

MAKING OUR CITY’S PROGRESS PERMANENT: AN OVERVIEW

The Commission proposes the following five separate ballot propositions:

1. PROTECTING THE CITY’S MOST VULNERABLE CHILDREN

- **Making ACS a Charter Agency**

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

2. PROTECTING CHILDREN FROM GUN VIOLENCE AND CRIMES

- **Gun-Free School Safety Zones**

This proposal would amend the Charter to make it a crime to possess or discharge any weapon, including a firearm, rifle, shotgun, assault weapon or machine gun, within 1,000 feet of any school, pre-school or day care center in the City. There would be limited exceptions for police officers and other persons needing to carry guns. Any person found in violation of the weapons ban in a school safety zone would be subject to criminal and/or civil penalties.

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

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

- **School Crime Reporting**

This proposal would require Board of Education employees to report immediately to the Police Department any suspected crimes by adults, and any suspected crimes by students involving sex offenses or violent crimes, that occur in public schools. The child’s parents or legal guardians would also have to be notified. Any person who, in good faith, reported such information to the police would receive immunity from civil liability. This proposal would not limit the existing authority of the Board of Education or any other agency from conducting any administrative, civil or criminal investigation within the scope of its authority.

3. PROTECTING HUMAN RIGHTS

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

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

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

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

4. ENHANCING PUBLIC HEALTH

- **Merger of DOH and DMH**

This proposal would merge the Department of Health ("DOH") and the Department of Mental Health, Mental Retardation and Alcoholism Services ("DMH") to establish the Department of Public Health as a new Charter agency. The existing operations of DOH and DMH would be given structural parity in the new agency. There would be at least two executive deputy commissioners who would report directly to the commissioner. One of these executive deputy commissioners would have direct oversight of the new agency's mental health, mental retardation and alcoholism functions, and the agency would maintain separate budgetary units for those functions. Also, the Mayor's Office of Operations would conduct biennial reviews to ensure that the needs of the mental retardation and developmentally disabled community were met.

- **Expanding the Board of Health**

This proposal would increase the Board of Health’s membership from five to eleven members (including the commissioner), while maintaining the current ratio of medical to non-medical personnel. The Board’s five physician members would be required to have at least ten years experience in clinical medicine, public health administration or college or university public health teaching. The other five members would be required to hold advanced degrees in environmental, biological, veterinary, physical or behavioral health or rehabilitative science, as well as possess at least ten years of experience in their respective fields. One member of the Board would also come from the Mental Hygiene Advisory Board.

5. PROMOTING PUBLIC SAFETY

- **Making OEM a Charter Agency**

This proposal would make the Office of Emergency Management (“OEM”), which was created by Executive Order in 1996, a Charter agency. OEM would retain all of its current functions and have rulemaking authority similar to other Charter agencies.

- **Creating an Organized Crime Control Commission**

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

- **Coordination of Domestic Violence Services**

This proposal would establish within the Executive Office of the Mayor a new Charter agency to be known as the Office to Combat Domestic Violence. The new agency would be responsible for the coordination of City services to combat domestic violence and assist victims of domestic violence. This Charter change would make permanent the Mayor’s reforms, implemented by Executive Order in 1994, to ensure coordination of the City’s domestic violence services.

INTRODUCTION

On June 15, 2001, Mayor Rudolph W. Giuliani appointed the 2001 Charter Revision Commission (the "Commission") to review and make recommendations to improve the City Charter. The Commission carried out its mandate by undertaking a comprehensive review of the City Charter, reviewing the Final Reports of previous Charter Revision Commissions and soliciting comments from elected officials, seasoned public servants and the public. In July and August 2001, the Commission held a series of public meetings, public hearings and expert briefings, traveling to all five boroughs of the City to hear from the public. The Commission's report follows.

The Commission finds that the Charter should be revised and believes that many of the successful initiatives that have been implemented over the last eight years to make government more accountable, more responsive and more transparent should be made permanent. The Commission recommends amendments be made to the Charter which will protect child welfare, promote public safety, protect human rights, enhance public health, and prevent gun violence. Further, the Commission proposes that its recommended changes to the Charter be submitted to the voters of the City of New York for their approval on the November 6, 2001 ballot.

A. Overview of the Charter Revision Process

The New York City Charter is the basic document that defines the organization, power, functions and essential procedures and policies of City government. As a "short form" charter, it sets forth the institutions and processes of the City's political system and defines the authority and responsibilities of elected officials — the Mayor, Council, Comptroller, Borough Presidents, and Public Advocate — and City agencies in broad strokes while leaving the details of operation to local law and agency rulemaking. Unlike the United States Constitution, which is amended rarely, the City's Charter is a fluid document that is amended often. Indeed, while in a span of 201 years the U.S. Constitution has been amended only 27 times, over the past twelve years, the Charter has been amended nearly 90 times.

In the United States, City governments receive their legal authority from the states in which they are located. In the State of New York, municipalities have broad authority to structure how they operate by virtue of the Home Rule provisions of the

State Constitution and the Municipal Home Rule Law. The City's Charter, along with the State Constitution, the Municipal Home Rule Law and other State statutes, provides the legal framework within which it may conduct its affairs.

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

Charter commissions are not permanent commissions. MHRL § 36(6)(e) limits the term of a charter commission. A commission expires on the day of the election at which a proposed new charter or amendments prepared by a commission are submitted to the voters. However, if a commission fails to submit a new charter or any amendments to the voters, the commission expires on the day of the second general election following the commission's creation. There are no prohibitions against the reappointment of a commission or appointment of a new commission upon the expiration of an existing commission.

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

The proposed amendments must be filed with the City Clerk for action by the voters no later than the second general election after the commission's creation, and

must be voted on at a general or special election held at least sixty days later. The proposed amendments may be submitted to voters as one question, or a series of questions or alternatives. MHRL § 36(5)(b).

B. The Commission's Membership

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

- ◆ **Randy M. Mastro, Chair** - Former Deputy Mayor; former Chair of the 1999 Charter Revision Commission; Co-Partner-In-Charge, New York Office, Co-Coordinator, Litigation Group, Gibson, Dunn & Crutcher.
- ◆ **Jonathan Ballan** - Partner, Fischbein, Badillo, Wagner and Harding; Chairman of Municipal Assistance Corporation; former Board Member of the Health and Hospitals Corporation.
- ◆ **Amalia V. Betanzos** - President, Wildcat Services Corporation; former member of New York City Board of Education; former Chair of the New York City Commission on the Status of Women; member of previous Charter Revision Commissions, including the 1999 Commission.
- ◆ **Abraham Biderman** - Executive Vice President, Lipper & Company, L.P.; former New York City Housing Commissioner and Finance Commissioner; member of previous Charter Revision Commissions, including the 1999 Commission.
- ◆ **Imam El Hajji Izak-El Mu'eed Pasha** - Malcolm Shabazz Mosque, Harlem; first Muslim Chaplain, New York City Police Department; member of the 1999 Charter Revision Commission.
- ◆ **Rosa Gil** - University Dean for Health Sciences, CUNY Office of Academic Affairs; former Chair, NYC Health and Hospitals Corporation; former Special Advisor to the Mayor for Health Policy.
- ◆ **Lisa Lehr** - West Side Community Activist; Police Community Relations Board, West Side, Manhattan; member of the 1999 Charter Revision Commission.
- ◆ **Yvonne Liu** - Vice-President and Co-owner, Multicultural Broadcasting Corporation; member of the 1999 Charter Revision Commission.
- ◆ **Claude Millman** - Of Counsel, Solomon, Zauderer, Ellenhorn, Frischer and Sharp; former Director of the Mayor's Office of Contracts; Executive Director of the 1999 Charter Revision Commission.

- ◆ **Vincent Roberts** - Consultant, Zalismah Contracting; Board Member, Afro-American Parents Day Care Centers I and II.
- ◆ **Herbert Rubin** - Partner, Herzfeld and Rubin; Member of the Board of Editors, New York Law Journal; member of the 1999 Charter Revision Commission.
- ◆ **Mary C. Sansone** - Founder and Executive Director, Congress of Italian-American Organizations, Inc.; member of previous Charter Revision Commissions, including the 1999 Commission.
- ◆ **Tosano Simonetti** - Executive Director of Security, McAndrews & Forbes; former First Deputy Commissioner, New York Police Department; member of previous Charter Revision Commissions, including the 1999 Commission.
- ◆ **Marta Varela** - Chair of the New York City Commission on Human Rights.
- ◆ **Howard Wilson** - Partner, Rosenman and Colin; Chairman of School Construction Authority; former Commissioner, New York City Department of Investigation; member of a previous Charter Revision Commission.

C. Scope of Review

In June 2001, the Commission Chair directed staff to review the entire Charter. Further, he asked staff to review the preliminary and final reports of the 1998 and 1999 Charter Revision Commissions, Commission member and public inquiries, comments and proposals, and to review a number of reform measures that had been implemented during the Giuliani Administration. Finally, he requested a staff report of preliminary recommendations for Charter revision. A staff report containing preliminary recommendations was released on July 27, 2001.

After the staff report was released, the Commission held a series of expert briefings and public hearings concerning the recommendations in all five boroughs.¹ Both expert briefings and public hearings were held on August 8, 2001 in Staten Island, August 9, 2001 in the Bronx, August 14, 2001 in Queens, August 15, 2001 in Manhattan, and August 16, 2001 in Brooklyn. The Commission attempted to reach

¹ The Queens hearing, held at LaGuardia Community College, was directly accessible by four major subway lines. The Brooklyn hearing at Metro-Tech Center was within a short walk from the borough's downtown hub and accessible by eleven subway lines. Manhattan's public hearing at City College was easily reached by the IRT subway line as well as the Broadway bus line. The hearing at Fordham University in the Bronx was accessible by the D train and four bus lines. The Staten Island hearing, held at the Petrides Center, was accessible by a bus line and by car, a principal means of transportation for Staten Islanders. All of these facilities were able to accommodate more than 200 persons.

consensus on all the issues presented to it in determining which ballot proposals to place before the voters. Indeed, as the report details, many of the proposals that the Commission decided to place before the voters on November 6, 2001, were the subject of extensive public debate for as much as five years. Some of these proposals were introduced in the City Council, but never acted on. Other proposals were recommended by the 1999 Charter Revision Commission. The Commission believes that had those recommendations been proposed as categorized ballot questions, as they are now, the voters would have approved them.

The Commission received substantive comments from the public for improving the Charter. These substantive comments were of great help to the Commission in determining how to fashion its proposals for the November 2001 ballot. Other members of the public criticized the Commission, its process and work. They were principally concerned that: (1) the Commission's public hearings were held during the summer; (2) the Commission moved too quickly; and (3) the Commissioners were appointed by the Mayor.

The Commission focused on a series of staff recommendations that fell into nine separate categories. Of those categories, the proposals concerning enhancing public health, government purchasing procedures, and reforming the City's building inspections received some criticisms, although in public testimony, more witnesses testified in favor of the public health recommendation than against it.

The Commission members directed the staff to investigate the concerns of those who opposed the public health recommendation. The Commission believes that subsequent changes to the staff's recommendation, as proposed by the Commissioner of Health, address adequately the community concerns. These changes thus enabled the Commission to achieve consensus that the recommendation should be placed on the ballot.

The Commission concluded that the recommendations to streamline the procurement process should be evaluated further by future commissions. The Commission evaluated the arguments for and against reforming the City's building inspections and were unable to reach a consensus. Likewise, the Commission was unable to reach a consensus concerning the staff recommendation on the City's conflicts of interest rules because of concerns that expansion of the Conflicts of Interest

Board's investigative powers could potentially compromise investigations conducted by the City's Department of Investigation. The Commission believes that a future commission should further evaluate these recommendations.

D. The Commission's Public Outreach and Proceedings

The Commission developed its proposals for the November 2001 ballot by: (1) initiating a multi-media public outreach campaign to solicit public proposals for Charter revision; (2) distributing to the public a staff report setting forth recommended revisions to the Charter text and the grounds for the proposed revisions; (3) holding a televised public hearing in each of the five boroughs to receive public comment on the proposed Charter revisions; (4) providing for five televised briefings of the Commission's Chair by 28 experts concerning the staff proposals; (5) deliberating the merits of the proposals and selecting those worthy of consideration for inclusion on the November 2001 ballot at a televised public meeting; and (6) distributing to the public a summary of the final proposals in English, Spanish, and Chinese.

The public was afforded a month to submit proposed Charter changes before the staff made its preliminary recommendations, and the Commission remained open to new public proposals throughout the process. Moreover, almost all of the issues considered by the Commission as well as the proposed text changes to the Charter were made public one month before the Commission's final hearing and vote. As a result, the public was able to shape the Commission's agenda and critique the proposed Charter revisions.

