



**REPORT OF THE
NEW YORK CITY
CHARTER REVISION COMMISSION**

August 20, 1998

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I. THE CHARTER

The New York City Charter is the basic document that defines the organization, power, functions and essential procedures of City government. The Charter sets forth the structure of local government in broad strokes while leaving the details of operation to local law and rule-making by City agencies.

In 1989, the Charter underwent a major overhaul in response to the United States Supreme Court decision in *Morris v. Board of Estimate*, which required the City to eliminate the Board of Estimate as a governmental body. Given the scope of the recent changes to the Charter, the 1998 Charter Revision Commission limited itself to consideration of proposals to improve governmental operations in those areas where experience had shown the new Charter was not working effectively.

Under New York State law, Charter revision may occur as an ongoing process. Individual subjects or sections of the Charter can be considered for amendment and a limited number of revisions presented to the voters each year. This approach works well to address technical issues, such as those in the campaign finance chapter, and was used by the 1988 Charter Revision Commission to propose the original Charter chapter on campaign finance reform.

The 1998 Charter Revision Commission has also adopted this approach. After reviewing the Charter as a whole, the Commission decided to present limited revisions for voter approval in 1998, while developing additional proposals for consideration in 1999. This report discusses the Charter revisions proposed by the Commission in 1998, as well as the proposals the Commission plans to study for potential submission in 1999.

II. THE 1998 CHARTER REVISION COMMISSION

Mayor Rudolph W. Giuliani appointed the 1998 Charter Revision Commission on June 5, 1998, pursuant to Municipal Home Rule Law §36. The Mayor named as members of the Commission:

- Peter J. Powers, Chairman. Chairman of High View Capital. First Deputy Mayor of the City of New York, January 1994 – August 1996;
- Paul A. Crotty, Vice Chairman. Group President – New York/Connecticut, Bell Atlantic. Corporation Counsel of the City of New York, January 1994 – November 1997. Commissioner, New York City Department of Housing Preservation and Development, 1986 – 1988. Commissioner, New York City Department of Finance, 1984 – 1986;
- Amalia Victoria Betanzos. President of Wildcat Service Corporation and Chair of the New York City Commission on the Status of Women;
- Abraham Biderman. Executive Vice President of Lipper & Company, LP. Commissioner, New York City Department of Housing Preservation and Development, 1988 – 1989. Commissioner, New York City Department of Finance, 1986 – 1987;
- Monsignor Harry J. Byrne. Pastor Emeritus of Epiphany Church in Manhattan. Vice President, Ronald McDonald House of New York City. Member, New York City Rent Guidelines Board, 1978 – 1982;
- The Reverend Michel J. Faulkner. Senior Minister, Central Baptist Church. Member, Task Force on New York City Police and Community Relations;
- Vincent A. Marchiselli. Chairman, New York City Civil Service Commission. Member, New York State Assembly, 1974 – 1984;
- Benito Romano. Member, Willkie Farr & Gallagher. Former U.S. Attorney for the Southern District of New York. Acting Chair, New York City Conflicts of Interest Board. Chairman, Puerto Rican Legal Defense and Education Fund;
- Herbert Rubin. Senior Partner, Herzfeld and Rubin. Member of Judicial Screening Committees for U.S. Senator Daniel P. Moynihan and Mayor Giuliani;

- Mary Crisalli Sansone. Founder, Congress of Italian-American Organizations;
- Spiros A. Tsimbinos. Attorney in New York State for 29 years. Former President, Queens County Bar Association;
- Howard Wilson. Partner, Rosenman and Colin LLP. Commissioner, New York City Department of Investigation, 1994 – 1996. Chair, Board of Trustees, New York City School Construction Authority.

The Mayor requested the members of the Commission to consider five issues:

- Whether New York City should adopt nonpartisan elections;
- Whether further campaign finance reform, including a ban on corporate contributions, is needed;
- Whether the land use review process could be streamlined while maintaining appropriate community input;
- Whether the rules governing procurement of goods and services could be improved;
- Whether City offices function effectively.

Under the State law governing Charter revision commissions, the Commission was also responsible for reviewing the Charter generally and determining whether other changes should be made.

Public Hearings and Public Meetings

To solicit the widest possible public input, the Commission held a series of five public hearings, one in each borough, before it developed formal proposals. The Commission distributed notices of the hearings and of the topics in which it was most interested to over three thousand civic organizations and interested individuals. Notice of the hearings was also published in newspapers, on the Commission's internet site and in the City Record. In every notice, the Commission encouraged public participation through written and oral testimony.

During the initial round of public hearings, many speakers voiced concern that the Commission would not be able to spend enough time reviewing proposals before offering Charter amendments. The Commission was sensitive to this concern and voted unanimously to focus its work on three areas for possible Charter amendments on the November 1998 ballot: campaign finance reform, nonpartisan elections, and a full-time City Council. The Commissioners also voted unanimously to continue working on proposals in other areas, but to make no recommendations for change in the current election year.

The Commission then held three public meetings with the subject matter limited to the topics the Commission was studying for the current year. At each meeting, a panel of experts on the subject addressed the Commission, answered questions from the Commissioners and debated one another's ideas.

After meeting with the invited experts, the Commission met again on August 4, 1998, to decide whether to propose a Charter amendment on any of these three subject matter areas. The Commission determined that it would propose one Charter amendment for the 1998 ballot, on the subject of campaign finance reform. The Commission discussed and refined the campaign finance reform proposal at three public meetings and two public hearings. On August 20, 1998, the Commission voted to recommend the campaign finance reform Charter amendment to the voters.

III. THE CAMPAIGN FINANCE REFORM PROPOSAL

New York City's efforts to reform the campaign finance system through Charter revision extend back to 1986. Over the past twelve years, through several administrations and three Charter revision commissions, the City has engaged legislators, good government groups, election reform experts and the public in a dialogue on the subject. As with all questions of political reform, any apparent resolution, or endpoint in the dialogue, is merely a stopping ground for reflection. The work of the previous commissions marks the substantive beginnings of the current Commission's proposal.

