



THE NEW YORK CITY COUNCIL

REPORT TO THE NEW YORK CITY CHARTER REVISION COMMISSION

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INTRODUCTION

The New York City Charter is, in essence, the City's constitution. It assigns responsibility for all municipal functions among the elected officials and entities of the City government. These responsibilities include budget, land use, legislation, as well as the provision of the full range of government services, such as sanitation, homeless services, health care, elder care and policing. They also include oversight of the City government itself.

In 1989, New York City voters adopted a new City Charter, instituting sweeping changes in the structure of our City government. The new Charter provided for a strong executive, but also transferred substantial new responsibilities from the Board of Estimate to the New York City Council.

This Report makes recommendations to the 2010 Charter Commission for changes to the City's Charter. Many individuals, including elected officials, have provided the Commission with meritorious proposals, some of which are mirrored in this Report. The scope, breadth and complexity of these proposals strongly suggest that the work on Charter reform should continue beyond this year. The recommendations contained in this Report will, the Council believes, provide for greater community participation in the government, bring more transparency to the work of the City government, and strengthen accountability of, and in turn the public's confidence in, City government.

PART I

BALANCE OF POWER AND INDEPENDENCE OF CERTAIN CITY ENTITIES

The 1989 Charter Revision Commission sought and achieved a governmental structure in which the Mayor is responsible for managing government operations and implementing policy, and the Council is responsible for setting policy and conducting oversight. The Council is proposing a series of changes to further the goal of maintaining strong and independent branches of government. In particular, the Council proposes a requirement that the executive afford due deference to the laws enacted by the legislature. In addition, the Council recommends greater independence for certain City entities and offices that are central to the oversight of government. This independence is reflected in different instances through the appointment process, budget independence, or the authority granted to particular offices.

I. Implementation of Council-Enacted Laws

Amend Section 3 of the Charter to require the Mayor to implement all laws enacted by the City Council unless a Court has enjoined enforcement of the law or holds the law invalid.

CURRENT LAW: Section 3 of the Charter makes the Mayor the Chief Executive Officer of the City. Section 21 of the Charter makes the Council the local legislative body of the City and section 28 gives the Council the power to adopt local laws. The majority opinion in a closely divided New York State Court of Appeals case stated that whenever a “local law seems to the Mayor to conflict with a state or federal one, the Mayor's obligation is to obey the latter.” *Matter of Council of City of New York v. Bloomberg*, 6 N.Y.3d 380, 389 (2006).

REASONS FOR PROPOSED CHANGE: As noted by the dissenting judges in *Matter of Council of City of New York*, “Under a separation of powers system it is the job of the legislative branch to enact laws and the executive to carry them out. An executive who believes that a law is unconstitutional is not powerless but must follow a process by which the judiciary – and not the executive – determines the issue in the first instance.” *Id.* at 396 (citing New York City Charter §§ 3 and 21) (footnote omitted). The proposed change would restore to New York City principles of separation of powers that have been a bedrock of American democracy since the founding of the United States Constitution. *See id.* at 396 fn. 2 (citing *Marbury v. Madison*, 1 Cranch [5 U.S.] 137, 177 (1803); *Kendall v. United States ex rel. Stokes*, 12 Pet [37 U.S.] 524, 613 (1838); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587-588, (1952)).

II. Greater Independence for City Agencies and Entities

Strengthen the independence of the Law Department by making the Corporation Counsel subject to the advice and consent of the Council and requiring the Law Department to provide representation to all City officials and institutions.

CURRENT LAW: Pursuant to Chapter 17 of the Charter, the Corporation Counsel serves as attorney for the City and each City agency. The Corporation Counsel is appointed by the Mayor and is not subject to the advice and consent of the Council.

REASONS FOR PROPOSED CHANGE: As the head of the agency that serves as attorney and counsel to the City as a whole, including the Council, the Comptroller, the Public Advocate, the Borough Presidents as well as the agencies of the executive, the Corporation Counsel's appointment by the Mayor should be subject to the advice and consent of the Council. The challenge of serving both as the appointee of and lawyer for the Mayor, and as the counsel to the City and all of its offices and officials has been the subject of much discussion and commentary, even among individuals who have held that post in earlier administrations.

Additionally, while it is often the practice, the Charter should make clear that the Law Department must provide on an equal basis legal services to each agency or office. In the event of a conflict of interest, the Law Department should provide outside counsel at its expense unless the governmental entity declines such provision of outside counsel.

Strengthen the independence, and broaden the authority of, the Civilian Complaint Review Board (CCRB) by:

- **Linking the budget of the CCRB to that of the New York City Police Department or to the number of complaints filed; and**
- **Granting the CCRB authority to prosecute substantiated cases.**

CURRENT LAW: Pursuant to Chapter 18-A of the Charter, the Civilian Complaint Review Board has the authority to independently investigate allegations of misconduct of members of the New York City Police Department.