On June 30, 2001, Commission Chair Randy Mastro initiated the campaign to solicit public proposals for revisions to the Charter by issuing a "Solicitation of Proposed Revisions to the New York City Charter." In addition, on July 19, 2001 the schedule of all the Commission's meetings and hearings was made available to the public. These notices were published in fifteen newspapers including publications directed at members of the African-American, Hispanic, Caribbean, Chinese, Russian and Korean communities.² The notices were also published on a daily basis in the *City Record*, and on the Web. Finally, the notices were sent by mail to approximately 2,300 interested

² The advertisements were placed in the *New York Times*, the *World Journal* (in Chinese), the *Daily News*, the *Post*, *Newsday*, the *Beacon*, *Amsterdam News*, *El Diario*, the *Korean Times*, *Sing Tao*, *Hoy*, *Courier Life*, *Jewish Press* and *Novoye Russkoye Slovo*.

persons.³ In response to the Chair's solicitation, the Commission's staff received many letters, telephone calls and e-mails requesting information and submitting proposals for Charter revisions. In just seven weeks (from June 30, 2001 through August 22, 2001) there were 1668 "hits" on the Commission's Web-site by people seeking Commission reports, notices, and other information and checking the meeting and hearing schedule.

On July 27, 2001, the Commission held its first meeting, at which the staff sat before it and presented recommendations for revising the Charter and submitted a 140-page public report entitled, "Preliminary Recommendations for Charter Revision: Staff Report to the Members of the New York City Charter Revision Commission." The staff recommended that the Commission consider Charter amendments for the November 2001 ballot that fell into 9 categories. The Chair encouraged the Commissioners and the public to raise issues not necessarily brought up by the staff. The Chair stressed that the Commission was convened to review the entire Charter in a fair and non-judgmental way and that all meetings, hearings and forums conducted by the Commission would be open to the public. At the end of the meeting the Commission voted unanimously to accept the staff's preliminary report.

The Commission held public hearings on the proposals before it on August 8, 2001 in Staten Island, August 9, 2001 in the Bronx, August 14, 2001 in Queens, August 15, 2001 in Manhattan, and August 16, 2001 in Brooklyn. All of the hearings were scheduled to begin at 7:00 p.m.. Many elected officials and members of the public, including candidates for public office, spoke. All elected officials and members of the public were urged to limit their remarks to three minutes as a courtesy to the other speakers, but all were permitted to conclude their remarks, and many of them spoke for five minutes or more. All of the hearings were repeatedly televised on Crosswalks.

The Commission's Chair held briefings on August 8, 9, 14, 15 and 16, 2001, for the purpose of hearing expert testimony from 28 invited speakers. These experts addressed all of the issues recommended by the Commission's staff and being considered by the Commission. These five meetings were repeatedly televised on Crosswalks.

³ In addition to foreign language versions of the proposals, interpretation in American Sign Language was provided at all public meetings, hearings and forums.

On August 24, 2001, the Commission held its final public meeting to consider the various proposals, the public comments received and the expert testimony. At that time, the Commission voted to issue this report and propose ballot questions for submission to the voters on November 6, 2001. The Commission voted to submit proposals, falling into five categories, each to be posed as a separate ballot question, for consideration by the voters. If approved by the voters, each proposal would take effect immediately, or as soon thereafter as a transfer of agency functions could be effectuated, provided, however, that the part of the public health proposal concerning the Board of Health would take effect thirty days from the day it was approved. The Commission deferred consideration of other staff recommendations to future commissions.

The Commission asked staff to issue a summary of its proposals, for publication in various newspapers, and in several foreign languages, as required by law, shortly after August 24, 2001. The staff determined that the summary would also be published in the *City Record*, be made available on the Web, and be mailed to interested persons in English, Spanish, and Chinese.

E. The Commission's Staff

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

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

Sally Renfro, Co-Executive Director for Policy, has worked in government in various capacities. This is the third City commission that she has been involved with; the first two being the Mayor's Investigatory Commission on School Safety from 1995 to

1996, and the Mayor's Advisory Task Force on the City University of New York from 1998 to 2000.

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

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

The Commission was also staffed by Deputy General Counsel Matthew Campese, Assistant Counsels Howard Friedman, Elisabeth Palladino, Dara Jaffee, Julie Lubin, and Ashley Goodale; Analysts Eileen Smith, Christian Browne, Fipp Avlon, Talya Sheinkman and Mike Bonafede; and support staff Mindy Roth, Renee Wortham and Ivonne Sierra. Most of the staff members also served on the staff of the 1999 Charter Revision Commission.

F. The Commission's Proposals

In 1901, four years after the consolidation of Greater New York made it the world's second largest city after London, the Charter was first revised. At the time, the City Comptroller – Bird S. Coler, a Democrat – noted in his book on municipal government that, "(i)t was not expected that a charter for a great city... would be perfect."⁴ Coler and his contemporaries expected revisions to the Charter. They knew the importance of learning from government successes and failures and understood there would be innovations they could not foresee. History has proven them right.

⁴ Coler, Bird S., Municipal Government, D. Appleton Co., 1901, p.1.

Charter revision offers an opportunity to incorporate the lessons learned as a City into our governing document – whether it is protecting our City from future budget crises, protecting our children or ensuring the rights of immigrants. Charter revision gives us the ability to institutionalize reforms and innovations that have proven their worth. And, it allows us to change those institutions that have resisted reform.

This Commission's proposals seek to make permanent our progress. We have proposed, among other things, to protect the City's most vulnerable children by making the Administration for Children's Services an independent Charter Agency, to protect children from gun violence and crimes, to protect human rights, to enhance public health, and to promote public safety. Our proposed Charter reforms build upon the successes our City has experienced over the past eight years.

Past Charter Revision Commissions have presented their proposed changes as a single revision through a single ballot question. The 1989 Charter Revision Commission, for example, viewed the bulk of its changes as bound by a singular theme -- that of abolishing the Board of Estimate and distributing its power. The 1999 Charter Revision Commission followed the example of the 1989 Charter Revision Commission and presented its body of work as one ballot proposal that had to stand or fall on its own.

This Commission recommends Charter reform, through five ballot proposals, be considered by the voters on November 6, 2001. The Commission's work has been guided by one unifying principle: to build squarely upon the successes at government reform and service delivery that have made New York City a better place than it was eight years ago. Indeed, the Commission believes that these proposals, if adopted by the voters, will help make our City's progress permanent.

PROPOSALS

1. PROTECTING THE CITY'S MOST VULNERABLE CHILDREN

- **Making ACS a Charter Agency**

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

Relevant Charter Provision: None.

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

ACS has been operating as an independent agency pursuant to that Executive Order for more than five years. Moreover, the decision to create an independent agency to address child welfare is now widely accepted as the City's most important reform of the child welfare system. Over the past five years, the Council has considered proposed legislation to establish ACS as a Charter agency, but has yet to act on it. To continue to protect the City's children, that reform should be made permanent by establishing ACS as a Charter agency.

On January 11, 1996, the Mayor issued Executive Order 26, which created the Administration for Children's Services ("ACS") to oversee the various child-related services that had previously been the responsibility of the City's Human Resources Administration ("HRA"). ACS is comprised of the Child Welfare Administration, the Agency for Child Development and the Office of Child Support Enforcement. The

Mayor created ACS to fully integrate these three programs to better serve the interests of children in need.

Currently, ACS has one mission: to ensure the safety and well-being of the City's children. In carrying out this mission, ACS investigates more than 50,000 reports of abuse or neglect each year. It provides preventative services such as counseling and referral to drug rehabilitation programs to families in need of such services. ACS recruits and trains foster parents and other caregivers to provide safe, temporary homes for approximately 34,000 foster children and finds permanent homes for these children as quickly as possible. ACS provides family day care, center-based child care as well as Head Start programs for 80,000 children. Finally, through its Office of Child Support, ACS collects child support arrears to ensure that absent parents meet their financial obligations for their children.

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

On December 19, 1996, ACS released its "Reform Plan," which outlined its goals and strategies for improving services to New York City's children. Since the release of the plan, ACS has acted judiciously to implement its reform initiatives. ACS has, for example, reduced the average child protective caseworker's caseload from 27 in June 1996 to 14 in June 2000. This was accomplished by hiring over 1,200 new caseworkers who met increased eligibility standards. Further, to ensure quality case management, ACS expanded its training program for new caseworkers from four weeks to ten months and also initiated a supervisory training program. Finally, the agency instituted merit-based pay increases for caseworkers and supervisors to reward for outstanding job performance and professionalism. These changes have contributed significantly to reforms throughout the agency.

As an independent agency, ACS has been able to expeditiously find safe and appropriate permanent homes for children in foster care, either through reunification with families or adoption. In Fiscal Year ("FY") 2001, for example, the agency

discharged 7,171 children from foster care to their families or primary resource provider. And, for those children who can no longer be reunited with their biological families, ACS has finalized a record number of adoptions over the past five years: 21,185 adoptions compared to 11,625 adoptions between 1991 and 1996.

A cornerstone of ACS's reform initiatives is Neighborhood-Based Services ("NBS"). Under this program, children who enter foster care are placed in their own neighborhoods, keeping them close to family and in their own school. This reduces trauma to children in care and facilitates family visits. NBS promotes permanency by providing children with preventative services, foster care services, health care, and other support services in the community where they resided before removal. Between July and November 2000, 56.8% of children who entered the foster care system were placed in their home borough and 14.7% were placed in their home community district. The well-being of children and families is supported by strengthening communities and developing child welfare networks in each community district. These networks will ensure that culturally sensitive, need-driven services are provided in each community, and that neighborhood resources are utilized.

Indeed, an independent ACS is consistent with the 1998 settlement reached in Marisol v. Giuliani, 95 Civ. 10533 (RJW) ("Marisol"), which concerned charges that the City was not meeting all of its child welfare responsibilities. Among other things, the settlement in Marisol established a Special Child Welfare Advisory Panel to monitor ACS. On December 8, 2000, the panel issued its final report on ACS's progress in reforming the child welfare system. This report was very positive and praised ACS for its "remarkable progress" in reforming the child welfare system in New York City. The panel found that ACS has made a "sustained intelligent effort" in reforming the complicated and problematic system. Furthermore, the panel commended ACS for the 18% reduction in the foster care population and the 20% decrease in the number of children placed in foster care from 12,000 in 1998 to 9,583 in FY 2000. For the first ten months of FY 2001, admissions are 9.3% less than the same period for FY 2000. Recognizing that ACS initiated its reform efforts prior to the creation of the panel, the report stated that, "[i]t is especially important to note that many important [ACS] accomplishments predate any of our work."

Although approximately 61,090 children receive child care through ACS's Agency for Child Development ("ACD"), ACS has been working to further increase even more the availability of subsidized child care by inviting interested sponsors to expand their existing child care contracts by up to ten percent, by finding new providers and by raising the number of available child care vouchers.

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

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

The Commission heard expert testimony and public comments in support of making ACS a Charter agency and received no opposition to the staff's recommendation.⁵ Various speakers testified in support of making ACS a charter agency. ACS Commissioner Nicholas Scoppetta, Steven Cohen of the Special Child Welfare Advisory Panel, Sister Mary Paul Janchill of the Center for Family Life, and various other child welfare providers and even foster children, all spoke of the remarkable successes ACS has achieved in reforming the City's Child Welfare System. Steven Cohen stated in his testimony, "ACS's record of accomplishment would not have been likely despite all of the commitment of the talented leaders and staff, without its status as an independent agency reporting directly to the Mayor."

Additionally, Gail Nayowith, Executive Director of the Citizen's Committee for Children of New York, echoed this sentiment in her testimony before the Commission. She stated that "ACS...rescued children's services from obscurity in the City's social

⁵ See Expert Briefing Transcript and Hearing Transcript, August 8, 2001.

services bureaucracy...children have their own commissioner who reports directly to the Mayor .”

While ACS is currently functioning as an independent agency with a direct line of reporting to the Mayor, the Commission, along with many experts in the field of child welfare, believes that it is vital that ACS be made a part of the Charter to ensure its permanent independence and accountability in caring for the needs of the City’s children. Commissioner Scoppetta, in his testimony before the Commission, said it best:

[A]n independent child welfare agency is dramatically improving the welfare of children and their families in a way that has simply never happened before, despite the best intentions of prior administrators and prior administrations. I think that New York needs to insure these efforts continue by making ACS a permanent Charter agency.

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

Proposal: The Administration for Children’s Services should be established as a Charter agency.

Proposed Charter Revision:

Section 1. Section 603 of the New York city charter, as amended by Local Law 19 of 1999, is amended to read as follows:

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

local law which shall specifically provide the method, manner and conditions of dispensing the same.

§ 2. The New York city charter is amended by adding a new chapter 24-B to read as follows:

CHAPTER 24-B

ADMINISTRATION FOR CHILDREN'S SERVICES

§ 615. Administration; commissioner.

§ 616. Deputies.

§ 617. Powers and duties.

