

MEMORANDUM ERIE COUNTY
DEPARTMENT OF LAW

TO: **Erie County Charter Revision Policy Group**
FROM: **Gregory P. Kammer, Assistant County Attorney**
DATE: **2/24/2024**
RE: **Analysis and draft implementation of proposed Charter amendments**

The following pages contain:

1. Analysis and recommendations concerning proposed amendments to the Erie County Charter (the "Charter") submitted by County Departments.
2. Analysis and recommendations concerning other proposed amendments to the Charter.
3. A list and guidance relative to current advisory boards established by the Charter.

Please note, all references to proposed Erie County Administrative Code amendments submitted by Departments have been removed from this document.

Proposed Amendments Submitted by Departments

Department of Real Property Tax Services

Proposed Charter Amendment Submitted by Department

"Proposed changes to allow EC RPTS to provide assessment services Countywide".

Analysis

NYS RPTL Section 1537 authorizes assessing units and counties to enter into joint services agreements for the provision of assessing services. Since state law currently provides a mechanism for Erie County to provide assessment services countywide, no further legal authority is required.

Recommendation

No amendment recommended.

Department of Homeland Security and Emergency Services

Proposed Charter Amendment Submitted by Department

"Consolidate to a single DHSES advisory board instead of separate boards for Fire, EMS, and Emergency Management. Sub committees could still exist for each, but this would be more in line with Homeland Security Presidential Directives."

Analysis

There is no legal impediment to implementing this proposed amendment; however, Article 14, Section 14.07 ("14.07") of the Erie County Administrative Code currently authorizes the county executive to appoint a single "homeland security/emergency services advisor board" in lieu of the three individual boards specifically delineated above. 14.07 further defines the appointment method, composition, and purpose of a single consolidated board and contemplates the establishment of sub-committees representing each discipline so consolidated.

Since the authority to create a single consolidated board already exists, this proposed amendment would be wholly duplicative of existing authority.

Recommendation

Amend Article 14, Section 1403 of the Charter as follows:

Section 1403. Advisory board(s). The County Executive shall appoint an advisory board or advisory boards the following three advisory boards, which shall advise on matters relating to emergency medical services, fire safety, and civil defense/disaster preparedness. The establishment, composition, and purpose of such board(s) shall be as prescribed in the Erie County Administrative Code at Article 14, Section 14.07, respectively, either at the request of the Commissioner or upon their own initiative.

2. Emergency Medical Services Advisory Board.

~~3. Fire Advisory Board.~~

~~4. Civil Defense/Disaster Preparedness Advisory Board.~~

Department of Central Police Services

Proposed Charter Amendment Submitted by Department

"To hire commissioner, it says list of 6 candidates "must" have at least 1 female and 1 minority applicant provided by CPS Board. Suggestion is to revisit the language, so it isn't as strict and hurt process of filling vacancy in the future."

Analysis

There is no legal impediment to amending the composition of the commissioner candidate list provided by the Central Police Services Board of Trustees to the County Executive.

Recommendation

Amend Article 15, Section 1501 of the Charter as follows:

Section 1501. Department of Central Police Services; Commissioner. There shall be a Department of Central Police Services, the head of which shall be the Commissioner of Central Police Services. He or she shall be appointed by the County Executive, subject to confirmation by the County Legislature, from a list of ~~six qualified candidates provided by the Central Police Services Board of Trustees.~~ The list shall name six qualified candidates including at least one female candidate and at least one candidate from an under-represented minority group, one of which must be female, and an additional one of which must be from an under-represented minority group, provided by the Central Police Services Board of Trustees. Should the Central Police Services Board of Trustees be unable to identify qualified candidates who meet the descriptions herein, they shall submit a list of qualified candidates in such quantity and demographic as may be identified and available at the time of vacancy or impending vacancy in the Office of the Commissioner. The Commissioner shall serve at the pleasure of the County Executive.

Department of Public Works

Proposed Charter Amendment Submitted by Department

"Remove traffic advisory board. This board is not currently active. Haven't met since Geary has been around.

-Charter identifies Weights and Measures, code does not."

Analysis

The Charter does not refer to a traffic advisory board. Article 11, Section 11.05 of the Erie County Administrative Code establishes the traffic safety advisory board.

Erie County Local Law 4-2019 ("4-2019") transferred the Erie County Bureau of Weights and Measures from the Department of Public Works to the, then newly created, Division of Consumer Protection. The online version of the Charter has not been updated to reflect the adoption of 4-2019.

Recommendation

No amendment recommended. Law will facilitate the online Charter update to reflect the adoption of 4-2019.

Department of Mental Health

Proposed Charter Amendment Submitted by Department

“Charter section 1302 – remove sentence “Within appropriations made available there for, the Commissioner shall perform all duties with respect to child mental health services.” The Commissioner is not sure why it is in there and finds it unnecessary. In Charter, add that commissioner must be approved by NYS Inter Office Coordinating Council (IOCC). IOCC is made up of OMH, OASAS, and OPWDD and would approve qualifications of an applicant for Director of Community Services.”