The Civilian Complaint Review Board's budget is set in the same manner as most other City agencies: The Mayor proposes the Board's budget and the Council adopts it pursuant to the budget adoption provisions of the Charter.

When the Civilian Complaint Review Board determines that a member of the New York Police Department committed misconduct, the case is forwarded to the Department. In most cases, disciplinary proceedings are conducted by Department employees. The

Civilian Complaint Review Board is authorized by the Charter to review individual allegations of misconduct.

REASONS FOR PROPOSED CHANGE: The Civilian Complaint Review Board is responsible for investigating allegations of police misconduct and, as such, requires independence. Allowing for independence in its budgeting would afford the Board an additional measure of protection and avoid any appearance that it may be punished or rewarded for its actions in the form of budgetary considerations. Naturally, as the size of the police force expands, or the number of complaints rises, the CCRB is likely to need additional resources.

The CCRB attorneys who handle substantiated cases of police misconduct are intimately familiar with the details of those cases and are the most appropriate individuals to prosecute cases within the New York City Police Department's internal disciplinary system.

Strengthen the independence of the Conflicts of Interest Board (COIB) by allowing the Council to make two appointments to the COIB. Also, the Charter Commission should consider how to provide the Conflicts of Interest Board with appropriate budget independence.

CURRENT LAW: The Conflicts of Interest Board is responsible for enforcing the City's Conflicts of Interest Laws contained in Chapter 68 of the Charter and for training all City employees. Pursuant to Chapter 68 of the Charter, the five members of the Conflicts of Interest Board are each appointed by the Mayor with the advice and consent of the Council. The Chair of the Conflicts of Interest Board is designated by the Mayor. (Charter §2602) The Conflicts of Interest Board's budget is set in the same manner as most other City agencies: The Mayor proposes the Board's budget and the Council adopts it pursuant to the Charter's budget adoption provisions.

REASONS FOR PROPOSED CHANGE: COIB, as a "watchdog agency," has authority to impose penalties on public servants when it finds violations of the conflicts of interest laws. The Conflicts of Interest Board is also required to provide training to City employees on the City's Conflict of Interest Laws and Rules.

Because the Conflicts of Interest Board is a disciplinary body with jurisdiction over the conduct of all City employees that has been given the duty to train all City employees, its budget should not be completely controlled by those whose conduct it is responsible for overseeing. Allowing for independence in its budgeting would avoid any appearance that budgetary considerations play any role in its actions.

Similarly, because the agency is required to impose discipline in cases involving all public servants, we do not believe that every member of the Conflicts of Interest Board should be appointed by the Mayor. An appointment process which divides appointments between branches of government would contribute to a perception that the

Board's actions are always applied even-handedly and divorced from political considerations.

III. Expanded Community Participation in Land Use Decision-Making

Provide for a more democratic and representative Franchise Concession Review Committee (FCRC). The Borough Presidents should each have a full vote on matters involving multiple boroughs. Vote sharing should be eliminated. The City Planning Chair and an additional mayoral appointee should participate in votes on multi-borough proposals.

CURRENT LAW: Section 373 establishes the membership of the FCRC as the Mayor, Office of Management and Budget, the Corporation Counsel, the Comptroller, an additional appointee of the Mayor, and the Borough President in whose borough the subject of the application will be located. This Section states that when an application relates to more than one borough, the Borough Presidents share a vote.

REASONS FOR PROPOSED CHANGE: Providing the Borough Presidents with the opportunity to vote on matters that affect more than one borough allows for better local representation on land use decisions.

Expand the size of the Landmarks Preservation Commission (LPC) to 13 members with six members plus the Chair appointed by the Mayor, one member appointed by each of the Borough Presidents and one member appointed by the Public Advocate. The requirements for representation of certain professions on the Commission should not change, and the geographic representation should be fulfilled by the Borough President appointments. The Council should retain its role on advice and consent over all of the appointments.

CURRENT LAW: Under the current Charter provision (Chapter 74) the eleven Commissioners are appointed solely by the Mayor for a three year term with the advice and consent of the City Council. There are requirements that the Commission's membership contain representation from certain professions and from each of the five boroughs.

REASONS FOR PROPOSED CHANGE: Expanding the Landmarks Preservation Commission would provide greater diversity of views on this body and allow for community concerns to be incorporated into the decision making process. This would involve not only the designation decision but would also provide community input into the Certificate of Appropriateness decisions, which are not reviewable by an elective body.

Expand the Board of Standards and Appeals (BSA) to 13 members and provide for a chair and six commissioners appointed by the Mayor, one Council appointee and one appointee by each of the five Borough Presidents.

