

**PRELIMINARY
RECOMMENDATIONS
FOR
CHARTER REVISION**

**STAFF REPORT TO THE MEMBERS OF THE
NEW YORK CITY
CHARTER REVISION COMMISSION**

JULY 27, 2001

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EXECUTIVE SUMMARY

The Commission's staff makes these preliminary recommendations to revise the City Charter. The proposals fall into nine separate categories, each of which it is recommended be proposed as separate ballot propositions.

1. PROTECTING THE CITY'S MOST VULNERABLE CHILDREN

- **Making ACS a Charter Agency**

This proposal would make the Administration for Children's Services ("ACS"), which was created by Executive Order in 1996, a Charter agency. ACS would retain all of its current functions and would be vested with rulemaking authority similar to other Charter agencies.

2. PROMOTING PUBLIC SAFETY

- **Making OEM a Charter Agency**

This proposal would make the Mayor's Office of Emergency Management ("OEM"), which was created by Executive Order in 1996, a Charter agency. OEM would retain all of its current functions, be established in the Charter as the Emergency Management Department, and would be vested with rulemaking authority similar to other Charter agencies.

- **Creating an Organized Crime Control Commission**

This proposal would consolidate the regulatory, licensing and investigative functions of the existing City agencies that combat organized crime activities. The programs dealing with the Fulton Fish Market at the Department of Business Services and the Department of Investigation, the Trade Waste Commission, and the Gambling Control Commission would be merged into a new agency to be established in the Charter as the Organized Crime Control Commission.

- **Coordination of Domestic Violence Services**

This proposal would establish within the Executive Office of the Mayor a new Charter agency to be known as the Office to Combat Domestic Violence. The new agency would be responsible for the coordination of City services to combat domestic violence and assist victims of domestic violence. This Charter change would make

permanent the Mayor's reforms, implemented by Executive Order in 1994, to ensure coordination of the City's domestic violence services.

3. MAKING OUR SCHOOLS SAFER

- **School Crime Reporting**

This proposal would require public school teachers and other Board of Education employees to report immediately information relating to suspected sex-offenses or other violent crimes committed against a public school student to that child's principal and the Police Department. The school principal would also be required, with certain exceptions, to notify the child's parents or legal guardians. This proposal also provides immunity from civil liability to any person who, in good faith, reports such information to the police. The proposal would not limit the existing authority of the Board of Education or any other agency from conducting any administrative, civil or criminal investigation that is within the scope of its authority.

- **Gun Free School Safety Zones**

This proposal would amend the Charter to make it a crime to possess or discharge any weapon, including a firearm, rifle, shotgun, assault weapon or machine gun, within 1,000 feet of any school in the City. The proposal would not prevent a licensed weapon owner who lives or owns a business in a school zone from possessing and keeping a weapon at his or her home or business. Law enforcement officers would be exempt from the proposal. Any person found in violation of the weapons ban in a school safety zone would be subject to criminal and/or civil penalties.

4. PROMOTING GUN SAFETY

- **No Gun Sales to Persons Under 21**

This proposal would ban any person under the age of 21 from obtaining a license or permit to purchase or possess any weapon including a firearm, rifle, shotgun, assault weapon or machine gun. Any person under the age of 21 found in possession of any such weapon, or any person selling or otherwise providing such a weapon to a person under the age of 21, would be subject to criminal and/or civil penalties.

5. PROTECTING HUMAN RIGHTS

- **Making the Human Rights Commission a Charter Agency**

This proposal would provide for the enforcement of the City's Human Rights Law through the Charter by establishing the Commission on Human Rights as a Charter agency. To enforce the Human Rights Law, the Commission would retain all of its current powers, which include investigating complaints, initiating investigations, issuing subpoenas and holding hearings. The Commission would also be given rulemaking authority similar to other Charter agencies.

- **Making the Office of Immigrant Affairs a Charter Agency**

This proposal would establish the Mayor's Office of Immigrant Affairs as a Charter agency within the Executive Office of the Mayor. The office would advise and assist the Mayor and City Council in developing and implementing policies to aid the City's immigrants and other foreign language speakers. The office would also enhance the accessibility of City services by providing various outreach services to these populations, including providing access to translators and interpreters who could help facilitate communications between foreign language speakers and City agencies. Accordingly, the Charter would be amended to provide mechanisms to keep confidential any information in the possession of City agencies concerning the immigration status and other private matters of persons who seek assistance from them.

6. ENHANCING PUBLIC HEALTH

- **Merger of DOH and DMH**

This proposal would merge the Department of Health ("DOH") and the Department of Mental Health, Mental Retardation and Alcoholism Services ("DMH") to establish a new Charter agency entitled the Department of Public Health. The new agency would have a Deputy Commissioner for Mental Hygiene, who would report directly to the Commissioner and who would be responsible for coordinating contracts between community-based providers and the agency's procurement staff. Separate budgetary units would be maintained for the mental health, mental retardation and alcoholism units. Also, the Mayor's Office of Operations would be required to conduct a review of the merger each of the next two years and to work with the agency to ensure

that it is addressing the needs of the mental retardation and developmentally disabled community.

- **Expanding the Board of Health**

This proposal would increase the Board of Health's membership from five to eleven members (including the commissioner), while maintaining the current ratio of medical to non-medical personnel. The Board's five physician members would be required have at least ten years experience in clinical medicine, public health administration or college or university public health teaching. The other five members would not be required to be physicians, but would be required to hold advanced degrees in environmental, biological, veterinary, physical or behavioral health or science, as well as possess more than five years experience in their respective fields.

7. GOVERNMENT PURCHASING PROCEDURES

- **Improving the Integrity Assessment System**

This proposal would explicitly authorize in the Charter a centralized integrity review of vendors through pre-qualification and other means, and clarify the City's authority to deny specific contracts to corrupt businesses by eliminating the inflexible "debarment" provision and leaving the particulars to be established by the PPB. The Charter's rarely-used provisions regarding debarment would be replaced with a provision authorizing centralized contractor assessments.

- **Increasing the Dollar Amounts of Small Purchases**

This proposal would raise to \$100,000 the dollar limits for the streamlined, but competitive, small purchase process for all goods, services, construction, construction related services, and information technology. As future conditions may change costs sufficiently to warrant adjusting the limit further, the Procurement Policy Board ("PPB") and the City Council would retain the power to revise the limit by concurrent action.

- **Purchase of Specific Goods**

This proposal would provide the Department of Citywide Administrative Services ("DCAS") with broader authority to delegate procurement to purchasing agencies for specific items or types of items for which it does not possess specialized knowledge. This would allow for more efficient procurement by the user agency which would have the requisite knowledge about the good.

- **Removing the Charter Provisions Regarding Bid Deposit Requirements**

This proposal would delete the Charter provisions mandating bid deposits and make the PPB responsible for determining these basic procedural details. There is no reason why such specific requirements should be in a short-form Charter.

- **Removing the Charter Provision Regarding Multi-Step Sealed Proposals**

This proposal would delete from the Charter the provision for the submission of unpriced offers via RFP. The Charter already contains provisions that allow an agency to learn and act on the information sought in the submission of unpriced offers.

- **The Public Hearing Requirement**

This proposal would raise the threshold amount for contracts on which public hearings must be held from \$100,000 to \$500,000, and create a new written public comment process for contracts that are valued between \$100,000 and \$500,000.

- **Streamlining the Registration Process**

This proposal would provide for automatic contract registration if the Comptroller failed either to register a contract or to file an objection to it within thirty days of the date that it is filed. Furthermore, the proposal would provide for automatic registration of contracts in City data bases within the required times.

8. SAFEGUARDING GOVERNMENT INTEGRITY

- **Reforming the City's Conflicts of Interest Rules**

This proposal is adapted from recommendations presented to the Commission staff by the Conflicts of Interest Board ("COIB"). The proposal would grant COIB the authority to conduct independent investigations and issue subpoenas in connection with its investigations. It would also permit COIB to conduct open proceedings, but only once a petition is served and at COIB's discretion. Further, City agencies would be permitted to adopt more stringent conflicts of interest rules in consultation with COIB, and conflicts training would be required for all public servants. Finally, any elected official, holding an office when a local law is passed that would increase the salary of that office, would receive such salary increase upon re-election to office.

9. REFORMING THE CITY’S BUILDING INSPECTIONS

- **Empowering the Fire Department to Oversee Building Inspections**

This proposal would grant the Fire Department (“FDNY”) concurrent jurisdiction with the Department of Buildings (“DOB”) over Administrative Code provisions governing building construction, the Building Code, and the Electrical Code. The concurrent jurisdiction would also include the jurisdiction exercised by DOB pursuant to the existing Zoning Resolution, the Multiple Dwelling Law, the Labor Law and other applicable laws. DOB would, however, retain exclusive jurisdiction over the review and approval of plans, the acceptance of materials, assemblies, forms and methods of construction exercised under the Administrative Code. DOB would also retain exclusive jurisdiction over the acceptance of service equipment, the issuance of permits and certificates of occupancy, the issuance and administration of licenses, and the approval of applications for certificates of electrical inspection, the issuance of temporary or final certificates of electrical inspection and the issuance of such permits.

INTRODUCTION

A. Overview of the Charter Revision Process

The New York City Charter is the basic document that defines the organization, power, functions and essential procedures and policies of City government. As a “short form” charter, it sets forth the institutions and processes of the City’s political system and defines the authority and responsibilities of elected officials — the Mayor, Council, Comptroller, Borough Presidents, and Public Advocate — and City agencies in broad strokes while leaving the details of operation to local law and agency rulemaking. Unlike the United States Constitution, which is rarely amended, the City’s Charter is a fluid document that is often amended. Indeed, over the past twelve years, the Charter has been amended nearly 90 times.

In the United States, city governments receive their legal authority from the states in which they are located. In the State of New York (the “State”), municipalities have broad authority to structure how they operate by virtue of the Home Rule provisions of the State Constitution and the Municipal Home Rule Law. The City’s Charter, along with the State Constitution, the Municipal Home Rule Law and other State statutes, provides the legal framework within which it may conduct its affairs.

Under State law, charter revision may occur as an ongoing process through the passage of local laws. There are limitations on that authority; such as there can be no curtailment of powers of an elected official. A charter can also be revised pursuant to a State or city charter revision commission, which has the authority to put proposals before the voters. A charter revision commission can put proposals before the voters regarding all elements of a charter, including the curtailment of powers of an elected official as well as provisions that could also be adopted through local law. Municipal Home Rule Law (“MHRL”) § 36(4) permits the Mayor to establish a “charter commission” in New York City. The composition of a mayoral charter commission must consist of nine to fifteen members. The members must be City residents and may hold other public offices or employment. The Mayor designates the chair, vice-chair and secretary of the commission pursuant to MHRL §§ 36(4) and 6(d).

Charter commissions are not permanent commissions. MHRL § 36(6)(e) limits the term of a charter commission. A commission expires on the day of the election at

which a proposed new charter or amendments prepared by a commission are submitted to the voters. However, if a commission fails to submit a new charter or any amendments to the voters, the commission expires on the day of the second general election following the commission's creation. There are no prohibitions against the reappointment of a commission or appointment of a new commission upon the expiration of an existing commission.

A charter commission may propose a broad set of amendments that essentially "overhauls" the entire charter, or may narrowly focus upon certain areas and explain why such an approach is preferable in a report to the public. MHRL § 36(5)(a); see Matter of Cruz v. Deierlein, 84 N.Y.2d 890, 892-893 (1994). The proposed amendments must be consistent with general State laws and can only effect changes that are otherwise within the City's local legislative powers as set forth in the State Constitution and the MHRL.

The proposed amendments must be filed with the City Clerk for action by the voters no later than the second general election after the commission's creation, and must be voted on at a general or special election held at least sixty days later. The proposed amendments may be submitted to voters as one question, or a series of questions or alternatives. MHRL § 36(5)(b).

B. The Commission's Membership

On June 15, 2001, Mayor Rudolph W. Giuliani announced the formation of the 2001 Charter Revision Commission. The Mayor named as members of the Commission:

- ◆ **Randy M. Mastro, Chair.** Former Deputy Mayor; former Chair of the 1999 Charter Revision Commission; Co-Partner-In-Charge, New York Office of Gibson, Dunn & Crutcher.
- ◆ **Jonathan Ballan** - Partner, Fischbein, Badillo, Wagner and Harding; Chairman of Municipal Assistance Corporation; former Board Member of the Health and Hospitals Corporation.
- ◆ **Amalia V. Betanzos** - President, Wildcat Services Corporation; former member of New York City Board of Education; former Chair of the New York City Commission on the Status of Women; member of previous Charter Revision Commissions, including the 1999 Commission.

- ◆ **Abraham Biderman** - Executive Vice President, Lipper & Company, L.P.; former New York City Housing Commissioner and Finance Commissioner; member of previous Charter Revision Commissions, including the 1999 Commission.
- ◆ **Imam El Hajji Izak-El Mu'eed Pasha** - Malcolm Shabazz Mosque, Harlem; first Muslim Chaplain, New York City Police Department; member of the 1999 Charter Revision Commission.
- ◆ **Rosa Gil** - University Dean for Health Sciences, CUNY Office of Academic Affairs; former Chair, NYC Health and Hospitals Corporation; former Special Advisor to the Mayor for Health Policy.
- ◆ **Lisa Lehr** - West Side Community Activist; Police Community Relations Board; West Side, Manhattan; member of the 1999 Charter Revision Commission.
- ◆ **Yvonne Liu** - Vice-President and Co-owner, Multicultural Broadcasting Corporation; member of the 1999 Charter Revision Commission.
- ◆ **Claude Millman** - Of Counsel, Solomon, Zauderer, Ellenhorn, Frischer and Sharp; former Director of the Mayor's Office of Contracts; Executive Director of the 1999 Charter Revision Commission.
- ◆ **Vincent Roberts** - Consultant, Zalismah Contracting; Board Member, Afro-American Parents DayCare Centers I and II.
- ◆ **Herbert Rubin** - Partner, Herzfeld and Rubin; Member of the Board of Editors, New York Law Journal; member of the 1999 Charter Revision Commission.
- ◆ **Mary C. Sansone** - Founder and Executive Director, Congress of Italian-American Organizations, Inc.; member of previous Charter Revision Commissions, including the 1999 Commission.
- ◆ **Tosano Simonetti** - Executive Director of Security, McAndrews & Forbes; former First Deputy Commissioner, New York Police Department; member of previous Charter Revision Commissions, including the 1999 Commission.
- ◆ **Marta Varela** - Chair of the New York City Commission on Human Rights.
- ◆ **Howard Wilson** - Partner, Rosenman and Colon; Chairman of School Construction Authority; former Commissioner, New York City Department of Investigation; member of a previous Charter Revision Commission.

C. The Commission's Staff

The Commission is mostly staffed by career public servants with considerable expertise in City government. The Commission's staff is headed by three Co-Executive Directors: Jan English, Sally Renfro and Alessandra Sumowicz.

Jan English, Co-Executive Director for Administration, has been in City Government for over 21 years, and has served in varying capacities throughout her tenure. She has served as Deputy Commissioner for Administration for several agencies including the NYC Sheriff's Department, the Trade Waste Commission, the Department of Probation and, currently, the Department of Juvenile Justice. She served as Deputy Director for Administration for the 1999 Charter Revision Commission.

Sally Renfro, Co-Executive Director for Policy, has worked in government in various capacities. This is the third City commission that she has been involved with; the first two being the Mayor's Investigatory Commission on School Safety from 1995 to 1996, and the Mayor's Advisory Task Force on the City University of New York from 1998 to 2000.

Alessandra Sumowicz, Co-Executive Director for Outreach, has been in City government for more than six years having worked at the Department of Citywide Administrative Services' Division of Real Estate Services, and the Department of Environmental Protection's Bureau of Legal Affairs. Since 2000, she has been the Director of the Mayor's Office of Environmental Coordination.

Anthony Crowell, the Commission's General Counsel, has worked for the City since 1997. Since 1999, Mr. Crowell has served as an Assistant Corporation Counsel in the Legal Counsel Division of the Law Department. From 1997 to 1999, he served in the Law Department's Tax and Condemnation Division. From 1992 to 1997 he served on the staff of the International City/County Management Association in Washington, D.C., where he managed government affairs and policy. Mr. Crowell is an adjunct professor at Brooklyn Law School where he teaches a course entitled *State and Local Government*. He was a member of the legal staff of the 1999 Charter Revision Commission.

Other members of the staff included attorneys from the City's Law Department, which is a professional, independent law office that has represented, among others, the Mayor, the Public Advocate, the Comptroller, and the City Council. The staff also included attorneys, analysts and support staff from various agencies throughout City government. Most of the staff served on the staff of the 1999 Charter Revision Commission.

D. How the Commission's Staff Developed Its Recommendations

In preparing this preliminary report, the Commission's staff undertook a comprehensive review of the City Charter. The Commission's Chair and other Commission members asked the staff to consider making, as part of its review, recommendations that would codify and institutionalize a number of the policies and practices that have led to the City's enormous progress over the past eight years. The Commission's staff looked first to the Final Reports of the 1998 and 1999 Charter Revision Commissions for guidance. In particular, the 1999 Commission's report, *Keeping Our City's Progress Going into the Next Century*, contains a number of proposals that the staff believes fit with the theme of making the City's progress permanent. Although this preliminary report does not make recommendations for Charter change concerning all of the ideas of the 1999 Commission, the staff found many of the 1999 Commission's propositions undeniably practical and sensible.

In addition to reviewing the 1999 Commission's report, the staff also solicited input from the general public, and received numerous substantive suggestions. Each of these suggestions was reviewed and considered, and a number of them are incorporated into this preliminary report. The staff also consulted with various City officials, including City lawyers and Charter experts, budget officials and procurement officers, who helped to identify possible issue areas. The staff was also in regular contact with Commission members, receiving feedback and direction as the report took shape.

In sum, the recommendations in this report are an amalgamation of the ideas of dozens of people, from staff members to Commissioners, from Charter experts to members of the general public. It builds on the work of the 1998 and 1999

Commissions, absorbing much of it, diverging from it in some places and going beyond it in others. The staff's review was comprehensive, but its ultimate goals focused—to make permanent the policies, practices and institutions that have been the hallmark of the City's progress over the past eight years.

RECOMMENDATIONS

1. PROTECTING THE CITY'S MOST VULNERABLE CHILDREN

- **Making ACS a Charter Agency**

Issue: Should the Administration for Children's Services become a Charter agency?

Relevant Charter Provision: None.

Discussion: During the past eight years, New York City residents have seen vast improvements in the way government services are delivered. Of all these improvements, however, arguably none has been more dramatic or vital than the improvement of New York City's child welfare system. Children are undeniably New York City's most valued resource and, as such, it should be the responsibility of all New Yorkers, including the government, to ensure and protect the health and welfare of this vulnerable population. It is for this reason that the staff recommends that the Commission reconsider the previous 1999 Charter Commission's proposal to establish the Administration for Children's Services as a Charter agency.

On January 11, 1996, the Mayor issued Executive Order 26, which created the Administration for Children's Services ("ACS") to oversee the various child-related services that had previously been the responsibility of the City's Human Resources Administration ("HRA"). ACS has been operating as an independent agency pursuant to that Executive Order for more than five years. Moreover, the decision to create an independent agency to address the issue is now widely accepted as the City's most important reform of the child welfare system. To continue to protect the City's children that reform should be made permanent by establishing ACS as a Charter agency.

ACS is comprised of three former divisions of HRA: the Child Welfare Administration, the Agency for Child Development and the Office of Child Support Enforcement. The Mayor created ACS to fully integrate these three programs to better serve the interests of children in need. Over the past five years, the Council has

considered proposed legislation to establish ACS as a Charter agency, but has yet to act on it.

ACS acts as a child protective service and is charged with: receiving and investigating reports of child abuse and neglect; assisting families at risk by addressing the causes of abuse and neglect; providing children and families with day care and preventative services to avert the impairment or dissolution of families; and placing a child in temporary foster care or permanent adoption when preventative services cannot redress causes of family neglect. ACS provides opportunities for children's growth and development through Head Start services. Additionally, ACS provides services to ensure that parents who are legally required to provide child support do so.

In the past, the City's delivery of child welfare services was often criticized, especially in the wake of highly publicized incidents of child abuse. As an independent agency pursuant to an Executive Order, however, ACS has set out to address these problems. In fact, as ACS Commissioner Nicholas Scoppetta testified before the previous 1999 Charter Commission, "the very creation of ACS was the first major, and perhaps most important, reform of a long-neglected child welfare system."

On December 19, 1996, ACS released its "Reform Plan," which extensively outlined its goals and strategies for improving services to New York City's children. Among the many reforms made since ACS became an independent executive agency is the reduction in the average child protective caseworker's caseload from 27 in June 1996 to 14 June 2000. The agency now requires higher qualifications for newly hired caseworkers, and awards merit-based pay increases to reward caseworkers for outstanding job performance and professionalism. These changes have been vital to the institutional improvement of ACS's workforce.

ACS is dedicated to expeditiously finding safe and appropriate permanent homes for children in foster care, either through reunification with families or adoption. In Fiscal Year ("FY") 2001, 7,171 children were discharged from foster care to their families or primary resource provider. For those children who can no longer be reunited with their biological families, ACS has finalized a record-setting number of adoptions over the past five years. As of June 30, 2001, 21,185 adoptions had been finalized since 1996, compared to 11,625 adoptions between 1991 and 1996.

A cornerstone of ACS's reform efforts is Neighborhood-Based Services ("NBS"). Under this program, children who enter foster care are placed in their own neighborhoods, keeping them close to family and in their own school. This reduces trauma to children in care and facilitates family visits. NBS promotes permanency by providing children with preventative services, foster care services, health care, and other support services in the community where they resided before removal. Between July and November 2000, 56.8% of children who entered the foster care system were placed in their home borough and 14.7% were placed in their home community district.

In addition, the well-being of children and families is supported by strengthening communities and developing child welfare networks in each community district. These networks will ensure that the specific needs of each community are addressed and that culturally sensitive, need-driven services are provided and that neighborhood resources are utilized.

Indeed, an independent ACS is consistent with the 1998 settlement reached in Marisol v. Giuliani, ("Marisol"), which concerned charges that the City was not meeting all of its child welfare responsibilities. Among other things, the settlement in Marisol established a Special Child Welfare Advisory Panel to monitor ACS. On December 8, 2000, the panel issued its final report on ACS's progress in reforming the child welfare system. This very positive report praised ACS for its "remarkable progress" in reforming the child welfare system in New York City. The panel found that ACS has made a "sustained intelligent effort" in reforming the complicated and problematic system. Furthermore, the panel commended ACS for the 18% reduction in the foster care population and the 20% decrease in the number of children placed in foster care from 12,000 in 1998 to 9,583 in FY 2000. For the first ten months of FY 2001, admissions are 9.3% less than the same period for FY 2000. Recognizing that ACS initiated its reform efforts prior to the creation of the panel, the report stated that, "[i]t is especially important to note that many important [ACS] accomplishments predate any of our work."

Although approximately 61,090 children receive child care through ACS's Agency for Child Development ("ACD"), ACS has been working to further increase even more the availability of subsidized child care by inviting interested sponsors to expand their

existing child care contracts by up to ten percent, by finding new providers and by raising the number of available child care vouchers.

The Head Start Program, operated by ACS through the Office of Head Start, is separate from, and not part of, ACD childcare services. ACS provides direction, oversight and financial monitoring to the seventy-four contract agencies that operate Head Start programs. Head Start is an early childhood and educational family support program, which primarily serves three and four year olds and their families. ACS Head Start staff work with parents, contracted agency staff and the Federal government to support the overall goal of improving social competence of young children in low-income families.

In the critical area of ensuring that parents meet their financial responsibilities for their children, ACS projects collecting a record high of \$447 million in child support in FY 2001 compared with \$241 million in FY 1996, which is an increase of over 85%. In the last five years approximately \$1.8 billion has been collected.

The responsibilities of ACS are among the most important social service responsibilities of the City. An independent ACS brings direct accountability to child welfare and allows for resources and efforts to be focused solely on the needs of children. Child welfare should be the main concern of one agency rather than only one of many concerns addressed by a larger agency such as HRA. In addition, as a Charter agency, ACS would have rulemaking authority, providing the agency with increased latitude in promulgating regulations for the benefit of the City's children.

While ACS is currently functioning as an independent agency, the staff believes that it is vital that it be made a part of the Charter to ensure its permanent independence and its continued effectiveness in caring for the needs of the City's children. ACS's experience and record of accomplishment as an independent body since 1996 demonstrates that an independent ACS dramatically improves the welfare of the City's children. Its establishment as a Charter agency is long overdue.

Recommendation: The Administration for Children's Services should be established as a Charter agency.

Proposed Charter Revision:

Section 603 of the New York city charter, as amended by Local Law 19 of 1999, is amended to read as follows:

§ 603. Powers and duties. Except as otherwise provided in [chapter] chapters 24-A and 24-B, the commissioner shall have the powers and perform the duties of a commissioner of social services under the social services law, provided that no form of outdoor relief shall be dispensed by the city except under the provisions of a state or local law which shall specifically provide the method, manner and conditions of dispensing the same.

A new chapter 24-B is added to the charter to read as follows:

CHAPTER 24-B

ADMINISTRATION FOR CHILDREN'S SERVICES

§ 615. Administration; commissioner.

§ 616. Deputies.

§ 617. Powers and duties.

§ 615. Administration; commissioner. There shall be an administration for children's services, the head of which shall be the commissioner of children's services.

§ 616. Deputies. The commissioner shall appoint at least one deputy commissioner.

§ 617. Powers and duties. a. The commissioner shall have the powers and perform the duties of a commissioner of social services under the social services law for the purpose of fulfilling his or her responsibilities under this chapter. The commissioner shall have the power to perform functions related to the care and protection of children including, but not limited to:

1. performing the functions of a child protective service, including without limitation, the receipt and investigation of reports of child abuse and maltreatment;

2. providing children and families with preventative services for the purpose of averting the impairment or disruption of families which could result in the placement of children in foster care; enabling children placed in foster care to return to their families;

and reducing the likelihood that a child who has been discharged from foster care may return to such care;

3. providing suitable and appropriate care for children who are in the care, custody, or guardianship of the commissioner;

4. providing appropriate daycare and Head Start and other child-care services;
and

5. providing services to ensure that legally responsible parents provide child support.

b. Wherever the powers and duties of an agency other than the administration for children's services as set forth in the charter or administrative code confer any authority over the areas of child welfare, child development or child support enforcement within the jurisdiction of the commissioner of children's services pursuant to section six hundred seventeen of this chapter, such powers and duties shall be deemed to be within the jurisdiction of the administration for children's services and shall be exercised by such administration; provided that such other agency may exercise such powers and duties where required by state or federal law.

2. PROMOTING PUBLIC SAFETY

- **Making OEM a Charter Agency**

Issue: Should the responsibilities of the Office of Emergency Management be codified in the Charter under a newly created Emergency Management Department?

Relevant Charter Provisions: None.

Discussion: In recent years, acts of terrorism, natural disasters and catastrophic industrial and transportation accidents have challenged public safety and emergency response officers in major cities worldwide, including Tokyo, London and Paris. New York City is not immune from these threats. Indeed, the World Trade Center bombing in 1993 and recent threats of bio-terrorism in the City, as well as a host of possibilities for natural and technological hazards, make it vital for the City to establish and maintain an institutionalized, coordinated emergency planning and disaster response organization.

As the largest, most prosperous urban center in the United States, New York City has long sought to provide the finest in emergency planning, response and disaster mitigation systems. During the early 1940s, the first Office of Civil Defense was created. In 1976, an Office of Emergency Management was established as a unit within the New York City Police Department. Recognizing the need to enhance inter-agency and inter-governmental coordination during emergency situations, the Mayor created the present Mayor's Office of Emergency Management ("OEM") by Executive Order in 1996.

As defined by OEM's present mission, the New York City Emergency Management Department would operate within five primary operational parameters. First, the Department would monitor and respond to all potential emergency conditions and potential incidents that might require a multi-agency response. Second, the Department would operate an emergency operations center to assist the City in managing emergency conditions and potential incidents, which might require a multi-agency response. Third, the Department would research, compile, evaluate and implement City-wide Contingency Plans, ranging from anti-bioterrorism planning, to

public information and media outreach programs, to an all-hazards mitigation plan. Fourth, it would prepare, organize, and implement drills and exercises, such as it did with its recent bioterrorism preparedness exercise (Operation RED Ex), as well as those conducted by the Urban Search and Rescue Team. Finally, the Department would coordinate special inter-agency and inter-governmental responses, as it did for the 2000 Operation Sail/International Naval Review, Fleet Week 2001, the recent implosion of the Maspeth Tank Holders, Y2K contingency planning and numerous other response situations.

