

## Chapter 2: Council

### Section 21. The council.

There shall be a council which shall be the legislative body of the city. In addition to the other powers vested in it by this charter and other law, the council shall be vested with the legislative power of the city. Any enumeration of powers in this charter shall not be held to limit the legislative power of the council, except as specifically provided in this charter.

### Section 22. Composition of council.

a. The council shall consist of the public advocate and of fifty-one other members termed council members. Consistent with state law, the size of the council and the number of districts from which council members are elected may be increased by local law without approval pursuant to section thirty-eight.

b. One council member shall be elected from each council district as now or hereafter constituted.

### Section 23. Council members not to be employees of agencies.

No council member shall be an employee of any agency in any capacity whatever.

### Section 24. Public advocate.

a. The public advocate shall be elected by the electors of the city at the same time and for the same term as in this charter prescribed for the mayor. A public advocate who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of Section 1138 of the charter.

b. The public advocate may be removed or suspended in the same manner as provided in this charter with respect to the mayor.

c. Any vacancy in the office of public advocate shall be filled by popular election in the following manner:

1. Within three days of the occurrence of a vacancy in the office of the public advocate, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the city.

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of the term and on or before the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in such year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least eighty days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than seventy-five days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election, the vacancy shall be filled at such general election;

(b) if the vacancy occurs before August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in the office of public advocate at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the office of public advocate at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

d. The public advocate may, by written authority filed with the appropriate board, body or committee and with the city clerk, designate any two officers or employees appointed by the public advocate to exercise the powers specified in this subdivision. Either such officer or employee, so designated, may act in the place of the public advocate on any board, body or committee, other than the council, of which the public advocate is a member whenever the public advocate shall be absent from a meeting of said board, body or committee for any reason whatever.

e. The public advocate shall have the right to participate in the discussion of the council but shall not have a vote.

f. In addition to other duties and responsibilities, the public advocate shall serve as the public advocate and shall (1) monitor the operation of the public information and service complaint programs of city agencies and make proposals to improve such programs; (2) review complaints of a recurring and multiborough or city-wide nature relating to services and programs, and make proposals to improve the city's response to such complaints; (3) receive individual complaints concerning city services and other administrative actions of city agencies; and (4) investigate and otherwise attempt to resolve such individual complaints except for those which (i) another city agency is required by law to adjudicate, (ii) may be resolved through a grievance mechanism established by collective bargaining agreement or contract, or (iii) involve allegations of conduct which may constitute a violation of criminal law or a conflict of interest. If the public advocate receives a complaint which is subject to a procedure described in items (i) or (ii) of this paragraph, the public advocate shall advise the complainant of the appropriate procedure for the resolution of such complaint. If the public advocate receives a complaint of the type described in item (iii) of this paragraph, the public advocate shall promptly refer the matter in accordance with subdivision k of this section.

g. The public advocate shall establish procedures for receiving and processing complaints, responding to complainants, conducting investigations, and reporting findings, and shall inform the public about such procedures. Upon an initial determination that a complaint may be valid, the public advocate shall refer it to the appropriate agency. If such agency does not resolve the complaint within a reasonable time, the public advocate may conduct an investigation and make specific recommendations to the agency for resolution of the complaint. If, within a reasonable time after the public advocate has completed an investigation and submitted recommendations to an agency, such agency has failed to respond in a satisfactory manner to the recommendations, the public advocate may issue a report to the council and the mayor. Such report shall describe the conclusions of the investigation and make such recommendations for administrative, legislative, or budgetary action, together with their fiscal implications, as the public advocate deems necessary to resolve the individual complaint or complaints or to address the underlying problems discovered in the investigation.

h. In addition to other duties and responsibilities, the public advocate may review the programs of city agencies. Such reviews shall include, but not be limited to, annual evaluations of: (1) the implementation of the requirements for coterminality of local services contained in all subdivisions of section twenty seven hundred four; (2) the effectiveness of the public information and service complaint programs of city agencies; and (3) the responsiveness of city agencies to individual and group requests for data or information regarding the agencies' structure, activities and operations. The public advocate shall submit any reports documenting or summarizing such reviews to the council, mayor and appropriate agency and shall include in such reports his or her recommendations for addressing the problems identified and the fiscal implications of such recommendations.

