

# Comprehensive Recommendations

October 9, 2018



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## I. Create A Transparent & Digital 21st Century City

Chapter 47 of the Charter outlines public access to government information. It is very outdated and in need of an overhaul that reflects major advances in technology and communication over the last 30 years. Many of the provisions of this section reflect the world as it was in 1989, when paper-based processes were standard procedures and the internet and mobile devices did not exist.

Reinvent Albany believes the Commission should revamp Chapter 47, and lay out a coherent vision for a Transparent & Digital 21st Century City. A vision for a 21st Century Digital City would identify the City's goals and values for the use of civic technology, in addition to specific offices, positions and initiatives. City government has issued reports that can guide this Charter Commission, including the 2011 [Roadmap to a Digital City](#)<sup>1</sup> and 2013 [Council 2.0: A Roadmap to Digital Inclusion and Open Government](#).<sup>2</sup>

### **Reinvent Albany recommends a rewrite of Chapter 47 include the following elements:**

1. **Establish that city data is open data by default.** We believe data should be made available in a machine readable and downloadable format on as many devices as possible. This should be an expressed value of the City and a general operating principle of city government. In other words, unless there are clearly and publicly stated concerns about personal privacy, criminal investigations or proprietary information, data should be open. In practice this means the 2019 Charter should:
  - a. Codify and strengthen the City's [OpenRecords](#) platform created by executive order and administered by the Department of Records and Information Services (DORIS).<sup>3</sup> Int. No. 328 of 2014 is a starting point for a stronger OpenRecords/"OpenFOIL" law and process.
  - b. Supplant the The Public Data Directory in section 1062 with a strengthened Open Data Law (Title 23, Chapter 5 of the City's Administrative Code). The Open Data Law should include a private right of action or other appeals process that allows the public to compel the release of public data.

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<sup>1</sup> See:

<https://www1.nyc.gov/office-of-the-mayor/news/338-13/mayor-bloomberg-releases-to-digital-roadmap-plan-ensure-new-york-city-remains-leading#0>

<sup>2</sup> See: <http://council.nyc.gov/wp-content/uploads/2016/05/techplan.pdf>

<sup>3</sup> See: <https://a860-openrecords.nyc.gov/>

- c. Codify the Mayor’s Office of Data Analytics (MODA) in the Charter in Chapter 47 (it was created by [Executive Order No. 306 in 2013](#)<sup>4</sup>) and prescribe its duties and responsibilities, which should include a Director and Chief Open Platform Officer, who is in charge of administration of the Open Data Law in coordination with the Department of Information Technology and Telecommunications (DoITT).
- d. Require three separate open government interagency meetings at least quarterly to share best practices and ensure compliance with the Open Data Law, Freedom of Information Law (FOIL), and archiving requirements in the Charter. MODA and DoITT currently convene an Open Data Group and DORIS convenes an Archives Group and they should be mandated to continue to do so; additionally the Law Department should convene a interagency FOIL working group.
- e. Require agencies to provide tabular data online in an open data format for all data embedded in agency reports and web pages (for example, NYPD Compstat 2.0 geographic coordinates data for its crime incident map<sup>5</sup>).
- f. Mandate agencies include on their websites a downloadable *Table of Organization* that includes the date it was updated and reveals all directors of administrative units or assistant commissioners, whichever is more detailed. [The Department of Finance does this](#) but most agencies do not.<sup>6</sup>
- g. Put voting records online. Require the City Council to include on each Councilmembers’ webpage a searchable database informing voters how their Councilmembers voted on issues and bills.

**2. Put City government online: replace paper-based processes with digital information, forms and transactions.** For example:

- a. Enable vendors and the public to respond to all city procurement notices (Requests For Information, Requests for Proposals, etc.) electronically, reflecting changes currently being made in creating the new PASSPORT contract system replacing VENDEX.
- b. Require agencies to provide an online (paperless) mechanism to conduct transactions (permit and registration applications, fine payments, etc.) with the public using any common web browser.

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<sup>4</sup> See: [http://www.nyc.gov/html/om/pdf/eo/eo\\_306.pdf](http://www.nyc.gov/html/om/pdf/eo/eo_306.pdf)

<sup>5</sup> See: <https://compstat.nypdonline.org/>

<sup>6</sup> See: [https://www1.nyc.gov/assets/finance/downloads/pdf/org\\_chart/orgchart.pdf](https://www1.nyc.gov/assets/finance/downloads/pdf/org_chart/orgchart.pdf)

- c. Require 311 and *all* city agencies to accept uploadable photographs for complaints and service requests involving the city's physical infrastructure such as streets, parks or property.
  - d. Require agencies to have websites which include as digital, searchable, downloadable content all recent information that is transmitted externally in a paper form, including reports.
  - e. Update sections 1058 and 1059 of Chapter 48 related to taxpayers' access to books, papers and records to reflect digital access. Modernize section 1065 related to budget documents to make documents available in a open data form.
- 3. Data Sharing Transparency: require agencies to list on their website all data sharing agreements with non-NYC entities including vendors, universities and nonprofit organizations, including the type of data being shared and the conditions for sharing that data.** Maintain a webpage with a centralized link to all agency pages with such information.

