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Transcript of the Meeting of the

5

Charter Revision Commission

6

held on Thursday, August 21, 2003

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Public School 69, 77-16 37th Avenue,

8

Borough of Queens

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1 Meeting convened at 6:15 p.m.

2 P R E S E N T

3 FRANK MACCHIAROLA, Chairman

4 COMMISSIONERS:

5 BILL LYNCH

6 MOHAMMED KHALID

7 FRED SIEGEL

8 STEVEN NEWMAN

9 FATHER O'HARE

10 CECELIA NORAT

11 PATRICIA GATLING

12

Also Present:

13

DR. ALAN GARTNER, Director

14

ANTHONY CROWLEY, General Counsel

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1 CHAIRMAN MACCHIAROLA: Ladies and gentlemen,
2 can we call the meeting to order? We're expecting
3 Commissioner Gatling, we're going to start right now.
4 The Commission is going to start its meeting -- ladies
5 and gentlemen, this is a combined meeting and then when
6 we conclude the meeting, we will go into hearings.
7 There are some unfinished business items that we have to
8 address and so for the meeting, the first order of
9 business, and I will turn it over to Alan to address, is
10 on questions raised with regard to the Preliminary
11 Mayor's Management Report. Dr. Gartner.

12 DR. GARTNER: Thank you, Dr. Macchiarola.
13 You heard testimony over the course of several meetings
14 concerning the Mayor's Management Report, and
15 Preliminary Mayor's Management Report. The
16 recommendation from the Mayor's Office of Operations
17 that the preliminary report established some twenty plus
18 years ago be eliminated, not to reduce the information
19 that's available to the public, but because that
20 information is now more readily available on line on a
21 monthly basis, and that the demands of producing a four
22 month report, the judgment is that it does not warrant
23 that expense.

24 What I would like to do is circulate to you
25 two items, three items; a memorandum from Susan

1 Kupferman, the head of the Mayor's Office of Operations,
2 a memorandum from Tom McMann of the City Council, and an
3 e-mail message from Dale Forsyth. Let me identify for
4 those who don't know him, Dale Forsyth was the Budget
5 Director of the State of New York. He also currently
6 serves as the Chair of the Board of the IBO,
7 distinguished career beyond that, but let me just note
8 it, in the public Bar.

9 I believe that the case that was made --

10 VOICE: Excuse me, would you please use the
11 microphone?

12 DR. GARTNER: I believe that the case that
13 Ms. Kupferman makes, affirmed by Dr. Forsyth, is one
14 that should be mentioned to the Board and to the
15 Commission. Let me stop there. I'd be glad to answer
16 any questions in that regard.

17 CHAIRMAN MACCHIAROLA: Any Commissioners
18 have any questions? You have three pieces of paper in
19 front of you. Two in favor of the elimination of the
20 Preliminary Mayor's Management Report, and one which
21 comes from the counsel to the City Council. Is there
22 anyone that wishes to make any additional comments?
23 We've already voted to only make the Mayor's Management
24 Report --

25 DR. GARTNER: Preliminary report.

1 CHAIRMAN MACCHIAROLA: Preliminary Mayor's
2 Management Report, so unless anyone desires to open the
3 question --

4 COMM. SIEGEL: I have a question. I
5 understand that the Council is required to hold
6 legislative hearings on the Preliminary Management
7 Report. Do they in fact hold those hearings?

8 DR. GARTNER: It's my understanding that
9 they have not held a hearing in the past two years.

10 MR. BARRY: I think they sometimes fold
11 them into preliminary hearings on the budget, so the
12 preliminary hearings that happen are called joint
13 budget/PMMR hearings.

14 COMM. NEWMAN: Since I've gotten all these
15 papers, I'm not sure, if among the things you've
16 circulated the memo in response to my questions?

17 DR. GARTNER: No, I did not. I'm glad to
18 respond to any questions using that memo. Commissioner
19 Newman and I exchanged a series of e-mails in the course
20 of the last few days on this topic. He raised a number
21 of questions and urged that we invite Susan Kupferman to
22 come tonight. She's just been appointed the Chair of
23 the Mayor's committee looking at the blackout with a
24 thirty-day turnaround time and couldn't come, so she's
25 answered or at least addressed several of those issues

1 that Commissioner Newman raised and I'd be glad to
2 respond and read that into the record if you'd like.

3 COMM. NEWMAN: My problem with the
4 Preliminary Management Report, the problem with dropping
5 it, was going back to what Ross Sanders said when he
6 testified before us, that the City does too little
7 analysis and the thought of dropping something without a
8 real live replacement to it was troubling, and so I had
9 some dialogue and I've also talked to Ronnie Lowenstein,
10 the director of IBO, and to Diana Fortina, of the
11 Citizens' Budget Commission, and Chuck Descher, Research
12 Director for the Citizen's Budget Commission to get
13 their input on the issue.

14 The IBO staff as separate from Dale Forsyth
15 issued a report which I have with me, which doesn't call
16 for the elimination of the PMMR, it calls for moving it
17 back two months from February to April, so that it
18 contains six months worth of data and it could be useful
19 in the budget hearings. That being said, I came out
20 with a view sort of similar to the Citizens' Budget
21 Commission, one which is, it was okay to drop it if it
22 got replaced with things that were useful, so we
23 produced a list of things that we thought were useful
24 things which resulted in the document and Susan
25 Kupferman sent an e-mail indicating that on those three

1 categories of areas, she was working on them, and though
2 I don't think we were put them in the Charter, I think
3 it would be useful to have them in the record and what
4 the three were that the City needed to do more work in.
5 Measuring the cost per unit of services for different
6 services; two, that the City needed to do benchmarking
7 of services comparing private sector and public sector
8 and similar kinds of working and benchmarking the City
9 versus other cities, where many years ago, I guess the
10 Lindsay administration is when they first started mayors
11 management reports we were a leader in the field and we
12 no longer are. There are many other cities that do a
13 better job of analyzing a host of services, we ought to
14 be benchmarking against those cities.

15 And that third, that we ought to be doing
16 surveys of the citizenry to get a sense of how they
17 think City services are being viewed in the same way a
18 company would do evaluations.

19 So anyway, so there's an e-mail from Susan
20 Kupferman from late this afternoon.

21 CHAIRMAN MACCHIAROLA: So your suggestion is
22 that we incorporate it in the record?

23 COMM. NEWMAN: That we incorporate it into
24 the record. I don't think we can incorporate it into
25 the Charter, it shouldn't become very specific, but I

1 think it would be very useful to incorporate it.

2 CHAIRMAN MACCHIAROLA: That makes sense.

3 Without objection, we'll do that.

4 To the question itself, is there anyone who
5 wishes to revisit this question or are we convinced that
6 the solution lies in the way we addressed it the first
7 time and that this is sufficient language --

8 COMM. NEWMAN: I don't think we voted on it.

9 CHAIRMAN MACCHIAROLA: Did we vote on it?

10 DR. GARTNER: I think you need to vote on
11 it.

12 MR. CROWELL: I'd like to make one -- the
13 document I presented before you has some modifications.
14 I just want to make clear for Commissioner Patterson
15 that we made clear in the PMMR language that nothing in
16 this section shall limit the powers of the Council
17 pursuant to Sections 28 and 29 of the Charter. Those
18 are the sections that provide for the authority for
19 PMMR.

20 CHAIRMAN MACCHIAROLA: Okay, let's go around
21 the table.

22 COMM. NEWMAN: Yes.

23 COMM. SIEGEL: Yes.

24 COMM. O'HARE: Yes.

25 COMM. PATTERSON: Yes.

1 COMMISSIONER KHALID: Yes.

2 COMM. LYNCH: No.

3 COMM. GATLING: Yes.

4 COMM. NORAT: Yes.

5 CHAIRMAN MACCHIAROLA: Affirmed.

6 Next item, Alan.

7 DR. GARTNER: Let me give this to the
8 stenographer for inclusion into the record.

9 (The following is an excerpt of an e-mail to
10 Dr. Gartner from Susan Kupferman):

11 "1. Cost per Unit measures - I have met with
12 CBC (Diana and Chuck) a few times on CPU measurements. I
13 agree we must do more in this area and we have done
14 more. In fact we have nearly quadrupled the number of
15 cost per unit measures that we are tracking. The MMR I
16 inherited had 13, with the book we will publish in
17 September we will be up to 50. More than 5% of the total
18 measurements are CPUs and I expect this number to
19 continue to grow. Moreover, the number of agencies that
20 we have pushed to develop them is far more diverse. It
21 includes health and human service agencies and this is a
22 new concept for them. I also want to point out that more
23 than half of the new CPUs that will be contained in the
24 book were developed at the suggestion of the CBC.

25

1 "2. Benchmarks - While very challenging to
2 develop comparable data with other entities, we have had
3 some success and will continue to work hard at it. The
4 numbers are still modest but they are still 5 times more
5 than what had been published in the past --- growing
6 from 3 to at least 15 in the upcoming book.