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

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

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

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

2. providing children and families with preventative services for the purpose of averting the impairment or disruption of families which could result in the placement of children in foster care; enabling children placed in foster care to return to their families; and reducing the likelihood that a child who has been discharged from foster care may return to such care;

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

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

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

b. Wherever the powers and duties of an agency other than the administration for children's services as set forth in the charter or administrative code confer any authority

over the areas of child welfare, child development or child support enforcement within the jurisdiction of the commissioner of children's services pursuant to section six hundred seventeen of this chapter, such powers and duties shall be deemed to be within the jurisdiction of the administration for children's services and shall be exercised by such administration; provided that such other agency may exercise such powers and duties where required by state or federal law.

2. PROTECTING CHILDREN FROM GUN VIOLENCE AND CRIME

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

- **“Gun-Free” School Safety Zones**

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

Relevant Charter Provisions: None.

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

Although the NYPD's School Safety Division was implemented in 1998 to fight crime in schools, the City's schools are by no means immune to gun-related incidents. In 1999 and 2000, the School Safety Division reported a total of 71 gun-related incidents in City schools. During that same period, officers seized 41 handguns. These statistics are alarming and send a clear message that something must be done to block the presence of guns in and around all schools to keep our children safe from gun

violence. Therefore, the Commission believes that it is essential that the 1999 Commission's proposal to amend the Charter to create gun-free school safety zones be proposed again.

Federal law currently purports to make it a crime to possess a gun within 1,000 feet of a school.⁶ See Gun-Free School Zones Act, 18 U.S.C. § 922(q). The problem with the federal law, however, is that it is riddled with exceptions, including a general exception for all private property and for persons who have a license to carry a gun. See 18 U.S.C. § 922(q)(2)(B)(i) & (ii). As a result, the federal law, while recognizing that the integrity and safety of the nation's schools are urgent priorities, fails to go far enough in protecting the City's children. However, federal law, by its terms, does not preempt the City from establishing its own gun-free school safety zone law. See 18 U.S.C. § 922(q)(4).⁷

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

While school safety officers attempt to stop students and others from entering school property while carrying guns, their efforts will be aided by creating meaningful gun-free school safety zones. A gun-free school safety zone would prohibit the possession or discharge of any firearm within 1,000 feet of every school in the City, whether public or private, including day care centers. Unlike the federal law which provides broad exceptions to gun possession in school zones, only a limited number of exceptions to possession or discharge, such as possession of a gun for personal safety

⁶ The increased importance of areas around schools has already been recognized. Federal and state law, for example, provide heightened penalties for those who possess or distribute drugs within 1,000 feet of a school.

⁷ The federal law was initially struck down in United States v. Lopez, 514 U.S. 549 (1995), on Commerce Clause grounds. The Court found that, in enacting the law, Congress failed to find a "nexus" between the presence of guns in school zones and interstate commerce. Thereafter, to validate the law, Congress made findings to satisfy the nexus test and codified them at 18 U.S.C. § 922(q)(1)(A)-(I). The Court's decision turned on issues wholly unrelated to the City's ability to establish its own gun-free school safety zone law.

stored in a residence or business, or possession of a gun by a law enforcement official, would be available. Violators would be subject to penalties of up to one year in jail and/or a \$10,000 fine. Such a law should help reduce gun-related injuries near or at our City's schools.

The Commission heard expert testimony on this recommendation on August 8, 2001, and August 16, 2001, from Steven Fishner, the City's Criminal Justice Coordinator, and from Davis Yassky, a professor of criminal and constitutional law at Brooklyn Law School who also wrote the Brady Handgun Law while he served as Counsel to the House of Representatives Subcommittee on Crime. Both experts supported the proposal, as did several elected officials including Staten Island Borough President Molinari, Queens Borough President Claire Schulman, and Council Member Herbert Berman. All of the members of the public who testified supported the proposal, other than members of the Libertarian Party, who opposed any gun control.⁸

Accordingly, the Commission proposes that the Charter be amended to create gun-free school safety zones within 1,000 feet of every school in the City. Indeed, now more than ever, our children's safety depends upon it.

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

Proposed Charter Revision:

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

CHAPTER 18-C

PUBLIC SAFETY

§ 459. Definitions.

§ 460. Gun-free school safety zones.

§ 459. Definitions. a. The term "school" means a public, private or parochial, day care center or nursery or pre-school, elementary, intermediate, junior high, vocational, or high school.

b. The term "school zone" means in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line

⁸ See Public Hearing Transcript, August 15, 2001.

of a public, private or parochial day care center or nursery or pre-school, elementary, intermediate, junior high, vocational, or high school, or within one thousand feet of the real property boundary line comprising any such school.

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

§ 460. Gun-free school safety zones. a. It shall be a crime for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) for use in a special event or safety program authorized by a school in a school zone or by the police commissioner;

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

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

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

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

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

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

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

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

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

Relevant Charter Provisions: None.

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

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

Although City law prohibits the permitting and possession of most types of guns by persons under the age of 21, it provides a loophole that allows certain types of guns, including rifles and shotguns, to be purchased by persons beginning at age 18. As Steven Fishner, the City's Criminal Justice Coordinator, pointed out in testimony before the Commission on August 8, 2001, the current law allows a ten year old, who is in the presence of someone as young as eighteen, to legally possess some types of guns, as long as that teenager has a gun permit. See Expert Briefing Transcript, August 8, 2001, pp. 27-28. The Commission believes that, in a densely urban environment like New York City, only a uniform minimum age of 21 for the permitting and possession of any type of gun makes good sense and that this loophole should be closed.

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

On August 16, 2001, the Commission also heard other expert testimony supporting the recommendation from Professor David Yassky, a criminal and constitutional law expert from Brooklyn Law School, who also wrote the Brady Handgun Law while he served as Counsel to the House of Representatives Subcommittee on Crime. In addition, several elected officials also supported the proposal, including Queens Borough President Claire Schulman, and Council Members Madeline Provenzano and Pedro Espada. All of the members of the public who testified supported the recommendation, other than members of the Libertarian Party, who oppose any gun control.

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

any type of gun, and upon anyone who sells or provides any type of gun to anyone under the age of 21.

Proposal: The Charter should be amended to ban the sale to, and possession of, any gun to any person under the age of 21.

Proposed Charter Revision:

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

CHAPTER 18-D

SALE, PURCHASE AND POSSESSION OF WEAPONS

§ 461. Definition.

§ 462. Permits and licenses for the purchase and possession of firearms.

§ 463. Sale or disposal of firearms.

§ 464. Carrying and possession of firearms.

§ 465. Exemptions.

§ 466. Penalties.

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

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

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

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

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

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

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

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

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

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

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

§ 466. Penalties. a. Any violation of the provisions of sections four hundred sixty-three, four hundred sixty-four or subdivision b of section four hundred sixty-five

shall be a misdemeanor and punishable by not more than one year imprisonment or by a fine of not more than ten thousand dollars or by both.

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

- **School Crime Reporting**

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

Relevant Charter Provisions: Chapter 20

Discussion:

The Mayor's commitment to public safety is well documented. Further, making schools safe has been a top priority. In 1995, for example, the Mayor established the Commission on School Safety, chaired by Edward N. Costikyan. The accuracy of the Board's reporting of safety-related incidents was a central focus of the Commission. On January 4, 1996, the Commission released its final report. The Commission found, among other findings, that there was no reliable data with which to evaluate the level of safety in the schools. This was due, in part, to underreporting on the part of school principals. As a result of the Costikyan Commission's findings and recommendations, Board of Education officials acknowledged that the New York City Police Department (the "NYPD") was best situated to perform the tasks essential to the maintenance of school safety.

The NYPD assumed direct authority over the training and supervision of school safety officers in 1998. In deference to the school-building administrators, however, it was agreed that principals would continue to have primary responsibility for reporting, acts committed on or near school property which may be criminal in nature. Unless an incident creates an "immediate safety emergency," the principal is ultimately responsible for notifying the police.⁹

⁹ See Regulation of the Chancellor A-412. Further, a pattern of disruption, violence or failure to report incidents is part of the principal review process outlined in Regulation of the Chancellor C-33.

Although reports of school crime appear to have dropped by at least 14 percent since the Board of Education transferred school security personnel to NYPD, the Commission heard expert testimony that some principals are still reluctant to call police to their schools and often downplay or withhold information of crimes to protect the reputation of their schools. Jerry Cammarata, a Board of Education member and Commissioner of the City's Department of Youth and Community Development, pointed out that in May 2001, a Bronx classroom teacher was arrested and charged with sodomizing one student and fondling another. He was suspected of assaulting as many as five other boys. He was first accused of exposing himself to a student in 1998 but, after the initial Board of Education investigation in which the police were not notified, he was allowed to remain in the classroom.

Edward F. Stancik, Special Commissioner of Investigation, testified that although his office had substantiated 500 cases of sexual misconduct that resulted in over 200 public school employees being fired for their conduct over the past eleven years, timely and accurate reporting of incidents continues to be a problem.¹⁰ Special Commissioner Stancik stated that many school administrators are too hesitant to call the police or the Special Commissioner's Office to report sexual misconduct of violence because it will affect their careers. According to Stancik "Some school employees recognize immediately the seriousness of sex allegations, and always put the interest of their students ahead of their own. But others put their own interests first and seem more worried that a scandal will hurt their own career or the school's reputation. Some even demonstrate an outright hostility to law enforcement."¹¹

The Commission also heard impassioned testimony concerning bias-related violent crimes in schools committed against students based on their actual or perceived sexual orientation. The testimony urged the Commission to foster the creation of "Hate-Free School Zones" by including in any school crime reporting proposal the requirement of reporting to the Police Department of any suspected bias-related violent crime in the

¹⁰ The Special Commissioner of Investigations operates independently of the Board of Education, the Mayor's Office and the New York City Department of Investigation. The office receives and investigates alleged acts of corruption or other criminal activity with the City School District.

¹¹ See Transcript of Expert Briefing, August 9, 2001.

public schools against any person.¹² By doing so, a strong message would be sent both to students and school personnel that hate crimes will not be tolerated in City schools.

The Commission believes that the City's schools should be safe havens from violence and bigotry where our children can focus on learning in an environment free from intimidation based on actual or perceived race, religion, ethnicity, disability, sexual orientation, national origin, age, gender, or alienage or citizenship status. Although the Board of Education has policies against bias and discrimination, its policies fall short because they do not yet make bias-related crimes a reportable offense.¹³ Thus, the Commission also believes that requiring the immediate reporting of such crimes is needed and would, in turn, likely prevent a victim from retaliating violently against his or her attacker.¹⁴

The Commission believes that inaccurate and unreliable reporting of school-based crimes jeopardize the safety of our children, their teachers and school staff. Further, the sole responsibility for investigating crimes in our schools should not rest with school personnel but should be the responsibility of the NYPD. Just as teachers and others who work with children are required to report suspected abuse or maltreatment of children to a central register, known as a "hotline", employees of the

¹² The Commission received the 2001 report of the organization Human Rights Watch, entitled *Hatred in the Hallways*, which concluded that both the suicide and drop-out rates for gay and lesbian students are exponentially higher than for straight students as a result of anti-gay harassment and violence in schools. Data extrapolated from the report suggests that between 50,000 and 75,000 gay and lesbian students are enrolled in the City's schools.

¹³ It should be noted, however, that beginning with the 2001-2002 school year, each school district must report whether an incident was bias-related in its annual report of violent or disruptive incidents to the State commissioner of education. See Regulations of the Commissioner of Education, 100.2(gg). These regulations were promulgated pursuant to the Safe Schools Against Violence in Education Act (Save). Provisions of SAVE include: giving teachers more authority to remove disruptive students from the classroom; making assaults on teachers and teachers' assaults on students a felony; offering civility, citizenship and character education throughout the K-12 curriculum; requiring all districts to create a comprehensive school safety plan and provide violence prevention training for staff; and requiring schools to report all incidents of violence and establish new violence prevention programs.

¹⁴ News reports of the recent mass shootings at Columbine High School in Littleton, Colorado, and at Santee High School, near San Diego, California, indicate that the shootings were undertaken in retaliation because the shooters had been attacked, both verbally and physically, by fellow students because they were different or perceived as being different. Indeed, an April 2, 2001 article in *Time*, entitled *Let Bullies Beware*, reported that a study by the National Threat Assessment Center, run by the U.S. Secret Service, found that in more than two-thirds of 37 recent school shootings, the shooters felt "persecuted, bullied, threatened, attacked, or injured." The article also reported that a National Association of School Psychologists study found that bullying is why more than 160,000 children skip school everyday.

Board of Education should be required to report suspected criminal conduct that involves sex-related or other crimes that threaten the health or safety of a child.¹⁵

The Commission believes that the Charter should be amended to ensure that all of the City's public school students, and adult personnel, are adequately protected from all crimes, including sex-offenses and violent crimes. The Commission, therefore, proposes that the Charter be amended to require school personnel to immediately report to the Police Department all suspected crimes committed by an adult, and all suspected crimes involving sex-offenses or violent crimes (including bias-related violent crimes) committed by a student in a public school.¹⁶ Where a child is involved, the school principal would also be required, with certain exceptions, to notify the child's parents or legal guardian. This amendment also provides immunity from civil liability to any person who, in good faith, reports such information to the police. Lastly, nothing in this amendment would limit the existing authority of the Board of Education or any other agency from conducting any administrative, civil or criminal investigation that is within the scope of their authority.