## **II. Strengthen Ethics Laws for City-Affiliated Nonprofits and Codify Nonprofits in the Charter**

The city has seen the growth of a shadow government in the form of city-affiliated nonprofits. We believe there are well over a hundred city-affiliated nonprofits but we do not know for sure because there is no definition of a city-affiliated nonprofit in law nor is there a public listing of all city-affiliated nonprofits.

**We think city-affiliated nonprofits should be codified in the charter.** A new section of the city charter on city-affiliated nonprofits should:

- 1) provide a listing of all city-affiliated nonprofits and their associated city agency.
- 2) create procedures for creating, dissolving and providing Council oversight of city-affiliated nonprofits. We believe the Council should have to approve the creation of a city-affiliated nonprofit following a public hearing and a statement by the agency as to why the nonprofit is needed.
- 3) require city-affiliated nonprofits follow the Freedom of Information Law (FOIL) and the Open Meetings Law.
- 4) mandate city-affiliated nonprofits follow procurement procedures of city agencies with rare exception.
- 5) report revenues and expenditures to the public, City Council and City Comptroller.
- 6) lay out ethics requirements for board members, staff, and fundraising (see below).

**[Reinvent Albany also provided specific recommendations to the mayor's Charter Revision Commission strengthening ethics laws for city-affiliated nonprofits](#)<sup>7</sup> which are repeated below.** Our recommendations also impact ethics for government entities beyond nonprofits.

### **1. Limit contributions to *all* nonprofits affiliated with elected officials.**

Under Local Law 181 of 2016, donations to nonprofits affiliated with elected officials are limited to \$400, but only if the nonprofits spends 10 percent or more of their annual budget on public-facing communications featuring the elected official. The NYC Conflicts of Interest Board (COIB) has issued rules on the

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<sup>7</sup> See:

<https://reinventalbany.org/2018/05/reinvent-albany-calls-on-charter-revision-commission-to-increase-transparency-of-and-limit-donations-to-city-affiliated-nonprofits/>

affiliation of nonprofits with elected officials, Title 53 Chapter 3-03.<sup>8</sup> We believe donations should be limited by donors doing business even if the public facing communications do not feature the elected official. However, we believe the limit could be higher than the \$400 doing business limit, but we do not have a specific number to recommend. We also believe donations should be restricted to the lower limit for 180 days after a donor has ceased doing business with the city and is removed from the doing business database.

- 2. Restrict donations by those doing business with the city to city agencies, public authorities, public benefit corporations and local development corporations.** Local Law 181 of 2016 only limits contributions to nonprofits affiliated with elected officials who spend 10 percent of their budgets on name or image of the elected official. It does not restrict donors doing business with the city from making contributions directly to government entities. A donor can give unlimited sums to an agency even while bidding on a contract or seeking a favorable determination on a matter before the agency.
- 3. Publish as open data the exact amount of all donations by donors doing business with the city to nonprofits affiliated with elected officials, and to all government entities (city agencies, public authorities, public benefit corporations and local development corporations).** Donations should be made known to the public in a machine readable, tabular dataset in the city's Open Data Portal. Currently, donations to government entities and nonprofits are made available to the public in a 500-plus

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<sup>8</sup> "Affiliated" is defined in COIB Rules, Title 53, Chapter 3-03.

§3-03 Factors by which the Board Will Determine Whether an Entity is Affiliated with an Elected Official.

For purposes of Administrative Code § 3-901, in determining whether a person holding office as Mayor, Comptroller, Public Advocate, Borough President or member of the Council, or an agent or appointee of such a person, exercises control over a non-profit entity, the Board will consider the totality of the circumstances, including:

- (a) whether the organization was created by such an elected official or the official's agent, or by an individual who was previously employed by, or was a paid political consultant of, the elected official, and, if so, how recently such organization was created;
- (b) whether the board of the organization is chaired by such an elected official or the official's agent;
- (c) whether board members are appointed by such an elected official or the official's agent or only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) whether board members serve for fixed terms or can be removed without cause by an elected official or the official's agent;
- (e) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
- (f) the degree to which public servants, acting under the authority or direction of the elected official or an agent of the elected official, perform duties on behalf of the organization as part of their official City employment; and
- (g) the purpose of the organization.

page PDF every six months in broad ranges showing the dollar amount. Local Law 181 of 2016 requires the exact dollar amount of contributions to nonprofits affiliated with elected officials, along with additional identifying information, be made public beginning in January 2019. However, Local Law 181 does not require disclosure of the exact dollar value of contributions to city agencies, public authorities, public benefit corporations, local development corporations, and city-affiliated nonprofits not affiliated with elected officials.