CURRENT LAW: Section 659 of the Charter provides for the five members of the BSA to be appointed by the Mayor for six year terms. Section 662 provides for removal of a Commissioner by the Mayor for cause.

REASONS FOR PROPOSED CHANGE: Although the fixed terms and removal for cause provisions provide for some measure of insulation for the BSA Commissioners, giving appointment power to other elected officials, especially those closer to the communities most impacted by the decisions to grant variances, would provide an added and needed measure of independence to the BSA.

PART II

LAND USE

In the most densely populated major City in the Country, a City of over 8 million people and a land area of 305 square miles, every land use decision is important. The 1989 Charter Commission sought to establish a process that ensured that land use decisions would be made in a timely way, would provide for community input, would be made based on clear and prescribed criteria, and that the final disposition on designated land use proposals would be made by the Council, a body with close ties to the community. The Council's recommendations for changes to the Charter are aimed at furthering these important goals.

I. Reforming the Uniform Land Use Review Procedures (ULURP)

The precertification process should be reformed to allow for community input. Within 30 days after the Department of City Planning (DCP) forwards to the Community Board and Borough President the materials that it receives pursuant to section 197-b, DCP must, upon request, meet with the affected Community Board or Borough President to discuss possible alternatives to the action or applications. The comments received at such meeting shall be included in the certification application described in section 197-c.

CURRENT LAW: Section 197-c outlines the process from the time a land use application is filed. Currently, certification is the first step in the process. There is no role for the Borough President or Community Board until after the proposal is certified and the scope has essentially been determined. This limits their opportunity to propose changes.

REASONS FOR PROPOSED CHANGE: Providing greater community input would serve as an opportunity to engage various actors earlier in ULURP and would potentially lead to additional study of other land use options to review.

The Council should be authorized to make a determination that a modification to a proposal is within the scope of the application and the environmental review. The City Planning Commission should not be able to overrule this decision.

CURRENT LAW: Section 197-d (d) provides that if the City Planning Commission finds that a Council modification requires additional review pursuant to Section 197-c or additional environmental review, the modification may not be adopted.

REASONS FOR PROPOSED CHANGE: The Council has the expertise and experience to make scope determinations, as did the Board of Estimate. When determining whether to make a modification, the Council has before it the same information as the Commission did and, if charged with determining whether the modification is within scope, would be subject to the same environmental and other restrictions. There is no need, therefore, to have City Planning serve as a watchdog over these modifications.

Where a Council modification is in scope of the application, but requires additional environmental review, the modification should be allowed when the additional environmental review can be completed within the ULURP statutory timeframe.

CURRENT LAW: Section 197-d (d) provides that if the City Planning Commission finds that a Council modification requires additional review pursuant to Section 197-c or additional environmental review, the modification may not be adopted. Under **Current Law**, where a modification is within scope of the application, but requires additional, though limited, environmental review, nothing in the law provides for this review. The modification is not allowed, and the Council is left with the option of just approving or rejecting the application without the modification.

REASONS FOR PROPOSED CHANGE: The proposed change would allow a modification when the additional environmental review is minor and could be completed in a timely fashion.

Extend the Council's time to act on decisions filed by City Planning Commission from 50 to 60 days.

CURRENT LAW: Section 197-d (c) allows the Council 50 days to take final action on a decision that has been filed by the City Planning Commission. The CPC and Community Boards each have 60 days in the process pursuant to Charter section 197-c.

REASONS FOR PROPOSED CHANGE: Providing the Council with a 60-day review period would mirror the time provided for review by the City Planning

Commission and the Community Board for review under Charter section 197-c. The Council would have time for more meaningful review and action, especially when non-mandatory applications are involved. The additional time would permit a more efficient review and better notice to the public.

Formalize the process for the Council to act on acquisition of office space pursuant to section 197-d (b)(3), and extend the time period for such action from 20 to 60 days in Section 195 (c).

CURRENT LAW: Section 195(c) allows the Council 20 days to review and to take final action on an acquisition of office space.

REASONS FOR PROPOSED CHANGE: The current process does not provide sufficient time for the Council to both notice and hold meaningful hearings on office acquisition decisions. There should be a formal process in place for the Council to play a meaningful role in the review of office acquisition decisions.

Impose a 10-year expiration date on Council approval for the disposition of real property pursuant to Section 384(b)(3).

CURRENT LAW: Section 197-c of the Charter provides that dispositions of City owned property are subject to the City's Uniform Land Use Review Process. However, Charter section 384(b)(3) allows for the City to rely on resolutions approved in the distant past – even those issued by the now defunct Board of Estimate – when disposing of City-owned property.

