

# STATE OF NEW YORK

1632

2021-2022 Regular Sessions

## IN ASSEMBLY

January 11, 2021

Introduced by 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:

1 Section 1. The general city law is amended by adding a new section  
2 18-e to read as follows:

3 § 18-e. Election of police commissioner. 1. The office of police  
4 commissioner, in every city with a population of greater than one  
5 hundred thousand but less than one million, shall be an elected office.  
6 The office of police commissioner shall be elected at the general  
7 election in the year two thousand twenty-two and every fourth year ther-  
8 eafter. The police commissioner shall hold office for a term of four  
9 years commencing on the first day of January after each such election  
10 and shall not serve for more than two full terms in such office. The  
11 police commissioner may be removed or suspended in the same manner as  
12 the mayor of the city would be removed or suspended.

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

20 (b) Within three days of the occurrence of a vacancy in the office of  
21 police commissioner, the mayor shall proclaim the date for the election  
22 or elections required by this subdivision, provide notice of such proc-  
23 lamation to the city clerk and the board of elections and publish notice

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

LBD04059-01-1

1 thereof. After the proclamation of the date for an election to be held  
2 pursuant to paragraphs (e) and (f) of this subdivision, the city clerk  
3 shall publish notice thereof not less than twice in each week preceding  
4 the date of such election in newspapers distributed within the city, and  
5 the board of elections shall mail notice of such election to all regis-  
6 tered voters within the city.

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

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

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

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

54 (g) Elections held pursuant to paragraph (e) or (f) of this subdivi-  
55 sion shall be scheduled in the following manner: A special election to  
56 fill the vacancy shall be held on the first Tuesday at least eighty days

1 after the occurrence of the vacancy, provided that the mayor, in the  
2 proclamation required by paragraph (b) of this subdivision, may schedule  
3 such election for another day no more than ten days after such Tuesday  
4 and not less than seventy-five days after such proclamation if the mayor  
5 determines that such rescheduling is necessary to facilitate maximum  
6 voter participation; except that:

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

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

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

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

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

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

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

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

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

48 ~~c. Whenever a vacancy shall occur in the office of police commision-~~  
49 ~~er, a police commissioner shall be appointed by the mayor within ten~~  
50 ~~days thereafter]~~ electd at the general election in the year two thou-  
51 sand twenty-two and every fourth year thereafter. The police commision-  
52 er shall hold office for a term of four years commencing on the first  
53 day of January after each such election. A police commissioner who  
54 resigns or is removed from office prior to the completion of a full term  
55 shall be deemed to have held that office for a full term for purposes of  
56 section eleven hundred thirty-eight of the charter.

1 b. Any vacancy in the office of police commissioner shall be filled by  
2 popular election, in the manner set forth in this subdivision. In the  
3 event of a vacancy in the office of police commissioner until an interim  
4 or permanent successor is first elected, or whenever by reason of sick-  
5 ness, absence from the city or suspension from office, the police  
6 commissioner shall be prevented from attending to the duties of the  
7 office, an interim police commissioner shall be appointed by the mayor.

8 1. Within three days of the occurrence of a vacancy in the office of  
9 police commissioner, the mayor shall proclaim the date for the election  
10 or elections required by this subdivision, provide notice of such proc-  
11 lamation to the city clerk and the board of elections and publish notice  
12 thereof in the City Record. After the proclamation of the date for an  
13 election to be held pursuant to paragraphs four and five of this subdivi-  
14 vision, the city clerk shall publish notice thereof not less than twice  
15 in each week preceding the date of such election in newspapers distrib-  
16 uted within the city, and the board of elections shall mail notice of  
17 such election to all registered voters within the city.

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

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

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

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

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

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

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

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

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

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

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

50 § 3. The New York city charter is amended by adding a new section  
51 431-a to read as follows:

52 § 431-a. Removal of police commissioner. The police commissioner may  
53 be removed or suspended in the same manner as provided in this charter  
54 with respect to the mayor.

1 § 4. Section 1138 of the New York city charter, as amended by section  
2 1 of question 1 of local law number 60 of the city of New York for the  
3 year 2010, is amended to read as follows:

4 § 1138. Term Limits. a. Notwithstanding any provision to the contrary  
5 contained in this charter, no person shall be eligible to be elected to  
6 or serve in the office of mayor, public advocate, comptroller, borough  
7 president [~~or~~], council member or police commissioner if that person had  
8 previously held such office for two or more consecutive full terms,  
9 unless one full term or more has elapsed since that person last held  
10 such office.

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

18 c. Severability. If any provision of this section, or any provision of  
19 paragraph one of subdivision [~~k~~] (k) of section eleven hundred fifty-two  
20 of this charter relating to the application of this section, shall be  
21 held invalid or ineffective in whole or in part or inapplicable to any  
22 person or situation, such holding shall not affect, impair or invalidate  
23 the remainder of this section and such paragraph, and all other  
24 provisions thereof shall nevertheless be separately and fully effective  
25 and the application of any such provision to other persons or situations  
26 shall not be affected.

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

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

32 § 6. This act shall take effect immediately.