NYC Charter Revision Commission

DRAFT

PROPOSED AMENDMENTS TO THE NEW YORK CITY CHARTER

August 17, 2010

New York City Charter Revision Commission
2 Lafayette Street, 14th Floor
New York, N.Y. 10007

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EXECUTIVE SUMMARY

Shortly after Mayor Michael R. Bloomberg established the 2010 Charter Revision Commission, the Commission conducted an analysis of the testimony presented by the public, government officials and community organizations at its initial round of five public hearings, one held in each borough. On May 10, based on this analysis, the commissioners resolved to further explore five broad areas: term limits, voter participation, public integrity, government structure, and land use. The Commission subsequently held five issue forums at which it heard presentations by experts and additional testimony by the public.

At the direction of the Chair, the staff then prepared a Preliminary Report containing recommendations for the Commission's consideration. The Commission solicited public comments on these recommendations at a final round of hearings, again held in each of the boroughs.

On August 11, the Commission met and resolved to place 11 proposals on the November ballot.

Term Limits

Under existing charter provisions, as amended by a local law enacted by the Council in, 2008, City Council members and other elected City officials may currently serve up to three consecutive four year terms. Previously, a law enacted by voter initiative in 1993 established a limit of two four year terms for elected officials. In order to allow the electorate to choose between a two-term and a three-term limit, the Commission determined to place a proposal on the ballot to reduce the current limit of three consecutive terms for elected City officials to two consecutive full terms. Additionally, the proposal would prohibit the City Council from altering the term limit of incumbent elected officials; and provide that the proposed changes to two terms would apply to officials first elected to office after November 5, 2013.

Reducing Signature Requirements for Petitions

Voter turnout in City elections is dramatically low with only 26% of registered New Yorkers having voted in the last mayoral election. While the Commission explored a number of provisions designed to increase voter turnout, most of these would require a change in state law or the State Constitution. Some measures within the City's jurisdiction to enact can apply only to city elections. Since virtually all city elections occur at the same time and place as state elections, the differing voting requirements present the potential for massive voter confusion. The Commission has, however, proposed a measure permitted under state law to enable candidates for City elections to get onto the ballot with a reduced number of petition signatures. The proposal reduces from 7,500 to 3,750 the number of signatures necessary to gain access to a party primary for the Mayor, Comptroller, and Public Advocate; reduces from 4,000 to 2,000 the number of signatures necessary to gain access to a party primary for Borough Presidents; and reduces from 900 to 450 the number of signatures necessary for Council members to gain access to a party primary, or to 2,700 for access to the general election ballot for independent candidates.

Consolidating the Voter Assistance Commission (VAC) and the Campaign Finance Board (CFB) and Changing the terms of CFB Board Members

The Commission is proposing to consolidate the Voter Assistance Commission with the CFB (it is now a free standing entity); restructure its membership; rename it the "Voter Assistance Advisory Committee"; and redefine certain administrative functions and responsibilities of both entities. CFB has a well-established and managed operative framework through which VAC's impact can be enhanced. VAC already works with CFB in producing the Voters Guide and the Video Voters Guide. CFB would appoint the voter assistance coordinator and be responsible for carrying out the voter assistance functions currently listed in the Charter with the advice and assistance of VAC. The proposal will also move the commencement date for CFB members from April 1 to January 1.

Require the Disclosure of Independent Campaign Contributions

In recent years, independent expenditures by individuals or entities not working in tandem with declared candidates have become an increasingly significant part of election- related

spending in New York City. To provide the public with more information about these expenditures and enhance the extensive disclosure already required of persons or entities that expend or contribute monies in conjunction with identified candidates for city office, the Commission proposes to amend the City's renowned Campaign Finance law to require disclosure of expenditures by persons or entities who are acting independently of candidates. (This proposal involves disclosure only and does not set new contribution and expenditure limits for candidates.) The Commission's proposal will require any individual or entity making a contribution or expenditure of $1000 or more endorsing a candidate or referendum, independent of that candidate or the proponent of the referendum, to disclose the expenditure to the CFB; require any entity similarly making a contribution of $5,000 or more to disclose the sources of the funds: and require that literature or advertisements funded by individuals or entities making independent expenditures identify the name of the individual or entity making the expenditure.

Amendments to Chapter 68, Conflicts of Interest

The Commission proposes two reforms to the Charter to increase accountability among City employees, and to prevent corruption and abuse. The Commission proposes to increase penalties for violation of the City's conflicts of interest law and to establish mandatory training for city employees. The first penalty proposal recommends that penalties for a single conflict of interest violation be raised from a maximum of $10,000 to a maximum of $25,000. The current fine schedule has not been updated or adjusted for inflation since 1988 and it will give the Conflicts of Interest Board ("COIB") more flexibility to finely calibrate its penalties and thereby signal the relative importance of the proscriptions in the conflicts law. The second proposal authorizes disgorgement of gains obtained as a result of any conflict of interest violation. The Commission expects that these two provisions will have a deterrent effect on conflicts of interest violations. Finally, the Commission offers a proposal that mandates that all city employees be trained in the City's Conflict of Interest provisions within 60 days of the commencement of city employment and periodically thereafter. While the COIB has been systematically training city employees, this proposal clarifies that all employees must be trained and requires agencies to develop plans for providing training. The training may be in person or online.

Consolidating Administrative Tribunals

Adjudication of administrative violations currently take place at more than a dozen separate tribunals operated under different procedures and with differently qualified administrative law judges. This proposal provides for administrative consolidation of tribunals to streamline operations and create procedural norms. Many adjudicatory hearings are now held in-house at the regulating agency, and have been open to the perception that they lack the appearance of impartiality and independence. This proposal arose out of a 2005 Charter proposal to set a code of conduct for administrative law judges mirroring the rules applicable to state court judges. The proposal would authorize the Mayor to transfer adjudicatory functions of various tribunals to a single tribunal or agency; authorize the Mayor to convene a committee to evaluate and make recommendations regarding consolidation; authorize the Office of Administrative Trials and Hearings to handle the appointment of administrative law judges; and require a public hearing with notice before the mayor's orders and directives go into effect. Finally, the Commission proposes the enhancement of the adjudicatory functions of the Department of Consumer Affairs by authorizing the Department to hold impartial hearings for violations of the laws the Department enforces. Currently violations of all Consumer Protection laws not related to licensed entities are adjudicated in State Court.

Reviewing Reporting Requirements and Advisory Bodies

The Commission is proposing a mechanism to review the more than 175 reports and advisory bodies established by the Charter to determine if such reports and advisory bodies are currently useful or redundant and ineffective. Many reports have become unnecessary and may be a waste of time and resources for agencies in a time of fiscal austerity. The proposal establishes a Commission on Reporting and Advisory Bodies chaired by the Mayor's Director of Operations and additionally comprised of the City Council Speaker and two other Council members chosen by the Speaker, the Corporation Counsel, and the director of the Office of Management and Budget and the Department of Information Technology and Telecommunications. The proposal also requires the Commission on Reporting and Advisory Bodies to notify and consider input from the groups and organizations subject to or affected by these reports or advisory bodies before deciding to retain, waive in whole or in part, or dissolve a requirement or an advisory body, subject to review by the Council The new legislation would

establish factors for the Commission on Reporting and Advisory Boards to consider when reviewing a reporting requirement or advisory body. The proposal also imposes a three-year waiting period before the Commission may review a new reporting requirement; and does not affect the power of the Council to repeal, limit, extend, or enhance a reporting requirement or advisory body

Fair Share

The City's Fair Share law was established with the goal of distributing the burdens and benefits of city facilities among local communities. In order to give more transparency to "fair share" decisions, the Commission proposes to amend Section 204(d) of the Charter to require that the map and explanatory text published by the Department of City Planning also include the locations of state and federal transportation and solid waste management facilities, as well as private transportation and waste management facilities which act as the city's counterpart in providing a public service.

Issues for Future Consideration

In addition to the questions the Commission is placing on the ballot, the Commission has seriously considered other issues relating to election reform, public integrity, and government structures and is recommending that they be further studied.

TERM LIMITS

Background

Elected officeholders in the City have been subject to term limits since 1993, when New York City voters approved, by a 59% to 41% margin, a ballot initiative to prohibit persons from being elected to or serving in any elective city office for more than two consecutive full terms.[1]

In 2008, Local Law 51, which amended Charter § 1138 extended the number of consecutive terms to three. Prior to the enactment of Local Law 51, the City Council had considered two proposals to amend Charter § 1138 as originally enacted, but both met with failure. In 1996, the City Council unsuccessfully attempted, by ballot measure, to extend the two-term consecutive term limit by an additional term; the voters defeated the proposal by a 54% to 46% margin. And in March of 2001, with 35 of the 51 council members prohibited by Charter § 1138 from seeking re-election the following November, the Council's Governmental Operations Committee considered a bill that would repeal the applicability of Charter § 1138 to Council members; the Committee disapproved the bill by a 5-4 vote.

One proposal for amendment, however, clarifying the meaning of Charter § 1138, did succeed. In 2002, over the Mayor's veto, the City Council adopted Local Law 27. Local Law 27 added to the Charter a provision specifying that a single two-year council member term does not constitute a full term; instead, when applying Charter § 1138, two consecutive two-year council

[1] The 1993 ballot measure reads as follows:

> Should the New York City Charter be amended by the addition of a new Chapter 50 to provide that a person may not hold the office of mayor, public advocate, comptroller, borough president or city council member for more than two consecutive terms?

Prior to its approval by voters in November of 1993, the City Clerk had refused to certify the ballot measure on the ground that state law preempted a local law, including one adopted by initiative, that imposed term limits on city officeholders. The Court of Appeals, however, held otherwise; in *Roth v. Cuevas*, 82 N.Y.2d 791 (1993), decided less than a month before Election Day, the Court of Appeals affirmed the trial court's order compelling the City Clerk to place the initiative on the ballot. The Court based its decision on the reasoning of the trial court, which had examined whether state home rule law preempted local laws imposing term limits on its elected officials and found nothing constituting either an express or implied intent to reserve to the state the determination of a local officeholder's permissible length of service. *See Roth v. Cuevas*, 158 Misc. 2d 238 (Sup. Ct. N.Y. Cty. 1993)

member terms are to comprise one full term. After its enactment, Local Law 27 was soon subject to challenge on the basis that, since the term limits provision was enacted by the voters, any amendment such as that in Local Law 27 needed voter approval. This litigation failed when the Court of Appeals declined to review the Appellate Division's determination, in *Golden v. New York City Council*, that Local Law 27 could be enacted without voter approval even though the charter provision that was affected by Local Law 27 had itself been a ballot initiative adopted by the voters. *Golden* made clear that "laws proposed and enacted by the people under an initiative provision are subject to the same constitutional, statutory and charter limitations as those passed by the Legislature and are entitled to no greater sanctity or dignity."[2] When term limits were extended by the Council in 2008 (Local Law 51), a similar challenge in federal court proved unsuccessful.

In *Molinari v. Bloomberg*, the U.S. Court of Appeals for the Second Circuit upheld Local Law 51 against claims that the law violated federal, state and local law.[3] The plaintiffs had argued that Local Law 51 violates (1) the First Amendment, by discouraging the public from utilizing the initiative process as a means of speech and by discouraging potential candidates from challenging incumbents; (2) the federal constitutional right to substantive due process, because it served the interests of those who enacted it; (3) state home rule law, because the provisions of Local Law 51 can only be approved by referendum; and (4) city conflicts of interest law, because Local Law 51 was approved by council members who stood to gain personally by its approval.

