



NEW YORK CITY COUNCIL

REPORT TO THE
**2019 NEW YORK CITY
CHARTER REVISION COMMISSION**

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INTRODUCTION

The New York City Charter is the foundation upon which our City's government is built and, essentially, serves as a municipal constitution. It sets out the roles and powers of our elected officers, and establishes the structure and responsibilities of our City agencies.

New York State law provides us with a process for periodic comprehensive examinations of our Charter. Our modern City government was created through the Charter Revision process when voters adopted the recommendations of the 1989 Commission. No commission since then was tasked with examining our entire City's government, from top to bottom. No commission, whether in 1989 or since then, has consisted of representatives from every elected official in the City, with no one office holding a majority of the seats. After almost 30 years, both were long overdue. I am proud to have worked with then-Public Advocate and now Attorney General, Letitia James and the Manhattan Borough President, Gale Brewer to create this commission through the Council's legislative process. We expect that the 2019 Commission will serve as a model for all future Charter Revision Commissions.

Yet, even for a commission as independent and inclusive as this one, the Charter revision process is best served when a commission receives a broad range of recommendations from the City's residents. City Council Members and staff have watched and listened to the thoughtful testimony presented at the hearings held by the 2019 Charter Revision Commission, and the public's embrace of this process has been the very epitome of 'a government for the people' in action. With that same spirit, this report makes recommendations to the 2019 Charter Commission for changes to the City's Charter.

The recommendations in this report are the result of a long and deeply considered process, including many meetings of the Council's Policy Working Group, led by Council Members Brad Lander and Fernando Cabrera. These recommendations are divided into several broad categories, though together we believe they represent a plan for a more balanced and accountable City government that would be more directly responsive to the people that it serves.

PART I: THE BALANCE OF POWER IN CITY GOVERNMENT

I. APPOINTMENT AND REMOVAL OF OFFICERS

RECOMMENDATION: Amend the Charter to make certain public officers more accountable.

- Establish 3-year terms, and require Council advice and consent for the appointment of the Corporation Counsel, Police Commissioner, Chair of City Planning Commission, Chief Administrative Law Judge, and the Executive Directors of the Campaign Finance Board (CFB) and Conflicts of Interest Board (COIB).
- Make the removal of the Commissioner of Investigation subject to the approval of the Council.

Current law: The Police Commissioner, pursuant to Chapter 18 of the Charter, is appointed by the Mayor for a term of five years, unless removed sooner by the Mayor or the Governor.

Section 191 of the Charter exempts the Chair of the City Planning Commission from the advice and consent of the City Council, establishing that “[t]he director of city planning shall be the chair and a member of the city planning commission and shall serve at the pleasure of the Mayor.”

The Chief Administrative Law Judge, pursuant to section 1048 of the Charter, must be an attorney that has been admitted to practice for at least five years in New York State and is appointed by the Mayor.

The CFB implements the City’s Campaign Finance Act. Pursuant to section 1052 of the Charter, the members of the board are appointed by both the Mayor and the Speaker of the City Council, but the Executive Director is appointed solely by that board.

COIB enforces the City’s Conflicts of Interests Laws and pursuant to Chapter 68 of the Charter, the members of the board are each appointed by the Mayor, with the advice and consent of the Council. The Executive Director is appointed solely by that board.

Chapter 17 of the Charter establishes the Corporation Counsel as the “attorney and counsel for the city,” who “shall have charge and conduct of all the law business of the city.” The Corporation Counsel is appointed by the Mayor, without consultation with the Council, and is removable by the Mayor at any time, with or without cause.

The Commissioner of Investigation is appointed by the Mayor with the advice and consent of the Council and is removable only by the Mayor. To remove the Commissioner of Investigation, however, the Mayor must send a letter to the Commissioner stating the reasons for the removal which must also be filed with the Department of Citywide Administrative Services. The Commissioner is permitted to publicly respond to the letter. The Charter provides no role for the Council in the removal of the Commissioner of Investigation.

Reasons for proposed change: Accountability is critical for the performance of City officers who have responsibility over the business and affairs of the City.

The Corporation Counsel is meant to be the “attorney and counsel” for the entire City, including all its elected officials and executive agencies. Yet, the Corporation Counsel’s appointment and removal is made solely by the Mayor. Such a structure creates the potential for inherent bias. The Charter’s

mandate that the Corporation Counsel be the lawyer for the City is untenable if their clients cannot have confidence in the Corporation Counsel's independence to determine what is in the best interests of the City as opposed to one branch of City government.

The Commissioner of Investigation, similarly, is required to make any investigation directed by either the Mayor or the City Council, and to conduct any investigation that "may be in the best interests of the City." However, while the Council may direct the Commissioner of Investigation to conduct investigations, the Mayor may unilaterally remove the Commissioner, which substantially limits the Commissioner's accountability to the Council and the independence of DOI investigations.

The Corporation Counsel should be appointed to a three-year term subject to the Council's advice and consent so that his/her performance may be periodically reevaluated. Should the Corporation Counsel resign or otherwise leave office prematurely, then a replacement could be appointed, also subject to the Council's advice and consent, to complete the remainder of the term. At the expiration of the term, the Corporation Counsel would be subject to the advice and consent process if the Mayor chose to reappoint. The Commission may want to examine whether the Commissioner of Investigation should likewise be subject to a fixed term to ensure the Council's ability to more effectively gauge performance.

Further, the Commissioner of Investigation should only be removed with the consent of the Council. While the appointment of the Commissioner is subject to the Council's advice and consent, the Commissioner's removal is at the complete discretion of the Mayor, despite the fact that at any given time, a majority of the Department's active investigations are likely focused on Mayoral agencies or are being conducted at the request of the City Council as currently provided for in the Charter. The removal of the Commissioner of Investigation should be free from even the appearance of bias. Therefore, in order to remove the Commissioner of Investigation, the Mayor should still be required to serve the Commissioner of Investigations with the reasons for his or her removal, but the Mayor's action should be subject to the Council's advice and consent.

The City Council is the legislative body of the City of New York responsible for policymaking. The New York City Police Department, City Planning Commission, the Office of Administrative Trials and Hearings, the CFB and COIB play critical roles in City operations and the carrying out of the policies established by the Council. Further the public has a significant interest in ensuring that persons placed in a position of authority at each of these agencies act in the best interests of the City and in accordance with the law. The appointment of the heads of these offices should therefore be for fixed terms and subject to the Council's advice and consent. This stronger oversight and continued review by the Council would improve accountability and therefore public confidence in the persons appointed to head these agencies while allowing for even greater opportunity for each agency to fulfill their mission.

It is proposed that advice and consent for each of the above be implemented in the same manner as currently is established under section 31 of the Charter for the appointment of certain other officials.

RECOMMENDATION: Strengthen the Conflicts of Interest Board (COIB).

- **Amend the Charter to provide the City Council, Public Advocate and Comptroller with appointments to COIB.**

Current law: COIB enforces the City's conflicts of interest laws. The five members of the board are each appointed by the Mayor with the advice and consent of the Council. The chair of the board is designated by the Mayor.

Board appointees are not permitted to hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the City.

Reasons for proposed change: COIB is responsible for the interpretation and enforcement of the City’s conflicts of interest laws. In this role, COIB issues advisory opinions and imposes or recommends penalties for the violations of the conflicts law. The independence of the Board is pivotal to its function as well as to the public’s trust in the integrity of City government. Yet the Board is composed solely of Mayoral appointees and is therefore answerable only to the Mayor. Further, the current Mayoral Board does not reflect the experiences and views of the governing structure it oversees. The perspectives of other elected officers are vital if COIB is to implement the law in a rational and fair way and not just through the lens of the Mayor. No single elected officer should be solely responsible for the appointment of COIB and by dividing the appointments between all the branches of City government, COIB can more effectively meet the goals of its mission. Therefore, the Charter should be amended to grant the Council, Public Advocate and Comptroller a direct appointment to COIB and to eliminate one of the Mayor’s appointments.

RECOMMENDATION: Strengthen the Art Commission.

- **Amend the Charter to provide the City Council with a direct appointment to the Art Commission and remove one of the three general Mayoral appointments to the Commission.**

Current law: Chapter 37 of the Charter sets forth the membership of the Art Commission, renamed by executive order as the Public Design Commission. The membership includes: the Mayor, the President of the Metropolitan Museum of Art, the president of the New York Public Library, the president of the Brooklyn Museum, one painter, one sculptor, one architect, one landscape architect and three other residents of the City, none of whom may be active in such professions. The members who do not serve ex officio are appointed by the Mayor from a list submitted by the Fine Arts Federation. Pursuant to section 31 of the Charter, all such appointments by the Mayor are subject to the advice and consent of the Council.

Reasons for proposed change: The Art Commission plays a significant role in the approval of projects proposed on City land, which includes many projects funded in whole or part by Council capital expenditures. As such, the Council has a significant interest in the final appearance and design of such projects, as well as in ensuring the timely and fiscally responsible completion of such projects. This perspective would be a valuable addition to the Commission that is not fully represented by the current membership structure. The Charter should therefore be amended to replace one of the three general Mayoral appointments with a Council appointee.

RECOMMENDATION: Amend the Charter to expand and democratize the Landmarks Preservation Commission (LPC).

- **Increase the size of the LPC to 13 members.**
- **Restructure the appointments to provide for 6 members plus the Chair to be appointed by the Mayor, one member appointed by each of the respective Borough Presidents and one member appointed by the Public Advocate.**

Current law: Pursuant to Chapter 74 of the Charter the LPC performs a critical function in the City’s planning process by protecting the City’s landmarks. The LPC’s 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 members have specific professional credentials and reside in each of the five boroughs.

Reasons for proposed change: Expanding the LPC and providing for greater participation in its composition would ensure greater diversity of views 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.

