



CITIZENS UNION OF THE CITY OF NEW YORK

2010 CITY CHARTER REVISION RECOMMENDATIONS

Increasing Avenues for Participation in Governing and Elections in New York City

June 30, 2010

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Table of Contents

I.	New York City – 1989 and Today	p. 3
II.	The History of the City Charter Changes	p. 5
III.	Executive Summary	p. 7
IV.	Methodology & Process for Charter Revision Recommendations	p. 11
V.	Summary Listing of Recommendations	p. 12
VI.	Key Findings and Recommendations	p. 24
	a. Ensure Checks and Balances	p. 25
	i. Enhance the Powers of the Public Advocate and Borough Presidents	p. 26
	ii. Independent Budgets for the Public Advocate, Borough Presidents and the Conflicts of Interest Board	p. 29
	iii. Strengthen the Powers of the Civilian Complaint Review Board	p. 33
	iv. Make Permanent the Commission to Combat Police Corruption	p. 35
	v. Strengthen Community Boards	p. 37
	vi. Add Representation to the Franchise and Concessions Review Committee	p. 42
	vii. Add Representation to the Board of Standards and Appeals	p. 44
	viii. Strengthen City Council Participation in Development of the City Budget	p. 45
	b. Open Elections	p. 48
	i. Establish a “Top-Two” Election System for Municipal Offices	p. 49
	ii. Require Disclosure of Independent Expenditures	p. 57
	iii. Increase Ballot Access by Reducing Petitioning Signature Requirements	p. 63
	iv. Integrate the Voter Assistance Commission Within the Campaign Finance Board	p. 64
	v. Reform City Council Redistricting	p. 66

c. Strengthen Accountability	p. 67
i. Require Mandatory Referenda for Laws Passed by Voter-Initiated Referendum	p. 69
ii. Change Appointments to the Conflicts of Interest Board	p. 72
iii. Change Term Limits for City Council and Citywide Officials	p. 74
d. Protect Integrity	p. 76
i. Ban Council “Lulus” or Legislative Stipends	p. 77
ii. Changes to Council Voting on Salary	p. 78
iii. Enhance Disclosure of Outside Income Earned by the Council	p. 80
iv. Transfer Lobbying Reporting and Enforcement to the Campaign Finance Board	p. 83
v. Codify Provisions Enhancing Transparency and Equity of Discretionary Funding	p. 85
vi. Reform the Uniform Land Use Review Procedure	p. 87
vii. Create a Process to Integrate 197-a Plans into Long-term Planning	p. 90
viii. Consider the Creation of an Office of Inspections	p. 92
e. Increase Transparency	p. 94
i. Reform the Mayor’s Management Report	p. 95
ii. Transfer the Responsibilities of the Commission on Public Information and Communication to the Public Advocate’s Office	p. 97
iii. Expand Public Access to Government Data, Information and Reports	p. 99

VII. Appendix

VIII. Footnotes

I. NEW YORK CITY – 1989 and TODAY

New York was once seen as a city that was ungovernable.

In 1988 the City of New York embarked on an ambitious effort to change the form and function of its government. Though New York was a better city in the late 1980s than it was in the mid-1970s, having been pulled out of near bankruptcy with strong fiscal oversight provided by the state and the timely leadership of then Mayor Ed Koch, the City was hampered by a partisan, deal-driven and borough-dominated form of government that gave every borough, regardless of its population, one vote in budget and land use decisions. This arrangement was challenged in the courts and ultimately held by the United States Supreme Court to violate the principle of one person, one vote required by a representative democracy. In response, the City undertook a comprehensive Charter Revision process, and, in 1989, the voters approved a major revision of the structure of city government.

New York in 2010 is unrecognizable from what it was in 1989. Then it was a city of 7.3 million residents of which 28% were foreign born¹ and 43% were non-Hispanic white.² Murders numbered an unacceptable 2,262 and robberies were over 100,000.³ The high school graduation rate was an alarming 45%.⁴ City government had a budget of \$24.6 million⁵ and employed 247,469 workers.⁶

Today, New York is a city of 8.25 million residents and growing⁷. Its residents speak as many as 800 different languages⁸, with 36% of the population foreign born⁹ and 35% non-Hispanic whites.¹⁰ Murders have dropped to a record low of 471, with robberies just under 19,000.¹¹ The high school graduation rate has climbed to 66%.¹² The budget of the city government stands at \$60 million.¹³

The New York City Council, previously a body of 35 rather powerless individuals in 1989, was expanded to a body of 51 who have a greater voice in government decision-making which, for the first time in its history, is now comprised of a majority of people of color.¹⁴ Our legislators now more closely mirror the demographic makeup of the City's residents.

The significant structural changes brought about by the 1989 city charter revision led to a stronger form of mayoral government balanced by a more representative and increasingly important City Council. The 1989 Charter has largely worked, with a stronger mayor's office resulting in a city managed more responsibly, problems addressed more thoughtfully, and city services delivered more reliably, as each mayor has better utilized the powers of the office by building upon the experience and work of his predecessor. In doing so, Mayors David Dinkins, Rudolph Giuliani and Michael Bloomberg used this new structural framework to make city government function more effectively.

Yet major changes, no matter how successful, bring unintended consequences and there is always room for improvement. Now, with the benefit of twenty years of experience, it is time to update our City Charter and recalibrate the structure it provides for city government and the balance of power among the various elected officials and the New Yorkers they represent.

Many New Yorkers feel good about the city in which they live thanks to the way it has been led and managed. It is safer and more economically vibrant. Its schools are improving. Its parks are more plentiful and appealing to use. Its government is more open and accessible and functions more effectively and soundly. An increasingly successful public campaign finance system has opened up pathways for average citizens to have the necessary resources to run for local office which has resulted in a more diverse mix of elected representatives.

And yet for a city that is as wealthy and prosperous as New York, revitalization remains elusive for some communities. Affordable housing is still out of reach for far too many New Yorkers as needed development has, in some instances, displaced low and middle-income families from their neighborhoods. The rate of homelessness remains stubbornly high. Our neighborhoods are increasingly threatened by a homogeneity that undercuts the uniqueness that once defined them.

Increases in labor and pension costs threaten to cripple the City's budget at a time when tax receipts are declining. Rising incidents of stop-and-frisk searches have led to a record number of complaints against the police, yet the system of redress available to New Yorkers under the Civilian Complaint Review Board lacks public confidence because the police department controls too much of the disciplinary process.

Far-reaching reforms in our elections are urgently needed to end the closed partisan management of our elections and open up the process of voting to a greater number of eligible New Yorkers.

One of the reasons the term limits reversal engineered by Mayor Bloomberg and the City Council in 2008 continues to resonate with New Yorkers is because it crystallized the disconnect they feel from city government when it fails to meaningfully engage them before making its decisions. In the case of term limits, a decision was made without the consent of New Yorkers who twice voted for them.

Though prompted in part by a need to revisit and settle the issue of term limits, the current charter revision process provides an opportunity to create an even better form of local government. The Charter Revision Commission should retain the basic fundamental structure of a strong mayoralty that has led to the city's resurgence in the last two decades. However, it must also seek to enable the city's diverse population to have a greater level of input into how decisions that affect all New Yorkers are made, without undermining the effective and efficient management of the City and the delivery of its services. It must strengthen the integrity and transparency of government institutions so that public confidence is greater, and so that New Yorkers believe that participating in governmental decision-making is an endeavor worthy of their time and effort.

I. THE HISTORY OF CITY CHARTER CHANGES

The New York City Charter is the framework for how our city is governed, laying the foundation for how our government operates and the roles and responsibilities of our elected officials and city departments. The City Charter has been revised countless times, and is a living document that reflects the form and priorities of our government over time.

The City Charter can be changed in one of four ways:

1. by local law passed by the city council and signed by the mayor;
2. through direct referendum initiated by the voters;
3. by law passed by the state legislature and signed by the governor; or
4. by the appointment of a charter revision commission that has the authority to place referenda on the ballot to be passed by the voters.

Charter revision commissions can be appointed by the mayor or the City Council, or a question to create a charter revision commission can be placed on the ballot through a voter-initiated petition, which would detail an appointment structure.

When a charter revision commission is appointed, it is charged with reviewing the City Charter in its entirety, and must hold public hearings and issue a draft and final report.¹⁵ Its proposals become effective only if approved by the voters.

The first charter for “Greater New York” was created in 1898, which established the Board of Estimate, adding to the already established Board of Aldermen. The Board of Aldermen was replaced by the City Council in 1938. The Board of Estimate was ruled unconstitutional by the U.S. Supreme Court in 1989, as it violated the principle of “one person, one vote,” because it gave each borough the same voting power regardless of differences in population.¹⁶

The 1989 Charter Revision Commission, which was created to reconfigure city government in the aftermath of the Supreme Court ruling, was the last wholesale review of the City Charter. The 1989 Charter Revision Commission re-envisioned the city governance structure we have today, creating a strong mayoralty and the current expanded and empowered City Council, which was given responsibility for approving the city budget, authority over the Planning Commission in land use decisions, and a greater role in franchises and contracts. In addition, the Council was provided authority over mayoral agencies that report to the City Council through oversight hearings. The mayor maintained power over executive agencies, as well as the powers to appoint commissioners, to propose the city budget, and to make city revenue estimates. The Office of Borough President, once a part of the Board of Estimate with a legislative role, became more of an administrative position, sometimes relegated to that of borough cheerleader. The position of city council president was recreated as today’s public advocate. The 1989 Charter Revision Commission represents to many a model for its comprehensiveness given its wholesale review of city government.

The City Charter has been amended by referendum or local law more than one hundred times since 1989. More than six charter revision commissions have been appointed by city mayors in the past ten years. After each of those commissions, referenda were placed on the ballot. Mayor Giuliani in 1998 appointed a commission that proposed a referendum item prohibiting candidates for local office who were eligible to receive public matching funds from receiving corporate donations. The proposal was criticized by good government organizations and failed to gain the support of the Campaign Finance Board. During that time, the City Council had planned to place a voter referendum on the ballot to

ban the use of taxpayer money for what was to be the new Yankee Stadium. Mayor Giuliani's appointment of a commission to address campaign finance and his use of a provision in state law that allows a mayoral referendum to bump any other referenda from the ballot, led to legislation with Citizen Union supports but were also seen as moves to stop the city from placing the Yankee Stadium referendum on the ballot.

The next commission called by Mayor Giuliani in 1999 sought to change the process to fill a mayoral vacancy. The commission proposed a special election to be held within sixty days of a mayoral vacancy, rather than having the public advocate finish the entirety of the mayor's term, as specified in the City Charter at the time. This too was seen as politically motivated to prevent then Public Advocate Mark Green, a political adversary of Mayor Giuliani's, from finishing the Mayor's term if he ran for U.S. Senate. The proposal, along with fourteen others placed in an omnibus question, was rejected by the voters.

In 2001 Mayor Giuliani called another charter revision commission to look at five different issues. They included making the Administration for Children's Services and the Office of Emergency Management permanent agencies and merging the Departments of Health and Mental Health. These proposals were handily approved by the voters in the wake of the attacks of September 11th.

Mayor Bloomberg appointed his first Charter Revision Commission in 2002. The main issues it addressed were whether to eliminate partisan municipal elections and remove the public advocate from the line of succession to the mayor. The commission was called so late in the year, however, that there was strong criticism of the lack of time available to deliberate any potential changes to the City Charter. The commission focused solely on mayoral succession and recommended that a non-partisan special election be held within sixty days of a mayoral vacancy. The proposal to remove the public advocate as the successor to the mayor was rejected, though the creation of a non-partisan special election to fill a mayoral vacancy was approved. The commission was reappointed by the Mayor for a subsequent year in 2003.

Mayor Bloomberg appointed another Charter Revision Commission in 2003 to propose to conduct municipal elections on a non-partisan basis. This proposal was rejected by the voters in a low turnout election. Two years later, a 2005 Charter Revision Commission was appointed to address fiscal stability, judicial reform, and administrative efficiency and accountability. The commission recommended certain budget reporting rules, possible changes to the administrative judicial system, and new rules to increase agency efficiency, effectiveness and accountability. The proposals were accepted by the voters, resulting in the creation of an ethics code for administrative law judges and the extension of fiscal management practices established during the 1970s.

These previous charter revision commissions created the city structure we have today. For a review of these charter commissions and the changes they made, see Appendix A. The narrowly focused nature of commissions appointed since 1989 highlights the need for a comprehensive review of our City Charter once again to ensure that our living city constitution reflects the intent and desire of New Yorkers and how we believe our government should be structured.

III. EXECUTIVE SUMMARY

This City Charter revision process provides New Yorkers with an historic opportunity to take stock of the past twenty years of city government and consider meaningful prospects for greater reform for our local democracy. The City Charter Commission of the City of New York appointed in February by Mayor Bloomberg should be guided in that task by creating not necessarily more government, but rather government that is more accessible, transparent, and accountable to the citizens it serves.

It is with these principles in mind that Citizens Union presents its current recommendations on city government's form and function as represented in the City Charter. In making its recommendations, it looks broadly at five major objectives:

1. Ensure Checks & Balances
2. Open Elections
3. Strengthen Accountability
4. Protect Integrity
5. Increase Transparency

Citizens Union approaches its own broad evaluation of city government and recommended City Charter changes with an ardent belief that a strong mayoral form of government has been good for the City of New York. It has contributed to the revival of New York City as a vibrant urban center for its residents, neighborhoods and communities, commerce and business, and trade and tourism. But Citizens Union also believes that in a city that is as large and diverse as New York, there needs to be more avenues for shared decision-making and local input

Improving the form and function of city government to enhance different voices without diminishing the power of a strong mayoral form of city government is no small challenge, but it is one which Citizens Union believes is critical for the continued progress of our city. It is this challenge that frames Citizens Union's set of recommendations.

No radical makeover is needed in our city government, but some fine tuning is in order. In 1989, the powers of the borough presidents were curtailed and the office of council president reconfigured into the less influential Office of Public Advocate. We believe the offices of borough president and public advocate can be valuable offices, but need to be better defined and supported in order to justify their continued existence.

The City Council has become a more deliberative and serious legislative body, but given its importance in representing neighborhoods it should be provided an appropriate, but limited, increase in authority and responsibility for governing this city.

While 311 is a welcome resource providing greater access to city information, there remain ways to make government more accountable and transparent in its operations. Further coordination is needed to better facilitate the public's access to government information, particularly given all the advances made in information technology. The internet did not functionally exist when the 1989 Charter Revision was written.

New York needs election reform. The number of voters participating in the elections that matter most is in decline, and we need to reengage them. While democratic practice and party affiliation have

changed dramatically over the past 60 years, elections are conducted in much the same way as they were in 1950. Closed partisan primaries determine the winners of most local offices, excluding too many New Yorkers from full participation in the elections that matter most. Citizens Union believes that we can increase voter participation and politicians' accountability by opening up the election process and empowering a greater number of eligible voters to participate in choosing their representatives in elections that matter.

New York City needs to find a better way to conduct land use decision-making and planning that is more inclusive and sensitive to the fabric of its neighborhoods and communities, while still encouraging and supporting the kind of economic development that this city needs in order to thrive and maintain its appeal to businesses, current residents, and immigrants. This charter revision process has the opportunity to provide this greater balance, but not enough time exists to do a full enough review that is fair and balanced to the interests of all which is why we make only a few but necessary recommendations in this arena.

In the report that follows, Citizens Union makes forty-nine specific and distinct recommendations that are summarized into the following seventeen broad recommendations.

They are as follows:

1. Maintain a strong Office of the Mayor. Preserve the office's authority to set revenue estimates for the city budget and appoint commissioners without council approval.
2. Keep the Office of Public Advocate and assign it greater authority and provide it with an independently funded budget. Give the public advocate the power to make one appointment each to the Franchise and Concessions Review Committee, the Board of Standards and Appeals and the Conflicts of Interest Board. Empower the public advocate to request and receive documents from agencies without having to go through a city council committee. Dissolve the Commission of Public Information and Communication and transfer its major duties into the public advocate's office, giving him or her a greater level of responsibility for expanding public access to government data, information and reports.
3. Keep the Offices of Borough President and assign them greater authority and provide them with an independently funded budget as well. Give the borough presidents the power to require the appearance of borough commissioners at monthly interagency meetings led by borough presidents. Allow them to share an appointment to the Board of Standards and Appeals, similar to the arrangement they presently have on the Franchise and Concessions Review Commission.
4. Make the first primary election open to all eligible voters, regardless of party status, so that every registered voter can participate in the election that is often the most determinative of who is elected to office. The top two candidates would then move onto the general election in which all eligible voters would again vote, as in the system recently selected by California voters and currently in place in Washington State. Candidates would have the option of listing their party affiliation and political parties would be allowed to endorse a party candidate.
5. Increase candidate access to the ballot by reducing the number of signatures needed to secure a ballot line and strengthen campaign finance disclosure by requiring independent expenditure campaigns to be reported to the Campaign Finance Board.

6. Keep the term limits to three four-year terms for members of the city council and, decrease the term in office for the three citywide and five borough presidents to no more than two four-year terms.
7. Condition the effectiveness of any city council charter amendment that would alter or appeal a voter-installed provision on subsequent voter approval via referendum.
8. Create a new Election Integrity and Lobbying commission housed within the current Campaign Finance Board. The new entity would have responsibility for the city's campaign finance program, voter assistance activities currently under the purview of the Voter Assistance Commission, and enforcement and oversight of the city's lobbying law and reporting requirements currently the responsibility of the city clerk.
9. Grant greater authority and responsibility to the City Council in the decision-making process by requiring the City to more narrowly define a "program" and provide for smaller units of appropriation. Require the mayor to issue a final non-property revenue projection prior to the start of council hearings on the executive budget allowing for more integrity in the budget negotiating process.
10. Lulus should be banned and future compensation increases should only occur for the prospectively elected officials and not those presently serving. The discretionary funding reforms should be enshrined in the charter and distributed equally among all fifty-one members of the council, regardless of relationship to the speaker or party. Council members should be allowed to continue to earn outside income but only if greater disclosure of financial activity is required to ensure no conflicts of interest or self-dealing are occurring by maintaining a job outside the council.
11. Improve the independence of ethics oversight by giving each the comptroller and public advocate an appointee to the five-member Conflicts of Interest Board (COIB) with the mayor having the power to appoint the other three members, down from the five. All five would still need to be confirmed by the city council. Provide independent budgeting for the COIB tied to a percentage of the Law Department since it serves as an ethics watchdog over the very same officials who determine the size of its budget.
12. Improve public confidence in public safety and oversight of the police department by granting the Civilian Complaint Review Board the power to prosecute all cases it substantiates and make permanent the Commission to Combat Police Corruption, empowering it with subpoena authority.
13. Improve the independence of the council redistricting process by having the non-partisan Campaign Finance Board appoint five of the fifteen commissioners with the City Council and the mayor each appointing five. The chair and the executive director would be appointed by the Campaign Finance Board.
14. Strengthen the 59 local community boards by providing them with an independently funded budget and on-call professional planning staff. Require a more rigorous process of selecting members to the community boards that allows for a more professional approach to recruitment, retention and service.

15. Begin reforming the process of making land use and zoning decisions by modestly starting with changing the fair share provisions of 1989 that was undercut by rulemaking, standardizing responses from the various groups involved in ULURP, and creating a stricter process for integrating 197-a plans into the strategic planning and land use decisions of the city.
16. Improve the information contained within, and the use of, the Mayor's Management Report by making it complement better with the Citywide Performance Report.

The 2010 City Charter Revision Commission (the Commission) has wisely chosen to hold a number of open public hearings and to solicit public testimony of expert witnesses followed by additional public comment. Making the hearings accessible via webcast has provided a new means of participation for those New Yorkers who are not able to attend in person.

The suggestions put before the Commission are many, and the decisions to be made by the Commission and the voters are important to the continued success of our city. Because these decisions are so important, Citizens Union believes that the Commission should not put all that it seeks to accomplish before the voters in 2010. Rather, it should focus on what is needed now and postpone other matters so that they can receive for greater public review and consideration in time for their inclusion on the 2012 ballot. We feel that the off-cycle 2011 election, where only judgeships will be on the ballot, will have too low a turnout to present Charter proposals to a sufficiently large enough number of New Yorkers.

IV. METHODOLOGY & PROCESS FOR MAKING CHARTER REVISION RECOMMENDATIONS

In developing our charter revision recommendations, Citizens Union explored a wide range of issues by engaging in numerous meetings and holding substantive discussions with both internal and external sources.

Citizens Union tapped into its internal collective experience and wisdom of its members serving on its Municipal Affairs Committee (MAC) while also creating a special Charter Revision Task Force (the Task Force) consisting of Citizens Union Board members and other experts in city government. Citizens Union's Board, including members steeped in city governance, finalized positions developed by the Task Force and the MAC.

The MAC is a longstanding Citizens Union public policy committee consisting of about thirty Citizens Union members that discuss and recommend policy positions on issues affecting New York City. In recent years, it has looked closely at the issues of mayoral control of the city school system, land use, funding for the MTA and congestion pricing, political reform, and public oversight of police misconduct. For the purpose of making recommendations for charter revision, the MAC examined ethics and lobbying oversight, potential laws to subject to mandatory referendum, land use and zoning, and compensation and the city council. In vetting these issues, the MAC divided into subgroups to engage related stakeholders in assessing concerns about current structures and processes of government, and in devising solutions to those problems. As part of this analysis, MAC members met with Manhattan Borough President Scott Stringer; Gail Benjamin, the director of the City Council's Land Use Division; Steven Spinola of the Real Estate Board of New York; the Pratt Center for Community Development; Professor Vicki Been of the Furman Center at New York University; and the Municipal Arts Society. Discussions also were held between MAC members or Citizens Union staff with the New York City Bar Association, the Conflicts of Interest Board, Campaign Finance Board, the Department of Investigations, New York Public Interest Group, New York City Environmental Justice Alliance, former New York City Planning Commissioner Stuart Pertz, staff of Councilmember Gale Brewer, and staff of Councilmember and former community board district manager James Vacca. The MAC held monthly meetings to deliberate recommendations formed by its subgroups.

Citizens Union also convened a Charter Revision Task Force (Task Force) consisting of former charter revision commissioners and other esteemed experts in city government. The Task Force met eight times to consider recommendations provided by Citizens Union staff and proposals forwarded from the MAC. In considering these recommendations, the Task Force sought advice and input in meetings with Public Advocate Bill de Blasio, former Public Advocates Betsy Gotbaum and Mark Green, Comptroller John Liu, 1989 Charter Commission Chair Fritz Schwartz, and 1989 Charter Commission Executive Director Eric Lane. Discussions also took place between Task Force members or Citizens Union staff and senior staff of the City Council, the Independent Budget Office, the Department of Investigation, the Campaign Finance Board, the Voter Assistance Commission, New York State Board of Elections, Board of Elections in the City of New York, and county election officials in other municipalities.

Citizens Union staff attended every public hearing and all but one issue forum conducted by the Charter Revision Commission, reporting on testimony provided by the public and experts to the MAC and Task Force that further shaped the formation of Citizens Union's recommendations for charter revision.

V. SUMMARY LIST OF RECOMMENDATIONS

I. ENSURE CHECKS AND BALANCES

A. *The Office of Public Advocate*

- i. Continue the Office of Public Advocate and grant it some additional powers, responsibilities and appointments as presented throughout this report.
- ii. Empower the public advocate to request and receive documents from city agencies. This should be achieved in the City Charter by mandating that agencies provide documents to the public advocate when requested, rather than requiring the public advocate go through the relevant City Council committee. Exceptions to this currently in the City Charter, namely those documents for which a claim of privilege may properly be raised or that are being used by the Department of Investigations for use in an investigation, should be maintained as indicated in Chapter 2, Section 24(j) of the City Charter.

B. *The Office of Borough President*

- i. Continue the Office of Borough President and grant it additional appointment authority as presented in this report.
- ii. Empower borough presidents to require the appearance of borough of city agencies to attend to monthly interagency meetings led by the borough presidents. This should be done through an amendment to Chapter 4, Section 82 of the City Charter.

C. *Independent Budgets for the Public Advocate, Borough Presidents and Conflicts of Interest Board*

- i. Set the annual funding of the public advocate's office between five and seven percent of the City Council's budget. Because mayoral staff can be transferred to lower the perceived funding level of the mayor's office, the council's budget makes it a better peg to which to link the public advocate's budget. In FY 2010, the council budget was \$50,882,967. Five to seven percent of the FY2010 budget would create a budget of between \$2,544,148 and \$3,561,807 for the public advocate's office.
- ii. Set the operating budgets for the borough presidents' offices, like the public advocate's office, to the City Council's budget. In FY 2010, the City Council's budget was \$50,882,967. Making the operating budget 50% of the City Council's proposed FY2011 budget of \$52,882,967 million would yield \$26,441,483 for *all* borough presidents, which would then be divided among the five officeholders. This is \$328,000 less than the peak level for all the borough presidents' budgets back in FY2002, but \$2,243,112 more than their funding in FY2010.

The expense budget borough allocation and the capital budget borough allocation in the City Charter serve as a model for dividing the budget allocation among *each* of the borough president's offices. Factors like the share of the total land area of the City, total population below 125% of the poverty level, and share of the total population of the City should be used to create a formula allocating the total operating budget among the five borough presidents.

- iii. The Conflicts of Interest Board should also receive an independent budget that is pegged to the City Law Department. While Citizens Union has recommended independent budgeting for some city officials, COIB is the only agency for which it makes this recommendation. COIB is unique in that it oversees ethics across all agencies and elected officials' offices. Given this oversight role, it should not have its budget determined by the very people who are subject to its scrutiny and judgment. This distinct mission separates the COIB from other agencies seeking similar budget independence and justifies the request as being fundamental to its overarching function in the City Charter.

The COIB budget should not be linked to the Department of Investigation (DOI), as that does not remove the conflict of interest that is inherent in the Council and the Mayor determining the funding of bodies that oversees their conduct. Nor should it be linked with the city expense budget, which would likely lead to significant increases in the COIB's budget every year.

D. *Strengthen the Powers of the Civilian Complaint Review Board*

- i. Empower the Civilian Complaint Review Board (CCRB) to file and handle the prosecution of complaints substantiated by the CCRB with the recommendations of charges and specifications, instead of NYPD lawyers from the Department Advocate's office. The CCRB should be given full authority and responsibility for developing its own team of qualified and experienced lawyers to litigate the substantiated cases. Using the City Charter revision process to effectuate such a change would allow the public to decide on this issue of great concern, particularly within communities where police-community relations have been or continue to be less than optimal. Such a change would amend Section 440 of Chapter 18-A of the New York City Charter.
- ii. Enhance the CCRB's authority to permit it to initiate an investigation into reported or known incidents of police misconduct within its jurisdiction in the absence of a complaint. Such authority would track the authority of the Police Department's Internal Affairs Bureau. With this authority, the CCRB would no longer be forced to remain on the sidelines when there is a notorious or sensitive incident that has become the focus of community and police concern. Such a change would amend Section 440 of Chapter 18-A of the New York City Charter.
- iii. Empower the CCRB to investigate complaints filed by the public against members of the police department's school safety division, a unit of public safety officers under the supervision and control of the Police Department. While there have been differing views concerning the role of the school safety division officers in the City's schools, there should be no doubt or confusion as to how members of the public who believe they have been aggrieved by a school safety officer can file a complaint. Such a change would amend Section 440 of Chapter 18-A of the New York City Charter.

E. *Make Permanent the Commission to Combat Police Corruption*

- i. Establish the Commission to Combat Police Corruption (CCPC) as a permanent commission in the City Charter under a new section of law. Mayor Bloomberg's reauthorization of the CCPC notwithstanding, the Commission remains a temporary entity. The City Council, on at least two occasions, thought that the corruption problem identified by the Mollen Commission was sufficiently serious so as to merit the establishment of the CCPC as a City

Charter agency. Its reauthorization could also be interpreted as a statement of continuing concern about the problem.

- ii. Empower the CCPC to issue subpoenas when appropriate. The NYPD has not been as cooperative historically as it should be in responding to requests for information from the CCPC, primarily because the CCPC has no power to back up its request through subpoena.

F. *Strengthen Community Boards*

- i. Community boards should receive an independent budget allocation that is not at the discretion of the mayor or City Council, which could potentially diminish community input in a very centralized system of governance. This independent budgeting will empower community boards to carry out their charter-mandated responsibilities as an advisor on land use, planning, and budgeting. Community boards should be provided enough funding to be able to hire a land use and/or budgetary expert that could also be shared with other boards.