It is not the Commission's intent to criminalize ordinary misbehavior or "name calling" among school children but, rather, to ensure that schools are safe and secure places for all students, teachers and staff members, but to require the reporting of all violent crimes as set forth in the penal law. There is little doubt that the New York City public school system needs the professional expertise and investigative acumen of the Police Department to aid them in discovering the validity and seriousness of potentially sexual misconduct and other criminal incidents. The sole question from the perspective of school safety is whether vesting reporting responsibility with school principals has lead to accurate reporting of crimes to the Police Department. The Commission believes that it has not.

¹⁵ See Social Services Law §413.

¹⁶ The Commission's staff recommendation required reporting of any suspected sex-offense or other violent crime committed by an adult against a student, and, with respect to an allegation of any sex-offense or violent crime committed by a student against another student, it required reporting any such offense that rose to the level of a class B felony or above. Steven Fishner, the City's Criminal Justice Coordinator ("CJC"), testified before the Commission on August 8, 2001, in support of the staff's recommendation. However, he suggested that its reporting requirements were too narrow and should be broadened to require reporting of all suspected crimes committed by adults against students and other adults, and all sex-offenses and other violent crimes committed by a student against another student or adult, in the schools. The Commission's proposal embraces the CJC's suggestion.

Further, the Commission believes that with accurate and timely incident data, the Police Department could assist the school administrators in developing specific safety-related policies that respond to the immediate needs of existing safety problems in the schools.¹⁷

Proposal: The Charter should be amended to require Board of Education officials and employees to report immediately to the NYPD information relating to suspected crimes in public schools, including sex-offenses and violent crimes.

Proposed Charter Revision:

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

§ 526-a. Powers of investigation. a. Statement of purpose and intent. The purpose and intent of this section is to ensure that all suspected crimes committed by an adult against a student or another adult, and all allegations of sex-offenses or other violent crimes committed by a student against another student, including any bias-related violent crime committed by any adult or student, in a public school, is reported to the police department and the special commissioner of investigation for the New York city school district. It is not the purpose and intent of this section to mandate the reporting of incidents amounting to ordinary misbehavior and “name calling” among students.

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

¹⁷ A recent report of the U.S. Surgeon General, for example, confirms that serious violent crime is part of a lifestyle that includes drugs, guns, gangs, precocious sex and other risky behaviors. Risky behaviors vary in importance as children age. Substance abuse, for example, is a more powerful risk factor at age 10 than at age 18. See *Youth Violence: A Report of the Surgeon General* available at <http://www.surgeongeneral.gov>.

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

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

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

f. The provisions of this section shall not be construed as either (1) limiting the authority of any agency, commission, other entity or its members to conduct any administrative, civil or criminal investigation that is within the scope of their authority, or (2) limiting any obligation to file a report with any city, state or federal agency concerning a suspected crime or other activity.

3. PROTECTING HUMAN RIGHTS

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

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

Relevant Charter Provision: None.

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

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

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

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

The notion of incorporating the Commission on Human Rights and its powers to enforce the Human Rights Law in the Charter is made all the more compelling by the fact that City law offers protections not available under State or federal law with respect to the treatment accorded to sexual orientation, alienage and citizenship status and status as a victim of domestic violence. Under State and federal statutory provisions regarding employment discrimination, an employer may fire an employee solely

because the employer dislikes the employee's sexual orientation. It is only the City's Human Rights Law that makes such conduct illegal. Thus, were the Commission on Human Rights to be abolished or the Human Rights Law repealed, there would be no administrative enforcement agency that individuals could turn to in seeking protection from such discriminatory conduct.

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

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

The Human Rights Law is a lengthy and highly detailed statute that establishes the Commission on Human Rights and that contains complex provisions defining unlawful discriminatory conduct. Because the Human Rights Law is itself too long and complicated to be directly codified into our short form Charter, the approach taken here is to refer specifically to it as providing the basis for the City's anti-discrimination policies. The goal is to insulate the statute from the vagaries of the political process. Thus, the proposed revision of the Charter will confer considerable protection against any attempt to undermine the fundamental goal of achieving a fair and discrimination-free society. These very important protections, and the obligations they impose on private and public parties, already exist by virtue of local law. Thus, the proposed revision is designed simply to erect appropriate obstacles to any efforts to undermine the City's fundamental opposition to invidious forms of discrimination.

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

On August 14, 2001, expert testimony was given on the staff's recommendation. Randy Wills, Deputy Commissioner in charge of the Law Enforcement Bureau of the Human Rights Commission supported the staff's recommendation and testified that the Commission is New York City's most effective leader in the battle against discrimination and in the protection of civil rights. He detailed the accomplishments of the Commission over the past eight years, which include the effective use of mediation in the resolution of cases, and noteworthy decisions in cases of sexual harassment, racial steering, disability and sexual orientation discrimination. He also stated that the Commission is widely recognized as having the best mediation program of the civil rights agencies serving New York City. See Briefing Transcript, August 14, 2001, p. 13. In addition, the Commission received support for the substance of the recommendation from Brooklyn Borough President Howard Golden, and Council Members Madeline Provenzano and Herbert Berman.¹⁸ The Commission received no negative comments on the merits of the recommendation.

Accordingly, the Commission proposes that the Human Rights Commission be made a Charter agency and that the protections of the City's Human Rights law be enforced through the Charter.

¹⁶ Borough President Golden and Council Member Berman expressed that the recommended Charter amendment should be enacted by the City Council instead of proposed by the Commission. At the time this report was released, however, the Council had not yet introduced any such amendment.

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

Proposed Charter Revision:

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

CHAPTER 40

NEW YORK CITY HUMAN RIGHTS COMMISSION

§ 900. Declaration of intent.

§ 904. Functions.

§ 905. Powers and duties.

§ 906. Relations with city departments and agencies.

§ 900. Declaration of intent. It is hereby declared as the public policy of the city of New York to promote equal opportunity and freedom from unlawful discrimination through the provisions of the city's human rights law, chapter 1 of title 8 of the administrative code of the city of New York.

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

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

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

§ 903. The commission shall consist of fifteen members, to be appointed by the mayor, one of whom shall be designated by the mayor as its chairperson and shall serve as such at the pleasure of the mayor. The chairperson shall devote his or her entire time to the chairperson's duties and shall not engage in any other occupation, profession or

employment. Members other than the chairperson shall serve without compensation for a term of three years. In the event of the death or resignation of any member, his or her successor shall be appointed to serve for the term for which such member had been appointed.

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

a. to foster mutual understanding and respect among all persons in the city of New York;

b. to encourage equality of treatment for, and prevent discrimination against, any group or its members;

c. to cooperate with governmental and non-governmental agencies and organizations having like or kindred functions; and

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

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

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

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

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

d. (1) to receive, investigate and pass upon complaints and to initiate its own investigation of: (i) group-tensions, prejudice, intolerance, bigotry and disorder occasioned thereby, and (ii) unlawful discrimination against any person or group of persons, provided, however, that with respect to discrimination alleged to be committed by city officials or city agencies, such investigation shall be commenced after consultation with the mayor. Upon its own motion, to make, sign and file complaints alleging violations of the city's human rights law;

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

e. 1. to issue subpoenas in the manner provided for in the civil practice law and rules compelling the attendance of witnesses and requiring the production of any evidence relating to any matter under investigation or any question before the commission, and to take proof with respect thereto;

2. to hold hearings, administer oaths and take testimony of any person under oath;
and

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

4. in accordance with applicable law, to require any person or persons who are the subject of an investigation by the commission to preserve such records as are in the possession of such person or persons and to continue to make and keep the type of records that have been made and kept by such person or persons in the ordinary course of business within the previous year, which records are relevant to the determination whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city;

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

6. to appoint such employees and agents as it deems to be necessary to carry out its functions, powers and duties: provided, however, that the commission shall not delegate its power to adopt rules, and provided further, that the commission's power to order that records be preserved or made and kept and the commission's power to determine that a respondent has engaged in an unlawful discriminatory practice and to issue an order for such relief as is necessary and proper shall be delegated only to

members of the commission. The expenses for the carrying on of the commission's activities shall be paid out of the funds in the city treasury. The commission's appointment and assignment powers as set forth in this subdivision may be exercised by the chairperson of the commission;

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

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

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

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

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

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

Relevant Charter Provision: None.

Discussion: Anti-immigrant sentiments remain strong in some parts of the country and over the past five years the federal government has become less hospitable towards immigrants. We have learned that local laws that protect immigrants are, for many New

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

The importance of immigration to the City cannot be overstated. New York City is the nation's preeminent "world city." The presence of the Statue of Liberty and Ellis Island highlights the critical role that immigrants have played in promoting the City's vitality and cosmopolitan spirit. Approximately one third of the City's current residents were born abroad, and an even larger percentage of those born here are the children of a parent or parents born abroad. The City also serves as the site for the United Nations and for hundreds of foreign consulates, international organizations, and multi-national companies. The City is a place of countless languages and cultures, and diversity is one of its most persistent distinguishing features.

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

A. Mayor's Office of Immigrant Affairs

The City's foreign-born and immigrant populations face many challenges in trying to make use of City services, not the least of which is ignorance as to what City services are available and awkwardness about approaching public workers who speak only

English. The public interest is not well served by having significant segments of the City's population avoid using public services. The result is often that crime goes undetected and unpunished, that children go uneducated and that sickness goes untreated.

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

B. Guaranteeing Availability of City Services to Immigrants

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

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

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

C. Protecting Confidentiality

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

Whatever success Executive Order 124 may have had in reassuring City immigrants that they could avail themselves of City services without increasing their chances of being deported was undermined by the passage in 1996 of the Welfare Reform, Illegal Immigration Reform and Immigrant Responsibility Acts and related measures (the “federal legislation”) as well as by various court decisions, including most recently the decision of the United States Court of Appeals for the Second Circuit in City of New York v. United States, 179 F. 3d 29 (2d Cir. 1999). The federal legislation prohibits state and local governments from restricting their employees from exchanging information with the Immigration and Naturalization Service concerning an individual’s immigration status. The Court of Appeals for the Second Circuit upheld the constitutionality of the federal legislation against a facial challenge by the City.

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

In its decision, the Second Circuit stressed that it was upholding the federal legislation only against a facial challenge to its legality--a procedural context that required the City to establish that there is no imaginable set of circumstances under which the federal legislation might be valid. The Court explicitly left open the question of “whether these Sections [of the federal legislation] would survive a constitutional

challenge in the context of generalized confidentiality policies that are necessary to the performance of legitimate municipal functions and that include federal immigration status.”

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

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

On August 14, 2001, expert testimony was given on the staff’s recommendation to make the Office of Immigrant Affairs a Charter agency. Natasha Pavlova, the Office’s Executive Director, supported the staff’s recommendations and spoke about how the needs of the City’s immigrant populations are addressed by her office and how the proposal would enhance the provision of those services. See Briefing Transcript, August 14, 2001, p. 5. The Commission also heard testimony from various members of the public in support of the recommendation. Organizations including the Catholic Migration Office, African Services Committee, and the Jackson Heights Garden Society also supported the recommendation. No negative comments on the recommendation were received.

Accordingly, the Commission proposes that the Office of Immigrant Affairs be made a Charter agency and that the Charter provide for mechanisms so that City agencies keep confidential any information they may have regarding a person's immigration status.

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

Proposed Charter Revision:

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

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

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

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

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

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

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

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

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

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

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

4. ENHANCING PUBLIC HEALTH

- **Merger of DMH and DOH**

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

Relevant Charter Provisions: Chapters 22 and 23.

Discussion: In February 1998, the Mayor appointed Neal L. Cohen, M.D., as Commissioner of the Department of Health (“DOH”) and the Department of Mental Health, Mental Retardation and Alcoholism Services (“DMH”) effectively merging them. Concurrently, the Mayor sought legislation to formally merge the two agencies. Although the Council has declined to act for more than three years, the two agencies have demonstrated that the City has much to gain through better coordination of its public health activities. Indeed, under Commissioner Cohen’s leadership, DOH has been a pioneer in the areas of disease control and prevention, health education, child health, environmental health and infant mortality reduction; DMH has played an invaluable role in developing multiple services that enable people with mental disabilities to live and work successfully in their communities.

A. The City’s Progress in Public Health

The intervention strategies of the Department of Health have lead to a significant drop in the incidence of disease. For example, from 1994 to 2000, the number of tuberculosis cases declined by 56 percent. This decrease is attributed, in part, to DOH’s expanded use of Directly Observed Therapy (“DOT”) as part of the City’s disease control efforts. The City’s rates of reduction for syphilis and gonorrhea have surpassed its goals. From 1994 to 2000, the City experienced a 79 percent decrease in the incidence of primary and secondary syphilis. Breakthroughs in HIV/AIDS treatment have prolonged the progression of those diagnosed with HIV to developing AIDS, and improved the life expectancy of those already living with AIDS. Preliminary data indicate that mortality from HIV/AIDS has dropped 72 percent since its peak in 1994. Also, during that same time, the number of new AIDS cases being reported has been cut in half.