Analysis

There is no legal requirement to specifically qualify the Commissioner’s required provision of child mental health services to “appropriations made available there for”).

There is no legal impediment to referencing the required qualification review. Section 41.05 of the New York State Mental Hygiene Law requires that, to be eligible for state aid, a county must establish a local governmental unit for the provision of local services, with a director of community services as its chief executive officer. Here, the establishment of an Erie County Department of Mental Health and the appointment of its Commissioner satisfy those respective requirements. Part 102 of Title 14 of the Codes, Rules and Regulations of the State of New York (“14 NYCRR 102”) specifically delineates standards regarding the qualifications of a director of community services and further directs the Inter-Office Coordinating Council to promulgate procedures for the review of a candidate’s qualifications against those standards articulated in 14 NYCRR 102.

Recommendation

Amend Article 13, Sections 1301 and 1302 of the Charter as follows:

Section 1301. Department of Mental Health; Commissioner. There shall be a Department of Mental Health, the head of which shall be the Commissioner of Mental Health. He or she shall be appointed by the County Executive subject to confirmation by the County Legislature. The Commissioner shall meet the ~~those~~ qualifications required of directors of community services fixed by the State Office of Mental Health and in existence at the time of his or her appointment. The credentials of a candidate for appointment to the position of Commissioner shall be submitted to the New York State Inter-Office Coordinating Council (“IOCC”) for review pursuant to the procedures promulgated by the IOCC at the time of such submission.

Section 1302. Powers and duties. Except as otherwise provided in this Charter, the Commissioner of Mental Health shall have all the powers and perform all the duties conferred or imposed upon directors of mental health and/or community health boards by law. ~~Within appropriations made available there for, the~~ Commissioner shall perform all duties with respect

to child mental health services. The Commissioner or his or her designee shall serve as the Director of Community Services prescribed by Mental Hygiene Law §41.09. He or she shall perform such additional and related duties as the County Executive may prescribe.

Department of Probation

Proposed Charter Amendment Submitted by Department

“Clarifying titles that require Peace Officer status so that future commissioners and deputies qualifications are more clearly stated. However, it appears this would repeat language found in NYS law.”

Analysis

Title 9, Section 347(4)(f) of the New York Codes Rules and Regulations empowers the NYS Commissioner of the Division of Criminal Justice Services to promulgate required qualifications of probation professional personnel to include commissioners and deputy commissioners of probation departments.

Recommendation

Amend Article 22, Section 2203 of the Charter as follows:

Section 2203. Department of Probation. There shall be a Department of Probation headed by a Commissioner who shall be appointed by the County Executive, subject to confirmation by the County Legislature. Probation Administrators, Officers, and Supervisors staffing the Probation Department shall be New York State Certified Peace Officers and have met the mandated training requirement of a Probation Officer as required by law and as specified by the New York Department of Criminal Justice Service and shall be appointed under the provisions of New York Civil Service Law.

Department of Environment and Planning

Proposed Charter Amendment Submitted by Department

“In Charter Section 1002, adding #8 that commissioner ensures compliance with County Local Law 18 and all applicable local, state, and federal regulations around county’s affordable housing initiatives; and, adding #9 administration and enforcement of County Local Law 22 regarding public art installations.

-In Charter Section 1004.3, adding word “wetlands” in second sentence in second paragraph.”

Analysis

In relation to the promotion of fair housing in Erie County, Erie County Local Law 4-2018 states that: “The County Executive shall designate the Commissioner of the Department of Environment and planning to perform enforcement...”, and further states that: “The (Erie County Fair Housing) Board shall be staffed by the Department of Environment and Planning and its Commissioner shall serve as an ex-officio, non-voting member of the Board.”

In relation to the establishment of a Public Art Fund, Erie County Local Law 4-2023 states that: "The Department of Environment and Planning shall serve as coordinator for the program and provide staff support to the Committee."

While there is no legal impediment to implementation of these suggested amendments, their inclusion would be duplicative and without additional legal effect beyond the referenced local law provisions.

There is no legal impediment to amending Section 1004.3 to include the term "wetlands".

Recommendation

Amend Article 10, Section 1002(6) and Section 1004.3 as follows:

Section 1002. Powers and duties of Commissioner. The Commissioner of Environment and Planning shall have the following powers and duties:

1. He or she shall administer the planning, environmental compliance, drainage, flood control, solid waste management, sewerage planning, construction and management functions vested in the executive branch of the County government, provided, however, that this provision shall not be deemed to restrict the powers or duties of any administrative body appointed, designated, or established in accordance with article five a of the County law and the Erie County Charter and Administrative Code.
2. He or she shall head the Department of Environment and Planning, supervise and direct its officers and employees, and make such assignments of powers and duties among them as he or she may consider advisable.
3. He or she may promulgate, administer, enforce and amend a county environmental quality code, ~~as provided for by pursuant to section nine hundred three of this charter~~this Article. (Previous section 903 is now 1003. This amendment is recommended to prevent future inconsistencies)
4. He or she may, if authorized to do so by appropriate federal or state authorities, administer or enforce federal or state laws, rules, regulations, orders or programs in relation to the control, enhancement and preservation of environmental resources.
5. He or she shall advertise and call for bids on the construction of each sewer project of the County and such other projects as may be assigned to this department by the County Legislature, open such bids publicly, tabulate them and submit recommendations with respect thereto to the County Legislature and County Executive.
6. He or she shall have such additional powers and duties as may be prescribed by ~~law,~~regulation, and the County Executive.
7. He or she shall have all powers necessary or proper to the exercise of any of the duties or functions of the Commissioner of the Department of Environment and Planning.

