



CHARTER
REVISION
COMMISSION

2018 PRELIMINARY STAFF REPORT

Cesar Perales, Chair
Rachel Godsil, Vice Chair
Carlo Scissura, Secretary
Matt Gewolb, Executive Director

LETTER TO THE CHAIR

Dear Chair Perales and Commissioners:

I am delighted to present this Preliminary Staff Report, which I hope will serve as an informative and useful guide for the ongoing work of the 2018 New York City Charter Revision Commission.

As you know, the Commission has been extremely active in engaging with City residents during the initial stages of this revision process. From listening to in-person public testimony to engaging experts at our four Issue Forums to our “Commissioner-in-your-Borough” events, we have engaged the public in a serious—and enlightening—conversation about governance in New York City.

We have considered the entire City Charter to identify areas for potential revision. The Commission received hundreds of comments from New Yorkers from across the five boroughs. Advocacy and good government groups, elected officials, academics, and others have made meaningful contributions, and we will continue to consult with stakeholders as this process unfolds. The New York City Law Department, and others within City government, have provided invaluable guidance. We tremendously appreciate their efforts, as well as those of all of the other organizations and individuals who have provided assistance.

Ultimately, this Preliminary Staff Report reflects a focus on civic life and democracy in New York City—a theme that is particularly appropriate and relevant in contemporary times. The report also introduces a new and exciting phase in our process—one that I am confident will include a robust public discussion and debate about the future of the City Charter.

Below, we discuss the primary subject matter areas that have emerged from our extensive engagement process and recommend various proposals for consideration by the Commission. The report also identifies issue areas and proposals that may be meritorious but, for a variety of reasons, should be reserved for consideration by a future Commission or for legislative action. Of course, this Preliminary Staff Report is by no means exhaustive, and it is possible that you and your fellow Commissioners may choose to consider additional proposals.

On behalf of the Commission Staff, we thank you for the opportunity to assist in this process and look forward to continuing our work to present New Yorkers with Charter revision proposals that further democracy, equity, and engagement in the City.

Sincerely,



Matt Gewolb

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EXECUTIVE SUMMARY

In his State of the City Address on February 13, 2018, Mayor Bill de Blasio announced his intention to appoint a Charter Revision Commission. The Commission, consisting of 15 members appointed by the Mayor, is charged with reviewing the entire New York City Charter to identify areas for potential revision.

To ensure that all New Yorkers have an opportunity to participate in this process, the Commission has conducted, and will continue to conduct, a varied and vigorous public outreach and engagement process. To date, the Commission has held five public hearings at which the Commission heard directly from New Yorkers about how to amend and improve the Charter. The public responded to the Commission's invitation to submit written testimony by providing comments in a variety of forms, including by mail, by email, through social media, and on the Commission's website. The Commission also held four Issue Forums at which it heard presentations by experts and practitioners, and held a variety of community-based events to generate public feedback from a range of voices and perspectives.

The Commission's public engagement process yielded a wide variety of comments and proposals from members of the public, good government groups, advocates, experts, practitioners, elected officials, and City agencies. Each comment received by the Commission was carefully reviewed and considered by the Staff. The majority of comments received to date fall within five broad policy areas:

- Campaign Finance
- Municipal Elections in New York City
- Civic Engagement
- Community Boards
- The Districting Process

The Report describes the public testimony in each of these five broad policy areas, along with the results of the Staff's preliminary review and analysis of relevant proposals, including Staff recommendations for next steps by the Commission. By focusing the Commission's work in this way, the goal of the Report is to generate and inform further public dialogue, and to aid the Commission in formulating ballot questions for the public's consideration. The Staff recommendations presented in the Report are preliminary and are not intended to limit the Commission's consideration of other policy areas, comments, or proposals, or otherwise limit the Commission's work.

The Commission also received a variety of comments and proposals from City agencies. The Report summarizes a selection of agency proposals and recommends that the Commission study them further.

Finally, the Commission received comments and proposals that raised a range of other topics, including public safety and land use, which the Report addresses without making specific proposals for further consideration by the Commission.

EXECUTIVE SUMMARY, continued

RECOMMENDED AREAS OF FOCUS

Campaign Finance

The Commission received many comments addressing the City's campaign finance system, which imposes contribution limits and other requirements on candidates for Mayor, Public Advocate, Comptroller, Borough President, and City Council. The system also provides public financing to candidates who voluntarily participate in the City's program and agree to additional restrictions and obligations.

Most experts, advocates, and members of the public cited New York City's campaign finance system as a successful model to be emulated. However, commenters expressed serious concerns about persistent corruption, and the appearance of such corruption, and proposed numerous ways that the City's campaign finance system can be strengthened to combat such corruption, as well as its appearance.

Staff recommends that the Commission focus on reforms to certain core elements of the campaign finance system that were the subject of frequent comment by experts, elected officials, and members of the public: contribution limits, the public matching formula, and the matching funds cap. Staff recommends that the Commission solicit additional public and expert input on those areas and give strong consideration to developing a proposal to reduce contribution limits, strengthen public financing, and increase the cap on public matching funds.

Municipal Elections in New York City

Members of the public, experts, elected officials, and advocates have testified extensively, and submitted numerous written comments, about how to improve the administration of elections in the City. Overwhelmingly, the concern most often raised was the need to increase voter participation.

Proposals to address low voter participation generally fell into three categories. First, some offered proposals to modernize the administration of elections, such as changes to voter registration processes and proposals to adopt early voting. Second, some advocated for increasing access to voting either through direct changes to voter eligibility requirements or through efforts to remove practical barriers to voting experienced by immigrants and other vulnerable populations through increased voter assistance services. And third, to address a lack of engagement among voters, many offered proposals to encourage eligible New Yorkers to vote, including by adopting a ranked choice voting system to better capture voter preferences.

Although Staff recommends that the Commission solicit further comments and proposals in each of these categories, we note that action in this area requires careful consideration of several factors. Because many of the details of how elections are conducted in the City are found in state law, and in some cases, the State Constitution, reforming the administration of municipal elections could trigger a bifurcated system for state and local elections, raising potential operational and legal concerns.

EXECUTIVE SUMMARY, continued

Staff recommends that the Commission focus on proposed reforms that:

- Address elements of the election system specific to the City, such as the possible use of ranked choice voting in local primaries, and in particular, primaries for citywide offices; and
- Respond to identified needs of New Yorkers, such as strengthening and expanding language assistance services.

At the same time, Staff recommends that the Commission solicit further input on the question of whether other methods of increasing voter participation would be better achieved at the state level, rather than through the City's Charter revision process. To further address low voter participation rates, Staff also recommends that the Commission consider reforms that promote civic engagement, as discussed in the next section of the report.

Civic Engagement

Many comments received by the Commission reflected a broad concern about the state of civic engagement in the City and, by extension, the health of our local democracy. The City's current efforts to promote engagement of its residents are many and varied, but commenters suggested ways in which the City can supplement these efforts and better harness its greatest resource—its people—to improve the functioning of local government and quality of life in the City.

The themes and proposals most frequently presented to the Commission included creating a vehicle to coordinate and enhance the City's current efforts; promoting civic engagement as a continuum of opportunities for regularly participating in the civic life of the City; promoting engagement that is local, community based, and culturally relevant; and better informing the public about opportunities for engagement.

Staff recommends that the Commission further study ways to strengthen the City's efforts to engage its residents, including the possible establishment of a new entity or office specifically charged with such a purpose. Staff recommends that the Commission solicit further input on the following questions:

1. How such an entity or office could support, supplement, or coordinate the City's existing efforts in this area, including the recently announced DemocracyNYC initiative;
2. How such an entity or office could facilitate the expansion of participatory budgeting while working within legal and operational constraints;
3. Where such an entity or office should be situated; and
4. whether such an entity or office should have an independent, non-partisan, or other structure.

EXECUTIVE SUMMARY, continued

Community Boards

Members of the public, experts, and elected officials have expressed a strong interest in making the City's 59 Community Boards more reflective of the communities they represent and more effective in representing those communities. Although the Commission received many comments in this area, the concerns most frequently voiced were that Community Boards are insufficiently diverse, both demographically and ideologically; lack a consistent and centralized appointment process; and do not have adequate resources.

In response to these concerns, Staff recommends that the Commission consider proposals to:

1. Impose term limits for Community Board Members as a method to increase diversity;
2. Standardize and enhance the existing appointment process;
3. Provide additional support and resources to Community Boards, particularly in the context of urban planning;
4. Adopt other methods to ensure that Community Boards are representative of the communities that they serve.

The Districting Process

After every decennial census, the Mayor and the City Council must appoint a 15-member Districting Commission to draw City Council district lines to accommodate changes in population. The next districting plan will take effect in 2023, and the Commission heard a variety of proposals relating to the process by which district lines are drawn.

Several major themes emerged in the public engagement process. Some commenters expressed concern that the districting process continue to give due consideration to the voting power of racial and ethnic minority groups, after the Supreme Court rendered inert the Department of Justice pre-clearance mechanism, which sought to ensure that voting changes in certain districts did not have a discriminatory intent or effect. Others emphasized the importance of the independence of the Districting Commission and suggested changes to the appointment process. Finally, commenters expressed concern about the integrity of the upcoming 2020 census.

Staff recognizes that any changes to the City's districting process will necessitate a rigorous review of the legal, policy, and practical implications of such reforms, with further input and analysis from experts and stakeholders. Additionally, consideration of any potential changes to districting in the City should include an assessment of how discrete changes would affect the overall process. Staff recommends that the Commission invite the public to provide further comments and proposals regarding this important and complex area.

EXECUTIVE SUMMARY, continued

With these considerations in mind, Staff recommends continued study of three aspects of the districting process:

1. Procedures to address the effects of the districting process on the voting power of racial and ethnic minority groups, such as providing for an additional review and analysis of proposed lines by an independent expert, or other changes that are reflective of the important public policy goals underlying the Voting Rights Act and the former DOJ pre-clearance process;
2. Alterations to the structure of the Districting Commission to promote its independence and reduce the influence of elected officials, including possible changes to the appointment process; and
3. Strategies to counteract the negative effects of an undercount in the next census on the districting process.

INTRODUCTION

ABOUT THE COMMISSION

During his State of the City Address on February 13, 2018, Mayor Bill de Blasio announced his intent to appoint a Charter Revision Commission. On April 12, 2018, the Mayor appointed Cesar A. Perales as Chair, and 14 other distinguished and diverse leaders from civic, academic, and professional communities to the Commission. The Commission is charged with reviewing the entire New York City Charter to identify areas for potential revision

THE COMMISSIONERS

Cesar Perales, Chair. Chair Perales’s appointment follows a 50-year career in public service and advocacy. Most recently, he served as New York State’s Secretary of State, where he was directly involved in the State’s economic development, government efficiency, local government services, and anti-poverty efforts. He is also the co-founder of the Puerto Rican Legal Defense Fund (PRLDEF). In 1981, as President and General Counsel of PRLDEF, he initiated successful litigation against the City Council districting that was found to be in violation of the Voting Rights Act. Previously, Perales successfully sued to require New York City to provide language assistance at the ballot box—a requirement that was subsequently made an amendment to the national Voting Rights Act. He was also a Deputy Mayor under Mayor David Dinkins and previously served in President Carter’s administration as Assistant Secretary for the United States Department of Health and Human Services.

Rachel Godsil, Vice Chair. Vice-Chair Godsil is a Professor of Law and Chancellor’s Scholar at Rutgers Law School and is the co-founder and director of research for the Perception Institute, a national consortium of social scientists, law professors, and advocates focusing on the role of the mind sciences in law, policy, and institutional practices. She collaborates with social scientists on empirical research to identify the efficacy of interventions to address implicit bias and racial anxiety. Godsil is also a former Chair of the Rent Guidelines Board, and worked previously as an Assistant United States Attorney for the Southern District of New York and as an Associate Counsel at the NAACP Legal Defense and Educational Fund.

Carlo A. Scissura, Secretary. Secretary Scissura is a lifelong New Yorker and President and CEO of the New York Building Congress. Before his time at the Building Congress, Scissura spent years as a public servant in Brooklyn—working as the President and CEO of the Brooklyn Chamber of Commerce and as Chief of Staff and General Counsel to Brooklyn Borough President Marty Markowitz.

Larian Angelo. Larian Angelo is a Senior Fellow at the CUNY Institute for State and Local Governance (ISLG). Prior to joining the ISLG, she served in City government for

ABOUT THE COMMISSION, continued

27 years as First Deputy Director at the NYC Office of Management and Budget (OMB), Vice-President for Administration at Guttman Community College, Deputy Director for Education and Intergovernmental Relations at OMB, and Finance Director at the New York City Council. Angelo holds a Ph.D in economics.

Deborah N. Archer. Deborah N. Archer is an Associate Professor of Clinical Law at the NYU School of Law. She was previously an Assistant Counsel at the NAACP Legal Defense and Educational Fund where she litigated at the trial and appellate levels in cases involving affirmative action in higher education, employment discrimination, school desegregation, and voting rights. Archer additionally served as a Marvin H. Karpatkin Fellow with the American Civil Liberties Union, where she was involved in federal and state litigation on issues of race and poverty. Archer previously served as a mayoral appointee to the New York City Civilian Complaint Review Board.

Kyle Bragg. Kyle Bragg is 32BJ SEIU's Secretary-Treasurer. A member of the 165,000-member 32BJ for more than 30 years, Kyle serves as trustee of several 32BJ funds and as chair of the union's social and economic justice committee. He is a member of the executive board of the two million-member national SEIU and of the National African-American Caucus of SEIU, and serves on the international union's first Racial Justice Task Force. Bragg also serves as a member of Community Board 13 in Queens.

Marco A. Carrión. Marco A. Carrión is the Commissioner of the Mayor's Community Affairs Unit, working to connect City Hall to communities across the City, especially in the outer boroughs. Before serving as Commissioner, Carrión was the Political and Legislative Director for the New York City Central Labor Council, Chief of Staff to New York State Senator Gustavo Rivera, Director of New York City Intergovernmental Affairs to Governor David Paterson, and worked for the AFL-CIO in Washington, D.C.

Una Clarke. Una Clarke serves as President of Una Clarke Associates, a consulting firm specializing primarily in education management, political consulting, and small business services. Previously, Clarke served as a New York City Council Member, representing Brooklyn's 40th Council District for 10 years starting in 1991. Clarke sponsored more than 300 pieces of legislation on issues including child welfare, education, health and mental health, economic development, public safety, and transportation. Clarke is currently a CUNY Trustee.

Angela Fernandez. Angela Fernandez is the Executive Director and Supervising Attorney of Northern Manhattan Coalition for Immigrant Rights, a community-based legal services and advocacy organization for low-income immigrants. She also serves on the New York City Civilian Complaint Review Board. She has 20 years of experience in law, media, non-profit management, government, policy development, and advocacy. Her prior government experience includes working as District Chief of Staff to U.S. Representative José Serrano and as a staff aide to U.S. Senator Bill Bradley.

Sharon Greenberger. Sharon Greenberger is the 10th President and CEO of the YMCA of Greater New York, a New York City non-profit organization serving over 500,000 children, adults, and seniors annually through programs and services focused on empowering youth, improving health, and strengthening community. Prior to joining

ABOUT THE COMMISSION, continued

the YMCA in July 2015, Greenberger served as the Senior Vice President, Facilities and Real Estate, at New York-Presbyterian Hospital and the Chief Operating Officer for the New York City Department of Education.

Dale Ho. Dale Ho is the Director of the American Civil Liberties Union’s Voting Rights Project where he supervises the ACLU’s voting rights litigation and advocacy work nationwide. Ho has active cases in over a dozen states throughout the country. He has litigated cases under the federal Voting Rights Act and the National Voter Registration Act. Ho is also an adjunct professor of law at the NYU School of Law.

Mendy Mirocznik. Mendy Mirocznik is the president of C.O.J.O of Staten Island, a borough-wide civic organization dedicated to providing services to those less fortunate, including housing and a food pantry which provides hundreds of hot meals to fixed-income seniors. Mirocznik is also a member of Community Board 2.

Annetta Seecharran. Annetta Seecharran is the Executive Director of Chhaya Community Development Corporation, which works with New Yorkers of South Asian origin to advocate for and build economically stable, sustainable, and thriving communities. She has worked for 25 years to improve conditions for marginalized communities, including previously leading South Asian Youth Action and serving as Director of Policy for United Neighborhood Houses.

John Siegal. John Siegal is a partner at BakerHostetler where he handles litigations, arbitrations, and appeals for clients in the financial services, media, and real estate industries. He also serves on the New York City Civilian Complaint Review Board. Siegal’s public service experience also includes working as an Assistant to Mayor David N. Dinkins and as a Capitol Hill staff aide to Senator (then Congressman) Charles E. Schumer.

Wendy Weiser. Wendy Weiser directs the Democracy Program at the Brennan Center for Justice at the NYU School of Law. Her program focuses on voting rights and elections, money in politics and ethics, redistricting and representation, government dysfunction, rule of law, and fair courts. She founded and directed the program’s Voting Rights and Elections Project, directing litigation, research, and advocacy efforts to enhance political participation and prevent voter disenfranchisement across the country

ABOUT THE COMMISSION, continued

THE COMMISSION STAFF

Matt Gewolb, Executive Director

Matt Gewolb is the Commission's Executive Director and Counsel. Gewolb is the Assistant Dean and General Counsel of New York Law School, where he advises the Dean and President, members of the Board, and the senior administration on significant policy, management, and legal issues. He was previously the Legislative Director of the New York City Council. He is the former Director of Government Programs and Lecturer-in-Law at Columbia Law School and an adjunct professor at Fordham Law School, where he teaches Law of the City of New York.

Christine Billy, General Counsel and Deputy Executive Director for Legal Affairs

Christine Billy is the Commission's General Counsel and Deputy Executive Director for Legal Affairs. She comes to the Commission from the Bureau of Legal Affairs at the New York City Department of Sanitation. She previously served as Senior Counsel in the New York City Law Department's Legal Counsel Division. Billy holds a J.D. from Harvard Law School, an M.Phil from the University of Dublin, Trinity College, and a B.A. from Yale University. After clerking for the Honorable John T. Noonan on the U.S. Court of Appeals for the Ninth Circuit, she joined the law firm of Arnold & Porter, LLP. Billy is the co-author of the award-winning book, *Mariners at War: An Oral History of World War II* (2008). She is an adjunct professor at the NYU School of Law.

Candice Cho, Chief of Staff and Special Counsel

Candice Cho is Chief of Staff and Special Counsel of the Commission. She is also the Deputy Chief of Staff of the New York City Law Department. She previously served as an Assistant Corporation Counsel in the Legal Counsel Division and the Law Department's first Corporation Counsel Clerk (now Fellow). She has degrees from Columbia Law School and Harvard University.

Joshua Sidis, Deputy Executive Director for Operations

Joshua Sidis is Deputy Executive Director for Operations for the Commission. He comes to the Commission from the Mayor's Office of Operations, where he is a Senior Advisor and manages Intergovernmental Affairs, External Affairs, and Communications. Prior to his time at Operations, Sidis worked as an organizer and Operations administrator for the Public Advocate's Office. Prior to joining government, Sidis owned a small business in Brooklyn.

Jorge Montalvo, Deputy Executive Director for Policy and Commissioner Affairs

Jorge Montalvo is Deputy Executive Director for Policy and Commissioner Affairs. Prior to joining the Commission Staff, Montalvo spent more than a decade in senior managerial and policy making positions in state government, including as Deputy Secretary of State for Economic Opportunity, Associate Commissioner

ABOUT THE COMMISSION, continued

at the State Office for Temporary and Disability Assistance, and Director of Policy for the State Consumer Protection Board. Montalvo was the Founder and Inaugural Director of the New York State Office for New Americans—the first state-level immigrant integration office created by statute in the country. Montalvo also led the Empire State Poverty Reduction Initiative, a first-of-its-kind community effort to fight poverty in 16 localities throughout the State. Before his state government service, Montalvo managed corporate relations and volunteerism efforts for New York City’s 2012 Olympic Bid and served in Mayor Bloomberg’s economic development agency. Montalvo graduated from Dartmouth College with a degree in chemistry and spends his weekends teaching free GED and SAT prep classes to youth in the South Bronx.

Aaron Bloom, Deputy General Counsel

Deputy General Counsel Aaron Bloom comes to the Commission from the New York City Law Department, where he is a Senior Counsel in the Appeals Division, handling appeals in state and federal court on a diverse range of issues. Before joining the Appeals Division, Bloom was a Senior Counsel in the Law Department’s Affirmative Litigation Division, and prior to that served as an attorney for the Natural Resources Defense Council and the law firm Debevoise & Plimpton. Bloom is a graduate of Harvard Law School, and clerked in federal district court in Brooklyn for then-Chief Judge Edward R. Korman.

Additional Commission Staff

The Commission also relies on additional core Staff, including: Kwame Akosah, Associate Counsel; Torrey Fishman, Senior Policy Advisor; Sabrina Fong, Associate Director for Operations; Essence Franklin, Advisor for Outreach and Engagement; Ingrid Gustafson, Senior Counsel; Steven Newmark, Senior Policy Advisor; Michael Smilowitz, Senior Counsel; Emily Sweet, Senior Counsel; Bruce Thomas, Executive Assistant and Policy Editor; and Mary Van Noy, Senior Policy Advisor.

INTRODUCTION, continued

INTRODUCTION TO THE NEW YORK CITY CHARTER AND THE CHARTER REVISION COMMISSION

The New York City Charter sets out the structure, powers, and responsibilities of New York City's government. The current Charter is intended to be a "short-form" document that sets forth the governing structure of the City's powers and processes. Most of the legal provisions setting forth agency programs, regulations imposed on persons and businesses, and other details of City government are not in the Charter, but are contained in the Administrative Code, or in rules promulgated by City agencies.

A Charter Revision Commission is charged with reviewing the entire Charter, holding hearings to solicit public input, and issuing a report outlining findings and recommendations to amend or revise the Charter. Proposed Charter amendments drafted by the Commission are presented to the voters and, if adopted, become law.

OVERVIEW OF THE CHARTER REVISION PROCESS

First adopted in 1897 and in effect in 1898, the New York City Charter defines the organization, functions, and essential procedures and policies of City government. It sets forth the institutions and processes of the City's political system and broadly defines the authority and responsibilities of City agencies and elected officials.

In the United States, the legal authority of city governments is derived from the states in which they are located. In New York, municipalities have broad authority to structure how they operate by virtue of the Home Rule provisions of the State Constitution and the Municipal Home Rule Law (MHRL). The Charter, along with the State Constitution, the MHRL, and other state statutes, provides the legal framework within which the City may conduct its affairs.

Unlike the United States Constitution, which is rarely amended, the City's Charter is a fluid document that has regularly been amended. There are four ways to amend the Charter:

1. Local law (either with or without a referendum);
2. State law;
3. Petition (with referendum); and
4. Charter Revision Commission, which can be appointed in several ways.

As a result, the Charter contains both provisions of state law and provisions of local law.

Section 36 of the MHRL permits the Mayor to establish a Charter Revision Commission in New York City consisting of between 9 and 15 members. The Mayor selects the chair, vice-chair, and secretary of the commission. All commissioners must be residents of New York City and may hold other public offices or employment. Pursuant to MHRL § 36, a Charter Revision Commission may review the entire Charter and put any proposals for its amendment before the voters.

INTRODUCTION, continued

A Charter Revision Commission may propose changes that could be adopted through regular local law as well as changes that, if enacted by the City Council, would require approval in a mandatory voter referendum, such as Charter amendments that would:

1. Affect elective officers in various ways
2. Transfer powers from mayoral agencies to non-mayoral agencies (or vice versa)
3. Change the method of nominating, electing or removing an elective officer
4. Change the term of an elective office
5. Affect the public bidding and letting process
6. Remove restrictions on disposition of City property

A Charter Revision Commission may propose a broad set of amendments that essentially “overhauls” the entire Charter, or may narrowly focus on certain areas. The proposed amendments must be within the City’s local legislative powers as set forth in the State Constitution and the MHRL. They may be submitted to voters as one question, a series of questions, or alternatives.¹

Charter Revision Commissions are temporary and are limited by MHRL § 36(6)(e). A commission expires on the day of the election at which amendments prepared by such commission are presented to the voters. However, if a commission fails to submit any amendments to the voters, the commission expires on the day of the second general election following the commission’s creation. The last Charter Revision Commission was appointed by Mayor Michael Bloomberg in 2010.



INTRODUCTION, continued

PUBLIC OUTREACH AND ENGAGEMENT

An important principle guiding the work of this Commission is the need for meaningful participation by diverse communities throughout the five boroughs. The Commission Staff has used an array of approaches to connect with, and engage, members of the public, and to ensure that the Commission's process is open and accessible, including:

- Livestreaming every Commission meeting, hearing, and Issue Forum and posting video immediately after the event to the Commission's website and YouTube channel. Video has also been rebroadcast on NYCTV's channel 74.
- Publishing public notices in the City Record, as well as advertising in community and ethnic papers, and utilizing an extensive e-mail list of good government groups, community-based organizations, every Community Board, as well as City, state, and federal elected officials. All notices were translated into several languages, including all covered Voting Rights Act languages: Arabic, Bengali, Chinese (Mandarin, Cantonese), French, Haitian Creole, Korean, Polish, Russian, Spanish, and Urdu.
- Producing digital flyers and draft emails for organizations with large distribution lists for the purpose of redistribution.
- Sending media advisories to a list of over 3,000 people at least twice per public event.
- Providing ASL interpreters and L.O.O.P devices at every meeting, hearing, and Issue Forum, and holding all events in accessible spaces.
- Providing Spanish Language assistance at every meeting, hearing, and Issue Forum, and making listening devices available in additional languages upon request.
- Utilizing social media accounts through Twitter (@nyccharter) and Facebook (facebook.com/nyccharter).
- Providing multiple channels for the public to submit comments and testimony, including a web portal on our website, www.nyc.gov/charter; an email address, comments@charter.nyc.gov; a hotline, 212-386-5350; and a mailing address, Charter Revision Commission, 1 Centre St., New York, NY, 10007.
- Engaging in direct outreach to New Yorkers by holding multiple community forums and tabling events, including targeted efforts to engage youth, immigrant New Yorkers, and veterans.

INTRODUCTION, continued

MEETINGS, HEARINGS AND ADDITIONAL ENGAGEMENT



The Commission held its first public meeting on April 19, 2018. Chair Perales introduced the Commissioners and stressed the Commission’s goal of ensuring extensive public opportunities to participate in the Charter revision process. The agenda also included a presentation on the history of the Charter and a description of its contents.

The Commission subsequently hosted an initial round of public hearings, one in each of the five boroughs, to solicit suggestions from New Yorkers. The first was held at McKee High School in Staten Island on April 25, 2018; the next hearing was at Bronx Community College on April 30, followed by a hearing at the Flushing branch of the Queens Public Library on May 3. The Commission held a fourth hearing at the Brooklyn Botanic Garden on May 7. The initial round of hearings finished on May 9 at the New York Public Library, Stephen A. Schwarzman Building, in Manhattan.

FIRST ROUND OF PUBLIC HEARINGS

Dates	Location	Borough
April 25	McKee High School	Staten Island
April 30	Bronx Community College	Bronx
May 3rd	Queens Public Library, Flushing Branch	Queens
May 7th	Brooklyn Botanical Gardens	Brooklyn
May 9th	New York Public Library, Stephen A. Schwartzman Building, Edna Barnes Salomon Room	Manhattan

INTRODUCTION, continued

The Commission received many additional comments and recommendations through its web portal, email, paper mail, phone calls, and social media engagement. The Commission's Staff also met with organizations, advocacy and good government groups, practitioners, representatives of businesses, City agencies, elected officials, as well as Commissioners and staff members from prior Commissions.

Public comments received by the Commission are available on the Commission's website, www.nyc.gov/charter.

New Yorkers provided a wide variety of proposals for consideration by the Commission. However, the majority of the comments fell within five broad policy areas: Municipal Elections in New York City, Campaign Finance, Civic Engagement, Community Boards, and the Districting Process. The Commission met on May 31 at the Pratt Institute in Manhattan, where members discussed and passed a resolution directing the Staff to plan Issue Forums to hear from experts and practitioners on specific topics.

The first of four Issue Forums was held on June 12, at 125 Worth St., where Commissioners—and the public—heard expert testimony on Election Administration, Voter Participation, and Voting Access. At the second Issue Forum, held on June 14 at NYU Law School's D'Agostino Hall, the Commission heard testimony on Campaign Finance. The third Issue Forum, held on June 19 at the Pratt Institute's Manhattan campus, focused on Community Boards and Land Use. The fourth Issue Forum, held on June 21, again at D'Agostino Hall, focused on Civic Engagement and Districting.

Along with the expert Issue Forums, Commissioners and Staff engaged in community-based events to reach New Yorkers in their communities. Commissioner Dr. Una Clarke and Commission Staff had a lively conversation with after-school program students at Bay Ridge's P.S. 264 about revisions to the City Charter and the importance of civic engagement. Meanwhile, Commissioner Annetta Seecharran and Commission Staff held the first Commissioner in Your Borough event at the Queens Library, Jackson Heights. Community members from all over the borough provided input to the Commission on a range of topics including Community Boards, the importance of civic engagement, and the land use process.

In addition, three Commissioners—Dr. Una Clarke, Kyle Bragg, and Marco Carrión—joined an event hosted by the NYC Veterans Alliance and FDNY American Legion Post 930, which was attended by hundreds of New York City veterans as well as the New York City Department of Veterans Services. The Commissioners heard directly from veterans about the special role they play in the City as well as the challenges they face, and the Commission looks forward to a continued dialogue with this community. Staff also participated in GrowNYC's Grand Army Plaza Greenmarket in Brooklyn. Staff spoke with dozens of New Yorkers, answered questions about the Charter revision process, took comments on the Charter, and publicized upcoming public hearing dates.