In the areas of child health, DOH has made significant strides. Indeed, the City Immunization Registry (“CIR”) has information on more than 2 million children and 12 million immunizations. Today, every public and private hospital and clinic in the City reports immunizations to the CIR. As evidence of the importance and effectiveness of immunizations, the incidence of vaccine preventable diseases has been lowered dramatically. Moreover, since the implementation of the Mayor’s Asthma Initiative, the rates of asthma among children have been declining. Asthma hospitalizations for children 14 years old and younger declined 35.4 percent between 1997 and 2000. Similarly, the number of hospitalizations fell from a rate of 9.94 per 1,000 children to 6.42 per 1,000 children.

The collaborative efforts of City agencies have broken down barriers in creating a cleaner, healthier environment in New York. Due to extensive preventive and control efforts, the number of seriously ill West Nile Virus cases dropped to 14 in 2000 from 46 in 1999. The number of new lead poisoning cases reported and confirmed citywide declined 58 percent from 1994 to 2000. Since the Mayor launched a war on rodents, pest inspections and exterminations have increased considerably. From 1998 to 2001, inspections averaged 39,487 per year compared to an average of 15,095 from 1990 to 1997. Likewise, in the year 2000, the City marked the lowest number of reported rat bites in the past 10 years. From 1999 to 2001, complaints averaged 16,495 per year compared to an average of 20,398 per year before the initiative between 1990 through 1997.

The numbers of visits to DOH’s home page on NYC.GOV has increased 65 percent between 2000 and 2001. In May 2000, DOH launched an interactive application available through its home page on NYC.GOV that allows the public to search restaurant inspection results for over 21,130 food service establishments throughout the City by restaurant or neighborhood. This function receives between 25,000 to 35,000 visitors each month.

B. Continuing the Progress as One Agency

There is a growing professional consensus that today’s complex health problems are best addressed by integrated public health and mental hygiene programming and planning. The United States Surgeon General, for example, issued a Report on Mental Health in December 1999 that highlighted the connection between physical and mental

health. The report noted that scientific research on the brain shows a seamless picture of how biological, psychological and social factors affect overall well being. Consequently, the Report recommended that all Americans seek help for both mental and physical health problems. It also stressed the importance of facilitating access to mental health care by better integrating Public Health systems.

The benefit of this kind integration has been widely recognized. Eleven states (Arizona, Colorado, Delaware, Florida, Hawaii, Illinois, Maryland, Michigan, Montana, New Hampshire and Wyoming), several large cities (including Chicago and San Francisco) and three counties in New York State (Schuyler, Wayne and Oswego) have consolidated their health and mental hygiene agencies. Their experience indicates that mergers of public health agencies produce better services. These recent mergers have also enlisted the support of the medical and mental hygiene communities.

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

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

Commissioner Cohen has stated that the merger would allow the City to “integrate public health and mental hygiene programs when appropriate, reduce duplication of effort, promote community involvement and better oversee the extension of managed care to Medicaid users.” In fact, the experience of the two departments under one Commissioner over the past three years has demonstrated some of the benefits of a merger. See Appendix C. For example, DOH and DMH have: (1) used relationships with family health providers to raise awareness in the medical community of mental health and rehabilitation issues; (2) identified training needs for health

providers and begun to establish standards of care for Medicaid managed care plans that incorporate mental, physical and developmental disability concerns; (3) through public education, brought attention to health concerns that are most frequently affected by stress and other psychological factors such as asthma; and (4) reduced the marginalization of those with mental disabilities, including mental retardation, by bringing them into integrated health and disability planning and policy discussions.

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

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

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

The 1999 Commission proposed the merger of these two departments because the Council refused to act on legislation introduced at the Mayor's request. The 1999

Commission gave careful consideration to concerns raised by individuals and organizations that initially opposed the union because they feared a reduction in services for agency constituencies. These groups, including the Interagency Council of Mental Retardation and Developmental Disabilities Agencies and New York State Assemblyman James Brennan, ultimately withdrew their opposition and stated that the changes in the Commission's final proposal addressed their concerns regarding the merger. In addition, OHEL Children's Home and Family Services, Hospital Audiences Inc., the Chaps Organization, HeartShare Human Services, Cumberland Diagnostic and Treatment Center and Brookdale University Hospital testified in support of the merger. Their comments, together with expressions of support from many experts in the field, led the 2001 Commission's staff to recommend that DOH and DMH be merged to create a new Department of Public Health.

Specifically, the Commission's staff recommendation: (1) provides that the new Deputy Commissioner for Mental Hygiene report directly to the Commissioner; (2) requires separate budgetary units of appropriation for the mental health, mental retardation and alcoholism services units; (3) stipulates that the Deputy Commissioner for Mental Hygiene coordinate contracts between community-based providers and the agency's procurement staff; (4) requires that there be executive coordination of mental retardation and developmental disability services within the Mayor's Office of Operations to ensure that the agency addresses the needs of that community; (5) requires the Mayor's Office of Operations to review the merger, in the second and fourth years after its adoption; (6) mandates that the Early Intervention Program be administered in the Division of Mental Hygiene; (7) requires the Commissioner to develop plans and mechanisms to ensure participation and communication with local community and advocacy groups at the borough level; and (8) includes a maintenance of effort clause, which should ensure that the current funding stream for mental health services remains intact.

The Commission agrees with the staff's recommendation, but has now deleted several provisions based on comments received from families representing the mental retardation and developmental disabilities community, as well as from Commissioner Cohen.

On August 15, 2001, the Commission heard testimony from a panel of experts in support of the proposed merger. The panel included Commissioner Cohen, Gail Nayowith, Executive Director of Citizen's Committee for Children of New York, Giselle Stolper, Director of the Mental Health Association of New York City, Dr. Pam Factor Litvak, Associate Professor of Epidemiology at the Mailman School of Public Health, Columbia University,¹⁹ and Dr. Van H. Dunn, Senior Vice President for Medical and Professional Affairs, New York City Health and Hospitals Corporation.

Commissioner Cohen testified that since the inception of the unified management of the Department of Health and the Department of Mental Health, Mental Retardation and Alcoholism Services in 1998, the public health and mental hygiene communities have come closer together and that a greater integration of medical and mental hygiene services has been forged. Commissioner Cohen stated that the implementation of Kendra's Law has led to the development of the new Assisted Outpatient Treatment Program, a program designed to allow courts to mandate community based services for non-compliant persons with mental illnesses. Through this program, DMH has begun to address both the medical, as well as the psychological, needs of its clients. Similarly, through the Early Intervention Program, a program designed to facilitate rehabilitative care for infants and toddlers who manifest signs of developmental delays, both the DOH and the DMH have developed a collaborative program that has improved the continuum of care available to those children enrolled in the program. With the proposed merger, the integrated initiatives of these two programs will be the protocol for all programs in the new agency.

Gail Nayowith, of the Citizens Committee for Children applauded the success of the Early Intervention Program, stressed that "[t]he public health system and mental health, mental retardation and alcoholism services system can learn a great deal from each other and can provide more coherent direction for the city in a merged agency." Ms. Stolper testified that "extensive experience in the provision of mental health services has proven time and again that health and mental health are linked at the most basic levels and...that the proposed merger... affords our City the opportunity to be at

¹⁹ Dr. Factor-Litvak presented testimony on behalf of Dr. Allan Rosenfeld, Dean of the Mailman School of Public Health, Columbia University and Dr. Susser, Chair of the Department of Epidemiology and head of the Department of Epidemiology and Brain Disorders, New York State Psychiatry Institute.

the forefront of a holistic approach to public health.” Dr. Factor-Litvak stated that the proposed merger “would most efficiently allow for service delivery, prevention and control efforts, and research needs.” Ms. Redd, also noted the positive aspects of the proposed merger and stated that, “for too many years health care has been a tale of two separate systems that at times have delivered in different directions and at times overlapped causing needless redundancy and waste.” Lastly, Dr. Dunn testified that “medical research has shown that treatment outcomes can be greatly enhanced by adding a behavioral health service component for patients with diseases such as asthma, hypertension, heart disease, cancer and diabetes and although psychiatric problems are frequently identified in the general medical setting, psychiatry and public health medicine for the most part are not integrated.”

During the public hearings conducted throughout the five boroughs, the Commission received comments from elected officials and advocates of the mentally retarded and developmentally disabled, including the parents and guardians of mentally retarded or developmentally disabled children, who feared that the concerns of their communities would get lost in a larger merged agency, and that there would be a diminution in the level and quality of services they receive. One parent who testified before the Commission stated, “we...fought for about thirty years to reach the point at which we are now, with a separate first rate DMH which functions efficiently, whose staff members are accessible and helpful.” See Hearing Transcript, August 9, 2001, p. 30.

As previously explained, the Commission’s staff, in drafting its initial recommendation, was careful to address these fears and provided a budgetary maintenance of effort clause to guarantee that funding for DMH’s mental health, mental retardation, and alcoholism service functions would not suffer as a result of the merger.

Indeed, from FY 1998 to FY 2002, DMH’s total budget has increased by 81%. In contrast, during that same period, the total budget for DOH has increased by only 20%. Therefore, the rate of growth of DMH’s budget, during the period of joint operation, has increased at more than four times the rate of growth of DOH’s budget. The substantial growth rates of both DMH’s and DOH’s budgets over the past three years show that the effective merger of the two agencies has resulted in increased resources for both agencies rather than a loss of resources for either agency. Moreover, DMH’s budget will continue to be supported in this proposal by a budgetary maintenance of effort

clause for its activities under the merged department. Therefore, mental health services would not be adversely affected by a merger, but rather would continue to receive at least this high level of funding in the merged department.

Additionally, the Commission believes that the level and quality of the current services offered by DMH would not be compromised by a merger for the mere fact that DMH would not be delivering services directly, but would continue to contract with not-for-profit or other service providers to deliver services. Thus, the Commission believes that the fears expressed by those representing the mental retardation and developmentally disabled communities are misplaced.

Despite these fears, virtually every medical and mental health professional and academic who appeared before the Commission testified in support of the proposed merger and expressed the view that the new agency would provide necessary integrative services and holistic care and would be reflective of the current thinking in comprehensive public health management. Those who provided testimony included: Dr. Jennifer Havens, a child psychiatrist and Director of Child and Adolescent Clinical Services at the Children's Hospital of New York Presbyterian; William Witherspoon, Executive Director of the Upper Manhattan Mental Health Center, the Emma L. Bowen Community Service Center; Mark Appel, former President of CHAPS organization; Dr. Herbert Cohen, Director, Children's Evaluation and Rehabilitation Center; and Dr. Jeremiah Barondess, President of the New York Academy of Medicine. There was also virtually unanimous praise from all speakers for the work of DOH, DMH and Commissioner Cohen in heading the combined agency for the past three years.

During his testimony, Commissioner Cohen noted the concerns raised by members of the mental retardation and developmental disabilities communities at the Commission's earlier public hearings. To that end, he suggested that the Commission's staff change its recommendation on the merger regarding the division of power and authority among the new agency's most senior administrators. Specifically, Commissioner Cohen recommended that the public health and mental hygiene programs be given exact structural parity in the new agency. Instead of there being one of many deputy commissioners to oversee DMH's current functions, as initially recommended by the Commission's staff, he proposed that there be at least two executive deputy commissioners who would report directly to the commissioner and

oversee other deputy commissioners as necessary. One of these executive deputy commissioners would have direct oversight of the new agency's operations concerning mental health, mental retardation and alcoholism services. The other would oversee the new agency's public health programs, and other deputy commissioners as necessary. The Commission has concluded that this new structure, coupled with provisions for a budgetary maintenance of effort in DMH's programs, would guard against any diminution in the level or quality of DMH's current services, and any imbalance of priorities in the new agency, while allowing the new agency to ensure a seamless public health management system.

Accordingly, the Commission proposes that DOH and DMH be merged to create a new Department of Public Health.

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

Proposed Charter Revision:

Section 1. The chapter heading of chapter 22 of the New York city charter is amended to read as follows:

DEPARTMENT OF PUBLIC HEALTH

§ 2. Chapter 22 of the New York city charter is amended by adding a new section 550 to read as follows:

§ 550. Definitions. When used in this chapter: the term "mentally disabled" shall mean those with mental illness, mental retardation, alcoholism, substance dependence or chemical dependence as these terms are defined in section 1.03 of the mental hygiene law; or any other mental illness or mental condition placed under the jurisdiction of the department by the mayor; the term "provider of services" shall mean an individual, association, corporation or public or private agency which provides for the mentally disabled; and the term "services for the mentally disabled" shall mean examination, diagnosis, care, treatment, rehabilitation, training, education, research, preventive services, referral, residential services or domiciliary care of or for the mentally disabled, not specifically limited by any other law. Notwithstanding the foregoing, planning and programs for persons with substance dependence or chemical dependence shall be

conducted by the department, and the department may act as a “local agency” to conduct substance abuse programs and seek reimbursement therefore pursuant to provisions of the mental hygiene law relating to funding for substance abuse services, as deemed appropriate by the commissioner in recognition of the programs currently administered by the New York state office of alcoholism and substance abuse services or its successor agency under article nineteen of the mental hygiene law.