- 4. Require “volunteers” doing major policy work or senior level appointments for the city to follow city ethics laws.** The city has, in some instances, utilized people who are not on the city payroll to do policy work or assist in choosing senior officials while they are also fundraising for nonprofits affiliated with elected officials. We do not oppose per diem or unpaid volunteers serving on city boards, task forces and commissions, much like the members of this commission. But they should not also be fundraising simultaneously for nonprofits affiliated with elected officials. If they do, they should follow city ethics laws in some form.

Even if the city was to implement Reinvent Albany’s recommendations, certain nonprofits may still not be subject to lower contribution limits. It is not clear if The Police Foundation, for example, is considered “affiliated” with an elected official under the Conflicts of Interest Board’s rules (see footnote 8 on page 7) because none of its board members are part of the NYPD. Numerous companies that make donations to The Police Foundation have subsequently won NYPD contracts and most of the Foundation’s spending is on the NYPD.<sup>9</sup>

Our recommendations also leave untouched nonprofits which do not do business with the city but rely significantly on city funding and who may have board members who personally make donations to city government or elected officials’ campaigns. This is the case with many social service nonprofits.

We have not been able to identify a solution to these challenging scenarios. These nonprofits are not as clearly affiliated with government even while they are connected to government.

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<sup>9</sup> See: Nahmias, Laura, “Police foundation remains a blind spot in NYPD contracting process, critics say,” Politico. July 13, 2017. Available at: <https://www.politico.com/states/new-york/city-hall/story/2017/07/13/police-foundation-remains-a-blind-spot-in-nypd-contracting-process-critics-say-113361>



There is also a need to balance the good work nonprofits do on behalf of the city with curbing the perception of or actual undue influence on government decision making.

### III. Enact Election Reforms to Ensure Fair Elections

#### A. Campaign Finance Reform

During the first round of hearings held by the 2019 Charter Revision Commission, Council Speaker Corey Johnson testified at the Manhattan hearing. He encouraged the Commission to specifically consider reforms to the city’s elections, including Instant Runoff Voting (otherwise known as Ranked Choice Voting).

Several individuals testified in favor of Democracy Vouchers and other campaign finance reforms.

Reinvent Albany strongly supports the structure of the city’s campaign finance system. The public matching system, doing business restrictions, and strong enforcement by the Campaign Finance Board have made New York City’s campaign finance system a national model. It has been continuously and carefully improved over the last 30 years, and stands to be strengthened further if the voters approve the measures the Mayor’s Charter Revision Commission put on the ballot on November 6th.

The Commission should consider improvements to our model system but we oppose changing its strong foundation.

Reinvent Albany makes the following recommendations to improve the city’s campaign finance and voting systems:

#### **Recommendation #1:**

**Empower the Campaign Finance Board to monitor and enforce laws and regulations for campaign finance, ethics, and lobbying.**

**As a first step towards consolidating and strengthening oversight, move lobbying enforcement out of the City Clerk’s office into the Conflicts of Interest Board (COIB).**

In most places, campaign finance, ethics, and lobbying enforcement is more centralized than in New York City. Thirty five states have an ethics commission that administers

both conflicts of interest and lobbying laws.<sup>10</sup> In California, the highly regarded Fair Political Practices Commission, oversees elections, ethics and lobbying, has done so for over 40 years and is considered a national leader in the field.

New York City's administration and enforcement is fragmented: the Campaign Finance Board oversees candidates raising and spending money for political office; the Board of Elections administers elections; the Mayor's Office of Contract Services (MOCS) administers the Doing Business Database; the Conflicts of Interest Board (COIB) oversees ethics laws and financial disclosure; and the City Clerk's Office, part of the City Council, regulates lobbying disclosure and enforcement.

Reinvent Albany believes New York should consolidate these functions to concentrate regulatory and technology expertise, take advantage of economies of scale, and reduce costs. Consolidation allows one agency to conduct more effective oversight because it can examine all areas of potential influence by outside actors and activities by public officials, and leverage expertise applicable to all areas to broadly identify corruption risk. The Campaign Finance Board, which effectively uses technology to make campaign activity transparent and to engage voters, could apply its expertise to improving and networking databases at MOCS, COIB and the City Clerk's Office.

Consolidating oversight at the CFB might seem like a far out idea for those hearing it for the first time, but greater consolidation is the norm and the long term trend in most other places. If the Commission and the mayor are looking to do something big to put the city at the forefront of curtailing the influence of money on politics and governance, this is it.

The last NYC Charter Revision Commission made steps in this direction, moving the Voter Assistance Advisory Commission (VAAC) into the Campaign Finance Board, which has been a big success.

Here in New York City, the ethics body, COIB, does not regulate lobbying. Instead lobbying oversight is housed in the City Council in the Clerk's Office. At the very least, lobbying oversight should be moved into the COIB. Better still would be to move both lobbying and ethics moved into the larger, more effective and independent Campaign Finance Board.