7 "3. Citizen Surveys - A cited short-coming
8 of the MMR is its lack of direct feedback and validation
9 from the public. This is no longer true. While we are
10 just beginning to distill the information, 311 provides
11 a wealth of direct feedback from New Yorkers.
12 September's publication will begin to incorporate 311
13 data into each agency chapter of the MMR.

14 "4. 'The PMMR Will Be Replaced By Nothing' -
15 It has already been replaced by more meaningful tools
16 such as Capstat and My Neighborhood Statistics. The
17 proof is in the use numbers --- people and agencies are
18 not using the PMMR, four month data just doesn't provide
19 for any meaningful analysis."

20 COMM. NEWMAN: Chairman Macchiarola, I asked
21 Alan before, they said it was okay in the groundrules.
22 There's a vote I made the other day that I actually want
23 to switch.

24 CHAIRMAN MACCHIAROLA: If no Commissioner
25 has an objection to the switch --

1 COMM. NEWMAN: It doesn't change the
2 outcome, but it was the vote on 2009 or as soon after
3 2005, switching from no to yes. The testimony that took
4 place after our hearing the other day, or after our
5 forum the other day convinced me to change that vote.

6 DR. GARTNER: The next item that I want to
7 have the Commission address concerns candidate access.
8 At several meetings the Commission talked about ways of
9 increasing opportunities for the public to gain
10 information in the election process. We have a very
11 rich array of those arrangements already, and the
12 question is whether we could expand them; cable
13 television being one of the examples of that. Anthony
14 has some recommendations.

15 MR. CROWELL: It's in the packet that we
16 handed out to you under the campaign finance section.
17 We're just making an amendment to Section 1053 of the
18 Charter which provides for the Voter Guide and what it
19 would do is create a section A and a section B. The
20 current language would become Section A, and Section B
21 would provide for the video Voter Guide and it merely
22 states that the video Voter Guide in furtherance of the
23 purposes of subdivision A, that again is the section
24 that creates the printed Voter Guide, the Campaign
25 Finance Board, the Department of Information Technology

1 and Telecommunications shall implement and administer a
2 non-partisan video Voter Guide program designed to give
3 each candidate participating in the voluntary system of
4 campaign finance reform an opportunity to present
5 biographical information and concise statements of his
6 or her principles, platform or views over the City owned
7 and operated cable television network.

8 "The Department shall promulgate any rules
9 as necessary to implement and administrate this program.
10 The Department shall also consider ways to enhance the
11 video Voter Guide program for cable television franchise
12 agreements."

13 CHAIRMAN MACCHIAROLA: Is there any
14 requirement of debate?

15 MR. CROWELL: They currently have a debate
16 program.

17 CHAIRMAN MACCHIAROLA: That it be
18 videotaped? Is that assumed, that they can do that? So
19 you don't have to affirm that?

20 MR. CROWELL: It happens in practice.

21 CHAIRMAN MACCHIAROLA: Okay. Are there any
22 questions about that? This was overlooked in putting
23 together the proposal, as you remember the last time.
24 We just want to make it clear that we are amplifying the
25 responsibility for people participating in the campaign

1 finance program to in fact participate in the video
2 presentations that are going to be implemented by the
3 Campaign Finance Board. Okay.

4 State that question, we'll vote affirmative
5 or negative on that one.

6 COMM. NEWMAN: Yes.

7 COMM. SIEGEL: Yes.

8 COMM. O'HARE: No.

9 CHAIRMAN MACCHIAROLA: Siegel, yes. O'Hare
10 No.

11 COMM. PATTERSON: Yes.

12 COMMISSIONER KHALID: Yes.

13 COMM. LYNCH: Abstain.

14 COMM. GATLING: Yes.

15 COMM. NORAT: Yes.

16 CHAIRMAN MACCHIAROLA: Yes.

17 Alan?

18 DR. GARTNER: Let me note parenthetically,
19 when Bob Stern from California was here and testified at
20 the forum on elections, he mentioned briefly that they
21 had been doing a study -- I can't honestly remember
22 whether he mentioned it when he testified before you or
23 mentioned it separately, but he did mention that they
24 were doing a study of various jurisdictions and the use
25 of media to increase public opportunities. We now have

1 video material that they've shared with us about what
2 they've done, they, jurisdictions around the country.
3 Should this be adopted or perhaps whether it's adopted
4 or not, we will share with the Campaign Finance Board
5 and the Department of Information Technology and
6 Telecommunications.

7 There are some very interesting things where
8 they've taken individual candidate statements about a
9 whole array of issues and then spliced them together so
10 you get all the candidates about a housing program or
11 all the candidates about education. It's more and more
12 now using the cable and the Internet to do that and I
13 think that would be a great expansion of access to the
14 public of information. It didn't seem to be language
15 that would go into the Charter, but it's an example of
16 things that could be done.

17 COMM. PATTERSON: In that regard, inn the
18 language that is talked about with the City cable
19 stations, is the technology capable for doing streaming
20 videos of a video Voter Guide?

21 DR. GARTNER: You are talking to a Luddite.
22 I barely know what "streaming" means, but Anthony can --

23 COMM. PATTERSON: I guess I'm a little
24 younger, Alan.

25 DR. GARTNER: Thank you, Kitty.

1 COMM. PATTERSON: Is it feasible, is there
2 technology in place that we could do a streaming video
3 guide?

4 MR. CROWELL: As a matter of fact, we do
5 streaming right now for all the Mayor's press
6 conferences, so it is feasible, yes.

7 COMM. PATTERSON: I mean, I just ask that
8 whether that was something that is, again, worth putting
9 in the Charter, since you're mentioned City-owned cable
10 TV or whether that is something that should simply be
11 noted for the record as a suggestion for whoever is
12 going to be coordinating the Voter Guide.

13 MR. CROWELL: You can certainly say they
14 consider on-line options for distribution of such video
15 programming.

16 COMM. PATTERSON: It certainly would appeal
17 to a group of voters that have checked out, and may not
18 be watching the City cable stations, but are surfing the
19 web.

20 MR. CROWELL: It's really an excellent idea.

21 CHAIRMAN MACCHIAROLA: Okay. It will be
22 added.

23 Alan, procurement, Vendex?

24 DR. GARTNER: Procurement. There were two
25 sets of issues that had been hanging around for some

1 time. One concerning Vendex and one concerning issues
2 regarding not-for-profit organizations. At the last
3 meeting that you discussed this, I was instructed to see
4 if I could talk with the various parties and see if
5 there could be some agreement. I'm happy to report that
6 the answer is yes, but let me give you the material.

7 There are three items that I've shared with
8 you. Again, I started to produce something to help me
9 understand it, and I thought, I trust I'm right on that,
10 that it would be helpful to you to understand it.

11 You'll recall that at Tuesday's Commission
12 meeting, Eric Lane, special counsel to the Council
13 raised objections to what he characterized as usurpation
14 of the authority of the Council to act regarding Vendex.
15 Various staff members met and talked with Eric in the
16 course of yesterday and I met and talked with Eric in
17 the course of today, and what I'm presenting to you, as
18 I indicate in this cover memo, is satisfactory to Eric
19 and he indicates that it is satisfactory in this regard
20 to the Speaker.

21 Essentially, the language, it's really quite
22 analogous to the language we heard a minute ago. If you
23 look at the two-page distribution which begins with
24 Section 329 of the Charter and go down to the line just
25 before B, it adds the sentence that Eric proposed,

1 "Nothing herein contained shall limit the power of the
2 Council to legislate with respect to the Vendex system."

3 That has been approved by the
4 administration, it's been approved by Mr. Lane on behalf
5 of the Speaker, and I commend it to you.

6 CHAIRMAN MACCHIAROLA: Are we going to vote
7 this one at a time?

8 DR. GARTNER: I think they're sufficiently
9 important for you to vote them one at a time.

10 CHAIRMAN MACCHIAROLA: Does anyone have any
11 questions? Does anyone want to ask anything of Alan
12 with regard to this?

13 COMM. NEWMAN: The Vendex one?

14 CHAIRMAN MACCHIAROLA: The Vendex. If
15 there's no discussion, let's call the question
16 affirmative or negative. Mr. Newman?

17 COMM. NEWMAN: Yes.

18 COMM. SIEGEL: Yes.

19 COMM. O'HARE: Yes.

20 COMM. PATTERSON: Yes.

21 COMMISSIONER KHALID: Yes.

22 COMM. LYNCH: Abstain.

23 COMM. GATLING: Yes.

24 CHAIRMAN MACCHIAROLA: Yes.

25 COMM. NORAT: Yes.

1 CHAIRMAN MACCHIAROLA: So it's carried.

2 DR. GARTNER: I'm going to ask you, the
3 second concerns issues regarding not-for-profit
4 organizations and other organizations as well, not just
5 not-for-profits, although the focus of our discussion
6 has been on the not-for-profit organizations. These
7 discussions have involved various parties, Law
8 Department, Comptroller's office, the members of the
9 not-for-profit community and in each instance I
10 understood your instruction to me is to strengthen the
11 requirements in this regard. So let me go through using
12 the document, the larger document that Anthony presented
13 and you worked through in the previous meeting and let
14 me go through the five bullet points here.

