

The logo for the New York City Bar Association, featuring the words "NEW YORK" and "CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

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New York City Bar Association
Issues for Consideration by the Charter Revision Commission

April 2010

On behalf of the New York City Bar Association¹, we write to thank you for your willingness to serve as members of the Charter Revision Commission (CRC). We recognize the importance and complexity of the task you have undertaken. We also appreciate the independence, deliberativeness, and thoroughness with which you will be conducting this review of the City Charter.

Coming twenty years after the City-changing major 1988-89 charter revisions, your Commission has a special opportunity to engage in a truly thorough review of the entire City Charter; to revisit and evaluate changes made in the 1988-89 restructuring; to take into account the changes that modern times have brought to our City; and to chart a path for City government's future. We encourage you to do more than merely review the entire Charter, as the law charges. We encourage you to examine the entire document, and the principles underlying it, in detail.

In that spirit, we write to frame and call to your attention a number of Charter issues that are of salience to various committees within the Bar Association. The issues below concern the structure and offices of City Government, election law, the land-use process, and administrative law. These issues, we suggest, merit further analysis by the CRC and may ultimately lead to areas worthy of Charter revision. This list may not be exhaustive of our interests, as we are continuing to look at Charter issues. However, we wanted to provide you as promptly as we could with a list of issues we believe should be addressed.

In the interest of encouraging full deliberation, we do not take substantive positions on these issues at this time. Rather, we urge a full inquiry, with the benefits of research, time, and reflection. To that end, we also wish to underscore the importance of not rushing the Commission's work. We have concerns about the schedule that has been released, and the pace at which the Commission appears to be moving. Hearings have been scheduled on short notice, within close temporal proximity to one another. Four months is an exceedingly short time to review and make significant changes to a government as complex as New York City's. We urge you to give this review the time and deliberation it deserves.

Finally, we hope that you will not hesitate to contact us if we can assist the Commission with its work. The Association's various committees have much expertise in many of the matters likely to come before the Commission, and we hope we can be a resource for you in the

¹ This compilation of issues was prepared with contributions from the Association's Committees on Administrative Law, Election Law, Land Use Planning and Zoning and New York City Affairs.

coming months and years, both with respect to the issues we frame below and with respect to any additional areas of Charter reform that you may be considering. Indeed, in listing the issues below, we do not mean to imply that others are not worthy of review, or that other issues would not be of interest to us. We look forward to an ongoing dialogue with the Commission concerning these and any other issues that may arise in the coming months.

SUGGESTED ISSUES FOR CONSIDERATION

I. Issues Related to the Structure and Offices of City Government

The office and role of the Public Advocate: The CRC may wish to consider whether the position of Public Advocate should be retained, and, if so, whether it should be given more power, or, alternatively, whether some of its functions should be assigned to other entities, such as the Comptroller or the Department of Investigation. The CRC may wish to review the role the Public Advocate has played in City government, and how the position has contributed to the balance of power.

Mayoral succession: Regardless of whether the office of the Public Advocate is retained, the CRC may wish to consider whether the position of Public Advocate as the official next in line in the case of the Mayor's death, disability or resignation should be replaced by a Vice Mayor, elected on a ticket headed by the mayoral candidate, similar to the State Lieutenant Governor or federal Vice President who is elected as part of a gubernatorial or presidential slate.

The office and role of the Borough Presidents. The CRC may wish to review whether the Borough Presidents are performing the functions the 1988-89 CRCs intended them to perform, and, if not, whether any of their powers should be clarified, curtailed, or enlarged.

Budgetary independence of the Borough Presidents and the Public Advocate: Assuming the offices of the Borough Presidents and the Public Advocate remain substantially unchanged, the CRC may wish to consider the merits of liberating their budgetary dependence on the Mayor's office and the City Council. Specifically, the CRC may wish to consider Public Advocate and Borough President budgets that are automatically fixed as a percentage of the Mayor's budget (similar to the current relationship between the budgets of the Independent Budget Office and the City Office of Management and Budgets).

Different term limits for different city offices: The CRC may wish to consider the possibility that a two-term limit is ideal for the Mayor's office but that members of the City Council need more time in office to develop expertise and effectively counterbalance the Mayor's power. Similarly, it may wish to consider different term limits for other city offices as well, *i.e.*, the Comptroller, Public Advocate and the Borough Presidents.

Term limits or rotation requirements for community boards (Section 2800): [See above, Section I.] Community Board membership is often static for many years, and so may not be representative of the community district's current population or interests; this also limits the degree of civic engagement in the community. The CRC may wish to consider whether term limits or rotation requirements should be imposed.

II. Issues Related to Election Law

The City of New York has carved out for its municipal elections certain features not incorporated in New York State Election Law, specifically relating to term limits, non-partisan vacancy elections and campaign finance law. These provisions have been effected with the approval of the voters, the New York State Attorney General and the Corporation Counsel. Accordingly, the CRC is empowered to reform New York City elections in a variety of ways. The CRC may wish to consider the following changes to municipal elections:

Providing an alternative method to get on the ballot: The CRC may wish to consider whether, for those who have opted to join the campaign finance program, a place on the ballot should be guaranteed for those who have raised the threshold number of contributions in the amounts required. Should the CRC recommend such a change, it may also wish to consider that this be certified by the Campaign Finance Board at the beginning of the petition period so that, if the CFB does not certify the candidate, she still has the opportunity to petition for a place on the ballot.