The Commission expects to hold additional Commissioner in Your Borough events and other neighborhood and community-based events throughout the summer to engage New Yorkers in the Charter revision process. The Commission will also hold a second round of public hearings in each borough to solicit public input on this Report and to inform the Commission's work in formulating ballot questions for the public's consideration.

INTRODUCTION, continued

ENDNOTES

1. N.Y. MUN. HOME RULE LAW § 36(5)(b).

PROPOSALS

CAMPAIGN FINANCE

The Commission has received many comments from members of the public, elected officials, and representatives of good government groups about quid pro quo corruption in New York City, in New York State, and around the country. Many of these commenters stated that such corruption is an ongoing problem, that large campaign contributions increase the opportunity for and appearance of it, and that corruption and its appearance take a severe toll on public confidence in our democratic system.

Many of those commenters also addressed the campaign finance system adopted by the City to combat corruption and the appearance of it. Although a few commenters criticized the City's system, the majority praised it, while noting important areas in which it could be improved to better achieve its goals and increase public confidence in democracy in the City.

Proposals for reform were varied, but most focused on the system's core elements: contribution limits, the public matching funds formula, and the cap on public matching funds. While some interesting proposals outside of those core features may warrant further investigation by a future Commission, or by the City Council, Commission Staff recommends that the Commission focus its attention, and solicit further public input, on proposals regarding those core elements.

To place these proposals in context, we first provide a brief history of the City's campaign finance system, a summary of its current structure and goals, and a review of the system's performance.

BACKGROUND

History of the Campaign Finance System

In 1988, after a wave of serious corruption scandals, the City Council passed the Campaign Finance Act establishing a voluntary program for publicly financed campaigns in the City.¹ From 1985 through 1988 alone, one Borough President had been convicted of felonies; another had committed suicide while under investigation; a congressman had been convicted of bribery and extortion; former party chairmen in two boroughs were convicted of serious crimes; and several agency heads, judges, and other officials had been convicted or forced to resign.²

These incidents contributed to a widespread perception of corruption in government and led a specially convened State Commission on Government Integrity to conclude that "[o]ur democratic system is in crisis."³ State law heightened the impression that large donors exercised corrupt influence over government; at the time, it permitted a person or political action committee to contribute up to \$100,000 to candidates for citywide offices. The State Commission recommended campaign finance reform as the first step to restoring the public's faith in government integrity.⁴

CAMPAIGN FINANCE, continued

Timeline: History of the Campaign Finance System

-
- 1985** — Multiple City officials were accused or convicted of corruption, bribery, or extortion
 - 1988** — City Council passed the Campaign Finance Act establishing a voluntary public campaign financing program
 - Charter Revision Commission proposed (and voters adopted) amendments incorporating certain aspects of this program into the Charter
 - 1998** — City Council increased the matching ratio from 1:1 for the first eligible \$1,000 per donor to 4:1 for the first eligible \$250 per donor
 - Charter Revision Commission proposed (and voters adopted) a Charter amendment to ban contributions from corporations to participating candidates
 - 2004** — City Council extended contribution limits, the ban on corporate contributions, and disclosure requirements to all candidates, whether or not they participate in the public financing system
 - 2007** — City Council adopted “pay-to-play” rules making contributions from lobbyists and entities doing business with the City ineligible for public matching funds and setting lower contribution limits for these individuals and entities
 - City Council increased the matching ratio to 6:1 for the first \$175 of eligible contributions
 - 2010** — Charter Revision Commission proposed (and voters adopted) a Charter amendment requiring disclosure of independent expenditures
 - 2014** — City Council passed a law strengthening these independent expenditure disclosure provisions

The City Council found that candidate reliance on large private contributions results in the appearance of corruption and “thereby gives rise to citizen apathy and cynicism.”

After the State Legislature repeatedly failed to pass campaign finance reform, the City Council acted, adopting a voluntary public financing system and establishing an independent agency—the New York City Campaign Finance Board (CFB)—to administer it. The City Council found that regardless of whether the reliance of candidates on large private contributions actually results in corruption, “it has a deleterious effect upon government in that it creates the appearance of such abuses and thereby gives rise to citizen apathy and cynicism.”⁵ The City Council also found that there was a particular need for a campaign finance system in the City, “because of the presence of unique concentrations of wealth and financial power.”⁶ The 1988 Charter Revision Commission set forth a proposal (overwhelmingly approved by voters) reiterating in the Charter some of the provisions already adopted by the City Council, including the structure and functions of the CFB.⁷

The broad outlines of the City’s campaign finance system have remained the same over time. Candidates who choose to participate agree to adhere to spending limits in exchange for receiving public matching funds for certain individual contributions. To qualify for these funds, candidates must demonstrate a threshold level of support, and the total amount of public funds that a candidate can receive is capped. Contribution limits significantly lower than those set in state law have also been a part of the system since its 1988 inception. Those contribution limits initially applied only to candidates choosing to participate in the public financing program, but now apply to all candidates.

Since its enactment, the City Council and past Charter Revision Commissions have frequently refined the campaign finance system, continually striving to better serve the goal of reducing corruption, or its appearance, in City government and politics, including by making it possible to run competitive campaigns that rely heavily on small donations. Key amendments have included:

- ***Moving to a multiple match.*** Initially, candidates participating in the public financing program received public matching funds at a 1:1 ratio for the first \$1000 of eligible contributions per donor. In 1998, the City Council increased the matching ratio to 4:1, but matched only the first \$250 of eligible contributions.⁸ In 2007, the City Council again increased the matching ratio (to 6:1), this time matching only the first \$175 of eligible contributions.⁹
- ***Banning corporate contributions.*** The 1998 Charter Revision Commission proposed a charter amendment (adopted by the voters) to ban contributions from corporations to participating candidates.¹⁰

CAMPAIGN FINANCE, continued

- **Extending important restrictions to all candidates.** In 2004, the City Council extended contribution limits, the ban on corporate contributions, and disclosure requirements to all candidates, whether or not they participate in the public financing system.¹¹
- **Adopting “pay-to-play” rules.** In 2006 and 2007, the City Council made contributions from lobbyists and entities doing business with the City ineligible for public matching funds and set lower contribution limits for these individuals and entities.¹²
- **Requiring disclosure of independent expenditures.** After the Supreme Court’s decision in Citizen’s United v. FEC, the 2010 Charter Revision Commission proposed (and voters approved) a charter amendment requiring disclosure of “independent expenditures”—that is, expenditures made independently of, but in support of or in opposition to, candidates’ official campaigns.¹³ In 2014, the City Council passed a law strengthening these disclosure provisions, requiring independent spending entities to list their owners, directors, and top three donors on their communications and to disclose to the CFB details about both their donors and major contributors to their donors.¹⁴

Key Features of the Current System

In its current form, the City’s campaign finance system imposes contribution limits and other requirements on all candidates for Mayor, Public Advocate, Comptroller, Borough President, and City Council. It also continues to provide public financing, in exchange for additional restrictions and obligations, to candidates who choose to voluntarily participate in the public financing program.

Contribution Limits

Contribution limits apply to all candidates, not just those choosing to participate in public financing.¹⁵ Current limits per election cycle are:

OFFICE	LIMIT
Citywide offices (Mayor, Comptroller, Public Advocate)	\$5,100
Borough President	\$3,950
City Council Member	\$2,850

The CFB adjusts these limits every four years, based on changes in the consumer price index.¹⁶ The limits may be exceeded by up to 50% in certain circumstances, including run-off elections and special elections.¹⁷

The limits are lower for lobbyists, as well as individuals and organizations doing business with the City; contributions from these individuals and organizations are capped at \$400 for candidates for the three citywide offices, \$320 for Borough President candidates, and \$250 for City Council candidates.¹⁸ Certain organizations, including corporations, LLCs, LLPs, and partnerships (but not unions), may not contribute to a candidate for any of those offices.¹⁹

CAMPAIGN FINANCE, continued

Public Financing

The public financing program applies only to candidates who choose to participate in it. It currently has the following features:

Threshold eligibility requirements. To qualify for public matching funds, candidates must demonstrate that they are on the ballot, are opposed by another candidate who is also on the ballot, and have adequate support from the public by meeting a minimum threshold for both the amount of funds raised (counting only the first \$175 per donor) and the number of resident individuals who have contributed at least \$10.²⁰

Expenditure limits. Participating candidates must observe limits on the amount their campaign can spend during an election. The current limits for a primary or a general election during an election year are \$7,286,000 for Mayor, \$4,555,000 for Public Advocate and Comptroller, \$1,640,000 for Borough President, and \$190,000 for City Council. Every four years, the CFB adjusts these limits based on adjustments to the consumer price index.²¹ These limits may be exceeded by 50% if an opposing candidate who is not participating in the public financing system raises or spends more than half the expenditure limit for that office.²² These limits are lifted entirely if an opposing non-participating candidate has raised or spent more than three times the expenditure limit for that office.²³

OFFICE	CAMPAIGN EXPENDITURE LIMITS
Mayor	\$7,286,000
Public Advocate, Comptroller	\$4,555,000
Borough President	\$1,640,000
City Council Member	\$190,000

Matching ratio. Participating candidates receive matching funds for all eligible contributions from individual New York City residents up to the first \$175 per contributor, at a rate of \$6 in public funds for every \$1 in matchable private contributions. For example, a \$100 matchable contribution will be met with \$600 in public funds; and a \$5,100 matchable contribution will be met with \$1,050 in public funds (6:1 for the first \$175).²⁴

Non-matchable contributions. Contributions from certain donors are not matchable (that is, they will not be matched with public funds): these include contributions from non-City-residents; organizations, including unions and PACs; lobbyists and persons affiliated with lobbyists; and persons doing business with the City.²⁵

Cap on matching funds. The amount of public matching funds that any participating candidate may receive is capped at 55% of the expenditure limit for that office.²⁶

CAMPAIGN FINANCE, continued

Disbursement and use of public funds. Except for one early, relatively small disbursement,²⁷ public matching funds are disbursed to candidates only after the ballot is officially determined—typically beginning around six weeks before the election.²⁸ Public funds may be used only for certain types of campaign expenditures.²⁹

The Campaign Finance Board

The Campaign Finance Board (CFB) administers and enforces the City's campaign finance system, maintains a public database of contributions and expenditures, and promulgates campaign finance rules.³⁰ The CFB is also required to issue a post-election report every four years, analyzing the performance of the system in the most recent election cycle, and making proposals to improve the campaign finance system.³¹ The Charter requires the CFB, which is governed by five members appointed by the Mayor and the Speaker of the City Council, to be non-partisan and confers upon the CFB unusual budgetary protection: its proposed budget may not be modified by the Mayor, but rather must be included in the executive budget without change. This protection, added by the 1998 Charter Revision Commission, is otherwise afforded only to the City Council.³²

The primary goal of New York City's campaign finance system is to reduce the "perception that large contributions to candidates purchase special access to elected officials and special privilege in the conduct of government business."

The Goals of the Campaign Finance System

The primary goal of New York City's campaign finance system—as reflected in its origins, evolution, and current structure—is to reduce the "perception that large contributions to candidates purchase[] special access to elected officials and special privilege in the conduct of government business."³³ This goal is directly furthered by contribution limits and other restrictions on donations. It is also furthered by the public financing program, which enables candidates to run competitive campaigns that focus on a diverse group of donors, not just those who can make the maximum contribution.

The public financing program serves this goal in other ways as well. By enabling the best candidates to compete, regardless of their ability to line up multi-thousand-dollar contributions, the program ensures that the candidate pool is not artificially narrowed based on connections to wealthy donors, thus giving voters a broader range of choices

CAMPAIGN FINANCE, continued

and reducing the perception that elected officials are beholden to and will do favors for large donors. The program also incentivizes candidates to reach out to small donors in their districts, encouraging candidates to engage with a broader swath of their constituencies and diminishing the perception that candidates are controlled by those who can make large contributions.³⁴ And by multiplying the value of small contributions, the program makes donating more appealing to new and less wealthy contributors, who may then be inspired to engage in other forms of civic engagement.

A Successful System with Room for Improvement

Experts often cite the City's campaign finance system as a successful model to be emulated.³⁵ And indeed, it has served as a model for other jurisdictions. The City was among the first municipalities to adopt a public matching form of public financing—a model that is now used in at least 13 cities and 14 states nationwide.³⁶ The City was also a leader in adopting a “multiple match” strategy (matching contributions at more than a 1:1 ratio)—an approach that has also gained traction in municipalities and states nationwide.³⁷ Even on the federal level, a proposal in the House of Representatives would transform the federal campaign finance program into one that is very similar to the City's.³⁸

The City's system has survived legal challenges and boasts a long track record of high participation rates in the voluntary public financing program, including among election winners. It has also increased participation by small donors and eliminated many of the types of contributions that historically helped create opportunities for, and the appearance of, corruption, including corporate contributions, large “doing business” and lobbyist contributions, and the gargantuan individual contributions that were possible—and for many elections still are possible—under state law.

But the success of the system does not mean that its features are, or should be, carved in stone. In fact, continual evolution is anticipated and encouraged via the requirement that the CFB analyze each election cycle and make recommendations for improvement. Charter Revision Commissions and the City Council have repeatedly enhanced and refined the system to better serve its goals. And continuing public perceptions of government corruption, along with data from recent election cycles, support the conclusion that the campaign finance system has room for improvement. While numbers of small donors have increased, contributors giving the maximum permissible amount still accounted for 45% of the private funds donated to participating Mayoral candidates in 2017. That maximum permissible amount—\$4,950 for citywide races in 2017 and \$5,100 for citywide races in 2021—is more than high enough to create the perception that such a donor may be expecting something in return.

Evidence of Progress

The City's voluntary public financing program has made substantial progress toward its goal of reducing the potentially corrupting influence of large contributions by incentivizing candidates to reach out to a range of contributors, including small donors. For the 2009, 2013, and 2017 election cycles—in which participants received a 6:1 match on the first \$175 of eligible contributions—between 65 and 76% of contributors

Council Member Menchaca: Community members were energized to learn that their contributions would be matched at a rate of 6:1.

to participating candidates gave a total of \$175 or less.³⁹ These percentages are higher than those for non-participating candidates—which ranged between 50 and 54% in 2009, 2013, and 2017.⁴⁰ In addition, the number of small donors per 100,000 constituents increased both when the City switched from a 1:1 to a 4:1 match, and when the City switched from a 4:1 to a 6:1 match.⁴¹ Likewise, the proportion of total campaign funds attributable to small donors has increased since the City adopted a multiple-matching system, although that proportion dipped in 2017.⁴² That proportion also far outstrips the proportion of campaign funds attributable to small donors in federal congressional races in New York City in 2016, and for New York State Senate and Assembly races in 2016, none of which offered a public financing program with matching funds.⁴³

The public financing program has also made progress toward its goal of reducing corruption and its appearance by enabling candidates to run competitive campaigns that focus on a diverse group of donors, not just those who can make the maximum contribution. The Commission heard testimony from elected officials who explained that their campaigns would not have been possible without the public financing program, because public matching funds allowed them to compete even without connections to large numbers of donors capable of contributing thousands of dollars.⁴⁴ For example, Council Member Carlos Menchaca testified that matching funds enabled him to run a successful campaign as a relatively unknown candidate. He explained that community members were energized to learn that their contributions would be matched at a rate of 6:1, and that many small donors, even starting at \$10, became not only repeat donors, but active campaign volunteers.⁴⁵

The substantial progress toward the public financing program's goals is the direct result of the program's high levels of candidate participation. Participation rates, and participant success rates, matter because the voluntary program can achieve its goals only if a significant proportion of candidates choose to join. In every election cycle since 2001—the first in which the system included a matching ratio greater than 1:1—between 82 and 93% of candidates in City primaries and between 62 and 71% of candidates in general elections have participated in the program.⁴⁶ A similarly high percentage of election winners are publicly funded candidates, illustrating that participants are able to run strong campaigns within the constraints of the program. In every election cycle since 2001, at least 43 of the 59 offices covered by the program (three citywide offices, five Borough Presidents, and 51 Council Members) have been won by public financing participants, with 53 or more (roughly 90%) won by participants in all but one year.⁴⁷

CAMPAIGN FINANCE, continued

Public Perceptions of Government Corruption Persist

While our system has had success by many measures, there remains a widespread perception in the City that large campaign contributions have a corrupting influence on elected officials. The City has not experienced a recent rash of high-level municipal corruption convictions like there was in the 1980s—perhaps due, at least in part, to the introduction of the City’s campaign finance system—but many of the same factors that spurred the creation of that system are again present.

There remain the same, if not greater, “unique concentrations of wealth and financial power”⁴⁸ in the New York City metropolitan area. And local media accounts have detailed corruption trials and convictions of numerous downstate New York-based politicians in state government over the past decade.⁴⁹ Some municipal corruption convictions have also garnered media attention.⁵⁰ And recent polls of New York City residents show that public perceptions of corruption in government, including the perception that government officials grant special favors to large contributors, remain at an unacceptably high level.⁵¹

The Commission also heard public testimony about the perception that large donations buy favors, such as the view expressed by a member of the public at a public hearing in Brooklyn, who stated: “if I give you \$5,000 and I live in New York City, I’m going to be looking for something.”⁵² Another commenter noted that “while we cannot say for sure whether larger donations impact a candidate’s decisions in office, a lot of the recent corruption trials and investigations in New York State do not inspire much confidence.”⁵³ Elected officials also testified to the Commission that this perception is widespread.⁵⁴

In addition, while numbers of small donors have increased, data from recent elections also show that participating candidates are still heavily funded by larger donations. Those large contributions provide opportunities for *quid pro quo* corruption and supply fodder for public and media perceptions of corruption.



CAMPAIGN FINANCE, continued

Contributions to participating Mayoral candidates in the maximum permissible amount (\$4,950 in 2013 and 2017) still account for a far greater proportion of the private dollars donated by individuals to campaigns than do all contributions of \$175 or less. Indeed, maximum-level contributions accounted for 39% (\$13 million) in 2013 and 45% (\$3.3 million) in 2017 of the total funds donated by individuals to Mayoral candidates.⁵⁵ In contrast, contributions of \$175 or less accounted for 6% (\$1.8 million) in 2013 and 11% (\$0.8 million) in 2017.⁵⁶

Although the numbers are not as stark as they are for Mayoral candidates, large donations still account for a substantial proportion of the private funds raised by participating candidates for other offices. For example, individual contributions over \$1,500 accounted for 24% in 2013 and 29% in 2017 of the funds donated by individuals to City Council candidates, even though they were made by only 1% and 2% of individual contributors, respectively, in those elections.⁵⁷

For participating candidates, these discrepancies are mitigated by the 6:1 public match on a contributor's first \$175 in donations, which made, in 2013 and 2017, a matchable \$175 contribution worth \$1,225 and a matchable \$4,950 donation worth \$6,000. Still, an analysis by the Campaign Finance Institute showed that even including public funds, contributions by donors who contributed \$250 or less accounted for only 25% of the funds raised by competitive participating Mayoral candidates in 2013, and 37% in 2017.⁵⁸

THEMES & PROPOSALS FROM PUBLIC TESTIMONY

The Commission has received numerous campaign finance reform proposals, mostly addressing contribution limits, the public matching formula, and the matching funds cap. Staff recommends that the Commission focus its attention and solicit additional public and expert input on those areas, and give strong consideration to developing a proposal to reduce contribution limits, strengthen public financing, and increase the matching funds cap. Staff also recommends consideration of how reform of each of these elements of the campaign finance system would interact with and affect the other elements, how these reforms, taken together, will affect the ability of both participating and non-participating candidates to run effective campaigns, and how the changes will impact the cost of the program.

The following section describes a range of proposals to reform those elements that the Commission received, and provides a discussion of some arguments in favor of and against those proposals. The final section briefly discusses certain other campaign finance reform proposals heard by the Commission.

Proposals Relating to Contribution Limits and Public Matching Funds

Staff recommends that the Commission strongly consider placing on the ballot a proposal for reform of the campaign finance system, including changes to the following three elements: contribution limits, the public matching formula, and the cap on public matching funds.

CAMPAIGN FINANCE, continued

Contribution Limits

As described above, our current campaign finance system imposes contribution limits on all candidates, whether participating in public financing or not, for the offices of Mayor, Public Advocate, Comptroller, Borough President, and City Council Member. The aggregate limits for the 2021 election year are \$5,100 for the citywide offices, \$3,950 for Borough President, and \$2,750 for the City Council.

Proposals received by the Commission regarding contribution limits uniformly recommended reducing them. The CFB proposed limits of \$2,250 for citywide offices, \$1,750 for Borough President, and \$1,250 for the City Council.⁵⁹ Other proposals ranged from cutting contribution limits to \$2,850 for all offices,⁶⁰ to cutting limits at least in half⁶¹ or to the federal \$2,700 limit for citywide offices and reducing limits proportionately for other offices,⁶² to reducing the limits to \$2,000 for citywide offices and \$1,000 for City Council.⁶³ Finally, the Commission also received a proposal from a coalition of twelve organizations that proposed reducing contribution limits to \$1,000 for non-participating candidates, and reducing the limit even further, to \$500, for candidates who opt to participate in the public financing program.⁶⁴

Public Matching Funds Formula

The Commission received multiple proposals recommending an increase to the matching rate, the amount matched, or both. As noted, under the current system, participating candidates receive matching funds for all eligible, individual contributions from New York City residents up to the first \$175 per contributor, at a rate of \$6 in public funds for every \$1 in matchable private contributions.

The CFB recommended matching the first \$250 per contributor at a rate of 8:1 for citywide offices (while not changing the matching formula for other offices).⁶⁵ Under this proposal, a \$250 donation toward a candidate for citywide office would be met with \$2,000 in public funds. Similarly, Council Member Brad Lander has expressed support for allowing public matching funds on contributions up to \$250, and proposed matching the first \$175 per contributor at a rate of \$10 to \$1.⁶⁶ And Professor Michael J. Malbin, the Executive Director of the Campaign Finance Institute, proposed considering an increase in the matching rate for Mayoral candidates, and potentially other citywide offices, to 9:1.⁶⁷

Other commenters suggested that matching funds be provided according to a sliding scale. Under this system, smaller contributions would be matched at a higher rate. For example, Council Member Kallos suggested either: (a) matching contributions of \$175 or less at a rate of \$10 to \$1, while matching the first \$175 of a larger contribution at the current rate of \$6 to \$1, or (b) matching contributions of \$100 or less at an unspecified, higher rate.⁶⁸ Similarly, the coalition of twelve organizations that proposed a \$500 contribution limit for participating candidates has proposed matching contributions of \$100 or less at a higher rate, and then phasing out matching funds at higher contribution amounts (up to \$500) to result in doubling the amount of available public matching funds compared to the current system, but they did not recommend a specific scale.⁶⁹ Finally, some commenters proposed matching only contributions of \$175 or less, instead of the first \$175 of any contribution within the legal limit.⁷⁰

CAMPAIGN FINANCE, continued

The Cap on Matching Funds

Many organizations recommended increasing or eliminating the cap on the amount of public matching funds a participating candidate may receive. As noted, the amount of public matching funds that any participating candidate may receive is capped at 55% of the expenditure limit for that office.⁷¹

Several commenters proposed raising the matching funds cap to roughly 85% (six-sevenths) of the expenditure limit—a level that, under the current 6:1 matching rate, would ensure that candidates could continue to spend public funds until they reached the relevant expenditure limit, even if they never raised more than \$175 from a donor.⁷² Thus, if a candidate raised one-seventh (roughly 15%) of the expenditure limit in private funds that were all eligible to be fully matched at a 6:1 ratio (that is, all from resident, individual donors, who gave a total of \$175 or less), then the candidate would receive six-sevenths (roughly 85%) of the expenditure limit in public funds, and thus could reach the full expenditure limit without running out of public matching funds.⁷³

The Campaign Finance Board, by contrast, proposed raising the cap on matching funds to 65% of the expenditure limit.⁷⁴ Others supported raising the matching funds cap without specifying a particular number, or eliminating the cap altogether.⁷⁵

“the City’s contribution limits are higher than those in most other major cities”

Discussion

Reducing Contribution Limits

Proponents of reducing contribution limits point to that reform as the most direct way to reduce the corrupting influence of large donations, and to reduce the appearance of such corruption.⁷⁶ Reducing corruption directly benefits New Yorkers by avoiding waste and misuse of City resources, and reducing the perception of corruption improves public confidence in government—a worthy end in itself, but also one that could lead to greater voter participation and other forms of civic engagement.

As discussed above, media reports and public perceptions (as evidenced by surveys and public comments) associate large campaign donations, such as those at the upper end of the current limits, with *quid pro quo* corruption or at least the appearance of it. And the data discussed above show that contributions at the upward limit, in all races but especially in the Mayoral race, still play a major role in campaign funding, even though they come from a miniscule fraction of the City’s population.

CAMPAIGN FINANCE, continued

Proponents of reducing contribution limits also point out that each of the City's current contribution limits are higher than the contribution limit for all federal offices—President, Senator, and Representative—which is currently \$2,700 (although the federal limit applies per election, not per election cycle as the City's does).⁷⁷ Likewise, the City's contribution limits are higher than those in most other major cities. For example, Los Angeles's limits are currently \$800 per candidate per election for City Council races and \$1,500 per candidate per election for Mayoral races,⁷⁸ San Antonio's limits are \$500 for City Council races and \$1,000 for Mayoral races,⁷⁹ San Francisco's limits are \$500 per candidate per election,⁸⁰ and Philadelphia's limits are \$3,000 per candidate per calendar year.^{81, 82}

A potential criticism of lower contribution limits is that candidates may be required to spend more time fundraising to replace funds lost due to the lower limits. But such fundraising, particularly if aimed at a broader set of donors across a range of financial resources, could also be seen as a positive, in terms of the increased outreach and engagement that would result. Moreover, if lower contribution limits were combined with increased public matching funds, then many participating candidates may find that they need not significantly increase their fundraising time to raise an equivalent amount of funds, and some may even be able to decrease that time.

Decreased contribution limits may create other potential challenges. Staff recommends that the Commission consider and solicit further input on the following two challenges (and potential means of addressing them), which could become more acute the lower contribution limits are set.

The first challenge results from the timing of disbursements of public funds for participating candidates. Currently, aside from a relatively small installment of early public funds, candidates typically do not receive their first disbursement of public funds until 6 weeks before the election (after the ballot is set). If one result of a new public financing system is that public matching funds become a larger portion of a candidate's overall financing, participating candidates, particularly those that lack preexisting name recognition, could be at a disadvantage in terms of their ability to mount a vigorous campaign prior to the disbursements of public funds.⁸³

The second challenge is that lower contribution limits could make it more difficult for participating candidates who reach the cap on matching funds to continue to compete with a wealthy, self-funded candidate. A further potential downside is that lower contribution limits may push more private money into independent expenditures.⁸⁴

Strengthening the Public Match

Proponents of a stronger public match—an increase in the matching ratio, an increase in the matchable portion of a donation, or both—note that such a reform would increase candidates' incentives to seek out small donors.⁸⁵ This could make it easier for candidates participating in the public financing program to run effective fundraising campaigns, whether or not they have access to large donations, and help reduce the opportunities for, and public perception of, corruption associated with large donations. In addition, by encouraging the strongest candidates to run, regardless of their financial connections, a stronger public match could broaden the pool of potential candidates and improve voter choice.⁸⁶

From 2005 to 2013, first-time City resident donors increased by 50%.

Proponents also contend that a stronger public match energizes small donors, encouraging those who do not have much to give (and may not have previously donated) to consider giving, because even a small donation can have a big impact. For example, at the Commission’s Campaign Finance Issue Forum, Council Member Menchaca explained that he could use the City’s 6:1 matching ratio as a selling point with community members who could make only small donations.⁸⁷ Indeed, as noted above, the overall number of small donors increased after the City’s program shifted from a 1:1 to a 4:1 match, and when it shifted from a 4:1 to a 6:1 match, though the change was not as great for the latter shift. At the same time, the number of first-time New York City resident contributors also increased, from 28,170 in 2005 to 44,540 in 2013.⁸⁸ Increasing the number, and economic diversity, of donors may also translate into increases in other forms of civic engagement, including voting.⁸⁹

A potential criticism of a greater public match is the concomitant increase in the cost to fund the program. That cost increase should be taken seriously, but also should be considered in context. Total public funds payments to all candidates in the past three election cycles were \$28 million in 2009, \$38.4 million in 2013, and \$17.7 million in 2017.⁹⁰ That total cost translates to roughly \$2 to \$5 per New York City resident every four years. Increased public matching could increase these costs. The City’s operating budget for the 2019 fiscal year is \$89.2 billion. Thus, even the 2013 payout of \$38.4 million would be only four one hundredths of a percent (0.043%) of the current budget.⁹¹

Another criticism of strengthening the public match is that public matching at any ratio or amount does little to empower those who cannot afford to make anything more than a nominal donation. For many New Yorkers, even a \$175 donation is not a “small donation” but, rather, far out of reach. Indeed, at the Issue Forum, Brooklyn Borough President Eric Adams expressed this view, and advocated instead for a full public funding model, described in more detail below (under “Alternative Public Financing Schemes”).⁹²

The Cap on Matching Funds

Proponents of increasing the cap on matching funds—currently 55% of the base expenditure limit for an office—assert that doing so would ensure that the benefits of the City’s small-dollar public matching program, discussed above, do not prematurely end, leaving a candidate to rely solely on unmatched private funds late in the election cycle. The current cap has been in place since 1998,⁹³ and strengthening the public match could make it more likely that candidates hit the cap and see matching funds end prior to the end of a campaign.

Proponents of raising the matching funds cap to 85% of the expenditure limit (or more) asserted that there was no reason to stop matching funds from flowing before

CAMPAIGN FINANCE, continued

candidates reached their expenditure limits. By contrast, at the Issue Forum, the CFB asserted that an 85% or higher limit was unnecessary and unwise because, as a practical matter, candidates will need to raise a significant amount of private funds to cover expenses that are not eligible to be covered by public funds, and to cover campaign expenditures that precede the availability of public funds.⁹⁴ Citizens Union expressed similar concerns at the Issue Forum.⁹⁵ The CFB also noted that citywide candidates only rarely reach even the current 55% cap.⁹⁶

A potential criticism of any increase in the matching funds cap is cost—to the extent that candidates utilize any increase in the cap.⁹⁷ Staff recommends that the Commission review the costs associated with the various proposals to raise the matching funds cap.

