

# PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION

JUNE 10, 2005

New York City Charter Revision Commission  
2 Lafayette Street, 14<sup>th</sup> Floor  
New York, NY 10007

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charter  
REVISION  
COMMISSION

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## EXECUTIVE SUMMARY

Mayor Michael R. Bloomberg established the Charter Revision Commission on August 19, 2004, appointing Dr. Ester R. Fuchs, as Chair, and twelve other distinguished leaders from the civic, academic, and business communities. As part of the Commission's review of the entire Charter, the Mayor requested that the Commission consider issues of fiscal stability, administrative judicial reform and agency efficiency, effectiveness and accountability.

The Commission has embarked upon an extensive program of public outreach and consultation, which it will continue throughout the remainder of its process. The Commission has held several series of public events, beginning in December 2004, with a series of public meetings to establish a "baseline" understanding of the three topics. The Commission commenced, in March, publication of its newsletter, updating the public on its activities, and released its *SUMMARY OF ISSUES UNDER CONSIDERATION* to invite public comment at the first series of public hearings in all five boroughs. In addition, preceding three of these public hearings that began in March and ended in April 2005, the Commission held expert forums to hear expert discussion on each of the three topics.

The Commission held another series of public meetings in May and June to develop this *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION*, taking into consideration the public and expert testimony it received in March and April. In the course of the Commission's review of the entire Charter, which will continue until completion of the Commission's work, the Commission has received and considered

ideas for charter revision in addition to the preliminary recommendations discussed in this *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION*. The Commission will hold another series of public meetings and hearings in June, as described in the following section **SCHEDULE OF UPCOMING PUBLIC HEARINGS**, to solicit comments from members of the public on these three preliminary recommendations, described briefly below, and in more detail in this *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION*:

First, the Commission seeks public comment on whether the City should import into the Charter certain key expiring provisions of State law that have helped to ensure the City's fiscal stability for more than two decades. Ensuring the sound financial practices that are essential to the City's future financial stability is a matter of paramount concern and warrants revising the Charter to import these practices.

Next, the Commission seeks public comment on whether the City should require that a code of conduct or ethics, tailored to the quasi-judicial work at the City's administrative tribunals, apply uniformly to all the City's administrative law judges and hearing officers. Often many New Yorkers' only contact with City government comes at these tribunals, and ensuring the public perception that these tribunals conduct their quasi-judicial processes effectively and fairly is an important goal. The Commission also endorses the creation, by executive order, of a new position of Coordinator of Administrative Justice, charged with enhancing the coordination of the City's tribunals, and believes a Charter-mandated code of quasi-judicial ethics could support such coordination.

Finally, during its initial consideration of ideas to increase agency efficiency, effectiveness and accountability, the Commission observed a need for an extended and continuous public discussion about effective public reporting, standards for evaluating reports and a process for revising or phasing out of mandated reports deemed no longer useful. The Commission seeks public comment on whether the creation of a commission on public reporting and data access, charged with reviewing all reporting requirements and advisory bodies under the Charter, Administrative Code and local law, which involves all stakeholders in the area of public management and accountability and works alongside with both executive and legislative branches, would benefit agency management as well as increase public accountability.

### **Fiscal Stability**

Before 1975, the City was spending more money than it was taking in and covering the resulting gap by issuing large amounts of short-term debt. This practice, exacerbated by inadequate reporting and accounting, resulted in a loss of access to the credit market and a major financial crisis in 1975. To help the City restore stability to its financial situation, the State Legislature enacted the New York State Financial Emergency Act for the City of New York (FEA), key provisions of which are now set to expire in 2008.<sup>1</sup>

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<sup>1</sup> In 2003, the termination provision of FEA was amended to read: "This act shall terminate on the later of (a) July first, two thousand eight or (b) the date (i) when all bonds and notes containing the pledge and agreement authorized by subdivision one of section ten-a of this act are refunded, redeemed, discharged or otherwise defeased, or (ii) when there shall no longer be outstanding any guarantee by the United States of America or any agency or instrumentality thereof as to payment of principal or of interest on any note or bond issued by the city or a state financing agency, whichever of (i) or (ii) shall occur later." FEA §13. This amendment created some confusion with respect to the Act's termination date. State legislation has been proposed that would clarify that the FEA will expire on July 1, 2008.

The FEA addressed the City's management shortcomings by imposing a fiscal planning structure on the City, a primary feature of which was the creation of the Financial Control Board to oversee the City's financial matters and to exercise significant powers in some circumstances. Among the financial management practices imposed by the FEA on the City were a year-end balanced budget in accordance with generally accepted accounting principles for municipalities (GAAP), and an operating deficit of no more than \$100 million, and a detailed four-year financial planning process.

The Commission believes that the City has demonstrated its ability to be fiscally responsible after 23 years of budgets balanced in accordance with GAAP. It is likely that the City emerged in good shape from a subsequent fiscal crisis, in 2001-2002, in part, because of the changes wrought by the FEA. Nevertheless, features of the FEA, such as the Financial Control Board with significant powers with respect to the City's budget under certain circumstances, represent a significant intrusion on New York City's local home rule powers.

In anticipation of the FEA's expiration, now is an excellent time to import the meritorious provisions of the FEA into the City Charter to ensure their continuation and also to focus the eventual debate on the remaining features of the FEA. In considering the topic of fiscal stability, the Commission heard testimony from Mark Page, the City's budget director, heard from an expert panel, and solicited public comment on the possible inclusion, into the Charter, of financial practices found in the FEA. There appears to be a general consensus about the value of importing the financial practices required by the FEA into the Charter.

*The Commission seeks public comment on its preliminary recommendation to add the following features of the FEA to the Charter:*

- *Require that the City end each fiscal year with a GAAP balanced budget so that the results of its operations do not show a deficit when reported in accordance with GAAP.*
- *Require the City to continue preparation of the four-year financial plan documents, with quarterly modifications during the year.*
- *Require the City to produce and make available to the public, on a regular basis, financial plan statements showing updated actual financial information compared to projections which will enable public assessment of the progress the City is making toward achieving end-of-year budget balance.*
- *Require the City to conduct an annual audit in accordance with generally accepted auditing standards.*
- *Require the City to continue the stricter limits on short-term indebtedness.*

### **Administrative Judicial Reform**

The City's administrative tribunals are often the only forums in which citizens have any significant interaction with City government. For that reason, it is critical that New Yorkers have confidence that these tribunals resolve disputes fairly, efficiently and consistently. Administrative tribunals may be stand-alone agencies, like the

Office of Administrative Trials and Hearings, or they may be located within agencies. Those located within agencies, such as the tribunal at the Department of Consumer Affairs, usually hear cases arising from the regulatory activities of their parent agency.

The Commission heard testimony on administrative judicial reform from Carol Robles-Román, Deputy Mayor for Legal Affairs. Later it heard from a panel of experts who agreed that the creation of an administrative judicial coordinator would improve the effectiveness of the City's administrative justice system by increasing coordination among the tribunals, setting uniform standards and establishing best practices. There was consensus among the panel members that a coordinator's position could be created by executive order. The experts also agreed that the creation of a uniform code of conduct or ethics for administrative law judges and hearing officers, who currently are not subject to a standard of conduct or ethics appropriately focused on the quasi-judicial nature of their work, would be a positive measure. Additionally, the Commission solicited public comment on this topic.

- *The Commission recommends that the Mayor establish a Coordinator of Administrative Justice by executive order.*
- *The Commission also seeks public comment on its preliminary recommendation to add to the Charter the requirement that the Mayor (or designee) and the Chief ALJ at the Office of Administrative Trials and Hearings, first, consult with the Conflicts of Interest Board, the Department of Investigations and the heads of appropriate agencies and*



*administrative tribunals and, then, establish a uniform code of conduct or ethics for ALJs and hearing officers.*

### **Agency Efficiency, Effectiveness and Accountability**

Past Charter Revision Commissions introduced a variety of reporting requirements into the City Charter as a way of encouraging long-term planning. The 1975 Commission introduced the Mayor's Management Report (MMR), while the 1989 Commission introduced an additional series of documents intended to facilitate long-term planning. Since then, technological innovation has made it increasingly easy to compile and report data on government operations. The Commission has considered how to revise the Charter to make the City's current performance-based planning and reporting system more flexible for the agencies that must prepare the reports and more relevant to a wider range of users.

The Commission found that, while the MMR and the budget documents are frequently used and cited by the press and other specialized users, few of the other Charter-mandated reports are deemed useful. A Commission survey found that, with the exception of the MMR, few of the Charter-mandated planning and reporting documents were deemed useful by a sample of respondents knowledgeable about City government. An expert panel praised the Bloomberg Administration's revision of the MMR, but noted the current panoply of Charter-mandated documents does not appear to form a coherent structure of planning, management and reporting to support effective performance-based management and public accountability. The Commission, however, has come to believe that a wholesale reworking by the

Commission of the current reporting system - because of the number of mandated reports and their varying constituencies - might best be accomplished through an ongoing process.

*The Commission is considering recommending the creation of a commission on public reporting and data access to fill an observed need for an open, ongoing and systematic public discussion about effective public reporting and how to improve reports to create a better integrated performance-based reporting and planning system. Accordingly, one form such commission might take is described below. The Commission is hopeful that public comment during the next series of public hearings will help the Commission determine whether to recommend the creation of such a commission and, if so, help the Commission refine the idea to accomplish its purposes effectively.*

- *A commission on public reporting and data access, involving all stakeholders in the area of public management and accountability, could facilitate and moderate an ongoing public discussion about effective reporting, both from a management perspective and the perspective of public accountability. Such a commission could develop standards for evaluating reporting requirements and requirements for creating advisory bodies and review such requirements, on a periodic basis, to make them more relevant and useful as management tools and/or tools for public accountability in the context of an integrated performance-based reporting and planning system. After review, the commission could use one of two mechanisms described below to improve the*

*system. Since the observed need for such a commission is due, in part, to the perceived difficulty of focusing on this issue during the day-to-day of government activities, the Commission intends that its recommendation would complement, and not compete with, the day-to-day functions of the legislative and executive branches. The first mechanism could permit the Commission to waive the requirement that a report, or part of a report, be published or that an advisory body be continued. This waiver could be subject to disapproval by the Council within a period of time, veto by the Mayor and subsequent override by the Council within a period of time, a process similar to those found in the land use and budget processes. The second mechanism could permit the Commission to make recommendations, to the Mayor and the Council, concerning the modification or consolidation of reporting requirements in light of information advances, and to make recommendations concerning modifying reporting and advisory body requirements in light of other considerations. These recommendations to the Mayor and the Council would not involve a formal waiver process, but rather be purely advisory for the Mayor and the Council to consider as part of the regular legislative process.*

## SCHEDULE OF UPCOMING PUBLIC HEARINGS

The Commission will hold a set of public hearings and public meetings in the month of June, related to this *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION* as well as on any Charter-related topic. At the meetings, the public will have the opportunity to observe, but not to testify. On some of the evenings, as listed below, there will be both a public hearing and a public meeting. When both a public hearing and a public meeting are scheduled for the same evening, the public meeting will begin once the public hearing concludes. The schedule is as follows:

<b>DATE/TIME</b>	<b>FORMAT</b>	<b>LOCATION</b>	<b>ADDRESS</b>
Wed., June 15, 6 p.m.	Public Hearing/ Public Meeting*	Henry Kaufman Management Center, New York University, Room 2-60	44 West 4 <sup>th</sup> Street (between Washington Square East and Greene Street in Lower Manhattan)
Mon., June 20, 6 p.m.	Public Hearing/ Public Meeting*	Queens Public Library, Flushing branch	41-17 Main Street (between 41st Avenue and 41st Road in Flushing, Queens)
Wed., June 22, 6 p.m.	Public Hearing/ Public Meeting*	Brooklyn Law School, 7 <sup>th</sup> Floor Moot Court Room	250 Joralemon Street (between Court Street and Boerum Place in Brooklyn Heights)
Mon., June 27, 7 p.m.	Public Meeting	NYC Economic Development Corp., 4th Floor Conference Room	110 William Street (between John Street and Fulton Street in Lower Manhattan)
Thurs., June 30, 7 p.m.	Public Meeting	Spector Hall	22 Reade Street, 1st Floor (between Broadway and Centre Street in Lower Manhattan)
* <i>Public Meeting Will Begin After Public Hearing Testimony Concludes.</i>			

For information about any additionally scheduled meetings and hearings, please go to the Commission's website, [www.nyc.gov/charter](http://www.nyc.gov/charter), or call the Commission at (212) 676-2060.

The Mayor initially asked this Commission, in reviewing the entire Charter, to pay special attention to fiscal stability, administrative judicial reform, and agency efficiency effectiveness and accountability. The Commission approved this *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION*, taking into consideration the public and expert testimony it received during public meetings and hearings commencing in August 2004. Members of the public wishing to testify before the Commission may direct their comments to the topics contained in this *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION* or to any other aspect of the Charter.

The hearings are open to the public and anyone may register to speak. Individuals who wish to give testimony may do so by registering one-half hour before the hearing. Written testimony is encouraged and can be submitted at the hearings or sent to the New York City Charter Revision Commission at 2 Lafayette Street, 14th Floor, New York, New York 10007.

Individuals requesting spoken or sign language interpreters for any of these public hearings should contact Charter Revision Commission staff member Brian Geller, at (212) 788-2952, five (5) business days prior to the Public Hearing. TDD users should call Verizon Relay Services.

## ABOUT THE COMMISSION

On August 19, 2004, Mayor Michael R. Bloomberg appointed Dr. Ester R. Fuchs as Chair of the Charter Revision Commission, and twelve other distinguished leaders from the civic, academic, and business communities to the Commission.

### Overview of the Charter Revision Process

The New York City Charter is the basic document that defines the organization, power, functions and essential procedures and policies of City government. As a “short form” charter, it sets forth the institutions and processes of the City’s political system and defines the authority and responsibilities of elected officials—the Mayor, Council, Comptroller, Borough Presidents, and Public Advocate—and City agencies in broad strokes, while leaving the details of operation to local law and agency rulemaking.

Unlike the United States Constitution, which is amended rarely, the City’s Charter is a fluid document that is amended often. Indeed, while the U.S. Constitution has been amended only 27 times in its 216-year history, the Charter has been amended well over 100 times since 1989 by local law and a number of times by referendum.