During the past five years, OEM has spearheaded numerous projects and initiatives, including the Rodent Control Task Force and the Public Access Defibrillator program. It has addressed important City-wide health, safety and operational issues, among them coastal storm preparedness, and assisting health care facilities with contingency planning. In early 2001, OEM coordinated lifesaving relief efforts to aid victims of the powerful earthquakes that claimed thousands of lives in El Salvador and India. Because the decision to evacuate coastline areas during periods of severe weather is a choice best made early, OEM plans to unveil its new program, EMOLS (Emergency Management On-Line Locator System), soon. By employing state-of-the-art mapping technology, EMOLS will permit internet users to input their home addresses and immediately determine if an evacuation order has been issued for their area. If so, evacuation routes would be clearly marked, along with the address and position of the safest Reception Center.

In addition, OEM's national recognition for its leadership within the emergency management community has enabled the office to form productive alliances with the Federal Emergency Management Agency ("FEMA"), the National Guard, the American Red Cross, and many other public safety, health and human service organizations. In addition to advising the Mayor on emergency preparedness and response issues, OEM is frequently consulted in regards to state and national emergency management issues and projects. Indeed, in May 2001, the U.S. Department of Defense recognized New York City's high degree of emergency readiness by selecting OEM as the venue for Operation RED Ex, a bioterrorism preparedness exercise involving approximately 70 City, State and Federal private organizations.

During emergencies, when effective communication can save lives, it is crucial that only the most complete and accurate information be disseminated to the media and general public. The proposed Emergency Management Department would function as a centralized clearinghouse through which all public information concerning hazard preparedness and emergency management would pass. Press releases, informational brochures and public service announcements issued by OEM educate the City's various social and business communities on what actions should be taken during an emergency, as well as provide information concerning the availability of City resources. In recent months, OEM has produced informational brochures in multiple languages, as well as public service announcements concerning extreme heat conditions, and hurricane awareness. Additionally, OEM's Director frequently addresses community concerns and issues at Community Board and other neighborhood meetings.

Because in many emergency situations, the possibility exists for more lives and property to be lost to confusion and inefficiency than to the initial hazard itself, the Commission's staff recommends that OEM's responsibilities be codified in the Charter, and the present office elevated to departmental level status. By consolidating emergency management functions, improving coordination between city, state, federal and private agencies, and maintaining direct mayoral control, the City will continue to implement an effective, efficient, and comprehensive approach to emergency management. As evidenced by OEM's record of skillful professionalism, innovative ability, and defined accountability, OEM's codification as a Charter agency with departmental level status would ensure that the City of New York maintains its worldwide tenure of excellence in emergency management planning and response.

Recommendation: The activities of the Office of Emergency Management should be codified in the Charter. The Office should be elevated to departmental level status to create a new Emergency Management Department to ensure the City's future success in using a comprehensive approach to emergency management.

Proposed Charter Revision:

The New York city charter is amended by adding a new chapter 19-A to read as follows:

Chapter 19-A

Emergency Management Department

§ 495. Department; commissioner.

§ 496. Deputies.

§ 497. Powers and duties.

§ 498. Agency cooperation.

§ 495. Department; commissioner. There shall be an emergency management department, which may also be known as the New York city office of emergency management, the head of which shall be the commissioner of emergency management. The commissioner shall be appointed by and serve at the pleasure of the mayor. The commissioner shall also serve as the local director of civil defense, with the powers of a local director of civil defense.

§ 496. Deputies. The commissioner shall appoint at least one deputy with such duties as the commissioner determines and other deputies. The commissioner shall have the power to appoint and, at pleasure, remove deputies. During the absence or disability of the commissioner, the first deputy commissioner, or if the first deputy commissioner shall be absent or under disability, the deputy commissioner designated by the commissioner, shall possess all the powers and perform all the duties of the commissioner, except the power of making appointments and transfers.

§ 497. Powers and duties of the commissioner. The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department. The commissioner shall have the powers and duties to:

(a) Coordinate the city's response to all emergency conditions and potential incidents which require a multi-agency response, including but not limited to severe weather, threats from natural hazards and natural disasters, power and other public service outages, labor unrest other than the keeping of the peace, water main breaks, transportation and transit incidents, hazardous substance discharges, building collapses, aviation disasters, explosions, acts of terrorism and such other emergency conditions and incidents which affect public health and safety;

(b) Monitor on a constant basis all potential emergency conditions and potential incidents which may require a multi-agency response;

(c) Coordinate and implement training programs for public safety and health, including emergency response drills, to prepare for emergency conditions and potential incidents which may require a multi-agency response;

(d) Prepare plans for responding to emergency conditions and potential incidents, including but not limited to plans for the implementation of such emergency orders as may be approved by the mayor to protect public safety and facilitate the rapid response and mobilization of city agencies and resources;

(e) Make recommendations to the mayor concerning the city's emergency response capabilities and concerning the city's capacity to address potential emergency conditions and potential incidents;

(f) Increase public awareness as to the appropriate responses by members of the public to emergency conditions and potential incidents, and review the city's systems for disseminating information to the public;

(g) Operate an emergency operations center to assist the city in managing emergency conditions and potential incidents that may require a multi-agency response;

(h) Hold regular and frequent meetings of designated emergency response personnel of all city agencies that are determined by the commissioner to have a direct or support role in the city's management of emergency conditions and potential incidents which may require a multi-agency response;

(i) Obtain federal and other funding for emergency management, including but not limited to disaster relief, and civil defense, and assist other agencies in obtaining such funding;

(j) Coordinate with the Police Department and all city agencies to ensure that all such agencies develop and implement emergency response plans in connection with planning major city events;

(k) Coordinate with state, federal and other governmental bodies to effectuate the purposes of the department;

(l) Coordinate the operation of the local emergency planning committee established pursuant to Title III of the federal Superfund Amendments and Reauthorization Act;

(m) Coordinate New York city's civil defense effort in accordance with the provisions of the Defense Emergency Act of New York state and the city's civil defense emergency operations plan, as such plan may be amended from time to time;

(n) Perform all other functions previously performed by the former office of emergency management and the emergency control board;

(o) Promulgate such rules and regulations as may be necessary to implement the provisions of this chapter.

§ 498. Agency cooperation. The department shall be the lead agency in the coordination and facilitation of resources in incidents involving public safety and health, including incidents which may involve acts of terrorism. All agencies shall provide the department promptly with all information relevant to the performance of the emergency management functions and shall collect and make available any information requested by the department for use in emergency planning. All agencies further shall promptly provide the department with all appropriate material, equipment and resources needed for emergency management functions, including personnel.

- **Organized Crime Control Commission**

Issue: Should the various agencies that currently regulate and license public wholesale food markets, the private carting industry, and shipboard gambling be consolidated into an Organized Crime Control Commission that would continue these present functions in a more efficient organizational structure?

Relevant Charter Provisions: None.

Discussion: Currently, the Fulton Fish Market and other wholesale food markets, the private carting industry, and the shipboard gambling business have been effectively regulated to remove Organized Crime's influence from those sectors of the economy. As a result, incredible successes in rooting out organized crime in these industries have been achieved, and the impact on the economy has been enormous. In the private carting area alone, the waste-removal bills of City businesses have been cut by \$560 million and thousands of jobs have been added to the economy. In 2001, it still remains time to make sure these reforms become permanent and ensure that they are not rolled-back. This can be achieved by incorporating the reforms in the Charter and

consolidating the various City programs that have been engaged in this effort. In this way, we will ensure that the “mob-tax” that New Yorkers were compelled to pay for decades will not return.

In certain areas of the economy, organized crime syndicates have, through threats, violence, extortion and unconscionable practices exacted an involuntary “tax” from law-abiding residents. The “mob-tax” was the increased costs paid by law-abiding citizens due to organized crimes control in these industries, and this “tax” sometimes doubled or tripled the cost of services. Furthermore, this “tax” collected by organized crime groups did not pay for public services but instead, was used to reward and promote criminal activity. For all too long it was believed that this “tax” was an inescapable reality of conducting business, and that it was beyond the power of government to rectify. The City’s recent efforts have demolished that myth.

Traditionally, the task of fighting organized crime was assigned primarily to criminal law-enforcement agencies such as the police department and prosecutors’ offices. There were some notable successes in disrupting the activities of the organized crime families, and Federal and State criminal prosecutions resulted in the incarceration of numerous participants in organized crime activities. In recent years, however, the City expanded that effort by imposing stringent regulatory and licensing requirements on public wholesale food markets and on the commercial waste carting industry.

Recognizing that criminal prosecution alone would not eliminate the influence of organized crime, the City began to regulate areas of economic activity that had long been infiltrated by organized crime. In 1995, Local Law 50 was adopted to eliminate the influence of organized crime in the Fulton Fish Market. That local law empowered the Department of Business Services, with the assistance of the Department of Investigation, to license and conduct background investigations on designated businesses and organizations having dealings in the Fulton Fish Market. In 1997, Local Law 28 expanded this effort to the other public wholesale markets. In 1996, Local Law 42 created a new agency, the Trade Waste Commission, to oversee, regulate and license the private carting industry. Finally, in 1997, Local Law 57 established the Gambling Control Commission to eliminate any organized crime influence from

gambling ships sailing out of the City into international waters on so-called “cruises to nowhere.”

After these regulatory schemes were established, the prices charged by private carters and by merchants at the Fulton Fish Market and at other public wholesale markets decreased significantly. For example, prices in the commercial waste carting industry have fallen on average more than 50 percent, resulting in a savings to local businesses of more than \$560 million a year.

This recommendation would make these changes permanent and coordinate the City’s efforts in this area. It would create an Organized Crime Control Commission charged with combating organized crime in the areas already regulated by the City and consolidate the work of the existing agencies in this area. As noted above, these agencies deal with the Fulton Fish Market and other wholesale food markets (regulated by the Department of Business Services and the Department of Investigation), the private waste carting industry (regulated by the Trade Waste Commission), and gambling “cruises to nowhere” (regulated by the Gambling Control Commission). Indeed, the Mayor submitted legislation to the Council on December 7, 1999 to create such an Organized Crime Control Commission, but the Council has failed to act upon it.

Consolidation of the City’s current licensing and regulatory efforts would be extremely valuable to the City’s efforts in the areas that the City is already authorized to regulate. Each of the City’s current programs deals with a different area of economic activity but performs similar regulatory, licensing and investigative functions; and each places a special emphasis on background investigations of applicants to determine whether they are of good character and fitness and whether they have had contact with known organized crime figures and activities. However, each agency’s efforts to discharge these duties are hampered because relevant information is often scattered among the various agencies and among various other law-enforcement authorities. Notwithstanding the fact that the same organized crime figures sometimes infiltrate the different economic activities that are currently regulated, there is no formal structural mechanism in place to ensure cooperation among the various agencies or to prevent duplication of effort. The proposed revision would eliminate this deficiency in the City’s current governmental structure.

Thus, the proposed Organized Crime Control Commission would consolidate and oversee the regulatory, licensing, and investigative functions of the existing agencies that deal with organized crime activities. The programs dealing with the Fulton Fish Market at the Department of Business Services and the Department of Investigation, the Trade Waste Commission, and the Gambling Control Commission would be consolidated into the new agency, which would operate under the new name of the Organized Crime Control Commission.

The recommended Charter revision would not increase the City's regulatory, licensing, or investigative jurisdiction. It merely consolidates and institutionalizes what is currently being done, but would not expand the authority of the mayoral agencies. The staff considered expanding the regulatory powers of this entity to include New York City's unregulated construction industry, which for years has been tainted by corruption, including rigged bids, bribery, shoddy building practices and pension and tax fraud. Recent scandals involving employees at the Department of Buildings point to such corruption. The 1999 Charter Commission had also reviewed this option, but did not include such a proposal in its final report. The 1999 Commission concluded that regulation of the City's construction industry would best be achieved by the Mayor and Council working together to pass a comprehensive "Construction Control Commission" bill. This Commission's staff agrees with that conclusion.

Recommendation: An Organized Crime Control Commission should be created to handle the current regulatory, investigative and licensing functions of agencies that oversee the private carting industry, public wholesale food markets and shipboard gambling.

Proposed Charter Revision:

Section 1. The New York city charter is amended by adding a new chapter 63 to read as follows:

CHAPTER 63

ORGANIZED CRIME CONTROL COMMISSION

§ 2100. Organized crime control commission.

§ 2101. Jurisdiction.

§ 2102. Cooperation with other agencies.

§ 2100. Organized crime control commission. a. There shall be an organized crime control commission, which shall consist of a full-time chairperson appointed by the mayor and of the commissioners of the department of business services, the department of consumer affairs, the department of investigation, the police department and the department of sanitation, or their designees.

b. The chairperson may appoint a first deputy who shall possess all the powers and perform all the duties of the chairperson during the absence or disability of the chairperson and in case of the death of the chairperson or of a vacancy in that office shall act as chairperson until the appointment of a chairperson by the mayor.

c. The chairperson shall have charge of the organization of the commission and shall have authority to employ, assign and superintend the duties of such officers and employees as may be necessary to carry out the provisions of this chapter. In addition, the commissioner of any agency represented on the commission or the commissioner of any other appropriate city agency may, if requested, provide staff and other assistance with respect to any matter within the jurisdiction of the commission.

§ 2101. Jurisdiction; powers and duties. a. The organized crime control commission shall be responsible for the regulation of the trade waste industry, the shipboard gambling industry, the fulton fish market distribution area and other seafood distribution areas and the public wholesale markets. In regulating such industries, areas and markets, the commission shall have the powers and duties conferred by this chapter and such other powers and duties as are conferred by law.

b. The powers and duties of the organized crime control commission shall include, but not be limited to, the following:

1. to establish standards for the issuance, denial, suspension and revocation of licenses and other authorizations necessary for the operation of businesses in the industries, areas and markets it regulates; and to issue, deny, suspend and revoke such licenses and other authorizations;

2. to investigate any matter within its jurisdiction and to have full power to compel the attendance, examine and take testimony under oath of such persons as it

may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation;

3. to establish standards for service provided by, and for the conduct of, regulated businesses;

4. to conduct studies of, or investigations into, any matter within its jurisdiction in order to assist the city in formulating policies relating to the industries, areas and markets it regulates;

5. to create and disseminate materials on any matter within its jurisdiction in order to advise or educate regulated businesses and members of the public regarding such matters;

6. to adopt rules necessary or appropriate to carry out the powers and duties conferred on it by law;

7. to establish fees to enable it to effectuate the purposes of this chapter, including fees sufficient to cover the costs of processing applications and conducting investigations;

8. to enforce compliance with applicable laws and rules through the imposition of fines and penalties.

§ 2102. Cooperation with other agencies. The organized crime control commission shall provide such assistance to the mayor and other agencies as requested and shall establish liaison and information-sharing arrangements with other law enforcement, prosecutorial, investigative and regulatory agencies as it deems appropriate.

- **Coordination of Domestic Violence Services**

Issue: Should the Charter require Executive coordination of City services relating to the prevention of domestic violence?

Relevant Charter Provisions: None.

Discussion: One of the most important initiatives pursued in recent years by the City has been its efforts to combat domestic violence. The Mayor created the Commission to Combat Family Violence (“CCFV”), to coordinate the services of the many City agencies that deal with this issue. And this year, the City’s Human Rights Law was

amended to prohibit discrimination in the workplace against victims or perceived victims of domestic violence.

The problem of domestic violence is a critical issue in this City. According to the New York City Police Department (“NYPD”), approximately 59 percent of all female homicide victims in the City in 2000 were killed in intimate partner or family homicides. To prevent these crimes and to assist victims, the City’s services must be coordinated. The Mayor’s initiative to do so through Executive coordination has proven successful. To institutionalize this successful reform, the Commission’s staff proposes revising the Charter to establish domestic violence services coordination through the creation of a new Office to Combat Domestic Violence.

Mayor Giuliani created the CCFV by Executive Order in 1994. The CCFV is comprised of representatives from several City agencies and other mayoral appointees from private and public organizations. Commission members represent a broad spectrum of experts from the fields of health care, social services, law, education and housing. The purpose of the Commission is to develop and implement a comprehensive city-wide strategy to combat domestic violence. The CCFV formulates policies and programs relating to all aspects of services for victims of domestic violence; develops methods to improve the coordination of systems and services for victims; develops mechanisms to ensure that relevant City agencies respond appropriately to domestic violence situations and that there is coordination among those agencies; and implements City-wide public education campaigns to encourage victims to seek help, and to increase awareness of family violence and its devastating impact on victims and society.

Since its creation, the CCFV has implemented a variety of successful initiatives to further these objectives. The Adopt-A-School program, piloted by the CCFV in collaboration with HRA and the Board of Education, is an innovative program to address teen relationship abuse. The initiative is a comprehensive, school-based program that promotes healthy relationships, intervenes in the cycle of teen intimate partner violence, and prevents destructive patterns of relationship abuse from extending into adult relationships.

The CCFV has also established several other victim service programs including the Domestic Violence/Substance Abuse Pilot Program which integrates substance abuse treatment and domestic violence services, the Family Literacy Program designed to improve the literacy skills of both parents and children living in domestic violence shelters, and the P.H.O.N.E.S. ("People Helping Others Needing Emergency Services") Initiative which provides cellular telephones pre-programmed to call 911 to domestic violence victims, enabling them to contact emergency services quickly. The CCFV has worked with the New York City Housing Authority ("NYCHA") on the NYCHA Emergency Transfer Program, which allows tenants who are domestic violence victims an opportunity to confidentially and quickly relocate to another housing development. Because relocation can often be both a disruptive and disempowering experience, and a response to the need of victims for alternatives that could increase their safety, the CCFV established the Alternative to Shelter Program. This allows victims to remain safely in their homes by furnishing them with state-of-the-art electronic security devices, a cellular telephone for quick access to 911, and counseling services.

The CCFV has also worked with the NYPD on the NYPD Model Domestic Violence Program which improves a precinct's ability to police domestic violence crimes through enhanced education, prevention, and enforcement. A Domestic Violence Sergeant and additional Domestic Violence Prevention Officers are assigned to the precincts participating in the program. The CCFV has also been involved in the Department of Probation's Juris Monitor Program, which monitors convicted domestic violence offenders by utilizing electronic ankle bracelets, alarms in the victims' homes, voice print registration, and increased reporting requirements and home visits. The CCFV has also worked with the Health and Hospitals Corporation ("HHC") to establish a domestic violence protocol. All City public hospitals now include domestic violence screening in their emergency rooms and each facility has a full-time Domestic Violence Coordinator.

The CCFV has made significant progress in improving programs and access to services for victims of domestic violence. As a result of the efforts of the CCFV and the City-wide policies on domestic violence, in FY 2000, the NYPD made nearly 24,000 family-related arrests. In addition, the Domestic Violence Hotline received more than

116,000 calls in 2000. These are just a few of the examples of the advancements made as a result of the City's intensified, aggressive policies on domestic violence, as coordinated by the CCFV.

Given the success of the CCFV initiatives, the Commission's staff recommends that the Charter be amended to establish an Office to Combat Domestic Violence to be charged with coordinating services relating to the prevention of domestic violence. Institutionalizing such coordination would ensure that the City's new focus on combating domestic violence becomes a permanent part of the way the City does business.

Recommendation: Domestic violence services should be coordinated through an Office to Combat Domestic Violence to be established as a Charter agency.

Proposed Charter Revision:

Section 1. Declaration of legislative findings. The city of New York recognizes that domestic violence is a public health issue that threatens hundreds of thousands of households each year and that respects no boundaries of race, ethnicity, age, gender, sexual orientation or economic status. The city of New York further recognizes that the problems posed by domestic violence fall within the jurisdiction and programs of various City agencies and that the development of an integrated approach to the problem of domestic violence, which coordinates existing services and systems, is critical to the success of the city of New York's efforts in this area.

§ 2. The New York city charter is amended by adding a new section 19 to read as follows:

a. There shall be, in the executive office of the mayor, an office to combat domestic violence. The office shall be headed by a director, who shall be appointed by the mayor.

b. The director of the office to combat domestic violence shall have the power and duty to:

1. coordinate domestic violence services;
2. formulate policies and programs relating to all aspects of services and protocols for victims of domestic violence;

3. develop methods to improve the coordination of systems and services for domestic violence;

4. develop and maintain mechanisms to improve the response of city agencies to domestic violence situations and improve coordination among such agencies; and

5. implement public education campaigns to heighten awareness of domestic violence and its effects on society and perform such other functions as may be appropriate regarding the problems posed by domestic violence.

3. MAKING OUR PUBLIC SCHOOLS SAFER

Over the past eight years, controlling crime and protecting children from violence have been among the City's top priorities. Since 1994, the City's overall crime rate has been reduced by over 51 percent and its murder rate has been reduced by almost 58 percent. These enormous reductions in crime and resulting enhancements in quality of life have made New York City the safest large city in America. New York City's progress in these areas must continue, but the concerns expressed by the 1999 Commission about gun violence and other crimes that threaten the well being of children are still very real. Therefore, the Commission's staff recommends that the Charter be amended in several ways to ensure that school children continue to be protected from violent crime and that the gains realized to make our schools safer further progress.

- **School Crime Reporting**

Issue: Should the Charter be amended to require Board of Education officials and employees to immediately report to the Police Department information relating to suspected sex-offenses or other violent crimes against students in public schools?

Relevant Charter Provisions: Chapter 20

Discussion: The Mayor's commitment to public safety is well documented. Further, making schools safe has been a top priority. On June 10, 1995, for example, the Mayor issued Executive Order 23 establishing the Mayor's Commission on School Safety, chaired by Edward N. Costikyan. The Mayor directed the Commission to investigate the actual level of criminal activity and other misconduct in the City's school. The accuracy of the Board's reporting of safety-related incidents was a central focus of the Commission. On January 4, 1996, the Commission released its final report. The Commission found, among other findings, that there was no reliable data with which to evaluate the level of safety in the schools. Based on this and other findings, the Commission recommended that the NYPD assume direct management authority over the Division of School Safety and its school safety officers. The NYPD assumed direct authority over the training and supervision of school safety officers in 1998.

Although school crime has dropped 14 percent since the NYPD's takeover, some principals are still reluctant to call police to their schools and often downplay or withhold information of crimes to protect the reputation of their schools. A few examples from Spring 2001 illustrate the randomness of reporting school crimes. On May 2, a Bronx classroom teacher was arrested and charged with sodomizing one student and fondling another. He was suspected of assaulting as many as five other boys. He was first accused of exposing himself to a student in 1998 but after the initial Board of Education investigation he was allowed to remain in the classroom. On May 22, two girls, ages 11 and 12, said two boys trapped them in a stairwell and fondled them. One girl told her teacher who told the assistant principal. The assistant principal failed to notify police. By May 30, however, school officials were under pressure to notify police when crimes occurred. So, when five boys were accused of sexually abusing female classmates at schools in the Bronx and Queens, the police were notified immediately. Four of the boys were charged with sexual abuse.

Schools should be safe and secure places. Inaccurate and unreliable reporting of school-based crimes and misconduct jeopardizes the safety of our children, their teachers and school staff. Just as teachers and others who work with children are required to report suspected abuse or maltreatment of children to a central register, known as a "hotline", employees of the Board of Education should be required to report suspected criminal conduct that involves sex-offenses or other violent crimes that threaten the health or safety of a child to the police.

The Commission's staff recommends that the Charter be amended to help the City better protect children in public schools. There is little doubt that the New York City public school system needs the NYPD's professional expertise and investigative acumen to aid them in discovering the validity and seriousness of a potentially criminal incident. Further, with accurate and timely incident data, the NYPD could assist the school administrators in developing specific safety-related policies that respond to the immediate needs of existing safety problems in the schools.

Under this proposed amendment, teachers and other Board of Education employees would be required to report immediately information relating to suspected sex-offenses or other violent crimes committed against a student to the school's

principal and the NYPD. The school principal would also be required to notify the child's parents or legal guardian, with certain exceptions. This amendment also provides immunity from civil liability to any person who, in good faith, reports such information to the police. Lastly, nothing in this amendment would limit the existing authority of the Board of Education or any other agency from conducting any administrative, civil or criminal investigation that is within the scope of their authority. The NYPD would be given rulemaking authority to set standards for and implement the proposal's reporting requirements.

The purpose of this proposed amendment is two-fold: to ensure that the NYPD receives reports of all suspected sex-offenses or other violent crimes committed by an adult against a child, as well as reports of serious allegations of sex-offenses or other violent crimes committed by a student against another student that rise to the level of a Class B felony or above, as defined in the Penal Law. It is not the purpose of this amendment to mandate the reporting of incidents amounting to ordinary misbehavior among children. As such, the staff intends for the NYPD to reflect this purpose when drafting rules implementing this proposal. Indeed, this proposal aims at eliminating the likelihood that crimes against students will fall through the cracks of the Board of Education bureaucracy and not be reported to the police, because it is vital that incidents of crime be reported to and handled by those people best equipped to deal with them – the NYPD.

Recommendation: The Charter should be amended to require Board of Education officials and employees to report immediately to the NYPD information relating to suspected sex-offenses or other violent crimes against students in public schools.

Proposed Charter Revision:

Section 1. The New York city charter is amended by adding a new section 526-a to read as follows:

§ 526-a. Powers of Investigation; sex-offenses and other violent crimes.

a. Statement of purpose and intent. The purpose and intent of this section is to ensure that all suspected sex-offenses or other violent crimes committed by an adult

against a student are reported to the police department. With respect to allegations of sex-offenses or other violent crimes committed by one student against another, the purpose and intent of this section is to ensure that all allegations that rise to the level of a class B felony or above, as defined in the penal law, are reported to the police department. It is not the purpose and intent of this section to mandate the reporting of incidents amounting to ordinary misbehavior among students.

b. Where, the board, a committee of the board or officer or employee of the city school district of the city of New York has evidence or other information relating to a suspected sex-offense or other violent crime involving a child, the board, committee, officer or employee which has such information shall immediately report such evidence or other information to the police department, in a form and manner prescribed by rule by the police department, and to the principal of the child's school. Provided, however, that if such evidence or other information directly or indirectly involves or implicates such school principal, the report shall be made to the district superintendent as well as the police department.

c. The school principal or district superintendent shall promptly notify the parent or legal guardian of a child about whom a report has been made, except where, after consultation with the police department, it is determined that such notification would impede a criminal investigation.

d. Any such committee or individual who in good faith reports evidence or other information relating to a suspected crime to the police department and school principal or district superintendent in accordance with the provisions of subdivision b of this section shall have immunity from any civil liability that may arise from the making of such report, and the school district or any school district employee shall not take, request or cause a retaliatory action against any such committee or individual who makes a report. Nothing herein shall abrogate obligations of confidentiality imposed by certain privileged relationships pursuant to state law.

e. The police department shall promulgate all rules necessary to implement the provisions of this section.

f. The provisions of this section shall not be construed as either (1) limiting the authority of any agency, commission, other entity or its members to conduct any

administrative, civil or criminal investigation that is within the scope of their authority, or (2) limiting any obligation to file a report with any city, state or federal agency concerning a suspected crime or other activity.

- **“Gun Free” School Safety Zones**

Issue: Should the Charter create “gun-free” school safety zones within 1,000 feet of every school in the City?

Relevant Charter Provisions: None.

Discussion: School shootings are an epidemic problem threatening the safety of children in every classroom across the nation. The mass shootings this year of students at Santana High School near San Diego, California, and in 1999 at Columbine High School in Littleton, Colorado, underscore a sad reality that children may be safe nowhere. Indeed, statistics released by the Centers for Disease Control (“CDC”) in 2000 showed that, in a single two-year period, 105 violent deaths occurred on or near school grounds or at school associated events nationwide. The majority of these deaths, 81 percent, were homicides, and the use of guns caused most, 77 percent, of them.

Although the NYPD’s School Safety Division was implemented in 1998 to fight crime in schools, the City’s schools are by no means immune to gun-related incidents. In 1999 and 2000, the School Safety Division reported a total of 71 gun-related incidents in City schools. During that same period, officers seized 41 handguns. These statistics are alarming and send a clear message that something must be done to block the presence of guns in and around all schools to keep our children safe from gun violence. Therefore, the Commission’s staff believes that it is essential that the 1999 Commission’s proposal to amend the Charter to create gun-free school safety zones be proposed again.