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<sup>10</sup> See: <http://www.ncsl.org/research/ethics/50-state-chart-state-ethics-commissions-jurisdic.aspx>

**Recommendation #2:**

**Limit public matching funds to contributions up to \$175.**

Another solution is to limit matching funds for contributions up to \$175. Matching funds are currently provided for the first \$175 of *any* contribution at a rate of \$6 to \$1, no matter how large the contribution is. Consequently, many candidates with limited time and resources raise money from larger donors. By only providing the match for smaller contributions, we incentivize candidates to focus on smaller donors rather than raising the maximum contribution.

**Recommendations #3:**

**Include the clients of lobbyists in the Doing Business definition.**

The Doing Business restrictions should be extended to clients of lobbyists. This means that individuals associated with companies and organizations that hire lobbyists but do not lobby themselves would have their campaign contributions limited to \$400 or less. It does not make sense that in-house lobbyists at small nonprofits are subject to the doing business limits yet clients of lobbyists who may pay lobbyists hundreds of thousands of dollars per year to advocate for them are not considered doing business with the city.

The New York City Hospitality Association, for example, spent \$30,000 lobbying as a client in 2017. Because the association was not registered as a lobbyist, its president, president emeritus, treasurer, and board member all legally gave campaign contributions to Councilmembers in excess of the doing business limits while legislation impacting the industry was before the Council.

**Recommendations #4:**

**Require subcontractors doing large amounts of work on city contracts to be subject to the doing business contribution limits.**

Reinvent Albany recommends expanding the “Doing Business” definition so the reduced contribution limits apply to subcontractors doing large amounts of work on city contracts. We do not have a recommendation on the dollar value for being subject to the doing business restrictions at this time. However, we think it is an inconsistency that subcontractors doing millions of dollars of work are not subject to doing business contribution limits while prime contractors on small contracts are.

Reinvent Albany has advocated for more transparency regarding subcontractors generally, and last year the comptroller began to make spending on subcontractors available in Checkbook NYC, the city's public database for expenditures.<sup>11</sup> However, only a small portion of the funds are known in part because the city does not require prime contractors to report their subcontractors for many city contracts.<sup>12</sup> Collecting this information would not only reduce undue influence in government (or the perception of it) by limiting donations of subcontractors, but also result in better monitoring of Minority and Women Business Enterprises (MWBs) and procurement.

*Improve the Accuracy of the Mayor's Office of Contracting Doing Business Database*

Reinvent Albany also has concerns about the accuracy of the Doing Business Database. Based on our own experience filing lobbying reports, we believe the Doing Business Database is receiving incomplete or inaccurate information from the City Clerk's lobbying database. Reinvent Albany's current lobbyists were not listed in the Doing Business database even though we updated the online forms we submitted to the City Clerk's Office in March 2017. Former lobbyists who left the organization in March and September 2017 were not delisted until 2018.<sup>13</sup>

We are particularly concerned about the accuracy of the MOCS database because several changes were made in 2016 to the Doing Business laws. The 2016 laws prohibit matching contributions bundled by lobbyists and vendors doing business with the city; require that entities with at least a 10 percent interest in companies "doing business" also be classified as "doing business"; create new systems for disclosures to donors regarding doing business restrictions; require the Doing Business database include the dates when business was done; and require MOCS to publish a list of those doing business historically.<sup>14</sup>

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<sup>11</sup> See:

<https://comptroller.nyc.gov/newsroom/comptroller-stringer-announces-new-transparency-tool-for-checkbook-nyc/>

<sup>12</sup> See:

[https://www.checkbooknyc.com/contracts\\_landing/bottom\\_slider/sub\\_vendor/dashboard/ss/yeartype/B/year/118/status/A?expandBottomCont=true](https://www.checkbooknyc.com/contracts_landing/bottom_slider/sub_vendor/dashboard/ss/yeartype/B/year/118/status/A?expandBottomCont=true)

<sup>13</sup> See:

[https://www1.nyc.gov/dbnyc/entityDetail.htm?org\\_id=160125&org\\_name=REINVENT%20ALBANY&lastClosingDate=12/31/2017&lastRunDate=12/31/2017](https://www1.nyc.gov/dbnyc/entityDetail.htm?org_id=160125&org_name=REINVENT%20ALBANY&lastClosingDate=12/31/2017&lastRunDate=12/31/2017)

<sup>14</sup> See: <https://council.nyc.gov/press/2016/12/15/1339/>

### **Recommendation #5:**

#### **Strengthen disclosure of independent expenditures by revealing the actual donors or beneficial owners of LLCs making independent expenditures or donating to entities making independent expenditures.**

Limited Liability Corporations (LLCs) that are little more than shell companies or opaque conduits have been at the center of some of New York State's largest scandals. In New York City, corporate contributions to candidates are prohibited. However, because of the *Citizens United* and other court decisions, corporations, including limited liability companies, can spend unlimited amounts of money if they do not coordinate with candidates. Thanks to the 2010 Charter Revision Commission, the voters approved robust disclosure of independent expenditures. This disclosure was further strengthened by Local Law 41 of 2014, which requires disclosure of the owners, partners, board members, officers or persons controlling an entity making donations directly to an independent expenditure committee or entity. Local Law 41 also requires disclosure of any entity or individual contributing \$25,000 to an entity that in turn provides \$50,000 to the independent spender. Reinvent Albany opposes this last provision. To truly reveal the donors who filter money through numerous entities to an independent spender, language should be crafted that requires disclosure of the name of any entity (and their owners, partners, board members, officers or persons controlling the entity) or individual intending to make contributions directly or indirectly to the independent spender. This language would capture any donor no matter how nested their contributions are.