In the United States, city governments receive their legal authority from the states in which they are located. In the State of New York, municipalities have broad authority to structure how they operate by virtue of the Home Rule provisions of the State Constitution and the Municipal Home Rule Law. The City’s Charter, along with the

State Constitution, the Municipal Home Rule Law and other state statutes, provides the legal framework within which the City may conduct its affairs.

### The Commission's Public Outreach Efforts

On August 26, 2004, the Commission held its initial public meeting. At that meeting, Chair Fuchs restated the Mayor's request that the Commission "explore issues of fiscal stability, judicial reform and administrative efficiency and accountability."<sup>2</sup> Dr. Fuchs also stressed that the Commission was committed to reviewing the entire Charter, and encouraged the other Commissioners, the public and City agencies to suggest Charter-related reforms on any topic. Presentations followed about the Charter revision process and the work of past Commissions.

On November 3, 2004, the Commission held its second public meeting, at which Commissioners were briefed on some previous Charter revision proposals, and also raised issues of their own that they asked the staff to explore. Following the initial meetings, the Commission held three public meetings, on December 8, 2004, January 19, 2005, and February 9, 2005, which focused, respectively, on fiscal stability, administrative judicial reform, and operational efficiency and accountability. At each of these three meetings, a government expert presented testimony before the Commission—Mark Page, Director of the Mayor's Office of Management and Budget, discussed the topic of fiscal stability; Carol Robles-Román, Deputy Mayor for Legal Affairs, discussed the topic of administrative judicial reform; and Myrna Ramon, First

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<sup>2</sup> Press Release: "Mayor Michael R. Bloomberg Announces Appointments to Charter Revision Commission," August 19, 2004.

Deputy Director of the Mayor's Office of Operations, discussed the topic of agency efficiency, effectiveness and accountability.

Following these "baseline" topic meetings, the Commission embarked on a series of five public hearings in all the boroughs of the City. The first, on March 7, 2005, was in Queens, followed by hearings on March 16th, in the Bronx, March 23rd, in Brooklyn, March 30th on Staten Island, and finishing on April 4th in Manhattan. At these public hearings the Commission heard from the public on a variety of issues. Summaries of proposals that the Commission received from the public at these hearings and through correspondence may be found in the last section of this report.

In addition, immediately preceding three of the public hearings, the Commission held forums to hear expert testimony on each of the topics. The first expert forum, on administrative judicial reform, took place in Queens on March 7th. The members of the panel focused on the 2003 Charter Revision Commission's proposal to create an administrative judicial coordinator and to impose a uniform standard of ethics on the City's administrative law judges (ALJs) and hearing officers. James Brown, a labor and employment attorney, Ronald Goldbrenner, an attorney with expertise in administrative law, Preston Niblack, deputy director of the City's Independent Budget Office, and Betsy Plevan, President of the Association of the Bar of the City of New York, participated in this panel discussion.

The second expert forum, on fiscal stability, took place in Brooklyn on March 23rd. Charles Brecher, a professor of Public and Health Administration at the Wagner Graduate School of Public Service, Ronnie Lowenstein, Director of the New York City



Independent Budget Office, James Parrott, Deputy Director and Chief Economist of the Fiscal Policy Institute, and Marcia Van Wagner, Deputy Comptroller for Budget of the New York City's Comptroller's Office, sat on this panel. The members of the panel focused their comments on identifying those provisions from the Financial Emergency Act (FEA) that the City should consider importing into the Charter to ensure the continuation of the City's sound fiscal practices.

The third expert forum, on agency efficiency, effectiveness and accountability, took place in Manhattan on April 4th. The panel included Greg Brooks, Deputy Comptroller for Policy, Audit, Accountancy and Contracts at the City's Comptroller's Office, Barbara Cohn, Vice President at the Fund for the City of New York, Jay Fountain, Assistant Director of Research (Retired) of the Governmental Accounting Standards Board, Dennis Smith, Professor of Public Policy at NYU Wagner, and Jack Ukeles, President of Ukeles Associates. The members of this panel focused on how the City might improve its performance-based management and reporting system.

Following the series of public hearings and expert forums, the Commission held a series of four public meetings—May 3, May 16, May 25, and June 9—to hear staff recommendations for possible ballot proposals and consider them in light of the earlier public hearings and expert forums. On June 9, 2005, the Commission voted to adopt a set of preliminary recommendations for consideration and discussion by the public, which are described in this *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION*. This *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION* sets out those preliminary options for charter revision adopted by the Commission for public

consideration and discussion. For information on the upcoming series of public hearings in June, see “Schedule of Upcoming Public Hearings” at the beginning of this report.

Since its inception, the Commission established a varied and vigorous public outreach practice. The Commission has provided and will continue to provide notice to the public of its meetings and hearings in numerous ways, including:

- publishing notice of the meetings and hearings on the Commission website ([www.nyc.gov/charter](http://www.nyc.gov/charter)),
- publishing notice of the meetings and hearings in the *City Record*,
- advertising the meetings and hearings in English newspapers as well as in Spanish-, Chinese-, Russian-, and Korean-language newspapers,
- providing notice of the meetings and hearings through paper and e-mail mailings,
- televising the Commission’s proceedings on NYC-TV, and
- posting notice of the Commission’s proceedings in a public location.

In addition, on March 4, 2005, the Commission issued a report to the public, *SUMMARY OF ISSUES UNDER CONSIDERTION FOR CHARTER REVISION*, which outlined the areas on which the Commission had been focusing and sought public comment on the Commission’s initial ideas for Charter revision in those areas. The Commission also has published two newsletters, both of which were translated into Spanish, Chinese, Russian and Korean, distributed to members of the Commission’s mailing list and other members of the public, and published on the Commission’s website. The newsletters, among other things, discussed the topics under consideration by the

Commission, summarized the expert forums, and provided information about upcoming meetings and hearings.

The Commission's website also provides a great deal of information to the public, including a copy of the Charter, a schedule of the Commission's meetings and hearings, transcripts of the Commission's meetings and hearings, a copy of the Commission's first public report, copies of the Commission's two newsletters, biographical information about the thirteen commissioners, contact information for the Commission, a "send the Chair an e-mail" page, and archived materials from previous Commissions. In response to this Commission's outreach efforts, the Commission already has received numerous letters, telephone calls, e-mails, and online submissions either requesting information on or containing proposals for Charter revision.

Moreover, on October 20, 2004, Chair Fuchs sent a letter to the Commissioners of city agencies to solicit their suggestions for changes to the Charter that could improve service delivery in the City. In the following months, the Chair and Commission staff had follow-up meetings with agency heads on their ideas for Charter reform. Summaries of significant proposals that the Commission received from agency heads are listed in the last section, **OTHER SIGNIFICANT RECOMMENDATIONS**, of this *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION*. In addition, in January 2005, Chair Fuchs commenced a wide-ranging outreach effort to members of civic organizations, nonprofit organizations, community advocacy groups, professional associations, academic institutions, and other organizations to gather information and

listen to their ideas for reform. These efforts will continue throughout our Charter revision process.

## FISCAL STABILITY

Before 1975, the City spent more money than it was taking in and covered the resulting gap by issuing large amounts of short-term debt. These practices, coupled with inadequate reporting and accounting by the City, resulted in a loss of access to the public credit markets, precipitating a major financial crisis in 1975. In response to this historic financial crisis, the State Legislature enacted the FEA. The FEA, together with other measures taken during the 1970's, was critical to restoring stability to the City's finances.

The FEA addressed the City's management shortcomings by imposing a fiscal planning apparatus in addition to the City's existing budget and financial management process. A primary feature of the FEA was the creation of the New York State Financial Control Board (Control Board)<sup>3</sup> to oversee the City's financial affairs and exercise significant powers under certain circumstances. The most significant financial management practices imposed by the FEA were a year-end balanced budget requirement, in accordance with generally accepted accounting principles for municipalities (GAAP), subject to a limited operating deficit of no more than \$100 million, and a detailed four-year financial planning process.

The Commission believes that some of the fiscal practices required by the FEA have served the City well. Since the FEA has been in effect, the City has achieved 23 years of balanced budget results. The City's adherence to the financial management

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<sup>3</sup> The Control Board consists of seven members, four of whom are elected officials — the Governor, the City Comptroller, the State Comptroller and the Mayor — while the others are private citizens appointed by the Governor.

practices in the FEA led to changes in its budget practice and culture. These changes, in part, helped to ensure that the City would emerge in good shape from a fiscal crisis in 2001-2002, which, in terms of a gap as a percentage of the budget, was worse than the one in 1975. At the same time, however, the FEA, with its Control Board apparatus and powers, represents a significant restriction on local home rule.

When the New York State Financial Emergency Act for the City of New York (FEA) was adopted, its expiration date was far away. Key provisions of the FEA are now set to expire in 2008.<sup>4</sup> In anticipation of the discussion—at the State level—that will take place when the FEA expires, there is an opportunity now to import into the Charter those provisions of the FEA that are generally agreed to be meritorious in order to focus the eventual debate on the remaining features of the FEA.

The Commission held its first public meeting on the topic of fiscal stability on December 8, 2004, at which Mark Page, Director of the Mayor's Office of Management and Budget, discussed the history and features of the FEA. In *SUMMARY OF ISSUES UNDER CONSIDERATION FOR CHARTER REVISION*, released on March 4, 2005, the Commission sought comments from the public about what provisions from the FEA should be included in the City's Charter in anticipation of the expiration of the FEA. In particular, the Commission sought comment on whether any of the following should be included:

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<sup>4</sup> In 2003, the termination provision of FEA was amended to read: "This act shall terminate on the later of (a) July first, two thousand eight or (b) the date (i) when all bonds and notes containing the pledge and agreement authorized by subdivision one of section ten-a of this act are refunded, redeemed, discharged or otherwise defeased, or (ii) when there shall no longer be outstanding any guarantee by the United States of America or any agency or instrumentality thereof as to payment of principal of or interest on any note or bond issued by the city or a state financing agency, whichever of (i) or (ii) shall

- the financial planning and management structure of the FEA;
- the on-going GAAP balanced budget requirement, subject to a stated limited operating deficit;
- short-term debt restrictions;
- establishment of a general debt service fund to pay bondholders and related City bondholder covenants; and
- an oversight mechanism.

On March 23, 2005, the Commission heard from a panel of experts on these features of the FEA. The panel consisted of: Charles Brecher, a professor of Public and Health Administration at the Wagner Graduate School of Public Service, Ronnie Lowenstein, Director of the New York City Independent Budget Office, James Parrott, Deputy Director and Chief Economist of the Fiscal Policy Institute, and Marcia Van Wagner, Deputy Comptroller for Budget of the New York City's Comptroller's Office.

There was a general consensus among these experts that the City should import the salutary financial planning practices mandated by the FEA that are not currently in the Charter, such as requiring GAAP budget balance at the end of the fiscal year, details of the four-year financial plan process, including the quarterly modification of the four-year financial plan, and additional restrictions on short-term indebtedness. With respect to the debt service fund, the City has proposed State legislation designed to strengthen this fund and codify it in permanent law. There was additional consensus that the monthly updates of the four-year financial plan that are currently provided have been positive outgrowths of the FEA's monitoring process.

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occur later." FEA §13. This amendment created some confusion with respect to the Act's termination

This consensus among the panel experts was also consistent with staff discussions with other outside experts over the past several months on this topic.

There were differing views among the panel members and among outside experts about the value of a State control board that could impose sanctions on the City for failing to comply with the imported financial practices. Furthermore, a change in State law would be required to compel State officials to participate on a board of this nature.

Finally, the experts on the panel and several outside experts have raised the possibility of creating a "rainy day fund" mechanism. A rainy day fund can provide a source of funds to mitigate negative budget impacts created by changes in the economic cycle. The requirement of "GAAP budgeting" prevents, as a legal matter, the ability of the City to create a rainy day fund, as current revenues must be spent in the year they accrue. In order to permit a rainy day fund, it would be necessary to create an explicit exception to the GAAP budget balance requirement.

Furthermore, there is no consensus on the need for a rainy day fund. One could posit that the City has an ersatz rainy day fund in the form of the surplus roll, which complies with GAAP budgeting requirements. The City can "roll" a surplus in one year by pre-paying certain future year expenses, such as debt service, thus freeing up an amount equal to the pre-payment in the following year for expenditure. In addition, beginning in fiscal year 1998, the City formally instituted a "budget stabilization account" mechanism in the budget, creating a unit of appropriation, which assists

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date. State legislation has been proposed that would clarify that the FEA will expire on July 1, 2008.



with tracking pre-payment of future year debt service with surplus revenues. Finally, it has been asserted that the City's tax structure itself, which has a variety of taxes unlike other localities, performs a revenue stabilizing function.<sup>5</sup>

### **Commission's Preliminary Recommendations for Public Review**

There is an opportunity, in this charter revision process before the FEA expires, to import into the Charter those elements of the FEA that all agree are positive financial planning and management tools for the City to continue to use. Making such revisions now would still allow time for the various stakeholders to continue discussing other elements of the FEA about which there is no consensus and to achieve consensus before the FEA expires. Indeed, having imported some of the FEA provisions into the Charter may make for a better future discussion about the merits of continuing or importing some of the remaining provisions. With respect to the debt service fund, the staff believes that the proposed State legislation is the most appropriate way to effectively strengthen this fund.

Thus, the Commission seeks public comment on draft amendments that would add the following features of the FEA to the Charter:

- Require that the City *end* each fiscal year so that the results of its operations do not show a deficit when reported in accordance with GAAP. The FEA requires that the City's expense budget be prepared and balanced so that the results do not show a deficit when reported in accordance with GAAP.