i. Except for those matters which involve conduct which may constitute a violation of criminal law or a conflict of interest, the public advocate may, on the request of a resident, taxpayer, community board, council member or borough president, or on his or her own motion, inquire into any alleged failure of a city officer or agency to comply with any provision of the charter. If as a result of such inquiry, the public advocate concludes that there is any substantial failure to comply with any provision of the charter, he or she shall submit a preliminary report documenting the conclusions of the inquiry to the officer or officers and the head of each agency involved. Within a reasonable time after submitting such preliminary report, the public advocate shall issue a final report to the council, mayor, and agency documenting the conclusions of the inquiry.

j. The public advocate shall have timely access to those records and documents of city agencies which the public advocate deems necessary to complete the investigations, inquiries and reviews required by this section. If a city agency does not comply with the public advocate's request for such records and documents, the public advocate may request an appropriate committee of the council to require the production of such records and documents pursuant to section twenty-nine of the charter. The provisions of this subdivision shall not apply to those records and documents of city agencies for which a claim of privilege may properly be raised or which are prepared or maintained by the department of investigation for use in any investigation authorized by chapter thirty-four of the charter.

k. If the public advocate receives a complaint alleging conduct which may constitute a violation of criminal law or a conflict of interest, he or she shall promptly refer the complaint regarding criminal conduct to the department of investigation or, as applicable, to the appropriate prosecuting attorney or other law enforcement agency and shall refer the complaint regarding conflict of interest to the conflicts of interest board. If during the conduct of any investigation, inquiry, or review authorized by this section, the public advocate discovers that the matter involves conduct which may constitute a violation of criminal law or a conflict of interest, he or she shall take no further action but shall promptly refer the matter regarding criminal conduct to the department of investigation or, as applicable, to the appropriate prosecuting attorney or other law enforcement agency and shall promptly refer the matter regarding conflict of interest to the conflicts of interest board. Unless otherwise provided by law, all complaints received and any investigative file prepared or maintained by the public advocate regarding matters covered by this subdivision, shall be confidential.

l. Before making public any portion of any draft, preliminary or final report relating to the operations or activities of a city officer or agency, the public advocate shall send a copy of the draft report to any such officer, and to the head of any agency, discussed in such report and provide the officer and agency, in writing, with a reasonable deadline for their review and response. The public advocate shall include in any report, or portion thereof, which is made public a copy of all such officer and agency responses.

m. The public advocate may hold public hearings in the course of fulfilling the requirements of this section provided that a complete transcript of any such hearings shall be made available for public inspection free of charge within sixty days after the hearing. The public advocate shall also provide a copy of any requested pages of such transcript at a reasonable fee to cover copying and, if relevant, mailing costs.

n. Not later than the thirty-first day of October of each year, the public advocate shall present to the council a report on the activities of the office during the preceding fiscal year. The report shall include: (1) a statistical summary of the complaints received during such fiscal year, categorized by agency, type of complaint, agency response, mode of resolution, and such other factors as the public advocate deems appropriate; (2) an analysis of recurring complaints and the public advocate's recommendations for administrative, legislative or budgetary actions to resolve the underlying problems causing the complaints; (3) a summary of the findings and recommendations of the agency program reviews conducted during the fiscal year and a summary of the agency responses to such findings and recommendations; (4) a summary of the charter requirements which, in the opinion of the public advocate are not being implemented by the city agencies and officers subject to them, including a description of the nature and extent of the failure to comply and a summary of the responses of the agencies or officers to the public advocate's conclusions; and (5) a summary of improvements in charter compliance since the public advocate's last annual report. The public advocate shall include an assessment of the fiscal implications of any recommendations presented in this report.

