STATE OF NEW YORK

10908

IN ASSEMBLY

August 17, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Perry) -- read once and referred to the Committee on Cities

AN ACT to amend the general city law, the New York city charter and the administrative code of the city of New York, in relation to providing that the office of police commissioner in cities with a population of one hundred thousand or more is an elected office

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general city law is amended by adding a new section 18-e to read as follows:

§ 18-e. Election of police commissioner. 1. The office of police commissioner, in every city with a population of greater than one hundred thousand but less than one million, shall be an elected office. The office of police commissioner shall be elected at the general election in the year two thousand twenty and every fourth year thereafter. The police commissioner shall hold office for a term of four years commencing on the first day of January after each such election and shall not serve for more than two full terms in such office. The police commissioner may be removed or suspended in the same manner as the mayor of the city would be removed or suspended.

2. (a) Any vacancy in the office of police commissioner shall be filled by popular election, in the manner set forth in this subdivision. In the event of a vacancy in the office of police commissioner until an interim or permanent successor is first elected, or whenever by reason of sickness, absence from the city or suspension from office, the police commissioner shall be prevented from attending to the duties of the office, an interim police commissioner shall be appointed by the mayor.

(b) Within three days of the occurrence of a vacancy in the office of police commissioner, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof. After the proclamation of the date for an election to be held pursuant to paragraphs (e) and (f) of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the city.

(c) If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph (j) of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph (f) of this subdivision.

(d) If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs (e), (g), (h) and (i) of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

(e) If a vacancy occurs during the first three years of the term and on or before the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

(f) If a vacancy occurs after the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

(g) Elections held pursuant to paragraph (e) or (f) of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least eighty days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph (b) of this subdivision, may schedule such election for another day no more than ten days after such Tuesday

and not less than seventy-five days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that:

(i) if the vacancy occurs before August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election, the vacancy shall be filled at such general election;

(ii) if the vacancy occurs before August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(iii) if the vacancy occurs on or after August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

(h) All nominations for elections to fill vacancies held pursuant to paragraphs (e) and (f) of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph (b) of this subdivision shall not be counted.

(i) A person elected to fill a vacancy in the office of the police commissioner at an election held pursuant to paragraph (e) of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph (c) of this subdivision. A person elected to fill a vacancy in the office of the police commissioner at an election held pursuant to paragraph (f) of this subdivision shall take office immediately upon qualification and serve until the term expires.

(j) If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

§ 2. Section 431 of the New York city charter is amended to read as follows:

§ 431. Department; commissioner. a. There shall be a police department the head of which shall be the police commissioner who shall be [~~appointed by the mayor and shall, unless sooner removed, hold office for a term of five years.~~

~~b. Whenever in the judgment of the mayor or the governor the public interests shall so require, the commissioner may be removed from office by either, and shall be ineligible for reappointment thereto.~~

~~c. Whenever a vacancy shall occur in the office of police commissioner, a police commissioner shall be appointed by the mayor within ten days thereafter~~] elected at the general election in the year two thousand twenty and every fourth year thereafter. The police commissioner shall hold office for a term of four years commencing on the first day of January after each such election. A police commissioner 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 eleven hundred thirty-eight of the charter.

b. Any vacancy in the office of police commissioner shall be filled by popular election, in the manner set forth in this subdivision. In the event of a vacancy in the office of police commissioner until an interim

or permanent successor is first elected, or whenever by reason of sickness, absence from the city or suspension from office, the police commissioner shall be prevented from attending to the duties of the office, an interim police commissioner shall be appointed by the mayor.

1. Within three days of the occurrence of a vacancy in the office of police commissioner, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four and five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the city.

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of the term and on or before the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of the term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nomi-

nations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least eighty days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than seventy-five days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election, the vacancy shall be filled at such general election;

(b) if the vacancy occurs before August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after August seventeenth in any year and the first Tuesday at least eighty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in the office of the police commissioner at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the office of the police commissioner at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

§ 3. The New York city charter is amended by adding a new section 431-a to read as follows:

§ 431-a. Removal of police commissioner. The police commissioner may be removed or suspended in the same manner as provided in this charter with respect to the mayor.

§ 4. Section 1138 of the New York city charter, as amended by section 1 of question 1 of local law number 60 of the city of New York for the year 2010, is amended to read as follows:

§ 1138. Term Limits. a. Notwithstanding any provision to the contrary contained in this charter, no person shall be eligible to be elected to

or serve in the office of mayor, public advocate, comptroller, borough president [~~or~~], council member **or police commissioner** if that person had previously held such office for two or more consecutive full terms, unless one full term or more has elapsed since that person last held such office.

b. Notwithstanding any other provision to the contrary, no local law may be enacted by the city council, including but not limited to amendment of the provisions of this chapter, if such local law would alter or permit alteration of the term limit set forth in this section as such limit applies to any person then serving in the office of mayor, public advocate, comptroller, borough president [~~or~~], council member **or police commissioner**.

c. Severability. If any provision of this section, or any provision of paragraph one of subdivision [~~k~~] **(k)** of section eleven hundred fifty-two **of this charter** relating to the application of this section, 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 section and such paragraph, 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.

§ 5. The opening paragraph of section 14-102 of the administrative code of the city of New York is amended to read as follows:

Until otherwise provided by the [~~mayor, upon the recommendation of the~~] **police** commissioner, the police force in the police department, shall consist of the following ranks of members, to wit:

§ 6. This act shall take effect immediately.