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<sup>5</sup> Janine Berg, John Tepper Marlin and Farid Heydarpour, "Local Government Tax Policy: Measuring the Efficiency of New York City's Tax Mix, FYs 1984-1998", in *Local Government Tax Policy* (Summer 2000),

The FEA further sets forth the consequence of a “control period” if the City were to incur a deficit of more than \$100 million in the results of operations covered by its expense budget during a fiscal year. In contrast, the Charter requires that the City’s annual expense budget be balanced at adoption, in accordance with GAAP, but has no comparable provisions in relation to the end of the fiscal year. The draft statutory language would require that the City’s operations not show a deficit at the end of the fiscal year, without the cushion of a \$100 million operating deficit. Since the Commission’s draft recommendation does not include the consequence of a “control period,” it is appropriate to require the City to seek to achieve actual balance rather than a specified operating deficit. Further, the draft statutory language would place the legal responsibility upon the Mayor to ensure the City does not end the fiscal year in GAAP-reported deficit. In the event, however, the City ends the fiscal year in deficit, the four-year financial plan must provide for the repayment of that deficit in the first fiscal year of such financial plan.

- **Require the City to continue preparation of the four-year financial plan documents, with quarterly modifications during the year.** The FEA includes a detailed four-year planning process, which helps regularize the City’s procedures for financial planning and ensures that the City is not exclusively focused upon the short-term adoption of a budget in June of every year. The Charter requires a four-year financial plan, but lacks the specificity of the FEA.

- **Require the City to produce and make available to the public, on a regular basis, financial plan statements showing updated actual financial information compared to projections, which will enable public assessment of the progress the City is making toward achieving end-of-year budget balance.** There is a consensus that the monthly updates of the four-year financial plan that are currently provided have been positive outgrowths of the monitoring process that has evolved while the FEA has been effective. In addition, the draft statutory language would specify that any existing powers of other officers or bodies, such as the Financial Control Board (during its existence), the State Comptroller, the City Comptroller, the City Council and the Independent Budget Office, to obtain information with respect to the budget and the City's finances remain intact.
- **Require the City to conduct an annual audit in accordance with generally accepted auditing standards.** The Charter requires an annual audit but lacks the precise articulation of the standards found in the FEA. The draft statutory language would incorporate the FEA's audit standards into the Charter.
- **Require the City to continue the stricter limits on short-term indebtedness.** Short-term debt is generally issued in anticipation of the City's receiving certain revenues in the near future. The City's reliance on short-term debt played an important role in triggering the 1970's fiscal crisis. The FEA now generally limits the amount of short-term debt the City may assume so that it is not based upon unrealistic future revenue projections. In certain instances,

the FEA also prohibits the issuance of short-term debt that matures in a subsequent fiscal year. The Charter contains some restrictions on short-term debt that are not as stringent as those in the FEA and in State law.

### *Summary of Draft Recommended Charter Text*

§1. This section would repeal current Charter §258, entitled “Financial plan,” and reenact that section to incorporate into the Charter the requirements, standards and procedures for the four-year financial planning process set forth in the FEA, making appropriate adjustments by, for example, omitting references to the “covered organizations” referenced in the FEA, the Financial Control Board and procedures during a control period.

- §258(a) incorporates into the Charter the FEA’s year-end balanced budget requirement. Unlike the FEA, however, for the reasons discussed above, the draft language does not provide for a limited operating deficit of \$100 million, but rather requires the City to seek to achieve actual balance at the end of the fiscal year. This subdivision also places responsibility for the City’s year-end results on the executive branch, requiring the Mayor to ensure that the City is in compliance with the year-end balance requirement.
- §258(b) incorporates into the Charter standards set forth in the FEA for the four-year financial plan and financial plan modifications. These standards include, among other things, requirements that:
  - the City’s expense budget be prepared and balanced so that the results thereof not show a deficit when reported in accordance with GAAP;
  - the City not issue obligations inconsistent with the financial plan;
  - projections of revenues, expenditures and cash flow be based upon reasonable and appropriate assumptions;

- a general reserve be provided for each fiscal year to cover potential reductions in projected revenues or increases in projected expenditures; and
  - in the event that the City ends a fiscal year in deficit, the four-year financial plan provide for the repayment of that deficit in the first fiscal year of such financial plan.
- §258(c) describes how the financial plan shall be developed and modified, in conjunction with the City's budget process, as that process is already described in the Charter. The subdivision requires the Mayor to prepare the four-year financial plan in conjunction with the preliminary budget and to reexamine, at least quarterly, and modify as necessary, the projections and estimates contained in the four-year financial plan. Specifically, an update of the plan would be issued with the budget message, then again after the budget is adopted, then again during the second quarter of the City's fiscal year, and as additionally necessary as the Mayor deems appropriate. The adopted budget must be consistent with standards applicable to the financial plan.
- §258(d) imports from the FEA the required contents of the financial plan, including projections of all revenues, expenditures and cash flows and a schedule of the City's projected capital commitments.
- §258(e) elaborates on and codifies in the Charter the City's current practice of issuing monthly financial plan statements. This practice, though not codified in the FEA itself, was an outgrowth of the monitoring regime imposed by that Act, and there is a consensus that it would be beneficial to continue issuing such statements.
- §258(f) clarifies that the amendments made by this section are intended to codify in the Charter the City's current financial planning practices, developed under the FEA, and should be construed as subject to the requirements of the FEA while the FEA remains in effect. This subdivision also clarifies that the amendments made are not intended to affect any existing powers or duties of, among others, the Control Board (while it remains in existence), the state and city comptrollers'

offices, the city council, or the independent budget office, with respect to requesting or obtaining from city officers or agencies information relating to the City's budget or finances.

§2. This section would import the FEA language concerning the annual audit into the Charter section (§95) addressing the annual audit. The current Charter language on the annual audit would be substantially preserved, in a new subdivision b, with the exception of an antiquated provision waiving the requirement of an annual audit in the event the audit is performed by the State Comptroller.

§§3-6. These sections would make various minor changes to Charter §§ 101 (on the preliminary expense budget), 213 (on the preliminary capital budget), 233 (on the report of the comptroller on the state of the city's finances), and 250 (on the budget message), providing relevant cross references to the new financial plan section (§258) where appropriate, and making minor conforming changes to ensure consistency with the new financial plan section.

§7. This section would import into the Charter the FEA's restrictions on short-term debt. The section would retain the Charter's current restrictions on short-term debt, but add to those restrictions the FEA's more stringent requirements. These new restrictions relate to the amount of short term debt and maturity of the notes. Tax anticipation notes are limited to an amount not to exceed 90% of real estate taxes available to repay such notes. The duration of tax anticipation notes is limited to a maturity of no later than the fiscal year in which the notes were issued. Revenue anticipation notes are limited to an amount not to exceed 90% of the revenues (generally aid to the city) in anticipation of which they are issued. Revenue anticipation notes may not mature later than the end of the fiscal year in which they were issued, but may be renewed to a date no later than 10 days after the date of anticipated receipt of the revenues expected to be used to repay the notes. In no event may revenue anticipation notes mature more than one year after the end of the fiscal year in which they were issued. In addition, revenue anticipation notes may be issued only in anticipation of a specific type or types of revenue. Bond anticipation notes are limited to one-half of the amount of the bonds issued in the year previous to the issuance of the notes. Budget anticipation notes may mature not later than 6 months after issue and may be renewed for only one additional 6 month period. Budget

notes described in section 29.00 of the local finance law may be used only to fund projected expense budget deficits.

*Draft Recommended Charter Text for Public Review*

Section one. Section 258 of the New York city charter is REPEALED and reenacted to read as follows:

§258. Standards for budget and financial plan. a. The operations of the city shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles. The mayor shall take all actions necessary to ensure that the city is in compliance with this subdivision.

b. Pursuant to the procedures contained in subdivision c of this section, each year the mayor shall develop, and from time to time modify, a four year financial plan. Each such financial plan and financial plan modification shall comply with the requirements of subdivision d of this section and shall conform to the following standards:

(1) For each fiscal year, the city's budget covering all expenditures other than capital items shall be prepared and balanced so that the results thereof would not show a deficit when reported in accordance with generally accepted accounting principles and would permit comparison of the budget with the report of actual financial results prepared in accordance with generally accepted accounting principles. Notwithstanding any inconsistent provision of this charter, in the event of any change in generally accepted accounting principles, or change in the application of generally accepted accounting principles to the city, if the mayor determines that immediate compliance with such change will have a material effect on such budgets over a time period insufficient to accommodate the effect without a substantial adverse impact on the delivery of essential services, the mayor may authorize and approve a method of phasing the requirements of such change into such budgets over such reasonably expeditious time period as the mayor deems appropriate.

(2) The city shall issue no obligations which shall be inconsistent with the financial plan prepared in accordance with this section.

(3) Provision shall be made for the payment in full of the debt service on all bonds and notes of the city and for the adequate funding of programs of the city which are mandated by state or federal law and for which obligations are going to be incurred during the fiscal year.

(4) All projections of revenues and expenditures contained in the financial plan shall be based on reasonable and appropriate assumptions and methods of estimation. All cash flow projections shall be based upon reasonable and appropriate assumptions as to sources and uses of cash (including but not limited to the timing thereof), and shall provide for operations of the city to be conducted within the cash resources so projected.

(5) A general reserve shall be provided for each fiscal year to cover potential reductions in projected revenues or increases in projected expenditures during each such fiscal year. The amount provided for such general reserve shall be estimated in accordance with paragraph four of this subdivision, but in no event shall it be less than one hundred million dollars at the beginning of any fiscal year.

(6) In the event that the results of the city's operations during the preceding fiscal year have not comported with subdivision a of this section, the first fiscal year included in any financial plan shall make provision for the repayment of any deficit incurred by the city during the preceding fiscal year.

c. The financial plan shall be developed and may from time to time be modified, in accordance with the following procedures:

(1) The mayor shall, in conjunction with the preliminary budget prepared pursuant to section one hundred one, prepare a financial plan covering the four ensuing fiscal years (the first year of which is the year for which such preliminary budget is being prepared) as well as updating the current fiscal year.

(2) After the preparation by the mayor of a financial plan in accordance with the preceding paragraph, the mayor shall reexamine, at least on a quarterly basis, the



projections of revenues and expenditures and other estimates contained in the financial plan, and shall prepare modifications in accordance with the following procedures:

(a) The budget message, issued pursuant to section two hundred fifty of this chapter, shall include an update of the financial plan covering the four ensuing fiscal years (the first year of which is the year for which such budget message is being prepared) as well as an update for the current fiscal year.

(b) Not later than thirty days after the budget is finally adopted, the mayor shall issue an update of the financial plan covering the four ensuing fiscal years (the first year of which shall be the year for which such budget has been adopted) as well as an update for the fiscal year that is ending or has just ended. Such update shall reflect changes which were made in the budget in accordance with sections two hundred fifty-four and two hundred fifty-five; provided, however, that the budget adopted in accordance with such sections shall be consistent with the standards applicable to the financial plan set forth in this section.

(c) During the second quarter of the fiscal year, the mayor shall issue an update of the financial plan covering the fiscal year in which such quarter occurs and the three ensuing fiscal years.

(d) In addition, on such schedule as the mayor deems appropriate, the mayor may issue further updates of the financial plan during the fiscal year.

d. The financial plan shall include projections of all revenues, expenditures and cash flows (including but not limited to projected capital expenditures and debt issuances) and a schedule of projected capital commitments of the city. In addition, each financial plan and financial plan modification shall include a statement of the significant assumptions and methods of estimation used in arriving at the projections contained therein.

e. As soon as practicable following the end of each month, the mayor shall issue a financial plan monthly statement showing the results of the operations of the city. The financial plan monthly statement shall include:

(1) variances between actual and planned revenues and expenditures for such month, total variances between actual and planned revenues and expenditures to date during the fiscal year in which such month falls, and total variances between forecasted and planned revenues and expenditures projected for such fiscal year;

(2) variances between actual and planned capital commitments for such month and total variances between actual and planned capital commitments to date during such fiscal year;

(3) capital cash out-flows for such month, the total capital cash out-flows to date during such fiscal year, and total capital cash out-flows projected for such fiscal year;  
and

(4) cash in-flows and out-flows for each month to date during such fiscal year and cash in-flows and out-flows projected for each month remaining in such fiscal year.

f. The powers, duties, and obligations set forth in this section shall be subject to the powers, duties, and obligations placed upon any state or local officer or agency, including but not limited to the New York state financial control board, by or pursuant to the New York State Financial Emergency Act for the City of New York, while such act remains in effect. In addition, nothing in this section shall be construed to affect any existing powers or duties of any state or local officer or agency, including but not limited to the New York state financial control board during the existence of such board, the New York state comptroller, the city comptroller, the city council or the independent budget office, with respect to requesting or obtaining from city officers or agencies information relating to the City's budget or finances.

§2. Section 95 of the New York city charter, as amended by local law number 59 for the year 2001, is amended to read as follows:

§95. **Annual audit.** a. The city, in accordance with subdivision b of this section and section ninety-seven of this chapter, shall take such action as may be necessary to enable a nationally recognized independent certified public accounting firm or

consortium of firms, at least one of which is a nationally recognized independent certified public accounting firm, to perform an annual audit in accordance with generally accepted auditing standards and to furnish to the city, in accordance with subdivision b of this section, the report on such audit prepared by such firm or consortium of firms, which report shall include an opinion as to whether the city's financial statements have been prepared in accordance with generally accepted accounting principles and shall state whether the audit of such financial statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary under the circumstances. Such report shall note the nature and extent of variations, if any, from generally accepted accounting principles reflected in the city's financial statements. The city shall make available for inspection and copying all books, records, work papers and other data and material as required by such auditors, and officers and employees of the city shall be made available to, and shall cooperate with, such auditors so as to permit such annual audit to be completed and the report issued within four months after the close of the city's fiscal year.

b. [An] The annual audit described in subdivision a of this section shall be made [of the consolidated operating accounts of the city and year-end assets of the city] by a firm or firms of certified public accountants, as set forth in such subdivision, selected by the audit committee [unless such audit is performed or shall be performed by the state comptroller]. Copies of the annual audit shall be submitted to the mayor, the comptroller, the council and the state comptroller and shall be published in the City Record. No audit engagement contract pursuant to this section shall exceed four years.

