordinances for [Fiscal Years 2018-2019](#) at 73, 235-241, [Fiscal Years 2019-2020](#) at 35, 98-100, [Fiscal Years 2020-2021](#), at 36, 100-102.

<sup>156</sup> City of New York, [Adopted Budget Fiscal Year 2020](#), at 69E; Council of the City of New York, [Executive Budget Fiscal Year 2020](#), at 1.

## Proposed Amendment to the Charter – Deviation from Disciplinary Recommendations

The Charter and the Administrative Code give the Police Commissioner “cognizance and control” over police discipline.<sup>157</sup> As discussed above, the CCRB provides its findings and disciplinary recommendations to the Police Commissioner once it has completed an investigation.<sup>158</sup> The Police Commissioner has the sole authority over police discipline,<sup>159</sup> and may decide to implement the CCRB’s recommendation, with or without modification, or to disregard it completely. Regardless of the final outcome, the Police Commissioner must report to the CCRB “on any action” taken with respect to CCRB’s recommendations, but these notifications do not necessarily have to include the penalty imposed.<sup>160</sup> However, pursuant to the 2012 MOU between the CCRB and the NYPD, for cases that go through the APU, the Police Commissioner is required to notify the CCRB if he or she intends to “impose discipline of a lower level than that recommended by the CCRB or by an NYPD Trial Commissioner”; these written notices, which are supposed to include “detailed explanation of the reasons for deviating,” are commonly referred to as variance memoranda.<sup>161</sup>

As noted in the discussion of Concurrence Rate, the Police Commissioner frequently departs from the disciplinary and penalty recommendations he receives.<sup>162</sup>

As discussed in the Preliminary Staff Report, the Commission received several proposals to codify in the Charter the requirement that the Police Commissioner provide a rationale for deviating from CCRB-recommended discipline and to extend that requirement to all cases, not just Charges and Specifications cases. The Commission notes that the 2012 MOU is terminable at will by either the NYPD or the CCRB. While the Commission has no reason to believe this agreement will be terminated, it also believes that amending the Charter to require the Police Commissioner to provide the CCRB with variance memoranda in all cases, with detailed reasons for any deviation, will enhance the CCRB’s ability to report on trends related to ultimate discipline imposed in CCRB cases. The Commission also believes that this amendment will allow the CCRB to better understand the Police Commissioner’s rationale when determining discipline, which will be valuable when pursuing future investigations and prosecutions of substantiated CCRB complaints.

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<sup>157</sup> See Charter § 434(a); New York City, N.Y., Code § 14-115(a). These provisions originated in State law and were enacted in 1897 and 1873, respectively. See L. 1897, ch. 378 and L. 1873, ch. 335. See *Patrolmen’s Benv. Ass’n of City of New York, Inc. v. New York State Pub. Empl. Rel. Bd.*, 848 N.E.2d 448 (N.Y. 2006).

<sup>158</sup> Charter § 440(c)(1).

<sup>159</sup> This matter is further discussed in the 2019 Charter Revision Commission [Preliminary Staff Report](#), at 14.

<sup>160</sup> Charter § 440(d)(3) & (e).

<sup>161</sup> [Memorandum of Understanding](#) Between the New York City Civilian Complaint Review Board and the New York City Police Department, (Apr. 2, 2002).

<sup>162</sup> Mary Jo White et. al., [The Report of the Independent Panel on the Disciplinary System of the N.Y.C. Police Department](#), (Jan. 25, 2019), 24-26.

The Independent Panel on the Disciplinary System of the NYPD (Independent Panel), appointed by the Police Commissioner in June 2018 to conduct a comprehensive review of the NYPD's disciplinary system, also noted that the Police Commissioner frequently departs from the discipline recommendations he receives and likewise recommended expanding and strengthening the current variance memoranda requirements.

The Commission therefore proposes amending the Charter to require the Police Commissioner to notify the CCRB of any action taken; in all CCRB-substantiated cases, he or she must include the level of discipline and any penalty imposed. Further, under the proposed amendment, the Police Commissioner would also have to provide the CCRB with a detailed explanation in all cases where he or she intends to depart from discipline recommended by the CCRB or by the NYPD Deputy (or Assistant Deputy) Commissioner of Trials, no later than 45 days after the imposition of discipline, or within a shorter time frame if required by an existing agreement between the CCRB and NYPD (such as the 2012 MOU). In cases where the Police Commissioner intends to impose or has imposed a lower level penalty or level of discipline, the proposed amendment would require the Police Commissioner to include an explanation of how the disciplinary outcome was determined, including each of the factors the Police Commissioner considered in making his or her decision. The Commission further notes that codification of this MOU, if approved, will not inhibit the ability of the Police Commissioner to retain the final authority over NYPD officers, as mandated by the Charter. This amendment, if approved by the voters, would take effect immediately.

## **Proposed Amendment to the Charter – False Material Statements in CCRB Matters**

Under provisions of the NYPD's Patrol Guide, false official statements made by police officers in the course of their duties are subject to disciplinary action, up to and including dismissal.<sup>163</sup> Currently, when the CCRB has evidence that an officer may have made a false statement during the course of a CCRB investigation, this conduct is categorized as "Other Misconduct" and forwarded to the NYPD for further investigation (typically by its IAB) and possible disciplinary action.<sup>164</sup> However, as noted in the Preliminary Staff Report, there is clear concern that the NYPD currently does not adequately handle false statements made by police officers during the course of investigations, especially those referred by the CCRB. From 2013 through 2017, the CCRB reported 139 cases to the NYPD where it found evidence of officers making false official statements.<sup>165</sup> Additionally, between 2010 and 2018, the CCRB tracked 81 of these false official statement cases and found that the NYPD's IAB imposed discipline in only two such cases.<sup>166</sup> In the other 79

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<sup>163</sup> Procedure 203-08, [NYPD Patrol Guide](#).

<sup>164</sup> New York City Civilian Complaint Review Board, [Semi-Annual Report January-June 2018](#), (2018), at 33.

<sup>165</sup> *Id.*

<sup>166</sup> Joseph Goldstein, [Promotions, Not Punishments, for Officers Accused of Lying](#), The New York Times, (Mar. 19, 2018).

cases, the NYPD either found no wrongdoing or found the officer guilty of lesser misconduct, such as failing to properly fill out a memo book.<sup>167</sup>

The Independent Panel also highlighted these shortcomings and recommended that the NYPD issue official guidance to charge officers found to have made false official statements.<sup>168</sup> Likewise, the Commission to Combat Police Corruption (CCPC)<sup>169</sup> has also repeatedly “emphasized the importance of appropriately charging and strongly disciplining officers who make false statements in the course of their official duties.”<sup>170</sup> The CCPC recognizes that false statements “can greatly diminish the public’s confidence in the [NYPD] if not properly checked.”<sup>171</sup> Further, police reform advocates, including Citizens Union, the New York Civil Liberties Union, and Communities United for Police Reform, have also called for the CCRB to have the authority to investigate and prosecute potentially false official statement cases when they arise in connection with ongoing CCRB investigations or prosecutions.<sup>172</sup>

The Commission believes it appropriate to allow the CCRB to investigate and act on potentially false material statements made by an officer it is investigating for alleged FADO offenses because such statements can significantly undermine the vital accountability process that the CCRB was created to ensure. The Commission therefore proposes amending the Charter to allow the CCRB to investigate, hear, make findings, and recommend discipline regarding the truthfulness of any material official statement made by an officer who is the subject of a complaint received by the CCRB, if such statement was made during the course of and in relation to the CCRB’s resolution of such complaint. This amendment, if approved by the voters, would take effect on March 31, 2020.

## **Proposed Amendment to the Charter – Delegation of Subpoena Power**

The Charter currently gives CCRB the power to issue subpoenas to “compel the attendance of witnesses and require the production of such records and other materials as are necessary” for its investigations with a majority vote of the Board’s members.<sup>173</sup> The

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<sup>167</sup> *Id.*

<sup>168</sup> Mary Jo White et. al., [The Report of the Independent Panel on the Disciplinary System of the N.Y.C. Police Department](#), (Jan. 25, 2019), at 53–54.

<sup>169</sup> The CCPC is the successor to the “Mollen Commission”. After issuing its final report in July 1994, which found the NYPD had undergone alternating cycles of corruption and reform, the Mollen Commission recommended the creation of an independent commission to monitor the anti-corruption activities of the NYPD, and help keep the NYPD vigilant in preventing corruption. Based upon this recommendation, former Mayor Rudy Giuliani, with the support of the Police Commissioner, created the CCPC by Executive Order No. 18/1995. See <https://www1.nyc.gov/site/ccpc/about/about.page>

<sup>170</sup> New York City Commission to Combat Police Corruption [18<sup>th</sup> Annual Report of the Commission](#), (2017), at 112.

<sup>171</sup> *Id.*

<sup>172</sup> 2019 Charter Revision Commission, [Preliminary Staff Report 2019](#), at 23.

<sup>173</sup> Charter § 440(c)(3).

CCRB has proposed to the Commission that the Charter be amended to allow the Board to delegate its subpoena power to its “highest ranking staff.” CCRB Executive Director Jonathan Darche asserted to the Commission that doing so would enhance the CCRB’s ability to acquire time-sensitive evidence and information, as both investigations and prosecutions can suffer from delays caused by the current process required for issuing a subpoena.<sup>174</sup> The Commission recognizes the importance of the ability of the CCRB to gather potential evidence in a timely manner to ensure that it is able to conduct thorough and fair investigations of the complaints before it. The Commission further notes such a delegation of power would not be without precedent. The Department of Police Accountability (DPA) in San Francisco has a similar structure. The Executive Director of the DPA has direct subpoena power stipulated in San Francisco’s Administrative Code, which is limited to entities that are not already obliged to cooperate with the DPA.<sup>175</sup> Similarly, the municipal code of Chicago provides the Civilian Office of Police Accountability (COPA) and its Chief Administrator with the power to issue subpoenas.<sup>176</sup>

Therefore, the Commission proposes amending the Charter to allow the CCRB Board to delegate its subpoena power to (and withdraw its delegation from) the CCRB Executive Director. The amendment would also clarify that CCRB subpoenas are enforceable in court, and that the authority to bring suit to enforce a subpoena may also be delegated from the Board to the Executive Director. This amendment, if approved by the voters, would take effect on March 21, 2020.

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<sup>174</sup> 2019 Charter Revision Commission, [Transcript of Mar.7, 2019 Public Meeting](#), at 117-118.

<sup>175</sup> San Francisco Administrative Code § 96.6.

<sup>176</sup> Chicago Municipal Code § 2-78-120 (p) & § 2-78-125.



# BALLOT QUESTION #3 – ETHICS AND GOVERNANCE

The Commission proposes an “Ethics and Governance” ballot question encompassing five proposed Charter amendments: (1) extending the post-employment appearance ban for elected officials and senior appointed officials; (2) restructuring the Conflicts of Interest Board (COIB) to include appointees from the Public Advocate and Comptroller; (3) limiting political activity and donations by members of COIB; (4) changing the structure of the Minority and Women-Owned Business Enterprise program; and (5) requiring the City Council’s advice and consent for the Mayor’s appointment of the Corporation Counsel. The ballot question, explanatory abstract, and text of the proposed Charter amendment can be found in Appendix C to this report.

## Post-Employment Appearance Restrictions

### Background

The Charter prohibits all former public servants from appearing before the City agency that employed them for one year following the end of their service.<sup>177</sup> In the context of this Charter section, the Charter defines the term “appear” as any communication for compensation, other than those involving administrative matters.<sup>178</sup> Public servants are defined as elected officials and all employees of the City, including members of community boards and members of advisory committees who are paid.<sup>179</sup>

Some senior officials face a more stringent appearance ban. This includes elected officials, deputy mayors, the Director of the Office of Management and Budget, the Commissioner of the Department of Citywide Administrative Services, the Corporation Counsel, the Commissioner of the Department of Finance, the Commissioner of the Department of Investigation, and the Chair of the City Planning Commission. These officials may not appear before any agency in the *branch of government* they served in for the yearlong period.<sup>180</sup>

New York State has certain lengthier post-employment appearance restrictions. For example, State officers and employees are prohibited from appearing or practicing before their former agency and from being compensated in relation to matters before their former agency for two years.<sup>181</sup> Furthermore, former Executive Chamber officers and

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<sup>177</sup> Section 2601(19) of the Charter defines “public servant” as all “officials, officers and employees” of the City, including members of community boards and members of advisory committees, except unpaid members of advisory committees; Charter § 2604(d)(2).

<sup>178</sup> Charter § 2601(4).

<sup>179</sup> Charter § 2601(19).

<sup>180</sup> Charter § 2604(d)(3).

<sup>181</sup> Public Officers Law § 73(8)(a)(i).



employees are prohibited from appearing or practicing in front of any State agency for two years.<sup>182</sup>

The Commission notes that post-employment appearance bans exist to guard against the perception that lobbying by former government officials may result in these employees exerting undue influence with their former agencies. The Commission further observes this perception of undue influence may be more acute when former elected officials and high-ranking government officials act as lobbyists. These individuals had significant power while in office and could be seen as having outsized influence as lobbyists. This is why the Charter currently imposes an even wider ban on elected officials, deputy mayors, and those certain senior high ranking officials noted above, by prohibiting them from appearing before any agency in the branch of government they served in for the yearlong period.

## **Proposed Amendment to the Charter**

The Commission believes that extending the appearance ban for elected officers and certain senior City officials will give the public more confidence in their government and guard against actual or perceived notions of corruption. The Commission notes and takes general guidance from the State's two year post-appearance ban for its officials. Therefore, the Commission recommends that the Charter be amended to extend the "branch of government" post-employment appearance ban applicable to certain high-ranking officials from one year to two years. Specifically, this extended ban would apply to elected officials, deputy mayors, the Director of the Office of Management and Budget, the Commissioner of the Department of Citywide Administrative Services, the Corporation Counsel, the Commissioner of the Department of Finance, the Commissioner of the Department of Investigation, and the Chair of the City Planning Commission.

The proposed amendment would also extend to two years the prohibition on appearing before one's former agency for the following public servants: (1) the head of any City agency; (2) the executive director or highest-ranking employee of a City board or commission; and (3) any paid member of a City board or commission. The amendment would take effect on January 1, 2022 and would apply to public servants who leave City service after that date.

## **Conflicts of Interest Board**

### **Background**

The Conflicts of Interest Board (COIB) is responsible for administering, enforcing, and interpreting chapter 68 of the Charter and section 12-110 of the Administrative Code, along with other Administrative Code sections.<sup>183</sup> Chapter 68 of the Charter contains the

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<sup>182</sup> Public Officers Law § 73(8)(a)(iv).

<sup>183</sup> New York City Conflicts of Interest Board, [About COIB](#); New York City Conflicts of Interest Board, [The Conflicts of Interest Law](#).

ethics code for all City employees and public servants, and regulates conflicts between public duties and private interests.<sup>184</sup> This chapter is intended to maintain the City's governmental integrity, both perceived and actual, and outlines standards governing conflicts between the public duties and private interests of public servants.<sup>185</sup> It covers a variety of topics, including outside employment, volunteering, gifts, political activities, misuse of position, and post-employment restrictions.<sup>186</sup>

COIB is also responsible for the enforcement of Administrative Code section 12-110, which requires certain officials to disclose financial information to COIB.<sup>187</sup> Individuals required to disclose include elected and political party officials, candidates for public office, agency heads, deputy and assistant agency heads, members of boards or commissions, and several other types of City officers and employees with substantial policy discretion; these individuals' spouses and dependent children must also disclose interests.<sup>188</sup> Those subject to these laws must disclose financial information, including City and non-City income, gifts received, business investments, debts, and relatives in City service, among other details.<sup>189</sup> This section is enforced through compliance procedures and imposition of penalties.<sup>190</sup>

COIB issues advisory opinions, resolves enforcement matters, levies fines for violations, maintains an ethics hotline, and carries out City employee training.<sup>191</sup> Individuals covered by Chapter 68, including the Mayor, may solicit COIB for written advice regarding whether a conflict exists and/or how to address potential conflicts of interest.<sup>192</sup> For example, before taking office in 2002, Mayor Michael Bloomberg requested a COIB opinion concerning the application of Chapter 68 provisions in light of his significant outside financial interests, including Bloomberg L.P.<sup>193</sup> In August 2002, following multiple months of negotiations with Bloomberg L.P. lawyers, and after Bloomberg had taken office and appointed a new COIB chair, COIB issued an advisory opinion regarding various limits on Bloomberg's financial activities and interactions that touched upon City matters.<sup>194</sup>

Currently, all five members of COIB are appointed by the Mayor with the advice and consent of the Council. The Mayor designates the COIB chair from among the COIB members.<sup>195</sup> The Charter prescribes standards for appointment: independence, integrity,

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<sup>184</sup> New York City Conflicts of Interest Board, [The Conflicts of Interest Law](#); Charter § 2604.

<sup>185</sup> [Id.](#)

<sup>186</sup> [Id.](#)

<sup>187</sup> New York City Conflicts of Interest Board, [About COIB](#).

<sup>188</sup> Admin. Code § 12-110; New York City Conflicts of Interest Board, [Annual Disclosure](#).

<sup>189</sup> New York City Conflicts of Interest Board, [What Must Be Disclosed](#); See Admin. Code § 12-110(d).

<sup>190</sup> Admin. Code § 12-110(g).

<sup>191</sup> Bonnie Beth Greenball, [A Brief Overview of New York City's Conflicts of Interest Board: A Model Government Ethics Law](#), 17 NYSBA/MLRC Municipal Lawyer 26 (2003).

<sup>192</sup> See Charter § 2603(c).

<sup>193</sup> Ray Rivera, [Bloomberg Concedes Closer Ties to Company](#), The New York Times, (Oct. 5, 2007).

<sup>194</sup> Wayne Barrett, [Bloomberg Keeps His Billions Separate from His Mayoral Obligations? Yeah, Right!](#), The Village Voice, (Sept. 1, 2009); [COIB Advisory Opinion 2002-01](#), (Aug. 29, 2002).

<sup>195</sup> Charter § 2602(a).

civic commitment, and high ethical standards.<sup>196</sup> Appointees cannot concurrently hold public office, seek election to a public office, be a public employee, hold a political party office, or appear as a lobbyist before the City.<sup>197</sup>

The Commission notes that other cities structure their ethics oversight bodies differently. For example, the Los Angeles Ethics Commission, which administers city and state laws relating to campaign finance, governmental ethics, lobbying, and contracts, is composed of five members, each appointed by a different Los Angeles elected official – the Mayor, City Attorney, Controller, President Pro Tem of its City Council, and President of its City Council.<sup>198</sup>

## **Proposed Amendment to the Charter – COIB Structure**

The Commission believes that the actual and perceived independence of COIB would benefit from having a broader array of appointers, and that appointments to COIB by each citywide elected official – all subjected to the advice and consent of the City Council – is appropriate. Accordingly, the Commission proposes a charter amendment that would restructure COIB so that two of the five members currently appointed by the Mayor are replaced by one member appointed by the Public Advocate and one member appointed by the Comptroller, with all five members subject to the advice of consent of the Council. This proposed amendment would apply to the two current Board members whose terms expire on March 31, 2022. If either of the two affected seats becomes vacant before March 31, 2022 the Mayor would retain the power to fill the vacancy for the remainder of the unexpired term. The proposed amendment would also require that three members be present in order to achieve a quorum, up from the current two, and that three members vote affirmatively to take any actions on behalf of COIB, rather than the current two.