The Timing of Any Changes

Some commenters, including the CFB, have suggested that any proposed amendments to the campaign finance system go into effect immediately, for the 2021 election.⁹⁸ Others have recommended that amendments instead be implemented for the following election (in 2023) or phased in over the course of the two elections.⁹⁹ Concerns about immediate implementation have included administrative burdens on the CFB, as well as the fairness and feasibility of changing the rules after many candidates have already begun fundraising for the 2021 election.¹⁰⁰

Staff recommends that the Commission solicit further comments on when any proposed amendments should go into effect. In light of the legitimate concerns regarding any immediate implementation, Staff also recommends that the Commission consider the alternative approach of allowing 2021 candidates to choose whether to conduct their campaigns under the current system, or the system as amended.

Additional Campaign Finance Reform Proposals

Alternative Public Financing Schemes

Some commenters proposed that the Commission consider incorporating, or switching to, alternative public financing schemes such as the full public funding systems used in Maine, Arizona, and certain other states (“Clean Elections”), or the voucher system that debuted in selected races in Seattle in 2017 (“Democracy Vouchers”).¹⁰¹

Full Public Funding Systems

“Full public funding” refers to a system of campaign finance, used most prominently in Maine, Connecticut, and Arizona, in which participating campaigns are almost entirely publicly financed. Full public funding programs generally provide a government grant to finance the campaigns of candidates who voluntarily agree to strictly limit their spending and private fundraising.

Candidates opting to participate in a full public funding system are required to meet qualification criteria, which typically include collecting a certain number of signatures and small contributions from constituents before the candidate is eligible to receive public financing.¹⁰² To receive public financing, participating candidates generally

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agree to forgo all other fundraising and accept no other private or personal funds. Candidates who qualify are given an equal amount of public funds with which to run their campaigns, and are subject to detailed spending limitations and reporting requirements. Candidates who choose not to participate in the full public funding programs are still subject to fundraising limitations (typically in the form of limits on the size and source of contributions they accept) and detailed reporting requirements.¹⁰³

Proponents of the full public funding model note that it effectively takes all private money out of politics, at least for those who choose to participate—a result many find desirable.¹⁰⁴ In so doing, it aims to reduce corruption and the appearance of corruption, and to encourage candidates to focus their campaign efforts on all constituents equally, regardless of wealth.

Nonetheless, a full public funding system would represent a dramatic break from New York City's current campaign finance system, which many experts and the majority of commenters to the Commission consider very successful. Full public funding systems also raise questions of cost. Once candidates meet the qualifying threshold, they become eligible for a block grant of public funds. A large pool of qualifying candidates could greatly increase public costs, or threaten funding shortfalls.¹⁰⁵ By contrast, public matching programs allow for more funding flexibility, with candidates receiving more or less in public funds depending on their own ability to raise matchable contributions.¹⁰⁶ In addition, some commentators have opined that matching programs are preferable to full public funding systems because they better incentivize candidates to perform outreach and engage directly with small donors.¹⁰⁷

Voucher Systems

In a “voucher” system, eligible residents are provided with taxpayer-funded campaign contribution vouchers that they can “donate” to their candidate(s) of choice in an election cycle. The “Democracy Voucher Program” in Seattle, Washington, is the first of its kind in the United States.¹⁰⁸ Under the program, Seattle gives every eligible resident four \$25 vouchers;¹⁰⁹ those residents can then distribute their vouchers to participating candidates in eligible races, which in 2017 included two at-large city council races and the city attorney race.¹¹⁰ Future election years will also include mayoral and district city council races.¹¹¹

The Democracy Voucher Program is funded with \$3 million per year in property tax proceeds,¹¹² with voucher redemption disbursements being issued on a first-come, first-served basis until funding is depleted.¹¹³ Candidates opting to participate in the Democracy Voucher Program are subject to specific qualification requirements, as well as certain restrictions, including contribution and spending limits, debate participation requirements, and a ban on fundraising from any organization that makes independent expenditures.¹¹⁴

Proponents point out that, unlike public matching, vouchers enable participation in candidate funding by residents without the means to make a financial donation from their own resources.¹¹⁵ Nonetheless, the voucher system is comparatively untested, having been used in only a few races in a single election cycle in Seattle—a much smaller city. In that election cycle, just over 20,000 Seattle residents (3.4% of adult

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residents) assigned their vouchers to candidates, and only 35% of the candidates in covered elections qualified to participate in the program.¹¹⁶ Whether vouchers will be successful in Seattle is yet to be seen, and it is unclear whether Seattle's experiences would translate to New York City.

Changing the treatment of campaign-coordinated member-to-member communications

Some commentators have proposed exempting certain expenses incurred by a union or other membership organization in creating, producing, and disseminating communications with their members from the definition of "contribution" under the Campaign Finance Act, and thus from contribution limits. Under the current law, such communications are not considered contributions if they are made independently of the candidate or the candidate's campaign. But if the communications are coordinated with a candidate or campaign—that is, the candidate or campaign "authorizes, requests, suggests, fosters or cooperates" in these communications, they are considered "in-kind" contributions.¹¹⁷ Applying the Act's provisions, the CFB has found the following activities, among others, to constitute contributions: union-organized distribution of campaign materials composed in cooperation with a campaign, and union-organized phone-banking performed on behalf of a candidate.¹¹⁸

The Commission heard comments on both sides of this issue. Supporters of exempting all communications from a membership organization to its members and staff from the definition of contribution contend that membership organizations increase voter participation, and that membership organizations are voluntary associations whose members expect such communications.¹¹⁹ Opponents contend that allowing unlimited in-kind donations from large membership organizations would lead to the type of money-driven politics the Campaign Finance Act seeks to avoid.¹²⁰ Because of the divide in opinion and the fact that the policy merits of this issue may turn on fine distinctions and detailed information regarding such considerations as the quantity, nature, or impact of communications that currently qualify as "contributions" under the current rule, but would not under the proposed new rule, Staff believes that this issue requires further examination and study.

Other Proposals

The Commission heard numerous other proposals related to campaign finance. While Staff does not suggest ruling out these proposals altogether, we recommend that, given the limited time available, the Commission focus on considering the proposals to reform contribution limits, the public funds matching formula, and the matching funds cap, discussed above. These other proposals include:

- Requiring candidates for citywide offices and Borough President to raise contributions from geographically diverse communities in their constituencies to be eligible for public financing¹²¹
- Permitting candidates participating in the public financing program who reach the public funds cap to raise and spend an additional block of public funds above the expenditure limit for the relevant offices, but only from donors who contribute \$175 or less¹²²

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- Prohibiting the use of public matching funds to pay for consultants who also lobby the City¹²³
- Changing the legal definition of what constitutes a non-competitive election, to reduce the unnecessary transfer of public funds to candidates who face minimal opposition¹²⁴
- Transferring lobbying reporting and enforcement from the Office of the City Clerk, who is appointed by the City Council, to the CFB¹²⁵
- Changing the threshold requirements to qualify for public financing for candidates for citywide office by: (a) decreasing the threshold of amount of required fundraising from \$250,000 for Mayor to \$125,000, and from \$125,000 for Public Advocate and Comptroller to \$75,000, and (b) requiring candidates to collect at least 50 contributions in each borough¹²⁶
- Lowering the minimum contribution counted toward meeting the qualifying thresholds for public matching funds from \$10 to \$5¹²⁷
- Creating “People PACs” that would accept donations only of \$100 or less from City residents and would receive public matching funds at a 4:1 ratio¹²⁸
- Expanding the definition of “doing business with the City” to include clients of lobbyists and subcontractors doing large amounts of work on City contracts¹²⁹
- Requiring CFB to publish contribution and expenditure databases more frequently¹³⁰
- Developing a sampling system for post-election audits to cut down time spent on audits¹³¹
- Strengthening the rules for disclosure of the funders of independent expenditures¹³²
- Strengthening restrictions on donations to nonprofits affiliated with elected officials, and adding new restrictions on donations to nonprofits affiliated with City agencies and on direct donations to City agencies, public authorities, public benefit corporations, and local development corporations¹³³

NEXT STEPS

In sum, the vast majority of comments received by the Commission on the City’s campaign finance system have praised it, while also suggesting various areas for improvement. Continuing perceptions of corruption, and a review of the system’s recent performance, support the conclusion that the system has made progress toward, but not fully reached, its goals. Staff therefore recommends that the Commission focus its attention on the areas of the law that have most frequently been the subject of comment—contribution limits, the public matching formula, and the cap on matching funds—and develop a ballot proposal focusing on these areas. In particular, Staff recommends that the Commission strongly consider proposing an amendment reducing contribution limits, strengthening the public match, and increasing the cap on public matching funds. Staff also suggests that the Commission carefully consider when any proposed amendments

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to the campaign finance system should go into effect, how each proposed change to the system will interact with other proposed changes, how these changes will affect the ability of both participating and non-participating candidates to run competitive campaigns, and how the changes will impact the cost of the program.

END NOTES

1. N.Y.C., N.Y., Local Law no. 8 (Feb. 29, 1988).
2. 1 N.Y. STATE COMM'N ON GOV'T INTEGRITY, RESTORING THE PUBLIC TRUST: A BLUEPRINT FOR GOVERNMENT INTEGRITY 1-2 (1988), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1015&context=feerick_integrity_commission_reports&bcsi_scan_deac3ed0f6c2bde8=Be6DNG2Kep30QB3/4B70OnJFTxDAAAARhnRvw==&bcsi_scan_filename=viewcontent.cgi; see also Issue Forum on Campaign Finance, N.Y.C. Charter Revision Comm'n 17-21 (June 14, 2018) [hereinafter June 14, 2018 CRC Forum] (statement of Steve Louis, Chief, Div. of Legal Counsel, N.Y.C. Law Dep't), <https://www1.nyc.gov/assets/charter/downloads/pdf/06-14-18-NYCCharter-PublicHearing.pdf>.
3. N.Y. STATE COMM'N ON GOV'T INTEGRITY, *supra* note 2, at 1-2.
4. Friedlander, et al., The New York City Campaign Finance Act, 16 HOFSTRA L. REV. 345, 347-49 (1988); see also Memorandum from N.Y. Pub. Interest Research Grp. to N.Y.C. (1988) (included in Local Law no. 8 bill jacket on file with N.Y. Legislative Serv.) (noting that the top 200 contributors gave \$10 million to eight incumbents in the 1985 election); N.Y. STATE COMM'N ON GOV'T INTEGRITY, *supra* note 2, at 5-12.
5. Local Law no. 8, § 1.
6. *Id.*
7. See 1 N.Y.C. CHARTER REVISION COMM'N, REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION 42-46 (1988), https://www1.nyc.gov/assets/charter/downloads/pdf/1986-1988_final_report.pdf; Michel Marriott, Rules on Mayoral Succession and Anti-Corruption Voted, N.Y. TIMES, Nov. 9, 1988, at B4.
8. N.Y.C., N.Y., Local Law no. 48, § 7 (Oct. 22, 1998) (amending N.Y.C., N.Y., ADMIN. CODE § 3-705(2)(b)).
9. N.Y.C., N.Y., Local Law no. 67 (Dec. 19, 2007).
10. N.Y.C., N.Y., CHARTER ch. 46, § 1052(a)(13) (amended by N.Y.C. CHARTER REVISION COMM'N, *supra* note 7).
11. N.Y.C., N.Y., Local Law no. 59 (Dec. 15, 2004) (creating disclosure requirements); N.Y.C., N.Y., Local Law no. 60 (Dec. 5, 2007) (extending contribution limits and ban on corporate contributions).
12. N.Y.C., N.Y., Local Law no. 17 (June 13, 2006); N.Y.C., N.Y., Local Law no. 34 (July 3, 2007); Local Law no. 67, § 11; see also N.Y.C., N.Y., Local Law no. 15 (June 13, 2006) (establishing lobbyist restrictions).
13. See CHARTER ch. 46, § 1052(a)(15).
14. N.Y.C., N.Y., Local Law no. 41 (Aug. 28, 2014).
15. See N.Y.C., N.Y., ADMIN. CODE § 3-719(2)(b).
16. See *id.* § 3-703(7); Limits and Thresholds: 2021 Citywide Elections, N.Y.C. CAMPAIGN FIN. BD., www.nycffb.info/candidate-services/limits-thresholds/2021/ (last visited July 11, 2018).
17. See ADMIN. CODE § 3-703(1)(f).
18. See *id.* §§ 3-702(3), (18)(a), 3-703(1-a), 3-719(2)(b).
19. See *id.* §§ 3-703(1)(l), 3-719(2)(b); N.Y.C., N.Y., CHARTER ch. 46, § 1052(a)(13).
20. See ADMIN. CODE § 3-703.

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21. See *id.* § 3-706; Limits and Thresholds: 2021 Citywide Elections, *supra* note 16.
22. ADMIN. CODE § 3-706(3)(a).
23. *Id.* § 3-706(3)(b).
24. See *id.* §§ 3-703, 3-705(1)-(2).
25. See *id.* §§ 3-702(3)(a)-(i), 3-703(1-a), 3-213(c)(1), 3-719(2)(b).
26. See *id.* § 3-705(2)(b).
27. The maximum amount of the early disbursement varies by office and is \$250,000 for mayor, \$125,000 for comptroller and public advocate, \$50,000 for borough president, and \$10,000 for City Council member. See *id.* §§ 3-703(1)(a), 3-705(2)(b), 3-705(10), 3-709(5)-(6), 3-710(3); Limits and Thresholds: 2021 Citywide Elections, *supra* note 16 (follow “Public Funds Payment”).
28. The Campaign Finance Act requires candidates to have met all requirements to be on the ballot, and to be opposed by a candidate on the ballot, in order to be eligible for funds. See ADMIN. CODE § 3-703(1)(a), (5). However, the New York State Board of Elections is not required to certify the ballot to the New York City Board of Elections until 36 days before a primary or general election. See N.Y. ELEC. LAW §§ 4-110, 4-112(1). Thus, public funds disbursements for the September 12, 2017, primary election did not begin until August 3, 2017, and public funds disbursements for the November 7, 2017, general election did not start until September 28, 2017. See E-mail from Eric Friedman, Assistant Exec. Dir. for Pub. Affairs, N.Y.C. Campaign Fin. Bd., to Aaron Bloom, Deputy Gen. Counsel, N.Y.C. Charter Revision Comm’n (June 27, 2018 13:01 EST).
29. ADMIN. CODE § 3-704.
30. See N.Y.C., N.Y., CHARTER ch. 46, §§ 1051-1052; ADMIN. CODE §§ 3-708, 3-710-711.
31. See ADMIN. CODE § 3-713.
32. See CHARTER §§ 1052, 1057; ADMIN. CODE § 3-708.
33. Joseph A. O’Hare, Forward to N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE: CAMPAIGN FINANCE REFORM IN NEW YORK CITY, at ix (1990), www.nycfcfb.info/PDF/news_media/reports/1989_PER_executive_summary.pdf.
34. See generally ELISABETH GENN ET AL., BRENNAN CTR. FOR JUSTICE, DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS (2012), www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.
35. See, e.g., ANGELA MIGALLY & SUSAN LISS, BRENNAN CTR. FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE (2010), <http://www.brennancenter.org/sites/default/files/legacy/Small%20Donor%20Matching%20Funds-The%20NYC%20Election%20Experience.pdf>; Michael J. Malbin et al., Small Donors, Big Democracy: New York City’s Matching Funds as a Model for the Nation and States, 11 ELECTION L.J. 3 (2012); Ciara Torres-Spelliscy & Ari Weisbard, What Albany Could Learn from New York City: A Model for Meaningful Campaign Finance Reform in Action, 1 ALB. GOV’T L. REV. 194 (2008); Janos Marton, A National Model Faces New Challenges: The New York City Campaign Finance System and the 2013 Elections, 40 FORDHAM URB. L.J. 673 (2012).
36. See, e.g., JUHEM NAVARRO-RIVERA & EMMANUEL CAICEDO, DEMOS, PUBLIC FUNDING FOR ELECTORAL CAMPAIGNS: HOW 27 STATES, COUNTIES, AND MUNICIPALITIES EMPOWER SMALL DONORS AND CURB THE POWER OF BIG MONEY IN POLITICS (June 28, 2017), [www.demos.org/sites/default/files/publications/Public_Financing_Factsheet_FA\[5\].pdf](http://www.demos.org/sites/default/files/publications/Public_Financing_Factsheet_FA[5].pdf).

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37. For example, Los Angeles adopted a 4:1 match for general elections starting in 2013. See MICHAEL J. MALBIN & MICHAEL PARROTT, CAMPAIGN FIN. INST., WOULD REVISING LOS ANGELES' CAMPAIGN MATCHING FUND SYSTEM MAKE A DIFFERENCE? (Sept. 2016). More recently, Berkeley, California; Washington D.C.; Montgomery County, Maryland; Howard County, Maryland; and Suffolk County, New York, have adopted multiple match programs that either are currently being implemented, or will be in the near future. See BERKELEY, CAL., MUN. CODE § 2.12.505; Fair Elections Amendment Act of 2018, D.C. Law 22-94; Montgomery County, Md., CODE § 16-23; HOWARD COUNTY, MD., CODE § 10.306(d); SUFFOLK COUNTY, N.Y., CHARTER § C42-4.
38. Government by The People Act of 2017, H.R. 20, 115th Cong. (2017).
39. Presentation Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm'n 9 (June 14, 2018). Those percentages were higher for City Council candidates, and lower for citywide candidates. Id.
40. E-mail from Eric Friedman, N.Y.C. Campaign Fin. Bd., to N.Y.C. Charter Revision Comm'n, app. (June 28, 2018, 17:10 EST).
41. See Michael J. Malbin & Michael Parrott, Small Donor Empowerment Depends on the Details: Comparing Matching Fund Programs in New York and Los Angeles, 15 FORUM 219, 233 (2017).
42. See Written Testimony from Michael J. Malbin, Exec. Dir., Campaign Fin. Inst., to N.Y.C. Charter Revision Comm'n 3 (June 14, 2018).
43. See E-mail from Eric Friedman to N.Y.C. Charter Revision Comm'n, supra note 40, app. For example, for the 25 candidates that ran in a congressional primary in the City in 2016, the proportion of small donations (\$200 or less) was just 1% of total candidate funding. In the general election, the proportion of such donations was just 2.4%. Id.
44. June 14, 2018 CRC Forum, supra note 2, at 8-13, 42-44 (statements of Carlos Menchaca, Council Member, N.Y.C. Council, and Rosie Mendez).
45. Id. at 8-13 (statement of Carlos Menchaca).
46. N.Y.C. CAMPAIGN FIN. BD., BY THE PEOPLE: THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM IN THE 2013 ELECTIONS 46 (2013), http://www.nycffb.info/sites/default/files/pressfiles/2013_PER.pdf; Presentation Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm'n, supra note 39, at 7.
47. N.Y.C. CAMPAIGN FIN. BD., BY THE PEOPLE, supra note 46, at 46; Email from Eric Friedman, Assistant Exec. Dir. for Pub. Affairs, N.Y.C. Campaign Fin. Bd., to Aaron Bloom, Deputy Gen. Counsel, N.Y.C. Charter Revision Comm'n (June 26, 2018, 20:21 EST).
48. N.Y.C., N.Y., Local Law no. 8, § 1 (Feb. 29, 1988).
49. See, e.g. Susanne Craig, The Many Faces of New York's Political Scandals, N.Y. TIMES (May 3, 2016), www.nytimes.com/interactive/2014/07/23/nyregion/23moreland-commission-and-new-york-political-scandals.html.
50. See, e.g., Frank Rosario & Rich Calder, Ex-Councilman Dan Halloran Gets 10 Years for Bribery Scheme, N.Y. POST (Mar. 4, 2015), <https://nypost.com/2015/03/04/disgraced-councilman-dan-halloran-gets-10-years-for-bribery-scheme/>; Vivian Wang, City Councilman Convicted of Stealing Thousands in Public Funds, N.Y. TIMES (July 20, 2016), www.nytimes.com/2017/07/20/nyregion/ruben-wills-city-council-verdict.html.
51. See, e.g., Quinnipiac Univ., New York City Trend Information (Mar. 1, 2017), https://poll.qu.edu/images/polling/nyc/nyc03012017_trends_Nmd84xbw.pdf; Quinnipiac Univ., New York State Trend Information (July 20, 2016), https://poll.qu.edu/images/polling/ny/ny07202016_trends_Nyg32rt.pdf/.

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52. 1st Brooklyn Borough Hearing, N.Y.C. Charter Revision Comm’n 107-08 (May 7, 2018) [hereinafter May 7, 2018 CRC Hearing] (statement of Reginald Sweeney), https://www1.nyc.gov/assets/charter/downloads/pdf/05_07_18_nyc_charter_commission_public_hearing.pdf.
53. 1st Queens Borough Hearing, N.Y.C. Charter Revision Comm’n 22 (May 3, 2018) (statement of Tom Speaker, N.Y. Chapter, Represent.Us), https://www1.nyc.gov/assets/charter/downloads/pdf/05_07_18_nyc_charter_commission_public_hearing.pdf. Common Cause/ NY similarly testified that, in its view, recent election cycles had shown that corruption was still a problem in the City. See May 7, 2018 CRC Hearing, supra note 52, at 31 (statement of Susan Lerner, Exec. Dir., Common Cause N.Y.). And another member of the public testified that, in his view, “there is still a reliance on large donations for many candidates. Those large donations become a priority, and they have influence. ...[W]hy should that person that can afford to donate one thousand dollars potentially have their opinion matter more than that of my hard-working parents?” Id. at 18 (statement of RJ DeMello).
54. Council Member Carlos Menchaca testified at the Issue Forum that members of his constituency “[w]ithout a doubt” believed that that government is “rigged” and that individuals making large donations have outsize influence. See June 14, 2018 CRC Forum, supra note 2, at 11 (statement of Carlos Menchaca). Council Member Ben Kallos also discussed this perception, asking “[have] any of you ever given anyone \$4,950 without expecting anything in return?” 1st Manhattan Borough Hearing, N.Y.C. Charter Revision Comm’n 30 (May 9, 2018) [hereinafter May 9, 2018 CRC Hearing] (statement of Ben Kallos, Council Member, N.Y.C. Council), <https://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180509.pdf>.
55. Presentation Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm’n, supra note 39, at 11; E-mail from Eric Friedman to N.Y.C. Charter Revision Comm’n, supra note 40, app.
56. Presentation Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm’n, supra note 39, at 11; E-mail from Eric Friedman to N.Y.C. Charter Revision Comm’n, supra note 40, app.
57. Presentation Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm’n, supra note 39, at 12.
58. Written Testimony from Michael J. Malbin to N.Y.C. Charter Revision Comm’n, supra note 42, at 5. These statistics include all participating candidates who received half as many votes as the winner in either a primary or general election.
59. Written Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm’n 3 (June 14, 2018).
60. Written Testimony from Ian Vandewalker, Senior Counsel, Brennan Ctr. for Justice, to N.Y.C. Charter Revision Comm’n 4 (June 14, 2018); see also Written Testimony from Michael J. Malbin to N.Y.C. Charter Revision Comm’n, supra note 42, at 6.
61. Written Testimony from Brad Lander, Council Member, N.Y.C. Council, to N.Y.C. Charter Revision Comm’n 2-3 (May 7, 2018); Written Testimony from Alex Camarda, Senior Policy Advisor, Reinvent Albany, to N.Y.C. Charter Revision Comm’n 3-5 (June 14, 2018).
62. May 7, 2018 CRC Hearing, supra note 52, at 35-36, 46 (statements of Susan Lerner and Mariana Alexander, Vice President of Policy, New Kings Democrats).
63. Written Testimony from Ben Kallos, Council Member, N.Y.C. Council, to N.Y.C. Charter Revision Comm’n 1, 4 (May 9, 2018).
64. Letter from ALIGN et al. to N.Y.C. Charter Revision Comm’n (June 28, 2018). Those

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twelve organizations are ALIGN, the Center for Popular Democracy, Citizen Action, Communications Workers of America, DEMOS, Every Voice, Korean Americans for Political Advancement, Make the Road New York, New York Communities for Change, New York Working Families, SEIU 32BJ, and Strong Economy for All.

65. Written Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm'n, supra note 59, at 4.
66. Written Testimony from Brad Lander to N.Y.C. Charter Revision Comm'n, supra note 61, at 2-3.
67. Written Testimony from Michael J. Malbin to N.Y.C. Charter Revision Comm'n, supra note 42, at 6.
68. Written Testimony from Ben Kallos to N.Y.C. Charter Revision Comm'n, supra note 63, at 1, 4.
69. Letter from ALIGN et al. to N.Y.C. Charter Revision Comm'n, supra note 64.
70. See, e.g., Written Testimony from Alex Camarda to N.Y.C. Charter Revision Comm'n, supra note 61, at 5-6.
71. If an expenditure limit is raised due to a non-participating opponent's spending, see supra notes 22 and 23 and accompanying text, the matching funds cap remains at 55% of the original limit. See N.Y.C., N.Y., ADMIN. CODE § 3 705(2)(b); Order Pursuant to Fed. R. Civ. P. 54(b), Docket No. 131, Ognibene v. Parkes, No. 08-cv-1335 (S.D.N.Y. Dec. 16, 2011) (stipulating that the City would not enforce ADMIN. CODE §§ 3-706(3)(a)(ii)-(iii) and 3-706(3)(b)(ii)-(iii), which provide that candidates may receive additional funds above the 55% of the original limit under certain circumstances).
72. See, e.g., Written Testimony from Alex Camarda to N.Y.C. Charter Revision Comm'n, supra note 61, at 5-6; Written Testimony from Tom Speaker, N.Y. Chapter, Represent. Us, to N.Y.C. Charter Revision Comm'n 1-2 (May 3, 2018); Written Testimony from Susan Lerner, Common Cause N.Y., to N.Y.C. Charter Revision Comm'n 2 (May 7, 2018); Written Testimony from Ben Kallos to N.Y.C. Charter Revision Comm'n, supra note 63, at 1, 3.
73. If the matching ratio were 8:1, then the public funds cap necessary to achieve this result would be eight-ninths (89%) of the expenditure limit.
74. Written Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm'n, supra note 59, at 5.
75. Written Testimony from Brad Lander to N.Y.C. Charter Revision Comm'n, supra note 61, at 3; May 7, 2018 CRC Hearing, supra note 52, at 108 (statement of Reginald Sweeney).
76. May 9, 2018 CRC Hearing, supra note 54, at 30-31 (statement of Ben Kallos, Council Member, N.Y.C. Council); June 14, 2018 CRC Forum, supra note 2, at 36, 112, 123-26 (statements of Eric Friedman, Assistant Exec. Dir. for Pub. Affairs, N.Y.C. Campaign Fin. Bd., Amy Loprest, Exec. Dir., N.Y.C. Campaign Fin. Bd., and Eric Adams, Brooklyn Borough President, N.Y.C.).
77. See, e.g., Written Testimony from Ben Kallos to the N.Y.C. Charter Revision Comm'n, supra note 63, at 4; Written Testimony from Brad Lander to N.Y.C. Charter Revision Comm'n, supra note 61, at 2; see also Contribution Limits for 2017-2018 Federal Elections, U.S. FED. ELECTION COMM'N, <https://transition.fec.gov/info/contriblimitschart1718.pdf> (last visited July 11, 2018).
78. 2018 Contribution and Expenditure Limits, L.A. CITY ETHICS COMM'N, https://ethics.lacity.org/wp-content/uploads/2018/05/CPIAdjustment_3.1.18.pdf (last visited July 11, 2018).
79. SAN ANTONIO, TEX., CODE OF ORDINANCES pt. II, ch. 2, art. VII, div. 2, § 2-302.

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80. S.F., CAL., CAMPAIGN AND GOVERNMENTAL CONDUCT CODE § 1.114(a).
81. CITY OF PHILA. BD. OF ETHICS, PHILADELPHIA CAMPAIGN FINANCE LAW FAQ (May 2018), www.phila.gov/ethicsboard/campaignfinance/Documents/Campaign%20Finance%20FAQs.pdf.
82. Some large cities do have limits that are comparable to the City's current limits. For example, Houston's limits are currently \$5,000 per election cycle. See HOUS., TEX., CODE OF ORDINANCES §18-38. And contribution limits in Chicago are \$5,600 per election cycle, but these limits are set by state law, rather than by the city itself. See 10 ILL. COMP. STAT. 5/1-1.
83. One potential means of addressing this problem might be to increase the amount of public funds that are permitted to be disbursed earlier in the process, though doing so may be met with concerns about spending public funds on candidates who do not end on the ballot, or do not have an opponent on the ballot.
84. Written Testimony from Alex Camarda to N.Y.C. Charter Revision Comm'n, *supra* note 61, at 3-4.
85. See Written Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm'n, *supra* note 59, at 4; Written Testimony from Ben Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 63, at 4; Written Testimony Brad Lander to N.Y.C. Charter Revision Comm'n, *supra* note 61, at 2.
86. Experts cite this effect as a benefit of the City's existing public match. See, e.g., MIGALLY & LISS, *supra* note 35, at 2.
87. June 14, 2018 CRC Forum, *supra* note 2, at 8-9 (statement of Carlos Menchaca, Council Member, N.Y.C. Council).
88. N.Y.C. CAMPAIGN FIN. BD., BY THE PEOPLE, *supra* note 46, at 41.
89. See MICHAEL G. MILLER, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 77 (2013); Public Financing: What's the Return on Investment at the Voting Booth?, N.Y.C. CAMPAIGN FIN. BD.: FULL DISCLOSURE (Aug. 26, 2015), <http://nyccfb.info/media/blog/public-financing-ROI-voting-booth>.
90. Presentation Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm'n, *supra* note 39, at 8.
91. Proposals to match only contributions from donors who give \$175 or less, instead of the first \$175 of any donor's contributions, would potentially lower public costs and provide greater incentives to reach out to small donors, but in so doing might also make participation less attractive to some candidates. Such proposals also pose potentially significant practical concerns, including the risk of increasingly complex audits and more clawbacks of public funds, for instance where a candidate receives public matching funds on a \$175 donation, but later receives a subsequent contribution from the same donor, retroactively negating the eligibility of the original donation for public matching funds.
92. June 14, 2018 CRC Forum, *supra* note 2, at 124-26 (statement of Eric Adams, Brooklyn Borough President, N.Y.C.).
93. See N.Y.C., N.Y., Local Law no. 48 (Oct. 22, 1998).
94. June 14, 2018 CRC Forum, *supra* note 2, at 95-98, 121-22 (statement of N.Y.C. Campaign Fin. Bd.).
95. Written Testimony from Rachel Bloom, Dir. Pub. Policy & Programs, Citizens Union, to N.Y.C. Charter Revision Comm'n 1 (June 14, 2018); June 14, 2018 CRC Forum, *supra* note 2, at 76-77 (statement of Rachel Bloom, Dir. of Pub. Policy & Programs, Citizens Union).

