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**FINAL REPORT  
OF THE  
NEW YORK CITY  
CHARTER  
REVISION  
COMMISSION**

**JANUARY 1989 — NOVEMBER 1989**

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## INTRODUCTION

On November 7, 1989 the voters of New York City approved, by a vote of 55% for and 45% against, the most dramatic revisions to their charter since 1901. The revisions eliminated the Board of Estimate, shifted all of its legislative powers to an enlarged City Council and mandated fundamental changes in the City's budget, contract, franchise and land-use processes.

These reforms were initiated and drafted by the New York City Charter Revision Commission, an independent 15-member body with broad authority to study and recommend changes in the structure of city government.

Many aspects of the proposed revisions, as well as the charter revision process itself, were subject to pre-clearance by the U.S. Department of Justice under Section 5 of the Voting Rights Act. The Justice Department had to determine if the process was open and democratic, encouraging of minority participation. The Justice Department also had to determine if there was any diminution of minority political power contained within the governmental structure.

On August 14, 1989 the Charter Revision Commission made an extensive submission to the Department of Justice which explained both the Commission's process and its proposals. This Final Report draws heavily on that submission and, in particular, the justification presented in that submission for the elimination of the Board of Estimate and the increased powers of the City Council. These and all the other revisions proposed by the Commission are summarized in greater detail in Appendix A of this report.

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## HISTORY OF THE CHARTER REVISION COMMISSION

The charter is New York's basic governing document. It sets forth the institutions and processes of the City's political system and defines the authority and responsibilities of elected officials and most city departments. It also establishes the forms and procedures of such key government functions as budgeting, planning, zoning, contracting, franchising and collective bargaining.

In the United States, city governments receive their legal authority from the states in which they are located. This authority is provided, in different states, through varying combinations of constitutional provisions, state laws, and charters granted to, or adopted by, individual cities. In New York State, two cities, Albany and New York City, have charters of colonial origin; the state's other 60 cities were chartered separately by the legislature. While the substance of these documents varies substantially, each city's charter along with the State Constitution, the Municipal Home Rule Law and other statutes provides the legal framework within which it may conduct its affairs.

In November 1986, U.S. District Judge Edward R. Neaher ruled in the case of *Morris v. Board of Estimate* (647 F. Supp. 1463 (1986)) that the voting structure of the Board of Estimate was unconstitutional. The Board of Estimate, which has been one of the City's key governing institutions since the turn of the century, exercises broad decision-making authority in such government functions as land use, contracting, and budget approval. The Board consists of New York's three citywide elected officials—the mayor, comptroller, and Council president—who cast two votes each on the board, and the five borough presidents, who cast one vote each.

The population of the city's boroughs vary widely, from about 2.2 million people in Brooklyn to about 350,000 in Staten Island. The district court ruled that the allocation of equal representation on the Board of Estimate to boroughs of such unequal size violates the one person, one vote stan-



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## GUIDING PRINCIPLES AND THE CHARTER REVISION PROCESS

Early in its deliberations the Schwarz Commission adopted the following six principles which would guide its work and shape its final proposals.

- Ensure fair and effective representation
- Balance power by increasing competition and oversight
- Fix accountability by clarifying responsibility
- Enhance efficiency by streamlining procedures
- Shift from crisis management to long term planning
- Build greater participation in policy debates and decisions

The commission also placed a premium on maximizing the openness and thoroughness of the process by which it would reach its own conclusions. It decided to build on the work of the Ravitch Commission rather than starting all over. This was particularly important since most of its members (11 of 15) had been part of the earlier Commission's extensive program of hearings, meetings and studies. The Ravitch Commission had begun the process in May 1987 with a series of hearings, publicized in community papers and announced in a mailing to community groups throughout the City. The purpose of these hearings was to solicit comments and recommendations for the Commission's agenda. Following this initial round of hearings, the Ravitch and Schwarz Commissions held 29 public meetings to discuss and formulate proposals for restructuring city government and 25 public hearings to consider comments on its various proposals. Hundreds of witnesses appeared before the two Commissions. Commission members and/or Commission staff also held hundreds of informal meetings with interested groups and individuals. Additionally, in early 1989, the Schwarz Commission began its work with a series of six legislative type fact-finding hearings with panels of invited experts. This allowed the four new commissioners to climb the learning curve quickly and gave the continuing members the opportunity to test out the



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hypotheses and ideas that they had developed over the previous two years.

The Commission conducted an extensive education campaign not only about its meetings and hearings but also about the charter, the opportunities that were available to groups and individuals to influence the charter revision process, and the various proposals of the Commission. The education and outreach programs incorporated four goals under the general theme of encouraging wide public participation: (1) to inform the public generally about the charter and charter change; (2) to stimulate recommendations from as wide a public as possible for charter change; (3) to inform the public about the Commission's various preliminary proposals and solicit comments on them; and (4) to educate the public on the final proposals.