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

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

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

§ 552. Deputy commissioners. The commissioner may appoint [four] deputy commissioners, one of whom shall have the same qualifications as the commissioner [and one of whom shall be designated as the deputy commissioner for addiction programs and who shall be responsible for the drug treatment and drug prevention programs authorized by law]. There shall be at least two executive deputy commissioners, one of whom shall have the qualifications established pursuant to the mental hygiene law for a director of community services of a local governmental unit, and shall be the director within the department of the division of mental hygiene services. Such division shall be and shall exercise the powers of a local governmental unit for purposes of the mental hygiene law, and the executive deputy commissioner heading such division shall have the powers of a director of community services of a local governmental unit as set forth in or pursuant to such law, and shall report directly to the commissioner. In the exercise of such powers, such executive deputy commissioner shall coordinate the fiscal and programmatic administration of contracts awarded by the department for mental health, mental retardation, and alcoholism services.

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

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

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

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

§ 7. Section 556 of the New York city charter is REPEALED and reenacted to read as follows:

§ 556. Functions, powers and duties of the department. Except as otherwise provided by law, the department shall have jurisdiction to regulate all matters affecting health in the city of New York and to perform all those functions and operations performed by the city that relate to the health of the people of the city, including but not limited to the mental health, mental retardation, alcoholism and substance abuse-related needs of the people of the city. The jurisdiction of the department shall include but not be limited to the following:

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

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

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

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

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

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

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

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

(3) engage in short-range, intermediate-range and long-range mental hygiene planning that reflects the entire array of city needs in the areas of mental health, mental

retardation and developmental disabilities and alcoholism and substance abuse services within the department's jurisdiction;

(4) implement and administer an inclusive citywide planning process for the delivery of services for people with mental disabilities; and design and incorporate within that planning process, consistent with applicable law, standards and procedures for community participation and communication with the commissioner at the borough and local community level;

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

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

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

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

c. Supervision of matters affecting public health.

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

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

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

treatment of patients within such services and facilities for the mentally disabled within the department's jurisdiction;

(4) except as otherwise provided by law, analyze and monitor hospitals, clinics, nursing homes, and homes for the aged, and analyze, evaluate, supervise and regulate clinical laboratories, blood banks, and related facilities providing medical and health services and services ancillary thereto;

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

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

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

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

(9) supervise and regulate the food and drug supply of the city and other businesses and activities affecting public health in the city, and ensure that such businesses and activities are conducted in a manner consistent with the public interest and by persons with good character, honesty and integrity.

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

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

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

d. Promotion or provision of public health services.

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

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

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

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

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

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

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

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

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

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

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

e. Other functions.

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

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

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

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

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

(b) The commissioner with respect to the office of chief medical examiner shall exercise the powers and duties set forth in [paragraphs] paragraph one [two, three, and four] of subdivision a of section five hundred fifty-five of this chapter, but shall not

interfere with the performance by the chief medical examiner or his or her office of the powers and duties prescribed by the provisions of this section or any other law.

§ 9. Subdivision (e) of section 557 of the New York city charter is amended to read as follows:

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

§ 10. Subdivision (d) Of section 558 of the New York city charter is amended to read as follows:

(d) The board of health shall prescribe in the health code that the parent with legal custody or legal guardian of any child receiving day care services as authorized in such code shall have unlimited and on demand access to such child or ward. The department of public health shall make unannounced visits of such day care services if such board receives a complaint that, if true, would indicate that children in such services are not receiving adequate or appropriate care. Such board shall also prescribe in such code that during the period for which day care services are authorized upon any premises, the department shall whenever possible make at least one unannounced visit of every such premises annually.

§ 11. Section 564 of the New York city charter is amended to read as follows:

§ 564. Suits and service of papers. The department may sue and be sued in and by the proper name of "Department of Public Health of the City of New York," and service of all process in suits and proceedings against or affecting the department, or other papers, may be made upon the commissioner or official designated by him, and not otherwise; except that, according to usual practice in other suits, papers in suits to which the department is a party may be served on the corporation counsel or such assistant as may be assigned by him to the department.

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

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

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

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

b. (1) Contracts for services and facilities under this chapter may be made with a public or private voluntary hospital, clinic, laboratory, health, welfare or mental hygiene agency or other similar institution, notwithstanding that any member of the board or its subcommittees is an officer or employee of such institution or agency or is a member of the medical or consultant staff thereof.

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

§ 12. Chapter 22 of the New York city charter should be amended by adding a new section 569, to read as follows:

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

§ 13. Chapter 23 of the New York city charter is REPEALED.

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

d. 1. The city of New York recognizes that services for people suffering from mental retardation and developmental disabilities are provided by programs administered within a number of different city agencies, as well as by non-governmental entities. The city of New York further recognizes the need for coordination and cooperation among city agencies and between city agencies and non-governmental entities that provide such services.

2. There shall be mental retardation and developmental disability coordination within the office of operations. In performing functions relating to such coordination, the office of operations shall be authorized to: develop methods to: (i) improve the coordination within and among city agencies that provide services to people with mental retardation or developmental disabilities, including but not limited to the department of public health, the administration for children's services, the human resources administration, department of youth and community development, the department of juvenile justice, and the department of employment, or the successors to such agencies, and the health and hospitals corporation and the board of education; and (ii) facilitate coordination between such agencies and non-governmental entities providing services to people with mental retardation or developmental disabilities; review state and federal programs and legislative proposals that may affect people with mental retardation or developmental disabilities and provide information and advice to the mayor regarding the impact of such programs or legislation; recommend legislative proposals or other initiatives that will benefit people with mental retardation or developmental disabilities; and perform such other duties and functions as the mayor may request to assist people with mental retardation or developmental disabilities and their family members.

It should be noted that conforming amendments will also be made to Charter §§ 1058, 1403, 1404, and 2903. In those sections, where applicable, the word “public” will be placed before the word “health” in the terms “department of health” and “commissioner of health,” and the term “department of mental health” will be deleted.

- **Expanding the Board of Health**

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

Relevant Charter Provision: Section 553

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

In light of new and emerging issues in public health, the Commission’s staff recommends that the Board of Health be expanded from five to eleven members (including the Commissioner of Health), that the Board retain the current ratio of medical to non-medical personnel, that the terms of office be reduced from eight years to six years, and that the terms be staggered to assure continuity. These changes would ensure that the Board is better able to address today’s more complex public health threats and meet the new and emerging public health challenges of the future.

The jurisdiction of the Health Department is among the most extensive and varied of all City agencies. Its scope includes such diverse disciplines as communicable diseases, environmental health services, radiological health, food safety, veterinary affairs, water quality, pest control and vital statistics. New emerging pathogens and biological warfare are the most recent additions to the roster. A larger Board would increase the likelihood that members’ expertise would extend to any public health issue that comes before the Board.

Expanding the number of Board members will provide the opportunity to increase the variety of expertise represented, and allow for inclusion of representatives with

experience relating to special health needs of different racial and cultural groups in the City. A larger Board could also bring to bear a greater diversity of academic, clinical and community perspectives on the broad spectrum of public health problems and issues that need to be addressed.

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

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

Although the Commission heard no testimony in opposition to the staff's recommendation to expand the Board of Health, testimony urging the board to include representation from the behavioral and rehabilitative sciences professions on the board was given. In his testimony before the Commission, Dr. Neal Cohen, the Commissioner of the Department of Health and the Department of Mental Health, Mental Retardation and Alcoholism Services ("DMH") addressed this concern and proposed that one member of the expanded Board of Health also be the chairperson of the Mental Hygiene Community Services Board, an advisory body to DMH. The Commission agrees with these suggestions.

Accordingly, the Commission proposes that the Board of Health be expanded with changes to the staff's recommendation as provided by Commissioner Cohen.

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

Proposed Charter Revision:

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

a. There shall be in the department a board of health, the [chairman] chairperson of which shall be the commissioner. In addition to the [chairman] chairperson, the board shall consist of [four] ten members, [two] five of whom shall be doctors of medicine who shall each have had not less than ten years experience in any or all of the following: clinical medicine, neurology or psychiatry, public health administration or college or university public health teaching. The other [two] five members need not be physicians. However, non-physician members shall hold at least a masters degree in environmental, biological, veterinary, physical, or behavioral health or science, or rehabilitative science or in a related field, and shall have at least ten years experience in the field in which they hold such degree. One member of the board shall be the chairperson of the mental hygiene advisory board, as set forth in section 568 of the charter, provided that such chairperson shall meet the requirements for board membership of either a physician or non-physician member.

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

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

§ 3. Section 1152 of the New York city charter is amended by adding a new subdivision h, paragraph (4), to read as follows:

h. (4) The amendments to the charter, amending section fifteen and chapter twenty-two, repealing chapter twenty-three, renumbering section one thousand fifty-

eight, amending renumbered section one thousand fifty-seven-a and sections fourteen hundred three, fourteen hundred four, and twenty-nine hundred three, approved by the electors on November sixth, two thousand-one, shall take effect immediately, or as soon thereafter as a transfer of agency functions may be effectuated, and thereafter shall control as provided in respect to all the powers, functions and duties of all officers, agencies and employees, except as further specifically provided in other sections of this charter, except that: the amendments to the charter, amending section five hundred fifty-three of such chapter twenty-two, shall take effect thirty days after approval, provided, however, that of the first nine members of the board of health appointed on or after the effective date of these amendments, three members shall serve for two years, three members shall serve for four years, and the remainder shall serve for six years, provided further, however, that the term of any member of the board of health serving on the date of the approval of these amendments shall be deemed expired on such effective date.

5. PROMOTING PUBLIC SAFETY

- **Making OEM a Charter Agency**

Issue: Should the Office of Emergency Management (“OEM”) be codified in the Charter?

Relevant Charter Provisions: None.

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

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

Indeed, since its inception in 1996, OEM has spearheaded numerous projects and initiatives including the Rodent Control Task Force and the Public Access Defibrillator program. OEM has also addressed important citywide health, safety and operational issues, including coastal storm preparedness and assisting health care facilities with contingency planning. In early 2001, OEM coordinated lifesaving relief efforts to aid victims of the powerful earthquakes that claimed thousands of lives in El Salvador and India. Because the decision to evacuate coastline areas during periods of severe weather is a choice best made early, OEM plans to unveil its new program, EMOLS (Emergency Management On-Line Locator System), soon. By employing state-of-the-art mapping technology, EMOLS will permit Internet users to input their home addresses and immediately determine if an evacuation order has been issued for

their area. If so, evacuation routes would be clearly marked, along with the address and position of the safest Reception Center.

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

On August 16, 2001, the Commission heard expert testimony from OEM's Director, Richard Sheirer, New York State's Emergency Management Director, Edward F. Jacobi, and the American Red Cross of Greater New York's Government Liaison Officer, Michael Emmerman. All three experts supported the staff's recommendation.

Mr. Jacobi stated that he had worked with OEM in its efforts to prepare the City for nuclear, biological and chemical attacks and said that:

OEM's ability to bring together the City's diverse agencies and the resources is crucial to an effective response and recovery from these events. During these and other events, OEM has proven its value to New York City's efforts to protect the public health and safety.

See Briefing Transcript, August 16, 2001, p. 56.

Likewise, Mr. Emmerman stated that:

My ability to do my job efficiently has been directly enhanced by the existence of OEM...the ability to have all of the resources of this great City available and structured, that's the important part of this. To respond in times of need is something that is absolutely necessary and not a luxury.

See Id. at pp. 62-63.

The Commission also heard several positive comments and suggestions from the public and received no opposition to the substance of the staff's recommendation to create an Emergency Management Department.

As defined by OEM's present mission, the Emergency Management Department would operate within five primary operational parameters. First, the Department would monitor and respond to all potential emergency conditions and potential incidents that might require a multi-agency response. Second, the Department would operate an emergency operations center to assist the City in managing emergency conditions and potential incidents, which might require a multi-agency response. Third, the Department would research, compile, evaluate and implement citywide Contingency Plans, ranging from anti-bioterrorism planning, to public information and media outreach programs, to an all-hazards mitigation plan. Fourth, it would prepare, organize, and implement drills and exercises, such as it did with its recent bioterrorism preparedness exercise (Operation RED Ex), as well as those conducted by the Urban Search and Rescue Team. Finally, the Department would coordinate special inter-agency and inter-governmental responses, as it did for the 2000 Operation Sail/International Naval Review, Fleet Week 2001, the recent implosion of the Maspeth Tank Holders, Y2K contingency planning and numerous other response situations. Consistent with this recommendation, the City's existing authority to seek ex parte administrative orders on behalf of agencies to inspect conditions and/or abate nuisances within their jurisdiction to prevent emergencies or deal with their aftermath would be clarified.