CAMPAIGN FINANCE, continued

96. June 14, 2018 CRC Forum, *supra* note 2, at 121 (statement of N.Y.C. Campaign Fin. Bd.).
97. While some commenters proposed eliminating the public matching funds cap entirely, Staff does not recommend such an approach. In addition to opening up the possibility of unlimited public financing costs (in cases when a non-participating candidate's spending causes expenditure limits to be lifted), such proposals raise potential legal concerns.
98. June 14, 2018 CRC Forum, *supra* note 2, at 92 (statement of N.Y.C. Campaign Fin. Bd.); see also Written Testimony from Ben Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 63, at 2.
99. Written Testimony from Alex Camarda, Senior Policy Advisory, Reinvent Albany, Testimony to the N.Y.C. Charter Revision Comm'n at 3 (April 25, 2018).
100. *Id.* at 3; June 14, 2018 CRC Forum, *supra* note 2, at 105-07 (statement of John Siegel, Comm'r, N.Y.C. Charter Revision Comm'n).
101. See, e.g., Written Testimony from Ben Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 63, at 1-2, 7-8; Letter from ALIGN, et al. to N.Y.C. Charter Revision Comm'n, *supra* note 64, at 2-3; Written Testimony from Eric Adams, Brooklyn Borough President, N.Y.C., to N.Y.C. Charter Revision Comm'n 2-4 (May 7, 2018); June 14, 2018 CRC Forum, *supra* note 2, at 125 (statement of Eric Adams); Written Testimony from Alison Hirsh, Vice President, SEIU 32BJ, to N.Y.C. Charter Revision Comm'n 2 (May 9, 2018).
102. For example, to participate in Maine's Clean Election program, candidates must demonstrate community support by collecting a minimum number of qualifying contributions of \$5 or more from registered voters in their district (or for candidates for governor, registered voters in the State of Maine). The number of qualifying contributions needed to qualify for the program varies: 60 are required for House candidates, 175 for Senate candidates, and 3,200 for Gubernatorial candidates. See ME. REV. STAT. ANN. tit. 21-A, § 1125(3).
103. See *id.*; Maine Clean Elections Act, M.E. COMM'N GOVERNMENTAL ETHICS & ELECTION PRAC., www.maine.gov/ethics/mcea/ (last visited July 11, 2018); Contribution Limits, M.E. COMM'N GOVERNMENTAL ETHICS & ELECTION PRAC., <https://www.maine.gov/ethics/guide/contmax.htm> (last visited July 11, 2018); What We Do, ARIZ. CITIZENS CLEAN ELECTIONS COMM'N, <https://www.azcleelections.gov/en/what-we-do> (last visited July 11, 2018); ARIZ. CITIZENS CLEAN ELECTIONS COMM'N, ARIZONA CITIZENS CLEAN ELECTIONS GUIDE (2017), https://storage.googleapis.com/core.usgovcloudapi.net/public/docs/2-Candidate-Guide-2018-Updated-102017_wcover.pdf.
104. Written Testimony from Eric Adams to N.Y.C. Charter Revision Comm'n, *supra* note 101, at 3-4; June 14, 2018 CRC Forum, *supra* note 2, at 125-26 (statement of Eric Adams).
105. Scott Thistle, With Crowded Field in Governor's Race, Maine Clean Elections Fund Could Face Shortfall in 2018, PORTLAND PRESS HERALD (Nov. 17, 2017), www.pressherald.com/2017/11/17/maine-clean-elections-fund-could-face-shortfall-in-2018/. Arizona used opponent-spending triggering mechanisms to control public costs, but such mechanisms were struck down by the Supreme Court. See *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011).
106. See ANTHONY J. CORRADO ET AL., REFORM IN AN AGE OF NETWORKED CAMPAIGNS 44 (2010), www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf.
107. See *id.* at 40; see also Written Testimony from Michael J. Malbin to N.Y.C. Charter Revision Comm'n, *supra* note 42, at 6.

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108. SEATTLE ETHICS & ELECTIONS COMM'N, DEMOCRACY VOUCHER PROGRAM BIENNIAL REPORT 2017, at 6 (Mar. 2018), www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%2003_15_2018.pdf.
109. *Id.* at 8. Eligible donors include both adult citizens and adult green card holders who live in the city. *Id.*
110. *Id.* at 6, 8.
111. *Id.* at 6.
112. *Id.*
113. SEATTLE, WASH., MUNICIPAL CODE §§ 2.04.620, 2.04.630.
114. *Id.* § 2.04.630.
115. See Written Testimony from Eric Adams to N.Y.C. Charter Revision Comm'n, *supra* note 101, at 2.
116. BERK CONSULTING, SEATTLE DEMOCRACY VOUCHER PROGRAM EVALUATION, at i, 22 (Apr. 20, 2018), <http://www.seattle.gov/ethics/meetings/2018-05-02/item2.pdf>.
117. See N.Y.C., N.Y., ADMIN. CODE § 3-702(8); see also 52 R.C.N.Y. §§ 1-02, 1-04(g), 1-08(f).
118. C.F.B. Advisory Op. no. 2009-7 (Aug. 6, 2009), www.nyccfb.info/law/advisory-opinions/2009-7-guidance-law-relating-third-party-expenditures/.
119. See, e.g., Written Testimony from Alison Hirsh to N.Y.C. Charter Revision Comm'n, *supra* note 101, at 2-3; Letter from ALIGN et al. to N.Y.C. Charter Revision Comm'n, *supra* note 64, at 2.
120. See, e.g., Written Testimony from Rachel Bloom to N.Y.C. Charter Revision Comm'n, *supra* note 95, at 2-3; see also Will Bredderman, Union Could Use de Blasio Panel to Tear Hole in Campaign Finance Law, CRAIN'S N.Y. BUS. (June 1, 2018), www.crainnewyork.com/article/20180601/POLITICS/180609995/union-could-use-de-blasio-panel-to-tear-hole-in-campaign-finance-law.
121. Written Testimony from Ian Vandewalker to N.Y.C. Charter Revision Comm'n, *supra* note 60, at 4-5; Written Testimony from Michael J. Malbin to N.Y.C. Charter Revision Comm'n, *supra* note 42, at 6.
122. Written Testimony from Ian Vandewalker to N.Y.C. Charter Revision Comm'n, *supra* note 60, at 5-6.
123. Written Testimony from Rachel Bloom to N.Y.C. Charter Revision Comm'n, *supra* note 95, at 2; Written Testimony from Alex Camarda, Senior Policy Advisor, Reinvent Albany, to N.Y.C. Charter Revision Comm'n 1-3 (May 9, 2018).
124. Written Testimony from Rachel Bloom to N.Y.C. Charter Revision Comm'n, *supra* note 95, at 3; see also Written Testimony from Roxanne Delgado to N.Y.C. Charter Revision Comm'n (Apr. 30, 2018).
125. Written Testimony from Rachel Bloom to N.Y.C. Charter Revision Comm'n, *supra* note 95, at 3.
126. Written Testimony from N.Y.C. Campaign Fin. Bd. to N.Y.C. Charter Revision Comm'n, *supra* note 59, at 6.
127. *Id.* at 4.
128. Letter from ALIGN et al. to N.Y.C. Charter Revision Comm'n, *supra* note 64, at 2; see

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- also Written Testimony from Alison Hirsh to N.Y.C. Charter Revision Comm’n, supra note 101, at 2.
129. Written Testimony from Alex Camarda to N.Y.C. Charter Revision Comm’n, supra note 123, at 4.
130. Written Testimony from Noel Hidalgo, Exec. Dir., BetaNYC, to N.Y.C. Charter Revision Comm’n 4 (May 9, 2018).
131. Written Testimony from Susan Lerner to N.Y.C. Charter Revision Comm’n, supra note 72, at 2.
132. Written Testimony from Alex Camarda to N.Y.C. Charter Revision Comm’n, supra note 124, at 6; Written Testimony from Michael J. Malbin to N.Y.C. Charter Revision Comm’n, supra note 44, at 7. Staff notes that some concerns in this area identified by commenters may have been addressed by N.Y.C., N.Y., Local Law no. 41 (Aug. 28, 2014) (codified at N.Y.C., N.Y., CHARTER ch. 46, § 1052(a)(15)).
133. Written Testimony from Alex Camarda, Senior Policy Advisor, Reinvent Albany, to N.Y.C. Charter Revision Comm’n (May 3, 2018).

MUNICIPAL ELECTIONS IN NYC

Meaningful participation in elections has been a central theme in the Commission’s public engagement process to date. New Yorkers—through their comments to the Commission—have taken a strong interest in finding ways to improve how elections are administered in New York City. The public testified extensively on this topic at every hearing the Commission held, and submitted comments related to elections by email and mail and through the Commission’s online portal. Commenters offered a wide range of proposals representing a variety of perspectives on what is wrong with elections in New York City.

The Commission also held an Issue Forum on election administration, voter participation, and voting access to provide an opportunity for academics, practitioners, election administrators, advocates, and other election law experts to testify and present their own proposed changes to the Charter. Some advocated for making elections more operationally efficient and expressed frustration about delays and errors related to election administration, such as misplaced absentee ballots,¹ or poor poll worker performance and training.²

However, overwhelmingly, the concern most often raised by experts, advocates, elected officials, and New Yorkers was voter participation. Indeed, New York City’s voter participation rates are low,³ and have remained low despite a record high in City voter registration rates.⁴ Before outlining the specific proposals received by the Commission, we analyze the problem of low voter turnout in New York City and briefly discuss the legal and administrative framework governing elections in the City.

...in the most recent Mayoral and Gubernatorial general elections, only around a quarter of the City’s registered voters turned out to vote.

MUNICIPAL ELECTIONS IN NYC, continued

BACKGROUND

Declining voter participation in New York City

The vast majority of comments received by the Commission focused on the problem of low voter turnout in the City. Indeed, in the most recent Mayoral and Gubernatorial general elections, only around a quarter of the City's registered voters turned out to vote.⁵ Moreover, the drop-off in turnout between Presidential and Mayoral election years has grown substantially. Since 2000, turnout in Presidential years has remained flat, with around 58-62% of the City's registered voters participating,⁶ while turnout for Mayoral races has declined from 41% in 2001 to 26% in 2017.⁷

Turnout for primary elections is especially low. In 2017, only 12% of eligible voters turned out for the Mayoral primary,⁸ and in 2013, the last Mayoral primary without an incumbent, only 23% of eligible voters participated.⁹ Voter participation rates in federal primaries are not much better. In 2016, only 8% of eligible voters voted in the Congressional primary,¹⁰ and only 35% voted in the Presidential primary.¹¹ Preliminary numbers for the 2018 Congressional primary indicate that around 11% of eligible voters turned out this year.¹²



New York City is not an anomaly; New York State has consistently ranked below average in voter turnout compared to the rest of the nation. In 2016, the State ranked fourteenth from the bottom, with 56.8% of eligible voters casting a ballot for President.¹³ In 2012, the State ranked eighth from the bottom in eligible voter turnout,¹⁴ and

twelfth from the bottom in 2008.¹⁵ In non-Presidential years, New York State performs even worse relative to other states. In 2014, New York State ranked second from the bottom, with only 28.2% of eligible voters turning out,¹⁶ and ranked fourth from the bottom in the same category in 2010.¹⁷

Legal and Administrative Framework Governing Elections in New York City

The administration of elections in New York City is governed by a complicated and overlapping set of federal, state, and local laws. Many of the details of how elections are conducted in New York City are found in state law. The New York State Constitution

MUNICIPAL ELECTIONS IN NYC, continued

contains several key provisions relating to registration, eligibility to vote, the date of elections, absentee voting, and the bipartisan nature of boards of elections. The New York State Election Law contains provisions relating to, among other things, candidate nomination and designation;¹⁸ the form and content of the ballot;¹⁹ ballot certification;²⁰ voter registration;²¹ voter qualification;²² party enrollment;²³ voter rolls and records;²⁴ voting machines and systems;²⁵ canvassing procedures, including certification of election results;²⁶ and absentee and military voting procedures.²⁷

Pursuant to the Election Law, the Board of Elections of the City of New York (“BOE”), which is comprised of ten Commissioners, administers elections in the City.²⁸ Each of the two major political parties in each borough has a representative on the BOE,²⁹ and Commissioners are appointed by the City Council upon recommendation by the county political parties.³⁰ The BOE’s powers include, among other things, carrying out voter registration and processing³¹ (including maintaining and updating voter records);³² processing and verifying candidate petitions;³³ hiring and training poll workers and other Election Day personnel;³⁴ maintaining and operating voting machines;³⁵ canvassing; and certifying the vote.³⁶

Chapter 46 of the New York City Charter also addresses the administration of elections and voter participation in New York City; in some cases, these provisions were the result of past Charter Revision Commissions. Indeed, the Municipal Home Rule Law vests the City with the power to adopt local laws relating to the “powers, duties, qualifications, number, [and] mode of selection ... of its officers and employ,”³⁷ provided that such local law is not inconsistent with the State Constitution or any general state law, and provided that the State Legislature has not restricted the adoption of such a local law on a matter of state concern. In *Bareham v. City of Rochester*, the State’s highest court held that cities in New York possess the authority to adopt nonpartisan elections despite inconsistent provisions of the Election Law.³⁸

Further, the Election Law itself has been construed, in conjunction with the Municipal Home Rule Law’s broad delegation of legislative power, to permit experimentation in the selection of local officials. Section 1-102 of the Election Law, entitled “Applicability of Chapter,” provides, “[w]here a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter [setting forth state election law], such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law.”³⁹ The plain language of “any other law” includes a local law.⁴⁰ Therefore, the City has asserted the position in the past that it has authority to enact local laws that are inconsistent with certain provisions of the Election Law with respect to the administration of local elections.

Finally, it should be noted that election administration in the City is also governed by a combination of federal laws and Constitutional provisions. Most notably, and as described more fully below in this section’s discussion of language access and in section II.E of the Report (The Districting Process), the Voting Rights Act contains several provisions that provide protections to racial, ethnic, and minority language voters in the City and imposes certain obligations on the City as a covered jurisdiction under the Act.

Staff recommends that the Commission consider a multi-pronged approach to addressing voter participation.

THEMES & PROPOSALS FROM PUBLIC TESTIMONY

Experts and members of the public offered various explanations for why voter turnout in the City and the State is so low, including:

1. Regressive State election laws and constitutional constraints on implementing reforms;
2. Legal and practical barriers to voting experienced by immigrant and other vulnerable populations;
3. A failure to engage voters.

One common theme that emerged during the Commission’s outreach efforts was that no single change to the Charter, by itself, will substantially increase voter turnout.⁴¹ Staff recommends that the Commission consider a multi-pronged approach to addressing voter participation, with a recognition that there will be limitations on the Commission’s ability to address this problem through amendments to the Charter, due to the complexity of the problem.

Election Modernization

The Need for Statewide Election Reform

Some have argued that low voter turnout is in part due to the need to “modernize” New York State’s elections laws and procedures.⁴² Indeed, New York State has lagged the rest of the country in adopting reforms that could improve voter access. For example, 37 states and the District of Columbia currently allow registered voters to cast a ballot in person prior to Election Day—but New York State offers no early voting.⁴³ Although 27 states and the District of Columbia allow voters to vote absentee without offering an excuse, New York State is in the minority of states where an excuse is required.⁴⁴ And 32 states currently use electronic poll books,⁴⁵ while New York State still uses paper rolls to check-in voters at the polls.⁴⁶

New York State has also failed to adopt reforms that would make it easier for voters to register to vote or update an existing registration. Eighteen states and the District of Columbia have enacted laws that allow voters to register to vote and cast a ballot on the same day⁴⁷, but New York State requires voters to register 25 days before an election.⁴⁸ Seventeen states allow 16 or 17-year-olds to “preregister” to vote so that they can cast

MUNICIPAL ELECTIONS IN NYC, continued

a ballot upon turning 18⁴⁹, and twelve states use the Department of Motor Vehicles (DMV) and other state and local agency records to automatically register qualified voters⁵⁰—but New York State has not adopted either reform.

New York State is, however, one of 37 states that offer some form of online voter registration⁵¹—but the service is available only to New Yorkers with a valid DMV-issued identification such as a driver’s license,⁵² and New York City residents are far less likely to have such identification compared to other State residents. In 2017, the City Council enacted Local Law number 238, which adds a new § 1057-f to the Charter, “Online voter registration,” requiring the Campaign Finance Board (CFB) to create a website and mobile application that will allow individuals to submit information for purposes of registering and updating the individual’s voter registration.⁵³ The CFB is required to print this information onto a voter registration application form, electronically affix the signature, and transmit the printed application to the BOE within specific timeframes. The law takes effect in June 2019.⁵⁴

The election modernization changes described above, which are most commonly pursued as statewide reform efforts, have been endorsed year after year by various institutions, organizations, agencies and election officials, including the New York State Bar Association,⁵⁵ the New York City Comptroller and other elected officials,⁵⁶ the New York City Voter Assistance Advisory Committee,⁵⁷ the Mayor’s Democracy NYC initiative,⁵⁸ and the statewide Let NY Vote coalition.⁵⁹ The New York State Bar Association has argued that reforms to the registration process “would result in a significant increase in voter participation” as well as “increased efficiency and accuracy in the voter rolls and a reduction in cost.”⁶⁰ The Voter Assistance Advisory Committee wrote in its 2017-18 annual report: “early voting would give voters more opportunities to get to the polls and could encourage turnout, especially in ... municipal elections.”⁶¹

New York State has lagged the rest of the country in adopting reforms that could improve voter access.

MUNICIPAL ELECTIONS IN NYC, continued

Proposals Related to Election Modernization in New York City

The Commission received a wide variety of proposals aimed at “modernizing” New York’s election system, many of which echo the statewide reform efforts described above. As discussed below, when raised in the context of a Charter Revision Commission, most of these proposals raise complicated questions regarding how they would be implemented on a local level.

Voter Registration. The Commission received proposals for the adoption of same-day or election day registration and automatic voter registration. For example, some commenters asked the Commission to allow voters “to correct registration errors” at the polls,⁶² or to “automatically register[] eligible clients who interact with city agency databases.”⁶³

Party Affiliation. The Commission received comments on the rules governing eligibility in primary elections. One commenter suggested that voters should be able to switch party affiliations 25 days before a municipal primary election and still be eligible to vote in that election.⁶⁴ Other commenters went further, proposing that the law be changed to allow voters to switch affiliations on election day,⁶⁵ or to allow for nonpartisan municipal elections.⁶⁶



Early Voting and Absentee Ballots. Some commenters submitted proposals to make voting easier for those who have trouble getting to the polls on election day. One such commenter testified that many working people “have less control over their work and personal schedules” and that early voting would enable more people to go to the polls and “have their voices heard.”⁶⁷ Another commenter suggested that the Commission permit weekend voting.⁶⁸ Some suggested simply allowing voters in municipal elections to vote absentee without having to provide an excuse,⁶⁹ which some view as a form of early voting. The experts echoed some of the same proposals voiced in the public comments. On the issue of early voting or absentee voting, Perry Grossman of the New York Civil Liberties Union suggested that the Charter be amended to require the BOE to allow voters to cast early votes in municipal elections.⁷⁰

MUNICIPAL ELECTIONS IN NYC, continued

Ballot Access. The Commission also heard comments on ballot access. Council Member Ben Kallos asked the Commission to eliminate the current ballot petition process and permit candidates who qualify for public matching funds to be automatically placed on the ballot.⁷¹ Other commenters asked the Commission to lower the number of petitions needed for a candidate to get on the ballot, calling the current requirements too complicated.⁷²

Discussion

At the Issue Forum on election administration, experts acknowledged that each of the proposed reforms described above would implicate provisions of the New York State Election Law and, in some cases, the State Constitution.⁷³ While such reforms are often proffered in the context of statewide reform efforts that would apply to all elections, experts acknowledged that any proposed changes to the election system through amendments to the Charter by this Commission would be limited to elections for local offices.⁷⁴ As a result, individuals who vote in party, state, and federal elections, as well as judicial elections and elections for District Attorneys, would be required to follow the existing state scheme for those elections.

For example, in the case of early voting in local elections, concerns were raised that under such a system, voters who vote for local offices would still need to appear on election day to vote for any state offices, such as District Attorney or Supreme Court Judge.⁷⁵ Likewise, changes to the registration requirements in municipal elections would require the BOE to manage two sets of voter registration rolls. The operational challenges associated with such a bifurcated system would need to be carefully considered before adopting any change for local elections that deviates from a statewide requirement or practice. At a minimum, establishing two sets of rules for local and non-local elections could cause confusion and, ultimately, undermine the goal of removing barriers to voter participation.

Others cautioned against using the Charter as a vehicle to impose requirements on the BOE, citing mixed results from the City Council's previous efforts.⁷⁶ Experts had a variety of suggestions regarding how to address this question, ranging from use of the City's budget authority,⁷⁷ to increasing poll worker pay by Mayoral Executive Order.⁷⁸ However, some raised concerns about the BOE's ability to implement significant reforms to the City's election system.⁷⁹ Additionally, Susan Lerner of Common Cause/NY offered testimony that "the Commission should resist the temptation to load the Charter Revision with a lot of election reform proposals."⁸⁰ She further noted that "[e]very election administrator I have talked to in states that have significant modernization has emphasized how it has been a gradual incremental process that allows the administrators to actually handle the changes."⁸¹

MUNICIPAL ELECTIONS IN NYC, continued

Voting Access

Advocates and elected officials have argued that to meaningfully address low voter participation in New York City, we should look at who is excluded from elections—both legally and practically. Advocates argue that expanding the right to vote to non-citizens, voters under the age of 18, and those who have been disenfranchised due to their criminal records will have positive effects on voter participation. For example, the Comptroller has argued that “[a]llowing for pre-registration of 16- and 17-year-olds will increase the number of young people heading to the polls” and that “[p]airing pre-registration with ... civics education in New York’s public schools ... can boost voter participation over the long-term.”⁸² The Commission has also heard proposals advocating for greater access to elections and voting materials for language communities and people with disabilities as a means of increasing voter participation among under-represented populations.⁸³

“an open democracy should have the opportunity [for] everybody to participate.”

Voting Eligibility

Non-citizen Voting. Some commenters urged the Commission to grant voting rights in local elections to non-citizens. One such commenter argued that “an open democracy should have the opportunity [for] everybody to participate.”⁸⁴ At the Commission’s Issue Forum devoted to issues of election administration, voter participation, and voting access, Jerry Vattamala, the Director of the Democracy Program at the Asian American Legal Defense and Education Fund (AALDEF),⁸⁵ and Andrew Wilkes, Director of Policy and Advocacy at Generation Citizen,⁸⁶ both endorsed expanding voting rights in municipal elections to non-citizens. Vattamala suggested that the inclusion of non-citizen voters in past school board elections led to greater voter participation and engagement and greater representation among Asian-American voters.⁸⁷ However, experts also raised concerns about how the reform would work in practice, fearing that non-citizens may inadvertently register and/or vote in state and federal races.⁸⁸

Voting Age and Voting Rights Restoration. The Commission also received proposals to expand voting rights in local elections to 16- and 17-year-olds. At the Commission’s Issue Forum, Wilkes endorsed pre-registration of 16- and 17-year-olds as well as lowering the voting age to 16, citing successful implementation in Maryland cities, including Tacoma Park, Hyattsville, and Greenville.⁸⁹ Other commenters argued for the restoration of voting rights to people with criminal convictions.⁹⁰

Approximately 23% of all New Yorkers—over 1.8 million people—and approximately 49% of immigrant New Yorkers are Limited English Proficient.

Language Access

Approximately 23% of all New Yorkers—over 1.8 million people—and approximately 49% of immigrant New Yorkers are Limited English Proficient (LEP), meaning that they speak English less than “very well” and have a limited ability to read, speak, and write in English.⁹¹ As the City Council recognized when enacting Local Law 30 of 2017, which requires all agencies that provide direct and emergency services to translate documents commonly distributed to the public into selected languages:

[T]he well-being and safety of the city as a whole is put in jeopardy if the people of the city are unable to access city services or effectively communicate with city agencies [E]ffective language access is a tool to promote equity in economic opportunity, education, health, civic participation, and all other aspects of the life of the city, and ... it is a necessary component of city agencies’ ability to accomplish their mandates.⁹²

As the City continues to grow its efforts to fully engage its diverse and multilingual communities, expanding language access is crucial to building a more just and equitable City. These efforts are particularly critical as they relate to voting, the cornerstone of access to democracy.

Language Access: Current Legal and Administrative Landscape

Under state and local law, including § 1057-a of the Charter, 26 City agencies are required to help register voters and increase public awareness about elections, and to offer that assistance in the same languages as they provide other services. For those agencies covered by Local Law 30 of 2017, this currently means that such assistance must be provided in 10 languages—currently Arabic, Bengali, Chinese (Mandarin, Cantonese), French, Haitian Creole, Korean, Polish, Russian, Spanish, and Urdu.⁹³

Pursuant to the New York State Election Law, the BOE is responsible for registration of voters in New York City,⁹⁴ and the administration of elections in the five boroughs.⁹⁵ Pursuant to the Voting Rights Act, the BOE must provide information and assistance to potential and registered voters in various languages depending on the county, including Spanish, Chinese, Bengali, and Korean.⁹⁶ Under § 3-506 of the Election Law, the BOE is also required to provide certain voting materials in Russian.

MUNICIPAL ELECTIONS IN NYC, continued

The CFB is also responsible for facilitating and encouraging voter registration and voting, including by publishing a non-partisan print voter guide and video voter guide containing information on candidates and ballot initiatives and referenda.⁹⁷ Under § 1053 of the Charter, the CFB must “promulgate such rules as it deems necessary for the preparation and publication of voter guides in English, Spanish and any other languages the board determines to be necessary and appropriate and for the distribution of the guide in at least one media format.” For the 2017 general election, the CFB published voter guides in Spanish, Chinese, Korean, and Bengali.⁹⁸

Recognizing the need to improve access to voting for LEP New Yorkers, the City has undertaken a number of recent initiatives that go beyond what is required by federal, state, and local law. For example, the Mayor’s Office of Immigrant Affairs (MOIA) has translated voter registration forms into 11 additional languages (Albanian, Arabic, French, Greek, Haitian Creole, Italian, Polish, Russian, Tagalog, Urdu, and Yiddish), and has worked with the CFB to distribute these forms to libraries, post offices, and other places where New Yorkers register to vote, and to raise awareness of this resource.⁹⁹ Additionally, in 2017, MOIA conducted a pilot project in which it offered Russian and Haitian Creole interpreters to voters assigned to select polling sites in Brooklyn.¹⁰⁰

Language Access: Proposals

Vattamala testified that as a result of a 2006 lawsuit against the BOE, there are now regular language advisory groups tasked with advising the BOE on language access issues for Chinese and Korean voters.¹⁰¹ Vattamala believes these groups are beneficial, but that additional language advisory groups are needed.¹⁰² Vattamala also testified that he believes that the population thresholds that trigger the BOE’s provision of language assistance are too high, and recommended that the City establish a lower threshold in the Charter.¹⁰³ AALDEF’s testimony echoed the testimony of other commenters, who testified more generally about the need for the City to provide assistance and services in more languages than it currently does.¹⁰⁴

...the Commission should study methods to build on existing efforts to translate voter registration materials and ballots, provide interpreters, and engage language community advisory groups.

Next Steps Related To Voting Access

Changes to voter eligibility requirements raise similar operational and legal questions as those raised by the election modernization reforms described above. Specifically, proposed amendments to the Charter aimed at expanding the right to vote in municipal elections would implicate provisions of the New York State Election Law and the State

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Constitution and would require the BOE to maintain separate voter registration rolls and separate ballots for local elections.

In light of such operational and legal questions, Staff recommends that the Commission focus on proposals to address voting access that do not raise such concerns, such as proposals to increase language assistance services. In particular, we recommend that the Commission explore ways that City entities (whether the CFB, the Mayor's Office, or a newly constituted entity tasked with providing voter assistance services) can further supplement and improve on the work of the BOE in the area of language access. In particular, the Commission should study methods to build on existing efforts to translate voter registration materials and ballots, provide interpreters, and engage language community advisory groups.

In formulating any such proposal, careful consideration should be given to the role of BOE in operating poll sites, and where possible, City services related to language access should be integrated with those currently being provided. Finally, Staff recommends that any proposed amendment address the broader challenges of providing language assistance services equitably to affected populations within budgetary, operational, and legal constraints.