The Commission's work on campaign finance reform sought to remove the influence of special interests in the election process and to improve the campaign system. The Commission was committed to the idea that every New Yorker should be an equal player in municipal politics. In the area of campaign finance, the Commission proposed three measures to "level the playing field" in City campaigns: prohibit corporate contributions, rout out contributions that raise the appearance of corruption, and, to the extent possible, eliminate "soft money".

A. The Existing Campaign Finance System

In 1988, the Charter Revision Commission proposed establishing a campaign finance program, the first of its kind, in the City Charter. The Commission did not propose detailed technical reform measures because the

City Council had enacted legislation establishing a voluntary campaign finance program.¹

Instead, the 1988 Charter Revision Commission proposed Charter amendments to resolve problems not addressed by existing law. The 1988 Commission articulated four guiding principles to promote integrity in the electoral process:

- Election to municipal office should not require great personal wealth or access to large campaign contributors.
- Campaign contributions should be limited because of the potential that large contributors can have undue influence in the governmental decision-making process.
- There should be reasonable limitations on the costs of running for public office and on the amount that may be spent on election campaigns.
- City government should encourage broad public participation in the funding of municipal election campaigns.

The 1988 Commission proposed a ballot question on campaign finance, in part to “encourage the Council and the Campaign Finance Board to close loopholes in the law.”² The Commission proposed that the Campaign Finance Board be

¹ The Act consisted of a program including contribution limits, expenditure limits, public disclosure of campaign finances, and the provision of public matching funds to qualified candidates choosing to join the voluntary program. The legislation met with mixed praise. Good government groups applauded the fixed limits on campaign contributions and expenditures, partial public funding of City election campaigns and the newly established nonpartisan campaign finance board. In contrast, the provisions allowing corporate campaign contributions and loans were sharply criticized.

² Report of the New York City Charter Revision Commission: December 1986 – November 1988, vol. 1, 44.

made a Charter agency, that the Board be directed to operate in a strictly nonpartisan manner, that the integrity of the public fund from which amounts are disbursed to candidates be protected, and that the Board promote voter education. The voters approved these Charter amendments in November 1988.

The Campaign Finance Board has administered the system in an independent, nonpartisan fashion for ten years. The approach of the voluntary Campaign Finance Program ("the Program"), as administered by the Board, has resulted in effective limits on the amount of contributions, meaningful restraints on spending, disclosure of campaign finance information, financial support of candidates, and voter education. Further improvements in these areas have been proposed and the Commission determined that it should leave these issues to the legislative process.

The Commission focused its work on problems that would likely never be resolved without Charter amendment. It identified three areas that the existing system has not adequately addressed: corporate contributions, unregulated campaign spending (known as "soft money") and contributions by those who do business with the City ("pay to play" contributions). In addition, the Campaign Finance Board is vulnerable to political pressures through the uncertainty of the budget process and through unfilled Board appointments. The 1998 Charter Revision Commission adopted a ballot proposal to address all these problems.

The Commission also considered the timing of its proposal. The Campaign Finance Board works on a four-year election cycle and it will need substantial lead time to implement Charter amendments. Further, some candidates planning to run for municipal office in 2001 have already begun fundraising. If the new restrictions are to apply to donations to the 2001 campaigns, candidates and donors would have to be aware of them at an early stage. The Commission considered that a vote on the Charter amendments in 1998 would give the Board, candidates and donors sufficient time to comply with the new requirements while preparing for the 2001 election. The Commission thus determined that it would be better to propose the campaign finance Charter amendments this year.

B. The Proposal

After studying a range of materials and reports gathered by staff on the subject of campaign finance reform,³ on July 28, 1998, the Commission heard testimony from a panel of campaign finance experts.⁴ On August 4, 1998, the Commission met and approved a preliminary proposal to achieve three goals: protect the independence of the Campaign Finance Board, prohibit candidates from accepting contributions from a person or entity that does business or seeks

³ A bibliography of materials reviewed by the Commission is attached as Exhibit A.

⁴ The panel included Nicole Gordon, Executive Director of the Campaign Finance Board, Richard Schrader, Director of Citizen Action's Clean Money/Clean Elections campaign, Nancy Northup, an attorney with the Brennan Center for Justice at New York University Law School, Betty Lugo, a candidate who ran for election to the City Council under the current campaign finance system, and Lawrence Mandelker, an experienced election lawyer.

to do business with the City and eliminate the influence of "soft money" in election campaigns for City offices. The proposal delegated to the Campaign Finance Board the authority to adopt such rules as are necessary to implement the Charter amendment. In so doing, the proposal directed the Board to consider and balance criteria including the integrity of the campaign finance program, incentives to candidates to participate in the program, the costs to the public of the program and maintenance of a reasonable balance between the program's burdens and incentives. The proposal called for the Campaign Finance Board to submit rules for public notice and comment by June 30, 1999 and to adopt rules as soon as practicable thereafter.

The proposal was distributed to media outlets, elected officials, civic organizations and others who had expressed an interest in campaign finance issues. It was also published on the Commission's Internet site. In each instance, the Commission solicited comment on the proposal. Between August 4 and August 20, 1998, the Commission held two public hearings and received written comments on the proposal. In addition, individual Commissioners held informal meetings with knowledgeable parties. Of particular importance, the Commission solicited the technical input of the Campaign Finance Board.

On August 18, 1998, the Commission met and discussed revisions to its proposal. Some Commissioners and many commentators had expressed concern over the sweeping scope of a ban on contributions by anyone doing business with the City. They pointed to problems of interpretation that could not be easily resolved through a Charter amendment.

Other Commissioners continued to believe that campaign donations by those who do business with the City should be banned under all circumstances. Some of the Commissioners supported a proposal to require disclosure of donations by those doing business with the City, before directly regulating the donations.