This proposal does not include any change to the requirement for certain profession credentials for appointees. Similarly, it does not include any proposed change to the Council's role of advice and consent over all of the appointments.

RECOMMENDATION: Amend the Charter to strengthen the Franchise and Concession Review Committee (FCRC).

- **Restructure the membership of the FCRC to include the Public Advocate and remove the "additional" Mayoral appointee.**
- **Change the vote structure to eliminate vote sharing.**
- **Provide that affirmative votes will require 2/3 of the membership for any given proposal, with one additional affirmative vote for franchise applications.**
- **Clearly define the term "Major Concession" and subject renewals and modifications to Council approval.**

Current law: Section 373 of the Charter establishes the role and composition of the FCRC. The Mayor, Director of the 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 each have a vote in matters before the FCRC. This provision of the Charter also states that when an application relates to more than one borough, the relevant Borough Presidents share a vote. Section 373 also establishes that a passing vote requires a minimum of four members for all matters, with the exception of franchise determinations, which requires an affirmative vote of five members.

Reasons for proposed change: Under the current membership structure, vote outcomes are heavily weighted in the Mayor's favor, as the Mayor, or an appointee of his, has four of the possible six votes for any matter. The Public Advocate currently does not have a vote in FCRC matters.

The Public Advocate should be a member of the FCRC in order to establish a more balanced, transparent and accountable power structure on the FCRC and should replace the duplicative additional mayoral appointee.

Further, vote sharing should be eliminated and instead any Borough President representing a borough in which a proposed franchise or concession is located should have a full vote on that proposal and the Borough Presidents should each have a full vote on multi-borough proposals that include the borough they represent. Providing each affected Borough Presidents with a single vote on matters that affect more than one borough would allow for better local representation in these matters than the current vote sharing structure.

Further, in order to maintain the current vote balance with the new membership structure being proposed, which would increase the size of its membership, approval of proposals should require a 2/3 majority approval, plus one affirmative vote.

Finally, currently the Charter requires that the Council approve all Major Concessions. Charter section 374 defines Major Concessions as those that have significant land use impacts and implications—as determined by the Commission or for which an environmental impact statement is required by law. The term has been defined by the Commission in such a way as to make it almost impossible for any concession to be interpreted as a major concession requiring Council review. Indeed, only a handful of concessions have been delivered to the Council for its review since this provision was created by the 1989 Charter Commission. The Charter, not the CPC rules, should clearly define what matters need to be reviewed by the Council. Additionally, because of the significant impact that Major Concessions have for our communities, it is essential to ensure that modifications and renewals of those concessions are likewise subject to Council action.

II. LEGAL AFFAIRS OF THE CITY'S ELECTED OFFICERS

RECOMMENDATION: Amend the Charter to clarify the relationship between the Law Department and City elected officials.

- **Require the Law Department to provide funding for outside counsel for the Council, Comptroller, Borough Presidents and Public Advocate in certain matters.**

Current law: Under Chapter 17 of the Charter, the Corporation Counsel is the “attorney and counsel” for the City and has “charge and conduct of all the law business of the city and its agencies and in which the city is interested.”

Reasons for proposed change: As noted above the Charter establishes the Corporation Counsel as the “City’s lawyer. Yet the “City” is composed of multiple branches and elected officials not under the control of the Mayor. Who then does the Corporation Counsel represent? It is our understanding that the Corporation Counsel represents the interest of the City. If so, the Charter does not clearly state which branch of City government acts as the client in legal matters or provide direction for the City’s lawyer. Had the Charter intended for the Mayor to be the sole arbiter of what is in the City’s best legal interest, prioritizing only the Mayor’s interests, it would have expressly provided for that. It did not, and yet this has been the practical functioning of the Law Department, most notably when the Mayor is in opposition to the Council or other elected officers.

The Charter should expressly establish that in the event elected officials and the Mayor disagree on a legal matter that the law department either represent both interests if possible within the rules of professional conduct for lawyers, or if not, provide funding for outside legal representation.

III. THE PUBLIC ADVOCATE

RECOMMENDATION: Amend the Charter to give the Office of Public Advocate the tools to achieve its mission.

- **Provide the Public Advocate with the power to direct the Commissioner of Investigation to conduct investigations.**

- **Provide for the joint operation and management of the City’s 311 platform including the joint appointment of its Director.**
- **Give the Public Advocate an Appointment to the Civilian Complaint Review Board and the Conflicts of Interest Board.**

Current law: Section 803 of the Charter requires the Commissioner of Investigation to “make any investigation directed by the mayor of the council.” Further, it provides the Commissioner with responsibility to conduct investigations in the best interests of the City. DOI’s investigations may look into corruption or the efficiency of agency functions. Section 34 of the Charter empowers the Public Advocate to also conduct certain investigations, particularly in relation to complaints received from the public.

Section 24 also speaks extensively to the strong role the Public Advocate is expected to play in receiving and resolving complaints from the public.

Reasons for proposed change: In the course of its responsibilities, including the receipt of complaints from the public, the Public Advocate might often learn of potential abuses and inefficiencies by City agencies. As such, in order to greater strengthen the link between the Commissioner of Investigation and the concerns of the public, the Public Advocate should have the power to direct the Commissioner of Investigation to conduct certain investigations.

Additionally, in 2003, the City established 311 as a central point of contact for the public to submit complaints about City services. The Public Advocate’s prime role is to serve as an ombudsperson for City residents and to resolve complaints it hears from the public. The Mayor and the Public Advocate should therefore share responsibility for the operation, management and policy goals related to the 311 system. Specifically, the Mayor and Public Advocate should jointly appoint and remove, if necessary, the Director of the system. As with the City’s Vendex system for monitoring City vendors, the Mayor should be responsible for the operation of the system and the Mayor and Public Advocate should be jointly responsible for all policy decisions related to the system. The Mayor and Public Advocate should also review the operation of the system to ensure that it enables each of them as well as other elected officials and the public to utilize the information in performance of their official duties.

Finally, the Public Advocate is responsible for taking complaints from the public about City agency activities yet the office is not involved in any respect with the Civilian Complaint Review Board (CCRB)—an independent agency that is responsible for resolving complaints about police misconduct. The Public Advocate should therefore be responsible for appointing a member of the CCRB to better enable it to monitor CCRB performance and public complaints about police.

IV. INDEPENDENT BUDGETING

RECOMMENDATION: Amend the Charter to provide for independent budgeting for the Comptroller and Public Advocate, and non-negotiable budgets for the Borough Presidents and Community Boards.

- **Give the Comptroller and the Public Advocate authority to submit a proposed budget for their offices directly into the executive budget.**
- **Set the budgets of the Borough Presidents and the Community Boards as a proportion of an existing related budget.**

Current law: The Charter currently does not have any explicit provisions for how the budgets of the offices of the Comptroller, Public Advocate, or Borough Presidents are set. As a result these independently elected officials rely on the Mayor to set their budget and to determine what level of resources is sufficient to accomplish their Charter mandated functions. This budgetary relationship can become more political than practical and may significantly hamper the ability of these elected officials to do their work—particularly if their priorities conflict with the Mayor’s priorities. The budgets of Community Board are also set at the complete discretion of the Mayor, although they have the ability to decide what proportion of their budgets should be for Personal Services or Other Than Personal Services and there is a separate unit of appropriation for rent, where needed.

Reasons for proposed change: Independently elected officials with roles, responsibilities, and duties that are distinct from, and not always in alliance with, those of the Mayor should be permitted to determine the level of funding needed to properly fulfill their mandated functions or to have their budgets set in relation to other similar mayoral agencies. Both the office of the Comptroller and the Public Advocate should prepare their own budgets, and submit their expense budget, capital budget (if applicable), and program requirements for the ensuing fiscal year and the three succeeding fiscal years to the Mayor and Council, including proposed units of appropriation for “personal service” and “other than personal services.” These would be inserted into the executive budget and subject to negotiation, similar to the manner through which the Campaign Finance Board’s budget is set.

Borough Presidents play a critical role in the City’s land use and capital planning processes, among other responsibilities, in the public interest of the boroughs. Pursuant to the Charter, the Borough President is required to help the borough plan for the growth, improvement and development of the borough, review and make land use recommendations and provide technical assistance to Community Boards. As such, the Council proposes that the total combined budget for the Borough Presidents can be no less than 75 percent of the Department of City Planning’s annual operating budget. Such funds should be distributed among the five Borough Presidents based on each borough’s share of the total population of the city, each borough’s share of population below 125 percent of the poverty level, and each borough’s share of the total land area of the city.

To ensure that Community Boards have sufficient funds to operate and employ staff with appropriate expertise, their budgets should be set at a minimum sixty percent of the total operating expense budget for all of the Borough Presidents for that same fiscal year, as calculated above, and to be divided into equal shares for each Community Board.

V. OVERSIGHT

RECOMMENDATION: Strengthen the Council’s Investigation and Oversight Authority.

- Clarify the right of visitation and inspection for all City facilities by the Members of the City Council in the exercise of their oversight and legislative responsibilities.

Current law: Chapter 2 of the Charter establishes the powers of the City Council, including powers of investigation and oversight, through which the Council “may investigate any matters within its jurisdiction relating to the property... of the city.”

Reasons for proposed change: As the legislative body for the City of New York, the Charter vests the Council with strong oversight powers. These are core powers. The Council is the prime check on the Mayor and ensures through its oversight and legislation that City agencies act efficiently, ethically and in the best interest of all the City’s residents. The Council’s ability to conduct investigations and oversee City operations must be adequately unfettered. The public is best served by a Council with clear, robust oversight capabilities.

PART II: VOTING & ELECTIONS

RECOMMENDATION: Amend the Charter to increase civic participation in elections.