Voter Engagement

The Commission also received testimony suggesting that low voter participation rates stem from a lack of information about elections and candidates, and a perceived lack of connection between candidates and issues relevant to voters. For example, the CFB conducted two focus groups in November 2016 and a survey in January 2017 to study voters who participate in Presidential elections but typically sit out of local elections the following year.¹⁰⁵ The CFB's findings were as follows:

We found that New York City voters who do not participate in local elections are far from politically apathetic, but that most of the time, they did not vote because they felt they did not have enough information about the candidates, the races, and even the offices on the ballot and how they impact their lives. Our focus group participants responded particularly well to the idea of receiving information that was tailored to their needs and neighborhoods. Our research also found that the most effective way to appeal to voters was to connect voting with being able to impact the issues that they care about.¹⁰⁶

Others, such as Council Member Brad Lander, have posited that the low voting rate in New York City is part of a broader decline in civic participation and trust in our institutions and our democratic capacity.¹⁰⁷ Council Member Lander pointed to a decline in national metrics used to measure trust in government and institutions.¹⁰⁸

As described more fully below, ranked choice voting proposals, and more broadly, recommendations related to fostering civic engagement described in section II.C of this report, seek to address a perceived disconnect between voters and candidates that may be precipitating low voter turnout.

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Ranked Choice Voting

The most common election-related proposal received by the Commission was to adopt ranked choice voting or “instant run-off voting” (IRV), a system in which voters rank candidates according to preference. At the Commission’s public hearings, numerous individuals and groups testified in favor of adopting ranked choice voting in New York City,¹⁰⁹ and the Commission also received a large volume of written testimony in support of the proposal, including a letter submitted by ten City Council Members.¹¹⁰ Due to the significant public interest, the Commission convened an Issue Forum featuring an expert panel comprised of advocates, academics, and election administrators to explore ranked choice voting.

Ranked choice voting is currently used in some form by eleven cities and seven states around the country.¹¹¹ This year, Maine introduced ranked choice voting in statewide primary elections.¹¹² Ranked choice voting advocates argue that the practice builds consensus, reduces negative campaigning, and encourages more candidates to compete without fear of “vote splitting,” which in turn gives voters more choices and allows more voices to be heard, among other benefits.¹¹³ At the Issue Forum, however, several policy, operational, and fiscal considerations were raised, which are summarized below. Staff recommends that the Commission continue to study ranked choice voting for local primary elections, and to consider whether the practice should be used solely for races for citywide offices (where a runoff is provided for in existing law) or for Borough President and Council Member races as well.

Ranked choice voting is currently used in some form by eleven cities and seven states around the country.

Ranked Choice Voting: Current Legal Framework

New York State Election Law § 6-162 currently provides for a runoff if, in a primary election for Mayor, Comptroller, or Public Advocate, no candidate receives at least 40% of the vote. That runoff is held two weeks after the primary. Under current law, there are no runoffs in the primaries for City Council or for Borough President. As noted above, the City, relying on the text of the Election Law and judicial precedent, has continued to maintain that it has legal authority to enact local laws that are inconsistent with certain provisions of the Election Law with respect to the administration of local elections.¹¹⁴ Staff recommends careful consideration of other potentially operable provisions of the Election Law in reviewing any proposal for ranked choice voting.

Ranked choice voting was considered by the 2010 Charter Revision Commission, but was not submitted to the voters as a ballot proposal.¹¹⁵

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Ranked Choice Voting: Models

In general, ranked choice voting works by allowing voters to rank multiple candidates on their ballots in order of preference (first, second, third, etc.). Among the various jurisdictions that use some form of ranked choice voting, there are variations in the number of candidates that voters can rank and the methodology for tabulating votes.¹¹⁶

Most jurisdictions, including several cities in California, use a “bottom-up” approach. Under this approach, every voter’s first choice is tallied up, and if no candidate receives more than 50% of the vote, then the candidate with the fewest votes is eliminated and the voters who selected that candidate as a first choice will have their votes added to the totals of their second-choice candidate.¹¹⁷ This process repeats until a single candidate receives more than 50% of the votes, winning the election.¹¹⁸

The 2010 Charter Revision Commission considered a ranked choice voting proposal that would follow a different method of vote tabulation, called a “top-two” approach, designed to simulate, in one election, the two-stage runoff that now exists for citywide officials.¹¹⁹ Under this approach, if no candidate receives at least 40% of the vote, there is a runoff count between the two candidates with the greatest number of “first choice” votes in the initial count.¹²⁰ The runoff count canvasses the votes of those who did not select either of the top two as their first choice. The winning candidate is the one preferred over the other by the majority of all the voters who expressed a preference.¹²¹ In his testimony at the June 12th Issue Forum, Rob Richie, CEO of FairVote, suggested that the Commission might consider adopting the “top two” approach if the current 40% runoff threshold were to be maintained.¹²²



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Ranked Choice Voting: Policy Considerations

Voter participation. The Commission did not hear conclusive testimony regarding the direct effects of ranked choice voting on voter participation rates and invites further public comment on this question.¹²³ However, FairVote has argued that ranked choice voting promotes a greater sense of consensus and engagement among both voters and candidates, which in turn could have a positive effect on voter participation.¹²⁴

Voter confusion. There is a risk that introducing ranked choice voting in New York City will cause confusion among voters, as it will require significant changes to how ballots are designed, cast, and counted. Accounts regarding voter confusion in states and localities where ranked choice voting has been implemented are mixed. Several post-election surveys indicate that voters understand ranked choice voting.¹²⁵ Grace Wachlarowicz, an election administrator in Minneapolis, echoed this sentiment at the Commission's Issue Forum but noted that due to the high turnover in housing in Minneapolis, the city continues to expend resources on voter education and outreach, even after three municipal election cycles.¹²⁶ Other reports have found a possible correlation between ballot errors and ranked choice voting.¹²⁷ While Richie testified that voter confusion can be addressed through ballot design,¹²⁸ others have suggested that the complexity inherent in ranked choice voting causes problems for some voters and may exacerbate existing disparities in political participation among groups.¹²⁹ For example, Professor Craig Burnett, Associate Professor of Political Science at Hofstra University, argued that local elections are often low-information elections, noting that there is a cognitive demand associated with ranked choice voting that can lead to voter fatigue and ballot errors.¹³⁰

Impact on minority voters. Staff is actively studying whether the adoption of ranked choice voting would have adverse impacts on minority voters in New York City. Reports from other jurisdictions on the issue are inconsistent,¹³¹ and may not ultimately be applicable to New York City. Because resolution of this question is vital to the assessment of any proposal related to ranked choice voting, Staff has retained a nationally recognized expert to analyze potential impacts of ranked choice voting in New York City municipal elections on minority voters.

Impact on military and overseas voters. Several commenters at the Commission's public hearings advocated for the use of ranked choice voting as a means of addressing disenfranchisement of military and overseas voters who may not be able to receive and send back their completed ballots in time for a runoff election held two weeks after a primary.¹³² Alex Camarda from Reinvent Albany urged the City to establish instant runoff voting for military and overseas voters, noting that "other states have established instant runoff voting for military and overseas voters, in some cases as the result of a legal settlement."¹³³

Impact on candidates. Experts at the Commission's Issue Forum testified that under ranked choice voting, candidates "use a different playbook" when campaigning that leads to engagement with a broader set of voters. The Commission heard testimony that with ranked choice voting, candidates are more likely to reach out to voters beyond their base in an effort to solicit second or third choice votes. In Richie's view, "it's not only who is at the polls, but how they're treated when they're there and the incentives that it creates among the candidates to reach out to more people."¹³⁴

“it’s not only who is at the polls, but how they’re treated when they’re there and the incentives that it creates among the candidates to reach out to more people.”

Rob Richie, Fair Vote

Ranked Choice Voting: Operational Considerations

Adopting ranked choice voting in local primaries necessarily raises consideration of operational impacts. As applied to primaries for citywide offices in lieu of a runoff election, ranked choice voting presents the obvious operational advantage of avoiding a second election two weeks after a primary. The BOE has stated that it is “virtually impossible” to conduct a runoff primary within two weeks after the initial primary, due to the “comprehensive” and “time consuming ... pre-election testing process” that is required prior to using the City’s optical scanner voting machines.¹³⁵ Therefore, the BOE has recommended increasing the time frame between the primary and the run-off to three weeks.¹³⁶ Staff recommends that the Commission further study the operational feasibility of implementing ranked choice voting, including consideration of technological and equipment requirements, ballot design, poll worker training, timeframes for results, auditing procedures, and other relevant considerations.

Ranked Choice Voting: Fiscal Impacts

Careful consideration should also be given to the fiscal impacts of ranked choice voting, with particular attention given to potentially significant cost savings associated with avoiding an actual runoff election as well as to added costs associated with running an effective voter education and outreach campaign. While some advocates have proposed that the use of ranked choice voting could yield cost savings as applied to primaries for Citywide offices, Staff recommends that the Commission continue to study this question.¹³⁷

Ranked Choice Voting: Next Steps

Staff recommends that the Commission continue to study the use of ranked choice voting in local primary elections, and in particular, primaries for Citywide offices. However, the adoption of a ranked choice voting scheme in New York City necessitates careful review of the myriad public policy, operational, and fiscal considerations described above. The experiences of other jurisdictions indicate that in order for ranked choice voting to be successful, a significant amount of time and resources must be devoted to public education and outreach, with particular focus given to vulnerable populations.

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While ranked choice voting has been used in different types of elections in various jurisdictions, including nonpartisan elections, general elections and “at large” voting schemes, Staff recommends that the Commission limit consideration of ranked choice voting to local primary elections. Staff also recommends that the Commission continue to seek public feedback on the question whether ranked choice voting should be considered solely for runoff elections that are part of the existing scheme (that is, citywide offices, such as Mayor, Comptroller, or Public Advocate), or whether ranked choice voting should be considered for Borough President and Council Member races as well.

NEXT STEPS

Staff recommends that the Commission continue to study and review the election proposals related to election modernization and expanding voter eligibility, as described above. However, in light of the potential operational and legal concerns associated with any reforms that would trigger a bifurcated system for state and local elections, Staff recommends that the Commission solicit further input on the question of which methods of increasing voter participation are better achieved at the state level, rather than through the City’s Charter revision process.

Staff recommends that the Commission give particular consideration to proposed reforms that: (1) address elements of the election system specific to the City, such as the possible use of ranked choice voting in local primaries, and in particular, primaries for citywide offices; and (2) respond to identified needs of New Yorkers, such as strengthening and expanding language assistance services. To further address low voter participation, Staff also recommends that the Commission consider reforms that promote civic engagement, as described more fully below in section II.C.

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END NOTES

1. See Issue Forum on Election Administration, Voter Participation and Voting Access, N.Y.C. Charter Revision Comm'n 27 (June 12, 2018) [hereinafter June 12, 2018 CRC Forum] (statement of Susan Lerner, Exec. Dir., Common Cause/NY).
2. See *id.* (statement of Catherine Gray, co-President, League of Women Voters of N.Y.C.).
3. Jonathan Wolfe, *Why We Don't Vote*, N.Y. TIMES (June 25, 2018), <https://www.nytimes.com/2018/06/25/nyregion/new-york-today-why-we-dont-vote.html>; Ben Brachfeld, *8%! New Report Shows Shockingly Low Voter Turnout in NYC*, GOTHAM GAZETTE (June 28, 2017), <http://www.gothamgazette.com/city/7036-8-new-report-shows-shockingly-low-voter-turnout-in-nyc>; Mike Maciag, *Voter Turnout Plummeting in Local Elections*, GOVERNING (Oct. 2014), <http://www.governing.com/topics/politics/gov-voter-turnout-municipal-elections.html>.
4. Brigin Bergin, *NYC Voter Registration Hits All-Time High – But Turnout Continues to Lag*, WNYC (Apr. 30, 2018), <https://www.wnyc.org/story/nyc-voter-registration-hits-all-time-high-turnout-continues-lag/>; see also *7 Statistics about Voting and Voter Turnout in New York City's 2017 Elections*, N.Y.C. CAMPAIGN FIN. BD. (May 2, 2018), <https://www.nycffb.info/media/blog/7-statistics-about-voting-and-voter-turnout-in-new-york-city-s-2017-elections/>.
5. N.Y.C. BD. OF ELECTIONS, *ANNUAL REPORT 2017 20-21(2017)*, <http://vote.nyc.ny.us/downloads/pdf/documents/boe/AnnualReports/BOEAnnualReport17.pdf#page=22>.
6. *Id.*
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8. *Id.* at 24.
9. N.Y.C. BD. OF ELECTIONS, *ANNUAL REPORT 2013 17 (2013)*, <http://vote.nyc.ny.us/downloads/pdf/documents/boe/AnnualReports/BOEAnnualReport13.pdf#page=20>.
10. N.Y.C. BD. OF ELECTIONS, *ANNUAL REPORT 2016 20 (2016)*, <http://vote.nyc.ny.us/downloads/pdf/documents/boe/AnnualReports/BOEAnnualReport16.pdf#page=22>.
11. *Id.* at 19.
12. John O'Connor, *Turnout Is Up in New York Congressional Primaries, but Still Trails Other States*, WNYC (Jun. 27, 2018), <https://www.wnyc.org/story/turnout-new-york-congressional-primaries-still-trails-other-states/>.
13. *2016 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2016g> (last visited June 18, 2018).
14. *2012 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2012g> (last visited June 18, 2018).
15. *2008 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2008g> (last visited June 18, 2018).
16. *2014 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2014g> (last visited June 18, 2018).
17. *2010 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2010g> (last visited June 18, 2018).
18. N.Y. ELEC. LAW, Art. 6.
19. *Id.* Art. 7.
20. *Id.* Art. 6.

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21. Id. Art. 5.
22. Id. §§ 5-100 – 106.
23. Id. §§ 5-300 – 310.
24. Id. §§ 5-500 – 508.
25. Id. §§ 7-200 – 209.
26. Id. Art. 9.
27. Id. Art. 10 (military voters); id. §§ 8-400 – 412 (absentee voters).
28. Id. § 3-200(3).
29. Id. § 3-200(2)-(3).
30. Id. § 3-204(4).
31. Id. Art. 5.
32. Id. Art. 6.
33. Id. § 4-104.
34. Id. Art. 3-4.
35. Id. § 3-226.
36. Id. Art. 9.
37. N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(1). This provision implements Article IX, § 2(c), of the New York State Constitution.
38. 246 N.Y. 140 (1927).
39. ELEC. LAW § 1-102.
40. See *City of New York v. N.Y.C. Bd. of Elections*, No. 41450/91 (Sup. Ct., N.Y. Co.), *aff'd*, -- A.D.2d -- (1st Dep't), appeal dismissed, leave to appeal denied, 77 N.Y.2d 938 (1991) (“any other law” in Election Law §1-102 plainly includes a City Charter provision requiring all nominations in a special election to be made by independent nominating petition); *McDonald v. N.Y.C. Campaign Fin. Bd.*, 965 N.Y.S.2d 811, 829 (Sup. Ct. 2013), *aff'd*, 117 A.D.3d 540 (1st Dep't 2014) (upholding the City’s locally enacted campaign contribution limitations for non-participating candidates, and noting in dicta that “if it were necessary for its decision to interpret the impact of Election Law §1-102, it would find that Election Law §1-102 means what it says it means, and must be accorded its plain meaning”). See also N.Y. MUN. HOME RULE LAW § 2(6) (defining “law” to include state statutes as well as local laws).
41. See June 12, 2018 CRC Forum, *supra* note 1, at 25 (statement of Susan Lerner, Exec. Dir., Common Cause/NY).
42. N.Y.C. CAMPAIGN FIN. BD., 2017-2018 VOTER ASSISTANCE ANNUAL REPORT 53 (Apr. 2018), <http://www.nycfb.info/pdf/VAAC-2018.pdf#page=63> (“For too long, we have lagged behind the rest of the country; as other states have taken steps to make their voting process better, New York still allows voters to go to the polls only on Election Day.”); N.Y.C. COMPTROLLER, BARRIERS TO THE BALLOT: VOTING REFORM IN NEW YORK CITY 6-15 (Apr. 2016), http://comptroller.nyc.gov/wp-content/uploads/documents/reform_the_vote_report.pdf#page=9; N.Y. STATE BAR ASSOC., SPECIAL COMMITTEE ON VOTER PARTICIPATION FINAL REPORT 5 (Jan. 25, 2013), <http://www.nysba.org/voterreport/#page=11> (“The Committee’s first and primary conclusion is that the State of New York needs to modernize its system for registering voters and that, if implemented, such modernization would result in a significant increase in voter participation.”); Brian

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- Browne, Voter Turnout In New York – How Low Will We Go?, HUFFPOST (Nov. 11, 2017), https://www.huffingtonpost.com/entry/voter-turnout-in-ny-how-low-will-we-go_us_5a04e961e4b05673aa585a9d.
43. See Absentee and Early Voting, NAT'L CONFERENCE OF STATE LEGISLATURES (Aug. 17, 2017), <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.
 44. Id.
 45. See Electronic Poll Books, NAT'L CONFERENCE OF STATE LEGISLATURES (Mar. 22, 2017), <http://www.ncsl.org/research/elections-and-campaigns/electronic-pollbooks.aspx>.
 46. N.Y.C. CAMPAIGN FIN. BD., *supra* note 42, at 54.
 47. See Same Day Voter Registration, NAT'L CONFERENCE OF STATE LEGISLATURES (Mar. 27, 2018), <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.
 48. Voter Registration Deadlines, N.Y. STATE BD. OF ELECTIONS, <http://www.elections.ny.gov/votingdeadlines.html> (last visited July 2, 2018).
 49. See Preregistration for Young Voters, NAT'L CONFERENCE OF STATE LEGISLATURES (Mar. 28, 2018), <http://www.ncsl.org/research/elections-and-campaigns/preregistration-for-young-voters.aspx>.
 50. See Automatic Voter Registration, NAT'L CONFERENCE OF STATE LEGISLATURES (Apr. 18, 2018), <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>.
 51. See Online Voter Registration, NAT'L CONFERENCE OF STATE LEGISLATURES (Dec. 6, 2017), <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.
 52. Register to Vote Online - Electronic Voter Registration Application, N.Y. STATE DEP'T OF MOTOR VEHICLES, <https://dmv.ny.gov/org/more-info/electronic-voter-registration-application> (last visited July 2, 2018).
 53. N.Y.C., N.Y., CHARTER ch. 46, § 1057-f.
 54. Id.
 55. See generally N.Y. STATE BAR ASSOC., *supra* note 42.
 56. See generally N.Y.C. COMPTROLLER, BARRIERS TO THE BALLOT: VOTING REFORM IN NEW YORK CITY (Apr. 2016), http://comptroller.nyc.gov/wp-content/uploads/documents/reform_the_vote_report.pdf.
 57. N.Y.C. CAMPAIGN FIN. BD., *supra* note 42.
 58. DemocracyNYC, N.Y.C. OFFICE MAYOR, <https://www1.nyc.gov/office-of-the-mayor/democracy.page> (last visited June 25, 2018).
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 60. N.Y. STATE BAR ASSOC., *supra* note 42, at 5.
 61. N.Y.C. CAMPAIGN FIN. BD., *supra* note 42, at 53.
 62. 1st Brooklyn Borough Hearing, N.Y.C. Charter Revision Comm'n 34 (May 7, 2018) [hereinafter May 7, 2018 CRC Forum] (statement of Mariana Alexander, New Kings Democrats), http://www1.nyc.gov/assets/charter/downloads/pdf/05_07_18_nyc_charter_commission_public_hearing.pdf#page=34.
 63. 1st Staten Island Borough Hearing, N.Y.C. Charter Revision Comm'n 26 (Apr. 25,

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64. Written Testimony from Jerry Goldfeder, Assoc. Prof. Fordham Law Sch., to N.Y.C. Charter Revision Comm'n (May 9, 2018).
 65. May 7, 2018 CRC Hearing, *supra* note 62 (statement of Mariana Alexander, New Kings Democrats).
 66. 1st Manhattan Borough Hearing, N.Y.C. Charter Revision Comm'n 45 (May 9, 2018) [hereinafter May 9, 2018 CRC Hearing] (statement of Alvaader Frazier, N.Y.C. Indep. Clubs), <http://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180509.pdf>; see also *id.* (statement of Jackie Salit, President, Indep. Voting).
 67. *Id.* at 65 (statement of Alison Hirsh, Vice President, 32BJ).
 68. See Apr. 25, 2018 CRC Hearing, *supra* note 63, at 38 (statement of Gonzalo Mercado).
 69. May 9, 2018 CRC Hearing, *supra* note 66, at 105 (statement of Jerry Goldfeder, Assoc. Professor, Fordham Law Sch.).
 70. June 12, 2018 CRC Forum, *supra* note 1, at 13 (statement of Perry Grossman, Voting Rights Project Attorney, NYCLU).
 71. May 9, 2018 CRC Hearing, *supra* note 66, at 29 (statement of Ben Kallos, Council Member, N.Y.C. Council).
 72. *Id.* at 65 (statement of Alison Hirsh); see also May 7, 2018 CRC Hearing, *supra* note 62, at 16 (statement of Rachel Bloom, Exec. Dir., Citizens Union).
 73. June 12, 2018 CRC Forum, *supra* note 1, at 31 (statement of Susan Lerner, Exec. Dir., Common Cause/NY).
 74. *Id.* at 22 (statement of Perry Grossman).
 75. *Id.* at 19 (statement of Perry Grossman).
 76. *Id.* at 25 (statement of Susan Lerner) (observing that "there [are] an ongoing controversy between the New York City Board of Elections and the New York City Council and the mayor's office as to what the responsibilities of the New York City Board [are] in following City law.>").
 77. *Id.* at 10-11 (statement of Perry Grossman).
 78. *Id.* at 42 (statement of Catherine Gray, co-President, League of Women Voters of N.Y.C.).
 79. *Id.* at 28 (statement of Susan Lerner).
 80. *Id.*
 81. *Id.* at 30-31 (statement of Susan Lerner).
 82. N.Y.C. COMPTROLLER, *supra* note 42, at 6, 7.
 83. Issue Forum on Civic Engagement and Redistricting, N.Y.C. Charter Revision Comm'n 25, 50 (June 21, 2018) (statements of Paula Gavin, Chief Service Officer, NYC Service; statement of Susan Dooha, Exec. Dir., Ctr. For Independence of the Disabled, NY), https://www1.nyc.gov/assets/charter/downloads/pdf/06_21_18_charterrevisioncomission.pdf. See also MICHAEL JONES-CORREA, LANGUAGE PROVISIONS UNDER THE VOTING RIGHTS ACT: HOW EFFECTIVE ARE THEY? (Aug. 2005), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.0038-4941.2005.00317.x> (finding "that that the language provisions of the Voting Rights Act have significant and positive effects on the voting rates of covered linguistic minorities"); see also JOCELYN FRIEDRICHSON, ¡SU VOTO ES SU VOZ!

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INCORPORATING VOTERS OF LIMITED ENGLISH PROFICIENCY INTO AMERICAN DEMOCRACY (March 2007), <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2353&context=bclr>.

84. April 25, 2018 CRC Hearing, *supra* note 63, at 40 (statement of Gonzalo Mercardo).
85. June 12, 2018 CRC Forum, *supra* note 1, at 56 (statement of Jerry Vattamala, Dir. Democracy Program, AALDEF).
86. *Id.* at 60 (statement of Andrew Wilkes, Dir. of Policy and Advocacy, Generation Citizen).
87. *Id.* at 56 (statement of Jerry Vattamala).
88. *Id.* at 60 (statement of Andrew Wilkes).
89. *Id.* at 59 (statement of Andrew Wilkes).
90. May 7, 2018 CRC Hearing, *supra* note 62, at 35 (statement of Mariana Alexander, New Kings Democrats).
91. 2012-2016 American Community Survey 5-Year Estimates, U.S. CENSUS BUREAU, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/16_5YR/S0501/1600000US3651000 (last visited July 3, 2018).
92. N.Y.C., N.Y., Local Law no. 30 (Mar. 18, 2017).
93. *Id.* The languages covered under Local Law 30 are determined by a formula based on U.S. Census and N.Y.C. Department of Education data.
94. N.Y. ELEC. LAW §§ 5-200-230.
95. *Id.* § 8-300-316, 8-400-412.
96. See 52 U.S.C. § 10503 (governing localities where more than 10,000 (or over 5%) of total voting-age citizens in a single political subdivision: 1) are members of a single language minority group, 2) have depressed literacy rates and 3) do not speak English very well). Sections 4(e) and 4(f) of the Voting Rights Act (codified at 52 U.S.C. § 10303(e)-(f)) also contain provisions applicable to New York City related to protections for language minority groups.
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CIVIC ENGAGEMENT

Much of the testimony to the Commission during its public engagement process reflected a broad concern about the state of civic engagement in the City—and, by extension, the health of our local democracy. Rates of voter turnout in local elections are at historic lows.¹ So are levels of public trust, confidence, and participation in civic institutions.² As the Commission has heard, “America is experiencing a civic reckoning,” and our “city is collectively experiencing [a] civic depression, which contributes to a lack of diversity severely needed in representation, policy and thought.”³

At the same time, New Yorkers are participating in, and contributing to, civic life in ways that demonstrate, if not a sense of connection to their government, connection with their communities and each other. They volunteer in significant numbers for local religious organizations. They take time from family, work, and other obligations to demonstrate in large numbers on issues of local, national, and international significance. They gather at town halls, testify at public hearings, and engage in participatory budgeting. And they come from all walks of life and every borough and neighborhood.

The City’s challenge, and that of this Commission, is how to better harness the City’s greatest resource—its people—to improve the functioning of local government and the quality of life of all residents. An engaged citizenry brings energy, creativity, and a diversity of experience to solving problems; challenges entrenched biases and power structures; enhances democratic accountability; promotes a sense of stewardship over the political process; and builds trust and community.

BACKGROUND

The City’s efforts to promote civic engagement are numerous. The most significant of these efforts are briefly described below.

As described in greater detail above in section II.B, the Board of Elections of the City of New York (“BOE”) is directly responsible for registering voters in the City,⁴ providing information regarding upcoming elections,⁵ including locating poll sites,⁶ and providing certain assistance during voter registration and at poll sites.⁷ Many City agencies are also required by state or local law to provide voter registration services, such as supplying voter registration forms, providing assistance to applicants in completing these forms, and transmitting completed forms to the BOE.⁸

In addition to administering the Campaign Finance Act,⁹ the New York City Campaign Finance Board (“CFB”) facilitates and encourages voter registration and voting, including by publishing non-partisan print and video voter guides containing information on candidates, ballot initiatives, and referenda.¹⁰ Starting in June 2019, CFB will also be required to create a website and mobile application that allows for a form of online voter registration.¹¹ CFB’s NYC Votes program helps New Yorkers register to vote and holds education and outreach campaigns throughout the City.¹² CFB conducts these activities under the guidance of the Voter Assistance Advisory Committee (VAAC),¹³ which was

CIVIC ENGAGEMENT, continued



reconstituted within CFB as a result of the 2010 Charter Revision Commission.¹⁴ VAAC advises CFB on voter engagement and recommends legislative and administrative changes to improve City elections.¹⁵

Outside of voting, the Mayor's Office is home to several citywide efforts related to civic engagement. NYC Service promotes volunteerism and service, builds volunteer capacity through public/private partnerships, and connects "volunteers and national service members with City agencies and community-based organizations."¹⁶ NYC Service was launched in 2009 as a response to President Obama's national call for volunteerism.¹⁷ The Community Affairs Unit (CAU), created via executive order,¹⁸ "establish[es] deep partnerships with communities in order to actively engage and mobilize New Yorkers in City government."¹⁹ The current Commissioner of CAU, Marco A. Carrión, is also a member of this Commission. The Public Engagement Unit employs grassroots tactics, such as phone calls and door knocks, and case management strategies to connect vulnerable populations with government resources, services, and support.²⁰ For example, the unit has provided assistance to residents struggling with the City's housing affordability crisis²¹ and helped residents enroll in health insurance.²² Finally, DemocracyNYC is a ten-point plan announced by Mayor de Blasio in his 2018 State of the City address.²³ The plan includes appointing a Chief Democracy Officer to pursue several programmatic goals, such as registering 1.5 million voters over the next four years, providing civics education in every New York City public school, and launching a web portal to share information about joining Community Boards and seeking elective office.²⁴

The Mayor's Office is also home to efforts seeking to engage specific communities, such as the Mayor's Office of Immigrant Affairs ("MOIA"), which was codified by a Charter amendment adopted by the voters at the recommendation of the 2001 Charter Revision

The City's challenge, and that of this Commission, is how to better harness the City's greatest resource—its people—to improve the functioning of local government and quality of life of all residents.

Commission;²⁵ the Mayor's Office for People with Disabilities, which was established by Executive Order in 1990;²⁶ and the Mayor's Youth Leadership Council.²⁷

Many City agencies have a community outreach or engagement operation to help deliver services, improve community relations, or facilitate the sharing of information. For example, Neighborhood Coordination Officers in the New York Police Department serve as liaisons between the police and the community by "attending community meetings with neighborhood leaders and clergy, visiting schools, [and] following up on previous incidents."²⁸ The Department of Education's Division of Family and Community Engagement informs parents of new initiatives impacting students, such as opportunities to enroll their child into Pre-K.²⁹

Significant civic engagement efforts also exist within the Legislative Branch. In addition to the work undertaken by individual Council Members to address constituent issues, the City Council maintains a dedicated central staff unit that is responsible for engaging various communities on behalf of Council Members. Participatory budgeting, a process facilitated by Council Members who choose to participate, allows community members to play a role in deciding how to spend money allocated in the City's capital budget for schools, parks, libraries, and other community spaces.³⁰ Residents of a community district may participate in a number of ways. They can volunteer to become a "delegate" and work to narrow down the list of possible ideas, research community needs, and, together with City agencies, create concrete proposals.³¹ They can also work as "facilitators" who help guide the delegates through the process and assist in meeting the necessary deadlines.³² The projects are chosen and voted on by members of the community.³³ Anyone who lives in the district and is at least 11 years old or in the sixth grade can vote on project proposals.³⁴ Last year, 31 Council Members across all five boroughs participated, and over 100,000 New Yorkers voted on how to spend more than \$40 million.³⁵

The Commission on Public Information and Communication is tasked with educating the public about the availability of information produced or maintained by the City, assisting the public in obtaining access to such information, reviewing City information policies, and developing strategies regarding the use of new technologies to improve public access to such information.³⁶

Finally, Community Boards, local representative bodies that consist of active members of their communities, play an important role in civic engagement, as described in section II.D of this report.

