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## TESTIMONY BEFORE THE 2019 CHARTER REVISION COMMISSION

Monday, March 11, 2019

“Testimony on Charter-Defined Budget and Management Practices”

Thank you for the opportunity to submit testimony on behalf of the Citizens Budget Commission (CBC). CBC’s mission is to achieve constructive change in the finances and services of New York State and New York City government.

While many worthwhile ideas will be proposed to and discussed by this Commission, CBC believes the Commission will serve New Yorkers best by focusing on and proposing only those changes essential to the Charter’s purpose, which is to define the core structures, powers, and processes of New York City government. Furthermore, the Commission should consider removing administrative provisions not appropriate for the Charter or vestigial elements that are no longer relevant.

The current Charter generally provides a strong budgeting and financial management framework that has served the city well and has helped produce balanced, on-time budgets since the early 1980s. CBC recommends the Charter be modified selectively and offers five specific proposals for budgeting and financial management. CBC also has identified four areas where the current processes should be maintained and three areas of legitimate concern for which the solutions require managerial and operational changes, rather than Charter amendments. Finally, external to fiscal management, CBC urges caution when considering governance changes.

### **Improvements to the Charter’s Budgeting and Management Provisions**

1. ***Allow for and Create a Rainy Day Fund***: The Charter’s balanced budget requirement in Section 258(a) is the foundation of good financial management in New York City.<sup>1</sup> However, it precludes the City from having a Rainy Day Fund (RDF) since the use of prior year revenues to fund current year expenditures would result in a deficit as defined by generally accepted accounting principles (GAAP). This requirement and limitation also are in State law and perhaps in certain bond covenants.<sup>2</sup>

RDFs allow municipalities to accumulate reserves during good economic times to help weather economic contractions. A recent [CBC analysis](#) estimated that a recession could result in a tax revenue shortfall between \$15 billion and \$20 billion over three years, measured against current projections.<sup>3</sup> In a downturn an RDF would reduce the City’s need to enact harmful spending cuts that reduce needed services and counterproductive tax increases to maintain a balanced budget.

The Charter should be amended to make an exception to the balanced budget requirement to permit use of an RDF. To ensure the City appropriately funds and expends the RDF, the Charter ultimately should require mandatory deposits and provide guidelines for withdrawals. CBC understands the Commission intends to limit itself to proposals that do not require State action to take effect. However, amending the Charter first may create momentum for State law changes and would allow the City to make deposits to and use an RDF without delay once State law and perhaps bond covenants are changed.

- 2. Charter mandate the Retiree Health Benefits Trust Fund (RHBT) and pave way for funding a reduced liability:** In 2006 the City created the RHBT to accumulate resources to fund the liability associated with other postemployment benefits (OPEB), comprised of retiree health and welfare benefits.<sup>4</sup> Unlike pensions, the City pays retiree health bills as they come due rather than as the benefits are earned by employees. While annual pension fund payments are determined actuarially to ensure sufficient resources to pay the pensions of current and future retirees, there are no rules governing deposits to the RHBT. As a result, the City has made inconsistent deposits and used the RHBT as a de facto RDF: After the 2008 recession the City deposited less into the fund than the current year (or PAYGO) cost of retiree health benefits and used previously accumulated resources in the RHBT to pay the annual expense, effectively using the RHBT as an RDF. As a result, the fund's balance declined from \$3.2 billion in fiscal year 2008 to \$1.4 billion in fiscal year 2013. The current administration has increased the RHBT's balance to \$4.5 billion, just 4.4 percent of the \$103.3 billion liability at the end of fiscal year 2018. The Mayor has stated the fund could serve again as an RDF during a recession.<sup>5</sup>

The City's enormous OPEB liability is due largely to the generous nature of those benefits, and reform of those benefits would improve the City's long-term fiscal health. With a reasonable set of OPEB benefits, the City annually should deposit the normal cost (the actuarially estimated incremental cost of future benefits for current employees accrued that year) into the RHBT; currently such a requirement is unrealistic.<sup>6</sup>

The Charter should be amended to 1) mandate the RHBT, 2) require annual deposits into the fund of at least the PAYGO amount plus some percentage, or the normal cost, and 3) limit RHBT disbursements to the PAYGO cost of retiree health and welfare benefits. These amendments would pave the path to fund the current and future liability while precluding the use of the RHBT as an RDF.