## **Proposed Amendment to the Charter – Limiting Political Activity by Members of COIB**

Currently, lobbyists and other individuals who have “business dealings with the city,” as defined in the Administrative Code, face restrictions on their ability to donate to campaigns for City offices. In particular, they face lower campaign contribution limits (e.g., a typical campaign donor may contribute up to \$5,100 to a mayoral candidate while a lobbyist may only contribute up to \$400).<sup>199</sup> Additionally, their contributions are not eligible to be matched with public funds.<sup>200</sup>

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<sup>196</sup> Charter § 2602(b).

<sup>197</sup> *Id.*

<sup>198</sup> Los Angeles Charter § 700(b).

<sup>199</sup> Admin. Code §§ 3-702(18)(a), 3-211(a); New York City Campaign Finance Board, [Doing Business FAQs](#); New York City Campaign Finance Board, [Limits and Thresholds: 2021 Citywide Elections](#).

<sup>200</sup> New York City Campaign Finance Board, [Doing Business FAQs](#).

Members of the Campaign Finance Board (CFB) are also legally restricted in how they interact with political campaigns. In addition to certain campaign contribution limitations, CFB members are barred from participating in any capacity in the campaign of a candidate for elected City office.<sup>201</sup>

The Commission believes that, in light of COIB's responsibility to independently and impartially administer conflict of interest rules to all elected and appointed officials in the City, restrictions of the type imposed on CFB members would benefit the actual and perceived independence of the COIB in these matters. Therefore, the Commission recommends that COIB members also be restricted in their ability to make campaign contributions and participate in campaign activity related to City offices. The Commission proposes the Charter be amended to restrict COIB members' ability to make campaign contributions by restricting their donations to the same limits currently imposed on individuals who are doing business with the City; currently these contribution limits are \$400 for citywide candidates, \$320 for Borough President candidates, and \$250 for City Council candidates.<sup>202</sup> Additionally, the proposal would prohibit COIB members from participating in a campaign for an elected City office. This amendment would take effect immediately and would apply to any member appointed to COIB after its effective date, or whose term is extended after the effective date.

## **M/WBE Citywide Director and Office**

### **Background**

In 2005, the City created its Minority and Women-Owned Business Enterprise (M/WBE) program within the Department of Small Business Services (SBS).<sup>203</sup> The objective of the M/WBE program is to promote City government contracting opportunities for minority and women-owned businesses.<sup>204</sup> The head of each City agency must designate an executive officer as the agency's M/WBE officer, accountable for carrying out the agency's responsibilities related to the M/WBE program.<sup>205</sup> In 2013, a citywide M/WBE director requirement was added to the program by Local Law 1 of 2013.<sup>206</sup> This citywide director (1) is responsible for overseeing the M/WBE program; (2) is designated by the Mayor; and (3) reports directly to the Mayor or is a commissioner (commissioners generally do not report directly to the Mayor).<sup>207</sup> Since the creation of this citywide position, it appears to have uniformly been held by a senior official who reports directly to the Mayor (a Deputy Mayor, then a Counsel to the Mayor, and now a Deputy Mayor again). Since Fall 2016, pursuant to

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<sup>201</sup> Charter § 1052(a)(1).

<sup>202</sup> Admin. Code § 3-703 (1-a).

<sup>203</sup> Charter § 1304; Admin. Code § 6-129. See New York City Department of Citywide Administrative Services, [M/WBE Program](#); New York City Department of Small Business Services, [M/WBE Program](#).

<sup>204</sup> New York City Department of Citywide Administrative Services, [M/WBE Program](#); Charter § 1304; Admin. Code § 6-129.

<sup>205</sup> Admin. Code § 6-129(f).

<sup>206</sup> Local Law 1 of 2013.

<sup>207</sup> Admin. Code § 6-129(c)(14).

an executive order, the position has received assistance from the Office of Minority and Women-owned Business Enterprises (OMWBE) located within the Mayor's Office.<sup>208</sup>

In Fiscal Year 2018, the City expended approximately \$19.3 billion in its contracting for goods and services.<sup>209</sup> Local Law 1 of 2013 also set City goals to award certain percentage of different types of contracts to businesses owned by minority groups and women.<sup>210</sup> For example, the City has a goal of annually awarding 8% of its construction contracts to black-owned businesses.<sup>211</sup> However, reports from the Comptroller's office note the City has not reached any of these goals since 2014 (when the Comptroller first started annually evaluating the City's M/WBE program).<sup>212</sup> As a whole, M/WBEs are awarded a very small share of City contracts; in Fiscal Year 2018, they were awarded 5.5% of City contracts.<sup>213</sup>

In 2016, the Mayor identified new goals for the City's M/WBE program, aiming in part to award at least 30% of the dollar amount of City contracts to M/WBEs by 2021 and double the number of certified M/WBEs from 4,500 to 9,000 by 2019.<sup>214</sup> The Office of the Mayor stated that in order to reach the 30% goal, the City would be adding resources to SBS and the Mayor's Office of Contract Services, including more funding for programs to build capacity, free services to strengthen certified M/WBEs (e.g., mentorship, technical assistance), and resources for City agencies to improve their own M/WBE programs.<sup>215</sup> Additionally, SBS streamlined the M/WBE certification and recertification applications and created a separate, simpler application for sole proprietor businesses, which are predominately women-owned, to increase accessibility and be more user-friendly.<sup>216</sup>

## Proposed Amendment to the Charter

For over six years and through two administrations, responsibility for the M/WBE program has resided with an official reporting directly to the Mayor. However, there is no legal requirement that this continue in future administrations. There is also no legal requirement that the position's supporting office (OMWBE) exist at all going forward. Accordingly, and in light of the vitally important goals of the M/WBE program, the Commission proposes amending the Charter to require that the citywide M/WBE director report directly to the

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<sup>208</sup> New York City Office of the Mayor, Executive Order No. 24, [Mayor's Office of Minority and Women-Owned Business Enterprises](#) (Dec. 16, 2016).

<sup>209</sup> New York City Comptroller Scott Stringer, [Making the Grade 2018](#), (Oct. 2018).

<sup>210</sup> Admin. Code §§ 6-129 (d)(1).

<sup>211</sup> New York City Comptroller Scott Stringer, [A New Charter to Confront New Challenges](#), (Sept. 2018); Admin. Code § 6-129(d)(1).

<sup>212</sup> New York City Comptroller Scott Stringer, [A New Charter to Confront New Challenges](#), (Sept. 2018).

<sup>213</sup> New York City Comptroller Scott Stringer, [Making the Grade 2018](#), (Oct. 2018).

<sup>214</sup> New York City Comptroller Scott Stringer, [A New Charter to Confront New Challenges](#), (Sept. 2018); New York City Office of the Mayor, [Mayor de Blasio Announces Bold New Vision for the City's M/WBE Program](#), (Sept. 28, 2016); Office of the Mayor, [de Blasio Administration Reaches 5,000 City-Certified M/WBEs](#), (May 24, 2017).

<sup>215</sup> Office of the Mayor, [Mayor de Blasio Announces Bold New Vision for the City's M/WBE Program](#), (Sept. 28, 2016).

<sup>216</sup> Office of the Mayor, [De Blasio Administration Reaches 5,000 City-Certified M/WBEs](#), (May 24, 2017).

Mayor. Additionally, the Commission proposes amending the Charter to codify both the existing OMWBE and the position of the OMWBE director, and require that this director either be the citywide M/WBE director or report to the citywide M/WBE director. This amendment, if adopted by the voters, would take effect on March 31, 2020.

## Appointment of the Corporation Counsel

### Background

The Corporation Counsel is the head of the New York City Law Department, an agency that has over 920 attorneys and 800 support professionals.<sup>217</sup> Generally, the Corporation Counsel is the attorney and counsel for all of the City, including the Mayor; the Public Advocate; the Comptroller; the City Council; every City agency; and all City boards, commissions, and committees.<sup>218</sup> The Law Department represents these entities in all affirmative and defensive civil litigation, as well as in juvenile delinquency proceedings in Family Court and City Administrative Code enforcement proceedings in Criminal Court.<sup>219</sup> Furthermore, Law Department attorneys draft and review City and New York State legislation, real estate leases, procurement contracts, and financial instruments for the sale of municipal bonds.<sup>220</sup> The Law Department also provides legal counsel to City officials on many issues, including immigration, education, and environmental policy.<sup>221</sup>

The Mayor appoints the Corporation Counsel and may remove the Corporation Counsel at will.<sup>222</sup> Currently, the Charter does not require the Council to provide advice and consent for the appointment of the Corporation Counsel. Council advice and consent is required for a handful of mayoral appointments: the Commissioner of the Department of Investigation and members of the Art Commission, Board of Health, Board of Standards and Appeals, City Planning Commission, Civil Service Commission, Landmarks Preservation Commission, Tax Commission, Taxi and Limousine Commission, Environmental Control Board, and Conflicts of Interest Board.<sup>223</sup>

Though the Corporation Counsel serves as the attorney for the City, City agencies, elected officials, and other City bodies often employ their own legal team. After consulting with the Corporation Counsel and the head of a given agency, the Mayor may delegate to the agency the responsibility to conduct its own routine legal affairs.<sup>224</sup> The Corporation Counsel may assign Law Department attorneys to the City agency or body to help with these delegated functions.<sup>225</sup> Agency heads may use appropriations to employ separate

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<sup>217</sup> Charter §§ 391, 397; New York City Law Department, [About the Law Department](#).

<sup>218</sup> Charter §§ 394(a), 397(b).

<sup>219</sup> New York City Law Department, [About the Law Department](#); Charter § 394(b) & (c).

<sup>220</sup> New York City Law Department, [About the Law Department](#); Charter § 394(b).

<sup>221</sup> New York City Law Department, [About the Law Department](#).

<sup>222</sup> Charter §§ 6(a) & (b).

<sup>223</sup> Charter §§ 31, 2602(a).

<sup>224</sup> Charter § 397(a).

<sup>225</sup> *Id.*

staff counsel to assist with the agency's legal affairs.<sup>226</sup> For example, the Department of City Planning has its own General Counsel.<sup>227</sup>

The Charter only permits officials and agencies to employ outside private attorneys in limited circumstances, such as when there is legal action that may affect the official or agency individually, or when the action concerns contempt of court.<sup>228</sup> In addition, New York State case law allows officials and agencies to employ outside attorneys when conflicts of interest arise between the Corporation Counsel and another City entity.<sup>229</sup> For example, the City Council has sued the Mayor on numerous occasions through private or in-house counsel, including suits seeking to enjoin the Mayor from making budget modifications and to bar the Mayor from selling or leasing health facilities.<sup>230</sup> However, if the Corporation Counsel refuses to represent an official or agency seeking to sue or otherwise participate in a lawsuit against a non-City entity, courts generally have found that these officials/agencies are not permitted to sue or participate otherwise in their official capacity.<sup>231</sup>

The Commission notes that New York City is unique in its legislative body's (i.e., the City Council) limited advice and consent role for mayoral appointments. Several major cities in the United States, including Los Angeles, Chicago, and Houston, require their respective legislative bodies to provide advice and consent for the majority of mayoral appointments.<sup>232</sup> With regard to chief legal officers specifically, New York is the only city among the 10 largest U.S. cities where the top legal official is appointed by the city's chief executive with no legislative or electoral involvement.<sup>233</sup> And four of these 10 cities require the

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<sup>226</sup> Charter § 395.

<sup>227</sup> New York City Office of the Mayor Department of City Planning, [Anita Laremont Named Executive Director of City Planning](#).

<sup>228</sup> Charter § 395.

<sup>229</sup> Cahn v. Town of Huntington, 29 N.Y.2d 451, 455-56 (1972) (holding that the Planning Board of the Town of Huntington could retain the services of outside counsel in litigation against the Town Board of Huntington because the Town Attorney represented the Town Board and could not represent both sides in the litigation and, therefore, the "only possible recourse for the [Town] Planning Board was to employ special counsel . . . ."); Lamberti v. Metro. Transp. Auth. (MTA), 170 A.D.2d 224, 225 (1st Dep't 1991) ("The only judicially created exceptions to the rule that the Corporation Counsel has exclusive authority to conduct all law business of the City and its officers are where there is a void in representation created by the Corporation Counsel's disqualification from representation because of, for example, conflict of interest, fraud, collusion, corruption or incompetence . . . . Since this is not an instance in which the dispute would require the Corporation Counsel to represent City agencies or officials against one another . . . there is no conflict of interest . . . ." (internal citations omitted)).

<sup>230</sup> Council of City of N.Y. v. Giuliani, 163 Misc.2d 681 (N.Y. Sup. 1994); Council of City of N.Y. v. Giuliani, 172 Misc.2d 893 (1997), 93 N.Y.2d (1999).

<sup>231</sup> Lamberti v. Metro. Transp. Auth., 170 A.D.2d 224 (1st Dep't 1991) and Tax Equity Now LLC v. City of New York, 2018 WL 810135, at \*2 (N.Y. Sup.)

<sup>232</sup> Los Angeles City Charter § 231; Chicago Muni. Code § 2-4-010; Houston City Charter Art. VI, §§ 7, 7a(2).

<sup>233</sup> This conclusion is based on the Commission staff's internal research of relevant charter and code provisions.



legislative branch to provide advice and consent for appointment of the city's chief legal officer.<sup>234</sup>

## **Proposed Amendment to the Charter**

As noted in the Preliminary Staff Report, the Corporation Counsel has an expansive role in representing not only mayoral agencies but also other City officials and entities. Representatives of the Corporation Counsel testified before the Commission that the Corporation Counsel's role is to also ensure it is representing the best interests of the City as a whole.<sup>235</sup> Because City entities do not always agree, the Corporation Counsel faces a challenge in meeting that role while fairly and effectively providing guidance and representation to the constituent parts of City government. In the Commission's view, the Corporation Counsel should be permitted to operate with appropriate independence from the interests of any particular elected official, such as the Mayor, so that he or she can effectively defend the interests of the City overall.

The Commission heard concerns that the Mayor's appointment of, and ability to remove, the Corporation Counsel at will creates the potential for the Corporation Counsel to prioritize the interests of the Mayor, which may not be in the City's overall interests.<sup>236</sup> Testimony submitted by the City Council to the Commission argued that allowing non-mayoral elected officials to engage in the appointment process would help ensure that the nominee is committed to fulfilling the duties of the Corporation Counsel impartially and for the benefit of the City as a whole, including independent elected officials and agencies.<sup>237</sup> The Commission believes that an additional check on the selection and appointment of the Corporation Counsel by the City's other branch of government is appropriate and would provide non-mayoral officials confidence in the work of the Corporation Counsel. The Commission therefore proposes a Charter amendment granting the City Council the power to provide advice and consent for the appointment of the Corporation Counsel. Under this amendment, the Mayor would be required to make a nomination within 60 days of a vacancy in that office (or within 60 days of a Council disapproval of any nomination), and to make all reasonable efforts to ensure that a vacancy is filled within 120 days of its occurrence. The proposed amendment, if approved by the voters, would take effect immediately and apply to any vacancy in the office of Corporation Counsel that exists upon or occurs after the amendment's approval.

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<sup>234</sup> Chicago Municipal Code § 2-60-020; Houston Code of Ordinances § 2-257; Philadelphia Charter § 3-203; San Antonio Charter § 53.

<sup>235</sup> 2019 Charter Revision Commission, [Transcript of Mar. 18, 2019 Public Meeting](#), at 68.

<sup>236</sup> See [Council Report to the 2019 Charter Revision Commission](#) at 3-4, 7; [Written testimony of Manhattan Borough President Gale A. Brewer to the 2019 Charter Revision Commission](#) at 13-14.

<sup>237</sup> [Id.](#)



# BALLOT QUESTION #4 – CITY BUDGET

The Commission proposes a “City Budget” ballot question that encompasses four proposed Charter amendments: (1) allowing the City to create a “rainy day fund” and use it once impediments in State law are removed; (2) providing guaranteed minimum budgets for the Public Advocate and each Borough President; (3) changing the timeline for the Mayor to submit the yearly revenue estimate to the City Council during the budget negotiation process; and (4) requiring that the Mayor file any proposed budget modifications with the Council within 30 days of his or her issuance of the periodic financial plan updates during the fiscal year. The ballot question, explanatory abstract, and text of the proposed Charter amendment can be found in Appendix D to this report.

## Rainy Day Fund

### Background

A rainy day fund is a pool of money set aside to be “used in the event of an economic downturn or a crisis that reduces revenue so that spending would not have to be drastically cut or taxes increased to maintain a balanced budget.”<sup>238</sup> Governments deposit money in rainy day funds as a safety net, in order to save for the future.

Currently, both the Charter and the State Financial Emergency Act (FEA) preclude the City from operating a rainy day fund because of a requirement that the City’s operating budget be balanced every year under generally accepted accounting principles (GAAP).<sup>239</sup> GAAP prevents the City from considering rainy day fund withdrawals as revenue to balance the budget in a future year, thus effectively preventing the City from spending money from a rainy day fund.<sup>240</sup>

Because a City rainy day fund is not presently legally feasible, the City currently funds unexpected expenditures using two other mechanisms: (1) budget reserves and (2) reduced deposits to the Retiree Health Benefits Trust (RHBT). The budget reserves are presently made up of the General Reserve and the Capital Stabilization Reserve.<sup>241</sup> Both reserves set aside money that can be used to protect the City during an economic downturn or fiscal shortcoming.<sup>242</sup> However, these reserves must be spent by the end of the fiscal year in which they were created or be used to prepay bills that would otherwise

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<sup>238</sup> [Written testimony of Carol Kellerman](#), Public Meeting of the 2019 Charter Revision Commission, (Mar. 11, 2019), at 49.

<sup>239</sup> Charter § 258(a); New York State Financial Emergency Act, at § 8(1)(a). See Dall W. Forsythe, [Cyclical Budget Management In New York City](#), (Apr. 20, 2006), at 3; See also New York City Comptroller, [Measuring New York City’s Budgetary Cushion: How Much is Needed to Weather the Next Fiscal Storm?](#), (Aug. 2015), at 1.

<sup>240</sup> See [id.](#)

<sup>241</sup> Citizens Budget Commission, [To Weather A Storm Create an NYC Rainy Day Fund](#), (Apr. 18, 2019).

<sup>242</sup> Office of the Mayor, [Fact Sheet: Mayor de Blasio Releases Fiscal Year 2016 Executive Budget and Ten Year Capital Strategy](#), (May 7, 2015.)

be due the following year. These reserves are known as the “surplus roll.”<sup>243</sup> For Fiscal Year 2020, \$1 billion was put in the General Reserve and \$500 million in the Capital Stabilization Fund.<sup>244</sup> The reserve funds effectively act as miniature rainy day funds for a one-year period.

