



**SULLIVAN COUNTY
CHARTER REVISION COMMISSION**

COUNTY GOVERNMENT CENTER
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MEMORANDUM

TO: The Sullivan County Legislature
FROM: The Charter Revision Commission
DATE: May 17, 2017
RE: Final Report of the Charter Revision Commission

"The County Executive and staff work with the Legislature, County Departments, Agencies, Advisory Boards and the general public to provide services to county residents as defined in Federal, State and County laws and regulations."

From the Orange County 2015 Budget

I. Executive Summary

The Sullivan County Charter adopted by Sullivan County in 1993 (the "Charter") fundamentally reshaped county government. It dissolved the Board of Supervisors that had previously managed county operations and replaced it with a nine-member County Legislature (the "Legislature"), which in turn appointed a County Manager to handle day-to-day operations. The framers of the new Charter anticipated that it might need to be amended from time to time and therefore provided in §C1.05 "*Additional Charter Revision Commissions, composed of qualified county electors chosen by the County Legislature and representing various segments of the community, shall be appointed at least once every 10 years thereafter to review and propose revisions to this Charter, if required.*" Such a Commission serves in an advisory capacity and does not have the authority to make changes; that power rests with the Legislature or, in the event of a referendum, with the people of the county.

The current Charter Revision Commission (the “Commission”) was appointed by the Legislature in 2015 and has been meeting for two years. It has heard testimony from dozens of individuals, including the County Clerk, the District Attorney, the County Sheriff, the County Treasurer, former and current County Legislators, the County Manager, two County Attorneys, the County Auditor, department heads and commissioners, and several experts in county governance from around the state.

I. The Case for a County Executive

The biggest question facing this Commission has been to determine if our current legislative/manager form of government best serves the people of Sullivan County or if the people would be better served if the Charter were revised to create the position of an elected County Executive who would replace the appointed County Manager.¹ After a great deal of research the Charter Revision Commission has determined that the benefits of a County Executive far outweigh the negatives.²

Some of the most compelling testimony heard by the Commission concerned events in Ulster County, which instituted an executive form of government in 2006. Two years later voters elected Mike Hein, the County Administrator, to serve as the county’s first Executive. In this new role, Mr. Hein was able to take bold steps that were beyond what either he, or the Legislature, could accomplish under the previous system of government. County Attorney Beatrice Havranek said that when Hurricane Irene struck in 2011, the county was fortunate to have a single individual with the authority to act quickly under emergency conditions.

As the New York State Department of State “Local Government Handbook” explains:

“Voters in the charter counties of New York, in most cases, have chosen the elected executive form of county government organization. The creation of the office of elected executive provides the county with potentially strong leadership, because the executive is selected by the voters of the entire county. Thus, the executive operates from a strong political base to speak for the county and to

¹ The question of reinstating a governing Board of Supervisors was also discussed, but several members of the Commission argued persuasively that the compelling reasons that led Sullivan County to disband its Board of Supervisors more than twenty years ago still apply today. It is also worth noting that no New York County that replaced a Board of Supervisors with another form of government has ever reverted to a governing board.

² See Appendix I to this Memorandum, which sets forth some of the powers and duties of an elected county executive based on a review of certain other New York counties. This is meant for illustrative purposes only. The actual powers and duties of an elected county executive would be determined by the legislature.

*exercise leadership in relation to the legislative body. This principle holds true even where the charter does not endow the executive with extensive powers.*³

Dr. Gerald Benjamin, Distinguished Professor at SUNY New Paltz and Director of the Benjamin Center, is the university's principle locus for interacting with local governments. Dr. Benjamin has a unique perspective on this issue because he served both as Chair of the Ulster County Legislature and as Chair of the county's Charter Commission. He argued that the benefits of having a strong Executive can extend beyond county borders. Benjamin maintains that an Executive can give a county a marked advantage when competing with other counties for scarce state resources. The NYS County Executives Association represents a powerful bloc within the New York Association of Counties and is a force to be reckoned with in Albany. It's worth noting that of the seven other counties in the Mid-Hudson Regional Economic Development Council, only Sullivan lacks an Executive – and by many economic measures, these other counties typically outperform Sullivan in the economic sphere.⁴

There are intelligent, experienced and civic-minded people with divergent views on this subject, and the Commission heard from several witnesses who, for one reason or another, oppose the notion of a County Executive. These arguments centered on two concerns: First, an elected Executive might not have the same degree of competence as a professional Manager, and second, a County Executive form of government would be more expensive. The Commission carefully considered both these arguments.