### **B. Instant Runoff Voting**

#### **Establish Instant Runoff Voting (IRV) or Ranked Choice Voting for primary elections for citywide offices, all special elections, and for military and overseas voters.**

Reinvent Albany recommends the city adopt Instant Runoff Voting (IRV) or Ranked Choice Voting for primary elections for citywide offices, all special elections, and for military and overseas voters. We think Councilmember Brad Lander's and Manhattan Borough President Gale Brewer's legislation, Int. No. 150 of 2014, which was supported by more than half the City Council, is a good starting point for introducing Instant Runoff Voting in New York City.<sup>15</sup> Their bill covers primary elections for citywide offices

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<sup>15</sup> See:

<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1681065&GUID=C2D94A92-80CF-4E75-806F-D9C49E96C6BD&Options=ID|Text|&Search=ranked+choice>

(mayor, comptroller and public advocate) and special elections for all offices, including City Council and borough president. Under Int. No. 150 of 2014, voters rank 3 candidates in order of preference. If no candidate receives 50 percent of the vote, an instant runoff occurs. Only the candidates finishing in the top two in first choice votes advance to the instant runoff. The other candidates are eliminated, and ballots indicating a first choice vote for eliminated candidates are counted as votes for the highest ranked continuing candidate.

We think the city has a moral and possibly legal obligation to establish instant runoff voting for military and overseas voters. These voters are unable to vote in the runoff elections because there is not enough time in the two weeks between the primary and runoff elections for the Board of Elections to design and send ballots, and for military and overseas voters to receive and send back their completed ballots by the runoff deadline. Other states have established instant runoff voting for military and overseas voters, in some cases as the result of a legal settlement.

The benefits of instant runoff voting have been testified to before past charter revision commissions. They include more civil and substantive campaigns, increased voter enthusiasm due to the lack of wasted votes for longshot candidates, millions of dollars in cost savings on elections administration, and preventing vote splitting and the election of polarizing candidates who appeal to a narrow base unreflective of the majority of voters in a district. Instant runoff voting is also clearly within the city's authority to do unlike many other proposed voting reforms.

## C. Districting Reform

During the last city districting process in 2013, many stakeholders believed district maps were largely drawn to favor incumbents. We agree, and Reinvent Albany generally believes: 1) elected officials should have limited influence in drawing district lines; and 2) the criteria for drawing lines needs to be strengthened to stop gerrymandering.

### **Recommendation #1:**

**Task a nonpartisan body like the City Bar Association with creating a pool of eligible candidates for elected officials to choose from to serve on the districting commission.**

Reinvent Albany recommends the Charter Revision Commission change the Charter so the mayor and City Council no longer directly choose appointees of the City Districting Commission. We believe this creates a perceived or actual conflict of interest when commission appointees are drawing the lines influencing the political fate of the very elected officials who appointed them. To reduce the conflict, an independent body not chosen by elected officials should create a pool of qualified applicants that elected officials choose districting appointees from.

New York City is ahead of the curve in that lawmakers do not draw their own district boundaries. According to the National Conference on State Legislatures (NCSL), only thirteen states give commissions the primary responsibility of drawing state legislative lines while six do so for congressional boundaries. An additional 5 states have advisory bodies that assist the legislature in drawing boundaries, and 5 others have backup commissions in the event the legislature can't agree on district maps.<sup>16</sup>

However, even when commissions and boards exist to draw districts, lawmakers have great influence through the selection of commission members. Lawmakers in most states either directly pick all or some of the appointees of commissions.

New York City should look to California and Arizona for examples of commissions which are more independent in their composition than most others. California may be the most unique in that serving on the commission is broadly open to the public and 31,000

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<sup>16</sup> "Redistricting Commissions. State Legislative Plans," *National Conference on State Legislatures*, January 25, 2018. Available at: <http://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx>



people applied to serve in 2010.<sup>17</sup> Fourteen members ultimately serve on the California commission, which is largely chosen randomly from those who apply and are qualified. The qualifications screening and application process is administered by an Applicant Review Panel (ARP), which itself consists of three randomly chosen independent qualified auditors who are employees of the state, and licensed auditors with the California Board of Accountancy.<sup>18</sup> The only role lawmakers play in commission selection in California is in narrowing the pool of 60 members to 36 members.