Section 1004.3. Powers, duties and functions of the Council. The Council shall review and investigate ecologically sound methods of planning the use of the County's resources. In conjunction with the Deputy Commissioner of Environmental Compliance it shall prepare an annual recommendations report based on that investigation, and transmit same to the County Executive and the Legislature. The report shall include a section on the needs of those living in areas of urban or rural poverty where the impact of environmental degradation may be more severe.

The Council shall keep an index of all open areas within the County, with the plan of obtaining information pertinent to sound ecological utilization of such areas including land owned by any municipality within the County. It shall keep an index of all wetlands, open marsh lands, swamps, and all other wet lands in a like manner, and may recommend a program for their ecologically suitable utilization. The Council shall develop and maintain an inventory of natural resources within the County and such other environmental information as may be appropriate. Said inventory shall include wetlands and open spaces and may include, but not be limited to, factors relating to geology, soils, slope, water resources, vegetation, wildlife habitat unique natural areas, and scenic, historic, and archaeological sites.

Department of Health

Proposed Charter Amendment Submitted by the Department

--move EMS provisions from DHSES to Health

-In Charter, Public Health Lab Director is CSEA position but Section 505 give Commissioner power to appoint. Should resolve this conflict in language and Labor agreements. Also, Public Health Council full name is Public Health and Health Planning Council. Also, remove last sentence of second paragraph in section 505. We do not have a county lab board or director of lab district.

-In Charter, Section 506: division is led by Director, not Deputy Commissioner. Also conflict with commissioner appointment versus labor agreement. Should also mention they are Early Intervention Official to be consistent with state law. Change insure to ensure. Remove adults as division only serves birth to five. Remove medical needs as division only does development."

Analysis

The Division of Emergency Medical Services ("EMS") is not currently referenced anywhere in the Charter. Reference to EMS is only found in Article 14, Section 14.03 of the Administrative Code where it is placed within the Department of Homeland Security and Emergency Services. Article 5 of the Charter can be amended to place EMS within the Department of Health; however, absent a repeal of Section 14.02 of the Administrative Code, we would be left with conflicting provisions. EMS would live under the Department of Health in the Charter and under the Department of Homeland Security Emergency Services in the Administrative Code. Note, the Division of EMS can be found within the Department of Health in the Erie County Budget.

The references to a county laboratory board and a director of a county laboratory board should remain in Section 505. The references are made in order to confer to the Director of the Erie County Public Health Laboratory, all the authority granted by state law to such a board and such a director.

There are no legal impediments to implementing the remainder of the suggested amendments.

Recommendations

Make policy decisions regarding:

- 1) Amending the Charter to place EMS within the Department of Health while it remains within the Department of Homeland Security Emergency Services in the Administrative Code.
- 2) Amending the Charter to remove appointing authority from the Department of Health Commissioner relative to the positions of Director of the Public Health Lab and Director of the Division of Services to Persons with Special Needs.

Amend Article 5, Section 505 of the Charter as follows:

Section 505. County Laboratory District; County Laboratory; Director. The County, including the cities, towns, villages and special districts situated therein shall continue to be a county laboratory district. There shall be in the Department an Erie County Laboratory headed by a Director. The Commissioner of Health shall appoint as Laboratory Director a person who shall possess such qualifications as may be prescribed by the Public Health and Health Planning Council of the State of New York for a clinical laboratory director. Such appointments shall be for the term or balance thereof of the Commissioner making such appointment.

The Director shall exercise all the powers and duties heretofore or hereafter conferred or imposed upon him by the County Charter, by the Administrative Code, by order or direction of the Commissioner of Health and by any applicable act of the Legislature not inconsistent with the County Charter or the Administrative Code. Such powers and duties shall include but shall not be limited to any power or duty conferred or imposed upon a county laboratory board and the director of a county laboratory district by the Public Health Law or other applicable law.

The Director shall be responsible for the serological, bacteriological and other public health laboratory work for the County Laboratory District, as required by the Health Commissioner. Except as otherwise provided in this Charter, the Director shall exercise all powers and perform all duties of a county laboratory board.

Amend Article 5, Section 506 of the Charter as follows:

Section 506. Division of Services to Persons with Special Needs; ~~Deputy Commissioner~~Director. There shall be in the Department a Division of Services to Persons with Special Needs, headed by a ~~Deputy Commissioner~~Director. The ~~Deputy Commissioner~~Director shall be appointed by the Commissioner and serve at the Commissioner's pleasure. The ~~Deputy Commissioner~~Director shall ensure the continuance of beneficial programs and implement additional services in the County for ~~adults and youths~~ with special developmental and medical needs.