The techniques for accomplishing these goals were multi-faceted. They included: the building of a 62,000 entity mailing list; the development of multi-language educational materials and a strategy for their distribution, through mail, public advertising and other means; ongoing press relations; and an active speakers bureau.

The Commission sought to disseminate information about charter change as widely as possible. This effort included two series of subway posters in English and Spanish, posted throughout the entire subway system, offering materials to anyone who called; a public service notice in the New York City telephone bills, which produced 5,000 requests for information; 200,000 copies of a booklet of games and puzzles, distributed through libraries, unions, literacy programs and schools, to help the general public understand how the city runs; two booklets in Spanish and Chinese distributed to individuals to explain the city's governmental system; flyers to every city worker (385,000) offering information; a videotape on the challenge of charter revision; a wall poster that hung in city offices, libraries, banks and subway platforms throughout the city, illustrating the structure of the city; public service announcements in both English and Spanish which aired periodically throughout the process; and voters' handbooks inserted in more than 2 million Sunday papers and distributed widely at the more than 250 speaking engagements throughout the City.

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The Commission sought substantive input from as many groups as possible in the shaping of its proposals. In the winter of 1989, for instance, following the six fact-finding hearings, series of roundtable discussions on particular charter topics (land use, budget, contracts, representation) were held with interested groups. Participants spent three or more hours with staff members discussing particular questions and perspectives. Concrete proposals emerged from these meetings. The Office of Financial and Economic Opportunity, for instance, was a direct outgrowth of the meeting held with minority contractors.

This process had a substantial impact on the Commission's final charter design. Over the two and one-half years, an extraordinary number of proposals and comments were received by the Commission, and each set of Commission proposals was modified after each round of public comments. For example, the Schwarz Commission revised its preliminary proposals, summaries of which were available in English, Spanish, Korean and Chinese, in a series of meetings held between June 15 and June 27, 1989, after an earlier round of public hearings.

In sum, all of the Commission's proposals were either the product of ideas from the public or benefitted from public comment, including the larger Council, the new districting commission and criteria, the Council's expanded jurisdiction over land use decisions and the Independent Budget Office.

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## SAVING THE BOARD OF ESTIMATE: THE BASIC QUESTION

As previously indicated, the *Morris* decision held that the practice of according all five borough presidents the same vote on the Board of Estimate, even though the boroughs vary in size from approximately 350,000 people (Staten Island) to 2.2 million (Brooklyn), violated the constitutional principle of one person, one vote.

Under the system which existed prior to the 1989 revision of the charter, the board shared legislative power in the budget process with the 35-member City Council. It also had final authority over land use decisions, although if it failed to act on a land use matter within 60 days the prior decision of the City Planning Commission was deemed final. The board also had the power to approve franchises, and exercised authority over agency contracting in certain cases.

One of the most fundamental decisions in the charter revision process was whether to change the voting structure of the Board of Estimate or to transfer its functions to other governmental institutions. Both the Ravitch and Schwarz Commissions devoted extensive study to this question, paying particular attention to whether any change in the voting structure of the Board of Estimate could survive scrutiny under Section 2 of the Voting Rights Act and obtain preclearance pursuant to Section 5 of the Act. Both commissions also examined the implications of such a change under the constitutional principle of one person/one vote, and considered whether it was desirable from a policy perspective. By the time of the Supreme Court's decision to grant review in *Morris*, the Ravitch Commission had begun to consider these alternatives and an informal consensus had developed that the Board should be abolished. The Schwarz Commission formally adopted this position on May 2, 1989 by a vote of 13-1.

The Ravitch Commission solicited opinions concerning the Voting Rights Act implications of weighted voting on the Board of Estimate from six noted scholars and practitioners. All concluded that there is a substantial

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risk that any weighted voting arrangement would run afoul of Section 2 of the Voting Rights Act and have difficulty obtaining preclearance under Section 5.

Of particular concern was the historic difficulty encountered by members of racial and language minority groups in winning election to the Board of Estimate. Of the eight positions which constitute the Board, five have still never been held by members of protected minority groups. This includes two of the three citywide positions and the borough presidencies of Brooklyn, Queens and Staten Island. Indeed, until 1989, when David Dinkins was elected mayor, minority group members had failed on numerous occasions to win election to any citywide position. Thus, until 1989, only the Manhattan and Bronx Borough Presidencies had, at times, been held by members of protected minority groups and, even in those boroughs, minority candidates were by no means assured of success.

The only other political office now elected boroughwide is that of district attorney. Only one black has ever been elected to this position in any of the five boroughs (in the Bronx in 1988), and no Hispanic has ever become a district attorney. From 1964-83 each borough had two city council members at-large; during those 20 years only one minority group member was ever able to achieve election to the post and that was on only one occasion.