The Commission addressed the question: would the election of an Executive be little more than a “popularity contest” that might result in an incompetent individual taking the reins of government? And conversely, when the Legislature hires a professional Manager, does it necessarily have the ability to select a highly qualified individual from a large pool of applicants?

In some ways this seems like a curious argument to make in a country where we routinely elect executives ranging from mayors, to town supervisors, to governors, to presidents. One doesn't hear the argument that we should replace any of these elected officials with appointees. Moreover, this argument makes two assumptions—first, that a relatively

³ **Local Government Handbook**, a publication of the New York Department of State, Division of Local Government, p. 44.

⁴ A) According to the New York State Department of Labor Sullivan County has the highest unemployment rate (4.7%) in the seven-county in the Mid-Hudson region. (*The Times Herald Record*, December 20, 2016.)

B) A July 2016 economic profile published by New York State Comptroller Thomas Di Napoli, found that Sullivan County has the lowest median income in the seven-county region.

<http://www.osc.state.ny.us/localgov/pubs/economicprofile/midhudsonregion.pdf>

C) Independent research conducted by Jeffersonville resident Ken Hilton found that relative to median income, Sullivan County property taxes are among the top one percent in the nation.

poor, rural county like Sullivan will necessarily be able to attract first-rate managerial talent, and second, that the Legislature will unerringly hire the best applicant for the job.

The second concern, that an executive form of government might place an additional burden on the taxpayer was one the Commission took very seriously. Without doubt, there are some added expenses associated with having an Executive. For example, operating under a system of checks and balances, both the Executive and Legislature must each be afforded independent legal representation. But additional expenses do not necessarily mean that the county's overall expenses will increase.

One witness who offered compelling testimony on this point was Dr. Benjamin. He told the Commission that additional costs can be offset by increased efficiency. And Ulster's experience undercuts the notion that moving to an executive form of government necessarily entails an increased burden on the taxpayer. County Attorney Havranek testified that when Ulster adopted an executive form of government, it was able to cut the number of county employees from 1,800 to 1,300 (through attrition), and reduce its budget from \$363 million to \$330 million. In consequence the county was able to roll back property taxes.

Three out of four New Yorkers who live outside of New York City already reside in one of the eighteen counties with a County Executive.⁵ It's a form of government that is readily understood by every American because it resembles our federal and state governments in which a president, or governor, shares power with a legislative body. In contrast, Sullivan County's current form of government, with an elected Legislature and an appointed Manager, has few parallels in civic life. The division of powers and responsibilities within this form of government is not immediately apparent to everyone. In fact, even members of our county government have not always been able to agree on where the lines of authority should be drawn. On occasion, this has led to confusion and conflict.

The absence of a single leader who has the authority to act decisively can also lead to inaction. With an elected Executive, there can be little doubt as to who is responsible for government operations—he or she has both the power and the responsibility to ensure that the government operates effectively and efficiently. If an Executive fails to deliver, voters know who is to blame and can vote him or her out of office.

Adopting a fundamentally new form of government is not something that should be done lightly or without a frank and full public debate. The Commission strongly recommends that the Sullivan County Legislature adopt a local law to amend the Charter to provide for an elected County Executive instead of an appointed County Manager and require that the law be subject to a mandatory public referendum.

⁵ See [Appendix II](#) to this Memorandum.

II. Other Structural Changes: Financial Operations and Accountability

The Commission also recommends that as part of the same local law subject to public referendum, the Sullivan County Legislature amend the Charter to create the position of an independent, elected Comptroller and an appointed Finance Officer operating under the Executive.

A. The Comptroller

Most New York State counties that have a County Executive form of government also have an elected Comptroller⁶ who acts as an independent watchdog overseeing the financial operations of the Executive and the county government as a whole. The election, rather than the appointment, of the Comptroller assures the independence of the officeholder. It is further recommended that the term of the Comptroller be staggered with that of the County Executive in order to provide continuity to government operations.

In counties with a comptroller, the Comptroller typically is the chief accounting and auditing officer of the County and is required to:

- 1) Examine, audit, and verify all books, records, and accounts kept by the various administrative units, offices and officials paid from county funds, institutions and other agencies of the county, including bond and note register and trust accounts, and the accrual and collection of all county revenues and receipts, and for this purpose have access to all such books, records, and accounts at any time;
- 2) Have all the powers and perform all the duties conferred or imposed by law upon a county comptroller, and perform such other related duties required by the County Executive or County Code.

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

B. Commissioner of Finance

As part of this amendment of the Charter, the County Treasurer would be replaced by a Commissioner of Finance, appointed by the County Executive and approved by the Legislature.