The RHBT was created in 2006 and is intended to help pay the future cost of health insurance and other benefits for City government retirees.<sup>245</sup> While the City initially made significant deposits into the RHBT, the 2008 financial recession left the City in need of more funding. To cover costs, the City substantially reduced deposits into the RHBT and diverted the money to other expenditures. Contributions to the RHBT have increased since 2014, but the future cost of these retiree benefit obligations continued to grow through the financial recession, and the gap between what the City will owe to retirees and City funds available to pay that balance is larger than when the fund was created.<sup>246</sup>

Neither using the budget reserve funds nor diverting funds from the RHBT are ideal approaches to funding emergency budget situations. Because budget reserves can only be saved for a yearlong period, the City cannot contribute to a fund over time and prepare for a significant economic downturn. Diverting money from the RHBT harms the City’s ability to pay ever-growing retiree benefit obligations in the future.

Several individuals and groups testified to the Commission that the Charter should be amended to allow for a rainy day fund, including former Deputy Commissioner of the City Department of Finance, Carol Kellerman, and Citizens Budget Commission President, Andrew Rein.<sup>247</sup> In his testimony, Rein noted that “[a]n important exception to the Charter’s otherwise strong framework is that it doesn’t support certain structures needed to protect the City over the economic cycle or in the long run.” Rein noted that a rainy day fund could be used “in the bad times to ameliorate devastating service cuts or counterproductive tax increases.”<sup>248</sup>

Creating a rainy day fund would require: (1) amending the Charter to allow for withdrawals from rainy day funds to be counted toward resolving an operating deficit and (2) the

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<sup>243</sup> Citizens Budget Commission, [When the Smoke Clears](#), (Jun. 30, 2019).

<sup>244</sup> *Id.*; Citizens Budget Commission, [To Weather A Storm Create an NYC Rainy Day Fund](#), (Apr. 18, 2019); Office of the Mayor, [Fact Sheet: Mayor de Blasio Releases Fiscal Year 2016 Executive Budget and Ten Year Capital Strategy](#), (May 7, 2015.)

<sup>245</sup> Local Law 19 of 2006; Citizens Budget Commission, [To Weather A Storm Create an NYC Rainy Day Fund](#), (Apr. 18, 2019).

<sup>246</sup> By the end of fiscal year 2018, the RHBT balance was \$4.5 billion, but the City’s liability had grown to \$103 billion (up from \$54 billion in 2006); Citizens Budget Commission, [To Weather A Storm Create an NYC Rainy Day Fund](#), (Apr. 18, 2019).

<sup>247</sup> [Written testimony of Carol Kellerman and Andrew Rein](#), Public Meeting of the 2019 Charter Revisions Commission, (Mar. 11, 2019).

<sup>248</sup> [Written testimony of Andrew Rein, President, Citizens Budget Commission](#), Public Meeting of the 2019 Charter Revisions Commission, (May 9, 2019), at 17.

amendment or expiration of the FEA.<sup>249</sup> Changing the Charter will not immediately allow for the creation of a rainy day fund, but it will prepare the City to create such a fund if and when the FEA is amended or repealed, or when it expires, which could take place in 2033.<sup>250</sup>

## **Proposed Amendment to the Charter**

In the Commission's view, the current mechanisms the City uses to preserve funds for a budget emergency are inadequate. Therefore, the Commission recommends that the Charter be amended to allow the City to create and use a rainy day fund. This change would take effect immediately but would have no practical effect until the FEA expires, is repealed, or is amended.

## **Guaranteed Budget for the Public Advocate & Borough Presidents**

### **Background**

#### **Borough Presidents**

Upon consolidating the existing City of New York, Brooklyn, the East Bronx, western Queens County, and Staten Island into a single city in 1898, the City created the offices of the Borough Presidents to assuage concerns that boroughs would become irrelevant in a more centralized government.<sup>251</sup> Borough presidents are elected by the voters of their respective boroughs. They are elected at the same time and serve the same term as the Mayor.<sup>252</sup> No other jurisdiction in the United States has offices similar to those of the Borough Presidents.

From 1901 to 1990, Borough Presidents served on the Board of Estimate, a powerful governing body that had significant authority in budget, land use, contracting, and other areas.<sup>253</sup> After the 1989 Commission eliminated the Board, Borough Presidents' powers changed. Currently, these powers include, but are not limited to, making non-binding recommendations for capital projects, having legislation introduced in the Council,

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<sup>249</sup> See New York State Financial Emergency Act, at § 13; New York City Independent Budget Office, [Dawn of a New Era: New York City Fiscal Policy After\(?\) the Financial Emergency Act](#) (Nov. 2007) at 2.

<sup>250</sup> See New York State Financial Emergency Act, at § 13.

<sup>251</sup> Frederick A. O. Schwarz, Jr. & Eric Lane, *The Policy and Politics of Charter Making: The Story of New York City's 1989 Charter*, 42 N.Y.L. Sch. L. Rev. 723, 810-812 (1998); Gregory Perrotta, [A Case for and Against the Borough President in Twenty-First Century New York City](#), 58 N.Y.L. Sch. L. Rev. 193, 194 (2013-2014).

<sup>252</sup> Charter § 81(b).

<sup>253</sup> Frederick A. O. Schwarz, Jr. & Eric Lane, *The Policy and Politics of Charter Making: The Story of 129 New York City's 1989 Charter*, 42 N.Y.L. Sch. L. Rev. 723, 766 (1998); Gregory Perrotta, [A Case for and Against the Borough President in Twenty-First Century New York City](#), 58 N.Y.L. Sch. L. Rev. 193, 194 (2013-2014); See Linda Greenhouse, [Justices Void New York City's Government; Demand Voter Equality in All Boroughs](#), *The New York Times* (Mar. 23, 1989).

appointing Community Board members, appointing one member each to the City Planning Commission, and allocating funds within their respective boroughs. Borough Presidents may also hold public hearings.<sup>254</sup> For example, Borough Presidents often hold hearings on land use topics and various other issues.<sup>255</sup>

Borough Presidents are required to chair their Borough Board, make recommendations regarding their borough to the Mayor and other officials, maintain a planning office for the borough, monitor service delivery in the borough, propose a borough capital budget, and recommend executive budget modifications to the Mayor and Council.<sup>256</sup> Borough Presidents also play a role in the City's land use process. In addition to appointing community board members and a member each to the City Planning Commission, they have authority to issue non-binding recommendations concerning the approval, disapproval, or modification of land use applications under the Uniform Land Use Review Procedure (ULURP).<sup>257</sup>

Currently, the Borough Presidents' budgets are determined according to the standard budgetary process. The Mayor proposes budgets for the Borough Presidents as part of the Expense Budget, which the Council then debates, can amend, and ultimately approves.

Previous Borough Presidents have taken issue with mayoral decisions regarding their budgets. For example, in 2000, former Brooklyn Borough President Howard Golden publicly complained that Mayor Giuliani proposed reducing the Brooklyn Borough President's office budget to punish Golden for opposing several mayoral initiatives.<sup>258</sup> In 2013, former Queens Borough President Helen Marshall voiced concern over Mayor Bloomberg's proposed cuts to her personnel budget, asserting that it would force her to cut a significant portion of the office staff.<sup>259</sup>

The budget for every Borough President has increased over the past 10 years; however no Borough President office's budget has increased at the same rate as the overall City budget or the budget for the Mayor's Office. From 2010 to 2019, the mayoral budget increased by 34.4% while the Borough President offices' budgets increased by an average

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<sup>254</sup> Charter §§ 82(4), 82(11), (a)(1), 192(a), 211(a), 82(5); MNN Blog, [What Does the Manhattan Borough President Do?](#), MNN: Manhattan Neighborhood Network.

<sup>255</sup> Office of the Brooklyn Borough President Eric L. Adams, [Uniform Land Use Review Procedure Public Hearing](#), Office of the Borough President Eric L. Adams (Jan. 23, 2019); Gale Brewer – Manhattan Borough President, [9/11 Town Hall for Downtown Community](#), (Oct. 15, 2018).

<sup>256</sup> A borough board is a body comprised of the Borough President, Council Members from the borough, and the chair of each community board in the borough; it holds regular public hearings and reports to the Council, Mayor, and City Planning Commission on borough programs and capital projects (Charter § 85(a)). Additionally, a borough board has binding approval power in the leasing or selling of City property within the respective borough (Charter § 384(4)) and makes Uniform Land Use Review Procedure (ULURP) recommendations when the application affects multiple community districts within the respective borough (Charter § 197-c(f)); Charter §§ 82(7), 82(9), 82(10), 211(c), 251.

<sup>257</sup> Charter § 197-c(h).

<sup>258</sup> Howard Golden, [Punishment by Budget](#), The New York Times (Apr. 27, 2000).

<sup>259</sup> Terence M. Cullen, [Mayor's budget could cut Borough President staff by half](#), QNS, (May 16, 2013).

of 16.38% (see “Borough President Budget Comparison Table”). Further, Borough Presidents’ budgets were not decreased or increased evenly over the same time period. For example, every office except Queens saw budget decreases in 2011. In 2015, the Brooklyn office experienced a \$243,515 increase while the Queens office experienced only a \$5,537 increase.

Borough President Budget Comparison 2010-2019		
Budget	Total Increase	Percent Change
Expense	\$29,834,802,679	48.79%
Mayor's Office	\$9,786,361	34.41%
Bronx	\$561,704	10.30%
Brooklyn	\$1,114,834	20.33%
Manhattan	\$598,993	13.53%
Queens	\$936,395	20.12%
Staten Island	\$684,971	17.70%
BP Average	\$779,379	16.31%

Source: Staff analysis of New York City Office of Management and Budget, Adopted Budgets 2010-2019.

The Commission received testimony advocating for an independent budget for Borough Presidents. Doug Muzzio, a professor of Public Affairs at Baruch College, and the City Council both argued that independently elected officials, such as Borough Presidents, should not have their budget determined by other politicians.<sup>260</sup> Muzzio wrote, “The argument for independent budgeting is simply that officials selected by citywide or boroughwide electorates should not be at the mercy of the Mayor and the Council.”<sup>261</sup>

## Public Advocate

The 1989 Charter Revision Commission created what is now known as Office of the Public Advocate by modifying the powers and responsibilities of the City Council President.<sup>262</sup> The City Council President, who was elected citywide, had two votes on the Board of Estimate until the 1989 Charter Revision Commission abolished the Board.<sup>263</sup>

The Public Advocate is elected citywide and succeeds the Mayor if the mayoral office becomes vacant, serving until the Mayor’s absence ceases or a new Mayor is selected

<sup>260</sup> 2019 Charter Revision Commission, [Transcript of Mar. 18, 2019 Public Meeting](#) at 102; [Written Testimony of the New York City Council to the 2019 Charter Revision Commission](#) at 9.

<sup>261</sup> [Written Testimony of Doug Muzzio to the 2019 Charter Revision Commission](#) at 16.

<sup>262</sup> Frederick A.O. Schwarz, Jr. and Eric Lane, [The Policy and Politics of Charter Making: The Story of New York City’s 1989 Charter](#), 42 N.Y.L. Sch. L. Rev. 723, 740 (1999); In 1993, the Council voted to rename the City Council President position to “Public Advocate.”

<sup>263</sup> [Id.](#)

through a special or general election.<sup>264</sup> An elected public advocate is a position found only in New York City.<sup>265</sup>

The Public Advocate's primary responsibilities are to focus on issues regarding the provision of local services and to act as a watchdog for City government.<sup>266</sup> The Public Advocate is a part of the Council, with the ability to introduce legislation and participate in Council discussions, but is not permitted to vote.<sup>267</sup>

The Public Advocate must monitor the operation of City public information and service complaint programs; make suggestions for improvement, as well as review recurring and wide-ranging complaints about City services and programs; and suggest improvements to the City's response process.<sup>268</sup> Related to this duty, previous Public Advocates have maintained the "NYC Landlords Watchlist," which ranks the City's worst landlords according to the average number of violations for the landlords' buildings.<sup>269</sup>

Additionally, the Public Advocate receives individual complaints about City services and is required to investigate these complaints.<sup>270</sup> For example, in 2016, the Public Advocate's Constituent Services team helped families with heat and hot water complaints and stopped unfair evictions.<sup>271</sup> The Public Advocate must refer any complaint alleging potentially criminal conduct to prosecutors, and any conduct that would be a conflict of interest to the Conflicts of Interest Board.<sup>272</sup> The Public Advocate's office receives complaints over the phone, through an online form, and in person.<sup>273</sup>

The Public Advocate may investigate the failure of an agency to follow City Charter provisions (save criminal activity and conflict of interest issues) and must then report to the Council, Mayor, and relevant agency.<sup>274</sup> Agencies must provide the Public Advocate with timely access to records and documents.<sup>275</sup>

The Public Advocate also serves on certain committees (e.g., the Voter Assistance Advisory Committee, the Audit Committee) and chairs the Commission on Public Information and

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<sup>264</sup> Charter § 24(a); Charter §§ 10(a)-(c).

<sup>265</sup> New York City Charter Revision Commission, [Final Report of the New York City Charter Revision Commission: January 1989 – November 1989](#) at 30 (1990).

<sup>266</sup> Frederick A.O. Schwarz, Jr. and Eric Lane, [The Policy and Politics of Charter Making: The Story of New York City's 1989 Charter](#), 42 N.Y.L. Sch. L. Rev. 723, 821 (1999).

<sup>267</sup> Charter §§ 22(a), 240(e).

<sup>268</sup> Charter § 24(f).

<sup>269</sup> Letitia James – Public Advocate for the City of New York, [2018 NYC Landlord Watchlist](#), New York City Public Advocate.

<sup>270</sup> Charter § 24(f).

<sup>271</sup> Tish James, [Public Advocate Progress Report](#) at 40, Tish James – Public Advocate for the City of New York (Jan. – Dec. 2016).

<sup>272</sup> Charter § 24(k).

<sup>273</sup> New York City Council, [Speaker and Acting Public Advocate of the City of New York](#), New York City Council.

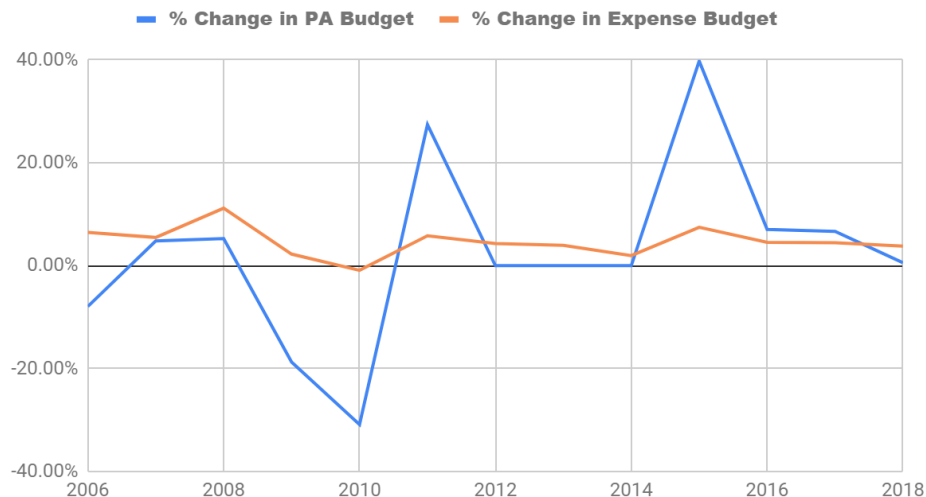
<sup>274</sup> Charter § 24(i).

<sup>275</sup> Charter § 24(j).

Communication.<sup>276</sup> The Public Advocate additionally makes various appointments (e.g., to the City Planning Commission and the Independent Budget Office Advisory Committee). The Public Advocate may also hold hearings to carry out its duties.<sup>277</sup>

The Public Advocate's office budget has been a point of tension for multiple public advocates and mayors. Former Public Advocate Mark Green and Mayor Giuliani clashed over multiple issues, and, perhaps as a result, Giuliani attempted to reduce the power and budget of the Public Advocate.<sup>278</sup> In 2009, Mayor Bloomberg openly criticized and questioned the need for the office.<sup>279</sup> That year, the Mayor and City Council passed a budget reducing the Public Advocate's budget by over 30% (see "Percent Change in Expense & PA Budget Chart"). Betsy Gotbaum, the Public Advocate at the time, claimed that this reduction was based on political differences between her and the Mayor and the Council.<sup>280</sup>

### Percent Change in Expense & Public Advocate Budget



Since Mayor de Blasio, a former Public Advocate, took office in 2014, he has presided over increases in the office's budget every year.<sup>281</sup> Only in 2015 did the Public Advocate's budget reach its former 2005 staff levels (see "Public Advocate Headcount"). Due to these large cuts and subsequent increases, over the past 10 years

<sup>276</sup> Charter §§ 97(a), 1054(a), 1061.

<sup>277</sup> Charter §§ 192(a), 24(m), 259(a).

<sup>278</sup> Julie Bosman, [For First Advocate, a Focus on Record](#), The New York Times (Sept. 22, 2009).

<sup>279</sup> Staten Island Advocate, [Mayor Bloomberg doesn't want public to have an advocate](#), silive.com (Oct. 12, 2009).

<sup>280</sup> David W. Chen, [Gotbaum Budget Is Cut 40%; She Calls It Political Payback](#), The New York Times (Jun. 19, 2009).

<sup>281</sup> Samar Khurshid, [With Williams in Office, Will Public Advocate Get Budget Boost?](#), Gotham Gazette (Mar. 8, 2019).



the Public Advocate office's budget has varied much more than the City budget as a whole (see "Percent Change in Expense & PA Budget Chart"). As a result, the office's staff headcount has varied significantly as well (see "Public Advocate Headcount").

<b>Public Advocate Budget and Headcount 2008-2019</b>		
<b>Fiscal Year</b>	<b>Budget</b>	<b>Office Headcount</b>
2008	\$2,561,297	31
2009	\$1,363,702	31
2010	\$1,363,702	30
2011	\$1,876,881	23
2012	\$1,857,499	19
2013	\$1,875,669	26
2014	\$1,900,446	33
2015	\$2,885,809	33
2016	\$3,110,500	40
2017	\$3,338,705	43
2018	\$3,358,383	45
2019	\$3,358,383	45

Source: New York City Office of Management and Budget, Adopted Budgets 2008-2019.

Former public advocates believe that an independent budget will help the office perform its duties. Three former public advocates – Attorney General Tish James, Betsy Gotbaum, and Mark Green – testified during the Commission's March 18, 2019 Expert Forum; they all agreed that an independent budget was needed to protect the office from political fights and allow the office's duties to keep up with the city's growth.<sup>282</sup>

During the Commission's May 2, 2019 public hearing in Brooklyn, current Public Advocate Jumaane Williams also expressed his support for an independent budget for the Public Advocate's office.

[A] system [in which] the Public Advocate must rely on the [same] elected officials it is charged with overseeing to determine the budget by which the Public Advocate can conduct that oversight [places] an inherent limit [on] the office. Independently elected officials should not have to weigh possible retaliation from the Mayor or the Council when bringing issues to light.<sup>283</sup>

<sup>282</sup> 2019 Charter Revision Commission, [Transcript of Mar. 18, 2019 Meeting](#).

<sup>283</sup> 2019 Charter Revision Commission, [Mar. Transcript of May 2, 2019 Meeting](#), at 25.