§3. Section 101 of the New York city charter, as amended and renumbered by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

§ 101. **Preliminary expense budget.** The preliminary expense budget shall contain proposed expenditures and a forecast of revenues for the ensuing fiscal year, including, for each tax revenue source which represents five percent or more of the total forecast of tax revenues, a detailed statement of the methodology and assumptions used to determine the forecast of revenues estimated to be received from such source in

sufficient detail to facilitate official and public understanding of the manner in which such forecasts are made, shall indicate proposed units of appropriations for personal service and for other than personal service, shall include a financial plan for the city for the four ensuing fiscal years (of which the first year is the year for which such preliminary expense budget is being prepared), consistent with section two hundred fifty-eight, [covering estimates of expenditures and revenues for the four ensuing fiscal years] with the amounts estimated to be available for discretionary increases, as defined in section one hundred two, in such years, shall include the departmental estimates of agency expenditures for the ensuing fiscal year pursuant to section one hundred together with proposed sources of revenue for each unit of appropriation specified therein and shall present a plan to ensure balance between the expense and revenue budgets during the ensuing fiscal year.

§4. Section 213 of the New York city charter, as renumbered and amended by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

§ 213. **Preliminary capital budget.** The preliminary capital budget shall consist of: (1) a financial plan, consistent with section two hundred fifty-eight, covering estimates of capital expenditures for the four ensuing fiscal years, (2) departmental estimates for capital projects as provided in section two hundred twelve together with the cash flow requirements and proposed sources of funding for each project included in such estimates, (3) a capital program status report which sets forth the appropriations for each project included in the capital budget for the current fiscal year together with the expenditures to date, and (4) a summary description of the purpose of each capital project and the needs it will fulfill, the schedule for beginning and constructing the project, its period of probable usefulness and an appropriate maintenance schedule.

§5. Section 233 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 7, 1989, is amended to read as follows:

§ 233. **Report of the comptroller on the state of the city's finances.** Not later than the fifteenth day of December, the comptroller shall report to the council, at a stated

meeting of the council, on the state of the city's economy and finances, including evaluations of the city's financial plan, as most recently updated by the mayor in accordance with section two hundred [twenty]fifty-eight, and the assumptions on which the revenue and expenditure forecasts contained therein are based.

§ 6. Subdivision 6 of section 250 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 7, 1989, is amended to read as follows:

6. [A] An update of the four-year financial plan, as set forth in section two hundred fifty-eight of this chapter, containing, (a) for each agency, for all existing programs, forecasts of expenditures for the ensuing fiscal year and the succeeding three fiscal years at existing levels of service; (b) forecasts of revenue by source from existing sources of revenue for the ensuing fiscal year and the succeeding three fiscal years; and (c) for each new or expanded program, an indication of when such program is projected to be fully implemented and a forecast of the annual recurring costs for such program or program expansion after it is fully implemented.

§7. Section 266 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 4, 1975, such section as renumbered and subdivision a as amended by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

§ 266 **Short term debt.** a. Subject to the provisions of subdivisions b[, c and d] through j of this section, the city may issue temporary debt obligations in anticipation of taxes and revenues as authorized by state law. The city shall issue no short-term obligations which shall be inconsistent with the limitations set forth in subdivisions b through j of this section. The limitations on short-term borrowing imposed upon the city by this section shall be in addition to the limitations on short-term borrowing imposed on the city under the state local finance law.

b. Revenue or tax anticipation notes shall be issued against a specific tax or revenues receivable which are clearly identified by source and fiscal year.

c. If the amount of taxes or revenues receivable against which anticipation notes have been issued becomes equal to the amount of such notes outstanding, the city shall deposit all further funds obtained from such sources into a segregated bank account which may be used only to redeem such debt upon maturity.

d. The city shall not issue anticipation notes against taxes or revenues which have been receivable for more than two years.

e. No tax anticipation notes shall be issued by the city in anticipation of the collection of taxes or assessments levied for a fiscal year which would cause the principal amount of such issue of tax anticipation notes to exceed an amount equal to ninety per cent of the available tax levy with respect to such issue. For purposes of this subdivision, "available tax levy" with respect to an issue of tax anticipation notes means at any date of computation the total amount of city real estate taxes or assessments projected, consistent with the financial plan then in effect, to be received in cash on or before the fifth day preceding the maturity date of such tax anticipation note issue, less amounts required during the period between the date of computation and the fifth day preceding such maturity date to be paid into a general debt service fund or otherwise required to pay interest payable on other outstanding city bonds and notes, principal (including payments into sinking funds) coming due on outstanding city bonds and principal to be paid from sources other than the proceeds of bonds or renewal notes on other outstanding city notes (exclusive of revenue anticipation notes or renewals thereof issued less than two years prior to the date of computation) but not including payments from sinking funds required by the terms of certain city bonds.

f. Tax anticipation notes and renewals thereof shall mature not later than the last day of the fiscal year in which they were issued.

g. (1) No revenue anticipation note shall be issued by the city in anticipation of the collection or receipt of revenue in a fiscal year which would cause the principal amount of revenue anticipation notes outstanding to exceed ninety per cent of the available revenues for such fiscal year. For purposes of this subdivision, "available revenues" shall be the revenues other than real estate taxes and assessments which have been estimated in the financial plan prepared pursuant to section two hundred fifty eight to

be realized in cash during such year, less revenues previously collected, other than revenues on deposit in any special fund or account established pursuant to law for the payment of interest and/or principal of revenue anticipation notes.

(2) Each issue of revenue anticipation notes shall be issued only in anticipation of the receipt of a specific type or types of revenue and the amount of revenue, the source of revenue and the anticipated date of payment shall be stated in the proceedings authorizing the issuance of such notes.

(3) Revenue anticipation notes shall mature not later than the last day of the fiscal year in which they were issued, and may not be renewed or extended to a date more than ten days after the anticipated date of receipt of such revenue. No such renewal note shall mature after the last day of such fiscal year unless the mayor shall certify that the revenue against which such renewal note is issued has been properly accrued and estimated in the financial plan set forth in section two hundred fifty eight in effect on the date of issuance of such renewal note; provided that in no event shall any such renewal notes mature later than one year subsequent to the last day of the fiscal year during which such revenue anticipation notes were originally issued.

h. (1) No bond anticipation note shall be issued by the city in any fiscal year which would cause the principal amount of bond anticipation notes outstanding, together with interest due or to become due thereon, to exceed fifty per cent of the principal amount of bonds issued by the city in the twelve months immediately preceding the month in which the note is to be issued.

(2) The proceeds of each bond issue shall be (i) held in trust for the payment, at maturity, of the principal of and interest on any bond anticipation notes of the city issued in anticipation of such bonds and outstanding at the time of the issuance of such bonds, (ii) paid into the general fund of the city in repayment of any advance made from such fund pursuant to section 165.10 of the state local finance law, and (iii) any balance shall be expended for the object or purpose for which such bonds were issued.

(3) Bond anticipation notes shall mature not later than six months after their date of issuance and may be renewed for a period not to exceed six months.

i. Budget notes issued pursuant to section 29.00 of the state local finance law may only be issued to fund projected expense budget deficits. No budget notes or renewals thereof shall mature later than sixty days prior to the last day of the fiscal year next succeeding the fiscal year during which such budget notes were originally issued.

j. All references to the state local finance law in this section shall be deemed to refer to the provisions of the New York state local finance law as such provisions may be amended over time or any successor provisions thereto.



## ADMINISTRATIVE JUDICIAL REFORM

The City's administrative law judges and hearing officers represent the face of justice in our City. The City's administrative tribunals—or executive branch courts—are often the only forums where citizens have any significant interaction with City government. It is, thus, critical that these tribunals continue to resolve disputes fairly, efficiently and consistently.

Tribunal operations can be governed either by local or state law, or sometimes both. Some tribunals are stand-alone agencies like the Office of Administrative Trials and Hearings (OATH), which hears a wide range of cases referred from a variety of agencies, or the Tax Commission, which hears specialized challenges to real property assessments determined by the Department of Finance. Other tribunals are located within larger agencies, such as the Parking Violations Bureau (PVB), located within the Department of Finance, and the Environmental Control Board (ECB), located within the Department of Environmental Protection (DEP). The majority of tribunals located within agencies hear cases arising from the regulatory activities of those agencies, such as the tribunals at the Department of Health and Mental Hygiene, the Department of Consumer Affairs and the Taxi and Limousine Commission (TLC). A notable exception is ECB, which over the years has been given jurisdiction over regulatory matters outside the purview of DEP.

The Commission held its first public meeting on the topic of administrative judicial reform on January 19, 2005, focusing particularly on the issues identified by Deputy Mayor Carol Robles-Román as a result of her work with the City's administrative

tribunals and the 2003 Charter Revision Commission's proposal to create an administrative judicial coordinator and to impose a more uniform standard of ethics on the City's administrative law judges (ALJs) and hearing officers.

In the *SUMMARY OF ISSUES UNDER CONSIDERATION FOR CHARTER REVISION*, released on March 4, 2005, the Commission sought comments from the public about:

- whether the City's administrative tribunals would benefit from coordination, and, if so, how it should be structured;
- whether a code of conduct should be established, and if so, how it should be developed, adopted and enforced;
- and, whether other steps should be taken to improve the management of the City's administrative justice system.

On March 7, 2005, the Commission heard from a panel of experts on these questions. The panel consisted of: James Brown, a labor and employment attorney, Ronald Goldbrenner, an attorney with expertise in administrative law, Preston Niblack, deputy director of the City's Independent Budget Office, and Betsy Plevan, President of the Association of the Bar of the City of New York. The experts generally agreed that the creation of the position of administrative justice coordinator was a necessary first step to assuring appropriate uniform standards and greater coordination among the City's administrative tribunals. Creation of an office with jurisdiction to coordinate the City's administrative tribunals would enable the City to improve the effectiveness and fairness of the City's administrative justice system as a whole. The City cannot effectively ensure uniform standards to enhance due process and the delivery of justice without coordinated oversight across all administrative tribunals.

The consensus among the panelists about the need for a coordinator was consistent with discussions Commission staff has had with other outside experts.

The panelists considered the functions a coordinator would perform. Among the functions mentioned were: advising and assisting the Mayor with respect to increased coordination, cooperation and information-sharing related to policy, management, technology, enforcement and uniform standards; and reviewing the ability of agencies to effectively enforce code violations. The rules governing the adjudicatory process at the Office of Administrative Trials and Hearings (OATH), including OATH's successful pre-trial conference procedure, might serve the coordinator well as a model for the processes at other tribunals.

There was consensus that it was not necessary to create such a position by ballot initiative, since the Mayor has the authority to create it by executive order, and further that sufficient study has occurred to support creation of such a position. Although there is value in creating the position by a ballot initiative, there was a consensus that the higher priority was establishing the position as soon as practicable. Experience with such a position created by administrative action would increase support in the future for a more permanent place in the Charter. This consensus, too, was consistent with discussions staff has had with other experts.

The panelists also discussed perceptions of ALJ and hearing officer conduct and the advisability of creating a uniform code of conduct or ethics for ALJs and hearing officers. Unlike in the case of State Court judges, no State or local law binds the City's ALJs and hearing officers to any code of professional conduct or ethics that is

focused on the quasi-judicial nature of their work.<sup>6</sup> The exception is OATH, which has adopted a code of conduct for its ALJs and which also may serve as a model for the other tribunals. But in general, the lack of a formal standard code of conduct or ethics specifically governing hearing officers and ALJs may render the City's tribunals less accountable than they should be. Subjecting all City ALJs and hearing officers to a uniform code of conduct or ethics would enhance accountability and also contribute to increasing professionalism within the ALJ and hearing officer corps. It is extremely important and necessary thus to ensure that the tribunals have credibility and that the public perceives them to resolve their disputes in a fair manner.

Finally, the Commission and the expert panel members were pleased to learn that Deputy Mayor Robles-Román is currently working with three groups of ALJs on a variety of issues related to improving the tribunals, ranging from ethical standards to enhanced coordination in the area of technology.

#### **Commission's Preliminary Recommendations for Public Review**

The Commission recommends that the Mayor establish a Coordinator of Administrative Justice by executive order. In view of the consensus of experts that a coordinator is necessary to assess the state of the City's administrative tribunal system and make recommendations for appropriate coordination and better practices and that it is not necessary to put such creation before the voters, the Commission has sent a letter to the Mayor, attached to this report as Appendix A, requesting him to create such a position by administrative action. The Commission endorses the

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<sup>6</sup> The City's ALJs and hearing officers are subject, as public servants, to the City's general conflicts of

establishment of a full-time Coordinator of Administrative Justice, with appropriate resources, to consult with the tribunals and related agencies to make recommendations to the Mayor with respect to coordination of policies, plans and operations common to the management of these tribunals, establishment of budget priorities for the tribunals, policies to increase efficiency at the tribunals, including the appropriate use of information technology, programs for training and professional development of administrative law judges and hearing officers and programs to enhance alternative dispute resolution. We further believe that the establishment of the Coordinator of Administrative Justice would enhance the context for any ballot proposal we might consider on the topic of administrative judicial reform.

The Commission seeks public comment on its preliminary recommendation to add to the Charter by referendum the requirement that the Mayor (or a designee) and the Chief ALJ at OATH consult with the Conflicts of Interest Board, the Department of Investigation, and the heads of appropriate agencies and administrative tribunals and establish a uniform code of conduct or ethics for ALJs and hearing officers. The existing general conflicts of interest law, located in Chapter 68 of the Charter, and related rules do not specifically address the quasi-judicial aspect of the work that ALJs and hearing officers perform but, rather, apply to all City public servants. Thus, Chapter 68 is necessarily more general than typical judicial codes of conduct, which focus on the types of conflicts likely to arise in a judicial forum. A code of conduct or ethics designed specifically for ALJs and hearing officers could be more appropriately tailored to the uniquely quasi-judicial nature of

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interest law.

the work performed by ALJs and hearing officers than the Charter's general conflicts provisions. A Charter amendment requiring the promulgation of this code of conduct could help ensure that adequate measures are in place to properly and uniformly impose the new rules. Finally, should the position of Coordinator of Administrative Justice be created by executive order, the Commission's believes that this Coordinator could be ideally situated to help develop the new rules.

*Draft Recommended Charter Text for Public Review*

Section 1. The New York city charter is amended by adding a new section 13-a to read as follows:

§13-a. Code of administrative judicial conduct. The mayor and the chief administrative law judge of the office of administrative trials and hearings shall, after consultation with the conflicts of interest board and the commissioner of investigation, and with affected agency and administrative tribunal heads, jointly promulgate, and may from time to time jointly amend, rules establishing a code or codes of professional conduct governing the activities of all administrative law judges and hearing officers in city tribunals, except to the extent that such promulgation would be inconsistent with law. An administrative law judge or hearing officer shall be subject to removal or other disciplinary action for violating such rules in the manner that such administrative law judge or hearing officer may be removed or otherwise disciplined under law. Further, such rules may set forth additional sanctions or penalties for violations of such rules to the extent consistent with law.