The Court rejected all these claims. It found no First Amendment right to legislation by voter initiative and no unconstitutional discouragement of speech protected by the First Amendment in Local Law 51. It found no violation of substantive due process, in light of the rational relationship between Local Law 51's extension of term limits and the City's asserted

[2] *Golden v. New York City Council*, 305 A.D.2d 598, 600 (2d Dep't 2003) (app. den. by *Golden v. N.Y. City Council*, 100 N.Y.2d 504 (2003)) (quoting *Caruso v. City of New York, 136 Misc 2d 892, 895-896*, (S. Ct. N.Y. Co. 1987), *affd.* 143 A.D.2d 601 (1st Dept. 1988), *affd.*, 74 N.Y.2d 854 (1989), *cert. den,*. 493 U.S. 1077 (1990). In *Golden*, the Appellate Division held that the enactment of Local Law 27 did not require voter approval because the law neither changed the length of any officeholder's term nor curtailed the power of any officeholder – and therefore did not trigger the mandatory voter approval provisions of state law.

[3] *Molinari v. Bloomberg*, 564 F.3d 587 (2d Cir. 2009).

goal of affording voters the opportunity to retain public officials in a time of crisis. It rejected the claim that Local Law 51's extension of officeholder term limits constituted a "change in the membership" of the local legislative body that, under the New York State Municipal Home Rule Law, would require voter approval. And it found no violation of the City's conflicts of interest law, agreeing with the City's Conflicts of Interest Board that any benefit that an incumbent council member might obtain in voting for Local Law 51 would not constitute the "personal or private advantage" prohibited under the City's conflicts of interest law.[4]

The passage of Local Law 51 drew criticism even from some opponents of term limits.[5] In establishing this Charter Revision Commission, the Mayor asked that the voters be given another opportunity to weigh in on the issue of term limits. In analyzing the issue of term limits, the Commission has been mindful of the strong feelings in favor of allowing the voters to decide whether to return to the two-term limit that was amended by the Council in 2008. The context that led to the legislative extension of term limits in New York has weighed very heavily in the assessment of whether the two-term option should be proposed on the ballot, even in light of some literature and testimony in favor of longer term limits, particularly for City Council members, as discussed below.

Views on Term Limits

The arguments for and against term limits have remained basically the same since the current term limits movement began in the late 1980s and early 1990s. Those in favor maintain that term limits make government more responsive to the public interest, while opponents argue that term limits are essentially undemocratic because they limit voter choice and that they render government less effective in serving the public interest.[6] The Commission has been provided with staff research on term limits and was presented with all sides of the debate by academics,

[4] *Id*. at 595-618.

[5] *See, e.g.*, "Citizens Union Disappointed Over Council Term Limits Vote, Statement by Dick Dadey, Executive Director," October 23, 2008, (available at http://www.citizensunion.org/www/cu/site/hosting/Statements/TermLimits1023.html) (describing approval of Local Law 51 as "unfortunate" in spite of Citizens Union historical opposition to term limits)

[6] *But see* Einer Elhauge, "Are Term Limits Undemocratic?," 64 U. Chi. L. Rev. 83 (1997) (arguing, *inter alia*, that voting for term limits is a rational, democratic choice).

advocates, elected officials and members of the public at its Forum on Term Limits.[7] Staff also commissioned two papers from political scientists, one from Richard Niemi and Kristin Rulison and another from Patrick Egan, evaluating the results of term limits.[8] Most of the academic research on term limits consists of studies of state legislatures;[9] although some question the applicability to New York City of this research, others believe it can be appropriately extrapolated, at least to the Council.[10] In addition to the academic and political debate over term limits, speakers at the public hearings and the forums noted the special context of the issue in New York City and many maintained the necessity of giving New York voters the opportunity to return to the results of the original referendum.

Commission Proposals

In regard to term limits, the Commission proposes that the public consider an amendment to the Charter which would: (1) reduce the current three-term term limit for elected city officials to two consecutive full terms; (2) restrict the City Council from extending the term limit of currently serving elected officials; and (3) provide that, if approved by the voters, the proposed change in the term limit will apply only to an elected officeholder who is elected to his or her first term full term on or after November 5, 2013. These proposals reflect the Commission's sensitivity to the importance of acknowledging the significance of the public vote in regard to the term limit issue as it has played out in New York City. The voters adopted a two-term limit in 1993 and rejected a three-term limit in 1996, yet Local Law 51 extended the term limit from two

[7] Hearing, May 25, 2010 (webcast available at http://www.nyc.gov/html/charter/html/meetings/public_meetings.shtml).

[8] *See* P.J. Egan, "Term Limits for Municipal Elected Officials: Executive and Legislative Branches," (hereinafter "Term Limits") (paper on file with the Commission); R.G. Niemi and K.K. Rulison, "The Effects of Term Limits on State Legislatures and Their Applicability to the Executive Branch" (hereinafter "The Effects of Term Limits") (paper on file with the Commission).

[9] *See. e.g.*, Karl T. Kurtz, Bruce Cain, and Richard G. Niemi (eds.), Institutional Change In American Politics: The Case of Term Limits (Ann Arbor 2007) (reporting the findings of the Joint Project on Term Limits, sponsored by the Council of State Governments, the National Conference of State Legislatures, and the State Legislative Leaders Foundation).

[10] *See* Richard G. Niemi and Kristin K. Rulison, "The Effects of Term Limits," , *supra* note 7, at 13 ("It seems likely that the effects of term limits [upon state legislatures] would apply relatively straightforwardly to city councils, which often have procedures, organizations, and objectives similar to those of state legislatures."); P.J. Egan, "Term Limits," *supra* note 7, at 13-14("all the evidence and facts suggest that the experience of term-limited states is not only relevant to New York City—but that term limits' weakening of City Council may be particularly exacerbated by the fact that individual members of Council are each responsible for so much oversight and so many constituents.")

terms to three and allowed elected officials who would soon be ending their second terms to run for a third term. Although it is clear that the Council acted within its jurisdiction in enacting Local Law 51,[11] the Commission heard testimony indicating that the extension of the term limit without referendum has troubled many voters.[12] This testimony influenced even those Commissioners who testified on record as being personally opposed to any term limits at all, and the Commission has thus agreed on the importance of responding to the public reaction to Local Law 51 by providing the voters with an opportunity to return the term limit to what the voters had originally approved.[13] In reaching its conclusion, the Commission has considered the oral and written testimony of experts, the research-based recommendations of staff and the oral testimony of city residents, including former and current elected officeholders. The Commission took into account evidence on both sides of the issue: on one hand, that term limits weaken a legislature by disqualifying legislators with the most experience in formulating legislation and exercising its oversight responsibilities; on the other, that term limits have limited the power of incumbency, led to more competitive elections and rendered the City Council "a more dynamic policy-making body due in part to the fresh perspective and energy of new Council members."[14] Moreover, although term limits have not created a City Council stocked with "citizen-legislators" having no interest in political careers, it is unclear whether that failure has been detrimental to city interests. Many if not most recently elected members come to the City

[11] *See Molinari v. Bloomberg*, 564 F.3d 587 (2d Cir. 2009) (upholding Local Law 51-2008)

[12] This testimony is compiled in the Appendix.

[13] The public popularity of term limits themselves has been attributed to widespread cynicism about government and its elected officials. *See, e.g.*, Jeffrey A. Karp, "*Explaining Public Support for Legislative Term Limits*," 59 *Pub. Op. Qty*. 373, 386 (1995), (concluding that "term limits support stems … from a frustration with the political process, manifested in an increasingly cynical electorate"); Elizabeth Garrett, "Term Limitations and the Myth of the Citizen-Legislator," 81 Cornell L. Rev. 623, 633 (1995-1996) ("Whatever the ultimate goals of the leaders of the movement, the resounding theme that unifies them is that professional politicians are the root of most problems pervading the federal government and that the citizen-legislator is the solution. Many average Americans who are sympathetic to this rhetoric are alienated and cynical with an intense, but generalized, distrust of the federal government and those who make a living working in it.")

[14] Citizens Union of the City of New York, "2010 City Charter Revision Recommendations: Increasing Avenues for Participation in Governing and Elections in New York City," at 74. In fact, taking office subject to a term limit might create this fresh perspective. *See, e.g.*, John M. Carey, Richard G. Niemi, Lynda W. Powell, and Gary F. Moncrief, "The Effects of Term Limits on State Legislatures: A New Survey of the 50 States," 31 Legis. Stud. Q. (2006) 105, 129 (suggesting that the ambition of term-limited legislators for holding subsequent offices having broader constituencies may explain their interest in larger issues as well as their greater reliance upon conscience).

Council with previous experience with or ties to city government,[15] suggesting that the regular replacement of incumbents with such "newcomers" might counter the loss of experienced members feared by opponents of term limits.

However, regardless of the extent to which studies of the effects of term limits can be applied to the City, the Commission believes that it must address the two distinct aspects of Local Law 51 that have received the most public attention: that the extension to three terms of the voter-approved two-term limit was accomplished without voter approval; and that the new three-term limit was made applicable to current officeholders, thereby allowing them to extend their eligibility for office.

The Commission's proposals respond directly to these two concerns. First, the Commission proposes that voters be given the opportunity to return to the two-term limit originally approved by ballot initiative. Second, the Commission proposes that voters be given the opportunity to restrict incumbent City Council members from affecting their own terms and the terms of other incumbent city officeholders. Finally, the Commission proposes that, should voters approve a shorter term limit, the new law should apply to office holders elected to their first full term after on or after November 5, 2013.

Proposed Text

Section 1. Sections 1137 and 1138 of the New York City Charter, as amended by Local Law 51 for the year 2008, are hereby amended to read as follows:

§ 1137. Public Policy. It is hereby declared to be the public policy of the city of New York to limit the time elected officials can serve as mayor, public advocate, comptroller, borough president and council member so that elected representatives are "citizen representatives" who are responsive to the needs of the people and are not career politicians and the offices in which they serve will be open to more people and a greater variety of ideas. It is further declared that this policy is most appropriately served by limiting the time such officials can serve to not more than [three full] two consecutive full terms. It is further declared that public confidence in

[15] *See* Jeffrey Kraus, "The Circulation of Office Holders: Term Limits and the New York City Council," Paper prepared for presentation at the 66th annual meeting of the Midwest Political Science Association, April 2008 (on file with Commission) at 10-20.

government should be protected by restricting amendments that would affect the application of term limits to any elected official then in office.

§ 1138. Term Limits. a. Notwithstanding any provision to the contrary contained in this charter, no person shall be eligible to be elected to or serve in the office of mayor, public advocate, comptroller, borough president or council member if that person had previously held such office for [three] two or more [full] consecutive full terms, unless one full term or more has elapsed since that person last held such office provided, however, that in calculating the number of consecutive terms a person has served, only terms commencing on or after January 1,1994 shall be counted.

b. Notwithstanding any other provision to the contrary, no local law may be enacted by the city council, including but not limited to amendment of the provisions of this chapter, if such local law would alter or permit alteration of the term limit set forth in subdivision a of this section as such limit applies to any person then serving in the office of mayor, public advocate, comptroller, borough president or council member.