Early in the Commission's process many commentators and some Commissioners suggested that the Commission should propose an outright ban on corporate contributions because corporations should have no role in financing election campaigns. After the Commission circulated its initial proposal to ban contributions by persons and entities doing business with the City, many commentators suggested that the same effect could be achieved by prohibiting corporate contributions, without the administrative difficulties presented by the Commission's original proposal. The Commissioners continued to believe it was important to regulate contributions by those who do business with the City but, after discussion, decided to recommend that corporate contributions be prohibited as well.

The Commissioners directed that a Charter amendment be drafted to reflect this discussion and distributed to interested parties. The proposal would include four elements.⁵

First, ensure the Board a full complement of members and protect the Board's budget from the political process.

Second, prohibit corporate contributions.

⁵ The Charter language and ballot question are attached as Exhibit B.

Third, require disclosure of campaign contributions by persons or entities doing business with the City; and direct the Campaign Finance Board to study such contributions and issue necessary regulations.

Fourth, require the Campaign Finance Board to promulgate such rules as it deems necessary to eliminate "soft money" in election campaigns in New York City.

1) Independence of the Board

The nonpartisan character of the Board is essential to its credibility, and the Commission determined that Charter provisions concerning the manner of appointments to the Board were necessary to insulate the Board's activities from the partisan political pressures of any given moment. With only five members, the Board needs a full complement to ensure a quorum and to maintain the ability to break tie votes. Further, because the Charter requires that the Mayor's and the Speaker's appointments be from two different political parties, the participation of all five appointed members gives credibility to its decisions and processes. Unfortunately, since becoming a Charter agency in 1988, the Board has operated without a full complement of appointed members for long periods of time.⁶ In addition, because a Board member who serves past his or her term functions as an "at-will" appointee, the Commission determined that such an appointee could be vulnerable to political pressure from the appointing authorities.

⁶ In particular, the Speaker of the Council has not named a non-Democratic appointee since 1994.

To address these concerns, the Commission proposed that:

- Any vacancy unfilled by an appointing authority (either the Mayor or the Speaker) for a period of 180 days shall be filled by appointment of the Board.
- Any Board member serving past his or her term shall be automatically re-appointed if the appointing authority has not acted, after notice, within 120 days of the end of the Board member's term.
- In a City election year, these appointments occur after 90 days.

The Commission specifically intended to retain the current requirement that the appointing authorities (the Mayor and the Speaker of the Council) each appoint two members from different political parties.

The other major area where the current Charter leaves the Board vulnerable to political pressure is in the adoption of its budget and, specifically, the budget for the Voter Guide. To insulate the Board from this pressure, the Commission proposed that:

- The Board shall submit to the Mayor an itemized estimate of the financial needs of the Board for the ensuing fiscal year. The Mayor shall include such estimates in the Executive Budget without revision, but with such recommendations as the Mayor may deem proper.

- The Charter provisions applicable to the establishment of the Council's budget shall then govern the Board's budget.
- Each time the Board must publish a Voter Guide, if the Board believes it has insufficient funds to produce the Guide, the Office of Management and Budget shall, after consultation with the Board, set aside a reasonable amount to publish and distribute the Voter Guide.

2) Prohibit Corporate Contributions

The Commission considered that corporate contributions were inherently problematic and should be banned outright from the City system. There are obvious inequalities that result from a system that allows corporations to pour money into political campaigns. The bedrock principle of one-person, one-vote is explicitly based on the idea that one person's vote should count the same as any other person's vote. Allowing corporations to contribute to candidates serves to undermine this fundamental value of our electoral system.

Unlike most individual contributions, corporate contributions as a class erode confidence in the democratic process. Corporations have financial, not ideological, reasons to participate in the political process. Corporate contributions increase public cynicism by contributing to the appearance that economically powerful groups can better influence politicians than the citizenry as a whole. To the extent politicians take positions to ensure corporate donations, those contributions impair the ability of a public official to make independent political judgments.

The United States Supreme Court in *Austin v. Michigan State Chamber of Commerce*,⁷ recognized that corporate contributions function precisely in this manner. The Court noted that the unique legal and economic characteristics of corporations require regulation of their political expenditures to avoid corruption or the appearance of corruption:

State law grants corporations special advantages – such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets – that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders' investments. These state-created advantages not only allow corporations to play a dominant role in the Nation's economy, but also permit them to use resources amassed in the economic market place to obtain an unfair advantage in the political marketplace....

The resources in the treasury of a business corporation...are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.⁸

The Court noted the "corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and have little or no correlation to the public's support for the corporation's political ideas." *Id.* at 660. Corporate expenditures, the United State Supreme Court found, pose the danger of corruption in this broader sense.

On the federal level, corporate contributions have been prohibited since Congress first banned them in 1907. More than half the states have enacted bans on direct corporate contributions to candidates and most other states limit

⁷ 494 U.S. 652 (1990).

⁸ 494 U.S. at 658 – 59 (internal quotation marks and footnotes omitted).

corporate contributions in some way.⁹ There is growing evidence that the flow of funds in City elections is too dependent on large corporate contributions. Of the money raised in 1997 by candidates participating in the City's program, 27 percent came from corporate contributions.¹⁰ The Commission determined that a ban on this kind of spending of corporate wealth in New York City is necessary to enhance participation and equality in City elections.

Under the Commission's proposal, no candidate participating in the Campaign Finance Program will be permitted to accept corporate contributions. The Campaign Finance Board will be given rule-making authority to implement the ban.

3) Regulation of Campaign Contributions by Those who Do Business With the City

Despite the considerable strides of the New York City Campaign Finance Program, the City has not addressed the problem of campaign contributions that are made (or perceived to have been made) to influence elected officials. A flat prohibition on corporate contributions is a step toward solving this problem, but the Commission was still concerned that other types of campaign donations would be used to exercise undue influence over candidates. Therefore, the Commission proposed that contributions by anyone – associations, partnerships or individuals – who does business with the City should be subject to regulation.