The budget for community boards should be linked to that of borough presidents' offices, which, as recommended above, should be linked to the City Council's budget. Community boards in total should receive 65% of the borough presidents' allocation, with each board receiving an equal amount in addition to allocations to cover offices, electricity and heat, which would still be determined through the regular budget process. Sixty-five percent of the FY2010 borough presidents' allocation would have provided the boards in total with \$874,000 more than in FY2010, or \$14,813 more per board in addition to revenues for offices, electricity and heat (which are not included in this formula for an operating budget). The additional revenue from the operating formula coupled with a separate allocation for offices, electricity and heat should provide for the hiring of staff with expertise on land use.

- ii. A mechanism should be created that provides an available pool of urban planners outside of the borough presidents' offices that can be accessed by community boards. This is critical to provide meaningful and informed input on land use and to develop 197-a plans. These urban planners should be connected to one or more boards, thereby establishing relationships with those boards and the larger communities they serve. While housing urban planners with the borough presidents is aligned with their current responsibilities to "establish and maintain a planning office...for the use, development or improvement of land located in the borough" under Section 82 of Chapter 4 of the City Charter and to "provide training and technical assistance to the members of the community boards" it becomes problematic when the borough president may disagree with a community board on a land development issue. Given their distinct roles in the Uniform Land Use Review Process (ULURP) and instances in which borough presidents have sought to remove community board members who have not aligned their votes with the sentiments of the borough presidents on land use proposals, it is essential that the independence of the community boards, and the urban planners that serve them, be maintained.
- iii. Reform the process for selecting members to community boards. Community boards are too often plagued by vacancies and an insular culture. To professionalize and open the boards to the communities they serve, a formal standardized and transparent process should be created for filling community board positions, as has been done by Manhattan Borough President Scott Stringer. Language should be added to the City Charter that:

- a. Requires written applications and interviews of all appointees or reappointees by the borough presidents;
- b. Establishes a deadline of 30 days for filling vacant positions; and
- c. Requires borough presidents to issue an annual report detailing their outreach efforts, whom they notified of the process, methods used and the demographics of those serving on community boards in comparison to the communities served by the boards.

G. *Add Representation to the Franchise and Concessions Review Committee and Board of Standards and Appeals*

- i. Expand the Franchise and Concessions Review Committee (FCRC) from six to seven members, adding a designee of the public advocate to address concerns that the franchise and concessions process is too centralized and that the voices of consumers or other affected groups are not given enough weight during negotiations. The public advocate’s representative would be a natural advocate for consumer issues and constituent groups citywide given the office’s ombudsman role. This expansion will preserve a majority appointed by the mayor or representing mayoral agencies, while providing three votes for appointees of other elected officials (the Comptroller, the Borough Presidents, and the Public Advocate). It will also create an odd number of votes on the FCRC.
- ii. The appointment process for the Board of Standards and Appeals should include additional representatives from the borough presidents and the public advocate. Specifically, the BSA should be expanded to include one appointee from the public advocate and one appointee from each of the five borough presidents. For a given ruling, the voting BSA members would consist of seven members, five appointed by the mayor, one by the public advocate, and one representing the borough impacted by the ruling, as is the practice with the Franchise and Concessions Review Committee. Members of the BSA from the mayoral appointments also should now be required to possess professional expertise, with two of the five appointees being architects, and one of the five being an urban planner. Additional members to the BSA should be put in place immediately while professional expertise should be phased in as mayoral appointees are replaced.

H. *Strengthen City Council Participation in Development of the City Budget*

- i. There should be greater transparency into the contents of the budget before it is voted on by the City Council. To that end, “program”, along with “purpose”, “activity” and “institution” needs to be defined in the City Charter (Chapter 6, Section 100) in relation to units of appropriation so that units of appropriation will be made more narrow and finite rather than continue as catch-all categories reflecting numerous programs or an entire agency’s budget.
- ii. Create maximum thresholds for units of appropriation that are a proportion of agency spending. For example, require that one unit of appropriation can’t be greater than the majority of an agency’s budget. This will result in greater transparency as it relates to agency spending by creating more specific units of appropriation. Agency flexibility in moving money from one unit of appropriation to another under new narrower, defined units of appropriation, will be preserved as there is currently in the City Charter (Chapter 6, Section 107(b)) a minimum threshold of 5 percent of agency spending or \$50,000, whichever is greater, for the transfer to be considered a budget modification and trigger notification of the council.

- iii. Eliminate the distinction between units of appropriation for personnel and other than personnel services (OTPS). Units of appropriation should reflect spending on particular programs, purposes, or activity, and include both personnel and other than personnel services.
- iv. Require the release of final non-property revenue projections by the mayor and the Office of Management and Budget prior to the beginning of Council hearings on the executive budget (typically May 5th) and before the adoption of the executive expense budget. Currently this is done by the Office of Management and Budget on June 5th, after the spending proposals are known, rather than providing the non-property revenue projections in advance to determine what the appropriate spending levels should be. This would enable the Council to know part of the revenue picture (other than property taxes) before indicating its priorities related to the expense budget.

II. OPEN ELECTIONS

A. *Establish a Top-Two Election System*

- i. Establish a top-two election system, similar to the one that is in place in Washington State, Louisiana, and Wisconsin for municipal and judicial elections, and was recently passed by voters in California. This would replace the current closed partisan primary system with a more open alternative consisting of two rounds of voting. In the first round, all candidates regardless of party affiliation and including independents would run, and all registered voters would be eligible to choose among all the candidates. The top two vote-getters would then advance to the general election or “round two”, with the voters again casting ballots to determine the ultimate victor. This is not the same as non-partisan elections. Candidates would have the option of indicating their party registration (or unaffiliated status) next to their name on the ballot. This identifier would provide voters with a sense of the candidate’s values and political platform. Moreover, party organizations would be free to endorse and campaign for candidates.

B. *Require Disclosure of Independent Expenditures*

- i. Require disclosure of independent campaign expenditures, including top donors, by organizations and entities engaging in campaign activities designed to influence the outcome of city elections, to be implemented by the Campaign Finance Board. Following the *Avella v Batt* ruling in 2006 and the recent U.S. Supreme Court ruling in *Citizens United*, independent expenditures by party committees, corporations, unions, interest groups, and wealthy individuals will likely continue to grow. There is a need for disclosure of independent expenditures, including the dates, sources, amounts and beneficiaries of these expenditures. This would inform voters and the citizenry of the indirect supporters of various candidates running for office.

C. *Increase Ballot Access by Reducing Petitioning Signature Requirements*

- i. Reduce the barriers for candidates attempting to get on the ballot by decreasing the number of signatures candidates need to collect. Lowering the signature requirement would likely enable more candidates to get on the ballot because they could better withstand aggressive challenges from other candidates who seek to prevent them from getting on the ballot to

avoid a competitive election. This would also limit the confusion for those collecting petitions. Due to the large number of signatures currently required, signatures are often collected for more than one candidate and include combinations of local and state offices. Lowering signature requirements would not change the requirements for who can sign a petition and would eliminate the need to memorize complex sets of rules while reducing the legal gamesmanship that often attempts to block legitimate candidates from the ballot based on a technicality. Additionally, Citizens Union will continue to push for greater reforms to ballot access at the state level to ensure there is an even playing field and consistency among local and state elections.

D. Integrate the Voter Assistance Commission within the Campaign Finance Board

- i. Integrate the Voter Assistance Commission and its voter education efforts within the Campaign Finance Board (CFB). Given the VAC's persistently low budget, it makes sense, particularly during difficult fiscal times, to fold the VAC into the CFB given common elements of their mission and a history of collaborative work and shared governance. This should enable the CFB to leverage its larger size, budget and presence to better achieve the goal of engaging and involving voters in the democratic process. Through its experience with the Voter Guides, planning and hosting debates, and as an advisor to VAC through its board, the CFB is positioned to expand upon its current experience in voter engagement to address the dismal and declining voter turnout in the city. This will prove to be an important focus of its work during years when municipal elections are not held and workload with respect to campaign finance diminishes.

E. Reform City Council Redistricting

- ii. Change the appointments to the districting commission drawing council district boundaries so that 3 members are appointed by the council delegation of the majority political party, 2 members are appointed by the council delegation of the minority political party, 5 members are appointed by the mayor with a maximum of 3 from the same party, and 5 members are appointed by the Campaign Finance Board (The CFB itself consists of 2 members not of the same party appointed by the council speaker, 2 not of the same party appointed by the mayor, and the chair appointed by the mayor in consultation with the speaker for five-year staggered terms). The apportionment commission should strive to reflect the gender, racial, ethnic, language, and geographical composition of the city and not include officials and employees of the city or city agencies, registered lobbyists, employees of registered lobbyists, and officers of any political party. Members of the apportionment commission can be removed by their appointing authority for cause.
- iii. Require the CFB to designate the Chair of the appointing commission from among its five appointees, as well as appoint the Executive Director of the apportionment commission
- iv. Amend section 52 specifying criteria for drawing a council district plan:
 - a. Reduce the variance between the most populated and least populated districts to 1 percent of the average population for all districts. Maintain the provision specifying that "any such differences in population must be justified by the other criteria set forth in this section.";
 - b. Replace section 52(f) with "council districts shall not be drawn with an intent to favor

or oppose any political party, an incumbent legislator, or any previous or presumed candidate for office.”; and

- c. Require the number of apportionment commission signatures to adopt a council district plan to be a minimum of 11 of 15 signatures (73 percent). This threshold will ensure requirements of Section 52, particularly provisions preventing partisan gerrymandering, are met in the plan.
- v. Make the commission and its activities more visible to the general public to support the independence of the board and guarantee transparency. This can be achieved by requiring the commission have a website that lists the names and biographical information of members, having a posted copy of the redistricting plan being reviewed at hearings, listing dates and times of public hearings, and posting hearing proceedings for public review.

In light of the expanded role and authority of the Campaign Finance Board, we would recommend a commensurate name change reflecting the function and responsibilities of the new entity.

III. STRENGTHEN ACCOUNTABILITY

A. Require Mandatory Referenda for Laws Passed by the Voter-Initiated Referendum

- i. Condition the effectiveness of any City Charter amendment that would alter or repeal a voter-initiated charter provision on voter approval. A voter-initiated charter provision could be amended or repealed by (i) a second voter-initiated measure, or (ii) a City Charter Revision Commission proposal that is approved by the voters. But if the Council seeks to amend or repeal a voter-initiated charter amendment such a Council measure would not be effective unless approved by the voters. This would prevent the Council from overturning voter-initiated measures without the voters’ consent.

B. Change Appointments to the Conflicts of Interest Board

- i. The present appointment system should be changed to create greater independence so that the mayor does not appoint all five members with council approval. It is recommended that the newly reconstituted Conflicts of Interest Board should have three appointees by the mayor, one by the comptroller, and one by the public advocate. The council would retain its role and power through its advise and consent authority for all appointees. Citizens Union felt that to go from all mayoral appointees to one in which a small plurality would be appointed by the mayor would inject too much change and politicize what has been a professional approach to ethics enforcement even though justifiable concerns exists over one elected official making all the appointments. Removal of Board members would be for cause only, at the discretion of the appointing office.

C. Change Term Limits for City Council and Citywide Elected Officials

- i. Change term limits for the three citywide offices (mayor, comptroller, and public advocate) as well as borough presidents to no more than two consecutive four-year terms. Term limits for city councilmembers should be kept at its current three consecutive four-year terms or twelve years, whichever is longer. Due to redistricting, once every twenty years, the Council is elected for two successive two-year terms. If a member is elected to two consecutive two-year terms, that would be treated as one four-year term. If a member is elected to the second

two-year term, he or she would be eligible to serve for the three following consecutive four-year terms, for a maximum of fourteen years.

IV. PROTECT INTEGRITY

A. Ban Council “Lulus” or Legislative Stipends

- i. Revise the City Charter to ban lulus except for the positions of speaker, majority leader, and minority leader. The next Quadrennial Advisory Compensation Commission should take this ban into account when establishing salaries for the City Council. This would require amendments to Chapter 2, Section 26(a), (b), and (c) of the City Charter.

B. Changes to Council Voting on Salary

- i. Require laws enacted by the City Council to change their own compensation go into effect after the next council election. This would require an amendment to Chapter 2, Section 27 of the City Charter.
- ii. Change the convening of the Quadrennial Compensation Commission for determining raises for the council, mayor, comptroller, public advocate, borough president, and district attorney to the year before a citywide election. This would prevent the mayor from delaying raises (or decreases in salary) by not convening the Quadrennial Compensation Commission and disrupting a prospective approach to salary increases. For the City Council, this would require an amendment to Chapter 2, Section 26(c) of the City Charter. Other offices would require additional language to be added to the City Charter in sections relevant to those offices.

C. Enhance Disclosure of Outside Income Earned By the Council

- i. City Council members should retain their ability to earn income from jobs other than their work as council members. However, City Council members should be subject to enhanced disclosure of outside income through the use of a different disclosure form from other filers like the mayor, public advocate, comptroller, and borough presidents, who cannot earn outside income. Therefore, the Charter Revision Commission should direct the COIB in the City Charter in Chapter 68, Section 2603(d) to create a separate financial disclosure form for City Council members that would require more detailed reporting of information about the source and amount of compensation, and time spent working outside of the Council. Specifically, the form for City Council members should require:
 - a. increased disclosure for Council members regarding the relatives of filers in City service, as well as the non-City employers of the filer’s siblings, parents and adult children;
 - b. reporting of all board memberships of any companies or not-for-profit organizations and indicate what business, if any, the entity has with any city agency; and
 - c. information regarding the nature of outside income, specifically:
 - i. the number of hours City Council members spend each month, or on average during the reporting year, working at their other jobs;
 - ii. income reporting ranges that are tighter than current income ranges so as to better know the range of outside income earned; and

- iii. information regarding the nature of outside income, including the identity of paying clients, the amount and nature of all fees and income above a minimum threshold that is received from clients, and the name of any city agency relevant to the representation and a general description of the services rendered in exchange for the fees. Regarding disclosure of clients:
 - 1. The disclosures should apply prospectively, meaning only to new clients and new matters for existing clients as of the City Charter provision's effective date.
 - 2. Exceptions from this disclosure requirement would be granted for the disclosure of the identities of clients the City Council member represents in criminal, family or transactional matters that have not been revealed in public records. In such situations, the fees, city agencies involved and general nature of the work involved should be disclosed unless the Conflict of Interest Board determines that such disclosure would result in the identification of the client involved.
 - 3. City Council members should also be permitted to seek exceptions from the Conflict of Interest Board where the disclosure of the fact of representation itself is privileged or where such disclosure is likely to be embarrassing or detrimental to the client.

Citizens Union recognizes that lawyers who are City Council members have ethical responsibilities with regard to clients' confidential information, and that their client interactions are subject to the attorney-client privilege. Nevertheless, we believe that disclosure of the above information is consistent with lawyers' ethical obligations, particularly as the law would apply prospectively, so that attorney-council members can inform their clients in writing of their disclosure obligations.

D. Transfer Lobbying Reporting and Enforcement to the Campaign Finance Board

- i. Transfer lobbying and reporting responsibilities from the City Clerk's office to the Campaign Finance Board to create a more independent and effective system of lobbying law enforcement.
- ii. Require the Campaign Finance Board to publish an annual reporting of lobbying activity

E. Codify Provisions Enhancing Transparency and Equity of Council Discretionary Funding

- i. Codify in the City Charter recent reforms regarding the City Council's discretionary funding process, so that if discretionary funding continues to be distributed, they will be subject to requirements which include:
 - a. Disclosure of conflicts of interest by elected officials distributing funds and organizations receiving funds;
 - b. Preclearance of organizations by the Mayor's Office of Contract Services; and
 - c. Creation of an online searchable database of discretionary funding allocations and applications for such funding.
- ii. Place in the City Charter additional reforms providing that if discretionary funding continues to be distributed:

- a. Require that discretionary funding be distributed equally to all 51 members of the City Council. For members choosing not to receive discretionary funding, their portion should go back into the general fund; and
- b. Require that a statement of need be provided for every discretionary funding application to demonstrate how the funding would be utilized to meet said need.

F. Reform the Uniform Land Use Review Procedure

- i. Change the Fair Share Provisions related to site selection subject to ULURP. These include:
 - a. Requiring city facilities sitings, expansions and reductions be properly identified in the Annual Citywide Statement of Needs by undoing rules that allowed for amendments to the Statement of Needs mid-year;
 - b. Including all polluting/infrastructure facilities in the Atlas of City-Owned Property, not just those owned by the city. This will provide a more accurate picture of services provided in a community that can be taken into consideration for new sitings, or expansions or closures of existing facilities; and
 - c. Utilizing more updated indicators of environmental burdens, including number of brownfields, highways, and air quality
- ii. Standardize responses from the various groups involved in ULURP. This requirement that rules create greater standardization from entities providing feedback during ULURP could be referenced in Chapter 8, section 197-c. Specifically, subsection i can be amended the following way (additions underlined):

The city planning commission shall establish rules providing

- i. guidelines, minimum standards, and procedural requirements for community boards, borough presidents, borough boards and the commission in the exercise of their duties and responsibilities pursuant to this section,
- ii. minimum standards for certification of applications pursuant to subdivision c of this section,
- iii. specific time periods for review of applications pursuant to this section prior to certification, and
- iv. uniform guidelines to community boards, borough presidents, and borough boards for providing recommendations for different types of applications such as the impact on local schools, housing, public space, streetscapes, environmental sustainability, and coherence with the community's architectural character.

This would also require changes to Rules pursuant to ULURP, namely Section 2-03, Community Board Actions. Changes to the Rules may be the preferred approach rather than changing language in the City Charter.

G. Create a Process to Integrate 197-a Plans into Long-term Planning

- i. Create in the short run, a process to better integrate 197-a plans into strategic planning so, at a minimum, they are acknowledged and addressed when other planning that is in conflict with 197-a plans is done. In the long run, there is a need for a mandated and well-resourced

comprehensive planning process that coordinates the disparate approaches currently in existence while integrating community planning.

H. *Consider the Creation of an Office of Inspections*

- i. Consider whether a new independent Office of Inspections (OOI) should be created to handle, at a minimum, buildings inspections currently handled by the Department of Buildings. Citizens Union is interested in the proposal to create an Office of Inspections, but has not fully evaluated the potential of this idea. This issue also could be addressed by the Mayor through the creation of a task force to review city agency inspections. In considering whether the responsibility for other City agencies' inspections should be consolidated into the new OOI, such as the Department of Health and Mental Hygiene, the Fire Department, and the Department of Environmental Protection, the following items should be considered by the Charter Revision Commission:
 - a. Would it enhance public safety?
 - b. Would it limit corruption?
 - c. Would it improve customer service?
 - d. Would it result in any greater efficiency?
 - e. Would it separate needed knowledge of industry-specific inspections from enforcement?
 - f. Should it be included in the City Charter?

V. INCREASE TRANSPARENCY

A. *Reform the Mayor's Management Report*

- i. Continue posting the Mayor's Management Report (MMR) online and eliminate print requirements while requiring the updating of its performance indicators as quickly as is possible: on a monthly or quarterly basis, as is done for similar programs measuring agency performance like the agency performance reporting which is part of the Citywide Performance Report (CPR). The online MMR should continue to include a narrative that provides performance goals for city agencies and measures performance relative to those goals.

B. *Transfer the Responsibilities of the Commission on Public Information and Communication to the Public Advocate's Office*

- i. Eliminate the Commission on Public Information and Communication (COPIC) and transfer its major duties and responsibilities into the public advocate's office. In addition, city agencies shall be required to provide information, documents, and other data to the public advocate who, as the City's watchdog of public information, will be better able to evaluate the ease of public access to city government information and the breadth of information available.
- ii. Require the public advocate to make recommendations on improving access to data and information via new technologies, such as the internet and mobile devices, and on the reporting mechanisms developed.
- iii. Require the public advocate to review the City's procedures and timeliness of response related to Freedom of Information Law (FOIL) requests, and make recommendations in this area.

- iv. Require the public advocate to review current law requiring agency reports and make recommendations on sunseting reports when they are no longer needed or useful.
- v. Require the publication of the Public Data Directory by the Department of Information Technology and Telecommunications (DOITT) in an accessible format on the City's website.

C. *Expand Public Access to Government Data, Information and Reports*

- i. Require the proactive publishing of city government reports and data that are currently publicly available under law in a singular web portal. This should be accomplished through building off of and combining existing City government websites such as NYCStat, the Department of Records and Information Services website and NYC Data Mine to allow for ease of public use. All data and reports should be published in open formats, when possible, that allow for automated processing and analysis. The public advocate should be charged with facilitating the development of this website and making recommendations for improvements after its implementation.
- ii. Require the City Record to be published for free online. The Charter Revision Commission should examine whether the City Record should be maintained by the Department of Administrative Services, or whether it should be provided on an expanded website that houses other government information or data, as recommended above.
- iii. Require each city agency, committee, commission and task force and the City Council to webcast and record its open meetings and hearings subject to the Open Meetings Law. Public entities that receive significant city funds, such as the New York City Board of Elections, should also be required to webcast and record their meetings. This video should be archived for at least twelve months and made available to the public on the City's website in a centralized location or on an expanded "C-Span" like website.

VI. KEY FINDINGS AND RECOMMENDATIONS

a. Ensure Checks and Balances

i. Enhance the Powers of the Public Advocate and Borough Presidents

The Office of Public Advocate

The Office of the Public Advocate was created in 1989. As one of three city-wide elected officials, the public advocate replaced the city council president. The 1989 Charter Revision Commission intended the public advocate to serve as a watchdog of city government services and an ombudsperson for city residents, ensuring that “all New Yorkers receive the City services they deserve and have a voice in shaping the policies of their government.”¹⁷

Under the Charter, the public advocate is required to:

- monitor operation of public information and service complaint programs of city agencies and make proposals to improve such programs;
- review complaints of a recurring citywide nature relating to services and programs; and make proposals to improve the City's response to such complaints;
- receive individual complaints concerning city services and other administrative actions of city agencies;
- investigate and attempt to resolve individual complaints; and
- establish procedures for receiving and processing complaints, responding to complainants, conducting investigations, and reporting findings, and inform the public about such procedures.¹⁸

These Charter-mandated responsibilities and duties, fundamental to the role of the office, require that the public advocate interface with city agencies and have some degree of leverage in acquiring cooperation, particularly when he or she may be representing a different point of view or advocating on behalf of the public in questioning a particular policy or process.

To be effective, the public advocate must be able to obtain documents, reports, and other data from all city agencies. The City Charter in Chapter 2, Section 24(j) currently provides that the public advocate shall “have timely access to those documents of city agencies which the public advocate deems necessary to complete the investigations, inquiries and reviews.” However, the public advocate must request information via the relevant council committee if the agency does not provide requested documents.

Citizens Union believes that the Office of Public Advocate, when properly structured and adequately funded can be a useful and necessary actor in city government, especially given the need for additional oversight over city government agencies. With the City of New York having only three elected citywide officials, the Office of Public Advocate serves as a useful perch for another voice in a city that is as large and diverse as New York. Though it can be used unfairly and unwisely as a platform for nothing other than a critic's post, the benefit of its existence as a force for creating a healthy and constructive dialogue around important public policy matters far outweighs such a downside. We believe that the following recommended changes will allow a fair and final assessment of the office's usefulness by the public in the future.

Recommendations:

- Continue the position of public advocate and grant it some additional powers, responsibilities and appointments as presented throughout this report.

- Empower the public advocate to request and receive documents from city agencies. This should be achieved in the City Charter by mandating that agencies provide documents to the public advocate when requested, rather than requiring the public advocate go through the relevant council committee. Exceptions to this currently in the Charter, namely those documents for which a claim of privilege may properly be raised or are being used by the Department of Investigations for use in an investigation, should be maintained as provided in Chapter 2, Section 24(j) of the Charter.

The Office of Borough President

The Office of the Borough President and its duties were diminished in the 1989 Charter revision process, but still include a role in ensuring effective city service delivery. Borough presidents also give an important and necessary borough voice in the affairs of the City, which is beneficial in a city as large, complex, and diverse as New York. Their duties include:

- holding public hearings on issues of public interest;
- monitoring and making recommendations regarding the performance of contracts providing for the delivery of services in the borough; and
- overseeing a borough-wide public service complaint program.

More generally, the borough presidents' role encompasses:

- making recommendations to the mayor and other city officials on behalf of the residents of the borough; and
- affecting public issues relevant to borough residents, such as education and health care.

As with the public advocate, these Charter-mandated responsibilities and duties, which are fundamental to the role of these offices, require that borough presidents interface with city agencies.

For the borough presidents, ensuring that agencies are responsive currently takes the form of calling agency borough heads to attend monthly meetings chaired by the borough president. The Charter Commission testimony of Staten Island Borough President James Molinaro is compelling in describing how monthly meetings have resulted in dramatic changes in the coordination and effective delivery of city services.¹⁹ Staten Island has been doing this for particular issues on a voluntary basis for a year and a half, and has seen improved planning and city service delivery due to the discussion of issues that cut across multiple agencies. Prior to these monthly meetings, Staten Island experienced the planting of trees that were subsequently ripped up when a capital project construction began; the construction of a new building that reduced the width of the street, preventing the passage of fire trucks and a variance granted to a developer on an unpaved but mapped street that blocked access to a new police precinct. Monthly meetings can prevent this lack of agency coordination and waste of taxpayer money from occurring.

Recommendations:

- Continue the Office of the Borough President grant it additional appointment authority as presented in this report.

- Empower borough presidents to require the appearance of borough commissioners of city agencies to report to monthly interagency meetings led by the borough presidents. This should be done through an amendment to Chapter 4, Section 82 of the Charter.

ii. Independent Budgets for the Public Advocate, Borough Presidents and the Conflicts of Interest Board

The Public Advocate and Borough Presidents

Since the Office of Public Advocate was created twenty years ago, the office's budget has been cut by 75 percent – a figure supported by Frederick AO Schwartz, Jr., the Chair of the 1989 Charter Commission, in his presentation to the Citizens Union Charter Revision Task Force (Task Force).²⁰ The public advocate's current allocation for fiscal year (FY) 2010 is \$1.77 million. Its peak since FY 2002 was \$2.9 million in FY 2006.

In meetings that the Task Force had with the three public advocates elected in the City, Mark Green, Betsy Gotbaum, and Bill de Blasio, it was learned that the number of staff had dropped from 65 under Andrew Stein, who occupied the office which morphed into the public advocate's office, to 45 under Green and 27 under the current public advocate Bill de Blasio. The dramatic cuts in the office's budget have undercut the ability of the public advocate to perform his or her charter mandated responsibilities as outlined above. Both former public advocates as well as the current public advocate have called for independent budgeting for the office so that he or she may carry out the duties of the office without fear of its office budget being cut.

Most of the current borough presidents have also called for independent budgeting. This request comes as the result of a decline in funding for the office. In FY2002, \$26,769,792 was allocated to all five borough presidents' offices combined. By FY 2010, the total for all five offices had declined to \$24,198,371.

Brooklyn Borough President Marty Markowitz has been most forceful in calling for an independent budget, stating in testimony before the Charter Revision Commission that, "in this current structure, there is simply no way for a borough president to be a truly independent voice....we take a back seat to City Council members, who, though they represent far fewer voters and far more narrow interests, get to vote on the city budget while borough presidents do not...we go in and 'pitch' as if we were a non profit community group or cultural organization hoping upon hope that in the end, we get the funding we need for the staff and resources to do our Charter-mandated jobs."²¹

None of the borough presidents have publicly provided suggestions regarding a formula for determining independent budgeting. Borough President Marty Markowitz alluded to a formula providing independent budgeting, citing the allocation of capital funding for boroughs as an example.

The manner of allocation for the capital and expense budget borough allocations are spelled out under Chapter 9, section 211 and Chapter 6, section 102(b) of the Charter, respectively. However, the capital budget is not part of each borough president's operational budget and the expense budget borough allocation represents a miniscule amount and, in some years, nothing at all. The primary way in which the borough presidents' offices are funded operationally is at the discretion of the mayor and Council. That being said, the separate capital and expense budget borough allocations do serve as a guide for independent funding.

