

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

NEW YORK  
CITY BAR

NEW YORK CITY CHARTER REVISION TASK FORCE

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Members

New York City Charter Revision Commission  
250 Broadway  
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Dear Members of the New York City Charter Revision Commission:

The New York City Bar Association's Charter Revision Task Force was established to communicate to the Commission certain frameworks or proposals it should consider during its deliberations, and then to comment upon the final proposals the Commission places on the November ballot.<sup>1</sup> We are pleased to present this Initial Report.<sup>2</sup>

We are of course aware that the Commission's staff report has just been issued, and we hope that our observations will supplement its views and proposals. In furtherance of the Task Force's first charge, then, we suggest the following four points:

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<sup>1</sup> The Task Force members are of course acting in their respective individual capacities as members of the City Bar, not in their professional or academic roles.

<sup>2</sup> This Initial Report was aided in part by the work of the Land Use Planning and Zoning Committee of the Bar Association. Its members Alison McCabe and Daphne Rubin-Vega recused themselves from the Uniform Land Use Review Procedure section, and Kurt Steinhouse recused himself from the Board of Standards and Appeals section.

1. Prior to the Task Force's creation, the Bar Association's Committee on New York City Affairs issued a detailed report to your Commission and the Mayor's Commission.<sup>3</sup> (*See* attached, dated July 2018.) In that Report, the Bar Association urged both Commissions to reform our municipal election laws by instituting early voting, no-excuse absentee ballots, enhanced registration and easier change of enrollment practices, and Instant Run-off voting. In that the state legislature has enacted early voting, that proposal is moot. However, although the legislature passed a constitutional amendment to enact same-day registration and no-excuse absentee voting, those measures still need approval by the next duly-elected legislature and the voters of New York State. The earliest this approval process can be completed is November 2021, to be put in effect for the 2022 elections. Thus, the Commission can and should institute these reforms for city elections until then. Moreover, the legislature has failed to enact Instant Run-off voting, and, therefore, the Commission is urged to adopt this proposal.

2. We also urge an additional election reform—to alter the calendar for special elections prompted by the legislature having changed the date of the political party primary election from September to June. The current City Charter provides for special elections when there are vacancies during the first three years of a municipal officer's term. Unfortunately, the time-line no longer is practical. The current schedule in the City Charter resulted in a Public Advocate special election (to fill the office immediately until the end of this year) on the same date that petitioning started for the Public Advocate primary election scheduled for June (to fill the office from January 1, 2020 through December 31, 2021). And, because the winner of the special election vacated a Council seat, another special election to fill that seat (through the end of this year) is occurring only a month before the primary for the City Council seat (to fill the office for the remainder of the term). Thus, as a result of the current City Charter's timeline, there is a series of elections that is administratively inefficient and confusing to the voters. The Task Force urges the Commission to address this problem.

3. The next observation relates to various proposals to change the structure of our city government. Simply stated, a government with separated powers maintains its stability by resisting rearrangement. To protect the stability that our municipal government has enjoyed with only minor adjustments since the 1980s, we recommend that the Commission not propose changes to the City Charter that alter the existing separation of powers without a compelling need.

The reason is simple. Change proposed by one branch of government that might adversely impact another branch may result in the public's reduced faith in the government's promise to check itself. Any shift in such power arrangement must stem from a need which is immediate and concrete, not an abstract or philosophical desire. The need may be existential—for example, if the Supreme Court of the United States deems the existing structure unacceptable under the nation's constitution. Or it may be borne of demonstrable failures—repeated, serious, systematic failures which result from the leadership arrangement. Public outcry is an important indicator of demonstrable need, whether by civil engagement, news articles, or public demonstrations. Another important indicator is testimony at hearings. If and when these indicia occur, the public may be ready to accept a change in the structure of or balance of power in our city government.

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<sup>3</sup> Available at [https://s3.amazonaws.com/documents.nycbar.org/files/2018406-CharterRevision\\_ElectionReforms.pdf](https://s3.amazonaws.com/documents.nycbar.org/files/2018406-CharterRevision_ElectionReforms.pdf).

We have observed during the Commission's hearings and the list of proposals on its website that there has been little outcry for fundamental change. Indeed, neither the expert panels nor the good government groups have made such changes a priority. The fact that the City Council is advocating for an expansion of its role in City government is, frankly, not a sufficient cause for a change to the currently well-functioning separation of powers. We urge the Commission to resist any governmental change in this regard at this time.