THEMES AND PROPOSALS FROM PUBLIC TESTIMONY

The Commission received comments from members of the public, government officials, and good government organizations; heard testimony at public hearings; and listened to presentations by a panel of experts and practitioners on the issue of civic engagement at an Issue Forum.

After reviewing the record, Staff has identified the following themes:

Civic engagement “beyond the ballot box.”

The Commission was repeatedly encouraged to understand civic engagement as a continuum of opportunities for regularly participating in the civic life of the City.³⁷ This continuum includes election-related participation, such as voting, running for office, or donating to campaigns, as well as activism, volunteerism, advocacy work, attendance at community meetings or other public events, membership on Community Boards and other civic organizations, participatory budgeting, public service, and digital engagement.³⁸ According to testimony from Paula Gavin, the City’s Chief Service Officer, these forms of civic engagement interact with, and encourage, one another; for example, as Gavin said, “those who volunteer more vote more,” and “those who vote more volunteer more.”³⁹

Engagement that is local, community-based, culturally relevant, and accessible

As DeNora Getachew, the New York Executive Director of Generation Citizen told the Commission, “[l]et’s meet ... New Yorkers where they are.”⁴⁰ The Commission heard testimony emphasizing the need for engagement that occurs at the neighborhood level;⁴¹ involves organizations active in and trusted by communities; and is in multiple languages,⁴² culturally relevant,⁴³ and accessible to people with disabilities.⁴⁴

Lack of coordination

There is no comprehensive framework for coordinating the City’s efforts on civic engagement. The Commission also heard about the need to coordinate with City agencies whose clients are frequently underrepresented in civic life,⁴⁵ and the potential for greater coordination and collaboration with non-governmental entities, such as community- and faith-based organizations⁴⁶ and the private sector.⁴⁷

Lack of information

Shortcomings in the availability and accessibility of information act as barriers to civic participation, especially among underserved and underrepresented communities such as communities of color, youth, immigrants, persons living with disabilities, and lower income communities. Several panelists commented on what they perceive to be an absence of a civics education program in schools.⁴⁸ Others commented that forms of digital participation are under-resourced, inadequately advertised, and inadequately promoted;⁴⁹ written materials for voters may not be available in large print, Braille, or audio;⁵⁰ immigrants may not be aware of volunteer opportunities in languages other than English;⁵¹ and New Yorkers who want to be engaged may not know how to match their interests with opportunities.⁵²

“Let’s meet New Yorkers where they are.”

DeNora Getachew, Generation Citizen

The Commission also heard several proposals for improving the City’s efforts on civic engagement:

Youth engagement

Several commenters emphasized the importance of engaging young people before they reach voting age.⁵³ Early engagement helps to develop the “muscle of civic engagement”⁵⁴ and trains the next generation of civic leaders.⁵⁵ Commenters advocated for the expansion of the City’s youth-based efforts, including Youth Leadership Councils, which engage high school youth,⁵⁶ and the City’s Summer Youth Employment Program, which provides paid summer employment to youth.⁵⁷

More resources for Community Boards

Members of the public and experts agreed that Community Boards lack the resources necessary to meet their Charter responsibilities, and have proposed providing, among other things, professional planning assistance with respect to land use. This proposal is described more fully in section II.D of this report.

Expansion of participatory budgeting citywide

Several members of the public, experts, and organizations suggested expanding participatory budgeting to a dedicated percent of the City’s discretionary and capital budgets.⁵⁸

Vehicle for coordinating and enhancing the City’s efforts

Many commenters advocated for a vehicle to better coordinate, integrate, and enhance the City’s efforts. Commenters were divided on whether this goal should be accomplished through a newly created entity situated outside the Mayor’s Office, such as that proposed by Council Member Lander;⁵⁹ a Chief Democracy Officer; or other interagency vehicle. Proponents of a new office promote it as opportunity to provide leadership, coordination, and resources to underfunded efforts. Opponents raised concerns about creating a new bureaucracy that may be duplicative or redundant of similar existing efforts.

CIVIC ENGAGEMENT, continued

NEXT STEPS

Staff recommends that the Commission further study ways to strengthen the City's efforts to engage its residents, including the possible establishment of a new entity specifically charged with such a purpose. Possible roles and responsibilities for such a new entity or office might include:

1. Developing a citywide strategy for promoting the civic engagement of all New Yorkers;
2. Ensuring that such a strategy is accessible, inclusive, and culturally sensitive;
3. Coordinating Mayoral and non-Mayoral efforts in implementing the strategy;
4. Partnering with a diverse and inclusive cross section of civic leaders from outside City government;
5. Providing technical assistance and other resources to Community Boards and other civic institutions;
6. Serving as a clearinghouse for information about opportunities for civic engagement, especially through the use of digital tools;
7. Piloting innovative forms of civic participation, particularly through participatory budgeting;
8. Evaluating the effectiveness of City efforts and recommending best practices; and
9. Promoting skills-building among a new generation of civic leaders, particularly among youth.

In recommending consideration of this approach, Staff was persuaded of the need to adopt a more integrated understanding of civic engagement, and to present a continuum of regular opportunities for participation in civic life that reflects New Yorkers' diversity of interests and experiences. Centralizing strategy and planning could promote a more efficient deployment of City resources, avoid duplication, and address gaps in service. Establishing such an entity or office could protect these efforts from politicization or the appearance of politicization, and from the shorter-term priorities of any given elected official. It could also encourage a perspective on civic engagement that moves beyond traditional cycles of campaigning followed by civic neglect, and respects the mutual responsibilities that City government and New Yorkers owe each other.

Staff invites additional public comment on, and reserves for further consideration, the following questions related to the structure and authority of such an entity or office:

First, Staff is interested in better understanding how such an entity or office could help support, supplement, or coordinate the City's existing efforts on civic engagement, including the recently announced DemocracyNYC initiative.

CIVIC ENGAGEMENT, continued

Second, Staff seeks public comment on how such an entity or office could help facilitate an expansion of participatory budgeting, including consideration of a possible role for Community Boards, while working within legal and operational constraints. Commenters have advocated for participatory budgeting as a potentially powerful tool for engaging New Yorkers, including those who are not typically active, in civic life and decision-making.

Third, Staff seeks additional input on where such an entity or office should be situated. At the Issue Forum addressing civic engagement, CFB opined that VAAC and voter assistance are appropriately housed at CFB. For reasons described above, Staff is concerned about separating efforts to improve election-related participation from other forms of civic engagement, but is interested in public feedback on this question.

Finally, Staff solicits suggestions on how such an entity or office could be structured, including whether such an entity or office should have an independent, non-partisan, or other structure, and how it might be supported by, and in turn support, non-governmental actors and individuals in this space.

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7. See *id.* §§ 5-216, 8-306.
8. *Id.* § 5-211; N.Y.C., N.Y., CHARTER ch. 46, § 1057-a.
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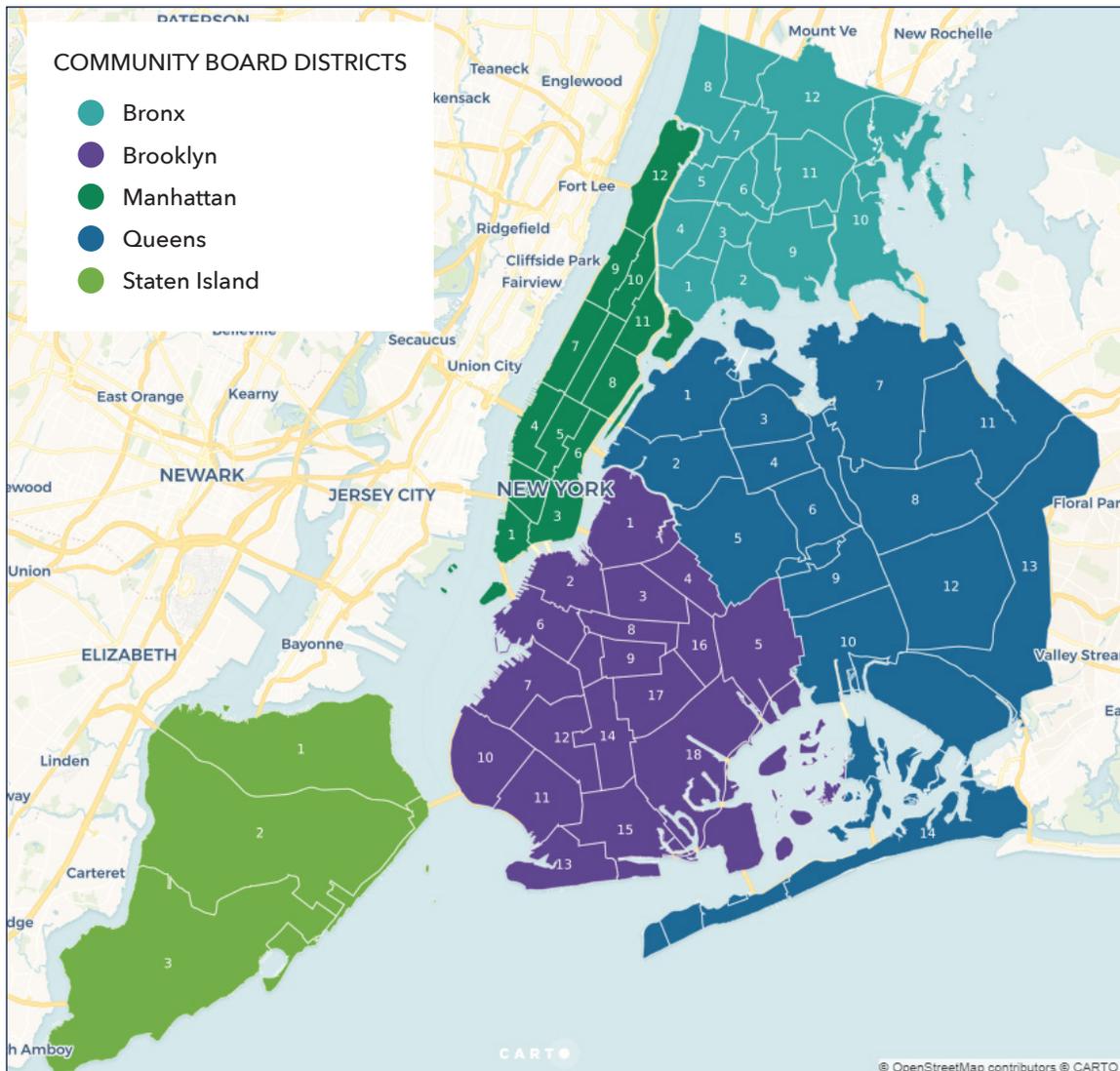
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31. N.Y.C. COUNCIL, PARTICIPATORY BUDGETING IN NEW YORK CITY 2017-2018 RULEBOOK 11, 14 (2017-18), https://www.dropbox.com/s/hq4jlf5y3zxlmw/PBNYC%202017-18_%28Rulebook%29_English_%20Singal%20Pages_2.pdf?dl=0.
32. Id. at 12.
33. Id. at 8-9, 11.
34. Id. at 8, 11.
35. Id. at 1-2.
36. N.Y.C., N.Y., CHARTER ch. 47, § 1061(a), (d).
37. See, e.g., June 21, 2018 CRC Forum, *supra* note 3, at 14-15, 39, 69-70 (statements of Paula Gavin, Chief Serv. Officer, N.Y.C., DeNora Getachew, N.Y.C. Exec. Dir., Generation Citizen, and Noel Hidalgo, Exec. Dir., BetaNYC).
38. See NYC SERV., NYCIVIC ENGAGEMENT: NEIGHBORHOOD VOLUNTEER STUDY & PLAN 12 (Aug. 3, 2017), https://gallery.mailchimp.com/e3163e2ee79e21b79cf36982c/files/0937bf9a-a234-4204-b7f4-1c1f61be85a0/Neighborhood_Report_7.10.17_WEB.pdf (providing a graphical illustration of this concept).
39. June 21, 2018 CRC Forum, *supra* note 3, at 15 (statement of Paula Gavin).
40. Id. at 62 (statement of DeNora Getachew).

CIVIC ENGAGEMENT, continued

41. Id. at 25 (statement of Paula Gavin).
42. See id. at 31, 33, 67 (statements of Amy Loprest, Exec. Dir., N.Y.C. Campaign Fin. Bd., and Elizabeth OuYang, Adjunct Professor, Columbia Univ.).
43. See id. at 43-44 (statement of Ifeoma Ike, Partner, Think Rubix).
44. See id. at 49-55 (Susan Dooha, Exec. Dir. Ctr. for Indep. of the Disabled in N.Y.).
45. Id. at 30-31 (statement of Amy Loprest).
46. Id. at 33-34 (statement of Elizabeth OuYang).
47. Id. at 94-96 (statements of John Siegal, Comm'r, N.Y.C. Charter Revision Comm'n, and Brad Lander, Council Member, N.Y.C. Council).
48. Id. at 26-27, 38, 56 (statements of Amy Loprest and DeNora Getachew); GENERATION CITIZEN, ACTION CIVICS IN SCHOOL DISTRICTS: INSIGHTS AND MATERIALS FOR ADMINISTRATORS 7 (July 21, 2017), https://generationcitizen.org/wp-content/uploads/2017/07/GC-District-Report-170721_final.pdf. DeNora Getachew and Council Member Brad Lander stressed the need for a civics education infused with participatory elements. See June 21, 2018 CRC Forum, supra note 3, at 39, 99-100.
49. See Written Testimony from Noel Hidalgo, Exec. Dir., BetaNYC, to N.Y.C. Charter Revision Comm'n (June 21, 2018); see also June 21, 2018 CRC Forum, supra note 3, at 69-72 (statement of Noel Hidalgo, Exec. Dir., BetaNYC).
50. See June 21, 2018 CRC Forum, supra note 3, at 54 (statement of Susan Dooha).
51. See id. at 32-34 (statement of Elizabeth OuYang).
52. Id. at 25 (statement of Paula Gavin, Chief Serv. Officer, N.Y.C.).
53. See, e.g., Written Testimony of Ilana Cohen, Founder & Co-Facilitator, PB Youth Comm., to N.Y.C. Charter Revision Comm'n (May 9, 2018).
54. June 21, 2018 CRC Forum, supra note 3, at 49 (statement of Ifeoma Ike, Partner, Think Rubix).
55. Id. at 40-41 (statement of DeNora Getachew).
56. See id. at 39-40; see also supra note 27 and accompanying text.
57. See June 21, 2018 CRC Forum, supra note 3, at 40-41 (statement of DeNora Getachew); see also Summer Youth Employment Program, DEP'T YOUTH & COMM. DEV., <https://www1.nyc.gov/site/dycd/services/jobs-internships/summer-youth-employment-program-syep.page> (last visited July 6, 2018).
58. June 21, 2018 CRC Forum, supra note 3, at 73-74, 84-86 (statements of Noel Hidalgo and Brad Lander, Council Member, N.Y.C. Council); see also 1st Manhattan Borough Hearing, N.Y.C. Charter Revision Comm'n 74-76, 80-83 (May 9, 2018) (Melissa Appleton, Project Manager, Participatory Budgeting Project, and Heather E. Beers-Dimitriadis, President, PBNYC Citywide Comm.), <https://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180509.pdf>; 1st Brooklyn Borough Hearing, N.Y.C. Charter Revision Comm'n 31 (May 7, 2018) (Susan Lerner, Exec. Dir., Common Cause).
59. See N.Y.C. Council, Intro. no. 116 (2018).

COMMUNITY BOARDS

Throughout the Commission’s public engagement process, New Yorkers have expressed an interest in making Community Boards more reflective of the communities that they represent and more effective in representing those communities. Proposals presented to the Commission have included imposing term limits on Community Board members, standardizing the appointment process, and providing Community Boards with additional resources. While perspectives on specific reforms differed, the testimony received by the Commission confirmed the notion that, more than 50 years after their addition to the Charter in 1963, Community Boards are central to civic engagement in New York City.



COMMUNITY BOARDS, continued

BACKGROUND

Community Board members are appointed by the Borough President, with input by Council Members and community groups. For each Community District, the Borough President appoints up to 50 Community Board members for staggered two-year terms.¹ The Charter does not impose term limits for Community Board members. The Charter allows non-members who have a “residence or significant interest in the community” to serve on committees of a Community Board.²

At least half of a Borough President’s Community Board appointees must be nominated by the Council Members whose Council Districts include any part of the Community District.³ Additionally, Borough Presidents must ensure that Council Member nominees are appointed in proportion to the share of the Community District population represented by each Council Member, as determined by the City Planning Commission.⁴ Thus, if a Council Member represents two-thirds of the population of a Community District, then that Council Member’s nominees must comprise two-thirds of the Council Member nominees ultimately appointed to the District’s Community Board. Community Boards, civic groups, and other community groups may also make nominations, but the Charter does not require the Borough President to select any of these nominees.⁵

The Charter imposes other restrictions on the composition of Community Boards. Each Community Board member must reside in the City⁶ and must maintain a residence or a business, professional, or “other significant interest” in the Community District.⁷ The appointing Borough President must ensure that Community Board members adequately represent the different geographic sections and neighborhoods within the Community District, and consider whether appointments, viewed in the aggregate, fairly represent all segments of the community.⁸ Additionally, no more than 25% of Community Board members may be City employees,⁹ and none may be employees of the Borough President or nominating Council Member.¹⁰ Community Board members must be at least 16 years old,¹¹ but “[n]o more than two members [of each Community Board] shall be less than eighteen years of age.”¹²

Either a Borough President or a majority vote of a Community Board may remove a Community Board member for cause, which “include[s] substantial nonattendance at board or committee meetings over a period of six months.”¹³ Vacancy appointments are to be made “promptly” in the same manner as a new appointment.¹⁴

More than 50 years after their addition to the Charter in 1963, Community Boards are central to civic engagement in New York City.

THEMES AND PROPOSALS FROM PUBLIC TESTIMONY

Members of the public, Community Board members and leaders, elected officials, academics, and other experts offered a variety of perspectives on Community Boards at the Commission’s public hearings and through a large volume of written comments. Due to the strong public interest in this topic, the Commission convened an Issue Forum featuring a panel discussion devoted to Charter reforms related to Community Boards. Below, we outline the most common critiques and observations about Community Boards made by the public and experts, as well as the proposals most frequently advanced to solve these perceived problems.

Improving Diversity Through Term Limits

Many commenters to the Commission contended that repeated re-appointment of the same members has resulted in Community Boards lacking sufficient ideological or demographic diversity, and that the membership of Community Boards may no longer reflect the changing Community Districts that they serve.¹⁵ Members of the public observed that the leadership of some Community Boards is racially homogenous and not reflective of the diversity of the Community District.¹⁶ To demonstrate the impact of this lack of diversity, one member of the public described a past vote by a Community Board recommending against a variance for a non-profit health clinic due to parking availability concerns, despite the fact that the clinic “would have addressed an important need in [the] community: [i]mproved health care outcomes for low income immigrants of color.”¹⁷ This commenter urged the City not to “let another decade pass with hundreds of similar votes by similarly unrepresentative community boards.”¹⁸ Recent media reports¹⁹ and academic literature²⁰ have also expressed concern that Community Boards are not sufficiently demographically representative.²¹

Many members of the public suggest addressing this problem through the adoption of term limits for Community Board members.²² The primary benefit of term limits would be increased turnover on Community Boards, allowing for potentially increased diversity through new appointments.

No clear consensus emerged among members of the public, elected officials, or experts regarding the appropriate number of terms that each Community Board member should be allowed to serve. Term limits proposed by the public ranged from four²³ to eight²⁴ years.²⁵ Several experts who testified at the Issue Forum supported term limits as well.²⁶ For example, Rachel Bloom, Director of Public Policy and Programs at Citizens Union, suggested that Community Board members be limited to five consecutive two-year terms.²⁷ Council Member Ben Kallos submitted a written statement supporting term limits of the same duration for all Board members, as well as “leadership term limits,” particularly for a Board’s chairperson.²⁸

Some experts cautioned that term limits would likely result in a reduction in the institutional memory of Community Boards. These experts urged the Commission to establish a term limit threshold balancing increased turnover with institutional memory. Elena Conte, Director of Policy at the Pratt Center for Community Development, a supporter of term limits, observed that “the strong argument against ... [term limits] is

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that folks develop a capacity.”²⁹ Similarly, Shah Ally, the Chair of Community Board 12 in Manhattan, also supported term limits but recognized the complexity of the issue, observing that “it takes a couple of years to try to figure out how to write a resolution, how to understand City government There is some merit to institutional knowledge. There’s also merit to a new voice.”³⁰ Community Board 3 Land Use Committee Chair MyPhuong Chung cited similar concerns and testified that developing an expertise in City bureaucratic processes on Community Boards can take a decade, making term limits a “blunt” tool to increase diversity.³¹

Staff recommends that the Commission study and consider proposed amendments to impose term limits for Community Board members and seek further public input on the appropriate number of terms. In conjunction with such a proposal, the Commission should give careful consideration to methods to address the potential loss of institutional memory on Boards, such as a provision allowing for non-consecutive terms.

“There is some merit to institutional knowledge. There’s also merit to a new voice.”

Shah Ally, Community Board 12, Manhattan

Improving Uniformity in the Appointment and Recruitment Process

Many experts and members of the public contended that the current appointment and selection process is flawed, both methodologically and in terms of its outcomes. Bloom, Council Member Kallos, and City Comptroller Stringer,³² as well as many members of the public,³³ stated that the application and selection process suffers from inconsistency and should be standardized.

The lack of uniformity in the appointment process appears to stem directly from the Charter. Although the Charter sets forth the authority for nomination and appointment of Community Board members, it does not address the procedure for Community Board application or selection. As a result, the mechanics of application and selection vary widely across boroughs. Indeed, a survey of recent application forms from across the five boroughs revealed substantial variation in both content and form.³⁴ For example, the application forms for the Bronx, Brooklyn, and Manhattan—but not Queens or Staten Island—solicit demographic information, though the information solicited by each is different.³⁵ Similarly, the application forms for Manhattan and the Bronx—but not Queens, Staten Island, or Brooklyn—specifically contemplate a multistep application process, including screening and interviewing.³⁶

COMMUNITY BOARDS, continued

To remedy these inconsistencies, Comptroller Stringer proposed that the Charter be amended to standardize the application process, including by requiring a uniform application timeline as well as interviews for all applicants. Stringer testified that as Borough President, he had instructed his staff to conduct applicant interviews and developed an “independent screening panel” to ensure merit-based evaluation of applicants, which had in turn resulted in greater Community Board turnover and diversity.³⁷ Other experts made similar recommendations.³⁸

Some commenters also expressed concern that some Community Boards appear to be “plagued by vacancies.”³⁹ Indeed, establishing mandatory timelines for appointments and vacancy appointments were also points of emphasis for Bloom, Kallos, and Stringer.⁴⁰

Comptroller Stringer also stated that conducting a vigorous outreach campaign for every Community Board seat is important.⁴¹ Stringer proposed that the Charter be amended to require Borough Presidents to conduct such outreach, for example through public information sessions, increased availability of Community Board applications, and the translation of the application into multiple languages.⁴² Council Member Kallos emphasized the importance of working with community groups to conduct outreach and recommended that the Charter be amended to require the development of “individualized recruitment plans” for each Community Board.⁴³

Staff recommends that the Commission consider proposals to standardize the Community Board application process and enhance recruitment by Borough Presidents. Staff also recommends that the Commission seek further public input on the questions of how much flexibility should be preserved in the Charter and who should develop such uniform application forms and procedures, with careful consideration given to the role of Borough Presidents.

Increasing the Resources Available to Community Boards

Many commenters have argued that inadequate access to resources undermines the ability of Community Boards to fulfill their Charter mandate⁴⁴ and that a scarcity of resources has frustrated Community Boards’ ability to perform their duties.⁴⁵ Experts and members of the public have asked this Commission to ensure that Community Boards receive additional resources.⁴⁶

Although the Charter prohibits the compensation of Community Board members, it authorizes Community Boards to appoint paid staff, including a District Manager, who must process “service complaints” and perform other duties assigned by the Community Board. In addition, within its budget appropriation, each Community Board is authorized to employ assistants and use the services of other professional staff, consultants, and experts.⁴⁸

The Charter also authorizes Community Boards to request support from other City agencies, which must, upon request, provide “information or assistance necessary for the board’s work.”⁴⁹ Additionally, the Charter requires the Department of City Planning (DCP) to “[p]rovide community boards with such staff assistance and other professional and technical assistance as may be necessary to permit such boards to perform their planning duties and responsibilities.”⁵⁰ Similarly, each Borough President must provide

COMMUNITY BOARDS, continued

training and technical assistance to Community Boards, including technical assistance with respect to land use matters.⁵¹

To address the lack of resources available to Community Boards, commenters have proposed amending the Charter to provide for the following additional resources:

Urban Planning Services. Experts,⁵² academics,⁵³ and members of the public⁵⁴ called for the provision of professional urban planning services to assist Community Boards in land use matters, including the Uniform Land Use Review Process (ULURP) and other Community Board functions addressing land use. Similar proposals have been made repeatedly over the last decade. In 2015, Council Member Kallos sponsored legislation to require each Borough President to provide a professional planner to each Community Board.⁵⁵ The 2010 Charter Revision Commission considered a similar recommendation.⁵⁶



Although the Charter already requires DCP and the Borough Presidents' offices to provide land use assistance,⁵⁷ many contend that the current provision has not been effective. Some commenters point out that the use of shared resources may be flawed as a practical matter, because Community Boards, Borough Presidents, and DCP may have valid differences of opinion on land use matters.⁵⁸ Others argue that the level of support provided has been insufficient.⁵⁹

There were numerous proposals for the provision of professional urban planning services to Community Boards. The most comprehensive proposal has come from the Inclusive

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City working group. This proposal would require the provision of an urban planner to each Community Board as well as the creation of an Office of Community Planning to provide technical assistance to Community Boards engaged in land use planning.⁶⁰ By contrast, Bloom proposed amending the Charter to establish a pool of urban planners housed in a non-partisan, centralized office and available to Community Boards on an as-needed basis.⁶¹ Indeed, as other commenters note, Community Boards are not uniform in their needs,⁶² which may vary based on economic factors and the density of professional skills available in the Community District,⁶³ and every Community District may not require an assigned planner.⁶⁴

Training for Community Board Members. The Inclusive City working group, Comptroller Stringer, Dr. Angotti, and Council Member Brad Lander proposed that the City provide training to Community Board members.⁶⁵ The City is already obligated to provide Community Board members with training in certain matters, such as conflict-of-interest laws,⁶⁶ but the City is not specifically required to provide training in any of the other disciplines mentioned above, such as land use. Comptroller Stringer, recounting his experiences as Borough President, contended that the trainings administered by his office strengthened the knowledge and capacity of Community Boards.⁶⁷

Technological Support. In the last several years, the Department of Information Technology and Telecommunications has made an effort to improve Community Boards' online infrastructure.⁶⁸ Noel Hidalgo of BetaNYC broadly recommended that the City provide greater technological support for Community Boards,⁶⁹ and Council Member Kallos and the Inclusive City working group proposed that the City provide additional support specifically for website infrastructure.⁷⁰ Moses Gates, Vice President for Housing and Neighborhood Planning at the Regional Planning Association, proposed that Community Boards use technology to allow for participation by community members whose schedules prevent them from attending meetings in person.⁷¹

Based on the support from experts and members of the public, Staff recommends that the Commission consider recommendations related to the provision of planning resources and technical support for Community Boards. Staff also recommends that the Commission consider requiring or encouraging additional training for Community Board members. Staff recommends that the Commission seek further public input on the questions of: which agency or office could provide such resources, how they should be allocated, and the degree to which operational details should be specified in the Charter, with careful consideration given to the role of Borough Presidents.

Other Proposals

In addition to the issues and proposals discussed above, this Commission has received a variety of other comments and suggestions related to Community Boards, including the following:

- Many advocates and experts called for substantial changes to who appoints Community Board members. Members of the organization Women of Color for Progress proposed redistributing authority over some appointments to non-elected local community leaders.⁷² The Real Estate Board of New York proposed that the Charter allow some Community Board appointments to be made by the

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Mayor and “businesses in the area to ensure broad and diverse representation.”⁷³ Dr. Angotti⁷⁴ and various members of the public⁷⁵ advocated for the direct election of Community Board members. Members of the organization Movement to Protect the People oppose Borough President appointments altogether and proposed a variety of alternative models, including adopting a direct election method or vesting Council Members or state legislators with the authority to appoint Community Board members.⁷⁶

- Some commenters proposed expanding the scope of authority of Community Boards.⁷⁷ These recommendations varied in level of specificity.
- Some commenters called for renewed scrutiny of the potential conflicts of interest of Community Board members.⁷⁸
- Several commenters stressed the need for increased youth participation and opportunity on Community Boards.⁷⁹ In 2014, the State enacted legislation allowing individuals at least 16 years of age to serve on Community Boards.⁸⁰
- Members of the public also sought a mandate that Community Boards live-stream their meetings.⁸¹ This recommendation has been proposed in two recent City Council bills that have not been enacted.⁸² Currently, the Charter provision mandating the recording and live-streaming of meetings specifically excludes Community Boards from its scope.⁸³
- Several commenters have called for the standardization of meeting procedures, observing that “[t]here is little consistency between the many community boards[, which] ... follow vastly different procedures.”⁸⁴ More specific procedural recommendations have related to increasing the frequency of Community Board meetings.⁸⁵ Dr. Angotti, in his previous writings, has also suggested revision of these procedures, but instead of standardizing them, Dr. Angotti has recommended revisions to “encourage more flexible and inclusive methods for engaging civic participation and encouraging local problem-solving, conflict resolution and decision-making.”⁸⁶

NEXT STEPS

Considering the testimony provided, and as noted in greater detail above, Staff recommends that the Commission continue to study and seek public input on: proposals to impose term limits for Community Board members; proposals to standardize or enhance the existing appointment and recruitment process; ways to provide significant additional support and resources to Community Boards, particularly in the area of urban planning; and other methods to ensure that Community Boards are representative of the communities that they serve.

