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**Testimony of Council Member Daniel R. Garodnick
Before the Charter Revision Commission
August 2010**

Introduction

As the Council Member representing the Fourth District, I write to offer my response to the Commission's Preliminary Staff Recommendations released on July 9, 2010, as well as some additional recommendations for reform of the City's Charter.

Before I dive into the substance, a word about process. As you are well aware, the process of revising the City's Charter – its Constitution – is extremely important, and as such, recommendations to revise it should not be rushed through. Because of the notable lack of knowledge and interest in this process to date, I recommend strongly that the work of this Commission not conclude until November 2011 to allow full and complete consideration of all potential ideas. Notwithstanding these misgivings, in the event that the Commission were to proceed with putting proposals to a vote this year, I have offered my views below, and thank you in advance for your consideration of them.

Perhaps because of self-imposed time restraints, the Commission's Staff has only made a limited number of recommendations for ballot proposals dealing with term limits, elections, voter participation and public integrity. Accordingly, I will first comment on the Staff's recommendations. Then, I will offer some additional reforms that I believe should be on your list.

I. Recommendations by the Staff

A. Term Limits

I did not support the Mayor's 2008 proposal to change the term limits rules through the legislative process. New York City's voters had approved a ballot initiative to limit service to two consecutive full terms in 1993, and rejected a proposal to extend it to three terms in 1996. Given the history of this issue in New York City, only the voters should determine the length of service permitted New York City's officeholders. Thus, now that the City Council and the Mayor have acted, I believe that the voters should have another crack at the issue.

Assuming that the Commission will not be proposing the *elimination* of term limits for either citywide officials or Council Members, I support the Commission Staff's suggestion that the voters again be presented with the issue of term limits. However, I believe the question should be posed as one of three choices: whether voters support leaving the law as is, with three terms for all elected officials; limiting the terms to two for citywide officials and three for Council Members; or limiting the terms to two for all elected City officials.

While I did not support the extension as it was done legislatively, I firmly believe that more than two terms are appropriate for the City Council. It would make for a more serious and deliberative body, encouraging members to be more interested in long term policy issues – such as infrastructure and budget – and would also provide more balance to a very strong local executive branch.

B. Elections

1. Disclosure of Independent Campaign Expenditures

I strongly support the proposed Charter amendment to require disclosure of independent expenditures made to influence the outcome of municipal elections or ballot proposals. The City's Campaign Finance Board (CFB) is currently empowered to require that candidates for public office comply with comprehensive disclosure requirements. However, the CFB has no power to require disclosure of expenditures made independent of any candidate which, in recent years, have become increasingly significant in New York City.

The Supreme Court's decision in *Citizens United v. Federal Election Commission*, which struck down restrictions on the use of corporate and union funds for independent election expenditures, will likely lead to further increases in independent expenditures in local elections. If such expenditures are not disclosed, there will be influential forces in our local elections that are not known or answerable to the public. The public has a clear interest in knowing who is supporting candidates, and who is making expenditures in local races.

According to the Staff Report to the Commission, approximately 40 states and a number of major cities including Los Angeles and Seattle have already required such disclosure. I agree that this Commission should include this issue on the ballot.

2. Instant Runoff Voting

I support the Staff's recommendation to use Instant Runoff Voting (IRV) in primaries for nominating party candidates for the citywide offices of Mayor, Public Advocate and Comptroller.

The method of IRV being proposed provides that if no candidate receives at least 40% of the vote there would be a runoff count between the top two finishers. In the runoff count the votes of those who did not select either of the top two as their first choice would be canvassed and, if they voted for one of the top two, their second choice votes would be

allocated to their second favored candidate. The winning candidate would be the one preferred over the other by the majority of all the voters who expressed a preference.

With Instant Runoff Voting, the expense of a runoff election is avoided (approximately \$14 million in the 2009 runoff for Public Advocate and Comptroller) as is the drop-off in turnout that commonly occurs between the primary and the runoff. Further, IRV provides a winner with greater electoral support than using the current system, and avoids the “spoiler” or “wasted vote” problem. Moreover, I believe IRV will also reduce negative campaigning because of a desire by candidates to be every voter’s second choice. By eliminating the second round of the primary election, IRV will reduce the overall costs of running to the candidates and to the City.