4. There are several observations with regard to land use issues, which we will address separately below:

A. The development of any "comprehensive city planning framework" deserves significant further study.

The City Charter establishes a variety of planning processes (*e.g.*, community-based plans under City Charter Sec. 197-a) and mandates the creation of several strategic planning documents (*e.g.*, the Mayor's Strategic Policy Statement under City Charter Sec. 17), but does not require the creation of a single 'Comprehensive Plan' to guide land use and related transportation and infrastructure, housing, and social services. We think this ought not be changed at this time, and that a 'Comprehensive Plan' approach should not be adopted absent careful study and full consideration of whether it would be beneficial and workable for New York City.

The City Charter abandoned the concept of a single 'Master Plan' for New York City under the 1975 City Charter Revision, and instead opted for what it described as an incremental planning model focused on making changes at a neighborhood scale. This was based upon a concern that New York City is too large, too diverse, and too dynamic to allow for a single planning process or wholesale document to adequately reflect the needs of individual neighborhoods and their residents. Since that time, comprehensive planning has taken place at the neighborhood level, with City-wide strategic objectives (*e.g.*, production of affordable housing, promotion of transit oriented and sustainable development, creation of 'good jobs') adapted to the special character and needs of individual neighborhoods. These City-wide strategic objectives are reflected in policy blueprints such as the Mayor's Housing Plan and in OneNYC, and are implemented via City-sponsored neighborhood planning initiatives as well as in private land use applications. This approach has been subject to criticism on the basis that the absence of a single, overarching 'plan' to guide growth and development in New York City results in a lack of coordination and ability to evaluate how local initiatives fit within an overall set of agreed-upon City goals. However, it has a number of positive features which we believe are important to the success of any planning framework, including flexibility and the ability to plan for local conditions at a 'fine grain' level while continuing to advance overall City needs.

The City Council's January 2019 "Report to the 2019 New York City Charter Revision Commission" contains a proposal for the creation of a Citywide Comprehensive Plan, with a detailed description of its scope, process for adoption, and regulatory impact on decision making. The goal of the proposal—to create a unitary vision for how growth and development should be distributed across the City—is commendable. However, it is premature to conclude that a single Citywide Comprehensive Plan can succeed in our diverse and ever-changing metropolis, and we have a concern that it might instead prove cumbersome, unworkable, and perhaps even divisive.

Any City Charter proposal to establish a Comprehensive Plan requirement would require careful attention to a host of issues, including the following:

*Strategic Vision vs. Prescriptive Requirements:* Comprehensive Plans run the gamut from those which are more strategic and aspirational, providing a policy benchmark against which to measure specific initiatives, to those which have a more binding effect, *e.g.*, by requiring implementation through zoning and other regulations. The balance struck between these two different approaches would have significant implications for the City's ability to remain nimble in response to new trends and challenges, particularly given that a Comprehensive Plan would only be updated on a periodic basis;

*Relation to Other City Plans and Activities:* City agencies engage in long-term planning in their spheres of activity. *See, e.g.*, the Department of Sanitation's Solid Waste Management Plan; the School Construction Authority's 5-Year Capital Plan; the New York City Housing Authority/Housing Preservation and Development's "Where We Live NYC" initiative. Thus, the relationship of these plans, among others, to a Comprehensive Plan would have to be determined, taking into account legal mandates of various agencies;

*Public Process for Consensus Building and Adoption:* The City's last attempt to create a Master Plan in 1969 is widely considered to have been a failure, in part because of a perception that the draft plan did not adequately address the needs of local neighborhoods. The process for development of a Comprehensive Plan would have to be carefully considered in order to address how local perspectives should be balanced against Borough- and City-wide priorities, and how best to take into account varying perspectives on key issues;

*Private Sector Initiatives:* The potential impact of a Comprehensive Plan on private sector initiatives would need to be considered. For example, the City Council's proposal suggests that private land use applications that comport with the plan and a Generic Environmental Impact Statement prepared for the plan would be fast-tracked through the land use review process. However, the practicality of a City-wide EIS is highly uncertain, and the implications for private actions deemed 'inconsistent' with the Comprehensive Plan would need to be understood.

The Task Force believes that, almost 50 years after the 1975 City Charter Revision, attention should be given to the City's planning framework; however, to do so raises complex questions that deserve significant further study. Quite simply, the upcoming deadline for the Commission to complete its work does not allow adequate time for development of a workable framework that can stand the test of time and respond adequately to long-term issues such as housing affordability and climate change.