⁹ A chart describing how the states regulate corporate campaign contributions is annexed as Exhibit C. New York State does not prohibit corporate contributions.

¹⁰ New York Times, April 18, 1998, Sec. B, page 1.

Most private money contributed to election campaigns is "interested" in at least one of three ways:

- the interest in securing access to, or influence over, the elected official;
- the interest in promoting candidates who are likely to vote in ways that are consistent with the donor's self interest;
- the interest in promoting candidates who espouse philosophies that are consistent with the donor's.

It is difficult to characterize definitively whether contributions fall into one category or another. The donor who contributes equally to both sides of a race is probably advancing the first interest. The donor who contributes to members of a legislative committee that regulates the donor's industry is likely advancing at least the second interest, if not the first as well. An organization that has a position on an issue and contributes to a candidate that advocates the same position may be furthering the third interest. Because it is impossible to ascertain the motive of the contributor, it is equally difficult to know which of the interests described above a donor intends to further.

Regardless of the donor's motive, the Commission identified those donations that appear to further the first type of "interest" as inherently harmful. First, there is the opportunity for corruption on the part of public officials who accept campaign contributions from those whose business interests can be affected by that official's discretionary decisions, whether that decision is the favorable negotiation of a contract or the exercise of a legislative vote. Second,

even where no corruption is evident, donations that are made to secure influence over public officials erode public trust and confidence in government.¹¹

The Commission identified several categories of campaign contributions that, at a minimum, create the perception that those donors have the opportunity and desire to exercise undue influence over elected officials. The most obvious categories of donations that create this perception are donations by City contractors and others doing business with the City. The news is replete with stories raising questions about donations by contractors to candidates for office at all levels of government and in all political parties. Commission staff collected a sampling of over fifty such incidents in New York State between 1994 and 1998 alone. Similarly, donations by registered lobbyists and their principals can create the appearance of an attempt to purchase influence. These donations can be made directly to the candidate, or to the candidate's political committee or political action committee.

Generally there is no evidence that these campaign contributions actually influence the award of a particular contract or passage of a bill. The contributions appear to be consistent with current law, which does not prohibit contributions by entities doing business with the government. There is, however, no doubt that these contributions have a negative impact on the public because they promote the perception that one must "pay to play."

¹¹ The Commission recognized that the mere size of a contribution might be correlated with how effectively the interest of the donor will be advanced. Indeed, some have argued that all private donations are "interested" and that the undue influence of such donations will not be eliminated unless campaigns are completely financed with public funds and private contributions are eliminated entirely. In New York City, through contribution limits and public funding for candidates, the campaign finance system has taken steps to limit the potentially superior influence of those with access to greater wealth.

In framing its proposal, the Commission considered the growing body of regulatory restrictions from around the country that address this kind of interested donation. A survey of some of the jurisdictions with these regulations is attached as Exhibit D.

The Commission also considered the many helpful comments it received on its original proposal. The final proposal specifically addresses the concern raised by many that too broad a ban on donations by persons doing business with the City could drive candidates out of the voluntary Campaign Finance Program. Since the City has never collected this information, the Commission decided that the concerns raised about the effect of a ban could not be adequately addressed. Therefore, the Commission determined that the first necessary step was to require disclosure of the donors to participating campaigns who do business with the City. City agencies can aid in the information gathering process by identifying for the Board the persons and entities they do business with. Once the data is collected and freely available to the public, it will be easier to project the likely impact of regulating those donors.

The proposal grants the Board substantive rule-making authority. The Commissioners specifically intended that the Board's regulatory authority encompass the authority to ban donations from certain classes of people or entities who do business with the City, and to expand on the initial prohibition as warranted by experience. The Commissioners were aware that the City Program's success thus far was in large part due to incremental steps taken after thorough study by the Campaign Finance Board. Therefore, they decided against imposing a flat prohibition on donations by persons doing business with

the City in the Charter itself. Instead, the Board is empowered to prohibit such donations, entirely or in part, and to establish other restrictions as it deems appropriate after thorough study of the disclosure data.

The Charter amendment provides that the Board be guided by certain factors in promulgating rules: the effectiveness of the system, its cost and the maintenance of a reasonable balance between the burdens and incentives of the system. The Board may choose to begin regulating the more easily identifiable type of contributions and move on after the impact of the new regulations is studied. The Board will have the discretion to exclude small contributions, small campaigns or small businesses from regulatory coverage. The Commission intended that these choices be made carefully, based on the factors spelled out in the Charter amendment, in order to preserve the integrity of the Program as a whole. Therefore, the Commission decided that the Board should be given continuing substantive rule-making authority to regulate donations to participating campaigns by persons or entities doing business with the City. The Commission also proposed that the Board's initial rule-making authority in this area supersede any inconsistent existing local law. The Commission considered this a necessary protection from political pressures to dilute prohibitions on accepting campaign contributions from persons or entities doing business with the City. The Commission recognized, however, that the City Council could always override a misguided Board regulation through the normal legislative process.

4) Regulation of "Soft Money"

The Commission recognized that "soft money" undermines the effectiveness of the City's voluntary Campaign Finance Program because it is not subject to the rigorous public scrutiny and controls of funds that are regulated by the Campaign Finance Board. "Soft money" refers to any political contribution that is not regulated under the existing campaign finance scheme. Typical examples of soft money involve contributions to political parties, or unregulated expenditures by individuals and independent groups on behalf of, or against, a candidate.

The Campaign Finance Board addressed the problem of soft money in a 1995 report entitled "Party Favors", which examined the impact of political party spending in covered campaigns and recommended changes to City and State law. As a result, in 1996, the Board adopted Rule 1-08(f)(4) on independent expenditures which, in effect, establishes a rebuttable presumption that party spending on behalf of that party's nominee is not independent.

