

**Testimony submitted to the
New York City Charter Revision Commission**

by

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I am the executive director of the Fiscal Policy Institute, a nonprofit research organization with offices in Latham and New York City. I was the director of research for the 1987-88 and 1989 New York City Charter Revision Commissions.

These comments deal with the Charter Commission's preliminary recommendations on "agency efficiency, effectiveness and accountability." Yesterday, I submitted comments on the preliminary recommendations regarding "fiscal stability."

The Charter Revision Commission's Preliminary Recommendations of June 10, 2005, solicited comments on a draft of possible charter text creating a Commission on Public Reporting and Information. I have read this draft language and the accompanying explanatory material and have the following comments and questions.

1. The "draft possible charter text" would create a Commission with the power to recommend changes in the charter that would take effect unless rejected by either (a) the Mayor and a majority of the Council; or (b) a two-thirds majority of the Council over the objection of the Mayor to a rejection by a simple majority of the Council. This Commission would consist of six (6) individuals appointed by Mayor and three (3) elected officials. Given the nature of the subjects that could be covered by this Commission's recommendations (particularly the waiving of Charter-required reporting requirements), it seems extremely inappropriate that two-thirds of the members should be Mayoral appointees.

2. Three (3) of the six (6) members appointed by the Mayor would be city officials who would be serving by virtue of their offices. The "draft possible charter text" indicates that these three officials may be represented at the Commission's meetings "by a delegate of such member." There is no indication that these surrogates would not be authorized to vote on changes in the Charter that would take effect unless rejected in the manner described in item #1 above. This seems like an incredible power to vest in someone designated by these city officials who are members of the Commission by virtue of their offices. There is no language in the "draft possible charter text" on who these city officials could (or could not) designate as their delegates but it is likely that their designees would be individuals who work in the staff offices that these individuals head. While such individuals may be great public servants in terms of the work they do for the City government, it seems strange to think that people in such roles should be making decisions on what information should be reported to the public and what information should not be reported.

3. The Commission that would be created by the “draft possible charter text” would be chaired by the director of the Mayor’s Office of Operations. Despite the fact that the people who have held this position over time have been outstanding individuals, it is inappropriate to have such an appointed official chairing a commission that includes (and should include even more) independent, elected officials.

4. The commentary on this proposal (in the June 10, 2005, “preliminary recommendations” document) never mentions that a very similar commission with a more appropriate and more balanced membership (and with a more balanced charge) is already established by the Charter but that this other Commission has never been given the resources that it needs to do its job. Here are the provisions of the Charter on this other Commission:

§ 1061. Commission on public information and communication.

a. There shall be a commission on public information and communication which shall consist of the public advocate, as chair, the corporation counsel or the delegate of such officer, the director of operations or the delegate of such officer, the commissioner of the department of records and information services or the delegate of such officer, the commissioner of information technology and telecommunications or the delegate of such officer, the president of the WNYC communications group or the delegate of such officer, and one council member elected by the council, all of whom shall serve on the board without compensation. In addition, there shall be four other members, each appointed for a four-year term, who shall not hold or seek public or political party office or be public employees in any jurisdiction, except the representative of the community board as set forth herein, to be appointed as follows: two by the mayor, one of whom is or has been a representative of the news media and one of whom shall be a member of a community board; one by the public advocate; and one by the borough presidents acting as a group. Such members shall receive a per diem compensation for each calendar day they perform the work of the commission. No such members shall serve for more than two consecutive four-year terms. All initial appointments shall be made by the first day of March, nineteen hundred ninety.

b. Members may be removed by the mayor for cause after notice and opportunity to be heard. Members shall serve until their successors have been appointed.

c. The commission shall appoint an executive director, a general counsel and such other officers, employees, and consultants as are necessary to fulfill its duties, within appropriations available therefor.

d. The commission shall:

(1) undertake, by itself, or in cooperation with other entities, activities to educate the public about the availability and potential usefulness of city produced or maintained information and assist the public in obtaining access to such information;

(2) review (i) all city information policies, including but not limited to, policies regarding public access to city produced or maintained information, particularly, computerized information; (ii) the quality, structure, and costs to the public of such information; (iii) agency compliance with the various notice, comment, and hearing provisions of the charter and other laws applicable to city agencies; and (iv) the usefulness and availability of city documents, reports, and publications;

(3) assist city agencies in facilitating public access to their meetings, transcripts, records, and other information, and monitor agency compliance with the provisions of the charter, and other laws which require such public access;

(4) hold at least one public hearing each year on city information policies and issue at least one report

each year with such recommendations as the commission deems advisable;

(5) on the request of any member of the public, elected official, or city agency, render advisory opinions regarding the application of those provisions of the charter or other laws which require public access to meetings, transcripts, records and other information. Such advisory opinions shall be indexed by subject matter and maintained on a cumulative basis;

(6) make recommendations regarding: (i) the application of new communications technology to improve public access to city produced or maintained information; (ii) the distribution of information to the public about the purposes and locations of the city's service delivery facilities; and (iii) programming for the municipal cable channels and broadcasting system.