§2. Subdivision 2 of section 1049 of the New York city charter, as added by local law number 49 for the year 1991, is amended to read as follows:

2. (a) The chief administrative law judge shall establish rules for the conduct of hearings, in accordance with the requirements of chapter forty-five of the charter.

(b) The chief administrative law judge shall, in conjunction with the mayor and in accordance with the requirements of section thirteen-a of the charter, promulgate rules

establishing a code or codes of professional conduct governing the activities of all administrative law judges and hearing officers in city tribunals.

## AGENCY EFFICIENCY, EFFECTIVENESS AND ACCOUNTABILITY

Past Charter Revision Commissions have introduced reporting requirements into the Charter as one way of increasing agency efficiency, effectiveness and accountability. Indeed, the City's current performance-based management and reporting system is the combined legacy of the 1975 and 1989 Commissions. The 1975 Commission created the Mayor's Management Report, in part, to make sure that every administration would be accountable to the public for the quality of services and achievement of results. The 1989 Commission introduced a series of additional documents to the Charter, in part, to encourage a shift from crisis management to long-term planning.

Since the first public meeting on the topic, this Commission has been considering how to be "accountable about accountability." The Commission's initial discussion about the re-making of the MMR, served as a catalyst for a broader discussion of the existing system of performance-based planning and reporting documents in the Charter. Looking beyond the MMR, the Commission's focus turned to the general issue of reporting. While measuring results and reporting outcome-based information are vital to agency efficiency and effectiveness, there are costs to agencies and elected officials collecting and reporting data. Since the 1975 and 1989 Commissions created our present system, technological innovation and a nationwide government experience in managing and reporting for results have emerged as tools to help make this system more efficient and effective in providing useful data to a variety of users.



During a discussion about the usefulness of the Charter's mandated performance-based reporting and planning documents, Commissioner Abrams asked the staff to research the media's use of such documents as one indicator of their usefulness. As shown in the bar graphs in Appendix B, the budget documents and the MMR appear in press stories, while the remaining Charter-mandated documents are barely covered, if at all. The frequency of press coverage on the budget documents and the MMR, as shown in the last two charts in Appendix B, correlates most closely with their respective publication dates, although the press does refer to them throughout the year as well, with decreasing frequency.

In addition, staff developed a user survey of the Charter-mandated performance-based planning and reporting documents, sending it, in early April, to a group of professionals and experts who were most likely to use such documents. This survey of specialized users was intended to increase the probability that our sample would be familiar with or would have actually used one of the Charter documents. The first question in the survey was a screening question and asked whether the respondents were familiar with the document. The majority of respondents were not familiar with majority of documents. The survey then asked the respondents to assign a value to the reports—"never used," "rarely used," "sometimes used," "often used," and "very often used." Respondents who did not work for the City found the reports "rarely useful" to "often useful," while those who worked for the City found them "never useful" to "somewhat useful." The team also found that the MMR scored best among the surveyed documents, against criteria established by the Governmental Accounting Standards Board and the International City/County Management Association.

In the *SUMMARY OF ISSUES UNDER CONSIDERATION FOR CHARTER REVISION*, released on March 4, 2005, the Commission sought comments from the public about how the Charter might be amended:

- to facilitate efficient and effective delivery of municipal services through technology,
- to make the current performance-based planning and reporting system less prescriptive and more efficient and relevant to a wide range of users, and
- to increase flexibility and efficiency in agency operations while maintaining high levels of accountability.

During the expert panel discussion, before the April 4, 2005 public hearing, the panelists acknowledged that the City had been a leader in the field of performance-based management and reporting when the MMR was introduced to the Charter. They also applauded the recent improvements made to the MMR during the Bloomberg Administration.

The experts agreed that making reports useful and relevant to the public is important, although there were differing opinions on the best way to achieve this goal. A mechanism to discuss changing data needs as well as to assess the public's interest in reported data was suggested as a possible solution to the need to balance changes in reporting with accountability. The discussion expanded to a discussion about the panoply of other Charter-mandated documents. While the Charter cannot make agencies plan and manage well, it can provide tools for better planning and management and can institutionalize processes that increase the chance of better planning and management. The current panoply of Charter-mandated documents

does not appear to form a coherent structure of planning, management and reporting to support effective performance-based management and public accountability. The experts noted that there is overlap and duplication in the current system and an ineffective linkage between spending and results, there is little ability to trace connections among the documents so that they provide a composite picture of city government, there is no certainty that the stated recipients are the actual users, and it is no longer clear that the documents perform their intended functions.

In response to the question of whether the Commission had the capacity at this point in the process to place a "cogent, creative, productive, useful" proposal on the ballot, there was a consensus that this Commission has the capacity to make changes. The process of creating a coherent structure of performance-based management and reporting was thought doable because there was an existing system of documents. There was concern, however, that the large number of these reports and the varying constituencies for them indicate that a wholesale reworking of the current set of reports might best be done through a more extended and continuing process. This practical concern was consistent with our discussions with outside experts, in which several people expressed uneasiness with the idea of the Commission itself revising the content of these documents rather than establishing an ongoing process to permit revision.

#### **Commission's Preliminary Option for Public Review:**

The Commission continues to examine the feasibility of whether to create a commission on public reporting and data access to fill an observed need for an

extended and continuous public discussion about effective public reporting and how to improve them to create a better integrated performance-based reporting and planning system. Accordingly, the Commission seeks public comment on whether to create a public reporting and data access commission in the form described below, or in some alternative form. The Commission is hopeful that public comment during the next series of public hearings will help the Commission determine whether to recommend creating such a commission and help to refine the recommendation to accomplish its purposes effectively.

A commission on public reporting and data access, involving all stakeholders in the area of public management and accountability, could facilitate and moderate an ongoing public discussion about effective reporting, both from a management perspective and the perspective of public accountability. The observed need for such a commission is related, in part, to the perception that day-to-day government activities often preclude focusing on these issues. Many agree that some of the mandated reports or parts of them, and some advisory bodies that have, as their main purpose, responsibility for producing reports, are no longer as useful or relevant as originally intended. The idea of revising them as part of this Charter revision process, without a broader and more extended discussion among stakeholders, seems to this Commission, however, as unwise. The City, however, appears to need an institutional mechanism where all stakeholders can have a discussion about reporting data to the public. Stakeholders could include representatives of the Council, the Comptroller, the Public Advocate, the Mayor's Office of Operation, the Office on Management and Budget and Corporation Counsel, as well as members of the public representing

communications media, academia and civic organizations. This public discussion could be subject to the Open Meetings Law and could require the solicitation of input from those constituencies affected by such reports—either users of the reports themselves or users of the services covered by such reports. All members of the general public could have the opportunity to participate in public hearings of this commission. Deciding what and how to report should be an open, ongoing and systematic process, in which all stakeholders can feel comfortable with changing data requirements over time.

Such a reporting commission could develop standards for evaluating reports, both from a management perspective and the perspective of public accountability. It could review, on a periodic basis, the Charter-mandated performance-based planning and reporting documents and other locally required documents, as well as all requirements in the Charter and elsewhere in the City's local laws that mandate the establishment of advisory bodies that often have, as their main purpose, responsibility for producing reports. After reviewing such requirements, the Commission could determine whether they work as intended and whether they can be improved to create a better integrated performance based reporting and planning system. Under this recommended mechanism, the MMR and budget-related documents would be exempt from this commission's jurisdiction.

After review, this commission could have options to improve the reporting and advisory body requirements, in order to make them more relevant and useful as management tools and/or tools for public accountability in the context of the City's

overall system of reporting. It is the intent that such a commission provide an opportunity for the City to step back from particular issues of the moment and look at the City's data and reporting needs systematically in a way that complements—rather than competing with—the day-to-day functions of the legislative and executive branches. As presently envisioned, if this commission believed a reporting or advisory body requirement was no longer necessary, was duplicative or otherwise served no public interest, it could determine that such requirement be waived, in whole or in part. Waiving production of a report, in whole, would have the practical effect of no longer requiring the production of the report, while waiving the production of a report, in part, would have the practical effect of modifying the report within its own requirements. If the commission waived a requirement with respect to an advisory body, such body would no longer continue to exist. The proposal to waive in whole or in part could then be subject to disapproval by the Council within a period of time, veto by the Mayor and subsequent override by the Council within a period of time. This mechanism is similar to those found in land use and budget administration processes.

The Commission also would be able to make recommendations to the Mayor and the Council concerning the modification to reporting or advisory body requirements, including recommendations to modify or consolidate reporting requirements in light of technological advances and recommendations concerning additional data needs. These recommendations would not involve a formal waiver process, but would be purely advisory for the Mayor and the Council to consider as part of the regular legislative process.

The Commission seeks public comment on the following possible draft text to amend the Charter to create such a public reporting commission, noting that this is only one articulation of the form such a commission could take, and seeking input from the public on possible alternatives:

*Summary of Possible Draft Charter Text*

§1. This section would add to the Charter a new section 1113, entitled "Commission on public reporting and data access".

- §1113(a) provides that, except as provided, any provision that mandates the periodic issuance of reports or the establishment of a commission or similar body that exercises no sovereign power and serves only an advisory function shall be subject to waiver and deemed to be conditioned in accordance with the provisions of this section.
- §1113(b) establishes the Commission on Public Reporting and Data Access, to consist of nine members, including the Speaker of the Council, the Public Advocate, the Comptroller, the Corporation Counsel, the Director of the Office of Operations and the Director of the Office of Management and Budget, all serving ex officio. In addition, three members appointed by the Mayor, none of whom shall be a City employee, would also serve on the Commission. The Director of the Office of Operations would serve as chair of the Commission. Members who do not serve by virtue of their offices would serve four-year terms.
- §1113(c) requires that the Commission meet at regular intervals and hold at least one public hearing each year devoted to matters required to be reviewed by the Commission. Ex officio members could act through designees. This subdivision also requires that all meetings of the Commission be in compliance with the state Open Meetings Law. The Chair would have authority to appoint and supervise the Commission's staff and to request from other City agencies staff or other assistance, as appropriate, with regard to any matter within the Commission's jurisdiction.

- §1113(d) authorizes and requires the Commission to review all provisions of the Charter, the Administrative Code, or any local law mandating the periodic issuance of reports or the establishment of advisory commissions or similar bodies and, subject to review, veto, and override by the City Council and the Mayor, to waive any such requirement. With respect to reporting requirements, the Commission would be authorized to waive such requirements either in whole or in part. However, provisions of the Charter relating to the Mayor's Management Report, to the Comptroller's annual statement, to the Annual and Actuarial Audits, to the enactment of the City budget, to the Independent Budget Office, and to requirements by or pursuant to state or federal law, rule, or regulation would be beyond the Commission's authority. The Commission would be required, as part of its review, to solicit the views of groups or entities affected by the requirement under review, and to state in writing as part of its recommendation that it has done so. With regard to requirements in effect at the time of adoption of section 1113, the Commission would be required to complete its review and reach a determination regarding waiver no later than October 1, 2008; with regard to requirements enacted subsequent to the adoption of section 1113, the Commission would be required to complete its review and reach a determination no later than five years after enactment. Provisions of local law remaining in effect after the Commission's review would be required to be reviewed again by the Commission no later than five years after the initial review.
- §1113(d) further provides for review of determinations by the Commission to waive such requirements. The Commission would be required to file each such determination with the City Council and the Mayor, with copies to all groups or other entities whose input was solicited by the Commission during its review. The determination would take effect ninety days after such filing, unless earlier approved or disapproved by the Council. All actions of the Council with regard to determinations by the Commission would, within the ninety-day period for Council action, be required to be filed with the Mayor, who could, within ten days of such filing, disapprove the Council's action (or the constructive approval of a Commission determination resulting from failure by the Council to act on such determination).



Any Mayoral disapproval of Council action could be overridden by a two-thirds vote of the Council.

- §1113(e) authorizes the Commission to base its determinations on such criteria as it may deem appropriate, including, with regard to reporting requirements, whether the report provides useful information for evaluating the results of programs or the City's effectiveness in managing its resources, whether the report is duplicative of any other report and how the report's benefits compare to the costs of its preparation; and, with regard to requirements mandating the establishment of other advisory bodies, whether the work of the body substantially furthers the mission of other City agencies, whether the function of the body is duplicative of the functions of other bodies, whether the work of the body is limited to the production of one or more reports which have been waived by the Commission, and how the benefits of the body compare to the costs of its operation.
- §1113(f) provides that the Commission also may recommend to the Mayor and City Council the modification of requirements regarding the issuance of reports or the operation of advisory bodies, for the purpose of increasing the effectiveness of such requirements, including recommendations to revise or consolidate reporting requirements in light of technological advances, and may make recommendations concerning additional information needs.
- §1113(g) makes clear that the City Council may act by local law to repeal, limit or enhance any requirement otherwise subject to section 1113, but that any such enhancement is also subject to the provisions of section 1113.

*Draft Possible Charter Text for Public Review*

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

§1113. Commission on public reporting and data access.

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 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 advisory in nature and exercises no sovereign power, shall be subject to waiver in accordance with the provisions of this section, and the processes and powers set forth in this section shall be deemed a condition of such requirement.

b. There shall be a commission on public reporting and data access, which shall consist of the speaker of the council, the public advocate, the comptroller, the corporation counsel, the director of the mayor's office of operations, the director of management and budget and three other members appointed by the mayor, none of whom shall be an employee of the city. The director of the mayor's office of operations shall be the chair of such commission. Members of such commission who do not serve by virtue of their offices shall be appointed to four-year terms beginning the first day of January, two thousand six; such appointments shall be by the mayor serving on or after such date. Members of the commission shall serve until their successors have been appointed and qualified. Any vacancy occurring other than by expiration of term shall be filled by the mayor with an individual who has the qualifications required to fill the vacancy. A person so appointed shall serve for the unexpired portion of the term of the member succeeded. Terms of members who do not serve by virtue of their offices shall expire concurrently on December thirty-first at the end of each four-year period, and appointments of successor members shall be by the mayor serving on or after the January first immediately following such date. The mayor may remove any such member from the commission for cause, after providing such member prior notice and an opportunity to be heard.