Borough capital budgets are currently funded at a rate of five percent of the appropriations proposed in the mayor's capital budget for the ensuing fiscal year divided among the five boroughs. The division of the five percent is based on the average of each borough's share of the total population of the City and the average of each borough's share of the total land area of the City, or through a formula in local law.²²

A similar arrangement exists for expense budget borough allocations. According to the Charter, “five percent of the total amount of discretionary increases* which the mayor includes in the executive expense budget for the ensuing fiscal year is allocated among the boroughs by a formula based on factors related to population and need.”²³ The division of the five percent of the total amount of discretionary increases is based on the average of each borough’s share of the total population of the City, each borough’s share of the total land area of the City, and each borough’s share of the total population of the City below 125 percent of the poverty level, or through a formula in local law.

It is the view of Citizens Union that independently elected officials should not have their office operating budgets decided by both the city council and the mayor when these officials may challenge the mayor or the council on their positions and approaches to issues. It undermines honesty and integrity in our elected officials if they feel the need to couch their remarks and opinions for fear of having their budget cuts.

Recommendations:

- Set the annual funding of the public advocate’s office between five and seven percent of the City Council’s budget. Because mayoral staff can be transferred to lower the perceived funding level of the mayor’s office, the council’s budget makes it a better peg to which to link the public advocate’s budget. In FY 2010, the council budget was \$50,882,967. Five to seven percent of the FY2010 budget would create a budget of between \$2,544,148 and \$3,561,807 for the public advocate’s office.
- Set the operating budgets for the borough presidents’ offices, like the public advocate’s office, to the City Council’s budget. In FY 2010, the City Council’s budget was \$50,882,967. Making the operating budget 50% of the City Council’s proposed FY2011 budget of \$52,882,967 million would yield \$26,441,483 for all borough presidents, which would then be divided among the five officeholders. This is \$328,000 less than the peak level for all the borough presidents’ budgets back in FY2002, but \$2,243,112 more than their funding in FY2010.

The expense budget borough allocation and the capital budget borough allocation in the Charter (and described above) serve as a model for formulaically dividing the budget allocation between *each* of the borough president’s offices. Factors like the share of the total land area of the City, total population below 125percent of the poverty level, and share of the total population of the City should be used to create a formula dividing up the total operating budget allocation for each of the five borough presidents.

The Conflicts of Interest Board

* The definition of “discretionary increases” is a complex one that ultimately seems to result in a very small amount of money. It is the total amount of general fund expenditures of city funds, state funds, and federal funds over which the city has substantial discretion to be proposed in the ensuing fiscal years except debt service and minus the sum of:

- 1) proposed expenditures to operate programs at current service levels;
- 2) proposed increases in those expenditures to accommodate projected caseload increases for current programs;
- 3) proposed increases to those expenditures for current programs that are the result of federal, state or local laws or judicial decisions;
- 4) proposed increases in expenditures for new programs as required by federal, state, or local law; and
- 5) all proposed expenditures beyond those needed to operate programs at current service levels excluding those modified in the budget process (except actual but unanticipated caseload increases or unanticipated increases as a result of federal, state or local law or judicial decisions and actual but unanticipated increases for new programs, and any budgetary increase that was financed by a decrease in the executive expense budget).

The Conflicts of Interest Board's budget (COIB) is determined during budget negotiations between the mayor and the City Council as part of the annual budget process.

This fiscal year, the COIB's budget was reduced approximately five percent, with an allocation of \$1.8 million. This comes on top of years of cuts that have reduced COIB's staff from 26 in 1993 to 20 in FY2010 and 16 in the preliminary budget in FY2011 (a 38 percent decline in total from 1993).²⁴ According to COIB staff, last year, the managers at COIB took a 2 percent pay cut, the only city agency to do so. In addition, four of five COIB members – thoughtfully for public servants – waived their \$12,000 per diem. The COIB has also cut OTPS (Other Than Personnel Services) 35 percent since FY2009, with OMB actually forbidding any further OTPS cuts by the Board.

Fiscal Year	COIB Total Budget
FY 2007 Modified Budget	\$1,852,196
FY 2008 Modified Budget	\$1,925,518
FY 2009 Modified Budget	\$2,004,289
FY 2010 Adopted Budget	\$1,882,779

As the only city agency that regulates the ethical conduct of the very persons who set its budget, often at the very time of budget negotiations, the establishment of an independent budget makes sense for the agency so that it is not subject to the annual fiscal negotiation between the City Council and the mayor. While the COIB believes that Mayor Bloomberg and the City Council have been generally respectful of the independence of the Board (noting the Speaker's requirement that staff attend trainings on conflicts of interest, which is not required under the law), Citizens Union shares its belief that budget independence is important regardless of whether a future mayor or speaker has similar views of the office. The current mayor has made significant cuts to the public advocate's office and attempted cuts to the budgets of community boards, both of which can serve useful public purposes for relatively little cost and at times may have worked with different goals than the Mayor. It is certainly possible that a future mayor or City Council politically opposed to the COIB could financially hobble the effectiveness of the COIB through budget cuts, rendering it unable to fulfill its established mission. Creating budget independence for the COIB would help eliminate this potential conflict.

The COIB has identified a specific formula for independent funding: setting their budget at 1/7000th of one percent of the city's expense budget (for FY2011, it is \$63.639 billion), which would equal approximately \$4.6 million – more than double its current budget allocation of \$1.8 million.²⁵ However, this calculation assumes it would receive additional powers through changes to the City Charter, including mandatory ethics training and education, as well as investigative authority. In exchange for this increase, the COIB is willing to provide a public, detailed list of its expenditures. A budget link that reflects the COIB's current responsibilities and allows for adequate hiring of staff (it currently has 19 staff, a sharp decline off its high of 26) would be about 5/1,000 of 1% of the preliminary net total expense budget. That would provide the COIB \$3.18 million.

Some have suggested the COIB's budget be linked to the Department of Investigation (DOI). DOI's proposed budget for FY2011 is \$19 million. Annual decreases to the DOI's budget have been made in FY2010 and, in 2009, it warned of an increase in fraud if they were not sufficiently funded. That year, the DOI's budget was slashed by eight percent. This year, the DOI is facing a cut of \$3 million of their total funding.

Fiscal Year	COIB Total Budget	DOI Total Budget	COIB Budget as Percentage of DOI Budget
FY 2007 Modified Budget	\$1,852,196	\$18,388,666	10%
FY 2008 Modified Budget	\$1,925,518	\$19,165,667	10%
FY 2009 Modified Budget	\$2,004,289	\$18,000,166	11%
FY 2010 Adopted Budget	\$1,882,779	\$16,010,292	12%

The COIB argues that the DOI operates within a tight budget, and, like the COIB, is placed in the awkward position of reviewing the conduct of the elected officials that approve the COIB's budget. Therefore, a linkage with the DOI would not prevent those officials subject to investigation by the COIB or the DOI from retaliating or seeking to undermine either entity. In fact, it may very well make efforts to defang the DOI more efficient by simultaneously reducing the capacity of the COIB.

Linking the COIB's budget to the City's expense budget would allow for more independence because it would not be subjected to targeted budget cuts that may be political in nature. However, it would probably guarantee needed significant increases every year. Therefore, COIB's budget should be linked to another agency which the mayor and council have little incentive to cut and has stable responsibilities and duties. One such agency is the City Law Department.

According to the Office of Management and Budget (OMB), the following represents the budget for the City Law Department in recent years:

Fiscal Year	Total Law Dept. Budget (in thousands)	City Law Dept. Budget (in thousands)
FY 2006 Actual Budget	\$125,134	\$116,962
FY 2007 Actual Budget	\$125,979	\$119,418
FY 2008 Actual Budget	\$125,308	\$118,905
FY 2009 Actual Budget	\$132,205	\$125,096
FY 2010 Forecasted Budget	\$147,137	\$138,003
FY 2011 Forecasted Budget	\$133,816	\$126,819

If the COIB were linked to the City Law Department at a rate of at least 1.6 percent of the total law department budget as determined by the OMB, COIB's forecasted budget in FY2011 would be about \$2.141 million, slightly higher than their forecasted budget for FY2011 of \$2.023 million, as forecasted by OMB. A slightly higher formula of 1.7 or 1.8 percent might also be worth considering depending upon the level of responsibility the agency has or is given.

Recommendations:

- The Conflicts of Interest Board should also receive an independent budget that is pegged to the City Law Department. While Citizens Union has recommended independent budgeting for some city officials, COIB is the only agency for which it makes this recommendation. COIB is unique in that it oversees ethics across all agencies and elected officials' offices. Given this oversight role, it should not have its budget determined by the very people who are subject to its scrutiny and judgment. This distinct mission separates the COIB from other agencies seeking similar budget independence and justifies the request as being fundamental to its overarching function in the City Charter.

The COIB budget should not be linked to the Department of Investigation (DOI), as that does not remove the conflict of interest that is inherent in the Council and the Mayor determining the funding of bodies that oversees their conduct. Nor should it be linked with the city expense budget, which would likely lead to significant increases in the COIB's budget every year.

iii. Strengthen the Powers of the Civilian Complaint Review Board

The Civilian Complaint Review Board (CCRB) is a semiautonomous oversight body of the New York Police Department (NYPD) composed of thirteen civilian members who are all appointed by the mayor: five by direct appointment, five upon the recommendation of the City Council (one representative for each borough) and three upon the recommendation of the police commissioner.²⁶ The CCRB is empowered to receive, investigate, issue findings, and recommend action on complaints and allegations of NYPD misconduct made by members of the public concerning the use of excessive or unnecessary force, abuse of authority (including improper detentions or searches), discourteous actions, or the use of offensive language (together known as the acronym “FADO”). The CCRB is part of the Police Department’s disciplinary process, as reflected by its inclusion in the City Charter as Chapter 18-A (1992) directly following Chapter 18: The Police Department.

Pursuant to Chapter 18-A, Section 440, the CCRB conducts its activities thoroughly, completely and impartially. Its role is critical to ensuring that the public and the police have confidence that civilian allegations of misconduct are being handled fairly, judiciously, and most importantly, independently. Nonetheless, the role of the CCRB is strictly advisory. The Police Commissioner, as the chief executive of the NYPD, is the sole, ultimately responsible party regarding police department discipline, under Section 434 of Chapter 18.

The CCRB currently does not have the authority to administratively prosecute a complaint stemming from its own investigation in which it has found one or more substantiated allegations of misconduct. Substantiated complaints are presently forwarded to the police department with recommendations for the filing of charges and specifications and adjudication through the NYPD’s Department Advocate’s office: a process that according to the Commission to Combat Police Corruption, the NYCLU, the CCRB itself, and Citizens Union’s own 2008 report results in unnecessary additional delays, bureaucracy and duplication. The lack of action, in turn, contributes to lower disciplinary rates against subject police officers in CCRB cases, the imposition of less substantial penalties, strained interagency relations between the CCRB and the NYPD and most significantly, an erosion of confidence on the part of the public and the police concerning the entire process.*

The recommendation to have the CCRB prosecute its substantiated cases of misconduct was first proposed by Mayor Giuliani’s Commission to Combat Police Corruption and was embodied in a Memorandum of Understanding (MOU) that was signed in April of 2001 between the NYPD and the CCRB. The MOU was prompted by an investigation by the U.S. Attorney’s office in Brooklyn and the Justice Department’s Civil Rights Division in Washington, DC concerning the Abner Louima incident.

The Patrolmen’s Benevolent Association, the police officers’ union, challenged the MOU in court 2001 in *Lynch v. Giuliani*.²⁷ The union claimed that the authorization was an improper delegation of executive authority to the CCRB as well as to NYC’s Office of Administrative Hearings and Trials (OATH) where the administrative proceedings were to be conducted. While the Court accepted the argument regarding the OATH provision, both the lower court and the appellate court upheld the transfer of the police department’s prosecutorial power to the CCRB holding that it was merely “an attempt to reallocate[d] the division of duties within [Mayoral] agencies” that did not accord any new “substantive powers” to the CCRB.²⁸

* For more information, see *Issue Brief and Position Statement: Public Oversight of Police Misconduct*, Citizens Union, May 2008, http://www.citizensunion.org/www/cu/site/hosting/IssueBriefs/2008IB_PoliceMisconduct.PDF

A recent arrangement between the NYPD and CCRB has resulted in the CCRB taking on some prosecutorial responsibilities. Beginning this fall, the CCRB will prosecute every fifth case in which it substantiates wrongdoing by a police officer. The NYPD will retain its ability to serve as the judge in these cases of alleged misconduct, as well as to administer penalties or punishment. Though these steps are in the right direction, the CCRB needs to be given full authority in this arena.

Recommendations:

- Empower the Civilian Complaint Review Board (CCRB) to file and handle the prosecution of complaints substantiated by the CCRB with the recommendations of charges and specifications, instead of NYPD lawyers from the Department Advocate’s office. The CCRB should be given full authority and responsibility for developing its own team of qualified and experienced lawyers to litigate the substantiated cases. Using the City Charter revision process to effectuate such a change would allow the public to decide on this issue of great concern, particularly within communities where police-community relations have been or continue to be less than optimal. Such a change would amend Section 440 of Chapter 18-A of the New York City Charter.
- Enhance the CCRB’s authority to permit it to initiate an investigation into reported or known incidents of police misconduct within its jurisdiction in the absence of a complaint. Such authority would track the authority of the Police Department’s Internal Affairs Bureau. With this authority, the CCRB would no longer be forced to remain on the sidelines when there is a notorious or sensitive incident that has become the focus of community and police concern. Such a change would amend Section 440 of Chapter 18-A of the New York City Charter.
- Empower the CCRB to investigate complaints filed by the public against members of the police department’s school safety division, a unit of public safety officers under the supervision and control of the Police Department. While there have been differing views concerning the role of the school safety division officers in the City’s schools, there should be no doubt or confusion as to how members of the public who believe they have been aggrieved by a school safety officer can file a complaint. Such a change would amend Section 440 of Chapter 18-A of the New York City Charter.

iv. **Make Permanent the Commission to Combat Police Corruption**

The Commission to Combat Police Corruption (CCPC) was created in February 27, 1995 by Executive Order No. 18 of Mayor Giuliani to monitor and evaluate the anti-corruption programs, activities, commitment and efforts of the New York City Police Department.²⁹ The order provides the CCPC with the authority to perform audits, studies, and analyses of the "policies and procedures, without limitation, of the NYPD relating to corruption controls as the Commission deems appropriate."³⁰ The executive order further mandates that the NYPD must provide to the CCPC upon request "any and all documents, records, reports, files, or other information relating to any matter within the jurisdiction of the Commission, except such documents as cannot be so disclosed according to law." Therefore, the CCPC operates by routinely requesting and receiving NYPD documents so that it may undertake various audits and studies, and operates independently of the Department. It is comprised of six Commissioners, appointed by the mayor, who direct a small full-time staff.³¹ Its total annual budget is approximately \$444,000.³² According to the CCPC's 2009 annual report, the budget of the Commission has not increased significantly since its inception and as a result, the staff had been reduced to an executive director, three staff attorneys, and an office manager.

The CCPC grew out of the July 1994 recommendations of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (the "Mollen Commission"). The Mollen Commission found that the New York City Police Department had undergone alternating cycles of corruption and reform approximately every 20 years. The Mollen Commission believed that the creation of an independent commission to monitor the anti-corruption activities of the NYPD would keep the department vigilant in this area and would check the cycles of corruption.³³ Mayor Bloomberg in Executive Order 39 of 2003 continued the CCPC, adding the sixth commissioner.

Accordingly, the CCPC, along with its general monitoring of routine corruption-fighting activities, chooses specific areas that it believes would be beneficial to monitor more closely. The CCPC does not, absent extraordinary circumstances, carry out investigations.

The CCPC uses a multi-faceted approach to ensure that its on-going monitoring efforts are effective and all-encompassing. These efforts include³⁴:

- Examining and reviewing all corruption allegations received by the NYPD for the previous 24-hour period. Specifically, CCPC staff review the allegations that are logged by the Internal Affairs Bureau (IAB) to monitor how each of the cases are handled.
- Monitoring cases in which a conclusion has been reached by the IAB so that it may evaluate how these cases have been handled from in-take through closure.
- Attending IAB steering meetings at which high-ranking IAB personnel provide the investigative groups with direction in the management of their caseloads.
- Reviewing penalties imposed in the disciplinary cases adjudicated by the NYPD.
- Attending briefings by the IAB to the Police Commissioner on significant corruption investigations.
- Observing NYPD disciplinary trials, interviewing NYPD personnel both inside and outside of IAB, and attending NYPD corruption training sessions.

Since its inception, the CCPC has completed 37 substantive reports on various issues related to the NYPD's corruption fighting methods including twelve annual reports.³⁵ The CCPC has also conducted monitoring studies, reviews of the hiring and recruitment of new police officers, and reviews of the disciplinary actions of the NYPD with regard to misconduct. The CCPC has commented specifically in

at least two reports on the NYPD's poor handling of CCRB complaints, and it has endorsed granting the CCRB the authority to adjudicate its substantiated complaints.

The CCPC's creation was a compromise proposed by Mayor Giuliani after his successful campaign to prevent the City Council from creating a permanent and independent city agency, the Independent Police and Investigation and Audit Board, to monitor police corruption. The Mayor objected to the process of naming the board members: two by the mayor, two by the city council and one jointly considered and approved. The Mayor claimed the City Council would usurp his authority and interfere with the functioning of the NYPD. In addition, under state law, if the measure reduced the mayor's powers it would require voter approval.

A similar bill was passed by the City Council in 1997, Local Law 91.³⁶ Mayor Giuliani and District Attorney Robert Morgenthau successfully challenged the law in court claiming that the City Council's appointment power violated separation of powers.

In Citizens Union's research regarding the CCPC for its 2008 Issue Brief and Position Statement on Public Oversight of Police Misconduct³⁷, the organization found that the NYPD has not been as cooperative as it should be in responding to requests for information from the CCPC, primarily because the CCPC has no power to back up its requests by subpoena.

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Recommendations:

- Establish the Commission to Combat Police Corruption (CCPC) as a permanent commission in the City Charter under a new section of law. Mayor Bloomberg's reauthorization of the CCPC notwithstanding, the Commission remains a temporary entity. The City Council, on at least two occasions, thought that the corruption problem identified by the Mollen Commission was sufficiently serious so as to merit the establishment of the CCPC as a City Charter agency. Its reauthorization could also be interpreted as a statement of continuing concern about the problem.
- Empower the CCPC to issue subpoenas when appropriate. The NYPD has not been as cooperative historically as it should be in responding to requests for information from the CCPC, primarily because the CCPC has no power to back up its request through subpoena.

v. Strengthen Community Boards

New York City is divided into 59 administrative districts, each served by a community board. There are 12 in the Bronx, 12 in Manhattan, 14 in Queens, 18 in Brooklyn, and 3 in Staten Island. Community boards are local representative bodies – though not necessarily reflecting of all aspects of the community – that serve as advocates for New York City residents and communities. They are the grassroots level of government that serves as the eyes, ears, and voices of the communities of New York City.

In 1951, Mayor Robert F. Wagner, Jr. established twelve "community planning councils" consisting of 15 to 20 members each. The councils were charged with advising the borough president on planning and budgetary matters.³⁹ In 1963, the community planning councils were established as community planning boards (eventually shortened to community boards) throughout the five boroughs. Community boards were intended play an advisory role in neighborhood planning and serve as a primary outlet for constituent complaints, particularly prior to the creation of 311.⁴⁰

The City Charter was modified in 1975 to give community boards the opportunity to provide feedback on land use and zoning issues through the Uniform Land Use Review Process (ULURP) and other related processes. As a result of the 1989 charter revision, community boards were given the power to draft their own community development plans, called 197-a plans, and submit them to the City Planning Commission and City Council for approval.⁴¹ 197-a plans are advisory policy statements, but the City Charter obligates city agencies to consider the plan in making future decisions. Prior to this change, community boards were not authorized to submit plans, all of which were prepared by the Department of City Planning and presented to the City Planning Commission for approval. Community boards were also promised professional planning assistance, a charter principle that has yet to be put into practice.⁴²

Each community board has up to 50 voting members, with one-half of the membership appointed for two-year terms without limits on the number of terms served. All City Council members whose council districts cover part of a community district also serve as non-voting, ex-officio community board members. Borough presidents appoint the voting community board members, with half of the appointees nominated by council members representing the district.⁴³

In practice, community boards have many fewer than 50 active members and vacancies are quite common, as a total of 2,950 people are required to fill all the positions on each of the 59 boards. Each community board has a district manager, a paid staff member approved by the board who acts to resolve community complaints and serves as a liaison to the board. The district manager's role includes taking complaints, providing information, and providing assistance in accessing city services or navigating agency bureaucracy. Community board members can only be removed for cause since they are public officers under New York State Law by virtue of their Charter-mandated responsibilities. However, borough presidents have, on occasion, been able to circumvent the law, particularly when board members have contradicted borough presidents on development projects.

Community boards meet once monthly. Committees, which meet as needed, are typically organized around functional issues (for example land use, education or public safety), geography, or the relevant city agencies. Their most significant power is their ability to comment on land use issues such as development, zoning, licensing issues (for example, liquor licenses and sidewalk café applications) and placement of all municipal facilities in their communities. Community boards also provide feedback on

the allocation of city funds, specifically expense and capital budgets, through the submission of a "District Statement of Needs," which describes the issues and needs of the district.

The community board’s comments on development are the first level of community input through the Uniform Land Use Review Procedure (ULURP). ULURP was set up in the mid-1970s to give neighborhoods a voice in decision-making. Prior to its implementation, the City's neighborhoods had no way of systematically taking part in land use decisions that would affect their futures. While community boards do not have the power to make binding recommendations – they are limited to advisory opinions – establishing a baseline opinion is significant enough that lobbyists have spent significant sums lobbying community boards in particular instances.

The average community board budget is around \$200,000, for a total expense to the City for all boards of about \$12 million. About 90 percent of the money is spent on personnel: each community board hires a district manager and, on average, two other staff members who do the administrative work, which leaves just \$10,000 to \$20,000 for everything else.⁴⁴ Some community boards have resorted to creating non-profit organizations to collect private donations to support their work.

Community Boards’ Funding⁴⁵

Office	FY '02 Budget	FY '06 Budget	FY '10 Budget
Bronx	\$2,290,872	\$2,596,183	\$2,839,903
Brooklyn	\$3,395,474	\$3,924,320	\$4,362,207
Manhattan	\$2,411,733	\$2,991,441	\$3,437,006
Queens	\$2,720,527	\$3,123,437	\$3,438,491
Staten Island	\$641,135	\$724,285	\$777,320
Total	\$11,459,741	\$13,359,666	\$14,854,927

Mayor Bloomberg’s preliminary budget for FY 2011 slashed funding of community boards by 30 percent to save a total of \$2 million, with the average board receiving around \$140,000. Many district managers contended that they would be prevented from carrying out their Charter-mandated responsibilities and have called for fixed budgets that are not subject to determination by the mayor and the City Council. Others have argued that inadequately funding community boards is an attempt to undermine community input into governmental decision-making.⁴⁶ Mayor Bloomberg recently restored funding for community boards to an average of \$198,895 in his executive budget.⁴⁷

While section 2800(f) of the City Charter already enables community boards to hire “professional staff and consultants, including planning and other experts,” few have had the resources to do so, even without taking into account the Mayor’s recent round of cuts. Consequently, community boards are prevented from adequately fulfilling their Charter-mandated responsibilities. For example, only seven community-based 197-a plans have been adopted by the City in the last 16 years. According to Thomas Angotti, chair of the Pratt Institute's Planning Department, the primary factor in why so few of the 59 community boards have prepared plans is that few have any knowledge of planning, and the Department of City Planning (DCP) does not actively promote the 197-a process.⁴⁸ In addition, many communities recognize from the outset that master plans are limited in what they can achieve, since they are only advisory. Section 191(b)(5) of the City Charter requires that the DCP shall “provide community boards with such staff and assistance and other professional and technical assistance as may be necessary to permit such boards to perform their planning duties and responsibilities.” However, DCP has not had adequate resources to fulfill this obligation and assist community boards. Lastly,

many 197-a plans require an environmental impact statement (EIS), which community boards do not have sufficient funds to pay for.

The City Planning Commission (CPC) is required through rules for the processing of plans pursuant to City Charter section 197-a to comment on plans proposed by community boards. Section 3.010 of the Rules specifies that after a sponsor proposes a plan, DCP staff must, within 90 days, “inform the sponsors of all deficiencies with respect to form and content and any changes, additions or deletions which, in the opinion of staff, may correct such deficiencies. The sponsor may, thereupon, indicate its willingness to make such changes, additions or deletions in which case the Department will defer its report to the Commission until the changes have been made.”

In addition to providing development input through 197-a plans, the responsibility of providing feedback on the city budget through the District Statement of Needs also requires skills beyond those possessed by many community board members. Nevertheless, John Mudd, in his study *Neighborhood Services*, estimated that just 30 to 50 percent of district budget requests are approved, with capital budget requests faring better than expense budget requests.⁴⁹

Community boards have also had their function of assisting with constituent services diluted by the creation of the 311 phone system, and the number of calls to community boards has decreased dramatically. Data obtained from 311 calls by community boards does not provide names or origination of complaints meaning that community boards are unable to provide personalized follow-through or ensure that complaints are properly addressed by the appropriate agencies.

Due to the lack of expertise caused by insufficient resources, Manhattan Borough President Scott Stringer has developed innovative ways to give community boards the tools they need. He started a program to provide graduate urban planning students the opportunity to work as planning consultants in Manhattan community board offices in 2006. The City Charter currently authorizes community boards to hire a planner but does not mandate it, and few boards hire planners due to lack of resources. The Community Planning Fellowship Program has placed second-year graduate school students in every board in Manhattan to aid boards in addressing planning and land use issues. The mayor’s office and CUNY have supported the Fellowship Program and are working to expand it citywide. Stringer has also run training sessions on land use, ethics, and even how to run a meeting – something borough presidents are required to do for community boards under the City Charter.⁵⁰

Beyond deficient resources and expertise, community boards are also plagued by vacancies and, in some instances, an insular culture or lack of diversity. Few community boards even come close to approaching 50 active members. For example, in 2006, nearly 20 percent of the positions on Manhattan Boards were vacant.⁵¹ To address both these issues, Borough President Stringer revamped the process of appointment. He started a standardized application process for potential community board members, who would then be reviewed by a coalition of nonprofit and planning groups. According to Borough President Stringer’s office, this revamped process resulted in the filling of every vacancy, 1700 new applications, 1400 interviews, and the appointment of 500 new members since 2006.⁵²

Though no longer as integral to the handling and disposition of constituent services, community boards play an important role in being the voice of local communities in articulating their budget and service needs as well as views on local development and land use issues. Again, in a city as large, diverse and complex as New York, it is important that there be locally recognized governmental bodies organized to perform such functions, but they need to be properly funded and supported and their membership selection process improved.

Recommendations:

- Community boards should receive an independent budget allocation that is not at the discretion of the mayor or council, which potentially can be reduced to diminish community input under a very centralized system of governance. This is essential for community boards to carry out their Charter-mandated responsibilities as an advisor on land use, planning, and budgeting. Community boards should be provided enough funding to be able to hire a land use and/or budgetary expert.

The budget for community boards should be linked to that of borough presidents' offices, which in turn, should be linked to the city council's budget. Community boards in total should receive 65% of the borough presidents' allocation, with each board receiving an equal amount, in addition to revenues for offices, electricity and heat, which would still be determined through the regular budget process. Sixty-five percent of the FY2010 Borough President's allocation would have provided the boards in total with \$874,000 more than in FY2010, or \$14,813 more per board in addition to revenues for offices, electricity and heat (which are not included in this formula for an operating budget). The additional revenue from the operating formula coupled with a separate allocation for offices, electricity and heat should provide for the hiring of staff with expertise on land use.

$(0.65) \times (\text{total budget for all Borough Presidents}) / \text{number of Community Boards citywide} = \text{individual Community Board budget}$

Using this formula for FY2010, each community board would have received \$266,592 not including costs for offices, electricity and heat.

$(0.65 \times \$24,198,371) / 59 = \$266,592$

Community boards are slated to receive, on average, \$198,895 in FY2011, according to the Mayor's Executive budget. This will not create budget inflexibility for the mayor and council, as the total expenditure on all Community boards was a miniscule \$14.8 million in FY2010.