15 You'll notice a unique event on our part,
16 pages numbered. If you'll turn to page number 5.

17 COMM. GATLING: We don't have page numbers.

18 DR. GARTNER: It's this document -- oh, I'm
19 sorry -- which I didn't distribute to you.

20 CHAIRMAN MACCHIAROLA: It was a test.

21 COMM. NEWMAN: We're all searching through
22 the other document.

23 COMM. NORAT: Very clever.

24 (Laughter.)

25 DR. GARTNER: Page 5, item B at the top,

1 underlined, towards the top of the page, makes
2 information about agencies' performance relative to the
3 timing of the procurement process a mandatory part of
4 the Mayor's procurement report. It had been an optional
5 part of it in an earlier iteration.

6 Second, on page 7, again, the shift is from
7 the optional item to a mandatory item. In 4(b)(6),
8 there is a requirement now that the time schedules be a
9 mandatory part of the rules that the Procurement Policy
10 Board is to promulgate.

11 On the same page, the same paragraph, it's
12 the underlined portion in the middle, which rule,
13 meaning PPB rules -- this whole section is about the
14 rules that the PPB is to issue, "which rule shall
15 specify the appropriate remedy for failure to meet the
16 term of any applicable schedule for taking such action."

17 So we now have a mandatory schedule from the
18 agency and now a set of consequences, if you will,
19 appropriate remedies. Illustrative of that is should
20 the agency on a tracking record be a persistent poor
21 performer, options would include loss of flexibility for
22 the agency in procurement -- flexibility which is highly
23 prized by the agency and appropriately so; consequences
24 for the ACCO who is responsible for meeting the time
25 line and what we call the package, what I call the tool

1 box of economic remedies such as advances, loans and
2 payment of interest.

3 There's been no change to the item that you
4 had wanted in the earlier versions and the current
5 version. Now, when interest is paid it's paid at a
6 uniform rate, the differential between something and
7 nothing as it applied to non-profit organizations is
8 eliminated.

9 Fourth, if you turn to the next page, if you
10 look at the very top of page 8, small numbers, number 2,
11 the issue that came up again and again and that both
12 Commissioners raised and members of the not-for-profit
13 community raised, is when the work that has been agreed
14 upon comes to an end, but in fact because the contract
15 is now at its end, but the agency nonetheless wants the
16 work to continue, in effect a continuation or renewal
17 and the agency is put in the position of being asked
18 informally, but nonetheless realistically to continue
19 the work, even though it has not been paid for, the
20 provision here is to require the PPB to establish rules
21 providing for expedited renewal or extension of existing
22 client services contract, so there isn't a break in
23 services and there is a continuation of payment.

24 There are two things that I want to
25 continue. Services to continue and payment to continue.

1 Some of the earlier items that we've talked about
2 hopefully speed up the process, but when that doesn't
3 happen, or until that happens, it ought not to be a
4 situation where agencies are asked to do something that
5 would be potentially risky for clients and risky for the
6 agency.

7 And finally, the last item in the memo, also
8 on page 8, responsive to the concerns of the
9 not-for-profit community, most particularly the Human
10 Services Council, that it's now in number 3 in that same
11 paragraph, the promulgation of draft and final contract
12 plans by all agencies procuring client services, which
13 draft and final plan shall follow respectively the
14 executive budget submission and budget adoption, so that
15 the vendor community can know what it is the agency is
16 planning to do in the course of the year to come.

17 The not-so-subtle point here is that the
18 agency itself needs to think about what it is that it's
19 going to do and since in the earlier sections we're
20 talking about mandatory time lines and consequences of
21 failure to follow those time lines, the pieces are
22 designed to knit together and reinforce one with the
23 other.

24 I'll be happy to answer any questions you
25 have about these items.

1 COMM. SIEGEL: On number 4, question of the
2 trigger. What's the trigger that says, that allows an
3 agency to assume that it's supposed to continue?

4 DR. GARTNER: The trigger is the -- excuse
5 me, agency; meaning the vendor?

6 COMM. SIEGEL: Right.

7 DR. GARTNER: It is the agency, meaning the
8 Government, that indicates to the vendor -- the vendor
9 can't on its own decide it just wants to continue.

10 COMM. SIEGEL: Right.

11 DR. GARTNER: There has to be an affirmative
12 action on the part of the agency, to fund it, if you
13 will.

14 COMM. SIEGEL: It seems to me that's going
15 to end up being a very open interpretation and possibly
16 litigation unless it's clear what exactly triggers the
17 continuation. In other words, if I'm a vendor and some
18 of the agencies have informally said to me, I think
19 things will continue --

20 DR. GARTNER: I sure as hell wouldn't
21 continue on that basis.

22 COMM. SIEGEL: I imagine you have to.

23 COMM. PATTERSON: Realistically.

24 COMM. NEWMAN: The vendor has to.

25 DR. GARTNER: I'm happy to change the

1 specification.

2 COMM. NEWMAN: Not only does the vendor have
3 to, if in fact the City backs away at some later point,
4 the vendor has every right to sue the City, it goes to
5 the Comptroller's office and gets handled by something
6 called an equitable claim and the vendor two or three
7 years later is made whole and that works if you're a
8 large enough vendor and it doesn't work if you're not.

9 CHAIRMAN MACCHIAROLA: What would the basis
10 presently be to warrant payment? Wouldn't it be that if
11 the vendor continues to perform, the City accepts that
12 performance? So that if someone in the City were to say
13 continue and perform, and that performance were in fact
14 to be continued and the City official does nothing to
15 prevent that from taking place, that ought to be the
16 trigger.

17 COMM. NEWMAN: Some higher up at some later
18 point determines what to do. It happens, I can give you
19 examples -- this is not a claim category that didn't
20 have claims.

21 CHAIRMAN MACCHIAROLA: But is there any way
22 -- what you're doing is putting in the Charter the
23 authorization that services should be paid for. You're
24 eliminating a need to go through an administrative
25 remedy through somebody else. Isn't that sufficient to

1 establish the obligation that the City would have and
2 for Corp. Counsel or for anyone else interpreting that
3 to understand that now that it's more clearly written
4 into the Charter, that acceptance of that work under the
5 color of authority to do the work results in an
6 obligation to pay.

7 COMM. PATTERSON: I don't think that the
8 Charter language was written actually to say anything
9 close to that. It's really authorizing the PPB to solve
10 the problem.

11 CHAIRMAN MACCHIAROLA: Let's see what the
12 language says.

13 COMM. PATTERSON: That's one of the
14 questions I have.

15 DR. GARTNER: Instructing the PPB.

16 COMM. PATTERSON: It instructs the PPB to
17 address a problem, but it doesn't specify that the
18 payment will be received by a not-for-profit vendor or
19 if a not-for-profit --

20 CHAIRMAN MACCHIAROLA: Let's say to solve
21 the problem so that a not-for-profit vendor may be
22 compensated for the service that it provided.

23 COMM. NEWMAN: Can I do something terrible
24 to a former colleague of mine? Who is now shrinking in
25 the Chair. John Graham, who is the Director of Contract

1 Administration for the Comptroller's Office is here and
2 I assume this is the first he's hearing of this. He may
3 have some view that may be useful.

4 CHAIRMAN MACCHIAROLA: Well, why don't we
5 just ask the general question. If the assumption is
6 that this language should be clarified even more, we
7 have three days to approve the final language and if we
8 can work to get that done by -- the agreement that they
9 will provide a remedy is already heard, that's already
10 been addressed. A remedy will be provided. What we
11 really now need is to clarify the fact that the remedy
12 will in fact be provided, that clarification should come
13 because of the danger of the views in not honoring
14 what's been admitted.

15 COMM. SIEGEL: Excuse me, it seems to me
16 it's double dangerous. You have a situation in which
17 the City for whatever reason does not want to continue
18 using that vendor, there's someone in the Department who
19 likes that vendor, says positive things. Meanwhile, the
20 person is in charge of the agency wants to switch
21 vendors. The trigger mechanism has to be clearer, or
22 else you could get sued both ways; a vendor who loses
23 out who thinks they're getting a contract because they
24 think the other wasn't doing a good job. This kind of
25 informal, this kind of informal set of assumptions can

1 go through enormous abuse.

2 You can't eliminate all abuse, I don't
3 expect it, but you can provide some framework for
4 providing what constitutes an understanding.

5 CHAIRMAN MACCHIAROLA: You're not differing
6 from what I'm saying. What I'm suggesting is we ought
7 to refine to the extent -- since it's already been
8 established that an obligation to pay when performance
9 has been rendered pursuant to the desire of the agency
10 to have that performance continue and the vendors'
11 agreement to continue it, that there ought to be a way
12 to compensate. That's what we've agreed to in
13 principle. Now the question is how do we put that into
14 language so that that intent is honored, not just in the
15 Charter, but in the eyes of those people who are going
16 to administer the provisions of the Charter, actually
17 administer the payment. Commissioner Simpson is here --

18 COMM. SIEGEL: The formulation assumes a
19 clarity of intent. That may be absent.

20 CHAIRMAN MACCHIAROLA: The clarity of intent
21 is present from the Commission, I understand.

22 COMM. NEWMAN: It may not be a
23 Commissioner--

24 CHAIRMAN MACCHIAROLA: But the last
25 discussions we had, this Commission determined it would

1 be implemented, not thought that it might be
2 implemented, right? That's where we are. The language
3 was to reach a stage of --

4 DR. GARTNER: May I suggest language, on the
5 second line after the word "contracts," "pursuant to a
6 determination by the Agency Commissioner". So it's not
7 some midlevel official, it's an act that is specific in
8 particular.

