**THE COUNCIL OF THE CITY OF NEW YORK**



**COMMITTEE REPORT OF THE**

**COMMITTEE ON RULES, PRIVILEGES AND ELECTIONS**

**Hon. Karen Koslowitz, Chairperson**

**September 23, 2021**

**Council Chambers**

**City Hall**

**Topic I: *New York City Board of Correction* – (Candidate for appointment by the Council)**

* **Julio Medina [Pre-considered M]**

The New York City Department of Correction (“DOC”) provides for the care, custody and control of persons accused or convicted of crimes and sentenced to one year or less jail time. The New York City Board of Correction (“BOC”) oversees DOC’s operations and evaluates agency performance. Pursuant to *New York City Charter* (“Charter”) §§ 626(c), 626(e), 626(f), BOC, or by written designation of the BOC, any member of it, the Executive Director[[1]](#footnote-1), or other employee, shall have the power and duty to:

* inspect and visit all institutions and facilities under the jurisdiction of DOC at any time;
* inspect all records of DOC;
* prepare and submit to the Mayor and to the Council, and the DOC Commissioner, proposals for capital planning and improvements, studies and reports concerned with the development of DOC’s correctional program planning, and studies and reports in regard to the methods of promoting closer cooperation of custodial, probation and parole agencies of government and the courts;
* evaluate DOC performance;
* establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of DOC; and to
* establish procedures for the hearing of grievances and complaints or requests for assistance by or on behalf of any person held or confined by DOC or by any employees of DOC.

BOC is composed of nine members. Three members are appointed by the Mayor, three by the Council, and three by the Mayor on the nomination jointly by the presiding justices of the Appellate Division of the Supreme Court for the First and Second Judicial Departments. Appointments are made by the three respective appointing authorities on a rotating basis to fill any vacancy. Members are appointed to a term of six-years, and vacancies are filled for the remainder of the unexpired term. The Mayor designates the Chair of BOC from among its members from time to time. The Mayor may remove members for cause after a hearing at which they shall be entitled to representation by Counsel. *Charter* § 626(b).

Although BOC members receive no compensation, they may, however, be reimbursed for expenses incurred in the performance of their duties. *Charter § 626*(a).

BOC is required to adopt rules to govern its own proceedings. *Charter § 626*(b). Within the scope of its authority, BOC may compel the attendance of witnesses, require the production of books, accounts, papers, and other evidence, administer oaths, examine persons, and conduct public or private hearings, studies and investigations. Also, BOC may institute proceedings in a court of appropriate jurisdiction to enforce its subpoena power and other authority. *Charter § 626*(g).

On an annual basis, and at such other times as it may determine, BOC submits to the Mayor, the Council and the DOC Commissioner, reports, findings and recommendations in regard to matters within its jurisdiction. *Charter § 626(d)*. Members of the Council are authorized to inspect and visit at any-time the institutions and facilities under the jurisdiction of DOC. *Charter § 627*.

If appointed by the Council, Mr. Medina, a resident of the Bronx, will fill a vacancy and serve for the remainder of a six-year term that will expire on October 12, 2026. Copies of the candidate’s résumé and the related messages is attached.

**Topic II: *New York City Board of Elections – (Candidate for appointment by the Council*)**

* **Jenny Low [M-0327]**

The New York City Board of Elections (“BOE”) consists of ten commissioners, two from each of the City’s five counties, who are directly appointed by the New York City Council. Not more than two commissioners shall be registered voters of the same county. Each commissioner serves a term of four years or until a successor is appointed. Commissioners shall be registered voters from each of the major parties in the county for which they are appointed [*New York State Election Law* § 3-200(3)].

Party recommendations for election commissioner shall be made by the County Committee, or in such fashion as the rules of a party may provide. Each of the major political parties shall be eligible to recommend appointment of an equal number of commissioners [*New York State Election Law* *§ 3-200(2)*]. The BOE and its commissioners are responsible for the maintenance and administration of voting records and elections. The BOE also exercises quasi-judicial powers by conducting hearings to validate nominating petitions of candidates for nomination to elective office. The BOE is required to make an annual report[[2]](#footnote-2) of its affairs and proceedings to the New York City Council once every twelve months and no later than the last day of January in any year. A copy of said annual report shall be filed with the New York State Board of Elections [*New York State Election Law* § 3-212(4)(a)].

