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ERIE COUNTY COMPTROLLER
HON. STEFAN I. MYCHAJLIW

April 21, 2016

Mr. Todd Aldinger
Chairman
Erie County Charter Review Commission
92 Franklin Street
Buffalo, NY 14202

RE: Charter Change Recommendations for your Consideration

Dear Chairman Aldinger:

First and foremost, I want to thank you and your colleagues on the Charter Review Commission for your hard work and service to taxpayers. I vividly recall working as a journalist covering the progress of the last commission a decade ago. It was then that I saw firsthand the level of commitment that goes into the work you are performing.

I wanted to provide for your consideration a list of suggested charter changes that I think would strengthen the County's commitment to those we serve, including taxpayers and veterans, protect the autonomy of independently elected officials, improve the budget process and enhance my office's audit powers. These innovative reforms respect and benefit those that pay the bills to keep County government functioning; the hardworking taxpayers.

PROTECTING VETERANS

The County's Department of Veterans Services is a critical office for more than 62,000 veterans we count as our neighbors. The office assists veterans that need assistance navigating the federal Department of Veterans Affairs' (VA) bureaucracy. Specifically, the office helps veterans with the VA's claim process. The Director of the Office assists veterans with gathering information necessary to file a claim, starting the claim and tracking the claim throughout the decision process. If a claim is denied, the Director can assist a veteran with filing an appeal.

The County provides this service as a convenience to veterans. The Director and county staff serve as a liaison between the veteran and federal officials at the VA. In order to work on the veteran's behalf, the VA requires that the Director, and county staff working on claims, are certified Veterans Service Officers. This certification takes at least six months to obtain, and is an absolute requirement to file claims and work on existing claims on behalf of veterans. In the event that a new Director is appointed who does not have this certification, claims started by county officials grind to a screeching halt. This negatively impacts the veteran at no fault of their own. Their claim and the benefits they earned fighting for our freedoms get held hostage by our internal bureaucracy.

I think this is wrong, and I think it should be fixed. Erie County veterans became victims of this horrible circumstance when County Executive Collins lost his re-election and the newly elected County Executive Poloncarz appointed a director that was not a certified Veterans Service Officer. It took months for the new director to obtain his certification. The office now has its third director in four years. Our veterans deserve consistency in this position, and therefore I am proposing that the director be given a five year term of office and that a transition process be put in place when a new director is appointed.

At a minimum, this change would ensure that claims do not get held up as the result of a political process that changes with the County Executive. This office needs to be above politics. Should the County Executive appoint a new director that is not already certified, the transition process would provide them the authority to keep on the outgoing director until the new director obtains the necessary certification. If the commission wanted to go one step further, it could make having the certification a requirement for the appointment. I take caution in proposing that the charter go that far because of concerns of what that would do the applicant pool for the position.

HONORING ACTIVE DUTY MILITARY PERSONNEL

Federal law requires that Erie County preserve the jobs of county employees who are deployed in service to our nation. However, the compensation of our deployed employees is within our control. Currently, if deployed, an employee is given 30 days (176 hours) of deployment leave pay. After that, if the employee wishes to retain their full salary, they are required to use their personal time off allowances. If they choose not to do that, a 2002 resolution passed by the Erie County Legislature allows them to collect the difference between their county pay and their armed services pay. In order to do this, the employee must submit their armed services pay stub to the Department of Personnel and they will receive the difference in their compensation in the county's next pay period.

In 2002, the Legislature took a step forward in honoring the sacrifice our employees that serve make, but I don't think they went far enough. Being deployed takes both an emotional and financial toll on a family. I firmly believe that deployment pay should be extended from 30 days to the full length of the deployment. While this change could be done through legislative resolution or local law, I think it is so important that it should be codified in the charter.

AUTONOMY OF INDEPENDENTLY ELECTED OFFICIALS

The current charter allows independently elected officials to have full control over the office they manage. However, the language is not strong enough and is routinely violated by over-reaching administrations.

Currently, if I want to hire a new employee in my office into a fully funded position, I require the permission of the budget office. If I want to move already approved funding from one account in my office into another, regardless of purpose, I require the permission of the budget office. The authority over these processes was assumed by the budget office through the computer systems that were set up to handle these various functions. They were set up to manage the activities of departments, not independently elected offices that are designed to serve as checks and balances on the administration and various functions of government.

I strongly believe in the checks and balance process, and would support a charter change that gives independently elected officials full control over their office budget throughout the year. This control should include a provision that the office budgets of independently elected officials shall not be changed by the county executive when they submit the annual county budget to the Legislature, with the exception of new positions. This protection would prevent a County Executive from arbitrarily cutting the budget of an independently elected official, but would also retain their control over the addition of county positions. The County Executive would retain their veto authority if the Legislature were to make any additions. The Legislature would also retain their full authority to change an office budget however they see fit.

As stated, I believe to a certain extent some of this authority already exists. However, the advancement of technology has changed a lot of the county's internal processes, and with those changes there have been unintentional consequences placed on the autonomy of independently elected officials.

BUDGET PROCESS CHANGES

The current budget process doesn't work and is continually violated by the County Executive. The process requires that the County Executive submit to the Comptroller revenue estimates that will be used in the proposed budget by October 1st. This charter requirement is routinely ignored, and the charter provides for no consequence when it is violated. The budget is due to the Legislature on the 15th of October. The process is designed to give the Comptroller 15 days to review the revenue estimates and offer an opinion as to whether or not they are reasonable. This makes sense, and was built into the charter with very good intentions. It is unfortunate that it is routinely ignored.