Department of Information and Support Services

Proposed Charter Amendment Submitted by the Department

- change "Director of Information and Support Services" to "Chief Information Officer"
- change "Director of Data Processing" to "Director of Information Technology"
- change "data processing" to "information technology"

Analysis

There are no legal impediments to implementing the suggested amendments.

Recommendation

Amend Article 3, Section 310 of the Charter as follows:

Section 310. Division of Information and Support Services.

1. There shall be in the office of the County Executive a Division of Information and Support Services, headed by a ~~Chief Information Officer~~ ~~Director of Information and Support Services~~ who shall be appointed by and serve at the pleasure of the County Executive. The ~~Director~~ ~~Chief Information Officer~~ shall provide such information and support services as provided for in the Administrative Code and shall operate such other central facilities as may be established by the County Executive within the appropriations provided there for.
2. Within the Division of Information and Support Service there shall be an Office of ~~Information Technology Data-Proeessing~~, headed by the Director of ~~Information Technology Data-Proeessing~~ who shall be appointed by and serve at the pleasure of the County Executive. The Director shall be a person meeting such qualifications as may be set out in this Charter or in the Administrative Code at the time of his or her appointment. The Director shall perform such ~~information technology data-proeessing~~ services as provided for in the Administration Code.
3. Subject to the approval of the County Legislature, the County Executive may enter into a contract with the federal government, state government or any municipal corporation to provide ~~information technology data-proeessing~~ services to such governments or units of government.

Department of Senior Services

Proposed Charter Amendments Submitted by the Department

- change to Department of the Aging
- change all instances of senior citizens to older adults"
- in section 16.03 Advisory board of code, refers back to charter but charter doesn't specify terms of advisory board"

Analysis

There are no legal impediments to implementing the first two suggested amendments. However, it has been suggested by counsel to the Department, and the Department has agreed, that "Department for the Aging" is more appropriate and in-line with the intent of the amendment than the originally suggested "Department of the Aging".

The intent of Section 16.03 of the Administrative Code is to defer to the general provisions of Article 22, Section 2205 of the Charter as they relate to advisory board establishment and composition and not Article 16 of the Charter which establishes and describes the Department of Senior Services.

Recommendation

Amend Article 16 of the Charter as follows:

Article 16 - Department for the Aging of Senior Services - Charter

Section	1601.	Department of Senior Services <u>for the Aging</u> ; Commissioner.
	1602.	Powers and duties.
	1603.	Advisory board.

Section 1601. Department for the Aging of Senior Services; Commissioner. There shall be a Department for the Aging of Senior Services, the head of which shall be the Commissioner. The Commissioner of said department shall be appointed by and shall serve at the pleasure of the County Executive.

Section 1602. Powers and duties. The Commissioner of the department shall:

1. Act as a local administrative officer for planning and coordination of services for older adults senior citizens in cooperation with the County Executive and the County Legislature;
2. Serve as an advocate in order to make existing service systems more effective and accessible to older adults senior citizens;
3. Assess the future needs of older adults senior citizens to ensure the continuance of beneficial programs and to implement additional services according to need and demographics including handicapped and disabled older adults senior citizens;
4. Apply for such federal and state funds and grants as may be beneficial to older adult senior citizen's programs;
5. Function as a coordinator with the cities, towns and villages within the County for community-based systems for older adults senior citizens;

6. Gather and disseminate information relating to the needs of the aging and inform the public through an awareness program of the services and facilities available to ~~older adults senior citizens~~;
7. Initiate and monitor programs to preserve the safety of ~~older adults senior citizens~~ with respect to transportation services and crime prevention;
8. Perform such further duties as may be prescribed or directed by the County Executive or the County Legislature.

Section 1603. Advisory board. There shall be established an advisory board to the Department ~~for the Aging of Senior Services~~.

Department of Personnel

Proposed Amendments Submitted by the Department in blue and law edits in red.

Analysis/Comments

The term commissioner has been amended to read commission because NYS Civil Service Law Section 15(1)(b) provides that "A personnel officer (EC Commissioner of Personnel) shall have all the powers and duties of a municipal civil service commission." The reference goes to the powers and duties of the commission as a whole and not simply an individual commissioner.

Will there be a Deputy Commissioner/Director who oversees each of these two newly created Divisions?

Article 9 - Department of Personnel – Charter

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Section 901. Department of Personnel; Commissioner: ~~divisions~~. There shall be a Department of Personnel headed by a Commissioner, who shall be appointed by the County Executive subject to confirmation by the County Legislature ~~for a term of six years. Within such department there shall be a Divisions of Personnel Services and a Division of Civil Service Administration and Enforcement.~~

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Section 902. Powers and duties.