The Department of Finance under the direction of the Commissioner of Finance shall:

⁶ Memorandum to the Charter Review Commission, from Assistant County Attorney Andrew J. Ford, dated September 14, 2016.

- 1) Administer all the financial affairs of the County;
- 2) Collect, receive, have custody of, deposit and disburse all revenues, fees and other funds of the County or for which the County is responsible;
- 3) Act as the enforcing officer of the County for the purpose of the collection of tax liens on real property pursuant to Article 11 of the Real Property Tax Law of the State of New York;
- 4) Have all the powers and duties conferred upon a public administrator pursuant to the Surrogate's Court Procedure Act of the State of New York, except that any and all fees received in the performance of such duties shall be the property of the County of Sullivan;
- 5) Perform all duties specified in law for County treasurers or other County officers relating to the collection of taxes;
- 6) Submit a complete statement of County finances to the County Executive and the County Legislature on or before the first day of March and at such other times as either may require; and
- 7) Have all the powers and perform all the duties conferred or imposed by law upon a county commissioner of finance and perform such other duties required by the County Executive and/or as required by the county code.

III. The Role of the Legislature in a County Executive Form of Government.

The role of the Legislature will be little changed if Sullivan County adopts a County Executive form of government. Legislators will continue to represent their districts, and the Legislature will continue to make laws and levy taxes and it will have the added responsibility of providing oversight of executive actions.

The powers and duties of the Legislature are enumerated in §C2.02 and § C2.03 of the Charter.

The following powers and duties will be retained by the Legislature under a County Executive:

§C2.02 of the Charter

- A. *Make appropriations, levy taxes, incur indebtedness, authorize contracts and adopt the county budget.*
- B. *Enact, amend or repeal the County Administrative Code, local laws, legalizing acts or resolutions, and provide for the administrative implementation thereof.*
- C. *Adopt, by resolution, all rules and regulations for its own conduct and procedure.*
- D. *By local law, create, alter, combine or abolish administrative units of county government not headed by elective officers or designated in this Charter, establishing or abolishing positions of employment in connection therewith.*

E. *Fix the compensation of all officers and employees paid from county funds, except members of the judiciary, and except that compensation of any elected official paid from county funds shall not be decreased during that official's term of office.*

F. **[Note: See page 8, below.]**

G. *Make, or cause to be made, such studies, audits and investigations as it deems necessary and also obtain professional and technical advice, appoint temporary advisory boards of citizens, subpoena witnesses, administer oaths and require the production of books, papers and other evidence deemed necessary or material to such study, audit or investigation.*

H. *Equalize real property taxes on the basis of data supplied by the New York State Board of Equalization and Assessment⁷, various administrative units and towns within the County of Sullivan, pursuant to the applicable provisions of the Real Property Tax Law of the State of New York.*

I. *Fix the amount of bonds of officers and employees paid from county funds.*

J. *Fill vacancies in any elective County office except as provided otherwise by this Charter. The person or persons so appointed shall hold office by virtue of such appointment until the certification of the first general election after the happening of the vacancy, upon which certification the vacancy shall be filled for the balance of the term, if any, and the person so elected shall take office immediately. [Amended 10-18-2007 by L.L. No. 10-2007]*

K. *Contract annually with a Certified Public Accountant to conduct an audit of the general purpose financial statements of the county.*

L. *To the maximum extent permitted by law and consistent with responsible sound fiscal policies, follow and adhere to sustainable energy and sound environmental principles and processes in all of its policies and operations. [Amended 10-18-2007 by L.L. No. 11-2007]*

M. **[Note: See page 8, below.]**

N. **[Note: See below.]**

O. **[Note: See below.]**

⁷ The Board of Equalization and Assessment was changed to the Board of Real Property Services by L.1994, c. 385, effective 1-1-1995.

P. *Shall require a certificate of availability of funds to be issued, prior to the submission of any resolution that appropriates funds, or authorizes a contract to be executed that requires an expenditure of funds. [Added 10-18-2007 by L.L. No. 12-2007]*

Q. **[Note: See below.]**

R. *Determine and make provision for any matter of County Government not otherwise provided for, including but not restricted to, any necessary matter involved in the transition of this Charter. [Added 10-18-2007 by L.L. No. 12-2007]*

§ C2.03 of the Charter

Confirmation of appointments. Confirmations of appointments, when required, shall be by a majority of the votes cast by the legislators at a regular or special meeting of the County Legislature except where a different majority is provided for in this Charter.

Parts F, M, N, O and Q of §C2.02 of the Charter will have to be altered under a County Executive form of government.