9 COMM. NEWMAN: That may be fine for us, but
10 that may not work in the vendor community, because
11 courts have long ruled that the vendor is communicated
12 to by someone they reasonably believed was a responsible
13 official, which could be a Bureau Chief who is
14 responsible for their contract.

15 CHAIRMAN MACCHIAROLA: You can't delegate to
16 every agency the authority.

17 DR. GARTNER: I would assume Commissioner
18 Gatling would fire someone who worked for her --

19 COMM. GATLING: That goes on all the time.

20 CHAIRMAN MACCHIAROLA: I think -- look,
21 we're trying to reach some way of dealing with it. The
22 primary obstacle is the obstacle that apparently there
23 was no mechanism for making payments. So the mechanism
24 we've agreed to or at least that's been presented is
25 that the Commissioners or a representative of the

1 Commissioner has the authority to continue the contract.
2 Now we're worried about some underling usurping that
3 authority.

4 Well, I just don't think we're going to get
5 language that's going to protect everyone in the process
6 from someone who abuses authority or misunderstands the
7 scope of authority. The language of the Charter can't
8 cure that. If there's a difference of opinion between
9 the Commissioner and the representative of the
10 Commissioner and one acts pursuant to one set of beliefs
11 and the another acts pursuant to other beliefs, we're
12 going to have two different outcomes and there's no way
13 we can make both of them the result.

14 So I think we've got to say, as far as the
15 Charter language is concerned, that it is the
16 Commissioner, but still in the event that someone acts
17 pursuant to authority not of the Commissioner, we're not
18 limiting that person's claim to an equitable remedy if
19 the Bureau Chief has presented it in such a way that it
20 obscures the role or the responsibility of the
21 Commissioner. Now we would assume that the Commissioner
22 would deal with that Bureau Chief.

23 It seems to me in most cases if the
24 Commissioner is inclined, the Bureau Chief is going to
25 authorize it, the authorization is going to come with

1 some approval of the Commissioner, I would suspect that.
2 It certainly was done that way at the Board of Ed.

3 COMM. GATLING: It's changed.

4 COMM. NEWMAN: It depends on the size of the
5 agency. So an agency like the Agency for Children's
6 Services, I would bet a Commissioner does not approve
7 the hundreds of day care and Head Start contracts.

8 COMM. NORAT: The Commissioner would pick
9 who in the big agency is in charge of contracts.

10 CHAIRMAN MACCHIAROLA: I think the problem,
11 though, is not that we know who it is, we just don't
12 know who is administering the contract.

13 COMM. NORAT: I understand, but the
14 Commissioner, if they have a piece of paper that says
15 Commissioner Norat, by, and your my deputy, as they do
16 all over the State, and you sign on the line --

17 COMM. NEWMAN: You could have a Commissioner
18 and a designee and make it that there can't be more than
19 one or two designees per agency.

20 CHAIRMAN MACCHIAROLA: You see, I think
21 we're solving a problem that doesn't exist. I think if
22 there is a language, there's language in the Charter
23 that provides for that authority, then in most cases
24 that authority will be the basis upon which action will
25 be taken.

1 In the event that a Commissioner at one
2 point in time believes that the authority was exercised
3 inappropriately, and deals with the vendor in such a
4 way, the word is going to go through the people that the
5 agency deals with and the word is going to be don't let
6 that assurance lull you into sleep. Go get it from the
7 Commissioner.

8 I think where there's a problem, there's a
9 mechanism now to solve it. I think the original problem
10 we had was that there was no authority and that we had
11 to go back and redo the authority. In this case we're
12 recognizing the authority and I think you're making -- I
13 think we're making light years worth of progress in this
14 and I think it's as far as one could reasonably go and
15 have a document that works.

16 COMM. PATTERSON: The Charter is designed
17 to paint a relatively broad brush. You simply can't
18 legislate every little detail for every agency. Every
19 agency operates differently. And then you also have the
20 issue, which I think you may be able to deal with,
21 Steve, the rest of us it's beyond our ken, that in the
22 course of the budgeting process there will be, for
23 example, senior centers that get proposed to be shut
24 down, even though those centers have been operating for
25 several months during an existing fiscal year.

1 Somehow it works out, so that until the
2 senior center gets shut down, the agency, the
3 not-for-profit agency gets paid for its expenditures at
4 the senior center, but it does eventually get shut down.

5 COMM. NEWMAN: The contract is terminated.

6 COMM. PATTERSON: The contract is
7 terminated, but somehow there's what you call a quasi
8 contract for the rent payment or something that allows
9 for the senior center to be supported by the City, and
10 we can't as a Charter amendment permit the --

11 CHAIRMAN MACCHIAROLA: Prevent those.

12 COMM. PATTERSON: I thought the purpose was
13 to delegate to the PPB a relatively broad rule making
14 authority because they're the ones closer to the issue.

15 COMM. NEWMAN: Accepting that this
16 reasonably deals with existing contracts and I accept
17 that, this is a lot of progress.

18 CHAIRMAN MACCHIAROLA: You can't climb the
19 whole mountain, we can only go up so far.

20 COMM. NEWMAN: I accept. There's a separate
21 issue that goes with it. There are organizations that
22 don't have contracts and get a contract, so they're not
23 covered by this, and they're directed by a Commissioner
24 to go forward while that contract winds its way through
25 the review process, and it's not only in the

1 not-for-profit world, it's in the engineering world, the
2 architectural world, security guards, et cetera, and
3 this rule doesn't deal with that, because obviously they
4 don't have a contract so therefore they can't get paid.

5 On the other hand, one they want to work
6 two, they don't want to alienate anybody, and three,
7 they're inevitably being told don't worry, you'll have
8 it in the next few weeks and it goes on for six months.

9 CHAIRMAN MACCHIAROLA: We don't want the
10 Commission meeting to go on six months.

11 COMM. NEWMAN: But we also don't want those
12 to be in the claims process.

13 CHAIRMAN MACCHIAROLA: We'll get a little at
14 a time. Is there anyone that wants to add anything to
15 this discussion? Yes.

16 COMM. PATTERSON: I don't think that what
17 Steve suggested is -- I think the PPB is being given
18 enough authority and enough direction in this proposed
19 language that what you're suggesting is very unlikely to
20 happen, and you open up a real can of worms if you tell
21 the PPB to put in the Charter a suggestion that anyone
22 who thinks they have a contract with the City can get
23 paid.

24 COMM. NEWMAN: It goes back to the other
25 issue, it goes back to the interest, which at least as

1 far as I quickly read this, isn't spelled out.

2 COMM. PATTERSON: It isn't.

3 CHAIRMAN MACCHIAROLA: Interest at the same
4 rate.

5 COMM. NEWMAN: Interest is at the same rate
6 that that contractor is told to go forward, this new
7 contractor, whoever it may be, or even an old contractor
8 who doesn't get paid, and six months later they finally
9 get a contract, they should get interest for it, in the
10 same way they get interest for late payment, and in fact
11 in the same way late payment resulted in expediting the
12 payment process.

13 I mean, the other day Marla mentioned 80,000
14 in fiscal '03 as interest payments. In fiscal '96 it
15 was \$1,100,000 by fiscal '00 it dropped to \$400,000 and
16 so on every year down to the drop to the 80,000 and the
17 reason for that, since the City was paying money, they
18 had to figure out how to pay people timely, and if the
19 interest there is mandated, then the City will figure
20 out how to contract. And prior to that it was higher.

21 I keep going back into annual financial
22 records. So I think we should be putting in the clause
23 about interest and mandating it in the same way the '89
24 Charter Commission did for prompt payment. It worked
25 then, it will work now. And I guess I make that as an

1 official proposal.

2 DR. GARTNER: I think the language here
3 gives sufficient flexibility to the PPB rather than
4 mandating a particular remedy.

5 COMM. NEWMAN: It's a "may" and not
6 a "shall." This issue has been brought to them since
7 1998. If they wanted to, they've had ample opportunity
8 to do it. The only way -- and if the '89 Charter
9 Commission had written "may" instead of "shall" they
10 wouldn't have gotten interest for prompt payment.