Others have also argued that the Public Advocate should have an independent budget. Citizens Union of the City of New York, Doug Muzzio (professor of Public Affairs at Baruch College), and the City Council argued that independently elected officials, such as the Public Advocate, should not have their budget determined by other politicians.<sup>284</sup>

## **Proposed Amendment to the Charter**

In the Commission's view, the need to allow for a flexible budgeting process must be weighed against the potential for the budgets of the Public Advocate and Borough Presidents to be subjected to retaliatory acts and budget reductions for reasons other than sound budgeting policy. These offices play important roles in the City's operations. As has been demonstrated over the past 10 years in both the Borough Presidents' and Public Advocate's budgets, these offices are susceptible to large budget fluctuations that are not in line with the overall City budget.

As these offices are independently elected and meant to provide oversight and checks on mayoral and Council power, the Commission believes it is reasonable for their budgets to be insulated from the Mayor and Council, barring a determination of actual fiscal necessity. Thus, the Commission recommends that the Charter be amended to require that, beginning in Fiscal Year 2021, the budgets for the Public Advocate and Borough Presidents be set at or above their respective Fiscal Year 2020 budgets, generally adjusted in future fiscal years by the lesser of the percentage change in the City's total expense budget (excluding certain components such as pension contributions) or the rate of inflation in the New York City metropolitan area. The minimum budget would have to be met unless the Mayor makes a written determination of fiscal necessity setting forth in detail (1) the basis for that determination and (2) that the proposed failure to meet the required budget level is part of an overall plan to address a downturn in City revenues or unforeseen financial circumstances.

## **City Budget Process -- Revenue Estimate & Budget Modification Timing**

### **Background**

The budget is arguably the most important policy document in the City. On an annual basis, the Mayor and Council work together to pass a City budget covering a fiscal year from July 1 to June 30 according to a detailed timeline outlined by the Charter.<sup>285</sup> Through its adoption, the Mayor and Council signal policy objectives for the ensuing fiscal year and New Yorkers know what services are provided in exchange for their tax dollars.

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<sup>284</sup> [Written Testimony of Citizens Union to the 2019 Charter Revision Commission](#), (Mar. 18, 2019), at 3; [Written Testimony of Doug Muzzio to the 2019 Charter Revision Commission](#), (Mar. 18, 2019), at 16; [Written Testimony of the New York City Council to the 2019 Charter Revision Commission](#), (Jan. 2019), at 9.

<sup>285</sup> See generally Charter ch. 10.

While the budget is not passed on the same day every year, the period of time between when the Mayor proposes a preliminary budget in January and when the budget is usually adopted in late June can be considered the “budget season.” The budget is required to be balanced, with projected operating revenues equaling operating expenses, and therefore there is considerable negotiation between the Mayor and Council before adoption.

Two aspects of the budget process that engender frequent tension between the Mayor and the Council are (1) the timing of the Mayor’s non-property tax revenue estimate for the coming fiscal year, which plays a vital part in determining funding for all City programs and initiatives and (2) the budget modifications the Mayor makes during the fiscal year.

## **Proposed Amendment to the Charter – Revenue Estimate**

Estimating anticipated revenue is a key component of any budgeting process, which is only heightened in the City’s context by the Charter requirement that the City maintain a balanced budget. The City’s total revenue is made up of revenue from property taxes and revenue from sources other than property taxes (these include income and sales tax revenue; licensing, permit, and rental revenue; and federal and New York State grants). The Mayor provides an estimate of anticipated revenue from sources other than property taxes, which is called the “revenue estimate.”<sup>286</sup> The Council sets the property tax rate at budget adoption to generate the needed revenue to achieve a required balanced budget. Therefore, the Mayor’s revenue estimate is a critical element of the budget negotiation process.

As discussed in the Preliminary Staff Report, the Charter requires that the Mayor submit the revenue estimate to the Council by June 5<sup>th</sup>.<sup>287</sup> However, in practice, the revenue estimate is provided to the Council at the same time that the Council passes the adopted budget, which frequently takes place in mid- to late June. The Council, on the other hand, is required to set property tax rates sufficient to balance the budget (in effect, sufficient to fund the difference between the non-property tax revenue estimate and the budgeted expense spending) immediately upon adoption of the budget.<sup>288</sup>

The Preliminary Staff Report discussed in detail how the Mayor can use the revenue estimate as a political tool within the larger budget negotiation process.<sup>289</sup> For example, if a mayor disagreed with some of the proposed expenditures in budget negotiations, a mayor could set a lower revenue estimate late in those negotiations to force the Council to either increase property tax rates or make budget cuts. This situation actually took place in 1998 when the Council passed a non-negotiated budget without the Mayor’s consent, and he responded by revising the revenue estimate to create a shortfall.<sup>290</sup>

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<sup>286</sup> Charter §§ 1516, 1515(a).

<sup>287</sup> Charter § 1515(a); 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 64.

<sup>288</sup> Charter § 1516(a).

<sup>289</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 64–66.

<sup>290</sup> Mike Allen, [By Mayor's Calculation, A Hole in Council's Budget](#), The New York Times, (Jun. 7, 1998).

To address concerns related to potential politicization of the revenue estimate, the Preliminary Staff Report solicited feedback on whether to allow a third-party estimate to be used in the event that the Mayor does not provide an estimate by June 5<sup>th</sup>.<sup>291</sup> The Independent Budget Office and the Comptroller both project revenue estimates that could be used in the event the Mayor does not provide one by June 5<sup>th</sup>.<sup>292</sup> In testimony before the Commission, the Office of Management and Budget expressed opposition to this proposal, which would in its view “shift the responsibility of providing the revenue [to] a third party that is not accountable to anybody.”<sup>293</sup> The Citizens Budget Commission testified that there already exists informal negotiation between the Mayor and Council regarding the revenue estimate, and therefore a third-party is not necessary.<sup>294</sup>

The Preliminary Staff Report also solicited specific feedback on whether to establish an earlier due date for the non-property tax revenue estimate to reduce the incentive for a mayor to politicize the revenue estimate.<sup>295</sup> In testimony before the Commission, Manhattan Borough President Gale Brewer endorsed the idea of requiring the revenue estimate to be submitted to the Council at a date earlier than June 5<sup>th</sup>.<sup>296</sup> Earlier testimony by the Council also endorsed an earlier submission date.<sup>297</sup>

The Commission recognizes that the revenue estimate is a critical part of maintaining a balanced City budget and that the current Charter requirement that the Mayor submit an estimate to the Council by June 5<sup>th</sup> (taken together with the actual practice of submitting it at or close to budget adoption) is not optimal for an orderly and predictable budget adoption, and also does not provide the Council with appropriate time to set real estate property tax rates. Therefore, the Commission proposes that the Mayor be required to submit a non-property tax revenue estimate to the Council with the Executive Budget that the Mayor must provide by April 26<sup>th</sup> of each year preceding the adoption of the annual budget. The Mayor would be permitted to submit an updated revenue estimate until May 25<sup>th</sup>, but would only be allowed to submit an updated revenue estimate after May 25<sup>th</sup> if he or she provides a written determination of the fiscal necessity of doing so to the Council, setting forth the basis for the determination and the changed circumstances that warrant such a modification. This proposed amendment, if approved by the voters, would take effect immediately.

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<sup>291</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 66.

<sup>292</sup> New York City Office of the Comptroller, [Annual State of the City's Economy and Finances](#); Independent Budget Office, [Annual Budget Report](#).

<sup>293</sup> 2019 Charter Revision Commission, [Transcript of May 2, 2019 Public Meeting](#), at 35.

<sup>294</sup> [Written testimony of Andrew Rein, Citizens Budget Commission](#), Public Hearing of the 2019 Charter Revision Commission, (May 9, 2019), at 5-6.

<sup>295</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 66.

<sup>296</sup> [Written testimony of Manhattan Borough President Gail Brewer](#), Public Hearing of the 2019 Charter Revision Commission, (May 9, 2019), at 49.

<sup>297</sup> [Written Testimony of the New York City Council to the 2019 Charter Revision Commission](#), at 14.

## Proposed Amendment to the Charter – Budget Modification Timing

Budget modifications are allowed by the Charter in order to reflect changes necessary to the budget throughout the fiscal year. The Mayor must seek Council approval through a budget modification for transfers of funds (1) between agencies in any amount or (2) between units of appropriation in a single agency that exceed the greater of \$50,000 or 5% of a unit of appropriation.<sup>298</sup> Units of appropriation, commonly called “UAs,” are the budget’s smallest component parts, defined by the Charter as “a particular program, purpose, activity or institution.”<sup>299</sup> After receipt of the expense modification, the Council then has up to 30 days after its first Stated Meeting following receipt to approve or reject the proposed transfer, and the modification is automatically approved if no additional action is taken.<sup>300</sup>

The Mayor must also submit a budget modification to the Council for any revenue modifications, such as creating new UAs or appropriating new or previously unappropriated revenue.<sup>301</sup> In the case of a revenue modification, the Council has its usual budget adoption powers and can alter the Mayor’s submission to change the proposed use of revenue, but not the amount.<sup>302</sup>

As discussed in the Preliminary Staff Report, the Charter does not specify *when* the Mayor must notify the Council of expense or revenue modifications. In practice, this has led the Mayor to submit budget modifications to the Council late in the fiscal year, instead of when the actual budget modification has taken place. For example, as shown in “Section 107(b) & (e) Budget Modifications 2009-2019,” over the last decade, 16 of 56 budget modifications, nearly one-third of the total, were finalized by the Council in June.<sup>303</sup> In testimony to the Commission, Comptroller Scott Stringer noted that the lack of specificity in timing of budget modifications effectively “limits the Council’s participation in budgetary decision making as envisioned in the City Charter.”<sup>304</sup>

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<sup>298</sup> Charter § 107(b) & (e).

<sup>300</sup> Charter § 107(b).

<sup>301</sup> Charter § 107(e).

<sup>302</sup> Charter § 107(e); See also Terri C. Matthews, City Budget Guide, Prepared for New York City Council 2001 Conference at Baruch School of Public Affairs, (Dec. 3, 2001).

<sup>303</sup> Staff analysis of budget modifications from 1999-2019.

<sup>304</sup> New York City Comptroller Scott Stringer, [A New Charter to Confront New Challenges](#), (Sep. 2018), at 78.

Section 107(b) & (e) Budget Modifications 2009-2019			
Month	107(b)	107(e)	Total
July	1	0	1
August	2	0	2
September	4	0	4
October	2	0	2
November	2	0	2
December	4	2	6
January	3	1	4
February	1	0	1
March	5	4	9
April	6	3	9
May	0	0	0
June	8	8	16
Grand Total	38	18	56

Source: Staff analysis of budget modification 2009-2019.

The Preliminary Staff Report recommended that the Commission solicit further feedback on clarifying the time frame in which budget modifications must be submitted to the Council.<sup>305</sup> In testimony before the Commission, Comptroller Stringer, the City Council, and other elected officials proposed requiring that a budget modification be submitted to the Council for any corresponding changes outlined in the Mayor's financial plan.<sup>306</sup> The Mayor's financial plan contains information about current spending and revenues on a real-time basis and frequently includes information about new programs or budget cuts.<sup>307</sup> The Charter already requires financial plan updates to be published at least quarterly, and in practice OMB publishes updates in February, April, June, and November.<sup>308</sup>

The Commission believes that language in the Charter should be amended to make clear when the Mayor must submit proposed budget modifications to the Council. The Commission therefore proposes an amendment to the Charter that would require the Mayor to submit any necessary budget modifications to the Council that may result from updates to the financial plan within 30 days of the publication of such plan. The amendment, if approved by the voters, would be implemented for the start of the Fiscal Year 2021 budget, meaning it will take effect on July 1, 2020.

<sup>305</sup> 2019 Charter Revision Commission, [Preliminary Staff Report April 2019](#), at 68.

<sup>306</sup> New York City Comptroller Scott Stringer, [A New Charter to Confront New Challenges](#), (Sep. 2018), at 77-78; [Written Testimony of the New York City Council to the 2019 Charter Revision Commission](#), at 19-20.

<sup>307</sup> Charter § 258(b).

<sup>308</sup> Charter § 258(c); New York City Office of Management and Budget, [Budget Reports](#).

# BALLOT QUESTION #5 – LAND USE

The Commission proposes a “Land Use” ballot question that encompasses two proposed Charter amendments: (1) establishing a Uniform Land Use Review Procedure (ULURP) pre-certification notice period for Community Boards, Borough Presidents, and Borough Boards; and (2) providing Community Boards with additional time to review ULURP applications for applications certified into public review from June 1 to July 15. The ballot question, explanatory abstract, and text of the proposed Charter amendment can be found in Appendix E to this report.

## ULURP Pre-Certification Notice Period

### Background

Since 1975, the Charter has established a Uniform Land Use Review Procedure (ULURP), which specifies a time frame and sequence for public review of land use applications by different government actors – Community Boards, Borough Presidents, Borough Boards, the City Planning Commission (CPC), and ultimately, the Council. A wide variety of land use actions are subject to ULURP, including, for example, the designation of zoning districts to allow different densities and uses in an area; the purchase, sale, or lease of property by the City, such as purchasing land to build a sanitation garage; and special permits to permit projects that vary from strict conformance with the City’s Zoning Resolution.<sup>309</sup> ULURP, and the so-called “ULURP clock,” begins when an applicant (which can be a private or public actor, such as a developer or a City agency) formally files its application with the Department of City Planning (DCP) and DCP certifies that the application is complete. In practice, however, DCP discusses and reviews draft applications long before they are formally filed and certified.<sup>310</sup> This non-public “pre-certification” process often lasts for well over a year (and in some instances can be a multi-year process).<sup>311</sup>

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<sup>309</sup> See Charter § 197-c

<sup>310</sup> Within five days after a ULURP application has been filed, the Charter requires DCP to forward a copy of the application materials to the affected community board, Borough President, and borough board. Charter § 197-c(b). Thereafter, DCP is responsible for certifying that the application is complete and ready to proceed through ULURP. Charter § 197-c(c). When DCP so certifies, the formal ULURP “clock” begins to run, starting with a 60-day community board review period, followed by a 30-day Borough President/borough board review period, and concluding with CPC and Council review periods, resulting in a binding final decision. Charter § 197-c; See 62 RCNY § 10 (CPC rules discussing procedure for meeting with applicants prior to filing); See also New York City Department of City Planning, [Applicants – Overview](#) (“The Department reviews all applications before the public review process begins. An applicant’s first conversations with the Department are typically before an application has even been put together.”).

<sup>311</sup> See Matt Chaban, [A New BluePrint: City to Speed Up Land-Use Reviews](#), N.Y. Observer, (Jun. 21, 2012) (“[P]re-certification process at the Department of City Planning . . . can take months, and sometimes even years . . .”).

Currently, the Charter requires notification to the affected Community Board, Borough President, or Borough Board only when the application is officially submitted to DCP (and related City Environmental Quality Review documents are filed).<sup>312</sup> However, this official filing occurs after many months, if not years, of pre-filing engagement between applicants and DCP staff on how to shape the project for formal ULURP review.

Within 60 days of certification of an application by DCP, the affected Community Board must hold a public hearing (which it can waive in certain instances) and submit a nonbinding recommendation to the CPC and the affected Borough President. The Borough President then submits an independent nonbinding recommendation within the next 30 days. The CPC must then, within the next 60 days, hold a public hearing and vote to disapprove, approve, or approve the application with modifications. CPC approvals are filed with the Council.<sup>313</sup> The Council, within the next 50 days (up to 65 days if modifications are made), may (1) disapprove the application, ending the process; (2) modify the application, triggering CPC review of the Council's proposed modification; or (3) approve the application, ending the process.<sup>314</sup> The Mayor may veto the Council's final action, which the Council may then override.<sup>315</sup>

Throughout the Commission's public hearings, it has heard from many members of the public, including Community Board members and elected officials, that the official ULURP time frame provides insufficient opportunity for community engagement. Specifically, the Commission heard that Community Boards receive inadequate notice of and information about applications that are about to proceed through ULURP, and that their 60-day period to review and issue a nonbinding recommendation on the proposed project does not give them sufficient time to meaningfully express their thoughts and ideas on proposed applications before the applications are effectively finalized.<sup>316</sup>

DCP testified to the Commission that many ULURP applicants engage with the applicable Community Board, Borough President, and Council Member before the official ULURP clock commences, though they are not required to do so. DCP further articulated that it believes that applicants who do engage in this informal pre-ULURP process have found it beneficial, stating that it helps them shape their projects to address local neighborhood concerns and results in better outcomes.<sup>317</sup>

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<sup>312</sup> Charter § 197-c(b)

<sup>313</sup> CPC disapprovals are final except with respect to (1) Urban Renewal Plans (per State law) and (2) special permits, 197-a plans, and zoning map or text changes (at the Mayor's election).

<sup>314</sup> The Charter requires Council review of some actions. If the Council does not act within 50 days, the CPC decision is final.

<sup>315</sup> The Council may override a mayoral veto with a 2/3 vote.

<sup>316</sup> See, for example, [Written testimony of Community Board 8 Manhattan Chair Alida Camp](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 60; [Written testimony submitted by Councilmember Ben Kallos](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 47; [Written testimony of Manhattan Borough President Gale Brewer](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019) at 40.

<sup>317</sup> See generally [2019 Charter Revision Commission, Mar. 21, 2019 Public Meeting](#) (testimony of DCP Director Marisa Lago).



The Commission received and considered proposals from various entities and individuals, including Manhattan Borough President Gale Brewer, Manhattan Community Board 8, and Council Member Ben Kallos, to require notification of and solicitation of feedback from Community Boards and Borough Presidents during a specified, required “pre-certification” process of a particular duration.<sup>318</sup> They argued that the current ULURP process provides insufficient opportunity for community engagement.<sup>319</sup>

The Commission notes that some cities already require pre-application community outreach. For example, applicants in some San Francisco zoning districts must hold a pre-application meeting after providing at least 14 days’ notice to community stakeholders before submitting an application.<sup>320</sup> Likewise, applicants in Boston must file a “Letter of Intent” before submitting an application for a “large” project, triggering an “Impact Advisory Group” made up of community representatives.<sup>321</sup>

## **Proposed Amendment to the Charter**

The Preliminary Staff Report recommended that the Commission further consider and solicit public feedback concerning a pre-certification engagement process to provide more time and an earlier opportunity for Community Boards and Borough Presidents to review applications that are likely to proceed through ULURP. In light of the compelling testimony received on this issue, the Commission believes that requiring that Community Boards, Borough Presidents, and Borough Boards receive notice of impending ULURP applications before they are certified into public review (when the official ULURP “clock” begins) would benefit the local communities affected by ULURP projects. Therefore, the Commission proposes a Charter amendment that would require that DCP prepare a pre-certification notice for all ULURP applications that includes the project location and the purpose and description of the proposed actions, sufficient in detail so as to put the affected community on notice of an impending land use action entering public review. The amendment would further provide that DCP transmit this notice to the affected Community Board, Borough President, and Borough Board (if applicable), and publish the notice online before the project application is certified into public review by DCP. Under the proposed amendment, this summary would have to be transmitted at least 30 days before the application is certified and published by DCP on its website within five days thereafter. The certified application would have to be substantially consistent with the project summary that is published/transmitted. This Charter amendment, if approved by the voters, would take effect on August 31, 2020.