- 3. Expand capital inventory to include all assets:** Section 1110-a of the Charter requires an inventory of fixed capital assets or buildings with a historical cost of at least \$10 million and useful life of at least 10 years and requires reporting the estimated cost of bringing to or keeping those assets in a state of good repair. This inventory is not comprehensive; it excludes several important asset classes including the water and sewer system, mayoral-controlled authorities (such as New York City Health + Hospitals and the New York City Housing Authority), most fixed and movable equipment, and the City's computer systems.

The Charter should be amended to make the City's capital inventory and needs assessment more comprehensive; that is, to include all assets that meet capital financing eligibility criteria, currently

\$35,000 and a five-year useful life, owned by an agency or authority that the City controls. The needs assessment should inventory capital assets, identify their condition, and estimate the investment needed to bring them to or keep them in a state of good repair.

4. ***Focus the Borough President capital budget role on identifying needs and providing recommendations:*** A capital budget based on a comprehensive needs assessment and appropriate community input will result in the most efficient and effective allocation of capital dollars. The Charter provides Borough Presidents with the opportunity to identify boroughwide needs and City Council members to advocate for the concerns of their constituents when approving the capital budget. In addition the Charter specifies that Borough Presidents receive 5 percent of proposed capital budget appropriations; this carve out reduces an efficient and effective citywide allocation of total capital resources.

The Charter should be amended to focus the Borough Presidents' roles on identifying borough-based needs and advising the Mayor and the City Council on how best to address those needs. The Charter should be amended to eliminate the capital budget Borough President allocations.

5. ***Require resident feedback survey:*** The Charter does not require the City to solicit comprehensive, consistent, and quantifiable resident feedback. Input on City services is received through multiple channels including 311. While these data are valuable, they often are skewed toward complaints or reporting of problems. The City conducted a citywide survey on municipal services and quality of life in 2008; CBC repeated this survey in 2017. The surveys generated citywide and community district data about municipal services and quality of life. Such data are valuable to policymaking, service improvement, and accountability.

CBC recommends the Charter require the City to solicit resident feedback on quality of life and City service delivery in a manner that produces statistically valid results at the community district level at least every four years. These data would serve as an important complement to performance indicators included the Charter mandated Mayor's Management Reports (MMRs).

#### **Areas Where Current Process Should Be Maintained**

1. ***Maintain current revenue forecast process:*** The Charter directs the Mayor to prepare and provide the City Council with projections of City receipts in the ensuing fiscal year from non-property tax revenues, miscellaneous revenues, and federal and State grants by June 5.<sup>7</sup> Following adoption of the budget, the City Council uses these projections to set the property tax rate in order to fund fully the expense budget.

The Office of Management and Budget (OMB) has been reasonably conservative in its estimates of non-property tax revenues. Under the current requirements, if receipts come in above estimates throughout the year, the City Council approves their use through the budget modification process described in Section 107(e).

This system has contributed to the City's fiscal stability by reducing the likelihood that the forecast is overly optimistic, particularly when the economy slows or contracts. While conservative revenue

estimates could limit the City's ability to provide services it can afford, the current system does not have this problem: City-funded spending grew 5.3 percent annually on average over the last 18 years, well more than twice the 2.3 percent rate of inflation.<sup>8</sup>

A City Council report proposed the Mayor be required to submit non-property tax revenue estimates by May 25, which would then be subject to Council approval.<sup>9</sup> If consensus cannot be reached on the forecast by June 5, the binding revenue estimate for the upcoming year would be determined by the Independent Budget Office on June 6. The current process for estimating revenues has served the City well and should not change.