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

(k) The amendments to the charter, amending sections eleven hundred thirty-seven and eleven hundred thirty-eight, approved by the electors on November second, two thousand ten, shall take effect immediately, and hereafter 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; provided, however, that, notwithstanding any inconsistent provision of the charter, persons holding the offices of mayor, public advocate, comptroller, borough president or council member on the date such amendments take effect shall be subject, with respect to eligibility to be elected to or serve in the offices so held, to the provisions of section eleven hundred thirty-eight that were in effect prior to the approval of such amendments.

DISCLOSURE OF INDEPENDENT EXPENDITURES

Currently, the Charter and Administrative Code empower New York City's Campaign Finance Board ("The CFB") to require that candidates for public office comply with comprehensive disclosure requirements concerning contributions and expenditures, in addition to imposing contribution limits and expenditure limits for candidates participating in the voluntary campaign financing program.[16] These disclosure requirements are a large part of why the City's campaign finance law has been repeatedly lauded as a national model.[17] Under existing law, however, the CFB has no power to require disclosure related to expenditures that are made independent of any candidate, but that are nevertheless made with the express intent of influencing the outcome of municipal elections and ballot proposals. This gap in the City's campaign finance system allows independent actors to spend lavishly on local elections while remaining largely insulated from public scrutiny.

The CFB, which under the Charter is responsible for interpreting and enforcing the City's campaign finance laws,[18] proposed that this Commission consider requiring that independent expenditures above a minimum threshold be reported to the Campaign Finance Board, and that entities paying for advertising with independent expenditures disclose their identities in advertising materials.[19] This proposal has also received the support of good government groups, including the Citizens Union;[20] the Commission also heard testimony in support of this proposal from Columbia Law School Professor Richard Briffault.[21]

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[16] New York City Administrative Code §§ 3-701 to -720.

[17] *E.g.*, Testimony of Prof. Richard Briffault before the New York City Charter Revision Commission (June 16, 2010) (http://www.nyc.gov/html/charter/media/video/pc061610_charter_meeting500k.asx); Testimony of Prof. John D. Feerick before the New York City Campaign Finance Board, (Dec. 2, 2009) (http://www.nyccfb.info/press/news/testimony/pdf/post-election/2009-12-02--Feerick.pdf)

[18] New York City Charter § 1052.

[19] Letter from Loprest to Goldstein, May 4, 2010.

[20] Citizens Union of the City of New York, "2010 Recommendations," *supra* at n. XX, at 58 (June 30, 2010).

[21] Testimony of Prof. Richard Briffault, *supra* at n. XX. See also Testimony of Council Member Daniel R. Garodnick (August, 2010) (on file with Commission).

In recent years, independent expenditures have become an increasingly significant part of election-related spending in New York City. In both the 2005 and 2009 municipal elections, minor political parties, labor unions, political committees, and other third-party actors made significant independent expenditures.[22] In 2009 in particular in some primary elections, there were independent advertising campaigns by minor parties receiving funds from other entities, including labor unions and the real estate industry.[23] These independent expenditures did not have to be disclosed to the CFB under current law. Furthermore, entities making independent expenditures are not required to identify themselves or key funding sources in advertising materials, which can lead to confusion for members of the public. Requiring that expenditures of this nature be reported to CFB, and that those making significant expenditures be identified in advertising materials, would provide critical information and context for members of the public and help them to evaluate advertising messages aimed at influencing their votes. Requiring reporting of independent expenditures would also enhance CFB's ability to enforce expenditure and contribution limits under current law by providing CFB with real-time data concerning expenditures of this nature.

On a national level, the Supreme Court's recent decision in *Citizens United v. Federal Election Commission*[24] has significantly raised the profile of independent expenditures as a component of campaign related spending. In *Citizens United*, the Court held that no government interest could justify limiting the political speech of corporations[25] and struck down federal law that prohibited the use of corporate and union general treasury funds for independent election expenditures.[26] As a result of this decision, some commentators anticipate an increase in independent spending across the country, including in local elections. In that same decision, however, the Court also

[22] Letter from Loprest to Goodman, May 24, 2010. *See, e.g.*, Cassi Feldman, *Working Families Fracas: Dems Blast Party for Meddling*, CITY LIMITS, Sept. 12, 2005, http://www.citylimits.org/news/articles/1776/working-families-fracas-dems-blast-party-for-meddling.

[23] Letter from Loprest to Goldstein, May 4, 2010. *See* Chris Bragg, *Independence Party Mailers Tout Union Ties for Anti-WFP Candidates: Feerick, Stewart, Koslowitz and Mitchell Among Those Boosted*, CITY HALL, Sept. 9, 2009, http://www.cityhallnews.com/newyork/article-898-independence-party-mailers-tout-union-ties-for-anti-wfp-candidates.html; Eliot Brown, *Landlords Have a Party*, N.Y. OBSERVER, Dec. 8, 2009, http://www.observer.com/2009/real-estate/landlords-have-party.

[24] 130 S. Ct. 876 (2010)

[25] *Id*. at 913

[26] *Id*. at 886

explicitly upheld the components of federal law requiring such independent actors to disclose their identity, expenditures, and funding sources to the FEC.[27] In determining that a government interest did indeed justify encumbering electoral communication in this manner, even if it did not justify actually limiting such communication, the Court recognized the essential public policy purpose that underlies the disclosure of independent expenditures: "provid[ing] shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."[28]

In addition to the federal disclosure requirements endorsed by *Citizens United*, the current legal landscape outside of New York also includes laws and regulations in at least 29 states that require disclosure of independent expenditures in some form.[29] Several major municipalities have also passed their own laws mandating such disclosure, including Los Angeles,[30] Seattle[31] and Portland.[32] New York State requires that political committees report contributions to and expenditures by political committees to the Board of Elections at certain times that are specified by law, but the reporting requirements are narrower in scope and do not provide for the degree of transparency contemplated by the Commission's proposal, nor are there any requirements concerning disclosure in advertising materials.[33] To provide the citizens of the City with more complete and timely information so that they can properly assess the content of

[27] *Id*. at 914. The Court did, however, acknowledge an exception in that disclosure "would be unconstitutional as applied to an organization if there were a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed." *Id*. at 916 (citing *McConnell v. FEC*, 540 U.S. 93, 198 (2003))

[28] *Id*. at 915–16

[29] *See* Letter from Loprest to Goodman, May 24, 2010. These 29 laws and regulations are: Ariz. Rev. Stat. § 16-914.02; Ark. Code § 7-6-220; Colo. Const. art. 28, § 5; Del. Code tit. 15, § 8031; Fla. Stat. § 106.071; Ga. Code § 21-5-34(f); Idaho Code § 67-6611; Iowa Code § 68A.404; Ky. Rev. Stat. § 121.150(1); La. Rev. Stat. § 18:1501.1; Me. Rev. Stat. tit. 21-A, § 1016-B; Mass. Gen. Laws ch. 55, § 18A; Mich. Comp. Laws § 169.251; Minn. Stat. § 10A.20(6b); Miss. Code § 23-15-809; Mo. Rev. Stat. § 130.047; Mont. Admin. R. 44.10.531(4); Neb. Rev. Stat. § 49-1467; Nev. Rev. Stat. § 294A.210; N.H. Rev. Stat. § 664:6; N.J. Admin. Code. § 19:25-12.8; N.C. Gen. Stat. § 163-278.12; Ohio Rev. Code. § 3517.105; Or. Rev. Stat. § 260.044; 25 Pa. Stat. § 3246(g); S.D. Codified Laws § 12-27-16; Va. Code § 24.2-945.2; Wash. Rev. Code § 42.17.100; W. Va. Code § 3-8-2. *Id*

[30] L.A. Mun. Code § 49.7.26

[31] Seattle Municipal Code 2.04.270

[32] Portland City Code § 2.10.140

[33] N.Y. Election Law §§ 14-102, 14-104.

political communications intended to influence their behavior at the polls, the Commission recommends that the Charter be amended to require the disclosure of independent expenditures.

The proposed charter amendment would make three major changes to § 1052, which governs the composition, powers and responsibilities of the CFB. First, it would require any individual or entity making independent expenditures in the amount of $1,000 or more to disclose such activities to the CFB. Second, it would empower the CFB to require any entity making independent expenditures in the amount of $5,000 or more to disclose the sources of the funds used to make such expenditures, preventing independent actors from circumventing the disclosure requirements through masking their identities by creating or contributing to other entities. Third, it would require that literature or advertisements that are paid for by individuals or entities making independent expenditures aggregating $1,000 or more to include the name of any individual or entity making the expenditure. Procedurally, these changes would be implemented through rulemaking authority delegated to the CFB to prescribe the content, form and manner of such disclosures. The amendment would also make knowing violation of such disclosure requirements punishable both as a misdemeanor and through a civil penalty of up to $10,000 for each violation.

Proposed Text

Section 1. Subdivision a of section 1052 of the New York city charter is amended by adding a new paragraph 15 to read as follows:

15. (a) For purposes of this paragraph, the following terms shall have the following meanings:

(i) "Independent expenditure" shall mean a monetary or in-kind expenditure made, or liability incurred, in support of or in opposition to a candidate in a covered election or municipal ballot proposal or referendum, where no candidate, nor any agent or political committee authorized by a candidate, has authorized, requested, suggested, fostered or cooperated in any such activity. The term "independent expenditure" shall not include:

(1) the value of services provided without compensation by individuals who volunteer a portion or all of their time,

(2) the use of real or personal property and the cost of invitations, food and beverages voluntarily provided by an individual, to the extent such services do not exceed five hundred dollars in value,

(3) the travel expenses of any individual who on his or her own behalf volunteers his or her personal services, to the extent such expenses are unreimbursed and do not exceed five hundred dollars in value, and

(4) any expenditure made, or liability incurred, that is considered to be a contribution to a candidate under any provision of this charter or local law, or under any rule promulgated by the board.

(ii) "Entity" shall mean any corporation, limited liability company, partnership, limited liability partnership, political committee, political party or party committee, employee organization or labor organization, association, club, or other organization.

(iii) "Covered election" shall mean any primary, run-off primary, special, run-off special or general election for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council.

(b) Every individual and entity that makes independent expenditures aggregating one thousand dollars or more in support of or in opposition to any candidate in any covered election, or in support of or in opposition to any municipal ballot proposal or referendum, shall be required to disclose such expenditure to the board. In addition, the board may require every entity that, in the twelve months preceding a covered election, makes independent expenditures aggregating five thousand dollars or more in support of or in opposition to any candidate in any covered election to disclose the identity of any entity that contributed to the entity reporting the expenditure, and any individual who contributed one thousand dollars or more to the entity reporting the expenditure in the twelve months preceding the covered election.

(c) Any literature, advertisement or other communication in support of or in opposition to any candidate in any covered election that is paid for by an individual or entity making independent expenditures aggregating one thousand dollars or more shall disclose the name of any individual or entity making the expenditure.

(d) The board may, upon notice and opportunity to be heard, assess civil penalties in an amount not in excess of ten thousand dollars for each violation of this subdivision. The

intentional or knowing violation of this section shall be punishable as a misdemeanor in addition to any other penalty provided under law.

(e) The board shall promulgate rules concerning the form and manner in which independent expenditures are to be reported and disclosed, the information to be reported and disclosed, the periods during which reports must be filed, and the verification required. The board shall promulgate such additional rules as it deems necessary to implement, administer, interpret and enforce this subdivision and shall provide in such rules that information regarding independent expenditures be promptly made accessible to the public during the covered election cycle.