- **Require Ranked Choice Voting in all primary elections for Citywide offices as well as special elections.**

Current law: Pursuant to the state Election Law, in any citywide primary election in New York City, if no candidate receives more than 40% of the vote then a separate runoff election is held in which the two leading candidates participate head-to-head to determine their party’s nominee for the General Election.

Reasons for proposed change: Runoff elections have extremely low turnouts, at significant fiscal cost to the City. In the 2013 runoff election for Public Advocate only seven percent of eligible active voters participated, a voter drop-off of almost two-thirds from the primary election, at a cost of \$13 million in public funds. NYC’s current election system can also result in counter-majoritarian outcomes, in which candidates win elections despite being opposed by the majority of voters. This vote splitting effect is particularly common in elections with large pools of candidates.

Ranked Choice Voting (RCV), also known as instant runoff voting, allows voters to rank candidates in order of preference (first, second, third, etc.). If a candidate wins the majority among the first-choice votes, that candidate is the winner, just as with our current elections. If no candidate wins a majority of the votes, the candidate with the fewest first-choice votes is eliminated and the second choice from those ballots are then added to the remaining candidates’ vote count. This counting process continues until one candidate receives a majority of the final votes, eliminating the need for additional runoff elections.

Several jurisdictions across the United States have implemented RCV in place of costly runoffs to save money, increase voter participation and promote majority rule among other benefits. From Cambridge, Massachusetts to Santa Fe, New Mexico voters have consistently reported that they find RCV easy to understand and use. Two surveys of 11 cities in California conducted by the Rutgers-Eagleton Institute of Politics in 2013 and 2014 demonstrate that voter support for RCV remains strong across lines of race, age and income. Because voters are able to vote for all the candidates they support—rather than against the candidate they oppose the most—candidates do best in elections when they reach out positively to as many voters as possible, including those who may be more likely to support their opponents. The Rutgers-Eagleton Institute of Politics polls referenced above found that this effect on elections results in less negative campaigning and more satisfied voters. RCV provides more choice to voters without fear of splitting the vote, which has been found to open up the field to a more diverse set of candidates. A 2016 study in California conducted by Representation 2020 found that RCV led to

more women, people of color and women of color running for office and winning elections. RCV is also widely used by jurisdictions to ensure that military voters can fully participate in elections, where runoff elections may not provide sufficient time for absentee ballots to be sent and returned in time to be counted.

RCV should be implemented for all primary elections for which a runoff is currently required and for special elections in which there are three or more candidates, including qualified write-ins. Ideally, the ballot should allow voters to rank as many choices as there are qualified candidates to maximize voter expression. In races where there is a very large pool of candidates, however, NYC’s voter equipment may not feasibly accommodate the ranking of every candidate. In such an election, the Charter should allow the ballot to limit the maximum number of choices that can be ranked, so long as the ballot allows the voter to rank at least between 5-8 choices.

Voter Education & Timeline

RCV is best implemented alongside a robust public outreach and education campaign. The Voter Assistance Advisory Committee (VAAC), now a part of the Campaign Finance Board (CFB), should create and run a campaign that would explain to voters the benefits of RCV, how to mark the ballot, and how the votes will be counted, in clear, simple terms, before Election Day. This information should be made available to voters in every language covered by the City’s Language Access Law (Local Law 30) and in all voting materials, including the CFB’s NYC Votes Voter Guide. The VAAC should work with the Board of Elections to ensure these materials are made available to voters, including at poll sites on the day of the election. Organizations like the Ranked Choice Voting Resource Center have collected and tested best practices from across the country to develop easy-to-use sample education materials, including illustrations and infographics. RCV should be applied starting with the primary elections in 2021.

RECOMMENDATION: Reform the City’s special elections process.

- **Eliminate costly, unnecessary primary and general elections following a special election at the beginning of a term.**

Current law: In the case of a vacancy that occurs in the first three years of any local elected official’s term, the Charter requires a non-partisan special election to be held shortly after the occurrence of the vacancy. As reported by the New York Times in 1990, Frank Mauro, Research Director for the 1989 Charter Revision Commission, said “the purpose of the nonpartisan special election was to dilute the power of the party leaders and to make it easier for those not chosen by the leaders to qualify for the ballot.” Unlike typical citywide primary and general elections—in which a runoff is triggered when no citywide candidate receives 40 percent of the vote—these special elections set no voter threshold to determine a winner. In all such cases, however, a primary and general election is required the following fall after the special election, in which the winner of the special election must defend the right to serve the remainder of the unexpired term.

Reasons for proposed change: With the adoption of Ranked Choice Voting (RCV) for all special elections, the defending elections held the fall after a special election will become unnecessary. Today, non-partisan special elections are often very crowded contests, attracting dozens of candidates. With no majority threshold in special elections, these crowded contests are more likely to result in counter-majoritarian outcomes in which the winning candidate does not necessarily have the majority of voters’

support. Under current law, the primary and general elections directly following a special election therefore play the critical role of affirming or rejecting support for the newly elected incumbent.

RCV, however, takes into account full voter preference at the outset of the election, which would help ensure the special election winner has the majority of voter support and obviate the need for the defending elections later that year. Additionally, the State legislature recently voted to consolidate federal and state primaries and to require the City's local primaries to be held in June instead of September, making the implementation of these primary and general elections following a special election impractical in the case of most vacancies.

The Charter should therefore be amended to eliminate the primary and general elections required in the fall following a special election.

PART III: POLICE OVERSIGHT

RECOMMENDATION: Amend the Charter to strengthen the Civilian Complaint Review Board (CCRB).

- **Replace one of the Mayoral appointments to the CCRB with an appointment by the Public Advocate and require that the appointment of the chair of the CCRB be made jointly between the Mayor and the Council.**

Current law: The Charter requires that the CCRB consist of 13 members of the public that reflect the diversity of the city's population. Five members, one from each of the five boroughs, are appointed by the City Council; three members with professional law enforcement experience are appointed by the Police Commissioner; and five members are appointed by the Mayor, one of whom is selected by the Mayor to chair the Board.

Reasons for proposed change: The CCRB was established as an independent body charged to conduct the investigation of complaints concerning police misconduct fairly, independently, and in a manner in which the public and the police department have confidence. Section §440 of the Charter should be amended to provide one appointment to the Board to be made by the Public Advocate and to reduce the Mayor's appointments from 5 to 4. Further, the Mayor's selection of the CCRB chair should be made jointly with the Council. The Public Advocate's role is to receive complaints directly from the public related to the operation of City government. This Public Advocate's perspective on the Board would therefore be invaluable in carrying out its mission. Similarly, the Chair of the CCRB should not be beholden solely to one elected official. The recommended changes to the Board structure would significantly improve the CCRB's ability to investigate complaints fairly and independently from the Mayor.

- **Amend the Charter to codify the Administrative Prosecution Unit (APU) and its authority to independently prosecute cases of police misconduct.**

Current law: The Charter grants the CCRB power to investigate civilian-initiated complaints involving excessive use of force, abuse of authority, discourtesy, and the use of offensive language and to determine if officer misconduct occurred. Once the CCRB substantiates a case of misconduct it may conduct a trial and based on the findings at trial recommend discipline, which may range from a better

training to termination. However, the imposition of discipline is at the complete discretion of the Police Commissioner. Further, until a few years ago even the decision to conduct a trial based on a CCRB substantiated case was controlled by the Police Commissioner. In 2012, the New York Police Department (NYPD) and CCRB entered into a Memorandum of Understanding (MOU) granting the CCRB authority to prosecute substantiated cases in its discretion where the board recommended “charges and specifications,” the most serious discipline. However, ultimate decisions on police discipline for CCRB complaints remain with the Police Commissioner.

Reasons for proposed change: Since the MOU took effect, the CCRB’s APU has tried more than 250 cases, closed more than 400 cases, and taken pleas in more than 180 cases. The APU consists of CCRB staff who serve as prosecutors in administrative trials before the NYPD Deputy Commissioner of Trials.

However, because the APU’s authority is derived from a voluntary agreement, it is revocable at any time by the Police Commissioner. Codifying the APU in the Charter would make the CCRB’s power to prosecute cases fairly and independently from the NYPD permanent.

- **Amend the Charter to require the New York Police Department (NYPD) to implement or request reconsideration of the CCRB’s recommended discipline within 60 days to ensure the timely imposition of discipline and penalties.**

Current law: As previously described, in cases where the CCRB makes recommendations for disciplinary action or penalties, the imposition of that discipline is at the discretion of the police commissioner. The NYPD can also request the CCRB to reconsider its recommendations, through a formal reconsideration request process. In the second half of 2016, police lawyers took an average of 264 days to submit a reconsideration request, significantly delaying the imposition of any discipline in those cases. Rules adopted by the CCRB in August 2017 explicitly require the police commissioner to request reconsideration of a case within 30 days from receipt of the CCRB’s initial findings and recommendations.

Reasons for proposed change: In cases closed by the Administrative Prosecution Unit where “Charges and Specifications” were recommended, the Police Commissioner took the CCRB’s recommended disciplinary action just 26 percent of the time in the first half of 2018. The delay and subsequent downgrading of the CCRB’s recommended disciplinary action in substantiated cases, regardless of the severity of the officer’s misconduct, severely limits the efficacy of the CCRB and the public’s confidence in the process.

The Charter should be amended to require the Police Commissioner to either request reconsideration or impose the CCRB’s recommended discipline within 60 days of receiving the CCRB’s recommendation. This amendment would codify the time restriction for the reconsideration process to ensure it cannot be used to delay the resolution of complaints. It would also ensure that the CCRB’s recommended disciplinary action is implemented by the Police Commissioner in a timely and responsive fashion in cases that do not merit reconsideration.