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

Because in many emergency situations, the possibility exists for more lives and property to be lost to confusion and inefficiency than to the initial hazard itself, the

Commission proposes that OEM's responsibilities be codified in the Charter, and the present office elevated to departmental level status. By consolidating emergency management functions, improving coordination between City, State, federal and private agencies, and maintaining direct mayoral control, the City will continue to implement an effective, efficient, and comprehensive approach to emergency management. As evidenced by OEM's record of skillful professionalism, innovative ability, and defined accountability, OEM's codification as a Charter agency with departmental level status would ensure that the City of New York maintains its worldwide reputation of excellence in emergency management planning and response and, most importantly, continues to save lives and property.

Proposal: The Office of Emergency Management should be codified in the Charter as an independent agency, the Emergency Management Department, to ensure the City's future success in using a comprehensive approach to emergency management.

Proposed Charter Revision:

Section 1. The New York city charter is amended by adding a new chapter 19-A to read as follows:

CHAPTER 19-A

EMERGENCY MANAGEMENT DEPARTMENT

§ 495. Department; commissioner.

§ 496. Deputies.

§ 497. Powers and duties.

§ 498. Agency cooperation.

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

§ 496. Deputies. The commissioner shall have the power to appoint and, at pleasure, remove deputies, one to be known as first deputy commissioner. During the absence or disability of the commissioner, the first deputy commissioner, or if the first deputy commissioner shall be absent or under disability, the deputy commissioner

designated by the commissioner, shall possess all the powers and perform all the duties of the commissioner, except the power of making appointments and transfers.

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

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

b. monitor on a constant basis all potential emergency conditions and potential incidents which may require a multi-agency response;

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

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

e. make recommendations to the mayor concerning the city's emergency response capabilities and concerning the city's capacity to address potential emergency conditions and potential incidents;

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

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

h. hold regular and frequent meetings of designated emergency response personnel of all city agencies that are determined by the commissioner to have a direct

or support role in the city's management of emergency conditions and potential incidents which may require a multi-agency response;

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

j. coordinate with all city agencies to ensure that all such agencies develop and implement emergency response plans in connection with planning major city events;

k. coordinate with state, federal and other governmental bodies to effectuate the purposes of the department;

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

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

n. perform all other functions previously performed by the former office of emergency management and the emergency control board; and

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

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

§ 2. The New York city charter is amended by adding a new section 398 to read as follows:

§398. Ex parte administrative warrants. If entry to a location or premises to be inspected pursuant to an agency's powers and duties is not gained on consent, or if circumstances call for entry without prior notice, the commissioner of such agency, or

his or her authorized representative, may request the corporation counsel to make an application, ex parte, in any court of competent jurisdiction for an order directing the entry and inspection of such premises or location and, in accordance with applicable law, to abate any nuisance thereon. Nothing in this section shall be construed to limit, abridge, affect or amend the power of an agency under law, including state, local or case law, to enter and inspect any location or premises or abate any nuisance thereon, either with or without a warrant, to carry out any of its functions, powers and duties.

- **Organized Crime Control Commission**

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

Relevant Charter Provisions: None.

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

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

Recognizing that criminal prosecution alone would not eliminate the influence of organized crime, the City began to regulate areas of economic activity that had long been infiltrated by organized crime. In 1995, Local Law 50 was adopted to eliminate the

influence of organized crime in the Fulton Fish Market. That local law empowered the Department of Business Services, with the assistance of the Department of Investigation, to license and conduct background investigations on designated businesses and organizations having dealings in the Fulton Fish Market. In 1997, Local Law 28 expanded this effort to the other public wholesale markets. In 1996, Local Law 42 created a new agency, the Trade Waste Commission, to oversee, regulate and license the private carting industry. Finally, in 1997, Local Law 57 established the Gambling Control Commission to eliminate any organized crime influence from gambling ships sailing out of the City into international waters on so-called “cruises to nowhere.”

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

Currently, the Fulton Fish Market and other wholesale food markets, the private carting industry, and the shipboard gambling business are being effectively regulated to remove Organized Crime’s influence from those sectors of the economy. The Commission believes that the permanent consolidation of the current licensing and regulatory efforts would be extremely valuable to the City. Each of the City’s current programs deals with a different area of economic activity but performs similar regulatory, licensing and investigative functions; and each places a special emphasis on background investigations of applicants to determine whether they are of good character and fitness and whether they have had contact with known organized crime figures and activities. However, each agency’s efforts to discharge these duties are hampered because relevant information is often scattered among the various agencies and among various other law-enforcement authorities. Notwithstanding the fact that the same organized crime figures sometimes infiltrate the different economic activities that are currently regulated, there is no formal structural mechanism in place to ensure cooperation among the various agencies or to prevent duplication of effort. The proposed revision would eliminate this deficiency in the City’s current governmental structure

The Commission, therefore, proposes that the Charter be amended to create an Organized Crime Control Commission charged with combating organized crime in the areas already regulated by the City and consolidating the work of the existing agencies in this area.²⁰ Indeed, the Mayor submitted legislation to the Council on December 7, 1999 to create such an Organized Crime Control Commission, but the Council has failed to act upon it.

The proposed Organized Crime Control Commission would consolidate and oversee the regulatory, licensing, and investigative functions of the existing agencies that deal with organized crime activities. The programs dealing with the public wholesale food markets at the Department of Business Services and the Department of Investigation, the Trade Waste Commission, and the Gambling Control Commission would be consolidated into the new agency, which would operate under the new name of the Organized Crime Control Commission. In addition, the proposal would strengthen the City's ability to ensure that its own business relations are not influenced by organized crime, and other corrupt elements, by clarifying executive authority to oversee a centralized integrity assessment system, and to provide for vendor prequalification, in the area of City contracting.

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

²⁰ As noted, these agencies deal with the public wholesale food markets (regulated by the Department of Business Services and the Department of Investigation), the private waste carting industry (regulated by the Trade Waste Commission), and gambling "cruises to nowhere" (regulated by the Gambling Control Commission).

The Commission's staff recommendation to create an Organized Crime Control Commission was supported enthusiastically by experts in the field of combating organized crime, including the Federal Bureau of Investigation ("FBI"). The Commission received a letter, dated August 14, 2001, from Barry W. Mawn, Assistant Director in Charge of the FBI's New York office. Mr. Mawn stated:

I would like to commend the City's regulatory efforts against the LCN [La Cosa Nostra (the syndicate of organized crime families)] which have already had a tremendous impact on behalf of the public and to the detriment of the LCN...I would urge continued diligence, and would welcome the opportunity to work with the Organized Crime Control Commission in whatever manner possible... .

In addition to Mr. Mawn's letter, on August 16, 2001, the Commission also heard expert testimony from Ed Ferguson and Raymond Casey, who are, respectively, the former and current Executive Directors of the City's Trade Waste Commission. Mr. Casey also serves as Executive Director of the Gambling Control Commission.

Both experts supported the recommendation and agreed that consolidation of the City's current licensing and regulatory efforts would be extremely valuable to the City's efforts in the areas that the City is already authorized to regulate. Each of the City's current programs deals with a different area of economic activity but performs similar regulatory, licensing and investigative functions; and each places a special emphasis on background investigations of applicants to determine whether they are of good character and fitness and whether they have had contact with known organized crime figures and activities. However, each agency's efforts to discharge these duties are hampered because relevant information is often scattered among the various agencies and among various other law-enforcement authorities. Notwithstanding the fact that the same organized crime figures sometimes infiltrate the different economic activities that are currently regulated, there is no formal structural mechanism in place to ensure cooperation among the various agencies or to prevent duplication of effort. The experts believed that proposed revision would eliminate this deficiency in the City's current governmental structure, and ensure that these functions are performed more efficiently, that various expertise at the separate agencies are pooled to maximize effectiveness, and that opportunities for investigation and enforcement do not fall through interagency

cracks. The Commission received other positive testimony and a request for a technical clarification, none of which challenged the substance of the staff's recommendation.²¹

Accordingly, the Commission proposes that the Charter be amended to create a new Organized Crime Control Commission by merging current government oversight functions over the public wholesale markets, commercial waste carting industry, and shipboard gaming industry.

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

Proposed Charter Revision:

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

CHAPTER 63

ORGANIZED CRIME CONTROL COMMISSION

§ 2100. Organized crime control commission.

§ 2101. Jurisdiction.

§ 2102. Cooperation with other agencies.

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

b. The chairperson may appoint a first deputy who shall possess all the powers and perform all the duties of the chairperson during the absence or disability of the

²¹ In written comments, dated August 15, 2001, Council Speaker Peter Vallone expressed concern that language in the staff's recommendation regarding the new agency's authority to set "standards for service" by and "conduct of regulated businesses" was "unclear" and could be "[mis]construed." The Commission's proposal addresses the Speaker's concern and clarifies that any such standard setting authority "shall be exercised in a manner consistent with all local laws governing the regulation of the trade waste industry, the shipboard gambling industry, the fulton fish market distribution area and other seafood distribution areas and the public wholesale markets," which would include existing laws providing for certain standards and conduct. Although the Speaker did not oppose the substance of the proposal, he believed that the recommendation should be enacted by the Council.

chairperson and in case of the death of the chairperson or of a vacancy in that office shall act as chairperson until the appointment of a chairperson by the mayor.

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

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

b. The powers and duties of the organized crime control commission shall be exercised in a manner consistent with all local laws governing the regulation of the trade waste industry, the shipboard gambling industry, the fulton fish market distribution area and other seafood distribution areas and the public wholesale markets and shall include but not be limited to the following:

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

2. to investigate any matter within its jurisdiction and to have full power to compel the attendance, examine and take testimony under oath of such persons as it may deem necessary in relation to such investigation, and to require the production of books, accounts, papers and other evidence relevant to such investigation;

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

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

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

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

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

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

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

§ 2. Section 335 of the New York city charter is REPEALED and reenacted to read as follows:

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

- **Coordination of Domestic Violence Services**

Issue: Should the Charter require Executive coordination within the Mayor's Office of City services relating to the prevention of domestic violence?

Relevant Charter Provisions: None.

Discussion: One of the most important initiatives pursued in recent years by the City has been its efforts to combat domestic violence. The Mayor created the Commission to Combat Family Violence ("CCFV"), to coordinate the services of the many City

agencies that deal with this issue. And this year, the City's Human Rights Law was amended to prohibit discrimination in the workplace against victims or perceived victims of domestic violence.

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

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

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

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

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

On August 16, 2001, expert testimony was given on the staff’s recommendation concerning the City’s coordination of domestic violence services. Angela Albertus, CCFV’s Executive Director, supported the staff’s recommendation and testified that the CCFV has made significant progress in improving programs and access to services for victims of domestic violence. As a result of the efforts of the CCFV and the citywide

policies on domestic violence, in FY 2000, the NYPD made nearly 24,000 family-related arrests, of which 4,013 were for violations of orders of protection. See Briefing Transcript, August 16, 2001, p. 9.

Bea Hanson, Vice President for Domestic Violence Programs at Safe Horizons, also supported the proposal and testified that the City's Domestic Violence Hotline, which is run by her organization, received more than 130,000 calls in FY 2001. She reported that this call volume amounted to a 164 percent increase from the amount of calls received by Safe Horizons in FY 1995 when it began running the hotline. Id. at p. 18.

Judith Kahan, Executive Director of the Center for the Elimination of Violence for the Family and Chair of the New York City Coalition of Domestic Violence Residential Service Providers, testified that currently "42,000 New Yorkers need shelter because their lives are threatened at home," and that in 2000 "almost 14,000 people called the [City's] domestic violence hotline for shelter." She supported the recommendation and stated that coordination of the City's domestic violence services was needed because "there is scarcely a branch of [City government] that doesn't touch a battered woman in her quest to provide for her children and escape the abuse." Id. at p. 27.

Professor David Yassky, a criminal and constitutional law expert from Brooklyn Law School, who also wrote the federal Violence Against Women Act while he served as Counsel to the U.S. House of Representatives Subcommittee on Crime, gave "strong and enthusiastic support" for the staff's recommendation. He made clear that domestic violence continues to be a critical and evolving issue in the City that transcends heterosexual and same-sex relationships. He emphasized that, for many years, domestic violence was an "underenforced crime," or not treated like a crime at all, by some police departments. He concluded that domestic violence requires "serious coordination efforts...not just from law enforcement but also...from a broad array of City agencies, and so the coordination needs here...are unique and due a special office." Id. at p. 13-14.

Victoria Cruz, a domestic violence counselor at the New York City Gay and Lesbian Anti-violence Project, known as AVP, also testified in support of the staff's recommendation. She stressed the need for the creation of an office to "permanently focus on points to address service gaps, [and to] improve the expansion of service as

needed...by all victims of domestic violence including LGBT [lesbian, gay, bi-sexual and transgender] victims.” See Id. at p. 25.