REASONS FOR PROPOSED CHANGE: The Council proposes ten years as a reasonable limit on the use of a resolution authorizing the disposition of property, recognizing that urban renewal developments may take longer than other more individual conveyances. After ten years, an agency would need to again seek Council approval pursuant to Section 197-c and 197-d of the Charter.

The disposition of City owned property, particularly in cases where the parcel is large or is strategically located can have a tremendous impact on the future development of a community. Permitting the use of resolutions that are 20 years old or older to be the basis for the authorization of a disposition of City-owned property allows the Administration to avoid a public review process despite the fact that the underlying conditions and surrounding communities may have changed over the years and that the intended purpose of the disposition is no longer being met. If a neighborhood has continued to change and develop over more than ten years without the disposition being effectuated, the City should be required to seek a new authorization from the Council to ensure that the disposition still serves the intended purposes.

Formalizing the process so that once a ULURP application is to be approved, but it has been determined that an additional follow-up corrective action (FUCA) is necessary, City Planning will provide a list of the actions needed to be taken and a timeline for the implementation thereof.

CURRENT LAW: Section 197-d provides that if a modification is out of scope, the Council can take no action on it. There is, however, an informal process where the CPC and the Council agree, the Council approves the original application and the CPC files a new application reflecting the agreed upon follow up measures.

REASONS FOR PROPOSED CHANGE: This Charter amendment would regularize a process now informally used, and proven to be of utility in the land use process. This process would be used when the Council wants to modify an application but the desired modification is not in scope. Where both the Council and the City Planning Commission agree on the desirability of the modification, this change in law would regularize a process for accomplishing it.

Separate the appeal to the City Planning Commission into two actions. After six months, a request may be made for a written notice of the additional information necessary for the application to be certified. The response from the Commission must be in writing and include, but not be limited to, the information that is necessary for the application to be certified and a timeline for the process. If the application has not been certified within 90 days of the submission of all additional information, the applicant may appeal to be certified.

CURRENT LAW: Section 197-c(c) states that if an application is not certified by the Department of City Planning within six months after it is filed, the applicant and the affected Borough President, if the land use in the proposed application is consistent with the land use policy or strategic policy statement of said Borough President, shall have the right to appeal to the City Planning Commission for certification. Within 60 days of the filing of the appeal, the Commission shall either certify the application or state in writing what other information is necessary to complete the application.

REASONS FOR PROPOSED CHANGE: The pre-certification process can be frustrating to many applicants. There is no time certainty and no clock governing any of the actions that need to be taken. Despite perceived delays, many applicants are hesitant to appeal to the Commission to be certified. By including a neutral step in the process that would include a certain level of review of the submitted application and a written response, the applicant could have greater assurance that the project could move forward.

II. Comprehensively Reviewing the City Zoning Resolution

The Department of City Planning (DCP) should conduct a compressive review of our Zoning Resolution. The review should encompass all the uses within the 18 Use Groups in the New York City Zoning Resolution. In this review the Department should add uses that were not anticipated in the 1961 Zoning Resolution as well as remove uses that have become obsolete since that time.

CURRENT LAW: Under Charter Section 191-b, the Department of City Planning is charged with conducting continuous studies to serve as the basis for planning recommendations, assisting the Mayor in the preparation of strategic plans and performing such functions as are assigned by the Mayor. Section 200 empowers the City Planning Commission to adopt a resolution to amend the zoning text.

REASONS FOR PROPOSED CHANGE: The Zoning Resolution, as we know it today, took effect in 1961 and was the last citywide comprehensive review of zoning. Since then, new zoning approaches have been developed and advanced to deal with some of the problems and opportunities that have emerged. A combination of incentive zoning, like the inclusionary housing bonus, and contextual zoning, to preserve neighborhood character, have been used to make zoning more responsive. However uses have not been compressively reviewed. That review would be a benefit for our planning toolbox. The Zoning Resolution serves as a framework for the development of the City. Taking a comprehensive look at it would further our ability to respond to changes in technology, policy shifts, and innovative design

II. Enhancing Fairness in the Landmarks Preservation Process

Enhance fairness in Landmarks Preservation Commission (LPC) proceedings through additional notice requirements to concerned property owners that designation of their property is under consideration.

CURRENT LAW: Under current law, the Charter does not require that the property owner be notified that designation of a particular property is under consideration.

REASONS FOR PROPOSED CHANGE: The Landmarks Preservation Commission has a significant role in the land use regulatory processes in the City. The actions they may take along with those which they choose not to take should be conducted in public meetings, notice of which has been given to all concerned parties, especially those most affected by the designation. Notice should also be provided to the owner after the Commission has received an RFE so that the owner may provide information relevant to the evaluation process

This proposal is necessary to ensure that a public agency conducts its business in a manner that demonstrates that due process is accorded. Fairness and good practice

should require that decisions which may affect the property rights of owners be conducted only after notice to the property owner.