~~Except as otherwise provided in this Charter, the Personnel Commissioner shall:~~

- (a) ~~The Commissioner of Personnel shall not~~ Have, with reference to the civil service of the County, the powers and duties of a ~~county municipal~~ civil service commissioner ~~as provided by the Civil Service Law, and, he or she shall be subject to supervision and control by the State Civil Service Commission as are county civil service commissions as are~~ ~~county personnel officers. Provided, however, that the State Civil Service Commission shall have exclusive jurisdiction to prepare and rate examinations and establish eligibility lists for all positions under the jurisdiction of the County Personnel Commissioner.~~

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- (b) The Commissioner shall perform such additional and related duties as the County Executive may prescribe. Enforce all countywide Policies and Procedures for County employees.
- (c) Foster and develop programs for the improvement of employee effectiveness, including programs for training and development, safety, health and counseling, with a focus on opportunities for promotion of minorities, women, veterans and individuals with disabilities.
- (d) Perform such other and related duties as shall be required or delegated to him by the county executive or county legislature.

Section 903. Division of Personnel Services.

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The Division of Personnel Services shall be responsible for the presentation, implementation and management of employee benefits for all County employees in accordance with County policy and the appropriate collective bargaining agreement, if applicable.

Section 904. Division of Civil Service Administration.

The Division of Civil Service Administration shall be responsible for administering and enforcing the provisions of Civil Service Law within Erie County.

Department of Public Advocacy

Proposed Charter Amendments Submitted by Department

“looking to clarify where Office for People with Disabilities and EEO go in charter and code since they do not report to the commissioner of public advocacy; both are budgeted in Personnel”

Analysis

Article 17, Section 1702 (“1702”) of the Charter establishes a Division of Equal Employment, Diversity and Inclusion (“EEODI”) within the Department of Public Advocacy. 1702 further provides that the EEODI shall be headed by a Director who shall be appointed by and serve at the pleasure of the Commissioner of Public Advocacy.

The provisions of Article 17, Section 1706 (“1706”) of the Charter mirror those referenced above in 1702 but relate to the Division of Persons with Disabilities and its Director (“DPD”).

Presently, the Department of Public Advocacy has indicated that, contrary to the provisions of 1702 and 1706 of the Charter, the Directors of EEODI and DPD do not, in fact, report to the Department Commissioner.

The DPD is currently budgeted within the Department of Personnel.
The EEODI is currently budgeted as a stand-alone Division not contained within any other Departmental budget.

Recommendations

Policy decisions should be made with respect to:

- 1) Who the respective Directors should, in fact, report to or if these divisions should be stand-alone Departments.
- 2) Should the Departmental organizational structure found in the Charter mirror that found in the annual budget.

Revise the Charter accordingly.

Department of Social Services

Proposed Amendments Submitted by the Department in purple.

Analysis/Comments

N.Y. Social Services Law specifically pre-empts any local legislation regarding term length. A five-year term is mandated here.

N.Y. Executive Law 412 is a definitional section. In defining a Municipal youth bureaus, 412(8) describes typical activities engaged in by such boards but does not assign powers or duties.

Charter Change Requests

Section 1201. Department of Social Services; Commissioner; County Welfare Act repealed. There shall be a Department of Social ~~Welfare Services~~ headed by a Commissioner who shall be appointed by the County Executive subject to confirmation by the County Legislature for a five year term. The Erie County Social Welfare Act, being chapter twenty eight of the laws of nineteen hundred thirty-eight as amended, is hereby repealed as of January first, nineteen hundred sixty-one.

***N.Y. Social Services Law §116 establishes the term length of five years.

Section 1202. Powers and duties of the Commissioner. Except as otherwise provided in this Charter, the Commissioner of Social Services shall have all the powers and perform all the duties conferred on or required of a county commissioner of public welfare under the Social Welfare Social Services Law or other applicable law, and perform such additional and related duties as the County Executive may prescribe.

Section 1204. Youth Bureau Board. There shall be established a Youth Bureau Board to the Division of Youth Services of the Department of Social Services, which shall have the powers and duties assigned to Municipal youth bureaus under Executive Law or other applicable law.

***N.Y. Executive Law §412

Recommendations

Implement the proposed amendments for Sections 1201 and 1202.

No amendments recommended to Sections 1204.

Comptroller

Proposed Amendments to the Charter Submitted by Comptroller

Amend Section 1801 to “Other than those powers assigned to the Department of Real Property Tax Services specifically pursuant to section 402, any reference to “County Treasurer” in state or county law shall be assumed to mean “County Comptroller”.

Amend Section 1802 of the Charter to require that the Comptroller certifies the availability of funds for all capital projects. Amend Section 1802 of the Charter to mandate that the Comptroller be solely responsible for the investment of County funds. Amend Section 1802 of the Charter to mandate that the Comptroller be designated as an authorized signatory on all accounts under the county’s tax ID number.

Analysis

There is no legal impediment to implementing these proposed amendments.