o. 1. For fiscal year 2021 and each fiscal year thereafter, the appropriations available to pay for the expenses of the public advocate shall be not less than a sum equal to the minimum appropriation for the public advocate for the prior fiscal year modified by the percentage change, if any, in the total city-funded appropriations contained in the expense budget, excluding debt service, pension contributions and fringe benefits, from the prior fiscal year to the city-funded total appropriations contained in the expense budget, excluding debt service, pension contributions, and fringe benefits, for the current fiscal year; provided, however, that (i) such minimum appropriation shall not increase in any year by a percentage greater than the increase in the consumer price index for all urban consumers in the New York-Newark-Jersey City area, as published by the bureau of labor statistics of the United States department of labor, or a successor index, for the calendar year prior to that in which the budget is adopted and (ii) for the purposes of making the calculations required by this paragraph, the minimum appropriation for fiscal year 2020 shall be deemed to be \$4,529,267. Any proposed budget shall ensure compliance with the minimum appropriation required by this subdivision for the upcoming fiscal year. The calculation to determine the minimum appropriations for the public advocate pursuant to this paragraph shall be set forth in the preliminary expense budget, the executive expense budget, and the adopted budget.

2. Notwithstanding paragraph 1, and in addition to any action that may be taken pursuant to section one hundred six, the appropriations available to

pay for the expenses of the public advocate may be less than the minimum appropriations required by paragraph 1, provided that, prior to adoption of the budget pursuant to section two hundred fifty-four or prior to the adoption of a budget modification pursuant to section one hundred seven, the mayor determines that such reduction is fiscally necessary and that such reduction is part of a plan to decrease overall appropriations or is due to unforeseen financial circumstances, and the mayor sets forth the basis for such determinations in writing to the council and the public advocate at the time of submission or adoption, as applicable, of any budget or budget modification containing such reduction.

(Am. L.L. 2019/215, 12/11/2019, eff. 12/11/2019)

## **Section 25. Election; term; vacancies.**

a. The council members shall be elected at the general election in the year nineteen hundred seventy-seven and every fourth year thereafter and the term of office of each council member shall commence on the first day of January after the elections and shall continue for four years thereafter; provided, however, that the council member elected at the general election in the year two thousand and one and at the general election in every twentieth year thereafter shall serve for a term of two years commencing on the first day of January after such election; and provided further that an additional election of Council Members shall be held at the general election in the year two thousand three and at the general election every twentieth year thereafter and that the members elected at each such additional election shall serve for a term of two years beginning on the first day of January after such election.

Notwithstanding any other provision of this charter or other law, a full term of two years, as established by this subsection, shall not constitute a full term under section 1138 of this charter, except that two consecutive full terms of two years shall constitute one full term under section 1138. A member of the council who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of section 1138 of the charter.

b. Any vacancy which may occur among the council members shall be filled by popular election in the following manner.

1. Within three days of the occurrence of a vacancy in the council, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the district in which the election is to be held.

2. If a vacancy occurs during the first three years of a four-year term or the first year of a two-year term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of a four-year term or in the first year of a two-year term and on or before the last day in the third year of such a four-year term or the first year of such a two-year term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of a four-year term or the first year of a two-year term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such a four-year term or the second year of such a two-year term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least eighty days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than seventy-five days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election, the vacancy shall be filled at such general election;

(b) if the vacancy occurs before August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in the council at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the council at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

(Am. L.L. 2019/215, 12/11/2019, eff. 12/11/2019)

## **Section 26. Salaries and allowances.**

- a. The salary of the public advocate shall be one hundred eighty-four thousand eight hundred dollars a year.
- b. The salary of each council member shall be one hundred forty-eight thousand five hundred dollars a year, except that the salary of the speaker shall be one hundred sixty-four thousand five hundred dollars a year. In addition any council member, while serving as a committee chairperson or other officer of the council, may also be paid, in addition to such salary, an allowance fixed by resolution, after a hearing, for the particular and additional services pertaining to the additional duties of such position.
- c. If prior to the enactment of a local law increasing the compensation of council members, the council establishes a commission to study and make recommendations for changes in the compensation levels of council members, or if it otherwise causes an analysis of such compensation levels to be made to assist it in its consideration of a local law, such study or analysis may include an analysis of the benefits, detriments, costs and impacts of placing restrictions on earned income derived by council members from sources other than their council salary.