Easier Petitioning Requirements: The CRC may wish to consider ways to ease petitioning requirements, including (1) whether voters should be able to sign more than one petition for candidates running for the same office; (2) whether corrections to the information provided by the signer or the circulator may be made without the requirement of a circulator's initials; and (3) whether the number of signatures required to get on the ballot should be lowered.

Alternative Forms of Voting: The CRC may wish to consider modifying city-wide run-offs with Instant Runoff Voting. The CRC may also wish to consider instituting a 40% requirement for party primary nominations for the other municipal offices as well, along with Instant Runoff Voting.

III. Issues Related to Land Use

Speeding up the Department of City Planning's certification of applications to begin public review under the Uniform Land Use Review Procedure ("ULURP") - (Sections 197(c)(c); 197(c)(h)(i)(2)): Once an application is filed, the Department of City Planning often takes much time to review the application for completeness. The Charter currently offers a 6-month timeframe after which an applicant may appeal for certification. The CRC may wish to consider whether a 6-month deadline should be imposed on the City Planning Commission to review all filed applications and either discontinue, certify as complete, or specify what materials remain to be completed within that period.

Notification process for individual property owners whose property rights may be affected by a proposed zoning map amendment (Land Use Approval (Section 197)): The CRC may wish to consider that, when the City of New York is the applicant, the City be required to give such notice.

Land use approval expirations (Section 197): Certain types of approvals granted under the Zoning Resolution (*e.g.*, open-air cafes and kiosks) expire after 3 years and a new application must be filed for the already-approved item. Re-application results in great cost to property owners. The CRC may wish to re-consider the requirement for new applications for existing approved developments located on private property.

Whether ULURP is necessary when the City disposes of City development rights but no other real property interest: (Sections 197(c)(a)(10); 384; 824; 1150(12))

The City's policy is unclear on this question, and the CRC may wish to consider whether a clarification and/or a clarifying definition of "real property" is necessary.

Including nonprofits in list of entities that may file applications for zoning changes or special permits (Section 201): The CRC may wish to consider "cleaning up" this section of the Charter, which currently includes "taxpayers" but not nonprofits.

The interplay between landmarking and the zoning process. Review may be merited into the ways in which the landmarking process has been used consistently or inconsistently with the zoning process and whether landmarking has been used as a way to evade the zoning process.

IV. Issues Related to Administrative Law

Possible Revisions to the City Administrative Procedure Act (CAPA), NYC Charter Ch. 45 §§ 1042 – 1046:

Increased access to and transparency in the creation of regulatory agenda: Section 1042 requires each city agency to publish its regulatory agenda and submit it to the Mayor, who reviews it and determines whether the suggested regulations are consistent with the policy of the administration. The CRC may wish to consider whether the Charter should specify where or how the regulatory agenda is to be published and/or whether the Charter should include the City Council in the review of the regulatory agenda.

Rulemaking: Section 1043 focuses on the publication and notice of proposed rules as well as the opportunity for Agency and public comment. The CRC may wish to consider whether to modernize the publication, notice and comment process for rulemaking to include Citywide and/or agency websites and other electronic media.

Section 1043(b) also currently includes, among other requirements, the publication of the full text of the rule and a statement of basis and purpose of the proposed rule. The CRC may wish to consider whether to add an additional requirement that, for each rule proposed, the agency must also submit a statement of the public impact of the rule, including, where applicable, the regulatory and economic impact.

Electronic publication of Compilation of City Rules: Section 1045 directs the Corporation Counsel to publish a Compilation of City rules and issue supplements at least every six months to include every rule currently in effect. The CRC may wish to consider whether the publication process should be modernized. For example, should the Charter require the Corporation Counsel to publish rules on its website or on a public website immediately upon the passing of new rules as opposed to the six months allowed for published written supplements?

Increased uniformity among the NYC tribunals in adjudications: Section 1046 directs agencies that are authorized to conduct adjudications to provide notice to all parties of any hearing to be adjudicated by the agency. The notice must include the time and place of the hearing, the legal authority and jurisdiction under which the hearing is to be held, reference to the particular sections of law and rule involved and a short and plain statement of the

matter to be adjudicated. The content of these notices across city agencies is currently inconsistent: Some are sworn statements and make a *prima facie* case; some contain little or no facts; some are not sworn. The CRC may wish to consider whether the Charter should direct agencies to include in all notices a brief sworn statement of the facts of the case in plain language that, if proven true, would prove the charges contained in the notice. In addition, the Charter currently requires the notices to reference the applicable rules; the CRC may wish to consider whether the Charter also should require that the notice contain a brief description of the particular sections involved.

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