Recommendation

Amend Article 18, Section 1802(3) of the Charter as follows:

3. Examine all requisitions for the encumbering of funds for the expenditure of which the County is responsible, ~~and After such examination,~~ certify as to the availability of funds ~~for all capital projects, therefor.~~

Amend Article 18, Section 1802(19) as follows:

19. Have custody of all accounts; ~~and be solely responsible for the investment of all funds maintained by the County and its officers and agents.~~

Amend Article 18, Section 1802 of the Charter by adding a new subsection 20 as follows:

- ~~20. Be designated as an authorized signatory on all bank accounts bearing the county’s tax identification number.~~
210. Be responsible for the provision of all accounting services to all County departments, offices and units as part of a centralized accounting system.

Other Proposed Amendments

Proposed Amendment

Amend Section 2516 of the Charter to require a simple majority vote of the Erie County Legislature for the imposition of sales tax and fees.

Analysis

There is no legal impediment to implementing this amendment.

Recommendation

Repeal and replace Article 25, Section 2516 of the Charter as follows:

Section 2516. Imposing and increasing County taxes, fees and charges.

1. No new form of county tax shall be imposed except by a resolution approved by: (a) the affirmative vote of two thirds of the whole number of the membership of the County Legislature, or, (b) the affirmative vote of a majority of the whole number of the membership of the County Legislature submitting a proposition for such imposition.
2. All other fees and charges of the County shall be imposed or increased by the affirmative vote of a majority of the whole number of the membership of the County Legislature.
3. Notwithstanding the provisions in subsection 1 above or any other provision of local legislation, so long as local legislative action is required by the state to extend the County's 1% and 0.75% sales and use tax authorized by New York State Tax Law Article 29, Section 1210, such action shall be taken upon the affirmative vote of a majority of the whole number of the membership of the County Legislature without the necessity of a referendum.

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Proposed Amendment

Repeal Article 26, Section 2602A of the Charter

Analysis

There is no legal impediment to implementing this proposed amendment.

Recommendation

Repeal Article 26, Section 2602A of the Charter as follows:

~~Section 2602A. Amendments to contracts. No contract to which the County of Erie is a party, regardless of prior authorization granted to the County Executive or any other individual acting on behalf of the County, shall be amended to extend the stated term of the contract, including any explicit options to extend, in excess of three months beyond the terms stated in the original contract, without the approval of the Legislature.~~

Proposed Amendment

Amend Article 25, Section 2511 of the Charter to eliminate the \$10,000 cap on unencumbered appropriation transfers without ECL approval and make the cap proportional to the departmental budget.

Analysis

There is no legal impediment to implementing this proposed amendment.

Recommendation

Make a policy determination as to what proportion of a departmental budget may be transferred without ECL approval. Amend the Charter accordingly.

Proposed Amendment

Amend Article 25, Section 2504 of the Charter to remove the County Attorney and formally add the Parks Commissioner, DPW Commissioner, and the Deputy County Executive to the capital projects committee membership.

Analysis

There is no legal impediment to implementing this proposed amendment.

Recommendation

Amend Article 25, Section 2504(2) of the Charter as follows:

2. Capital Projects Committee. To assist in the consideration of capital projects and the capital program, there shall be a Capital Projects Committee consisting of the County Executive, the Deputy County Executive, the Comptroller, the Budget Director, the Commissioner of the Department of Environment and Planning, the Commissioner of the Department of Parks and Recreation, the Commissioner of the Department of Public Works, ~~the County Attorney~~ and such other administrative heads as the County Executive may designate, and the following members of the County Legislature; the chair, the chair of the Finance and Management Committee, and the majority and minority leaders. The County Executive shall be solely responsible for the capital program and budget as submitted to the County Legislature and no members of the latter body shall be obliged to support any project by reason of membership on the Capital Projects Committee. The County Executive shall be the chair and the Budget Director shall be the vice chair of this committee.

Proposed Amendment

Clarify how conflicts between Section 2205 and the absence of rules for committees and boards in other sections is resolved. "Where written language is absent all boards will conform to the rules of section 2205" or "committees and Boards with rules explicitly written in the charter will disregard section 2205"

Analysis

Article 22, Section 2205 ("2205") of the Charter currently provides that "...Unless otherwise stipulated elsewhere in this charter or through NYS law, advisory boards for Erie County shall be constituted as follows:" This current language functions to allow for specific Erie County advisory boards established in the Charter or state law to deviate from the default framework provided for by 2205. Given this language, there are no conflicts between 2205 and other sections of the charter which establish the composition of advisory boards outside of the framework provided in 2205; however, advisory boards solely established in the Erie County Administrative Code are not contemplated here and therefore could be in conflict with 2205.

Recommendation

Amend the first paragraph of Article 22, Section 2205 of the Charter as follows:

Section 2205. Advisory boards. To better fulfill the purpose, responsibilities and goals of each department of the County, or comply with the requirements of NYS law, citizens' advisory boards may be established. Unless otherwise stipulated elsewhere in this charter, the Erie County Administrative Code, or through NYS law, advisory boards for Erie County shall be constituted as follows:

Proposed Amendment

Amend Article 22, Section 2205(7) to permit the advisory board creating authority to abolish the board when deemed appropriate.