Federal law currently purports to make it a crime to possess a gun within 1,000 feet of a school.¹ See Gun-Free School Zones Act, 18 U.S.C. § 922(q). The problem

¹ The increased importance of areas around schools has already been recognized. Federal and state law, for example, provide heightened penalties for those who possess or distribute drugs within 1,000 feet of a school.

with the federal law, however, is that it is riddled with exceptions, including a general exception for all private property and for persons who have a license to carry a gun. See 18 U.S.C. § 922(q)(2)(B)(i) & (ii). As a result, the federal law, while recognizing that the integrity and safety of the nation’s schools are urgent priorities, fails to go far enough in protecting the City’s children. However, federal law, by its terms, does not preempt the City from establishing its own gun-free school safety zone law. See 18 U.S.C. § 922(q)(4).²

State penal law currently bans possession of a firearm in a school or on school grounds. Penal Law § 265.01(3)(Class A misdemeanor). Possession of a firearm in a school or on school grounds by someone who has been previously convicted of any crime is a Class D felony. Penal Law § 265.02. The Commission believes that this proposal, to make it a crime to possess a gun within 1,000 feet of a school, is consistent with and furthers the intent of the State Penal Law to keep our children safe from the terrible risks posed by guns in our schools.

While school safety officers attempt to stop students and others from entering school property while carrying guns, their efforts will be aided by creating meaningful gun-free school safety zones. A gun-free school safety zone would prohibit the possession or discharge of any firearm within 1,000 feet of every school in the City, whether public or private, including day care centers. Unlike the federal law which provides broad exceptions to gun possession in school zones, only a limited number of exceptions to possession or discharge, such as possession of a gun for personal safety stored in a residence or business, or possession of a gun by a law enforcement official, would be available. Violators would be subject to penalties of up to one year in jail and/or a \$10,000 fine. Such a law should help reduce gun-related injuries near or at our City’s schools. Indeed, now more than ever, our children’s safety depends upon it.

Recommendation: The Charter should be amended to create “gun-free” school safety zones within 1,000 feet of every school in the City.

² The federal law was initially struck down in United States v. Lopez, 514 U.S. 549 (1995), on Commerce Clause grounds. The Court found that, in enacting the law, Congress failed to find a “nexus” between the presence of guns in school zones and interstate commerce. Thereafter, to validate the law, Congress made findings to satisfy the nexus test and codified them at 18 U.S.C. § 922(q)(1)(A)-(I). The Court’s decision turned on issues wholly unrelated to the City’s ability to establish its own gun-free school safety zone law.

Proposed Charter Revision:

Section 1. The New York city charter is amended by adding a new Chapter 18-C to read as follows:

CHAPTER 18-C
PUBLIC SAFETY

§ 459. Definitions.

a. The term "school" means a public, private or parochial, day care center or nursery or pre-school, elementary, intermediate, junior high, vocational, or high school as defined in penal law section § 220.

b. The term "school zone" means in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public, private or parochial day care center or nursery or pre-school, elementary, intermediate, junior high, vocational, or high school, or within one thousand feet of the real property boundary line comprising any such school.

c. The term "weapon" means a firearm, rifle, shotgun, or assault weapon, as such terms are defined in section 10-301 of the administrative code, or a machine gun, as defined in penal law section 265.00.

§ 460. Gun-free school safety zones.

a. It shall be a crime for any individual knowingly to possess a weapon at a place that the individual knows, or has reasonable cause to believe, is a school zone.

b. Subdivision a of this section shall not apply where the weapon is:

(i) possessed and kept in such individual's home in a school zone, provided that such individual is licensed or permitted to possess such weapon; or

(ii) possessed and kept at such individual's business in a school zone, provided that such individual is licensed or permitted to possess such weapon.

c. Affirmative defenses to the crime established in subdivision a shall include possession of a weapon:

(i) carried for personal safety between such individual's business, home, or bank in a school zone, provided that such individual is licensed or permitted to possess such weapon for such purpose;

(ii) just purchased or obtained by such individual and being transported that same day for the first time to such individual's home or business in a school zone where it will be stored, provided that such individual is licensed or permitted to possess such weapon;

(iii) carried between a police department facility for inspection and an individual's business, home, bank, or point of purchase in a school zone, provided that such individual is licensed or permitted to possess such weapon;

(iv) carried by licensed or permitted individuals and being transported to or from an authorized target practice facility;

(v) carried between a gunsmith for demonstrably needed repairs and an individual's business or home in a school zone, provided that such individual is licensed or permitted to possess such weapon;

(vi) used in a safety program approved by a school in a school zone, or in accordance with a contract entered into between a school within the school zone and the individual or an employer of the individual, provided that such individual is licensed or permitted to possess such weapon for such purpose;

(vii) used in accordance with a contract entered into between a business within the school zone and the individual or an employer of the individual, provided that such individual is licensed or permitted to possess such weapon for such purpose.

d. It shall be a crime for any person, knowingly or with reckless disregard for the safety of another, to discharge a weapon in a school zone.

e. Affirmative defenses to the crime established in subdivision d shall include discharge of a weapon:

(i) by an individual for self-defense, provided that such individual is licensed or permitted to possess such weapon for such purpose;

(ii) for use in a safety program approved by a school in a school zone;

(iii) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual, provided that such individual is licensed or permitted to possess such weapon for such purpose;

(iv) by an individual in accordance with a contract entered into between a business and the individual or an employer of the individual, provided that such individual is licensed or permitted to possess such weapon for such purpose.

f. Any person who violates this section shall be guilty of a misdemeanor, punishable by imprisonment of not more than one year or by a fine of not more than ten thousand dollars, or both.

g. In addition to the penalties prescribed in subdivision f of this section, any person who violates this section shall be liable for a civil penalty of not more than ten thousand dollars.

h. This section shall not apply to a police officer, as such term is defined in section 1.20 of the criminal procedure law, or a federal law enforcement officer, as such term is defined in section 2.15 of the criminal procedure law.

i. The police commissioner may promulgate rules implementing the provisions of this section. The police commissioner shall provide written notice of the requirements of this section to all persons who receive an official authorization to purchase a weapon and to all persons applying for a license or permit, or renewal of a license or permit. Failure to receive such notice shall not be a defense to any violation of this section.

j. The city of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident or injury occurring in a gun-free school safety zone arising out of a violation of any provision of this section.

4. PROMOTING GUN SAFETY

- **No Gun Sales to Person Under 21**

Issue: Should the minimum age to purchase and possess any type of gun be raised to 21?

Relevant Charter Provisions: None.

Discussion: Each year in the United States, 30,000 people are killed, and thousands more injured, by guns, making this nation the world leader in both the number of adults and children who die or are injured by such weapons annually. This nation's yearly death toll from guns compares to only a few hundred such deaths every year in other industrialized nations. For example, in 1997, guns killed no children in Japan, 19 children in Great Britain, 57 children in Germany, 109 children in France, 153 children in Canada, but killed 5,285 children in the United States. According to statistics released by the Centers for Disease Control in 2000, in each year since 1988, more than 80 percent of homicide victims between the ages of 15 and 19 were killed with a gun. Indeed, a teenager in the United States is more likely to die from a gunshot wound than from all natural causes combined.

New York City has long recognized that this level of death and injury results from the easy availability of guns, especially by those too young to possess and keep them responsibly. Indeed, in recent years the City has taken many steps to eliminate the violence and death caused by guns. In perhaps one of the boldest moves to address the problem, the City recently initiated litigation against gun manufacturers for the devastation that their products have wrought on the City's communities. The City has also enacted, and vigorously enforced, many laws intended to keep guns out of the hands of children and criminals.

Although City law prohibits the permitting and possession of most types of guns by persons under the age of 21, it provides a loophole that allows certain types of guns, including rifles and shotguns, to be purchased and possessed by persons beginning at age 18. The Commission's staff believes that, in a densely urban environment like New York City, only a uniform minimum age of 21 for the permitting and possession of any type of gun makes good sense and that this loophole should be closed.

The Commission staff's conclusion is consistent with the rationale used by the City Council in setting 21 as the minimum age at which most types of guns may be permitted and possessed in the City, and by the State Legislature as the statewide minimum age at which alcoholic beverages may be purchased. Indeed, persons under the age of 21 are extremely susceptible to injury resulting from immaturity and often lack sound judgment. The older and more experienced a person becomes, the more likely that he or she will be able to appreciate the deadly nature of *all* types of guns.

Accordingly, to further the City's progress in the reduction and prevention of gun violence and gun-related accidents in its communities, the Commission's staff recommends that the Charter be amended to prohibit anyone under the age of 21 from purchasing or possessing any type of gun, including a handgun, pistol, rifle, shotgun, assault weapon or machine gun. The Charter should also be amended to provide that criminal and civil penalties be imposed upon anyone under the age of 21 who is found in possession of any type of gun, and upon anyone who sells or provides any type of gun to anyone under the age of 21.

Proposed Charter Revision:

The New York city charter is amended by adding a new Chapter 18-C to read as follows:

CHAPTER 18-C

SALE, PURCHASE AND POSSESSION OF WEAPONS

§ 461. Definition. The term "weapon" means a firearm, rifle, shotgun, or assault weapon, as such terms are defined in section 10-301 of the administrative code, or a machine gun, as defined in penal law section 265.00.

§ 462. Permits and licenses for the purchase and possession of weapons. Notwithstanding any other provision of local law, no person under the age of twenty-one shall be granted a permit or license to purchase and possess a weapon. If the applicant for a permit or license is a partnership or corporation, only those members of the partnership or corporation over the age of twenty-one may apply for a permit or license to purchase and possess a weapon on behalf of the partnership or corporation. This section shall not apply to any person under the age of twenty-one who has been issued

a valid permit or license to possess a weapon on the date that this section shall become law.

§ 463. Sale or disposal of weapons. It shall be a crime for any person to sell, offer for sale, or dispose of a weapon to any person under the age of twenty-one within the city of New York, unless such person under the age of twenty-one has a valid permit or license or is otherwise exempted by law.

§ 464. Carrying and possession of weapons. It shall be a crime for any person under the age of twenty-one to carry or otherwise have in his or her possession any weapon within the limits of the city of New York, unless such person has a valid permit or license or is otherwise exempted by law. If a partnership or corporation carries or has in its possession a weapon, no member, officer or employee of such partnership or corporation under the age of twenty-one shall carry or have in his or her possession such weapon within the limits of the city of New York.

§ 465. a. Sections four hundred sixty-two and four hundred sixty-four shall not apply to: (1) persons in the military service of the state of New York when duly authorized by regulations issued by the chief of staff to the governor to carry or possess a weapon;

(2) persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to carry or possess a weapon;

(3) persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of a weapon is necessary for manufacture, transport, installation and testing under the requirements of such contract;

(4) police officers as defined by the criminal procedure law section 1.20;

(5) peace officers as defined by the criminal procedure law section 2.10, provided that such peace officers are (i) authorized pursuant to law or regulation of the state or city of New York to possess a weapon within the city of New York without a license or permit therefore; and (ii) authorized by their employer to possess such weapon;

(6) participants in special events when authorized by the police commissioner;

b. Any person listed in subdivision a of this section may be permitted or licensed to purchase a weapon according to State law and the rules of the city of New York. Pursuant to section four hundred sixty-three, it shall be a crime for a dealer to sell any weapon to any person listed in subdivision a without securing full and secure proof of identification.

§ 466. Penalties. a. Any violation of the provisions of sections four hundred sixty-three, four hundred sixty-four or subdivision b of section four hundred sixty-five shall be a misdemeanor triable by a judge of the criminal court of the city of New York and punishable by not more than one year imprisonment or by a fine of not more than ten thousand dollars or by both.

b. In addition to the penalties prescribed in subdivision one of this section, any person who violates the provisions of sections four hundred sixty-three, four hundred sixty-four or subdivision two of section four hundred sixty-five shall be liable for a civil penalty of not more than ten thousand dollars.

5. PROTECTING HUMAN RIGHTS

- **Making the Human Rights Commission a Charter Agency**

Issue: In order to strengthen the City’s public policy of eliminating unlawful discrimination based on race, color, religion, creed, age, national origin, alienage, citizenship, gender, sexual orientation, disability, status as a victim of domestic violence and other protected classes, should the City Commission on Human Rights be codified in the Charter and should the powers of the Commission to enforce the Human Rights Law be stated in the Charter?

Relevant Charter Provision: None.

Discussion: This City continues to be at the forefront of local governments nationwide in the battle against discrimination and the protection of civil rights. Fifty-seven years ago, in 1944, Mayor Fiorello H. LaGuardia issued an executive order creating the Mayor’s Committee on Unity, the purpose of which was “to make New York City a place where people of all races and religions may work and live side by side in harmony.” Eleven years later, Mayor Robert F. Wagner and the City Council passed Local Law 55, enlarging the powers of the Committee and renaming it the Commission on Intergroup Relations (“COIR”). In 1958, in keeping with its pioneering role in protecting civil rights, the City enacted Local Law 80. Local law 80, the first statute in the country of its kind, banned racial discrimination in private housing. Local Law 80 also empowered the COIR to investigate and prosecute cases of such discrimination. Four years later, the COIR was granted additional enforcement powers and was officially renamed the New York City Commission on Human Rights.

Since that time, the City has continuously expanded the scope and effectiveness of its civil rights protections. For example, in 1986 the City prohibited discrimination based on sexual orientation. In 1991, Local Law 39 expanded the Human Rights Law to include those perceived to belong to a protected group. The 1991 law also specifically enumerated protection from discrimination on the basis of criminal conviction or arrest record for employment or licensing purposes and further strengthened the enforcement provisions of the law. Similarly, seven years ago, the City instituted a number of administrative reforms to make the Commission on Human Rights more efficient and

responsive to the public. As a result, the productivity of the Commission on Human Rights, measured in terms of cases resolved by each investigator, has approximately doubled since 1994. Finally, over the past four years, the City has passed landmark domestic partnership legislation and amended numerous laws and regulations to provide that domestic partners be accorded rights that traditional spouses of City employees enjoy. Most recently, Local Law 1 of 2001 amended the Human Rights Law to prohibit discrimination in the workplace against victims of domestic violence. The law included status as an actual or perceived victim of domestic violence as a new protected class under the law's employment provisions. This progress in expanding our civil rights laws has been of vital importance to the fight against prejudice and hate in this City.

To ensure that such progress continues, the Commission's staff recommends that the Commission on Human Rights should be accorded Charter status and the Commission's powers to enforce the protections of the Human Rights Law should be stated in the Charter. As the City Human Rights Law recognizes in its introductory section, there is no greater danger to the health, safety, and welfare of the City of New York and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on race, color, religion, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, status as a victim of domestic violence and whether children are or may be residing with a person. The Commission on Human Rights is the agency charged with eliminating the injustices that arise from prejudice, intolerance and bigotry; and the importance of pursuing this mission justifies codifying the agency in the Charter. Including the Commission on Human Rights and its powers in the Charter will illustrate the City's continued commitment to civil rights and make it more difficult for future City leaders to eliminate those protections, thereby ensuring the continuation of the City's significant progress in the fight against unlawful discrimination.

The notion of incorporating the Commission on Human Rights and its powers to enforce the Human Rights Law in the Charter is made all the more compelling by the fact that City law offers protections not available under State or federal law with respect

to the treatment accorded to sexual orientation, alienage and citizenship status and status as a victim of domestic violence. Under State and federal statutory provisions regarding employment discrimination, an employer may fire an employee solely because the employer dislikes the employee's sexual orientation. It is only the City's Human Rights Law that makes such conduct illegal. Thus, were the Commission on Human Rights to be abolished or the Human Rights Law repealed, there would be no administrative enforcement agency that individuals could turn to in seeking protection from such discriminatory conduct.

While the difference between the City's Human Rights Law and its state and federal counterparts is most striking in their respective treatment of sexual orientation, alienage and citizenship status, and status as a victim of domestic violence, the scope of protection afforded to other protected classes also differs from one statute to another. In numerous specific situations, individuals of one or another protected class may have rights under the City Human Rights Law that would not be available under otherwise applicable State or federal legislation. By establishing the Commission on Human Rights as a Charter agency, these locally granted rights are rendered more secure.

By specifically referring to the Human Rights Law in the Charter and by granting the Mayor the power to enforce that law, the likelihood that the ordinary legislative process will attenuate or eviscerate the protections that the Human Rights Law provides for victims of discrimination would be lessened. Moreover, incorporating into the Charter the fundamental idea that the well-being of the City of New York depends on the elimination of bias, prejudice, unlawful discrimination, and bigotry from the civic life of the City will be of great symbolic value.

The Human Rights Law is a lengthy and highly detailed statute that establishes the Commission on Human Rights and that contains complex provisions defining unlawful discriminatory conduct. Because the Human Rights Law is itself too long and complicated to be directly codified into our short form Charter, the approach taken here is to refer specifically to it as providing the basis for the City's anti-discrimination policies. The goal is to insulate the statute from the vagaries of the political process. Thus, the proposed revision of the Charter will confer considerable protection against any attempt to undermine the fundamental goal of achieving a fair and discrimination-

free society. These very important protections, and the obligations they impose on private and public parties, already exist by virtue of local law. Thus, the proposed revision is designed simply to erect appropriate obstacles to any efforts to undermine the City's fundamental opposition to invidious forms of discrimination.

It might be argued that if State or federal legislation is amended someday to provide equal or greater protections than that provided by the City statute, the City agency will become duplicative of corresponding human rights agencies on the State or federal level. A City agency, however, unlike an otherwise identical State or federal one, is uniquely accountable and, typically, responsive to City constituents. Accordingly, because of the importance of ensuring such responsiveness and because of the profound importance of eliminating unlawful discrimination, the City Human Rights Commission should be established as a Charter agency and it should be ensured through the Charter that the rights that the Commission enforces are preserved.

Recommendation: In order to strengthen the City's public policy of eliminating unlawful discrimination based on race, color, religion, creed, age, national origin, alienage, citizenship, gender, sexual orientation, disability, status as a victim of domestic violence and membership in other protected classes, the City's Commission on Human Rights should be codified in the Charter, and the protections of the City's Human Rights Law enforced through the Charter.

Proposed Charter Revision:

Section 1. The New York city charter is amended by adding a new chapter 40 to read as follows:

CHAPTER 40

NEW YORK CITY HUMAN RIGHTS COMMISSION

Declaration of intent. It is hereby declared as the public policy of the city of New York to promote equal opportunity and freedom from unlawful discrimination through the provisions of the city's Human Rights Law, Chapter 1 of Title 8 of the Administrative Code of the city of New York.

§ 900. The mayor shall be authorized to issue such executive orders as he or she deems appropriate to provide for city agencies and contractors to act in accordance with the policy set forth in this chapter.

§ 901. a. The New York city commission on human rights is hereby established and continued.

b. The commission shall have the power to eliminate and prevent unlawful discrimination by enforcing the provisions of the New York city human rights law, and shall have general jurisdiction and power for such purposes. It may, in addition, take such other actions as may be provided by law against prejudice, intolerance, bigotry and unlawful discrimination.

§ 902. The commission shall consist of fifteen members, to be appointed by the mayor, one of whom shall be designated by the mayor as its chairperson and shall serve as such at the pleasure of the mayor. The chairperson shall devote his or her entire time to the chairperson's duties and shall not engage in any other occupation, profession or employment. Members other than the chairperson shall serve without compensation for a term of three years. In the event of the death or resignation of any member, his or her successor shall be appointed to serve for the term for which such member had been appointed.

§ 903. Functions. The functions of the commission shall be:

1. To foster mutual understanding and respect among all persons in the city of New York:

2. To encourage equality of treatment for, and prevent discrimination against, any group or its members:

3. To cooperate with governmental and non-governmental agencies and organizations having like or kindred functions; and

4. To make such investigations and studies in the field of human relations as in the judgment of the commission will aid in effectuating its general purposes.

§ 904. Powers and duties. The powers and duties of the commission shall be:

1. To work together with federal, state and city agencies in developing courses of instruction, for presentation to city employees and in public and private schools, public libraries, museums and other suitable places, on techniques for achieving harmonious intergroup relations within the city of New York, and engage in other anti-discrimination activities.

2. To enlist the cooperation of various groups and organizations, in mediation efforts, programs and campaigns devoted to eliminating group prejudice, intolerance, hate crimes, bigotry and discrimination.

3. To study the problems of prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby in all or any fields of human relationship.

4. (a) To receive, investigate and pass upon complaints and to initiate its own investigation of:

(i) Group-tensions, prejudice, intolerance, bigotry and disorder occasioned thereby.

(ii) Unlawful discrimination against any person or group of persons, provided, however, that with respect to discrimination alleged to be committed by city officials or city agencies, such investigation shall be commenced after consultation with the mayor. Upon its own motion, to make, sign and file complaints alleging violations of the city's Human Rights Law.

(b) In the event that any such investigation discloses information that any person or group of persons may be engaged in a pattern or practice that results in the denial to any person or group of persons of the full enjoyment of any right secured by the Human Rights Law, in addition to making, signing and filing a complaint upon its own motion pursuant to paragraph (a) of this subdivision, to refer such information to the corporation counsel for the purpose of commencing a civil action pursuant to chapter four of title eight of the administrative code.

5. (a) To issue subpoenas in the manner provided for in the civil practice law and rules compelling the attendance of witnesses and requiring the production of any evidence relating to any matter under investigation or any question before the commission, and to take proof with respect thereto;

(b) To hold hearings, administer oaths and take testimony of any person under oath; and

(c) In accordance with applicable law, to require the production of any names of persons necessary for the investigation of any institution, club or other place or provider of accommodation.

6. In accordance with applicable law, to require any person or persons who are the subject of an investigation by the commission to preserve such records as are in the

possession of such person or persons and to continue to make and keep the type of records that have been made and kept by such person or persons in the ordinary course of business within the previous year, which records are relevant to the determination whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city.

7. To issue publications and reports of investigation and research designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby.

8. To appoint such employees and agents as it deems to be necessary to carry out its functions, powers and duties: provided, however, that the commission shall not delegate its power to adopt rules, and provided further, that the commission's power to order that records be preserved or made and kept and the commission's power to determine that a respondent has engaged in an unlawful discriminatory practice and to issue an order for such relief as is necessary and proper shall be delegated only to members of the commission. The expenses for the carrying on of the commission's activities shall be paid out of the funds in the city treasury. The commission's appointment and assignment powers as set forth in this subdivision may be exercised by the chairperson of the commission.

9. To recommend to the mayor and to the council legislation to aid in carrying out the purposes of this chapter.

10. To submit an annual report to the mayor and the council which shall be published in City Record.

11. To adopt rules to carry out the provisions of this chapter and the policies and procedures of the commission in connection therewith.

§ 905. Relations with city departments and agencies. So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective head to the commission for the carrying out of the functions herein stated. The head of any department or agency shall furnish information in the possession of such department or agency when the commission so requests. The corporation counsel, upon request of the chairperson,

may assign counsel to assist the commission in the conduct of its investigatory or prosecutorial functions.

- **Making the Office of Immigrant Affairs a Charter Agency**

Issue: Should the Charter provide that City services be available to all eligible persons regardless of alienage and citizenship status, and that an Office of Immigrant Affairs will implement this and other policies concerning immigrant affairs? Should the Charter provide that the City, as part of its inherent power to determine the duties of its employees, may require confidentiality to preserve the trust of individuals who have business with City agencies, and that the Mayor may issue rules guaranteeing, to the fullest extent permitted by State and federal law, the confidentiality of information collected from those who need such protection, such as immigrants?

Relevant Charter Provision: None.

Discussion: Anti-immigrant sentiments remain strong in some parts of the country and the federal government has become less hospitable towards immigrants. We have learned that local laws that protect immigrants are, for many New Yorkers, their most valuable rights. The immigrants who come to this City – like other New Yorkers – need shelter, education and employment. When immigrants residing here are reluctant to seek social services or assist the police in solving crimes, we all suffer. Because we cannot rely on either the federal or State governments to protect immigrant rights, the City must provide leadership in this area. While the City has done so, federal laws have jeopardized the protections afforded. Moreover, we must ensure that our commitment to the welfare of immigrants endures. To ensure that immigrant populations continue to be protected by the City, the reforms that we have achieved must be enhanced and incorporated in the Charter.

The importance of immigration to the City cannot be overstated. New York City is the nation’s preeminent “world city.” The presence of the Statue of Liberty and Ellis Island highlights the critical role that immigrants have played in promoting the City’s vitality and cosmopolitan spirit. Approximately one third of the City’s current residents were born abroad, and an even larger percentage of those born here are the children of

a parent or parents born abroad. The City also serves as the site for the United Nations and for hundreds of foreign consulates, international organizations, and multi-national companies. The City is a place of countless languages and cultures, and diversity is one of its most persistent distinguishing features.

For the past decade, it has been the City's policy to make its services available to the foreign-born and to facilitate their assimilation into the life of the City. With rare exceptions, an individual's alienage and citizenship status is irrelevant under local law. Indeed, the Human Rights Law forbids unlawful discrimination on the basis of national origin, alienage or citizenship status. The current Administration has actively supported these policies. Nevertheless, to protect immigrant rights from the vicissitudes of politics, the Charter should provide for a Mayor's Office of Immigrant Affairs, guarantee City services to all residents, regardless of citizenship or alienage, and protect confidential information provided to agencies, including information regarding immigrant status, to the extent permitted by State and federal law.

A. Mayor's Office of Immigrant Affairs

The City's foreign-born and immigrant populations face many challenges in trying to make use of City services, not the least of which is ignorance as to what City services are available and awkwardness about approaching public workers who speak only English. The public interest is not well served by having significant segments of the City's population avoid using public services. The result is often that crime goes undetected and unpunished, that children go uneducated and that sickness goes untreated.

It is the purpose of the Mayor's Office of Immigrant Affairs to fight these harms by, among other activities, engaging in educational and outreach efforts and by maintaining a "language bank" that provides translators for non-English speakers who have dealings with City agencies. This office, which exists solely by executive prerogative, should be provided for in the Charter. Doing so would recognize the special and distinctive needs that immigrants face in assimilating themselves into a new country and the crucial role that immigrants play in the City's life. It would also encourage immigrants to have greater confidence in City government by demonstrating the City's long-term commitment to assist them.

B. Guaranteeing Availability of City Services to Immigrants

In 1989, in order to promote the City's public policy to provide its services to the foreign born and to facilitate their assimilation into the life of the City, Mayor Koch issued Executive Order 124, which provided, inter alia, that "[a]ny service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law." Executive Order 124 was renewed by both Mayor Dinkins and Mayor Giuliani.

As the last three mayors have recognized, the City benefits when foreign-born residents use City services. In the words of Executive Order 124, "[i]t is to the disadvantage of all City residents if some who live in the City are uneducated, inadequately protected from crime, or untreated for illness."

Given the importance of this policy, it should be included in the Charter. Doing so will reinforce the City's commitment to its ideals and insulate it from the vagaries of politics. Indeed, if the Mayor is authorized in the Charter to enforce the policy through the Office of Immigrant Affairs, it will be difficult for residents to be denied City services on account of immigrant status.

C. Protecting Confidentiality

Since at least 1989, when Mayor Koch issued Executive Order 124, it has been City policy to preserve the confidentiality of information regarding the immigration status of persons availing themselves of City services. Indeed, Executive Order 124 prohibited City employees from providing information about immigrants to federal authorities unless legally obligated to do so. The basis for this policy was the recognition that the public welfare would be harmed if, out of fear of being reported to the federal Immigration and Naturalization Service, immigrants refrained from making use of City services.

Whatever success Executive Order 124 may have had in reassuring City immigrants that they could avail themselves of City services without increasing their chances of being deported was undermined by the passage in 1996 of the Welfare Reform, Illegal Immigration Reform and Immigrant Responsibility Acts and related

measures (the “federal legislation”) as well as by various court decisions, including most recently the decision of the United States Court of Appeals for the Second Circuit in City of New York v. United States, 179 F. 3d 29 (2d Cir. 1999). The federal legislation prohibits state and local governments from restricting their employees from exchanging information with the Immigration and Naturalization Service concerning an individual’s immigration status. The Court of Appeals for the Second Circuit upheld the constitutionality of the federal legislation against a facial challenge by the City.

Although it deals with confidentiality in general, and is not limited to immigration matters, the Commission staff’s recommendation regarding confidentiality may enable immigrants who seek City services to do so without fear of deportation. It is likely that neither the federal legislation nor the decision of the Court of Appeals for the Second Circuit would require City employees to disclose information regarding immigrant status if the proposed Charter revision were adopted and implemented in a manner that protects information regarding immigrant status.

In its decision, the Second Circuit stressed that it was upholding the federal legislation only against a facial challenge to its legality--a procedural context that required the City to establish that there is no imaginable set of circumstances under which the federal legislation might be valid. The Court explicitly left open the question of “whether these Sections [of the federal legislation] would survive a constitutional challenge in the context of generalized confidentiality policies that are necessary to the performance of legitimate municipal functions and that include federal immigration status.”