The Commission questioned whether the Board had taken every action legally and constitutionally possible to regulate soft money.¹² The Commission recognized that the City could not address the State Legislature's failure to lower the \$69,900 per year cap on donations to political parties or to cap the unlimited donations to parties for "housekeeping" at the State level. The Commission was

¹² For example, under existing regulations, party spending for generic ballot advocacy purposes is not considered an in-kind contribution to a participating candidate unless it is demonstrated that the candidate cooperated in the effort and that it was intended for the benefit of that candidate. The Commission believes that the Board should revisit this and similar questions.

concerned, however, that restricting direct campaign donations, such as a ban on corporate contributions, would result in more soft money to distort the regulatory framework. In light of these serious concerns, the Commission determined that the Charter should be amended to grant the Board substantive rule-making authority over soft money and direct that the Board issue all legally permissible additional regulations to minimize the influence of soft money in City elections.

Accordingly, the Commission proposal would amend the Charter to require that the Campaign Finance Board promulgate whatever regulations it deems necessary to further regulate spending that supports candidates in elections without being directly attributable to the candidate's campaign. This delegation of substantive rule-making authority would supersede existing local law.

After discussion of this revised proposal, the Commissioners voted unanimously to reconvene on August 20, 1998 and consider Charter language to carry out these aims.

On August 20, 1998, the Commission unanimously decided to recommend to the voters that the Charter be amended to: (1) prohibit corporate contributions, (2) require disclosure and regulation of contributions by persons doing business with the City and regulation of "soft money", (3) protect the Campaign Finance Board's budget and (4) allow the Campaign Finance Board to fill vacancies when appointments are not timely made.

IV. OTHER PROPOSALS CONSIDERED BY THE COMMISSION

The Commission debated whether to propose two other changes to the form of City government for the November 1998 ballot: nonpartisan elections and a full-time City Council. Ultimately, the Commission decided that while both proposals had considerable merit, they required more research and consideration before a proposal on either subject could be recommended to the voters. Accordingly, the Commission voted to continue work on both issues but against presenting any ballot question on the issues to the voters in 1998.

A. Nonpartisan Elections

The Commission studied at length whether to require that candidates for Citywide office be elected on a nonpartisan basis.¹³ In nonpartisan elections, candidates would be selected independent of the party nominating process and listed on the ballot without party labels. The Commission considered that voter turnout has been low and that nonpartisan elections might increase voter participation since all voters would be able to select the finalists who would run in the general election.

¹³ The Commission's report on nonpartisan elections is attached as Exhibit E.

The Commission reviewed the experience of other cities and noted that the overwhelming majority of municipalities throughout the United States conduct nonpartisan elections. Nonpartisan elections exist in New York City as well; the Charter was amended in 1988 to provide for nonpartisan vacancy elections for City Council and Borough President, and State law provides for nonpartisan school board elections.

Staff reported to the Commission that the City had the legal authority under State law to adopt nonpartisan elections and the Commission retained a voting rights consultant, Professor Allan J. Lichtman, who preliminarily concluded that switching to nonpartisan elections would not violate the Voting Rights Act.

Academic experts consulted by the Commission had divergent views on nonpartisan elections. Studies have shown that nonpartisan elections can encourage some trends that Commissioners would not support – lower voter turnout and an increase in ethnic bloc voting – but Commissioners believed that this would not necessarily be the case in New York City, in part because practical experience shows that minority candidates are more likely to be elected in nonpartisan than in partisan systems. Professor Lichtman informed the Commission that in the fifty largest cities in the country, no city without a Black or Hispanic majority population that uses partisan elections currently has a minority mayor while 28% of such nonpartisan cities have minority mayors.

The Commission consulted party leaders who made clear their view that this would be an undesirable change, and that the parties serve a legitimate and important role in New York City politics. Certainly New York City's experience with nonpartisan school board elections was sufficiently mixed to raise doubts concerning whether nonpartisan elections would be effective in New York City, although Commissioners questioned whether that experience could be applied to citywide races.

The Commission also identified a number of important technical questions that would have to be resolved before New York City could implement nonpartisan elections.

These included:

1. How should candidates advance to the general election?

In most jurisdictions, a nonpartisan primary is followed by a general election in which the top two primary vote recipients face off. Because of New York City's diversity, such a scheme may not be appropriate here.

2. What should the ballot look like?

The Commission would have to specify the ballot format by Charter amendment and it would have to make sure that it has chosen the simplest and clearest format so that voter confusion could be avoided.

3. How can the Board of Elections conduct a nonpartisan primary concurrently with a partisan primary?

The "lock-out" mechanism on the current mechanical voting machines would make it difficult for all voters to participate in the nonpartisan portion of the primary and then limit party voters to participation in the appropriate party primary.

Ultimately, the Commission concluded that it needed substantially more study before a nonpartisan elections proposal could be framed. Further, the Commission determined that there needed to be a vigorous public debate of the advantages and disadvantages of nonpartisan elections before the voters would be able to make an educated decision on such a major change. Therefore, the Commissioners voted unanimously to continue to study the subject and to defer making any proposal on the subject for one year.

B. Full-time Council

The Commission devoted significant attention to a proposal to change the status of the New York City Council from a part-time to a full-time legislative body. Under the current Charter, Council members are permitted to hold private employment, but must comply with conflicts of interest requirements. The proposal before the Commission would have amended Charter § 1100 to require that Council members devote full-time to Council service.

The Commissioners in favor of the proposal identified reasons to support the change. Of most importance was the Council's enhanced role in governing the City. With the elimination of the Board of Estimate under the 1989 Charter, the City Council gained authority over the budget and was given substantial new responsibilities in the areas of zoning, land use, and franchises. Commissioners noted that the Council has over time increasingly exercised its powers under the Charter, for instance by enacting its own budget. Commissioners doubted whether the Council could fully assert its authority while its members held outside jobs.

The Commissioners were also concerned that, as term limits take effect after the municipal election of 2001, much of the Council's institutional knowledge will be lost. It is likely that Council staff and the bureaucracy of City government will gain significant power and policy influence at the expense of the people's representatives, simply because they will know more about how the City operates. Full-time Council members would likely be more able to assert control from staff more quickly than members who remain preoccupied with outside jobs.

