

MEMORANDUM FROM THE
ULSTER COUNTY OFFICE OF THE COMPTROLLER

March S. Gallagher, Esq.
Comptroller



Alicia DeMarco, CPA
Deputy Comptroller

MEMORANDUM

TO: Kathleen C. Mihm, Chair, Ulster County Charter Revision Commission
Ulster County Charter Revision Commission Members

FROM: Comptroller March Gallagher

RE: Ulster County Comptroller's Charter Revision Recommendations

DATE: October 4, 2022

In response to your recent request, please find the attached schedule of preliminary recommendations that we would like to highlight for the Commission's review. We appreciate your consideration and invitation to provide input and feedback while you review the Charter and its operational functions within Ulster County.

We also wanted to note that in accordance with Subsection C-5 (2), the Committee may expend funds, as necessary, utilizing funds to be provided by the Legislature, should the Committee feel there are any expenses that need to be incurred in the performance of their duties (i.e., hire outside consultants and counsel).

If the Committee has any questions or concerns regarding these recommendations or would like additional information, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "March Gallagher".

ULSTER COUNTY CHARTER REVIEW RECOMMENDATIONS

CHARTER AMENDMENT

§ C-5(B) Amendment or Revision of the Charter

Convene the Charter Revision Commission at least once every five years.

DEFINITIONS

§ C-6 Definitions

DEPARTMENT — The administrative unit which is the primary level of County government.

Clarify the definition of "Department". The current definition does not clearly define if the Executive should be considered a single department or several departments and this has resulted in the requirements that "Departmental estimates" or budget requests be forwarded to the Legislature interpreted as the Executive budget presentation meeting the requirement.

Add definition for "DEPARTMENTAL ESTIMATES," as it relates to § C-33.

COUNTY EXECUTIVE

§ C-25(M) Execute all contracts under the sum of ~~\$50,000~~ \$100,000 and, with the approval of the County Legislature, all contracts in excess of ~~\$50,000~~ \$100,000 or any amendment to a contract that causes the total to exceed \$100,000;

The amount of administrative work that is involved in preparing resolutions related to contract approvals is significant for both legislative support staff and the County Attorney's Office. Based on our review, the total value of the contract does not appear to be the primary driver in the Legislature's review of contracts. We suggest adding additional reporting that encompasses ALL contracts to accommodate for the increase in the resolution requirement threshold.

BUDGET

§ C-33 Departmental, agency, office or unit estimates. [Amended 6-16-2020 by L.L. No. 3-2020]

Make it clear departmental estimates must be shared to the Legislature. Give Legislature and Comptroller view only access to the budget requests made by the departments. In the current financial system (New World/Logos/Tyler ERP) these are called "Level 1 Budget Worksheets". Make Department heads send a hard copy to the Legislature.

§ C-38(J) Copies of the County budget as adopted shall be certified by the County Executive and by the Clerk of the Legislature and shall be filed in the offices of the County Executive and the Clerk of the Legislature. The budget so certified shall be posted on the County website and, at the discretion of the Legislature, printed or otherwise reproduced and copies made available to the public at such cost as the Legislature shall deem appropriate no later than January 1 of the adopted budget year. Materials posted to the County website annually during the course of preparation of the County budget may not be removed from public access until the certified County budget for the year is posted in accord with the requirements of this section.

Establish a deadline within the Charter for public posting of the budget.

FINANCE

§ C-53(A) There shall be a Department of Finance under the direction of a Commissioner of Finance. The Commissioner of Finance shall be appointed by and serve at the pleasure of the County Executive, subject to confirmation by the County Legislature. He or she shall be appointed on the basis of his or her experience and qualifications in financial administration and other specified duties of this office and shall be directly responsible to the County Executive. The Commissioner of Finance shall hold no other elected public office or compensated employment and shall devote full time to the duties of the office.

This position comes with significant compensation and has many opportunities for conflicts. This amendment would make it similar to other positions that prohibit other outside employment.

§ C-53(B) Powers and duties. The Commissioner of Finance shall:

(3) Act as the enforcing officer of the County for the purpose of the collection of tax liens on real property pursuant to Article 11 of the Real Property Tax Law of the State of New York;

Add responsibility for timelines to enforce real property tax. Foreclosures should be processed as expeditiously as possible, with an annual review of all hazardous properties, a committee structure to review properties being withheld from the foreclosure action.

(10) Act as the enforcing officer of the County for the purpose of the collection of Occupancy tax

Add enforcement power/duties related to Ulster County's Occupancy Tax so that it's clear the Finance Commissioner has enforcement responsibility.

§ C-53(B)(6) Submit a complete statement of County finance to the County Executive and the County Legislature on or before the first day of ~~March~~ May and at such other times as either may require;

Change the required submission date of the AUD to the Legislature to mirror the due date in state law (May 1st). In practice, the AUD is never submitted to the Legislature prior to May 1.

§ C-53(B)(9) Maintain the financial books and records and perform bank reconciliations for all units of County government unless otherwise required by law.

Place responsibility for reconciling the county's bank accounts. And create a deadline for notifying the County Comptroller of any new account within 30 days of opening.

COMPTROLLER

§ C-56(A) There shall be a Comptroller, who shall be elected from the County at large in each odd-numbered year in which a County Executive is not chosen for a term of four years beginning with the first day of January next following his or her election. At the time of his or her nomination and election, and throughout his or her term of office, the Comptroller shall be and remain a qualified elector of Ulster County. The Comptroller shall hold no other elected public office or compensated employment and shall devote full time to the duties of the office.