C. Voter Participation

I support the Staff’s recommendation to reduce the number of petition signatures candidates must collect to qualify to run for office to 3,750 for citywide candidates (from 7,500); 2,000 for borough-wide candidates (from 4,000); and 450 for City Council candidates (from 900).

New York’s requirements for ballot access are much more difficult than most other states’, and serve to discourage some good candidates from running. Not only are the number of signatures required high, but complying with the rules for collecting the signatures is unnecessarily technical and stringent, often inviting expensive legal challenges. Thus, I favor revising the rules to make ballot access easier in the manner proposed by the Staff.

I believe there are many other necessary changes to New York’s election laws – such as no-fault absentee voting, universal registration, and same-day voting – that would likewise support the Commission’s objective of increasing voter participation, but which may be outside the City’s jurisdiction to implement.

D. Public Integrity and Government Efficiency

1. Conflicts of Interest

The Commission Staff has proposed changes to Chapter 68 of the Charter that would require ethics training for all City employees and increase penalties for violation of ethics rules. I support these two proposals.

On the former subject, scaling up ethics training to cover all 300,000-plus City employees (up from the approximately 19,000 who received such training in 2008), could become costly or unwieldy, which is why an amendment to the Charter should explicitly allow such training to be provided online or by staff at employing agencies who have been trained by the Conflicts of Interest Board (COIB).

In addition, the COIB has made a proposal to limit the “safe harbor” provisions for elected officials to voting, and to prohibit a Council Member’s allocating discretionary funds to entities at which that Council Member is a paid employee or member of the Board. I

support this proposal, as well as a related one to require disclosure of interests in writing (a change I called for beginning in 2008).

Changing the commencement date for new members of the CFB and authorizing the Board to prepare a voter guide in multiple media formats (while allowing voters to opt out of receiving the printed version of the guide) are consistent with the CFB's mission and worthy of support.

Finally, while not proposed by the Commission Staff, I should note that the independence of ethics oversight in the City would be improved by giving both the Comptroller and the Public Advocate an appointee to the five-member Conflicts of Interest Board. This would leave the Mayor with the power to appoint the other three members, down from all five.

2. Consolidating Agencies and Eliminating Unnecessary Reports

I support the objectives of the Staff's proposal for a Commission on Performance Reporting, which would be empowered to systematically review agency reports and advisory bodies currently required by the Charter and Administrative Code and to recommend the elimination of those that are superfluous to the mission of the City government. What I would not be able to support is any mechanism that could wipe out legislative acts by fiat. Accordingly, the City Council should have to vote affirmatively to enact any changes proposed by such a Commission; a failure to act should not constitute approval.

The objectives of two other Staff proposals – to consolidate the Voter Assistance Commission (VAC) into the Campaign Finance Board (and to make a series of other changes in the responsibilities of the VAC and the timing of its reports), and to consolidate various City agency administrative tribunals – deserve close study. However, it may be premature to put them on the ballot at this time.

II. Other Proposals Not Recommended by Staff

A. Budget and Legislative Issues

1. Guaranteed Budgets for Charter-Mandated Government Entities

I support actions to protect the budgets of certain Charter-mandated entities including the COIB, the Civilian Complaint Review Board (CCRB), the District Attorneys, the Public Advocate, the Comptroller, Borough Presidents and the Community Boards, against possible politically motivated budget cuts. Proponents of “guaranteed” budgets have suggested determining the budgets of these entities by formula as a percentage of the budget of some other appropriate entity. While I do not ordinarily support taking budgetary responsibilities away from the Council and the Mayor, we need to find a way to insulate the budgets of agencies whose role may be to deliver unpopular political news.

2. Budget Process

I support changes to the City's budget process to more properly balance the powers of the Mayor and those of the Council, as originally envisioned in the Charter revision of 1989. Several proposals come from the Speaker of the City Council, all of which I support:

- (a) requiring the Mayor's revenue estimate to be provided by May 25 of each year so that the Charter-required estimate is driven by actual revenue projections and not by a Mayor's strategy in negotiating the budget with the Council;
- (b) narrowing the definition of "units of appropriation" so that the Council has a clear understanding of the programs, services or activities being funded in a particular unit of appropriation;
- (c) limiting the Mayor's impoundment power to cases in which there is a significant and sudden reduction in current estimated revenues such that the City risks being unable to meet its financial obligations within the next 90 days; and
- (d) revamping applicable Charter provisions to ensure that the Capital Budget drives the City's capital plan, and the Commitment Plan operationalizes and reports on the capital plan's progress.