2. ***Preserve mayoral and Council authority to set budgets for special entities:*** A City Council report proposes creating self-determined budgets for the citywide elected offices of the Public Advocate and Comptroller and formula budgets for the Borough Presidents, Community Boards, and the Civilian Complaint Review Board. Collectively, these entities received \$182 million in funding in fiscal year 2019.<sup>10</sup> Adopting formula or self-determined budgets for these entities would restrict mayoral and Council discretion over budget priorities and could lead to spending increases without appropriate oversight.
3. ***Maintain mayoral flexibility in modifying budgets:*** Section 107(b) of the Charter allows for movement of funds from one unit of appropriation (UA) to another, subject to Council approval. A City Council report proposes the Council be granted the authority to increase, decrease, otherwise amend, and apply terms and conditions to these funding transfers. This could impede nimble management during the year. The Council approves the amount and terms and conditions for UAs when the budget is adopted, which provides important and sufficient oversight.
4. ***Retain the current role of the Comptroller in procurement:*** The Charter prescribes the City Comptroller's role in registering contracts is to ensure sufficient funds exist to pay for the contract, integrity in the contract award process, and that the vendor is not corrupt (Section 328). Proposals from Council and Comptroller reports would provide the Comptroller "pre-audit" responsibility that would allow the Comptroller to review a contract before it is approved.<sup>11</sup> An additional review may lengthen an already cumbersome procurement process and is inconsistent with the Charter-defined role of the Comptroller in procurement. The terms and conditions of a contract are matters of executive discretion.

#### **Improvements Best Addressed Outside City Charter**

1. ***More meaningful and limited Units of Appropriation with robust performance metrics:*** Some UAs do not reflect specific programs or services. Reports by the City Council and City Comptroller have proposed amending the definition of a UA or placing certain restrictions on how much of an agency's budget can be in a single UA. Currently, the Charter defines a process for the City Council and Mayor to co-determine UAs.<sup>12</sup> It is unnecessary to amend the Charter's UA definition since a change process already exists, and the benefits of proposed remedies are uncertain.

The Council and Comptroller reports also recommend the Charter require performance metrics for each UA. The Charter already includes some requirements for performance reporting, which is often not sufficiently tied to spending. The solution to the problem, however, rests first with improving the UA structure, and second, enhancing the metrics being reported.<sup>13</sup> It is unclear that the Council and Comptroller recommendations would achieve, or are necessary to achieve, the performance reporting improvements desired. Cooperative action by the Council and Mayor could improve the UA structure and metrics without Charter changes.

2. ***Improving capital project needs assessments and budget management:*** The Charter lays out a comprehensive capital planning process and requires the executive capital budget include a description of each capital project, appropriations previously adopted for the project, and the funds required to complete the project (Section 214). However, the requirement for project-based reporting is not followed in practice. Clarifying the definition of capital project will not likely result in improved capital project status reporting; rather, greater adherence to current requirements is needed. Similarly, making the capital inventory and needs assessment the cornerstone of capital planning will require broadening its scope as recommended above, but effective planning also requires improving the rigor of the needs analysis already mandated.
3. ***Speeding up the procurement process:*** CBC recently released a [report](#) that highlighted the negative effects of a cumbersome procurement process, including reduced competition and higher costs.<sup>14</sup> It is not clear that placing time limits for specific reviewers, as City Council and City Comptroller reports have proposed, would improve the process. These timeframes could be rendered irrelevant since reviewers could return contracts for revisions to avoid violating time restrictions. Proposals to require greater transparency during the review process to help identify bottlenecks and allow the Mayor's Office of Contract Services, elected officials, vendors, and the public to hold reviewers and agencies accountable have merit and are appropriate to pursue legislatively and administratively.

## **Governance**

In addition to considering the Charter-defined budgeting, procurement, and capital planning procedures, this Commission also intends to consider governance proposals regarding the powers of the Borough Presidents, Public Advocate, and advice and consent powers of the City Council. In considering these proposals, CBC urges caution. New York City government generally has functioned well under the current Charter: The Mayor executes policy and is responsible for service delivery; the City Council enacts laws representing 51 geographic constituencies and provides oversight; and the Comptroller, Borough Presidents, and Public Advocate function according to the Charter. Modifying these roles could prove counterproductive by blurring the lines of accountability.

## **Conclusion**

The budgeting procedures laid out in the Charter generally have served the City well. These processes and structures could be improved by allowing an RDF, addressing a reduced OPEB liability through deposit and withdrawal policies for the RHBT, making the City's capital inventory comprehensive, limiting the Borough Presidents' capital budget roles to need identification, and regularly assessing resident satisfaction with core public services. Other proposals should not be pursued since they could

weaken the processes' current strengths or attempt to solve problems better dealt with in law or administrative practice.