§C2.02 of the Charter

F. *Appoint, subject to the provisions of this Charter, and at its pleasure remove, the County Manager, and appoint, or confirm as the case may be, such other officials as provided in this Charter or in the Administrative Code.*

Note: The position of County Manager will be eliminated and replaced by an elected County Executive.

M. *Review, adopt and update a strategic plan that would establish the recommended programs and fiscal priorities of the County. It is suggested that said plans be adopted biannually (every other year) commencing on June 30 of the year in which the Legislature takes office. The adopted strategic plan shall be comprehensive and inclusive of all County divisions, offices, agencies, and contracted services. [Added 10-18-2007 by L.L. No. 12-2007]*

Note: It will be the responsibility of the County Executive to present a strategic plan to the Legislature for review and adoption.

N. *Establish and maintain a standing committee that will review, adopt and update, as necessary, a six-year capital plan that will establish capital programs and priorities that will assure responsible debt management. This committee shall also consider impacts to the County operating budget. This capital plan will be adopted by a majority vote of the Legislature, but deviation therefrom will require a two-thirds vote. [Added 10-18-2007 by L.L. No. 12-2007]*

(1) Said committee will be comprised of the following voting members:

Chairman of Management and Budget Committee; Chairman of Public Works Committee, County Manager, County Treasurer; Chairman of Personnel Committee, and a member of the Majority and Minority Caucus, Commissioners and other county staff appointed by the County Manager shall be available as resources to the committee at the discretion of the County Manager.

(2) The Capital Planning Committee shall also formulate and make recommendations to the County Legislature regarding the strategic plan described in § C2.02M of this charter.

Note: Capital planning will become the responsibility of the Executive branch.

O. Shall create and appoint a Council of Government that shall serve in an advisory capacity to the County Legislature. The Council of Government should include representatives of the Legislature, Town Supervisors, Village Mayors, Boards of Education, the County Manager, County Treasurer, and other appropriate officials.
[Added 10-18-2007 by L.L. No. 12-2007]

Note: The Commission recommends that the Legislature eliminate this provision of the Charter. The Legislature has failed to convene a Council of Government in recent years.

Q. In the event that the County Treasurer and the County Manager do not agree on the annual estimate of revenues for the succeeding year's operating budget, then the County Legislature shall determine the estimate of revenues, at a public hearing conducted for that purpose, after receiving information from the County Manager, County Treasurer, and Commissioner of Management and Budget, by the 10th day of November. [Added 10-18-2007 by L.L. No. 12-2007]

Note: The County Executive will be responsible for presenting an annual budget to the legislature. Under §C2.02 A, the Legislature shall make "appropriations, levy taxes, incur indebtedness, authorize contracts and adopt the county budget."

IV. Other Changes to the Charter

In addition to the foregoing, the Commission also considered other changes to the Charter, including term limits and staggered terms of legislators. While the Commission decided not to recommend term limits, it did resolve at its March 2016 meeting to recommend that the County Charter be amended to provide for staggered terms of the legislators. A copy of that resolution is attached to the Memorandum as **Appendix III**.

APPENDIX I**Powers and Duties of a County Executive****Powers and Duties of County Executive.**

The County Executive shall be the chief executive of the County. He or she shall have and exercise all the executive powers and duties conferred by this Charter and/or in law upon a County executive officer or the executive branch of a County government, and all powers and duties necessarily implied or incidental thereto, including without limitation, to:

- A. Execute and enforce all laws and regulations of the County Legislature;
- B. Supervise, direct and control all administrative departments, offices and agencies of the County government;
- C. Appoint department heads and other officers and employees as provided in this Charter, subject to confirmation by the County Legislature,
- D. Appoint, without confirmation by the County Legislature, such assistants, officers, and employees of the County Executive's office as may be authorized by the County Legislature;
- E. Conduct or supervise the conduct of collective bargaining negotiations with legally designated bargaining agents of County employees;
- F. Create, combine, separate, or eliminate executive departments of the County, or reorganize the duties thereof, with the confirmation of the Legislature;
- G. Serve as an *ex officio* member of and appoint, supervise and terminate all executive committees, commissions and boards needed to assist in the exercise of executive functions and in the planning, formulation and administration of executive policies and programs;
- H. Serve as the chief budget officer of the County, and as such, (i) prepare and submit to the County Legislature the annual budget and capital program and (ii) execute the County budget and capital program in accordance with the resolutions and appropriations made by the County Legislature;
- I. Be responsible for keeping the County Legislature fully advised as to the financial condition and needs of the County and file with the County Legislature by the first day of March each year an unaudited annual report of the financial affairs and other affairs of the County;
- J. Designate one or more official depositories located within the County for the deposit of County funds;
- K. Approve or disapprove the sufficiency of sureties on official bonds and undertakings required to be posted of officers within the Office of the County Executive;