Commissioners were also concerned about the appearance of conflicts of interest that can arise when Council members practice law, work in private business, or operate non-profit organizations in addition to their legislative positions. While Council members are subject to the conflicts of interest provisions of the Charter, their part-time status raises questions as to whether they can maintain objectivity in setting legislative priorities and budgetary allocations while their business and professional interests can easily be linked to their civic duties. Commissioners also questioned whether part-time Council

employment might give the appearance that members neglect their legislative workload.

The Commissioners compared the Council to legislatures in other large cities. Among the six U.S. cities with a population over one million that have a Mayor/Council form of government, New York City, Chicago, and Houston have part-time status for their municipal legislators, while Los Angeles, Philadelphia, and Detroit have full-time legislative bodies. Currently, the 51 members of the Council are paid an annual salary of \$70,500 and most receive additional special stipends, with the average stipend at \$9,500. The base pay leaves Council members the sixth highest paid municipal legislative body, full-time or part-time.

Some Commissioners proposed that if the Council were to be made full-time, the districts should be redrawn to make the Council a smaller body. Those Commissioners contended that the two proposals should be coupled since a full-time Council member would have more time for constituent service and could handle the demands of a larger district.

Other Commissioners questioned the need for the proposal, arguing that part-time work helps Council members keep in touch with the concerns of their constituencies and gives valuable "real world" experience to political decision making. They questioned the quality of candidates that would be attracted to a full-time Council. It was also noted that legislative bodies with more responsibility than the City Council operate on a part-time basis.

Even many of the Commissioners who favored the proposal supported deferring the issue because the change would not take effect until the 2001 election. Therefore, they contended that the Commission had the time to engage in the additional public discussion and debate that was warranted for a proposal to fundamentally redefine the City's legislative branch of government. Accordingly, the Commission voted by 8 to 4 to defer development of a ballot question on this subject.

V. REVIEW OF OTHER AREAS OF THE CHARTER

Although they made no recommendations for change to be put before the voters in the current year other than campaign finance reform, Commissioners identified many other areas of the Charter where further study is warranted. Individual commissioners studied proposals for Charter amendment and prepared recommendations to the Commission as a whole. The Commissioners discussed these proposals at a meeting on July 16, 1998.

▪ ULURP

The Commissioners reviewed Section 197-c of the Charter, the Uniform Land Use Review Process ("ULURP"). Several Commissioners met with elected officials, present and former City employees who implement ULURP, and members of the public who have participated in ULURP. In addition, at the public hearings the Commissioners heard a number of comments on the subject of ULURP.

Although dissatisfaction with ULURP was palpable, there was no consensus on what needs to be done. Those concerned with the changes development brings to neighborhoods argued strongly for more localized control, taking power away from the Department of City Planning and the City Council. Those concerned with encouraging economic development argued for a simplified and shortened review process. Those concerned with unpredictable outcomes argued for eliminating the City Council's authority over specific site

decisions. Others felt that the Council's administrative power was an important avenue for stopping unpopular projects.

ULURP was added to the Charter by the 1975 Charter Revision Commission. When the Charter was revised in 1989 to eliminate the Board of Estimate, the City Council was given the Board's ULURP powers. The Council's role became a hybrid of legislative and administrative functions. Some Commissioners recommended that the Commission revisit the question of whether it was appropriate for the City Council to exercise both legislative and administrative power in ULURP. They suggested that the Council retain legislative authority, including the power to create rules of general applicability affecting the City, while administrative authority, which applies general rules to specific projects, would be transferred to the City Planning Commission. This would speed up ULURP review and make it more predictable, while retaining community input through the Community Boards, Borough Presidents and Borough Boards. At least one Commissioner, however, strongly urged that the Council retain an administrative role in ULURP because Council members are more attuned to the important issues in their districts.

There were less controversial proposals for changes to ULURP as well, including the removal of minor changes in street grade from the ULURP review process, but these were difficult to consider apart from the rethinking of the ULURP process as a whole.

Commissioners differed in their views on the need for ULURP changes. Two Commissioners favored a significantly longer study period before making recommendations to the voters. One Commissioner favored leaving ULURP untouched. All the Commissioners agreed, however, that the issues were complex and required more study and evaluation before a recommendation could be made. Accordingly, at the July 16, 1998 Commission meeting, the Commissioners voted unanimously to defer making any proposal to amend Charter § 197-c but directed the Commission staff to continue its study of the issues.

- Procurement and Franchises

The Commission also studied Chapter 13 of the Charter concerning procurement of goods and services and Chapter 14 concerning franchises. Many of the Commissioners had experience in public service and were interested in simplifying and improving the procurement process.

At meetings with City contracting officials and experts in governmental procurement, there was intense dissatisfaction with the City's system of procuring goods and services. Many City administrators felt that the system led to low quality purchases and many providers felt the system was unduly complex. Almost all commentators agreed the system was economically irrational.

Many of the problems identified in City contracting, however, do not originate entirely in the Charter. They are either based on the State law requirement under General Municipal Law §103 that purchases be made from the lowest responsible bidder, or were derived from City's Procurement Policy Board Rules, which could simply be amended by rule-making. Therefore, while some possible changes to the Charter could be identified, such as proposals to simplify the process for determining whether a bidder is responsible and for clarifying the Comptroller's role in contract registration, more study was required before a package of beneficial amendments could be developed for public consideration.

The Charter provisions concerning franchises were substantially revised by the 1989 Charter Revision Commission. The current franchise provisions were criticized by public officials at the public hearings who argued that the Charter should be amended to decentralize control over franchises, thereby removing the City Council's franchise power. Other experts offered proposals to simplify the process. The Commissioners determined that this topic required a more thorough consideration of how the system currently operates in order to identify deficiencies and possible improvements.

Therefore, the Commission unanimously decided it could make no recommendation to the voters on procurement and franchises for November 1998, and deferred the two subjects for further study.