- A mechanism should be created that provides an available pool of urban planners outside of the borough presidents' offices that can be accessed by community boards. This is critical to provide meaningful and informed input on land use and to develop 197-a plans. These urban planners should be connected to one or more boards, thereby establishing relationships with those boards and the larger communities they serve. While housing urban planners with the borough presidents is aligned with their current responsibilities to "establish and maintain a planning office...for the use, development or improvement of land located in the borough" under section 82 of chapter 4 of the City Charter and to "provide training and technical assistance to the members of the community boards" it becomes problematic when the borough president may disagree with a community board on a land development issue. Given their distinct roles in ULURP and instances in which borough presidents have sought to remove community board members who have not aligned their votes with the sentiments of the borough presidents on land use proposals, it is essential that the independence of the community boards, and the urban planners that serve them, be maintained.
- Reform the process for selecting members to community boards. Community boards are too often plagued by vacancies and an insular culture. To professionalize and open the boards to the communities they serve, a formal standardized and transparent process should be created

for filling community board positions, as has been done by Manhattan Borough President Scott Stringer. Language should be added to the City Charter that:

- Requires written applications and interviews of all appointees or reappointees by the borough presidents;
- Establishes a deadline of 30 days for filling vacant positions; and
- Requires borough presidents to issue an annual report detailing their outreach efforts, whom they notified of the process, methods used and the demographics of those serving on community boards in comparison to the communities served by the boards.

vi. Add Representation to the Franchises and Concessions Review Committee

Franchises and concessions are grants of the rights to use or occupy public assets. They are defined as follows:

- **Franchises** are grants of the right to occupy or to use the City's inalienable property, such as streets or parks, for a *public* service, e.g., transportation or telecommunications.
- **Concessions** are grants for the *private* use of city-owned property such as for food sales or recreational activity, with the City's compensation typically tied to the concessionaire's revenue. Concessions are also subject to the Franchise and Concessions Review Committee's (FCRC) rules.⁵³

Typically, requests for proposals (RFPs) are issued by agencies or a sealed competitive bidding process is used for granting franchises or concessions. The Mayor's Office of Contracts (MOCS) has oversight over laws and regulations pertaining to franchises and concessions.

In some circumstances, grants for franchises and concessions are reviewed by the FCRC. Concessions that have a 10-year contract term or are expected to raise more than \$100 million in income are vetted through public hearings, except for those granted through a competitive sealed bid process.

The FCRC consists of six appointees: two represent the Mayor, one from the Law Department, one from the Office of Management and Budget (OMB), one from the Comptroller's office, and one from the representatives of the five borough presidents, with the vote going to the borough affected by the franchise or concession under review.

FCRC review for franchises consists of four steps:

- 1) FCRC approves a grant of franchise after a public hearing on the proposed franchise;
- 2) FCRC determines whether the proposed franchise is aligned with RFP requirements. This may result in modifications to the proposed franchise and a public hearing relevant to them;
- 3) The mayor or his designee must sign the approval of a franchise within 60 days of receipt; and
- 4) A copy of the franchise is provided to the comptroller. It becomes registered if the comptroller signs it or 30 days pass. The comptroller may raise objections to the franchise related to corruption or irregularities with the agreement and make the implementation void.⁵⁴

Concessions generate revenue for NYC, with \$45 million collected from 600 operating concessions in FY2009. Eighty-one franchises created \$180 million for NYC. The Department of Parks and Recreation generates the most revenue related to concessions while the Department of Information Technology and Telecommunications (DOITT) and the Department of Transportation (DOT) raise the most money related to franchises.

Criticism of the franchise and concessions process has focused on how grants are approved as well as the substance of the agreements. Regarding the process itself, secrecy and an imbalance of power are common criticisms. Negotiations typically take place between the mayor's office, agencies issuing the grants, and the vendor or entity receiving the franchise or concession. While there is public review for certain franchise and concessions once an agreement is reached, critics argue that negotiations occur behind closed doors. When Verizon sought a cable franchise to offer its FIOS service citywide, then Councilmember Tony Avella, who was Chair of the Franchises and Concessions committee, claimed he had no idea of the status of talks and was blocked from scheduling a council hearing.⁵⁵

Others have complained about the content of the agreements. Regarding the cable franchise for Verizon, then Comptroller Bill Thompson sought to inject a Consumer Bill of Rights while state Assemblymember Richard Brodsky wanted a greater percentage of revenues to go to government fees and public access programming, should Verizon have sought a statewide franchise rather than negotiating a separate agreement with each locality.⁵⁶ When the City Parks Department tried to secure additional funds for development in Randall's Island by having private schools receive a concession for use of new ball fields in recognition of the financial support they provided to rebuilding the fields, City Council members and community activists protested that it was unfair to public schools which would see their weekday use of the fields diminish. Arguably, however, new and more fields have been built and greater access is available during more hours of the day and week, just not at some of the desirable prime playing times. The move to grant the concession was also seen as a means to circumvent ULURP, something the State Supreme Court cited in rejecting the contract.⁵⁷

Recommendations:

- Expand the Franchise and Concessions Review Committee (FCRC) from six to seven members, adding a designee of the public advocate to address concerns that the franchise and concessions process is too centralized and that the voices of consumers or other affected groups are not given enough weight during negotiations. The public advocate's representative would be a natural advocate for consumer issues and constituent groups citywide given the office's ombudsman role. This expansion will preserve a majority appointed by the mayor or representing mayoral agencies, while providing three votes for appointees of other elected officials (the Comptroller, the Borough Presidents, and the Public Advocate). It will also create an odd number of votes on the FCRC.

vii. Add Representation to the Board of Standards and Appeals

The Board of Standards and Appeals (BSA) has several important responsibilities, including issuing special permits, ruling on appeals to laws relating to construction, and permitting variances from the Zoning Resolution. All five members are appointed by the mayor with advice and consent of the council. Other than being subject to judicial review if contrary to law, BSA decisions are final in that they are not subject to review by the council, the mayor, or any other public official or body.

The variance process is one of the most important decision-making powers of the BSA. In 1916, when New York City established the nation's first comprehensive zoning ordinance, the BSA was established to provide property owners a means to appeal zoning measures that would make use of their property financially infeasible.⁵⁸ This appeals process ensured that zoning would not constitute an uncompensated taking (akin to eminent domain) under the Fifth Amendment of the United States Constitution. Owners must meet strict criteria in order to qualify for a variance from the zoning.

Some critics see the actions of the BSA as being heavily influenced by the mayor and also as being pronouncedly pro-development. Borough President Scott Stringer believes that the determinations of the BSA demonstrate that the body is not independent from the mayor and has a pro-development bias, citing statistics that show that the BSA approved 93 percent of all variance applications filed in 2001 and 2002, a rate that is 10 percent higher than the next highest number of applications ever approved which was in 1979.⁵⁹ Citizens Union has not been able to obtain more recent statistics to verify this claim is still valid. Additionally, there is a concern expressed in many communities that the high number of approved variances in certain neighborhoods result in de facto rezonings.

The BSA needs to maintain its independence and its decisions should not be subject to review by another public official or body, though greater representation may aid in the deliberations of the important work in which it is engaged.

Recommendation:

- The appointment process for the Board of Standards and Appeals should include additional representatives from the borough presidents and the public advocate. Specifically, the BSA should be expanded to include one appointee from the public advocate and one appointee from each of the five borough presidents. For a given ruling, the voting BSA members would consist of seven members, five appointed by the mayor, one by the public advocate, and one representing the borough impacted by the ruling, as is the practice with the Franchise and Concessions Review Committee. Members of the BSA from the mayoral appointments also should now be required to possess professional expertise, with two of the five appointees being architects, and one of the five being an urban planner. Additional members to the BSA should be put in place immediately while professional expertise should be phased in as mayoral appointees are replaced.

viii. Strengthen City Council Participation in the Development of the City Budget

The New York City year-long budget process operates on a fiscal year beginning July 1, rather than a calendar year. The process requires the mayor prepare both an annual expense and a capital budget, which the mayor must submit to the City Council for “review and adoption.”⁶⁰

Since the fiscal crisis of the 1970s, the City is required to maintain a budget in accordance with “generally accepted accounting principles pursuant to State law.”⁶¹ Further, the City is required to “prepare a four-year financial plan, which is reviewed and revised on a quarterly basis.”⁶² This financial plan includes projections of the City’s capital, revenue, and expense budgets and presents proposed gap-closing programs.

The City Charter requires the preliminary budget for the ensuing fiscal year be “submitted to the City Council by the Mayor no later than January 16th.”⁶³ The Council has until March 25th to hold public hearings on the preliminary budget. In these hearings, aspects of the budget, including budget objectives, fiscal implications, budget priorities, the draft ten-year strategy, and the borough presidents’ recommendations, are discussed.⁶⁴ Agency officials and representatives of the borough and community boards testify during these hearings “regarding their needs for the coming fiscal year.”⁶⁵ Members of the public are also invited to these hearings to express their opinion of and testify on the preliminary budget. The Council must issue “findings and recommendations” by March 25th, which includes a summary of all budget hearings.

The City Charter requires an executive budget be submitted to the Council by April 26th. As with the preliminary budget, the Council must hold public hearings on the executive budget. After these hearings, the mayor’s Office of Management and Budget and the City Council’s finance division negotiate in order to create a balanced budget. During these negotiations, “the Council may increase, decrease, add or omit any unit of appropriation for personal or other than personal services, omit or change any terms or conditions related to any appropriation.”⁶⁶ With regards to terms or conditions, the Council may require City agencies to “report to the Council on how specific monies are being spent throughout the year.”⁶⁷ The Council must then vote on the budget by June 5th. No later than five days after the Council vote, the mayor may veto any increases, additions, and/or terms or conditions made by the Council. However, the mayor has no power to veto decreases to the budget made by the Council. The Council can override a mayoral veto with a two-thirds vote of all Council members.⁶⁸

The following is a summary of the Charter-prescribed steps related to the preliminary budget.

1. Mayor’s submission of preliminary management report (§12)
2. Council’s public hearings and report on preliminary management report (§12) not later than January 30 prior to April 8th.
3. Draft submitted of 10-year capital plan (§234) not later than January 16th.
4. Mayor’s preliminary certificate on maximum capital debt and obligations (§235) not later than January 16th.
5. Mayor’s submission of preliminary budget (§236) not later than January 16th.
6. IBO’s expenditure and revenue report. (§237)
7. Community boards’ submission of assessment of preliminary budget. (§238)
8. Finance commissioner’s submission of estimate of assessed valuation and of taxes due and uncollected. (§239)
9. Mayor’s submission of tax benefit report. (§240)
10. Community boards’ statement on borough priorities (§241) not later than February 25th.
11. Council’s submission of operating budget (§243) not later than March 10th.

12. Borough presidents' submission of recommended modifications to preliminary budget. (§245) not later than March 10th.
13. IBO's preliminary budget report (§246) not later than March 15th.
14. Council's preliminary budget hearings and submission of recommendations (§247) not later than March 25th.

The following is a summary of steps for Charter-prescribed actions related to the executive budget.

1. Submission of ten-year capital strategy (§248) no later than April 26th (in odd-numbered years).
2. Submission of executive budget and budget message (§249) no later than April 26th.
3. Borough presidents' recommendations (§251) no later than May 6th.
4. Independent Budget Office report analyzing executive budget (§252) no later than May 15th.
5. Council's executive budget hearings (§253) between May 6th and 25th.
6. If expense budget not adopted by June 5th, current modified budget and existing tax rates extended (§254(d), 1516(b)).
7. If capital budget not adopted by June 5th, unutilized portion of all prior capital appropriations deemed re-appropriated modified budget and existing tax rates extended (§254(e)) June 5th.
8. Mayoral veto and Council override (§255) mayoral veto: fifth day after Council acts upon budget. Council override: ten days after mayoral veto.
9. Mayor's revenue estimate (§1515(a)) no later than June 5th.
10. Alternative revenue estimates (§1515(d)) no later than May 15th.
11. Fixing of tax rates (§1516) no later than June 5th.
12. Fixing of tax rates (§1516-a) no later than June 5th.

In addition to the responsibilities outlined above, the Council is responsible for approving or rejecting modifications to the budget throughout the fiscal year.⁶⁹ Before the council votes on a proposed budget modification, the modification must be “accompanied, on a separate form, by a fiscal impact statement prepared by the finance division of the Council.”⁷⁰ These modifications are required as “new spending needs arise, delays in implementing programs occur, and revenues exceed or fall below expectations.”⁷¹ However, the City Charter does allow the mayor to “implement expenditure reductions” after the final adoption of the budget in an effort to maintain a balanced budget.⁷²

During the budget negotiation process, the Council largely relies on agencies and the mayor's Office of Management and Budget for detailed information about planned expenditures. This dependence is due to the fact that the budget submitted by the mayor to the Council contains large units of appropriation that actually encompass many programs. Detailed information on assigned dollars amounts that the Council receives is typically provided for programs the mayor proposes to be cut in the executive budget. Thus, all discussion, debate, and review are focused on these programs with little attention paid to the many other appropriations beyond cuts within the budget.⁷³

Greater disclosure could be provided by defining a “program” in the charter to prevent units of appropriation from encompassing allocations so large that they obfuscate what is actually being funded. Many large agencies have very few units of appropriation despite clearly having many more programs.⁷⁴ There is some precedent for detailing programmatic spending, as OMB has provided this information for 16 different agencies to the Council in recent years. The Council has also suggested eliminating the distinction between other than personnel services (OTPS) and personnel services so that each unit of appropriation would encompass both, providing greater clarity regarding all kinds of spending associated with distinct programs of City agencies.⁷⁵

The issue of whether the mayor should continue to be the sole determiner of the city budget revenue number has been the subject of debate. The Comptroller has suggested that since he is not part of the budget negotiation, he be given it because his office can provide a fair and accurate number. Others have recommended that the figure be split between estimates provided by the Council and the mayor separately. Some have argued that taking away this authority from the mayor would negatively affect the City's bond rating. Citizens Union believes that the authority to determine revenue should remain with the mayor as the best check against unnecessary increased spending, but that consideration should be given as to when the mayor needs to provide a final revenue figure.

The timing of the release of revenue projections is another critical part of the budget negotiation process. The Office of Management and Budget currently provides revenues projections after the hearings on the executive budget end on May 25th, which can result in no final figure being provided until the end of the negotiation. This allows OMB to withhold revenue projections until it finds out what the spending proposals are, rather than providing them earlier in the process to determine the available amount of revenues to spend. Moving the non-property tax revenue projections before the adoption of the executive expense budget would allow the Council to know the variable portion of the revenue projection in advance of indicating its priorities related to the expense budget.⁷⁶

Recommendations:

- There should be greater transparency into the contents of the budget before it is voted on by the City Council. To that end, “program”, along with “purpose”, “activity” and “institution” needs to be defined in the City Charter (Chapter 6, Section 100) in relation to units of appropriation so that units of appropriation will be made more narrow and finite rather than continue as catch-all categories reflecting numerous programs or an entire agency's budget.
- Create maximum thresholds for units of appropriation that are a proportion of agency spending. For example, require that one unit of appropriation can't be greater than the majority of an agency's budget. This will result in greater transparency as it relates to agency spending by creating more specific units of appropriation. Agency flexibility in moving money from one unit of appropriation to another under new narrower, defined units of appropriation, will be preserved as there is currently in the City Charter (Chapter 6, Section 107(b)) a minimum threshold of 5 percent of agency spending or \$50,000, whichever is greater, for the transfer to be considered a budget modification and trigger notification of the council.
- Eliminate the distinction between units of appropriation for personnel and other than personnel services (OTPS). Units of appropriation should reflect spending on particular programs, purposes, or activity, and include both personnel and other than personnel services.
- Require the release of final non-property revenue projections by the mayor and the Office of Management and Budget prior to the beginning of Council hearings on the executive budget (typically May 5th) and before the adoption of the executive expense budget. Currently this is done by the Office of Management and Budget on June 5th, after the spending proposals are known, rather than providing the non-property revenue projections in advance to determine what the appropriate spending levels should be. This would enable the Council to know part of the revenue picture (other than property taxes) before indicating its priorities related to the expense budget.

b. Open Elections

i. Establish a “Top-Two” Election System for Municipal Offices

The Issue: Low and Declining Voter Participation

New York City’s recent municipal elections have been plagued by anemic voter turnout. The winners of most local elections are decided in closed partisan primaries, effectively preventing a growing number of unaffiliated and third party voters from participating in the elections that determine their local representatives.

Mayoral Elections

While declining voter turnout is a problem across New York State and the country, New York City’s rates are particularly low. In 1989, 1,080,557 registered voters representing 49 percent of those registered in the Democratic Party turned out to vote in that year’s party primary election for mayor. In each successive city election year since, fewer and fewer of them turned out to vote. During the 2009 elections 330,659 Democrats or only 10.4 percent of those enrolled in the party voted in the mayoral primary. Over the past twenty years, voter turnout for Democratic primaries has dropped to 30 percent of what it was in 1989.

TABLE 1: Voter Turnout in New York City Mayoral Primary Elections

Year	Democratic Mayoral Primary					Republican Mayoral Primary			
	Total Registered ⁷⁷	Registered Democrats ⁷⁸	# of Voters ⁷⁹	% of total Dem.	% of Registered Voters	Registered Republicans ⁸⁰	# of Voters ⁸¹	% of total Repub.	% of Registered Voters
1989	3,187,741	2,202,222	1,080,557	49.07%	33.94%	449,426	115,110	25.61%	3.62%
1993	3,301,683	2,258,410	517,709	22.92%	15.68%	464,524	N/A	N/A	N/A
1997	3,514,974	2,616,732	411,459	15.72%	11.71%	536,773	N/A	N/A	N/A
2001	3,715,022	2,715,786	785,365	28.92%	21.14%	517,597	72,961	14.10%	1.96%
2005	3,944,831	2,991,140	478,818	16.01%	12.14%	566,782	N/A	N/A	N/A
2009	4,462,657	3,177,740	330,659	10.41%	7.41%	533,847	N/A	N/A	N/A

Public Advocate and Comptroller Elections

Over the past three election cycles, voter turnout for the City’s two other citywide offices also shows limited and declining participation in the Democratic Primary. Unlike the office of mayor, the comptroller and public advocate’s offices have consistently been held by Democrats for the past twelve years. For the Office of Public Advocate, voter turnout in the Democratic Primary has declined since 2001, when it was 24 percent of registered Democrats. Voter turnout dropped to 12 percent of total registered Democrats in 2009. (For the purposes of this report, Citizens Union did not include data prior to 2001 for the public advocate and comptroller elections because the data was not publicly available online.)

In New York City, candidates running in a primary election for citywide office must win and obtain at least 40 percent to move on to the general election. If no candidate is able to meet the winning threshold, the top two vote-getting candidates must face-off in a run-off election.

In 2001 there was a run-off election in the Democratic Primary for public advocate between Betsy Gotbaum and Norman Siegel. In that race, less than a quarter of registered Democrats participated,

which equaled 18 percent of all city voters. In 2009, there also was a run-off election in the public advocate’s race. A substantially lower voter turnout occurred than in 2001 with just over 8 percent of registered Democrats choosing the eventual nominee, who went on, to handily win in the general election. When looking at the total electorate and who participated, only 5 percent of all registered voters in New York voted in that important and decisive election for public advocate.

Table 2: Voter Turnout in New York City Public Advocate Primary and Run-off Elections⁸²

Year	Total Registered ⁸³	Registered Democrats	# of Voters	% of Total Democrats	% of Registered Voters	# of Voters in Run-off	% of Total Democrats	% of Registered Voters
2001	3,715,022	2,715,786	642,898	23.67%	17.31%	668,259	24.60%	17.99%
2005	3,944,831	2,991,140	396,256	13.25%	10.04%			
2009	4,462,657	3,177,740	366,917	11.55%	8.22%	233,206	7.34%	5.23%

In the case of comptroller elections, voter turnout in the Democratic Primary similarly declined. In 2001, 21 percent of registered Democrats voted in the party’s primary election, while in 2009 the percent of Democrats who voted dropped to under 12 percent. Low voter turnout in the Democratic primary translates to even lower percentages of the total registered voters, which in 2009 was less than 8 percent of the total number of registered voters.

During the 2009 elections, there also was a run-off in the Comptroller’s Democratic Primary. As shown below, the turnout among Democrats in the comptroller run-off election in 2009 was over 7 percent, and of all registered voters this total was only 5 percent. The winner of the run-off election was John Liu, who went on to win handily in the general election, but his candidacy and the most determinative election was decided by only a tiny fraction of the voting population in the City.

Table 3: Voter Turnout in New York City Comptroller Primary and Run-off Elections⁸⁴

Year	Total Registered	Registered Democrats	# of Voters	% of total Democrats	% of Registered Voters	# of Voters in Run-off	% of total Democrats	% of Registered Voters
2001	3,715,022	2,715,786	570,758	21.02%	15.36%			
2005	3,944,831	2,991,140	N/A	N/A	N/A			
2009	4,462,657	3,177,740	371,018	11.67%	8.31%	241,206	7.59%	5.40%

In the case of these two races for comptroller and public advocate which both led to extremely low voter turnout run-off elections, a decidedly small number of New Yorkers chose the eventual nominee who went on to win the general election with little opposition. In the election that mattered most – the Democratic primary run-off election – in a city of 4.5 million registered voters, 135,100 New Yorkers voted for John Liu for comptroller and 145,413 did so for Bill de Blasio for public advocate. Less than 3 percent of New Yorkers essentially voted in support of the people who now hold two of the three citywide elected positions. This is not a healthy sign for a representative democracy when so few voters vote in the election that essentially determines the winner.

General Elections

In reviewing turnout for the general elections in New York City for the past twenty years, Citizens Union found there is a similar downward trend in voter turnout; however, the rates of participation are consistently higher than the voter turnout percentages in the primary elections for those years. Voter turnout in the 1989 mayoral election was almost 60 percent, but it dropped to barely more than 25

percent twenty years later in the 2009 elections. However, the fact that more people turn out to vote in general elections, despite the fact that many of the races are predetermined, does suggest that if more voters are given an opportunity to participate they will. A larger pool of eligible voters results in a larger number of those turning out to vote.

Table 4: Voter Turnout in New York City Mayoral General Elections

Year	Total Registered*	Number of Voters-Mayoral ⁸⁵	% of Total-Mayoral	Number of Voters-Public Advocate ⁸⁶	% of Total-Public Advocate	Number of Voters-Comptroller ⁸⁷	% of Total-Comptroller
1985	2,842,517	1,170,904	41.19%	Not Available	Not Available	Not Available	Not Available
1989	3,183,741	1,899,845	59.67%	Not Available	Not Available	Not Available	Not Available
1993	3,301,683	1,898,437	57.50%	Not Available	Not Available	Not Available	Not Available
1997	3,514,974	1,409,347	40.10%	Not Available	Not Available	Not Available	Not Available
2001	3,715,022	1,520,443	40.93%	1,519,548	40.90%	1,519,551	40.90%
2005	3,944,831	1,289,935	32.70%	1,315,360	33.34%	1,315,360	33.34%
2009	4,462,657	1,154,802	25.88%	1,178,057	26.34%	1,178,057	26.34%

The form that New York City elections and politics have taken is the result of a unique combination of the city’s history steeped in strong political parties, union influence, and a large immigrant and transient population. It is also a city with an overwhelming voter registration advantage toward one party – about six Democrats for every Republican. Republican mayoral candidates have traditionally sought to use fusion coalitions as a way to effectively compete against Democratic mayoral candidates. While the number of registered voters is declining as a percentage of eligible voters, Democrats still make up a large majority of registered voters in New York City. However, there are a growing number of unaffiliated voters, equaling 17 percent of registrants in New York in 2009, while members of third parties make up almost 6 percent of the electorate, quadrupling over the past 20 years. Including the 11.3% of voters who are registered as Republicans, there are 1.5 million registered voters, or 34% of the electorate who are not registered Democrats and thus are excluded from arguably the most important election that, with the exception of recent mayoral races, almost always determines the eventual winner – the Democratic primary.

TABLE 3: Voter Enrollment Total in New York City 1985-2009⁸⁸

	Democrat		Republican		Blank		Other		Overall Total
	#	% of Total	#	% of Total	#	% of Total	#	% of Total	
Apr-85	2,115,070	70.16%	391,240	12.98%	451,817	14.99%	56,332	1.87%	3,014,459
Oct. 1989	2,202,222	69.09%	449,426	14.10%	478,330	15.01%	57,299	1.80%	3,187,337
Nov. 1993	2,256,410	68.42%	464,065	14.07%	515,016	15.62%	62,507	1.90%	3,297,998
Nov. 1997	2,708,886	67.05%	552,075	13.66%	675,058	16.71%	113,104	2.80%	4,040,123
Nov. 2001	2,748,538	66.96%	523,761	12.76%	699,190	17.03%	133,434	3.25%	4,104,923
Nov. 2005	2,909,215	66.37%	547,515	12.49%	752,927	17.18%	173,619	3.96%	4,383,276
Nov. 2009	3,057,021	68.50%	504,436	11.30%	758,997	17.01%	245,402	5.50%	4,462,657

* Totals reflect total registered voters as of November of the stated year.

In New York City, the vast majority of local elections are determined in the Democratic Primary, with citizens of many districts effectively denied a competitive general election choice. This is particularly true for local offices like City Council members, but also for borough-wide and some citywide offices, like public advocate and comptroller. Republican opposition is often not as strong and the voting base not as large, despite the fact that the City has elected Republican nominated mayors for the past five election cycles. It is important to keep in mind that during the past sixteen years of Republican and independent mayoralities, all other municipal elections for citywide offices have been won by Democrats without serious opposition. For example, in Manhattan's District Attorney race, Cyrus Vance Jr. won the powerful position outright after winning the Democratic primary; there was no GOP candidate after nearly 40 years of the Democratic incumbent Robert Morgenthau, Jr.

Moreover, a close vote in the Democratic primary is no guarantee that the primary winner will have a contested general election. In the races for City Council during 2009 – considered one of the most competitive election cycles in recent years – only six of thirty-four Democratic primary elections had results where the winner received less than five percent more votes than the runner-up. Yet in five of those races, the candidate went on to beat their general election challengers in landslides. Overall turnout is also a problem: in New York's first City Council district, which stretches from Soho to Battery Park and holds roughly 150,000 people, Margaret Chin beat incumbent Councilmember Alan Gerson by receiving 4,541 votes to Gerson's 3,520—one of the higher turnouts in the 2009 City Council primaries.

Potential Solutions

Citizens Union is a long-time supporter of reforms that would open the electoral process to allow more people to participate. Citizens Union supports and has lobbied on the state level for the passage of Election Day registration (EDR), early voting, no-excuse absentee voting, election administration reform, instant run-off voting, and poll worker improvements. After decades in which these needed measures that would enfranchise a greater number of voters and ease their access to the polls went nowhere, it now seems that the state legislature is in a position to advance these worthy election reforms. In the past two years alone, election reform bills have cleared both houses of the legislature and signed into law by the Governor. These pieces of legislation include easing the application process for an absentee ballot, allowing seventeen-year-olds to be poll workers, streamlining the process of registering to vote by affidavit ballot, and allowing for poll workers to work half-day shifts, among other things. A bill requiring poll sites to be fully accessible to voters with disabilities awaiting the Governor's signature.

Citizens Union evaluated recommendations that these reforms could be implemented by New York City independent of New York State, specifically through the Charter revision process.

In particular, EDR, early voting, and no-excuse absentee voting were considered as potential charter revision items that could increase the opportunities for voting for municipal offices.. These ideas were presented to the Charter Revision Commission by Jerry H. Goldfeder, a well respected election lawyer and Special Counsel at Stroock & Stroock & Lavan, in his testimony as part of an expert panel assembled to speak on voter participation.⁸⁹ Mr. Goldfeder discussed how he believed these reforms, and a number of others could be achieved through the City Charter. Indeed, it does seem that through the use of special ballots, or implementing procedures that are specific to New York City outside of those established in New York State election law, these reforms are possible.

Citizens Union agrees that these reforms, which it has been advocating over a number of years, could likely be addressed for municipal elections only through changes to the New York City Charter. However, the details of these reforms are such that implementing them is likely to be too burdensome for the City or confusing to voters.

For instance, the Board of Elections in the City of New York (BOE) would have to conduct separate voter registrations for city and state elections. For those occasions when separate city and state offices have elections on the same day, voters may discover they are registered to vote in a city election, but not in a state election. For example, although many people think of the office of district attorney as a city office, technically it is a state office, and the City's election reforms could not be applied to it. If the City adopted its own registration reforms, those solely registered with the City would be able to vote only for city offices but not district attorney even though the elections to fill these positions would be held on the same day. The same would hold true for early voting and no-excuse absentee voting, where the intersection between local and state races would make separating the two for the purposes of administering elections very difficult.