Create a trigger for a mandatory response on individual landmark Request for Evaluations (RFE). Upon request from a Community Board, the LPC must provide information on whether it will initiate a study and how long that study is estimated to take for an RFE on an individual landmark.

CURRENT LAW: Chapter 74, the current Charter provision on the Landmarks Preservation Commission (LPC), does not have a mechanism to accept requests for evaluation of individual properties for landmark. However, pursuant to the Administrative Code and agency rules, LPC accepts requests to study landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts. Pursuant to its rules, the LPC invites members of the public who propose individual properties and districts for landmark status to fill out a Request for Evaluation (RFE) form. After the form is completed, the LPC staff evaluates the property or properties to determine whether it meets the criteria for landmark designation, and may recommend it for consideration by the Commission.

REASONS FOR PROPOSED CHANGE: The LPC does not regularly respond to RFEs. For RFE's pertaining to individual landmarks the Council would like to give a greater weight to the local Community Board beyond the weight of a request from a member of the public. Perhaps not all requests can get a response or a timely response but this is a way to improve transparency.

III. Reforming the Review Process for Major Concessions

Mandate that specific types of concessions constitute major concessions and must come to the Council for approval. Mandate that concessions for 1) large recreational facilities such as ball fields, tennis courts and ice skating rinks; 2) restaurants over a certain size in parks or other inalienable property of the City; and 3) City-wide concessions affecting three or more boroughs are deemed major concessions which pursuant to section 197-c(6) would require Council review.

Any renewal or change of the major concession should also come to the Council for review. The language of section 197-c (6) should be amended to require modifications and renewals of major concessions to come to the Council. Section 197-d (b) (1) should be amended to include major concessions, any modifications and renewals as applications subject to mandatory review by the Council.

CURRENT LAW: Pursuant to section 374(b), the City Planning Commission defines what constitutes a major concession and section 197-c provides that only major concessions are subject to call up by the City Council under ULURP. The rules adopted by the CPC have resulted in a surprisingly few projects characterized as “major”, and therefore subject to Council review.

REASONS FOR PROPOSED CHANGE: The intent of the 1989 Charter was to have major concessions come to the Council for review. Since that time, only three concessions have been determined to be “major” and thus sent to the Council for approval. The ability of the City Planning Commission to use its rule making power to contravene the intent of the Charter should be eliminated. This proposal would set forth with more certainty the types of concessions that must be considered “major concessions” that are subject to Council approval.

Additionally, because of the significant impact that major concessions have for our communities, it is essential to ensure such concessions are subject to Council approval, and that modifications and renewals of those concession are also subject to Council action.

IV. Heightening Evidentiary Standards for Decision-Making by the Board of Standards and Appeals

Amend section 668 of the Charter to require that decisions of the Board of Standards and Appeals (BSA) on variances be made only upon a finding that there is “substantial evidence” that the criteria for the variance has been met.

CURRENT LAW: Section 668 of the Charter provides that when ruling on an application for a variance, the BSA shall “indicate whether each of the specific requirements of the zoning resolution for the granting of variances has been met and shall include findings of fact with regard to each such requirement.” The Zoning Resolution states that the standard to be used for such determinations is “substantial evidence or such other information or other data considered by the Board in reaching its decision, including the personal knowledge of or inspection by the members of the Board.”

REASONS FOR PROPOSED CHANGE: Although the Zoning Resolution appears to set the standard to be employed in ruling on applications for variances as one of substantial evidence, variances are routinely granted in situations where it appears questionable whether the criteria set forth in the zoning resolution have been met. The modifying clause, allowing the Board to consider “other information or data” including “personal knowledge”, actually lowers the evidentiary standard quite substantially. The Council’s proposed change would ensure that the “substantial evidence” standard is the standard that the BSA employs.

PART III

BUDGET PROCESS

The Council has proven a healthy, and fiscally responsible, check on executive power in the budget arena. In the first decade since the Council was given its new budget powers, it was the Council that froze overall property tax rates in the City throughout the 1990s.

The Council's proposals in the budget arena do not seek to weaken the Mayor's responsibility for ensuring that the City's budget remains in balance throughout any given fiscal year. However, certain powers given the Mayor in 1989 to ensure balance have been used by prior mayors not for this purpose, but to prevent the Council from assuming the full role given it in 1989 as the body that sets spending priorities in adopting the City's budget. Two of these powers – the power to estimate non-property tax revenues and the power to impound – should be left with the Mayor but circumscribed so that their use is for financial – not policy or political -- reasons.