- **Grant the CCRB and its Executive Director express subpoena power so the CCRB can obtain evidence more quickly and easily.**

Current law: Currently a majority of board members must vote to issue a subpoena for witnesses and documents and the NYPD has the duty to cooperate with the CCRB by providing records and other materials necessary for the CCRB's investigation.

Reasons for proposed change: To enable the agency to obtain relevant evidence more quickly and easily, Section §440 of the Charter should be amended to explicitly grant subpoena power to the CCRB’s executive director.

- **Tie the CCRB’s budget to the NYPD’s operating budget.**

Current law: The CCRB is intended to operate independently as a watchdog over the Police Department. However, the CCRB’s budget is set at the discretion of the Mayor, similar to other non-independent, executive agencies. In contrast, section 1052(c) of the Charter allows the Campaign Finance Board to approve its own budget and § 259(b) requires that the Independent Budget Office’s budget be at least ten percent of the budget of the Mayor’s Office of Management and Budget each year.

The perceived and actual independence of agencies is found to be directly related to the agencies’ funding, as in the case of the IBO’s budget being a percentage of the Office of Management and Budget. Chicago recently committed to fund their version of the CCRB (the Civilian Office of Police Accountability) at one percent of the Chicago Police Department budget. Miami’s City Charter similarly requires that their Civilian Investigative Panel be funded at no less than one percent of Miami’s police department general fund budget.

The very agency that is intended to serve as a watchdog over the NYPD should not be dependent on the Mayor for its funding. The current system allows for the possibility of politically-motivated budgeting tactics that could hamper the independence and effectiveness of this vital oversight agency.

Reasons for proposed change: In order to insulate the CCRB from budgetary manipulation, the Charter should be amended to require the CCRB budget to be a fixed percentage of the NYPD’s annual operating budget. Such a minimum threshold would help insulate the CCRB from the politicized budget negotiation process in order to ensure the CCRB maintains the resources it needs to effectuate its Charter mandate in proportion to the size of the NYPD.

PART IV: THE CITY BUDGET

RECOMMENDATION: Prevent the City’s revenue estimate from being used as a tool for control in budget negotiations.

- **Require the Mayor to submit a revenue estimate by May 25 for approval by the Council on June 5 on an annual basis.**
- **In the event that either of those deadlines is not met, require the City to adopt the revenue estimate produced by the Independent Budget Office.**

Current law: Currently, Charter § 258 requires that the City’s budget be balanced at the end of each fiscal year. This is achieved by ensuring that the City’s projected revenues are sufficient to cover proposed expenses. Section 254 of the Charter gives the Council the power to amend and adopt the Executive Budget thereby setting the size of the Expense Budget. Revenues are set pursuant to Charter § 1515(a) which gives the Mayor the power to estimate all non-property tax revenues and § 1516 which requires the Council to set the property tax rates at a level that fills the gap between the non-property tax revenues and the expense Budget.

Reasons for proposed change: While § 1515(a) of the Charter requires the Mayor to provide his revenue estimate by June 5, in actuality, that letter is usually delivered at budget adoption. This may be due to the fact that the Charter provides no recourse if no letter is delivered by the deadline. As a result, practice is that the Council negotiates the expense budget with the Mayor, but not the revenue budget. As a result, the Mayor is able to use the revenue estimate as a tool for control in budget negotiations, adjusting projections to meet the political needs.

Notably, in Fiscal 1999, disagreements in budget negotiations led the Council to adopt its own budget. The Mayor, who already has the power of veto, manipulated the revenue estimate by lowering it enough below the forecast in the Executive Budget that it would have forced the City Council to raise the property tax rates. This politicization of what should be a technical estimate undermines good budgeting practices and should be avoided in the budget process.

The budget process should be revised so that the Mayor and Council must agree on a revenue estimate via negotiation, similar to how the Charter intends the expense budget to be negotiated (by giving the Mayor the power to veto the Expense Budget).

The Charter should be amended to require the Mayor to submit a revenue estimate to the Council by May 25. The Council should then be required to approve the revenue estimate, without amendment, by resolution by June 5. In the event that either event does not occur, the binding revenue estimate for the subsequent fiscal year should be the revenue forecast as determined by the Independent Budget Office on June 6.

RECOMMENDATION: Reform the City’s Expense Budget to make it more meaningful and transparent.

- Amend the Charter to provide mechanisms to ensure adherence to the mandate for narrower, programmatic units of appropriation, such as narrowing the definition of the term, providing a definition of program, and/or creating restrictions on having a majority of an agency’s spending in a single unit of appropriation.
- Amend the Charter to require that the Mayor and Council jointly determine the units of appropriation included in the budget for key City agencies on an annual basis.

Current law: Charter § 100(c) requires that units of appropriation represent spending on a “particular program, purpose, activity, or institution.” The law also requires that inclusion of more than one program, purpose, or activity in a single unit of appropriation may occur only if it is accompanied by a resolution adopted by the Council setting forth the names, and a statement of programmatic objectives, of each program, purpose, activity or institution to be combined into the unit of appropriation. Such a resolution has never been submitted by the Mayor or adopted by the Council. Instead, units of appropriation tend to be large agglomerations of programs and activities that are effectively determined in the sole discretion of the Mayor with lobbying and negotiation by the Council during the budget process.

Reasons for proposed change: Units of appropriation are intended to be highly descriptive in order to facilitate the Council’s and the public’s understanding of agency spending and performance. However, the current presentation of the Expense Budget does not comply with the standards contained in the Charter and the units of appropriation set forth are generally vague, overbroad, and wide-ranging. This practice not only violates the Charter’s requirements, but also undermines the Council’s ability to set

and maintain budget priorities. Smaller, programmatic units of appropriation would enable the Council and the public to conduct more in-depth oversight of City agencies and would allow the Council to adopt the budget on a program basis. The Council could better understand the Mayor's priorities and have the legal authority to adjust program funding levels as it sees fit and as was intended by the 1989 Charter Revision Commission. When the units of appropriation do not properly reflect the programmatic activities of the agency, the budget becomes a less honest representation of the City's priorities.

The Council is also tasked with approving significant, mid-year changes to the Expense Budget through the budget modification process. The use of overbroad units of appropriation allows the Mayor to circumvent this process and to move money between programs without Council input or authorization. If each unit of appropriation represented the amount for a particular program, as the Charter requires, then an agency head would have to come to the Council through the budget modification process in order to use money appropriated for one program for another. Under our current system, in which all of an agency's programs may be contained in one or a handful of units of appropriation, agency heads can transfer money between programs without the required oversight or accountability.

The Charter should be amended to provide mechanisms to ensure adherence to the mandate for narrower, programmatic units of appropriation, such as narrowing the definition of the term, providing a definition of program, and/or creating restrictions on having a majority of an agency's spending in a single unit of appropriation. Further, the Charter should be amended to require that the Mayor and Council jointly determine the units of appropriation included in the budget for key City agencies on an annual basis.

RECOMMENDATION: Limit the Mayor's power to impound funds.

- **Amend the Charter to make clear the Mayor may only impound funds in cases in which there is a significant and sudden reduction in estimated revenues.**

Current law: Charter § 106(e) allows the Mayor to impound funds from the Expense Budget (i.e. not spending money that has been appropriated) when "the mayor determines...that the full amount of any appropriation should not be available for expenditure during the fiscal year." The Mayor must notify the Council of the intention to impound, but does not specify when the notification must be provided or the circumstances that trigger the authority of the Mayor to impound.

Reasons for proposed change: The impoundment process should not be used to circumvent a budget adopted in accordance with the requirements of the Charter. In the normal course, if revenues begin to decline during a fiscal year such that spending reductions are required, such spending reductions should be accomplished through a budget modification process. The only time impoundment should be used is if there is a sudden and significant reduction in revenues that is severe enough to threaten the City's ability to meet imminent financial obligations, otherwise this power could be used by the Mayor as a sword rather than the shield for which it was intended.

The Charter should therefore be amended to 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 should not be permitted to exceed the amount of the revenue shortfall. Notification to the Council of the impoundment should be required to include the Mayor's revenue projections and methodology used

and the spending reductions by unit of appropriation. The timing of the impoundment action and its notification should be within 30 days of a financial plan update.

RECOMMENDATION: Reform the City’s Capital Budget to improve transparency and accountability.

- **Amend section 214(a) of the Charter to clarify that capital budget lines must be narrow and specific, rather than an aggregation of related capital projects.**
- **The amount of appropriations for each capital project should be limited to 100 + X percent (where X is a reasonable amount available for contingencies).**

Current law: Charter § 214(a) clearly states that the Executive Capital Budget must set forth “separately each capital project,” with capital project defined, in part, in Charter § 210(1)(a) as one that “provides for the construction, reconstruction, acquisition or installation of a physical public betterment or improvement which would be classified as a capital asset under generally accepted accounting principles for municipalities or any preliminary studies and surveys relative thereto or any underwriting or other costs incurred in connection with the financing thereof.” The Council adopts the Capital Budget at the budget line level.

Charter § 214(a) also requires that several discrete pieces of information regarding each capital project be set forth in the budget, including: a brief description (scope); location; estimated cost and source of funds; the period of probable usefulness; estimated dates of completion of all stages of the project; and any terms and conditions of the project.

Lastly, § 217(b) of the Charter requires that if a capital project is not initiated by the expenditure of funds within two years of appropriation in the Capital Budget, the capital project must be eliminated from the budget.