Citizens Union believes that though these are needed reforms that could legally be established through the City Charter, they would be too complicated to administer. And because of this, we cannot support the implementation of these desirable reforms at the city level, however, and will instead continue to push for their enactment at the state level, where the political climate is increasingly supportive of these reforms.

Given the challenges of implementing some election reforms solely in the City, Citizens Union reviewed and considered other possible Charter changes that would increase access to and support for voting that would not be nearly as burdensome to implement. Those three areas of reforms are:

1. establish top-two election system for local elections;
2. increase access to the ballot; and
3. integrate the Voter Assistance Commission (VAC) into the Campaign Finance Board.

Establish a “Top-Two” Election System for Municipal Offices

The data presented above shows that the number of people participating in primary elections is decreasing and very few voters show up for run-off elections. Closed political party primary elections are often the determinative election in the City, which effectively means that the winners and presumed officeholders are decided by a group of voters that excludes 33 percent of New York's electorate. Doing away with closed partisan primaries – as more than 80% of American cities have now done – is one proven way to provide voters outside of the dominant party the opportunity to weigh in early in the election cycle and give equal voice to all voters.

Such a change has a precedent in New York City elections. Elections for vacancies in the Office of City Council and all citywide offices require candidates to run in special elections in which there is no party-nominated or designated candidate. The 2002 Charter Revision Commission placed on the ballot a recommendation to require mayoral vacancies to be filled by the same mechanism as other city vacancies, through a non-partisan special election, and that passed with over 60 percent of the vote.⁹⁰

Candidates in these special election races must circulate independent nominating petitions, as prescribed in New York State Election Law for local seats. However, instead of running under the ballot line of a designated party, candidates are required to provide their own party name and symbol that are different from any of the established State parties, on which to run. Candidates, in choosing

their party names, also cannot choose words or symbols from an existing party's name. These tailored party names and symbols are what appear next to the candidate's name during a special election.

New York has had partisan elections for municipal offices since 1890, when they were first instituted to combat what was a corrupt process by which party leaders selected candidates. The State Legislature enacted a law that would provide for the government to run and pay for party primary elections, which is how New York State and City ended up with the election system we have today.

Citizens Union's initial founding as a political party arose in part because of a desire to eliminate the influence of dominant political parties and advance the cause of local elections being decided in a nonpartisan manner.

The 2003 City Charter Revision Commission proposed eliminating political party primaries and allowing all candidates to run in a primary election in which candidates would be allowed to list their party registration or unaffiliated status, and the top two vote-getters would move on to a general election. The measure was defeated at the ballot box, 70 percent to 30 percent, in an election with 17 percent turnout. However, outside of New York, non-partisan elections are standard in 47 out of 50 of the nation's largest cities and over 80 percent of American cities overall.

Legal Authority for the Change

The 1998 Charter Commission, in particular, examined the legality of moving away from partisan party primaries for municipal elections closely and determined that "cities in New York State are permitted, under the principles of home rule, to amend their charters in order to adopt nonpartisan elections."⁹¹ The authority to conduct such an election is derived from Article IX of the State Constitution and Municipal Home Rule Law § 10 in which local governments are provided the power to adopt and amend local laws in a number of different areas, including in relation to the "mode of selection...of its officers and employees."

In addition, the New York State Court of Appeals held in 1927 in the case of *Bareham v. City of Rochester* that Rochester possessed the authority to establish non-partisan elections notwithstanding the State Election Law. The Court ruled that because the Election Law is a special law that applies to one or more, but not all cities within the state, as opposed to a general law,⁹² Rochester could enact a law inconsistent with the Election Law. More recently, New York City's decision to implement nonpartisan elections to fill Council vacancies was upheld in 1991 in *City of New York v. Board of Elections* which found that the Election Law "gives way to inconsistent local law provisions."⁹³ In other words, State Election Law provides a framework for partisan elections for those cities that choose to use that system, but there is no provision that requires municipalities to do so.

Voting in Other Jurisdictions

Nationwide, more than three quarters of municipalities use some form of non-partisan elections.⁹⁴ Non-partisan elections are used to elect mayors in a number of major municipalities including Los Angeles, Chicago, Houston, Detroit, San Diego, Dallas, Phoenix, San Antonio, San Francisco, Boston and Seattle. They are also used in various forms in a few states like Washington, Louisiana, and Nebraska. Citizens Union evaluated one major city that has implemented non-partisan elections, Los Angeles, a city of a size and diversity which make a comparison with New York City instructive. To provide some overview of how the system works in other locations, we reviewed one state's approach, that in Washington State.

In any locality, public participation in elections will be influenced by a number of factors including the structure of the system for choosing elected officials, quality of the candidates, the presence of campaign finance laws and public campaign funding, identification with parties, the issues impacting the municipality and other variable factors. However, non-partisan elections no doubt provide greater opportunity for a larger number of voters to participate in the first elections that are held for a particular office, allowing all voters to cast ballots in arguably the first and most important election.

Cities in California have elected local officials in non-partisan elections for over three decades. For municipal and city elections, the State Constitution of California has required elections to be non-partisan⁹⁵ since 1972. California went a step further in 1996 with the passage of Proposition 198, which created a “blanket primary” for the state.⁹⁶ The blanket primary system allowed all voters “to choose among all the candidates on the primary ballot, irrespective of party affiliation.”⁹⁷ Those party candidates that received the most number of votes were elected as the party’s nominees. In 2000, the U.S. Supreme Court ruled that Proposition 198 was unconstitutional because “it violated a political party’s First Amendment right of association.”⁹⁸ After the Supreme Court ruled Proposition 198 unconstitutional, California passed SB28, which created a “modified closed primary.”⁹⁹ In this system, registered members of a party vote in that particular party’s primary. Voters who choose not to affiliate with a party are able to vote in a party’s primary, however only if that party has “authorized unaffiliated voters to participate in its primary.”¹⁰⁰

California voters recently approved Proposition 14, which provides for a top-two primary election system based on the Washington State model for state and federal offices. This would allow candidates to indicate on the ballot their party registration or that they are not identified with a party. In Washington State candidates are additionally permitted to create their own party names, much like New York City’s special election process. Voters would be able to choose among all candidates running for a specific office. The two candidates who receive the most votes will face each other in the general election for each office.

Los Angeles

In Los Angeles, all candidates run in a first round of elections called a primary nominating election. If a candidate receives a majority of the vote, meaning 50 percent plus 1 vote, during the primary nominating election, that candidate is elected to office. If no candidate receives a majority, the two candidates receiving the highest number of votes from all voters in the city move on to run in a general election, referred to as the general municipal election. No other candidates are allowed to run in this election.¹⁰¹

Over the past seven mayoral elections in Los Angeles, one candidate was able to win the primary election with a majority of votes four times. In the table below, Los Angeles shows consistently higher voter turnout rates than New York, despite the rapidly declining rates over time. When compared to New York’s Democratic Primaries, which of all New York’s primaries have the highest rates of participation, Los Angeles had 7 percent more of its voters participate in 2009, and almost 12 percent more in 2005. The last time New York exceeded Los Angeles’s voter turnout in a mayoral primary election was in 1989.

TABLE 4: Voter Turnout in Los Angeles Primary Nominating Elections¹⁰²

Year	Total Registered	Total Number of Voters	Voter Turnout as % of Total	Resulted in General Election?
1985	1,371,499	463,435	33.79%	No
1989	1,375,698	319,088	23.19%	No
1993	1,403,364	474,418	33.81%	Yes
1997	1,339,036	407,790	30.45%	No
2001	1,525,350	499,641	32.76%	Yes
2005	1,474,186	411,604	27.92%	Yes
2009	1,596,165	274,233	17.18%	No

TABLE 5: Voter Turnout in Los Angeles General Elections¹⁰³

Year	Total Registered	Total Number of Voters	Voter Turnout as % of Total
1985			
1989			
1993	1,331,179	582,748	43.78%
1997			
2001	1,538,229	569,402	37.02%
2005	1,469,296	493,084	33.56%
2009			

Washington State Top-Two Primary¹⁰⁴

In Washington State, the current system for voting is called a “Top-Two Primary,” and is based upon the successful model used in Louisiana. Voters are allowed to choose among all candidates running for a specific office and are not required to declare a party affiliation. After ballots are cast, the two candidates who receive the most votes in the Primary Election move on to the General Election.

Candidates are allowed to state their party “preference.” This preference does not mean that the candidate is nominated or endorsed by the party, but simply that it is the candidate’s preferred political association. The law enacting top-two primaries was passed by voter initiative in 2004 with almost 60 percent of the vote. The Supreme Court rejected a constitutional challenge to the law in 2008.¹⁰⁵

Addressing Concerns Associated with Non-Partisan Elections

Campaign Finance Implications

During the 2003 Charter Revision Commission, the Campaign Finance Board, addressed what non-partisan elections might mean for bans on soft money contributions in City elections.¹⁰⁶ At the time, New York State Law prohibited parties from spending in support of a particular candidate during primary elections. By abolishing party primaries, parties would then be allowed to spend as much as they like during the primary period.

However, since then the rules regarding prohibitions on soft money contributions and independent expenditures have changed. New York's restrictions on party communications with voters during the primary election cycle were invalidated in 2006 as unconstitutional. As a result parties can now spend in party primaries, so that a shift to a two-round election system would not change the ability of parties to spend in the first round of the election.

Somewhat related is the increase in independent expenditures at the city and state level. In the same effort being promoted by many legislators and public interest entities across the country, the City Campaign Finance Board is currently advocating for increased disclosure for independent expenditures. While this type of spending is increasing, justifying the need for greater disclosure, abolishing party primaries would also seem to necessitate greater disclosure of independent spending. By increasing disclosure and reporting, voters will have more information about which organizations and individuals are supporting a given candidate. Citizens Union supports disclosure of independent expenditures, including top donors.

Voting Rights Act and Minority Representation

New York City has a particularly diverse voting population and the effects of changing the way local officials are elected on minority voting power and representation and should be taken into consideration. There are a number of studies with different results on how nonpartisan elections affect minority voters, and a review of the current literature suggests that there is no strong consensus as to how minority voters would be affected by a "top-two" system.

One concern about non partisan elections is the perception that party elections are good for minority voters because their voice is more solidified in a partisan structure that encourages voting. But recent evidence indicates that minority voters, particularly Asian voters, are increasingly declining to associate with a party when they register to vote. Election expert Allan J. Lichtman noted in 2003 during his testimony before the Charter Revision Commission of that year, that at the time 400,000 minority voters were registered as Republicans, independents, or members of minor parties.¹⁰⁷ Professor Lorraine C. Minnite, also reviewed exit poll data from 2000, 2002, and 2004 that found that one in three Chinese American voters registered as an independent.¹⁰⁸ Francis Barry, in his book *The Scandal of Reform* noted that Asian American voters are the fast-growing immigrant bloc in the City "and they are more likely than any other group (including whites) to register as independents."¹⁰⁹ "Exit polling by the Asian-American Legal Defense Fund in the 2001 election showed that one in four Asian American voters did not register with either the Democratic or Republican Party, and it's analysis of Board of Elections registration files found that number to be even higher: four in ten, more than double the citywide rate."¹¹⁰ According to AALDEF's 2001 report on the Asian-American Vote, 23% were not enrolled in any political party.¹¹¹

Over the last several years, people of color have become a larger percentage of the City's voters and one million registered New York voters are now not affiliated with either major party. In 1989, non-Hispanic whites made up 56 percent of the city's electorate. In this past November's election, 46 percent of voters identified themselves as white. Twenty-three percent of voters identified themselves as black, 21 percent as Hispanic and 7 percent as Asian, according to exit polls by Edison Media Research.¹¹² According to Bruce N. Gyory, a political consultant, "All the room for growth in the electorate is amongst Hispanic, Asian, biracial and black New Yorkers." Gyory further explains, "This polyglot electorate will demand the jigsaw-puzzle skills of coalition-building and diplomacy," Mr. Gyory said. "Bloomberg will likely be seen historically as a transition figure who got elected with the old base — Jewish and white Catholic — intact, helped by his ability to win a sizable share of minority votes.

But Thompson's and Liu's ability to begin reuniting a minority-led coalition around Democrats augurs that the future of New York City is where minority voters are an ever firmer, albeit diverse, majority."¹¹³

In his testimony before the 2003 Commission, J. Phillip Thompson, Associate Professor of Urban Politics at the Massachusetts Institute of Technology (MIT) refuted the argument in academic literature that parties increase voter participation, and that parties should not be weakened. He said that in New York City, there are other factors such as minor parties, churches, unions, and community organizations among other things that serve to encourage participation in elections. He also stated that in urban locations with strong civic organizations, he believed that non-partisan elections made it easier for voters to make an impact in the outcomes than partisan primaries.¹¹⁴

An electorate that is increasingly diverse and more independent of parties creates a political environment in which minorities will be less likely to rely on a partisan structure to take office. The Top two election system will still, however, allow for parties to declare which candidate truly reflects their ideology and work to get their favored candidate elected.

Analyzing the impact on minorities of nonpartisan elections in other municipalities reveals there is a lack of strong evidence suggesting that minority voters would be harmed by eliminating party elections. In evaluating the impact of nonpartisan elections on minorities, the 1998 New York City Charter Commission unveiled a report finding that of the 11 cities using partisan elections, only two, or 18 percent, had minority mayors. Of the 37 cities using nonpartisan elections, 15, or 41 percent had minority mayors.¹¹⁵ The 2002 Commission had similar findings when examining the impact of non partisan elections on minority representation for the most populated 100 cities in the United States. It found that "27 percent of cities with nonpartisan systems (including approximately 18 percent with white majorities) have African-American or Hispanic mayors, while only 22 percent of those with partisan elections have minority mayors, none of them in any of the 11 cities with white majorities."¹¹⁶ A 2003 article in the New York Sun by John Avlon (disclosure: John Avlon is a Citizens Union board member) echoed these findings. "Among the 31 largest cities where blacks and Hispanics don't make up a majority, for example, non partisan ballots have elected black or Hispanic mayors in 26 [percent] of the cities, as opposed to 0% for partisan elections. But a closer look at the numbers shows that the 0 [percent] figure is based on just four cities - so just one different election result would generate a 25% number, essentially equal to the nonpartisan figure."¹¹⁷

In 2010, however, a cursory review of cities that hold partisan elections, 4 of the 9 (44.44%) cities had mayors who are people of color. For those cities which hold nonpartisan elections, 13 of 41 (31.7%) were cities with a mayor who is a person of color. Though a partial reversal from above data, it still shows that in a third of the cities where there are non-partisan elections, close to one-third of the mayors are people of color.

In Newark, New Jersey, for example, Mayor Corey Booker has stated that he does not believe that he would have been elected Mayor if it were not for non-partisan elections, due to the disproportionate influence of unions in the closed partisan primary that supported his predecessor.

Beyond the data from other cities showing that at worst, nonpartisan elections has little impact on minority representation and, at in some instances. A 2003 memorandum written by J. Gerald Hebert regarding VRA Section 5 Preclearance of a switch to non-partisan elections, also provided a similar analysis. Hebert notes that based on other studies "insofar as citywide offices are concerned, party affiliation has not been a necessary or critical factor for minority-preferred candidates to be elected to city office. In fact, the use of nonpartisan elections would actually improve the chances of minority-preferred candidates because they would have an easier time making it to the general elections ballot,

something that has proven difficult in partisan elections.”¹¹⁸ While this is not conclusive, it certainly does not make a strong case that minority communities are well served by the current closed primary system. In addition, the huge drop in voter turnout, even with people of color on the ballot, suggests that minority communities at least share the disaffection of the whole electorate with the current political process. One cannot base an argument for preserving the current system’s reflection of minority voting participation when fewer and fewer voters are participating.

Allowing all voters to participate in both stages of voting will open the door wider for all candidates, and for communities seeking to advance their candidates. As in other large cities, the various communities will learn how to effectively run candidates to compete for and win higher office. As noted, the Top Two system will allow candidates to list their party affiliation on the ballot, and voters, including those in communities who prefer to vote Democratic, will be able to select candidates on that basis; indeed, choosing between Democratic candidates as they do now in a closed primary.

Party Identification and Roles of Parties

One concern that has been raised with eliminating party primaries is the effect non-partisan or top-two elections might have on parties and the way they select their nominees. During the 2003 Commission’s review of the issue, many members of the public came out to speak both for and against the proposed plan for non-partisan elections. One of the central concerns raised by non-partisan elections was the removal of party identifiers. Many opponents of non-partisan elections argued that party identifiers provide voters during the general election with important information about where a candidate stands on issues. It was argued that by taking away one of the most important pieces of information about a candidate, voters might rely on other indicators for voting, like race or name recognition. In response to this concern, one solution that was presented in by the 2003 Commission and is part of Citizens Union’s recommendation is the inclusion on the ballot of a candidate’s party registration or lack thereof. This would provide voters with a sense of what party or issues the candidate identifies with.

Another concern relates to whether eliminating party primaries would create a more centralized party machine. In his testimony before the 2003 Commission, Douglas Kellner, then a Democratic Commissioner for the Board of Elections in the City of New York and Chair of the Rules Committee of the Democratic Party in New York County, cautioned that without government organized party elections, party nominees would be selected by the parties in whatever manner they see fit.¹¹⁹ This could include selection by county committees, which in New York City could mean that the five county chairs would select nominees for citywide office with little or no input from rank and file members of the party.

Under a top-two system, parties would be allowed to create their own mechanism for selecting the party-backed candidate and would be able to openly support that candidate during the election. However, in a system where party-supported candidates would have to face a greater field of candidates among a wider audience of voters, the value of the nomination and the advantages it might yield is less clear. With New York’s strong campaign finance laws and public financing program, more candidates are able to wage more competitive races. With greater competition in the first round, the party’s support may not have the same effect it does in today’s primary elections, which is to effectively restrict competition during the party primaries and limit meaningful participation in the general election.

A top-two system would open the process to enable all voters to participate in the crucial first round of elections, where they can have a meaningful say about who should move on to a general elections, even though this would give party committees the ability to determine the candidates receiving party support.

Citizens Union also expresses concern with taxpayers paying for a partisan political activity in which not all citizens are allowed to participate. In a 2007 decision by the U.S. Court of Appeals for the Fourth Circuit, a ruling was issued that supported Virginia state law requiring party primaries be open to all voters, because the State had paid for the party's primary elections.¹²⁰ The opposite view could be construed that if party primaries are closed to only those taxpayers who are members, the state has no obligation to pay for them.

Citizens Union's Position on Non-partisan Elections in 2003

The question of whether New York City should move away from the closed party primary system has generated significant discussion. In 2003, the charter commission recommended that a nonpartisan system be established to elect City officeholders, and that recommendation was defeated by the voters. Though Citizens Union did not support that proposal at the time, it left the door open then by saying that the case for nonpartisan elections had not been convincingly made. In addition to being concerned over the process of the 2003 commission in which the decision to recommend nonpartisan elections was a foregone conclusion, CU also had the following reasons for not supporting nonpartisan elections in 2003:

- No convincing evidence had been presented that the elimination of party primaries reduces the influence of party organizations in election outcomes, nor evidence that the elimination of party primaries increases voter participation.
- Democrats and Republicans had each won five of the last ten mayoral elections, indicating that New York City was not controlled by only one party.
- Open and honest political party affiliations are vital to a properly functioning democracy.
- The lack of conclusive data regarding how the elimination of party primaries affected candidates from communities of color.

In the intervening years, Citizens Union has closely observed elections in New York City and has also been monitoring elections and voting trends and electoral developments around the country. We approach election-related issues as we always have, to seek an electoral process which provides the most opportunity for the electorate to express its preferences.

Citizens Union's Position on Top-Two in 2010

After more years of reflection, experience and research, we have concluded that New York should move to a Top Two system of voting. In short, we reach this new and different conclusion for the following reasons:

- As presented above, the number of voters in New York City choosing not to affiliate with a major political party continues to be substantial, in absolute numbers and as a percentage of registered voters. As a result, more registered voters are not involved in selecting candidates and, since for virtually every office but mayor recently, winning the Democratic primary is tantamount to election, a smaller percentage of voters are choosing who governs.
- Turnout in City elections has dropped to an abysmally low percentage, notably in the last two elections, to the point where a virtual handful of voters are participating and essentially choosing who serves in elected office. The low turnout, in both primary and general elections, when combined with the large number of unaffiliated registrants, makes New York City

elections less declarative and arguably less democratic. This is a serious problem that must be addressed.

- The Top Two system allows candidates to list their party affiliation on the ballot. The City's current non-partisan special elections to fill vacancies do not permit such a listing, instead requiring candidates to form their own party names. The use of party labels will make it easier for parties to campaign for their candidates, as voters can connect the messages they receive during the campaign with the affiliations they see on the ballot.
- Non-partisan elections are now firmly established as the method of voting in the vast majority of major American cities. In addition, the "top two" approach is becoming increasingly popular, with California and Washington recently adopting this voting method by vote of the electorate. We particularly take note of the vote to adopt this procedure in June of this year in California, an enormously diverse state.
- While the data remains limited about the effect of a shift away from a closed primary system on minority participation, it is clear that, in this "majority minority" city, more citizens of all colors are deciding not to affiliate, thus removing themselves from participating in elections. And we see that, around the country, people of color are consistently elected as mayors of major cities. Furthermore, the inclusion of party affiliation on the ballot will make the process more familiar to minority voters, and indeed all voters, than would a fully non-partisan system. We believe the value of a more inclusive system available to all voters is more democratic and desirable.

Citizens Union also has supported the implementation of instant run-off voting in traditional party primary elections though it has not settled on a preferred method. It is possible that IRV could be combined with a top-two election though Citizens Union did not closely examine its possible existence.

In sum, Citizens Union believes that the election system would be stronger if at all stages of the electoral process all eligible voters were allowed to vote, and that a Top-Two election system would provide for the maximum eligibility of voters to participate in local elections. By allowing candidates to provide their voter registration information on the ballot, they can say which "team" they are on and assist voters with determining their political leanings. In addition, from the academic and expert literature surveyed, it does not appear that the elimination of party primaries will negatively affect candidates of color.

Recommendation:

- Establish a top-two election system, similar to the one that is in place in Washington State, Louisiana, and Wisconsin for municipal and judicial elections, and was recently passed by voters in California. This would replace the current closed partisan primary system with a more open alternative consisting of two rounds of voting. In the first round, all candidates regardless of party affiliation and including independents would run, and all registered voters would be eligible to choose among all the candidates. The top two vote-getters would then advance to the general election or "round two", with the voters again casting ballots to determine the ultimate victor. This is not the same as non-partisan elections. Candidates would have the option of indicating their party registration (or unaffiliated status) next to their name on the ballot. This identifier would provide voters with a sense of the candidate's values and political platform. Moreover, party organizations would be free to endorse and campaign for candidates.

iii. Increase Ballot Access by Reducing Petitioning Signature Requirements

In the spirit of increasing opportunities to participate in elections, Citizens Union is interested in ways to make it easier for people to become candidates and ease the process of appearing on the ballot. Being a candidate in New York is notoriously difficult because of the draconian ballot access laws currently in place.

One solution proposed by Jerry Goldfeder at the June 2nd Charter Revision Commission meeting was to allow any candidate who qualifies for public matching funds under the City's public financing program to automatically appear on the ballot. In his testimony, Mr. Goldfeder argued that while signature limits and petitioning are outlined in State Election Law for local candidates, there is nothing precluding the City from developing additional criteria for how candidates are placed on the ballot. In other words, the current system does not have to be the sole mechanism for determining candidates.¹²¹

Others believe that because the City was able to successfully change the way candidates petitioned onto the ballot for Special Elections, there may be some ability to change the process for regular election cycles as well. Citizens Union reviewed these recommendations as well as those to lengthen the time period for petitions to be collected, allowing independent nominating petitioners to collect signatures earlier in the process, or expanding the petitioning process to include all voters. While Citizens Union supports easing the process by which candidates appear on the ballot for both local and state office, there are concerns about the administrative burden this might place on the City Board of Elections (BOE) and the potential confusion candidates may experience by state and local qualifying processes occurring simultaneously.

Public Advocate Bill de Blasio presented an alternative recommendation in his testimony to the Charter Revision Commission on June 2nd to provide legal assistance to candidates during the petition process as a way to help candidates navigate the complex process and limit the amount of a candidate's resources dedicated to protecting a candidate's place on the ballot.¹²²

Recommendation:

- Reduce the barriers for candidates attempting to get on the ballot by decreasing the number of signatures candidates need to collect. Lowering the signature requirement would likely enable more candidates to get on the ballot because they could better withstand aggressive challenges from other candidates who seek to prevent them from getting on the ballot to avoid a competitive election. This would also limit the confusion for those collecting petitions. Due to the large number of signatures currently required, signatures are often collected for more than one candidate and include combinations of local and state offices. Lowering signature requirements would not change the requirements for who can sign a petition and would eliminate the need to memorize complex sets of rules while reducing the legal gamesmanship that often attempts to block legitimate candidates from the ballot based on a technicality. Additionally, Citizens Union will continue to push for greater reforms to ballot access at the state level to ensure there is an even playing field and consistency among local and state elections.

iv. Integrate the Voter Assistance Commission Within the Campaign Finance Board

Chapter 46 of the City Charter requires the City to create and support a Voter Assistance Commission (VAC). The purpose of the VAC is to advise City officials on all matters pertaining to voter registration and participation and, along with mayoral agencies and community-based organizations, encourage voter registration and turnout.

The sixteen member Board consists of the first deputy mayor, the director of the office of management and budget, the president of the board of education (now the chancellor of the school system), the public advocate, the executive of the board of elections, the corporation counsel, and the chair of the campaign finance board. An additional nine members are appointed to the VAC who broadly represent the following three groups: “(1) groups that are underrepresented among those who vote and or among those who are registered to vote, (2) community, voter registration, civil rights, and disabled groups, and (3) the business community.”¹²³ Of the nine members, the mayor appoints three and six are appointed by the VAC. The nine appointed members serve terms of three years. The head of the VAC is elected by its members. VAC members are not compensated for their service and the VAC must conduct activities in a non-partisan manner.

The VAC Board is required by the Charter to: 1) monitor the performance of the voter assistance program 2) make recommendations to the mayor, the council, the borough presidents, and board of elections 3) undertake activities to “encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote” 4) review the annual report of the coordinator of voter assistance and 5) hold at least one public hearing annually, “between the day following the general election and December twenty-first.”¹²⁴

The commission is required to appoint, upon nomination by the mayor, a coordinator of voter assistance who oversees day-to-day operations of the VAC. The coordinator is responsible for encouraging voter registration and turnout for all eligible voters, identifying groups within the city that are underrepresented in voter registration and/or turnout and making recommendations to increase registration and/or turnout among these groups, coordinating all city agencies in regards to increasing voter registration and turnout, monitoring voter registration and voting in the city, submitting a public report to the commission, and publishing relevant reports and studies.

The City Charter also requires the heads of mayoral agencies to cooperate with the VAC in its effort to increase voter registration and turnout. Moreover, the Charter requires these agencies to prepare an annual report with “plans specifying the resources, opportunities, and locations the agency can provide for voter assistance activities.”¹²⁵

The Voter Assistance Commission fulfils its mission as defined by the Charter. However, the VAC is significantly limited by structural constraints that prevent the organization from reaching its full potential. Funding is the most central constraint limiting its effectiveness. With each new mayoral administration, the budget of the VAC is at risk for cuts. For example, Mayor Giuliani cut the VAC budget and staff “until it could no longer function.”¹²⁶ In 2002, Councilmember Charles Barron introduced resolution 245 that asked the mayor to fully finance and adequately staff the VAC. The resolution, which was supported by then Speaker Gifford Miller and ten Council members, requested the VAC budget be raised to 1 million dollars.¹²⁷ Unfortunately, the resolution was never adopted. The VAC’s current budget is slightly less than \$200,000, which although better than in previous years, is significantly less than needed to truly utilize the VAC in the effort to expand the electorate and increase voter participation.¹²⁸ Another major constraint facing the VAC is the lack of coordination between the organization and the City Board of Elections. Opportunities to educate the electorate, such as

providing sample ballots, are not within the jurisdiction of the Board of Elections, not the VAC.

VAC has been able to overcome its small budget at times, working jointly with the City's Campaign Finance Board, for example, to produce the Video Voter Guide. This joint effort is part of a broader collaboration between the two entities to inform and educate voters, something that is common to both their missions. The Campaign Finance Board, for instance, holds debates for candidates as well as publishing a non-partisan Voter Guide. The overlap of functions of the CFB and VAC dates back to their creation by the 1988 Charter Commission when the combined entities were known as the Department of Campaign Finance and Voter Assistance. The Department of Campaign Finance and Voter Assistance was separated in 1989, forming the CFB and VAC. Part of the reasoning was that creating the city's public campaign finance system would overshadow voter assistance, and so the latter needed to be distinct from campaign finance. To this day, the CFB retains a seat on the VAC's Board.