Since April 1987 the Board of Estimate has included two members of minority groups. From April 1987 through December 1989, the borough presidents of Manhattan and the Bronx and since January 1990, the mayor and the borough president of the Bronx. Together the two borough presidents held 18.2% of the votes on the 11-vote body. Only once before in the Board's history (1966 through 1969), had minority voting strength reached even that level. From 1954 through 1965, 1970 through 1977, and from 1986 through April 1987, the board had only one minority member (9.1% of the votes), the borough president of Manhattan. From 1978 through 1985, the board was all white.

According to the 1980 Census, the citywide minority population of New York City was 48.2% and the citywide minority voting-age citizen popula-

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tion was 37.9%. Only in the Bronx, where the minority population was 66.2% and the minority voting-age citizen population was 57.7%, did racial and language minorities have a strong chance of winning contested boroughwide elections. The figures for the other boroughs were: Brooklyn, 51.2% and 40.9%; Manhattan, 49.7% and 39.1%; Queens, 37.9% and 26.8%; and Staten Island, 14.8% and 11.1%. Moreover, estimates based upon the 1987 edition of the annual New York City Housing and Vacancy Report show an increase in the city's non-white population, but not a large enough increase to have altered minority electoral opportunities in city-wide and boroughwide elections to a significant extent.

The Schwarz Commission also examined the impact of the one person, one vote doctrine upon weighted voting schemes for retaining the Board of Estimate, and determined that weighted voting would not remedy the violation of that doctrine identified by the Supreme Court in *Morris*. The Commission concluded that no system of simple proportional weighted voting could be used since such plans have been found by the New York Court of Appeals to be violative of the one person, one vote requirements of both the United States and New York State Constitutions. The Commission also found that the one type of weighted voting permitted by the New York courts (weighted voting which results in each member's share of the power to influence the body's decisions, as measured by a complex calculation known as the Banzhaf Method, being equal to the share of the total population represented by that member) could not be applied to the Board of Estimate without changing the balance of power between the citywide representatives and some or all of the borough representatives; virtually disenfranchising Staten Island; and/or creating substantial population deviations.

For the Schwarz Commission, however, all of this became relatively moot after the Supreme Court's *Morris* decision in which the Court rejected the Banzhaf method for use in evaluating the Board of Estimate's compliance with the one person, one vote standard. The Supreme Court in *Morris* found the Banzhaf method to be unrealistic and impractical and agreed with the Court of Appeals that this approach was "seriously defective". The Commission also felt, as a matter of policy, that weighted voting could, at best, weight votes but could not weight the ability of elected

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officials to otherwise represent and serve their districts.

In view of these Voting Rights Act and one person, one vote concerns, the Schwarz Commission determined that weighted voting would perpetuate unrepresentative government and was therefore an inappropriate response to *Morris*.

Furthermore, members of the Commission and various witnesses raised policy questions about the governmental value of the Board of Estimate. Elected officials rarely participated in person at its meetings, and an examination of voting records revealed that the Board infrequently functioned as an effective check on the Mayor. The Board's role in the contracting process was a special focus of criticism. The Commission heard testimony confirming a 1987 report of the Institute of Public Administration that the Board's involvement at the end of the contracting process rarely allowed for changes in policy, and caused agencies to focus on Board approval and to pay less attention than is desirable to choosing appropriate methods for soliciting and selecting contractors in individual cases.

Drawing on this criticism and experience, the Commission sought to restructure the processes in which the Board of Estimate played a role. Its basic goals were: (1) to achieve a more classical legislative/executive model of government with the opportunity for expanded policy debate in the legislative branch by more and varied people, increased efficiency in the executive branch and the corresponding checks and balances that generally attend such systems, (2) to encourage policy debate at the beginning of the process rather than on a case by case basis at the end, (3) to enhance effective minority group influence in the government, and (4) to provide for additional decentralization in decisionmaking to address the alienation expressed by residents of some parts of the city.

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## ENHANCING MINORITY REPRESENTATION

The present City Council has 35 single-member districts.

Among the largest American cities, New York's 35-member Council ranks second in size to the 50-member Chicago City Council. In terms of size of Council districts, however, New York has the largest districts ranking first with slightly over 200,000 persons in each district. In the ten largest American cities, other than New York, with single member districts, the average district population is 112,600.

Since 1901, New York City's legislative body has had as many as 78 and as few as 17 members. The average number of constituents per member has ranged from 47,000 to almost 316,000.

Of all the major political institutions of the City, it is the local legislature that has been most regularly subject to alteration. Its size and structure, and its electoral processes and districting have all seen changes. Until 1945, the term of office for members was two years. At different times, the city's legislative power has been vested in both bicameral and unicameral bodies; members have been elected from single member districts, at-large in boroughs and by a combination of these two methods; and both single and multi-member districts have been employed. To assure the representation of minority parties in the Council, a borough at-large limited nomination-limited voting system was used between 1963 and 1983 to elect a portion of the Council's members. And the experiment with proportional representation (from 1938 to 1949) was among the most controversial in the history of the City.