At least thirty days before the first day of January of any year on which an elections commissioner is to be appointed, the Chair or Secretary of the appropriate party County Committee shall file a *Certificate of Party Recommendation* with the Clerk of the appropriate local legislative body [*New York State Election Law* § 3-204(1)]. In New York City, the City Clerk serves as the Clerk of the Council. If the Council fails to appoint an individual recommended by a party for appointment as a Commissioner within thirty days after the filing of a *Certificate of Party Recommendation* with the Council, then members of the Council who are members of the political party that filed the certificate may appoint such person. If none of the persons named in any of the certificates filed by a party are appointed within sixty days of the filing of the designating certificate, then such party may file another certificate within thirty days after the expiration of any such sixty day period recommending a different person for such appointment. If the party fails to file a *Certificate of Party Recommendation* within the time prescribed, the members of the Council who are members of such party may appoint any eligible person to such office [*New York State Election Law* § 3-204(4)].

If at any time a vacancy occurs in the office of any election commissioner other than by expiration of term of office, party recommendations to fill such vacancy shall be made by the county committee in such fashion as the rules of the party may provide.[[3]](#footnote-3) *Certificates of Party Recommendation* to fill such vacancy shall be filed no later than forty-five days after the creation of a vacancy. Anyone who fills a vacancy shall hold such office during the remainder of the term of the commissioner in whose place he/she shall serve [*New York State Election Law* § 3-204(5)].

BOE elects a President and a Secretary who cannot belong to the same political party [*New York State Election Law* § 3-312(1)]. The commissioners receive a $300 per-diem for each day’s attendance at meetings of the BOE or any of its committees, with a maximum of $30,000 per year [*New York State Election Law* § 3-208].

A *Certificate of Party Recommendation* referencing Ms. Low was filed with the Office of the City Clerk on August 25, 2021 at 2:56 pm. The Secretary of the New York County Democratic Party signed this document. Ms. Low, a registered Democrat from New York County, is being recommended for appointment to serve for the remainder of a four-year term that began on January 1, 2021 and ends on December 31, 2024 Copies of Ms. Low’s résumé and Committee report/resolution are annexed to this briefing paper.

 **Topic III: *New York City Civilian Complaint Review Board– (Council candidate for appointment)***

* **Herman Merritt [Pre-considered M]**

*New York City Charter* (“Charter”) § 440 created the New York City Civilian Complaint Review Board (“CCRB” or “the Board”) as an entity independent of the New York City Police Department (“NYPD”). Its purpose is to investigate complaints concerning misconduct by officers of NYPD towards members of the public. The Board’s membership must reflect the City’s diverse population, and all members must be residents of the City.

The CCRB consists of 15 members of the public. Members shall be residents of the city of New York and shall reflect the diversity of the city’s population. The members of the board shall be appointed as follows: (i) five members, one from each of the five boroughs, shall be appointed by the city council; (ii) one member shall be appointed by the public advocate; (iii) three members with experience as law enforcement professionals shall be designated by the police commissioner and appointed by the mayor; (iv) five members shall be appointed by the mayor; and (v) one member shall be appointed jointly by the mayor and the speaker of the council to serve as chair of the board. Only those appointees to CCRB designated by the Police Commissioner may have law enforcement experience. Experience as an attorney in a prosecutorial agency is not deemed law enforcement experience for purposes of this definition. The CCRB hires the Executive Director, who in turn hires and supervises the agency’s all-civilian staff. There are two Deputy Executive Directors: one is responsible for administration and the other for investigations.

All appointees to CCRB serve three-year terms. Vacancies on the CCRB resulting from removal, death, resignation, or otherwise, are filled in the same manner as the original appointment; the successor completes the former member’s un-expired term. Board members are prohibited from holding any other public office or public employment. All CCRB members are eligible for compensation for their work on a per-diem basis. The current per-diem rate is $315.00.