The Commission staff’s recommendation would explicitly authorize the development of such generalized confidentiality policies. Such policies would undoubtedly benefit the City in many ways. It is widely recognized that, in a large variety of government programs, confidentiality must be guaranteed if the program’s integrity is to be preserved. In areas ranging from income tax returns to medical data to anonymous crime tips and domestic abuse hotlines, confidentiality is guaranteed to ensure that private individuals cooperate with the program. Different government programs may, of course, differ from one another in terms of what degree of

confidentiality is necessary to ensure the program's effective functioning. Accordingly, the development of appropriate policies is best left to rulemaking.

The Commission staff's recommendation would explicitly authorize the Mayor to determine what guarantees of confidentiality are required to preserve the trust and the cooperation of individuals who do business with the City. While decisions by the Mayor regarding the extent to which confidentiality is essential to preserve the integrity and efficient functioning of specific City programs would be general in nature, it is likely that immigrants – who sometimes have to be assured of confidentiality to encourage them to use City services – would be included in such protections. Accordingly, one result of developing generalized confidentiality policies would be to improve the City's position in any future court challenges to the federal legislation.

D. Public Comments

The 1999 Charter Commission heard testimony regarding this proposal. The following is taken from the 1999 Commission's Final Report:

At its August 6, 1999 expert forum, the Commission heard testimony from three expert witnesses with extensive knowledge of immigrant affairs: Christopher Kui, Executive Director of Asian Americans for Equality; Manuel Matos, Board Member, Northern Manhattan Coalition for Immigrant Rights; and Gary Rubin, Director of Public Policy, New York Association for New Americans. All three strongly supported the Charter Commission's proposals. Mr. Kui also urged that more be done to increase the personnel and funding for the Office of Immigrant Affairs and Language Services.

Members of the public who appeared at the Commission's public hearings, including Queens Borough President Claire Shulman, voiced support for the Commission's proposals regarding immigrant affairs. In addition, the Commission received letters from a number of organizations in support of the proposals. Leonard Glickman, the Executive Vice President of the Hebrew Immigrant Aid Society, wrote in support of any policy that would encourage immigrants to utilize services available to them. The Managing Director of the Korean American Family Service Center, Bona Lee, wrote that in her work she frequently encounters families that are unable to get services in their native language and strongly supports a proposal that would ensure the availability of services in immigrants' own languages, as well as confidentiality. John

Kim, President of the New York chapter of the National Association of Korean Americans, submitted testimony at the Commission's Manhattan public hearing on August 12, 1999, strongly supporting the inclusion of immigrant rights protections in the Charter. The Executive Director of the Caribbean Women's Health Association, Inc., Yvonne Graham, sent a letter specifically supporting the proposals to include the Office of Immigrant Affairs and Language Services in the Charter, to make City services available to all eligible persons and to require confidentiality where necessary. The Commission received similar letters of support from UJA – Federation of New York, the National Association of Latino Elected and Appointed Officials, the Executive Director of Hamilton-Madison House (a settlement house that has been assisting the City's immigrants for over 100 years), and Jacqueline Ward, Chair of the Board of Directors of Casita Maria.

Recommendation: In order to strengthen the City's public policy to make City services available to all eligible persons regardless of alienage and citizenship status, the Mayor's Office of Immigrant Affairs should be established in the Charter. Moreover, the Charter should provide that the City, as part of its inherent power to determine the duties of its employees, may require confidentiality in order to preserve the trust of individuals who have business with City agencies and that the Mayor, in the exercise of this power, may issue rules guaranteeing, to the fullest extent permitted by State and federal law, the confidentiality of information relating to immigration status and other private matters.

Proposed Charter Revision:

Section 1. The New York city charter is amended by adding a new section 18 to read as follows:

§ 18. Immigrant Affairs. a. The city recognizes that a large percentage of its inhabitants were born abroad or are the children of parents who were born abroad and that the well-being and safety of the city is put in jeopardy if the people of the city do not seek medical treatment for illnesses that may be contagious, do not cooperate with the police when they witness a crime or do not avail themselves of city services to educate themselves and their children. It is therefore desirable that the city promote the utilization of city services by all its residents, including foreign-born inhabitants, speakers of foreign languages and undocumented aliens.

b. In furtherance of the policies stated in subdivision a of this section, there shall be established in the executive office of the mayor an office of immigrant affairs. The office shall be headed by a director, who shall be appointed by the mayor. The director of the office of immigrant affairs shall have the power and the duty to:

1. advise and assist the mayor and the council in developing and implementing policies designed to assist immigrants and other foreign-language speakers in the city;

2. enhance the accessibility of city services to immigrants and foreign-language speakers by establishing programs to inform and educate immigrant and foreign language speakers of such services;

3. manage a city-wide list of translators and interpreters to facilitate communication between city agencies and foreign language speakers;

4. perform policy analysis and make recommendations concerning immigrant affairs; and

5. perform such other duties and functions as may be appropriate to pursue the policies set forth in subdivision a of this section.

c. Any service provided by a city agency shall be made available to all aliens who are otherwise eligible for such service to the same extent such service is made available to citizens unless such agency is required by law to deny eligibility for such service to aliens.

§ 2. Section 8 of the New York city charter is amended by adding a new subdivision g to read as follows:

g. The city has the power to determine the duties of its employees, and it is essential to the workings of city government that the city retain control over information obtained by city employees in the course of their duties. In the exercise of this power, the mayor may promulgate rules requiring that information obtained by city employees be kept confidential to the extent necessary to preserve the trust of individuals who have business with city agencies. To the extent set forth in such rules, each agency shall, to the fullest extent permitted by the laws of the United States and the state of New York, maintain the confidentiality of information in its possession relating to the immigration status or other private information that was provided by an individual to a city employee in the course of such employee's duties.

6. ENHANCING PUBLIC HEALTH

- **Merger of DMH and DOH**

Issue: Should the Charter be amended to consolidate the functions of the Department of Mental Health, Mental Retardation and Alcoholism Services (“DMH”) and the Department of Health (“DOH”) to create a new agency called the Department of Public Health?

Relevant Charter Provisions: Chapters 22 and 23.

Discussion: In February 1998, the Mayor appointed Neal L. Cohen, M.D., as Commissioner of the Department of Health (“DOH”) and the Department of Mental Health, Mental Retardation and Alcoholism Services (“DMH”) effectively merging them. Concurrently, the Mayor sought legislation to formally merge the two agencies. Although the Council has declined to act for more than three years, the two agencies have demonstrated that the City has much to gain through better coordination of its public health activities.

DOH has been a pioneer in the areas of disease control and prevention, health education, child health, environmental health and infant mortality reduction. DMH has played an invaluable role in developing multiple services that enable people with mental disabilities to live and work successfully in their communities. But, there is a growing professional consensus that today’s complex health problems are best addressed by integrated public health and mental hygiene programming and planning. The United States Surgeon General, for example, issued a Report on Mental Health in December 1999 that highlighted the connection between physical and mental health. The report noted that scientific research on the brain shows a seamless picture of how biological, psychological and social factors affect overall well being. Consequently, the Report recommended that all Americans seek help for both mental and physical health problems. It also stressed the importance of facilitating access to mental health care by better integrating Public Health systems.

The benefit of this kind integration has been widely recognized. Eleven states (Arizona, Colorado, Delaware, Florida, Hawaii, Illinois, Maryland, Michigan, Montana, New Hampshire and Wyoming), several large cities (including Chicago and San Francisco) and three counties in New York State (Schuyler, Wayne and Oswego) have

consolidated their health and mental hygiene agencies. Their experience indicates that mergers of public health agencies produce better services. These recent mergers have also enlisted the support of the medical and mental hygiene communities.

By appointing one commissioner oversee both DOH and DMH, the Mayor acknowledged that it was time to move the City toward a fully integrated system of Public Health. And, through the leadership of a single commissioner, a nationally recognized integrated service delivery model has been developed by DOH and DMH that has at its core coordinated planning and programming and innovative partnerships with community-based organizations

This kind of integrated service delivery model is needed. Often people have multiple problems. They face, for example, such issues as mental illness and substance abuse, HIV/AIDS and homelessness, educational failure and teen pregnancy, domestic violence and poverty. In the past when attempting to address these kinds of issues, DOH and DMH often reached out to the same populations, but failed to coordinate the services they provided.

Commissioner Cohen has stated that the merger would allow the City to “integrate public health and mental hygiene programs when appropriate, reduce duplication of effort, promote community involvement and better oversee the extension of managed care to Medicaid users.” In fact, the experience of the two departments under one Commissioner over the past three years has demonstrated some of the benefits of a merger. For example, DOH and DMH have: (1) used relationships with family health providers to raise awareness in the medical community of mental health and rehabilitation issues; (2) identified training needs for health providers and begun to establish standards of care for Medicaid managed care plans that incorporate mental, physical and developmental disability concerns; (3) through public education, brought attention to health concerns that are most frequently affected by stress and other psychological factors such as asthma; and (4) reduced the marginalization of those with mental disabilities, including mental retardation, by bringing them into integrated health and disability planning and policy discussions.

Indicative of the result of better coordination is The Cumberland Family Health and Support Center in Brooklyn. This model of integrated treatment has shown the

benefits of melding mental health, primary health, and addiction services in one program. The individuals, families and children served by the program rarely have just one problem. Their concerns are overlapping and require an integrated response from health and mental health professionals. The Cumberland Center is a joint effort of the DOH, DMH and other City agencies. Based on the success of this program, similar initiatives will be started.

The unified administration of New York's City's public health and mental hygiene agencies has also influenced health promotional programming. Examples include DOH's renewed efforts to reduce new HIV infections, which has benefited from the agency's enhanced access to social science and behavioral expertise. Specifically, it has allowed DOH to better target groups at particularly high risk for infection, including minority men who have sex with other men. Equally, the agency has used sophisticated behavioral models in designing its highly successful *Quit Yet* antismoking health promotion campaign.

With medical, scientific and environmental advances making it easier to control infectious diseases, public health agencies are increasingly working to reduce the impact of preventable conditions like heart disease, cancer and diabetes. Successfully addressing conditions that unnecessarily shorten or impair the lives of numerous New Yorkers, requires knowledge of what motivates behavior. For this reason, the kind of coordinated planning now being done by DOH and DMH will grow ever more important. A merger of the two agencies will insure that integrated activities can be implemented with speed and efficiency.

Consistent with concerns raised by the public during the 1999 Commission's public hearings, the Commission's staff recommendation would not result in a reduction in services for any of the constituencies of either agency. Since it was originally proposed, Charter revision language has been amended to: (1) provide that the new Deputy Commissioner for Mental Hygiene report directly to the Commissioner; (2) require separate budgetary units of appropriation for the mental health, mental retardation and alcoholism services units; (3) stipulate that the Deputy Commissioner for Mental Hygiene coordinate contracts between community-based providers and the agency's procurement staff; (4) require that there be executive coordination of mental

retardation and developmental disability services within the Mayor's Office of Operations to ensure that the agency addresses the needs of that community; (5) require the Mayor's Office of Operations to review the merger, in the second and fourth years after its adoption; (6) mandate that the Early Intervention program be administered in the Division of Mental Hygiene; (7) require the Commissioner to develop plans and mechanisms to ensure participation and communication with local community and advocacy groups at the borough level; and (8) include a maintenance of effort clause, which should ensure that the current funding stream for mental health services remains intact.

At the time the 1999 Commission considered the merger of these two departments, it contacted individuals and organizations that initially opposed the union, to inform them of the amendments described above, and to urge that they comment in writing or testify at the Commission's August 26, 1999 public hearing. Several groups and individuals initially opposed to the merger, including the Interagency Council of Mental Retardation and Developmental Disabilities Agencies and New York State Assemblyman James Brennan, stated that the changes described above addressed their concerns regarding the merger. In addition, OHEL Children's Home and Family Services, Hospital Audiencies Inc., the Chaps Organization, HeartShare Human Services, Cumberland Diagnostic and Treatment Center and Brookdale University Hospital testified in support of the merger. Their comments, together with indications of support from many experts in the field, have provided the basis for the Commission's staff recommendation that DOH and DMH be merged to create a new Department of Public Health.

Recommendation: The Department of Health and the Department of Mental Health, Mental Retardation and Alcoholism Services should be consolidated to create a new Department of Public Health as a Charter agency.

Proposed Charter Revision:

Section 1. The chapter heading of chapter 22 of the New York city charter, as added by local law number 25 for the year 1977, is amended to read as follows:

Department of Public Health

§ 2. Subdivision a of section 551 of the New York city charter, as added by local law number 25 for the year 1977, should be amended to read as follows:

a. There shall be a department of public health, the head of which shall be the commissioner of public health who shall be appointed by the mayor. The department shall have and exercise all powers of a local health department set forth in law. Notwithstanding any other provision of this charter to the contrary, the department shall be a social services district for purposes of the administration of health-related public assistance programs to the extent agreed upon by the department, the department of social services and the department of homeless services. Appropriations to the department for mental health, mental retardation and alcoholism services shall be set forth in the expense budget in separate and distinct units of appropriation. In determining the annual amount of city funds, as defined in paragraph three of subdivision e of section two hundred forty-nine, to be appropriated by the city for mental health, mental retardation and alcoholism services, the following provision shall apply: in the event that the executive budget proposes a decrease in city funds measured against the budget for the current fiscal year, as modified in accordance with section one hundred seven, for the units of appropriation for mental health, mental retardation and alcoholism services, the executive budget shall not propose a greater percentage decrease in city funds measured against the budget for the current fiscal year, as modified in accordance with section one hundred seven, for the units of appropriation for mental health, mental retardation and alcoholism services than has been proposed for the units of appropriation for public health services. If, however, in his or her discretion, the mayor determines that it is in the city's best interest to submit an executive budget at variance with the requirements of this provision, the mayor shall include an explanation of the basis for this variation as part of the budget message.

§ 3. Section 552 of the New York city charter, as added by local law number 25 for the year 1977, should be amended to read as follows:

§ 552. Deputy commissioners. The commissioner may appoint [four] deputy commissioners, one of whom shall have the same qualifications as the commissioner [and one of whom shall be designated as the deputy commissioner for addiction programs and who shall be responsible for the drug treatment and drug prevention

programs authorized by law]. One of the deputy commissioners shall have the qualifications established pursuant to the mental hygiene law for a director of community services of a local governmental unit, and shall be the director within the department of the division of mental hygiene services. Such division shall be and shall exercise the powers of a local governmental unit for purposes of the mental hygiene law, and the deputy commissioner heading such division shall have the powers of a director of community services of a local governmental unit as set forth in or pursuant to such law, and shall report directly to the commissioner. In the exercise of such powers, such deputy commissioner shall coordinate the fiscal and programmatic administration of contracts awarded by the department for mental health, mental retardation, and alcoholism services.

§ 4. Subdivision a of section 555 of the New York city charter is amended to add a new paragraph (2) to read as follows:

(2) At the conclusion of the second year following the establishment of the department pursuant to this section, and again at the conclusion of the fourth year following such establishment, the mayor's office of operations shall conduct a review and submit a report to the mayor comparing such periods with the period preceding such establishment with regard to the department's delivery of mental health, mental retardation and alcoholism and substance abuse services, the access of consumers and their families to such services, and the administration and oversight of contracts for the delivery of such services.

§ 5. Paragraph (1) of subdivision b of section 555 of the charter, as renumbered by vote of the electors at a general election held on November 8, 1988, should be amended to read as follows:

(1) Compel the attendance of witnesses, administer oaths and compel the production of books, papers and documents in any matter or proceeding before the commissioner.

§6. Section 556 of the charter should be REPEALED and reenacted to read as follows:

§ 556. Functions, powers and duties of the department. Except as otherwise provided by law, the department shall have jurisdiction to regulate all matters affecting

health in the city of New York 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. The jurisdiction of the department shall include but not be limited to the following:

a. General functions. (1) enforce all provisions of law applicable in the area under the jurisdiction of the department for the preservation of human life, for the care, promotion and protection of health and relative to the necessary health supervision of the purity and wholesomeness of the water supply and the sources thereof;

(2) maintain an office in each borough and maintain, furnish and operate in each borough office health centers and health stations or other facilities which may be required from time to time for the preservation of health or the care of the sick;

(3) exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto, within the jurisdiction of the city and within the quarantine limits as established by law;

(4) receive and expend funds made available for public health purposes pursuant to law;

(5) arrange, with the approval of the mayor, for the rendition of services and operation of facilities by other agencies of the city;

b. Review of public health services and general public health planning.

(1) develop and submit to the mayor and council a program for the delivery of services for the mentally disabled, including construction and operation of facilities;

(2) determine the needs of the mentally disabled in the city, which determination shall include the review and evaluation of all mental hygiene services and facilities within the department's jurisdiction;

(3) engage in short-range, intermediate-range and long-range mental hygiene planning that reflects the entire array of city needs in the areas of mental health, mental retardation and developmental disabilities and alcoholism and substance abuse services within the department's jurisdiction;

(4) implement and administer an inclusive citywide planning process for the delivery of services for people with mental disabilities; and design and incorporate within

that planning process, consistent with applicable law, standards and procedures for community participation and communication with the commissioner at the borough and local community level;

(5) establish coordination and cooperation among all providers of services for the mentally disabled, coordinate the department's program with the program of the state department of mental hygiene so that there is a continuity of care among all providers of services, and seek to cooperate by mutual agreement with the state department of mental hygiene and its representatives and with institutions in such department and their representatives in pre-admission screening and in post-hospital care of persons suffering from mental disability;

(6) receive and expend funds made available for the purposes of providing mental health, mental retardation and developmental disability and alcoholism and substance abuse related services;

(7) administer, within the division of mental hygiene, the unit responsible for early intervention services pursuant to the public health law; and

(8) in accordance with section five hundred fifty-five of this chapter, determine the public health needs of the city and prepare plans and programs addressing such needs.

c. Supervision of matters affecting public health.

(1) supervise and control the registration of births, fetal deaths and deaths;

(2) supervise the reporting and control of communicable and chronic diseases and conditions hazardous to life and health; exercise control over and supervise the abatement of nuisances affecting or likely to affect the public health;

(3) make policy and plan for, monitor, evaluate and exercise general supervision over all services and facilities for the mentally disabled within the department's jurisdiction; and exercise general supervisory authority, through the promulgation of appropriate standards consistent with accepted professional practices for the care and treatment of patients within such services and facilities for the mentally disabled within the department's jurisdiction;

(4) except as otherwise provided by law, analyze and monitor hospitals, clinics, nursing homes, and homes for the aged, and analyze, evaluate, supervise and regulate

clinical laboratories, blood banks, and related facilities providing medical and health services and services ancillary thereto;

(5) to the extent necessary to carry out the provisions of this chapter, the mental hygiene law and other applicable laws and when not inconsistent with any other law, arrange for the visitation, inspection and investigation of all providers of services for the mentally disabled, by the department or otherwise;

(6) conduct such inquiries into services and facilities for the mentally disabled as may be useful in performing the functions of the department, including investigations into individual patient care, and for such purpose the department may exercise the powers set forth in section five hundred fifty-five of this chapter and shall, consistent with the provisions of the mental hygiene law, have access to otherwise confidential patient records, provided such information is requested pursuant to the functions, powers and duties conferred upon the department by law;

(7) supervise and regulate the public health aspects of water supply and sewage disposal and water pollution;

(8) supervise and regulate the public health aspects of the production, processing and distribution of milk, cream and milk products, except for such inspection, regulation and supervision of the sanitary quality of milk and cream distributed, consumed or sold within the city as performed by the New York department of agriculture and markets pursuant to section seventy-one-l of the agriculture and markets law;

(9) except as otherwise provided by law, supervise and regulate the public health aspects of the food and drug supply of the city and other businesses and activities affecting public health in the city;

(10) supervise and regulate the removal, transportation and disposal of human remains;

(11) supervise and regulate the public health aspects of ionizing radiation, the handling and disposal of radioactive wastes, and the activities within the city affecting radioactive materials, excluding special nuclear materials in quantities sufficient to form a critical mass;

(12) in furtherance of the purposes of this chapter and the mental hygiene law, make rules and regulations covering the provision of services by providers of services for the mentally disabled;

d. Promotion or provision of public health services.

(1) maintain and operate public health centers and clinics as shall be established in the department;

(2) engage in or promote health research for the purpose of improving the quality of medical and health care; in conducting such research, the department shall have the authority to conduct medical audits, to receive reports on forms prepared or prescribed by the department; such information when received by the department shall be kept confidential and used solely for the purpose of medical or scientific research or the improvement of the quality of medical care;

(3) produce, standardize and distribute certain diagnostic, preventive and therapeutic products and conduct laboratory examinations for the diagnosis, prevention and control of disease;

(4) promote or provide for public education on mental disability and the prevention and control of disease;

(5) promote or provide for programs for the prevention and control of disease and for the prevention, diagnosis, care, treatment, social and vocational rehabilitation, special education and training of the mentally disabled;

(6) promote or provide diagnostic and therapeutic services for maternity and child health, family planning, communicable disease, medical rehabilitation and other diseases and conditions affecting public health;

(7) promote or provide medical and health services for school children and the ambulant sick and needy persons of the city;

(8) promote or provide medical and health services for the inmates of prisons maintained and operated by the city;

(9) within the amounts appropriated therefor, enter into contracts for the rendition or operation of services and facilities for the mentally disabled on a per capita basis or otherwise, including contracts executed pursuant to subdivision e of section 41.19 of the mental hygiene law;

(10) within the amounts appropriated therefor, execute such programs and maintain such facilities for the mentally disabled as may be authorized under such appropriations;

(11) use the services and facilities of public or private voluntary institutions whenever practical, and encourage all providers of services to cooperate with or participate in the program of services for the mentally disabled, whether by contract or otherwise;

e. Other functions.

(1) prior to the sale, closing, abandonment of a city hospital or transfer of a city hospital to any other hospital or facility, hold a public hearing with reference to such proposed sale, closing, abandonment or transfer; publish notice of such public hearing in the City Record and in such daily newspaper or newspapers published in the city of New York as shall be selected by the commissioner, such publication to take place not less than ten days nor more than thirty days prior to the date fixed for the hearing; and adjourn such hearing from time to time, if necessary, in order to allow persons interested to attend or express their views;

(2) submit all materials required by the mental hygiene law for purposes of state reimbursement;

(3) provide for membership on such state or federally authorized committees as may be appropriate to the discharge of the department 's functions, powers and duties; and

(4) perform such other acts as may be necessary and proper to carry out the provisions of this chapter and the purposes of the mental hygiene law.

§ 7. Subdivision (b) of section 557 New York city charter, as amended by local law number 59 for the year 1996, is amended to read as follows:

(b) The commissioner with respect to the office of chief medical examiner shall exercise the powers and duties set forth in [paragraphs] paragraph one [two, three, and four] of subdivision a of section five hundred fifty-five of this chapter, but shall not interfere with the performance by the chief medical examiner or his or her office of the powers and duties prescribed by the provisions of this section or any other law.

§ 8. Subdivision (e) of section 557 of the charter is amended to read as follows:

The chief medical examiner [and all deputy chief medical examiners, associate medical examiners, assistant medical examiners, junior medical examiners and medical investigators may administer oaths and take affidavits, proofs and examinations as] or his or her designee shall have power to require the attendance and take testimony under oath of such persons as he or she may deem necessary and to require the production of books, accounts, papers and other evidence relative to any matter within the jurisdiction of the office.

§ 9. Section 568 of the city charter is REPEALED and reenacted to read as follows:

§ 568. Mental hygiene advisory board. a. (1) There shall be a mental hygiene advisory board which shall be advisory to the commissioner 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. The board shall have separate subcommittees for mental health, for mental retardation and developmental disabilities, and for alcoholism and substance abuse. The board and its subcommittees shall be constituted and their appointive members appointed and removed in the manner prescribed for a community services board by the provisions of the mental hygiene law. Pursuant to the provisions of such law, such members may be reappointed without limitation on the number of consecutive terms which they may serve.

(2) Members of the mental hygiene advisory board and its subcommittees shall serve thereon without compensation except that each member shall be allowed actual and necessary expenses to be audited in the same manner as other city charges.

(3) No person shall be ineligible for membership on the board or its subcommittees because such person holds any other public office, employment or trust, nor shall any person be made ineligible to or forfeit such person's right to any public office, employment or trust by reason of such appointment.

b. (1) Contracts for services and facilities under this chapter may be made with a public or private voluntary hospital, clinic, laboratory, health, welfare or mental hygiene

agency or other similar institution, notwithstanding that any member of the board or its subcommittees is an officer or employee of such institution or agency or is a member of the medical or consultant staff thereof.

(2) If any matter arises before the board or any of its subcommittees directly involving a public or private voluntary hospital, clinic, laboratory, health, welfare or mental hygiene agency or other similar institution of which any member of the board or such subcommittee is an officer, employee or on the medical or consultant staff thereof, that member shall participate in the deliberations of the board or of such subcommittee on the matter only insofar as to provide any information requested of such person by the other members of the board or subcommittee, and that member shall not participate further in the deliberations of the board or subcommittee on the matter after having provided the required information.

§ 10. Chapter 22 of the New York city charter should be amended by adding two new sections 569 and 570, to read as follows:

§ 569. Definitions. When used in this chapter: “mentally disabled” means those with mental illness, mental retardation, alcoholism, substance dependence or chemical dependence as these terms are defined in section 1.03 of the mental hygiene law; or any other mental illness or mental condition placed under the jurisdiction of the department by the mayor; “provider of services” means an individual, association, corporation or public or private agency which provides for the mentally disabled; “services for the mentally disabled” means examination, diagnosis, care, treatment, rehabilitation, training, education, research, preventive services, referral, residential services or domiciliary care of or for the mentally disabled, not specifically limited by any other law. Notwithstanding the foregoing, planning and programs for persons with substance dependence or chemical dependence shall be conducted by the department, and the department may act as a “local agency” to conduct substance abuse programs and seek reimbursement therefore pursuant to provisions of the mental hygiene law relating to funding for substance abuse services, as deemed appropriate by the commissioner in recognition of the programs currently administered by the New York state office of alcoholism and substance abuse services or its successor agency under article nineteen of the mental hygiene law.

§ 570. Construction clause. The provisions of this chapter relating to services for the mentally disabled shall be carried out subject to and in conjunction with the provisions of the mental hygiene law.

§11. Chapter 23 of the charter should be REPEALED.

§12. Paragraphs 1 and 3 of subdivision b of section 1403 of the New York city charter, paragraph 1 as amended by local law number 65 for the year 1996 and paragraph 3 as added by local law number 50 for the year 1991, should be amended to read as follows:

(1) The commissioner shall have charge and control over the location, construction, alteration, repair, maintenance and operation of all sewers including intercepting sewers and sewage disposal plants, and of all matters in the several boroughs relating to public sewers and drainage, and shall initiate and make all plans for drainage and shall have charge of all public and private sewers in accordance with such plans; and shall have charge of the management, care and maintenance of sewer and drainage systems therein. In addition, the commissioner shall have the authority to supervise and adopt rules regarding private sewage disposal systems, other than community private sewage disposal systems, and to prescribe civil penalties for the violation of such rules of no more than ten thousand dollars per violation, and, except as otherwise provided in section six hundred forty-three of this charter, to issue permits pursuant to such rules for the construction and maintenance of such private sewage disposal systems. With regard to community private sewage disposal systems, the commissioner shall have the authority to perform inspections, and to issue notices of violation for violations of any provisions of the New York city health code relating to private sewage disposal, which shall be served and returnable as provided by law for violations of the New York city health code, and the power to perform such other duties with regard to the supervision and regulation of such systems as may be lawfully delegated to him or her by the board of health or department of public health.

(3) Nothing in this subdivision shall be construed to limit the authority or powers of the commissioner of public health, the department of public health, or the board of health relating to the declaration or abatement of nuisances, or the enforcement of applicable public health laws or rules.

§ 13. Subdivision a of section 1404 of the New York city charter, as amended by local law number 71 for the year 1985, should amended to read as follows:

a. There shall be in the department an environmental control board consisting of the commissioner, who shall be chairman, the commissioner of sanitation, the commissioner of buildings, the commissioner of public health, the police commissioner, the fire commissioner and the commissioner of consumer affairs, all of whom shall serve on the board without compensation and all of whom shall have the power to exercise or delegate any of their functions, powers and duties as members of the board, and six persons to be appointed by the mayor, with the advice and consent of the city council, who are not otherwise employed by the city, one to be possessed of a broad general background and experience in the field of air pollution control, one with such background and experience in the field of water pollution control, one with such background and experience in the field of noise pollution control, one with such background and experience in the real estate field, one with such background and experience in the business community, and one member of the public, and who shall serve for four-year terms. Such members shall be compensated at the rate of one hundred fifty dollars per day when performing the work of the board. Within its appropriation, the board may appoint an executive director and such hearing officers, including non-salaried hearing officers and other employees as it may from time to time find necessary for the proper performance of its duties.