§ C-57(A) Examine, audit, and verify all books, records, and accounts kept by the administrative units, offices and officials paid from County funds, institutions and other agencies of the County, including bond and note registers and trust accounts, and the accrual and collection of all County revenues and receipts, and for this purpose have access to all such books, records, and accounts at any time except where precluded by law. ~~The Comptroller shall prepare an annual audit report including a risk assessment of the accounting methods utilized by the County, and shall submit a copy of the report to the County Legislature and the County Executive by April 1 of each year; The Comptroller shall use risk assessment to identify weaknesses in internal controls and shall summarize improvements in internal controls in an annual audit report to the Legislature and Executive by April 1 of each year.~~

The current language does not account for current best practices which are that risk assessment is a continuous process that occurs throughout the operating year. Furthermore, it is not good policy to publish the risks identified or examined because that provides too much information to those who might choose to act fraudulently. Instead, risk assessment is a tool that is conducted internally that informs the Comptroller's Office recommendations on improving internal controls.

§ C-57(B) Procure from the depositories with which the Commissioner of Finance shall have deposited the funds and monies coming into the Comptroller's possession statements, at least monthly, of all monies deposited by the Commissioner of Finance or paid out pursuant to the Comptroller's order, and ~~reconcile such statements with the County accounts;~~ review bank reconciliations as prepared by the Commissioner of Finance;

Friction between the Comptroller's Office and Finance Department over bank reconciliations is likely a result of the misplaced responsibility for this duty. It is typical to have internal auditors review reconciliations, not conduct them. For example, the Dutchess County Comptroller does not reconcile bank accounts.

§ C-57(C) Audit records of appropriations, encumbrances, expenditures, and revenues, and . . .

Although audit authority over revenues is implied, this would codify it.

§ C-57(G) As he or she determines necessary or appropriate, audit any department, program, ~~or~~ function or public benefit corporation of County government to assess the degree to which its operation is economical, efficient and/or effective;

The Comptroller's Office was sued by the UCRRA in a challenge to its audit authority and now with significant financial and asset disposition decisions being made by the Ulster County Economic Development Alliance and the Ulster County Housing Development Corporation, significant county taxpayer resources are handled by public benefit corporations. This change would reiterate Comptroller's audit authority without having to resort to litigation.

§ C-57(H) To conduct studies and investigations in furtherance of his or her functions and, in connection therewith, to obtain and employ professional and technical advice, appoint citizens' committees, commissions and boards, subpoena witnesses and documents (including digital records and access to software licensed by or owned by the county), administer oaths, and require the production of books, papers and other evidence deemed necessary or material to such studies

or investigations. A subpoena issued under this section shall be regulated by the Civil Practice Law and Rules together with any state or federal laws or rules that may be applicable. The subpoena shall not extend to disclose the identity or jeopardize the safety of victims, confidential informants, witnesses, and undercover officers or operatives;

Make clear that subpoena power applies to all records including digital records and provide for read only access to all software licensed by or owned by the county. For example, the Comptroller has had difficulty in accessing software used by the Finance Department to monitor short-term rentals and process delinquent real property tax.

~~§ C-60(A) Filling Comptroller vacancy. If a vacancy occurs in the office of the Comptroller of Ulster County for any reason other than the expiration of a term, the County Legislature shall fill this office ad interim by the appointing of a person fully qualified by law to hold that office by a majority of its full number at its next regularly scheduled session or at a special session held for the purpose, and any such session shall be held no sooner than two weeks after the vacancy occurs, and no later than one month after the vacancy occurs.~~

~~§ C-60(B) Appointee to serve on interim basis. A person appointed by the Legislature in this manner to fill an office ad interim shall serve until the end of the 31st day of December following the first general election day at which a general election may be held under law to fill this position.~~

Eliminate sections A and B. Allow Acting Comptroller to serve until an election can be held as practicable. The Legislative appointment of an interim comptroller overrides the internal succession plan and results in rapid leadership turnover and politicization of the office.

DEPARTMENT OF RESIDENTIAL HEALTHCARE FACILITIES

~~§ C-99 ARTICLE XXIX Department of Residential Health Care Facilities~~

Remove section on residential healthcare facilities (the county sold Golden Hill)

PERIODIC COMPENSATION REVIEW COMMISSION

§ C-110 At the call of its Chairman, the Committee shall review the salaries of all elected officials of the County of Ulster at least every second year after its first meeting. In the course of its deliberations, the Committee shall hold at least one public hearing and shall otherwise provide ample opportunity for public comment. The Committee shall provide its recommendations and the rationale for them to the County Executive and the County Legislature no later than June 30 of the same year in which it convened, except that the Committee shall not make recommendations concerning compensation of elected officials for whom, by law or judicial determination, the County Legislature does not have the power to fix compensation. Immediately upon their delivery to the County Executive and the County Legislature, the recommendations of

the Committee shall be filed with the Clerk of the Ulster County Legislature and posted on the County website. ~~All changes in salaries for elected officials shall be made by local law. The recommendations of the Commission shall be incorporated into the next County Executive's proposed budget unless previously adopted by local law.~~

The County Executive's Office has interpreted current language to preclude the Executive budget from proposing increases recommended by the Commission and the Legislature has routinely avoided increasing the budget to accommodate these recommendations. The logic of having an independent commission is overruled by still requiring electeds to take an affirmative act by increasing the Executive budget proposal to implement the recommendations.