- Office of the Public Advocate

The Commission considered amending Charter § 24 to eliminate the Office of the Public Advocate. The Public Advocate, formerly known as the Council President, had been retained by the 1989 Charter Revision Commission by a split vote, even though the Office had lost its substantive powers with the elimination of the Board of Estimate. Today, the Public Advocate's few remaining functions duplicate those of other elected officials and City agencies.

Nonetheless, a number of people testified at the public hearings in favor of retaining the Public Advocate. The office seems to be functioning well for some New Yorkers who could not otherwise find help in resolving bureaucratic problems. The Public Advocate's election by a citywide electorate apparently strengthens the office's ability to help individual citizens resolve problems that are perhaps unsolvable by a City Council member representing a smaller district. Even though research had found no other city or state in the United States with a similar elected official, it may be that New York City's size and complexity requires more ombudsman-type help than anywhere else. The Commission therefore unanimously resolved at the July 16, 1998 meeting to continue studying whether the City Council or another City official or agency could be as effective a trouble shooter for New Yorkers.

- Independent Budget Office

The Commission reviewed Chapter 11 of the Charter and considered whether the Independent Budget Office (“IBO”) should be eliminated or revised. The IBO was established in the 1989 Charter, and had only been fully functional for two years at the time the 1998 Commission was established. The IBO was modeled on the Congressional Budget Office, an independent nonpartisan body. The IBO was criticized by some as being the creature of advocacy groups, rather than truly independent. Those critics proposed that the IBO’s functions could be transferred to the Office of the Comptroller, who, as an official elected by the entire City, would be equally responsive to all segments of the public. Others argued, however, that political figures who disagree with the policy proposals of the Mayor and Council majority needed the IBO to serve as an authoritative source of information on budget issues.

Because the IBO had not been operational long enough to draw a reasoned conclusion concerning its value, the Commissioners unanimously agreed to defer proposing any changes to the IBO, pending further study.

- Size of Council Districts

Some Commissioners argued strongly that the Commission should propose a Charter amendment to reduce the size of the City Council from the present 51 districts. Such small districts, it was suggested, make it difficult for Council members to concentrate on the needs of the City as a whole and leave the Council too large a body to foster collegiality. The point was also raised that

if the Commission were to recommend a full-time Council, the districts could be made larger because the members would have more time to devote to constituency service.

The Commissioners unanimously voted to study the issue in conjunction with the full-time Council question, with a view to a possible proposal for the ballot in 1999.

- **Budget Process**

Because the Charter Revision Commission had been appointed during a time of disagreement between the Mayor and the City Council over budgetary powers, numerous proposals to revise the Charter provisions on budgeting had been suggested. The budget process had been changed substantially by the 1989 Charter Revision Commission; with the elimination of the Board of Estimate the Council had been given new powers over the budget and the Mayor's role had been altered as well. Until this year, the Council had exercised its budgetary powers only gingerly, and the existing Charter language had yet to be fully clarified by experience. Accordingly, the Commissioners did not frame a proposal on the issue, and did not vote to continue to study the subject.

EXHIBIT A

SOURCES

SOURCES

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EXHIBIT B

CHARTER AMENDMENT
&
BALLOT QUESTION

1 Section 1. Paragraph 1 of subdivision a of section
2 1052 of the charter, as amended by local law number 68 for
3 the year 1993, is amended to read as follows:

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

- 14 (a) one member appointed by the speaker for a term of
15 one year;
- 16 (b) one member appointed by the mayor for a term of
17 two years;
- 18 (c) one member appointed by the speaker for a term of
19 three years;
- 20 (d) one member appointed by the mayor for a term of
21 four years; and
- 22 (e) the chairperson for a term of five years.

23 Each term shall commence on April first, nineteen
24 hundred eighty-eight. Thereafter, each member shall be

1 appointed for a term of five years by the mayor or the
2 speaker, according to the original manner of appointment.
3 Upon expiration of the term of a member, if the mayor or
4 the speaker, as appropriate, shall fail to appoint a member
5 within one hundred twenty days of the expiration of such
6 term, the member whose term has expired shall be deemed
7 appointed for an additional term of five years, provided,
8 however, that if the expiration of such term occurs in a
9 year in which elections, except special elections, covered
10 by the voluntary system of campaign finance reform are
11 scheduled, the member whose term has expired shall be
12 deemed appointed for an additional term of five years if
13 the mayor or the speaker, as appropriate, shall fail to
14 appoint a member within ninety days of the expiration of
15 such term. In case of a vacancy in the office of a member,
16 a member shall be appointed to serve for the remainder of
17 the unexpired term by the mayor or the speaker, according
18 to the original manner of appointment. If the mayor or the
19 speaker, as appropriate, shall fail to appoint a member
20 within one hundred eighty days of such vacancy, then a
21 member shall be appointed by the board to serve for the
22 remainder of the unexpired term, if additional time remains
23 in such term, provided, however, that if such vacancy
24 occurs in a year, or within ninety days prior to a year, in

1 which elections, except special elections, covered by the
2 voluntary system of campaign finance reform are scheduled,
3 then a member shall be appointed by the board to serve for
4 the remainder of the unexpired term, if additional time
5 remains in such term, if the mayor or the speaker, as
6 appropriate, shall fail to appoint a member within ninety
7 days of such vacancy. Except for the chairperson, such
8 member shall not be enrolled in the same political party as
9 the other member appointed by the official who failed to so
10 appoint. Each member shall be a resident of the city,
11 registered to vote therein. Each member shall agree not to
12 make contributions to any candidate for nomination for
13 election, or election, to the office of mayor, public
14 advocate, comptroller, borough president, or member of the
15 council which in the aggregate are in excess of the maximum
16 contribution applicable to such office pursuant to any
17 local law establishing a voluntary system of campaign
18 finance reform. No member shall serve as an officer of a
19 political party, or be a candidate, or participate in any
20 capacity in a campaign by a candidate, for nomination for
21 election or election to the office of mayor, public
22 advocate, comptroller, borough president or member of the
23 city council. Officers and employees of the city or any
24 city agency, lobbyists required to file a statement of

1 registration under section 3-213 of the administrative code
2 and the employees of such lobbyists shall not be eligible
3 to be members of the board.