The Commission believed that a large Council, with smaller single-member districts, was needed to provide enhanced electoral opportunities for the City's minority groups. It therefore proposed a City Council of 51 members, thereby reducing the average population per district from approximately 202,000 to 139,000. In arriving at this decision the Commission sought to balance four goals: (1) to enhance opportunities for minority voters to elect candidates of their choice, (2) to increase the

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number of minority Councilmembers, (3) to maintain a Council of manageable size in which all members can meaningfully participate and (4) to increase Councilmembers' responsiveness by making their constituencies smaller, without making those constituencies so small as to foster parochialism.

In the Commission's judgement a 51-seat Council, conservatively based on the results of the 1980 Census, but districted to maximize minority opportunities, would increase the proportion of districts with more than 80% minority population from 25.7% on the present Council (9 of 35 districts) to 35.3% (18 of the 51 districts); and the proportion of districts with 75-79% minority population from none on the present Council to 5.9% (three additional districts). The proportion of districts with 70-74% minority population would decrease from 8.6% on the present Council (3 of 35 districts; none of which have elected minority group Councilmembers) to 2% (1 of 51 districts). (Neither the old nor the prototype 51-district Council have any districts with 65-69% minority population.) Even if only the 18 districts with 80% or more minority population elected minority Councilmembers, the Commission's plan would double the number of such Councilmembers from nine to 18—a 100% expansion of minority representation on a Council expanded in size by only 45.7% (from 35 to 51). The result would necessarily be a vast increase in the power of the Council's minority bloc.

The Commission's prototype of a 51-district system, based upon 1980 Census data, was prepared for informational purposes only to illustrate that even under the 1980 Census, a Council of this size would significantly enhance minority group electoral opportunities. The actual districts will be drawn by a districting commission on the basis of 1990 Census data, which will further enhance opportunities for minority representation.

There was some controversy over both the Commission's proposal to enlarge the size of the Council and the particular size it chose. Initially some Councilmembers, including minority members, argued that an enlargement of the Council would not result in an increase in the proportion of districts in which members of minority groups would have the opportunity to elect Councilmembers of their choice. However, most of



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the representatives of minority communities were in favor of increasing the size of the Council, and some critics were won over by evidence presented during the course of the charter revision process.

In considering the final structure of the city government, the Commission also evaluated the possibility of creating a bicameral City Council with a 19-member upper house. However, that plan was offered only on the condition that it would enhance the opportunities for minority voters to participate in and influence the political process. The Commission heard considerable opposition to this proposal, and its own analysis found that the smaller second legislative body might, in fact, dilute minority representation. The Commission also briefly considered adding the borough presidents to the enlarged Council, but abandoned the idea out of the concern that boroughwide elected Councilmembers (i.e. borough presidents) would dominate the Council and diminish the power of the district members.

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## WHO WILL DRAW THE NEW COUNCIL LINES AND WHEN?

To ensure that Council district lines are always drawn to maximize the electoral opportunities for racial and language minority groups, the Commission provided a new districting system. The Districting Commission will be expanded in size and, more importantly, the new charter requires that the Districting Commission include members of protected minority groups in proportion, as close as practicable, to their population in the city. The various appointing officials (the mayor and the majority and minority party delegations of the Council) are required to establish a joint screening and selection process for ensuring compliance with this requirement.

Furthermore, the new charter explicitly requires the Districting Commission, in developing its districting plan, to accord extremely high priority to the fair and effective representation of racial and language minority groups protected by the Voting Rights Act. Only the requirement of population equality (one person, one vote) is accorded higher priority on the list of criteria to be followed. All other criteria (community and neighborhood integrity, compactness and borough integrity) are to be given less weight than the fair and effective representation of protected minorities.

The new charter also provides that the existing 35-member Council elected in the 1989 general municipal election will serve for only two years instead of the usual four years in order to allow the transition to the larger, more representative Council to occur as soon as possible. Though both the Commission's preliminary and revised proposals anticipated election of a redistricted and enlarged Council for the first time in 1993, it revised this plan during its final meetings based on the testimony received at its final round of public hearings.

The charter revisions finally adopted call for the new 51-member City Council to be elected for the first time in 1991 from new districts to be based on the statutory required April 1991 report of the 1990 census

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results. The members elected in 1991 would serve two-year terms. In 1993, there would be elections for regular four-year terms. Some or all Council district lines would be redrawn for the 1993 election, if necessary, to reflect adjustments of the census figures made after the Census Bureau's initial April 1991 report.

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## **NEW POWERS, NEW RULES FOR THE COUNCIL**

The City Council exercises the legislative powers of the City, within parameters set out in the state constitution, state law, and the city charter. It is the local lawmaking body, and under the pre-1989 charter exercised joint authority in budget adoption and budget modification with the Board of Estimate. Unlike councils elsewhere, however, prior to the 1989 changes, it did not have jurisdiction over zoning matters.