In Arizona, the Commission on Appellate Court Appointments establish a pool of 25 nominees, with the majority and minority leaders in each house of the Arizona legislature choosing one commission member from the pool. The fifth member, who is the chair, is chosen by the four other members. The Commission on Appellate Court Appointments, a standing committee for the selection of judges, is itself appointed by the governor with advice and consent from the state senate for 15 of 16 of its members.<sup>19</sup>

### **Recommendation #2:**

**Bar any person from serving on the commission who was an elected official or party officer at any level of government in the state for the last five years, or any of their immediate relatives.**

Another way to strengthen the independence of the Districting Commission is to place restrictions on those who can serve on it. The City Charter currently bars city officers, city employees, lobbyists and their employees advocating before the city, state or federal government, and political party officers from serving on the commission.<sup>20</sup>

Reinvent Albany believes the Commission should extend its ban to cover individuals who recently were elected officials or any of their relatives. This will help to address the perception or reality that districts are drawn to protect incumbents. During the last redistricting cycle a Queens State Senator who recently departed office was chosen to serve on the commission. There was a perception among certain ethnic groups a Republican district was preserved in eastern Queens, which ran contrary to the interests

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<sup>17</sup> "California Citizen Redistricting Commission," *Ballotpedia*, Available at: [https://ballotpedia.org/California\\_Citizens\\_Redistricting\\_Commission](https://ballotpedia.org/California_Citizens_Redistricting_Commission)

<sup>18</sup> *Ibid.*

<sup>19</sup> Commission on Appellate Court Appointments, *azcourts.gov*. Available at: [http://www.azcourts.gov/jnc/Constitutional-Provisions#Article\\_6\\_Section\\_36:\\_Commission\\_on\\_appellate\\_court\\_appointments\\_and\\_terms\\_appointments\\_and\\_vacancies\\_on\\_commission](http://www.azcourts.gov/jnc/Constitutional-Provisions#Article_6_Section_36:_Commission_on_appellate_court_appointments_and_terms_appointments_and_vacancies_on_commission) and Arizona

Commission on Appellate Court Appointments, *Ballotpedia*, Available at: [https://ballotpedia.org/Arizona\\_Commission\\_on\\_Appellate\\_Court\\_Appointments](https://ballotpedia.org/Arizona_Commission_on_Appellate_Court_Appointments)

<sup>20</sup> NYC Charter, Chapter 2-A, section 50, subsection 5.

of the growing Asian communities in the area who were seeking a district that would enable an Asian representative to be elected.

**Recommendation #3:**

**Narrow the population deviation between districts to “as nearly as is practicable” as is done for drawing federal districts.**

The City Charter allows for a 10 percent population deviation between the largest and smallest districts from the average district size, consistent with the Supreme Court rulings such as *Brown v. Thomson*.<sup>21</sup> However, the city can legally and operationally replace this loose standard with the federal standard for drawing congressional districts, which requires districts to be equal in population size “as nearly as is practicable.”<sup>22</sup>

In Reinvent Albany’s view, there is no reason legislative districts can’t be drawn with the same preciseness in population size as congressional districts, both of which require compliance with the Voting Rights Act. We think population deviations from the average district size simply open the door to gerrymandering, which is rationalized by citing the many valid redistricting criteria in law and case law even while not always the intent of the line-drawers.<sup>23</sup>

States held up for more independent redistricting processes follow the federal standard. Iowa’s standard for state legislative districts, for example, aspires to the federal standard of being “as nearly as is practicable to the ideal population” with the ideal population being the number of districts divided by the state’s population.<sup>24</sup> Under no circumstance may districts vary in population size by more than 5 percent from each other, and the overall deviation of districts cannot be greater than 1 percent.<sup>25</sup>

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<sup>21</sup> NYC Charter, Chapter 2-A, section 52, subsection a.

<sup>22</sup> All About Redistricting,” Professor Justin Levitt’s Guide to Drawing the Electoral Lines. Available at: <http://redistricting.ils.edu/where.php>

<sup>23</sup> See 2010 Redistricting Deviation Table, NCSL. Available at: <http://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx>

<sup>24</sup> See: Iowa Code, Title II, Subtitle I, Chapter 42(1)(a). “*Senatorial and representative districts, respectively, shall each have a population as nearly equal as practicable to the ideal population for such districts, determined by dividing the number of districts to be established into the population of the state reported in the federal decennial census.*” Available at: <https://www.legis.iowa.gov/publications/search/document?fq=id:870095&pdid=867712&q=redistricting#42.4>

<sup>25</sup> See Iowa Code, Title II, Subtitle I, Chapter 42(1)(a). “*In no case shall the quotient, obtained by dividing the total of the absolute values of the deviations of all district populations from the applicable ideal district population by the number of districts established, exceed one percent of the applicable ideal district population. No senatorial district shall have a population which exceeds that of any other senatorial district by more than five percent, and no representative district shall have a population which exceeds that of any other representative district by more than five percent.*”

**Recommendation #4:**

**Ban drawing districts with the intent to favor or oppose any elected official, actual or presumed candidate, or political party.**

New York City’s anti-gerrymandering provisions in the Charter are weak. The only provision addressing gerrymandering directly states the following:

