

## TESTIMONY OF SUSAN LERNER, EXECUTIVE DIRECTOR COMMON CAUSE/NY BEFORE THE 2019 CHARTER COMMISSION

Manhattan Public Hearing – September 27, 2018

Common Cause is a nonpartisan, nonprofit organization founded to serve as a vehicle for citizens to make their voices heard in the political process. We work to achieve open, honest and accountable government at all levels. We thank the Commission for this opportunity to testify.

The purpose of this written testimony is to summarize the issues which we believe the 2019 Charter Commission should take up. Our research into how some of these issues should be addressed continues and we hope to supplement this summary testimony with more detailed recommendations as the Commission's work progresses.

### Land Use Issues

Our topline recommendation is a process one. There are many issues which this commission could take up. While this Commission has at this point just under a year to complete its work, we agree with the observation which CUNY Professor Doug Muzzio, made in his testimony to the City Council Committee on Government Operations when it was considering appointing a charter revision commission, that a full examination of the entire charter would take at least 3 years. Many of the issues that will have been or will be brought to your attention can and should be addressed by the Council in the normal course. This includes issues which the just-concluded Charter Revision Commission took up and which we will discuss later in our testimony.

We strongly urge the commission to devote most, if not all, of its focus on an essential issue that cannot effectively be addressed piecemeal and which is too detailed and politically fraught to be taken up in the normal course by the City Council: the reworking of the city's land use procedures.

We became most directly familiar with the significant limitations of public participation in the city's land use determinations as part of the NY Commons collaboration with the Community Development Project and 596 Acres, a collaboration supported by the NY Community trust and the Esther T Mertz Charitable Fund. Our experience seeking comment from neighborhood activists in all five boroughs and our 3 pilot projects in neighborhoods in 3 boroughs provided us, as good government advocates, with insight into the very real deficiencies of the current ULURP and other processes. We learned firsthand of the ever building frustrations of residents and neighborhood-based organizations as they watched the transformation of zoning and neighborhoods, and the repurposing or sale of valued public assets. These changes take place all too frequently over the objections of residents, who feel that their input and comments were fruitless and solicited only after decisions were made, because of the way in which ULURP proceeds. It is time to re-examine and rework these processes and this Commission should, we believe, devote its time and resources to this daunting task.

Common Cause/NY is a participant in the Working Group which produced the [Inclusive City report](#). We subscribe to the recommendations in that report. We also support the more detailed recommendations made by our NY Commons partner, the Community Development Project, as set forth in the September 17, 2018 testimony of Paula Segal, a senior staff attorney in the Equitable Neighborhoods practice of the

Community Development Project. The current land use processes of the city fall far short of the goal of open and equitable decision-making processes in which the public, and particularly effected neighborhoods, have a meaningful and collaborative role. The current processes all too often force residents and organizations into extreme, crisis mode, leading to bitter neighborhood splits and costly litigation that makes planning for development unnecessarily costly, protracted and unpredictable.

We are most supportive of the recommendations which deal with the disposition of public assets or properties. We strongly believe that efforts to repurpose, transform, develop or sell public properties and assets should be subject to a unique review process, which must recognize the non-monetary and unique benefits which publicly owned assets provide not only to neighborhoods but to the city as a whole, in addition to their immediate monetary value.

We look forward to collaborating with the commission in this essential work.

## Voting Issues

Should the commission decide to take up issues in addition to charter provisions regarding land use, we believe that the following issues relating to voting are uniquely suited to inclusion in the charter through the commission process.

### ***A Right to Vote in the City Charter***

An ongoing issue is the unresolved conflict between New York City's well-defined public policy interest in strengthening and protecting its residents' right to vote in New York City elections and the New York City Board of Elections public position that it is not subject to the city's oversight. Interestingly, that public position has been contradicted by the Board in at least one lawsuit. *Gonzalez v. City of New York*, 2014 N.Y. Misc. LEXIS 3368 ; 2014 NY Slip Op 31963(U) (2014). The Commission should consider adding an express right to vote for New York City eligible residents to the City Charter, as well as a mechanism for city residents to enforce that right directly.