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<sup>318</sup> See, for example, [written testimony of Community Board 8 Manhattan Chair Alida Camp](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 60; [Written testimony submitted by Councilmember Ben Kallos](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019), at 47; [Written testimony of Manhattan Borough President Gale Brewer](#), Public Meeting of the 2019 Charter Revision Commission, (May 9, 2019) at 40.

<sup>319</sup> *Id.*

<sup>320</sup> See San Francisco Planning Department, [Pre-Application Meeting Packet](#), (updated Jan. 1, 2019).

<sup>321</sup> See Boston Planning & Development Agency, [Large Project Review](#).



## Additional ULURP Review Time for Community Boards

### Background

As part of ULURP, as noted above, once a Community Board receives an application that DCP has certified as complete, it has 60 days to (1) notify the public of the application in a manner specified by CPC rules; (2) hold a public hearing on the application; and (3) submit written recommendations to CPC and the affected Borough President.<sup>322</sup>

The Charter requires that Community Boards conduct at least one public hearing each month, except that such hearings are generally not required in July and August.<sup>323</sup> CPC rules require that Community Boards provide advance notice of these public hearings as follows: (1) notice must be published in the City Record for the five days “immediately preceding and including the date of the public hearing”; (2) notice must be published in the Comprehensive City Planning Calendar at least five days before the hearing; and (3) notice must be given to the applicant at least 10 days before the hearing.<sup>324</sup> Quorum for these public hearings is 20% of the Community Board’s membership or seven members, whichever is greater, but any recommendation must be adopted by a majority of the Community Board’s membership.<sup>325</sup>

The City Record is not published on Saturdays, Sundays, or legal holidays, so unless the Community Board hearings are held on Fridays, the five-day publication requirement effectively requires at least seven days of advance notice.<sup>326</sup> This does not include the delay between (1) the date when a Community Board provides a notice for publication to the City Record and (2) the earliest date that the City Record publishes such notice.

Because of the challenge of securing the required quorum to meet during the summer months, many Community Boards do not have regularly scheduled meetings in July and August, as permitted by the Charter. Almost all Community Boards, if not all, do not have meetings in August. The Commission has heard testimony that this situation puts the Community Boards at a distinct disadvantage when ULURP applications are certified in ULURP review as summer approaches, particularly with regard to applications certified in June and July. Community Boards often have insufficient time to publish the required legal notice in the City Record for their June meeting (before they adjourn for July and August) to hear the application and make a recommendation. At times, they simply cannot hold any hearing if their 60-day period within ULURP expires during the months they do not meet. As a result, they are not able to fulfill their intended role in the Charter’s ULURP process.

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<sup>322</sup> Charter § 197-c(e), (i).

<sup>323</sup> Charter § 2800(h).

<sup>324</sup> 62 RCNY § 2-03(c).

<sup>325</sup> 62 RCNY § 2-03(d)(3), (f)(1).

<sup>326</sup> See Charter § 1066(a).

The Commission has received testimony from the public, including Community Board members, that the Charter be amended to provide additional time to Community Boards for their ULURP review when DCP certifies applications in June and July.

### **Proposed Amendment to the Charter**

The Commission believes that the concerns expressed by the Community Boards are reasonable, especially given the critical role that Community Board review plays in the ULURP process, and that accommodating their request is unlikely to substantially hinder the ability of both private and public applicants to have their applications move through ULURP in a timely and predictable manner. Therefore, the Commission proposes to amend the Charter to provide that Community Boards have 90 days (instead of 60 days) after receipt of an application certified by DCP in the month of June, and 75 days (instead of 60 days) after receipt of an application certified by DCP between July 1 and July 15, to review, conduct hearings, and issue their recommendations on ULURP applications. This Charter amendment, if approved by the voters, would take effect immediately.

# **APPENDIX A**

## **BALLOT QUESTION #1 ELECTIONS**

## BALLOT QUESTION

This proposal would amend the City Charter to:

Give voters the choice of ranking up to five candidates in primary and special elections for Mayor, Public Advocate, Comptroller, Borough President, and City Council beginning in January 2021. If voters still want to choose just one candidate, they can. A candidate who receives a majority of first-choice votes would win. If there is no majority winner, the last place candidate would be eliminated and any voter who had that candidate as their top choice would have their vote transferred to their next choice. This process would repeat until only two candidates remain, and the candidate with the most votes then would be the winner. This proposal would eliminate the separate run-off primary elections for Mayor, Public Advocate, and Comptroller;

Extend the time period between the occurrence of a vacancy in an elected City office and when a special election must be held to fill that vacancy. Special elections would generally be held 80 days after the vacancy occurs, instead of 45 days (for Public Advocate, Comptroller, Borough Presidents and Council Members) or 60 days (for Mayor); and

Adjust the timeline of the process for drawing City Council district boundaries so that it is completed before City Council candidates start gathering petition signatures to appear on the ballot for the next primary elections. This process occurs every ten years.

Shall this proposal be adopted?

## ABSTRACT

This proposal would make several amendments to the City Charter related to elections for City offices.

**Ranked Choice Voting.** Currently, elections for most City offices are conducted using a traditional plurality, or “first past the post,” system in which the candidate who received the most votes wins, regardless of the percentage of the vote the candidate received, including when a candidate receives less than a majority of the votes cast. In the primary elections for the three citywide offices (Mayor, Public Advocate, and Comptroller), and in special elections for Mayor, if no candidate receives at least 40% of the vote, a runoff election is held between the top two vote-getters in a separate election at a later date.

This proposed Charter amendment would institute ranked choice voting, also known as instant runoff voting, in primary and special elections for Mayor, Public Advocate, Comptroller, Borough President, and City Council Member. Voters would be able to rank in order of preference up to five candidates, including a write-in candidate. If no candidate receives a majority of first-choice votes, the candidate with the least number of first choice votes would be eliminated and the voters who chose that

candidate would have their votes transferred to their selected second-choice candidate. This process would repeat until two candidates remain, and the candidate with the most votes at that point would win the election. Instituting ranked choice voting for these offices in primaries and special elections would eliminate the need for separate runoff elections at a later date. Ranked choice voting would not apply to general elections, which would remain unchanged and use the traditional plurality method of “first past the post.” Under this proposed amendment the City would be required to conduct a voter education campaign to familiarize voters with ranked choice voting.

This proposed amendment would apply to all primaries and special elections for Mayor, Public Advocate, Comptroller, Borough President, and City Council Member occurring on or after January 1, 2021.

**Timing of Special Elections.** Currently, when the office of the Public Advocate, Comptroller, or City Council Member becomes vacant during a term, a nonpartisan special election is generally held approximately 45 days later to fill the office on an interim basis. When the office of the Mayor becomes vacant, a special election is generally held approximately 60 days later. The proposed Charter amendment would extend that time period to hold a special election to 80 days for each of these offices in order to give the Board of Elections more time to mail ballots to military and overseas voters.

This proposed amendment would take effect immediately.

**Timing of Redistricting.** City Council district boundaries are redrawn every ten years to reflect population changes shown in the most recent United States Census. This process is commonly referred to as “redistricting.” Redistricting is carried out by a Districting Commission appointed by the Mayor and the City Council and includes holding public hearings and preparing a new City Council district map. Under the current Charter, the next redistricting process begins in mid-2022 and would end in March 2023. But, New York State recently enacted a law that moved the City’s primary elections from September to June; as a result, City Council candidates will begin collecting signatures on nominating petitions to appear on the primary election ballot before redistricting is completed. In other words, City Council candidates would need to obtain signatures from district residents, but they would not know the boundaries of their districts. The proposed amendment makes the redistricting process timeline shorter so that it concludes before the City Council candidate petitioning period begins.

This proposed amendment would take effect immediately so that it applies to the next redistricting process.

## PROPOSED CHARTER AMENDMENT TEXT

Section 1. Paragraph 6 of subdivision c of section 10 of the New York city charter is amended to read as follows:

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: [a] A special election to fill the vacancy shall be held on the first Tuesday at least [sixty] eighty days after the occurrence of the vacancy, provided that the person acting as mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day not more than ten days after such Tuesday and not less than [forty] sixty days after such proclamation if the person acting as mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [sixty] eighty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election [or between a primary and a general election], the vacancy shall be filled at such general election; [and]

(b) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [sixty] eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after [September twentieth] August seventeenth in any year and the first Tuesday at least [sixty] eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the

vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

§ 2. Paragraph 10 of subdivision c of section 10 of the New York city charter is amended to read as follows:

10. If [at any] an election is held pursuant to this subdivision for which nominations were made by independent nominating petitions, and if such election has not utilized ranked choice voting as provided in section 1057-g, and if at such election, no candidate receives forty percent or more of the vote, the two candidates receiving the most votes shall advance to a runoff election which shall be held on the second Tuesday next succeeding the date on which such election was held.

§ 3. Paragraph 6 of subdivision c of section 24 of the New York city charter is amended to read as follows:

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than [forty] seventy-five days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the

vacancy is less than ninety days before a regularly scheduled general election [or between a primary and a general election], the vacancy shall be filled at such general election;

(b) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

§ 4. Paragraph 6 of subdivision b of section 25 of the New York city charter is amended to read as follows:

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than [forty] seventy-five days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the



vacancy is less than ninety days before a regularly scheduled general election [or between a primary and a general election], the vacancy shall be filled at such general election;

(b) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

§ 5. Subdivision c of section 50 of the New York city charter, as amended by local law number 20 for the year 2003, is amended to read as follows:

c. Each council delegation authorized by subdivision a of this section to make appointments to the commission shall make such appointments no earlier than one year and [eight] ten months before, and no later than one year and [six] nine months before, the general election of the council to be held in the year nineteen hundred ninety-three, and every ten years thereafter. In any case in which the chairpersons of the county committees of a political party are authorized to submit nominations to the mayor, such nominations shall be submitted no earlier than one year and [eight] ten months before, and no later than one year and [six] nine months before, the general election of the council to be held in the year nineteen hundred ninety-three, and every ten years thereafter. The mayor shall make appointments to the commission after each council

delegation authorized to make appointments has done so but not later than one year and [five] eight months before such a general election of the council. The commission's term shall end sixty days after the day of the first general election of the council following the commission's adoption of a districting plan, as set forth in section fifty-one.

§ 6. Subdivisions c, e and f of section 51 of the New York city charter, as amended by a vote of the electors on November 7, 1989, is amended to read as follows:

c. The commission shall submit its plan to the city council not less than one year and three months before the general election of the city council to be held in the year nineteen hundred ninety-three and every ten years thereafter.

e. Upon the receipt of any such resolution and objections, the commission shall prepare a revised plan and shall, no later than [ten months] one year and one month before such general election of the city council, make such plan available to the council and the public for inspection and comment. The commission shall hold public hearings and seek public comment on such revised plan.

f. Following its consideration of the comments received pursuant to subdivision e of this section, the commission shall, no later than [eight] eleven months before such general election of the council, prepare and submit a final plan for the redistricting of the council.

§ 7. Paragraph 6 of subdivision e of section 81 of the New York city charter is amended to read as follows:

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this

subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than [forty] seventy-five days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election [or between a primary and a general election], the vacancy shall be filled at such general election; [and]

(b) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

§ 8. Paragraph 6 of subdivision c of section 94 of the New York city charter is amended to read as follows:

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: [a] A special election to fill the vacancy shall be held on the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy,

provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than [forty] seventy-five days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election [or between a primary and a general election], the vacancy shall be filled at such general election; [and]

(b) if the vacancy occurs before [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after [September twentieth] August seventeenth in any year and the first Tuesday at least [forty-five] eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

§ 9. Chapter 46 of the New York city charter is amended by adding a new section 1057-g to read as follows:

§ 1057-g. Ranked choice voting for certain primary elections and elections for which nominations were made by independent nominating petitions.

a. For the purposes of this section, the following terms have the following meanings:

Batch elimination. The term “batch elimination” means the simultaneous elimination of multiple candidates whose election is mathematically impossible.

Continuing ballot. The term “continuing ballot” means a ballot that is not an exhausted ballot.

Continuing candidate. The term “continuing candidate” means any candidate who has not been eliminated.

Election is mathematically impossible. The term “election is mathematically impossible” applies to a candidate who cannot be elected because such candidate’s vote total in a round, plus all votes that could possibly be transferred to such candidate in future rounds from candidates who received a fewer or an equal number of votes, would not be enough to surpass that of the candidate with the next highest vote total in such round.

Exhausted ballot. The term “exhausted ballot” means a ballot in which all ranked candidates have been eliminated, or a ballot that assigns equal rank to two or more candidates and all candidates with higher ranks than the rank assigned to two or more candidates are eliminated.

Highest rank. The term “highest rank” refers to the highest rank whether that be rank number 1, rank number 2, rank number 3, rank number 4, or rank number 5.

Last place candidate. The term “last place candidate” means a continuing candidate with the fewest votes in a round.

Rank. The term “rank” means the number assigned on a ballot by a voter to a candidate to express the voter’s preference for that candidate. Rank number 1 is the highest ranking, rank number 2 is the next highest ranking, and so on.

Ranked choice election. The term “ranked choice election” means any primary election for a ranked choice office, and any election for a ranked choice office in which all candidates are nominated by independent nominating petition.

Ranked choice office. The term “ranked choice office” means the offices of mayor, public advocate, comptroller, borough president, and council member.

Ranked choice voting. The term “ranked choice voting” means the method of casting and tabulating votes in which voters rank candidates in order of preference, tabulation proceeds in rounds in which last place candidates are eliminated, and the candidate with the most votes in the final round is elected.

b. The provisions of this section shall apply to ranked choice elections. No run-off election shall be held for any ranked choice office.

c. Ranked choice elections shall be governed by applicable provisions of the election law, except that the following provisions of the election law, as amended from time to time, and any successor provisions, shall apply as modified herein. References to the sections modified herein shall be deemed to refer to such sections as they are so modified when and to the extent that they apply to ranked choice elections. References to provisions of the election law in this section shall be deemed to refer to any successor provisions. Provisions of the election law not specified in this subdivision here shall apply to ranked choice elections, provided however that such provisions shall not be construed to prevent or impede the application of this section.

1. Sections 6-150 and 6-152 shall apply to ranked choice elections, except that where such sections refer to a candidate's receipt of a plurality of votes cast, such sections shall be deemed to refer instead to a candidate's election, or nomination, respectively, pursuant to this section.

2. Section 6-162 shall not apply to ranked choice elections.

3. Either subparagraph (a) or (b) shall apply depending on the conditions described in each such subparagraph.

(a) In the event that A. 2682-A / S. 2300-A from the 2019-2020 New York state legislative session that would enact the voter friendly ballot act does not become law, paragraph (c) of subdivision 3 of section 7-104; subdivisions 5 and 8 of section 7-106; paragraph (c) of subdivision 2 of section 7-114; and paragraph (d) of subdivision 1, and paragraph (c) of subdivision 2 of section 7-122 are superseded with respect to ranked choice elections, and ballots to which these provisions would otherwise apply shall be designed pursuant to subdivision d of this section.

(b) In the event A. 2682-A / S. 2300-A from the 2019-2020 New York state legislative session that would enact the voter friendly ballot act becomes law, thus amending the election law, paragraph (d) of subdivision 3, and subdivisions 13, 17 and 20 of section 7-104; and paragraph (b) of subdivision 1 of section 7-122 are superseded with respect to ranked choice elections, and ballots to which these provisions would otherwise apply shall be designed pursuant to subdivision d of this section.

4. Paragraph b of subdivision 1 of section 8-100 shall not apply to ranked choice elections.

5. Section 9-100 shall apply to ranked choice elections, except that the requirement that canvass be completed shall be deemed to be a canvass completed under Article 9 of the Election Law as modified by this section.

6. Section 9-102 shall apply to ranked choice elections, except that the requirement that ballots be hand counted pursuant to subdivisions 1 or 1-a, as applicable, 2, and 3 of such section is superseded to the extent that it is not required pursuant to the rules promulgated by the board of elections in the city of New York pursuant to subdivision g of this section of the charter; and except that with respect to reading, announcing, or making a proclamation of results, and with respect to the hand tallying of votes, such requirements shall be deemed to mean reading, announcing, or proclaiming the results of the tally of the number of ballots that marked each candidate as rank number 1 for that ranked choice office; and except that reference to "total of the votes cast" on portable memory devices shall mean the record of how each ballot ranked each candidate for a ranked choice office in a ranked choice election.

7. Subdivision 2 of section 9-110 is superseded with respect to ranked choice elections, and ballots to which it would otherwise apply shall be hand counted in accordance with the rules promulgated by the board of elections in the city of New York pursuant to subdivision g of this section of the charter.

8. Section 9-112 shall apply to ranked choice elections, except that references to votes for candidates or other persons shall be deemed to be references to a vote, or the counting of a vote, in a round of tabulation pursuant to this section of the charter if the applicable election is a ranked choice election; and except that subdivisions 4 and 6 of



section 9-112 are superseded to the extent that voters are permitted to rank multiple candidates as provided by this section of the charter.

9. Section 9-114 shall apply to ranked choice elections, except that, to the extent a ballot subject to an objection has been counted under such section, the memorandum of the ruling shall indicate "Counted for (naming the candidate who is ranked as the highest rank on such ballot)."

10. Section 9-116 shall apply to ranked choice elections, except that, with respect to tallying and the total number of votes for a ranked choice office, the requirements of section 9-116 shall be deemed to refer to the number of ballots that marked each candidate as rank number 1 for that ranked choice office.

11. Section 9-120 shall apply to ranked choice elections, except that references to the number of votes for candidates shall be deemed in ranked choice elections to be references to the total number of ballots that marked a candidate in such an election as rank number 1 for that ranked choice office.

12. Section 9-122 shall apply to ranked choice elections, except that references to the number of votes or party votes for candidates shall be deemed in ranked choice elections to be references to the total number of ballots that marked each such candidate as rank number 1 for that ranked choice office.

13. Section 9-126 shall apply to ranked choice elections, except that the reference in paragraph (a) of subdivision 2 to the number of votes received by each person voted for shall be deemed in ranked choice elections to be a reference to the total number of ballots that marked each such person as rank number 1 for that ranked choice office; and except that, for ranked choice elections, the tabulation of results as they are received

pursuant to paragraph (b) of subdivision 2 shall be deemed to refer to either, as determined by the board of elections of the city of New York pursuant to paragraph 1 of subdivision f of this section of the charter, (i) a tabulation of the number of ballots assigning rank number 1 for each candidate for each ranked choice office, or (ii) the number of votes cast for each such candidate for that ranked choice office for each round of tabulation, as tabulated pursuant to subdivision e of this section of the charter.

14. Section 9-200 shall apply to ranked choice elections, except that the tabulated statements referred to in subdivision 1 of section 9-200 shall be deemed to mean, for ranked choice elections, the number of votes cast for all candidates for a ranked choice office as tabulated pursuant to this section of the charter, and the results for each round of such tabulation for such office; and except that the nominee of his or her party for a ranked choice office shall be determined in accordance with this section of the charter.

15. Section 9-202 shall apply to ranked choice elections, except that the tabulated statements referred to in section 9-202 shall be deemed to mean, for ranked choice offices, the number of votes cast for all candidates for a ranked choice office as tabulated pursuant to this section of the charter, the number of votes cast for each such candidate for that ranked choice office for each round of tabulation, as tabulated pursuant to subdivision e of this section of the charter; and except that the nominee of his or her party for a ranked choice office shall be determined in accordance with this section of the charter.