REDUCING SIGNATURE REQUIREMENTS FOR PETITIONS

The Commission has heard numerous ideas about ways to reduce the myriad barriers to ballot access in municipal elections. This amendment will take a first step towards lowering those barriers by reducing the number of signatures required on designating petitions, which allow access to party primary ballots, and on independent nominating petitions, which allow direct access to the general election ballot for independent candidates.

Under state law, candidates for Mayor, Comptroller and Public Advocate must obtain up to 7,500 signatures and candidates for Borough President must obtain up to 4,000 signatures on a designating petition; and City Council hopefuls must obtain up to 900 signatures on a designating petition or up to 2,700 signatures on a nominating petition. However, the required number of signatures for a designating petition need not exceed five percent of the voters enrolled in the party in the office's subdivision, and for a nominating petition need not exceed five percent of the total votes cast for governor in the last gubernatorial election in the office's subdivision.[34] Prospective candidates for office must meet signature requirements within a limited time frame: 37 days for designating petitions[35] and 42 days for nominating petitions.[36] Designating petitions can only be signed by voters who are enrolled in the same political party as the candidate and who are eligible to vote in that party's coming primary election for the office. Nominating petitions can only be signed by voters registered in the political subdivision of the office. Because of these and other demanding requirements, candidates need to obtain approximately three times the number of signatures that are mandated in order to ensure that their petitions will withstand legal challenges.[37]

[34] Election Law §§ 6-136(2) and 6-142(2).

[35] Election Law § 6-134(4).

[36] Election Law § 6-138(4).

[37] D. Getachew & A. Senteno, "Understanding the Labyrinth: New York's Ballot Access Laws," GOTHAM GAZETTE (June 29, 2009) (http://www.gothamgazette.com/print/2954).

Though this system was created in the late nineteenth century with the purpose of democratizing elections, running for office in New York is now considered "notoriously difficult because of the draconian ballot access laws."[38] New York's system is also particularly onerous compared to that of other jurisdictions in terms of both the details of its petition process and the fact that it is one of only a handful of states to set a petition requirement as the sole means of getting on the ballot for all candidates, including both incumbents and challengers.[39] The 37- and 42-day requirements are particularly stringent compared to the more than a year allowed in Michigan, and the unlimited time period in at least six other states, including New Jersey.[40] In addition, the number of signatures required to get on a ballot in New York is much greater than in other states: for example, access to the gubernatorial ballot in California currently requires only 65 signatures.[41] Some jurisdictions allow candidates to bypass the petition process altogether by paying a filing fee, a far superior alternative according to some ballot access experts.[42]

Suggestions to the Commission have included providing legal assistance to help candidates through the complexities of the petition process[43] and linking ballot access to a candidate's fundraising performance,[44] but the most straightforward way to level the playing field is to decrease the number of signatures required on designating and nominating petitions. Thus, the Commission proposes legislation that would amend the Charter to reduce the number of signatures required on petitions in order to expand ballot access to a wider variety of

[38] Citizens Union of the City Of New York, "2010 Recommendations," *supra* at n. 17, at 64 (June 30, 2010).

[39] Id.

[40] D. Israel & M. Gertz, "Ballot-Bumping, NYC's Bloodsport," GOTHAM GAZETTE, July 27, 2005, http://www.gothamgazette.com/print/1492.

[41] California Secretary of State's Office, 2010 California Election Calendar, at 3-1 (2010) (http://www.sos.ca.gov/elections/2010-elections/calendar/pdfs/section-3-candidate-filing.pdf). These signatures are sufficient along with a filing fee of approximately $3,500; in lieu of the fee a candidate may provide 10,000 signatures. *Id.*

[42] Alex Kane, "Getting on the Ballot in Other Cities," GOTHAM GAZETTE, June 30, 2009, http://www.gothamgazette.com/print/2962.

[43] Statement by New York City Public Advocate Bill de Blasio: A Vision for Charter Reform in New York City (May 25, 2010) (on file with the Charter Revision Commission).

[44] Testimony of Jerry H. Goldfeder before the New York City Charter Revision Commission, (June 2, 2010) (http://www.nyc.gov/html/charter/media/video/pc060210_charter_forum_500k.asx).

candidates. The required number of signatures, for both designating and nominating petitions, would be reduced to no more than half of the current level for designating petitions: 3,750 signatures for New York City-wide candidates; 2,000 for borough-wide candidates; and 450 for City Council candidates.

State constitutional and statutory laws, and the case law interpreting it, permit the reduction through charter amendment of the number of signatures required by a candidate seeking ballot access for election to a city office. The municipal home rule law vests the City with the power to adopt local laws relating to the "powers, duties, qualifications, number, [and] mode of selection … of its officers and employ,"[45] provided that such local law is not inconsistent with the State Constitution or any general State law, and provided that the State Legislature has not restricted the adoption of such a local law on a matter of State concern.[46] Further, the municipal power to determine "the mode of selection … of its officers" is confirmed in the state election law, which provides that "[w]here a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter [setting forth state election law], such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law."[47] State law indicates, in provisions specific to the City, the number of signatures required for nominating petitions in regard to each city elective office.[48] Thus, the petition signature requirements for City election ballot access are set forth in special, not general, law. Moreover, these provisions do not contain clauses expressly indicating the state's intent to preclude the exercise by the City of its home rule power to determine the "mode of selection . . . of its officers." It therefore seems clear that the

[45] N.Y. Mun. Home Rule Law § 10(1)(ii)(a)(1). This provision implements Article IX, § 2(c), of the State Constitution.

[46] *Id.*

[47] N.Y. Election Law 1-102 (emphasis added).

[48] *See* N.Y. Election Law §§ 6-136(2)(a) (designating petition signatures for NYC citywide offices); 6-136(2)(b) (designating petition signatures for NYC borough-wide offices); 6-136(2)(c-1) (designating petition signatures for NYC council district offices); 6-142(2)(b) (independent nominating petition signatures for NYC citywide offices); 6-142(2)(c)(independent nominating petition signatures for NYC borough-wide offices); 6-142(2)(d-l) (independent nominating petition signatures for NYC council district offices).

City may alter the signature requirements of state law as long as it indicates its intent to supersede those provisions.[49]

Proposed Text

Section 1. The New York city charter is amended by adding a new section 1057-b to read as follows:

§ 1057-b. Designating and independent nominating petitions; number of signatures. a. The number of signatures required for any designating petition or independent nominating petition for the designation or nomination of a candidate for an elected office of the city shall be governed by applicable provisions of the New York state election law, except that in no event shall the number of signatures required exceed the following limits:

(1) for the offices of mayor, comptroller, or public advocate, three thousand seven hundred fifty signatures;

(2) for the office of borough president, two thousand signatures; and

(3) for the office of member of the city council, four hundred fifty signatures.

b. (1) The following provisions of the election law shall not apply to the extent that they govern the designation or independent nomination of mayor, comptroller, public advocate, member of the city council, and borough president: paragraphs (a), (b), and (c-1) of subdivision two of section 6-136 (designating petitions; number of signatures); and paragraphs (b), (c), and (d-1) of subdivision two of section 6-142 (independent nominations; number of signatures). Section 6-100 of the election law shall apply, except to the extent that provisions of article six of the election law are inapplicable in accordance with this section.

(2) Any other provisions that from time to time may be added to the election law and that relate to the matters covered by the provisions of the election law that are inapplicable in accordance with this section shall similarly not apply to the extent that they govern the designation or nomination of such officers.

[49] *See Bareham v. City of Rochester*, 246 N.Y. 140, 149 (1927) (striking down Rochester local law amending state law provisions for election to local offices for failing to set forth the state law being superseded, notwithstanding that "[Rochester] is empowered to modify an election law in so far as that law affects . . . the election of the local officers."), *but see* N.Y. Mun. Home Rule Law § 22 (" In adopting a local law changing or superseding any provision of a state statute or of a prior local law or ordinance, the legislative body shall specify the chapter or local law or ordinance, number and year of enactment, section, subsection or subdivision, which it is intended to change or supersede, but the failure so to specify shall not affect the validity of such local law. (emphasis added)."

(3) References to provisions of the election law in this section shall be deemed to refer to any successors to such provisions.

CONSOLIDATING THE VOTER ASSISTANCE COMMISSION AND THE CAMPAIGN FINANCE BOARD

Background

The Voter Assistance Commission ("VAC") and the position of Coordinator of Voter Assistance were created in 1988 in order to provide a role for government to assist in increasing voter registration and participation.[50] VAC was originally made part of a Department of Campaign Finance and Voter Assistance.[51] CFB and VAC were separated as part of the 1989 charter revisions, although CFB continues to produce the Voters Guide.[52] VAC consists of 16 Commissioners, including seven *ex officio* appointments, six persons appointed by the Council and three persons appointed by the Mayor. The *ex officio* appointments are the First Deputy Mayor, the Director of the Office of Management and Budget, the President of the Board of Education, the Public Advocate, the Executive Director of the Board of Elections, the Corporation Counsel and the Chair of the Campaign Finance Board.[53] VAC is responsible for taking actions to encourage voter registration and voting, while the Coordinator of Voter Assistance is responsible for encouraging and facilitating voter registration, and coordinating agencies' voter registration efforts.[54] Additionally, city agencies are responsible for distributing voter registration forms, and VAC and the Coordinator are responsible for monitoring agencies' compliance with this requirement.[55]

The Commission received testimony and comments from good government groups and others expressing concern that VAC has been hampered by structural issues and a lack of resources. VAC has also been viewed as unwieldy in light of its size.

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[50] New York City Charter Revision Commission, December 1986-November 1988, "The Report: Volume One," at 42-44.

[51] *Id.*

[52] Charter § 1053.

[53] *Id.* § 1054(a)

[54] *Id.* §§ 1054-55

§§ 1054-55

[55] *Id.* §§ 1054-55, 1057-a.

Moving VAC into CFB and Restructuring VAC

The Commission is proposing that VAC be moved into CFB. CFB has dedicated funding and a well-established and managed operating framework through which VAC's impact can be enhanced. It already shares responsibility for voter education through its work in producing the Voters Guide, which provides information concerning candidates for City offices and ballot proposals, as well as where and how to register and vote.[56] CFB also works with VAC to produce the Video Voter Guide. CFB members are selected by both the Mayor and the Council in a manner designed to ensure that the CFB is non-partisan, and CFB has a reputation for non-partisanship. The idea of moving VAC into CFB is supported by good government groups including Citizens Union and the New York Public Interest Research Group.

In moving VAC into CFB, the Commission recommends that VAC be restructured as follows: VAC would be renamed the Voter Assistance Advisory Committee, and would consist of nine members. Two members would be appointed by the mayor, provided that not more than one of these members could be enrolled in any one political party; two members would be appointed by the Council, with the same restriction; one member would be appointed by the Comptroller; one member would be appointed by the Borough Presidents acting together; the Public Advocate and the Executive Director of the Board of Elections would serve *ex officio*; and a chair would be appointed by the Mayor in consultation with the Council Speaker. As is currently the case, the appointed positions would be chosen from among representatives of groups that are underrepresented among those who vote or register to vote; community, voter registration, and civil rights organizations; and the business community. The Coordinator of Voter Assistance would be appointed by CFB. CFB would be responsible for carrying out the voter assistance functions currently listed in the Charter, with the advice and assistance of VAC and the Voter Assistance Coordinator. These functions also would specifically include outreach targeted at young people, who as a group have low voter participation rates; and eligible limited English proficient voters. CFB members could attend and participate in VAC meetings but

5, 1057-a.