§ 14. Subparagraphs (a) and (e) of paragraph 15 of subdivision a of section 2903 of the New York city charter, subparagraph (a) as amended by local law number 43 for the year 1995 and subparagraph (e) as added by local law number 88 for the year 1981, should be amended to read as follows:

(a) The commissioner shall issue a special vehicle identification parking permit to a New York city resident who requires the use of a private automobile for transportation and to a non-resident who requires the use of a private automobile for transportation to a school in which such applicant is enrolled or to a place of employment, when such person has been certified by the department of public health or a provider designated by the department or the department of public health, who shall make such certification in accordance with standards and guidelines prescribed by the department or the

department of public health, as having a permanent disability seriously impairing mobility. A permit shall be issued to such person upon his or her application. A permit shall also be issued to such person upon application made on such person's behalf by a parent, spouse, guardian or other individual having legal responsibility for the administration of such person's day to day affairs. Any vehicle displaying such permit shall be used exclusively in connection with parking a vehicle in which the person to whom it has been issued is being transported or will be transported within a reasonable period of time. Such permit shall not be transferable and shall be revoked if used on behalf of any other person. Any abuse by any person to whom such permit has been issued of any privilege, benefit or consideration granted pursuant to such permit, shall be sufficient cause for revocation of said permit.

(e) Certifications by the department of public health of applications for special vehicle identification permits shall be made at those district health offices designated for such purpose by the commissioner of public health. At least one such district health office shall be designated in each borough for special vehicle identification permit certifications. Such certifications shall be available by appointment at each of said borough health offices, or an alternative location within the borough as designated by the commissioner by regulation, on a regular basis.

§15. Declaration of findings. The city of New York recognizes that services for people suffering from mental retardation and developmental disabilities are provided by programs administered within a number of different city agencies, as well as by non-governmental entities. The city of New York further recognizes the need for coordination and cooperation among city agencies and between city agencies and non-governmental entities that provide such services.

§16. Section 15 of the New York city charter is amended by adding a new subdivision d to read as follows:

(d) There shall be mental retardation and developmental disability coordination within the office of operations. In performing functions relating to such coordination, the office of operations shall be authorized to: develop methods to: (i) improve the coordination within and among city agencies that provide services to people with mental retardation or developmental disabilities, including but not limited to the department of

public health, the administration for children’s services, the human resources administration, department of youth and community development, the department of juvenile justice, and the department of employment, or the successors to such agencies, and the health and hospitals corporation and the board of education; and (ii) facilitate coordination between such agencies and non-governmental entities providing services to people with mental retardation or developmental disabilities; review state and federal programs and legislative proposals that may affect people with mental retardation or developmental disabilities and provide information and advice to the mayor regarding the impact of such programs or legislation; recommend legislative proposals or other initiatives that will benefit people with mental retardation or developmental disabilities; and perform such other duties and functions as the mayor may request to assist people with mental retardation or developmental disabilities and their family members.

- **Expanding the Board of Health**

Issue: Should the Board of Health’s membership be expanded from five to eleven members?

Relevant Charter Provision: Section 553

Discussion: The main function of the Board of Health is to promulgate the New York City Health Code, a significant body of the law that can encompass any matter within the jurisdiction of the Department of Health, and which has “the force and effect of law”[New York City Charter, Section 558]. Since 1928, the City Charter specified that the Board comprise five members. The Commissioner of Health serves as chairperson. Section 553(a) specifies that two of the five members be medical doctors with 10 years experience in “clinical medicine”, public health administration or college or university public health teaching.” The remaining two members are not required to be physicians.

In light of new and emerging issues in public health, the Commission’s staff recommends that the Board of Health be expanded from five to eleven members (including the Commissioner of Health), that the Board retain the current ratio of medical to non-medical personnel, that the terms of office be reduced from eight years to six years, and that the terms be staggered to assure continuity. 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.

The jurisdiction of the Health Department is among the most extensive and varied of all City agencies. Its scope 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 roster. A larger Board would increase the likelihood that members' expertise would extend to any public health issue that comes before the Board.

Expanding the number of Board members will provide the opportunity 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. A larger Board can also bring to bear a greater diversity of academic, clinical and community perspectives on the broad spectrum of public health problems and issues that need to be addressed.

Indeed, other statutes that describe the minimum membership of various Boards of Health (such as city, county, or district) require or authorize between 3 and 18 members. For example, the New York State Public Health Council is a 15-member body, including the State Commissioner of Health. In addition, six-year terms are more consistent with term lengths for members of Boards of Health of other jurisdictions, including Westchester County and the New York State Public Health Council. Staggered terms would provide for continuity and smooth transitions in the membership of the City's Board of Health.

Thus, an eleven-member board appointed for staggered, six-year terms would strike the right balance between state-of-the-art expertise and efficient Board performance. To achieve the highest level of expertise, non-physician members should be required to hold at least a masters degree in environmental, biological, veterinary, physical, or behavioral health or science, or in a related field, as well as possess a minimum level of experience, such as more than ten years in their respective fields. Accordingly, the Commission staff recommends this proposal.

Recommendation: The Board of Health should be expanded from five to eleven members (including the Commissioner of Health) and the current ratio of medical to non-medical personnel should be retained. Additionally, the terms of the members of the Board of Health should be reduced from eight to six years, and their terms should be staggered.

Proposed Charter Revision:

Section 1. Subdivision a of section 553 of the New York city charter is amended to read as follows:

a. There shall be in the department a board of health, the chairman of which shall be the commissioner. In addition to the chairman, the board shall consist of [four] ten members, [two] 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, public health administration or college or university public health teaching. The other [two] 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 in a related field, and shall have at least ten years experience in the field in which they hold such degree.

§ 2. Subdivision b of section 553 of the charter, as amended by local law number 25 for the year 1977, is amended to read as follows:

b. The [four] ten members other than the chairman shall serve without compensation and shall be appointed by the mayor, each for a term of [eight] six years, commencing at the expiration of the terms of the present incumbents. In case of a vacancy the mayor shall appoint a member to serve for the unexpired term.

§ 3. Section 1152 of the charter is amended by adding a new subdivision h to read as follows:

h. the amendments to subdivisions a and b of section five hundred fifty-three shall take effect immediately upon certification that the electors have approved the amendments to the charter, provided, however, that of the first ten members of the board of health appointed on or after the effective date of these amendments, three members shall serve for two years, three members shall serve for four years, and the remainder shall serve for six years, and further provided that the term of any member of the board of health serving on the date of the enactment of these amendments shall be deemed expired.

7. GOVERNMENT PURCHASING PROCEDURES

The 1999 Charter Revision Commission concluded that the City has an overly burdensome procurement process and an overly decentralized system for ensuring that City business is denied to corrupt contractors. In its final report, it set forth a number of related proposals to address these concerns. Two years later, there has yet to be any significant reform in this area. This Commission's staff has been contacted by numerous City agencies and received public comments regarding procurement issues, and it is clear that the procurement process should be reformed. The following sections discuss the staff's proposed recommendations to amend Chapter 13 of the Charter, dealing with procurement, by incorporating many of the recommendations of 1999 Commission, as well as additional recommendations. Because the City's ability to procure goods and certain services is essential to all agency operations, these recommendations are critical to the continuation of the City's progress in delivering essential services to its citizens.

A. History

The 1989 Charter Revision Commission, reacting to a series of contracting scandals, concluded that the City charter should contain further detail regarding procurement procedures. While it created a Procurement Policy Board ("PPB") to develop rules regarding City contracting, the 1989 Commission also added many specific rules of its own.

In recent years, the City's procurement system, although still unwieldy, has become more efficient and less susceptible to corruption. These improvements were largely due to the efforts of the PPB, which simplified its rules (as evidenced by a 70% reduction in the number of pages in its rule-book), piloted and then refined a new procurement method for time-sensitive purchases that can cut procurement times in half, spearheaded a "prompt-payment" program that cut the City's late-fees-per-bill by 75% and resulted in a 90% timely-payment rate, worked with its 29-member vendor advisory group to implement a neutral contract dispute resolution process that has been lauded by the contractor community, and designed a centralized integrity assessment program that has conducted reviews of approximately 750 vendors thus far in 2001.

While these are positive reforms, there is still much to do. Today, it still takes the City more than eight months on average to enter into a contract using the Request for Proposals process. Given that the City uses the RFP process to procure services that

address many pressing day-to-day needs, that kind of delay is not acceptable. The PPB has demonstrated that it is possible to reform the procurement bureaucracy by cutting red tape while implementing aggressive centralized corruption-prevention programs. Indeed, the time has never been more right than now to institutionalize that good sense in the Charter.

B. Overview: The Procurement System

The City's procurement of goods, services, and construction is governed by Chapter 13 of the Charter and the PPB rules, as well as by many provisions of State law, including the General Municipal Law ("GML"). As a result of revisions resulting from the 1989 Charter Revision Commission, the Charter's general procurement process is administered primarily by the PPB, the Mayor, and the Comptroller. The PPB adopts rules governing the process generally, the Mayor is responsible for the implementation of the procurement system, and the Comptroller provides oversight through the registration process and its audit responsibilities.

The PPB consists of five members, three of whom are appointed by the Mayor and two of whom are appointed by the Comptroller. Charter § 311(a). The PPB is given broad authority to promulgate rules governing the procurement process;³ it explicitly lacks the authority to address the award or administration of any particular contract. Charter §§ 311(b) and (f). The Charter also specifically requires the PPB to promulgate rules governing methods for soliciting bids or proposals and awarding contracts, the manner in which City agencies shall administer contracts, standards and procedures for determining whether a bidder is responsible, and procedures for the fair resolution of contract disputes. Charter § 311(b).

The Charter gives the Mayor ultimate responsibility for the procurement of goods, services, and construction through specific contracts. For example, under Charter § 317(b), the Mayor (or Deputy Mayor) has a non-delegable duty to review and approve proposed contracts worth more than two million dollars, where the proposed contractor was selected by a method other than competitive sealed bidding, competitive sealed

³ In addition, GML§ 104-b requires the City to promulgate rules to further the goals of that section. Under GML§ 104-b(1), procurements that are not required to be made by competitive sealed bidding must nonetheless be done "in a manner so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers . . . to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption."

bidding from prequalified vendors, or competitive sealed proposals. In addition, under Charter § 322, written approval of the Mayor is required prior to solicitation of bids or proposals whenever an agency determines that it should use an alternative procurement procedure for a particular procurement or type of procurement. Similarly, prior to filing for registration of a contract that has been let by other than competitive sealed bidding, the Mayor must certify that the relevant procedural requisites have been met. Charter § 327(a). Should the Comptroller object to the registration of a particular contract, the Mayor has the obligation to address the objection. Charter § 328.

As to the specific methods of procurement that may be used, the Charter contains a presumption in favor of competitive sealed bidding. Charter § 312(b)(1). Competitive sealed bidding is where sealed bids are publicly solicited and opened and a contract is awarded to the lowest responsive, responsible bidder; the only variable at issue is price. The presumption in favor of competitive sealed bidding is consistent with the mandate of GML § 103(1), which, with certain exceptions, requires that all contracts for "public work" be awarded "to the lowest responsible bidder . . . after advertisement for sealed bids." Under Charter § 312(b)(1), competitive sealed bidding must be accomplished pursuant to rules of the PPB.

The Charter permits the City to use a procurement method other than competitive sealed bidding in a "special case." Charter § 312(b)(1). A "special case" is defined as a situation "in which it is either not practicable or not advantageous to the city to use competitive sealed bidding" for any of certain enumerated reasons. Charter § 312(c)(1). These reasons include, for example, that "judgment is required in evaluating competing proposals, and it is in the best interest of the city to require a balancing of price, quality, and other factors." Charter §§ 312(c)(1)(ii), 317, and 319. Section 312(c)(1) also authorizes the PPB to define other situations that constitute special cases.

The primary criticism of the City's procurement process, discussed in more detail below, is that it takes too long for the City to enter into contracts. Typically, it takes the City approximately four months to enter into a contract through the competitive sealed bid method and just over eight months through the competitive sealed proposals method. Criticisms regarding the procurement bureaucracy come from government officials responsible for the City's procurements, the PPB, the contracting community, and academics familiar with the system.

The 1989 revisions to Charter Chapter 13 were supposed to streamline the procurement process and address the existence of opportunities for corruption.⁴ However, anecdotal evidence suggests that the process remains "awash in a sea of paper [and] plagued by inordinate delays."⁵ Furthermore, scholarly analysis has argued that overly burdensome procedural requirements intended to prevent corruption may in fact have become counterproductive, in part by producing "a dysfunctional relationship between the City and contractors who know how to exploit a labyrinthine, suspicion-ridden, and inefficient contracting system."⁶

The 1989 Charter Revision Commission also failed in its effort to provide the City with a full array of tools to combat corruption. For example, corrupt contractors have argued (albeit unsuccessfully) that the Charter limits the Mayor's and the agencies' discretion in denying them business. Although such arguments lack merit, they have resulted in needless litigation against the City.

Thus, the 1989 Charter revisions have not resulted in an efficient and cost-effective procurement process. Furthermore, the 1989 Charter revisions were internally inconsistent. Under Charter § 311, the PPB was clearly designed to have the expertise and responsibility to create the rules necessary to effectuate the goals of the Charter.⁷ But the arcane and technical procedural rules in the Charter deprive the PPB of the flexibility to use its expertise to adopt and amend rules, as experience dictates, to better meet the goals of the Charter and the needs of the City.

The following sections discuss the Commission staff's recommendations to amend the Charter's procurement chapter, many of which were proposed in 1999, and some of which are new recommendations. The proposed changes are primarily designed to achieve two goals: (1) strengthen the City's ability to identify and deny business to corrupt contractors by providing for a centralized integrity assessment function; and (2) eliminate

⁴ Frederick A. O. Schwarz, Jr. & Eric Lane, The Policy and Politics of Charter Making: The Story of New York City's 1989 Charter; Part II: The Structure and Processes of the New Government, 42 N.Y.L. Sch. L. Rev. 775, 881-882 (1998).

⁵ Id. at 881.

⁶ Frank Anechiarico & James B. Jacobs, Purging Corruption from Public Contracting: The "Solutions" are Now Part of the Problem, 40 N.Y.L. Sch. L. Rev. 143, 170 (1995).

⁷ See also Frederick A. O. Schwarz, Jr. & Eric Lane, The Policy and Politics of Charter Making: The Story of New York City's 1989 Charter; Part II: The Structure and Processes of the New Government, 42 N.Y.L. Sch. L. Rev. 775, 893-94 (1998).

from the Charter the detailed procedures regarding the mechanics of procurement that, in effect, restrict the PPB's ability to streamline the procurement process. The proposed amendments also include minor (but helpful) technical improvements to the Charter.

C. Recommendations

- **Improving the Integrity Assessment System**

Issue: Should the Charter explicitly authorize a centralized integrity review of vendors through pre-qualification and other means, clarify the City's authority to deny specific contracts to corrupt businesses by eliminating the inflexible "debarment" provision, and leave the particulars regarding the process to be followed in such instances to the Procurement Policy Board?

Relevant Charter provisions: Charter §§ 318, 320, 324 and 335.

Discussion: In 1996, a task force created by the PPB recommended that the City centralize its system for evaluating contractor integrity. The task force suggested that a centralization experiment be attempted and that legislative reform follow any successful experiment to ensure implementation of a comprehensive program. The City's subsequent centralization experiment proved successful. However, as the task force expected, some corrupt contractors erroneously asserted (albeit unsuccessfully) that provisions of the Charter precluded such centralization. Accordingly, the Charter should be amended to clarify that a centralized integrity assessment program may be implemented in accordance with the task force's unanimous recommendation. Such a program should include the following elements: (1) replacement of the Charter's rarely-used provisions regarding debarment with a provision authorizing centralized contractor assessment; and (2) revision of the Charter's vendor pre-qualification provision to authorize centralization and make pre-qualification easier to use.

The Charter clearly authorizes agencies to find corrupt contractors non-responsible, even if such a finding has been made concerning the contractor on a prior occasion, and even if the contractor has not been "debarred" under Charter § 335. It also clearly authorizes the Mayor to coordinate the contractor integrity assessment activities of the mayoral agencies. Nevertheless, some corrupt contractors have attempted to use provisions of the Charter, such as the debarment provision (§ 335), as a shield against repeated non-responsibility findings. See, e.g., Matter of DeFoe Corp. v. Chapman, N.Y.L.J. (N.Y. Sup. Ct. Apr. 9, 1999). Moreover, they have argued that the Mayor may not advise agencies regarding contractor integrity matters. To prevent such

needless litigation, the Charter provision regarding debarment should be eliminated and replaced with a provision clarifying that the Mayor may coordinate the integrity assessment activities of the mayoral agencies, and it should be left to the PPB to address such issues further through its rule-making authority.⁸

The centralized integrity initiative would also be enhanced if the Charter's provisions regarding prequalification were improved. The efficiency of governmental purchasing can be greatly enhanced by the use of prequalified lists, to the extent that such lists are authorized as an exception to GML § 103. Using such lists, vendor qualifications can be evaluated before a procurement begins, *i.e.*, before the time pressures that typically affect public purchases are felt. Moreover, where a centralized governmental authority creates lists for use by all of the governmental departments, information sharing is maximized.

Unfortunately, the Charter's provisions regarding pre-qualified lists do not achieve these benefits to the greatest possible extent. First, the Charter appears to mandate that each agency maintain a set of prequalified vendor lists. This level of direction by the Charter is inappropriate. The decision whether prequalified vendor lists should be maintained, and whether such lists should be maintained centrally or by individual agencies, belongs properly with the Mayor. Second, the Charter mandates that an agency determination to use competitive sealed bids or proposals from prequalified vendors be made in writing and be approved by the Mayor. The decision as to whether these types of procurements are ones that particularly require mayoral oversight is best left to the PPB.

The 1989 Charter Revision Commission believed that the use of prequalification, a concept new to the Charter, though not to City practice, might reduce competition – which the City now knows, from its experience since that time, it has not.⁹ It appears that the 1989 Charter Revision Commission therefore included competitive sealed bids and proposals from prequalified vendors in the category of procurements for which it

⁸ Section 328 of the Charter authorizes the Comptroller to notify the Mayor within 30 days of the date that a contract is filed for registration that “the proposed vendor has been debarred by the city in accordance with the provisions of section three hundred thirty-five.” The Commission has not proposed deleting that provision because some contractors are presently debarred pursuant to proceedings previously conducted under that original section. Going forward, however, there would be no Charter-based debarment proceedings, and the “*de facto*” debarment defense (which never had any merit in any event) would no longer be available.

⁹ See Structure and Processes, 42 N.Y.L. Sch. L. Rev. at 892.

required a "second look" by the Mayor.¹⁰ However, the 1989 Charter Revision Commission also acknowledged that one of the advantages of prequalification was that it made procurement more efficient by permitting evaluation of potential vendors' qualifications outside of a particular procurement.¹¹ This efficiency is reduced by the requirement of mayoral approval. Moreover, pre-qualification is not anti-competitive given that entry to a pre-qualified list is continuously open.

- **Increasing the Dollar Amounts for Small Purchases**

Issue: Should the Charter's small purchase provision increase the limit to a level that reflects current prices, while still allowing for future flexibility?

Relevant Charter provision: Charter § 314.

Discussion: The single most effective way to remove red tape from the procurement system is to raise the dollar threshold of the streamlined, but competitive, small purchase procurement process. Under Charter § 314, the PPB and the Council may, by concurrent action, establish dollar limits under which procurements may be made through the small purchase procurement process. Currently, the small purchase limits are \$25,000 for goods and services; \$50,000 for construction and construction-related services; and \$100,000 for information technology. See PPB Rules § 3-08(a).

The current small purchase limits are unreasonably low in light of the cost of goods, services, and construction. Procurements in excess of these limits may fairly be called "small purchases." However, the Council has so far refused to agree to increase the small purchase limit to an amount, such as \$100,000 for all procurements, that reflects reasonable costs. Indeed, legislation to raise the limit to the level approved by the PPB on June 12, 1997 has languished in the Council for the past four years. Therefore, it is necessary to specify a \$100,000 limit in the Charter. Nonetheless, as future conditions may change costs sufficiently to warrant adjusting the limit either higher or lower, the Charter should retain the power of the PPB and the Council to revise the limit by concurrent action.

It is important to remember that small purchases are still subject to competition. PPB rules mandate that, for procurements worth over \$2,500, at least five suppliers

¹⁰ See id. at 887-88; Minutes of the NYC Charter Revision Commission, May 15, 1989, at 209-12; compare Charter § 319 (no mayoral approval required for determination to use open competitive sealed proposals).

¹¹ Structure and Processes, 42 N.Y.L. Sch. L. Rev. at 892.

must be solicited at random from the appropriate small purchase bidders list and other sources of potential suppliers. PPB Rules § 3-08(c)(1)(iii). While no competition is required for procurements worth \$2,500 or less, the agency must still ensure that the price is reasonable and that purchases are distributed appropriately among qualified buyers. PPB Rules § 3-08(c)(1)(ii). However, various formal procedural requirements are not required for small purchases and, therefore, small purchases can be processed quickly and efficiently.

It takes, on average, more than eight months to complete a purchase using the competitive sealed proposals method and more than four months using the competitive sealed bid method. See Mayor's Management Report for FY 2000. According to the staff at the Mayor's Office of Contracts, a small purchase can be typically processed in about two weeks. The Commission's staff estimates that had the small purchase limit been raised to \$100,000 prior to FY 2000, 20% of all the procurements done in that fiscal year could have been treated as small purchases, thus freeing resources to address more complex and expensive procurements. Furthermore, little risk could be associated with the increase in these small purchases in that they would have represented only 0.6% of the total dollar value of the City's contracts in FY 2000.

Indeed, increasing the small purchase limit would help small City businesses, particularly those owned by women and minorities and based in the City. The City's small purchase process is inviting to bidders who have not learned how to navigate the City's procurement bureaucracy. Moreover, the City's "Bid-Match System" is tied to the small purchase system. Bid-Match is designed to encourage more participation in the procurement process by small firms and those owned by women and minorities. Under Bid-Match, when a City agency makes a small purchase, the agency must alert the Department of Business Services, which helps pair the agency with small vendors and vendors run by women or minorities. Since Bid-Match is tied to the small purchase limit, raising the limit will probably cause more of the City's small and women and minority-owned businesses to compete for City procurements. In fact, based on statistics from FY 2000, the Commission's staff estimates that increasing the small purchase limit to \$100,000 could bring an additional 737 procurements, valued at \$42.5 million, into the Bid-Match System.

Finally, it is important to note that the Commission's staff recommendation to raise the limits on small purchases to \$100,000, and no more, is consistent with Charter §

312(a), which is designed to protect the City's unionized workers from possible displacement resulting from higher dollar value contracts of *more* than \$100,000. Indeed, this Commission's staff supports the rationale underlying Charter § 312(a) to protect workers and does not propose any changes to that section.

The staff also recommends explicitly stating in the Charter that the registration requirements of Charter § 328 do not apply to small purchases. Small purchases have never been viewed as being subject to registration and, traditionally, they have in fact not been registered. It has come to the staff's attention, however, that some confusion exists on this point. Therefore, it recommends amending Charter § 328 to make clear that registration does not apply to procurements done using the small purchase process.

- **Purchases of Specific Goods**

Issue: Should the Charter permit the Department of Citywide Administrative Services to delegate the authority to purchase specific goods to the user agency?

Relevant Charter provisions: Charter §§ 329 (b), (c) and (d).

Discussion: Under Charter § 329(c), an agency may directly purchase goods in an amount not to exceed \$1,000, and may purchase goods in an amount not to exceed \$5,000 with the prior approval of the commissioner of the Department of Citywide Administrative Services ("DCAS"). These limitations do not apply to purchases by an agency under a vendor contract entered into by DCAS. Charter § 329(d) provides that the \$1,000 limit may be raised to \$5,000 by the DCAS commissioner with the approval of the Mayor. Increases in the limits above \$5,000 also require the approval of the Comptroller. The Commission's staff recommends that, at the discretion of DCAS, there be an exception for individual procurements of specific goods that are used by individual agencies.

Some specific goods are purchased for use by individual agencies, and could be more efficiently procured by the purchasing agency than by DCAS because of the agency's detailed knowledge about the product. The staff's recommendation, which permits DCAS to delegate the purchase of specific goods to an agency, would give the agency the freedom to take action in individualized cases only, and would still require it to procure common items through DCAS.

The proposal would ensure that the agency with expertise about the product's specifications and use would fully control the procurement process, and would allow DCAS to expend its resources on procurement of those more general or common items

purchased by many agencies. Such delegation would also eliminate an often time consuming step in the procurement process, thereby expediting the purchase. While the recommendation permits the delegation for specific goods regardless of cost, it does not increase dollar limits for goods DCAS is suited to purchasing, such as those that will generally be needed by more than one agency. For example, in the case of bomb defusing robots, it is unlikely that more than one or two agencies would make such a purchase, and therefore there would be no monetary gain or other benefit realized by their procurement by DCAS.

- **Removing the Charter Provisions Regarding Bid Deposit Requirements**

Issue: Should the Charter mandate specific requirements governing bid deposits?

Relevant Charter provisions: Charter §§ 311, 313(c) and (d).

Discussion: There is no reason such specific requirements should be in a short-form Charter. These types of basic procedural details are more appropriately the responsibility of the PPB. Thus, the Charter should be amended to require the PPB to promulgate these rules.

- **Removing the Charter Provision Regarding Multi-Step Sealed Proposals**

Issue: Should the Charter contain a provision allowing for "multi-step sealed proposals"?

Relevant Charter provision: Charter § 323.

Discussion: Under Charter § 323, "a preliminary request for proposals may be issued requesting the submission of unpriced offers." Submissions made in response to the request may then be used as the basis for competitive sealed bids or proposals, or competitive sealed bids or proposals from prequalified vendors. This section is completely unnecessary. While the section is aimed at providing flexibility to a procuring agency in a situation where the agency is uncertain of the best approach to take regarding a particular procurement, the Charter already contains provisions that would allow the agency to learn and act on any information it could get from the Section 323 mechanism. Charter §§ 319 and 320 (Competitive Sealed Proposals and Competitive Sealed Proposals from Prequalified Vendors) already allow the agency to negotiate with responsible offerors who submit proposals. Thus, there is no need for the section 323 mechanism of a second solicitation of bids or proposals following the

submission of the unpriced proposals. Furthermore, the City's experience since this provision was adopted in 1989 indicates that it is unnecessary.

- **The Public Hearing Requirement**

Issue: Should the Charter provision related to public hearings be amended to reduce delays in contracting while ensuring public participation?

Relevant Charter provision: Charter § 326.

Discussion: The Charter's public hearing requirement was intended to provide a forum for purchasing agencies to receive the public's input on certain proposed contract awards greater than \$100,000. Public hearings are rarely attended, however, and attendees seldom offer any public comment. Therefore, the Commission's staff recommends raising the threshold level to \$500,000.

Statistics for Fiscal Year ("FY") 2001 make a compelling case for raising the threshold for public hearings while still providing a means for public participation. In FY 2001, the City conducted hearings for 1,172 contracts, 444 of which were for contracts valued between \$100,000 and \$500,000. Of these 1,172 contracts, the public commented on 200 of them, and only 16 of the contracts for which comments were received had a value between \$100,000 and \$500,000. Thus, had the hearing threshold been \$500,000 in FY 2001, instead of \$100,000, 444 contracts could have been processed in less time. A higher threshold would therefore reduce delays in the procurement process on those contracts that rarely receive public comment, but would preserve the public's ability to comment at a public hearing on higher dollar value awards.

Nonetheless, the Commission's staff believes that the opportunity for public comment is important for all contracts with values between \$100,000 and \$500,000. Thus, the Commission's staff recommendation would provide for public participation on such contracts, even with the increased threshold, by providing for written public comment. Indeed, because of the relative ease of submitting written comments, the Commission's staff believes that public participation in the contract process might be enhanced, while at the same time agencies would be able to maximize resources that are currently devoted to often ineffective public hearings.

- **Streamlining the Registration Process**

Issue: Should the Charter make explicit that if the Comptroller fails to act on a contract within 30 days of the date that the contract is filed with the Comptroller, or if the Mayor overrides the Comptroller's objection, the contract is automatically registered?