### ***Use the Budget Process to Insure Greater Accountability of the Board of Elections***

While case law makes it clear that the Board of Elections has absolute discretion regarding the hiring and firing of Board employees, within the budget amounts allocated by the City Council, the statutory or case law authority for the proposition that the Board is free to ignore all requirements regarding accountability for the manner in which city taxpayers money is spent on non-personnel items is questionable. The commission should consider adding specific reporting requirements to the Charter which would require the Board of Elections to report its performance goals and whether they are met, not simply report "through-put" (i.e., how many people voted, how many machines broke down, etc.) as part of the city budget process. For instance, the Board could be required to report the number and location of polling places where voters experience waiting times in excess of 30 minutes for city elections. The Charter should expressly authorize the City Council to include terms and conditions to its funding allocations for the Board's operations other than employee hiring, firing and salaries.

### ***Clarify That the City Conflicts of Interest Law Applies to the Board of Elections***

We recommend that you consider adding a provision to the Charter to expressly clarify that the Board of Elections is subject to the charter's conflict of interest provisions, thus over-ruling the outdated and misguided opinion issued by the Corporation Counsel in 1996, Opinion 2-96, 1996 NYC Corp. Counsel Lexis 22.



## Unfinished Business from the 2018 Charter Revision Commission

The 2018 Charter Revision Commission, in its final report, identified areas which it urged future charter commissions to consider. These included the city's districting process and rank choice voting. Common Cause/NY made recommendations and submitted proposed charter language for ranked choice voting and collaborated with the Brennan Center on proposed districting provisions. We believe that these areas could be taken up by the City Council and do not require the commission's attention. However, we will submit our earlier proposed charter language to this commission through this commission's website. Summaries of those proposals are provided below.

### ***Districting Process***

*Selection Process.* At present, members of the districting commission are appointed directly by elected officials. While we would not alter this structure, we recommend introducing a screening process to ensure that commissioners are qualified and sufficiently independent and impartial. To do this, we recommend that the New York City Campaign Finance Board be placed in charge of screening applicants (both for disqualifications and for fitness) and creating a pool of at least 75 diverse and qualified applicants. Elected leaders then would make their commissioner selections from pool created by the board.

If the members of the Charter Revision Commission wish to go further, they could follow the model used in California and Austin, Texas and allow elected officials to strike applicants from the pool but have the selection of commissioners occur through a randomized process. This type of arrangement, however, would require careful structuring to ensure commission is demographically and geographically representative.

*Disqualifications.* We recommend adding additional restrictions on who can be a member of the commission by excluding from eligibility certain persons who have connections with large donors.

*Transparency.* At present, there are no restrictions on the ability of commissioners to meet in private with interested stakeholders. We recommend requiring that all communications regarding the business of the commission be during commission meetings or other public forums. If a commissioner or commission staff conduct discussions regarding plans details with anyone not affiliated with the commission, he or she would be required to submit a disclosure form. We also recommend requiring making all comments and testimony, whether submitted formally or informally, available to the public via the internet.

*Public Participation.* While in 2011, the commission held a robust number of public meetings, it did so voluntarily, and there is no guaranty that future commissions will feel similarly bound. We recommend formalizing a requirement that the commission release a draft plan and hold public hearings relating to the draft plan before the commission adopts its final plan. Likewise, we recommend requiring draft plans to be made available to the public for at least 15 days before the commission takes any action in order to facilitate public input.

*Map drawing Criteria.* While the charter's map drawing rules are strong overall, they could be updated and enhanced. We recommend, for example, strengthening protections for communities of color in the charter's map drawing criteria, making clear for example that it is legitimate to consider the ability of different minority groups to coalitions with one another. We also recommend adding greater clarity to what constitutes a community of interest for purpose of redistricting and making clear that observing political boundaries and compactness are subordinate to other criteria.



*Census Data.* At present, the charter requires that districts be drawn based on population data from the census. However, because there are growing concerns about a sizeable census undercount, we recommend authorizing city agencies to adjust the data using accepted statistical methods in order to ensure that hard-to-count groups are not underrepresented.

*Approval of Maps.* At present, maps are adopted by a simple majority of the commission. We recommend requiring a two-thirds supermajority (10 of 15 members). This will serve as an additional check on potential gamesmanship and help foster negotiation among the different stakeholders.

***Rank Choice Voting***

Common Cause/NY strongly endorses adopting Rank Choice Voting for all New York City primary elections, not limiting the reform to run-offs or to top 2 or 3 finishers. We believe that such a configuration would garner the full benefits which the reform can provide to New York City's voters, given the unusually high proportion of multi-candidate races which New York city's primaries experience.

