



Legislation Text

File #: Int 0238-2002, **Version:** *

Int. No. 238

By Council Members Comrie, Oddo, Addabbo, Avella, Baez, Boyland, Brewer, Clarke, Davis, DeBlasio, Diaz, Dilan, Felder, Fidler, Gennaro, Gerson, Gioia, Jackson, Jennings, Katz, Lanza, Liu, Lopez, Martinez, McMahon, Monserrate, Moskowitz, Nelson, Provenzano, Quinn, Recchia, Reed, Reyna, Sanders, Seabrook, Sears, Serrano, Stewart, Vallone, Vann, Weprin, Yassky, Perkins, Rivera and the Speaker (Council Member Miller).

A Local Law to amend the New York City Charter, in relation to qualifications for the office of Council Member.

Be it enacted by the Council as follows:

Section 1. Purpose and Intent. This legislation addresses the qualifications for the office of Council Member imposed by Chapter 50 of the Charter in relation to the application of the two-year terms of Council Members established by Chapter 2 of the Charter. It does not change any term of office. Nor does it change those disqualification provisions of Chapter 50 of the Charter prohibiting any elected City official from serving more than two consecutive four-year terms. This legislation also does not change the current law mandating that the election to an unexpired term of office under Section 25b of the Charter not be considered a full term under Chapter 50 of the Charter. Therefore, a Council Member elected to fill an unexpired term of office can still serve two consecutive full terms immediately thereafter.

This bill also addresses the question of whether an elected official who resigns or is removed from office prior to the end of a full term is disqualified from election to a further consecutive term to such office, if such elected official would have been otherwise disqualified under Section 1138 of the Charter.

A. Section 25 of the Charter

Under Section 25 of the Charter, the terms of Council Members are normally four years and, under state law, councilmatic elections must be held in odd number years. Section 25 also provides that the terms of Council Members elected in 2001 and 2003 and every twenty years after each of these years shall be two years. The purpose of the two-year term is to allow an election for Council Members in 2003 and every twenty years thereafter in order to expeditiously implement the redrawn Council district lines required to be drawn by March of 2003 and every twenty years thereafter. Without this election, the redrawn lines under a four-year term in decades in which an election for Council is held in the first year of that decade, would not go into effect until the fifth year of that decade. Therefore, it allows for the timely redrawing of Council districts while also keeping Council elections on the same four-year cycle as citywide and borough-wide elections.

Section 1138 of Chapter 50 of the New York City Charter, added in 1993, disqualifies Council Members from serving more than two full consecutive terms. It makes no clear distinction between four-year terms and two-year terms, although Section 1137 and the literature in support of the initiative through which it was adopted suggests that the goal of that provision was to limit members to eight consecutive years in office. For example, a brochure distributed by the initiative sponsors told the public that they were voting for a “referendum to limit the Council Member to two consecutive four-year terms.” Additionally, the ballot question and other documents discussing the initiative spoke about two consecutive terms of office which in context could only be understood as eight years.

The application of Section 1138 and Section 25 of the Charter results in the disqualification of Council Members elected to their first full term in 1997 and every twenty years thereafter and their second term in 2001 and every twenty years thereafter from running again in 2003 and every twenty years thereafter and the disqualification of Council Members elected in 2003 and every twenty years thereafter and reelected in 2005 and every twenty years thereafter from running for reelection in 2009 and every twenty years thereafter. All other members of the Council remain qualified to serve two full

four-year terms. Presently there are eight members who cannot be elected in 2003 under this provision and any new members elected in 2003 will be subject to this special disqualification.

The Council declares that such unequal disqualification for office disadvantages the citizens of those districts from which Council Members are disqualified for running for greater than six consecutive years. Seniority and experience are significant factors in the capacity of Members to represent and serve their districts. Districts in which Members are disqualified from continuing to serve after six consecutive years are substantially disadvantaged as compared to districts in which Members can serve eight consecutive years. Additionally, five of the eight current Members who will be disqualified are members of protected minority groups under the Voting Rights Act of 1965 and four represent majority- minority districts. As of 2002, 25 members of the Council are members of protected minority groups. Nineteen of their districts are majority-minority districts. The effect of the two-year term disqualification is that minority populations will be disproportionately disadvantaged by the disqualification of Members who have served six consecutive years. Such disproportional representation raises equal protection questions.