[56] Charter § 1053

would not be able to vote.[57] CFB would have rule-making authority relating to voter assistance, except that rules pertaining to city agency operations would be promulgated in conjunction with the Mayor's Office of Operations.

Coordinating the Timing of VAC Hearings and Reports

The Charter currently requires that VAC conduct hearings concerning voter registration and participation at least once a year, in the time between a general election and December 21. It further requires that the Coordinator of Voter Assistance prepare an annual report on voter registration and participation by July 30 of each year that reviews, among other things, voter registration and voting processes from the previous year. The Commission recommends that the report and the hearings be coordinated and the timeframes adjusted so the Coordinator's report can be considered at VAC's hearings, and the hearings can also consider voter registration efforts that are underway for the next election. Specifically, the report would be completed by April 30 of each year and, in addition to the post-election hearing, hearings would commence after submission of the report.

Term Commencement

The Charter currently sets April 1 as the commencement date for new terms of the members and chairperson of the CFB.[58] In April of an election year, however, board members must already be fully able to participate in key decisions on election conduct. Indeed, in both 2005 and 2009, the CFB issued critical advisory opinions in that month.[59] To provide continuity of membership throughout an election year and to allow new members the chance to familiarize themselves with the important issues that the CFB must address, the proposed charter amendment would change the commencement date for new terms to December 1.

Proposed Text

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er § 1053

[57] This structure differs from that proposed by staff in the preliminary report.

ry report.

d. §§ 1054-55

Section 1. Paragraph one of subdivision a of section 1052 of the New York city charter, as amended by local law number 34 for the year 2007, is amended to read as follows:

1. There shall be a campaign finance board consisting of five members. Two members of the board shall be appointed by the mayor, provided that not more than one such member shall be enrolled in any one political party, and two members shall be appointed by the speaker of the council, provided that not more than one such member shall be enrolled in any one political party, and one member, who shall be the chairperson, shall be appointed by the mayor after consultation with the speaker. The members shall first be appointed to serve as follows:

(a) one member appointed by the speaker for a term of one year;

(b) one member appointed by the mayor for a term of two years;

(c) one member appointed by the speaker for a term of three years;

(d) one member appointed by the mayor for a term of four years; and

(e) the chairperson for a term of five years.

[Each] The first term shall commence on April first, nineteen hundred eighty-eight. Thereafter, each member shall be appointed, by the mayor or the speaker, according to the original manner of appointment, for a term of five years that shall, for any term beginning on or after March first two thousand eleven, commence on December first [by the mayor or the speaker, according to the original manner of appointment]. Terms that began before, and have not expired on, March first, two thousand eleven shall be extended and shall expire on the November thirtieth following their original March thirty-first expiration dates. Upon expiration of the term of a member, if the mayor or the speaker, as appropriate, shall fail to appoint a member within one hundred twenty days of the expiration of such term, the member whose term has expired shall be deemed appointed for an additional term of five years, provided, however, that if the expiration of such term occurs in a year in which elections, except special elections, covered by the voluntary system of campaign finance reform are scheduled, the member whose term has expired shall be deemed appointed for an additional term of five years if the mayor or the speaker, as appropriate, shall fail to appoint a member within ninety days of the expiration of such term. In case of a vacancy in the office of a member, a member shall be appointed to serve the remainder of the unexpired term by the mayor or the speaker, according to the original manner of appointment. If the mayor or the speaker, as appropriate, shall fail to appoint a member within one hundred eighty days of such vacancy, then a member shall be appointed by

the board to serve for the remainder of the unexpired term, if additional time remains in such term, provided, however, that if such vacancy occurs in a year, or within ninety days prior to a year, in which elections, except special elections, covered by the voluntary system of campaign finance reform are scheduled, then a member shall be appointed by the board to serve for the remainder of the unexpired term, if additional time remains in such term, if the mayor or the speaker, as appropriate, shall fail to appoint a member within ninety days of such vacancy. Except for the chairperson, such member shall not be enrolled in the same political party as the other member appointed by the official who failed to so appoint. Each member shall be a resident of the city, registered to vote therein. Each member shall agree not to make contributions to any candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president, or member of the council which in the aggregate are in excess of the maximum contribution applicable to such office pursuant to any local law establishing a voluntary system of campaign finance reform. No member shall serve as an officer of a political party, or be a candidate, or 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. Officers and employees of the city or any city agency, lobbyists required to file a statement of registration under section 3-213 of the administrative code and the employees of such lobbyists shall not be eligible to be members of the board. In appointing members to the board, the mayor and the speaker shall consider campaign experience in general and particularly campaign experience with the New York city campaign finance system. Members of the board shall be required to undergo training developed pursuant to paragraph 14 of this section.

§ 2. Section 1052 of the New York city charter is amended by adding a new subdivision e to read as follows:

e. The board shall take such actions as it deems necessary and appropriate to encourage, promote, and facilitate voter registration and voting by all residents of New York City who are eligible to vote, including, but not necessarily limited to the employment of a coordinator of voter assistance and other necessary staff. The board shall have authority to promulgate rules in order to implement the voter assistance provisions of this chapter, except that any rules with respect to city agency operations concerning voter registration and voting, including but not

limited to implementation of section one thousand fifty-seven-a, shall be promulgated in conjunction with the office of the mayor through its office of operations.

§ 3. Sections 1054 and 1055 of the New York city charter are REPEALED and section 1054 is reenacted to read as follows:

§1054. Voter assistance advisory committee. a. There shall be a voter assistance advisory committee consisting of nine members, which shall assist the board with its duties and responsibilities under this chapter, including but not limited to overseeing the voter assistance program established by this chapter. Two members shall be appointed by the mayor, provided that not more than one such member shall be enrolled in any one political party; two members shall be appointed by the speaker of the city council, provided that not more than one such member shall be enrolled in any one political party; one member shall be appointed by the comptroller; one member shall be appointed by the borough presidents acting together; and one member shall be appointed by the mayor in consultation with the speaker and shall serve as chair. In addition, the committee shall include the public advocate, or in his or her absence, a representative, and the executive director of the board of elections (or, in his or her absence, the deputy executive director of the board of elections). In appointing members to the committee, the mayor, speaker, comptroller and borough presidents shall consider experience with groups or categories of residents that are underrepresented among those who vote or among those who are registered to vote and community, voter registration, civil rights, and disabled groups. The appointed members shall first be appointed to serve as follows:

1. one member appointed by the speaker for a term of one year;
2. one member appointed by the mayor for a term of two years;
3. one member appointed by the speaker for a term of three years;
4. one member appointed by the mayor for a term of four years;
5. one member appointed by the comptroller for a term of four years;
6. one member appointed by the borough presidents for a term of five years; and
7. the chair, appointed by the mayor in consultation with the speaker for a term of five years.

Each term shall commence on January first, two thousand eleven. Thereafter, each member shall be appointed for a term of five years according to the original manner of

appointment. Upon expiration of the term of a member, if the appointing official or officials shall fail to appoint a member within one hundred twenty days of the expiration of such term, the member whose term has expired shall be deemed appointed for an additional term of five years. In case of a vacancy in the office of an appointed member, a member shall be appointed to serve for the remainder of the unexpired term according to the original manner of appointment. For appointees of the mayor or speaker, such member shall not be enrolled in the same political party as the other member appointed by the official making the appointment to fill the vacancy. Each member shall be a resident of the city, registered to vote therein. No member other than the public advocate shall serve as an officer of a political party, or be a candidate, or 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 members of the committee shall serve without compensation.

b. The board, with the advice and assistance of the committee and the coordinator of voter assistance, shall:

1. encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote, and recommend methods to increase the rate of registration and voting by such residents;

2. identify groups or categories of such residents who are underrepresented among those registered and those voting and recommend methods to increase the rate of voter registration and voting among such groups and categories;

3. consistent with all state and local laws, coordinate the activities of all city agencies in general and specialized efforts to increase registration and voting including, but not limited to, the distribution of forms for citizens who use or come in contact with the services of city agencies and institutions; mailings by city agencies to reach citizens; cooperative efforts with non-partisan voter registration groups, community boards, agencies of city, state, and federal governments, and entities doing business in the city; publicity and other efforts to educate youth about the importance of voting and to encourage youth to register to vote upon reaching age eighteen; and other outreach programs;

4. make such recommendations as it deems appropriate to the mayor, the council, the borough presidents, and the board of elections for steps that should be taken by such officials or

bodies or by city agencies to encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote;

5. undertake, by itself or in cooperation with other public or private entities, activities intended to encourage and facilitate voter registration and voting by all residents of New York City who are eligible or may become eligible to vote, including eligible voters who are limited in English proficiency;

6. prepare and publish reports, including, at the minimum, an annual report to be published no later than April thirtieth in each year, regarding voter registration and voter participation in New York City, and forward copies of such reports to the mayor, the council, the borough presidents, and all other public officials with responsibilities for policies, programs and appropriations related to voter registration and voter participation in New York City and to private entities that are currently or potentially involved in activities intended to increase voter registration and voting. Such annual report shall include, but not be limited to (a) a description of voter assistance activities and the effectiveness of those activities in increasing voter registration and voter participation; (b) the number of voter registration forms distributed by the programs related to voter assistance and voter participation, the manner in which those forms were distributed and the estimated number of persons registered through the activities of the programs; (c) the number and characteristics of citizens registered and unregistered to vote during the previous primary, general and special elections and for the most recent time period for which such information is available; (d) the number and characteristics of citizens who voted during the previous primary, general and special elections; (e) a review and analysis of voter registration and voter participation processes in New York City during the previous year; (f) recommendations for increasing voter registration and voter participation; and (g) any other information or analysis the board deems necessary and appropriate; and

7. monitor voter registration and voting in New York City, and receive citizen complaints regarding such processes.

c. The committee shall meet at least every other month. The committee shall hold at least two public hearings each year, one following the issuance of the annual report, and the second between the day following the general election and December twenty-first, regarding voter registration and voter participation in New York City. Any member of the board may attend and participate in committee meetings and hearings.

§ 4. Sections 1056 and 1057 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 8, 1988, are amended to read as follows:

§1056. Cooperation of mayoral agencies. Heads of mayoral agencies shall cooperate to the extent practicable with the board of elections and the campaign finance board and [the] its coordinator of voter assistance to improve public awareness of the candidates, proposals or referenda in all elections in which there are contested elections held in the city of New York for any city, county, state, or federal office and/or ballot proposals or referenda pursuant to city, county, state, or federal law, and to encourage voter registration and voting by all residents of the city of New York eligible to vote[and shall prepare annually, in accordance with rules and guidelines of the coordinator of voter assistance, plans specifying]. Such cooperation shall include providing the campaign finance board with appropriate information concerning the resources, opportunities, and locations the agency can provide for public awareness and voter assistance activities.

§1057. Non-partisanship in program operations. The campaign finance board[, commission] and [coordinator] the voter assistance advisory committee shall conduct all of their activities in a strictly non-partisan manner.

§ 5. Subdivision 1 of section 1057-a of the charter is amended to read as follows:

1. Participating agencies shall adopt such rules and regulations as may be necessary to implement this section. The [New York city voter assistance commission] campaign finance board shall prepare and distribute to participating agencies written advisory agency guidelines as to the implementation of this section and may establish training programs for employees of participating agencies; provided that any guidelines promulgated by the voter assistance commission prior to the effective date of this clause shall remain in effect unless further amended or repealed by the board. Participating agencies may consider such advisory agency guidelines in the promulgation of their rules and regulations.