16. Section 9-206 shall apply to ranked choice elections, except that votes cast for all candidates for a ranked choice office shall be tabulated pursuant to this section of the charter.

17. Subdivision 3 of section 9-208 shall apply to ranked choice elections, except that the reference to the “number of votes recorded on the tabulated results tape” shall, with respect to ranked choice offices, be deemed to be a reference to the total number of ballots recorded on the tabulated results tape.

18. Section 9-209 shall apply to ranked choice elections, except that subparagraph (ii) of paragraph (c) of subdivision 2 of section 9-209 shall be deemed to refer to manual counting subject to this section of the charter, and the provisions of the election law as superseded or modified herein where not inconsistent with the provisions of this section of the charter; and except that, for ranked choice elections, the requirement in subdivision (e) that ballots be tallied, and that such tally be added to a previous tally, and that the result be announced, are superseded and inapplicable, but that such ballots in ranked choice elections be included in the tabulation undertaken pursuant to sections 9-200, 9-210 and 9-212 as applicable, as superseded or modified herein.

19. Section 9-210 shall apply to ranked choice elections, except that for ranked choice elections the requirement that a statement set forth the number of votes cast for each candidate shall be deemed to require that the statement set forth the number of votes cast for each candidate for that ranked choice office for each round of tabulation, as tabulated pursuant to subdivision e of this section of the charter; and except that for ranked choice elections an electronic record of how each ballot ranked each candidate for a ranked choice office from which such statements were made, including, to the extent practicable, such information broken down by election district, instead of any tabulation sheets showing the vote by election districts, shall be filed in the office of the board of elections in the city of New York.

20. Section 9-212 shall apply to ranked choice elections, except that each person elected to a ranked choice office in a ranked choice election shall be determined in accordance with this section of the charter.

d. The board of elections in the city of New York shall determine the design of the ballot and content of ballot instructions for ranked choice elections, subject to the requirements of this subdivision and any election law requirements not superseded under this section, in furtherance of the purposes of this section. For all ranked choice elections, the following requirements for all ballots, including ballots for absentee voters and ballots for military voters, shall apply:

1. All candidates in a ranked choice election shall be listed on the ballot. The ballot shall permit a voter to rank five candidates, inclusive of any write-in candidate permitted by law, in order of preference for a ranked choice office, unless there are fewer than five candidates on the ballot for such office, in which case the ballot shall permit a voter to rank the total number of such candidates for such office inclusive of any write-in candidate permitted by law.

2. The sections of the ballot containing ranked choice elections shall be organized in the form of a grid, with dimensions and spacing sufficient to facilitate a ranked choice election pursuant to the requirements set forth in this subdivision. The title of the office shall be arranged horizontally in a row at the top of such grid, with columns underneath. The leftmost column shall contain the names of the candidates for such office and the slot or device for write-in candidates for such office, arranged vertically. For any election for a ranked choice office in which all candidates are nominated by independent nominating petition, the names selected for the independent bodies making the nomination of the

candidates shall be included on the ballot in accordance with the election law. The subsequent columns shall contain ovals or squares, with one oval or square per each column and row. Each column containing ovals or squares shall be labeled consecutively with the rankings, starting from "1st choice" and going up to a maximum of "5th choice."

3. The ballot shall, in plain language, set forth instructions that indicate how to mark a ballot so as to be read by the voting equipment used to tabulate results or manually, as applicable, and how to rank candidates in order of the voter's preference, and any other information deemed necessary by the board of elections in the city of New York. Such instructions and ballot heading information shall be presented above or next to the first election of each type. At a minimum, the text for ballot instructions shall be substantially as follows so that it accurately reflects the ballot layout:

#### INSTRUCTIONS

Rank candidates in the order of your choice. Mark the (insert "oval" or "square") in the "1st choice" column for your first-choice candidate. Mark the (insert "oval" or "square") in the "2nd choice" column for your second-choice candidate, and so on. (Provide illustration of correctly marked voting positions here.) To rank a candidate whose name is not printed on the ballot, mark (insert "an oval" or "a square") next to the box labeled "write-in" and print the name clearly, staying within the box. You may mark as many or as few candidates as the numbered columns allow, but do not mark more than one (insert "oval" or "square") per candidate. Ranking a second-choice candidate, third-choice candidate, and so on will not hurt your first-choice candidate. Do not mark more than one (insert "oval" or "square") in any column. If you do, your vote may not count. Any mark or writing outside the spaces provided for voting may void the entire ballot. You have a right to a replacement ballot. If

you make a mistake, or want to change your vote, (insert “ask a poll worker for a new ballot” or, for absentee ballots, “call the board of elections at (insert phone number here) for instructions on how to obtain a new ballot”).

The board shall also provide line drawing illustrations to supplement these instructions. At a minimum, an illustration of the correct way to mark the ballot shall be provided, but nothing in this section shall be construed to limit the board in providing additional illustrations.

4. To the greatest extent practicable, the ballot design shall allow for electronic tabulation of all rankings and electronic detection of ballot marking in order to allow a voter to correct a ballot that assigns equal rank to two or more candidates.

5. If a ranked choice election is on the ballot with one or more elections using other methods of voting, to the extent practicable, the ranked choice elections shall be grouped together and presented either on a separate ballot page from the non-ranked choice elections, or on one side of a combined ranked choice and non-ranked choice ballot page.

6. The final ballot design shall be based on the space and design limitations of the ballot design software, while following the best practices for ballot design to the greatest extent possible.

e. For all ranked choice elections, the following tabulation procedures apply:

1. If a candidate receives a majority of highest rank votes, that candidate shall be declared the nominee of his or her party for a primary election, or declared the elected winner for an election for which nominations were made by independent nominating petitions.

2. If no candidate receives a majority of highest rank votes, tabulation shall proceed in rounds. In each round, the number of votes for each continuing candidate shall be counted; each continuing ballot shall count as one vote for its highest ranked continuing candidate for that round; and exhausted ballots shall not be counted for any continuing candidate.

A round ends with one of the following outcomes:

(a) If there are two continuing candidates, the candidate with the most votes shall be declared the nominee of his or her party for a primary election, or elected winner for an election for which nominations were made by independent nominating petitions.

(b) If there are more than two continuing candidates, the last place candidate shall be eliminated and a new round shall begin; provided, however, that batch elimination shall occur at the same time as such elimination of the last place candidate, unless such batch elimination would result in only one continuing candidate, in which case no such batch elimination shall occur.

3. A tie between two or more candidates shall be resolved in accordance with the election law.

f. 1. When making public the results of a ranked choice election pursuant to section 9-126 of the election law, the board of elections in the city of New York shall release as the unofficial tally either, as determined by the board, (i) the total number of ballots that marked a candidate in such an election as rank number 1 that ranked choice office, or (ii) the number of votes cast for each candidate for that ranked choice office for each round of tabulation, as tabulated pursuant to subdivision e of this section of the charter.

2. When making the statement of results of a ranked choice election pursuant to section 9-210 of the election law, such statement shall set forth the number of votes cast for each candidate for that ranked choice office for each round of tabulation, as tabulated pursuant to subdivision e of this section of the charter, in addition to any other requirements provided by section 9-210 of the election law.

g. The board of elections in the city of New York shall promulgate rules for the hand counting of any ballot in a ranked choice election that is required to be hand counted pursuant to article 9 of the election law, as superseded by this section. Such rules shall ensure that all ranks on a hand counted ballot for candidates in a ranked choice election are tabulated with all machine-counted ballots in a ranked choice election pursuant to the tabulation procedure established in subdivision e of this section.

h. The campaign finance board shall conduct a voter education campaign to familiarize voters with ranked choice voting.

i. The board of elections in the city of New York shall take all necessary steps to ensure timely implementation of ranked choice voting pursuant to this section. No later than June 1, 2020, such board shall submit to the mayor and speaker of the council a report containing a plan for achieving timely implementation of ranked choice voting for applicable elections held on or after January 1, 2021. Failure by such board to submit such a report within 30 days of June 1, 2020 shall create a rebuttable presumption that such board is declining to implement ranked choice voting as required by this section.

j. This section applies to elections held on or after January 1, 2021, if the applicable election is a ranked choice election.



k. 1. Any person who knowingly and willfully violates any provision of this section of the charter which violation is not specifically covered by section 17-168 or any other provision of article seventeen of the election law is guilty of a misdemeanor.

2. Any person convicted of a misdemeanor under this subdivision shall be punished by imprisonment for not more than one year or by a fine of not less than one hundred dollars nor more than five hundred dollars or by both such fine and imprisonment.

§ 10. Section 1152 of the New York city charter is amended by adding a new subdivision m, paragraph (1) to read as follows:

m. (1) The amendments to the charter amending paragraphs 6 and 10 of subdivision c of section 10, paragraph 6 of subdivision c of section 24, paragraph 6 of subdivision b of section 25, subdivision c of section 50, subdivisions c, e and f of section 51, paragraph 6 of subdivision e of section 81, and paragraph 6 of subdivision c of section 94, and adding a new section 1057-g, approved by the electors on November 5, 2019, shall take effect immediately upon certification that the electors have approved such amendments to the charter, and thereafter such amendments shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees, except as further specifically provided in other sections of this charter.

## **APPENDIX B**

### **BALLOT QUESTION #2 CIVILIAN COMPLAINT REVIEW BOARD (CCRB)**

## BALLOT QUESTION

This proposal would amend the City Charter to:

Increase the size of the Civilian Complaint Review Board (CCRB) from 13 to 15 members by adding one member appointed by the Public Advocate and adding one member jointly appointed by the Mayor and Speaker of the Council who would serve as chair, and to provide that the Council directly appoint its CCRB members rather than designate them for the Mayor's consideration and appointment;

Require that the CCRB's annual personnel budget be high enough to fund a CCRB employee headcount equal to 0.65% of the Police Department's uniformed officer headcount, unless the Mayor makes a written determination that fiscal necessity requires a lower budget amount;

Require that the Police Commissioner provide the CCRB with a written explanation when the Police Commissioner intends to depart or has departed from discipline recommended by the CCRB or by the Police Department Deputy (or Assistant Deputy) Commissioner for Trials;

Allow the CCRB to investigate the truthfulness of any material statement that is made within the course of the CCRB's investigation or resolution of a complaint by a police officer who is the subject of that complaint, and recommend discipline against the police officer where appropriate; and

Allow the CCRB members, by a majority vote, to delegate the board's power to issue and seek enforcement of subpoenas to compel the attendance of witnesses and the production of records for its investigations to the CCRB Executive Director.

Shall this proposal be adopted?

## ABSTRACT

This proposal would make several amendments to the City Charter related to the Civilian Complaint Review Board (CCRB).

The CCRB investigates and resolves complaints by the public against police officers involving excessive use of force, abuse of authority, discourtesy, or the use of offensive language. In most cases, the CCRB makes discipline recommendations directly to the Police Department. In more serious cases, under an agreement with the Police Department, the CCRB prosecutes the officer directly in an administrative trial presided over by a Police Department official. In all cases, final disciplinary authority rests with the Police Commissioner.

**Structure of the Civilian Complaint Review Board.** Currently, the CCRB consists of 13 members appointed by the Mayor. The City Council nominates five members. The

Police Commissioner nominates three. And the remaining five members are chosen solely by the Mayor. The Mayor also selects one member to serve as chair. The proposed Charter amendment would expand CCRB by adding two new members: one member appointed by the Public Advocate and one member jointly appointed by the Mayor and the Speaker of the City Council to serve as chair. Whenever the position of chair is vacant, the Mayor will appoint an interim chair from the existing board members. The amendment would also have the City Council directly appoint its members rather than just nominate them and require that vacancies be filled within 60 days.

The proposed amendment would take effect on March 31, 2020, except that the terms of the two new members would begin on July 6, 2020.

**Protected CCRB Budget.** CCRB's budget is set by the Mayor and the City Council each year. Beginning in Fiscal Year 2021, the proposed Charter amendment would require that CCRB's personnel budget be high enough to support a staff size equal to 0.65% of the budgeted number of uniformed police officers, unless the Mayor determines that fiscal necessity requires a lower budget.

**Deviation from Disciplinary Recommendations.** Currently, if the CCRB recommends that a police officer be disciplined, the Police Commissioner must report to the CCRB on any penalties imposed on that officer. But these reports do not have to include or explain the penalty imposed. For the more serious cases that are prosecuted directly by the CCRB at an administrative trial presided over by a Police Department official, the Commissioner must notify the CCRB before imposing discipline that is lower than what is recommended by the CCRB or the presiding official. These notices must explain in detail the Commissioner's reasons for deviating from the recommended discipline and are commonly referred to as "variance memoranda."

Under the proposed Charter amendment, if the CCRB recommends that a police officer be disciplined, the Police Commissioner's report to CCRB would need to describe any discipline or penalties that are imposed. Further, if the Police Commissioner deviates from what CCRB recommends (or what the Police Department official recommends after an administrative trial), then he or she must provide a detailed explanation of the reasons for the deviation. And, if the discipline imposed will be lower than what was recommended, the explanation must show how the Police Commissioner arrived at the decision and include each factor he or she considered. This explanation would have to be provided within 45 days after the discipline is imposed (except where a shorter timeframe is agreed to by the Police Commissioner and CCRB).

This proposed amendment would take effect immediately.

**False Official Statements in CCRB Matters.** Currently, if the CCRB has reason to believe that a police officer has made a false statement during the course of a CCRB investigation, it refers the matter to the Police Department for further investigation and possible disciplinary action and takes no further action on its own. The proposed Charter amendment would allow CCRB to investigate, hear and make findings, and recommend discipline regarding the truthfulness of any material official statement made by an officer

who is the subject of a CCRB complaint if that statement was made during the course of and in relation to the CCRB's resolution of the complaint.

This proposed amendment would take effect on March 31, 2020.

**Delegation of Subpoena Power.** Currently, the Charter empowers the CCRB to issue subpoenas to require that witnesses give testimony or provide records to help with its investigations. These subpoenas can only be issued if a majority of CCRB's board approves. The proposed Charter amendment would allow the CCRB to authorize its Executive Director to issue these subpoenas and to seek enforcement of the subpoenas in court if need be. CCRB would be able to make or withdraw this authorization with a majority vote of its board members.

This proposed amendment would take effect on March 31, 2020.

## PROPOSED CHARTER AMENDMENT TEXT

Section 1. Paragraphs 1, 3, and 4 of subdivision (b) of section 440 of the New York city charter, as added by local law number 1 for the year 1993, are amended to read as follows:

1. The civilian complaint review board shall consist of [thirteen] 15 members of the public, [appointed by the mayor, who] Members shall be residents of the city of New York and shall reflect the diversity of the city's population. The members of the board shall be appointed as follows: (i) five members, one from each of the five boroughs, shall be [designated] appointed by the city council; (ii) one member shall be appointed by the public advocate; (iii) three members with experience as law enforcement professionals shall be designated by the police commissioner and appointed by the mayor; [and (iii) the remaining] (iv) five members shall be [selected] appointed by the mayor; and (v) one member shall be appointed jointly by the mayor and the speaker of the council to serve as chair of the board. [The mayor shall select one of the members to be chair.]

3. The members shall be appointed for terms of three years[, except that of the members first appointed, four shall be appointed for terms of one year, of whom one shall

have been designated by the council and two shall have been designated by the police commissioner, four shall be appointed for terms of two years, of whom two shall have been designated by the council, and five shall be appointed for terms of three years, of whom two shall have been designated by the council and one shall have been designated by the police commissioner]. The public advocate shall make the public advocate's first appointment to the board on or before May 6, 2020. The board member so appointed shall assume office on July 6, 2020. The mayor and the speaker of the council shall make their initial joint appointment to the board on or before May 6, 2020. The member so appointed shall serve as the board's chair and shall assume office on July 6, 2020.

4. Members of the board shall serve until their successors have been appointed and qualified. In the event of a vacancy on the board during the term of office of a member by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as the original appointment within 60 days from the date such vacancy occurred. A member appointed to fill a vacancy shall serve for the balance of the unexpired term. During any period in which the office of the chair is vacant, the mayor shall select a member of the board to serve as interim chair until such vacancy has been filled.

§ 2. Paragraphs 1, 2, 3, and 5 of subdivision (c) of section 440 of the New York city charter, as added by local law number 1 for the year 1993, are amended to read as follows:

1. The board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs

relating to race, ethnicity, religion, gender, sexual orientation and disability. The board shall also have the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received by the board, if such statement was made during the course of and in relation to the board's resolution of such complaint. The findings and recommendations of the board, and the basis therefor, shall be submitted to the police commissioner. No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.

2. The board shall promulgate rules of procedure in accordance with the city administrative procedure act, including rules that prescribe the manner in which investigations are to be conducted and recommendations made and the manner by which a member of the public is to be informed of the status of his or her complaint. Such rules may provide for the establishment of panels, which shall consist of not less than three members of the board, which shall be empowered to supervise the investigation of [complaints] matters within the board's jurisdiction pursuant to this section, and to hear, make findings and recommend action on such [complaints] matters. No such panel shall consist exclusively of members [designated] appointed by the council, or designated by the police commissioner, or [selected] appointed by the mayor.

3. The board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of [complaints submitted] matters within its jurisdiction pursuant to this section. The board may request the corporation counsel to institute proceedings in a

court of appropriate jurisdiction to enforce the subpoena power exercised pursuant to this section, and the board itself may, subject to chapter 17 of the charter, institute such proceedings. The board may, subject to any conditions it deems appropriate, delegate to and revoke from its executive director such subpoena authority and authority to institute proceedings.

5. The board is authorized, within appropriations available therefor, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The board shall employ civilian investigators to investigate all [complaints] matters within its jurisdiction.

§ 3. Paragraphs 1 and 2 of subdivision (d) of section 440 of the New York city charter, as added by local law number 1 for the year 1993, are amended to read as follows:

1. It shall be the duty of the police department to provide such assistance as the board may reasonably request, to cooperate fully with investigations by the board, and to provide to the board upon request records and other materials which are necessary for [the investigation of complaints submitted] investigations undertaken pursuant to this section, except such records or materials that cannot be disclosed by law.

2. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the board and its civilian investigators in connection with [the investigation of complaints submitted] investigations undertaken pursuant to this section, provided that such inquiries are conducted in accordance with department procedures for interrogation of members.

§ 4. Paragraph 3 of subdivision (d) of section 440 of the New York city charter, as added by local law number 1 for the year 1993, is amended to read as follows:



3. The police commissioner shall report to the board in writing on any action taken, including the level of discipline and any penalty imposed, in all cases in which the board submitted a finding or recommendation to the police commissioner with respect to a [complaint] matter within its jurisdiction pursuant to this section. In any case substantiated by the board in which the police commissioner intends to impose or has imposed a different penalty or level of discipline than that recommended by the board or by the deputy commissioner responsible for making disciplinary recommendations, the police commissioner shall provide such written report, with notice to the subject officer, no later than 45 days after the imposition of such discipline or in such shorter time frame as may be required pursuant to an agreement between the police commissioner and the board. Such report shall include a detailed explanation of the reasons for deviating from the board's recommendation or the recommendation of the deputy commissioner responsible for making disciplinary recommendations and, in cases in which the police commissioner intends to impose or has imposed a penalty or level of discipline that is lower than that recommended by the board or such deputy commissioner, shall also include an explanation of how the final disciplinary outcome was determined, including each factor the police commissioner considered in making his or her decision.