The New York City Council acts on most matters by majority vote, and may override a mayoral veto of a proposed local law by a two-thirds vote. On budget matters, however, a two-thirds vote was required in either the Council or the Board of Estimate, with a simple majority in the other body to override a mayoral veto.

The pre-1989 charter established the office of vice chairman of the Council and provided that this official succeed to the Council presidency in the case of a vacancy in that office. By the Council's rules, the vice chairman also served as the Council's majority leader if he or she was a member of the majority party.

The vice chairman/majority leader was the center of organizational power within the Council. The Council's Rules Committee, in consultation with the vice chairman, recommended all committee members and chairs for Council approval. Additionally, the vice chairman referred proposed local laws and resolutions to committees for consideration and action, and had the power, as did the chairman of each committee, to set committee agendas. The vice chairman allocated Council resources, set the time for Committee meetings to avoid scheduling conflicts and appointed the Council's central staff. Of the Council's committees, only the Finance Committee was established by the charter.

The Commission, while mindful of the need for strong leadership for the effective functioning of the City's legislative body, nevertheless sought to

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respond to the considerable concern about excessive concentration of power within the City Council which was expressed during the charter revision process. Symbolic of the enhanced role that the Council was expected to play in the governance of the City, the title of its leader was changed from vice chairman to speaker. But, to balance the considerable authority of the leader, the powers of the entire body to control the appointment of committee chairs and the creation of committees was given a charter basis. Additionally, full Council approval was required for stipends for members in leadership positions. A land use committee with representation from each borough was required by the new charter. The capacity of individual sponsors and the council majority to move matters out of committee was enhanced. And, advance notice of Council meetings and records of committee hearings and votes was also required.

Finally, many groups advocated the establishment of an Independent Budget Office to offset the authority of the mayor's Office of Management and Budget and to provide a resource to individual Councilmembers, independent from the authority of the Council's majority leader. This office will provide Councilmembers and other officials with information on actual and estimated city revenues, the fiscal implications of all proposed local laws, and any other fiscal information or analysis requested. All City agencies will be required to provide the Independent Budget Office with information requested by it. Its director will be chosen jointly by a representative of the City Council, the comptroller, a representative of the borough presidents and the Council president. The appointment will be made upon the recommendation of a screening committee of private citizens with expertise in economics, finance and public administration.

Under the former charter, the Council's oversight responsibilities derived from a variety of provisions that directed it to receive and react to mayoral reports and initiatives concerning taxation, budgeting and management in the City. Two bases for oversight were especially important. One gave each standing committee of the Council investigatory authority within its jurisdiction and allowed the appointment of special committees to investigate any matters concerning the property, affairs or government

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of the City or of a county within the City. The second required that the Council, "...through its standing committees..." review on a regular and continuous basis the service goals and performance and management efficiency of the agencies of the city."

The new charter strengthens the Council's oversight authority by adding matters on which the mayor must report to it on a regular basis. These include an augmented management report, a report on social indicators and a strategic policy statement. Additionally, the charter now explicitly provides for annual hearings by committees concerning the activities of all agencies under their jurisdiction, and periodic review of procurement policies and procedures.

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## BUDGET PROCESS

Under New York City's former charter, the mayor was responsible for submitting a proposed budget while the responsibility for budget adoption rested with the Council and Board of Estimate. The new charter gives the Council sole authority to adopt and modify the budget. This reflects the Commission's judgment that the Council, as the city's legislative body and as its most representative governing body, should be responsible for setting City policy and should not have to share that responsibility with a less representative, quasi-legislative/quasi-executive body. The Commission also recommended changes in the development of the budget. For a summary of those changes see Appendix A.

## LAND USE

Under the former charter, the Board of Estimate was the only elected body with power to review and approve land use decisions. The Council had no role in the land use review process. A seven-member City Planning Commission, appointed by the mayor with the advice and consent of the Council (except for the chair who served at the pleasure of the Mayor), initially passed on significant land use decisions but the Board of Estimate had the power to approve, modify, or disapprove such decisions. The failure of the Board to act within 60 days was deemed an approval of the City Planning Commission's decision.

The Ravitch and Schwarz Commissions spent considerable time and effort on land use issues. While the initial proposals of Richard Ravitch substantially limited the opportunity for Council participation in land use decisions, the final proposals of the Schwarz Commission, arrived at after extensive discussion, numerous meetings and public hearings would transfer to the new Council the opportunity to review all decisions of the City Planning Commission now subject to review by the Board of Estimate.

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The basic change made by the 1989 charter amendments was to substitute the Council for the Board as the final decisionmaker in land use. The 1989 amendments also increased the size of the City Planning Commission to thirteen members, with the mayor appointing seven (including the Chair) and each borough president and the City Council President appointing one. All City Planning Commission appointments, except for the chair, continue to require the advice and consent of the Council.