The CCRB is authorized to “receive, investigate, hear, make findings and recommend action” upon civilian complaints of misconduct by members of the NYPD towards the public. Complaints within the CCRB’s jurisdiction are those that allege excessive force, abuse of authority, discourtesy, or use of offensive language, including but not limited to slurs relating to race, ethnicity, religion, gender, sexual orientation or disability.

The CCRB has promulgated procedural rules pursuant to the City’s Administrative Procedural Act (“CAPA”). These rules regulate the way in which investigations are conducted[[4]](#footnote-4), recommendations are made, and members of the public are informed of the status of their complaints. The rules also outline the establishment of panels consisting of at least three Board members (no panel may consist exclusively of Mayoral appointees, Council appointees or Police Commissioner appointees); these panels may supervise the investigation of complaints and hear, make findings and recommend action with respect to such complaints. The CCRB, by majority vote of all its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of complaints.

The CCRB’s findings and recommendations with respect to a complaint, and the basis therefore, must be submitted to the Police Commissioner. In all such cases where a finding or recommendation has been submitted, the Police Commissioner is required to report to the CCRB on any action taken with respect to that complaint. The law prohibits the CCRB from making any finding or recommendation solely on the basis of an unsworn complaint or statement. In addition, the law prohibits the CCRB from using prior complaints against a member of the NYPD that have been unsubstantiated, unfounded or withdrawn as the basis for any finding or recommendation regarding a current complaint.

It should also be noted that the CCRB has established a voluntary mediation program in which a complainant may choose to resolve his or her complaint through informal conciliation. Both the alleged victim and the subject officer must voluntarily agree to mediation. Mediation is offered as an alternative to investigation to resolve certain types of complaints, none of which can involve physical injury or damage to property. If the mediation is not successful, the alleged victim has the right to request that the case be fully investigated.

Also, the CCRB is required to issue to the Mayor and to the City Council a semi-annual report describing its activities and summarizing its actions, and is also mandated to develop and administer an on-going program to educate the public about CCRB.

If appointed by the Council, Mr. Merritt, a resident of Brooklyn, will succeed Marbre Stahly-Butts and serve for a three year term that expires on July 4, 2023.Copies of the candidate’s resume is annexed to this Briefing Paper.

**Topic IV*: New York City Health + Hospitals – (Council candidate for designation)***

* **Patricia Marthone, MUDr [Pre-considered M]**

The New York City Health + Hospitals was constituted pursuant to Chapter 1016 of the laws of 1969, thereafter codified §7384 *et seq.* of the *Unconsolidated Laws of the State of New York*. H+H is a public benefit corporation whose purpose is to: (a) provide and deliver high quality, dignified and comprehensive care and treatment for the ill and infirm, both physical and mental, particularly to those who can least afford such services; (b) extend equally to all served, comprehensive health services of the highest quality, in an atmosphere of human care and respect; (c) promote and protect, as both innovator and advocate, the health, welfare and safety of the people of the State of New York and of the City of New York; and (d) join with other health workers and communities in a partnership to promote and protect health in its fullest sense—the total physical, mental and social well-being of the people. *HHC By Laws Article II.*

As provided by law, a Board of Directors consisting of sixteen (16) members administers H+H. As specified in H+H By Laws Article IV, §3, the Administrator of the Health Services Administration, the Commissioner of Health and Mental Hygiene, the Director of Community Mental Health Services, the Administrator of the Human Resources Administration and the Deputy Mayor/City Administrator, or their successors shall be directors ex-officio. Ten (10) additional directors are appointed by the Mayor, five (5) of whom are designated by the City Council.[[5]](#footnote-5) The President of H+H serves as the sixteenth director.[[6]](#footnote-6)

The term of a director, other than those serving ex-officio and/or at the pleasure of the Board, is for five years. The Mayor shall fill any vacancy which may occur by reason of death, resignation, or otherwise, in a manner consistent with the original appointment. The directors do not receive compensation for their services, but are reimbursed for actual and necessary expenses incurred by them in the performance of their official duties.

If Ms. Marthone, a resident of Brooklyn, is designated by the Council, and subsequently appointed to H+H by the Mayor, she will fill a vacancy and serve for the remainder of a five-year term that will expire on March 20, 2023. Copies of Ms. Marthone’s résumé and report/resolution are attached to this Briefing paper.