Reasons for proposed change: Despite the Charter requirements, it is commonplace for individual budget lines to represent many similar projects and have very generic descriptions as a result. For example, in the Fiscal 2019 Preliminary Budget there were 1,952 budget lines, which contained funding for approximately 14,750 projects. Currently, the only information provided by the Mayor to the Council about those projects when the Council votes on them at adoption is the general description contained in the budget lines, but not specifically which or how many projects will be included within them. That information is not disclosed until the release of the Adopted Capital Commitment Plan. In addition, all the information that is required to be set forth in the budget described above is required at an individual project level. However, since budget lines do not represent individual projects, the reporting that the Mayor includes in the Capital Budget is aggregated and not useful for knowing and tracking the progress and spending of individual capital projects.

With respect to the removal of appropriations from the budget, while the Mayor does remove some appropriations on an annual basis, because there are multiple projects within each budget line and a large amount of excess appropriations rolling from year to year, it is difficult to determine how closely this requirement is being heeded. For example, as of the Fiscal 2019 preliminary budget, the total available appropriations for Fiscal 2018 was \$42.2 billion, yet planned commitments for that year totaled only \$21.7 billion. This excess balance gives the Mayor a considerable amount of flexibility in executing its capital program without seeking a budget modification from the Council, as envisioned by the Charter.

Section 214(a) of the Charter should be amended to clarify that Capital Budget lines must be narrow and specific, rather than an aggregation of related capital projects. The amount of appropriations for

each capital project should be limited to 100 + X percent (where X is a reasonable amount available for contingencies).

RECOMMENDATION: Reimagine the long-term capital planning process so that it is more effective, comprehensive, cohesive, and accountable.

- Expand the scope of the AIMS report in regards to both type of infrastructure and amount of the asset.
- Require the Ten-Year Capital Strategy and Commitment Plan to cross-reference the AIMS report and the City’s Statement of Needs, including details for when and how the City will make investments necessary to fund new and expanded facilities and maintain infrastructure in a state of good repair.
- Require the creation and maintenance of a publicly available capital projects tracker.

Current law: Every year, in accordance with Charter sections 213 and 214, the Mayor produces and the Council adopts a Capital Budget. In addition to the budget for the ensuing year, the financial plan updates released in accordance with Charter § 258 with the Preliminary, Executive, and Adopted Budgets, as well as the November Financial Plan, are required to include a plan for the next three fiscal years. The Mayor is also required to produce a Capital Commitment Plan three times a year pursuant to Charter § 219, which is a five-year spending plan that provides appropriations by agency and budget line for the current fiscal year and planned commitments. The Commitment Plan also shows, by budget line, the total current contract liability, the total spending since introduction of the budget line, and commitments made since the last reporting period.

In addition, the Charter requires the publication of a biennial Ten-Year Capital Strategy pursuant to Charter sections 215, 228, 234, and 257. By November 1 in even-numbered years, the Office of Management and Budget and the Department of City Planning prepare a draft Capital Strategy, which must be the subject of a public hearing. The City Planning Commission must then issue a report on the draft Capital Strategy, and the Mayor must submit a final Capital Strategy with the Executive Budget in odd-numbered years. Within 30 days of the adoption of the Budget, the Mayor is required to prepare and attach as an appendix to the Capital Strategy a statement of how the Capital Budget and program as finally adopted vary, if at all, from the Capital Strategy. The Capital Strategy must describe the strategy for the development of the city's capital facilities for the ensuing ten fiscal years and the proposed capital commitments for each of those years.

Section 204 of the Charter also requires the Mayor to produce a Citywide Statement of Needs by November 15 each year. The Charter requires the document to identify all new city facilities, significant facility expansions, and facility closures or reductions the City intends to make or propose during the ensuing two fiscal years.

Charter § 1110-A mandates the City’s Asset Inventory Management System (AIMS) report which is intended to provide annual information on the investment necessary to maintain all “major portions of the City’s capital plant” with a replacement cost of at least \$10 million in a state of good repair, including condition assessments, maintenance schedules, recommendations, and necessary capital and expense budget funding.

Lastly, the Mayor’s Office of Operations maintains the NYC Capital Projects Dashboard, which provides certain information for all capital projects with a budget of \$25 million or greater.

Reasons for proposed change: While the Charter requires a variety of capital budget and planning documents to be produced, what has resulted is a hodgepodge of reporting measures and data tracking that often do not relate to one another or the City’s real spending in a meaningful way. The Capital Budget shows spending authorization for a single year that is several times more than an agency could or would spend. The Commitment Plan contains unrealistic targets for commitment that are generally front-loaded into the first two years of the plan. In addition, because the Mayor does not adhere to the Charter requirements regarding separating out individual capital projects in the Capital Budget, the Commitment Plan is the only document that sets schedules of work for individual projects, yet this document is not subject to approval by the Council. The Ten-Year Capital Strategy also typically includes unrealistic timelines for capital projects, overestimating commitments in the initial years and underestimating commitments in the second half of the plan. It also does not provide enough information about whether the City is investing sufficiently to keep infrastructure in a state of good repair, nor does it have a strong connection to what is reported in AIMS. Lastly, it lacks indicators to demonstrate progress towards achieving the goals of the long-term plan, thereby providing a lack of accountability.

Moreover, the Citywide Statement of Needs, which is intended to be used as a forward-looking planning document, does not contain enough detail to be useful, particularly in the context of capital planning. The document is not required to contain any cost estimates and typically omits a majority of the facilities sited by the City during the ensuing years. Neither the Ten-Year Capital Strategy nor the Capital Commitment plan reference this document or address how the plans do or do not sufficiently fund new and expanded facilities.

Finally, there is a lack of information available to the public about the status of individual capital projects that are going on in their neighborhoods or that effect citywide infrastructure. The City’s existing Capital Dashboard only includes capital projects with a budget of over \$25 million. As a result, this tracking system currently contains data on only 287 of the City’s approximately 15,000 capital projects.

The Charter should be amended to ensure the long-term capital planning process is more effective, comprehensive, cohesive, and accountable. First, the Charter should be amended to expand the scope of the AIMS report in regards to both type of infrastructure and amount of the asset. The Charter should also be amended to require the Ten-Year Capital Strategy and Commitment Plan to cross-reference the AIMS report and the City’s Statement of Needs, including details for when and how the City will make investments necessary to fund new and expanded facilities and maintain infrastructure in a state of good repair. Finally, the Charter should be amended to require the City to create and maintain a publicly available capital projects tracker. This amendment to the Charter should codify and expand the City’s existing interactive and searchable Capital Dashboard to include information about all pending (non-completed) citywide capital projects, regardless of total cost. The database should include information for each project including the name, location and current phase, as well as information related to the project schedule and cost. It should also contain citywide capital project information including the total number of projects above/below cost and behind/ahead of schedule by project type and city agency. Finally, the website should contain an interactive map indicating the location of all projects listed in the database.

RECOMMENDATION: Reform budget modifications to improve accountability and strengthen the Council’s role in the City’s budget process.

- Amend the Charter to require the Mayor to submit budget modifications to the Council for approval within 30 days of issuance of a financial plan update.

Current law: In order to make certain midyear budget changes, Charter § 107(a) requires the Mayor must submit a budget modification for Council whenever he or she wishes to 1) transfer funds between one agency or another; or 2) transfer funds that will result in any unit of appropriation having been increased or decreased by more than five percent or \$50,000, whichever is greater, from the adopted budget. The Council has thirty days from the first Stated meeting following receipt of the submission of the budget modification from the Mayor to disapprove the proposed action.

Charter § 107(e) further dictates that when a budget modification seeks to 1) create a new unit of appropriation or 2) appropriate new revenues from any source (other than federal, state, or private sources over which the City has no discretion), the procedures and approvals required to adopt the budget for the ensuing fiscal year must be followed. Moreover, any budget modification which seeks to increase the budget must be accompanied by a statement of the source of current revenues or other identifiable and currently available funds required for the payment of such additional amounts.

Pursuant to § 216 of the Charter, upon receipt of a recommendation in writing from the Mayor or a Borough President, the City Council may amend the Capital Budget or capital program in the same manner as the adoption of the Capital Budget and capital program as set forth in section 254 of the Charter. The Council may approve the proposed amendment as submitted, or increase or decrease the amounts of funds proposed to be appropriated, so long as funds are available within the Capital Budget and the applicable program category of the capital program.

Reasons for proposed change: The Adopted Budget is supposed to set forth the City’s budgetary priorities for the ensuing fiscal year and any mid-year changes should undergo the same level of rigorous review and approval by the Council as the initial budget for the fiscal year. However, because the Mayor can unilaterally determine when to seek a budget modification, they are not presented to the Council until late in the fiscal year or until after a new policy or program is put into place, thereby depriving the Council the opportunity to play its Charter-envisioned role in the process. This becomes a particularly acute problem when the Mayor uses overbroad and vague units of appropriation and capital budget lines because mid-year programs and projects can be initiated or changed within those overbroad units of appropriation and capital budget lines without the need to seek Council approval to appropriate funding. Moreover, with respect to expense and capital budget modifications, the Council only has the authority to disapprove the entire modification.

Budget modifications should 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 (both spending increases, shifts, and reductions). All budget modifications would require affirmative approval by the Council and, in all cases, the Council would have the full authority granted to it in Charter § 254 with respect to adopting the budget—specifically, the authority to add, omit, increase, or decrease units of appropriation, capital appropriations, or terms and conditions.

RECOMMENDATION: Establish a Rainy Day Fund for the City.

- Amend the Charter to authorize the City to establish a Rainy Day Fund upon the expiration of the FEA budget requirements in 2033.

Current law: As highlighted in a Revenue Note from the Finance Division in March 2018, the City’s current method for accumulating budgetary reserves is legally complicated. This stems from the City’s

strict balanced budget requirement, tracing back to the Financial Emergency Act of 1975 (FEA), which was incorporated into the Charter in 2005 as § 258.