Recommendation:

- Integrate the Voter Assistance Commission and its voter education efforts within the Campaign Finance Board (CFB). Given the VAC's persistently low budget, it makes sense, particularly during difficult fiscal times, to fold the VAC into the CFB given common elements of their mission and a history of collaborative work and shared governance. This should enable the CFB to leverage its larger size, budget and presence to better achieve the goal of engaging and involving voters in the democratic process. Through its experience with the Voter Guides, planning and hosting debates, and as an advisor to VAC through its board, the CFB is positioned to expand upon its current experience in voter engagement to address the dismal and declining voter turnout in the city. This will prove to be an important focus of its work during years when municipal elections are not held and workload with respect to campaign finance diminishes.

v. Reform City Council Redistricting

The City is required by law to redraw city council districts every 10 years to reflect demographic data from the new census. The City Charter (in Section 50) requires that for each redistricting process, an “independent” redistricting commission be formed to create and implement the redistricting plan. Sections 51 and 52 of the charter summarize the powers and duties of the commission, as well as the rules and restrictions it must abide by.

The commission is constructed as follows: 5 members are appointed by the council delegation of the majority political party, 3 members are appointed by the council delegation of the minority political party, and an additional 7 members are appointed by the mayor. Further, commission members can only be removed from office by the person or persons who appointed them and “only for cause and upon notice and hearing.” The charter also requires that the commission contain at least one resident of each borough and that racial and language group representation be proportional to the City’s total population. Members of the Commission serve without compensation.

Those who are ineligible to serve on the commission include: officials and employees of the city or city agencies, registered lobbyists, employees of registered lobbyists, and officers of any political party.

Section 52 of Chapter 2-A of the City Charter outlines several guidelines that the redistricting commission must consider when redrawing district lines. These factors include: population consistency, “fair and effective representation of racial and language minority groups,” neighborhood and community cohesiveness, geographical compactness and contiguity, and compliance with voting rights laws. Additionally, the charter states that the commission may not redraw districts “for the purpose of separating geographic concentration of voters enrolled in the same political party” in order to weaken these voters’ representational power.

The redistricting commission is required by the charter to hold at least one public hearing a month before submitting the plan to the city council. The plan must be made public one month before the first public hearing. Furthermore the plan must be submitted to the City Council at least a year before the general election of the City Council.

The plan that is submitted to the City Council is adopted unless, within three weeks, the Council votes to reject to the plan in which case it must submit written objections to the redistricting commission. The redistricting commission then must prepare a revised plan and make this revised plan available to the Council and the public. Additionally, the commission must hold public hearings on the revised plan at least 10 months before the general election. After receiving additional comments and objections from the Council, the commission must submit a final plan at least 8 months before the general election. The adoption of the final draft requires the signature of at least 9 members of the 15 commission members certifying that the requirements in Section 52 have been applied and implemented in the plan.

The current redistricting system used by the city and outlined in the charter is significantly more independent and just than the system used on the state government level. However, the city’s redistricting commission remains vulnerable to politicization since the council members and mayor have the power to directly appoint all members to the commission.

Recommendations:

- Change the appointments to the districting commission drawing council district boundaries so

that 3 members are appointed by the council delegation of the majority political party, 2 members are appointed by the council delegation of the minority political party, 5 members are appointed by the mayor with a maximum of 3 from the same party, and 5 members are appointed by the Campaign Finance Board (The CFB itself consists of 2 members not of the same party appointed by the council speaker, 2 not of the same party appointed by the mayor, and the chair appointed by the mayor in consultation with the speaker for five-year staggered terms). The apportionment commission should strive to reflect the gender, racial, ethnic, language, and geographical composition of the city and not include officials and employees of the city or city agencies, registered lobbyists, employees of registered lobbyists, and officers of any political party. Members of the apportionment commission can be removed by their appointing authority for cause.

- Require the CFB to designate the Chair from among its five appointees, as well as appoint the Executive Director of the apportionment commission
- Amend section 52 specifying criteria for drawing a council district plan:
 - Reduce the variance between the most populated and least populated districts to 1 percent of the average population for all districts. Maintain the provision specifying that “any such differences in population must be justified by the other criteria set forth in this section.”;
 - Replace section 52(f) with “council districts shall not be drawn with an intent to favor or oppose any political party, an incumbent legislator, or any previous or presumed candidate for office.”; and
 - Require the number of apportionment commission signatures to adopt a council district plan to be a minimum of 11 of 15 signatures (73 percent). This threshold will ensure requirements of Section 52, particularly provisions preventing partisan gerrymandering, are met in the plan.
- Make the commission and its activities more visible to the general public to support the independence of the board and guarantee transparency. This can be achieved by requiring the commission have a website that lists the names and biographical information of members, having a posted copy of the redistricting plan being reviewed at hearings, listing dates and times of public hearings, and posting hearing proceedings for public review.

In light of the expanded role and authority of the Campaign Finance Board, we would recommend a commensurate name change reflecting the function and responsibilities of the new entity.

c. Strengthen Accountability

i. Require Mandatory Referenda for Laws Passed by Voter-Initiated Referendum

City voters have the power to amend the City Charter directly. If a petition to amend the Charter obtains the legally required number of signatures, it is placed on the ballot, and if a majority of City voters casting a ballot approves it, it becomes law. However, the City Council can alter or repeal such a voter-initiated measure by local law, without voter approval, as occurred in 2008 when the Council at the Mayor's request amended the term limits law to permit current officeholders to serve three terms.

Since 1966, when the first ballot initiative was organized, voter-initiated referenda have resulted in approved amendments being enacted on two occasions, first pertaining to the civilian review board (now the Civilian Complaint Review Board) and then to term limits for City Council members. In 1966, city residents passed a referendum prohibiting a civilian-controlled review board of police misconduct. The amendment in the referendum dictated that "any members of such a civilian complaint review board be full-time Police Department employees."¹²⁹ Two decades later, the City Council voted to allow civilian appointees to that board, rebuffing both the electorate and the NYPD. In 1993, term limits were imposed on City Council members, as well as upon other elected city officials, through a voter referendum that billionaire businessman Ronald Lauder helped to finance and organize.¹³⁰ The referendum provided that elected officials could serve a maximum of eight consecutive years and could not serve more than two full consecutive terms in office.

As a result of the 1993 amendments (and earlier ones through the Charter Commission of 1989), City Council members who were elected to a four-year term in 1997 and a two-year term in 2001 were barred from seeking reelection in 2003, even though they had served only six consecutive years in office. To correct this "unequal disqualification," the City Council in 2002 enacted Local Law No. 27, which amended Charter section 25(a) as it related to term limits.¹³¹ The local law established that a term of two years would not constitute a full term, but that two consecutive two-year terms would constitute one full term.

Several initiatives since 1966, however, have failed to pass amendments. The failures of these initiatives can be ascribed to three general causes: a) lack of approval from voters, b) ballot placement blocked by the appointment of a mayoral charter commission, and c) ballot placement blocked by court ruling. In 1986, an advocacy group called the Committee for New York's Future put forth an initiative to aid homeless families, but the voters did not approve the proposed amendment.¹³² On several occasions, matters presented by the voters qualified for ballot placement by virtue of the number of signatures collected, but were bumped from the ballot by the appointment of a mayoral charter commission. This happened in 1998, when Mayor Giuliani appointed a commission to block ballot placement of an initiative on whether the city should build a West Side Stadium to replace Yankee Stadium, and in 2005, when Mayor Bloomberg blocked ballot placement of an initiative to allow for specific classroom sizes.^{133, 134} Finally, in 1969 and 1985, ballot placement of initiatives was blocked from the ballot by court ruling. These initiatives pertained, respectively, to the Vietnam War and the harboring of ships with nuclear weapons in the city's ports.¹³⁵ The courts prohibited ballot placement in both cases because the initiatives did not concern ballot-appropriate subjects.

New York State Municipal Home Rule Law (MHRL), Section 37, provides what types of voter initiatives *cannot* be placed on the ballot present in the State, as follows:

11. No such petition for a proposed local law requiring the expenditure of money shall be certified as sufficient by the city clerk or become effective for the purposes of this section unless there shall be submitted, as a part of such proposed local law, a plan to provide moneys and revenues sufficient to meet such proposed expenditures. This restriction shall not prevent the

submission of a local law to adopt a new charter or to reorganize the functions of city government, or a part thereof, relying partly or solely on normal budgetary procedures to provide the necessary moneys to meet the expenses of city government under such reorganization, whether or not such reorganization includes the creation of new offices, provided only that such reorganization shall not require specific salaries or the expenditure of specific sums of money not theretofore required.

12. No charter amendment or new charter submitted under the provisions of this section which requires the expenditure of money shall become effective with respect to such expenditure before the beginning of the first fiscal year for which a city budget is prepared and adopted after the adoption of the amendment or new charter.

A recent voter-initiated referendum, the Smaller Class Sizes petition, sought to require that 25 percent of monies appropriated as ordered by the courts in the Campaign for Fiscal Equity (CFE) lawsuit be used to reduce class sizes. This initiative was denied placement on the ballot by the City Clerk in 2005 because of the Mayor's calling of a City Charter Revision Commission, as well as a finding that the petition did not adequately provide for a plan to provide revenues as required by the Municipal Home Rule Law. The New York State Supreme Court, New York County, subsequently dismissed a lawsuit by the signers of the petition on grounds that the Department of Education was not a mayoral entity and thus the initiative was not appropriate for the City Charter¹³⁶. The court did not examine whether the initiative met the requirements for providing an adequate funding plan under the MHRL.

Though the Supreme Court did not address whether the Smaller Class Sizes petition had provided a sufficient funding plan, the current restrictions under MHRL on the submission of voter initiatives appear to be sufficient for the purposes of ensuring that no unfunded mandates can make it to the ballot.

Given Citizens Union's particular interest in preventing elected officials from overturning laws passed by voter initiative that relate to their own interests, i.e. term limits, Citizens Union considered whether a more narrow view of changes to mandatory referendum laws as they relate to voter initiated laws is appropriate, as opposed to requiring voter approval for all laws that were first enacted through voter initiative. In examining how to define the types of conflicts of interest that Citizens Union is interested in, it is helpful to examine the City's current conflict of interest rules.

The Conflicts of Interest Board (COIB) was asked to examine whether the City Council voting to extend term limits was a violation of the City Charter's conflict of interest rules. City Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use his or her position as a public servant "to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant." The COIB ultimately issued Advisory Opinion 2008-3, which found that such a vote on extending term limits did not violate the City's conflict of interest laws. The opinion stated that there was no "personal or private" interest in the extension as provided under law, but rather related to the "terms and conditions of their public service as Council Members."

The COIB cited another example related to the City Council voting on items relating to the terms and conditions of their public office as the approval of legislation resulting in a pay increase, which currently occurs through the Quadrennial Compensation Commission process. Citizens Union has concerns about the ability of the Council to change term limits as well as their own compensation, believing that compensation rates should be applied prospectively rather than in their current term. If the City's conflicts of interest laws were changed to include items such as the terms and conditions of public office, elected officials would be preempted from making changes in these areas, and it would

not be necessary to include a provision related to conflicts of interest for laws subject to mandatory referendum.

Regardless of whether such a change is desirable, Citizens Union believes that the City Charter should be amended to protect voter-initiated laws from subsequent amendment or repeal without voter approval.

Recommendation:

- Condition the effectiveness of any City Charter amendment that would alter or repeal a voter-initiated charter provision on voter approval. A voter-initiated charter provision could be amended or repealed by (i) a second voter-initiated measure, or (ii) a City Charter Revision Commission proposal that is approved by the voters. But if the Council seeks to amend or repeal a voter-initiated charter amendment such a Council measure would not be effective unless approved by the voters. This would prevent the Council from overturning voter-initiated measures without the voters' consent.

ii. Change Appointments to the Conflicts of Interest Board

The COIB is the ethics board for the City of New York and was created by the 1988 Charter Revision Commission as the successor to the former Board of Ethics, which had been in operation since 1959. The COIB is the independent, non-mayoral City agency charged with interpreting and enforcing the Conflicts of Interest Law, found in Chapter 68 of the New York City Charter, the City's Financial Disclosure Law, set forth in section 12-110 of the New York City Administrative Code, and the Lobbyist Gift Law, found in sections 3-224 through 3-228 of the Administrative Code.

The mayor, with the advice and consent of the City Council, appoints the COIB's five members to staggered six-year terms. Members are to be chosen for their independence, integrity, civic commitment and high ethical standards. They cannot be removed at the Mayor's will. The staff, headed by an executive director, is divided into six units: Legal Advice, Training and Education, Financial Disclosure, Enforcement, Information Technology, and Administration. With limited exceptions, specifically spelled out in Chapter 68, the records of the Board are confidential.

The central question in considering the appointments structure of the COIB is whether it can be truly independent and faithful to its mission to oversee the ethical conduct of public servants and enforce such rules governing that conduct when its membership is appointed by the Mayor and approved by the Council, two of the very entities that come under its purview. Prior to 1989, the Board was comprised of several members of the mayor's office and the sitting administration's counsel, raising significant questions of independence.

Today's composition has mixed reviews. Council Member Daniel Garodnick, who in his capacity as member of the Council's committee that oversees mayoral appointments, interviews and investigates all nominees, stated "...at some point you have to have faith that boards will act independently of the people that have appointed them."¹³⁷ However, Council Member Letitia James and Public Advocate Bill de Blasio have questioned that viewpoint, recently having the COIB named as a defendant in a suit they filed against the City Council for issuing an opinion that stated that the council's vote to extend term limits did not violate the city's conflict of interest laws.

There have been some concerns about the independence of the COIB and application of conflicts of interest laws equally across all levels of public officials. News reports have focused on some of the outside or professional activities of COIB members, including lobbying and memberships on other boards, some of which were closely linked to city activities or projects. The COIB was criticized for its decision to allow schools Chancellor Joel Klein to raise funds for a national education nonprofit he is affiliated with while on the clock and using city resources. Citizens Union made the following statement to the New York Times regarding the matter, "There may be reason to question how strongly they are monitoring the activities of senior administration officials, given that they have ruled against a number of lower-level city employees for rather minor mistakes or judgments and then appear not to be as equally fair-minded in their review of higher-level folks."¹³⁸

More recently, the COIB has come under questioning for granting a waiver to the Mayor allowing his aide, Allison Jaffin, to be paid privately by the Mayor in addition to earning her city salary. The City Charter forbids financial relationships between public servants who are subordinates or superiors of each other without a waiver. While the mayor has presented Ms. Jaffin as an assistant doing administrative tasks, she also volunteered for the mayor's most recent campaign and is a key witness in a criminal investigation related to the mayor's \$1.2 million personal contribution to the state Independence party. Despite cases like these, the COIB continually asserts that it views every case

fairly. Arguably, appointments by only one elected official help perpetuate the perception that it may not act as independently as required.

The non-profit City Ethics group, which serves as a clearinghouse for resources and information about local government ethics programs, has formulated a model ethics code for cities to use as a starting point in writing their own, has this to say: “The fact that elected officials like to have the final say is itself a conflict of interest, because it is certainly not in the public interest to give them this final say. The more independent the ethics commission, the more it will be trusted by city residents, the less it will be used for political purposes, and the more respect its decisions will be given. When an ethics system is not perceived as independent, and ethics accusations are politicized, the ethics system can actually undermine the very confidence in government it is supposed to protect.”¹³⁹

In its August 2009 document proposing amendments to chapter 68 of the New York City Charter, the COIB’s only recommendations regarding the composition of its Board were to allow for the hiring of one non-city member with ethics experience, presumably to allow for greater flexibility in bringing in a board member with ethics expertise.

At the state level, Citizens Union has strongly advanced legislation that would create a unitary ethics commission with joint jurisdiction over both the legislative and executive branch with no one elected official controlling a majority of appointments.

Recommendation:

- The present appointment system should be changed to create greater independence so that the mayor does not appoint all five members with council approval. It is recommended that the newly reconstituted Conflicts of Interest Board should have three appointees by the mayor, one by the comptroller, and one by the public advocate. The council would retain its role and power through its advise and consent authority for all appointees. Citizens Union felt that to go from all mayoral appointees to one in which a small plurality would be appointed by the mayor would inject too much change and politicize what has been a professional approach to ethics enforcement even though justifiable concerns exists over one elected official making all the appointments. Removal of Board members would be for cause only, at the discretion of the appointing office.

iii. Change Term Limits for City Council and Citywide Officials

New York City voters first approved term limits via a 1993 ballot initiative which limited citywide officials, borough presidents and city council members to no more than two consecutive four-year terms. In 1996, the voters reiterated this position in addressing a referendum seeking to extend the number of years and terms that councilmembers and citywide officials could serve. Citizens Union opposed both those initiatives at that time, believing that voter choice would be limited by term limits.

Subsequent efforts were made to alter or overturn term limits by the council and mayor, most recently and dramatically in 2008. From 2005 onward, Citizens Union opposed any unilateral council action and endorsed a charter revision commission review of the issue. Though Citizens Union had historically opposed term limits, it believed that since the voters enacted term limits, only the voters should be able to amend them.

The experience of the Council since term limits went into effect has been positive. Perhaps the best illustration of the ability of the Council to perform under term limits occurred in 2002, when a newly elected City Council, in addition to a newly sworn in mayor and public advocate, came to power and contributed to re-establishing stability just months after the city's darkest day. In the years following the approval of term limits, the City Council became a more dynamic policy-making body in part due to the fresh perspective and energy of new Council members. Competition for exposure and achievement fueled activity in the second term of City Council members as they positioned themselves for higher office. This was a double-edged sword, adding to the vigor of the Council but also, on occasion, distracting from the focus on policy and their current positions. This suggests that the extension of terms from two to three for Council members would be best so that their focus on current activities is greater than the attention devoted to advancing to the next office.

The typical arguments against term limits, such as loss of expertise and voter choice, have not been substantiated in New York City's experience. In fact, the opposite has been true. Regarding voter choice, arguably the potential field of candidates is more narrowed when an incumbent is seeking reelection, as has been the experience in the last few election cycles. In contrast, voter choice is significantly increased in the election in which terms limits bars the incumbent from seeking reelection. Also, with respect to the argument that term limits empower staff, new leadership always retains the discretion to hire new staff and it could be argued that no staffer is necessarily irreplaceable given the political nature of legislative bodies.

Term limits are also, in part, responsible for a more diverse City Council. In 2001, when term limits first kicked in, diversity in the Council rose from 23 members of color to 25. Today 27 of the Council's 51 members, or a majority, are African-American, Latino or Asian-American¹⁴⁰

Three terms or twelve years, for legislators and two terms for citywide officials and borough presidents is consistent with the national trend and history of term limits in the United States where such limits are more prevalent for executives than for legislators. Moreover, executives generally – but specifically in the city's case the mayor – have more institutional power which hinders significant policy advancement by legislators who have less power and ability to advance legislation during their terms. Longer term limits for legislators would provide a necessary check and balance against the executive who has greater power built in to the official duties and responsibilities of the office. For example, with only two terms it is difficult for the city council to elect a speaker who has sufficient experience to lead and can provide continuity if chosen for a subsequent term, during which there would be a large portion of newly-elected, less experienced members.

Recommendation:

- Change the convening of the Quadrennial Compensation Commission for determining raises for the council, mayor, comptroller, public advocate, borough president, and district attorney to the year before a citywide election. This would prevent the mayor from delaying raises (or decreases in salary) by not convening the Quadrennial Compensation Commission and disrupting a prospective approach to salary increases. For the City Council, this would require an amendment to Chapter 2, Section 26(c) of the City Charter. Other offices would require additional language to be added to the City Charter in sections relevant to those offices.

d. Protect Integrity

i. Ban Council “Lulus” or Legislative Stipends

“Lulus” or legislative stipends are additions to salary that most Council members currently receive for serving as committee chairs or in other leadership positions. They range from \$4,000 to \$28,500 for the Speaker of the City Council and are on top of an existing salary of \$112,500. Typically, lulus are \$10,000 awarded for chairing a committee. Forty-six of fifty-one members currently earn a lulu, the exceptions being the four minority Republican members of the City Council and one rank-and-file Democrat. These stipends as a whole cost \$473,500 in taxpayer money in FY 2010. The Speaker of the Council controls the amount and distribution of lulus.

Citizens Union has taken a position calling for an elimination of lulus except for the Speaker, Majority Leader, and Minority Leader, who clearly have greater responsibilities warranting a higher salary. In 2006 testimony to the Quadrennial Advisory Compensation Commission, Citizen Union indicated that the ending of lulus for rank and file members should be coupled with a base pay increase. A significant base pay increase from \$90,000 to \$112,500 was made in 2007 while lulus were kept intact.

The call to end lulus has been echoed by many other civic groups and newspaper editorial boards including the Daily News, which has called the system one in “which the speaker can buy votes with money instead of winning them on the merits.”¹⁴¹ That sentiment was echoed by Council Member Walter McCaffrey, who stated before the 2006 Quadrennial Commission that lulus had been used to “reward allies and enforce discipline.”¹⁴² The awarding of lulus has also resulted in a proliferation of unnecessary committees and distributed council members across too many specialty areas resulting in diminished focus and expertise that ultimately undermines the ability to create good policy. Testimony provided by both Citizens Union and McCaffrey, coupled with other information and accounts, caused the 2006 Commission in its report to call lulus “ripe for reform” and recommended the Council or a future Charter Revision Commission consider reforming the practice of awarding lulus.¹⁴³

It is important to note that no other Council or state legislature in the country, with the exception of New York, awards lulus.¹⁴⁴ Neither does Congress, with every representative earning the same pay regardless of seniority or responsibility. This countervailing trend has not stopped the increase in the use or dollar value of lulus in the Council. In 1994, just 29 members received lulus totaling \$334,000. Twelve current Council members have voluntarily given up the receipt of lulus. Eight additional members have indicated their support for the repeal of lulus, despite still accepting them.

Recommendation:

- Change the convening of the Quadrennial Compensation Commission for determining raises for the council, mayor, comptroller, public advocate, borough president, and district attorney to the year before a citywide election. This would prevent the mayor from delaying raises (or decreases in salary) by not convening the Quadrennial Compensation Commission and disrupting a prospective approach to salary increases. For the City Council, this would require an amendment to Chapter 2, Section 26(c) of the City Charter. Other offices would require additional language to be added to the City Charter in sections relevant to those offices.

ii. Changes to Council Voting on Salary

Currently, raises for the City Council, as well as for the mayor, comptroller, public advocate, borough president and district attorney are determined through a process involving a Quadrennial Commission, the mayor, and the City Council. Every four years, a Quadrennial Commission is convened that analyzes a number of factors in determining suggested raises for these city offices. Among the factors considered by the Quadrennial Commission are costs of living, inflation, city union contracts, city managerial pay increases, salaries of appointed staff in elected officials' offices, salaries for heads of governmental and quasi-governmental agencies, as well as executives of non-profit organizations.¹⁴⁵ After the Quadrennial Commission issues an advisory report on the matter, the mayor may reject, accept or amend the findings of the Commission. The City Council then votes on the salaries following input by the Mayor. Thus, the Council votes on the raises of sitting members although nothing precludes the Quadrennial Commission or Mayor from suggesting raises go into effect at a later date after elections. However, the Administrative Code as presently written empowers these commissions with the authority to make such recommendations applicable to the current office holders.

It is also noteworthy that the mayor appoints all Quadrennial Commission members and has made City staff available to work under its direction.

Citizens Union has taken a position on this issue in the past, indicating in hearings in 2006 before the Quadrennial Advisory Compensation Commissions that "...Citizens Union would have ideally preferred that salary increases recommended by the Quadrennial Advisory Compensation Commissions...not go into effect until the commencement of the next term. It makes good sense that the Council and the Mayor not participate in or vote on their current salaries, but rather on those elected for the next term, even if those salary increases are proposed by a separate body such as the Quadrennial Compensation Commission and the offices are held by the same re-elected officials."¹⁴⁶ The rationale for a prospective approach is to negate the obvious conflict of interest in council members (and the mayor for that matter) voting on raises immediately affecting them, rather than the positions themselves. The 2006 Quadrennial Commission echoed these sentiments, stating that, "The Commission believes that limiting the ability of government officials to raise their own salaries and receive them immediately would improve the integrity of government and public confidence in it."¹⁴⁷

In other major cities, the ability of the city council to vote on its raises, prospective or otherwise, has been effectively or literally taken away. In Philadelphia, council members' raises are dictated every four years by changes in a cost of living formula. This is also the case in Chicago, although 38 members recently submitted an affidavit calling for a raise when the recent economic downturn resulted in a lowering of their salaries. In both these cities, the council voted to create this system. In Seattle, raises are also dictated every four years by a cost of living formula. However, Seattle council members are not able to change this arrangement through voting. The decision is not in their authority to alter.

Recommendation:

- Require laws enacted by City Council changing their compensation go into effect after the next council election. This would require an amendment to Chapter 2, section 27 of the City Charter.
- In determining raises for the City Council, mayor, comptroller, public advocate, borough president, and district attorney, the convening of the Quadrennial Compensation Commission should be changed to the year before a citywide election. This would prevent the mayor from

delaying raises (or decreases in salary) by not convening the Commission and disrupting a prospective approach to salary increases. For the council, this would require an amendment to Chapter 2, Section 26(c) of the City Charter. Other offices would require additional language to be added to charter sections relevant to those offices.

iii. Enhance Disclosure of Outside Income Earned By the Council

Currently, city council members are allowed to earn an outside income from jobs other than their council position while earning a base salary of \$112,500 plus a typical “lulu” of \$10,000 in addition to their base salary. For most council members, however, their sole income is from serving as a public official. Only 11 of 51 Council members in 2004 earned income from second jobs that was not related to investments, interest income or other forms of non-employment income. About twenty percent held jobs outside the Council, with those working multiple jobs earning up to nearly a half million dollars of combined income. Despite the fact that a small minority of members earn income outside the Council, all members are required to complete lengthy financial disclosure forms which are submitted to the Conflicts of Interest Board. The 42-page disclosure form, which is also completed by citywide electeds, Borough Presidents, and local party officials, covers a broad array of topics beyond income from outside positions including deferred income, travel expenses, gifts, transfers of money and property, interests in trusts, estates, government contracts, investments, and loans, among other topics. Reporting on similar topics and other financial affairs is also required for the spouses and domestic partners of electeds, and their dependent children

Dating back at least a decade, Council members have been criticized by good government groups for holding additional jobs because it can potentially create a conflict of interest since members vote on such a wide range of issues. While this conflict is not as visible or prevalent as in the state legislature, where editorial boards have frequently accused Assembly Speaker Shelley Silver of preventing the passage of tort reform while working at a law firm specializing in personal injury lawsuits, the appearance of or actual conflicts of interests can exist. For this reason, and the perception that Council members may not actually devote 40 hours a week to the job, Citizens Union has indicated that it is “troubled by the several members of the council who earn other than employment-related income” and that “Council Members should earn a city salary that would allow them to devote “whole time” attention to performing their duties without the need to earn an outside income.” In 2006, the Quadrennial Compensation Commission said the issue merited “serious review and reform.”

The practices in other states provide some guidance in considering whether council members should be able to earn income at jobs outside the council. Council members in Los Angeles are the highest paid in the nation at \$178,789 but are forbidden from earning income from outside jobs. Nor do they receive “lulus.” Part of the reason for their exorbitantly high salaries is the link for raises between their salary and those of municipal judges. Seattle lawmakers are also forbidden from additional employment while earning a significant salary of \$103,878, with increases tied to the Consumer Price Index and other cost of living factors. Chicago and Philadelphia resemble New York, with outside employment income permitted with varying degrees of disclosure. A mayoral task force in Philadelphia recently proposed requiring job descriptions and good government groups there have sought to use those descriptions as a screen to bar particular jobs for Council members.