§ 5. Section 440 of the New York city charter is amended by adding a new subdivision (g) to read as follows:

(g) 1. Beginning in fiscal year 2021 and for each fiscal year thereafter, the appropriations available to pay for the personal services expenses of the civilian complaint review board during each fiscal year shall not be less than an amount sufficient to fund personal services costs for the number of full-time personnel plus part-time personnel,

calculated based on full-time equivalency rates, equal to 0.65 percent of the number of uniform budgeted headcount of the police department for that fiscal year, as determined consistent with published budgeted headcount documents of the office of management and budget. The calculation to determine the minimum appropriations for the personal services expenses of the civilian complaint review board pursuant to this paragraph shall be set forth in the preliminary expense budget, the executive expense budget, and the adopted budget.

2. Notwithstanding paragraph 1 and in addition to any action that may be undertaken pursuant to section 106, the appropriations available to pay for the personal services expenses of the civilian complaint review board may be less than the minimum appropriations required by paragraph 1 provided that, prior to adoption of the budget pursuant to section 254 or prior to the adoption of a budget modification pursuant to section 107, the mayor determines that such reduction is fiscally necessary and that such reduction is part of a plan to decrease overall appropriations or is due to unforeseen financial circumstances, and the mayor sets forth the basis for such determinations in writing to the council and the civilian complaint review board at the time of submission or adoption, as applicable, of any budget or budget modification containing such reduction.

§ 6. Section 1152 of the New York city charter is amended by adding a new subdivision m, paragraph (2) to read as follows:

m. (2) (a) The amendments to the charter amending paragraphs 1, 3, and 4 of subdivision (b), paragraphs 1, 2, 3, and 5 of subdivision (c), and paragraphs 1 and 2 of subdivision (d), of section 440, approved by the electors on November 5, 2019, shall take effect on March 31, 2020. Officers and employees of the city shall take any actions as are

necessary and appropriate to prepare for the implementation of such amendments prior to such date, and the civilian complaint review board shall promulgate any rules necessary for the timely implementation of such amendments prior to such date.

(b) The amendments to the charter amending paragraph 3 of subdivision (d) and adding a new subdivision (g) of section 440, approved by the electors on November 5, 2019, shall take effect immediately upon certification that the electors have approved such amendments to the charter.

(c) Upon the effective dates included in this paragraphs, the amendments described therein shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees, except as further specifically provided in other sections of this charter.

# **APPENDIX C**

## **BALLOT QUESTION #3 ETHICS AND GOVERNMENT**

## BALLOT QUESTION

This proposal would amend the City Charter to:

Prohibit City elected officials and senior appointed officials from appearing before the agency (or, in certain cases, the branch of government) they served in for two years after they leave City service, instead of the current one year. This change would be applicable to persons who leave elected office or City employment after January 1, 2022;

Change the membership of the Conflicts of Interest Board (COIB) by replacing two of the members currently appointed by the Mayor with one member appointed by the Comptroller and one member appointed by the Public Advocate;

Prohibit members of the COIB from participating in campaigns for local elected office, and reduce the maximum amount of money that members can contribute in each election cycle to the amounts that candidates can receive from those doing business with the City (\$400 or less, depending on the office);

Require that the citywide director of the Minority- and Women-Owned Business Enterprise (M/WBE) program report directly to the Mayor and require further that such director be supported by a mayoral office of M/WBEs; and

Require that the City's Corporation Counsel, currently appointed by the Mayor, also be approved by the City Council.

Shall this proposal be adopted?

## ABSTRACT

This proposal would make several amendments to the City Charter as outlined below.

**Post-Employment Appearance Ban for Elected Officials and Senior Appointed Officials.** Former City employees and elected officials are generally not allowed to communicate with the agency, or in some cases the branch of government, that employed them. This ban lasts for one year following the end of their employment. This proposed Charter amendment would extend this ban to two years for elected officials, deputy mayors, agency heads, paid members of boards and commissions, and the executive director or highest ranking public servant of a board or commission.

This amendment would take effect on January 1, 2022 and would apply to public servants who leave City employment after that date.

**Conflicts of Interest Board Structure.** The Conflicts of Interest Board (COIB) is charged with enforcing and interpreting the ethics laws and rules applicable to public

servants, including rules relating to outside employment, volunteering, gifts, political activities, misuse of position, and post-employment restrictions.

Currently, COIB has five board members, all of whom are appointed by the Mayor for six-year terms with the advice and consent of the City Council. This proposed Charter amendment would replace the two members whose terms expire on March 31, 2022 with one member appointed by the Comptroller and one member appointed by the Public Advocate. The amendment would also require that board decisions be approved by at least three members (a majority), rather than just two.

The proposed amendment would take effect immediately.

**Political Activity by Members of COIB.** The Charter sets standards for COIB members. They must show independence, integrity, civic commitment, and high ethical standards. They cannot hold or seek public office, be public employees, hold political party offices, or appear as a lobbyist before the City. This proposed Charter amendment would further prohibit members of COIB from participating in the campaign of any candidates for an elected City office and reduce the maximum amount of money that members can contribute in each election cycle to candidates for Mayor (to \$400), Public Advocate (to \$400), Comptroller (to \$400), Borough President (to \$320), and City Council (to \$250 each).

This amendment would take effect immediately and would apply to any member appointed to COIB, or who has their term extended, after that date.

**M/WBE Citywide Director and Office.** Pursuant to the City Charter and the Administrative Code, the City's Minority and Women-Owned Business Enterprise (M/WBE) program is charged with promoting City government contracting opportunities for minority and women-owned businesses. Under the current mayoral administration, the program is coordinated by a Citywide M/WBE Director who reports directly to the Mayor and who is supported by an Office of M/WBEs located within the Mayor's Office. But existing law does not require that this continue. The proposed Charter amendment would require that, in all future mayoral administrations, the Citywide M/WBE Director would report directly to the Mayor and be supported by an Office of M/WBEs located within the Mayor's Office.

This proposed amendment would take effect on March 31, 2020.

**Appointment of the Corporation Counsel.** The City's Corporation Counsel is the attorney and counsel for the City and leads the City's Law Department. The Law Department represents the City, including all its agencies, in all civil litigation, juvenile delinquency proceedings and enforcement proceedings in Criminal Court. Among other responsibilities, Law Department attorneys draft and review City and New York State legislation, real estate leases and City contracts. The Law Department also provides legal counsel to City officials on a wide array of issues. Currently, the Corporation Counsel is appointed by the Mayor.

This proposed Charter amendment would require that the Corporation Counsel be appointed by the Mayor with the advice and consent of the City Council. The Mayor would be required to make a nomination within 60 days of either a vacancy or City Council disapproval of a nomination, and to make all reasonable efforts to fill a vacancy within 120 days.

The proposed amendment would take effect immediately and apply to any vacancy in the office of Corporation Counsel that exists upon or occurs after the amendment's approval.

## **PROPOSED CHARTER AMENDMENT TEXT**

Section 1. Chapter 1 of the New York city charter is amended by adding a new section 20-h to read as follows:

§ 20-h. Office of minority and women-owned business enterprises. a. Definitions.

As used in this section, the following terms have the following meanings:

Agency M/WBE officer. The term "agency M/WBE officer" means a deputy commissioner or other executive officer designated pursuant to subdivision f of section 6-129 of the administrative code.

Director. The term "director" means the holder of the position defined under paragraph (14) of subdivision c of section 6-129 of the administrative code.

M/WBE. The term "M/WBE" means a minority or women-owned business enterprise certified in accordance with section 1304.

Office. The term "office" means the office of minority and women-owned business enterprises.

b. Notwithstanding any provision to the contrary contained in section 6-129 of the administrative code, the director shall report directly to the mayor.

c. The mayor shall establish an office of minority and women-owned business enterprises within any office of the mayor. The head of such office shall be either the director or an individual who shall report directly to the director.

d. The office shall perform the following duties:

1. Monitor agencies' compliance with section 1304 of the charter and section 6-129 of the administrative code, and assist the director in carrying out the director's duties under section 6-129 of the administrative code;

2. Work with agency staff, including agency M/WBE officers, to facilitate M/WBE participation in city procurement opportunities;

3. Facilitate communication between M/WBEs, other members of the public and agencies to address M/WBE-related concerns;

4. Assist in the development of policies, maintain oversight and help expand agency programming relating to M/WBEs across all city agencies;

5. Carry out outreach and education efforts regarding programs and opportunities for M/WBEs to engage in city procurement, including efforts to encourage eligible firms to certify as M/WBEs with the city;

6. Establish and maintain relationships with the public to promote government procurement opportunities for M/WBEs; and

7. Other duties as the mayor may assign.

e. The head of each agency shall cooperate with and furnish to the office such information and assistance as may be required in order for the office to perform its duties.



§ 2. Section 31 of the New York city charter, as amended by local law number 96 for the year 2016, is amended to read as follows:

§ 31. Power of advice and consent. Appointment by the mayor of the commissioner of investigation and the corporation counsel, and of the members of the art commission, board of health (other than the chair), board of standards and appeals, city planning commission (other than the chair), civil service commission, landmarks preservation commission, tax commission, taxi and limousine commission and the public members of the environmental control board shall be made with the advice and consent of the council after a public hearing. Within 30 days after the first stated meeting of the council after receipt of a nomination, the council shall hold a hearing and act upon such nomination and in the event it does not act within such period, the nomination shall be deemed to be confirmed.

§ 3. Section 391 of the New York city charter is amended to read as follows:

§ 391. Department; corporation counsel; vacancy. a. There shall be a law department the head of which shall be the corporation counsel.

b. Within 60 days following the occurrence of a vacancy in the office of the corporation counsel, the mayor shall submit to the council the name of the mayor's nominee for corporation counsel. If the council disapproves a nomination while the office of the corporation counsel is vacant, the mayor shall submit a new nomination to the council within 60 days of council disapproval. Each subsequent council disapproval of a mayoral nomination shall begin a new 60-day period. The mayor shall make all reasonable efforts to ensure that the vacancy is filled through the process described in this subdivision within 120 days of the occurrence of the vacancy.

§ 4. Subdivision b of section 392 of the New York city charter is amended to read as follows:

b. The first assistant corporation counsel shall, during the absence or disability of the corporation counsel, possess all the powers and perform all the duties of the corporation counsel and in case of the death of the corporation counsel or of a vacancy in that office shall act as corporation counsel until the appointment and qualification of a corporation counsel in accordance with law.

§ 5. Section 2602 of the New York city charter, as added by a vote of the electors on November 8, 1988, subdivisions a and c as amended by a vote of the electors on November 7, 1989, is amended to read as follows:

§ 2602. Conflicts of interest board. a. There shall be a conflicts of interest board consisting of five members[,]. Three members shall be appointed by the mayor, one member shall be appointed by the public advocate, and one member shall be appointed by the comptroller. All members shall be appointed with the advice and consent of the council. The mayor shall designate a chair.

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, be a lobbyist as that term is defined in section 3-211 of the administrative code or [appear as a lobbyist before the city] participate in any capacity in a campaign by a candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council. The restrictions on contributions by natural persons who have business dealings with the city set forth in

subdivision 1-a of section 3-703 of the administrative code, or a successor law, shall apply to contributions by members. Each member shall agree not to make contributions in excess of such restrictions.

c. Each member shall serve for a term of six years[;]. [provided] Provided, however, that [of the three members first appointed,] one member appointed by the mayor shall be appointed for a term to expire on March [thirty-first, nineteen hundred ninety] 31, 2020[, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two, and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one] two members appointed by the mayor shall be appointed for [a term] terms to expire on March [thirty-first, nineteen hundred ninety-four. If the mayor] 31, 2024; and the members first appointed by the public advocate and comptroller shall be appointed for terms to expire on March 31, 2028, replacing two mayoral appointees whose terms expire on March 31, 2022. For all members, if the appointing authority has not submitted to the council a nomination for appointment of a successor at least [sixty] 60 days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within [forty-five] 45 days of receipt of such nomination from the [mayor] appointing authority, the nomination shall be deemed to be confirmed. No member shall serve for more than two consecutive six-year terms. [The three initial nominations by the mayor shall be made by the first day of

February, nineteen hundred eighty-nine, and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.]

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the [mayor] appropriate appointing authority made to the council within [sixty] 60 days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within [forty-five] 45 days of receipt of such nomination from the [mayor] appointing authority, the nomination shall be deemed to be confirmed.

f. Members may be removed by [the mayor] their respective appointing authority for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint a counsel to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the counsel shall be defined in writing, provided that neither the counsel, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. [Two] Three members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least [two] three members of the board.

§ 6. Paragraphs 1 through 3 of subdivision d of section 2604 of the New York city charter, as added by a vote of the electors on November 8, 1988, paragraph 3 of such subdivision as amended by local law number 59 for the year 1996, are amended to read as follows:

1. No public servant shall solicit, negotiate for or accept any position:

[(i)] (a) from which, after leaving city service, the public servant would be disqualified under this subdivision [,] ; or

[(ii)] (b) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city.

2. (a) No former public servant, other than those public servants listed in subparagraphs (b) and (c) of this paragraph, shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant [; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with

that agency. For the purposes of this paragraph, the agency served by a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate.

3. No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person].

(b) The following former public servants shall not, within a period of two years after termination of their service with the city, appear before the city agency they served:

(1) any head of an agency that is not a board or commission, other than the agency heads listed in subparagraph (c) of this paragraph;

(2) the executive director or the highest ranking public servant employed by a board or commission; and

(3) any paid member of a board or commission.

(c) The following former public servants shall not, within a period of two years after termination of their service with the city, appear before any agency in the branch of city government they served:

(1) any elected official; and

(2) the holder of the position of deputy mayor, director of the office of management and budget, commissioner of citywide administrative services, corporation

counsel, commissioner of finance, commissioner of investigation and chair of the city planning commission.

For the purposes of this [paragraph] subparagraph (c), the legislative branch of the city consists of the council and the offices of the council, and the executive branch of the city consists of all other agencies of the city, including the office of the public advocate.

3. The prohibitions set forth in subparagraphs (a), (b) and (c) of paragraph 2 of this subdivision shall not be deemed to prohibit a former public servant from making communications with the agency served by the public servant, or with any agency in the branch of city government served by the public servant, as applicable, which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with such agency or in any agency in the branch of city government served during the period of the public servant's service, as applicable.

§ 7. Section 1152 of the New York city charter is amended by adding a new subdivision m, paragraph (3) to read as follows:

m. (3) (a) The amendments to the charter adding a new section 20-h, approved by the electors on November 5, 2019, shall take effect on March 31, 2020.

(b) The amendments to the charter amending sections 31 and 391 and subdivision b of section 392, approved by the electors on November 5, 2019, shall take effect immediately upon certification that the electors have approved such amendments to the charter; provided, however, that if the office of the corporation counsel is vacant on such effective date, such vacancy will be deemed to have occurred on such effective date.

(c) The amendments to the charter amending section 2602, approved by the electors on November 5, 2019, shall take effect immediately upon certification that the electors have approved such amendments to the charter. Provided, however, that:

(i) The two offices of the conflicts of interest board for which terms expire on March 31, 2022 shall continue until successors have been appointed by the public advocate and comptroller, pursuant to section 2602, for the ensuing terms. The mayor shall not make nominations for successors to such offices unless such offices become vacant prior to March 31, 2022, in which case the mayor shall make nominations for successors to serve for the unexpired portion of the terms. The public advocate and comptroller shall make their initial nominations to the conflicts of interest board by January 30, 2022. If either fails to do so by such date, the term of the member in office shall be extended for an additional year, and the term of the successor to such member shall be shortened by an equal amount of time, pursuant to subdivision c of section 2602.

(ii) The amendments to the charter amending subdivision b of section 2602 shall only apply to members serving on the conflicts of interest board whose terms begin after the effective date of such amendments, except that such amendments shall apply to any member whose term is extended pursuant to subdivision c of section 2602 after the effective date of such amendments.

(d) The amendments to the charter amending paragraphs 1 through 3 of subdivision d of section 2604, approved by the electors on November 5, 2019, shall take effect on January 1, 2022 and shall only apply to public servants, as that terms is defined in section 2601, who leave service with the city after such date.



(e) Upon the effective dates included in this paragraph, the amendments described therein shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees, except as specified by the terms of this paragraph or as specifically provided in other sections of this charter. Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of such amendments prior to such effective dates.

# **APPENDIX D**

## **BALLOT QUESTION #4 CITY BUDGET**

## BALLOT QUESTION

This proposal would amend the City Charter to:

Allow the City to use a revenue stabilization fund, or “rainy day fund,” to save money for use in future years, such as to address unexpected financial hardships. Changes to State law will also be needed for this rainy day fund to be usable;

Set minimum budgets for the Public Advocate and Borough Presidents. The budget for each office would be at least as high as its Fiscal Year 2020 budget adjusted annually by the lesser of the inflation rate or the percentage change in the City’s total expense budget (excluding certain components), unless the Mayor determines that a lower budget is fiscally necessary;

Require the Mayor to submit a non-property tax revenue estimate to the City Council by April 26 (instead of June 5). The Mayor may submit an updated estimate after that date, but must explain why the updated estimate was fiscally necessary if the update is submitted after May 25; and

Require that, when the Mayor makes changes to the City’s financial plan that would require a budget modification to implement, the proposed budget modification shall be submitted to the Council within 30 days.

Shall this proposal be adopted?

## ABSTRACT

This proposal would make several amendments to the City Charter related to the City’s budget and budgeting process.

The City Charter establishes a detailed process by which the Mayor and the City Council set the City’s budget each year. Generally, the Mayor proposes a Preliminary Budget in January followed by an Executive Budget in April. The City Council adopts the budget in June, typically after negotiation with the Mayor, and that budget applies for the following fiscal year, which begins on July 1<sup>st</sup>.

**Revenue Stabilization Fund (also referred to as a “Rainy Day” Fund).** A “rainy day” fund is a fund in which excess revenues from one year are set aside for use in future years to help fill budget gaps caused, for example, by economic downturns, emergencies, or unforeseen decreases in revenue. “Rainy day” funds can provide an alternative to raising taxes and cutting services in times of fiscal necessity, but there are currently legal obstacles to creating a “rainy day” fund for the City.

One legal obstacle is that the City Charter prohibits using revenue received and saved in one year from being considered in balancing a future year’s budget. The

proposed Charter amendment would provide an exception to the Charter's balanced budget requirements to allow money from the "rainy day" fund, when established and funded, to be used to achieve a balanced budget in a given year. Changes to state law, which contains requirements similar to those in the City Charter, are also necessary for the City to use a "rainy day" fund. Those state law requirements presently would expire in 2033.

If the proposed Charter amendment is enacted, and if the necessary changes to state law occur, the City would then be able to use a "rainy day" fund, subject to other restrictions in state law that regulate the use of such a fund.