Reasons for proposed change: The current legal requirements limit the City’s ability to use savings from prior years to pay current year expenses. It also prohibits the City from having an explicit Rainy Day Fund, so a number of practices have developed over the years to provide budgetary cushions within these rules. By not having an explicit fund, it is not guaranteed that the City will have enough revenues to continue the necessary provision of public services during times of revenue deficits. While the balanced budget requirements of the FEA are currently in place until 2033, once the FEA expires, the City could determine on its own whether to loosen the strict requirements to allow for such a savings account.

Notwithstanding the current restrictions imposed by the FEA, the Charter should establish a Rainy Day Fund, with changes to how the City applies Generally Accepted Accounting Principles (GAAP) to its accounting and budgeting practices. Such rainy day fund should include objective and clearly stated rules about when funds could be disbursed with such rules for withdrawal based, for example, on budget gaps, revenue forecast error, and/or economic or revenue volatility. State legislation to permit a Rainy Day Fund should be sought to accompany the change in the Charter.

RECOMMENDATION: Reduce the City’s long-term liabilities.

- **Prefund the City’s Other Post-Employment Benefits (OPEB) Liabilities.**

Current law: The City’s annual cost for OPEB is calculated by the actuary, based on certain assumptions about the workforce (when they will retire, when they are expected to die, etc.) and the growth in health insurance premiums. The total OPEB liability (\$93.1 billion) represents the cost to pay for all future expenses, but the amount the City contributes annually (\$2.3 billion in Fiscal 2017) covers only the cost for current year OPEB expenses. To address the long-term liability, the City established the Retiree Health Benefits Trust Fund (RHBT) in 2006. Assets in the RHBT currently total \$4.4 billion, but it is widely recognized that the balance is most likely to be used as a revenue source for the City’s budget in the event of an economic downturn. In other words, the RHBT is not being used for its intended purpose of reducing the long-term liability.

Reasons for proposed change: By using a pay-as-you-go financing strategy, the City will likely see annual OPEB costs increase considerably over time, as the cost of health insurance has been rising much faster than inflation. The Charter should be amended to establish a method to prefund the City’s OPEB liability, perhaps similar to how the City actuarially prefunds its pension obligations.

RECOMMENDATION: Improve the City’s accountability to performance goals.

- **Require service level information and performance measures for each unit of appropriation in the budget.**
- **Amend the Charter to require that each indicator included in the PMMR and MMR include the relevant expense budget Unit(s) of Appropriation most likely to influence the indicator.**

Current law: Most service level and performance measure information is required by Charter § 12 to be included in the Mayor’s Management Report, though some information regarding changes in performance goals is required by Charter § 250 to be included in the Executive Budget. In addition, Charter § 100(b) requires that agency department estimates in the Preliminary Budget and the Executive Budget be accompanied by service level impacts for each unit of appropriation.

Reasons for proposed change: In practice, service level and performance measure information is not directly linked to units of appropriation in the budget. Without linking performance indicators and service levels to each unit of appropriation and showing how the funding level will impact service provision, the Council and the public cannot clearly understand the impact of different levels of appropriation on core agency services and how to better allocate funding to address priorities.

The Charter should therefore be amended to require service level information and performance measures for each unit of appropriation in the budget. If the Council changed the amount in a unit of appropriation in adopting the budget, the Mayor should submit a revised statement of service and performance levels within 30 days of adoption. The Charter should be further amended to require that each indicator included in the PMMR and MMR include the relevant expense budget Unit(s) of Appropriation most likely to influence the indicator.

RECOMMENDATION: Increase access to information and improve transparency in the budget process.

- **Require all budget documents to be made available in a machine-readable, downloadable format.**

Current law: Currently, the New York City Mayor’s Office of Management and Budget (OMB) publishes budget-related documentation in portable document format (PDF) on its website. Additionally, several budget documents are available on the City’s Open Data Portal. Charter Sections 236, 249, and 258.1 require the provision of machine-readable data, however, the Mayor is not in compliance with this requirement.

Reasons for proposed change: The budget is the most important public policy the City regularly makes. As such, its transparency is crucial to helping New Yorkers understand how the City spends and raises funding. While OMB publicly provides many budget documents, all of them are in portable document format (PDF), making analysis cumbersome at best and impossible at worst. Like other agencies, OMB should publish machine-readable files of its documents such as the supporting schedules, departmental estimates, and other applicable documents. The Charter should therefore be amended to require that all budget data, including all service and performance metrics by unit of appropriation, be presented to the Council and the public in a machine-readable, downloadable format on the City’s Open Data Portal.

PART V: THE PROCUREMENT PROCESS

RECOMMENDATION: Reduce contract delays by amending the Charter to set time limits for certain agency procurement processes.

- Oversight Agencies involved in reviewing contracts should be limited to the 30-day review window placed on the Office of the Comptroller.
- Contracting Agencies should be required to submit vendor information and the contract to relevant oversight agencies within 30 days of contract agreement.

Reasons for proposed change: Once a contract is executed and registered with the Comptroller, the contracting agency may begin making payments to the vendor, per Chapter 13 of the City Charter. However, city agencies' contract review process significantly delays the disbursement of funds, particularly among human services contractors. In 2017, of the 2,448 new or renewed contracts in the human services sector, 2,224 (90.8 percent) were retro-active contracts—meaning they reached the Comptroller's office for registration after the contract start date. Half of these contracts were over six months retroactive, and over 18 percent were over one year retroactive. As a result, the Department of Homeless Services, the Human Resources Administration, the Department of Education, the Department for the Aging, the Department for Youth and Child Development, the Department of Health and Human Services, and the Administration for Child Services delivered at least half, and in most cases over 90 percent, of their contracts to the Comptroller after vendors had already begun performance of the contract in 2017. These delays often force non-profit organizations—that provide critical services to New Yorkers—to seek out loans and other gap financing to pay employees and meet other expense needs.

A significant barrier in the process is the time spent by contracting agencies and oversight agencies reviewing awarded contracts prior to submitting them to the Comptroller for registration. Oversight agencies include: the Mayor's Office for Contract Services, Corporation Counsel, the Department of Investigations, the Office of Management and Budget and the Division of Labor Services at the Department of Small Business Services. Notably, none of these agencies other than the Comptroller have any time limitations on their processing of city contracts. Additionally, contracting agencies have no limit to the amount of time at their disposal to deliver vendor information and the contract to the oversight agencies.

The Charter should therefore be amended to require contracting agencies to forward necessary information to oversight agencies within 30 days of agreement with a vendor to the terms of a contract, and to establish fixed timelines of no longer than 30 days for oversight and contracting agencies to perform their functions in the procurement process. The Charter should be further amended to authorize the Procurement Policy Board to require these oversight functions to be performed simultaneously wherever possible.

RECOMMENDATION: Identify problems earlier on in the procurement process.

- Amend the Charter to require contracting agencies to engage the Comptroller early in the procurement process, before a contract is executed.

Current law: Per the 1989 Charter Revision Commission, the Comptroller is empowered to “stop an agency from entering into any proposed contract, franchise, revocable consent or concession by presenting in writing reasons for believing there had been corruption in letting the contract or that contractor has engaged in corrupt practices.” However, the Comptroller’s current authority is limited to registering contracts that have already been executed between the contracting agency and vendor. As noted, severe delays in the contracting process and the prevalence of retroactive contracts results in the vast majority of these non-profits starting work before the contract reaches the Comptroller’s office for review. In the event the Comptroller identifies problems with the contract, the payment for services is delayed.

Reasons for proposed change: Involving the Comptroller earlier in the contract review process would create a more efficient and effective system in which the Comptroller can identify potential concerns and problems proactively and reduce delays in payment. This process would allow the Comptroller to review a contract package prior to execution—focusing on the contracting development process in addition to the actual contract content resulting in potential cost savings as well as fewer delays and earlier payments to vendors providing vital services for New Yorkers. The State Comptroller currently has this “pre-audit” authority, which reportedly saved taxpayers \$30 million dollars in Fiscal Year 2017, without slowing down the procurement process.

The Charter should therefore be amended to give the City Comptroller “pre-audit” authority, which would allow the Comptroller to review a contract before it has been approved.

RECOMMENDATION: Increase transparency and accountability in the pre-registration process.

- Amend the Charter to require the creation of a transparent contract tracking system for vendors.

Current law: The modernization of city procurement by transitioning to online portals and electronic documentation has been undertaken in recent years; the Comptroller created the Checkbook NYC website to make up-to-date data available to vendors once an agency has submitted a contract for registration, while the Mayor’s Office of Contract Services developed the Procurement and Sourcing Solutions Portal (“PASSPort”), an internal database agencies can use to review over 10,000 past and current agency contracts. However, there remains a dearth of publicly available information to track contracts going through the procurement process—from initial proposal submission, through contract negotiations, review and ultimate award and registration with the Comptroller’s office. According to the City Comptroller, vendors often experience a “black hole” after signing a contract with an agency, in which many months go by without any communication whatsoever about the status of their contract or payment. This presents significant challenges for cash-strapped non-profits, in particular, that would benefit from increased transparency to better manage cash flow and plan for the execution of programming.

Reasons for proposed change: Section 311 of the Charter should be amended to require that the Mayor’s Office of Contract Services create a public-facing online tracking system that includes information about each individual vendor’s contract, the contract’s current status, and how long each agency took to process each contract during the pre-registration phase of procurement. A public-facing tracker would increase transparency overall by providing valuable information available to interested members of the public and improve accountability, allowing for budget watchdogs, elected officials, and advocates to conduct independent analyses of contract delays that can inform future policymaking.

PART VI: LAND USE

I. REFORMS FOR MORE EQUITABLE AND RATIONAL PLANNING

RECOMMENDATION: Require the creation of a Comprehensive Plan—a citywide strategic framework and vision for growth and development.