- L. Execute all contracts under the sum of \$50,000 and, with the approval of the County Legislature, all contracts in excess of \$50,000;
- M. Approve or disapprove (veto) in writing every resolution or local law passed by the County Legislature, within ten (10) days and thirty (30) days, respectively, subject to override of said veto by the County Legislature as provided in this Charter⁸;
- N. Make such recommendations to the County Legislature with respect to the affairs of the County and its government as appropriate;
- O. Declare the existence of emergencies affecting the life, health or safety of all the inhabitants of the County and, except as otherwise provided by law, exercise all the powers and duties necessary for the protection thereof; and
- P. Conduct studies and investigations in furtherance of executive functions within the limits of appropriations set by the County Legislature, and, in connection therewith, obtain and employ professional and technical advice, appoint citizens' committees, commissions and boards.
- Q. The above duties are limited to the extent allowed by law and county code.

⁸ The veto override provisions would be set forth in the Legislature part of the charter. In the Ulster County Charter, it reads as follows:

"If the County Executive approves the local law or resolution, he or she shall sign it and return it to the Clerk of the County Legislature; it shall then be deemed to have been adopted. If he or she disapproves the local law or resolution, he or she shall veto it by returning it within 10 days to the Clerk with his or her objections stated in writing, or 30 days in the case of a local law. Any resolution not returned within 10 days, or 30 days in the case of a local law, will be deemed to have been adopted. The Clerk shall present the local law or resolution with the County Executive's objections to the County Legislature at its next regular meeting, and these objections shall be entered in the Legislature's record, journal or minutes of proceedings."

"Within 30 days after such receipt and entry, the County Legislature may reconsider such vetoed enactment and pass the same over the objections thereto by a favorable vote of at least 2/3 of the whole number of its elected members on a roll-call vote."

APPENDIX II

New York Counties with County Executives
And Their Population

Of the approximately 11,250,000 New Yorkers who reside outside the five boroughs of New York City, 8,392,000 reside in counties with an Executive.

New York State Total Population:	19,800,000
Less New York City Population:	<u>8,550,000</u>
Balance of State Population:	11,250,000
Population of Counties with Executives:	8,392,000

County	First Executive	Population
Albany	1976	309,000
Broome	1980	197,000
Chautauqua	1975	132,000
Chemung	1974	87,000
Dutchess	1978	297,000
Erie	1962	923,000
Monroe	1938	750,000
Montgomery	2012	50,000
Nassau	1938	1,361,000
Oneida	1962	233,000
Onondaga	1961	468,000
Orange	1969	377,000
Putnam	1977	100,000
Rensselaer	1972	160,000
Rockland	1985	326,000
Suffolk	1961	1,493,000
Ulster	2009	180,000
Westchester	1939	<u>949,000</u>
		<u>8,392,000</u>

APPENDIX III

Resolution – Staggered Terms

Resolution No. 1-16

Resolution Introduced By the Sullivan County Charter Review Commission to Change The Terms Of Office Of Elected County Legislators.

Whereas, the duly appointed members of the Sullivan County Charter Review Commission have met regularly since January 2015 for the purpose of, among other reasons, evaluating the efficiency and functionality of county government, and

Whereas, the commission members have heard testimony from numerous county officials and outside advisors, and

Whereas, during these hearings, it has been suggested that the possibility of having a large number of newly elected legislators taking office at the same time has the potential of disrupting the smooth functioning and continuity of county government, and

Whereas, the commission members have duly deliberated on this matter of staggered terms, and

Whereas, the commission members have come to the conclusion that having the duly elected legislators' terms of office not run concurrently is in the best interests of county government, now

Therefore Be It Resolved, that the commission members do hereby recommend that elected county legislator's terms beginning with the next general election for said positions be staggered in such a way that four randomly selected legislators run for 2 year terms and then for four year terms at the end of those terms. The other five legislators terms would remain the same.

Moved by Mr. Burckard, seconded by Mr. Walter, put to a vote and carried 10-0 with Mr. Harding and Mr. Sutherland absent.

STATE OF NEW YORK)
 §:
COUNTY OF SULLIVAN)

I, MICHELLE HUCK, Secretary to the Sullivan County Charter Review Commission, do hereby certify that I have compared the foregoing copy of a resolution with the original thereof now on file in my office and that the same is a correct transcript therefrom and of the whole of said original. WITNESS my hand and seal this 16th day of March 2016.

/s/
SECRETARY TO THE S.C. Charter Revision Commission