(Am. L.L. 2016/019, 2/19/2016, retro. eff. 1/1/2016)

## **Section 27. Local laws and resolutions increasing or decreasing salaries or allowances.**

No local law or resolution increasing or decreasing the salaries, or other allowances, in accordance with section twenty-six shall be adopted during the period between the general election day and the thirty-first day of December, both such days inclusive, in any year in which all of the council members are elected.

## **Section 28. Powers of council.**

- a. The council in addition to all enumerated powers shall have power to adopt local laws which it deems appropriate, which are not inconsistent with the provisions of this charter or with the constitution or laws of the United States or this state, for the good rule and government of the city; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants; and to effectuate the purposes and provisions of this charter or of the other law relating to the city. The power of the council to act with respect to matters set forth in sections one hundred ninety-seven-c and two hundred shall be limited by the provisions of section one hundred ninety seven-d.
- b. The council shall have power to provide for the enforcement of local laws by legal or equitable proceedings, to prescribe that violations thereof shall constitute misdemeanors, offenses or infractions and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments.
- c. In the event that there exists no other provision of law for the filling of a vacancy in any elective office, resulting from removal or suspension from such office, or the death, resignation or inability of the incumbent to exercise the powers or to discharge the duties of the office, the council by a majority vote of all the council members shall elect a successor to fill the vacancy in such office.
- d. All local laws shall be general, applying either throughout the whole city or throughout specified portions thereof.
- e. The council shall not pass any local law authorizing the placing or continuing of any encroachment or obstruction upon any street or sidewalk excepting temporary occupation thereof by commercial refuse containers or during and for the purpose of the erection, repairing or demolition of a building on a lot abutting thereon under revocable licenses therefor, and excepting the erection of booths, stands or displays or the maintenance of sidewalk cafes under licenses to be granted only with the consent of the owner of the premises if the same shall be located in whole or in part within stoop lines; any such commercial refuse containers thus placed or continued upon any street or sidewalk pursuant to such a revocable license shall be painted with a phosphorescent substance so that the dimensions thereof shall be clearly discernible at night.
- f. All local laws in relation to licenses shall fix the license fees to be paid, if any, and shall provide that all licenses shall be according to an established form and shall be regularly numbered and duly registered.
- g. The council shall hold a public hearing prior to the consideration of any resolution requesting the state legislature, in accordance with the provisions of section two of article nine of the Constitution of the state of New York, to pass any bill, the substance of which, if adopted by the council as a local law, would require its approval by the electorate voting thereon at a referendum. Notice of such public hearing shall be published in the City Record for at least five days immediately preceding the commencement of such a hearing.

## **Section 29. Power of investigation and oversight.**

- a. The council, acting as a committee of the whole, and each standing or special committee of the council, through hearings or otherwise:
  - 1. may investigate any matters within its jurisdiction relating to the property, affairs, or government of the city or of any county within the city, or to any other powers of the council, or to the effectuation of the purposes or provisions of this charter or any laws relating to the city or to any county within the city.
  - 2. shall review on a regular and continuous basis the activities of the agencies of the city, including their service goals and performance and management efficiency. Each unit of appropriation in the adopted budget of the city shall be assigned to a standing committee. Each standing committee of the council shall hold at least one hearing each year relating to the activities of each of the agencies under its jurisdiction.
- b. Any standing or special committee shall have power to require the attendance and examine and take testimony under oath of such persons as it may deem necessary and to require the production of books, accounts, papers and other evidence relative to the inquiry. Copies of all reports or studies received by the council pursuant to section eleven hundred thirty-four and subdivision c of section ninety-three shall be assigned to the appropriate standing committees for review and action, as necessary.

## **Section 30. Council review of city procurement policies and procedures.**

The council shall periodically review all city procurement policies and procedures, including:

- 1. the rules and procedures adopted by the procurement policy board, all rules relating to the participation of minority and women owned business enterprises in the city's procurement process and the implementation of those rules and procedures by city agencies;
- 2. patterns of contractual spending by city agencies, including determinations of the need to contract made by agencies in accordance with rules of the procurement policy board;
- 3. access to and fairness in city procurement opportunities, the fair distribution of contract awards, and the fair employment practices of city contractors;
- 4. procedures for evaluating contractor performance; and
- 5. procedures for declaring bidders not responsible and for debarring contractors.