Current financial disclosure requirements are enumerated in Section 12-110 of the NYC Administrative Code. The mayor, city council members, borough presidents, comptroller, public advocate, local political party officials, candidates for the all of these offices, and public servants who are an agency head, a deputy agency head, a paid member of any board or commission, a member of the Management Pay Plan, a City employee whose salary is above \$83,500, or a City employee with direct involvement in contracts, leases, franchises, revocable consents, concessions, or applications for zoning changes, variances, or special permits must file an annual report of their financial affairs.¹⁴⁸ In total, financial disclosure is required of about 8,000 New York City employees and elected officials.¹⁴⁹

Reporting requirements go far beyond income from additional jobs, and include income from securities, real estate, previous employment, interest income from trusts, businesses, loans made to others, among other requirements. Income is reported in 7 different ranges across all areas for which it is reported. Those ranges are as follows: 1) \$1K to under \$5K, 2) 5K to 40K, 3) 40K to 60K, 4) 60K to 100K, 5) 100K to 250K, 6) 250K to 500K, and 7) 500K or over. Many of the requests require information beyond a name or simple listing. For instance, lawyers are required to report “principal subject areas of matters undertaken during the reporting year” in addition to those principal subject areas addressed by the firm where they work. While the value of one’s real estate holdings, business interests, trusts, estates, business contracts and securities are required to be reported, there appears to be no requirement to report one’s bank account balances or value of real estate for one’s primary or secondary home if it is exclusively owned or owned with a relative.

In December of 2007, Citizens Union presented testimony to the Council’s Committee on Governmental Operations regarding the compensation levels of elected officials, which recommended that a separate financial disclosure be developed for and required from city council members due to their ability to earn outside income. This different form would require greater disclosure of how much time is spent on outside employment and in what ways and on behalf of whom where appropriate. In 2008, Citizens Union opposed the removal of ranges or increasing dollar amounts related to disclosure to align to city law to state law. To the contrary, in its 2008 testimony to the Council committee on Standards and Ethics, Citizens Union called for tighter income ranges in 2007 testimony before the Government Operations committee. Citizens Union also called for increased disclosure for all filers regarding the relatives of filers in City service, as well as the non-City employers of filers’ siblings, parents and adult children.

The Conflicts of Interest Board is for the elimination of all dollar ranges, and is also opposed to the provision of specific amounts. They do not think these amounts are relevant to conflicts of interest because any amount above may potentially be a conflict and disclosure thresholds don’t match what is considered a violation of a law (for instance, the form’s \$1,000 threshold for reporting fails to result in disclosures of gifts between \$50-\$999 that may be a conflict of interest).

Chapter 68, section 2603 of the Charter details powers and obligations of the Conflicts of Interest Board, including directing public servants to file financial disclosure statements with the Board. The Board is also empowered to determine if such statements are in compliance with laws related to financial disclosure, and issue rules pertaining to disclosure and compliance thereof. The laws pertaining to financial disclosure, as mentioned earlier, are written in section 12-110 of the NYC Administrative Code.

- City Council members should retain their ability to earn income from jobs other than their work as council members. However, City Council members should be subject to enhanced disclosure of outside income through the use of a different disclosure form from other filers like the mayor, public advocate, comptroller, and borough presidents, who cannot earn outside income. Therefore, the Charter Revision Commission should direct the COIB in the City Charter in Chapter 68, Section 2603(d) to create a separate financial disclosure form for City Council members that would require more detailed reporting of information about the source and amount of compensation, and time spent working outside of the Council. Specifically, the form for City Council members should require:
 - a. increased disclosure for Council members regarding the relatives of filers in City service, as well as the non-City employers of the filer’s siblings, parents and adult children;

- b. reporting of all board memberships of any companies or not-for-profit organizations and indicate what business, if any, the entity has with any city agency; and
- c. information regarding the nature of outside income, specifically:
 - i. the number of hours City Council members spend each month, or on average during the reporting year, working at their other jobs;
 - ii. income reporting ranges that are tighter than current income ranges so as to better know the range of outside income earned; and
 - iii. information regarding the nature of outside income, including the identity of paying clients, the amount and nature of all fees and income above a minimum threshold that is received from clients, and the name of any city agency relevant to the representation and a general description of the services rendered in exchange for the fees. Regarding disclosure of clients:
 - 1. The disclosures should apply prospectively, meaning only to new clients and new matters for existing clients as of the City Charter provision's effective date.
 - 2. Exceptions from this disclosure requirement would be granted for the disclosure of the identities of clients the City Council member represents in criminal, family or transactional matters that have not been revealed in public records. In such situations, the fees, city agencies involved and general nature of the work involved should be disclosed unless the Conflict of Interest Board determines that such disclosure would result in the identification of the client involved.
 - 3. City Council members should also be permitted to seek exceptions from the Conflict of Interest Board where the disclosure of the fact of representation itself is privileged or where such disclosure is likely to be embarrassing or detrimental to the client.

Citizens Union recognizes that lawyers who are City Council members have ethical responsibilities with regard to clients' confidential information, and that their client interactions are subject to the attorney-client privilege. Nevertheless, we believe that disclosure of the above information is consistent with lawyers' ethical obligations, particularly as the law would apply prospectively, so that attorney-council members can inform their clients in writing of their disclosure obligations.

iv. Transfer Lobbying Reporting and Enforcement to the Campaign Finance Board

Lobbying in the City of New York is governed by the Administrative Code of the City of New York, specifically Title 3, Chapter 2, Subchapter 2, Section 3-211-223 and by the implementing regulations. Lobbyists are required to register and report to the City Clerk's office, which contains a Lobbying Bureau.

The city's Department of Investigations (DOI) works in conjunction with the Lobbying Bureau in the City Clerk's office to investigate and enforce the Lobbying Law. In 2007, the DOI created the Lobby Law Unit, which implemented the framework that includes regular and ad hoc meetings with the Lobbying Bureau of the City Clerk's office to discuss audits and investigations, training the City Clerk's staff, reviewing their audit protocols, forms, and audit reports, and advising them with respect to enforcement actions. The DOI Lobby Law Unit also has undertaken several audits on its own to become familiar with the industry. Under Title 3, Chapter 2, Subchapter 2, Section 3-212 of the Administrative Code, the City Clerk may conduct investigations and subpoena witnesses and records. It may also, under Section 3-223, report violations to the DOI and is required to do so in instances where it suspects a criminal violation of the law.¹⁵⁰

The function of the City Clerk's Lobbying Bureau is to monitor the activities of lobbyists and their clients, and in doing so, keep the public fully informed of their activities. They are responsible for drafting reports on lobbyist details, conducting training sessions for lobbyists and clients on changes to policy, law, or enhancements of e-Lobbyist (the city's lobbying database), and conducting random audits. The Lobbying Law also provides the City Clerk with broad enforcement powers in order to provide the Bureau with the tools to conduct oversight and obtain disclosure information.

Lobbying oversight has been under the authority of the City Clerk since 1972.¹⁵¹ Up until 2006, lobbyists were required to file and submit periodic reports to the City Clerk. The office functioned largely as a repository for information and published reports of lobbyist registration and activity. There was no true oversight or enforcement component to the City Clerk's function. In 2006, at the urging of Citizens Union, the Council and the Mayor passed legislation that strengthened lobbying disclosure, increasing the responsibilities and scope of the City Clerk's office.

Citizens Union has long had concerns over the City Clerk having the responsibility for lobbying oversight and enforcement when that position is held by someone who is appointed by the City Council, the very entity in which lobbying of elected officials occurs. We believe this is a conflict of interest that must be removed. It should also be noted that the City Clerk no longer publishes an annual report of lobbying activity, which Citizens Union believes is essential to understanding the extent and range of lobbying activity in the city.

In considering whether lobbying oversight should be conducted by another agency, Citizens Union examined other bodies in the City that perform oversight roles. In other cities which have ethics oversight bodies, such as Los Angeles and San Francisco, the ethics agency also oversees and enforces the lobbying law. At the state level in New York, Citizens Union advocated for the inclusion of lobbying regulation in ethics oversight, seeing the intersection of money and politics as an appropriate and natural extension of regulating government ethics. In New York City, the Conflicts of Interest Board (COIB) already oversees reporting and enforcement of the Lobby Gift Law. Although COIB may be a natural entity to oversee lobbying given its role as a repository for documents and because a combined lobbying-ethics structure is common around the country, the COIB –which has submitted many proposals to amend the City Charter related to its function – has not called for extending its

authority to include the lobbying law. It also may not be the best fit given that it is more an administrative agency and less an enforcement agency.

The City's Campaign Finance Board (CFB) has the capacity for monitoring financial reporting, and is more oriented toward transparency than both the COIB and the City Clerk's office. Lobbying reporting is consistent with the CFB's work in disclosing to the public accessible and transparent information, though it has been limited to candidates. Two examples of exemplary practices of facilitating disclosure by the CFB are: 1) an in-house developed software that campaigns use along with training and a call-in service to assist filers with it; and 2) an in-house developed online public database that is user-friendly and searchable. The CFB also has a more independent role than COIB with appointments made by both the Mayor and the Council,, which is in line with the diverse appointments structure Citizens Union is proposing for the COIB.

The CFB is already familiar with obtaining information related to lobbyists given that the City's matching funds system, which provides for public financing of campaigns, has special rules concerning contributions from lobbyists. Likewise, the CFB is familiar with navigating the Doing Business Database, which contains a listing of those who do business with the City, including lobbyists, relevant to their current work in determining thresholds for the size of permissible financial contributions to candidates. The CFB may be more capable of providing effective disclosure of the fundraising and political consulting activities that lobbyists do for candidates, which is not currently available on the city's online Lobbyist Search website despite being filed with the City Clerk's office.

Recommendations:

- Transfer lobbying and reporting responsibilities from the City Clerk's office to the Campaign Finance Board to create a more independent and effective system of lobbying law enforcement.
- Require the Campaign Finance Board to publish an annual report of lobbying activity.

v. Codify Provisions Enhancing Transparency and Equity of Council Discretionary Funds

Discretionary funding or “member items” are grants made by City Council members to “community based not-for-profit and other public service organizations, either individually or in collaboration with other members.”¹⁵² For FY 2010, discretionary funding totaled \$48.8 million for the City Council. Its distribution is unequal between City Council members, ranging from \$358,000 to \$1.3 million.

According to analysis by Gotham Gazette – published by Citizens Union’s affiliated organization, Citizens Union Foundation – those who receive the most funding typically have leadership positions or chair influential committees.

Discretionary funding has been the subject of public scrutiny over the last five years, and the City Council has responded with a series of welcomed and needed reforms which have all been made in either the City Council’s Rules, or at the direction of the Speaker. On Nov. 8, 2006, Speaker Quinn announced that discretionary funding would be allocated each year in the city budget and names of sponsoring Council members would be identified.¹⁵³ For the first time, the City Council put the list of all of the organizations or programs that receive city funding, known as "Schedule C", online.

The casualness and lack of oversight in the discretionary funding process in New York City came into sharp relief in 2008 when, as a result of a federal investigation, it was revealed that the City Council used fictitious organizations to serve as false place holders for \$17.4 million in taxpayer dollars since 2001.¹⁵⁴ This crisis prompted City Council and Speaker to revise the Council’s system of review and decision-making for discretionary funding and adopt a series of reforms including (i) increasing pre-clearance requirements for organizations requesting funding through the Mayor’s Office of Contract Services (MOCS); (ii) heightening disclosure for organizations and funding Council members regarding conflicts of interest; (iii) increasing the amount of information in budgetary documents such as Schedule C; and (iv) appointing an Independent Council Compliance Officer who reports to the General Counsel.¹⁵⁵ In 2009, additional information was provided in Schedule C such as organizations’ federal tax identifiers, whether they had met pre-clearance or qualification requirements, and whether there was a fiscal conduit organization involved.¹⁵⁶

Further reforms were enacted in April 2010, including¹⁵⁷:

- a commitment to create an online searchable database of discretionary funding allocations and applications for discretionary funding;
- enhancements to the current vetting process by requiring information regarding prior funding sources, and requiring non-profits that were created in 2009 or 2010 to be limited to \$15,000 in total cumulative funding and an individual maximum of \$7,500 per council member;
- limiting the hiring of consultants;
- limiting City Council members’ ability to sublet office space to only other elected officials; and
- limiting funding via fiscal conduits to no more than \$10,000 or less than \$1,000.

At the state level, legislation has been introduced to provide statutory requirements for member item distribution. As is the practice in the City Council, the process of awarding member items is subject to either the State Assembly or the State Senate’s internal rules. S.7007/A.10116 was introduced by Senator Serrano and Assemblymember Galef as a comprehensive reform bill that would require equal distribution of member items between the majority and minority parties, and between rank-and-file legislators and party leadership, among other reforms – many of which were based on the New York City Council’s reforms. The legislation would also require that any groups wishing to receive member items be pre-certified by the Attorney General. Pre-certification will include the verification of the organization's tax status, as well as compliance with having filed the mandatory annual report on any

previously received legislative grants. State agencies would oversee the spending of the allocated funds, and are required to publicly report on the usage of distributed member items. In addition, awarded legislative grants, along with the name of the recipient groups and the sponsoring legislator, must be made public 24 hours in advance of budget approval to allow for public comment. The bill also calls for legislators and member item recipients to report any possible conflicts of interest in advance of budget approval.

Citizens Union neither opposes nor supports the practice of allocating discretionary funds, but believes that if the practice is retained, the current reforms should be made permanent with the reforms enshrined in the City Charter.

Recommendations:

- Codify in the City Charter recent reforms regarding the City Council’s discretionary funding process, so that if discretionary funding continue to be distributed, they will be subject to requirements which include:
 - a. Disclosure of conflicts of interest by elected officials distributing funds and organizations receiving funds;
 - b. Preclearance of organizations by the Mayor’s Office of Contract Services; and
 - c. Creation of an online searchable database of discretionary funding allocations and applications for such funding.

- Place in the City Charter additional reforms providing that if discretionary funding continue to be distributed:
 - a. Require that discretionary funding be distributed equally to all 51 members of the City Council. For members choosing not to receive discretionary funding, their portion should go back into the general fund; and
 - b. Require that a statement of need be provided for every discretionary funding application to demonstrate how the funding would be utilized to meet said need.

vi. Reform the Uniform Land Use Review Procedure

All requests, applications and appeals pertaining to land use within the city are subject to the Uniform Land Use Review Procedure (ULURP). ULURP entails a complex set of procedures involving the New York City Department of City Planning (DCP), the City Planning Commission (CPC), community boards, borough presidents and borough boards, the City Council and the mayor. Each office plays a role in reviewing land use applications and determining whether to approve a given application for review by another office. The complete review process for an application, once certified, is typically 215 days, with intermediate time constraints for each phase.¹⁵⁸

The CPC plays arguably the most pivotal role in the application review process, as it gets to decide whether to approve, approve with modifications, or disapprove an application for review by the City Council and the mayor. Once the CPC receives an application, it has already been processed by the DCP and reviewed by concerned community boards, borough presidents, and borough boards. The CPC thus acts as the nexus between local offices whose communities stand to be affected by a land use decision and the citywide offices that will ultimately determine whether to grant that proposal.

While the breadth of actions related to land use subject to review, and ultimately the ULURP process, has grown over the decades, not all actions are covered by the process while others are covered by abbreviated forms of it. The following actions are subject to ULURP:¹⁵⁹

- Changes to the City Map
- Mapping of subdivisions, platting of land into streets, avenues or public places (this has not been used since 1976)
- Designation or change of zoning districts including changes to zoning maps, including district designations and boundaries. (However, zoning text, which establishes rules for use and development of property within zoning districts, and the Zoning Resolution, a government regulation allocating land to various uses, are not.)
- Special Permits (permits that modify zoning controls such as use, bulk and parking) within the Zoning Resolution requiring approval of the CPC
- Site selection for capital projects (the construction or acquisition of a public improvement classified as a capital asset of the City, for example a library, fire house, or sewage plant)
- Revocable consents (an at-will grant by the city for private use on, over, or under city property like a bridge), RFPs, franchise solicitations (agency grants of a right to occupy or use city property to provide a public service, for example a private bus line), and major concessions (grants by an agency for private use of city-owned property, and which have significant land use or which require an environmental impact statement (EIS)). CPC rules determine if a concession is major and goes through ULURP.
- Improvements in real property the costs of which are payable other than by the city (rarely occurs).
- Housing and urban renewal plans pursuant to city, state, and federal laws
- Sanitary or waterfront landfills
- Disposition of city owned property
- Acquisition of real property by the city (excluding office space)

There are a number of proposals that are part of the public debate to reform ULURP. Real estate interests and developers seek to streamline and fast track the process. This can take the form of curtailing the amount of time different government entities have to consider ULURP proposals, limiting the proposals subject to ULURP, or expediting the pre-certification period, among other

proposals. Community groups and associated advocates seek to provide the community with a greater role in the process. This includes giving greater weight to advisory bodies, subjecting more land use proposals to ULURP, or lengthening periods for deliberation.

Citizens Union believes that, since its creation in the mid-1970s, ULURP has largely been successful in allowing for needed development that has aided in the city's resurgence. However, there is a need for ensuring that community voices are heard and taken into account when decisions are made. There is also a greater degree of coordination needed with regard to long-term planning, some of which will require more comprehensive reforms that are beyond the scope of what Citizens Union is recommending at this time. This understanding of ULURP, and that of land use more generally, not only informs our recommendations below but also those related to the composition of the Board of Standards and Appeals (see p. 44), Franchises and Concessions (see p. 42), and reforms related to community boards (see p. 37).

Following the 1989 Charter Commission, administrative rules completed pursuant to the changes in the City Charter related to Fair Share provisions undermined the intent of the original language. The recommendations below will establish greater equity and fairness in opening and closing city facilities like social service entities or waste transfer stations, as was intended by the 1989 Charter Commission, and correct an unintended consequence of errant rule making.

As highlighted by Community Board One (CB1) in Manhattan, there currently is no standardized structure for providing responses to land use actions that are subject to ULURP. Requiring greater standardization and guidance for community boards in providing feedback on actions related to land use would make the ULURP process more efficient while also improving the quality of community input. As described by CB1, as many as eight standards are used for evaluation of land use projects including the impact on local schools, housing, public space, streetscapes, environmental sustainability, and coherence with the community's architectural character. The City Planning Commission should be required in the City Charter to create rules that will guide community boards, borough boards, and borough presidents as to how they should uniformly comment with regard to different types of proposals subject to ULURP. The guidelines should vary depending on what the proposal is – for example, housing, zoning, the disposition of real property, etc. The process of creating these rules should involve the parties providing feedback in creating responses tailored to a standardized format.

Citizens Union's recommendations at this time regarding land use review and decisions are limited and focused on some immediate issues, such as in the areas of Fair Share and standardizing response and guidelines, but are by no means complete. We have examined far more than what is contained below in the recommendations and hope to present future recommendations on how to simplify and strengthen ULURP as well as the structure and function of the City's planning efforts and activities.

For example, there is a need to integrate 21st century security concerns into land use decision-making. This was best illustrated in the case of redevelopment of the World Trade Center site, where the Freedom Tower underwent redesign after the NYPD voiced concerns about security. Consequently, a 187-foot concrete base was added to the design of the Tower in April 2006. While this development is controlled by the state, it raises questions as to whether other actions that are subject to ULURP should address potential security concerns where applicable. This could be addressed in a number of ways: outside of the City Charter through alterations to land use applications, within the charter through adding the NYPD as an entity that vets particular applications, or by requiring that a member of the CPC have a background or expertise in security. This could be best accomplished through amendments to Section 2-202 of Rules pursuant to ULURP related to the application. The Department of City Planning should create standards for circulating to the NYPD particular

applications which have significant security implications, and gathering their feedback as part of ensuring the application is complete prior to certification. This approach will address security concerns on the front-end rather than causing revisions to actions at much later stages of ULURP.

Recommendations:

- Change the Fair Share Provisions related to site selection subject to ULURP. These include:
 - a. Requiring city facilities sitings, expansions and reductions be properly identified in the Annual Citywide Statement of Needs by undoing rules that allowed for amendments to the Statement of Needs mid-year;
 - b. Including all polluting/infrastructure facilities in the Atlas of City-Owned Property, not just those owned by the city. This will provide a more accurate picture of services provided in a community that can be taken into consideration for new sitings, or expansions or closures of existing facilities; and
 - c. Utilizing more updated indicators of environmental burdens, including number of brownfields, highways, and air quality

- Standardize responses from the various groups involved in ULURP. This requirement that rules create greater standardization from entities providing feedback during ULURP could be referenced in Chapter 8, section 197-c. Specifically, subsection i can be amended the following way (additions underlined):

The city planning commission shall establish rules providing

- i. guidelines, minimum standards, and procedural requirements for community boards, borough presidents, borough boards and the commission in the exercise of their duties and responsibilities pursuant to this section,
- ii. minimum standards for certification of applications pursuant to subdivision c of this section,
- iii. specific time periods for review of applications pursuant to this section prior to certification, and
- iv. uniform guidelines to community boards, borough presidents, and borough boards for providing recommendations for different types of applications such as the impact on local schools, housing, public space, streetscapes, environmental sustainability, and coherence with the community's architectural character.

This would also require changes to Rules pursuant to ULURP, namely Section 2-03, Community Board Actions. Changes to the Rules may be the preferred approach rather than changing language in the City Charter.

vii. Create a Process to Integrate 197-a Plans into Long-term Planning

Comprehensive long-term planning performed for the City can be disjointed and uncoordinated. Specific long-term planning is provided to some extent by the Mayor's Office of Long-Term Planning and Sustainability (OLTPS) and recently by Waterfront Vision and Enhancement Strategy (WAVES), a joint task force of the New York City Economic Development Corporation and the Department of City Planning mandated by the City Council and approved by the mayor

The most extensive citywide development planning in recent years involved the proposals for the 2012 Olympics, most of which were not considered after the bid was lost. Individually, city agencies such as the Parks Department and the Department of Transportation (DOT) have internal documents that address long-term programs. The City Planning Commission and Department of City Planning are more narrowly focused on rezoning and address land use changes for specific districts on a case-by-case basis, which is an activity more on the order of project planning. However, there is little comprehensive planning being done (i) to address the City's overarching needs and (ii) to develop and implement its long term goals.

The City Charter does endow DCP and the CPC, along with other governmental entities, with responsibilities that speak to comprehensive planning by requiring the production of various planning-related documents. For example, DCP is charged with assisting the mayor in the preparation of an annual report concerning the social, economic and environmental health of the city, a strategic policy statement every four years and the ten-year capital strategy. According to the City Charter, the City Planning Commission "shall be responsible for the conduct of planning relating to the orderly growth, improvement and future development of the city, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population."¹⁶⁰ The City Planning Commission is also charged with developing a zoning and planning report every four years. However, rather than the CPC producing this report, DCP has produced the previously mentioned Strategic Plan, a less comprehensive document than the zoning and planning report. In 1990, through the charter revision process, community boards were given a greater role in what is a form of long-term planning with the power to draft their own community development plans, called 197-a plans, and submit them to the CPC and City Council for approval.¹⁶¹ 197-a plans are advisory policy statements but the City Charter obligates city agencies to consider the plan in making future decisions. Community boards were also promised professional planning assistance to assist them in the creation of 197-a plans in addition to serving in their advisory capacity related to land use. Neither has happened in practice.¹⁶² (see more on 197-a plans on p. 37) While several different entities approach some form of long-term planning, insufficient comprehensive coordinated planning takes place.

Recent proposals to address long-term planning in the City include the 2009 amendments to current Local law promulgated by the Municipal Arts Society (MAS) sponsored Campaign for Community-Based Planning, as well as MAS 2005 proposed charter revisions, both of which are intended, *inter alia*, to strengthen Section 197-a (community based planning). The Pratt Center for Community Development, Manhattan Borough President Scott Stringer and other informed observers have diagnosed the current problems of city planning and largely agree that the difficulties arise mainly from too much control centered in the Mayor's office as well as a lack of coordination across state, regional and local agencies, authorities and corporations. Additionally, problems arise due to elected officials' perceived discomfort with any planning that involves more than a three to five year action horizon.

There is a strong constituency for comprehensive planning now, given its success historically in New York, and the success of plans in other cities in the U.S. and around the world. How and where in the

City such an effort takes place becomes a significant decision affecting not only any plan but the future of the Department of City Planning.

Recommendations:

- Create in the short run, a process to better integrate 197-a plans into strategic planning so, at a minimum, they are acknowledged and addressed when other planning that is in conflict with 197-a plans is done. In the long run, there is a need for a mandated and well-resourced comprehensive planning process that coordinates the disparate approaches currently in existence while integrating community planning.

viii. Consider the Creation of an Office of Inspections

A consolidation proposal considered by the 2001 Charter Revision Commission¹⁶³ was the possible transference of the inspection and enforcement functions of the Department of Buildings (DOB) to the Fire Department. This recommendation was developed by a Task Force commissioned by Mayor Giuliani to review the Department of Buildings in light of its “decades-long” corruption.¹⁶⁴ This proposed transfer was opposed by several organizations, including the American Institute of Architects, the Real Estate Board of New York (“REBNY”), the Rent Stabilization Association, the Building Trades Employers Association, and the New York Building Congress, as they expressed concern that giving one agency (DOB) responsibility over permit approvals and another (FDNY) responsibility over final inspections, would create major problems for the real estate and construction industries, especially since the procedures, requirements and computer systems of each agency differ. A consolidation proposal was considered by the 2001 Commission, and though it did not ultimately find consensus, it recognized that reforms were needed.

The 2001 Commission also considered granting concurrent jurisdiction to the FDNY and DOB over inspections and enforcement. The FDNY at the time was overseeing the enforcement and inspections of the DOB pursuant to a memorandum of understanding. The 2001 Commission stated at that time that the “FDNY has better technology, oversight of personnel and anti-corruption training than DOB and therefore is in a better position to conduct more efficient and effective scheduling of inspections. Enforcement functions could also be shared with FDNY.”¹⁶⁵ Legislation (Intro 922-2001) was introduced into the City Council at the request of Mayor Giuliani to give the FDNY concurrent jurisdiction over inspections and enforcement, but the legislation was not passed by the Council.

Regarding the recommendation to have the FDNY take on additional responsibilities of the DOB, it should be noted that the Department of Investigation conducted an investigation into both DOB and FDNY regarding the August 2007 Deutsche Bank building fire and released a report in June 2009.¹⁶⁶ This report found administrative problems with both agencies’ management of inspections.

Scrutiny of the DOB has continued, with the January 2010 release of a report by Manhattan Borough President Scott Stringer’s office, “Falling Apart at the Seams,” which found that the average time period during which serious buildings violations in Manhattan remained open was five years. These violations, issued by the DOB for Environmental Control Board (ECB), regarded sites that posed a “threat that severely affects life, health, safety, public interest or persons so as to warrant immediate correction.” The report additionally found that these and other open violations cost the City \$60 million in lost revenue from Manhattan alone.¹⁶⁷

Manhattan Borough President Scott Stringer has proposed that the mission of the DOB be reduced and that a separate New York City Office of Inspection (OOI) be created to handle building inspection and remediation. The rationale for this change was articulated in the Borough President Stringer’s report as removing the conflict of interest that the DOB currently has in its mission of both promoting development in the City and enforcing buildings violations, as well as ensuring that violations are addressed in a timely manner. As proposed, the OOI would house all of the City’s building inspectors, and be responsible for the issuance and remediation of all buildings violations. It would serve as a “one-stop shop” for property owners, improving service delivery. The DOB would retain the responsibilities of plan examinations, issuing construction permits and certificates of occupancy. The OOI would be funded by the current DOB budget for inspections, and supplemented with revenue collected from violations and enforcement. This revenue currently goes to the City’s general fund. This change regarding funding would require approval by the state.

Under Borough President Stringer’s proposal, the Environmental Control Board (ECB) would still adjudicate all violations of the OOI, and would be reconstituted to include five public appointees by the borough president and one by the City Council speaker (these six public appointees currently are appointed by the mayor), while retaining the membership of the commissioner of environmental protection, the commissioner of sanitation, the commissioner of buildings, the commissioner of health and mental hygiene, the police commissioner, the fire commissioner and the chief administrative law judge of the office of administrative trials and hearings as chair. By having the ECB adjudicate all violations, the borough president’s report stated that this would be a check on the “overzealous” issuance of violations.

Public Advocate Bill de Blasio is considering a similar proposal regarding inspections¹⁶⁸, which would create a new Department of Inspection to oversee and monitor all building inspections conducted by the Department of Buildings, Department of Environmental Protection, the New York City Fire Department, and Department of Health and Mental Hygiene. Consolidated oversight over the inspection process would help to ensure a coordinated response to complaints and enhance overall construction safety.

Citizens Union is intrigued by these ideas and recommendations, but it is an open question whether these proposals would improve the inspections process, or whether these changes, even if desirable, ought to be made by City Charter amendment rather than addressed administratively.