Relevant Charter Provisions: Charter §§ 93(p) and 328

Discussion: Charter §§ 93 and 328 give the Comptroller certain limited powers in connection with the registration of contracts. Specifically, a contract may not be implemented until it is registered by the Comptroller. The Charter requires that the Comptroller shall register a contract within 30 days of it being filed. The Comptroller may, however, refuse to register the contract because he has information indicating that: (i) there are insufficient appropriated funds to pay the estimated cost of the contract; (ii) a certification by the Mayor (regarding certain procedural requirements) or by Corporation Counsel (regarding the legal authority of the agency to award the contract) has not been made; or (iii) the proposed vendor has been debarred. In addition, when the Comptroller has reason to believe that there was possible corruption in the letting of the contract or that the proposed contractor is involved in corrupt activity, the Comptroller may object to the registration of the contract in writing to the Mayor. After responding to the objections, the Mayor may require registration despite the Comptroller's objections.

Historically, Comptrollers have used their registration function to interject themselves into policy questions in a manner that had never been intended. The 1975 Charter Revision Commission attempted to resolve this problem by requiring registration within 30 days. The problem continued to exist after the 1975 charter revision, and the 1989 Charter Revision Commission chose to revisit the issue in order to clarify the Comptroller's limited role. The compromise reached by the 1989 Charter Revision Commission was for the Comptroller's role to remain primarily ministerial (checking for sufficient funds, the appropriate certifications, and whether the proposed vendor has been debarred), with discretion limited to simply raising the possibility of corruption. Structure and Processes, 42 N.Y.L. Sch. L. Rev. at 895-96. This compromise (as currently set forth in the Charter) involved a "limited role for the comptroller," and "kept the policy goal of mayoral accountability intact." Id.

Nonetheless, problems continued following the 1989 Charter revision. In light of these continuing problems, the 1999 Charter Revision Commission studied the issue and found that the language of the Charter clearly prohibited the abuses taking place. Because the Comptroller continued to exceed his authority in this regard, the 1999 Commission recommended further study to determine whether the Charter should be revised to further limit or eliminate the Comptroller's contract registration role. The Commission was vindicated the following year when, in October 2000, the Appellate Division, First Department, ruled in favor of the Mayor in Giuliani v. Hevesi, 715 N.Y.S.2d 12 (1st Dept. 2000).

In that case, the comptroller refused to register two welfare-to-work contracts on the grounds of corruption, despite the fact that the Mayor had lawfully overridden the Comptroller's objections, thereby obligating him to register the contract within ten days of his receipt of the Mayor's response. Not only did the court find no evidence of corruption, but it also held that once the Mayor overrode the Comptroller's objections, the Charter imposed a mandatory duty upon the Comptroller to register the contracts and deprived him of any further right to challenge it. Despite this court ruling, disagreements persist as to contract registration obligations. An amendment to provide for automatic registration of contracts is therefore necessary to give a clear Charter mandate concerning the registration of contracts.

Accordingly, the Commission's staff recommends that the Charter be amended to provide that if the Comptroller fails to act on a contract within thirty days of the date that the contract is filed for registration, the contract be deemed registered. Furthermore, registration of contracts in city data bases should occur where the Comptroller fails to act within the required times.

Recommendation: The Charter should be amended to explicitly authorize a centralized integrity review of vendors through pre-qualification and other means, and clarify the City's authority to deny specific contracts to corrupt businesses by eliminating the inflexible "debarment" provision and leaving the particulars to the Procurement Policy Board regarding the process to be followed in such instances. It should also be amended to streamline the procurement process by raising the small purchase limit to \$100,000, permitting DCAS to delegate the purchase of specific goods to purchasing agencies, eliminating detailed requirements concerning bid deposits and multi-step sealed proposals, updating the public hearing requirement, and permitting automatic registration of contracts.

Proposed Charter Revision:

Section 1. Subdivision p of section 93 of the New York city charter is amended as follows:

p. [No contract or agreement executed pursuant to this charter or other law shall be implemented until (1) a copy has been filed with the comptroller and (2) the comptroller has registered it, in accordance with] The comptroller shall register contracts and agreements in accordance with sections three hundred twenty-eight and three hundred seventy-five of the charter.

§ 2. Subdivision b of section 311 of the New York city charter is amended to read as follows:

b. The board shall promulgate rules as required by this chapter, including rules establishing:

1. the methods for soliciting bids for proposals and awarding contracts, consistent with the provisions of this chapter;

2. the manner in which agencies shall administer contracts and oversee the performance of contracts and contractors;

3. standards and procedures to be used in determining whether bidders are responsible;

4. the circumstances under which procurement may be used for the provision of technical, consultant or personal services, which shall include but not be limited to, circumstances where the use of procurement is (a) desirable to develop, maintain or strengthen the relationships between nonprofit and charitable organizations and the communities where the services are to be provided, (b) cost-effective, or (c) necessary to (i) obtain special expertise (ii) obtain personnel or expertise not available in the agency, (iii) to provide a service not needed on a long-term basis, (iv) accomplish work within a limited amount of time, or (v) avoid a conflict of interest;

5. the form and content of the files which agencies are required to maintain pursuant to section three hundred thirty-four and such other contract records as the board deems necessary and appropriate;

6. the time schedules within which city officials shall be required to take the actions required by this chapter, sections thirteen hundred four and thirteen hundred five, or by any rule issued pursuant thereto, in order for contracts to be entered into, registered and otherwise approved, and recommended time schedules within which city officials should take

action pursuant to any other provision of law or rule regarding individual contracts. The promulgation of rules defining time schedules for actions by the division of economic financial opportunity of the department of business services and the division of labor services of such department shall require the approval of each division, as such rule pertain to the actions required of such divisions, prior to the adoption of such rules by the procurement policy board;

7. such requirements for bid deposits as are necessary and practicable;
8. procedures for the fair and equitable resolution of contract disputes; and
- [8.] 9. such other rules as required by this chapter.

§ 3. Subdivisions c and d of section 313 of the New York city charter are REPEALED:

[c. No bid shall be valid unless accompanied by a deposit in the amount and manner set forth and specified in the proposal; provided, however, that the procurement policy board shall establish such requirements for bid deposits as are necessary and practicable, and, pursuant to rules and standards, may waive the bid deposit requirement for specific classes of purchase or types of transactions. Upon the award of the contract the deposits of unsuccessful bidders shall be returned to them, and the deposit of the successful bidder shall be returned upon execution of the contract and furnishing of the required security.

d. Every invitation for bids shall contain a provision that in the event of the failure of the bidder to execute the contract and furnish the required security within ten days after notice of the award of the contract, the deposit or so much thereof as shall be applicable to the amount of the award made shall be retained by the city, and the bidder shall be liable for and shall agree to pay on demand the difference between the price bid and the price for which such contract shall be subsequently relet, including the cost of such reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid.]

§4. Section 314 of the New York city charter is amended to read as follows:

§ 314. Small Purchases. Notwithstanding any other provision of this charter, the [procurement policy board and the council may, by concurrent action, establish] dollar [limits] limit for procurement of goods, services, or construction [or construction-related services] that may be made without competition or without public advertisement shall be one hundred thousand dollars. The procurement policy board and the council may, by concurrent action, revise this dollar limit. Awards pursuant to this section shall be made in accordance with rules of the procurement policy board.

§5. Subdivision a of section 317 of the New York city charter is amended to read as follows:

a. If, in accordance with section three hundred twelve, it is determined [an agency determines] that the use of competitive sealed bidding is not practicable or not advantageous to the city, [the agency shall select] the most competitive alternative method of procurement provided for by sections three hundred eighteen through three hundred twenty-two which is appropriate under the circumstance shall be used. [Each agency contract file shall contain documentation of such determination and of the basis upon which each contract is awarded, as is required by the procurement policy board.]

§ 6. Section 318 of the New York city charter should be amended as follows:

§ 318. Competitive sealed bids from prequalified vendors. In accordance with section three hundred seventeen, bids may be solicited from vendors who have been pre-qualified for the provision of a good, service or construction pursuant to section three hundred twenty-four by mailing notice to each pre-qualified vendor or, if special circumstances require, to a selected list of pre-qualified vendors. Award of the contract shall be made in accordance with the provisions of section three hundred thirteen of this chapter. [A determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency, and approved by the mayor.]

§ 7. Section 320 of the New York city charter is amended as follows:

§ 320. Competitive sealed proposals from prequalified vendors. In accordance with section three hundred seventeen, proposals may be solicited from vendors who have been pre-qualified for the provision of a good, service or construction pursuant to section three hundred twenty-four by soliciting proposals from [mailing notice to] each pre-qualified vendor or, if special circumstances require, [to] a selected list of pre-qualified vendors. Award of the contract shall be made in accordance with the provisions of section three hundred nineteen. [A determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency, and approved by the mayor.]

§ 8. Section 323 of the New York City charter is REPEALED.

§ 9. Subdivision a of section 324 of the New York city charter is be amended as follows:

a. [Agencies shall] The mayor and any agency designated by the mayor may maintain lists of pre-qualified vendors [and entry]. Entry into a pre-qualified group shall be continuously available. Prospective vendors may be pre-qualified as contractors for the provision of particular

types of goods, services and construction, in accordance with general criteria established by rule of the procurement policy board which may include, but shall not be limited to, the experience, past performance, ability to undertake work, financial capability, responsibility, and reliability of prospective bidders[, and which may be supplemented by criteria established by rule of the agency for the pre-qualification of vendors for particular types of goods, services or construction or by criteria published in the City Record by the agency prior to the pre-qualification of vendors for a particular procurement]. Such pre-qualification may be by categories designated by size and other factors.

§10. Subdivision a of section 326 of the New York city charter is amended to read as follows:

§ 326. Public hearings on contract awards. a. Prior to entering into any contract for goods, services or construction to be awarded by other than the competitive sealed bidding or competitive sealed bids from prequalified vendors, the value of which exceeds [one] five hundred thousand dollars, the [head or deputy head of the] agency shall upon reasonable public notice conduct a public hearing to receive testimony regarding the proposed contract. Prior to entering into any such contract the value of which exceeds one hundred thousand dollars but does not exceed five hundred thousand dollars, the agency shall upon reasonable notice to the public provide the public an opportunity to offer written comment regarding the proposed contract. The procurement policy board may by rule establish monetary thresholds, other than those set forth in this section, to reflect changes in the consumer price index for the metropolitan New York area published by the United States bureau of labor statistics. The procurement policy board may by rule exempt from [this] these public hearing and comment [requirement] requirements contracts to be let which do not differ materially in terms and conditions, as defined by the board, from contracts currently held by the city where the parties to such contracts are the same, provided that under no circumstances may such exemptions apply to any contract in value exceeding ten million dollars.

§11. Section 328 of the New York city charter should be amended as follows:

§328. Registration of contracts [by the comptroller].

a. No contract or agreement executed pursuant to this charter or other law shall be implemented until it has been registered in accordance with this section. If a copy of a contract is filed with the comptroller, the comptroller shall, within thirty days of such filing, either register the contract, file with the mayor a certificate of refusal to register pursuant to subdivision b of this section, or file with the mayor an objection pursuant to subdivision c of this section. If the

comptroller fails to take one of these actions within thirty days of the date that the contract is filed with the comptroller, the contract shall be deemed registered. [(1) a copy has been filed with the comptroller and (2) either the comptroller has registered it or thirty days have elapsed from the date of filing, whichever is sooner, unless an objection has been filed pursuant to subdivision c of this section, or the comptroller has grounds for not registering the contract under subdivision b of this section.]

b. The comptroller may, within thirty days of the date of filing of the contract with the comptroller's office, file with the mayor a certificate of refusal to register, if [Subject to the provisions of subdivision c of this section, the comptroller shall register a contract within thirty days unless] the comptroller has information indicating that:

i. there remains no unexpended and unapplied balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as certified by the officer making the same;

ii. that a certification required by section three hundred twenty-seven of this chapter has not been made; or

iii. the proposed vendor has been debarred by the city or otherwise found non-responsible in accordance with the provisions of section three hundred thirty-five.

Such certificate shall be signed by the comptroller and delivered to the mayor within such thirty day period. The comptroller may not delegate the authority to file a certificate pursuant to this section to any body or official other than a deputy comptroller.

c. The comptroller may, within thirty days of the date of filing of the contract with the comptroller's office, object in writing to the registration of the contract, if in the comptroller's judgment there is sufficient reason to believe that there is possible corruption in the letting of the contract or that the proposed contractor is involved in corrupt activity. Such objection shall be signed by the comptroller and delivered within such thirty day period to the mayor setting forth in detail the grounds for the comptroller's determination. The comptroller may not delegate the authority to file an objection pursuant to this section to any body or official other than a deputy comptroller. After the mayor has responded to the comptroller's objections in writing, indicating (i) the corrective actions if any, that have been taken or will be taken in response to the comptroller's objections, or (ii) the reasons why the mayor disagrees with the comptroller's objections, the mayor may require registration of the contract despite the comptroller's objections. Such response by the mayor shall not serve as the basis for further objection by the

comptroller, and the comptroller shall register the contract within ten days of receipt of the mayor's response. If the comptroller fails to do so, the contract shall be deemed registered.

d. Any city computer system concerning the registration of contracts shall provide that, once thirty days elapse from the date that a contract was filed with the comptroller, as indicated in the system by the mayor or agency, the contract shall be automatically registered, unless the comptroller has indicated in the system within that time period either that the contract has been registered, that a certificate of refusal to register has been filed pursuant to subdivision b of this section, or that an objection has been filed pursuant to subdivision c of this section, or unless the mayor or agency has withdrawn the contract from the comptroller. In addition, such computer system shall provide that, once ten days elapse from the date that the mayor requires the contract to be registered notwithstanding the comptroller's objection under subdivision c of this section, as indicated in the system by the mayor, the contract shall be automatically registered, unless the comptroller has indicated in the system within that time period that the contract has been registered, or unless the mayor has withdrawn the contract from the comptroller.

[d.]e. The requirements of this section shall not apply to

(1) an emergency contract awarded pursuant to section three hundred fifteen or to an accelerated procurement as defined under section three hundred twenty-six, provided that the agency shall, as soon as is practicable, submit any such contract to the comptroller for an audit of the procedures and basis for the determination of the need for an emergency or accelerated procurement[,or];

(2) a contract for an amount that does not exceed the dollar limit set forth in section three hundred fourteen, as revised by the procurement policy board and the council pursuant to that section; or

(3) a contract awarded pursuant to this chapter for the provision of goods, services or construction that is not to be paid for out of the city treasury or out of moneys under the control of the city, provided that the board of the entity awarding such a contract shall within ten days of awarding contract, file a copy of such contract and any related materials specified by the mayor, with the mayor or the mayor's designee for purposes of section three hundred thirty-four of this charter.

§ 12. Section 329 of the New York city charter is amended by adding a new subdivision e to read as follows:

e. A specific procurement of a specific good may be delegated by the commissioner of citywide administrative services to any agency for direct purchase by such agency, and shall not be subject to the provisions of subdivisions b, c or d of this section.

§ 13. Section 335 of the New York city charter is REPEALED and a new section 335 is added to read as follows:

§ 335. Centralized evaluation of contractor integrity, performance, and capability. The mayor may evaluate the integrity, performance, and capability of entities that contract with the city, are seeking to contract with the city, or may seek to contract with the city. The mayor may designate one or more agencies to participate in such efforts. The evaluations of the mayor and any agency designated by the mayor may include conclusions regarding whether the entity should be considered a responsible contractor. The mayor and any agency designated by the mayor may make such evaluations and conclusions available to agencies and the public through a centralized data base.

8. SAFEGUARDING GOVERNMENT INTEGRITY

- **Reforming the City's Conflicts of Interest Rules**

Issue: Should the Charter be amended to enhance its conflicts of interest rules?

Relevant Charter Provision: Chapter 68.

Discussion: The Charter establishes the Conflicts of Interest Board (“the Board”) as the watchdog of City government. The Board is responsible for enforcing the City’s Conflicts of Interest Law, the statute that governs appropriate conduct for public servants and elected officials and also issues advisory opinions on matters that may involve potential ethical conflicts. In addition, the Board receives and reviews financial disclosure reports for certain City employees to guard against conflicts of interest and corruption.

Over the past eight years, the City has made tremendous progress in improving honesty and integrity in City government. Indeed, the Board has played an important role in this accomplishment. Given the crucial need to ensure that the City’s elected officials and other powerful officers continue to maintain high standards in carrying out their public duties, the Commission’s staff believes that the Charter should be amended to augment the Board’s powers and to provide for additional safeguards against corruption and appearances of impropriety. The Commission’s staff recommends that the Charter be amended to grant the Board the authority to conduct independent investigations of allegations of conflicts of interest and impropriety, and that the Board be empowered to issue subpoenas in connection with its investigations. Indeed, the authority to conduct investigations and issue subpoenas are common for bodies similar to the Board around the country, including the Securities and Exchange Commission, the Pennsylvania Ethics Commission and the Massachusetts Ethics Commission.

To foster a more open government, the Commission staff also recommends that the Charter be amended to permit open proceedings of the Board, but only once a petition is served and at the discretion of the Board. Public enforcement informs the public, public servants, the media, and complainants that a matter is being pursued. Open proceedings would also serve an educational function by alerting City employees to the requirements of Chapter 68 and the enforcement power and actions of the Board. Failure to keep the public and complainants informed of the progress of certain enforcement matters discourages complainants and has generated some cynicism from the public and City employees about the efficacy of Chapter 68. For the same reasons, complainants should be notified of the disposition of their complaints.

This amendment would make the City's provisions similar to those at the State Ethics Commission where notices of reasonable cause are public, and hearings are public at the option of the Commission. See Executive Law § 94(17). The State Ethics Commission's notices of reasonable cause are analogous to the Board's petitions. The Board would still be permitted to close the proceedings, including upon application of the respondent.

The Commission's staff also believes that each City agency should take effective steps to prevent corruption and conflicts. To that end, the staff recommends that the Charter be amended to explicitly permit City agencies to adopt their own conflicts of interest standards in consultation with the Board. Because of the sensitive nature of some agencies' missions, these agency-specific rules may need to be more stringent than the Charter's general provisions. Agency conflicts rules would provide employees with direct, work-related guidance and would help to reinforce the need for public servants to abide by a strict ethics code.

The Charter should also be amended to require conflicts training for all public servants. The Board would work in concert with individual agencies to create appropriate programs to educate public officers as to their duties and responsibilities under the law. Current Charter provisions require the Board to train City employees to understand the Conflicts of Interest Law. Requiring the agencies and the Board to collaborate on mandatory training programs would foster the Board's Charter mission and help employees to better understand the rules under which they work.

Finally, the Commission's staff recommends that the Charter provisions governing salary increases for elected officials be amended. The City Council currently has the power to adopt, and the Mayor to enact, local laws that increase their salaries, and the salaries of other elected officials, whenever they wish and in whatever amount they choose. These increases in salary can be made effective not only immediately, but also retroactively. Any such salary increases can create the appearance that the elected officials are acting out of self-interest, against the best interests of the public. It is for this reason that, under the U.S. Constitution, salary changes for members of Congress and the President cannot take effect until they have been re-elected to another term of office. Indeed, these Constitutional requirements create an effective check against an appearance of impropriety or abuse of power. Therefore, the Commission's staff recommends that any future appearances of impropriety be averted by amending the Charter to provide that any elected official, who is

holding an office when a local law is passed to increase the salary of that office, receive the salary increase only after he or she is re-elected to serve another term.

Recommendation: Chapter 68 of the Charter should be amended to strengthen the investigative and enforcement powers, and training functions, of the Conflicts of Interest Board. In addition, salary increases for elected officials should take effect only at the start of an official's next term. Together, these Charter changes would better preserve the integrity of City government.

Proposed Charter Revision:

Section 1. Section 2600 of the New York city charter, as added by a vote of the electors on November 8, 1988, is amended to read as follows:

§ 2600. Preamble. Public service is a public trust. These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency. City agencies may adopt additional conflicts of interest standards that are stricter than those contained in this chapter. Such agencies may consult the board in the adoption of any such standards.

§ 2. Section 2602 of the New York city charter, as amended by vote of the electors at a general election held on November 7, 1989, is amended to read as follows:

§ 2602. Conflicts of interest board. a. There shall be a conflicts of interest board consisting of five members, appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair.

b. Members of the board shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or [appear] for compensation represent any person or entity as a lobbyist before the city.

c. Each member of the board shall serve for a term of six years; provided, however, that of the three members first appointed, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall by appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for

a term to expire on March thirty-first, nineteen hundred ninety-four. If the mayor has not submitted to the council a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed. No member shall serve for more than two consecutive six-year terms. [The three initial nominations by the mayor shall be made by the first day of February, nineteen hundred eighty-nine and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.]

d. Members of the board shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the mayor made to the council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed.

f. Members of the board may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint [a counsel] an executive director to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the [counsel] executive director shall be defined in writing, provided that neither the [counsel] executive director, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

§ 3. Paragraph 2 of subdivision b of section 2603 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended to read as follows:

2. Agencies, within existing units of appropriation for training, shall provide public servants with training, as may be provided by the board, and written information, as shall be provided by the board, concerning the provisions of this chapter. The board shall [provide training to all individuals who become public servants to inform them of the provisions of this chapter, shall assist agencies] promulgate rules in consultation with city agencies detailing provisions for assisting such agencies in conducting ongoing training programs[, and shall make information concerning this chapter available and known to all public servants] and disseminating information. The corporation counsel shall review all training materials and written information to be provided to any agency by the board. On or before the tenth day after an individual becomes a public servant, such public servant must [file] sign a written statement [with the board], which shall be maintained in his or her personnel file, that such public servant has read and shall conform with the provisions of this chapter.

§ 4. Paragraph 2 of subdivision c of section 2603 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended to read as follows:

2. [Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant.] A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the public servant.

§ 5. Paragraph 4 of subdivision c of section 2603 of the New York city charter, as amended by local law number 95 for the year 1989, is amended as follows:

4. [Not later than the first day of September, nineteen hundred ninety the board shall initiate a rulemaking to adopt, as interpretive of the provisions of this chapter,] The board may adopt any advisory opinions of the board of ethics constituted pursuant to chapter sixty-eight of the charter heretofore in effect, which the board determines to be consistent with and to have interpretive value in construing the provisions of this chapter.

§ 6. Paragraph 2 of subdivision e of section 2603 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended to read as follows:

2. Whenever a written complaint is received by the board, it shall:

(a) dismiss the complaint if it determines that no further action is required by the board;

or

(b) refer the complaint to the commissioner of investigation if further investigation by the department of investigation is required for the board to determine what action is appropriate; or

(c) make an initial determination that there is probable cause to believe that a public servant has violated a provision of this chapter; or

(d) refer an alleged violation of this chapter to the head of the agency served by the public servant, if the board deems the violation to be minor or if related disciplinary charges are pending against the public servant, in which event the agency shall consult with the board before issuing a final decision; or

(e) conduct an investigation; or

(f) refer the complaint to a law enforcement agency.

§ 7. Subdivision f of section 2603 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended to read as follows:

f. Investigations. 1. The board shall have the power to conduct or direct the department of investigation to conduct an investigation of any matter related to the board's responsibilities under this chapter. The commissioner of investigation shall, within a reasonable time, investigate any such matter and submit a confidential written report of factual findings to the board. For the purpose of ascertaining facts in connection with any investigation authorized by this chapter and upon the recommendation of the executive director of the board, any member of the board shall exercise the board's full power to compel the attendance of witnesses, administer oaths and compel the production of books, papers and documents in any matter or proceeding before the board. Each member of the board or any agent or employee of the board duly designated by the board in writing for such purposes may administer oaths or affirmations, and examine such persons as he or she may deem necessary, examine witnesses in a public or private hearing, receive evidence and preside at or conduct any such investigation.

2. The commissioner of investigation shall make a confidential report to the board concerning the results of all investigations which involve or may involve violations of the

provisions of this chapter, whether or not such investigations were made at the request of the board.

§ 8. Subdivision g of section 2603 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended to read as follow:

g. Referral of matters within the board's jurisdiction. [1. A public servant or supervisory official of such public servant may request the board to review and make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.] [2] 1. Whenever an agency receives a complaint alleging a violation of this chapter or determines that a violation of this chapter may have occurred, it shall refer such matter to the board. Such referral shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

[3] 2. For the purposes of this subdivision, public servant includes a former public servant, and a supervisory official includes a supervisory official who supervised a former public servant.

§ 9. Subdivision h of section 2603 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended to read as follows:

h. Hearings. 1. If the board makes an initial determination, based on a complaint, investigation or other information available to the board, that there is probable cause to believe that the public servant has violated a provision of this chapter, the board shall notify the public servant of its determination in writing. This notification shall be confidential and shall not be public. The notice shall contain a statement of the facts upon which the board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The board shall also inform the public servant of the board's procedural rules. Such public servant shall have a reasonable time to respond, either orally to board staff or in writing to the board, and shall have the right to be represented by counsel or any other person.

2. If, after receipt of the public servant's response or upon the failure of the public servant to respond within the time permitted by rule of the board, the board determines that there is no probable cause to believe that a violation has occurred, the board shall dismiss the matter and inform the public servant and the complainant, if any, in writing of its decision. If, after the consideration of the response by the public servant or the expiration of the time permitted by rule of the board for the public servant to respond, the board determines there remains probable cause to believe that a violation of the provisions of this chapter has occurred,

the board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred, or, in the discretion of the board, shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings, provided that when such a matter is referred to any agency, the agency shall consult with the board before issuing a final decision. Any notification to the public servant that the board has determined that there remains probable cause to believe that a violation of the provisions of this chapter has occurred shall, upon expiration of the time set by rule of the board, be public, except as, and to the extent, otherwise expressly provided by the board in its discretion, including upon application by the public servant, in the manner and time specified by rule of the board. Any hearing conducted by the board, or at the direction of the board pursuant to this paragraph, shall be open to the public, except as, and to the extent, otherwise expressly provided by the board in its discretion, including upon application of the public servant, in the manner and time specified by rule of the board.

3. If the board determines, after a hearing or the opportunity for a hearing, that a public servant has not violated any of the provisions of this chapter, it shall issue an order to that effect. If the board determines, after a hearing or the opportunity for a hearing, that a public servant has violated provisions of this chapter, it shall, after consultation with the head of the agency served or formerly served by the public servant, or in the case of an agency head, with the mayor, issue an order either imposing such penalties provided for by this chapter as it deems appropriate, or recommending such penalties to the head of the agency served or formerly served by the public servant, or in the case of an agency head, to the mayor; provided, however, that the board shall not impose penalties against members of the council, or public servants employed by the council or by members of the council, but may recommend to the council such penalties as it deems appropriate. [The] An order determining that a violation occurred shall include findings of fact and conclusions of law. When a penalty is recommended, the head of the agency or the mayor, in the case of an agency head, or the council shall report to the board what action was taken. Orders issued pursuant to this paragraph, whether or not they determine that a violation of this chapter occurred, shall be public.

4. [Hearings of the board shall not be public unless requested by the public servant. The order and the board's findings and conclusions shall be made public.]

5.] The board shall maintain [an] a public index of all persons found to be in violation of this chapter, by name, office and date of order. [The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.]

6] 5. Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is otherwise authorized to do so; provided, however, that such action by the appointing officer shall not preclude the board from exercising its powers and duties under this chapter with respect to the actions of any such public servant. Nothing contained in this section shall prohibit the board from referring any matter to a law enforcement agency at any time.

[7] 6. For the purposes of this subdivision, the term public servant shall include a former public servant.

§ 10. Subdivision k of section 2603 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended to read as follows:

k. Confidentiality. Except as otherwise provided in this chapter, the records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny. The board may, but need not, release such documents if their confidentiality is waived by the public servant. Nothing contained in this section shall prohibit the board from releasing records, reports, memoranda or files of the board to a law enforcement agency pursuant to subpoena.

§ 11. Section 26 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended by adding a new subdivision d to read as follows:

d. Any local law that provides for an increase in salary for any elected office may take effect immediately, provided, however, that an elected official holding an office, at the time any such local law is enacted, shall not receive an increase in salary until before the first day of his or her next term of office, following the vote of the electors at a general election.

9. REFORMING THE CITY'S BUILDING INSPECTIONS

- **Empowering the Fire Department to Oversee Building Inspections**

Issue: Should the inspection and enforcement functions of the Department of Buildings be established within the Fire Department?

Relevant Charter Provision: Chapters 19 and 26.