11 CHAIRMAN MACCHIAROLA: Anyone want to pick
12 up on that? Okay, are there any more resolutions before
13 us?

14 COMM. NEWMAN: I've got to vote on the
15 interest issue.

16 CHAIRMAN MACCHIAROLA: I'll do whatever you
17 like. You want to --

18 COMM. NEWMAN: Vote on mandating interest
19 for late contracting.

20 CHAIRMAN MACCHIAROLA: Why don't we vote the
21 whole package and you can make a motion to add that.

22 COMM. NEWMAN: Shouldn't it happen first?

23 CHAIRMAN MACCHIAROLA: It would be part of
24 the package. All right, you want to add mandated
25 interest on contracts that have not been --

1 COMM. NEWMAN: Where contracts --

2 CHAIRMAN MACCHIAROLA: That have not been
3 registered.

4 COMM. NEWMAN: Are contracts that are
5 registered after they began.

6 DR. GARTNER: I'm advised by the Law
7 Department --

8 CHAIRMAN MACCHIAROLA: Don't tell us about
9 the Law Department. They give bad advice. Don't tell
10 us about the Law Department. Tell us what you think the
11 policy should be.

12 DR. GARTNER: Acting without, providing City
13 funds when registration has not occurred is not
14 something we ought to be encouraging.

15 CHAIRMAN MACCHIAROLA: Is it done for for-
16 profits?

17 COMM. NEWMAN: It's done by the State of New
18 York, so for their contracts --

19 CHAIRMAN MACCHIAROLA: So there are
20 provisions in the Charter that you're talking about
21 haven't applied to profit making entities.

22 COMM. NEWMAN: That's correct.

23 CHAIRMAN MACCHIAROLA: So what you want us
24 to do is add a new item beyond what we've --

25 COMM. NEWMAN: No, we've been considering

1 this all along, beyond what's written here. It is
2 exactly what the State does, so there's no State bar on
3 doing this, and obviously if it's in the Charter, that
4 takes care of the Law Department's legal issue.

5 CHAIRMAN MACCHIAROLA: All right, on
6 Mr. Newman's resolution, all those, I'm going to ask if
7 you're in favor or opposed. Mr. Newman is in favor.

8 COMM. SIEGEL: Abstain.

9 COMM. O'HARE: Favor.

10 COMM. PATTERSON: Favor.

11 COMMISSIONER KHALID: Favor.

12 COMM. LYNCH: Abstain.

13 COMM. GATLING: Opposed.

14 CHAIRMAN MACCHIAROLA: Opposed?

15 COMM. NORAT: Opposed.

16 CHAIRMAN MACCHIAROLA: Resolution passes.

17 And I suspect that brings you to the drawing board to
18 come up with ammunition for Monday's meeting.

19 DR. GARTNER: I'm very anxious not to add to
20 the burden between now and Monday in terms of what you
21 do and I wondered whether the Chair would entertain
22 inviting Marla Simpson, Mr. Graham to come before us at
23 this point.

24 COMM. NEWMAN: We just voted. I suggested
25 that before. I don't mind speaking, but it does seem a

1 little odd that when I asked for them to speak it was
2 ignored, and now that this has passed -- now that this
3 has passed --

4 CHAIRMAN MACCHIAROLA: I think the
5 resolution that's been adopted, right, or been passed,
6 right, they can clarify it, we will have it --

7 COMM. NEWMAN: That's fine.

8 CHAIRMAN MACCHIAROLA: We will have it on
9 Monday --

10 COMM. NEWMAN: We can ask them to draft it
11 jointly. That might be a nice idea.

12 CHAIRMAN MACCHIAROLA: Why don't we get
13 Mr. Graham and Commissioner Simpson to speak on this?

14 MR. CROWELL: I think what I was trying to
15 point out, I think there are legal problems with what
16 you're trying to propose and I think for us to go back
17 to the drawing board, we're going to come back with
18 probably the same thing, that I don't think there's a
19 way for us to do it. We've had extensive discussions
20 over the past week and I know what the State does --

21 COMM. NEWMAN: I have the State law with me.

22 MR. CROWELL: We operate under a completely
23 different set of laws from the State.

24 CHAIRMAN MACCHIAROLA: Could I suggest the
25 following? Could I suggest that we write Steve's

1 recommendation and we say, "unless not in accord with
2 State law," right?

3 COMM. PATTERSON: Why don't we put in a
4 clause "to the extent permitted by applicable law."

5 COMM. NEWMAN: By applicable State law.
6 Because they'll say the City law bars it.

7 DR. GARTNER: It's the Municipal Home Rule
8 Law, which the State is not subject to.

9 MR. CROWELL: General Municipal Law.

10 CHAIRMAN MACCHIAROLA: Municipal Home Rule
11 Law as State Law.

12 COMM. NEWMAN: If this had been the issue a
13 month ago, I would suggest we consult with the Attorney
14 General of the State. It's a little late for that, so
15 the clause --

16 CHAIRMAN MACCHIAROLA: Look, the policy that
17 the Charter Commission wants implemented is policy which
18 pays interest to vendors whose contracts have not been
19 registered and who perform service. That's what the
20 Charter Commission's policy wishes. The objection we've
21 heard is that it is contrary to State law, it's not
22 policy objection, it's a law objection.

23 So therefore, if the Charter Commission
24 passes its resolution and says "to the extent permitted
25 by State law," comma, "interest payments shall be made,"

1 I don't see that that's a problem.

2 MR. CROWELL: That's fine. What I'd like to
3 do is I would like to have Ms. Simpson and Mr. Graham
4 speak for the record, because this would likely be an
5 issue of litigation. I would like it explicitly clear
6 for the record what we're doing and what their beliefs
7 are as to the legal parameters under which the City
8 operates now with this provision that you're proposing.

9 CHAIRMAN MACCHIAROLA: Ms. Simpson, are you
10 a lawyer?

11 MS. SIMPSON: Yes. 25 years.

12 CHAIRMAN MACCHIAROLA: And are you
13 testifying under oath?

14 MS. SIMPSON: If you want me to. If you
15 want me to.

16 CHAIRMAN MACCHIAROLA: I also appreciate the
17 fact that you're an officer of the City Government, so,
18 and not representative of a law authority.

19 MS. SIMPSON: My lawyer is the Law
20 Department, I know that.

21 CHAIRMAN MACCHIAROLA: So why don't you give
22 us your perspective of it, not as much as in terms of
23 legal bar, but in terms of other issues.

24 MS. SIMPSON: I will speak to this. Is this
25 on?

1 VOICE: No.

2 MS. SIMPSON: Thank you, I'm sorry, but this
3 has been a subject of active discussions. The drafts
4 that you had in front of you was not a draft we arrived
5 at without thinking about whether to specify interest.
6 Indeed, we are in a dialogue with the Comptroller's
7 office about a way for the PPB to do that. We are
8 advised by counsel that there are significant legal
9 issues and we are trying to work around them. It was
10 our best judgment that having a language that mandated
11 time frames and mandated remedies for violation of those
12 time frames without tying the PPB's hands as to what
13 those remedies would be, was the best way to get to a
14 solution, some part of it may well be, and I have to say
15 this over my lawyer's dead body, but it may well be
16 interest, but that interest might be something that
17 kicks in after two other options that are preferable
18 fail or something, I don't know.

19 But this is a dialogue that we're having and
20 we're trying to have and we would like to be able to
21 have, obviously, in the context of improved Charter
22 language that gives us mandated schedules.

23 But it is not our best judgment that
24 interest alone is necessarily the only remedy for this,
25 and all I can say is our principals have been, you'll

1 hear from John directly, obviously, we have sort of
2 different perspectives that we start from, but this is a
3 subject that was between the Deputy Mayor and
4 Comptroller on policy grounds and we ended up with the
5 language that was put before you tonight.

6 Obviously, the Comptroller probably, he'll
7 speak for himself, he'll probably disagree with my
8 lawyer's view and I think we'll get to a solution that
9 makes both of us pleased and that achieves the result
10 that all the members of the Commission, including the
11 ones who voted in favor of the amendment would be happy
12 with, but I do not have authority to agree to that or
13 draft that, because it is our best judgment that it's
14 extremely unwise.

15 CHAIRMAN MACCHIAROLA: Do you have a belief,
16 do you have a belief that the payment of interest
17 pursuant to State law is not something that the City can
18 do?

19 MS. SIMPSON: The issue is that, as I
20 understand it, and it's very hard for someone who has
21 been a lawyer for 25 years to be only policy making as
22 she speaks, but as I understand the issue, the Law
23 Department does not want to create a legal obligation to
24 pay before there is a registered contract in front of
25 the Comptroller. As I understand the issue, the Law

1 Department believes that in order to create that legal
2 obligation to pay, we would have to do what the State
3 did and create a new agency action which would be the
4 directive, the official directive to pay, to continue
5 working and therefore be eligible to be paid.

6 I believe the Law Department's concern is
7 that the creation of that action, if we don't craft
8 something that's clever, the creation of that action is
9 a separate set of decisions that can then also be
10 litigated and since obviously the City operates in a
11 somewhat different litigation environment than the
12 State, that is a matter of concern. I do not believe
13 that's an insolvable problem. We're engaged in active
14 discussions with the Comptroller to arrive at a version
15 we can all work with, but that is why, for example, the
16 State structure which creates a State loan fund is not
17 the direction that we have gone.