New York City has an extensive system for preventing and prosecuting conflicts of interest and corruption in government and for ensuring transparency in government operations and the electoral process. The City has its own ethics, lobbying and campaign finance laws, enforced by the Conflicts of Interest Board ("COIB"), the City Clerk, and the Campaign Finance Board ("CFB"), respectively. The New York City Department of Investigation is principally responsible for investigating possible unlawful activity by city employees and others trying to influence governmental actions and outcomes. The COIB and CFB were established as charter institutions in 1988, when voters approved the ballot proposal presented by the 1988 Charter Revision Commission.

The current Commission heard testimony at public hearings regarding several public integrity topics, including the independence of the COIB, recent controversy relating to the allocation of discretionary funds by City Council members to non-profit organizations, recent instances of corruption at the Department of Buildings, and making the city lobbying law more effective. The Commission held an issues forum on public integrity and received expert testimony as well as additional comments from government officials, good government organizations and members of the public. Proposals pertaining to the City's conflicts of interest law are set forth below.

AMENDMENTS TO CHAPTER 68, CONFLICTS OF INTEREST

The Conflicts of Interest Board, good government groups and members of the public have made a number of proposals for changes to Chapter 68 of the Charter, which sets forth the city conflicts of interest law. As discussed below, staff recommends that the Commission propose the following amendments to Chapter 68:

- Increase the penalties for Chapter 68 violations, and authorize disgorgement of any gains from such activity; and
- Mandate Chapter 68 training for city employees.

The COIB consists of five persons who are appointed by the Mayor, subject to advice and consent of the Council, for up to two consecutive six-year terms, and can only be removed for cause.[60] The COIB's responsibilities include, among others, interpreting and enforcing the provisions of Chapter 68 and providing training to City employees. Chapter 68 includes many restrictions intended to prevent actual or apparent conflicts of interest in City government. These restrictions pertain to the following matters, among others:

- Financial interests and employment with entities that have business with the City;[61]
- Actions benefiting entities in which a public official or employee has a financial or employment interest;[62]
- Use of position to obtain financial gain for oneself or for an "associated" person;[63]
- Gifts and additional compensation;[64]
- Business relationships with superiors or subordinates;[65]
- Political activity;[66] and
- Post-employment restrictions

Proposals for Change

Increased Fines & Disgorgement

The Commission recommends increasing penalties for single Chapter 68 violations from $10,000 to $25,000 and authorizing the COIB to order payment to the city of the value of any gain or benefit obtained as a result of violating Chapter 68 ("disgorgement") consistent with due

[60] Charter § 2602(a)-(c), (f).

[61] Id. § 2604(a)(1).

[62] Id. § 2604(b)(1).

[63] Id. § 2604(b)(3).

[64] Id. § 2604(b)(5), (13).

[65] Id. § 2604(b)(14).

[66] Id. § 2604(b)(9), (11)-(12), (15).

process. The COIB has proposed these changes, and the Commission has also heard support for these proposals from good government groups.[67]

The maximum fine for a single violation of Chapter 68 has been capped at $10,000 since 1988, without any adjustment for inflation.[68] An increased penalty would make it easier to distinguish between different violations of Chapter 68 based on their severity, with greater penalties provided for more serious offenses. The increased fine, along with the disgorgement requirement, may also have a deterrent effect, and ensure that individuals will not benefit financially from activities that violate Chapter 68. Finally, disgorgement would provide for restitution to the City for any gains made by individuals through violations of Chapter 68.

Proposed Text

Section 1. Subdivision b of section 2606 of this charter, as added by vote of the electors of the city of New York at a general election held on November 8, 1988, is amended, and a new subdivision b-1 is added, to read as follows:

b. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, shall have the power to impose fines of up to [ten] twenty-five thousand dollars, and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment.

b-1. In addition to the penalties set forth in subdivisions a and b of this section, the board shall have the power to order payment to the city of the value of any gain or benefit obtained by the respondent as a result of the violation in accordance with rules consistent with subdivision h of section twenty-six hundred three.

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68 Id. § 2606.

Mandatory Training

Given the importance, breadth and complexity of Chapter 68, the Commission recommends that training in the requirements of Chapter 68 be made mandatory for all City employees. The proposed charter amendment would not require that training be provided in person, or that all training be provided by COIB directly. Rather, training could be provided on-line, or by staff at employing agencies who receive training from COIB.

Proposed Text

Section 1. Paragraph 2 of subdivision b of section 2603 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 8, 1988, is amended to read as follows:

2. (a) The board [shall provide training to all individuals who become public servants to inform them of the provisions of this chapter, shall assist agencies in conducting ongoing training programs, and] shall make information concerning this chapter available and known to all public servants. On or before the tenth day after an individual becomes a public servant, such public servant shall be provided with a copy of this chapter and [must file] shall sign a written statement [with the board], which shall be maintained in his or her personnel file, that such public servant has received and read and shall conform with the provisions of this chapter.

(b) Each public servant shall undergo training provided by the board in the provisions of this chapter on or before the sixtieth day after he or she becomes a public servant, and periodically as appropriate during the course of his or her city service. Every two years, each agency shall develop and implement an appropriate agency training plan in consultation with the board and the mayor's office of operations. Each agency shall cooperate with the board in order to ensure that all public servants in the agency receive the training required by this subdivision and shall maintain records documenting such training and the dates thereof. The training required by this subdivision may be in person, provided either by the board itself or by agency personnel working in conjunction with the board, or through an automated or online training program developed by the board.

(c) The failure of a public servant to receive the training required by this paragraph, to receive a copy of this chapter, or to sign the statement required by this paragraph, or the failure

of the agency to maintain the required statement on file or record of training completed, shall have no effect on the duty of such public servant to comply with this chapter or on the enforcement of the provisions thereof.

The substantive changes described on the following pages would create increased transparency and efficiencies in the operation of city government by removing unnecessary requirements and consolidating functions.

CONSOLIDATION OF ADMINISTRATIVE TRIBUNALS

Under current law, the Office of Administrative Trials and Hearings (OATH) and the Environmental Control Board (which is located within OATH) have the power to conduct adjudicatory hearings with respect to many types of alleged violations of city laws and regulations. However, pursuant to a patchwork of legal provisions, adjudications concerning city laws and regulations also are held before in-house tribunals and hearing officers at multiple city agencies. Because administrative tribunals are located in, and operated by, many of the agencies whose determinations the public may wish to challenge, they are often said to lack the appearance of impartiality and independence. It is also believed that if the various tribunals could share back-office administration and operate pursuant to a standardized set of processes, to the extent practical, greater efficiencies and less confusion – and thus a greater sense of fairness – would result. To address these issues, the Commission is proposing an amendment to the Charter that would allow for the consolidation of various city tribunals into one agency.[69]

Prior charter revision commissions have scrutinized the issue of city tribunals. In 1988, a ballot question adopted by the voters enacted procedural safeguards for city adjudications under

[69] The Commission noted that certain tribunals and adjudicatory functions may not be appropriate candidates for transfer of functions to OATH, either because of the governing laws or because of public policy considerations. The committee established under the proposed amendment to evaluate and make recommendations in these areas would conduct this analysis. In addition, certain other City agencies – the Conflicts of Interest Board, the Loft Board, the Campaign Finance Board, the Commission on Humn Rights, the Clerk's Office – have adjudicatory functions vested in them by Charter or state statute, but have already entered into arrangements to have their hearings conducted at OATH. In effect, their adjudicatory functions have already been consolidated.

the City Administrative Procedures Act. The 2003 Charter Revision Commission focused on increasing operational efficiency at the city's tribunals and considered the creation of the Coordinator of Administrative Justice, which was ultimately created by executive order in 2006. In 2005, the Charter was amended by vote of the electorate to set a code of conduct for administrative law judges mirroring the code applicable to state court judges. More recently, the Deputy Mayor for Legal Affairs and the Administrative Justice Coordinator have been leading the effort to further professionalize the City's adjudicatory system, including through potential consolidation. Consolidating many of the city's tribunals could greatly help in their efforts.[70]

To accomplish consolidation, the Charter could be amended to authorize the Mayor to transfer the adjudicatory functions of various tribunals (for example, tribunals now located within the Taxi and Limousine or the Department of Health and Mental Hygiene) under the umbrella of a single tribunal/agency. The transfer could be made into OATH (which would be re-designated to reflect its enhanced role). Under this proposal, the Mayor would be authorized to issue such an executive order or orders, including an evaluation and planning process, so that over a period of time many of the City's tribunals could be brought under the jurisdiction of one agency.

The Commission also proposes further amendment of the Charter to authorize the Mayor to issue any orders or directives necessary to effectuate consolidation, including those related to the functional transfer of operations from one agency to another. Such orders or directives could also include provision for the handling of matters pending at the time any transfer is ordered. The Charter should also authorize the Mayor to convene a committee to oversee consolidation, which would be chaired by the Deputy Mayor for Legal Affairs and have representatives from OATH, the Law Department and the Department of Citywide Administrative Services, among others. might include a Deputy Mayor and representatives from OATH and the Law Department. This committee should also be charged with evaluating potential transfers and making recommendations based on its evaluation to the Mayor.

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To give the public and other interested parties an opportunity to comment on proposed transfers, the Charter should require the committee to solicit public comments prior to making recommendations to the Mayor. The committee should be required to hold a public hearing in furtherance of obtaining public comments, giving notice of any such hearing in the City Record at least 20 days before the hearing is to be held. Such notice should specify the transfers that the committee is considering recommending to the Mayor.

The Charter should also give flexibility to OATH to handle the appointment of administrative law judges. Judges handling current matters overseen by OATH and perhaps other transferred matters could continue to have five-year terms. In other cases, however, the Chief Administrative Law Judge of OATH may determine that functions transferred to OATH under this amendment are better served by judges with alternative qualifications or terms than those applicable to current OATH administrative law judges.

Finally, the Commission recommends taking this opportunity to enhance the adjudicatory functions of the Department of Consumer Affairs by amending the Charter to authorize the Department to hold impartial hearings for violations of all of the laws the Department enforces. Currently, certain violations that are disputed are either handled by internal settlement discussions or adjudicated in state court. This amendment would level the playing field for all businesses subject to the laws the Department enforces, and would further the goal of increased efficiency. The amendment would preserve the Mayor's power to transfer adjudicatory functions as set forth in the proposed amendment to the provisions governing OATH.

This charter amendment could set the stage for an extensive consolidation of city adjudications into one centralized, professional and independent body.

Proposed Text

Section 1. Subdivision e of section 1046 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 8, 1988, is amended to read as follows:

e. Hearing officer. Except as provided for by this charter the person presiding at a hearing shall be assigned solely to adjudicative and related duties. Except as otherwise provided for by the rules of the agency or by order of the mayor issued in accordance with subdivisions two and three of section one thousand forty-eight, such hearing officer shall make final findings of fact and shall not make any final decision, determination or order, but shall only recommend such, and shall forward such recommendation and the record of the adjudication to the agency, who may adopt, reject or modify any such recommended decision, determination or order.

§ 2. Section 1048 of the New York city charter, as added by local law number 49 of the city of New York for the year 1991, is amended to read as follows:

§ 1048. Office. 1. There shall be an office of administrative trials and hearings which shall conduct adjudicatory hearings for all agencies of the city unless otherwise provided for by executive order, rule, law or pursuant to collective bargaining agreements. The office shall be directed by the chief administrative law judge, who shall be an attorney admitted to practice for at least five years in the state of New York. The chief administrative law judge shall be appointed by the mayor.