**Topic V**: ***New York City Board of Health* – (Mayor’s nominee for appointment upon advice and consent of the Council)**

* **Simona Chung Kwon, DrPH, MPH [M-0326]**

Pursuant to *New York City Charter* (“*the Charter*”) § 553, there shall be in the New York City Department of Health and Mental Hygiene (“the Department”)[[7]](#footnote-7) a Board of Health (“the Board”)[[8]](#footnote-8), the Chairperson of which shall be the Commissioner of the Department.

The main function of the Board is to promulgate the *New York City Health Code* (“Code”), which can encompass any matter within the jurisdiction of the Department, and has “the force and effect of law.” [*Charter* § 558.] The Board may legislate on “all matters and subjects to which the power and authority of the Department extends.” [*Charter* § 558(c).] The jurisdiction of the Department is among the most extensive and varied of all City agencies. Except as otherwise provided by law, the Department has jurisdiction to regulate all matters affecting health in the City and to perform all those functions and operations performed by the City that relate to the health of the people of the City, including but not limited to the mental health, mental retardation, alcoholism and substance abuse related needs of the people of the City. [*Charter* § 556.] The scope of the Department’s jurisdiction includes such diverse disciplines as communicable diseases, environmental health services, radiological health, food safety, veterinary affairs, water quality, pest control and vital statistics. New emerging pathogens and biological warfare are the most recent additions to the Department’s roster of concerns.

In addition to its primary legislative function in relation to the *Code*, the Board is charged with certain administrative responsibilities. The Board may issue, suspend or revoke permits (e.g., food vendor permits) or may delegate this duty to the Commissioner, in which case a party aggrieved by the decision of the Commissioner has a right of appeal to the Board. [*Charter* § 561.] The Board may declare a state of “great and imminent peril“ and take appropriate steps subject to Mayoral approval. [*Charter* § 563.] Other administrative functions of the Board are contained in the *Administrative Code of the City of New York*. One important function is to declare conditions as public nuisances and to order that such conditions be abated or otherwise corrected. [*Administrative Code* § 17-145.]

In addition to the Chairperson, the Board consists of ten members, five of whom shall be doctors of medicine who shall each have had not less than ten years experience in any or all of the following: clinical medicine, neurology, psychiatry, public health administration or college or university public health teaching. The other five members need not be physicians. However, non-physician members shall hold at least a Masters degree in environmental, biological, veterinary, physical, or behavioral health or science, or rehabilitative science or in a related field, and shall have at least ten years of experience in the field in which they hold such a degree. The Chairperson of the Mental Hygiene Advisory Board[[9]](#footnote-9) sits as one of the ten board members, provided that such individual meets the requirements for Board membership of either a physician or non-physician member.

The nine Board members other than the Chairperson and the member who shall be the Chairperson of the Mental Hygiene Advisory Board shall serve without compensation and shall be appointed by the Mayor, each for a term of six-years.[[10]](#footnote-10) In the case of a vacancy, the Mayor shall appoint a member to serve for the un-expired term. [*Charter* § 553(b).] The Mayor’s appointees are subject to the advice and consent of the New York City Council as set forth in *Charter* § 31.

The Commissioner shall designate such Department employees as may be necessary to the service of the Board, including an employee designated by him to serve as the Secretary to the Board. [*Charter* § 553 (c).]

Pursuant to *Charter* § 554, a member of the Board other than the Chairperson may be removed by the Mayor upon proof of official misconduct or of negligence in official duties or of conduct in any manner connected with his/her official duties, that tends to discredit his/her office, or of mental or physical inability to perform his/her duties. Prior to removal, however, the Board member shall receive a copy of the charges and shall be entitled to a hearing before the Mayor and to the assistance of counsel at such hearing.

If appointed, Dr. Kwon, a resident of Brooklyn, will fill a vacancy and serve the remainder of a six-year term that expires on May 31, 2022. A copy of the candidate’s résumé is annexed to this briefing paper.