18 We do an outright discretionary grant to a
19 not-for-profit so that the loans that are granted are
20 private actions, they are not State actions, they are
21 not litigable. We have never ran out of that loan fund,
22 we believe there's room to restructure that loan fund to
23 resolve and deal with this problem, but we do not want
24 to make that loan fund a City version of a State loan
25 fund, we want to keep that loan fund private.

1 CHAIRMAN MACCHIAROLA: So the answer is
2 there's nothing in the law that prevents us from doing
3 this.

4 MS. SIMPSON: I actually believe my lawyer's
5 advice. I believe that if you were to do it, it would
6 create more problems and it would slow the process down
7 rather than speed it up, because I don't think
8 litigation ever speeds anything up, but that's my
9 concern.

10 CHAIRMAN MACCHIAROLA: Thank you.

11 MR. GRAHAM: Thank you, Steve.

12 COMM. NEWMAN: I'm sorry, John.

13 MR. GRAHAM: That's all right.

14 COMM. NEWMAN: I did it before your
15 principal showed up.

16 VOICE: That's okay, John. Go ahead.

17 MR. GRAHAM: As Marla said, we discussed
18 this at length. We're relatively okay with the version
19 that's out there before you. If you want to change it,
20 you might want to change it to monetary remedies --

21 MS. SIMPSON: That's certainly better.

22 MR. GRAHAM: Right now it says "remedy," you
23 could put "monetary remedy," it might work for you,
24 Steve. We're in favor of interest payments for all
25 contractors for retroactive contracts. We have a

1 special proposal to PPB and we put a recommendation in
2 the task force report recently about it. So I think
3 right now it's just splitting hairs over the language
4 and maybe you could get past this use of the word
5 "monetary."

6 CHAIRMAN MACCHIAROLA: So your
7 recommendation is that we can carve this language out to
8 have the same effect?

9 MR. GRAHAM: Yes. I don't have language in
10 front of me. We didn't get a version of this.

11 MS. SIMPSON: It's the version that Anthony
12 showed us, it's where it says mandatory remedies.

13 MR. GRAHAM: Page 7.

14 COMM. NEWMAN: While they're discussing,
15 part of the problem with the loan fund, a loan fund, I
16 still think it was the right decision, the loan can only
17 be made when the contract leaves the Mayor's Office of
18 Contracts and goes to the Comptroller's Office, because
19 there is a fear -- reasonably legitimate -- that some
20 contracts will be rejected in the process of going
21 through MOC, OMB, et cetera, and it may well be
22 uncovered. So it's only at the point it goes to the
23 Comptroller's office, which is maybe one month out of
24 the six.

25 MR. GRAHAM: I don't think that the

1 word "monetary," Steve, would apply only to loans.

2 COMM. NEWMAN: No, I was just explaining why
3 loans themselves don't address --

4 MS. SIMPSON: Under the current guidelines.

5 CHAIRMAN MACCHIAROLA: So you would add
6 language to this --

7 MR. GRAHAM: Maybe you can describe it, or I
8 can describe it.

9 DR. GARTNER: It's one word.

10 MR. GRAHAM: On page 7 it says, "which rule
11 shall specify the appropriate monetary remedies for
12 failure."

13 COMM. NEWMAN: My problem is I've seen how
14 the prompt payment rule worked just by imposing
15 interest. It forced the City, including the
16 Comptroller's Office and OMB, to figure out how to
17 process payments.

18 CHAIRMAN MACCHIAROLA: And now it will do
19 the same in the not-for-profits that we have as a result
20 of the changes that we made. So we're now talking about
21 a separate problem and I think we've made progress on
22 that problem.

23 My sense is that -- the Commission makes its
24 decision. The decision that it has made has been that
25 we're going forward with -- we're going forward with

1 something other than what we've got. Is that still the
2 will of the Commission?

3 COMM. NEWMAN: We still have until Monday.
4 This is an issue that's been worked on by PPB and others
5 for five years. If we establish a deadline for them by
6 when we meet on Monday, they may come up with something
7 that works. So if we leave it the way we just voted it,
8 they get three days or four days to come back at us with
9 an alternative that may work.

10 DR. GARTNER: I think they've imposed, if I
11 understand the dialogue between John and Marla, a
12 resolution that's satisfactory to them. The question is
13 whether that's satisfactory to the Commission as a body.

14 CHAIRMAN MACCHIAROLA: The question is does
15 the modification, the inclusion of the word "monetary"
16 satisfy the Commission on this question.

17 COMM. NEWMAN: Not yet.

18 CHAIRMAN MACCHIAROLA: Not yet. Mr. Seigel?

19 COMM SIEGEL: Yes.

20 COMM. O'HARE: No.

21 COMM. PATTERSON: No.

22 COMMISSIONER KHALID: No.

23 COMM. LYNCH: Abstain.

24 COMM. GATLING: I voted no to begin with.

25 CHAIRMAN MACCHIAROLA: You voted yes.

1 COMM. GATLING: No.

2 COMM. NORAT: No.

3 CHAIRMAN MACCHIAROLA: We have a majority
4 that wishes to continue the negotiation.

5 COMM. NEWMAN: With the hope that on
6 Monday--

7 CHAIRMAN MACCHIAROLA: Four for, four no.

8 DR. GARTNER: Who voted yes?

9 CHAIRMAN MACCHIAROLA: Siegel, Gatling,
10 Macchiarola and --

11 COMM. NORAT: No, because it was consistent
12 with not all the way.

13 DR. GARTNER: What was the tally I have?
14 Maybe we better tally again.

15 COMM. NEWMAN: Doesn't matter, since it's a
16 tie or the abstention counts as a no.

17 CHAIRMAN MACCHIAROLA: We're going to
18 ultimately have to vote, so this will come back.

19 COMM. NEWMAN: Hopefully the Law Department
20 and the City players will come back to us on Monday with
21 a solution that works for everybody.

22 CHAIRMAN MACCHIAROLA: Next item.

23 DR. GARTNER: You've heard testimony from --

24 COMM. NEWMAN: Mr. Chair, I think we have to
25 vote on the whole package.

1 CHAIRMAN MACCHIAROLA: Vote on the whole
2 package? Mr. Newman?

3 COMM. NEWMAN: Yes.

4 COMM. SIEGEL: Yes.

5 COMM. O'HARE: Yes.

6 COMM. PATTERSON: Yes.

7 COMMISSIONER KHALID: Yes.

8 COMM. LYNCH: Abstain.

9 COMM. GATLING: No.

10 COMM. NORAT: No.

11 CHAIRMAN MACCHIAROLA: Okay, it's four and
12 five, what's the number? I lost count.

13 DR. GARTNER: It's five, two and one with
14 the Chair not yet voting.

15 CHAIRMAN MACCHIAROLA: The Chair votes
16 present. Okay.

17 DR. GARTNER: May I just be sure that the
18 language -- I'm sorry, John, could I trade you?

19 MR. GRAHAM: Sure.

20 DR. GARTNER: On page 8, did part of what
21 was just passed include the phrase "pursuant to the
22 determination by the Commission?" That was included, is
23 that correct?

24 CHAIRMAN MACCHIAROLA: Yes.

25 DR. GARTNER: Turning now to the next

1 problem, next to the last, we heard testimony from the
2 Commissioner of the Department of Consumer Affairs and
3 several other people. We have a proposal from the
4 Commissioner that Anthony will present. Before you go
5 further, you have from the Department a letter that I
6 believe every Commissioner has, indicating the support
7 of her predecessors for the recommendation.

8 I had a phone conversation today with Don
9 Halpern, former State Senator, who represents the New
10 York Metropolitan Retail Association, and he indicated
11 his support for the Commission's proposal. I have an
12 e-mail from the executive vice president of the Food
13 Industry Alliance, who also supports the recommendation
14 of the Commission.

15 COMM. SIEGEL: Who was the first group?

16 DR. GARTNER: The first group is called the
17 Metropolitan Retail Association. It's an association of
18 large retail stores, J.C. Penney, the electronic stores,
19 and so forth. These are the people who presumably would
20 be subject to this --

21 COMM. NEWMAN: They would be the people most
22 likely to oppose this.

23 DR. GARTNER: So Anthony, do you want --

24 MR. CROWELL: I would just point you to a
25 new Section 2203-A of the Charter that the Department of

1 Consumer Affairs has presented to us. This has been the
2 subject of extensive discussion. Commissioner Siegel
3 has asked that the Commission be given the weekend to
4 review it, he has some questions he wants to ask, so we
5 can address it at that point and it's summarized in your
6 packet.

7 CHAIRMAN MACCHIAROLA: Okay?

8 COMM. SIEGEL: I'd just like to speak to
9 some of the former Commissioners about this and see if
10 it's possible to break out some of the -- it may not be
11 possible to break out some of the sections. But it's
12 interesting, I'm thinking about it now, I'm surprised
13 these groups have no objection.