*Districts shall not be drawn for the purpose of separating geographic concentrations of voters enrolled in the same political party into two or more districts in order to diminish the effective representation of such voters.*

The Charter should be strengthened to include language that bars drawing lines to favor or oppose any incumbent, candidate or presumed candidate, or political party. This would, at the very least, prohibit the drawing of lines to include or exclude candidates’ residences as was done in the last city districting process. Disgraced Assemblymember Vito Lopez had his residence drawn into a Council district to provide him an opportunity to run for Council. The drawing of that district was later changed at the written request of Council Speaker Christine Quinn, which raised questions about the legality of the districting commission reversing the map it had already drawn and delivered to the Council to vote on.<sup>26</sup>

In Iowa, which is known for its strict criteria for drawing district lines, the legislative staff responsible for drawing the lines are additionally barred from using data revealing incumbents’ addresses, political affiliations of registered voters, and previous election results to ensure lines are not drawn to favor or oppose any incumbent, candidate or presumed candidate, or political party.<sup>27</sup>

**Recommendation #5:**

**Prioritize criteria for drawing lines based on geographic boundaries and political subdivisions over communities of interest.**

Reinvent Albany believes the best way to limit the possibility of gerrymandering is to re-prioritize the charter’s criteria for drawing district lines. More importance should be

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<sup>26</sup> Barkin, Ross. “What is Going on with the City Council Redistricting: A Primer,” *Gotham Gazette*, January 7, 2013. Available at: <http://www.gothamgazette.com/city/129-elections/4169-what-is-going-on-with-city-council-redistricting-a-primer>

<sup>27</sup> Iowa Code 42.4 Redistricting Standards. Available at: <https://www.legis.iowa.gov/docs/code/2016/42.4.pdf>

placed on drawing lines consistent with existing geographical and political subdivision boundaries (like community board districts and neighborhood boundaries) than communities of interest.

The Charter's criteria for drawing districts is mostly prioritized, which is a rare and good feature of redistricting laws. However, the Charter prioritizes first a maximum population deviation standard, which opens the door to gerrymandering. The population deviation, as discussed previously, should be narrowed to the federal standard and made subordinate to the Voting Rights Act. The second criterion in the Charter is adherence to the Voting Rights Act, which is required under federal law. The third criterion is communities of interest but the wording is so vague it can be manipulated to gerrymander districts:

*District lines shall keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other.*

Subsequent criteria following the communities of interest provision bound line-drawers to draw districts that:

- are compact and no more than twice as long as they are wide;
- do not cross borough or district boundaries;
- minimize the sum of the length of the boundaries of all the districts in the redistricting plan;
- are contiguous and have connections over waterways; and
- limit cross-borough districts to one district per two boroughs.

The criteria for drawing districts which are contiguous and compact are much more quantifiable than those for drawing communities of interest, and therefore less prone to being exploited for gerrymandering.

**Recommendation #6:**

**Bar non-public communications between officeholders, party officials, their employees or lobbyists advocating on their behalf and the districting commission members regarding the drawing of districts.**

Reinvent Albany believes any communications between officeholders, party officials, their staffs or lobbyists with the districting commission should be done in public at public hearings or in writing via its website and made available to the public online.

During the last redistricting process, the Districting Commission Chair communicated with elected officials to hear their perspective on proposed districts. He acknowledged incumbency protection and continuity of districts was a criteria in drawing lines, which is recognized as a valid criterion in federal case law but not listed in the prioritized criteria for drawing lines in the City Charter.

This raises questions as to whether the prioritized criteria in the Charter was followed in the last redistricting when the Commission did not draw districts uniting Asian-American communities in Oakland Gardens and Bayside, for example, or South Asian communities in Richmond Hill, but was perceived as having preserved incumbents' districts in those areas.

Greater transparency of communications with the districting commission will alleviate concerns lawmakers' views unduly influenced the process, and help to prevent undue influence altogether.

## IV. Index of Recommendations

### A. Create A Transparent & Digital 21st Century City

#### 1. Establish that city data is open data by default.

- a. Codify and strengthen the City's [OpenRecords](#) platform created by executive order and administered by the Department of Records and Information Services (DORIS).<sup>28</sup> Int. No. 328 of 2014 is a starting point for a stronger OpenRecords/"OpenFOIL" law and process.
- b. Supplant the The Public Data Directory in section 1062 with a strengthened Open Data Law (Title 23, Chapter 5 of the City's Administrative Code). The Open Data Law should include a private right of action or other appeals process that allows the public to compel the release of public data.
- c. Codify the Mayor's Office of Data Analytics (MODA) in the Charter in Chapter 47 (it was created by [Executive Order No. 306 in 2013](#)<sup>29</sup>) and prescribe its duties and responsibilities, which should include a Director and Chief Open Platform Officer.
- d. Require three separate open government interagency meetings at least quarterly to share best practices and ensure compliance with the Open Data Law, Freedom of Information Law (FOIL), and archiving requirements in the Charter.
- e. Require agencies to provide tabular data online in an open data format for all data embedded in agency reports and web pages
- f. Mandate agencies include on their websites a downloadable *Table of Organization* that includes the date it was updated and reveals all directors of administrative units or assistant commissioners.
- g. Put voting records online. Require the City Council to include on each Councilmembers' webpage a searchable database informing voters how their Councilmembers voted on issues and bills.