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. All meetings of the commission shall be held in compliance with the New York state open meetings law.

Each member of the commission who serves by virtue of his or her office may be represented at such meetings by a delegate of such member. 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 commissioner or head of any agency represented on the commission or the commissioner of any other appropriate city agency 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) As provided in paragraph two of this subdivision, the commission shall have the power and it shall be its duty to review all requirements in this charter or the administrative code or elsewhere in the local laws of New York city which mandate the issuance of periodic or multiple reports 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 advisory in nature and exercise no sovereign power. Notwithstanding any inconsistent provision of this charter, the administrative code or any local law, the commission shall further have the power and duty, subject to review by the council and the mayor as provided in paragraphs four and five of this subdivision, to waive any such requirement. The commission shall be empowered to review requirements in effect on the effective date of this section, as well as requirements enacted by local law after such effective date. Provided, however, that the powers and duties of the commission shall not extend to the mayor's management report required pursuant to subdivisions a and c of section twelve as in effect on July first, two thousand five, or to requirements mandating the issuance of reports, or the creation of bodies, that are both (i) in effect on July first, two thousand five and (ii) set forth in or required by subdivision I of section ninety-three or section ninety-five or ninety-six, or by chapter six, nine, ten or eleven of this charter, or by or pursuant to any state or federal law, rule or regulation.

(2) In conducting reviews pursuant to this section, the commission shall solicit the views of groups, organizations or entities representing the interests of persons and entities that are the subject of or are otherwise affected by the requirement under review. Any determination made by the commission shall include a statement that the commission has solicited input in accordance with this paragraph.

(3) All requirements specified in paragraph one of this subdivision shall be reviewed by the commission. Upon completing its review of each such requirement, the commission shall issue a written determination whether to waive such requirement and stating the reasons therefor. If a requirement is waived, then the relevant report shall not be required or the relevant body shall be dissolved, after an opportunity for review by the council and the mayor pursuant to this section. In the case of reporting requirements, the commission may opt to waive a requirement in part rather in whole by identifying particular required elements of such report that should be waived or retained. Initial determinations shall be issued with respect to requirements that are in effect on the date of adoption of this section no later than October first, two thousand eight, and initial determinations shall be issued with respect to requirements enacted after such date of adoption no later than five years after their date of enactment. After its initial determination with respect to a requirement, the commission may from time to time make further determinations with respect to 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 each determination to waive a requirement, whether in part or in whole, that is issued pursuant to paragraph three of this subdivision. Copies shall also be provided promptly to groups, organizations or entities from which the commission has solicited input in accordance with paragraph two of this subdivision. Within ninety 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, within such ninety-day time period, the council fails to act or fails to act by the required vote 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. Actions of 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. The mayor shall further have the right to file with the council a written disapproval of any approval deemed to have occurred pursuant to paragraph four of this subdivision as a result of a failure by the council to act or to act by the required vote. Any such written disapproval must be filed with the council within ten days of the expiration of the time period for action by the council under paragraph four of this subdivision. Any mayoral disapproval under this paragraph shall be subject to override by a two-thirds vote of all the council members within fifteen days of such filing by the mayor.

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 city's management of its resources; whether the report is entirely or partially duplicative of the subject matter of any other mandated report; 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 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; 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 with respect to the establishment of advisory bodies that exercise no sovereign power, so as to make the

implementation of such requirements more effective in achieving their intended purposes, including 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 repeal or limit any requirement otherwise subject to this section at any time, or to enhance or extend such requirement, provided that any such enhancement or extension shall be subject to the review procedures of this section.

## OTHER SIGNIFICANT RECOMMENDATIONS

In the course of its review of the entire Charter, the Commission has received and considered other recommendations in addition to the preliminary recommendations discussed in the preceding pages. These additional ideas come from a variety of sources. Some have come to the Commission from the public and elected officials during public hearings held in March and April as well as from correspondence to the Commission. Other ideas from the public have come to the Commission as a result of meetings that arose out of the Commission's broad outreach process as discussed above. Other ideas have come to the Commission from City agency heads as a result of a solicitation from Chair Fuchs made last fall for their suggestions for changes to the Charter. The Chair and the staff have now met with the heads of many agencies about their recommendations.

Commission staff has reviewed and analyzed all such recommendations, supplementing them with additional research when necessary. Commission staff sent summaries of such recommendations to the Commission, providing legal and policy comment as appropriate. At the June 9th meeting, Commission staff generally reviewed these ideas with the Commission, answering questions the Commissioners had about particular ideas. All such significant recommendations are set forth in the charts that follow.

The vast majority of the ideas summarized in the following charts concern important City government issues. As a matter of law, a charter revision commission established

pursuant to the Municipal Home Rule Law is able to propose referenda on any matter within the jurisdiction of local government to enact. As a matter of public policy, however, this Commission has articulated a preference for focusing on broad structural issues concerning the operation and administration of the entire City government— issues like fiscal stability, citywide tribunal operations, and reporting requirements that affect a wide variety of users and agencies – about which there is a general consensus. A number of the recommendations, many of which could be enacted by local law, have a limited or particular effect on a single agency or small group of stakeholders. This Commission believes, as a matter of policy, that before it would propose any narrow, non-systemic or non-structural proposal for referendum, a case should be made that it addresses a very significant need or that, if the issue could be addressed by a local law without referendum, it has been presented to the City Council and rejected (or would evidently be rejected), despite its merits.

As of its June 9, 2005 meeting, the Commission has not recommended any of the ideas, listed below, to amend the Charter by referendum. For each of the suggestions listed below, the Commission has briefly stated some of its tentative reasons for not recommending, at this time, such suggestion's inclusion on the ballot this year. It is important to emphasize that, notwithstanding these tentative determinations, at least some of these suggestions may well be worthy of ultimate adoption by the Council, the State Legislature or a future charter revision commission. Although the Commission has thus far tentatively determined that these suggestions do not comport with the present Commission's priorities and criteria, the Commission will continue to review these ideas as it continues its process. Of course, the Commission



will consider public testimony on such ideas and will consider new recommendations from the public during the next series of public hearings before the Commission finalizes its work.

## Significant Proposals from Public Hearings

Proposer(s)	Proposal(s)	Comments
<i>Proposals Deferred to Future Charter Revision Commissions</i>		
Queens Borough President Helen Marshall March 7, 2005  Brooklyn Borough President Marty Markowitz March 23, 2005	In order to permit the office of the borough president to fulfill its Charter mandate, especially that of articulating borough-specific needs and concerns to the centralized budget and planning processes, the borough presidents need to be given adequate resources. The Charter language for funding the Independent Budget Office, a percentage of a mayoral agency, would be an appropriate mechanism.	City agencies have proposed centralization of certain borough president functions such as the city map and assigning addresses. On the other hand, borough presidents have articulated concern about adequate funding for Charter functions that deal with articulation of borough specific needs and concerns. Balancing the needs for centralization and decentralization of borough president functions requires further study and public discussion. This Commission recommends deferring these proposals to a charter revision commission focusing more specifically on the distribution of powers among elected officials, particularly the re-arrangement of functions accomplished by the 1989 Charter Revision Commission.
Bronx Borough President Adolfo Carrion March 16, 2005	Add to the function of borough president roles with respect to site selection for school capital projects similar to the role it has for other City capital projects; add to the function of community boards a role with respect to individualized educational plans (special needs).	The ability to accomplish these proposals is limited by state law that governs local education. In addition, as discussed above, balancing the needs for centralization and decentralization of borough president functions requires additional study and public discussion; expanding the functions of community boards also requires additional study and public discussion.
Alonzo Meyers April 4, 2005	Consolidate the Commission on Human Rights, the Equal Employment Practices Commission (EEPC) and the Department of Citywide Administrative Services' (DCAS) Equal	These three entities have different, though related, purposes, powers and constituencies, some of which might be adversely affected as a result of merger. Further review of this proposal would

	Employment Opportunities Division into an independent agency.	therefore be necessary.
<i>Proposals related to Area of Administrative Judicial Reform Deferred to Review by Administrative Judicial Coordinator</i>		
Bert Irons March 7, 2005	Create an independent panel to be responsible for the various agencies' code compliance practice and policies and adjudication practices and policies. Parties in an administrative tribunal may not feel that hearing staff from an agency would be receptive to considering alleged procedural errors committed by enforcement staff from the same agency in deciding a particular case.	These proposals are related to the area of administrative judicial reform and might best be subject of review by the administrative judicial coordinator that the Commission recommends be created by executive order.
Steve Seltzer March 7, 2005	Restrict information about a party in an administrative tribunal to the matter before the tribunal for purposes of making the initial decision about the case; other information could be admitted for purposes of assessing the penalty. Open up TLC hearings to the public.	
<i>Proposals, in Whole or in Part, Beyond Commission's Scope</i>		
Stanley Love March 23, 2005	Amend Charter to require Council approval of spending of PILOT funds	The issue of PILOT payment expenditures is related to disputes concerning financing of the proposed New York Sports and Convention Center and is more appropriately addressed in other forums.
John Zaccone, Counsel to Staten Island Borough President March 30, 2005	Create borough-based community preservation commissions, funded by additional real estate transfer fee of 1.5%, to purchase land for open space and historic purposes.	Additional real estate transfer fee, which would fund the commissions, requires State legislation.
Anita Lerman March 30, 2005  Teresa Hamel April 4, 2005	Require the City to continue to use mechanical voting machines instead of moving toward computer-based systems as a way to minimize voter fraud.	This matter is presently under review by other bodies at the State and local levels.
Douglas Israel, Advocacy Director, Citizens Union April 4, 2005	Reform the process of creating charter revision commissions to insure that	The process for creating charter revision commissions is set forth in state, not local,

Erik Strangeways April 4, 2005	the executive branch cannot monopolize the use of this tool.	law.
Alonzo Jordan, Volunteer Liaison to State Senator Malcolm H. Smith March 7, 2005 and March 23, 2005	Made reference to problems with the grand jury process.	The grand jury process is not subject of local legislation.
Charles Moore March 7, 2005  Leonard Silver March 23, 2005	Make the transportation systems governed by the Port Authority and the Metropolitan Transportation Authority subject to the authority of the City.	The ability to accomplish such a proposal is limited by the various state laws that govern the transportation systems governed by the Port Authority and the Metropolitan Transportation Authority.
<i>Proposals related to Area of Fiscal Stability Deferred to Local Legislation/Future Charter Commissions</i>		
Allison Sesso, Senior Policy Analyst, Human Services Council March 23, 2005  Leonard Silver March 23, 2005  Chaplain Hernandez March 23, 2005	As part of enhancing the City's budget planning and management practices before the FEA expires, require the City's budget presentation to integrate the budget figures with agency programs and that the out years of the financial plan assume the baseline level of services in the adopted budget. In addition, an automatic program adjustment, subject to a mayoral opt out, would ensure contracted levels of services from the providers of publicly funded social services.	As with rainy day funds, there is no consensus yet about mechanisms such as program performance budgeting and current services budgeting. These proposals relate to the City's fiscal stability and should be the subject of further study and public discussion and this Commission recommends deferring this proposal to local legislation or a future charter revision commission.
<i>Miscellaneous Proposals</i>		
Allan Bortnick March 23, 2005, April 4, 2005	Eliminate public funding from the City's campaign finance board for campaigns of incumbents running for the same or a different office.	This would be a fundamental change in a program that has covered incumbents since its initiation. More deliberation would be required to ensure that such a change would have a positive effect upon the City's electoral system.
Council Member Eric Gioia April 4, 2005	CM Gioia discussed legislation he has introduced in the Council with respect to agency reporting.	See discussion about performance-based planning and reporting system above in <b>AGENCY EFFICIENCY, EFFECTIVENESS AND ACCOUNTABILITY.</b>
Craig Gurian, Executive Director, Anti-Discrimination Center of Metro New York April 4, 2005	Amend the Charter to create an affirmative obligation of the City with respect to fair housing and require the	The City already has aggressive policies designed to promote new housing at various income levels.