- **Require the City to produce a Comprehensive Plan for the city once every ten years to serve as the basis for land use, zoning, and capital planning decisions.**

Current law: The Charter includes many provisions related to comprehensive land use planning but does not require an actual plan. Section 16 of the Charter requires the Mayor to submit annual reports on socio-economic disparities and efforts to reduce the poverty rate. Section 17 requires the Mayor to submit a strategic policy statement every four years. Section 20, created in 2006, establishes the Mayor’s Office of Long-Term Planning and Sustainability and requires this office to develop sustainability indicators, population projections and a long-term sustainability plan regarding housing, open space, brownfields, transportation, water quality and infrastructure, air quality, energy and climate change to be updated every four years with an annual progress report. Section 191 requires the Department of City Planning (DCP) to assist in preparation of strategic plans.

Section 192(d) requires the City Planning Commission (CPC) to be responsible for planning related to orderly growth, and Section 192(f) requires the Commission to issue a zoning and planning report every four years stating: the planning policy of the Commission and its relation to the Ten Year Capital Strategy; the four year capital program; the demographic reporting required by Charter § 16; the strategic policy statements of Section 17 and any Section 197a plans; summaries of the significant plans and studies undertaken by DCP during the prior four years; analysis of any portions of the zoning resolution that “merit reconsideration;” and any proposal for implementing the planning policy of the Commission. In practice, Charter § 192(f) is fulfilled by slides published on the DCP/CPC website summarizing their work and it is not taken seriously by DCP/CPC as a tool for setting forth a comprehensive, coordinated planning strategy.

Per § 197a of the Charter, plans for the development, growth, and improvement of the city may be submitted by the Mayor, CPC, DCP, Borough Presidents, Borough Boards, or Community Boards, and through ULURP. In practice, most of these plans have been selectively referred to as policy guidance but not implemented and there has not been a new § 197a plan since 2011.

Section 204 establishes the Citywide Statement of Needs process for transparency and public input on public facility siting. Section 205 requires the DCP to publish a Comprehensive Waterfront Plan every ten years beginning in 2010. Section 206 requires tracking of policy commitments made by the Mayor during the public review process for public rezoning applications. Section 215 requires the preparation and submission of the Ten Year Capital Strategy, which serves as the City’s medium-term infrastructure and facilities planning document.

Reasons for proposed change: While the New York City Charter has many provisions intended to require comprehensive consideration of land use and planning policy, there is no actual requirement to publish a citywide comprehensive plan.

In other major cities around the country and the world, the Comprehensive Plan—a document establishing a strategic framework and vision for growth and development—serves as the basis for land use, zoning, and capital planning decisions. Lacking such a plan, New York City is without a strategic vision for how growth and development should be rationally and equitably distributed across the City. The lack of a citywide plan contributes to the overall housing shortage and exacerbates conflicts for space between different uses. The ad hoc selection of particular neighborhoods for growth-oriented rezoning plans has proved to be an inefficient and acrimonious process and is not delivering enough opportunities for development as the city needs. Making matters worse, unlike other cities, New York does not iteratively update zoning and other development regulations, leaving many parts of the city hamstrung by decades-old regulations. When communities or private developers seek to facilitate new types of development, they often struggle to find relevant up-to-date zoning tools.

A citywide strategic planning framework, developed with extensive community-level participation but with clear guidelines to accommodate the City’s projected housing, commercial, industrial, and infrastructure needs on a fair and rational basis, would serve as the foundation for both public and private development decisions. It would allow both community-based proposals and private development proposals to move forward with an accelerated process if such proposals comport with the comprehensive plan. And it would usher in a new, iterative planning process in New York to comprehensively update and maintain the Zoning Map and Zoning Text for contemporary needs.

The Charter should therefore be amended to require a strengthened and integrated comprehensive planning process. It should require the City to first complete an Existing Conditions analysis, which should include the following elements:

- A citywide study of demographic, economic, infrastructure state of repair and capacity, housing, land use, sustainability, resilience and environmental data (including a focus on sea-level rise and other climate-change impacts) over the prior 20 years and growth/needs projections for the next 20 years, undertaken by one central agency or Mayoral office. Much of this information is already actively gathered and analyzed by various city agencies and some of it is brought together and published under the current “OneNYC” Charter § 20 report.
- A supplementary “Growth and Equity” analysis, similar to the analysis conducted by Seattle’s Office of Planning and Community Development, to help guide decision making on the Comprehensive Plan. This analysis should set explicit policy goals and priorities for the City’s overall growth and development and include an “Access to Opportunity” Index that overlays education, economic, transit, civic infrastructure, and health data and a “Displacement Risk” Index that overlays indicators of vulnerability and analyzing both geographically.

The Charter should then require the City to hold a minimum number of participatory workshops throughout the five boroughs in which the City will share the results of the citywide Existing Conditions study to examine the findings and implications at the local-level.

Informed by public input and the Existing Conditions analysis, the Charter should be amended to require the City to produce a Draft Comprehensive Plan to develop a strategic vision for the City’s future, including, at a minimum, multiple possible scenarios for growth. The Draft Plan should also be required to include quantifiable targets for growth, city facilities and investment at the borough and Community District level, identified based on the findings of the Existing Conditions study and objective criteria, determined by the City with consideration of public input. The Charter should require a minimum number of presentations and workshops throughout the five boroughs to review the Draft Comprehensive Plan and collect community feedback.

Finally, the City should be required to release a Final Comprehensive Plan and complete a CEQR GEIS analysis on such plan. The Final Comprehensive Plan should then be subject to public review with final approval by the City Council. The Charter should also be amended to authorize the Council to modify the quantifiable targets set forth in the plan through the ULURP process. Further, the Ten Year Capital Strategy for that year should be required to directly cross-reference the adopted Comprehensive Plan, with prioritization of the investments identified through the planning process and restrictions on how those investments can be modified by the City in future years.

To incentivize implementation, the Charter should be amended to explicitly allow the GEIS analysis to fast-track public and private applications that comport with the Comprehensive Plan. Private and public applications that comport with the plan and GEIS would only need to complete an abbreviated, supplementary EAS or technical memo for impacts unique to the project, significantly reducing the time, cost and burden on applicants in the land use review process.

The Charter should require the City to complete this planning process once every ten years, and produce progress reports once every two years. The Charter should also provide a concrete pathway to update the plan as necessary, on an annual basis. Finally, the Charter should specify that the process, from start to finish, should not exceed four years to complete.

RECOMMENDATION: Amend the Charter to improve the transparency, planning, community input and effectiveness of the City’s Fair Share System.

- **Require the City to regularly update the Fair Criteria and mandate as binding rules, not just guidelines, and authorize the Council to initiate future reviews of the rules.**
- **Require a higher bar for sitings in highly over-concentrated districts (i.e. require CPC or Council review of sitings in districts that are the most over-concentrated of that facility type).**
- **Increase transparency so that members of the public can easily review Fair Share Statements and objectively compare the concentration of any kind of facility between different communities.**
- **Reform the Citywide Statement of Needs to be a more thorough and useful planning document.**

Current law: Section 203 of the City Charter requires that CPC, following a proposal by the Mayor, promulgate rules establishing criteria for the siting of new City facilities, and the expansion, reduction, or closing of existing facilities, consider the fair distribution of facilities among communities as well as communities’ needs for services, the efficiency of service delivery, and the social and economic impact of facilities on their surrounding areas. These criteria are commonly referred to as the “Fair Share Criteria.”

Section 204 requires the Mayor, in conjunction with DCP, the Department of Design and Construction, and the Department of Citywide Administrative Services to produce an annual citywide Statement of Needs (SON), which must identify all sitings subject to the Fair Share Criteria planned for the next two fiscal years and explain why the specific siting was chosen. Before submitting their own departmental statements of need to the Mayor, agencies are required to consult with the district needs statements and statements of budget priorities prepared by Community Boards. Community Boards and Borough Presidents may comment on the SON within 90 days of its issuance, and Borough Presidents may propose alternate locations for any proposed siting within their borough.

Section 204 also requires City agencies to issue what have come to be known as “Fair Share Statements” when they propose site specific City facilities (whether they have been listed in the SON or not). These statements are required to describe how the proposed action satisfies the Fair Share Criteria, and whether it is consistent with the most recent SON, or any written statements from Borough Presidents or Community Boards in response to the SON.

Charter Section 315 exempts “emergency contracts” from the Fair Share process and the City has increased its reliance on such contracts to site facilities that should be considered under Fair Share in districts that are over-concentrated with such facilities.

With Sections 203 and 204 of the Charter formally adopted in the 1989 Charter Revision, the CPC promulgated the first Fair Share Criteria in December 1990, to take effect in July 1991.

Reasons for proposed change: The Fair Share Criteria were developed more than 25 years ago to address the needs of a very different city. New challenges of distributional fairness and environmental resilience have arisen that need to be taken into consideration. The Charter should therefore be amended to require the Fair Share Criteria to be revised and updated on a regular basis. This would allow the City to consider new kinds of facilities that should be subject to or omitted from the Fair Share process.

The Charter should also explicitly prohibit City agencies from siting facilities in highly over-concentrated districts unless the agency can pass a far higher bar than the standard Fair Share analysis currently requires. Further, Fair Share Criteria should be established by rule through the City’s Administrative Procedure Act. Currently, because courts view the Criteria as mere guidelines, they are more deferential to agency discretion, even with unfair sitings. By recasting the criteria as rules, Fair Share plaintiffs would have more support in litigation over objectively unfair sitings.

To increase transparency, the Charter should explicitly require Fair Share statements to be posted publicly on the relevant agencies’ website and the DCP’s website. Further, all City facilities, including office lease acquisitions, should be required to produce a statement of compliance. This posting requirement will allow for a historical perspective as elected officials, Community Boards, and members of the public could see how agencies view siting different kinds and quantities of facilities in the same community over time.

