

ULSTER COUNTY OFFICE OF THE COMPTROLLER

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Comptroller



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MEMORANDUM

TO: Charter Review Commission Chair Kathleen Mihm
Charter Review Commission Members

FROM: Comptroller March Gallagher

RE: Ulster County Charter Revision Suggestions

DATE: April 5, 2023

As noted in your most recent meeting, in light of recent events that highlight the importance of internal controls in County operations, the Comptroller's Office has done an additional review of the Charter to identify any additional changes that could improve transparency and controls. While the Commission is reviewing the section of the Charter as it relates to the duties, powers and responsibilities of the Comptroller, I would like to offer the following charter amendments for your review and discussion.

Because we have recently proposed changes to the charter, and some of those changes are still pending, we are presenting this section of the charter in whole, as a redlined draft. For clarity, we have highlighted those sections that have already been approved in blue, those that have been presented but are still pending in yellow, and newly proposed changes in redline with no highlight. We provided notes in grey to elaborate and explain the reason we feel the change is necessary.

As always, we appreciate the Commissions consideration and time in reviewing the recommendations attached to this memo.

ULSTER COUNTY CHARTER PENDING, ACCEPTED & PROPOSED CHANGES

PENDING

ACCEPTED

NEWLY PROPOSED

§ C-56 Election; term; qualifications.

[Amended 7-16-2019 by L.L. No. 4-2019]

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. (Matrix Item #19)

B. No person shall serve as Comptroller for more than three full terms, unless he or she has filled an unexpired term prior thereto. For the purpose of establishing the term limit, term of office shall be calculated beginning the first day of his or her first full term of office after the effective date hereof.

§ C-57 Powers and duties.

[Amended 8-14-2012 by L.L. No. 9-2012[1]]

The Comptroller shall be the chief auditing officer of the County. Except as may otherwise be provided in this Charter he or she shall:

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, software 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; (Matrix Item #20)~~

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.

Additionally, we seek to clarify that audit authority and access should extend to all County software applications.

B. Procure from the depositories and investment vehicles 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. (Matrix Item #21)~~ The Comptroller shall be designated an authorized user on all County accounts and be provided access to all such accounts at all times;

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.

Additionally, the Comptroller needs to be considered an authorized user for banking purposes and always have access to all accounts and information to ensure that we can adequately conduct audits of County financial records.

C. Audit records of appropriations, encumbrances and expenditures, revenues, and prescribe generally accepted government accounting methods to be used by all units of County government, unless otherwise required by the State Comptroller; (Matrix Item #22)

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

D. Certify the availability of funds for all requisitions, contract related payments, purchase orders and other documents by which the County incurs financial obligations or for the expenditure of funds for which the County is responsible;

This change is to clarify that the availability of funds is reviewed when payments are issued. The total amount of not to exceed contracts are not included in this analysis.

E. Prescribe the form for records of appropriation, encumbrances, and expenditures for all units of County government, receipts, vouchers, bills and claims, and journal entries posted unless otherwise required by the State Comptroller;

F. Audit and certify for payment all lawful claims or charges against the County, whether for payroll or otherwise, or against funds for which the County is responsible in whole or in part;

G. As he or she determines necessary or appropriate, audit any department, program, or function, public benefit corporation, or component unit of County government to assess the degree to which its operation is economical, efficient and/or effective; (Matrix Item #23)

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.

Additionally, we seek to add component units as a newly proposed change.

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 or its component units), 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; (Matrix Item #24)

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.

Additionally, we seek to add component units as a newly proposed change.

I. Submit to the County Legislature and Executive, and post on the County website as frequently as he or she deems necessary, but at least quarter-annually, reports on the financial condition of the County and the economy, efficiency and/or effectiveness with which the County government or any of its departments, agencies or programs is managed;

J. Have all the powers and perform all the duties conferred or imposed by law upon a county comptroller, and perform such other related duties required requested by the County Executive or County Legislature.

[1] Editor's Note: This local law was approved at referendum by a majority of the duly qualified voters 11-6-2012.

§ C-58 Deputy Comptrollers and staff.

The Comptroller shall have the power to appoint such Deputy Comptrollers, assistants and employees in his or her office as shall be authorized by the County Legislature. All such appointees shall be qualified by education and/or experience and shall be directly responsible to, and serve at the pleasure of, the Comptroller, subject to applicable law.

§ C-59 Acting Comptroller.

The Comptroller shall designate in writing, and in order of succession, the Deputy Comptrollers and assistants who shall be Acting Comptroller in the event of his or her absence from the County or inability to perform and exercise the powers and duties of this office. Such designation shall be filed with the County Clerk and the Clerk of the County Legislature and may be revoked at any time by the Comptroller filing a new written designation and order of succession. The Acting Comptroller shall have all the powers and perform all the duties of the Comptroller.

§ C-60 Vacancy.

[Amended 8-14-2012 by L.L. No. 9-2012[1]]

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, and meeting the independence standards set forth by the United States Government Accountability Office (GAO) in that agency's most recent revision of Government Auditing Standards 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.

Clarify that appointed Comptroller's should meet independence standards.

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.~~ (Matrix Item #25)

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.

C. Election; person to serve for duration of unexpired term. The person chosen at general election, held as soon as practicable on a general election day under state law to fill a vacancy in the position of the Comptroller of Ulster County, shall serve for the duration of the unexpired term of the office.

[1] Editor's Note: This local law was approved at referendum by a majority of the duly qualified voters 11-6-2012.