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END NOTES

1. N.Y.C., N.Y., CHARTER ch. 70, § 2800(a).
2. *Id.* § 2800(i).
3. *Id.* § 2800(a).
4. *Id.* In addition, those Council Members serve as non-voting members of the board.
5. *Id.*
6. N.Y. PUB. OFF. LAW § 3(1); see also N.Y.C. Corporation Counsel Op. 4-88 (Apr. 26, 1988) (finding the United States Citizenship requirement of this statute inapplicable to Community Board membership).
7. CHARTER ch. 70, § 2800(a).
8. *Id.*
9. *Id.*
10. *Id.* ch. 49, § 1135. *Id.* ch. 68, § 2604(b)(3) also limits the appointment and nomination of family members and other “associated” persons to Community Boards. N.Y.C. Conflicts of Interest Bd. Advisory Op. no. 93-21 (July 12, 1993).
11. PUB. OFF. LAW § 3(1).
12. CHARTER ch. 70, § 2800(a).
13. *Id.* § 2800(b).
14. *Id.*
15. See, e.g., Issue Forum on Land Use and Community Boards, N.Y.C. Charter Revision Comm’n 52 [hereinafter June 19, 2018 CRC Forum] (statement of Scott Stringer, N.Y.C. Comptroller), https://www1.nyc.gov/assets/charter/downloads/pdf/hearing_20180619.pdf; 1st Brooklyn Borough Hearing, N.Y.C. Charter Revision Comm’n 80-82, 114 (May 7, 2018) [hereinafter May 7, 2018 CRC Hearing] (statements of Janine Nichols, Sullivan Ludlum Stoddard Neighborhood Ass’n, and Juan Restrepo, Transp. Alt.), https://www1.nyc.gov/assets/charter/downloads/pdf/05_07_18_nyc_charter_commission_public_hearing.pdf; 1st Queens Borough Hearing, N.Y.C. Charter Revision Comm’n 58-60, 67 (May 3, 2018) [hereinafter May 3, 2018 CRC Hearing] (statements of Jobi Jacob and John Cho), <https://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180503.pdf>.
16. See, e.g., May 3, 2018 CRC Hearing, *supra* note 15, at 59 (statement of John Cho); Web Portal Message from Conrad Gangone to N.Y.C. Charter Revision Comm’n (June 16, 2018, 15:05 EST).
17. May 3, 2018 CRC Hearing, *supra* note 15, at 59-60.
18. *Id.* at 60.
19. Roshan Abraham, Community Boards Face Questions over Demographics, CITY LIMITS (Aug. 25, 2016), <https://citylimits.org/2016/08/25/community-boards-face-questions-over-demographics/#>; Keith Williams, Original Members of New York City’s Community Boards Enjoy Serving, WALL STREET J. (May 28, 2014), <https://www.wsj.com/articles/original-members-of-new-york-citys-community-boards-enjoy-serving-1401327002>.
20. TOM ANGOTTI, LAND USE AND THE NEW YORK CITY CHARTER 19, 26 (Aug. 10, 2010), <http://www.hunter.cuny.edu/ccpd/repository/files/charterreport-angotti-2.pdf>; see also TOM ANGOTTI, NEW YORK FOR SALE: COMMUNITY PLANNING CONFRONTS GLOBAL REAL ESTATE, 240-41 (2008), <https://macaulay.cuny.edu/eportfolios/caldwell15/files/2015/02/New-York-for-Sale-Community-Planning-Confronts-Global-Real-Esta.pdf>.

COMMUNITY BOARDS, continued

21. Expressing similar concerns, City Council Members have introduced legislation to require reporting on the demographics of Community Boards, though no such legislation has been enacted. See N.Y.C. Council, Intro. no. 976 (2018); N.Y.C. Council, Intro. no. 555 (2018); N.Y.C. Council, Intro. no. 1046 (2016); see also Samar Khurshid, Eyeing Diversity, New Push for Demographic Data on Community Board Members, GOTHAM GAZETTE (Jan. 6, 2016), <http://www.gothamgazette.com/index.php/government/6064-eyeing-diversity-new-push-for-demographic-data-on-community-board-members>.
22. See, e.g., May 7, 2018 CRC Hearing, *supra* note 15, at 82 (statement of Juan Restrepo); Written Testimony from Cristina Gonzalez et al., Women of Color for Progress, to N.Y.C. Charter Revision Comm'n 2 (May 9, 2018); Web Portal Message from Laura Newman to N.Y.C. Charter Revision Comm'n (June 27, 2018, 21:35 EST); Web Portal Message from Monika Fabian to N.Y.C. Charter Revision Comm'n (June 27, 2018, 20:08 EST); Web Portal Message from Michael Guippone to N.Y.C. Charter Revision Comm'n (June 2, 2018, 8:12 EST).
23. Written Testimony from Alicia Boyd, Movement to Protect the People, to N.Y.C. Charter Revision Comm'n 2 (May 7, 2018).
24. Web Portal Message from Marlene McGarrity to N.Y.C. Charter Revision Comm'n (June 2, 2018, 13:36 EST); Web Portal Message from Kelly Murphy to N.Y.C. Charter Revision Comm'n (June 2, 2018, 12:04 EST).
25. Two pieces of legislation proposed by City Council Members would establish term limits of 12 consecutive years for Community Board members. See N.Y.C. Council, Intro. no. 460 (2018); N.Y.C. Council, Intro. no. 585 (2014).
26. June 19, 2018 CRC Forum, *supra* note 15, at 11, 13, 17-18, 20-22, 27, 76 (statements of Elena Conte, Dir. of Policy, Pratt Ctr. for Cmty. Dev., Rachel Bloom, Dir. of Pub. Policy and Programs, Citizens Union, Shah Ally, Chair, N.Y.C. Cmty. Bd. 12 Manhattan, and Ebenezer Smith, Dist. Manager, N.Y.C. Cmty. Bd. 12 Manhattan).
27. *Id.* at 76 (statements of Rachel Bloom); see also *id.* at 20-21, 27 (statements of Shah Ally and Ebenezer Smith) (suggesting even longer term limits).
28. Web Portal Message from Benjamin Kallos, Council Member, N.Y.C. Council, to N.Y.C. Charter Revision Comm'n app. at 5 (June 20, 2018, 14:33 EST). The Charter does not mandate that Community Boards have specific leadership positions other than Chairperson; however, some Community Boards have voluntarily begun adopting such measures via bylaw. See Williams, *supra* note 19.
29. See June 19, 2018 CRC Forum, *supra* note 15, at 11, 13 (statement of Elena Conte).
30. *Id.* at 17-18, 20 (statement of Shah Ally).
31. *Id.* at 35-39 (statement of MyPhuong Chung, Land Use Chair, N.Y.C. Cmty. Bd. 3 Manhattan).
32. *Id.* at 54, 75 (statements of Scott Stringer, N.Y.C. Comptroller, and Rachel Bloom); Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 28, app. at 4 (further advocating for online applications).
33. Written Testimony from Cristina Gonzalez et al. to N.Y.C. Charter Revision Comm'n, *supra* note 22, at 2; Written Testimony from Paula Segal, Staff Attorney, Urban Justice Ctr., to N.Y.C. Charter Revision Comm'n 3 (May 7, 2018); E-mail from Nancy Preston, Moving Forward Unidos, to N.Y.C. Charter Revision Comm'n (May 6, 2018, 16:06 EST); Web Portal Message from Sunita Prasad to N.Y.C. Charter Revision Comm'n (May 6, 2018, 14:27 EST); Web Portal Message from Alice Forbes Spear, 462 Halsey Cmty. Farm, to N.Y.C. Charter Revision Comm'n (May 6, 2018, 14:17 EST).

COMMUNITY BOARDS, continued

34. Compare Manhattan Community Board 2018 Application (n.d.) (on file with author) (requiring applicants to complete a multipage application, which requires new applicants to draft a short essay regarding the applicant's qualifications and interest in serving on a Community Board or, with respect to applicants for reappointment, the applicant's efforts over the previous term), and Application for Membership—Bronx Community Boards (Fall 2017) (on file with author) (including a multipage application, requiring a notarized statement of the accuracy of the application, a statement from a Chairperson or district manager confirming past meeting attendance, and a conflict of interest law agreement form), with Brooklyn Community Board Membership Application (n.d.) (on file with author) (featuring a short two page application), and Queens Community Board Membership Application (n.d.) (on file with author) (requiring only completion of a one page, notarized questionnaire).
35. See Manhattan Community Board 2018 Application, *supra* note 34, at 3; Application for Membership – Bronx Community Boards, *supra* note 34, at 2; Brooklyn Community Board Membership Application, *supra* note 34, at 2.
36. Memorandum from Ruben Diaz Jr., Bronx Borough President, to Cmty. Bd. Applicants (Fall 2017); Manhattan Community Board 2018 Application, *supra* note 34, at 8.
37. June 19, 2018 CRC Forum, *supra* note 15, at 52-54, 57-58, 65-66 (statement of Scott Stringer); Written Testimony from Scott Stringer, N.Y.C. Comptroller, to N.Y.C. Charter Revision Comm'n 4-5 (June 19, 2018). These accounts suggest that the independent screening panel also aided Stringer's office in the recruitment process.
38. June 19, 2018 CRC Forum, *supra* note 15, at 39, 41, 74 (statements of Rachel Bloom and MyPhuong Chung); Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 28, app. at 3-4.
39. June 19, 2018 CRC Forum, *supra* note 15, at 74 (statement of Rachel Bloom); see also Written Testimony from Scott Stringer to N.Y.C. Charter Revision Comm'n, *supra* note 37, at 4-5.
40. June 19, 2018 CRC Forum, *supra* note 15, at 53-54, 75 (statements of Rachel Bloom and Scott Stringer); Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 28, app. at 4.
41. June 19, 2018 CRC Forum, *supra* note 15, at 50-52 (statement of Scott Stringer); see also Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 28, app. at 2-3; DemocracyNYC (@DemocracyNYC) TWITTER (May 21, 2018, 9:14AM), <https://twitter.com/democracyNYC/status/998779216371077120>.
42. Written Testimony from Scott Stringer to N.Y.C. Charter Revision Comm'n, *supra* note 37, at 3-4.
43. See Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 28, app. at 2.
44. See June 19, 2018 CRC Forum, *supra* note 15, at 11-12, 16-17, 40, 46-48, 73, 75-76, 79-81 (statements of Elena Conte, Dir. of Policy, Pratt Ctr. for Cmty. Dev., Shah Ally, Chair, N.Y.C. Cmty. Bd. 12 Manhattan, Tom Angotti, Emeritus Professor, Hunter Coll., Scott Stringer, MyPhuong Chung, and Rachel Bloom).
45. Roshan Abraham, City's Community Boards Play Bigger Role Within Tight Budgets, CITY LIMITS (Oct. 20, 2016), <https://citylimits.org/2016/10/20/citys-community-boards-play-bigger-role-within-tight-budgets/>.
46. See, e.g., E-mail from Nancy Preston to N.Y.C. Charter Revision Comm'n, *supra* note 33; Sunita Prasad to N.Y.C. Charter Revision Comm'n, *supra* note 33; Web Portal Message from Alice Forbes Spear to N.Y.C. Charter Revision Comm'n, *supra* note 33.

COMMUNITY BOARDS, continued

47. N.Y.C., N.Y., CHARTER ch. 70, § 2800(c), (f). Some “actual and necessary out-of-pocket expenses” are compensable. *Id.* § 2800(c).
48. *Id.* § 2800(f)-(g).
49. *Id.* § 2800(e).
50. *Id.* ch. 8, § 191(b)(5).
51. *Id.* ch. 4, § 82(9), (12).
52. June 19, 2018 CRC Forum, *supra* note 15, at 11, 19, 28, 46-49, 56, 61-62, 73, 81, 131-32 (statements of Elena Conte, Shah Ally, Scott Stringer, Rachel Bloom, Tom Angotti, and Ebenezer Smith, Dist. Manager, N.Y.C. Cmty. Bd. 12 Manhattan).
53. See, e.g., TOM ANGOTTI, LAND USE AND THE NEW YORK CITY CHARTER, *supra* note 20, at 26.
54. See, e.g., 1st Bronx Borough Hearing, N.Y.C. Charter Revision Comm’n 72 (Apr. 30, 2018) [hereinafter Apr. 30, 2018 CRC Hearing] (statement of Michael Beltzer), <https://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180430.pdf>.
55. N.Y.C. Council, Intro. no. 732 (2015).
56. 2010 N.Y.C. CHARTER REVISION COMM’N, FINAL REPORT OF THE 2010 NEW YORK CITY CHARTER REVISION COMMISSION 89 (Aug. 23, 2010), https://www1.nyc.gov/assets/charter/downloads/pdf/final_report_of_the_2010_charter_revision_commission_9-1-10.pdf.
57. See *supra* notes 49-51 and accompanying text.
58. See, e.g., June 19, 2018 CRC Forum, *supra* note 15, at 73-74 (statement of Rachel Bloom); 2010 N.Y.C. CHARTER REVISION COMM’N, *supra* note 56, at 89. But see June 19, 2018 CRC Forum, *supra* note 15, at 97 (statement of Jessica Katz, Exec. Dir., Citizens Hous. Planning Council) (stating that DCP “must have the resources, so [DCP] can ... provide more robust technical assistance to Community Boards.”).
59. TOM ANGOTTI, LAND USE AND THE NEW YORK CITY CHARTER, *supra* note 20, at 12; Amy Widman, Replacing Politics with Democracy: a Proposal for Community Planning in New York City and Beyond, 11 J.L. & POLY 135, 149-50 (2002).
60. INCLUSIVE CITY, STRATEGIES TO ACHIEVE MORE EQUITABLE AND PREDICTABLE LAND USE IN NEW YORK CITY 9-11 (Jan. 2018), <http://library.rpa.org/pdf/Inclusive-City-NYC.pdf>. Other proposals also implicated an Office of Community Planning. See Written Testimony from Paula Segal to N.Y.C. Charter Revision Comm’n, *supra* note 33, at 3; Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm’n, *supra* note 28, app. at 5; Web Portal Message from Sunita Prasad to N.Y.C. Charter Revision Comm’n, *supra* note 33; Web Portal Message from Alice Forbes Spear to N.Y.C. Charter Revision Comm’n, *supra* note 33.
61. June 19, 2018 CRC Forum, *supra* note 15, at 73 (statement of Rachel Bloom).
62. 2010 N.Y.C. CHARTER REVISION COMM’N, *supra* note 56, at 89; June 19, 2018 CRC Forum, *supra* note 15, at 59-62, 79-80 (statements of Kyle Bragg, Comm’r, N.Y.C. Charter Revision Comm’n, Scott Stringer, N.Y.C. Comptroller, and Tom Angotti); Widman, *supra* note 59, at 149-50.
63. June 19, 2018 CRC Forum, *supra* note 15, at 79-80 (statement of Tom Angotti).
64. *Contra id.* at 61-62 (statement of Scott Stringer).
65. June 19, 2018 CRC Forum, *supra* note 15, at 49-50, 102 (statements of Scott Stringer and Tom Angotti); INCLUSIVE CITY, *supra* note 60, at 11; May 7, 2018 CRC Hearing, *supra* note 15, at 68 (statement of Brad Lander, Council Member, N.Y.C. Council).

COMMUNITY BOARDS, continued

66. N.Y.C., N.Y., CHARTER ch. 4, § 82(12); *Id.* ch. 68, §§ 2601(19), 2603(b).
67. June 19, 2018 CRC Forum, *supra* note 15, at 49 (statement of Scott Stringer).
68. Abraham, *supra* note 45.
69. 1st Manhattan Borough Hearing, N.Y.C. Charter Revision Comm’n 16 (May 9, 2018) [hereinafter May 9, 2018 CRC Hearing] (statement of Noel Hidalgo, Exec. Dir., BetaNYC), <https://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180509.pdf>; see also Issue Forum on Civic Engagement and Redistricting, N.Y.C. Charter Revision Comm’n 71 (June 21, 2018) [hereinafter June 21, 2018 CRC Forum] (statement of Noel Hidalgo), https://www1.nyc.gov/assets/charter/downloads/pdf/06_21_18_charterrevisioncomission.pdf.
70. INCLUSIVE CITY, *supra* note 60, at 11; Written Testimony from Ben Kallos to N.Y.C. Charter Revision Comm’n, *supra* note 28, app at 3; see also June 21, 2018 CRC Forum, *supra* note 69, at 71 (statement of Noel Hidalgo).
71. June 19, 2018 CRC Forum, *supra* note 15, at 104-05 (statement of Moses Gates, Vice President, Reg’l Plan Ass’n).
72. Written Testimony from Cristina Gonzalez et al. to N.Y.C. Charter Revision Comm’n, *supra* note 22, at 2. In contrast, Comptroller Stringer expressed that the role of elected officials in the Community Board appointment process was critical to accountability. June 19, 2018 CRC Forum, *supra* note 15, at 70-72 (statement of Scott Stringer).
73. Written Testimony from Real Estate Bd. of N.Y. to Charter Revision Comm’n 3 (June 19, 2018).
74. June 19, 2018 CRC Forum, *supra* note 15, at 102 (statement of Tom Angotti, Emeritus Professor, Hunter Coll.).
75. See, e.g., May 7, 2018 CRC Hearing, *supra* note 15, at 118, 123 (statements of Matthew Fairley and Marlene Donnelly).
76. *Id.* at 142 (statement of Lashaun Ellis, Movement to Protect the People); Written Testimony from Alicia Boyd to N.Y.C. Charter Revision Comm’n, *supra* note 23, at 1-2.
77. See, e.g., June 19, 2018 CRC Forum, *supra* note 15, at 80, 102 (statement of Tom Angotti); May 3, 2018 CRC Hearing, *supra* note 15, at 81 (statement of Edward Kiernan, Bd. Member, N.Y.C. Cmty. Bd. 3 Queens); May 9, 2018 CRC Hearing, *supra* note 69, at 116-17 (statement of Rebecca Lamorte, Sec’y, Cmty. Bd. 8 Manhattan); Web Portal Message from Kelly Murphy to N.Y.C. Charter Revision Comm’n, *supra* note 24.
78. See, e.g., INCLUSIVE CITY, *supra* note 60, at 11.
79. June 21, 2018 CRC Forum, *supra* note 69, at 40 (statement of DeNora Getachew, Exec. Dir., Generation Citizen); Apr. 30, 2018 CRC Hearing, *supra* note 54, at 57 (statement of Leah James); Written Testimony from Cristina Gonzalez et al. to N.Y.C. Charter Revision Comm’n, *supra* note 22, at 2; Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm’n, *supra* note 28, app. at 3.
80. Act of Aug. 11, 2014, ch. 251, 2014 N.Y. Laws 980 (amending N.Y. PUB. OFF. LAW § 3(1) and N.Y.C., N.Y., CHARTER ch. 70, § 2800(a)).
81. May 3, 2018 CRC Hearing, *supra* note 15, at 68 (statement of Jobi Jacob); Apr. 30, 2018 CRC Hearing, *supra* note 54, at 73 (statement of Michael Beltzer).
82. N.Y.C. Council, Intro. no. 28 (2014); N.Y.C. Council, Intro. no. 812 (2012).
83. N.Y.C., N.Y., CHARTER ch. 47, § 1063(d).

COMMUNITY BOARDS, continued

84. See Web Portal Message from Laura Shepard to N.Y.C. Charter Revision Comm'n (May 22, 2018, 13:11 EST); May 7, 2018 CRC Hearing, *supra* note 15, at 139-40 (statement of Karen Flemming).
85. Written Testimony from Real Estate Bd. of N.Y. to N.Y.C. Charter Revision Comm'n, *supra* note 73, at 3 (relating to meetings during summer months); E-mail from Mark Laster to N.Y.C. Charter Revision Comm'n (May 6, 2018, 16:53 EST) (relating to the frequency of Community Board committee meetings).
86. TOM ANGOTTI, LAND USE AND THE NEW YORK CITY CHARTER, *supra* note 20, at 17, 26-27.

THE DISTRICTING PROCESS

The Commission heard a number of proposals relating to the process by which City Council district lines are drawn. Staff recommends continued study of this important area.

BACKGROUND

Overview of the Districting Process

Every ten years, after each decennial census, the Mayor and the City Council must appoint a 15-member Districting Commission to draw City Council district lines to accommodate changes in population.¹

The Council delegations of the first and second largest political parties in the Council appoint a total of eight Districting Commission members (five and three, respectively).² The Mayor appoints the remaining seven members, and must make such appointments so as to ensure that individuals enrolled in a single political party do not make up a majority of the members of the Districting Commission.³ The Districting Commission must include at least one resident of each borough and must also include members of the racial and minority groups in New York City that are protected by the Voting Rights Act in proportion, as close as is practicable, to their population in the City.⁴ The following individuals are barred from serving on a Districting Commission: (1) officers and employees of the City or any City agency; (2) lobbyists required to file a statement of registration under federal, state, or local law, and the employees of such lobbyists; (3) federal, state, and local elected officials; and (4) officers of any political party.⁵

After soliciting public comment and holding at least one public hearing, the Districting Commission must develop a districting plan, which it must submit to the City Council at least one year in advance of the general election for City Council that will be held in the next year ending in "3."⁶ Unless the City Council objects by resolution within three weeks of submission, the plan is deemed adopted once it is filed with the City Clerk together with a statement signed by at least nine members of the Districting Commission certifying that it has followed the substantive and procedural requirements of Chapter 2-A of the Charter.⁷

If, however, the Council objects to the plan, the Districting Commission must prepare a revised plan and solicit further public input. Following consideration of any public comments, the Districting Commission must, no later than eight months before the general municipal election, submit a final districting plan, which is deemed adopted once it is filed with the City Clerk together with the statement described above.⁸

The most recent Districting Commission was constituted following the 2010 census, and its plan became effective beginning with the 2013 municipal election. The next Districting Commission will begin its work after the 2020 census, and any redrawing of district lines will take effect beginning with the 2023 election.

THE DISTRICTING PROCESS, continued

Prior to 2013, New York City was required pursuant to Section 4(b) and Section 5 of the Voting Rights Act to submit any change in a “standard, practice, or procedure with respect to voting”—including districting plans—to the United States Department of Justice (DOJ) for “pre-clearance” to determine whether the change would have the effect of denying or abridging the right to vote on account of race or color.⁹ However, since the Supreme Court’s decision in *Shelby County v. Holder*,¹⁰ which invalidated the coverage formula in Section 4(b) of the Act, pre-clearance by DOJ is no longer required. The upcoming 2023 New York City districting plan will be the first under which pre-clearance is not required.

Applicable Law

Several sources of law govern districting in New York City, including: the Fourteenth Amendment to the United States Constitution, Section 2 of the Voting Rights Act, and § 52 of the New York City Charter.

Fourteenth Amendment

The Equal Protection clause of the Fourteenth Amendment is the source of the “one person, one vote” standard, which underlies the requirement that districts be of generally equal population.¹¹

The Supreme Court has generally accepted a greater inter-district population deviation in state and local districting than in Congressional districting. While Congressional districts are required to be of equal population “as nearly as is practicable,” state and local legislative districts need only be “substantially” equal in population size.¹² A maximum deviation among local districts of under 10% has generally been deemed to satisfy the Fourteenth Amendment.¹³

Section 2 of the Voting Rights Act of 1965

Section 2 of the Voting Rights Act prohibits any voting qualification or practice—including the drawing of districting plans—applied or imposed by any state or political subdivision that results in the denial or abridgement of the right to vote based on race, color, or membership in a language minority.¹⁴ A violation of Section 2 may be established:

if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of [protected] citizens ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.¹⁵

Section 2 has been used to challenge districting plans that dilute the voting effectiveness of a racial minority group and impair the racial minority’s ability to elect the representative of its choice.¹⁶

THE DISTRICTING PROCESS, continued

New York City Charter

Section 52 of the Charter sets forth the criteria to be applied by the Districting Commission “to the maximum extent practicable” when developing its plan.¹⁷ The following criteria are listed in the Charter in decreasing order of priority.

Population Size. The difference in population between the least populous district and the most populous district must be no more than 10% of the average district size.¹⁸

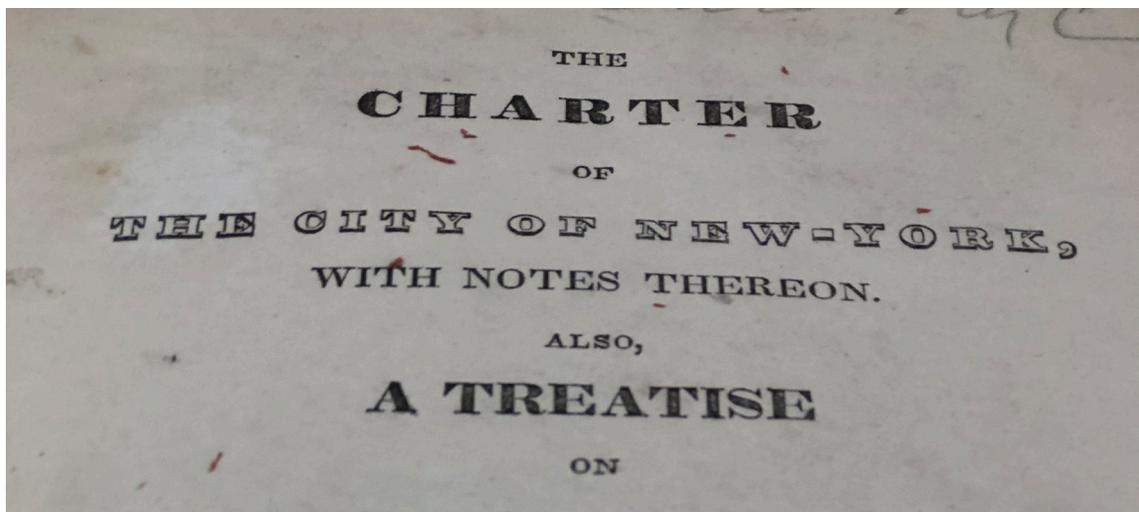
Fair and Effective Representation of Racial and Language Minority Groups. The plan should “ensure the fair and effective representation of [the] racial and minority groups in New York City” that are protected by the Voting Rights Act.¹⁹

Keeping Neighborhoods and Communities of Interest Intact. District lines should “keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, religious or other.”²⁰

Additional Criteria. The remaining factors, in decreasing order of priority, are as follows:

- Districts should be compact (no more than twice as long as wide).²¹
- Districts should not cross borough lines.²²
- Districts should not be drawn for the purpose of separating geographic concentrations of voters enrolled in the same political party in order to diminish the effective representation of such voters.²³
- Districts should be drawn in such a way that minimizes the sum of the length of the boundaries of all districts included in the plan.²⁴ In other words, districts should not have irregular shapes.

Additionally, § 52 requires that: (1) districts must be contiguous, meaning that different parts of the district must be connected in some way, whether by land, bridge, tunnel, tramway, or regular ferry service;²⁵ and (2) if compliance with the Charter’s districting criteria results in a plan where districts must cross borough lines to satisfy higher priority Charter criteria, no more than one district may span a particular pair of boroughs.²⁶



THEMES AND PROPOSALS FROM PUBLIC TESTIMONY

Several commenters proposed changes to the Charter that would make the Districting Commission more independent of the influence of elected officials. For example, representatives of Common Cause; John Louis Flateau, Executive Director of the DuBois Bunche Center for Public Policy and the U.S. Census Information Center at Medgar Evers College; and James Hong of the MinKwon Center for Community Action in Queens proposed that New York City follow the lead of jurisdictions like California and take appointments to the Districting Commission out of the direct control of elected officials.²⁷ There were also proposals to prohibit former elected officials from serving on the Districting Commission,²⁸ and to prohibit members from running for City elected office for a period of time after their service.²⁹

Additionally, the Commission heard proposals to change the districting criteria set forth in the Charter. For example, both Common Cause and Professor Flateau proposed decreasing the maximum permitted population deviation between districts (currently 10%), with Common Cause recommending a maximum 6% deviation and Professor Flateau a maximum 5% deviation.³⁰ Professor Flateau also recommended that co-terminality with state Assembly Districts as well as the City's 59 Community Board Districts be a priority redistricting principle. This proposal would result in more and smaller districts, which Professor Flateau said he supported on the theory that "the smaller the district the closer the government will be to the people."³¹

Proposed changes to the process of approving a districting plan included removing the ability of the City Council to veto the Districting Commission's plan and having New York City establish its own independent review process to take the place of the DOJ pre-clearance mechanism that was rendered inert by the *Shelby* decision.³²

Finally, commenters identified the need for robust outreach and engagement around the upcoming 2020 federal census to ensure that New Yorkers are not undercounted. Concern was expressed that the inclusion of a citizenship question in the census will discourage non-citizens, regardless of immigration status, from responding and will

"...if New York City does not massively engage and get counted in the 2020 Census our whole redistricting process is going to be in a shambles and will not adequately represent the people of New York."

Professor John Louis Flateau, Medgar Evers College

THE DISTRICTING PROCESS, continued

result in an undercount. Such an undercount would negatively impact the work of the next Districting Commission, which will rely on federal census data.³³ Indeed, while the census is primarily a federal process, the City has already started preparing for the census and begun efforts to reduce the magnitude of an undercount.³⁴ The effect of the citizenship question on the census is currently being litigated in federal court.³⁵

The DOJ pre-clearance process, a procedural method under the federal Voting Rights Act to protect against discrimination in line drawing will no longer be applied to districting plans by virtue of the *Shelby* decision.

NEXT STEPS

Based on testimony from experts and members of the public, Staff recommends continued study of three aspects of the districting process:

First, Staff notes that the DOJ pre-clearance process, a procedural method under the federal Voting Rights Act to protect against discrimination in line drawing that is explicitly referenced in the Charter, will no longer be applied to districting plans by virtue of the *Shelby* decision, as described above. Staff recommends that the Commission solicit further input from the public, experts, and affected communities on possible procedures to address the effects of the districting process on the voting power of racial and ethnic minority groups, such as providing for an additional review and analysis of proposed lines by an independent expert, or other changes that are reflective of the important public policy goals underlying the Voting Rights Act and the former DOJ pre-clearance process.