Under the revised charter, there are three different procedures by which the land use decisions of the City Planning Commission become subject to review by the Council. All zoning changes, housing and urban renewal plans and projects, and plans for the development and growth of the city, as well as most dispositions of city-owned residential property, are automatically referred to the Council for review upon approval by the City Planning Commission.

Other decisions of the City Planning Commission, such as special zoning permits, city map changes, dispositions of city owned non-residential property, and approvals of sites for city capital projects (including such unpopular projects as jails, incinerators, and shelters for the homeless) are subject to review by the Council in two different ways: (1) upon objection of the affected borough president and community board; or (2) upon a majority vote of the Council.

Sending the first category of matters automatically to the Council will ensure that the legislative body of the City would review land use decisions that are legislative in nature, and would also review dispositions of City-owned residential property which tend to have particularly significant impact on low-income areas where the City owns large numbers of residential properties as a result of tax foreclosures. The significance of this latter point was made clear to the Commission by the testimony and comments it received from representatives of minority communities.

The remaining land use jurisdiction of the Council would consist generally of site-specific, administrative matters which do not merit the attention of a 51-member legislature in many cases, but may be reviewed by the



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Council if there is public controversy or particular significance. A decision of the City Planning Commission would be subject to review if it is opposed by both the affected borough president and community board or if the Council by majority vote deems it sufficiently important to justify Council review.

The Council will have 50 days to approve or disapprove a decision of the City Planning Commission and 65 days if it proposes to modify such a decision. Any action by the Council on a land use matter, as with all local laws, would be subject to veto by the mayor, and any such veto will be subject to override by a two-thirds vote of the Council. This veto and override provision carry forward the current balance on the Board of Estimate, since two-thirds of the non-mayoral votes on the Board (i.e., six out of nine) are now required to muster a majority against the mayor on the eleven-vote Board. However, because racial and language minority groups will enjoy far greater representation on the Council than they have had on the Board, they will be able to exert more influence if there is conflict with the mayor on a land use matter.

The Council's power over the selection of sites of City capital projects would also be enhanced by the ability of a 26-member majority to defeat items in the capital budget.

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## FRANCHISES

A franchise is a grant to a private party that permits use of the streets and other public rights of way of the City to provide a public service. Under the former charter, all franchises had to be approved by a three-fourths vote of the Board of Estimate and separately by the mayor. Thus, no franchise could be awarded without the approval of the mayor.

In the procedure for awarding franchises under the new charter, the Council is given the critical role of determining what types of franchises should be granted and the terms and conditions under which they may be granted. The executive is assigned the administrative task of selecting franchisees and negotiating contracts. This procedure is consistent with the Commission's goal of rationalizing the governmental process by having policy decisions made prior to executive branch implementation.

Under the new charter, proposals for a particular franchise can only be solicited pursuant to the terms, conditions and procedural requirements of an authorizing resolution adopted by the Council. Such a resolution would have to set forth the type of franchise to be granted, the procedure for soliciting proposals and the terms and conditions for that type of franchise. If a proposed franchise has land use impacts, the request for proposals (RFP) for a franchise would be subject to review and approval pursuant to the City land use review procedure (ULURP) including review by the City Planning Commission and the Council. No RFP could be issued prior to such approval.

After an agency issues an RFP, evaluates the responses, and selects a proposed franchisee pursuant to the criteria set forth in the authorizing resolution and the RFP, the specific franchise agreement would be subject to review and approval by a Franchise and Concession Review Committee and, as at present, by the mayor. The Franchise and Concession Review Committee would consist of one representative each of the mayor, the corporation counsel, the director of the Office of Management and Budget, an additional appointee of the mayor, the comptroller and the

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affected borough president or presidents. A vote of five members of the Committee would be required to approve a franchise.

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## CONTRACTS

Procurement of goods, services and construction in the City of New York is presently governed by charter provisions which establish competitive sealed bidding, with award to the lowest responsible bidder, as the preferred method of procurement. Sixty percent of all city contracting is done pursuant to this method. No revision of this preferred method was recommended by the Commission.

However, the former charter also recognized certain exceptions to competitive sealed bidding, principally in "special cases" (a term which was left undefined by the former charter) and consultant contracts for which competitive sealed bidding was inappropriate. Special case and consultant contracts were primarily contracts let in response to requests for proposals or on a sole source basis. Such methods could be used by agencies only upon approval by the Board of Estimate. In practice, this approval came after the agency had chosen both an alternative method and a vendor. The Commission found this approval process (1) to have very little impact on City policy, since action by the Board of Estimate was limited to reviewing individual contracts, and occurred at the end of the process, and (2) undermined the integrity of the procurement process by diffusing accountability for procurement decisions among the eight members of the Board. The 1989 revisions of the charter replaced this process with one in which policy decisions are to be made by the legislative branch before implementation; and, accountability for implementation is clearly fixed with the City's chief executive.