3. Implementing Duly Enacted Laws

I also strongly support a proposal that would require the Mayor to implement all duly enacted laws unless a court has enjoined enforcement or holds the law invalid. This is at the heart of the power sharing arrangement between the Mayor and the Council intended by the 1989 Charter revisions. It simply makes no sense for a Mayor to veto a bill, have the veto overridden, and then for the Council to have the responsibility to sue to put it into effect.

B. Civilian Complaint Review Board (CCRB)

I have authored legislation to give the Civilian Complaint Review Board the power to independently prosecute all cases of police misconduct it substantiates, and I believe that this change should be made in the Charter. Additionally, even in the absence of a complaint, the CCRB should be permitted to initiate an investigation into reported or known incidents of police misconduct.

C. Community Boards

Although the Commission Staff declined to refer proposals to strengthen the Community Boards, the Commission should consider Citizens Union's proposal to allocate to the 59 Community Boards an independently funded budget that is not in the discretion of the Mayor or Council. These Boards are an essential part of the land use process, and an important tool for soliciting community feedback. Accordingly, their budgets should not be vulnerable from year to year. Further, the appropriate level of funding would include allowing the Boards to hire from an available pool of urban planners.

D. Campaign Finance Board (CFB)

I encourage the Charter Revision Commission to consider transferring responsibility for supervising and enforcing lobbying reporting from the City Clerk's office to the CFB to create a more effective system of regulation.

E. Council Compensation

To eliminate the appearance of conflict, laws enacted by the City Council to change Members' own compensation should go into effect only after the subsequent Council election.

F. Land Use and Planning Reform

Although the Staff Report to the Commission recommended that land use issues be "reserved for future consideration," there are a number of reforms that deserve to be considered at this point.

1. Comprehensive Planning

Unlike other major cities, New York lacks a clear roadmap for future development. While development is critical to New York City's growth, our infrastructure needs to keep pace. Neighborhoods suffer when development overloads their schools and streets. Moreover, often when communities attempt their own planning under Charter section 197-a, their efforts need to integrate with the City's development plans. Accordingly, I believe that there should be a Charter-mandated comprehensive planning framework, including a statement of basic principles against which all development proposals would be measured, for approval by the Council and ultimately by the voters in a referendum. It would be appropriate for the City Planning Commission to be charged with this task.

2. Supermajority Voting to Overcome Negative Recommendation From Borough President and Community Board

Where a Borough President and local Community Board both reject a land use application, the applicable agency – such as the Board of Standards and Appeals, the Landmarks Preservation Commission, or the City Planning Commission – should only be able to approve it by vote of a supermajority. Thus, when the Borough President and Community Board both line up against a proposal, the standard for approving it over those negative recommendations would be clear and overwhelming agency support.

3. Council Role in Land Use.

I support a number of proposals by the City Council Speaker for modifying the Charter rules governing land use, in order to more properly balance the land use process:

(a) The Council should be authorized to make a determination that a modification to a proposal is within the scope of the underlying application and the environmental review, and the City Planning Commission (CPC) should not have authority to overrule this Council decision.

(b) Where a Council modification is within the scope of the application but requires additional environmental review, the modification should be allowed if that additional environmental review can be completed within the ULURP statutory timeframe.

(c) The Council's time to act on decisions filed by the City Planning Commission should be extended from 50 to 60 days, the same period provided to the CPC and the

Community Boards, in order to permit a less rushed review and better notice to the public.

(d) A 10-year expiration date on Council approval for the disposition of real property pursuant to Charter Section 384(b)(3) should be imposed, in order to assure a public review process where original Council approval is older than 10 years and the local community has continued to evolve.

Conclusion

Thank you for considering my views. Please be assured that the Commission will have my cooperation as it completes its work.