*Founded in 1932, the Citizens Budget Commission is a nonpartisan, nonprofit civic organization devoted to influencing constructive change in the finances and services of New York State and New York City governments.*

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<sup>1</sup> Section 258(a) of the Charter states, "The operations of the city shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles." See: New York City Charter, Chapter 10, Section 258, amended through March 1, 2019, (accessed March 3, 2019),

[http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny).

<sup>2</sup> New York State Financial Emergency Act for the City of New York 868/75 (accessed March 3, 2019),

[www.nysenate.gov/legislation/laws/FEA](http://www.nysenate.gov/legislation/laws/FEA).

<sup>3</sup> Ana Champeny, "NYC Revenues in a Recession: Quantifying the Potential Shortfall," *Citizens Budget Commission Blog* (February 26, 2019), <https://cbcny.org/research/nyc-revenues-recession>.

<sup>4</sup> The RHBT is established in local Law No. 9 (2006), which sets out that the "sole purpose of the trust fund...shall be to fund the health and welfare benefits of retired city workers and their dependents." See: Local Law No. 9 of 2006 (June 19, 2006) <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=446045&GUID=FA4831E6-CB28-48DC-A84C-5241234FEE31&Options=&Search=>.

<sup>5</sup> City of New York, Mayor's Office of Management and Budget, *Preliminary Budget for Fiscal Year 2020, Summary* (February 7, 2019), p. 16, <https://www1.nyc.gov/assets/omb/downloads/pdf/sum2-19.pdf>.

<sup>6</sup> In fiscal year 2018, the normal cost of the OPEB benefit was \$4.9 billion and the PAYGO cost was \$2.4 billion. See: Thad Calabrese, *The Price of Promises Made: What New York City Should Do About Its \$95 Billion OPEB Debt* (Citizens Budget Commission, October 2017), <https://cbcny.org/research/price-promises-made>.

<sup>7</sup> New York City Charter, Chapter 1515(a), amended through March 1, 2019 (accessed March 3, 2019), [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny).

<sup>8</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Consumer Price Index – New York-Newark-Jersey City* (accessed March 3, 2019), All Urban Consumers – (CPI-U), [www.bls.gov/regions/new-york-new-jersey/data/xg-tables/ro2xgcpiny1967.htm](http://www.bls.gov/regions/new-york-new-jersey/data/xg-tables/ro2xgcpiny1967.htm).

<sup>9</sup> New York City Council, *Report to the 2019 New York City Charter Revision Commission* (January 2019), <http://council.nyc.gov/wp-content/uploads/2019/02/NYC-Council-Report-to-the-2019-Charter-Revision-Commission.pdf>.

<sup>10</sup> City of New York, Mayor's Office of Management and Budget, *Preliminary Budget for Fiscal Year 2020, Financial Plan Expense* (February 7, 2019), [www1.nyc.gov/assets/omb/downloads/pdf/feb19-fp.pdf](http://www1.nyc.gov/assets/omb/downloads/pdf/feb19-fp.pdf).

<sup>11</sup> Office of the New York City Comptroller, *A New Charter to Confront New Challenges* (September 2018), <https://comptroller.nyc.gov/wp-content/uploads/documents/A-New-Charter-to-Confront-New-Challenges.pdf>.

<sup>12</sup> New York City Charter, Chapter 6, Section 100(c), amended through March 1, 2019 (accessed March 3, 2019), [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny).

<sup>13</sup> The preliminary management report shall contain for each city agency "an appendix indicating the relationship between the program performance goals included in the management report...and the corresponding expenditures made pursuant to the adopted budget for the previous fiscal year." See: New York City Charter, Chapter 1, Section 12(b)(6), amended through March 1, 2019 (accessed March 3, 2019), [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny).

<sup>14</sup> Ana Champeny, *9 Things New Yorkers Should Know About How New York City Buys Stuff* (Citizens Budget Commission, February 2019) <https://cbcny.org/research/9-things-new-yorkers-should-know-about-how-new-york-city-buys-stuff/>.