**PROJECT STAFF**

Charles W. Davis III, Director of Investigations

Alycia Vassell, Senior Legislative Investigator

Andre Johnson-Brown, Legislative Investigator

Ramses Boutin, Legislative Investigator

Lance Polivy, Counsel

1. BOC may appoint an Executive Director to serve at its pleasure with such duties and responsibilities as BOC may assign, and other professional, clerical, and support personnel within appropriations for such purpose.DOC’sCommissioner shall designate such of DOC’s stenographic, clerical and other assistance to BOC as may be necessary for the proper performance of its functions. *Charter* § 626(b). [↑](#footnote-ref-1)
2. The annual report shall include a detailed description of existing programs designed to enhance voter registration. The report shall also include a voter registration action plan to increase registration opportunities [*New York State Election Law* § 3-212(4)(b)]. [↑](#footnote-ref-2)
3. According to *New York State Public Officers Law* § 5, every officer except a judicial officer, a notary public, a commissioner of deeds and an officer whose term is fixed by the Constitution, having duly entered on the duties of his office, shall unless the office shall terminate or be abolished, hold over and continue to discharge the duties of his office after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified; but after the expiration of such term, the office shall be deemed vacant for the purpose of choosing his successor. [↑](#footnote-ref-3)
4. The CCRB employs civilian investigators to investigate all complaints against members of the NYPD. [↑](#footnote-ref-4)
5. The Mayor must confirm the Council’s designees in order for these individuals to serve on the Board of Directors. [↑](#footnote-ref-5)
6. The President of H+H is also referred to as the Chief Executive Officer. This individual is chosen by the other fifteen directors and serves at the pleasure of the Board of Directors. According to HHC *By-Laws* Article VII, §4(A), the President shall have general charge of the business and affairs of HHC and shall have the direction of all other officers, agents and employees. He or she shall, if present, and in absence of the Chair of the Board and Vice chair of the Board, preside at all meetings of the Board. The President may assign such duties to the other officers of H+H, as he or she deem appropriate. In HHC *By-Laws* Article VIII, §1, it is noted that the President appoints an Executive Director for each H+H facility. This individual serves at the pleasure of the President. Other duties of the President include the establishment of Community Advisory Boards for each H+H facility. Community Advisory Boards consider and advise HHC with respect to the plans and programs of HHC. See *H+H By-Laws*, Article X1.  [↑](#footnote-ref-6)
7. On November 6, 2001, the voters of New York City approved the merger of the New York City Department of Health and the New York City Department of Health, Mental Retardation and Alcoholism Services to create a new agency called the Department of Public Health. The agency is presently known as the Department of Health and Mental Hygiene. [↑](#footnote-ref-7)
8. The ballot proposal approved by the City’s voters on November 6, 2001, expanded the Board’s membership from five to eleven members (including the Commissioner), while maintaining the current ratio of medical to non-medical personnel. Also, member terms were reduced from eight years to six years, and staggered to assure continuity. The Charter Revision Commission (the “Commission”) asserted that these changes would ensure that the Board is better able to address today’s “more complex public health threats and meet the new and emerging public health challenges of the future.” Also, the Commission reasoned that the expansion of the Board would “provide the opportunities to increase the variety of expertise represented, and allow for inclusion of representatives with experience relating to special health needs of different racial and cultural groups in the City.” Moreover, the Commission felt “a larger Board would also bring to bear greater diversity of academic, clinical and community perspectives on the broad spectrum of public health problems and issues that need to be addressed.” Report of the New York City Charter Revision Commission, *Making Our City’s Progress Permanent*, pp69-70 (September 5, 2001). [↑](#footnote-ref-8)
9. This body advises the Commissioner of Health and Mental Hygiene and the Deputy Commissioner for Mental Hygiene Services in the development of community mental health, mental retardation, alcoholism and substance abuse facilities and services and programs related thereto. Charter § 568. [↑](#footnote-ref-9)
10. The term of the Board of Health Chair, who is the Commissioner of Health, is not specified. The Chair of the Mental Hygiene Advisory Board can serve an unlimited number of four-year terms on that advisory Board and, thus, on the New York City Board of Health as well. Mental Hygiene Law § 41.11(d) and Charter § 568(a)(1). [↑](#footnote-ref-10)