	Planning Commission to take this obligation into consideration in developing land use plans.	
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## Significant Proposals from Correspondence

Proposer(s)	Proposal(s)	Comments
<i>Proposals Deferred to Future Charter Revision Commissions</i>		
Betsy Gotbaum, Public Advocate	In order to permit the office of the public advocate to fulfill its Charter mandate of Citywide ombudsman, the public advocate needs to be given adequate resources. The Charter language for funding the Independent Budget Office, a percentage of a mayoral agency, would be an appropriate mechanism.	This is one of several proposals to mandate the level of financing for various entities in order to protect the entity from the politics of the budget. Similar proposals were made by the borough presidents. As noted above, this proposal requires further study and public discussion. This Commission recommends deferring these proposals to a charter revision commission focusing more specifically on the distribution of powers among elected officials, particularly the re-arrangement of functions accomplished by the 1989 Charter Revision Commission.
<i>Proposals, in Whole or in Part, Beyond Commission's Scope</i>		
Corey Bearak, Executive Vice President, Queens Civic Congress	Require all PILOTS to be contained in the revenue budget or require a referendum for all PILOT expenditures outside the budget; require expenditures by off-budget authorities above a certain amount be included as a separate unit of appropriation in the expense and/or capital budget; require Mayor's appointment of a charter revision commission appointment to Council approval, or by limiting a mayor to one Charter Revision Commission per term; require that prospective and existing community board members should certify involvement in a community group to gain appointment or reappointment; change date of charter-mandated meeting of Council so that it does not conflict with Governor's State	The issue of PILOT payment expenditures is related to disputes concerning financing of the proposed New York Sports and Convention Center and is more appropriately addressed in other forums; state-created off-budget authorities generally cannot be subjected to local legislative restrictions absent authority by state law creating them; the process for creating charter revision commissions is created by state, not local, law; other ideas require further input from affected entities, such as Council and community boards.

	of the State speech.	
Kathy Dodd, District Manager, Staten Island Community Board 2	Create borough-based community preservation commissions, funded by additional real estate transfer fee of 1.5%, to purchase land for open space and historic purposes.	Additional real estate transfer fee, which would fund the commissions, requires State legislation.
Gifford Miller, Speaker of the Council	Place the question of whether to construct the West Side Stadium on the ballot.	There is no legal authority to place such question on the ballot; additionally, the role of a charter revision commission is to consider systemic issues concerning operation and administration of city government, not specific development projects.
David Moog, President, Local 1757 of D.C. 37, New York Assessors, Appraisers and Mortgage Analysts	Remove the tax collection function or the assessment function from the Department of Finance as one agency should not perform both functions.	Assuming that this change could be accomplished by local law, insufficient public policy justification has been presented for fragmentation of real property tax functions.
Daniel Schaffer, Brooklyn resident	Require a home rule message from the Council for future charter revision commissions; require bi-partisan commissions	The process for creating charter revision commissions is created by state, not local, law.
Daniel Schaffer, Brooklyn resident	Require a home rule message from the Council for future charter revision commissions; require bi-partisan commissions	The process for creating charter revision commissions is created by state, not local, law.
<b><i>Proposals related to Area of Administrative Judicial Reform Deferred to Review by Administrative Judicial Coordinator</i></b>		
Bert Irons, Administrator, Evangelical Church of God, Bronx	Create an independent panel to be responsible for the various agencies' code compliance practice and policies and adjudication practices and policies. Parties in an administrative tribunal may not feel that hearing staff from an agency would be receptive to considering alleged procedural errors committed by enforcement staff from the same agency in deciding a particular case.	
Tara Rice, President, Lesbian, Gay, Bisexual and Transgender Law Association	Explore adding standards for recruitment/selection of ALJs and hearing officers, in order to eliminate bias in recruitment/selection process.	
<b><i>Proposals related to Area of Fiscal Stability that Are Deferred to Local Legislation/Future Charter Commissions</i></b>		
Bonnie Brower, Executive Director, City Project	Reformulate budget as a programmatic and services document; link budget information with non-financial information; include	There is no consensus yet about mechanisms such as rainy day funds, program performance budgeting and current services budgeting;

	tax expenditures in budget, expand time between release of executive budget and adoption or increase level of programmatic information in the preliminary budget; mandate that a majority of Council members be present during the public testimony part of budget hearings; increase operating deficit from \$100 million to \$200 million; require a rainy day fund; better integrate expense and capital budgets; create a financial control board at the City level with statutory access to financial information; vest the power to make the binding revenue estimate with an independent third party.	these topics are appropriate for further discussion at the Council or in future Charter Revision Commissions; there is no consensus about the value of a financial control board that can impose sanctions on the city for failing to comply with financial requirements to the extent tax expenditures are granted pursuant to state law, state law would limit the ability to subject them to locally legislated processes; changing the party making the binding revenue estimate would require significant input from all participants in the budget process as well as outside fiscal monitors.
<i>Miscellaneous Proposals</i>		
Thomas Bornemann, Queens resident	Require that Council member districts be within a single borough	Redistricting just occurred in 2003, and will not occur again for eight years. This issue may be reviewed by future charter commissions or districting commissions.
Steven DiMarco, Shirley, New York resident	Reduce or eliminate Charter requirement that City employees live in the City.	Although there are significant exceptions to the current requirement, it reflects an arguably sound public policy that, where no special public policy considerations apply, those who are on the City payroll should participate directly in the City's economy and culture as residents.
Christian DiPalermo, Executive Director, New Yorkers for Parks	Earmark moneys from Parks Department concessions for Parks Department budget for benefit of parks system	Fiscal consequences of this proposal for the City budget would require additional review.
Joshua Kahr, Kahr Real Estate, New York	Create an independent oversight body to monitor the Department of Finance's real property assessment practices.	Integrity and practices of the real property assessment system, to the extent that they may be addressed locally, have been and will continue to be the subject of review by the Administration and the Council.
Gary Kaskel, Chair and President, Executive Director, United Action for Animals	Create an ombuds position within Mayor's Office to coordinate animal welfare	The Commission has received no additional evidence of a systematic problem in this



	and control policy.	area and defers the recommendation to future administrative or legislative action.
Walter McCaffrey, former Council Member from Queens	Expressly prohibit the payment of public funds to Council Members in excess of the Charter mandated level as compensation for additional duties such as chairing committees and performing leadership functions (known as "lulus"); make the position of Council Speaker a full-time position and establish a specific salary, as Charter does for other elected officials, commensurate with duties; consider establishing specific salaries for majority and minority leaders.	The practice of distributing lulus is not common among state and local legislatures across the country and neither Congress nor the Senate engages in this practice; further this practice might be seen as undermining the Charter provisions setting forth the salaries of elected officials. However, further study and discussion with those public officials affected by the practice of distributing lulus would be required before making such a change.
Maria Thompson, Queens resident	Change the removal provisions of Charter section 2800(b) relating to community boards to make it harder to remove community board members	The Commission has received no additional evidence of a systemic problem with the community board removal process.

## Significant Proposals from Outreach Meetings

Idea
<i>Generally Deferred for Consideration in the Legislative Process or Future Charter Revision Commissions</i>
Create an Early Childhood Education Department, merging Head Start programs, universal pre-kindergarten programs and early intervention services, to coordinate better with Department of Education.
Move the home attendant program from HRA to DFTA to create continuum of care for elderly and let HRA focus on its central mission as engine for access to benefits.
Create a position within the Office of the Mayor to look at opportunities, using the Out-of-School-Time RFP process as a model, to combine individual programs and related funding streams at different agencies that cover a particular policy area and design integrated multi-agency RFPs for programs at different agencies supporting a particular policy.
Expand the scope of agency inspections to cover sweatshop conditions, predatory loan practices.
Reconfigure the City's performance-based reporting process to engage citizens and enhance problem solving and governance at the community level.
Reform the MMR and related performance-based reports to reflect their initial emphasis on management by objectives
Articulate in the Charter, a principle of competition, similar to those in Phoenix, AR, and Charlotte, NC, that requires a periodic determination as to the most efficient and effective manner of providing municipal services.
Change the actuary's audit of pension assumptions from every two years to every four or five years to match more closely when actuarial assumptions change.
As an economic development initiative, create a local bid preference so that for certain procurements, small locally-based companies receive a priority.
Require EDC and IDA to report on projects by Community District and Borough.
Fund outside entities to evaluate/audit City-produced performance-based reports, much like IBO evaluates City-produced budget.
Create independent entity to review agency denial of information requests from public.
Explicitly prohibit local laws that effect social policies via the procurement process.
Engage the public to discuss how to make government indicators more meaningful to them and to discuss indicators of interest to the public that are not necessarily the direct result of government action.
Change timing of PMMR to 6 weeks after Preliminary Budget release
Create position of Health Coordinator
Enact 311 in Charter
Look at Administrative Conference of the United States as model for interaction of government, private sector and academia on a particular policy area.
Create data warehouse for research purposes; create searchable database, including past and present reports and capturing future reports
Create an interagency task force to focus on language access issues.
Modify concept of GAAP budgeting to permit rainy day fund.
Change operating deficit and general reserve amounts from \$100 million to a percentage of budget (e.g., 1% of city tax levy)
Reconstitute Control Board as a local board with access to financial information.
Include outstanding debt, debt service and revenues of certain City off-budget agencies in the budget and financial planning documents in order to show the City's effective debt burden.
Create a Deputy Mayor for Infrastructure to facilitate coordination of City's capital program with those of the State and other State off-budget agencies within the metropolitan region
Revise the Ten-Year Capital Strategy to make it work as intended as a planning tool

Instead of a rainy day fund, limit the City spending surplus funds to paying down principal on outstanding debt due in a future year, paying for capital projects or reducing taxes.
Strengthen the office of borough president by enhancing their roles in land use and infrastructure planning as way to focus on local development issues, budgeting and in allocating and directing service delivery within the boroughs; in land use and budgeting
Create percentage requirement for pay-as-you-go capital funded, supplemented by one-shot revenues such as proceeds from sale of city assets and one-shot expenditure savings.
Restructure term limits for the Council to permit staggered 12-year terms.

## Agency Head Proposals

Agency	Idea	Comments
<i>Proposals Deferred to Administration's Local or State Legislative Agendas or to Future Charter Revision Commissions</i>		
City Planning/Buildings	Eliminate role of Borough Presidents in City map and address processes	While centralization of these functions at City Planning makes sense, the issue of the role/functions of the borough presidents requires further study and public discussion. This Commission recommends deferring these proposals to a charter revision commission focusing more specifically on the distribution of powers among elected officials, particularly the re-arrangement of functions accomplished by the 1989 Charter Revision Commission.
Transportation	Instead of permitting Taxi and Limousine Commission (TLC) chair to hire staff, require TLC staff work to be performed by Department of Transportation staff in the same manner Board of Health staff work is performed by Department of Health and Mental Hygiene staff.	When the City created an independent commission regulating this mode of public transportation, it moved away from the model still used in other large cities of locating this regulatory function within a city agency under a single department head, usually a police or consumer affairs department. While centralizing the policy and operational functions of all modes of transportation makes sense, this proposal requires further study and public discussion and this Commission recommends deferring this proposal to a future charter revision commission.
Human Resources Administration	Replace power of borough presidents to request response from agency within 10 days when borough president has reason to believe term or condition of service contract is not being complied with general provision for accountability for evaluation and monitoring of contractor performance.	While eliminating this one detailed time requirement for contractor evaluation and monitoring to permit more thorough investigations makes sense, the issue of the role/functions of the borough presidents requires further study and public discussion. This Commission recommends deferring these proposals to a charter revision commission

		focusing more specifically on the distribution of powers among elected officials, particularly the re-arrangement of functions accomplished by the 1989 Charter Revision Commission.
Buildings, Transportation, Human Resources Administration, Environmental Protection, Fire	Eliminate specific reference to number and designation of deputy commissioners	While this proposal enjoys widespread support among City agencies with these Charter restrictions, this Commission recommends deferring this proposal for future consideration.
Buildings/Small Business Services/Environmental Protection	Resolve waterfront coordination issues relating to the dissolution of Department of Ports and Terminals in [1990].	A proposal to resolve these coordination issues was presented to the Council in the mid-1990s, but no action was taken. This Commission defers this proposal to administrative action and/or the Administration's legislative agenda in the future.
Buildings	Eliminate specificity of requirements for inspectors	
Buildings	Premium for service on weekends like Fire Department	
Buildings	Amend section governing appeals to the Board of Standards and Appeals to state that it has no jurisdiction over the Department of Buildings licensing matters.	
Transportation	Delete Local Law 67 references to sidewalk complaints that are no longer relevant	
Transportation	Clarify that maintenance functions for arterials exclude trees which should be done by Parks	
Human Resources Administration	Transfer responsibility of identifying additional public burial places for the poor and strangers from the Department of Social Services to the Department of Citywide Administrative Services, which has Charter responsibility to manage, purchase and lease real property within the City.	
Environmental Protection	Transfer power to collect water and sewer charges and power to enter into contracts with collection agencies for water and sewer charges from Finance to DEP	
Environmental Protection	Delete references to private water companies as they no	

	longer exist	
Environmental Protection	Add the power to permit with respect to sewage control	
Information Technology and Telecommunications	Revise telecommunications franchise language to conform to federal Telecommunications Act of 1996	The relationship of the Charter to federal law, and the best means of harmonizing them, should be subject to further review.
<i>Proposals related to Area of Administrative Judicial Reform Deferred to Review by Administrative Judicial Coordinator</i>		
Consumer Affairs	Use full-time judges in administrative tribunals.	
Consumer Affairs	Improving administrative tribunal predictability.	
Consumer Affairs	Mandating pre-hearing settlement conferences.	
Consumer Affairs	Consider eliminating default inquest hearings.	
Consumer Affairs	Consider periodic audits of tribunals by an outside entity (e.g., DOI, Corp. Counsel, Office of Operations) to ensure that tribunals remain independent.	
Taxi and Limousine Commission	Amend charter restriction on docketing to permit docketing as authorized in State law.	
Environmental Protection	Add Parks and Transportation commissioners to ECB Board now that notices of their violations are answerable to ECB.	
Environmental Protection	Increase compensation for private members of ECB Board	
Environmental Protection	Extend life of ECB judgments from 8 years to 20 years	
Environmental Protection	Revise procedures for serving notices of violation to include mail to last known address as acceptable means of service and permit ECB to directly docket violations; also revise procedures for serving notices by Transportation that are answerable at ECB	
<i>Proposals related to Area of Fiscal Stability Deferred to Local Legislation/Future Charter Commissions</i>		
OMB/OLR	Subject home rule messages to requirement that fiscal impact statements be completed by City actuary	This proposal relates to the City's fiscal stability and should be the subject of further study and public discussion, and this Commission recommends deferring this proposal to local legislation or a future charter revision commission.

## ABOUT THE COMMISSIONERS

**Dr. Ester R. Fuchs (Chair)**, Special Advisor to the Mayor for Governance and Strategic Planning, is on leave from her position as Professor of Political Science and Public Affairs and Director of the Center for Urban Research and Policy at Columbia University and Barnard College. She is a resident of Manhattan.

**Dr. Dall Forsythe (Vice Chair)** is the Chief Administrative Officer of the Episcopal Diocese of New York. He is the former Budget Director for New York State and the New York City Board of Education. He is a resident of Manhattan.

**Stephen J. Fiala (Secretary)** is the County Clerk and Commissioner of Jurors for Richmond County. He is a former member of the New York City Council. He is resident of Staten Island.

**Robert Abrams** is a partner of Stroock & Stroock & Lavan LLP. He was formerly the New York State Attorney General. He also served as the Borough President of the Bronx and was a member of the New York State Assembly. He is a resident of Manhattan.

**Curtis L. Archer** is Executive Director of the Rockaway Development and Revitalization Corporation and is the former Director of Small Business Development for the Upper Manhattan Empowerment Zone. He is a resident of Manhattan.

**Dr. Lilliam Barrios-Paoli** is the President and CEO of Safe Space, Inc. She previously served as the Senior Vice President and Chief Executive for Agency Services of the United Way of New York City. She has also served as Commissioner of New York City's

Human Resources Administration, Department of Housing and Preservation and Development, Department of Personnel and Department of Employment. She is a resident of Manhattan.