14 CHAIRMAN MACCHIAROLA: You have four
15 Commissioners, five, Commissioner Dykstra, Polninski --

16 COMM. NORAT: It just happens I talked to
17 Don about this today extensively, and the issue was last
18 year was the Consumer Affairs first presented it, they
19 had many concerns and then the Commissioner opened her
20 office to the constituents and they actually -- what is
21 now in front of us is the language that was put together
22 by the agency and the people affected by it. And it's
23 actually equal to a bill that had been introduced in the
24 Legislature.

25 COMM. SIEGEL: Let me then withdraw my

1 objection and let's just move forward.

2 CHAIRMAN MACCHIAROLA: With that withdrawal,
3 we can proceed to vote on this one. I have to say I was
4 very impressed with the amount of support this
5 generated. Mr. Newman?

6 COMM. NEWMAN: Yes.

7 COMM. SIEGEL: Yes.

8 COMM. O'HARE: Yes.

9 COMMISSIONER KHALID: Yes.

10 COMM. LYNCH: Yes.

11 DR. GARTNER: Yes.

12 COMM. NORAT: Yes.

13 CHAIRMAN MACCHIAROLA: Yes. We don't have
14 Kitty's vote, she's not back.

15 DR. GARTNER: Next to the last item of this
16 catch-all package, Anthony will present something which
17 is a request of the Conflict of Interest Board which
18 carries further what it is you approved at the last
19 meeting.

20 MR. CROWELL: As you'll remember at the last
21 meeting, we discussed increasing the fines the Conflict
22 of Interest Board may impose from 10,000 to 25,000 and
23 also providing a disgorgement provision for them.
24 Although the Law Department had approved the language
25 the Commission prepared, up to the disgorgement

1 provision, the Conflict of Interest Board is requesting
2 a more expansive provision I'll read to you.

3 It will provide any entity or person,
4 whether or not a public servant, which or who realizes
5 an economic benefit knowing it to be the result of
6 conduct by a public servant that violates Section 2604
7 or 2605 of this Chapter, shall be liable in a civil
8 action brought by the Board in a Court of appropriate
9 jurisdiction for the value of the benefit.

10 Therefore, if a violation of the conflicts
11 rules rendered a public servant with \$500,000 in their
12 pocket, so to speak, the Conflicts of Interest Board
13 could go after that money that was obtained through that
14 violation of the conflicts of interest law.

15 CHAIRMAN MACCHIAROLA: Why wouldn't the
16 Conflict of Interest Board do that? Wouldn't the City
17 have the right to pursue that remedy?

18 MR. CROWELL: There's no specific right
19 right now within the conflicts of interest law.

20 CHAIRMAN MACCHIAROLA: If a person obtains a
21 benefit as a result of violation of the conflict of
22 interest, why would the City have a right to recover all
23 this gain? Why would we give you parallel jurisdiction
24 through the Conflict of Interest Board?

25 MR. CROWELL: What you're doing with the

1 Conflicts of Interest Board, because they are the group
2 that adjudicates these violations, that makes the
3 decision, they're the appropriate body to go after.

4 CHAIRMAN MACCHIAROLA: Why would that be? I
5 think, did Corporation Counsel agree to this?

6 MR. CROWELL: Mm-hmm.

7 CHAIRMAN MACCHIAROLA: I can't imagine.

8 MR. CROWELL: The Human Rights Commission
9 does it as well. I think what --

10 COMM. GATLING: With asset forfeiture, you
11 went against the criminal.

12 CHAIRMAN MACCHIAROLA: You went against the
13 person that obtained the benefit.

14 MR. CROWELL: You're thinking about what the
15 Department of Investigation does. This is a separate
16 legal structure under which this kind of action would
17 ensue.

18 COMM. GATLING: We confine it to \$100,000.
19 So it's not a big deal for the Conflicts of Interest
20 Board.

21 MR. CROWELL: It's jurisdictional.

22 CHAIRMAN MACCHIAROLA: Commissioner Gatling
23 says it's standard in her agency.

24 MR. CROWELL: It has to do with how the laws
25 are enforced.

1 CHAIRMAN MACCHIAROLA: Any discussion?

2 Kitty, you're missing a good discussion here.

3 COMM. PATTERSON: On administrative law?

4 CHAIRMAN MACCHIAROLA: This is an area where
5 I was looking for the lawyers here to help me.

6 COMM. PATTERSON: I ran. Administrative
7 adjudication.

8 CHAIRMAN MACCHIAROLA: Do we have anybody
9 wishing to comment on this? Commissioner Newman, what's
10 your disposition?

11 COMM. NEWMAN: Yes.

12 COMM. SIEGEL: Yes.

13 COMM. O'HARE: Yes.

14 COMMISSIONER KHALID: Yes.

15 COMM. LYNCH: Yes.

16 COMM. GATLING: Yes.

17 CHAIRMAN MACCHIAROLA: Yes.

18 COMM. NORAT: Yes.

19 CHAIRMAN MACCHIAROLA: Okay, yes.

20 COMM. GATLING: The last item is an
21 information item for you. We heard, we, staff,
22 presented information and we heard comments at the last
23 I think probably two commission hearings about the
24 experience in Jacksonville. It is a somewhat unique
25 jurisdiction in that it has campaign finance -- sorry,

1 non-partisan elections and it is one of the two cities
2 that permits the name of candidates, candidates' names
3 -- candidates who place the party in which they're
4 registered on the ballot. The other interesting part of
5 Jacksonville is that it is one of the cities that
6 recently has adopted non-partisan elections, most of the
7 41 cities that we've always referred to have done it
8 quite some long time ago.

9 It is also in -- I guess I'd be surprised
10 and I won't ask the Commissioners to identify since they
11 haven't looked at the paper, Jacksonville is the 14th
12 largest city in the country. It's not some small, quiet
13 Florida town, it is larger than Boston and Washington.

14 COMM. NEWMAN: I was shocked.

15 COMM. SIEGEL: Be careful. It's a unified
16 City-County system. It's the entire County.

17 DR. GARTNER: It's the consolidated
18 counties.

19 MR. CROWELL: Like New York City.

20 DR. GARTNER: In that case, the County and
21 the City is coterminous.

22 CHAIRMAN MACCHIAROLA: So they don't have to
23 change that name. It's not that important yet.

24 DR. GARTNER: Not yet.

25 CHAIRMAN MACCHIAROLA: It's getting there.

1 DR. GARTNER: Staff's been working on this
2 issue for the past two or three weeks. We really need
3 Frank Barry. Let me ask Frank to summarize what you
4 have here and respond to any questions that you have.

5 MR. BARRY: For the past week we've engaged
6 in some outreach to some various people in Jacksonville.
7 We've done some research and analysis in looking at
8 their election results. We tried to get a sense of the
9 legislative history that resulted in their switch to
10 what they call unitary election system. To give you a
11 brief synopsis of it, in the late '80s, 1988 a group
12 called the Jacksonville Community Council did a study on
13 ways to increase voter participation and increase the
14 number of candidates and increase the competitiveness of
15 elections. And they began with a general predisposition
16 towards non-partisan elections, but after running into
17 some opposition from parties, as well as running into
18 the literature which was not entirely favorable, they
19 began to look at more of a hybrid approach and came up
20 with what they decided to call a unitary system.

21 That term I don't think existed before they
22 created it, but the hybrid approach that they came up
23 with was a non-partisan structure in that there were no
24 party primaries, but you would be allowed to, in fact,
25 required in Jacksonville to list your party label on the

1 ballot. So that was part of a study they did in 1988.
2 It didn't go too far.

3 However in 1991, the City had an election
4 with two Democrats running in the primary and no
5 Republican primary, for Mayor that is, and a lot of
6 voters were miffed there was no election held in
7 November for Mayor. As a result of that, the City
8 Council got a lot of phone calls, lot of people
9 expressed frustration, which resulted in a lot of
10 newspaper articles which are attached in this document
11 and momentum began to build for some election reform and
12 what they latched on to was the recommendations made by
13 the Jacksonville Community Council and the bill was
14 introduced by a Liberal Democrat on the City Council, it
15 had bipartisan support, it was put before the voters in
16 a referendum. The voters supported it by a margin of 73
17 percent to 27 percent, and the first election which it
18 was in effect for was 1995. So they've had three
19 elections under it, '95, '99, 2001.

20 So the second half of the report is looking
21 at what their experience has been, and we looked at both
22 numbers and we did some -- had lengthy phone
23 conversations with a variety of people from the sponsor
24 of the bill to the author of the original study, to the
25 current president of that organization to party leaders

1 and the president of the Jacksonville Urban League, and
2 to a person, they were generally supportive of it.
3 There was not a single bad thing said about it.

4 That's the anecdotal part of it. But the
5 evidence part of it is more compelling in terms of the
6 turnout numbers. And all of that is in the report as
7 well. Their experience has been that turnout has
8 increased in both elections.

9 I think it passed around the election of
10 2003 they had 50 percent and 46 percent, so two rounds
11 they were close to 50 percent on both rounds with a
12 percent of number of, percentage of the population
13 voting around 30, percent which was also an all time
14 high.

15 So participation was way up in 2003. It was
16 down in '99, but there was no competitive Mayoral race.
17 It was way up, it was considerably up in '95, which was
18 the first year they had switched.