§ 1062. Public data directory.

a. The commission shall publish annually a directory of the computerized information produced or maintained by city agencies which is required by law to be publicly accessible. Such directory shall include specific descriptions of the contents, format and methods of accessing such information, and the name, title, office address, and office telephone number of the official in each agency responsible for receiving inquiries about such information.

b. The mayor shall transmit to the commission such information as the commission requires to compile and update the public data directory. The mayor shall also ensure that all agencies provide the commission with such assistance and information as the commission requires.

5. The Commission that would be created by the “draft possible charter text” would be authorized to recommend, subject to the type of legislative veto process described above, the “waiving” (which I think means “elimination” in this context) of any charter provision that “mandates the establishment of a commission, committee, board, task force or other similar body that is advisory in nature and exercises no sovereign power.” In addition to the comments presented above, this possible charter language uses a concept (“sovereign power”) that is neither defined nor used any place else in the charter. Moreover, some might argue that the city is, in fact, just a creature of the state and that it has no “sovereignty.” In the American federal system, “sovereignty” is divided more than in most other nations leaving us with a system that is frequently referred to as being one of “dual sovereignty.” But, I have not heard of our constitutional order being referred to as one of “tripartite sovereignty.”

6. The “draft possible charter text” provides that “In conducting reviews pursuant to this section, the commission shall solicit the views of groups, organizations or entities representing the interests of persons and entities that are the subject of or are otherwise affected by the requirement under review.” What about frequent (and occasional) users of the information included in Charter-required reports?

7. Later in the “draft possible charter text,” it is provided that when recommendations to waive a requirement of the Charter are filed with the Mayor and the Council that “Copies shall also be provided promptly to groups, organizations or entities from which the commission has solicited input in accordance with” the consultation process referred to in Item #6 above. This seems like a very closed process. Just because “input” was not initially solicited from an organization does not mean that such an organization should not be made aware of these proposals and given the opportunity to comment on them before the Council takes action. If the Charter Commission decides to propose a process of the type included in the “draft possible charter text,” it should at

the very least make it a more open and participatory process.

8. The two criteria included in the “draft possible charter text” for determining the usefulness of the content of Charter-mandated reports seems very narrow. They are as follows: (1) “whether the report provides useful information for evaluating the results of programs, activities and functions and their effectiveness in achieving their goals and objectives,” and (2) “whether the report provides useful information for assessing the effectiveness of the city’s management of its resources.” While these are important and noble objectives, they are clearly not the only reasons for information to be made available to the public in periodic or occasional reports. What about reports related to land use, land use decision making, and social indicators; tax policy reports; campaign finance board reports; department of investigations reports; etc? It seems far fetched to argue that the only information that should be made available to the public on a regular basis is information that is relevant to evaluating or assessing the effectiveness of government programs or the city’s management of its resources. These are important types of information but they are only one type of the information that a well-run government in a democracy needs to make available to its voters, residents, taxpayers, etc.

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Overall, I think that the “draft possible charter text” on agency reporting is not thought out clearly enough and that it represents a form of “overkill.”

To deal with cases of duplicative reporting requirements, A simple provision allowing for the use of single reports to meet one or more city, state and/or federal reporting requirements could be recommended for inclusion in the charter. For example, some generalized version of the following provision (Section 7 (1) (g)) of the Financial Emergency Act (which is being reviewed by the Charter Revision Commission for other purposes) might prove appropriate for this purpose:

In order to avoid duplicative reports and reporting requirements, to the extent that the city is required to submit monthly or quarterly financial reports to the department of the treasury pursuant to any agreement or arrangement made in connection with federal guarantees of notes or bonds issued by the city or a state financing agency, copies of such reports shall be submitted to the board in satisfaction of the monthly and quarterly reporting requirements set forth above, together with such additional information as the board may require.

For a more comprehensive review of the Charter’s various reporting requirements, a new Charter Commission could be created in January with the assignment to review these aspects of the Charter in detail and to recommend whatever specific changes it deemed appropriate for voter approval in November 2006 or November 2007. This would be far preferable to creating an administrative body with the power to reduce the flow of government information to the public through a process that does not require explicit approval by either the voters or the Council.