The Council also declares that the disqualification of Members will serve to destabilize a Council, which has only recently amended its rules to broaden its lawmaking and oversight responsibility to a large number of Members and which faces a continuing budget crisis.

The Council determines that the best means to remedy the above-described problems is to amend Section 25 of the Charter to provide that a two-year term established thereunder shall not be considered a full term for purposes of Section 1138, but the two consecutive two-year terms together shall be considered one full term in relation to Charter Section 1138. The Council determines that it has the authority to enact this amendment to Section 25 of the Charter without referendum. Term limits are qualifications for office and not subject to mandatory referendum under the Charter or state law. Additionally, the Council is without power to submit such local law to referendum. Under both

the Charter and state law, local laws not subject to mandatory referendum may not be submitted to referendum.

B. Leaving Prior To The End Of The Term

Under Section 1138 of the Charter, the disqualification for continued consecutive service arguably does not apply in the event that an elected official leaves office prior to the end of that elected officials' term. Thus, an elected official could resign from office prior to the end of his or her elected term and run again without being disqualified. The Council declares that this anomaly undermines the goals of Section 1138 of the Charter. This legislation addresses the problem by clarifying that an elected official serves a full term for purposes of Section 1138 whether he or she resigns or is removed from office.

§ 2. Paragraph a of Section 25 of the New York City Charter is hereby amended to read as follows:

§ 25. **Election; term; vacancies.** a. The council members shall be elected at the general election in the year nineteen hundred seventy-seven and every fourth year thereafter and the term of office of each council member shall commence on the first day of January after the elections and shall continue for four years thereafter; provided, however, that the council member elected at the general election in the year two thousand and one and at the general election in every twentieth year thereafter shall serve for a term of two years commencing on the first day of January after such election; and provided further that an additional election of Council Members shall be held at the general election in the year two thousand three and at the general election every twentieth year thereafter and that the members elected at each such additional election shall serve for a term of two years beginning on the first day of January after such election.

Notwithstanding any other provision of this charter or other law, a full term of two years, as established by this subsection, shall not constitute a full term under section 1138 of this charter, except that two consecutive full terms of two years shall constitute one full term under section 1138. A member of the council who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of section 1138 of the charter.

§ 3. Section 4 of Chapter 1 of the New York City Charter is hereby amended to read as follows:

§ 4. **Election; term; salary.** The mayor shall be elected at the general election in the year nineteen hundred sixty-five and every four years thereafter. The mayor shall hold office for a term of four years commencing on the first day of January following such election. A mayor who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of section 1138 of the charter. The salary of the mayor shall be one hundred and ninety-five thousand dollars a year.

§ 4. Paragraph a of Section 24 of Chapter 2 of the New York City charter is hereby amended to read:

§ 24 **Election; term; vacancies.** a. The public advocate shall be elected by the electors of the city at the same time and for the same term as in this charter prescribed for the mayor. A public advocate who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of Section 1138 of the charter.

§5. Section 91 of Chapter 5 of the New York City charter is hereby amended to read as follows :

§91. **Election; term; salary.** The comptroller shall be elected by the electors of the city at the same time and for the same term as in this charter prescribed for the mayor. A comptroller who resigns or is removed from office prior to the completion of a full term shall be deemed to have served a full term for purposes of section 1138 of the charter. The salary of the comptroller shall be one hundred and sixty thousand dollars a year.

§6. Paragraph b of Section 81 of the New York City charter is hereby amended to read:

b. The borough president shall be elected by the electors of the borough at the same time and for the same term as in this charter prescribed for the mayor. A borough president who resigns or is removed from office prior to the completion of a full term shall be deemed to have served a full term for purposes of section 1138 of the charter.

§ 7. If any provision of this local law or of any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§8. This local law shall take effect immediately.

JD:et/ml
LS#840