Central to many of the Council's budget proposals is the need for greater budget transparency. Transparency is an effective check on governmental actions, allowing all governmental actors as well as the public to understand the consequences of their actions. Nowhere is this more needed than in the process for allocating scarce resources.

I. Preventing Misuse of the Power to Estimate Revenues

Require the Mayor's final revenue estimate to be presented no later than May 25th to prevent its misuse as a weapon to undermine Council budgetary priorities.

CURRENT LAW: Currently, under Charter section 1515 the Mayor unilaterally determines the amount of non-property tax revenues that will be available to spend in the ensuing fiscal year. This revenue estimate is required to be submitted no later than the June 5th target date for budget adoption. In practice, the Administration presents the final revenue estimate at the time the Council is adopting the budget. The Council sets the property tax rates pursuant to section 1516 to ensure a balanced budget.

The Council proposes changing the date on which the Mayor submits the non-property tax revenue estimate under section 1515 of the Charter to May 25th to ensure that the Mayor's estimate is driven by revenue projections and not budget negotiating strategy.

REASONS FOR PROPOSED CHANGE: In practice the budget is never adopted without knowing whether or not property tax rates will be increased. In ordinary circumstances, the Council and Mayor intend to hold property tax rates steady and spending levels in the adopted budget are adjusted so as not to exceed the total of non-property tax revenues and property tax revenues. Nonetheless, by allowing the Mayor to

change a revenue estimate at the point of adoption of the budget, a Mayor can use this power to thwart spending proposals with which he or she disagrees by issuing a revenue estimate that is lower by an amount equal to the spending with which he or she takes issue. This allows the revenue estimate to be used, not as a tool for ensuring a balanced budget, but rather as a tool to force the Council to change its budget priorities.

This proposal would ensure that the revenue estimate is known and settled prior to the final stretch of intense budget negotiations that begins after the Council completes its executive budget hearings on May 25th. With this change, the revenue estimate would be driven solely by revenue projections, rather than by budget negotiating strategies.

II. Reforming the Structure and Presentation of the Expense Budget to Make it More Programmatic, Meaningful and Transparent.

Re-enforce the programmatic budgeting direction of the 1989 Charter by:

- **Providing mechanisms to ensure adherence to the mandate for narrower units of appropriation in the expense budget, such as tightening the definition of “unit of appropriation,” providing a definition of program and/or creating prohibitions on having a majority of an agency’s spending in one unit of appropriation; and**
- **Eliminating the unnecessary distinction between Personal Services and Other than Personal Services Units of Appropriation but have this distinction delineated within units of appropriation .**

CURRENT LAW: Under Charter section 100(c), a unit of appropriation is supposed to represent spending on a “particular program, purpose, activity, or institution.” The inclusion of more than one program, purpose, or activity in a single unit of appropriation can only occur if it is accompanied by a Resolution adopted by the Council (as per recommendation by the Mayor or on its own initiative) setting forth the names, and a statement of the programmatic objectives, of each program, purpose, activity or institution to be included in such a single unit of appropriation. In addition, Charter section 100(a) requires separate Units of Appropriation for personal services (PS) and other than personal services (OTPS).

A Resolution detailing multiple-program units of appropriation has never been submitted by any Mayor or adopted by the Council.

REASONS FOR PROPOSED CHANGE: Currently, the presentation of the budget in overly broad units of appropriation makes it difficult, if not impossible, for the Council to gain an adequate understanding of the programs, services, or activities being funded in a particular unit of appropriation. Often, not only do the units of appropriation encompass more than one particular program, purpose or activity of an agency, but often they encompass virtually all of an agency’s programs and activities. This is exactly what

the 1989 Charter Commission sought to avoid when it added language requiring the Mayor to seek Council approval if he or she wanted to use units of appropriation with multiple programs. In spite of this, the Council has never been asked to authorize multi-program units of appropriation as is required by the Charter.

The requirement for distinct units of appropriation for PS and OTPS spending impairs understanding of program costs by separating their PS and OTPS elements, when arguably an accurate understanding of the full cost of an agency program would be more readily obtained if they were presented together.

The proposed changes would eliminate the less relevant distinction between personal services and other than personal services costs, and focus instead on ensuring that agency programs and activities are presented in distinct units of appropriation. The budget document would delineate objects of expenditure (personal services or other than personal services) within each unit of appropriation.

Require a detailed reconciliation for each unit of appropriation between proposed levels of spending for the coming year with appropriations for the current year as adopted and modified. This reconciliation should include: new spending needs; spending reductions and savings; collective bargaining changes; cost re-estimates; transfers; and other changes. Each such change should be accompanied by an explanation of the change and the reasons for it, and reference where appropriate service level information. (See proposal on service level information, infra.)