Discussion: During the past two decades, corruption scandals involving employees at the Department of Buildings (“DOB”) have caused widespread concern that the integrity of DOB’s function to ensure public safety by regulating construction and administering a range of local and State codes and statutes related to construction activity has been compromised and the public’s safety put at risk. In response to these concerns, the Administration convened a “Task Force Examining Operations of the Department of Buildings” in September 2000. The Task Force published a final report of its findings and recommendations for reform in April 2001.

The report made clear that, because DOB’s operations affect the safety, viability and cost of both public and private development city-wide, major reengineering and operational reform were essential in order to improve service delivery and increase public confidence in DOB. Areas that were identified as being in need of immediate reform were those of construction and safety inspections and enforcement. To achieve the reform, the Task Force recommended that the New York Fire Department (“FDNY”) be given the same jurisdiction as DOB over those functions.

The reasoning behind this recommendation is that concurrent jurisdiction would enable the City to focus the resources and expertise of FDNY on the objectives of significantly improving the management, accountability, efficiency and emergency responsiveness with respect to inspections of buildings, while reducing the potential for corruption. FDNY has better technology, oversight of personnel and anti-corruption training than DOB and this better organization would thus result in more efficient and effective scheduling of inspections. Enforcement functions would also be shared with FDNY. This would help to ensure the improvement of the inspection and enforcement functions that are not operating in a coordinated manner under DOB’s current organizational structure. Finally, the reform would better enable DOB to focus on its core functions of plan review, permit issuance and licensing. Indeed, in the months since the Task Force issued its report, the Administration

has worked to implement the Task Force's recommendations by having legislation introduced in the City Council, and by assigning DOB staff to work at FDNY as part of a joint task force for inspections and enforcement. Although the Council has refused to act on the Administration's proposal, the work of the DOB-FDNY joint task force has already made strides in improving inspections and enforcement efforts and in deterring corrupt activity.

The Commission's staff believes these positive changes should be made permanent by amending the Charter to grant FDNY concurrent jurisdiction encompassing, but not limited to, Administrative Code provisions governing building construction, the Building Code, and the Electrical Code. The concurrent jurisdiction would also include the jurisdiction exercised by DOB pursuant to the existing Zoning Resolution, the Multiple Dwelling Law, the Labor Law and other applicable laws. However, DOB would retain exclusive jurisdiction over the review and approval of plans, the acceptance of materials, assemblies, forms and methods of construction exercised under the Administrative Code. DOB would also retain exclusive jurisdiction over the acceptance of service equipment, the issuance of permits and certificates of occupancy, and the issuance and administration of licenses. FDNY's jurisdiction would not extend to provisions of the Electrical Code relating to the approval of applications for certificates of electrical inspection, the issuance of temporary or final certificates of electrical inspection or the issuance of permits, nor would FDNY have jurisdiction to appoint an advisory board relating to electrical appliances and materials. Thus, those functions under the Electrical Code would remain exclusively within DOB's jurisdiction.

The Commission's staff also believes that other recommendations for reforming DOB in the proposed Charter revision, including an amendment to the criteria used by DOB for hiring building inspectors, an amendment requiring that property owners notify the City when they obtain title to ensure safety and accountability in inspections, and a clarification of the powers of buildings inspection officials to inspect properties will facilitate the goal of effective enforcement.

Recommendation: The Fire Department should be given jurisdiction over the inspection and enforcement functions currently performed by the Department of Buildings.

Proposed Charter Revision:

Section 1. Section 487 of the New York city charter is amended by adding a new subdivision g to read as follows:

g. The commissioner shall have jurisdiction that is concurrent with such jurisdiction as is conferred by section six hundred forty-three of this charter on the commissioner of buildings to enforce, with respect to buildings and structures, the provisions of subchapters one and three of chapter one of title twenty-six and chapters one and three of title twenty-seven of the administrative code of the city of New York, the zoning resolution of the city of New York, the multiple dwelling law, the labor law and other laws, rules and regulations, except that the commissioner shall not have jurisdiction to enforce any provisions of such code, zoning resolution, multiple dwelling law, labor law or other laws, rules or regulations relating to the approval of plans, acceptance of materials, assemblies, forms and methods of construction under article seven of subchapter one of chapter one of title twenty-seven of the administrative code of the city of New York, acceptance of service equipment, issuance of permits and certificates of occupancy, and the issuance and administration of licenses. Nothing contained in this subdivision shall be construed to require that both the fire commissioner and the commissioner of buildings, or both of their respective departments, perform any act in the exercise of their concurrent jurisdiction to enforce any provision of law. Upon request of the commissioner, it shall be the duty of all departments to cooperate with the fire department at all times, and to furnish to such department such information, reports and assistance as the commissioner may require.

§ 2. The last undesignated paragraph of section 488 of the New York city charter is amended to read as follows:

The powers conferred by this section shall not extend to the enforcement of any provision of the health code or the regulations of the board of health[, or of any provision of the building code relating to the construction or alteration of buildings or the installation of service equipment, except as otherwise provided therein,] or interfere in any manner with the powers and duties of the board of health or the chairman of the board of health [or of the department of buildings or of the commissioner of buildings].

§ 3. Subdivision a of section 645 of the New York city charter is amended by adding a new paragraph 5 to read as follows:

(5) other acceptable qualifications, including, but not limited to, a bachelor's degree from an accredited college, other educational background, training and work experience, as determined by the commissioner.

§ 4. Section 649 of the New York city charter is amended to read as follows:

§ 649. Inspection. a. The commissioner, any deputy commissioner, borough superintendents, inspectors, or any officer of the department authorized in writing by the commissioner or a borough commissioner to act in his borough may, in accordance with law, for the purpose of performing their respective official duties, enter and inspect any building, structure, enclosure, premises or any part thereof or anything therein or attached thereto; and any refusal to permit such entry or inspection shall be a misdemeanor triable in criminal court and punishable upon conviction by not more than thirty days imprisonment or by a fine of not more than one hundred dollars, or both].

b. If entry is not gained on consent, or if circumstances call for entry without prior notice, the commissioner or his authorized representative, or the commissioner of the department of health, fire, sanitation, housing preservation and development, or environmental protection, or his authorized representative, may enter pursuant to an order, obtained ex parte, from any court of competent jurisdiction, and may, upon a showing of exigency, abate any nuisance thereon. Upon entering the area to be inspected the commission may make plans, drawings and descriptions or otherwise record conditions thereof.

§ 5. Section 1504 of the New York city charter is amended by adding a new subdivision 5 to read as follows:

5. With respect to premises, grounds, structures, buildings, and vacant land, the commissioner shall require any person, corporation or other legal entity that takes title via deed to file a sworn statement of ownership containing the name or names of the title holders, their mailing address or addresses, and the street address, borough, block, and lot of the building, structure or vacant land to which title is held, with the department, within a reasonable period of time after knowingly obtaining title, unless the deed has been recorded in the office of the county clerk or city register. The commissioner shall require any person, corporation or other legal entity that obtains title by any other means to file a sworn statement of ownership containing the name or names of the title holders, their mailing address or addresses, and the street address, borough, block, and lot of the building, structure or vacant land to which title is held, with the department, within a reasonable period of time after

knowingly obtaining title. The commissioner shall establish by rule the reasonable period of time allowed for such filing and the required form and method for such filing. A failure to comply with the filing requirements of this paragraph is an affirmative defense to be raised by the City in any judicial or administrative proceeding or action.

10. OTHER ISSUES STUDIED BY THE COMMISSION

In addition to the nine categories for which the Commission's staff has made recommendations to revise the Charter, the staff examined the entire Charter and recommendations made by other Charter Commissions, even if those Commissions ultimately deferred certain issues for further study. In some instances, this Commission's staff now recommends Charter revision in this election cycle concerning some of those issues (e.g., government integrity). The Commission's staff now recommends deferring further consideration of the following issues during this election cycle:

A. Elections and Elected Offices

- **Nonpartisan Elections**

The Commission's staff considered the issue of whether elections for City-wide offices of the Mayor, Comptroller and Public Advocate should be conducted on a nonpartisan basis.

Like elections for federal and State offices, most contests for City offices are conducted in a "partisan" fashion. Candidates compete in party nominating elections and a candidate's party affiliation appears with his/her name on the ballot. New York City's use of the partisan system is a rarity among the nation's other major municipalities. As the chart at the end of this section shows, most major cities, including Los Angeles, Chicago, Houston, Boston and Detroit, employ a nonpartisan election system. Under a nonpartisan election system, candidates do not run in party nominating primaries and ballots do not denote a candidate's party affiliation. Instead, all candidates for a particular office run together in a primary. Typically, the two candidates who receive the most votes in the primary advance to a run-off held on the general election day.

Both the 1998 and 1999 Charter Revision Commissions examined the merits and legality of nonpartisan elections for New York City. While both Commissions noted the benefits and legality of nonpartisan elections, they decided to defer the issue for further consideration in the future. This Commission's staff concurs with that approach.

As the 2001 primary election for City-wide and other elected offices fast approaches, this Commission's staff finds the case for nonpartisan elections more compelling than ever — especially in light of a campaign season that, to date, lacks a vigorous and substantive policy debate about the City's future. The Commission's staff believes that one reason for this lack of debate stems from the City's current partisan system, one that tends to foster uniformity,

rather than diversity of ideas. Indeed, because one major party has, with a few exceptions, dominated the City's political life for decades, many potential candidates feel compelled to identify themselves with that party and its platform in order to have any chance of success.

Under the nonpartisan system, candidates would be freer to act as individuals offering voters competing ideologies and visions. No longer would candidates be forced to tailor their positions to appeal mainly to the factions within their own parties that tend to vote in primaries. Instead, even in the primary, candidates would be challenged to articulate a vision to resonate with a broad spectrum of voters.

The partisan system can also act easily as a vehicle for special interests. Both major parties have close affiliations with various powerful lobbies that can exercise enormous influence over candidates' stances and actions. By allowing candidates to run as individuals, rather than as the nominees of particular parties, the access and influence of special interests would be reduced, fostering more independent and innovative ideas.

A nonpartisan system would create chances for people from outside of a party's machinery to compete with party insiders and loyalists on a more equal footing. Many candidates' fates, especially in the partisan primaries, hinge on whether they can successfully woo party bosses and their political foot soldiers. Newcomers and people with careers outside of politics often find it difficult to make a run for elective office for office because of their lack of access to party organizations. In a nonpartisan system, less-connected candidates would find it far easier to make a run for elective office since there would not be a party-favorite candidate blocking any realistic chance for success. When coupled with the City's voluntary campaign finance program, which provides a generous level of public matching dollars to participating candidates, a nonpartisan system would make New York City, which is arguably one of the world's most diverse cities, also one of the easiest places for all of its citizens to effectively compete for public office.

This Commission's staff agrees with the 1998 and 1999 Commissions that the City has the authority to change to nonpartisan elections. The authority to conduct such an election is derived from Article IX of the State Constitution and Municipal Home Rule Law § 10. In addition, the New York Court of Appeals has held that cities possess the authority to establish nonpartisan elections notwithstanding State Election Law. Bareham v. City of Rochester, 246 N.Y. 140 (1927). Indeed, the City's nonpartisan election scheme used to fill Council vacancies was recently upheld in City of New York v. Board of Elections, Index No.

41450/91 (Sup. Ct., New York Co.), aff'd, ___ A.D.2d ___, (1st Dept), lv. app. den., 77 N.Y.2d 938 (1991).

The staffs of the 1998 and 1999 Commissions both worked with noted voting rights expert Dr. Allan Lichtman, Chair of the Department of History at American University, who conducted analyses of whether the change to nonpartisan elections would violate the federal Voting Rights Act. See 42 U.S.C. § 1973 et seq. The Voting Rights Act prohibits the abridgement or denial of the right to vote on the basis of race or color, and requires that alterations of electoral provisions with respect to the standard or practice of voting must be pre-cleared by the United States Department of Justice or by the District Court for the District of Columbia. Dr. Lichtman advised both Commissions that the switch from partisan to nonpartisan elections would not violate the Voting Rights Act. This Commission's staff believes that Dr. Lichtman's conclusions remain valid.

While the staff believes that many of the major questions about nonpartisan elections have been answered, the practical obstacles to implementing a nonpartisan voting scheme are still present. The City is still saddled with outdated and problem-prone voting machines that are not designed for a nonpartisan system. Therefore, any recommendation to change the City's election system should await an opportunity for more extensive public discourse, and collaborative planning with the City's Board of Elections ("Board").

Fifty Prominent Cities* that Hold Nonpartisan Elections for Mayor

	City	State	Population
1	Los Angeles	California	3,694,820
2	Chicago	Illinois	2,896,016
3	Houston	Texas	1,953,631
4	Phoenix	Arizona	1,321,045
5	San Diego	California	1,223,400
6	Dallas	Texas	1,188,580
7	San Antonio	Texas	1,144,646
8	Detroit	Michigan	951,270
9	San Jose	California	894,943
10	San Francisco	California	776,753
11	Jacksonville	Florida	735,617
12	Columbus	Ohio	711,470
13	Austin	Texas	656,562
14	Memphis	Tennessee	650,100
15	Milwaukee	Wisconsin	596,974
16	Boston	Massachusetts	589,141
17	Nashville-Davidson	Tennessee	569,891
18	El Paso	Texas	563,662
19	Seattle	Washington	563,374
20	Denver	Colorado	554,636
21	Fort Worth	Texas	534,694
22	Portland	Oregon	529,121
23	Oklahoma City	Oklahoma	506,132
24	New Orleans	Louisiana	484,674
25	Cleveland	Ohio	478,403
26	Long Beach	California	461,522
27	Albuquerque	New Mexico	448,607
28	Kansas City	Missouri	441,545
29	Fresno	California	427,652
30	Virginia Beach	Virginia	425,257
31	Atlanta	Georgia	416,474
32	Sacramento	California	407,018
33	Oakland	California	399,484
34	Mesa	Arizona	396,375
35	Omaha	Nebraska	390,007
36	Minneapolis	Minnesota	382,618
37	Honolulu	Hawaii	371,657
38	Miami	Florida	362,470
39	Colorado Springs	Colorado	360,890
40	Wichita	Kansas	344,284
41	Santa Ana	California	337,977
42	Arlington	Texas	332,969
43	Cincinnati	Ohio	331,285
44	Anaheim	California	328,014
45	Toledo	Ohio	313,619
46	Tampa	Florida	303,447
47	St. Paul	Minnesota	287,151
48	Newark	New Jersey	273,546
49	Birmingham	Alabama	242,820
50	Baton Rouge	Louisiana	227,818

- By population. Data obtained from 2000 Census.

- **Mayoral Vacancies and the Line of Succession**

The Commission's staff considered the issue of whether the Charter's provisions for filling mayoral vacancies should be amended to provide for a special election or a different successor or both.

The Mayor is the chief executive of the City of New York. When voters elect a mayor, they know that the ideologies and abilities of that candidate are likely to have a significant impact on their lives daily. Ironically, given the prominence of the City's mayoralty, this is the only elected office that voters are *not* afforded an opportunity to fill promptly at a special election in the event of a vacancy. Instead, the Charter provides that, upon a vacancy, the powers and duties of the Mayor devolve upon the Public Advocate and the Comptroller in that order of succession until a new mayor is elected. If a vacancy occurs prior to September 20 in any year, then an election for a new Mayor is held in the general election that same year. If, however, a vacancy occurs on or after September 20 in any year, then an election for a new Mayor is held in the general election of the following calendar year. The result of this provision is that, if a vacancy were to occur on or after September 20 in any year of the mayor's term, the Public Advocate could potentially serve as Mayor for more than 15 months before an elected Mayor takes office.

It is apparent to the Commission's staff that the current mayoral succession system is deeply flawed and anachronistic. Indeed, public comments received thus far by the Commission have revealed a deep concern that the current system fails to provide for continuity in executive policy in the event of the death or resignation of a mayor. Reforms need to be made. The question arises, however, whether now, on the eve of elections for every citywide office, is the right time for recommending this Charter reform.

The City's voters need not wait when it comes to filling vacancies in other elected offices. Since the Charter reforms effected by the 1988 Charter Revision Commission, vacancies in *all* other City offices are filled at special elections that are held within 60 days of the occurrence of a vacancy. The 1988 Commission recognized that it was simply undemocratic to deprive the voters of a chance to promptly replace an out-going elected official. Prompt special elections represent the appropriate democratic response to a vacancy. A vacancy should not create a situation in which the electorate effectively becomes disenfranchised for a significant period of time. The current rules governing mayoral succession, however, have the potential to create just such a scenario. The remedy for this

undemocratic scheme is to adopt mayoral succession to mirror the succession rules for all other elected City offices: a prompt special election that must be held within 60 days of the occurrence of the vacancy.

Mayoral Succession

The Public Advocate is the officer who would succeed to the mayoralty in the event of a vacancy. This responsibility, which is a holdover from the days of the Board of Estimate, no longer makes sense. The Public Advocate is an independently elected official who is not charged with running any of the day-to-day affairs and policies of the City. Furthermore, the Public Advocate would not necessarily carry on the programs and policies of the Mayor whom the voters elected. Therefore, the Commission's staff supports a Charter change to remove the Public Advocate from the line of succession.

It is important to explain how the Public Advocate acquired the role of successor to the Mayor. The Office of the Public Advocate, as it exists today, did not come into being until 1993. Before that, during the days of the Board of Estimate ("the Board"), the Public Advocate was known as the President of the City Council, and the responsibilities of the office were vastly different.

For most of the last century, the Board was the most powerful and important governing body of the City. Established in 1901 and lasting until its abolition in 1989, the Board was comprised of eight members: the Mayor, the City Council President, the Comptroller and the five Borough Presidents. The Mayor, the Council President and the Comptroller each had two votes. Each Borough President had one vote. Membership on the Board was the only significant source of power for the office of the Council President.

The Board exercised authority over some of the City's most important functions and responsibilities, including participation in the budget process, granting leases of City property and maintaining final authority over the use, development and improvement of City land, including zoning regulations. It also had final approval of all capital projects and City contracts that were not awarded through competitive sealed bids. While the Council had the power to pass local laws and the Mayor was responsible for implementing the City's programs, the Board possessed authority over important policy decisions that affected the City on a daily basis.

In 1989, however, the United States Supreme Court, in Board of Estimate v. Morris, 489 U.S. 688 (1989), declared the Board's voting scheme unconstitutional, holding that it violated the "one man, one vote" principle. Because Borough Presidents held equal amounts

of power on the Board, the Court held that residents of some boroughs, such as Staten Island, were over-represented, while residents of other boroughs, such as Brooklyn, were under-represented. The Court ordered the City either to reorganize or to abolish its most important political structure. Between March 22 and August 2, 1989, the 1989 Charter Revision Commission worked to comply with the Court's ruling.

The 1989 Commission decided that the Board could not be reorganized in a lawful fashion and, accordingly, proposed to abolish it and create a new governance structure for the City that would receive the Board's powers. The Commission wanted to continue the City's tradition of a strong mayoralty and, therefore, folded many of the Board's functions into the Mayor's purview. The Commission also decided that the Council, the legislative branch, should serve as the primary check on the power of the Mayor. Thus, the Commission expanded the Council's membership from 35 to 51 members and granted the Council power to approve budgets and exercise authority over land use decisions.

The 1989 Charter Revision Commission continued the offices of the Comptroller and the Borough Presidents, but with significantly different powers than they had enjoyed by virtue of their seats on the Board. Creating a new role for the Council President, however, was more problematic. Like the Mayor and Comptroller, the Council President enjoyed two votes on the Board and, therefore, exercised significant influence on the City's most powerful decision-making body regarding budgetary issues, land use decisions, approval of contracts and zoning changes. The Council President's duties outside of the Board were marginal. As the Council's presiding officer, the Council President could cast a vote to break a tie but was not permitted to vote under any other circumstances. However, because there is an odd number of Council seats, a tie is legally impossible, rendering this power theoretical. The Council President was also the immediate successor to the mayoralty. This arrangement was rational because the Council President had the same number of votes on the Board as the Mayor and was involved in the day-to-day executive decisions of the Board that affected the City.

Nonetheless, the power and significance of the Council President was eviscerated when the 1989 Commission eliminated the Board of Estimate and, correspondingly, the Council President's two votes on that Board. Accordingly, the decision to eliminate the Board generated a long and heated debate over whether the Council President's responsibilities should be redefined or whether the office should be eliminated altogether. By an 8 to 6 vote, the 1989 Commission ultimately decided not to eliminate that office in what was part of a

political compromise: certain Commissioners did not want then Council President Andrew Stein to be ousted from City government. Indeed, Commission Chair Frederick A. O. Schwarz, Jr. himself has since admitted that the office was kept, in part, to protect the Commission's majority coalition.¹² He also noted that this issue aroused "puzzling passion."¹³

In the 1989 Commission's "Summary of Final Proposals," the Council President is described as "the city's 'Public Advocate' . . . charged with receiving, investigating and attempting to resolve individual citizen complaints."¹⁴ Indeed, as the current Public Advocate has noted, he is the country's only elected ombudsman.¹⁵ In 1993, the City Council passed Local Law 19, officially changing the title of that office from "President of the Council" to "Public Advocate." In passing that law, the Council acknowledged that "the most important duty of the President of the City Council is to serve as the public advocate for the citizens of New York City."¹⁶ In short, the nature of the Council President's office was radically transformed and bore little relation to that of its predecessor under the Board of Estimate system.

Therefore, given the evolution from Council President to Public Advocate, it makes no sense for that office holder to succeed to the mayoralty. The Public Advocate should continue to serve as an ombudsman, watchdog, and check on the mayor, but not, however, as the mayor's potential successor.

Although this Commission's staff does not recommend that voters consider a change in the Public Advocate's role during an election season, it recommends strongly that this important issue be further studied, and a reform proposal made, by another commission.

- **Term Limits**

The Commission's staff reviewed the issue of term limits. Charter § 1138 currently limits City elected officials to two terms. The 1999 Commission's final report pointed out that as a result of term limits, the current Mayor, Comptroller, Public Advocate, and four of the five

¹² Frederick A. O. Schwarz, Jr. & Eric Lane, The Policy and Politics of Charter Making, 42 N.Y.L. Sch. L. Rev. 723, 820 (1998).

¹³ Id. at 818.

¹⁴ Summary of Final Proposals, New York City Charter Revision Commission, August 1989, at 19.

¹⁵ Mark Green & Laurel Eisner, The Public Advocate for New York City: An Analysis of the Country's Only Elected Ombudsman, 42 N.Y. L. Sch. L. Rev. 1093, 1095 (1998).

¹⁶ Memorandum in Support, Local Law 19 for the year 1993.

Borough Presidents will be required to leave their offices at the end of their current terms. In addition, 35 members of the City Council will also be required to leave office. The 1999 Commission stated that the voters have twice expressed their opinions on this issue via referenda and have chosen to adopt term limits for City officials. Accordingly, the 1999 Commission decided not to revisit term limits or to consider the issue of whether term limits should be staggered to reduce the potential disruption to the City's government at this time. The outcome of this election cycle will be critical and this issue should be monitored closely. Therefore, this Commission's staff recommends deferring further consideration of this issue to another commission.

- **The Public Advocate**

The 1999 Charter Revision Commission considered whether the powers of the Office of the Public Advocate, enumerated in Charter § 24, should be eliminated, altered or retained. In its staff's preliminary report, the recommendation was made to amend the Charter to remove the Public Advocate's ceremonial power to "preside" over the City Council, and for internal consistency, to eliminate the Public Advocate's stated authority to break a tie vote in the City Council, which could never occur because Charter § 34 provides that no local law or resolution shall be passed except by at least a majority affirmative vote of the 51 Council members. The staff did not recommend changing the Office of the Public Advocate. Instead, it recommended that the issue be revisited at a later date. Because altering or abolishing the office would require more analysis and time for study, this Commission's staff recommends deferring further consideration of this issue during this election cycle.

- **The Borough Presidents**

The 1999 Commission considered whether the powers and duties of the Borough Presidents, enumerated in Charter § 82, which were greatly diminished by the 1989 Commission, should continue to include control over certain discretionary capital expense allocations. The staff's preliminary report recommended that the commission postpone making a determination about the issue because of its complexity and because of the long history of the office of the Borough Presidents. The Commission concurred in its final report. Because of the complex issues regarding the degree to which City government should be centralized, this Commission's staff recommends deferring further consideration of this issue during this election cycle.

- **The City's Campaign Finance Program**

The City's voluntary campaign finance program is administered by the Campaign Finance Board ("CFB") pursuant to Charter § 1052. The 1999 Commission believed that reforms to the program going beyond those of the 1998 campaign finance reform (by both Charter revision and local law) could improve the overall program. That Commission concluded, however, that it would be appropriate to monitor and evaluate the effectiveness of the existing provisions before making any further revisions.

Since the 1998 Charter amendments, the CFB's proposed expense budget has been included without change in the executive budget, and the Mayor has at times included in the budget statements of objections to the CFB proposals. In addition, from 1998 to 2001, there was a longstanding dispute between the CFB and the City with respect to whether participating candidates should receive public funds to match their contributions at a 4-to-1 rate (up to \$1000, with 5-to-1 matching up to \$1250 in certain instances) or a 1-to-1 rate (with 2-to-1 matching in certain instances). The dispute concerned the relationship between the 1998 Charter revision that restricted acceptance of corporate contributions by participating candidates and Local Law 48 of 1998, which provided for 4-to-1 matching (or 5-to-1 matching in certain instances) for those candidates who affirmatively opted to forego corporate contributions and 1-to-1 matching for all other participating candidates.

The City, relying upon an opinion of the Corporation Counsel, took the position that only 1-to-1 matching was authorized, while the CFB relied upon its own opinion that 4-to-1 matching applied to all participating candidates. The resulting litigation between the City and the CFB, brought by the City earlier this year, was resolved when the City Council enacted, over the veto of the Mayor, Local Law 21 of 2001 to definitively provide 4-to-1 matching (or 5-to-1 matching in certain instances) to all participating candidates.

Also earlier this year, controversy arose concerning contributions made by investment advisers who perform services for the City in connection with the investment of City pension funds. In response, the Mayor proposed Int. 930, which would prohibit candidates who participate in the City's campaign finance program from accepting contributions from any investment adviser or manager who has performed services in connection with City pension funds, other than non-matchable contributions up to \$250 from investment advisers or managers entitled to vote for the candidate. The Committee on Governmental Operations held a hearing on Int. 930 in May, but has taken no further action on the bill.

The Commission's staff believes that issues surrounding the voluntary campaign finance program are critical to ensuring fairness and integrity in the election campaign process for all citizens who seek public office. However, because of the complexities involved we believe this issue should be further studied by another commission.

B. The Budget Process

- **The 1999 Commission's Ballot Proposals**

The 1999 Commission's ballot proposition included three proposals that would have amended the City's budget processes to ensure the City's continued fiscal responsibility. The first proposal would have limited year-to-year increases in City-funded spending to the inflation rate. In the event of an emergency or other need in the best interests of the City, the Mayor and the Council would have been permitted to jointly lift the cap for that fiscal year. The proposal would have also required an explanation for each instance where an increase in an agency's budget exceeded the rate of inflation. In addition, all legislative actions that could have resulted in unfunded legislative mandates would have required fiscal impact statements to be issued prior to the time of passage.

The second budget-related proposal would have required that at least 50% of any surplus revenue be placed in a Budget Stabilization and Emergency Fund to be used for an emergency or other need that the mayor and the City Council jointly determined to be in the best interests of the City, or, if not needed by the end of the fiscal year, for the prepayment of debt.

The third proposal would have required at least a two-thirds vote of the Council to pass any local law or resolution to impose a new tax or to increase an existing tax. To override a Mayoral veto to such a law, the Council would have needed an enhanced supermajority four-fifths vote.

These budget proposals were intended to continue the disciplined spending practices that, over the past eight years, have strengthened the economy and enabled the City to produce record budget surpluses and make improvements in the delivery of City services. Some of these proposals, however, were criticized because they could have reduced flexibility that the Mayor and the City Council currently have in budgeting. Accordingly, while it is critical that the City remain fiscally responsible, this Commission's staff recommends deferring further consideration of these proposals during this election cycle.

- **Budget Modification Reform**

Budget modification is a change to the current year's budget after adoption. Charter § 107 sets forth the procedures for modifications. The mayor may transfer part or all of any unit of appropriation to another, except that if the transfer (1) is between agencies, or (2) results in more than a five percent or \$50,000 increase or decrease from the adopted budget, the mayor is required to notify the Council of the proposed action. The Council then has 30 days from the first stated Council meeting following notification to disapprove the proposed change.