#### 2. Put City government online: replace paper-based processes with digital information, forms and transactions.

- a. Enable vendors and the public to respond to all city procurement notices (Requests For Information, Requests for Proposals, etc.)

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<sup>28</sup> See: <https://a860-openrecords.nyc.gov/>

<sup>29</sup> See: [http://www.nyc.gov/html/om/pdf/eo/eo\\_306.pdf](http://www.nyc.gov/html/om/pdf/eo/eo_306.pdf)

electronically, reflecting changes currently being made in creating the new PASSPORT contract system replacing VENDEX.

- b.** Require agencies to provide an online (paperless) mechanism to conduct transactions (permit and registration applications, fine payments, etc.) with the public using any common web browser.
- c.** Require 311 and *all* city agencies to accept uploadable photographs for complaints and service requests involving the city's physical infrastructure such as streets, parks or property.
- d.** Require agencies to have websites which include as digital, searchable, downloadable content all recent information that is transmitted externally in a paper form, including reports.
- e.** Update sections 1058 and 1059 of Chapter 48 related to taxpayers' access to books, papers and records to reflect digital access. Modernize section 1065 related to budget documents to make documents available in an open data form.

- 3. Data Sharing Transparency: require agencies to list on their website all data sharing agreements with non-NYC entities including vendors, universities and nonprofit organizations, including the type of data being shared and the conditions for sharing that data.** Maintain a webpage with a centralized link to all agency pages with such information.

## **B. Strengthen Ethics Laws for City-Affiliated Nonprofits and Codify Nonprofits in the Charter**

### **1. Codify Nonprofits in the Charter**

- a.** Provide a listing of all city-affiliated nonprofits and their associated city agency.
- b.** Create procedures for creating, dissolving and providing Council oversight of city-affiliated nonprofits. We believe the Council should have to approve the creation of a city-affiliated nonprofit following a public hearing and a statement by the agency as to why the nonprofit is needed.
- c.** Require city-affiliated nonprofits follow the Freedom of Information Law (FOIL) and the Open Meetings Law.
- d.** Mandate city-affiliated nonprofits follow procurement procedures of city agencies with rare exception.

- e. Report revenues and expenditures to the public, City Council and City Comptroller.
- f. Lay out ethics requirements for board members, staff, and fundraising (see #2 below).

## **2. Strengthen Ethics Laws for City-Affiliated Nonprofits and Other Governmental Agencies and Entities**

- a. Limit contributions to *all* nonprofits affiliated with elected officials.
- b. Restrict donations by those doing business with the city to city agencies, public authorities, public benefit corporations and local development corporations.
- c. Publish as open data the exact amount of all donations by donors doing business with the city to nonprofits affiliated with elected officials, and to all government entities (city agencies, public authorities, public benefit corporations and local development corporations).
- d. Require “volunteers” doing major policy work or senior level appointments for the city to follow city ethics laws.

## **C. Enact Election Reforms to Ensure Fair Elections**

### **1. Campaign Finance Reform**

- a. Empower the Campaign Finance Board to monitor and enforce laws and regulations for campaign finance, ethics, and lobbying. As a first step towards consolidating and strengthening oversight, move lobbying enforcement out of the City Clerk’s office into the Conflicts of Interest Board (COIB).
- b. Limit public matching funds to contributions up to \$175.
- c. Include the clients of lobbyists in the Doing Business definition.
- d. Require subcontractors doing large amounts of work on city contracts to be subject to the doing business contribution limits.
- e. Strengthen disclosure of independent expenditures by revealing the actual donors or beneficial owners of LLCs making independent expenditures or donating to entities making independent expenditures.



## **2. Instant Runoff Voting**

- a.** Establish Instant Runoff Voting (IRV) or Ranked Choice Voting for primary elections for citywide offices, all special elections, and for military and overseas voters.

## **3. Districting Reform**

- a.** Task a nonpartisan body like the City Bar Association with creating a pool of eligible candidates for elected officials to choose from to serve on the districting commission.
- b.** Bar any person from serving on the commission who was an elected official or party officer at any level of government in the state for the last five years, or any of their immediate relatives.
- c.** Narrow the population deviation between districts to “as nearly as is practicable” as is done for drawing federal districts.
- d.** Ban drawing districts with the intent to favor or oppose any elected official, actual or presumed candidate, or political party.
- e.** Prioritize criteria for drawing lines based on geographic boundaries and political subdivisions over communities of interest.
- f.** Bar non-public communications between officeholders, party officials, their employees or lobbyists advocating on their behalf and the districting commission members regarding the drawing of districts.