CURRENT LAW: Current practice with respect to the presentation of proposed budgetary changes dates back to practices developed in consultation between the City and the State Financial Control Board, and are focused almost exclusively on fiscal management and maintenance of balanced budget – important goals fully shared by the Council. The Council is also concerned, however, with the impact of proposed spending on the programs and services provided by agencies, and in particular how those might be affected by changes in appropriations. Charter section 100(b) requires the Mayor to submit in the executive budget a statement of the impact of proposed units of appropriations on service levels during the ensuing fiscal year but such statements are not provided.

REASONS FOR PROPOSED CHANGE: In current practice, proposed changes to agency spending for the coming year are presented with reference to the agency’s budget for that same year as of the previous financial plan. Since the agency’s budget as of the previous financial plan may differ from the agency’s budget for the current year – particularly where the Council may have adopted spending levels for the current year that differed from the Mayor’s Executive Budget proposals and are not incorporated in subsequent years of the financial plan (i.e., not “baselined”) – the “plan-to-plan” presentation of spending changes often fails to provide a clear picture of the impact of proposed spending compared to the levels of service being provided in the current year. A reconciliation presented on a year-over-year basis would make the impact of proposed spending changes on agency programs and services much clearer to elected officials and

the public. Among other things, one goal of this proposal, combined with the next, would be to help distinguish between changes in spending that are related to the *cost* of service provision and those that would impact the *level* of service provision.

Require service level information and performance measures for each unit of appropriation in the budget which should include: demand measures (such as estimates of eligible population; number of program applications, etc.); output measures (e.g. number of persons served, lane-miles paved); and performance goals and information (including outcome measures related to program goals and measures of service delivery quality), accompanied by a narrative explanation of the impact of proposed units of appropriation on service levels, and a comparison of service levels under the budgeted appropriation (as modified) for the current fiscal year and for the fiscal year for which the budget is being proposed. If the Council changed the amount in a unit of appropriation in adopting the budget, the Mayor would submit a revised statement of service and performance levels within 30 days of adoption.

CURRENT LAW: Most service level and performance measure information for agencies is required to be provided in the Mayor’s Management Report pursuant to Charter section 12. Some information, such as changes in performance goals from the preliminary management report, is required to be provided in the Executive budget message (Charter §250(9)) and some is provided in other supporting material provided by the Mayor’s Office of Management and Budget. However, none of this service level and performance measure information is directly linked to budgetary units of appropriation.

Under Charter section 100(b), the preliminary budget agency departmental estimates and the Mayor’s executive budget are also supposed to be accompanied by statements of service level impacts at the unit of appropriation level (§100(b)). Although some information about individual budget actions is from time to time provided with the preliminary and expense budgets, the Council does not believe that the intent of this section has ever been met by what has been provided.

REASONS FOR PROPOSED CHANGE: By linking performance indicators and service levels to each budgetary unit of appropriation, and showing how a certain level of funding will impact service provision, the Council and public will be able to understand the impact of different levels of appropriation on core agency services and better be able to allocate funding to address priorities.

III. Reforming the Budget Modification Process to Tie Budget Modifications to Required Quarterly Financial Plans

Budget modifications would be required to be submitted by the Mayor to the Council within 30 days of issuance of a financial plan update that reflects changes to spending that would necessitate a budget modification. This change would also require submission by the Mayor of a budget modification when a financial plan showed only spending reductions. For spending reduction modifications, the Council could approve the modification, make changes to the modification as long as the sum total of the changes equaled the total amount of reductions in the Mayor's proposed budget modification, or decline to act, in which case the Mayor's proposed modification would be deemed approved after 30 days.

CURRENT LAW: Charter section 107 gives the Mayor the sole power to initiate a budget modification. Budget modifications are required when transfers are made between units of appropriation (in excess of the minimum threshold) or between agencies. Currently, when the Mayor orders a reduction in spending after the budget has been adopted (mid-year PEG), the Mayor does not have to seek Council approval via a budget modification, unless and until he or she is transferring any money that is saved as a result of such spending reductions – e.g., into the Budget Stabilization Account.

Section 258 of the Charter and State Law require the Mayor to produce quarterly financial plans. Often, these plans reflect spending reductions by the Mayor. Generally, these reductions will eventually require a budget modification because under Generally Accepted Accounting Principles (GAAP), any savings generated by these reductions must be used by the City prior to the end of the fiscal year. However, current law contains no link between the Mayor's quarterly financial plans and the submission of budget modifications to the Council.

REASONS FOR PROPOSED CHANGE: The adopted budget, which has the force of law, is supposed to set forth the City's budgetary priorities for the ensuing fiscal year. This proposal ensures that the budget priorities cannot be altered outside of the budget modification process. If cuts are to be undertaken during the fiscal year, those cuts should be done by modifying the City's budget. They should not be unilaterally made in a manner that could change the spending priorities in the budget approved and adopted by the Council.