This is done by assigning the Council the legislative power to approve, modify or reject a new and detailed contract budget before any procurement of contractual services can be initiated by City agencies. The contract budget would specify whatever terms and conditions the Council determines to be appropriate for expense budget programs to be implemented by contract. The Council would also be authorized to reduce, omit, or increase appropriations for any category of spending for

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contractual services proposed by the mayor or to add additional categories of contractual services.

Similarly, the Council is authorized to make similar changes in the capital budget a project-based document with greater detail than the expense budget, or even the proposed contract budget.

Thereafter, City agencies will be permitted to implement authorized procurement in accordance with the procurement policies specified in the charter and in the rules promulgated by a proposed new five-member Procurement Policy Board. Three members of this board are to be appointed by the mayor and two by the comptroller. After a contract has been let, the Council, the borough presidents and the comptroller will all be authorized to monitor the performance of the services provided.

This process reflects the Commission's view that procurement, pursuant to the substantive policy decisions of the Council and consistent with the procurement procedures contained in the charter and the rules of the Procurement Policy Board, is an executive function and that the mayor should be held accountable for procurement implementation by City agencies. While the Council should be responsible for setting policy regarding the use of contracting in particular substantive areas and for the terms and conditions which should be followed, it should not be involved in the selection of vendors or in the approval of the terms of individual contracts for the thousands of purchases made by City agencies each year.

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## EXPANSION OF OPPORTUNITIES FOR MINORITIES AND WOMEN

In response to letters and testimony from a variety of civil rights and advocacy groups, the Commission adopted and the voters approved several proposals relating to fair employment practices by the City. The existing charter prohibitions against discrimination were strengthened by adding a specific reference prohibiting discrimination in the setting of wages. Additionally, the new charter requires City agencies to establish and enforce measures and programs to ensure "a fair and effective affirmative employment plan." It also creates a new Equal Employment Practices Commission to review the employment practices and procedures of City agencies; assist such agencies in their efforts to increase employment by minority group members and women; make policy, legislative and budgetary recommendations to ensure equal employment opportunity, and report annually to the mayor and Council on the efforts by and effectiveness of agencies to promote employment by minority group members and women.

The new charter also includes several proposals that would enhance the opportunities of minority-owned businesses to participate in the procurement process. Each City agency is required to establish reasonable measures and procedures to assure the meaningful participation of such businesses in its procurement process. In addition, an Office of Financial and Economic Opportunity would be established to assist, guide and monitor City agencies in implementing that requirement.

Under a related proposal, an Office of Labor Services was created to "establish and enforce a citywide program to ensure meaningful employment participation by minority group members and women" in entities with which the city contracts. A similar office, the Bureau of Labor Services, presently exists pursuant to mayoral executive order.

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The charter also specifies that a substantial violation of these provisions and the standards developed by these two offices will be made a basis for disqualifying a contractor from doing business with the City.

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## COMPTROLLER

Under the pre-1989 Charter, the comptroller was elected citywide for a four-year term and was second in line, after the president of the Council, to succeed to the mayoralty. The comptroller also served as a member of the Board of Estimate. The comptroller's powers included the investigation of all matters affecting the finances of the City; conducting financial and management audits of City agencies; settling and adjusting all claims in favor of or against the City; managing the City's trust funds; keeping the City's accounts; publishing an annual financial statement for the City; establishing for the comptroller's office and City agencies a uniform system of accounting and reporting; and registering contracts.

The Commission's decision to abolish the Board of Estimate eliminated some of the powers of this citywide office. That decision puts an end to a disturbing conflict built into the comptroller's dual role as (1) a policymaker/legislator on the Board of Estimate and (2) the overseer of the City's fiscal and management affairs. The Commission received testimony that this dual role created both a general conflict between the comptroller's political focus at the Board and fiscal focus as comptroller, and more particular conflicts inherent in voting on specific items which might later need to be audited. The comptroller's dual role also conflicted with one of the principal auditing standards as set forth by the United States General Accounting Office in *Government Auditing Standards*: "In all matters relating to the audit work, the audit organization ... should be free from ... impairments to independence." Such impairments include previous responsibility of the auditor for decisionmaking affecting the entity or program being audited.

Under the proposed charter, the comptroller must submit an annual report to the mayor and Council summarizing the results of all audits conducted during the previous year, the corrective actions recommended and those actually taken, and any recommendations of the comptroller for additional corrective actions. While the comptroller will no longer vote on the budget as a member of the Board of Estimate, the new charter



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gives the comptroller the power and duty to review and analyze proposed budgets and to make this expertise available to other participants in the budgetary process. The comptroller's power to oversee the city's contracting process is strengthened by eliminating the conflictual role of voting on contracts at the Board of Estimate but assigning to this office an expanded role in the registration of contracts. This strengthening of the comptroller's powers in registering contracts was proposed to the Commission by several officials and citizens' groups at the public hearings.