The Charter should also require the City to develop and publish community district rankings of facility concentrations online and in the SON. At present, it is nearly impossible for the public, elected officials and journalists to objectively compare facility concentration in different communities without the ranking of districts. The Mayor should be required to establish and include in the annual citywide SON two indicators of how saturated any given community district is with City facilities. First, for every category of facility described in the Fair Share Criteria, the SON should rank each community district by how concentrated it is with such facilities, in terms of the ratio of facility capacity to the community district’s population. Second, for every facility listed, the SON should provide a similar ranked index of community districts, highlighting the most and least-fair sitings by facility code used by the Department of Citywide Administrative Services. These community rankings would serve to debunk false Fair Share claims and empower over-concentrated communities to advocate on their own behalf.

The City should be required to create an online, interactive map to accompany the SON. This map should include explanatory text and visual overlays indicating the specific locations, addresses and

current or planned use of City-owned property and City facilities, in addition to a brief guide describing each of the facility types and uses included on the map. The map should also include facility concentration data for each community district.

The SON is an annual statement of what city facilities the City expects to open, close, significantly expand or significantly shrink in the next two fiscal years. The Charter should be amended to require the Mayor to update the map and explanatory text (often called the Atlas and Gazetteer) that accompany the citywide SON every year to correct existing confusion about how often updates are required.

Currently, planned facilities are only required to be listed in the SON by community district if it is “practicable” to do so, and if the facility is under “serious consideration.” As a result, the SON often lists facilities without any indication of where the agency plans to site it. The Charter should be amended to define “serious consideration” to mean 1) when an agency is conducting feasibility or other studies for a location or 2) when an agency has begun negotiations for a site, thereby requiring agencies to include additional geographic detail about the proposed site as early as possible in the siting process. The Charter should also require City agencies to conduct additional community outreach for facilities that are not listed in the citywide SON, above and beyond any comment period afforded by the ULURP process. This requirement would function as a strong incentive for agencies to include planned sitings in the SON where fairness can be analyzed more comprehensively, and communities can engage at an earlier and appropriate time without stalling the siting of these necessary City facilities.

Finally, the SON consists of an incomplete list of City facilities subject to the Fair Share criteria, but does not include other capital projects. The Charter should require the citywide SON to include additional information on capital investments such as property acquisitions, investments in streets, bridges or tunnels, making it easier to assess the district’s current needs or capacity with respect to infrastructure. Requiring this additional detail would improve the usefulness of the SON for long-term planning in New York City.

II. **ADDING TRANSPARENCY AND IMPROVING PROCESS FOR PRIVATE APPLICATIONS**

RECOMMENDATION: Create new early notice and community engagement requirements for Pre-Application Statements submitted by private applicants to the Department of City Planning (DCP) and create an opportunity for public input before ULURP certification.

Current law: Charter Section 197-c currently provides for notification to Borough Presidents, Community Boards, and City Council Members when an application is submitted and environmental review scoping begins. However, before an application is officially submitted, the DCP meets closely and regularly with prospective private applicants in an informal process to provide advice on shaping the application and determining what level of environmental review will be required. The applicant sometimes meets with ULURP stakeholders such as key Community Board members and the relevant Council Member(s) during this pre-application period to gauge support but these meetings are informal and not publicly noticed or even open to the public.

Reasons for proposed change: By the time the application is officially submitted, its characteristics are largely determined and CEQR scope rules often prevent substantial modifications, limiting the ability of Community Boards and other local stakeholders to influence the project. Amending the Charter to require public notice and a process to facilitate public input during the pre-application

process would allow more open and substantive public engagement with development proposals, facilitating modifications to improve projects' local impacts by giving applicants more clarity on local priorities and needs.

RECOMMENDATION: Increase transparency by requiring public online posting of application materials at the time of submission and a 60-day window between submission and certification.

Current law: Charter Section 197-c (b) requires DCP to forward a copy of all application materials it receives to the affected Borough President and Community Board within 5 days, but there is no requirement for posting application materials online. Charter Section 197-c (c) gives DCP the authority to certify that applications are complete and ready to proceed through ULURP but establishes no timeline for moving from submission to certification. In certain cases, applications have been certified shortly (within 2 weeks) after submission.

Reasons for proposed change: Current law allows applications to be submitted and certified almost simultaneously. Amending the Charter to require public online posting of application materials at the time of submission and a 60-day window between submission and certification would create a defined period of public notice before certification and increase the transparency and accountability in the process. This defined period of pre-certification sunlight would increase opportunities for public engagement and revision of applications while there is greater opportunity for flexibility than during the actual ULURP process.

RECOMMENDATION: Require that the City Planning Commission certify an application within 6 months if it is complete.

- **Require certification of applications within six months of submission if applications are technically complete and sound.**
- **If an application is not certified 6 months after submission, the CPC must state in writing what further information is necessary to complete the application and must certify within 60 days provided the applicant completes the application.**

Current law: Charter Section 197-c (c) gives DCP the authority to certify that applications are complete and ready to proceed through ULURP but establishes no timeline for moving from submission to certification. This section of the Charter also establishes a procedure for the affected Borough President to appeal to the City Planning Commission for certification if at least six months have passed since the date of filing. The Commission must respond within 60 days and either certify the application or state in writing what further information is necessary to complete the application. A vote of five members of the CPC can force certification.

Reasons for proposed change: Applicants should have certainty of the timeline for certification and should not have to wait indefinitely for certification after submission. It is a generally accepted best practice to provide certainty for the timeline of processing applications. The current Borough President appeal process is rarely used. The Charter should instead require certification of applications within six months of submission if applications are technically complete and sound. If an application is not certified six months after submission, the CPC must state in writing what further information is necessary to complete the application and must certify within 60 days provided an applicant completes the application.

III. IMPROVE THE BALANCE OF POWER IN THE LAND USE PROCESS

RECOMMENDATION: Authorize the Council to make a determination that a modification to a proposal is within the scope of an 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 prior to its elimination in 1989. 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 DCP serve as a watchdog over these modifications.

RECOMMENDATION: Authorize the Council to call up any proposed modification of a previously approved ULURP application by creating a new category in 197-c (a).

- Create a new ULURP category in 197-c (a): “any modification of a matter previously approved pursuant to this section [197-c] not otherwise subject to review pursuant to such section.”
- Authorize the Council to review any such matter pursuant to the call-up requirements of section 197-d (b) (3). Modifications would not include “substantial compliance” determinations made at the staff level at DCP or the Department of Buildings.

Current law: Charter Section 197-c (a) lists the categories of applications that are subject to ULURP. Currently there is no category under 197-c (a) requiring that proposed modifications to a previously-approved ULURP application be subject to Council call-up.

Reasons for proposed change: Creating a new category, as described above, would ensure appropriate public participation in the review of changes to a proposed project, for those projects where it is warranted. This would clarify the Charter and codify the Council’s position that CPC decisions subject to ULURP can only be modified by going through ULURP and ensure transparency and the appropriate level of public review of proposed project changes.

IV. TECHNICAL IMPROVEMENTS TO THE LAND USE PROCESS

RECOMMENDATION: Require that any decisions of the City Planning Commission that are related to matters subject to review by Council are also subject to review and action by the Council without the need for the Council to call up the related decisions (end “chair call-ups”).

Current law: Charter section 197-d (b)(1) prescribes which City Planning Commission decisions filed with the Council are subject to review and action by the Council, but does not state that related

(discretionary) decisions are also subject to review and action by the Council. Discretionary items need to be called up before a public hearing is held on the related mandatory and discretionary items.

Reasons for proposed change: The Charter should be amended to clarify that discretionary items related to mandatory items should be deemed “mandatory” for the purpose of land use review. This would allow the Council to hold early hearings on applications and allow applications to reach more than one cycle of City Council stated meetings if necessary.

V. OTHER IMPROVEMENTS

RECOMMENDATION: Provide for an annual stipend for the Commissioners of the Landmarks Preservation Commission.

Current law: Charter Section 3020 (3) currently requires that the members of the Commission other than the chair, serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

Reasons for proposed change: Serving as an LPC Commissioner is a major commitment of time. Revising the Charter to allow a stipend (as is practice on the City Planning Commission) would establish fair compensation for contributions of time and expertise by skilled professionals serving the public interest.

RECOMMENDATION: 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. Amending the Charter to clarify that decisions of the BSA on variances be made only upon a finding there is “substantial evidence” would ensure that a higher standard of evidence is considered in the BSA’s review and approval of variances as intended by the Zoning Resolution.

RECOMMENDATION: 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 LPC has a significant role in the land use regulatory processes in the City. All of the LPC's decisions—including the actions they may take and those which they choose not to take—should be conducted in public meetings, notice of which should be 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 a Request for Evaluation 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. The Charter should therefore be amended to require that decision which may affect the property rights of owners—including actions the LPC choose not to take—be conducted only after notice to the property owner.

RECOMMENDATION: Add professional expertise requirements for the City Planning Commission, requiring at least one appointee with a degree and/or professional expertise in historic preservation and at least three city planners.

Current law: Section 192 of the Charter requires for the City Planning Commission only that “[m]embers shall be chosen for their independence, integrity and civic commitment.”

Reasons for proposed change In contrast to other bodies such as the LPC, which requires “at least three architects, one historian qualified in the field, one city planner or landscape architect, and one realtor,” there are no professional expertise requirements for the City Planning Commission. Currently, only one member of the City Planning Commission has a master's degree in city/urban planning. The Charter should therefore be amended to require at least three city planners and one historic preservation expert would elevate the level of public discussion at the Commission and provide a valuable sounding board for Department of City Planning (DCP).