Analysis

Article 22, Section 2205(7) currently provides that the advisory board creating authority (the CE or the ECL) may recommend to the ECL that a board be abolished if it fails to meet regularly. This language could result in a situation where the ECL is recommending to itself that a board be abolished and could also result in a situation where the CE is required to obtain legislative approval to abolish a board of his own creation

Recommendation

Amend Article 22, Section 2205(7) of the Charter as follows:

7. Advisory boards shall meet at least four times per year, and meetings shall be held in compliance with the Open Meetings Law. If a board fails to hold the minimum number of meetings, the creating authority shall investigate why, and is authorized to remove an ineffective chair or any inactive members, or to ~~recommend that the legislature~~ abolish the board when deemed appropriate.

Proposed Amendment

Amend Article 26, Section 2601 of the Charter to remove provisions regarding the composition of advisory boards. These provisions conflict with those contained in the default provisions of Article 22, Section 2205 of the Charter.

Analysis

This amendment would work to alleviate a conflict in terms and the associated confusion of implementation.

Recommendation

Amend Article 26, Section 2601 of the Charter as follows:

Section 2601. Administrative unit defined; administrative and advisory boards. "Administrative unit" shall mean any department, executive division, institution, office or other agency of County government except a bureau, division, section or other subordinate part of any of the foregoing.

The Board of Trustees of the Buffalo and Erie County Public Library and the Board of Trustees of the Erie County Technical Institute shall continue to be administrative boards heading the respective administrative units. Every other board, all appointive members of which are appointed by the County Executive, shall be an advisory board. An advisory board shall have no administrative or appointive powers but, when requested by the County Executive, shall assist him or her in the recruitment of candidates to fill a vacant position as head of the respective administrative unit.

~~Except as otherwise provided in this Charter, advisory boards shall consist of such numbers and the members thereof shall be appointed for such terms as may be provided in the Administrative Code. In the absence of any such provision, the number of members shall be not less than five nor more than fifteen as determined by the County Legislature and appointments shall be for five year staggered terms. Initial appointments shall be for such periods as will result, as nearly as practicable, in the same number of term expirations each year. If a vacancy occurs other than by the expiration of a term, appointment to fill such vacancy shall be for the unexpired portion of such term.~~

Before approving or vetoing any local law or ordinance specifying functions affected thereby of any administrative unit in which an advisory board has been appointed, the County Executive shall refer such local law or ordinance to such advisory board for consideration and recommendation. (I am not aware of this provision ever being applied and am inclined to recommend its repeal.)

It shall be the duty of each advisory board to study conditions in its respective field, with particular reference to the policies and programs in Erie County, and to report its findings and recommendations to the County Executive, who shall forward the same together with any comments he or she may choose to make, to the County Legislature.

Proposed Amendment

Amend Article 17, Section 1705 to change the name of the advisory entity from "advisory commission to the division on the status of women" to "advisory board to the division on the status of women".

Analysis

There is no legal impediment to implementing this proposed amendment.

Recommendation

Amend Article 17, Section 1705 of the Charter as follows:

Section 1705. Advisory ~~Board Commission~~ to Division on the Status of Women. There shall be an ~~Advisory commission Board~~. The ~~Board Commission~~ shall consist of nine to fifteen members to be appointed by the County Executive subject to confirmation by the County Legislature. The

County Executive shall appoint to the Board Commission at least two persons recommended by each of the majority and minority leaders of the Legislature.

Nominations for the remaining positions shall be actively solicited from groups which represent and are active in the area of women's concerns. The Departments of Health, Mental Health, Senior Services, Social Services, Youth Services, and the Equal Employment Opportunity Office shall each designate one person to serve as an ex-officio non-voting member of the Board Commission. The membership of the Board Commission shall reflect the diversity of women and their concerns in Erie County.

No member may serve more than two terms, except that those members who are initially appointed to complete the unexpired term of a member may also be eligible to serve two subsequent terms of three years each.

The Board Commission shall annually designate one member to serve as Board Commission chairperson. In the event of a vacancy occasioned other than by expiration of the term of office of the chairperson, the Board Commission shall appoint a successor to that office from the Board's Commission's membership.

The County Executive shall require any county department, division, board, council, committee, authority or agency, or other unit to provide such facilities, assistance and data as will enable the commission to properly effectuate its powers and duties under this article.

Proposed Amendment

"Amend Article 17, Section 1701 of the Charter to remove the requirement to appoint the Commissioner of Public Advocacy from among the department's division directors so that the commissioner and one of the division directors need not serve in two positions simultaneously."

Analysis

This amendment would align the Charter with the department's current structure and operations as budgeted by the County Legislature. It would remove an unnecessary limitation on who may serve as commissioner and would allow the commissioner and division directors to better devote individual time and attention to carrying out their respective duties and missions.

This amendment would still permit the commissioner to be appointed from among the division directors as Section 1701 provides, because the County Executive already has the power and option to appoint a single individual to serve in multiple administrative head positions under Article 3, Section 307 of the Charter.