Given the limitations of its schedule, the Commission may wish instead to propose the creation of a blue-ribbon commission or task force to study the issue further. Any such group should have a diverse membership and be tasked with identifying the planning needs that a 'comprehensive' plan could address; examining the experience of other jurisdictions; evaluating the pros and cons of various options from diverse perspectives; making an overall evaluation of whether a 'comprehensive plan' would be workable and beneficial for New York City; and making recommendations to the Mayor and the City Council about next steps, if deemed advisable. Such a commission or task force could be established by City Charter amendment; however, the Commission could instead recommend in its Report that the Mayor and City Council jointly form such a group by other means. In addition, the Commission may wish to consider as

part of its own work how existing reports and strategic planning documents can be improved, coordinated with each other, and disseminated more broadly to the general public in a user-friendly fashion.

- B. We recommend that the Commission codify a requirement for mandatory pre-ULURP consultation.

The certainty created by the Uniform Land Use and Review Procedure (ULURP) time clock (60 days at the Community Board; 30 days at the Borough President; 60 days at the City Planning Commission; and 50–65 days at the City Council) is one of the significant features of the ULURP process. Unlike other jurisdictions where there is no prescribed review period and land use proposals can linger for months and even years at a time before a decision is made, ULURP ensures an outcome—approval, disapproval, or approval with modifications—in a fixed time period.

At the same time, the ULURP time clock can sometimes limit the ability of an applicant to make substantial modifications to an application requested by community stakeholders during the process. A requirement for applicants to engage with the Community Board and Borough President prior to certification of the ULURP application would help address this, allowing the Board and Borough President early input regarding desired modifications and giving applicants clarity on local priorities. As a practical matter, many applicants routinely consult early, recognizing that doing so is not simply a matter of courtesy but can also help them improve their proposals and garner public support. Codifying early consultation as a requirement could help shape projects in ways that would benefit local communities as well as increase support for responsive development.

That said, any such requirement should allow flexibility to determine when to consult and how to do so; that is, the City Charter should not create a prescribed 'mini-ULURP' process that precedes ULURP itself. This is important because not all projects are alike and they do not all progress through the Department of City Planning's pre-certification process in the same way and at the same rate. One approach would be to require the applicant to consult with the Community Board and the Borough President no later than a fixed number of days prior to certification (*e.g.*, 90 days); as a condition of certification, the applicant would need to demonstrate to DCP that consultation occurred or was offered within this time frame. The pre-certification consultation should neither be limited nor required beyond what is practicable so as to be meaningful without causing delay.

- C. The composition of the BSA should remain unchanged; the Borough Presidents should have the option to recommend appointments to the BSA.

The Board of Standards and Appeals (BSA) consists of five members appointed by the Mayor, each for a term of six years. One of the members must be a planner, one a registered architect, and one a licensed professional engineer. The Mayor designates one of the members who is either an architect, planner, or engineer, as the Chair, and the Mayor's appointment of the Chair is subject to the advice and consent of the City Council. The Commissioners reside in different boroughs, with no more than two Commissioners residing in a single borough.

This works well. A quasi-judicial body with the power to grant applications for variances from the Zoning Resolution, the currently-constituted BSA includes the professional disciplines necessary to make variance determinations, with the trio of planner-architect-engineer typically supplemented by a lawyer and expert in economic analysis.

By comparison, the members of the City Planning Commission exercise both legislative and administrative functions; accordingly, the City Charter appropriately does not specify particular professional qualifications for the CPC Commissioners, providing instead that “[m]embers shall be chosen for their independence, integrity and civic commitment.” City Charter Sec. 192(a). The combined legislative–administrative function of the CPC also lends itself to a diverse appointment structure (Mayor- Chair and six members; Borough Presidents- one member each; Public Advocate- one member).

A City Charter amendment under which the Borough Presidents would be invited to propose candidates for appointment to the BSA by the Mayor could assist in implementation of the requirement for Borough diversity in the residence of BSA Commissioners.

D. City Council appellate review of the BSA would be unwise.

The Task Force also believes that allowing the City Council to assume an appellate role in reviewing decisions of the BSA would be unwise and raise serious issues regarding the City’s fulfillment of the legal requirement to provide a zoning ‘safety-valve’ through the issuance of variances. The City Council, as the City’s legislature, is by definition a political body and ill-suited to reviewing a variance determination to determine whether it is supported by substantial evidence in the record. The proper forum for review of BSA decisions is in the courts, which apply established standards of judicial review to determine whether agency action is lawful.

As explicated in Point 3, above, adoption of this kind of alteration of powers is just the kind of governmental change that the Commission ought to avoid.

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We trust that these observations will be useful as the Commission continues its deliberations.

**JERRY H. GOLDFEDER, Chair**  
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