2. Notwithstanding any inconsistent provision of law and except as provided in subdivision five of this section, the mayor shall be authorized to designate by executive order the office of administrative trials and hearings as the tribunal for the impartial administration and conduct of adjudicatory hearings for violations of this charter, the administrative code of the city of New York, rules promulgated pursuant to this charter or such code and any other laws, rules, regulations or other policies enforced or implemented by the agencies of the city through the conduct of adjudications. Pursuant to any such order, the mayor may transfer entire tribunals or parts thereof, or categories of adjudications to such office, which may perform such responsibilities, including responsibilities delegated elsewhere by this charter or other law, as the mayor shall direct in such order. In furtherance of any such order, agencies shall be authorized to establish their tribunals, or parts thereof, within such office. No existing right or remedy of any character shall be lost, impaired or affected by reason of a transfer of a tribunal or part thereof or category of adjudications pursuant to this subdivision except as may be necessary to implement such transfer.

3. Any order issued by the mayor pursuant to subdivision two of this section may include provision for matters pending at the time that any transfer pursuant to such subdivision shall take effect and may in appropriate instances deem agency rules in effect on the date of any transfer to be rules of the office of administrative trials and hearings. Any such order may in addition address circumstances in which agencies shall continue to make final findings of fact and/or decisions, determinations or orders.

4. (a) The mayor shall constitute a committee to evaluate the adjudicatory functions carried out by city agencies and to make recommendations with respect to the transfers authorized by subdivision two of this section. Such committee shall be chaired by the deputy mayor for legal affairs or another designee of the mayor. It shall have representatives from the office of administrative trials and hearings, the law department, the department of citywide administrative services and any other agency the mayor deems necessary to implement the transfers described in this section. The work of such committee shall be deemed complete upon submission to the mayor of a final report identifying the tribunals or parts thereof, or categories of adjudications, that have been consolidated or that should be considered for future consolidation, provided that the mayor may reconstitute the committee at any time to perform the functions described in this section.

(b) Before recommending transfers of tribunals or parts thereof, or of categories of adjudications, the committee shall solicit comments from the public, including, to the extent practicable, any segments of the public particularly affected by such transfers. In furtherance of such solicitation, the committee or a person or agency designated by the committee shall hold a public hearing, on notice of at least twenty days published in the City Record. Such notice shall specify the transfers that are under consideration by the committee for recommendation to the mayor.

(c) The authority conferred upon the mayor by subdivisions two and three of this section shall not be limited by or contingent upon the requirements of this subdivision.

5. Subdivisions two through four of this section shall not apply to the office of administrative tax appeals, including the tax commission and the tax appeals tribunal, or the board of standards and appeals.

§ 3. Subdivision 1 of section 1049 of the New York city charter, as added by local law number 49 of the city of New York for the year 1991, is amended to read as follows:

1. (a) The chief administrative law judge shall have authority to direct the office established pursuant to section one thousand forty-eight with respect to its management and structure and to appoint a staff of administrative law judges. Each administrative law judge shall be an attorney admitted to practice in the state of New York for at least five years. Each administrative law judge shall be appointed for a term of five years removable only for cause after notice and opportunity for a hearing on a record.

(b) The provisions of paragraph (a) of this subdivision relating to terms and qualifications shall not be mandatory with respect to any administrative law judge or hearing officer transferred from another agency pursuant to subdivision two of section one thousand forty-eight of this chapter or assigned to any particular tribunal or part thereof, or category of adjudications, transferred pursuant to such subdivision that may be specified by the chief administrative law judge. The chief administrative law judge may prescribe alternative qualifications and terms and conditions of employment for any administrative law judges or hearing officers who are not subject to paragraph (a) of this subdivision.

§ 4. Subdivision a of section 1049-a of the New York city charter, as amended by local law number 35 of the city of New York for the year 2008, is amended to read as follows:

a. There shall be in the office of administrative trials and hearings an environmental control board consisting of the commissioner of environmental protection, the commissioner of sanitation, the commissioner of buildings, the commissioner of health and mental hygiene, the police commissioner, the fire commissioner and the chief administrative law judge of the office of administrative trials and hearings, who shall be chair, all of whom shall serve on the board without compensation and all of whom shall have the power to exercise or delegate any of their functions, powers and duties as members of the board, and six persons to be appointed by the mayor, with the advice and consent of the city council, who are not otherwise employed by the city, one to be possessed of a broad general background and experience in the field of air pollution control, one with such background and experience in the field of water pollution control, one with such background and experience in the field of noise pollution control, one with such background and experience in the real estate field, one with such background and

experience in the business community, and one member of the public, and who shall serve for four-year terms. Such members shall be compensated at [the] a rate [of one hundred fifty dollars per day when performing the work of the board] that may be specified by the chair and approved by the mayor. Within [its] the board's appropriation, the [board] chair may appoint an executive director, subject to the approval of the board, and such hearing officers, including non-salaried hearing officers, and other employees as [it] the chair may from time to time find necessary for the proper performance of [its] the board's duties.

§ 5. Section 2203 of the New York city charter is amended by adding a new subdivision (g) to read as follows:

(g)(1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(2) All such proceedings shall be commenced by the service of a notice of violation. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

(3) For the purposes of this subdivision, no act or practice shall be deemed a deceptive trade practice unless it has been declared a deceptive trade practice and described with reasonable particularity in a local law or in a rule or regulation promulgated by the commissioner.

(4) Notwithstanding any other inconsistent provision of law, powers conferred upon the department by this subdivision may be exercised by the office of administrative trials and

hearings consistent with orders of the mayor issued in accordance with subdivisions two and three of section one thousand forty-eight of this charter.

CITYWIDE REVIEW OF REPORTING REQUIREMENTS AND ADVISORY BODIES

The 2005 Charter Revision Commission took a detailed look at the issue of reporting requirements. Currently, the Charter and the Administrative Code contain a large number of requirements for detailed periodic reports on various aspects of agency programs. These requirements have steadily increased over the years in attempts to increase agency efficiency, effectiveness and accountability. Many reports are extremely useful to the public and to city managers, providing information about what agencies are doing, how well they are performing, and how to improve their performance. The most relevant and frequently updated reports enable the City to manage itself effectively and base its plans on precise performance indicators.

Many reporting requirements, however, have become outdated. Concerned that the continued production of unnecessary reports may be a waste of time and resources for strapped agencies, the 2005 Commission ordered two expert reports to examine the usefulness of 33 charter-mandated reports. In one of the reports, the experts noted that they could not even find 13 of the reports because they were difficult to locate online, not posted or not produced; and, of the remaining reports, many were not widely used or familiar to either the public or city managers. That report found that the best-known and most used reports were the Mayor's Management Report and the Preliminary Mayor's Management Report, the Executive Budget and the Adopted Budget. The report also recommended posting the meaningful reports online in order to make them more accessible to the public. The second expert report noted that there were close to 175 reports required by the Charter and Administrative Code combined, and that they do not form a coherent structure in support of performance and accountability: there is overlap and duplication, an ineffective linkage between spending and results, and little ability to trace connections among documents so that they provide an integrated picture of city government. The same general findings apply to the plethora of advisory bodies mandated by current provisions of law. An updated chart of required reports is attached in the Appendix.

Both expert reports advised the Commission that it was not feasible for the Commission itself to try to identify and excise reports that are no longer useful. Rather, they proposed amending the Charter to create a commission to study the usefulness of each report, as well as of the type of advisory bodies described below, and to recommend elimination of those that failed to meet certain criteria of continued usefulness. The 2005 Commission drafted proposed legislation to create such a commission but ultimately did not propose it. The expert reports, as well as the Preliminary Recommendations of the 2005 Commission, which contains a long discussion of the background and theory of reporting requirements, can be found on the Charter Revision Commission's website (http://www.nyc.gov/html/charter/html/archives/reports.shtml) in the Archives section.

With reference to bodies that are solely advisory in nature, it is the intent of this proposal to cover bodies that prepare reports or offer advice or recommendations, but do not themselves implement city programs or initiatives or have the power to bind agencies or the public to their determinations. Thus, for example, the Commission would have no jurisdiction over community boards, whose members have been found by the Corporation Counsel to be public officers and which exercise an array of powers and duties under the Charter, or over the Voter Assistance Commission, which is empowered to undertake activities to facilitate voter registration and voting.[71]

This Commission agrees with the 2005 Commission finding that reporting requirements and advisory bodies should be reviewed to assess their continued usefulness. The proposal set forth below would establish a seven-member Report and Advisory Board Review Commission charged with reviewing periodic reports required by the Charter, Administrative Code, or local law, and the advisory commissions, committees, boards and task forces required therein. The members of the Commission would be: the City Council Speaker and two other Council members chosen by the Speaker, the Corporation Counsel, the Directors of the Mayor's Office of Operations and the Office of Management and Budget, and the Commissioner of Information Technology and Telecommunications. The Director of the Mayor's Office of Operations would

[71] This would still be the case if voters approve the Commission's ballot proposal to merge the Voter Assistance Commission into the Campagin Finance Board and reconstitute it as the Voter Assistance Advisory Committee.

chair the Commission. The composition of the Commission is meant to allow the council and the relevant mayoral agencies to work together in order to increase the City's ability to govern itself and keep the people informed using the most up to date and important indicators.

The proposal charges the Report and Advisory Board Review Commission with soliciting the views of groups and organizations that are the subject of these reports or advisory bodies or are affected by them. After reviewing a reporting requirement, the Commission could retain it, waive it in whole or in part, or dissolve an advisory body, subject to review by the Mayor and City Council. The Commission would file any decision to waive a requirement or dissolve an advisory body with the Council and the Mayor, and provide copies of the information to interested groups. The Council could either vote to approve or disapprove the waiver; failure to act would constitute approval of the Commission's recommendation. The Mayor could veto the Council's disapproval, and the Council could override the Mayor by a two-thirds vote.

The proposal requires that, in deciding whether to waive a reporting requirement, the Commission consider several criteria, including but not limited to whether the report provides useful information for evaluating the results of programs, activities and functions and their effectiveness in achieving their goals; whether the report provides useful information to assess the effectiveness of the City's management of its resources; whether the report is duplicative of any other mandated report; whether the report remains relevant in light of changing circumstances, current information needs and technological advances; and whether the report's benefits outweigh the costs to produce it. The proposal specifically exempts certain reports from the Commission's power: the Mayor's Management Report, required by Charter § 12(c), the Comptroller's annual statement of the City's revenues and expenditures, the Comptroller's annual audit and actuarial audit, and any reports required by charter chapters concerning the Expense Budget, Capital Projects and Budget, Budget Process, and the Independent Budget Office; as well as any reports required by state or federal law.

When deciding whether to recommend the dissolution of an advisory body, the Commission must consider whether the body substantially furthers the mission of its City agency; whether its function or jurisdiction duplicates the work of any other mandated body;

whether its function is limited to producing reports that have been waived under this section; whether its function or jurisdiction remains relevant; and whether the body's benefits outweigh the costs of supporting it.

The legislation would also empower the Commission to recommend to the Mayor and the Council the modification of reports and advisory bodies to make them more effective; this would include recommendations to modify or consolidate reporting requirements in light of technological advances and additional data needs. In this respect, the 2010 Charter Revision Commission views the applicability of and compliance with electronic filing requirements in the Charter to be a very important tool for increasing the transparency of government, accessibility of the public to important information and public awareness. The Council could also repeal or limit any reporting requirement or advisory body at any time, or extend or enhance such requirements, provided that any such extensions or enhancements are subject to review by the Report and Advisory Board Review Commission. It also imposes a three-year waiting period before the Commission may review a newly enacted reporting requirement.