## **Section 31. Power of advice and consent.**

Appointment by the mayor of the commissioner of investigation and the corporation counsel, and of the members of the art commission, board of health (other than the chair), board of standards and appeals, city planning commission (other than the chair), civil service commission, landmarks preservation commission, tax commission, taxi and limousine commission and the public members of the environmental control board shall be made with

the advice and consent of the council after a public hearing. Within 30 days after the first stated meeting of the council after receipt of a nomination, the council shall hold a hearing and act upon such nomination and in the event it does not act within such period, the nomination shall be deemed to be confirmed.

(Am. L.L. 2016/096, 8/31/2016, eff. 12/29/2016; Am. L.L. 2019/215, 12/11/2019, eff. 12/11/2019)

**Editor's note:** For related unconsolidated provisions, see Administrative Code Appendix A at L.L. 2016/096.

## **Section 32. Local laws.**

Except as otherwise provided by law, all legislative action by the council shall be by local law. The style of local law shall be "Be it enacted by the council as follows." Every local law shall embrace only one subject. The title shall briefly refer to the subject-matter.

## **Section 33. Local laws and budget modifications; fiscal impact statements.**

- a. No proposed local law or budget modification shall be voted on by a council committee or the council unless it is accompanied by a fiscal impact statement containing the information set forth in subdivision b of this section.
- b. A fiscal impact statement shall indicate the fiscal year in which the proposed law or modification would first become effective and the first fiscal year in which the full fiscal impact of the law or modification is expected to occur; and contain an estimate of the fiscal impact of the law or modification on the revenues and expenditures of the city during the fiscal year in which the law or modification is to first become effective, during the succeeding fiscal year, and during the first fiscal year in which the full fiscal impact of the law or modification is expected to occur.
- c. All agency heads shall promptly provide to any council committee any information that it requests to assist it in preparing a fiscal impact statement.
- d. Each fiscal impact statement shall identify the sources of information used in its preparation.
- e. If the estimate or estimates contained in the fiscal impact statement are inaccurate, such inaccuracies shall not affect, impair, or invalidate the local law or budget modification.

## **Section 34. Vote required for local law or resolution.**

Except as otherwise provided by law, no local law or resolution shall be passed except by at least the majority affirmative vote of all the council members.

## **Section 35. Ayes and noes.**

- a. On the final passage of a local law or resolution the question shall be taken by ayes and noes, which shall be entered in the journal of proceedings. No such vote may be cast except by a council member who is present and who casts his or her own vote in the manner prescribed by the rules of the council.
- b. All committee votes on proposed local laws or resolutions shall be taken by ayes and noes, which shall be entered in a committee report a copy of which shall be filed with the clerk or other official specified by the council rules for this purpose and which shall be available for public inspection. No such vote may be cast except by a member of the committee who is present at the meeting at which the vote is taken.

## **Section 36. Local laws; passage.**

No local law shall be passed until it shall have been in its final form and upon the desks of the council members at least seven calendar days, exclusive of Sundays, prior to its final passage, unless the mayor shall have certified as to the necessity for its immediate passage and such local law be passed by the affirmative vote of two-thirds of all the council members.

For purposes of this section, a local law shall be deemed to be upon the desks of the council members if: it is set forth in a legible electronic format by electronic means, and it is available for review in such format at the desks of the members. For purposes of this section "electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions and which: allows the recipient to reproduce the information transmitted in a tangible medium of expression; and does not permit additions, deletions or other changes to be made without leaving an adequate record thereof.