Recommendations:

- Consider whether a new independent Office of Inspections (OOI) should be created to handle, at a minimum, buildings inspections currently handled by the Department of Buildings. Citizens Union is interested in the proposal to create an Office of Inspections, but has not fully evaluated the potential of this idea. This issue also could be addressed by the Mayor through the creation of a task force to review city agency inspections. In considering whether the responsibility for other City agencies’ inspections should be consolidated into the new OOI, such as the Department of Health and Mental Hygiene, the Fire Department, and the Department of Environmental Protection, the following items should be considered by the Charter Revision Commission:
 - a. Would it enhance public safety?
 - b. Would it limit corruption?
 - c. Would it improve customer service?
 - d. Would it result in any greater efficiency?
 - e. Would it separate needed knowledge of industry-specific inspections from enforcement?
 - f. Should it be included in the City Charter?

e. Increase Transparency

i. Reform the Mayor's Management Report

The Mayor's Management Report (MMR) serves as a public report card on City services affecting the lives of New Yorkers. In the City Charter, requirements related to the MMR are laid out in Chapter 1 Section 12. A preliminary report is also required by the City Charter. For both the preliminary and the management report, the City Charter lays out the requirements related to format, date of issuance, and comparing performance goals to actual performance for each city agency, as measured by indicators for those agencies. The City Charter also requires the reporting by each city agency of rulemaking and procurement actions as part of the MMR.¹⁶⁹

The MMR was first published in 1977 but was revamped in 2002. Forty-six agencies that report to the mayor provide information for the MMR. The MMR focuses on the public service components of city agencies, and the stated objectives and goals pertaining to those public service elements. Public service areas and objectives are created by agency heads and senior managers in collaboration with the mayor's Office of Operations.¹⁷⁰

The Preliminary MMR (PMMR) is issued in January of each year, and shows how city agencies performed for the first four months of the fiscal year (July to October) and establishes objectives for the next fiscal year. These objectives may be adjusted in the MMR based on the actual fiscal allocation in the adopted budget. The MMR, published each September, looks back retrospectively at the City's prior fiscal year performance (July- June). The MMR also contains information about staffing, overtime, expenditures, revenues, and 311-related complaints and requests.¹⁷¹

The MMR's website also includes additional information not in the report, disaggregated by community board, police precinct and school district, in addition to definitions of performance indicators, and evaluative measures across agencies.

The Charter-mandated Mayor's Management Report is "supposed to link budgets to service delivery."¹⁷² The City Council is mandated to hold hearings on the report and issue findings based on the data and analysis within the report. The report serves as a mechanism for accountability allowing the City Council and the public to know what each dollar of the budget actually buys. For instance, "during the Giuliani years the council aggressively used the [MMR] hearings to question agency spending and make the case for enhanced performance indicators."¹⁷³ Up until 2001, the City Council Governmental Operations Committee's subcommittees held individual hearings on the report with each committee preparing "extensive analyses and recommendations on the report."¹⁷⁴ Since that time, the Government Operations Committee has replaced subcommittee hearings with full committee hearings.¹⁷⁵

Although Mayor Bloomberg's first Mayor's Management Report in 2002 was met with great optimism because of its emphasis on accessibility through the utilization of technology, subsequent reports and actions have demonstrated that the mayor does not believe the MMR is of central importance. In August of 2003, Mayor Bloomberg's Charter Revision Commission recommended that the MMR be eliminated because it was "outdated, ineffective, and too expensive."¹⁷⁶ This recommendation made it on to the November 2003 ballot but New Yorkers voted against eliminating the report. Similarly, the 2004 MMR made it clear that the current administration did not believe in the usefulness of the report as the report did not comply with "the key city-charter mandate – to show accountability by comparing policy goals with actual performance."¹⁷⁷ The print version of the 2004 MMR was cut by two-thirds, with much of the report focused on the listing data from the newly created 311 system—providing little analysis of service delivery. In fact, the 311 system received "many more pages than the mayor's other big priority, the overhaul of the \$15 billion education department."¹⁷⁸ The 2005 report was much

smaller than previous years, with 276 pages compared to 1,162 in 2001, and included “too many insignificant indicators” and lacked an overview of mayoral priorities.¹⁷⁹ Subsequent MMRs since 2005 have also been criticized for lacking meaningful data and analysis and for failing to include a narrative of the mayor’s priorities and goals.

The development of other tools, namely the Citywide Performance Report (CPR) in 2008, has arguably diminished to some degree the importance and relevance of the actual MMR. CPR, for instance, covers the same agencies as the MMR, providing information for over 500 performance indicators. Depending on the performance indicator, updates are done monthly, quarterly or annually. The majority are updated on a monthly or quarterly basis, thereby making some indicators in the MMR outdated by the time they are printed. The CPR also includes new performance indicators that are more focused on outputs. The 500 performance indicators, all considered “critical indicators”, are marked with a star next to them in the MMR agency tables showing performance indicators. However, the MMR has a narrative that accompanies the indicators tracking performance, as well as additional indicators that are not in the CPR.

The CPR and MMR are part of NYCStat, which was created in February 2009. NYCStat is an online clearinghouse of data related to city service delivery and includes the CPR and the MMR (including supplemental online information pertaining to it). Through the various data-collection reports and programs on the site, NYCStat provides a broad range of information on city service delivery at the city, borough, community board district, and in some instances, street level (one of its components, NYC*Scout, provides detailed information on potholes and catch basins on city streets, and the progress of repairs related to them). However, the data from the different programs and reports are not integrated. For instance, the NYC*Scout data shows quality of life concerns filed by inspectors from the mayor’s Office of Operations who drive the city streets searching for these kind of issues. However, it is not integrated with 311 data available through a different report on NYCStat, in compliance with local law 47 of 2005.

Although NYCStat provides more transparency and accountability with regard to city operations, the website should not be viewed as a replacement for the City Charter-required MMR; only the MMR contains performance objectives of city agencies, a narrative about the agency and their work, and an explanation and analysis of the data that it provides.

Recommendation:

- Continue posting the Mayor’s Management Report online but eliminate print requirements while requiring the updating of its performance indicators as quickly as is possible – in most cases, on a monthly or quarterly basis, as is done for similar programs measuring agency performance like the agency performance reporting, which is part of the citywide performance reporting. The online MMR should continue to include a narrative that provides performance goals for city agencies and measures performance relative to those goals.

ii. Transfer the Responsibilities of the Commission on Public Information and Communication to the Public Advocate's Office

The Commission on Public Information and Communication (COPIC) was created under Chapter 47 of the New York City Charter in 1989. Its members are only removable for cause, and it has the authority to appoint an executive director, general counsel, and other such officers as necessary. The makeup of the commission is:¹⁸⁰

1. the public advocate – chair
2. corporation counsel or delegate
3. director of operations or delegate
4. commissioner of the Department of Records and Information Services (DORIS) or delegate
5. commissioner of Department of Information Technology and Telecommunications (DOITT) or delegate
6. president of WNYC communications or delegate
7. one councilmember elected by the city council
8. four members, appointed for a four-year term who shall not hold public or political party office, or be public employees in any jurisdiction (except for community boards, as provided below):
 - a. a representative of the news media – appointed by the mayor
 - b. a representative of a community board – appointed by the mayor
 - c. a representative appointed by the public advocate
 - d. a representative appointed by the borough presidents acting as a group

The duties and responsibilities of COPIC include to:¹⁸¹

- educate the public about the availability and potential usefulness of city government information and assist the public in accessing such information;
- review (i) all city information policies, including policies regarding public access to information; (ii) the quality, structure, and costs to the public of such information; (iii) agency compliance with the various notice, comment, and hearing provisions in law and (iv) the usefulness and availability of city documents, reports, and publications;
- assist city agencies in facilitating public access to their meetings, transcripts, records, and other information, and monitor agency compliance with public access laws;
- hold at least one public hearing each year on city information policies and issue an annual report with such recommendations as the commission deems advisable;
- on the request of any member of the public, elected official, or city agency, render advisory opinions regarding the City Charter or other laws which require public access to meetings, transcripts, records and other information; and
- make recommendations regarding: (i) the application of new communications technology to improve public access to city information; (ii) the distribution of information to the public regarding the city's service delivery facilities; and (iii) programming for the municipal cable channels and broadcasting system.

Under Section 1062 of Chapter 47, COPIC is also required to annually publish a public data directory. The directory is required to list the computerized information produced or maintained by city agencies that is required to be publicly accessible. It is also required to list the contents, format and methods of accessing the information, as well as the contact information for officials responsible for receiving inquiries about information at the appropriate agency. The public data directory has only been published in 1993 and 2001.

COPIC has been largely dormant during its existence in the City Charter due to funding constraints and lack of support from the executive branch. As an alternative, the 2005 City Charter Revision Commission considered the creation of a new “Public Reporting and Data Access Commission.”¹⁸² This new commission would review local law requirements to produce reports, with the exception of the MMR and budget-related documents, and local law requirements that establish advisory bodies. After reviewing their usefulness and relevance, this commission would be able to waive the requirement for an advisory board or report after a public input process. The Citizens Budget Commission testified¹⁸³ on this new body, recommending that, if created, it should be more independent of the mayor, and that COPIC should be eliminated as many of its functions would be duplicative. The 2005 Commission ultimately deferred consideration of this proposal.

Regarding COPIC’s role in reviewing programming for municipal cable television, it also was charged with producing a proposal on the implementation of cablecasting for public proceedings of the City Council and the city planning commission in 1991.¹⁸⁴ Today, the City has a television channel, Channel 74 or “NYC Gov,” which has programming related to government proceedings such as City Council meetings, City Planning Commission meetings, and the activities of the Mayor’s office. Other channels include “NYC Life,” “NYC World,” and “NYC Drive,” all housed together under NYC Media, which also has a website, www.nyc.gov/media. A live webcast of the channel’s programs is available on the website; however, the material is pre-recorded.

Recommendations:

- Eliminate the Commission on Public Information and Communication (COPIC) and transfer its major duties and responsibilities into the public advocate’s office. In addition, city agencies shall be required to provide information, documents, and other data to the public advocate who, as the City’s watchdog of public information, will be better able to evaluate the ease of public access to city government information and the breadth of information available.
- Require the public advocate to make recommendations on improving access to data and information via new technologies, such as the internet and mobile devices, and on the reporting mechanisms developed.
- Require the public advocate to review the City’s procedures and timeliness of response related to Freedom of Information Law (FOIL) requests, and make recommendations in this area.
- Require the public advocate to review current law requiring agency reports and make recommendations on sunseting reports when they are no longer needed or useful.
- Require the publication of the Public Data Directory by the Department of Information Technology and Telecommunications (DOITT) in an accessible format on the City’s website.

iii. Expand Public Access to Government Data, Information and Reports

A large amount of City government data and information is available to the public, yet the breadth of information that is available is overwhelming and spread out in multiple locations, making it difficult for the public to locate specific information to meet their needs. The information that is proactively made public via the internet or other means is limited in its scope to material that is required to be reported under law, or is released by agencies on an ad hoc or discretionary basis.

Information regarding government services, agency reports, and other data are currently provided either through Freedom of Information Law (FOIL) requests, through City agency or other government body's websites, or by inspecting certain records in person, such as archives maintained by the City Clerk or the Department of Records and Information Services (DORIS). The public is able to learn about service delivery and proposed changes to law or regulation by attending public hearings hosted by City agencies or the City Council. Public hearings and other notices regarding regulation changes are published through the City Record, a print publication, though they are typically also provided via the relevant bodies' websites. The vast majority of public hearings and meetings are not currently webcast.

The City enacted Local Law 11 in 2003, which requires all city agency publications and reports required to be published, issued, or transmitted to the mayor and City Council to also be posted on the DORIS website.¹⁸⁵ There are concerns, however, that DORIS does not have sufficient staff to complete this mandate and that information is not being posted in a timely manner, if at all. The City's compliance with this law has been the subject of oversight hearings by the City Council.

311 has also provided an avenue for the public to access information about services or other government information via telephone or the web. Local Law 47 of 2005 requires 311 to provide monthly reports to the City Council, the public advocate, community boards, and the public. Additional statistical information is available on NYCStat¹⁸⁶, a website of the Mayor's Office of Operations, which has information compiled regarding agency performance, 311 reports, the City's use of stimulus funds and other information.

In an effort to expand access to data, the City in October 2009 conducted a competition called "Big Apps" that provided a prize to developers of software applications that allow the public to interact with city data either on the web, a desktop computer or a mobile handheld device. The project created the "Datamine" website¹⁸⁷ for use in developing the applications, which include limited data sets from city agencies including both raw and geographic data. The winning application, WayFinder NYC, allows users to locate the nearest subway and PATH stations on Android phones.

Several proposals at the City Council seek to increase the amount of information that is available to the public, including:

- **Intro 29 of 2010 re: Open Data Standards** – This legislation would amend the City Charter to require the City to create a centralized online repository of all publicly available data that is either produced or retained by the City. The legislation would also require the City to publish data in formats that allow for automated processing through setting standards for open data. Releasing information in such formats would allow web developers and entrepreneurs to interact with City government to create applications for public use, such as was accomplished under the Big Apps competition on a more limited scale.
- **Intro 952 of 2009 re: Publishing the City Record Online** – This legislation amends the City Charter to require the City Record to be published for free online. The website for the City Record would be maintained by the Department of Citywide Services, its successor or its designee. The legislation retains the printing of hard copies for distribution periodically to each borough

president, council member, community board, branch of the public library, the municipal reference and research center and to the news media.

- **Intro 32 of 2010 re: Webcasting of Public Meetings** – This legislation amends the City Charter to require each city agency, committee, commission and task force and the Council to webcast and record its meetings and hearings that are subject to the Open Meetings Law where practicable. The legislation also requires video to be archived and made available to the public on the city's website or, in the case of the Council, on the Council's website, not more than seventy-two hours after adjournment of the meeting or hearing recorded.

At the state level, the New York State Register is currently provided for free online. Additionally, through Executive Order 3 issued by Governor Spitzer in 2007 and extended by Governor Paterson via Executive Order 9, all state agencies and public authorities are required to broadcast meetings subject to the Open Meetings Law via the internet.¹⁸⁸

Regarding providing government data online, other cities, including San Francisco, Seattle and Washington, D.C. have implemented websites similar to those proposed in Intro 29, as does the federal government through www.data.gov and www.recovery.gov.*

Recommendations:

- Require the proactive publishing of city government reports and data that are currently publicly available under law in a singular web portal. This should be accomplished through building off of and combining existing City government websites such as NYCStat, the Department of Records and Information Services website and NYC Data Mine to allow for ease of public use. All data and reports should be published in open formats, when possible, that allow for automated processing and analysis. The public advocate should be charged with facilitating the development of this website and making recommendations for improvements after its implementation.
- Require the City Record to be published for free online. The Charter Revision Commission should examine whether the City Record should be maintained by the Department of Administrative Services, or whether it should be provided on an expanded website that houses other government information or data, as recommended above.
- Require each city agency, committee, commission and task force and the City Council to webcast and record its open meetings and hearings subject to the Open Meetings Law. Public entities that receive significant city funds, such as the New York City Board of Elections, should also be required to webcast and record their meetings. This video should be archived for at least twelve months and made available to the public on the City's website in a centralized location or on an expanded “C-Span” like website.

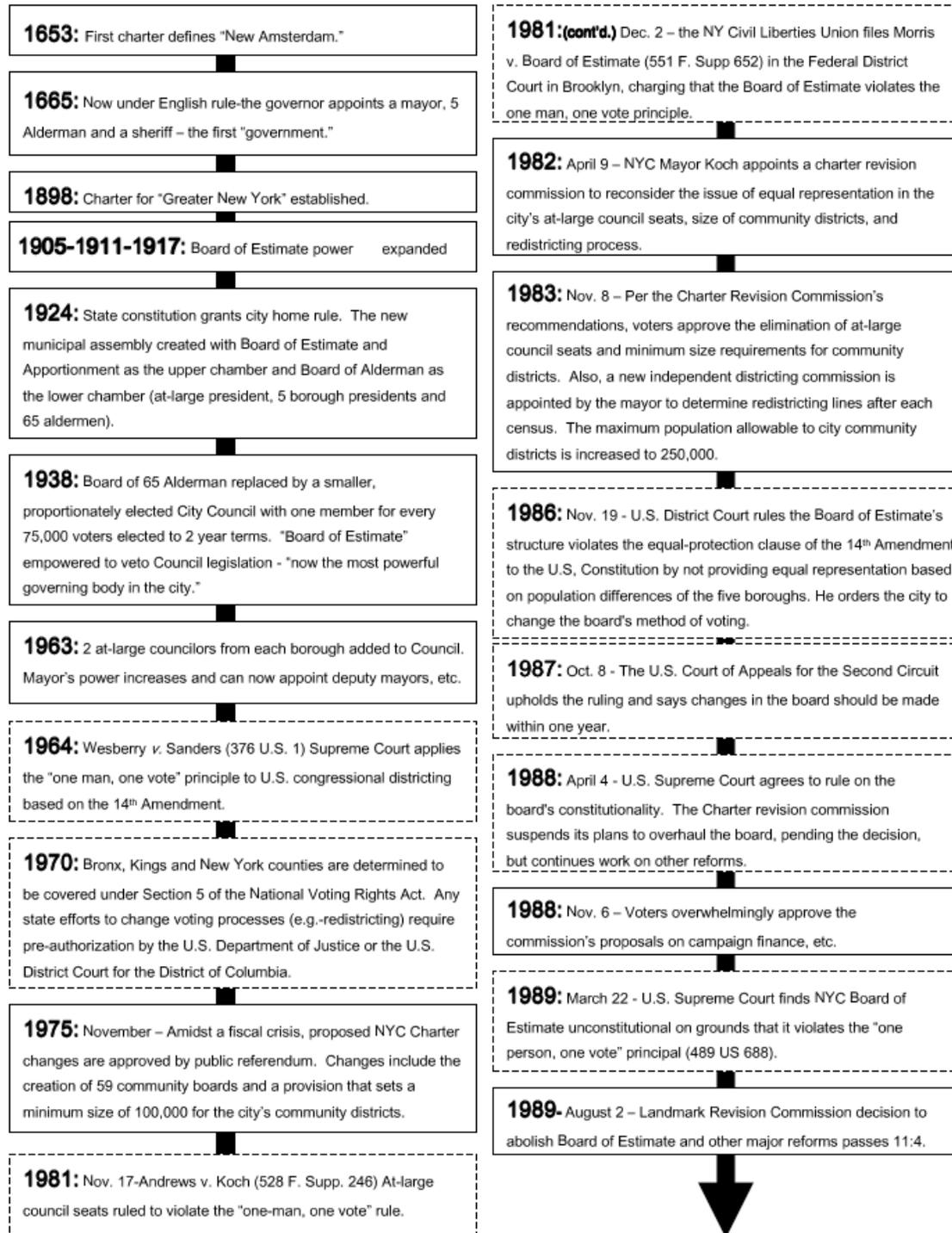
* For more information, see: <http://www.datasf.org/>, <http://data.seattle.gov/> and <http://data.octo.dc.gov/>

VII. APPENDIX A

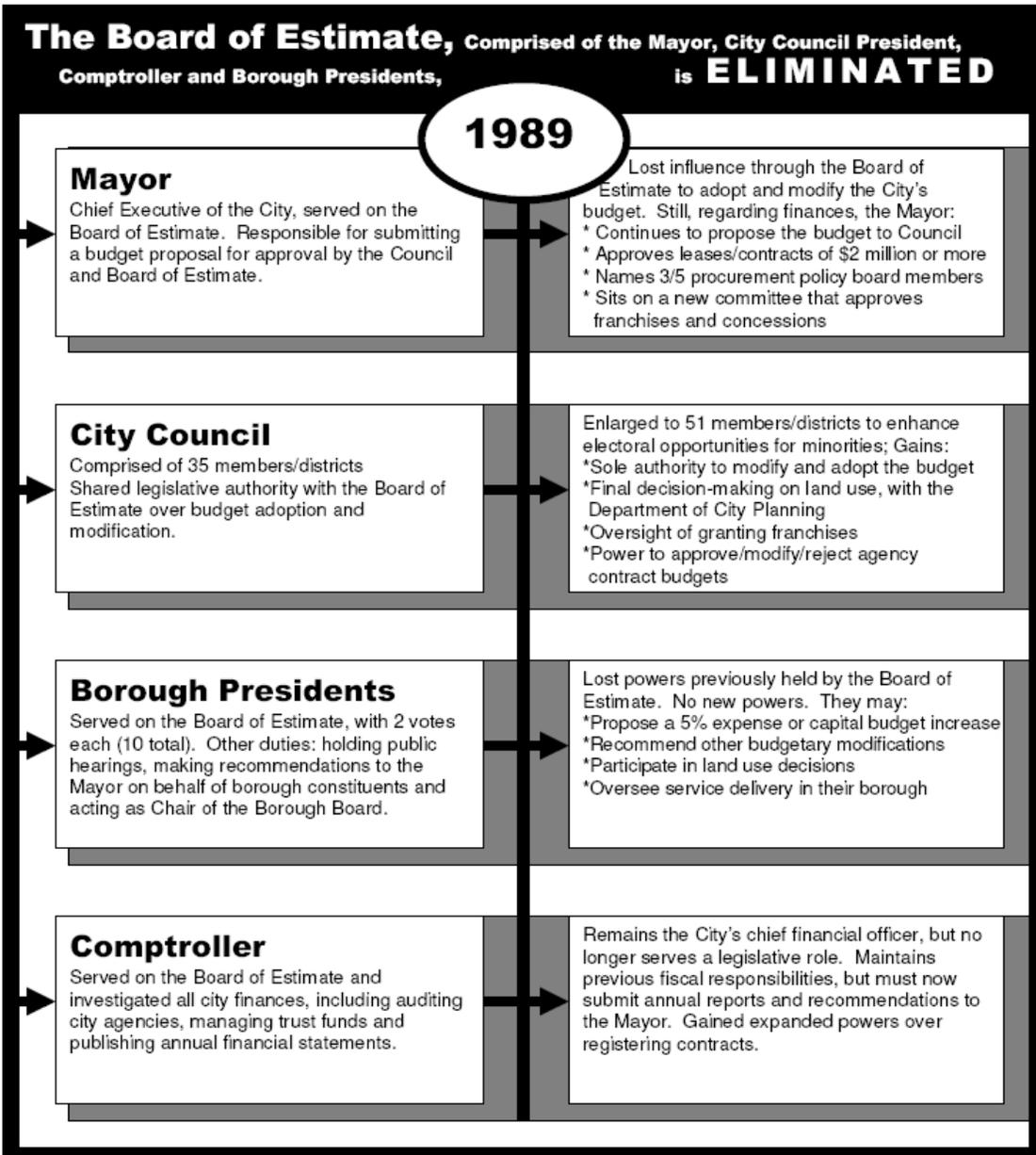
NYC Charter Timeline

Charter Reform

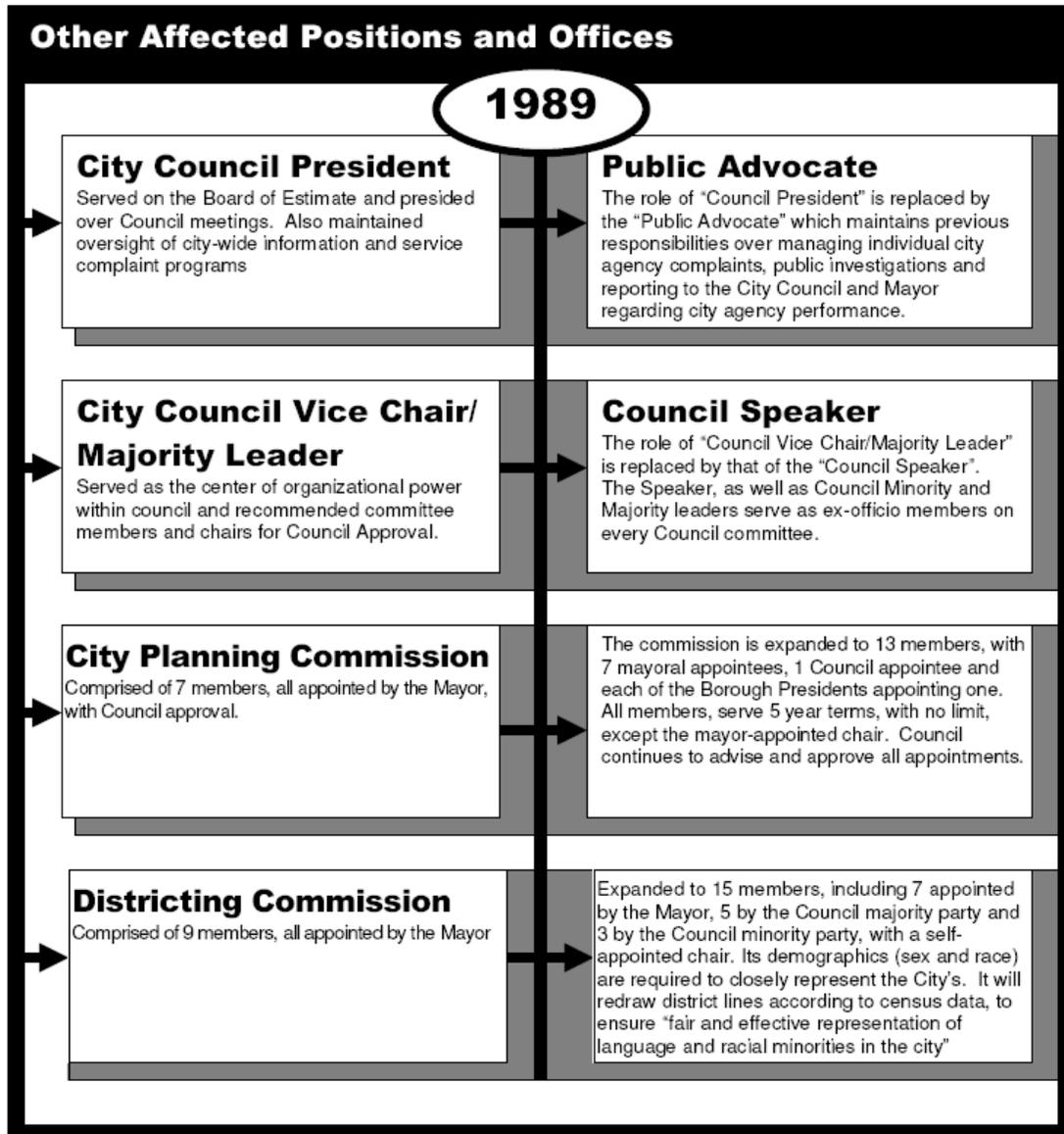
Court Decisions



The New York City Charter: Analysis of 1989 Changes



The New York City Charter: Analysis of 1989 Changes



The New York City Charter: Analysis of 1989 Changes

New Offices and Institutions

Expanding Opportunities for Minorities and Women

→ **The Equal Employment Practices Commission** is created to review City agencies' employment practices and procedures; assist agencies in efforts to increase minority and women employment; make policy, legislative and budgetary recommendations to ensure equal employment opportunity; submit annual progress reports to the Mayor and Council on these agencies' efforts.

→ **The Office of Labor Services** is created to ensure that women and minorities have "meaningful employment participation" with the City's contractors. Any violation of these standards could disqualify a contractor from doing business with the City.

→ **The Office of Financial and Economic Opportunity** is established to "assist, guide and monitor city agencies in implementing" a new requirement for the "meaningful participation" of minority and women-owned businesses in the City's procurement process.

Ensuring Expert Budget Analysis

→ **The Independent Budget Office (IBO)** is proposed as a means to provide Council members, Borough Presidents, Community Boards and the public with an independent analysis of:

*The city's budget and budget process

*Actual and estimated revenues

*The fiscal impacts of proposed local laws-if requested by a Borough President or the chair or ranking minority party member of a Council committee.

*Any other fiscal analysis requested by elected officials, borough boards or communities, as practical

The Charter requires agency compliance with IBO information requests and guarantees a budget of at least 10% the amount of the Mayor's Office of Management and Budget.

Note on Dual Office Holding for Elected Officials

The new 1989 Charter prohibits dual office holding for city and borough-wide elected officials and key appointed officials (e.g.-deputy mayors, agency commissioners, and others with "significant policy discretion"). The Commission stopped short of barring City Council members from holding significant party offices because such restrictions would have disproportionately affected racial ethnic minority members. Council members are able to maintain roles at the district level or lower, but not County Chairmanships or higher.

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