19 So what I attempted to do was an analysis at
20 looking at their experience under the partisan system
21 compared to the unitary system, looking at voter
22 turnout, also looking at election results in terms of
23 impact on minorities and also competitiveness. So all
24 the information is in there.

25 I know you're seeing it for the first time.

1 I'm happy to take any questions or if you want to on
2 Monday, if you want to digest it over the weekend.

3 DR. GARTNER: Let me call to your attention
4 some of the summary data. Highest voter participation
5 in any election in twenty years, in the past twenty
6 years, the election that Frank described on page 24. In
7 terms of minority participation, which was the one that
8 caught my eye when I read the report for the first time
9 a couple of days ago a draft of it, it's the first time
10 in Florida's post reconstructive history that a black
11 person was elected Sheriff. It's the second highest
12 position in the municipality.

13 Similarly, there were increases in the
14 number of blacks in lower offices as well.

15 The summary on page 7, since switching to a
16 unitary system, Jacksonville participates in both rounds
17 what we call a primary and general, initial and runoff.
18 The obvious question is, are the increases in the black
19 community a function of increasing black percentage; in
20 the past years there was only a marginal increase in
21 black percentage. It's always hard to deal with
22 causality, but it does seem to be the experience in
23 Jacksonville.

24 I did mention at our last meeting that a
25 study that the City of Charlotte had done reported that

1 Jacksonville had the highest voter turnout of any city
2 of a comparable size across the country; cities in the
3 four to seven or 800,000 person range.

4 CHAIRMAN MACCHIAROLA: There's one sentence
5 at the conclusion, almost at the last sentence. It says
6 "people," -- it's quoting a professor: "People don't
7 like parties as much as political scientists."

8 COMM. NEWMAN: Well, we've heard that.

9 COMM. O'HARE: Could I ask a question?
10 Frank, on page 3 on the top paragraph, you say, "this
11 hybrid approach is similar to a partisan system with
12 wide open primary elections." Could you explain that a
13 little bit?

14 MR. BERRY: I think that's actually a quote
15 from the original report that the Jacksonville Community
16 Council did in 1988, and they were explaining the way
17 different states and cities-run primaries and they
18 subsequently in that report defined an open primary
19 where you could go into the voting booth and vote either
20 the Republican or Democratic primary, so I think that is
21 what they were getting at.

22 It's not just an open primary, but a totally
23 wide open -- it was different from an open primary, and
24 yet also in some ways different from a non-partisan.

25 COMM. O'HARE: How is it different from an

1 open primary?

2 MR. BERRY: In an open primary you're still
3 voting for one or the other, in that you go into the
4 booth, but you have a Democratic ballot or Republican
5 ballot. Whereas in a non-partisan they're all in the
6 same ballot.

7 CHAIRMAN MACCHIAROLA: I think the
8 difference is in a wide open primary you can vote in
9 whatever primary you choose, regardless of the party to
10 which you belong. So if there's an interesting
11 Republican race you can vote in that one or an
12 interesting Democratic race, and I think the report was
13 comparing what would be the effect of what they're doing
14 in Jacksonville, which is to say opening it up, to
15 what's being done in Minneapolis, where they in fact
16 have that wide open primary. I think.

17 COMM. O'HARE: Yes, that's what I was
18 wondering about this sentence, the hybrid approach
19 refers to the case in Minneapolis.

20 CHAIRMAN MACCHIAROLA: The hybrid approach
21 that they are talking about in this situation, is
22 similar to the wide open partisan, wide open primary.

23 COMM. O'HARE: Hybrid approach is the one
24 they're considering for Jacksonville, and it's similar
25 to the one in Minneapolis.

1 MR. BERRY: That's right.

2 COMM. O'HARE: Minneapolis is the wide open
3 primary.

4 COMM. LYNCH: I would like to know what do
5 they call this election in Jacksonville and how come
6 they're not calling that the same here in New York?

7 MR. BERRY: It's called a unitary system and
8 I never learned how they arrived at that term, but we
9 think it's a creation of Jacksonville, and our system,
10 what is being proposed, anyway, is slightly different
11 from what they have in Jacksonville, slightly different
12 from what they have in Minneapolis, which calls their
13 system a non-partisan system, even though they also have
14 party labels on the ballot.

15 Jacksonville requires the party label to be
16 on the ballot. What is being proposed here is the
17 option for the candidate to be on the ballot.

18 DR. GARTNER: Minneapolis the third version,
19 which is any three words the candidate wishes, which may
20 be a party, such as Democrat, Farm, Labor Party or there
21 might be something, such as I had seen under a
22 candidate's name, "Old Skool," spelled with a K. I
23 assume that was meant to say something, I'm not sure
24 what.

25 But you have, I guess I've said it in a

1 number of places, of the 41 cities that have
2 non-partisan elections, no one of them does it in the
3 exact same manner than any other one of them. I think
4 the question of naming is a free-for-all.

5 I would assume that on Monday night when we
6 vote on ballot language with the staff, that is
7 something you would want to address.

8 MR. CROWELL: I think in the wide open
9 choices we've worked on so far, we consider calling it
10 New York City non-partisan.

11 CHAIRMAN MACCHIAROLA: Okay, let me just
12 review where we are.

13 COMM. NEWMAN: I have questions. I assume
14 this system in Jacksonville and Minneapolis that people,
15 if they have petition requirements, anybody from any
16 party or a registered voter can carry petitions and can
17 sign?

18 MR. BERRY: I'm actually not sure of the
19 answer to that.

20 COMM. NEWMAN: And two, more for people who
21 are opposed to this, I just want to make sure that all
22 the elections you're talking about took place after the
23 consolidation of Jacksonville.

24 MR. BERRY: Yes.

25 CHAIRMAN MACCHIAROLA: Okay, let's go a

1 couple of touchy items we had to address tonight. Let
2 me just go over what we have to do for Monday.

3 Monday we have to get some language that
4 addresses the issue that we've been discussing on
5 interest payments. We're also going to discuss, you've
6 distributed to us four sets of language proposals --

7 DR. GARTNER: Resolutions about matters that
8 were not in the jurisdiction of the Commission, but were
9 of concern.

10 CHAIRMAN MACCHIAROLA: We're going to have
11 those in a form that's going to allow us to have that
12 discussion. Ballot language that people have should be
13 communicated to the staff to get anybody's judgment as
14 to what that should be. We will have that for
15 discussion on Monday.

16 Monday we will vote, finally, to put ballot
17 questions to the voters in the November election. We
18 will discuss the language in the questions -- ballot
19 language, access, and the strategy for doing that, we
20 should have discussion on the strategies for putting
21 that forward, who would be involved in discussion and
22 which Commissioners would be willing to advance
23 concern, .

24 I think we're going to need to get some
25 coalitions going here, leaders of the City, et cetera,

1 so we'll discuss that.

2 And that will conclude our business,
3 hopefully, before we submit items to the Board of
4 Elections. After that, we'll have another set of
5 meetings to go over how we will, what role we play
6 between now and the election, and how we further develop
7 the agenda for Home Rule message and for legislation
8 that we are also proposing.

9 DR. GARTNER: On that last point. You
10 instructed me that we would have a meeting soon after
11 Labor Day. I investigated the members about the
12 education program in September and October.

13 COMM. NEWMAN: We also talked about writing
14 up a recommendation for what another Charter Commission
15 might look at, and in recent times, too late for us to
16 do anything, we've managed to gather some information,
17 both Alan and I have, concerning 2008 and the
18 elimination of the financial controls and the raising of
19 a variety of issues.

20 CHAIRMAN MACCHIAROLA: I think to the extent
21 that you have that -- I think the reason that I think
22 the deadline is so important is because the deadline
23 we're facing is the deadline that allows us to get on to
24 the ballot and then the Commission's life continues
25 right up until election day.

1 COMM. NEWMAN: I wasn't suggesting that we
2 do that on Monday. Because in fact on Monday I think we
3 should deal with what's on the ballot. Definitely in
4 October or November.

5 CHAIRMAN MACCHIAROLA: Okay, we're now --

6 COMM. LYNCH: Mr. Chairman, did I hear you
7 correctly, we're going to get the information from the
8 staff on Monday --

9 CHAIRMAN MACCHIAROLA: The ballot language?

10 COMM. LYNCH: Yes.

11 CHAIRMAN MACCHIAROLA: It should be
12 discussed on Monday, they're going to get it out as soon
13 as they can get it out. I haven't received anything,
14 because my whole system has been down with a virus. I
15 don't know if there's been mails with the virus or well,
16 between the virus, I haven't gotten any e-mails.

17 COMM. SIEGEL: The whole school?

18 CHAIRMAN MACCHIAROLA: Our accountants
19 delivering the audit documents had a corrupted system.
20 Outlook was gone, Internet was gone, the whole thing was
21 gone, and I have no e-mails and I can't even call people
22 because I don't even have the numbers. Don't get me
23 started. Okay. So let's adjourn the meeting and we
24 will begin the hearing in ten minutes.

25 (Time noted: 7:47 p.m.)