## **Section 37. Local laws; action by mayor.**

- a. Every local law certified by the clerk of the council, after its passage by the council, shall be presented to the mayor for approval.
- b. If the mayor approves the local law, the mayor shall sign it and return it to the clerk; it shall then be deemed to have been adopted. If the mayor disapproves it, he or she shall return it to the clerk with his or her objections stated in writing and the clerk shall present the same with such objections to the council at its next regular meeting and such objections shall be entered in its journal. The council within thirty days thereafter may reconsider the same. If after such reconsideration the votes of two-thirds of all the council members be cast in favor of repassing such local law, it shall be deemed adopted, notwithstanding the objections of the mayor. Only one vote shall be had upon such reconsideration. The vote shall be taken by ayes and noes, which shall be entered in the journal. If within thirty days after the local law shall have been presented to him or her, the mayor shall neither approve nor return the local law to the clerk with his or her objections, it shall be deemed to have been adopted in like manner as if the mayor had signed it. At any time prior to the return of a local law by the mayor, the council may recall the same and reconsider its action thereon.

## **Section 38. Local laws; referendum.**

A local law shall be submitted for the approval of the electors at the next general election held not less than sixty days after the adoption thereof, and shall become operative as prescribed therein only when approved at such election by the affirmative vote of a majority of the qualified electors of the city voting upon the proposition, if it:

1. Abolishes or changes the form or composition of the council or increases or decreases the number of votes any member is entitled to cast or reduces the number of districts from which council members shall be elected.
2. Changes the veto power of the mayor.
3. Changes the law of succession to the mayoralty.
4. Abolishes an elective office, or changes the method of nominating, electing or removing an elective officer, or changes the term of an elective officer, or reduces the salary of an elective officer during his or her term of office.
5. Abolishes, transfers or curtails any power of an elective officer.
6. Creates a new elective office.
7. Changes a provision of law relating to public utility franchises.
8. Changes a provision of law relating to the membership or terms of office of the city civil service commission.

9. Reduces the salary or compensation of a city officer or employee or increases the hours of employment or changes the working conditions of such officer or employee if such salary, compensation, hours or conditions have been fixed by a state statute and approved by the vote of the qualified electors of the city; and no provision effecting such reductions, increases or changes contained in any local law or proposed new charter shall become effective unless the definite question with respect to such reductions, increases or changes shall be separately submitted and approved by the affirmative vote of a majority of the qualified electors voting thereon.

10. Provides a new charter for the city.

11. Transfers powers vested by this charter in an agency the head of which is appointed by the mayor to an agency the head of which is not so appointed or vice versa, other than transfers of power authorized by this charter from an agency the head of which is appointed by the mayor to a community board, borough president or a borough board.

12. Dispenses with a provision of this charter requiring a public notice and hearing as a condition precedent to official action.

13. Dispenses with a requirement of this charter for public bidding or for public letting of contracts except as otherwise provided pursuant to chapter thirteen of this charter.

14. Changes a provision of this charter governing the classes or character of city bonds or other obligations, the purposes for which or the amount in which any class of obligations may be issued.

15. Removes restrictions in this charter on the sale, lease or other disposition of city property.

16. Curtails the powers of the city planning commission, or changes the vote in the council required to take action without or contrary to the recommendation of the city planning commission.

17. Repeals or amends this section or any of the following sections of this charter; sections forty, one hundred ninety-one, one hundred ninety-two, one hundred ninety-three, one hundred ninety-nine, two hundred, two hundred seventeen, eleven hundred ten, eleven hundred eleven, eleven hundred fifteen, eleven hundred sixteen, eleven hundred seventeen, eleven hundred eighteen, and eleven hundred twenty-three.

18. Repeals or amends sections twenty-six hundred one, twenty-six hundred four, twenty-six hundred five, and twenty-six hundred six insofar as they relate to elected officials and section twenty-six hundred two.

### **Section 39. Reconsideration.**

At any time prior to the election at which a local law is to be submitted to the electors for approval pursuant to this charter, the council, not later than fifteen days prior to the election, may reconsider its action thereon and repeal such local law without submission to the mayor, whereupon the proposition for its approval shall not be submitted at such election, or if submitted the vote of the electors thereon shall be without effect.