When County Executive Poloncarz proposed the 2016 budget, he failed to provide the property tax revenue and levy estimates to my office by the deadline. At the time he stated he was unable to do so because exact numbers weren't yet finalized by the various offices throughout the county involved in compiling them. If these figures remain unknown at the time when this report is due to the Comptroller, the County Executive shall be required to submit in its place a maximum and minimum levy amount which shall be used in preparing the budget.

This change will give the Comptroller a basis for reviewing the property tax figures and opinion on whether or not they are reasonable.

AUDIT REQUEST COMPLIANCE

My office has the major responsibility as serving as the county's internal auditor. In this role, we perform compliance and financial audits and reviews of county departments, political subdivisions and contract agencies. Too often these audits and reviews are delayed by the auditee's refusal to cooperate or provide requested information. In my opinion, the charter must address this problem and those audited by the Office of Erie County Comptroller must be forced to comply.

For internal county departments, agencies and subdivisions, I would propose that they be given 10 business days to fulfill requests from the audit division that are made as part of an engaged audit or review. If the auditee is unable to provide the requested information, they must provide their reasoning in writing to both the Comptroller and the Erie County Legislature by the expiration of that 10 day

period. Reasonable requests that are not complied with in 30 business days should trigger an automatic subpoena.

For external organizations that are being audited or reviewed because they are the recipient of taxpayer funds the process for complying with Audit Division requests should be clarified. In my opinion, these organizations should be given 10 business days to comply with the total request. Failure to do so will subject their organization to a subpoena from the Comptroller. Their contract language should be amended to include provisions that require them to reimburse the County for any costs incurred if the subpoena process is necessary. Additionally, a provision should be added to all County contracts noting that they are subject to the audit and review authority of the Erie County Comptroller and any failure to comply with an ongoing audit or review will subject their contract to termination or suspension by the Erie County Legislature if requested, through the legislative resolution process, by the Comptroller.

These changes will greatly enhance the ability of the Comptroller's Division of Audit and Control to do their work. Unfortunately, too many of our audits are delayed because departments and external agencies face no consequences for refusing to work with us. Their refusal is disrespectful to our process and to the taxpayers providing the funding. The Office of Erie County Comptroller should have the chartered protection to do their work as the taxpayer's watchdog.

HIRING & SPENDING FREEZE

The current charter allows the County Executive and other independently elected officials to implement hiring and spending freezes within departments and offices under their direct control. It has no provision for the Legislature to do the same. I feel strongly that it should. At any point the Legislature deems it appropriate, they should be able to impose a hiring freeze upon the county with a majority vote that is subject to the County Executive's veto. Additionally, I think at the recommendation of the County Comptroller, the County's Chief Financial Officer, the Legislature should be able to freeze certain spending with a majority vote that is also subject to the County Executive's veto.

The Legislature serves as the people's representative, and the Comptroller serves as the taxpayer's watchdog and the County's Chief Financial Officer. Both play critical roles in managing the County's finances and they should have more authority and responsibility in terms of reigning in reckless and unaffordable spending. The current process allows the Legislature one bite at the spending apple during the annual budget process. Throughout the year, our economic conditions can change, often times unexpectedly. When that happens, I feel strongly that the Legislature should have the opportunity to change our spending habits in a way that will benefit taxpayers.

SAFEGUARDING CURRENT EMPLOYEES AND TAXPAYERS

Next year the County's largest union contract will expire with CSEA. Currently, our hard working AFSCME employees are working with no contract. I think it is only fair to County employees that they have a contract with agreed upon terms. I also think it is equally valuable for the County to have union contracts in place so both the County Executive and Legislature can properly budget for and anticipate future costs.

With this said, I think your honorable body should consider the merits of a new job creation freeze during times when our existing employees are without a contract. This proposal should not be

confused with a hiring freeze. Existing jobs that are budgeted for and have been approved by the Legislature and are part of the necessary operations of County government can be filled. However, the addition of positions to the County budget should be prohibited until a contract is in place and the Legislators creating the positions know the true cost of them going forward.

COMMENT FROM MANAGEMENT LETTER

In this past year's management letter, our outside auditors remarked on the need for the County to review the charter requirement that sets the fund balance at 5% of operational expenses. The auditors did not comment on whether or not this number was appropriate, but stressed the importance that since it was changed recently, that it be reviewed for effectiveness. The charter revision process is the easiest time to address a flaw in the charter if one occurs. I would recommend that the Commission consider the fund balance requirement during their deliberations.

SALARY REVISION COMMISSION

Earlier I stated that I didn't believe the County should be creating new positions when any of our union contracts are expired. When our employees don't have a contract, and future personnel costs are an unknown, it is not the appropriate time to increase the amount of personnel we have. At the same time, I think the rules governing the Salary Review Commission should be amended to deny any elected official a pay raise in year in which any of the unions serving the County are without a contract. If politicians are unable to settle employment contract issues, they have not earned and should not receive a raise themselves.

The recommendations set forth in this letter are being provided for your consideration. Should your honorable body express interest in pursuing any of them as part of your efforts, I have also provided the Clerk of the Legislature draft language to effectuate the changes in the charter. Once again, thank you for your time and effort on this very important endeavor. My proposed changes are designed to strengthen the checks and balances already in the charter and provide new protections for current employees, veterans and taxpayers.

Please feel free to contact me should you have any questions about these recommendations.

Sincerely,



STEFAN I. MYCHAJLIW
Erie County Comptroller

cc: The Honorable Members of the Erie County Legislature
The Honorable Members of the Erie County Charter Revision Commission