**Amalia Victoria Betanzos** is President of Wildcat Service Corporation a non-profit employment program. Formerly, she was a Commissioner of the Department of Youth Services and an Executive Secretary to Mayor John Lindsay, and a member of four previous Charter Revision Commissions. She is a resident of Staten Island.

**David Chen** is the Executive Director of the Chinese-American Planning Council and is the founding Chairman of the Board of Directors of the Chung Pak Local Development Corporation. He is a resident of Brooklyn.

**Anthony Crowell** is Special Counsel to Mayor Michael R. Bloomberg and a former Executive Director and General Counsel to several previous Charter Revision Commissions. He is an adjunct Professor at Brooklyn and New York Law Schools. He is a resident of Brooklyn.

**Stanley E. Grayson** is the President and Chief Operating Officer of M.R. Beal & Company. He was a former Managing Director and Director of Prudential Securities Public Finance Department. Prior to his investment-banking career, Mr. Grayson held several senior positions within New York City government, including Deputy Mayor for Finance and Economic Development, Finance Commissioner and Chief Executive Officer of the New York City Industrial Development Agency. He is a resident of Manhattan.



**Dr. Mary McCormick** is President of the Fund for the City of New York. She is a former Special Assistant to New York City's Deputy Mayor for Labor Relations and Personnel and a professor at Columbia University. She is a resident of Brooklyn.

**Stephanie Palmer** is the Executive Director of the New York City Mission Society and is the former Executive Director of Human Services Council of New York City. She is a resident of Manhattan.

**Jennifer J. Raab** is the President of Hunter College. She is the former Chair of the New York City Landmarks Preservation Commission. She is a resident of the Bronx.

[Commission letterhead]

[Draft Letter to Mayor]

Mayor Michael R. Bloomberg  
City Hall  
New York, New York 10007

Dear Mayor Bloomberg:

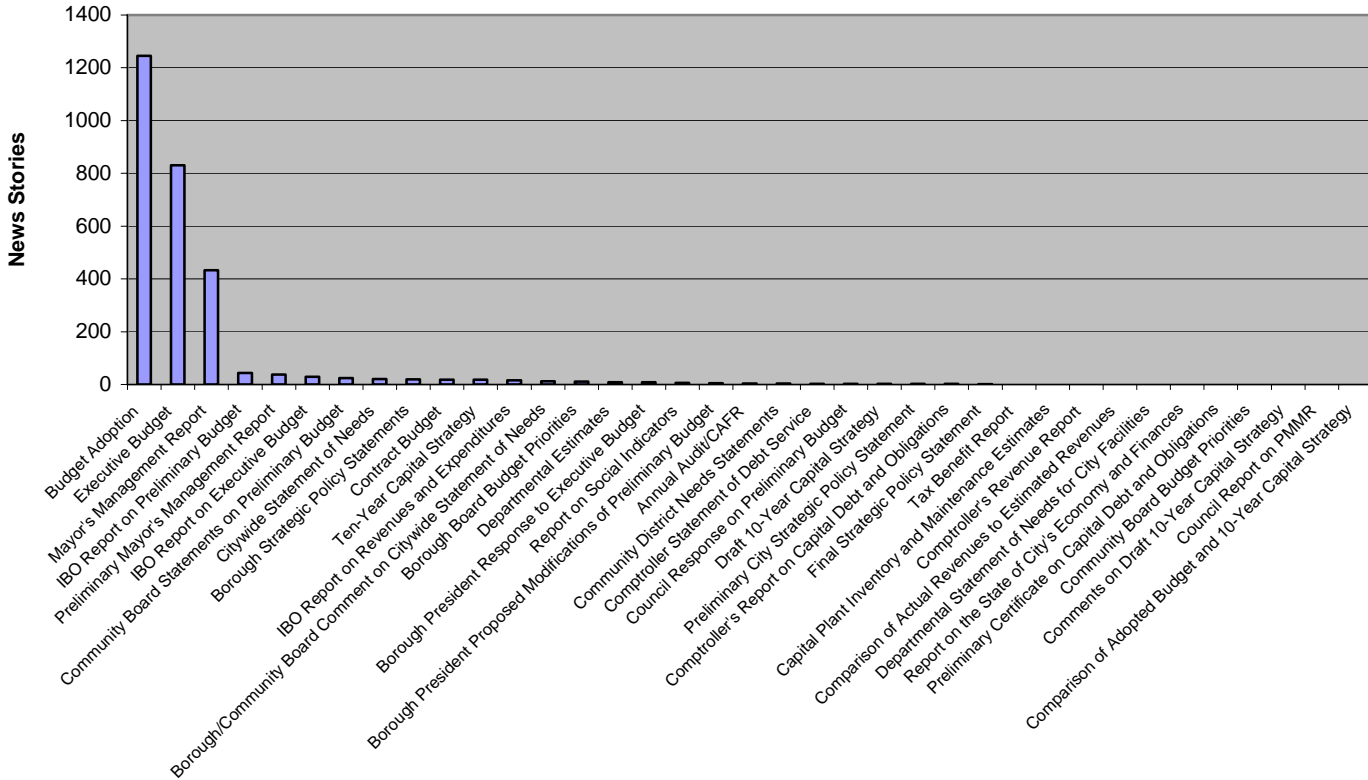
You asked this Commission to consider administrative judicial reform. We have heard testimony from Carol Robles-Roman, the Deputy Mayor for Legal Affairs, in which she outlined the issues facing the City's administrative tribunals as well as the proposal to create the position of Coordinator of Administrative Justice. We have also heard testimony from Betsy Plevan, President of the Association of the Bar of the City of New York, in which she stated her and the Association's strong support for the creation of such a position.

We have also heard from a panel of experts on this topic, and Commission staff has reported to us the many conversations they have had with other experts and stakeholders. There is a wide consensus that creating the position of an administrative judicial coordinator is a necessary first step toward assessing the state of the City's administrative tribunal system and making recommendations to improve its operations. There is also a consensus that it is not necessary--either legally or practically--to put the creation of this position before the voters as a ballot initiative.

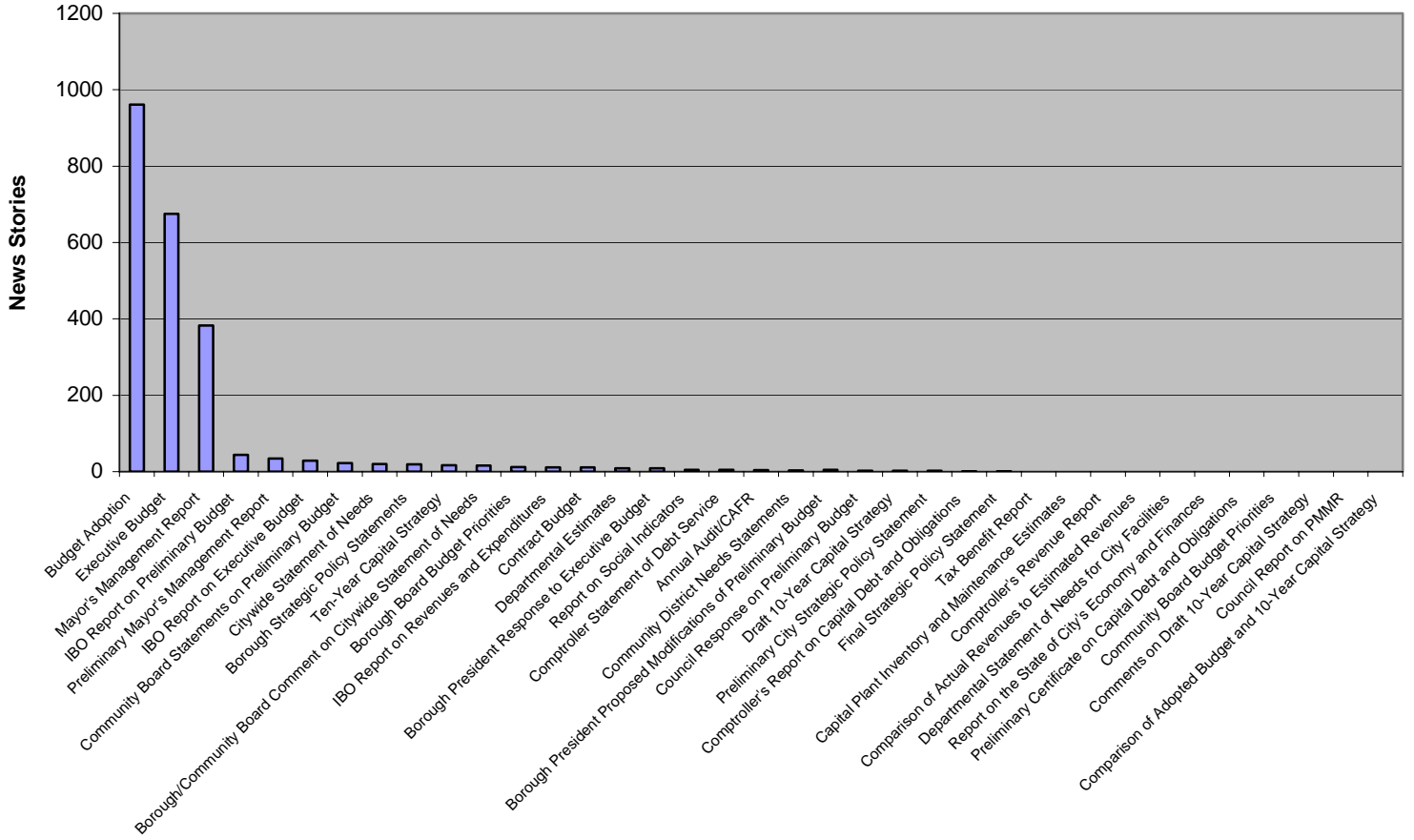
The Commission endorses the establishment of a full-time Coordinator of Administrative Justice, with appropriate resources, to consult with the tribunals and related agencies and assist the Mayor with respect to: coordination of policies, plans and operations common to the management of these tribunals; establishment of budget priorities for the tribunals; establishment of policies to increase efficiency at the tribunals, including the appropriate use of information technology; establishment of programs for training and professional development of administrative law judges and hearing officers; and, establishment of programs to enhance alternative dispute resolution.

We further believe that the establishment of the Coordinator of Administrative Justice would provide the context for any ballot proposal we might consider on the topic of administrative judicial reform. Thus, we respectfully request that you create such a position by executive order as soon as practicable.

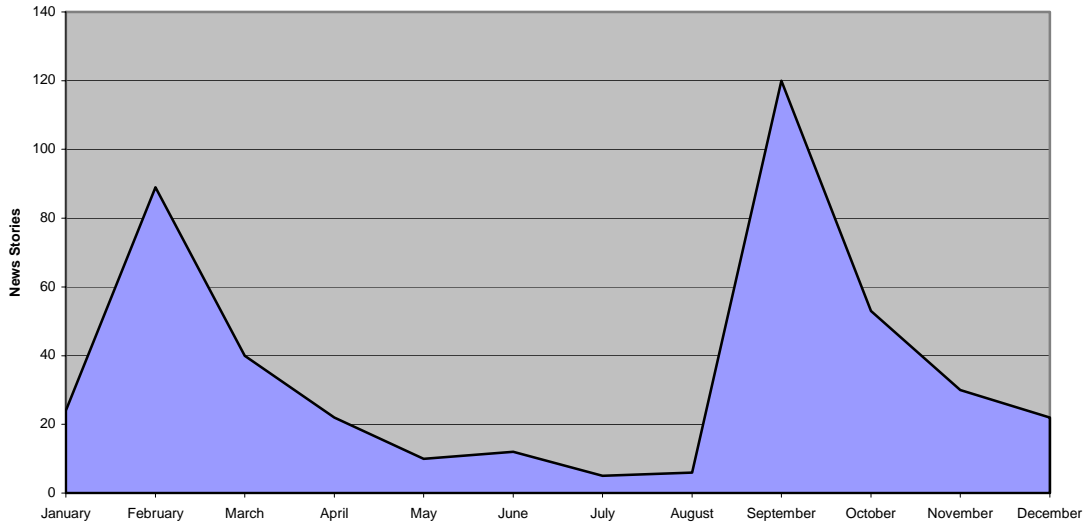
**Charter-Mandated Reports in the News  
(1976 - present)**



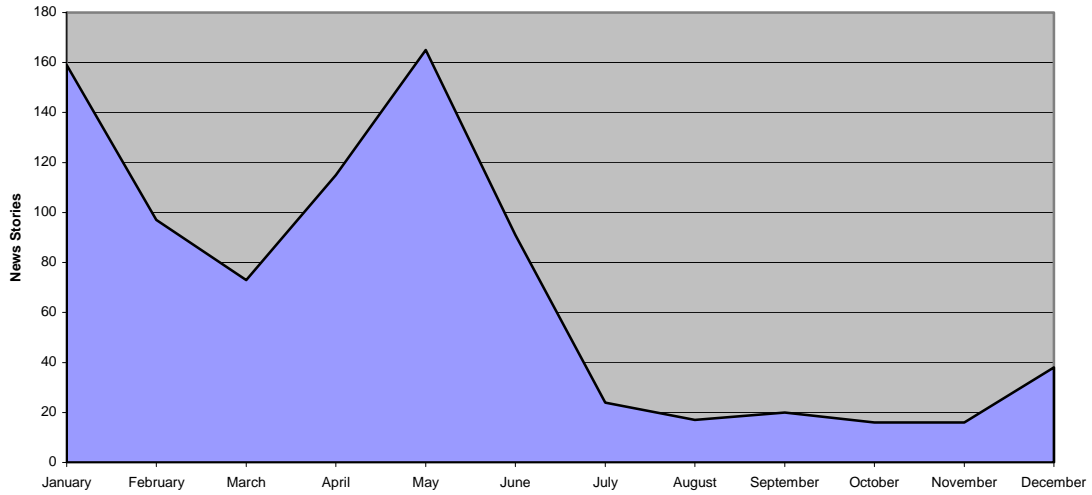
### Charter Mandated Reports in the News (1990-present)



**Monthly Frequency -- MMR  
(1976-present)**



**Monthly Frequency -- Executive Budget  
(1976-present)**



SOURCE: LEXIS-NEXIS