



**ADVANCING ACCOUNTABILITY:
BALANCED BUDGETS AND
ADMINISTRATIVE ETHICS**

**FINAL REPORT OF THE 2004-2005 NEW
YORK CITY CHARTER REVISION
COMMISSION**

EXECUTIVE SUMMARY

AUGUST 2, 2005

New York City Charter Revision Commission
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To request a copy of the complete final report – including the adopted ballot questions and related abstracts, along with this Executive Summary – please contact the Commission at (212) 676-2060 or by e-mail at charter@dcas.nyc.gov.

EXECUTIVE SUMMARY

On August 19, 2004, Mayor Michael R. Bloomberg appointed Dr. Ester R. Fuchs as Chair of this Charter Revision Commission, along with twelve other distinguished leaders from the civic, academic, and business communities as Commissioners. The Mayor initially asked this Commission, in reviewing the entire New York City Charter, to pay special attention to fiscal stability, administrative judicial reform, and agency efficiency, effectiveness and accountability.

On August 26, 2004, this Commission held its first public meeting. At that meeting, Chair Fuchs restated the Mayor's request, but also stressed that this Commission was committed to reviewing the entire Charter, and encouraged the other Commissioners, the public and City agencies to suggest Charter-related reforms on any topic. Following the Commission's two initial meetings, a series of three public meetings, on December 8, 2004, January 19, 2005, and February 9, 2005, which focused, respectively, on fiscal stability, administrative judicial reform, and agency efficiency, effectiveness and accountability, established a "baseline" understanding of these topics.

Following these "baseline" meetings, on March 4, 2005, the Chair released *SUMMARY OF ISSUES UNDER CONSIDERATION FOR CHARTER REVISION*, which articulated principles, summarized below, to guide the Commission and the public as they embarked on a series of five public hearings in all the boroughs of the City.

- The City must continue its exemplary fiscal planning and budgeting practices after the financial controls imposed by State law expire.

- All City administrative tribunals must have the highest standards of adjudicatory practice to ensure that disputes continue to be resolved fairly, impartially, efficiently and consistently.
- Past Charter changes must be reviewed for unintended consequences that impede agencies' ability to deliver services effectively and efficiently, reforming them to ensure accountability while preserving flexibility.
- All aspects of the Charter must be reviewed, with the Commission open to all ideas that will strengthen New York City's future and promote innovation in municipal governance.

The *SUMMARY OF ISSUES UNDER CONSIDERATION FOR CHARTER REVISION* outlined the areas which the Commission had been focusing on and sought public comment on the Commission's initial ideas, as presented by the Chair, for Charter revision in those areas.

The first public hearing, on March 7, 2005, was in Queens, followed by hearings on March 16th, in the Bronx, March 23rd, in Brooklyn, March 30th, on Staten Island, and finishing on April 4th in Manhattan. At these public hearings, the Commission heard from the public on a variety of issues. In addition, immediately preceding three of the public hearings, the Commission held a forum to hear expert testimony on each of the topics. The first expert forum, on administrative judicial reform, took place in Queens on March 7th. The second expert forum, on fiscal stability, took place in Brooklyn on March 23rd. The last expert forum, on agency efficiency, effectiveness and accountability, took place in Manhattan on April 4th.

Following the series of public hearings and expert forums, the Commission held a series of four public meetings—May 3, May 16, May 25, and June 9—to discuss testimony received during the public hearings and to hear staff recommendations for

possible ballot proposals and consider them in light of the earlier public hearings and expert forums. On June 9, 2005, the Commission voted to adopt a set of preliminary recommendations for consideration and discussion by the public, which are described in its *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION*.

The Commission held a series of public hearings in June to hear public comment on its *PRELIMINARY RECOMMENDATIONS FOR CHARTER REVISION*. Following this series of public hearings, the Commission held a series of public meetings—July 5, and August 1 and 2—to discuss the public comments and revise the proposed recommendations to reflect certain of such comments. At its August 1, 2005 public meeting, the Commission voted to defer, for future consideration, its third proposal, which was to create a commission on reporting. At its August 2, 2005 public meeting, the Commission voted to recommend its two remaining proposals for inclusion on the ballot, described below, and release this *ADVANCING ACCOUNTABILITY: BALANCED BUDGETS AND ADMINISTRATIVE ETHICS*, summarizing the two proposals, among other things, to the public. The Commission also voted to adopt a resolution and ballot questions and related abstracts attached to this *ADVANCING ACCOUNTABILITY: BALANCED BUDGETS AND ADMINISTRATIVE ETHICS* as Appendices A-1 and A-2.