Second, Staff recommends that the Commission evaluate proposals to alter the structure of the Districting Commission to promote its independence and reduce the influence of elected officials, including proposals to change the appointment process.

Third, Staff recommends that the Commission study whether there are permissible ways to counteract the negative effects of an undercount in the next census on the districting process.

THE DISTRICTING PROCESS, continued

Staff recognizes that any changes to the City's districting process will necessitate a rigorous review of the legal, policy, and practical implications of such reforms, with further input and analysis from experts and stakeholders. Additionally, consideration of any potential changes to districting in New York City should include an assessment of how discrete changes would affect the overall process. We recommend that the Commission solicit further comments and proposals in this area.

THE DISTRICTING PROCESS, continued

END NOTES

1. N.Y.C., N.Y., CHARTER ch. 2-A.
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* § 50(a)(5).
6. *Id.* § 51(b)-(c).
7. *Id.* § 51(d), (g).
8. *Id.* § 51(e)-(f).
9. 52 U.S.C. § 10304. Alternatively, the City could satisfy this requirement through commencement of an action before a specially convened three judge panel in the U.S. District Court for the District of Columbia for a declaratory judgment that such change complied with the Voting Rights Act. *Id.*
10. 570 U.S. 529 (2013).
11. See *Gray v. Sanders*, 372 U.S. 368, 381 (1963).
12. *Reynolds v. Sims*, 377 U.S. 533, 567-77 (1964); see also *Bd. of Estimate v. Morris*, 489 U.S. 688, 701 (1989).
13. *Brown v. Thompson*, 462 U.S. 835, 842 (1983); see also *Harris v. Ariz. Indep. Redistricting Comm’n*, 136 S. Ct. 1301, 1304 (2016).
14. 52 U.S.C. §§ 10301, 10303(f).
15. *Id.* § 10301(b).
16. See, e.g., *Johnson v. De Grandy*, 512 U.S. 997 (1994); *Thornburg v. Gingles*, 478 U.S. 30 (1986).
17. N.Y.C., N.Y., CHARTER § 52(1).
18. *Id.* § 52(1)(a).
19. *Id.* § 52(1)(b).
20. *Id.* § 52(1)(c).
21. *Id.* § 52(1)(d).
22. *Id.* § 52(1)(e).
23. *Id.* § 52(1)(f).
24. *Id.* § 52(1)(g).
25. *Id.* § 52(2).
26. *Id.* § 52(3).
27. Issue Forum on Civic Engagement and Redistricting, N.Y.C. Charter Revision Comm’n 104-37 (June 21, 2018) [hereinafter June 21, 2018 CRC Forum], https://www1.nyc.gov/assets/charter/downloads/pdf/06_21_18_charterrevisioncomission.pdf.
28. *Id.* at 113-15, 123-24 (statements of Kathay Feng, Exec. Dir., Cal. Common Cause; James Hong, former co-Dir., MinKwon Ctr. for Cmty. Action).

THE DISTRICTING PROCESS, continued

29. Written Testimony from Common Cause/NY to N.Y.C. Charter Revision Comm'n 3 (June 21, 2018).
30. June 21 CRC Forum, *supra* note 27, at 108 (statement of John L. Flateau, Prof., Medgar Evers Coll.); Written Testimony from Common Cause/NY to N.Y.C. Charter Revision Comm'n, *supra* note 29, at 5.
31. June 21, 2018 CRC Forum, *supra* note 27, at 107-08 (statement of John L. Flateau); see also Written Testimony from John L. Flateau, Prof., Medgar Evers Coll., to N.Y.C. Charter Revision Comm'n (June 21, 2018).
32. June 21, 2018 CRC Forum, *supra* note 27, 127-30 (statement of John L. Flateau); Written Testimony from Common Cause/NY to N.Y.C. Charter Revision Comm'n, *supra* note 29, at 5.
33. June 21, 2018 CRC Forum, *supra* note 27, at 113, 131-35.
34. James Barron, Preparing for the 2020 Census, One Address at a Time, N.Y. TIMES (Mar. 9, 2018), <https://www.nytimes.com/2018/03/09/nyregion/census-2020-new-york.html>. The City's current efforts are pursuant to 13 U.S.C. § 16, which provides tribal, state and local governments with the opportunity to review and comment on the U.S. Census Bureau's address list for their jurisdiction prior to each decennial census.
35. N.Y. v. U.S. Dep't of Commerce, No. 1:18-cv-2921 (S.D.N.Y. filed April 3, 2018); Maegan Vazquez, Judge Allows Lawsuit Against Citizenship Question on Census to Go Forward, NY AG Says, CNN (July 3, 2018), <https://www.cnn.com/2018/07/03/politics/citizenship-question-census-new-york-court/index.html>.

PROPOSALS FROM CITY AGENCIES

THEMES AND PROPOSALS FROM CITY AGENCIES

The Commission solicited proposals for potential revisions to the Charter from City agency heads via a letter from the Chair and Executive Director. The letter asked agencies to recommend specific changes to any provision of the Charter that would better enable them to fulfill their mission and serve City residents. In response, agencies submitted a broad range of proposals for the Commission's consideration.

Certain agencies, including the Department for the Aging, the Financial Information Services Agency, the Office of Payroll Administration, the Mayor's Office of Operations (Operations), and the Mayor's Office for People with Disabilities (MOPD), submitted various recommendations to codify offices or make other structural changes to the Charter, including to establish MOPD, the Mayor's Office of Data Analytics, NYC Opportunity, and NYC 311 as entities in the Charter.

Additionally, certain agencies submitted suggestions to improve and streamline various processes prescribed in the Charter. For instance, the Department of Citywide Administrative Services and the Mayor's Office of Contract Services made recommendations to streamline land use review and procurement processes, respectively.

Certain agencies submitted proposals to better engage the public in civic life. For instance, Operations and MOPD proposed revisions to bolster the City's current civic engagement efforts. These proposals ranged from expanding the City's agency-based voter registration program to updating the NYC voter guide and online voter registration tools (the latter of which is still in development) to make them more accessible. Operations and MOPD also submitted ideas about how the Charter might be revised to increase accessibility for people with disabilities. Additionally, Operations presented recommendations to improve the City Administrative Procedure Act, the City's rule-making procedure.

NEXT STEPS

Staff recommends that the Commission continue to study agency proposals and, through the Staff, engage in dialogue with the relevant agencies to learn more about each proposal, including how such proposals may relate to the broader work of the Commission. Where necessary and appropriate, we recommend that Staff meet with subject matter experts to discuss the merits of each proposal.

OTHER ISSUES

In addition to the proposals addressed above, the Commission received comments from the public on a wide variety of additional topics, ranging from affordable housing to the powers, duties, and terms of the City's elected officials. Each comment was carefully considered and reviewed by Staff. Although several of these comments included interesting proposals and raised important questions regarding the role of government and its processes, due to the short timeframe and the public focus on other important issues reflected in the record, Staff recommends that further work in these areas be deferred for future action and consideration. Two such topics—public safety and land use—are discussed at greater length below.

PUBLIC SAFETY

The Commission received several public comments relating to public safety, including specific proposals to change the appointment structure and authority of the Civilian Complaint Review Board (CCRB), to create an independent special prosecutor's office for police misconduct, and to require public disclosure of police disciplinary records.

Background

The CCRB is the largest civilian police oversight agency in the country.¹ A creature of Chapter 18-A of the Charter, the Board is empowered to receive, investigate, mediate, hear, make findings, and recommend actions on complaints against New York City police officers alleging the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.² It has investigated tens of thousands of complaints, leading to discipline for thousands of officers.³

The CCRB consists of 13 members appointed by the Mayor, with five of the members (one from each borough) designated by the City Council, five selected by the Mayor, and the remaining three selected by the Police Commissioner. Other than the three board members appointed by the Police Commissioner, no member of the Board may have experience as a law enforcement professional or have been an employee of the New York City Police Department (NYPD).⁴ The Board's current all-civilian form was adopted in 1993 after extensive debate and public comment following the Tompkins Square Riots of 1988.⁵ CCRB's investigative Staff is also comprised entirely of civilians.⁶

Although the CCRB is empowered to recommend discipline against officers, the Police Commissioner retains final authority over the discipline of members of the NYPD.⁷ The New York State Court of Appeals has recognized that, although the provisions of the Charter and Administrative Code granting disciplinary authority to the Police Commissioner are part of local law, these provisions were originally enacted as state statutes and, as such, "reflect the policy of the State that police discipline in New York City is subject to the Commissioner's authority."⁸

OTHER ISSUES, continued

Themes and Proposals from Public Testimony

The Commission received a proposal from the Campaign for an Elected Civilian Review Board recommending that: (1) members of the CCRB be elected; (2) the CCRB have final disciplinary authority over police officers; and (3) an independent special prosecutor's office be created to investigate and prosecute cases in which police officers are accused of crimes.⁹ Aspects of this proposal were echoed by other organizations and individuals. For example, Mothers for Justice advocated placing the CCRB under the control of a newly created elected official,¹⁰ and the Commission received multiple comments via Twitter supporting an elected CCRB and a special prosecutor for police misconduct.¹¹ Additionally, Women of Color for Progress proposed making disciplinary records of police officers available to the public, including information concerning what disciplinary recommendations have been made by the CCRB and whether those recommendations were adopted by the NYPD.¹²

The Commission received additional comments related to public safety ranging from a proposal to establish a "Commission on Peace"¹³ to calls for an elected Police Commissioner¹⁴ and the addition of more antigun violence programs.¹⁵

Next Steps

Staff recognizes the thoughtful public policy concerns underlying many of these proposals. However, given the additional amount of careful analysis and public input required to meaningfully address these issues and the short timeframe remaining in this particular process, Staff recommends that any proposal to change the CCRB's structure or appointment process be reserved for the future.

OTHER ISSUES

LAND USE

Background

In 1975, the State Charter Revision Commission for New York City proposed, and the voters adopted, a new City Charter that required the City Planning Commission (CPC) to follow a uniform procedure in its review of land use applications.¹⁶ The Uniform Land Use Review Procedure (ULURP) sets forth a single process for the review of a variety of land use actions and describes the roles played in the process by Community Boards, Borough Boards, Borough Presidents, CPC, the City Council, and the Mayor.¹⁷ Most final determinations regarding ULURP applications are made by CPC, which is “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.”¹⁸

Prior to 1989, the Charter gave the Board of Estimate substantial approval authority over a variety of land use decisions, including authority to approve ULURP applications.¹⁹ However, the 1989 Charter Revision Commission, which abolished the Board of Estimate and substituted the City Council into the ULURP process, gave the City Council the authority to review and overrule determinations by CPC.²⁰ Since 1989, the Mayor has had the authority to appoint seven of the 13 CPC members, including the Chair, who also serves as Director of the Department of City Planning (DCP).²¹ One member is appointed by each of the Borough Presidents, and the final member is appointed by the Public Advocate.²² Borough Presidents, Borough Boards, and Community Boards play advisory roles for a variety of land use procedures, including ULURP.²³

Separate processes may also be triggered by certain land use determinations, although a complete account of such processes is beyond the scope of this Report. For example, resolutions by CPC to amend the text of the City’s zoning resolution follow a separate approval procedure,²⁴ and determinations on zoning variances and some special permits are made by the City’s Board of Standards and Appeals.²⁵

In addition to creating ULURP, the 1975 Charter Revision Commission set forth a process, codified at § 197-a of the Charter, for creating “community based plans”—that is, plans for the “development, growth, and improvement of the city and of its boroughs and community districts.”²⁶ Under § 197-a, the Mayor, CPC, DCP, a Borough President, a Borough Board, or a Community Board may initiate such plans. In 1989, the revised Charter required CPC to produce rules and standards for § 197-a plans and shifted the obligation to conduct an environmental review of a proposed plan from the Community Boards to DCP.²⁷

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Themes and Proposals from Public Testimony

The Commission received a variety of comments related to the City's land use processes, and most commonly to the ULURP process. The Commission also convened an Issue Forum featuring an expert panel comprised of advocates, academics, and practitioners to explore potential changes to the Charter related to land use. These comments and proposals are summarized below.

Calls for Broad-based Change

Several experts who testified before the Commission suggested a reimagining of the land use system. Professors Tom Angotti, Ron Shiffman, and Elena Conte suggested that the City should shift from a focus on application-based decision-making toward a "community-based" land use planning process.²⁸ These experts contended that current land use processes do not adequately facilitate community input and that they prioritize short-term concerns and over long-term community planning.²⁹ They also argued that the current land use framework weighs economic factors too heavily and does so at the expense of social and environmental factors.³⁰

Consistent with these calls for a planning-based approach to land use, other commenters recommended a renewed focus on the development of community-based § 197-a plans. Council Member Ben Kallos, among others, recommended the creation of an Office of Community-Based Planning to assist communities and Community Boards in land use and planning.³¹ One member of the public suggested that each Community Board present the City with a district-wide community plan every 10 years.³² Conte, Angotti, Kallos, and others advocated for land use decisions to be required to conform to § 197-a plans.³³ Kallos proposed that Community Boards, jointly with Borough Presidents and Borough Boards, be given the ability to override land use actions.³⁴

"It may be that the ULURP process for all its faults is simply a reflection of how difficult these land use choices are and that the controversy is not a reflection of a broken process at all..."

Jessica Katz, Citizen's Housing Planning Council

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In contrast, the Real Estate Board of New York (REBNY) encouraged the Commission to “preserve and strengthen as-of-right development,” which REBNY asserted is “under attack in a variety of venues.”³⁵ For example, REBNY proposed streamlining the land use process by amending the Charter to allow CPC to make final determinations on all administrative land-use permits, such as certifications, authorizations, and special permits.³⁶ This proposed amendment would remove the role of the City Council from the CPC Special Permit process.³⁷ Similarly, REBNY proposed that all § 197-a plans “sunset.”³⁸ Whether the City’s land use policies should emanate from a centralized planning authority or, alternatively, from a woven patchwork of community plans, appears to be a point of genuine disagreement among the commenters addressing the Commission.

While several criticisms of the City’s land use processes related to substantive outcomes, David Karnovsky, a land use attorney and former General Counsel of DCP, acknowledged that “no process guarantees a particular result.”³⁹ He observed that while the Charter identifies players in the process and establishes the procedures that are followed, the Charter “doesn’t express a point of view or perspective about what those policies and decisions should consist of.”⁴⁰

Proposals to Change the ULURP Process

Experts and other commenters also proposed targeted changes to particular aspects of ULURP and its related processes. Angotti and Adrien Weibgen, Equitable Neighborhoods Practice Staff Attorney at the Urban Justice Center’s Community Development Project, expressed concerns about the pre-ULURP process, arguing that many land use decisions are pre-negotiated by stakeholders outside of public view, undermining ULURP as a process for meaningful and transparent public review of land use decisions.⁴¹

Some commenters proposed reforms seeking to regulate the pre-ULURP process, including suggestions to increase transparency and public input by adding timing requirements, requiring pre-ULURP meetings to be publicized, and requiring ULURP applications to be disclosed.⁴²

Other commenters proposed amendments to the ULURP process itself, such as an expansion of the applicability of ULURP to land owned by the New York City Housing Authority.⁴³ Commenters also proposed that additional considerations be embedded in the ULURP process, including assessment of the impact of land use actions on climate change, housing, and commercial rental prices.⁴⁴

Still other comments related to the post-ULURP process. Several individuals recommended the establishment of a time limit for the validity of ULURP approval.⁴⁵ Paula Segal, an attorney with Community Development Project of the Urban Justice Center, stated that some successful applicants continue to “utilize approvals from 2004 and 2006.”⁴⁶ Taken together, these proposals seek to increase transparency, consistency, and the opportunity for public scrutiny of land use related proposals.

Several experts at the Commission’s land use Issue Forum underscored the complexity of the current land use system and cautioned against broad-based change in this area without extensive study. Karnovsky observed that ULURP has “stood the test of time,” and stated that the Commission should not take up major changes to the process

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without “very significant investigation.”⁴⁷ Moses Gates, the Regional Plan Association’s Vice President for Housing and Neighborhood Planning, observed that “compared to many other municipalities, ULURP is more transparent, more community involved[,] and more predictable for developers than many, many other land use processes in the region.”⁴⁸ The Inclusive City working group expressed a similar sentiment.⁴⁹ Jessica Katz, Executive Director of the Citizens Housing Planning Council, testified that “[i]t may be that the ULURP process for all its faults is simply a reflection of how difficult these [l] and [u]se choices are and that the controversy is not a reflection of a broken process at all, but of a productive push and pull among stakeholders.”⁵⁰

Other Proposals

The Commission received a variety of other land use related proposals. Some related to the Landmark Preservation Commission (LPC). REBNY characterizes the current landmarks process as “extremely restrictive” and based “solely on criteria unrelated to the city’s broader needs.”⁵¹ REBNY suggests reorganizing the LPC as a division of the DCP and expanding the factors that the LPC may consider, including economic factors.⁵² One member of the public advocated for the popular election of LPC Commissioners.⁵³

Various members of the public commented on the protection of the public use and benefit of public land, and offered recommendations regarding its disposition and use. Several commenters urged the Commission to consider enhanced enforcement of deed restrictions held for the public benefit and the prioritization of community land trusts in the disposition of public land.⁵⁴ Segal, among others, recommended prohibiting City agencies from holding land that they are not using in an inventory separate from the general City inventory.⁵⁵

Lastly, Gates recommended a revision of the City’s existing “Fair Share” process to include consideration of the availability of housing.⁵⁶ Under current law, each year, the Mayor must develop a Citywide Statement of Needs, developed in accordance with the City’s “Fair Share” criteria.⁵⁷ This Citywide Statement of Needs must include sites for new or expanded facilities and for closures or capacity reductions in existing facilities anticipated during the ensuing two years.⁵⁸

Next Steps

Public testimony to the Commission indicates that New Yorkers are interested in examining the roles and processes surrounding urban and community planning, capital budgets, land use, and the environment. Questions about the role of community planning and the appropriate role of government in land use are intertwined with a variety of other adjacent policy matters. As several experts testified, these issues require thorough review and a major public conversation about the future of the City’s built environment.

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The Commission expressed some interest in this topic area, dedicating a portion of an Issue Forum to exploring expert opinion on land use. However, considering the complexity of this issue, Staff recommends that the Commission defer further consideration of land use to future Commissions. Staff recommends that future Commissions conduct additional outreach to address the thoughtful concerns that the public has expressed during the current process.

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END NOTES

1. About, N.Y.C. CIVILIAN COMPLAINT REVIEW BD., <https://www1.nyc.gov/site/ccrb/about/history.page> (last visited July 9, 2018).
2. N.Y.C., N.Y., CHARTER ch. 18-A, § 440(c).
3. N.Y.C. CIVILIAN COMPLAINT REVIEW BD., *supra* note 1.
4. CHARTER ch. 18-A, § 440(b).
5. N.Y.C. CIVILIAN COMPLAINT REVIEW BD., *supra* note 1.
6. CHARTER ch. 18-A, § 440(c)(5).
7. See, e.g., *id.* ch. 18, § 434, ch. 18-A, § 440; N.Y.C., N.Y., ADMIN. CODE § 14-115; 38 R.C.N.Y. §§ 15-12, 15-17.
8. See *Patrolmen’s Benevolent Ass’n v. N.Y. State Pub. Emp. Relations Bd.*, 6 N.Y.3d 563, 574 (2006).
9. Written Testimony from Elias Holtz, The Campaign for an Elected Civilian Review Bd., to N.Y.C. Charter Revision Comm’n 9 (May 9, 2018).
10. 1st Bronx Borough Hearing, N.Y.C. Charter Revision Comm’n 17 (Apr. 30, 2018) [hereinafter Apr. 30, 2018 CRC Hearing] (statement of Juanita Young), <https://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180430.pdf>.
11. See, e.g., Ashley Writes (@writes_ashley), TWITTER (June 21, 2018, 4:09 AM), https://twitter.com/writes_ashley/status/1009936425205321732; H Shawn Quick (@hShawnQuick), TWITTER (June 21, 2018, 8:03 AM), <https://twitter.com/hShawnQuick/status/1009814016787664897>; Elias (@eliasholtz), TWITTER (June 20, 2018, 7:57 PM), <https://twitter.com/eliasholtz/status/1009631484100206594>; Demetrius Valmas (@DemetriusValmas), TWITTER (June 21, 2018, 8:01 AM), <https://twitter.com/DemetriusValmas/status/1009813619700314112>, Susan Williams (@drsusan762), TWITTER (June 21, 2018, 2:22 PM), <https://twitter.com/drsusan762/status/1009909501011603456>.
12. Written Testimony from Cristina Gonzalez et al., Women of Color for Progress, to N.Y.C. Charter Revision Comm’n 2 (May 9, 2018).
13. See, e.g., Apr. 30, 2018 CRC Hearing, *supra* note 10, at 30-32 (statement of Saf Musa Morala).
14. See, e.g., 1st Queens Borough Hearing, N.Y.C. Charter Revision Comm’n 61-66 (May 3, 2018) (statement of Shirley Phipps), <https://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180503.pdf>.
15. 1st Staten Island Borough Hearing, N.Y.C. Charter Revision Comm’n 55-56 (Apr. 25, 2018) (statement of Mike Perry), <https://www1.nyc.gov/assets/charter/downloads/pdf/meeting-transcript-20180425.pdf>.
16. STATE CHARTER REVISION COMM’N FOR N.Y.C., FINAL REPORT OF THE STATE CHARTER REVISION COMMISSION FOR NEW YORK CITY 20 (1975).
17. CHARTER ch. 8, §§ 197-c, 197-d.
18. *Id.* § 192(d).
19. N.Y.C. CHARTER REVISION COMM’N, FINAL REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION 19-21 (1989), https://www1.nyc.gov/assets/charter/downloads/pdf/1989_final_report.pdf.

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20. *Id.*; CHARTER ch. 8, § 197-d(a)-(b). The detailed mechanics of this process are more complicated. The Mayor and the Council have a graduated series of approvals, depending on the circumstances.
21. CHARTER ch. 8, §§ 191(a), 192(a).
22. *Id.* § 192(a).
23. *Id.* §§ 197-c(e)-(g), 200(a), 201(a).
24. *Id.* § 200(a)(1).
25. See *id.* ch. 27, § 668.
26. *Id.* ch. 8, § 197-a; STATE CHARTER REVISION COMM'N FOR N.Y.C., *supra* note 16, at 20.
27. CHARTER ch. 8, § 197-a(b). See also Frederick A.O. Schwarz, Jr. & Eric Lane, *The Policy and Politics of Charter Making: The Story of New York City's 1989 Charter* (pt. 2), 42 N.Y. L. SCH. L. REV. 775, 868 (1998).
28. See Issue Forum on Land Use and Community Boards, N.Y.C. Charter Revision Comm'n 113-14, 118-19, 130-31 (June 19, 2018) [hereinafter June 19, 2018 CRC Forum] (statements of Ron Shiffman, Professor, Grad Ctr. For Planning, Pratt Inst., Elena Conte, Dir. of Policy, Pratt Ctr. for Cmty. Dev., and Tom Angotti, Emeritus Professor, Hunter Coll.), https://www1.nyc.gov/assets/charter/downloads/pdf/06_21_18_charterrevisioncomission.pdf.
29. See, e.g., *id.* at 130 (statement of Tom Angotti) (arguing that "the problem is the Department of City Planning is misnamed. It's a zoning department. They do zoning. They don't do planning.")
30. See *id.* at 109-10, 115-16 (statements of Ron Shiffman and Elena Conte).
31. Web Portal Message from Benjamin Kallos, Council Member, N.Y.C. Council, to N.Y.C. Charter Revision Comm'n (June 19, 2018, 14:33 EST). See also INCLUSIVE CITY, STRATEGIES TO ACHIEVE MORE EQUITABLE AND PREDICTABLE LAND USE IN NEW YORK CITY 9-10 (Jan. 2018), <http://library.rpa.org/pdf/Inclusive-City-NYC.pdf>; June 19, 2018 CRC Forum, *supra* note 28, at 106-07, 130 (statements of Tom Angotti and Moses Gates, Vice President, Reg'l Plan Ass'n).
32. Apr. 30, 2018 CRC Hearing, *supra* note 10, at 72 (statement of Michael Beltzer).
33. Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 31, app. at 5; June 19, 2018 CRC Forum, *supra* note 28, at 119, 130 (statements of Tom Angotti and Elena Conte).
34. Web Portal Message from Benjamin Kallos to N.Y.C. Charter Revision Comm'n, *supra* note 31, app. at 6.
35. Written Testimony from Real Estate Bd. of N.Y. to N.Y.C. Charter Revision Comm'n, at 1 (June 19, 2018).
36. *Id.* at 1-2.
37. See, e.g., CHARTER ch. 8, §§ 197-d, 200(b).
38. Written Testimony from Real Estate Bd. of N.Y. to N.Y.C. Charter Revision Comm'n, *supra* note 35, at 3.
39. June 19, 2018 CRC Forum, *supra* note 28, at 93 (statement of David Karnovsky).
40. *Id.* at 84.
41. See *id.* at 98-101, 120-21 (statements of Tom Angotti and Adrien Weibgen, Staff Attorney, Urban Justice Ctr.). See also INCLUSIVE CITY, *supra* note 31, at 12-15; E-mail from Nancy Preston, Moving Forward Unidos, to N.Y.C. Charter Revision Comm'n (May 6, 2018, 16:06

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EST). Angotti also raised questions regarding environmental review in the pre-ULURP process, arguing that the existing review process includes insufficient emphasis on the mitigation of environmental hazards. See June 19, 2018 CRC Forum, *supra* note 28, at 99-100 (statement of Tom Angotti).

42. See June 19, 2018 CRC Forum, *supra* note 28, at 99-101, 120 (statement of Tom Angotti); INCLUSIVE CITY, *supra* note 31, at 14; Written Testimony of Paula Segal, Staff Attorney, Urban Justice Ctr., to N.Y.C. City Charter Revision Comm'n, at 2 (May 7, 2018); Web Portal Message from Sunita Prasad to N.Y.C. Charter Revision Comm'n (May 6, 2018, 14:27 EST); Web Portal Message from Alice Forbes Spear, 462 Halsey Cmty. Farm, to N.Y.C. Charter Revision Comm'n (May 6, 2018, 14:17 EST).
43. See June 19, 2018 CRC Forum, *supra* note 28, at 125 (statement of Adrien Weibgen); Written Testimony from Cristina Gonzalez et al. to N.Y.C. Charter Revision Comm'n, *supra* note 12, at 1; Web Portal Message from Nancy Bruning to N.Y.C. Charter Revision Comm'n (June 12, 2018, 13:56 EST); Web Portal Message from Sunita Prasad to N.Y.C. Charter Revision Comm'n, *supra* note 42; Web Portal Message from Alice Forbes Spear to N.Y.C. Charter Revision Comm'n, *supra* note 42.
44. Written Testimony of Paula Segal to N.Y.C. Charter Revision Comm'n, *supra* note 42, at 2; Web Portal Message from Sunita Prasad to N.Y.C. Charter Revision Comm'n, *supra* note 42; Web Portal Message from Alice Forbes Spear to N.Y.C. Charter Revision Comm'n, *supra* note 42.
45. See Written Testimony of Paula Segal to N.Y.C. Charter Revision Comm'n, *supra* note 42, at 1; Web Portal Message from Sunita Prasad to N.Y.C. Charter Revision Comm'n, *supra* note 42; Web Portal Message from Alice Forbes Spear to N.Y.C. Charter Revision Comm'n, *supra* note 42.
46. See 1st Brooklyn Borough Hearing, N.Y.C. Charter Revision Comm'n 40 (May 7, 2018) [hereinafter May 7, 2018 CRC Hearing] (statement of Paula Segal, Staff Attorney, Urban Justice Ctr.).
47. June 19, 2018 CRC Forum, *supra* note 28, at 93 (statements of David Karnovsky).
48. *Id.* at 103 (statement of Moses Gates, Vice President, Reg'l Plan Ass'n).
49. See also INCLUSIVE CITY, *supra* note 31, at 12.
50. June 19, 2018 CRC Forum, *supra* note 28, at 98 (statement of Jessica Katz, Exec. Dir., Citizens Hous. Planning Council).
51. Written Testimony from Real Estate Bd. of N.Y. to N.Y.C. Charter Revision Comm'n, *supra* note 35, at 2.
52. *Id.*
53. May 7, 2018 CRC Hearing, *supra* note 46, at 100 (statement of Suwen Cheong).
54. Written Testimony from Cristina Gonzalez et al. to N.Y.C. Charter Revision Comm'n, *supra* note 12, at 1; Written Testimony from Paula Segal to N.Y.C. Charter Revision Comm'n, *supra* note 42, at 2; Web Portal Message from Sunita Prasad to N.Y.C. Charter Revision Comm'n, *supra* note 42; Web Portal Message from Alice Forbes Spear to N.Y.C. Charter Revision Comm'n, *supra* note 42.
55. Written Testimony from Paula Segal to N.Y.C. Charter Revision Comm'n, *supra* note 42, at 2; Written Testimony from Cristina Gonzalez et al. to N.Y.C. Charter Revision Comm'n, *supra* note 12, at 1.

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56. See June 19, 2018 CRC Forum, *supra* note 28, at 107-08 (statement of Moses Gates). Segal and Dr. Angotti also recommended revising the fair share criteria, but without great specificity. *Id.* at 102-03 (statement of Tom Angotti, Emeritus Prof., Hunter Coll.); Written Testimony from Paula Segal to N.Y.C. Charter Revision Comm'n, *supra* note 42, at 3.
57. Fair Share criteria are "designed to further the fair distribution among communities of the burdens and benefits associated with city facilities." CHARTER ch. 8, § 203(a). See also 62 R.C.N.Y. app. A.
58. CHARTER ch. 8, § 204(a).