### **Section 40. Amendment of charter.**

Amendments to this charter may be adopted by any of the following methods:

1. By local law adopted in accordance with the provisions of this charter.

2. By vote of the electors of the city upon the petition of electors of the city, an amendment may be adopted.

(a) in relation to the manner of voting for the elective officers of the city or any of them, or

(b) abolishing any elective office or offices or creating a new office or offices, including if so provided a transfer of powers to the newly created office or offices or a disposition of the powers of any office abolished, but no such amendment shall repeal or change any limitations contained in this charter on any power.

(c) such amendment may be adopted in the manner following:

(1) Not less than fifty thousand qualified electors of the city may file in the office of the city clerk a petition for the submission to the electors of the city at the next general election therein held not less than sixty days after filing of such petition of such a proposed amendment or amendments to the charter to be set forth in full in the petition. The petition may be made upon separate sheets and the signatures of each shall be authenticated in the manner provided by the Election Law for the authentication of designating petitions. The several sheets so signed and authenticated when fastened together and offered for filing shall be deemed to constitute one petition. A signature made earlier than one hundred twenty days before the filing of the petition shall not be counted. If within ten days after the filing of such petition a written objection thereto be filed with the office of the city clerk, the Supreme Court or any justice thereof of the first, second or eleventh judicial district shall determine any question arising thereunder and make such order as justice may require. Such proceedings shall be heard and determined in the manner prescribed by the election law in relation to judicial proceedings thereunder.

(2) If such proposed amendment or amendments receive the affirmative vote of the majority of the qualified electors of the city voting thereon, it or they shall take effect as prescribed therein.

3. In such other manner as may be provided by law.

### **Section 41. Submission of local laws or amendments.**

A proposition for the submission of a local law or an amendment to this charter for the approval of the electors pursuant to this charter shall contain the title of such local law or a brief statement of the subject of such amendment. The city clerk with the advice of the corporation counsel shall prepare an abstract of such local law or amendment concisely stating the title or subject and the purpose and effect thereof in clear language, and forthwith shall transmit such proposition and such abstract to the election officers charged with the duty of publishing the notice of and furnishing the supplies for such election. A sufficient number of copies of such abstract shall be printed, in such manner that the abstract shall appear with the question to appear on the ballot in bold type and separately from the text of the proposition, and shall be delivered with the other election supplies and distributed to the electors at the time of the registration of voters and at the election. If there be more than one such proposition to be voted upon at such election, each such proposition shall be separately, consecutively and consistently numbered on the ballot and on the abstract. In case of a conflict between two local laws or two amendments adopted at the same election, the one receiving the largest affirmative vote shall control.

### **Section 42. Meetings.**

The first meeting of the council in each year shall be held on the first Wednesday after the first Monday of January at noon. All meetings of the council shall be held as provided by its rules; provided, however, that at least two stated meetings shall be held each month, except in its discretion in July and August. A majority of the council members shall constitute a quorum. At least thirty-six hours prior to a stated meeting of the council, or as soon as practicable prior to a special meeting, the council shall publish and make publicly available a proposed agenda for such meeting, including a list of all proposed local laws or resolutions to be considered at such meetings.

### **Section 43. Special meetings.**

The mayor may at any time call special meetings of the council. He shall also call a special meeting when a requisition for that purpose signed by five

council members has been presented to him. Not less than one day before a special meeting is held, notice of the time thereof and of the business proposed to be transacted, signed by the mayor, shall be published in the City Record, and at the same time the city clerk shall cause a copy of such notice to be left at or sent by post to the usual place of abode or of business of each council member; but want of service of a notice upon any council member shall not affect the validity of the meeting. No business shall be transacted at such special meetings other than that specified in the notice relating thereto.

#### **Section 44. Speaker.**

The council shall elect from among its members a speaker and such other officers as it deems appropriate. The speaker shall preside over the meetings of the council. During any period when the public advocate is acting as mayor, or when a vacancy exists in the office of the public advocate, the speaker shall act as public advocate pending the filling of the vacancy pursuant to subdivision c of section twenty-four, and shall be a member of every board of which the public advocate is a member by virtue of his or her office.