Proposal on Balanced Budget and Other City Fiscal Requirements

Currently, a New York State law (called the New York State Financial Emergency Act for the City of New York), which was enacted in response to the City's 1975 fiscal crisis, generally regulates certain aspects of the City's finances. Parts of that State law will expire on July 1, 2008, while the remaining parts will expire at a later date,

if certain City debt has been paid or discharged. These proposed Charter changes would be subject to that State law while it remains in effect. The changes would generally establish in the City Charter, and therefore codify as City law, without an expiration date, the following elements of that State law:

Balanced Budget/No Deficit. The proposed changes, which are generally derived from the State law on the City's finances, require that the City prepare, each year, a budget balanced in accordance with generally accepted accounting principles (GAAP), and end each fiscal year without a deficit, also consistent with those principles. The Charter currently requires that real property tax rates must be fixed annually so as to produce a City budget that is balanced in accordance with generally accepted accounting principles, but contains no similar requirements concerning how the City must end the fiscal year. The current State law imposes stringent controls in the event that the City ends its fiscal year with a deficit of more than \$100 million. The proposed Charter change requires that the City end its fiscal year without any deficit, and does not impose similar controls, but instead requires the Mayor to take all actions necessary, in accordance with law, to ensure that the City does not end its fiscal year with any deficit.

Financial Plan. The proposed changes, which are generally derived from the State law on the City's finances, require that the Mayor, each year, develop a four-year financial plan for the City, that complies with general standards that include: (i) the City expense budget must be balanced, in accordance with generally accepted accounting principles; (ii) the City may not issue debt that would be inconsistent with

its financial plan; (iii) the City must provide for the payment of its debts and for adequate funding of State or federally required programs; (iv) projections of revenues, expenditures and cash flow must be based on reasonable assumptions; (v) a general reserve of at least \$100 million must be provided for each fiscal year to cover shortfalls in projected revenues or increases in projected expenditures; and (vi) if the City ends a fiscal year with a deficit, the City must pay down that deficit in the next fiscal year.

The proposed changes require that the City's four-year financial plan be modified on at least a quarterly basis. The proposed changes differ from the State law on the City's finances by expressly tying the timing of the quarterly financial plan modifications to significant steps in the budget process already set forth in the City Charter. The adopted budget also must be consistent with the standards applicable to the financial plan. Changes in generally accepted accounting principles or in their application to the City could be phased in if the Mayor determines that their immediate application would result in a substantial adverse impact upon the delivery of essential services (under the State law, a State board, not the Mayor, currently makes this determination).

Short-Term Debt. The proposed changes, which are generally derived from the State law on the City's finances, expand upon the Charter's current restrictions on the issuance of short-term debt by the City. The City may issue short-term debt to fund a projected deficit or in anticipation of its receipt of funds from taxes, revenues, and bonds. The proposed changes would limit the amount of short-term debt that the

City could issue in several ways, including limiting the amount of short-term debt issued in anticipation of taxes and revenues to ninety percent of, respectively, the real estate taxes and revenues available to repay that debt and limiting the amount of short-term debt issued in anticipation of bond proceeds to fifty percent of the amount of bonds issued in the previous twelve months.

The proposed changes would limit the duration of the short-term debt in various ways, including requiring that short-term debt issued in anticipation of taxes and revenues mature by the end of the fiscal year in which it was issued and short-term debt issued in anticipation of bond proceeds mature within six months of its issuance. However, debt issued in anticipation of revenues may be renewed for a limited period, provided the Mayor certifies that the revenue against which the debt was issued has been properly reflected in the financial plan (under the State law, a State board, not the Mayor, currently makes this certification); debt issued in anticipation of bond proceeds may be renewed for a period of up to six months. The proposed changes also provide that bond proceeds must be held in trust to repay certain outstanding obligations and restrict the City's issuance of budget notes used to fund projected expense budget deficits.

Annual Audit. The Charter currently requires that an annual audit be made of the City's accounts. The proposed changes, which are generally derived from the State law on the City's finances, would state conditions for that audit, including requirements that the audit be performed in accordance with generally accepted auditing standards and that the City make available to the auditors City books,

records, and other materials, as well as City officers and employees, to permit the auditors to complete the audit and issue their report within four months of the end of the City's fiscal year.

Proposal on Ethics Code for City Administrative Judges

At the present time, the Administrative Law Judges (ALJs) and Hearing Officers who preside over matters in the City's administrative tribunals are generally not subject to a uniform code of professional conduct that applies to their adjudicatory duties. They are subject only to the City's general Conflicts of Interest Law. These tribunals, such as the Environmental Control Board and the Taxi and Limousine Commission's tribunal, while not courts, have the power to adjudicate violations of the City's laws and regulations.

These proposed changes to the City Charter require the Mayor and the Chief ALJ of the Office of Administrative Trials and Hearings (which is a City agency with authority to conduct administrative hearings on behalf of other City agencies) to jointly issue rules establishing one or more code or codes of professional conduct for the City's ALJs and Hearing Officers. The Mayor and Chief ALJ also may amend the rules as appropriate. The proposal requires the Mayor and Chief ALJ to consult with the City's Conflicts of Interest Board, the Commissioner of Investigation and all affected agency and tribunal heads before promulgating the new rules or amending them. ALJs and Hearing Officers would be subject to disciplinary action for violating the new rules.