Proposed Text

Section 1. The New York city charter is amended by adding a new section 1113 to read as follows:

§1113. Report and Advisory Board Review Commission.

a. Notwithstanding any inconsistent provision of this charter, the administrative code or any local law and except as provided in this section, any requirement in this charter, the administrative code or otherwise in any local law that mandates the issuance of periodic or multiple reports by public agencies, officers or employees where at least one such report is due on or after the effective date of this section, and any requirement that mandates the establishment of a commission, committee, board, task force or other similar body that is solely advisory in nature, shall be subject to waiver in accordance with the provisions of this section.

b. There shall be a report and advisory board review commission, which shall consist of the speaker of the city council, two members of the council to be chosen by the speaker, the corporation counsel, the director of the mayor's office of operations, the director of management and budget, and the commissioner of information technology and telecommunications or

designated officers or employees of the agencies headed by such members or in the case of the council members, designated employees of the council. The director of the mayor's office of operations shall be the chair of the commission.

c. The commission shall meet on a regular basis, at intervals determined by the chair, to perform the reviews required by this section. The commission shall hold at least one public hearing each year to solicit comment from members of the public on matters required to be reviewed by the commission pursuant to this section. The chair shall have charge of the organization of the commission and shall have authority to employ, assign and superintend the duties of such officers and employees as may be necessary to carry out the provisions of this section. In addition, the speaker of the city council, the commissioner or head of any agency or office represented on the commission or the commissioner or head of any other appropriate city agency or office may, if requested by the chair or the commission, provide staff and other assistance with respect to any matter within the jurisdiction of the commission.

d. (1) Except as provided in paragraph six of this subdivision, the commission shall have the power and responsibility to review all requirements in this charter or the administrative code or elsewhere in the local laws of New York city that mandate the issuance of periodic or multiple reports by city agencies, officers or employees where at least one such report is due on or after the effective date of this section, and all requirements that mandate the establishment of commissions, committees, boards, task forces or other similar bodies that are solely advisory in nature. Notwithstanding any inconsistent provision of this charter, the administrative code or any local law, the commission shall further have the power and responsibility, subject to review by the council and the mayor as provided in paragraphs four and five of this subdivision, and except as provided in paragraph six of this subdivision, to waive any such requirement. The commission shall be empowered to review requirements in effect on and after the effective date of this section regardless of the date of enactment of such requirements; provided, however, that the powers and duties of the commission shall not extend to the mayor's management report required pursuant to subdivision c of section twelve of this charter as in effect on July first, two thousand ten, or to requirements mandating the issuance of reports, or the creation of bodies, that are required pursuant to any state or federal law, rule or regulation or that are both (i) in effect on July first, two thousand ten and (ii) set forth in or required by subdivision one of sections ninety-three, ninety-five or ninety-six, or by chapters six, nine, ten or eleven of this charter.

(2) Prior to making any determination to waive a requirement pursuant to this section, the commission shall, to the extent practicable, solicit the views of groups, organizations, or entities representing the interests of persons and entities that the chair or the commission reasonably determines are the subject of or are otherwise affected or benefited by the requirement under review. Any such determination made by the commission shall include a statement that the commission has solicited input in accordance with this paragraph.

(3) The commission shall review all requirements within its jurisdiction. Except as provided in this subdivision, the chair may establish the agenda and priorities of the commission with respect to the order in which the commission reviews requirements and with respect to similar matters. Upon completing its review of each such requirement, the commission shall issue a written determination whether or not to waive such requirement and, if the commission determines such requirement shall be waived, stating the reasons therefor. A report waived by the commission, subject to the review process set forth in paragraphs four and five of this subdivision, shall cease to be required. In the event that the commission determines to waive the requirement that mandates the establishment of an advisory body, if such waiver is approved by the council and the mayor pursuant to the provisions of this section, such body shall cease to exist following such approval. The commission may waive a reporting requirement in part rather than in whole by identifying particular required elements of such report that should be waived or retained. The commission shall issue determinations with respect to requirements that are in effect on the date of adoption of this section no later than November first, two thousand fifteen, and shall issue determinations with respect to requirements enacted after such date of adoption no later than five years after the date of enactment of such requirements. The commission may from time to time make further determinations with respect to the waiver of any such requirement; provided, however, that when a requirement has been retained by the commission or as a result of the review process set forth in paragraphs four and five of this subdivision, the commission shall again review such requirement within five years of the date of the determination to retain the requirement.

(4) The commission shall promptly file with the council and the mayor, publish in the city record and post on the city website each determination to waive a requirement, whether in part or in whole, that is issued pursuant to paragraph three of this subdivision, and shall promptly provide copies of such determination electronically or by any other reasonable means to groups,

organizations or entities from which the commission has solicited input in accordance with paragraph two of this subdivision. Within one hundred twenty days of the filing of a determination by the commission, the council may either approve or disapprove such determination by the affirmative vote of a majority of all the council members. If, at the end of such one hundred twenty days, the council has failed to act on a determination of the commission, the council shall be deemed to have approved such determination, and such determination shall take effect.

(5) All actions of the council pursuant to this subdivision shall be filed by the council with the mayor prior to the expiration of the time period for council action under paragraph four of this subdivision. Any approval by the council pursuant to this subdivision, whether as a result of council action or failure to act, shall be final. Any disapproval by the council pursuant to this subdivision shall be final unless the mayor within ten days of receiving a filing with respect to such action files with the council a written disapproval of the action. A mayoral disapproval pursuant to this paragraph shall have the effect of vetoing any council disapproval and shall be subject to override by a two-thirds vote of all the council members within fifteen days of such filing by the mayor.

(6) Notwithstanding any other provision of this section, in no event shall the commission make a determination to waive a requirement otherwise subject to its jurisdiction for three years following the date of enactment of the most recent local law imposing any such requirement.

e. The commission shall base its reviews and determinations on such criteria as it may deem appropriate. Such criteria shall include but not be limited to the following:

(1) With regard to requirements mandating the issuance of reports: whether the report provides useful information for evaluating the results of programs, activities and functions and their effectiveness in achieving their goals and objectives; whether the report provides useful information for assessing the effectiveness of the management of city resources; whether the report is entirely or partially duplicative of the subject matter of any other mandated report; whether the report remains relevant in light of changing circumstances, current information needs and technological advances; and whether the benefits and usefulness of the report outweigh the expenditure of public resources to produce it.

(2) With regard to requirements mandating the establishment of advisory commissions, committees, boards, task forces or other similar bodies: whether the body substantially furthers

the mission of city agencies with which it interacts or within which it is located; whether the function or jurisdiction of a body is entirely or partly duplicative of the function or jurisdiction of any other mandated body; whether the function or jurisdiction of a body is limited to the production of reports that have been waived pursuant to this section; whether the function or jurisdiction of a body remains relevant in light of changing circumstances and needs; and whether the benefits and usefulness of the body outweigh the expenditure of public resources to support and interact with it.

f. In addition to the powers set forth in subdivisions a through e of this section, the commission may recommend to the mayor and the council the modification of existing requirements with respect to the issuance of reports and the establishment of solely advisory bodies in order to make the implementation of such requirements more effective in achieving their intended purposes; such recommendations may include, but not be limited to recommendations designed to modify or consolidate reporting requirements in light of technological advances, and may also evaluate, and make recommendations to the mayor and the council concerning, additional data needs.

g. Nothing in this section shall be construed to prevent the city council from acting by local law to limit or repeal any requirement otherwise subject to this section at any time, or to enhance or extend such requirement. Any such enhancement or extension shall be subject to commission review pursuant to this section, provided, however, that such review is limited by the three-year period set forth in paragraph six of subdivision d.

FAIR SHARE

"Fair Share" was added to the Charter in 1989 in sections 203 and 204; it established criteria for the location of city facilities, with the goal of "fair distribution among communities of the burdens and benefits associated with city facilities, consistent with community needs for services and efficient and cost effective delivery of services and with due regard for the social and economic impacts of such facilities upon the areas surrounding the sites." The Charter instructed the City Planning Commission (CPC) to promulgate rules to implement this goal, and the CPC enacted the Criteria for the Location of City Facilities, commonly known as the Fair Share Criteria, in 1991. The Criteria describe in detail the considerations to be weighed in siting, expanding or closing city facilities, including methods by which local community input is to be solicited as part of the decision-making process.

The CPC's Criteria require city agencies making facility siting decisions to consider the relationship of the facility to existing city and non-city facilities. For example, Section 4.1(a) of the Criteria provides that the sponsoring agency must consider the "[c]ompatibility of the facility with existing facilities and programs, both city and non-city, in the immediate vicinity of the site." The Department of City Planning makes clear in its publication "'Fair Share' Criteria – A Guide for City Agencies" that "[t]he types of non-city facilities that should be identified are generally the state, federal, and private institutions that serve as the city's counterparts in providing public services."[72] Like city facilities themselves, these non-city facilities may serve local neighborhoods only, or may serve an entire borough or the city as a whole.

The Criteria recognizes the importance of considering a city facility-siting decision in the context of existing non-city facilities providing similar services. Charter § 204(d)(3), however, currently requires that the map and explanatory text of facilities published by the Department of City Planning include information about the locations of only certain non-city facilities, specifically health and social service facilities operated by or on behalf of the state or federal

[72] Guide at 14.

government. The current map and explanatory materials have not, therefore, included non-city facilities classified under the Criteria as "Transportation and Waste Management Facilities," a category which includes facilities such as airports, heliports, ferry terminals, sewage treatment plants, and solid waste transfer and processing facilities.[73] The Commission therefore proposes to amend Section 204(d) of the Charter to require that the map and explanatory text published by the Department of City Planning also include the locations of these facilities, as well as other state, federal or privately owned transportation and waste management facilities that act as the city's counterpart in providing a public service. This modification would align the charter map and data publication requirement with the Criteria, and provide agencies and the public with an information resource concerning these facilities.

Under this change, the locations of private waste management facilities, for example, would be identified on the map and explanatory text. Likewise, the locations of MTA or Port Authority bus depots and subway and train yards would be published. On the other hand, for example, a truck parking facility for a commercial distribution/warehouse operation would not be included.

Proposed text:

Section 1. Subdivision d of section 204 of the New York city charter, as amended by local law 20 for the year 2002, is hereby amended to read as follows:

d. The statement of needs shall be accompanied by a map together with explanatory text, indicating (1) the location and current use of all city-owned real property, (2) all final commitments relating to the disposition or future use of city-owned real property, including assignments by the department of citywide administrative services pursuant to clause b of subdivision 3 of section sixteen hundred two, and (3) to the extent such information is available to the city, <u>(i)</u> the location of health and social service facilities operated by the state of New York or the federal government or pursuant to written agreement on behalf of the state or the federal government<u>; and (ii) transportation or waste management facilities operated by the state of New York or the federal government, or by private entities that operate pursuant to written agreement on behalf of the state of New York or the federal government or that serve as the</u>

[73] Guide at 49.

city's counterparts in providing public services. Information which can be presented most effectively in text may be presented in this manner. In addition to being transmitted with the statement of needs pursuant to subdivision a of this section, such map shall be kept on file with the department of city planning and shall be available for public inspection and copying. The map shall be updated on at least an annual basis.