The 1999 Commission considered whether the \$50,000 threshold has become too low to meaningfully allow the City to adjust units of appropriations to meet changing needs, but determined that the case had not been made that the proposal would have been useful. The Commission considered a proposal to amend the modification level requiring the Council's approval by retaining the five percent limitation but increasing the dollar threshold from \$50,000 to \$100,000. The Commission stated in its Final Report that while the proposal would cover only a limited number of budget modifications, it could lead to improved governmental efficiency in limited circumstances, and therefore required more debate. We agree.

- **Educational Initiatives**

The 1999 Commission considered a proposal to amend the Charter to provide for a mandatory annual appropriation to the Office of the Mayor of an amount equal to one percent of the City-funded portion of the operating expense budget of the Board of Education to be used for educational initiatives. Under the proposal, the Mayor's Office would have been authorized to use these funds for the creation and implementation of innovative programs to benefit the City's more than one million school age children and to expand their educational opportunities. This new funding would have been provided in addition to, not at the expense of, the funding provided to the Board of Education, therefore constituting an increase in spending on education.

The 1999 Commission concluded, however, that more debate was required to determine whether the proposal would contribute to the improvement of educational opportunities for the City's children. We agree.

- **City Council Budget Process**

Charter § 247 states that, by March 25 of each year, the Council must hold hearings on the programs, objectives, and fiscal implications of the preliminary budget; the statements of budget priorities of the Community Boards and Borough Boards; the draft ten-year capital strategy; the Borough Presidents' recommendations and the status of capital projects and expense appropriations previously authorized. In addition, § 253 states that between May 6 and May 25, the Council must hold hearings on the budget as presented by the Mayor.

The 1999 Commission considered whether the Council's operating budget should be subject to the same hearing process as other agency budgets. Under the current budget there is never any hearing on the Council's budget. The 1999 Commission concluded that further debate is warranted on the issue. We agree.

- **Pension Audits**

Charter § 96 concerns the actuarial audits of pension funds and provides that "the comptroller, with the approval of the audit committee, biennially shall select an independent actuary to review and comment upon the financial soundness and probity of the actuarial assumptions employed by the city to calculate contributions to the city pension funds. The report of the actuary shall be published in the City Record. No actuary may be selected more than twice consecutively." Given the complexity and importance of this process, the audit takes a significant amount of time to complete. In fact, the Commission's staff understands that such audits can take more than one-year to complete. Because of the requirement to complete this audit every two years, the practical result is that a new audit must begin shortly after each audit is completed, thereby creating a continuous audit cycle originally unintended by the Charter. The Commission's staff recommends further study, after this election cycle, of whether lengthening the time between audits would allow for a more meaningful analysis of findings.

- **Reform of the Borough Presidents' 5% Expense Budget Allocation**

Charter § 102(b) provides for an allocation to the Borough Presidents of five percent of the total amount of the "discretionary increases" which the mayor includes in the executive expense budget for the ensuing fiscal year. The Commission's staff examined the issue and found that some debate exists about which year-to-year increases should be considered

“discretionary” for the purposes of determining the proper allocation. The Commission’s staff therefore recommends further study of the issue after this election cycle.

C. Government Integrity

- **Honesty and Integrity in Elected Offices**

This Commission’s staff reviewed the 1999 Commission’s proposals concerning government integrity. The issues considered by that Commission included whether the members of the City Council should be required to devote their whole time to the duties of their office and not engage in any outside employment; whether the limitations on the receipt of outside earned income and honoraria should be placed on elected officials; whether all City Council members other than the Speaker and Minority Leader should receive the same salary; whether the conflicts of interest and financial disclosure rules should apply to all elected officials, including district attorneys; and whether salary increases for elected officials should take effect after their re-election to office. None of these issues was ultimately included on the 1999 Commission’s ballot proposition. However, this Commission’s staff now recommends further consideration of this issue during this election cycle.

- **Union Finances**

In 1999, the Commission reviewed the issue of whether public employee organizations and their officers and employees should be required to file financial disclosure statements and otherwise be subject to the City’s financial disclosure rules. The 1999 Final Report noted that this might help to prevent abuses in the future. In 1999, the Commission wrote in its Final Report that since legislation was pending before the Council that could accomplish this result, the Council should be permitted a reasonable time to consider that legislation. The 1999 Commission stated that if the Council failed to act on this issue, a future commission should consider this proposal. We agree and recommend that this issue be deferred during this election cycle.

D. Land Use Reform

- **Zoning Administration and City Planning**

The Commission’s staff considered the issue of whether the Board of Standards and Appeals (“BSA”) should be abolished and the Department of City Planning (“DCP”) empowered to perform certain of its functions.

The BSA, established by Charter § 659 is an independent board located within the Office of Administrative Trials and Hearings. Its basic function is to consider the granting of

variances and the issuing of special permits, including hearing and deciding appeals arising from decisions or determinations of the Commissioner of Buildings, any order, requirement or decision of the Fire Commissioner, and any order, requirement or decision of the Commissioner of Transportation made in relation to the structures and uses of waterfront property under his or her jurisdiction. In its actual functions, BSA often resembles a court of equity, granting hardship exemptions and variances on the basis of the applicant's unusual circumstances.

The 1975 Charter Revision Commission was concerned about the integration of hardship variances with the City's overall planning policies. It found that such integration had not been achieved in part because BSA had repeatedly ignored the City Zoning Resolution's explicit standards governing variances (which is still often the case in 2001). Therefore, the 1975 Commission recommended that BSA be abolished and replaced with a new "Office of Zoning Administrator." This new office would effectively serve as a Zoning Board of Appeals like those found in many other jurisdictions, and would be established as a separate unit of what is now known as DCP. DCP, as established by Charter § 191, is charged with physical planning and matters related to the development of the City, including the issuance of special permits. Its director is the chair of the City Planning Commission, which is charged with adopting and amending the Zoning Resolution, as well as considering applications for zoning changes.

The abolition of BSA would be complicated. However, creation of an Office of Zoning Administrator within DCP would likely achieve the desired effect of integrating the extension of hardship variances into the larger vision of City planners. It would also centralize certain permitting functions because both BSA and DCP issue special permits.

Under the present system, BSA acts independently from DCP when making determinations on variances, a quasi-judicial function. It is this independence that is central to the integrity of the hardship process. Consequently, this integrity could be compromised if the entity that ruled on variances was under the control of, or perceived to be under the control of, the Zoning Resolution's drafters.

In addition, the expansion of DCP's role could incorporate integration of functions currently performed by the Borough Presidents, pursuant to Charter § 82 and Title 3, Chapter 5 of the New York City Administrative Code. Under the current scheme, the Borough Presidents' topographical bureaus are responsible for the issuance of new addresses and for the authorization of the naming of new private streets in the City.

Because each Borough President's office operates independently with respect to the procedures and standards for the issuance of street names and addresses, and because the process is mostly manual with little or no reconciliation of the new locations with City agency computerized geographic information files, primarily maintained by DCP, there have been numerous problems with conflicting and ambiguous location identities. These problems not only result in inconvenience but may threaten the health and safety of City residents in need of emergency services.

Accordingly, because of the possible conflict of interest and the highly technical nature of the issues involved with eliminating BSA and expanding DCP's jurisdiction, the Commission's staff recommends further consideration of this issue after the election cycle.

- **Street Grade Changes**

The 1999 Commission examined the issue of whether minor street grade changes of less than two feet should be exempt from the Uniform Land Use Review Procedure ("ULURP"). The Commission decided to defer consideration of this proposal.

Currently, capital roadway and bridge reconstruction projects, which often result in the virtual "in-kind" replacement of the existing structure, can include a change in grade to adjust to the appropriate engineering standard. Although "in-kind" replacements of existing structures are typically exempt from ULURP, these types of projects that require a change in the street grade are subject to ULURP. This requirement unnecessarily slows down these important capital projects. Furthermore, in many instances the precise final grade change of a project may not be known until a job is finished. Indeed, the Commission's staff agrees that the public interest would be just as well served if, at the end of a project, an appropriate engineering exhibit were filed with the official in charge of the particular city map. This would ensure that the public is kept informed of these types of changes, but it would also help to speed up some of the City's Capital construction projects.

Although this Commission's staff believes that no significant land use issues are implicated by changes in street grades of less than two feet, we agree with the 1999 Commission's conclusions, but recommend that the issue be deferred during this election cycle.

- **Special Permits**

Under the Zoning Resolution, certain zoning requirements relating to the use, bulk and other features of a development may be altered by a special permit under certain conditions.

Through its role as final decision maker with regard to adoption or amendment of the Zoning Resolution and the Zoning Map, the Council has the authority to determine what types of special permits may be issued and under what terms, as well as the areas of the City in which they are available. This legislative role is distinct from the essentially administrative task of determining whether a special permit should be granted in a specific instance. Currently, the Council may perform the latter role by choosing to take jurisdiction over special permit applications approved by the CPC, which results in at least 50 days being added to the ULURP process.

- The 1999 Charter Revision Commission examined how to streamline the Council's participation in this process without diminishing its power. Because a consensus did not emerge among the experts or the public on how to accomplish this, the Commission decided to delay resolution of this proposal to allow further debate and consideration. At this time, the Commission's staff recommends deferring further consideration of this issue during this election cycle.

- **Further Timetable Reforms**

The 1999 Commission's staff in its preliminary recommendation regarding Charter revision noted that the ULURP process takes too long and that there are a number of mandated ULURP timetable provisions, both pre- and post-certification by the Department of City Planning of the completeness of an application that may be unnecessary to a fair resolution of land use issues. The 1999 Charter Revision Commission staff concluded that ULURP is complex and that further study of the issue was required. At this time, this Commission's staff recommends deferring further consideration of these proposals during this election cycle.

- **Mayoral Veto of Council Modifications**

The 1999 Commission's Final Report examined whether the Charter should be amended to allow the Mayor the choice of whether to veto Council actions regarding CPC approvals as a whole or veto only the Council's modifications to a project. Currently, the Charter gives the Mayor veto power over Council actions regarding CPC approvals, subject to override by a two-thirds vote of the Council. This provision was adopted because projects approved by the CPC might nevertheless be modified by the Council in ways to which the Mayor might object. However, the veto provision is imperfectly suited to this purpose because the Mayor must veto the entire project or action, even if only the modification is objectionable.

Likewise, when the Council is faced with a veto resulting from the Mayor's objection to a modification, it cannot choose to override the Mayor's objection to the modification alone. Instead, it must choose between acquiescing to the Mayor's objection, or overriding the veto, even if the Council would otherwise be prepared to abandon the disputed modification in light of the Mayor's objection. This inability to focus on the merits of the disputed modification, may distort the land use review process and produce results that are not in the interest of either the City or the private development community.

The 1999 Commission believed that this proposal would rationalize the process without reducing the role of the Council. We agree, but recommend deferring further consideration of these proposals during this election cycle.

- **Restructuring Terms of City Planning Commissioners**

The 1989 Charter Revision gave the mayor a majority of the appointments to the new City Planning Commission in recognition that the chief executive should be in a position to set the land use agenda that goes before the Council and that while land use policy should reflect the input of appointees of other elected officials, the views of Mayoral appointees should predominate. At the same time, however, Charter § 192 staggers the appointments of City Planning Commissioners (other than the Chair, who serves at the pleasure of the Mayor) so that only one Mayoral (and one Borough President) appointment is made each year. The result is that an incoming Mayor does not, in fact, have a majority of appointments to the Commission. Indeed, a new Mayor must be well into a second term before having made all of his/her seven appointments to the Commission.

The ostensible purpose of this system of staggered terms was to ensure continuity on the Commission. The importance of continuity should not be dismissed, particularly given the nature of the Commission as an expert land use planning body. In this regard, the system which existed prior to the 1989 Charter amendments provided for a seven member Commission, with the Chairman serving at the pleasure of the Mayor, and the six other members appointed for eight year terms. The question, however, is how to balance continuity with accountability while allowing a new Mayor to have the ability to leave an imprint on land use policy. Restructuring the terms of the Commissioners to be more concurrent with the elected officials that appointed them could further this balance.

The staff of the 1999 Charter Revision Commission deferred the analysis of this issue to a later date. This Commission's staff agrees that this issue requires further study by another commission.

- **Reducing Reporting Requirements**

The Charter requires the Department of City Planning ("DCP") to prepare a number of annual reports, including the Citywide Statements of Needs, Community District Needs Statements, and Reports on Indicators. The Charter additionally requires that the CPC prepare a Zoning and Planning Report every four years. The 1999 Charter Commission examined whether the DCP's annual reporting requirement should be made biennial and whether the requirement to prepare the Zoning and Planning report should be eliminated altogether. The 1999 Commission's staff recommended that these proposals be analyzed at a future time. We agree that these proposals are meritorious but recommend deferring further consideration of them during this election cycle.

- **The Hardship Appeals Panel**

The 1999 Commission's Final Report addressed the issue of the Landmarks Preservation Commission's ("LPC") Hardship Appeals Panel. Charter Chapter 74 provides for a hardship appeals panel to hear challenges to the LPC's denial of applications for certificates of appropriateness, based on the grounds of hardship, to demolish, alter or reconstruct improvements that are exempt from real property taxes. Noting that since its creation in 1989, the hardship appeals panel has never convened or decided an appeal, the 1999 Commission's staff recommended that it be eliminated.

In 1999, members of the public, including former Landmarks Preservation Commission Chair Jennifer Raab, did not agree. Supporters of the Hardship Appeals Panel at that time argued that, although it has never met, it provides substantial comfort to the not-for-profit organizations that it was designed to protect. The 1999 Commission decided to defer consideration of this issue. This Commission's staff now recommends deferring further consideration of this issue during this election cycle.

- **Review of Office Space Acquisitions**

Charter §195 requires the City Planning Commission ("CPC") to review the purchase or lease of office space by City agencies. Unlike items subject to review under ULURP, there are no land use issues when the City rents or purchases office space in areas zoned for office use. This fact is recognized in the very nature of the Section 195 process, which

requires CPC review only in terms of compliance with “fair share criteria.” The policy objective underlying the inclusion of Section 195 in the 1989 Charter Revision was to ensure that, when the City proposes to purchase or lease office space in Manhattan south of 96 Street, consideration will be given to whether the facility can be located elsewhere to support economic development and revitalization of the City’s regional business districts. The Council was given the authority to disapprove these CPC actions by a two-thirds vote.

The 1999 Commission considered a proposal to eliminate the CPC from the Section 195 review process, and that the Council authority to disapprove of an office space acquisition should be limited to large acquisitions. The 1999 Commission decided to delay resolution of this proposal to allow future debate and consideration. This Commission’s staff recommends deferring consideration of this issue at this time.

E. Government Reorganization

- **Elimination of the Department of Employment**

The Commission’s staff considered whether the Department of Employment, as established by Charter § 3012, should be eliminated and its functions transferred to other City agencies. Historically, the Department of Employment (“DOE”) was responsible for administering programs that provided job training and various supportive services to the City’s economically disadvantaged as well as to dislocated workers. The primary source of funding for these programs was the federal government through the Job Training Partnership Act (“JTPA”) which governed the nation’s employment and training system from 1982 to 1998. The Workforce Investment Act of 1998 (“WIA”), codified as amended at 29 U.S.C. §§ 2811 et seq. superseded JTPA. WIA requires local areas, such as the City, to establish an integrated and coordinated system of services, known as a “one-stop” system. Further, it envisions “customer choice” in the form of individual training accounts (“ITA”) for the delivery of adult and dislocated worker training services.

The one of stated purposes of Title I of WIA is to reduce welfare dependency. See 20 CFR § 660.100. Because the Human Resources Administration (“HRA”) has overall responsibility for providing services to City residents who are receiving welfare or are at risk of welfare dependency, it was designated the lead agency for the purpose of implementing the one-stop system. As a result of this designation, HRA administers the WIA Title I Adult funds while DOE administers programs that provided WIA services to youth and dislocated workers.

The Commission's staff believes that, given the five-year lifetime limit on federal Temporary Assistance to Needy Families ("TANF"), HRA should continue to administer the WIA Title I Adult programs. Further, because HRA has re-focused its mission from dependency to self-sufficiency, and has converted all of its Income Support Centers into Job Centers, HRA should have administrative responsibility for all WIA adult programs including dislocated workers programs.

Under WIA, youth programs must provide comprehensive services to young people, ages 14 to 21, seeking help in obtaining academic and employment goals. Thirty percent of youth funds must be expended on out-of-school youth and there is no longer a stand-alone summer youth employment program. Because WIA youth programs focus youth development rather than simply on job training, these programs would be more appropriately administered by Department of Youth and Community Development ("DYCD").

Currently, DYCD, pursuant to Charter § 734, oversees the City's Youth Board, its interagency coordinating council on youth services. Further, it is responsible for the City's 81 Beacons. Beacons are school-based community centers that are open after school, in the evenings and on weekends year round, offering young people educational, vocational and social activities. If DOE were to be eliminated, the Commission's staff believes that its functions could be transferred to DYCD. Like the 1999 Commission's staff, we agree that a reorganization of the City's approach to providing employment and training placement services may be necessary but recommend deferring further consideration until after this election cycle.

- **Making the HIV AIDS Services Administration ("HASA") a Charter Agency**

The Commission's staff was asked to review whether HASA should become a Charter agency since HRA's primary focus is reducing dependency of public assistance. In 1997, the City Council passed Local Law 49, which codified the Division of AIDS Services ("DASIS") within HRA. The local law expanded eligibility to individuals who can document that they have at any time been diagnosed with clinical symptomatic HIV illness or with AIDS as defined by the Centers for Disease Control and Prevention or the New York State AIDS Institute.

In FY 2000, HRA created the HIV AIDS Services Administration ("HASA"), under which the Division of AIDS Services and Income Support ("DASIS") is located, to better serve people with HIV and AIDS. HASA provides essential services and benefits to individuals and

families with AIDS and advanced HIV illness to enable clients to manage the illness and live their lives with the fullest independence and dignity possible. The Commission's staff recommends that HASA remain within HRA, that its performance continue to be monitored, and that, thereafter, consideration by another commission be given to a future proposal.

- **A Centralized Franchise Agency**

The 1999 Commission considered consolidating the franchise/ concession/revocable consent and related management functions of the Departments of Transportation, Information Technology and Telecommunications and Consumer Affairs into a single administrative unit, either as a division of the Department of Business Services, or as a separate agency. In addition to consolidating these functions, the Commission also considered whether the Council's ability to amend authorizing resolutions and review franchises under ULURP should be changed. That Commission decided to defer consideration of those issues due to their highly complex and technical nature. This Commission's staff believes that consideration of these issues should be deferred at this time.

- **The Board of Correction**

The Commission's staff reviewed an issue concerning the role of the Board of Correction. Charter § 626 establishes the Board and empowers it to adopt rules and inspect institutions and documents under the control of the Department of Correction ("DOC"). Although the Commission's staff believes that the Board was intended to have an advisory role, and not one of oversight, with respect to DOC's operations, the Charter does not clearly define that role. This lack of clarity has led to some confusion despite the fact that DOC is subject to the State's rigorous regulatory and oversight scheme.

For example, the State Commission of Correction ("SCOC"), a regulatory body with broad powers pursuant to Article 3 of the Correction Law, establishes minimum standards for the operation and management of the City's jails and provides regular inspections of them. The provision of medical and mental health services to inmates is subject to limited review by the New York State Department of Health and Office of Mental Health. And, training programs for DOC's peace officer employees must meet standards promulgated by the SCOC or the State Department of Criminal Justice Services's Office of Public Safety, and be approved by either or both of those bodies. In addition, all conditions of confinement are subject to judicial scrutiny, and many of DOC's current policies and procedures are in place due to court decisions and orders regarding prison conditions.

Indeed, DOC has made tremendous advances in ensuring proper inmate care to the extent that many of these court orders have been terminated because they are no longer necessary. The Commission's staff believes that the Charter should be changed to clarify the Board's role as purely advisory to ensure that its work is focused where the Charter intended, thus leaving the State agencies and courts to provide for the necessary layers of regulatory control and oversight. However, the Commission's staff recommends deferring further consideration of this issue during this election cycle.

- **Merger of the Office of Payroll Administration and the Financial Information Services Agency**

The 1999 Commission examined the issue of whether the Office of Payroll Administration ("OPA") and the Financial Information Services Agency ("FISA") should be merged. The Office of Payroll Administration ("OPA") is responsible for coordinating matters of payroll policy among City agencies. The Financial Information Services Agency ("FISA") is responsible for implementing and managing the City's budgetary accounting system. While OPA distributes the payroll checks, FISA is the agency that actually produces the checks for City employees. FISA is also responsible for the data processing operations of those City personnel whose duty it is to organize and compile the City's central financial records and data.

The 1999 Commission decided against a proposal to merge the two agencies because consolidation would provide the City with only a minimal degree of administrative cost savings, the two offices were currently running efficiently, and they performed very few, if any, functions that could be considered overlapping. This Commission's staff re-examined that issue and reached the same conclusion.

- **Merger of DORIS and DCAS**

The previous 1999 Commission examined whether the Department of Records and Information Services ("DORIS") should be merged with the Department of Citywide Administrative Services ("DCAS"). That Commission deferred any resolution of this issue and recommended that it be examined further. Pursuant to Charter § 3003, DORIS is responsible for maintaining and storing the City's records and managing the City's archives. DCAS is the City agency responsible for providing administrative services to all City agencies, such as the acquisition of goods, and for managing the City's real estate holdings, including space for the storage of records. According to the 1999 Commission's final report, the merger of DORIS into DCAS has been urged on several grounds.

First, the 1999 Commission report stated that DORIS depends heavily on the acquisition of real estate, which is a function of DCAS. Since DCAS is the agency responsible for managing and acquiring the City's real estate holdings, some have suggested that bringing the agency under DCAS would maximize coordination and ensure that ample storage space is available for City records. Also, the 1999 report stated that it has been argued the merger would further the Charter's intention to consolidate all agency support services in one agency, DCAS. Along with managing city real estate, DCAS provides City agencies with administrative support in the procurement and civil service areas. Since records storage is an agency support function, it would certainly be appropriate to require DCAS to provide that service.

Lastly, as a comparatively small agency, the 1999 Commission noted that DORIS has had limited abilities to devote staff to or develop any expertise in administrative functions such as budget, personnel and purchasing. DCAS, on the other hand, has a large central administrative staff that performs such functions and could provide DORIS with additional support services such as improved technology and internship programs. The 1999 Commission, however, decided not to further pursue this issue. This Commission's staff now recommends deferring further consideration of this issue during this election cycle.

- **Consolidation of City Hearing Tribunals**

Currently, certain agencies that can impose civil penalties, such as the Department of Health, the Department of Consumer Affairs, and the Environmental Control Board, have their own autonomous hearing tribunal, each with its own unique rules of procedure. It has been proposed that these tribunals be merged into one consolidated hearing board or that they be transferred to the auspices of Office of Administrative Trials and Hearings. The result of such a consolidation might be to promote greater independence and professionalism and to make these hearings more "user-friendly" to the public. In addition, some savings might be achieved through economies of scale.

The staff members of the 1999 Charter Revision Commission believed that, while such a consolidation might be beneficial, there were a number of technical and legal obstacles, including potential preemption of such changes by State law. The results of similar reorganizations, such as the transfer to the Office of Administrative Trials and Hearings of the Hearings Division of the New York City Human Rights Commission, should be studied. In addition, the issue of whether the Office of Administrative Trials and Hearings should be an

entity independent of the Department of Citywide Administrative Services should be studied. The Commission staff agrees with the conclusion of the 1999 Commission staff that it is premature to make a recommendation on the subject and now recommends deferring further consideration of this issue during this election cycle.

- **Office of Administrative Trials and Hearings (OATH)**

The 1999 Commission received suggested Charter revisions regarding OATH from OATH's Chief Law Judge. The 1999 Commission considered issues concerning OATH's adjudications, budgetary powers, the term of the Chief Administrative Law Judge, and whether other City tribunals should be consolidated under OATH. They looked at the issue that OATH's adjudications may be conducted under two sets of procedural rules: OATH's rules or the referring agency's. The 1999 Commission stated in its Final Report that it would be preferable for OATH, and not individual agencies, to determine the procedural rules for OATH adjudications. The second proposal concerning OATH that the 1999 Commission examined concerned OATH's budget authority. Another issue examined by the 1999 Commission concerned a term for the Chief Administrative Law Judge. The 1999 Commission recommended further study of these issues. This Commission's staff now recommends deferring further consideration of these issues during this election cycle.

- **The Taxi and Limousine Commission**

The 1999 Commission reviewed issues concerning the Taxi and Limousine Commission ("TLC") and stated that TLC is charged with various, sometimes conflicting, responsibilities. In addition, the 1999 Commission noted that certain functions of TLC overlap with the programs of various other agencies, including the Departments of Consumer Affairs, Transportation and Environmental Protection and the Commission on Human Rights. The 1999 Commission wrote that the extent of the overlap of functions between TLC and other agencies made it appropriate to consider a broad spectrum of reorganization proposals. However, due to the complexity of the questions presented, the 1999 Commission decided not to resolve any issues concerning TLC at that time and recommended that potential consolidations be studied in the future. This Commission's staff now recommends deferring further consideration of this issue during this election cycle.

- **Independent Budget Office**

The Commission's staff re-examined an issue studied by the 1999 Commission of whether the Independent Budget Office ("IBO") should continue to be funded with public

money. The IBO is an independent office, established by Charter § 259 which is not under the control of the mayor. The IBO performs the function of providing budget information to the public and to elected officials. While this office is intended to be an independent body, the Charter requires that its budget not be less than 10% of the budget for the Office of Management and Budget.

The 1999 Commission concluded that the IBO's functions are for the most part redundant, due to the fact that many government entities and private groups are already engaged in reviewing and analyzing the City's Budget. Among these are the Council, City Comptroller, State Financial Control Board, and the State Comptroller. While the 1999 Commission stated that the existence of the IBO merely adds another fiscal monitor to the Budget review process, it concluded that more time was needed to analyze past reports that have been issued by the IBO, in order to make a more precise assessment as to whether this office should continue to receive public money. This Commission's staff agrees with that conclusion and recommends deferring further consideration of this issue during this election cycle.

- **The Art Commission**

The 1999 Commission reviewed the functions of the Art Commission. According to the 1999 Final Report, the Art Commission is part of the Office of the Mayor and was established in 1898, with its primary function being to review and approve designs and plans for works of art or structures to be purchased or erected on or over any City owned property. Additionally, it has general advisory oversight over all works of art belonging to the City. The Art Commission is composed of an 11-member board consisting of representatives from the Mayor's Office, the Metropolitan Museum of Art, the New York Public Library and the Brooklyn Museum of Art. The Board must also consist of one painter, one sculpture, one architect and three lay members.

In its preliminary recommendations to the Commission, the 1999 Charter Commission Staff suggested that the Art Commission's functions are unduly burdensome, that its essential functions are duplicative of programs at other agencies, and that meaningful savings could be achieved by abolishing it. The 1999 staff also noted that the Department of Parks and Recreation already exercises jurisdiction over structures and works of art located within the New York City park system, and that the Landmarks Preservation Commission has jurisdiction over structures that are within historic districts or that primarily concern a

landmark or a landmark site. However, the 1999 Commission also received numerous public comments advocating for the continued existence of the Art Commission. The 1999 Commission concluded that the issues regarding the Art Commission were too complex to be resolved without extensive further study. Accordingly, on July 29, 1999, the Commission deferred further consideration of whether the Commission should be abolished or reorganized. This Commission's staff now recommends deferring further consideration of this issue during this election cycle.

F. The City's Purchasing Procedures

- **Emergency Procurements**

Under the Charter, emergency procurements are not subject to competitive sealed bidding but instead require only such competition as is practicable under the circumstances. In addition, emergency procurements require the prior approval of the Comptroller and Corporation Counsel. When emergencies arise, the City must be able to act quickly and the Charter must reflect that need. The 1999 Commission considered whether the mandatory prior approval was necessary or appropriate for emergency procurements but did not include such a proposal in its ballot proposition. This Commission's staff recommends deferring further consideration of this issue during this election cycle.

- **Procurement with Another Governmental Entity**

The 1999 Charter Revision Commission considered whether Charter § 316 should be amended to contain a provision allowing the City to procure goods, services, or construction from, through or with another governmental entity without competition. The recommendation was made because at the time there was no legal provision by which the City could enter into a contract with another governmental entity to procure goods, services or construction from that governmental entity without competition. Since that time, the Procurement Policy Board ("PPB"), in promulgating Rule 3-13, has allowed for government to government purchases to the extent that they were not already allowed by state law. In light of the PPB's action, this Commission's staff believes that a Charter change is no longer necessary.