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## CITY COUNCIL PRESIDENT

The President of the Council, elected citywide for a four-year term, served as a member of the Board of Estimate and stood first in the line of succession to the mayoralty in the case of death or resignation, etc. The Council president presides over the Council's meetings but cannot vote except to break a tie. Ties are exceedingly rare. In addition, the pre-1989 charter accorded to the Council president the power to oversee the coordination of citywide citizen information and service complaint programs, to review recurring multi-borough or citywide complaints, and to make proposals to improve these processes.

Many powers of this citywide elected office are eliminated by virtue of the Commission's decision to abolish the Board of Estimate. Yet, the new charter retains the Council president as an executive official with power to balance and check the power of the mayor. Under the new charter, the Council president will become the City's public advocate, receiving and attempting to resolve individual complaints regarding the administrative acts of city agencies. The Council president is authorized to conduct investigations of such complaints and issue reports and recommendations to the mayor and council. The Council president is also charged with reviewing and reporting to the mayor and Council on, the performance of City agencies, with particular attention to the subjects of decentralized service delivery, agency information and service complaint programs, agency responsiveness to requests for information, and official and agency compliance with the provisions of the charter.

The office of Council president was the subject of considerable discussion during the charter revision process. Some Commission members considered the position unnecessary and advocated eliminating it entirely, replacing it with a vice-mayor elected on a joint ticket with the mayor. The advocates of this position argued that ticket balancing would result, thus increasing minority electoral opportunities. Others believed that this theory was unsound, and that it was preferable for minorities to seek citywide office independently rather than as part of so-called "balanced"

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tickets. Some members supported having both a separately elected City Council president and vice-mayor.

This issue was debated by the Commission on several occasions, with a clear majority always supporting the retention of the Office of City Council president. Of the Commission's six minority group members, one consistently advocated having a vice-mayor instead of a City Council president, one supported having both offices, and the other four favored an independently elected City Council president rather than a vice-mayor. The Commission's final proposal for continuation and re-shaping of the Office of City Council President without a vice-mayor passed by a vote of 9-4 at the May 6, 1989 meeting and again by a vote of 9-4-1 at the July 31, 1989 meeting.

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## BOROUGH PRESIDENTS

The borough presidents are presently elected for four-year terms by the voters of their respective boroughs. The former charter assigned some powers to these boroughwide elected officials as individuals. Each was authorized to hold public hearings on matters of public interest and was charged with making recommendations to the mayor and other city officials in the interest of the people of the borough. The charter required each borough president to appoint professional staff to assist in the review and analysis of proposed budgets and other fiscal matters and to appoint the director of the borough's Topographical Bureau, who, among a variety of responsibilities, is charged with monitoring capital projects in the borough. Each borough president also chaired a borough board, which the charter directs to hold regular public hearings on borough programs and proposed borough capital projects and to report to the Board of Estimate, the Council, the mayor and the City Planning Commission on these matters. Finally, each borough board was also charged with reviewing agency service statements and with evaluating the progress of capital developments within the borough and the quality and quantity of services provided by agencies within the borough.

However, most of the borough presidents' power was derived from their positions as members of the Board of Estimate. While the new charter eliminates these powers by abolishing the Board of Estimate, it does assign new powers to the borough presidents. For example, with regard to budgeting, the five borough presidents would be able, in the aggregate, to propose 5% of the non-mandatory increases in the city's expense budget and 5% of the capital budget. The exact sum to be proposed by each president would be determined by formulae. The mayor must include each borough presidents' proposals of this type in the executive budget, and may not veto or disapprove any of these items if they are adopted by the Council. The mayor may, however, comment and advise the Council as to the merits and demerits of these provisions. In addition, the borough presidents are authorized to recommend modifications to

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other portions of the budget to the mayor and to force Council action on such proposals if the mayor does not accept them.

Additionally the borough presidents will participate in land use decisions and in overseeing service delivery in their boroughs. Each borough president would also be required to issue a strategic policy statement every four years outlining goals and strategies for the borough. In addition, once each year, after budget adoption, the borough presidents would work with designated agency heads to determine the allocation of personnel and resources for key City services in their boroughs.

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## DUAL OFFICE HOLDING

The new charter prohibits citywide and boroughwide elected officials and key appointed officials in the city government (the deputy mayors, commissioners of city agencies and others with "substantial policy discretion") from serving in a significant party office.

This decision was based on the Commission's judgement that such a proposal will result in a desirable diffusion of political power in what is essentially a one-party city. Moreover it would untwist an inherent conflict of interest between high-level elected or appointed offices and party offices.

The Commission initially voted to bar City Councilmembers from holding significant party offices, but modified this provision to because it would have impacted disproportionately upon Council members of racial and language minority groups. The final charter language allows Councilmembers to hold District Leadership or lesser political positions but not higher positions such as County Chairmanships. Seven of the nine minority Councilmembers on the existing Council are Democratic district leaders in their communities, and the Commission chose not to interfere with their ability to serve in this capacity.