4 § 2. Subdivision a of section 1052 of the charter is
5 amended by adding a new paragraph 11 to read as follows:

6 11. a. The board shall require that candidates
7 participating in the voluntary system of campaign finance
8 reform or candidates who otherwise file disclosure reports
9 with the board shall disclose to the board the acceptance
10 of campaign contributions from individuals and entities
11 doing business with the city. The board shall promulgate
12 such rules as it deems necessary to implement and
13 administer this provision and provide that information
14 regarding such contributions shall be accessible to the
15 public. The board shall also promulgate such rules as it
16 deems necessary to regulate the acceptance by candidates
17 participating in the voluntary system of campaign finance
18 reform of campaign contributions from individuals and
19 entities doing business with the city, including rules that
20 determine which business dealings shall be covered by such
21 rules. Elected officials, city agencies, boards and
22 commissions, including the mayor, comptroller, public
23 advocate, borough presidents, the city council and members
24 of the city council shall cooperate with the board to

1 provide to the board such information about such
2 individuals and entities as the board shall require.

3 b. The board shall promulgate such rules as it deems
4 necessary to attribute expenditures that indirectly assist
5 or benefit a candidate participating in the voluntary
6 system of campaign finance reform as in-kind contributions
7 to such candidate.

8 c. In promulgating rules pursuant to this paragraph,
9 the board shall consider the following criteria: (1) the
10 effectiveness of the voluntary system of campaign finance
11 reform, (2) the costs of such system, (3) the maintenance
12 of a reasonable balance between the burdens of such system
13 and the incentives to candidates to participate in such
14 system.

15 d. Any rules promulgated pursuant to this paragraph
16 shall apply only with respect to nomination for election,
17 or election, to the office of mayor, public advocate,
18 comptroller, borough president, or member of the city
19 council.

20 e. Proposed rules promulgated pursuant to this
21 paragraph shall be published in accordance with subdivision
22 b of section one thousand forty-three of this charter no
23 later than December thirty-first, nineteen hundred ninety-
24 nine. Final rules promulgated pursuant to this paragraph

1 shall be adopted in accordance with such section as soon as
2 practicable thereafter. Final rules adopted in the initial
3 promulgation of rules pursuant to this paragraph shall
4 supersede any inconsistent provisions of the administrative
5 code that are in effect on the effective date of such final
6 rules.

7 § 3. Subdivision a of section 1052 of the charter is
8 amended by adding a new paragraph 12 to read as follows:

9 12. Notwithstanding any other provision of law, the
10 board shall prohibit candidates participating in the
11 voluntary system of campaign finance reform from accepting,
12 either directly or indirectly, a campaign contribution,
13 loan, guarantee or other security for such loan, from any
14 corporation. The board shall promulgate such rules as it
15 deems necessary to implement and administer this provision.

16 § 4. Subdivision b of section 1052 of the charter, as
17 amended by local law number 68 for the year 1993, is
18 amended to read as follows:

19 b. The board shall take such actions as it deems
20 necessary and appropriate to improve public awareness of
21 the candidates, proposals or referenda in all elections in
22 which there are contested elections for the offices of
23 mayor, public advocate, borough presidents, comptroller, or
24 city council or ballot proposals or referenda pursuant to

1 this charter or the municipal home rule law, including but
2 not necessarily limited to the publication of a non-
3 partisan, impartial voters guide providing information on
4 candidates, ballot proposals and referenda, and the
5 distribution of one copy of such guide to each household in
6 which there is at least one registered voter eligible to
7 vote in the election involved. In any year in which the
8 board publishes a voters guide, if the board determines
9 that the amount of money in its budget is insufficient or
10 likely to be insufficient for the publication and
11 distribution of the voters guide, it shall report such
12 determination to the director of the office of management
13 and budget, who, after consultation with the board, shall,
14 without an appropriation, transfer to the board a
15 reasonable amount, as the director shall determine, to
16 cover the cost of publishing and distributing the voters
17 guide.

18 § 5. Section 1052 of the charter is amended by adding
19 a new subdivision c to read as follows:

20 c. The board shall, not later than March tenth of
21 each year, approve and submit to the mayor detailed
22 itemized estimates of the financial needs of the campaign
23 finance board for the ensuing fiscal year. Such estimates
24 shall be comprised of at least one personal service unit of

1 appropriation and at least one other than personal service
2 unit of appropriation. The mayor shall include such
3 estimates in the executive budget without revision, but
4 with such recommendations as the mayor may deem proper.
5 Upon inclusion in the executive budget, the budget
6 submitted by the campaign finance board shall be adopted
7 pursuant to such provisions of chapter ten of this charter
8 as are applicable to the operating budget of the council.

9 § 6. Section 1152 of the charter is amended by adding
10 a new subdivision g to read as follows:

11 g. The amendments to the charter approved by the
12 electors on November third, nineteen hundred ninety-eight
13 shall take effect on the first day of January, nineteen
14 hundred ninety-nine, and thereafter shall control as
15 provided in respect to all the powers, functions and duties
16 of all officers, agencies and employees, except as further
17 specifically provided in other sections of this charter.

BALLOT QUESTION

Proposal Recommended by the
New York City Charter Revision Commission
dated August 20, 1998

Question 1 – Campaign Finance Reform

Shall the changes relating to the voluntary campaign finance system, including (1) prohibiting corporate contributions, (2) requiring disclosure and regulation of contributions by those doing business with the City of New York and regulation of indirect campaign expenditures, (3) establishing a special budget process for the Campaign Finance Board, and (4) establishing a procedure for filling vacancies on the Campaign Finance Board, proposed as amendments to Chapter 46 of the City Charter, be adopted?