Recommendation

Amend Article 17, Section 1701 of the of the Charter as follows:

Section 1701. Department of Public Advocacy. There shall be a Department of Public Advocacy, the head of which shall be the Commissioner. The Commissioner of said Department shall be appointed ~~from among the division directors~~

by, and shall serve at the pleasure of, the County Executive, subject to approval of the County Legislature. The Commissioner of the Department shall:

Proposed Amendment

Article 26, Section 2606 is preempted by state law and should be replaced to correctly state that the Governor fills all vacancies in the offices of County Clerk, District Attorney or Sheriff pursuant to statute.

Analysis

This amendment would eliminate conflict between state law and the Charter and end confusion caused by retaining the preempted language.

State law preempts local law with respect to the offices of County Clerk, District Attorney, and Sheriff, because those officers perform state functions according to statute despite being elected and serving at the county level. Pursuant to New York County Law § 400(7) and the Public Officers Law, the Governor fills a vacancy in each of these elective offices by appointment. Accordingly, the County Legislature may not appoint anyone to fill a vacancy in any of these elective offices as Section 2606 of the Charter provides.

Recommendation

Amend Article 26, Section 2606 of the Erie Charter as follows:

Section 2606. Filling vacancy in elective office of County Clerk, District Attorney or Sheriff. ~~Pursuant to law, a vacancy, otherwise than by expiration of term or removal by the Governor, in the elective office of County Clerk, District Attorney or Sheriff shall be filled by the Governor by appointment, and the appointment shall continue until and including the thirty-first day of December succeeding the first annual election at which the vacancy can be filled by election, pursuant to law, by the County Legislature, of a qualified elector of the County having the same political affiliation as the person last elected to such office. A vacancy occurring in such office as the result of removal of the incumbent by the Governor shall be filled by appointment, by the Governor, of a qualified elector of the County having the same political affiliation as the person last elected to such office. The person appointed by either the County Legislature or the Governor shall hold office by virtue of such appointment until the commencement of the political year next succeeding the first annual election after the happening of the vacancy, at which election a County Clerk, District Attorney or Sheriff, as the case may be, shall be elected for the balance of the term, if any.~~

Proposed Amendment

Amend Article 25, Section 2503 to “move budget due date to November 1st to allow more sales tax data to be reflected in Executive Recommendation”.

Analysis

There is no legal impediment to implementing this proposed amendment.

Recommendation

Amend the first paragraph of Article 25, Section 2503 of the Charter as follows:

Section 2503. Tentative budget and capital program by County Executive. On or before the ~~1st~~ ~~5th~~ day of ~~November~~ ~~October~~ of each year the County Executive shall submit to the County Legislature a tentative budget for the ensuing fiscal year, a financial forecast for the three (3) subsequent years, a capital program for the next six (6) fiscal years, and an accompanying message.

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Proposed Amendment

Amend Article 25, Section 2508(3) to contemplate the restoration of budgetary levels equal to those proposed prior to reductions made in contemplation of additions or increases which ultimately fail upon reconsideration.

Analysis

This proposed amendment would provide clarity relative to the consequences of a budgetary process currently not contemplated by the Charter.

Recommendation

Amend Article 25, Section 2508(3) of the Charter as follows:

3. The County Executive may object to any one or more of such added or increased items, and in such case shall append to the budget a statement of the added or increased items to which he or she objects with the reasons for his or her objections, and shall return the budget with his or her objections to the Clerk of the County Legislature who shall present the same to the County Legislature on or before the seventh business day after the sixth of December. The County Legislature shall thereupon enter the objections upon its journal and proceed to reconsider the additions and increases so objected to. If upon such reconsideration two thirds of all members of the County Legislature vote to approve such additions and increases, or any of them, the budget with any additions and increases so approved, together with any additions and increases not so objected to by the County Executive, shall be deemed adopted. If upon such reconsideration two thirds of all members of the County Legislature fail to approve such additions and increases so objected to, the budget excluding such additions and increases shall be deemed adopted and any budgetary reductions made in contemplation of such excluded additions and increases shall revert back to their originally proposed funding levels.

Proposed Amendment

"Article 22-B Erie County Community Coordinating Council on Children and Families, this joint-council between the Legislature, County Executive, Family Court, and Non-profits has been completely inactive since 2017. Consider elimination or addition of language that allows it to sit dormant until needed?"

Analysis

There is no legal impediment to implementing the suggested repeal or amendment.

Recommendation

Make a policy decision with respect to the repeal or amendment of Article 22-B of the Charter.

Proposed Amendment

Amend the first paragraph of Article 26, Section 2608 of the Charter as follows:

Section 2608. Charter revision commission. The Erie County Charter shall undergo a mandatory decennial review and the review shall commence by seating a Charter Review Commission by October 15, 20~~32~~²⁴, which shall report its recommendations to the Erie County Legislature no later than May 15, 20~~32~~²⁵. The Charter Revision Commission shall conduct at least one (1) public hearing prior to December 31, 20~~32~~²⁴. The Charter Revision Commission shall only be required to consider those proposals submitted to the Commission on or before April 15, 20~~32~~²⁵.

Overall:

- change he/she to them
- change chairman to chairperson
- make sure Erie County is capitalized correctly (not Erie county)