IV. Preventing the Misuse of the Mayor’s Impoundment Power

Limit the Mayor’s impoundment power to cases in which there is a significant and sudden reduction in estimated revenues in the current fiscal year, such that the City risks being unable to meet its financial obligations within the next 90 days. The impoundment could not exceed the amount of the revenue shortfall. Notification to the Council of the impoundment would have to include the Mayor’s revenue projections and methodology used and the spending reductions by unit of appropriation. The timing of an impoundment action and its notification should be within 30 days of release of a financial plan update under section 258(c).

CURRENT LAW: Currently section 106(e) of the Charter allows the mayor to impound funds when “the mayor determines, pursuant to the provisions of this charter or other relevant statutes, that the full amount of any appropriation should not be available for expenditure during the fiscal year.” This section requires the Mayor to notify the Council but does not specify when the notification must be provided, nor does it specify what circumstances trigger the Mayor’s impoundment power.

REASONS FOR PROPOSED CHANGE: The impoundment process should not be used to circumvent the duly adopted budget. If revenues begin to slowly decline during a fiscal year, spending reductions should be accomplished through the budget modification process. The only time impoundment should be used is if the decline in revenues is significant and sudden enough to threaten the City’s ability to meet imminent financial obligations, such as debt service payments, pension contributions, payroll, contract obligations, etc.

V. Reforming the Capital Budget

Revamp the requirements in the Capital Budget Chapter of the Charter to better accomplish the Charter’s intent that the capital budget drive the City’s capital plan and the Commitment Plan report on its progress. To do this the Commission should consider:

- **Reviewing and revising, if necessary the definition of capital projects so that the capital budget can contain a list of projects rather than enormous “buckets” filled with appropriations;**
- **Reviewing the link between appropriations and commitments established by Charter section 219 to achieve alignment between these two documents that have, over time, grown so far apart as to be virtually unrelated.**
- **Review mechanisms for providing notification as to specific additions and deletions of projects from the commitment plan as well as information on changes in costs to ensure that this information is promptly available in a useable form.**

CURRENT LAW: The Adopted Capital budget is supposed to be the driving force behind the City’s spending on infrastructure and facilities. According to Charter section 214, each project is required to be set forth in the budget separately and with particularity with a schedule from commencement to completion. Section 219 of the Charter provides that the “inclusion of a capital project in the capital budget...shall constitute a direction and order to the agency to proceed with the preparation of scope of project....”

The capital commitment plan is supposed to be the document that embodies the agencies’ progress in executing the capital budget. According to Charter section 219, it is to be updated at least three times a year and is required to contain changes in the schedules of projects from the adopted capital budget and substantial changes to projects.

In addition, Charter section 217 requires that funds included in the capital budget but that are not committed during the fiscal year, cannot be committed in the following year unless re-appropriated; and funds for a project not initiated for two fiscal years must be removed from the capital budget. This provision is designed to avoid the accumulation of appropriations for projects that are not moving forward.

The link envisioned in the Charter between the capital budget and the commitment plan appears to have completely failed. The Executive Capital Budget for FY 11 submitted by the Mayor contained almost \$23 billion in appropriations to cover contemplated commitments of less than \$8 billion.

REASONS FOR PROPOSED CHANGE: It may or may not be the case that current Charter requirements for the capital budget require too much detail given the size, scope and number of capital projects undertaken each year in the City. Regardless of the Commission’s answer to this question, however, the answer of each administration since the Council has assumed sole responsibility for adoption of the City’s Capital Budget – ignoring virtually all Charter requirements concerning the capital budget rather than complying with the extensive and detailed requirements -- cannot be an appropriate or acceptable response.

This has resulted in a capital budget that bears no resemblance to the one required by the Charter: Projects are not lined out. No detail, description or scheduling information is provided. Unused funds are never removed. The result is a budget that is nothing more than an authorization for each agency to spend an amount of money that is several times the amount that it would or could ever spend on whatever capital projects it wishes to spend that might come under that agency’s purview. The only document that actually sets forth individual projects with schedules for work is the commitment plan, a document that is never approved by the Council and is not the subject of Charter-mandated public hearings. This gives the administration complete control over the City’s capital spending – something clearly not contemplated or allowed by the Charter.

The Commission should review the detail currently required by Chapter 9 of the Charter – virtually none of which is provided in the budget -- and strike the appropriate balance between detail sufficient to give the Council and the public fair notice and

description of contemplated projects and the agencies' need for flexibility in constructing and maintaining infrastructure and facilities.