#### **Section 45. Sergeant-at-arms; procedure; expulsion of members.**

The council may elect a sergeant-at-arms and such research, drafting, clerical and other assistants as are needful to its purposes, within the appropriation provided therefor. It may appoint committees and shall appoint a finance committee properly staffed to consider budgetary and related matters and a land use committee consisting of at least one council member from each borough; shall be the judge of the election returns and qualifications of its own members, subject, however, to review by any court of competent jurisdiction; shall keep a public journal of its proceedings; shall make a complete transcript of each of its meetings and committee hearings available for public inspection free of charge within sixty days after such meeting or hearing and provide a copy of any requested pages of such transcript at a reasonable fee to cover copying and, if relevant, mailing costs; shall sit with open doors; shall have authority to compel the attendance of absent members and to punish its members for disorderly behavior, and to expel any member, after charges and a hearing, with the concurrence of two-thirds of all the council members.

#### **Section 46. Rules of the council.**

The council shall determine the rules of its own proceedings at the first stated meeting of the council in each year and shall file a copy with the city clerk. Such rules shall include, but not be limited to, rules that the chairs of all standing committees be elected by the council as a whole; that the first-named sponsor of a proposed local law or resolution be able to require a committee vote on such proposed local law or resolution; that a majority of the members of the council be able to discharge a proposed local law or resolution from committee; that committees shall provide reasonable advance notice of committee meetings to the public; that all committee votes be recorded and made available to the public; that for council members, earning outside income, as defined in such rules, is prohibited.

(Am. L.L. 2016/020, 2/19/2016, eff. 2/19/2016)

**Editor's note:** For related unconsolidated provisions, see Administrative Code Appendix A at L.L. 2016/020.

#### **Section 47. Legislative professional staff.**

Within appropriations for such purpose, the council shall establish a structure within the City Council and retain professional staff to review and analyze proposed budgets and departmental estimates, requests for new taxes or changes in taxes, budget modifications, capital borrowings and mayoral management reports. Such staff shall assist the committees of the council and Council Members in their analysis of proposed legislation and in review of the performance and management of city agencies.

#### **Section 48. City clerk; duties.**

a. The council shall appoint a clerk, who shall perform such duties as may be prescribed by law. The clerk so appointed shall be the city clerk and the clerk of the council, and shall hold office for six years and until such clerk's successor shall be appointed and has qualified. The city clerk shall have charge of all the papers and documents of the city, except such as are by law committed to the keeping of the several departments or of other officers. The city clerk shall keep the record of the proceedings of the council and shall also keep a separate record of all the local laws of the city in a book to be provided for that purpose, with proper indices, which book shall be deemed a public record of such local laws, and each local law shall be attested by said clerk. Copies of all papers duly filed in the office of the city clerk, and transcripts thereof and of the records of proceedings of the council and copies of the laws, ordinances and local laws of the city, certified by the city clerk under the corporate seal of the city, shall be admissible in evidence in all courts and places in the same manner and for the same purposes as papers or documents similarly authenticated by the clerk of a county. The city clerk may be removed on charges by a two-third vote of all the council members, subject, however, to judicial review. The city clerk shall collect such fees as shall be fixed by law.

b. It shall be the duty of the city clerk to keep open for inspection at all reasonable times the records and minutes of the proceedings of the council. The city clerk shall keep the seal of the city, and his or her signature shall be necessary to all grants and other documents, except as otherwise provided by law. In the absence of the clerk by sickness or otherwise, the first deputy clerk shall be vested with and possessed of all the rights and powers and be charged with all the duties by law imposed upon the clerk. In the absence of the first deputy clerk, the city clerk by an instrument in writing may designate one of his or her clerks, who shall be vested with and possessed of all the rights and powers and charged with all the duties by law imposed upon said clerk. The signature of the person so designated shall be in place of and of the same force and effect as the signature of the city clerk. Such designation shall be made in triplicate and shall be duly filed and remain of record in the city clerk's office and in the offices of the mayor and of the comptroller, but the designation shall be for a period not exceeding three months and shall not extend beyond the city clerk's term of office and shall be at all times revocable by the city clerk.

#### **Section 49. Members not to be questioned for speeches.**

For any speech or debate in the council and any committee or subcommittee thereof, the members shall not be questioned in any other place.