**Protected Budgets for the Public Advocate and Borough Presidents.** The budgets for the offices of the elected Public Advocate and the five elected Borough Presidents are set by the Mayor and the City Council each year. Beginning in Fiscal Year 2021, the proposed Charter amendment would set minimum budgets for the Public Advocate and Borough Presidents. Using each office's current Fiscal Year 2020 budget as a baseline, these budgets would be adjusted in future fiscal years by the lesser of the percentage change in the City's total expense budget (excluding certain components such as pension contributions) or the rate of inflation in the New York City metropolitan area, unless the Mayor makes a written determination that a lower budget is fiscally necessary in a given year.

This proposed amendment would take effect immediately so as to allow the required the minimum budgets to be in place for Fiscal Year 2021.

**Revenue Estimate.** The City Charter currently requires the Mayor to submit to the City Council an estimate of the anticipated revenues in the next fiscal year from sources other than property taxes by June 5<sup>th</sup>, a date after which certain consequences occur under the City Charter if the budget has not yet been adopted. In practice, however, the Mayor usually submits the estimate at about the time when the budget is adopted, which often occurs later than June 5<sup>th</sup>. The non-property tax revenue estimate is significant in part because the Charter requires the City Council to set property tax rates sufficient to balance the budget (in effect, sufficient to fund the difference between the non-property tax revenue estimate and the budgeted expense spending) immediately upon adoption of the budget.

The proposed Charter amendment, which would take effect immediately, would require the Mayor to submit the non-property tax revenue estimate to the City Council when the Mayor submits the executive budget in April. The Mayor could update this estimate up until May 25<sup>th</sup>. After May 25<sup>th</sup>, the Mayor could only update the estimate further if the Mayor made a written determination of fiscal necessity.

This proposed amendment would take effect immediately so as to allow for this procedure to be in place for Fiscal Year 2021.

**Budget Modification Timing.** After the City's budget is adopted, it can be

modified during the fiscal year. In many cases, if the Mayor wants to update the budget to reflect changes to spending or revenue or to transfer money allocated for one agency or program to another, the Mayor must either – depending on the nature of the proposed changes to the budget – seek the approval of the City Council or notify the Council to provide it with an opportunity to disapprove the proposed changes. This process is commonly referred to as seeking a “budget modification.”

In addition to preparing the City budget, the Mayor also prepares a financial plan that contains information about current fiscal year spending and revenue receipts and frequently includes information about new programs or budget cuts. The City Charter requires financial plan updates to be published at least quarterly during the fiscal year.

The proposed Charter amendment would require that, beginning in Fiscal Year 2021, when the Mayor submits a financial plan update that contains a change to revenue or spending that would require the Mayor to seek a budget modification, the necessary budget modification must be submitted to the City Council within 30 days after the financial plan update.

## **PROPOSED CHARTER AMENDMENT TEXT**

Section 1. Section 24 of the New York city charter is amended by adding a new subdivision o to read as follows:

o. 1. For fiscal year 2021 and each fiscal year thereafter, the appropriations available to pay for the expenses of the public advocate shall be not less than a sum equal to the minimum appropriation for the public advocate for the prior fiscal year modified by the percentage change, if any, in the total city-funded appropriations contained in the expense budget, excluding debt service, pension contributions and fringe benefits, from the prior fiscal year to the city-funded total appropriations contained in the expense budget, excluding debt service, pension contributions, and fringe benefits, for the current fiscal year; provided, however, that (i) such minimum appropriation shall not increase in any year by a percentage greater than the increase in the consumer price index for all urban consumers in the New York-Newark-Jersey City area, as published by the bureau of labor statistics of the United States department of labor, or a successor index,

for the calendar year prior to that in which the budget is adopted and (ii) for the purposes of making the calculations required by this paragraph, the minimum appropriation for fiscal year 2020 shall be deemed to be \$4,529,267. Any proposed budget shall ensure compliance with the minimum appropriation required by this subdivision for the upcoming fiscal year. The calculation to determine the minimum appropriations for the public advocate pursuant to this paragraph shall be set forth in the preliminary expense budget, the executive expense budget, and the adopted budget.

2. Notwithstanding paragraph 1, and in addition to any action that may be taken pursuant to section one hundred six, the appropriations available to pay for the expenses of the public advocate may be less than the minimum appropriations required by paragraph 1, provided that, prior to adoption of the budget pursuant to section two hundred fifty-four or prior to the adoption of a budget modification pursuant to section one hundred seven, the mayor determines that such reduction is fiscally necessary and that such reduction is part of a plan to decrease overall appropriations or is due to unforeseen financial circumstances, and the mayor sets forth the basis for such determinations in writing to the council and the public advocate at the time of submission or adoption, as applicable, of any budget or budget modification containing such reduction.

§ 2. Section 82 of the New York city charter is amended by adding a new subdivision 18 to read as follows:

18. a. For fiscal year 2021 and each fiscal year thereafter, the appropriations available to pay for the expenses of each borough president shall be not less than a sum equal to the minimum appropriation for that borough president for the prior fiscal year modified by the percentage change, if any, in the total city-funded appropriations

contained in the expense budget, excluding debt service, pension contributions and fringe benefits, from the prior fiscal year to the city-funded total appropriations contained in the expense budget, excluding debt service, pension contributions, and fringe benefits, for the current fiscal year; provided, however, that (i) such minimum appropriation shall not increase in any year by a percentage greater than the increase in the consumer price index for all urban consumers in the New York-Newark-Jersey City area, as published by the bureau of labor statistics of the United States department of labor, or a successor index, for the calendar year prior to that in which the budget is adopted and (ii) for the purposes of making the calculations required by this paragraph, the minimum appropriation for fiscal year 2020 shall be deemed to be \$6,282,711 for the president of the borough of the Bronx, \$7,240,311 for the president of the borough of Brooklyn, \$5,284,978 for the president of the borough of Manhattan, \$5,821,751 for the president of the borough of Queens and \$4,757,434 for the president of the borough of Staten Island. Any proposed budget shall ensure compliance with the minimum appropriation required by this subdivision for the upcoming fiscal year. The calculation to determine the minimum appropriations for each borough president pursuant to this paragraph shall be set forth in the preliminary expense budget, the executive expense budget, and the adopted budget.

b. Notwithstanding paragraph a, and in addition to any action that may be taken pursuant to section one hundred six, the appropriations available to pay for the expenses of each borough president may be less than the minimum appropriations required by paragraph a, provided that, prior to adoption of the budget pursuant to section two hundred fifty-four or prior to the adoption of a budget modification pursuant to section one hundred seven, the mayor determines that such reduction is fiscally necessary and that

such reduction is part of a plan to decrease overall appropriations or is due to unforeseen financial circumstances, and the mayor sets forth the basis for such determinations in writing to the council and the applicable borough president at the time of submission or adoption, as applicable, of any budget or budget modification containing such reduction.

§ 3. Subdivisions 5 through 16 of section 250 of the New York city charter, as amended by a vote of the electors on November 8, 2005, are renumbered as subdivisions 6 through 17 respectively, and such section is amended by adding a new subdivision 5 to read as follows:

5. An estimate of the probable amount of (1) receipts into the city treasury during the ensuing fiscal year from all the sources of revenue of the general fund and (2) all receipts other than those of the general fund and taxes on real property.

§ 4. Subdivision a and paragraph 1 of subdivision b of section 258 of the New York city charter, as added by a vote of the electors on November 8, 2005, are amended to read as follows:

a. The operations of the city shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles unless such deficit is offset by funds withdrawn for such purpose from the revenue stabilization fund established pursuant to section one thousand five hundred twenty-eight. The mayor shall take all actions necessary in accordance with the provisions of the charter, including but not limited to section one hundred six, or other applicable law to ensure that the city is in compliance with this subdivision.

b. (1) For each fiscal year, the city's budget covering all expenditures other than capital items shall be prepared and balanced so that the results thereof would not show a



deficit when reported in accordance with generally accepted accounting principles, unless such deficit is offset by funds withdrawn for such purpose from the revenue stabilization fund established pursuant to section one thousand five hundred twenty-eight, and would permit comparison of the budget with the report of actual financial results prepared in accordance with generally accepted accounting principles.

§ 5. Subdivisions e and f of section 258 of the New York city charter are relettered subdivisions f and g, respectively, and such section is amended by adding a new subdivision e to read as follows:

e. When the mayor issues modifications to the financial plan pursuant to subdivision c of this section, and such modifications would require the mayor to make a notification or submission to the council pursuant to subdivision b or e of section 107, the mayor shall make such notification or submission within 30 days of issuance of such modifications to the financial plan.

§ 6. Section 1515 of the New York city charter, as amended by a vote of the electors on November 7, 1989, is amended to read as follows:

§ 1515. Statement and estimate by the mayor. a. The mayor shall prepare and submit to the council, immediately upon the adoption of a single budget pursuant to section two hundred fifty-four, a statement setting forth the amount of the budget as approved by the council for the ensuing year [and the mayor shall prepare and submit to the council not later than the fifth day of June an estimate of the probable amount of (1) receipts into the city treasury during the ensuing fiscal year from all the sources of revenue of the general fund and (2) all receipts other than those of the general fund and taxes on real property]. The mayor may include in the statement of the amount of the budget as

approved by the council a confirmation of such amount, and thereby waive mayoral veto power pursuant to section two hundred fifty-five.

b. If, as a result of the exercise of the mayor's veto pursuant to section two hundred fifty-five, the amount of the budget for the ensuing fiscal year differs from the amount of the budget approved by the council pursuant to section two hundred fifty-four, not later than two days after the budget is finally adopted the mayor shall prepare and submit to the council a statement setting forth the amount of the budget for the ensuing year, and the council shall, if necessary, fix new annual tax rates pursuant to subdivision c of section one thousand five hundred sixteen.

c. The mayor shall prepare and submit an estimate of the probable amount of (1) receipts into the city treasury during the ensuing fiscal year from all the sources of revenue of the general fund and (2) all receipts other than those of the general fund and taxes on real property in the budget message submitted to the council pursuant to section two hundred forty-nine. After submission of the budget message to the council pursuant to section two hundred forty-nine but not later than the twenty-fifth day of May, the mayor may prepare and submit to the council an updated estimate of the probable amount of (1) receipts into the city treasury during the ensuing fiscal year from all the sources of revenue of the general fund and (2) all receipts other than those of the general fund and taxes on real property. After the twenty-fifth day of May and until adoption of the budget pursuant to section two hundred fifty-four, the mayor may prepare and submit to the council an update of such estimate, provided that the mayor makes a determination that it is fiscally necessary to do so due to changed circumstances, and submits such determination in writing to the council setting forth the basis of that determination and the

changed circumstances between the previous estimate and such update that warrant such modification.

[c.] d. The mayor, prior to [establishing the final] issuing any estimate of revenues for the ensuing fiscal year as required by this section where such estimate is issued on or after the first of May, shall consider any alternative estimate of revenues which [is] has been timely submitted pursuant to subdivision [d] e of this section at least two weeks before the issuance of the mayor's estimate and which is accompanied by a statement of the methodologies and assumptions upon which such estimate is based in such detail as is necessary to facilitate official and public understanding of such estimates.

[d.] e. Any person or organization may, prior to the fifteenth day of May, submit to the mayor an official alternative estimate of revenues for consideration by the mayor in accordance with subdivision [c] d. Such estimate shall be in a form prescribed by the mayor.

§ 7. Subdivision a of section 1516 of the New York city charter is amended to read as follows:

a. The council shall fix the annual tax rates immediately upon the approval of the budget pursuant to section two hundred fifty-four. The council shall deduct the total amount of receipts [as estimated] contained in the most recent estimate submitted by the mayor pursuant to section two hundred fifty or section one thousand five hundred fifteen from the amount of the budget, for the ensuing fiscal year, and shall cause to be raised by tax on real property such sum as shall be as nearly as possible but not less than, the balance so arrived at, by fixing tax rates in cents and thousandths of a cent upon each

dollar of assessed valuation. The tax rates shall be such to produce a balanced budget within generally accepted accounting principles for municipalities.

§ 8. Chapter 58 of the New York city charter is amended by adding a new section 1528 to read as follows:

§ 1528. Revenue stabilization fund. The city may maintain a revenue stabilization fund to serve as a year-to-year reserve account, subject to the New York state financial emergency act for the city of New York as amended from time to time or any successor statute. Such fund shall be created and operated in accordance with any applicable state law.

§ 9. Section 1152 of the New York city charter is amended by adding a new subdivision m, paragraph (4) to read as follows:

m. (4) (a) The following amendments to the charter, approved by the electors on November 5, 2019, shall take effect immediately upon certification that the electors have approved such amendments:

(1) The amendments to the charter adding a new subdivision o to section 24 and adding a new subdivision 18 to section 82;

(2) The amendments to the charter renumbering subdivisions 5 through 16 of section 250 to subdivisions 6 through 17, respectively, adding a new subdivision 5 to section 250 and amending section 1515 and subdivision a of section 1516; and

(3) The amendments to the charter amending subdivision a and paragraph 1 of subdivision b of section 258 and adding a new section 1528.

(b) The amendments to the charter relettering subdivisions e and f of section 258 to be subdivisions f and g, respectively, and adding a new subdivision e to section 258,

approved by the electors on November 5, 2019, shall take effect on July 1, 2020. Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of these amendments prior to such date.

(c) Upon the effective dates included in this paragraph, the amendments described therein shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees, except as further specifically provided in other sections of this charter.

# **APPENDIX E**

## **BALLOT QUESTION #5 LAND USE**

## BALLOT QUESTION

This proposal would amend the City Charter to:

For projects subject to the Uniform Land Use Review Procedure (ULURP), require the Department of City Planning (DCP) to transmit a detailed project summary to the affected Borough President, Borough Board and Community Board at least 30 days before the application is certified for public review, and to post that summary on its website; and

Provide Community Boards with additional time to review ULURP applications certified for public review by DCP between June 1 and July 15, from the current 60 day review period to 90 days for applications certified in June, and to 75 days for applications certified between July 1 and July 15.

Shall this proposal be adopted?

## ABSTRACT

This proposal would make two amendments to the Charter's ULURP provisions.

The City Charter establishes a Uniform Land Use Review Procedure (ULURP), which specifies a timeframe and sequence for public review and approval of land use applications by different government actors – Community Boards, Borough Presidents, the City Planning Commission (CPC), and, ultimately, the City Council. A wide variety of land use actions are subject to ULURP, including designation of zoning districts to allow different densities and uses in an area; the purchase, sale, or lease of property by the City, such as purchasing land to build a sanitation garage; and special permits to permit projects that vary from strict conformance with the City's Zoning Resolution.

**ULURP Pre-Certification Notice Period.** ULURP begins when an applicant (which can be a private actor, such as a developer, or a City agency) formally files its application with the Department of City Planning (DCP) and DCP certifies that the application is complete.

This proposed Charter amendment would require DCP to send a detailed project summary to the affected Community Board, Borough President and Borough Board before DCP certifies that the project application(s) is complete and commences the ULURP public review period. The required project summary would have to be transmitted to the affected Community Board, Borough President and Borough Board no later than 30 days before the application is certified, and published by DCP on its website within five days thereafter. The application(s) as certified by DCP would have to be substantially consistent with the project summary that is transmitted by DCP and published on its website.

This proposed amendment would take effect on August 31, 2020.

**Additional ULURP Review Time for Community Boards.** As part of ULURP, once a Community Board receives an application that DCP has certified as complete, it has 60 days to notify the public, hold a public hearing, and submit its written recommendations to the City Planning Commission (CPC) and the affected Borough President. The Charter requires that Community Boards conduct at least one public hearing each month, except that such hearings are generally not required in July and August. Some community boards are unable to hold the required ULURP hearing during the summer months, making it difficult or not possible for them to make their recommendations to the CPC and Borough President.

The proposed Charter amendment would provide additional time to a Community Board during the ULURP process to review, hold a public hearing and issue its recommendation for those applications certified between June 1 and July 15 of the calendar year. Specifically, the proposed amendment provides that Community Boards would have 90 days (instead of 60 days) to review ULURP applications that are certified in June and 75 days (instead of 60 days) to review ULURP applications that are certified between July 1 and July 15.

This proposed amendment would take effect immediately.

## PROPOSED CHARTER AMENDMENT TEXT

Section 1. Subdivision c of section 197-c of the New York city charter, as amended by a vote of the electors at a general election held on November 7, 1989, is amended to read as follows:

c. The department of city planning shall be responsible for certifying that applications pursuant to subdivision a of this section are complete and ready to proceed through the uniform land use review procedure provided for in this section. The department shall not certify an application unless (1) each affected borough board, borough president and community board has received from the department, at least thirty days before certification, a pre-certification notice containing information specified by the city planning commission, which shall include the project location, the purpose of the proposed actions, and a description of the proposed actions, sufficient to put such borough board,



borough president and community board on notice of the substance of the application, and (2) the application is substantially consistent with such notice. The department shall publish such notice on the department's website within five days of the transmission of such notice to the affected borough board, borough president and community board. Upon certification of an application, the department shall give notice of such certification to the council. If an application under this section has not been certified within six months after filing, both the applicant and, if the land use proposed in an application is consistent with the land use policy or strategic policy statement of the affected borough president, the affected borough president shall have the right at any time thereafter to appeal to the city planning commission for certification. The commission shall promptly, but in any event within sixty days of the filing of such an appeal, either certify the application or state in writing what further information is necessary to complete the application. If such an appeal is brought by an affected borough president, the affirmative vote of five members of the commission shall be sufficient to certify the application.

§ 2. Subdivision e of section 197-c of the New York city charter, as amended by a vote of the electors on November 7, 1989, is amended to read as follows:

e. [Each] (1) Except as otherwise provided in paragraph two of this subdivision each affected community board shall, not later than sixty days after receipt of an application that has been certified pursuant to subdivision c of this section,

[[1]] (a) notify the public of the application in a manner specified by the city planning commission pursuant to subdivision i of this section, and

~~[(2)] (b) either [(a)] (i) conduct a public hearing thereon and prepare and submit a written recommendation directly to the city planning commission and to the affected borough president or [(b)] (ii) where authorized by this charter, submit a written waiver of the right to conduct a public hearing and to submit such written recommendations to the commission and the affected borough president.~~

(2) Where an application has been certified during the month of June, the affected community board shall provide notification pursuant to subparagraph (a) of paragraph 1 of this subdivision and conduct a hearing or, where authorized, submit a waiver of the right to conduct a public hearing pursuant to subparagraph (b) of paragraph 1 of this subdivision not later than ninety days after receipt of such application or, where such application is certified during the period of time from and including July 1 to and including July 15, not later than seventy-five days after receipt of such application.

§ 3. Section 1152 of the New York city charter is amended by adding a new subdivision m, paragraph (5) to read as follows:

m. (5) (a) The amendments to the charter amending subdivision c of section 197-c, approved by the electors on November 5, 2019, shall take effect on August 31, 2020. Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of such amendments prior to the such date, and, no later than such date, the city planning commission shall establish rules providing minimum standards for the content and form of pre-certification notices to be submitted to community boards, borough boards and borough presidents.

(b) The amendments to the charter amending subdivision e of section 197-c, approved by the electors on November 5, 2019, shall take effect immediately upon certification that the electors have approved such amendments to the charter.

(c) Upon the effective dates included in this paragraph, the amendments described therein shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees, except as further specifically provided in other sections of this charter.