Given the success of the CCFV initiatives, and that domestic violence remains a critical and evolving issue in all communities of the City, the Commission proposes that the Charter be amended to establish an Office to Combat Domestic Violence to be charged with coordinating services relating to the prevention of domestic violence. Institutionalizing such coordination would ensure that the City’s new focus on combating domestic violence becomes a permanent part of the way the City does business.

Proposal: Domestic violence services should be coordinated by establishing an Mayor’s Office to Combat Domestic Violence as a Charter agency.

Proposed Charter Revision:

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

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

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

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

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

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

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

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

6. STAFF RECOMMENDATIONS NOT PROPOSED FOR INCLUSION ON THE BALLOT THIS YEAR

A. The City's Purchasing Procedures

The Commission's staff recommended that the Charter be amended to ensure that the City do business with honest contractors and to address overly burdensome procurement process by: (1) increasing the dollar amounts for small purchases; (2) allowing DCAS to delegate authority to purchase specific goods; (3) removing bid deposit requirements and multi-step sealed proposals; (4) raising the threshold for public hearings on contract awards from \$100,000 to \$500,000; and (5) ensuring that the City's computer systems are consistent with the law regarding the registration process.

Chapter 13 of the Charter and the Procurement Policy Board ("PPB") rules govern the City's procurement processes. The PPB adopts rules governing the process generally, the Mayor is responsible for the implementation of the procurement system, and the Comptroller provides oversight through the registration process and audit responsibilities.

The primary criticism of the City's procurement process is that it takes too long for the City to enter into contracts. It takes more than eight months, for example, to enter into a contract using the Request for Proposal ("RFP") process. Given that the City uses the RFP process to procure services that address the pressing human services needs of the City, this level of delay is not acceptable.

Because the Commission believes strongly that a more effective and cost-effective procurement process is needed, the following discussion of the staff's

recommendations is included in this report. However, the Commission has decided not to submit these recommendations for referendum during this election cycle because it could not reach consensus on all of the considerations involved.

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

The Commission heard expert testimony that the single most effective way to remove red tape from the procurement system is to raise the dollar threshold of the streamlined, but competitive, small purchase procurement process. It is estimated that if the small purchase limits for all purchases were raised from \$25,000 to \$100,000, the City could accelerate the processing of more than 700 procurements a year – 20 percent of all contracts.²² Under Charter § 314, the PPB and the Council may, by concurrent action, establish dollar limits under which procurements may be made through the small purchase procurement process. Currently, the small purchase limits are \$25,000 for goods and services; \$50,000 for construction and construction-related services; and \$100,000 for information technology. See PPB Rules § 3-08(a).

The current small purchase limits are unreasonably low in light of the cost of goods, services, and construction. Procurements in excess of these limits may fairly be called "small purchases." However, the Council has so far refused to agree to increase the small purchase limit to an amount, such as \$100,000 for all procurements that reflects reasonable costs. Indeed, legislation to raise the limit to the level approved by the PPB on June 12, 1997 has languished in the Council without even a public hearing for the past four years.

The Commission believes the limit should be raised to \$100,000. Any such change, however, should make it clear that as future conditions may change costs sufficiently to warrant adjusting the limit either higher or lower, the PPB and the Council should retain the power to revise the limit by concurrent action.

It is important to remember that small purchases are still subject to competition. PPB rules mandate that, for procurements worth over \$2,500, at least five suppliers must be solicited at random from the appropriate small purchase bidders list and other sources of potential suppliers. PPB Rules § 3-08(c)(1)(iii). While no competition is required for procurements worth \$2,500 or less, the agency must still ensure that the

²²See Testimony of Michael Best, Director, Mayor's Office of Contracts, Expert Briefing Transcript, August 15, 2001, pp. 73-77.

price is reasonable and that purchases are distributed appropriately among qualified buyers. PPB Rules § 3-08(c)(1)(ii). However, various formal procedural requirements are not required for small purchases and, therefore, small purchases can be processed quickly and efficiently.

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

Indeed, increasing the small purchase limit would help small City businesses, particularly those owned by women and minorities and based in the City. The City's small purchase process is inviting to bidders who have not learned how to navigate the City's procurement bureaucracy. Moreover, the City's "Bid-Match System" is tied to the small purchase system. Bid-Match is designed to encourage more participation in the procurement process by small firms and those owned by women and minorities. Under Bid-Match, when a City agency makes a small purchase, the agency must alert the Department of Business Services, which helps pair the agency with small vendors and vendors run by women or minorities. Since Bid-Match is tied to the small purchase limit, raising the limit would probably cause more of the City's small and women and minority-owned businesses to compete for City procurements. In fact, based on statistics from FY 2000, the Commission estimates that increasing the small purchase limit to \$100,000 could bring an additional 737 procurements, valued at \$42.5 million, into the Bid-Match System. Finally, it is important to note that raising the limits on small purchases to \$100,000, and no more, is consistent with Charter § 312(a), which is designed to protect the City's unionized workers from possible displacement resulting from higher dollar value contracts of *more* than \$100,000. Indeed, this Commission supports

the rationale underlying Charter § 312(a) to protect workers and would not recommend any changes to that section.

It has long been the New York City Law Department's position that purchases below the small purchase limit are not contracts and, therefore, do not require registration pursuant to Charter § 328. It has come to the Commission's attention, however, that some confusion exists on this point and that some City employees have incorrectly insisted that small purchases in excess of \$10,000 be registered. A step towards accelerating small purchases can be made without any change in law. The Comptroller's staff should be instructed that such registration is not required and, if necessary, the PPB should clarify the process. If such clarifications are unsuccessful, a Charter amendment may be needed to ensure that current law is understood and followed.

- **Purchases of Specific Goods**

Under Charter § 329(c), an agency may directly purchase goods in an amount not to exceed \$1,000, and may purchase goods in an amount not to exceed \$5,000 with the prior approval of the commissioner of the Department of Citywide Administrative Services ("DCAS"). These limitations do not apply to purchases by an agency under a vendor contract entered into by DCAS. Charter § 329(d) provides that the DCAS commissioner, with the approval of the Mayor, may raise the \$1,000 limit to \$5,000. Increases in the limits above \$5,000 also require the approval of the Comptroller. The staff recommended that, in certain circumstances, the Department of Citywide Administrative Services ("DCAS"), which purchases common goods in bulk needed by many agencies, be permitted to delegate the authority to purchase goods that are specific to a user agency, when that agency has the only expertise concerning the good. Centralized procurement of common goods would remain with DCAS.

Such delegation would eliminate time consuming step in the procurement process for some agencies, thereby expediting the purchase, and ensure that the agency with expertise about the product's specifications and use would fully control the procurement process, and would allow DCAS to expend its resources on procurement of those more general or common items within its expertise. While the recommendation would permit the delegation for specific goods regardless of cost, it would not increase dollar limits for goods DCAS is suited to purchasing, such as those that would generally be needed by more than one agency. For example, in the case of bomb defusing

robots, it is unlikely that more than one or two agencies would make such a purchase, and therefore there would be no monetary gain or other benefit realized by their procurement by DCAS.

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

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

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

Under Charter § 323, “a preliminary request for proposals may be issued requesting the submission of unpriced offers.” Submissions made in response to the request may then be used as the basis for competitive sealed bids or proposals, or competitive sealed bids or proposals from prequalified vendors. This section is completely unnecessary. While the section is aimed at providing flexibility to a procuring agency in a situation where the agency is uncertain of the best approach to take regarding a particular procurement, the Charter already contains provisions that would allow the agency to learn and act on any information it could get from the §323 mechanism. Charter §§ 319 and 320 (Competitive Sealed Proposals and Competitive Sealed Proposals from Prequalified Vendors) already allow the agency to negotiate with responsible offerors who submit proposals. Thus, there is no need for the § 323 mechanism of a second solicitation of bids or proposals following the submission of the unpriced proposals. Furthermore, the City's experience since this provision was adopted in 1989 indicates that it is unnecessary.

- **The Public Hearing Requirement**

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

The Commission heard compelling testimony for raising the threshold for public hearings while still providing a means for public participation. In FY 2001, the City conducted hearings for 1,172 contracts, 444 of which were for contracts valued between

\$100,000 and \$500,000. Of these 1,172 contracts, the public commented on 200 of them, and only 16 of the contracts for which comments were received had a value between \$100,000 and \$500,000. Thus, had the hearing threshold been \$500,000 in FY 2001, instead of \$100,000, 444 contracts could have been processed in less time. A higher threshold would therefore reduce delays in the procurement process on those contracts that rarely receive public comment, but would preserve the public's ability to comment at a public hearing on higher dollar value awards.²³

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

- **Streamlining the Registration Process**

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

²³ Id. at pp. 77-81.

Historically, Comptrollers have used their registration function to interject themselves into policy questions in a manner that had never been intended. The 1975 Charter Revision Commission attempted to resolve this problem by requiring registration within 30 days. The problem continued to exist after the 1975 charter revision, and the 1989 Charter Revision Commission chose to revisit the issue in order to clarify the Comptroller's limited role. The compromise reached by the 1989 Charter Revision Commission was for the Comptroller's role to remain primarily ministerial (checking for sufficient funds, the appropriate certifications, and whether the proposed vendor has been debarred), with discretion limited to simply raising the possibility of corruption.²⁴ This compromise (as currently set forth in the Charter) involved a "limited role for the comptroller," and "kept the policy goal of mayoral accountability intact."²⁵

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

The Commission heard testimony implying that "a Charter amendment that would deem contracts registered unless the Comptroller objects could result in contracts being registered that perhaps should not have been."²⁶ It also heard testimony suggesting that the recommendation diminished the power of the Comptroller. To the contrary, the recommendation requiring that the City's computer systems deem contracts registered under certain circumstances is consistent with current law as recognized by New York's highest court in DeFoe Corp. v. New York City Dept. of Transportation, 87 N.Y.2d 754 (1996), in which the Court of Appeals held that "if the Comptroller has not objected [to a

²⁴ Frederick A.O. Schwartz, Jr. & Eric Lane, The Policy and Politics of Charter making: The Story of New York City's 1989 Charter; Part II: The Structure and Processes of the New Government, 42 N.Y.L. Sch. L. Rev. 775, 895-96 (1998).

²⁵ Id.

²⁶ See Testimony of Council Member Herbert Berman, Public Hearing Transcript, August 16, 2001, p. 8.

contract] within 30 days, the contract is deemed registered.” Id. at 760. The staff’s proposal was intended to accomplish mechanics of registering contracts in the City’s data bases, and is really about implementation of the existing law. The idea that a Comptroller might object to every contract in order to circumvent the law is not a persuasive argument against this proposal, which merely clarifies what is already required by law. To the extent that the City’s computerized records do not presently reflect that a contract has been registered by operation of law, the proposal would mandate that these data bases be brought into compliance, such that they accurately reflect the correct legal status of the City’s contracts.

The Commission agrees with the staff’s procurement recommendations and believes that procurement reform is needed. While there is a consensus among those familiar with the inner-workings of City government, that procurement reform is needed, there is more work to be done to fully develop all of the reforms necessary. At the same time, the Commission believes that the staff’s recommendations concerning the creation of a centralized integrity assessment system, and to provide for vendor pre-qualification, in the area of City contracting was an obvious corollary to, and therefore should be made part of, the proposal to create an Organized Crime Control Commission. Therefore, the Commission proposes that that recommendation be included in the proposal on organized crime. Accordingly, the Commission defers action on the staff’s recommendations concerning the streamlining of the procurement process to another election cycle.

B. The City’s Conflicts of Interest Rules

The Commission considered a staff recommendation that the Charter be amended to grant the Conflicts of Interest Board ("the Board") the authority to conduct independent investigations of allegations of conflicts of interest and impropriety, and that the Board be empowered to issue subpoenas in connection with its investigations. Indeed, the Commission heard expert testimony that the authority to conduct investigations and issue subpoenas are common for bodies similar to the Board around the country, including the Securities and Exchange Commission, the Pennsylvania Ethics Commission and the Massachusetts Ethics Commission.²⁷

²⁷ See Testimony of Mark Davies, Executive Director, New York City Conflicts of Interest Board, Expert Briefing Transcript, August 14, 2001, p. 25

Although the Commission believed the recommendation could enhance the Board's ability to conduct speedier investigations, some members of the Commission expressed grave concern that the Board's exercise of subpoena power could potentially compromise investigations which are better suited to be handled by the City's Department of Investigation, which currently conducts investigations for the Board. Concern was also expressed that the Board's resources may prove inadequate resources to maintain an appropriate investigative staff.

The Commission also considered whether the Charter should be amended to permit open proceedings of the Board, but only once a petition is served and at the discretion of the Board. The Commission believes that open hearings would inform the public, public servants, the media, and complainants that a matter is being pursued. Additionally, open proceedings would also serve an educational function by alerting City employees to the requirements of Chapter 68 and the enforcement power and actions of the Board. Failure to keep the public and complainants informed of the progress of certain enforcement matters discourages complainants and has generated some cynicism from the public and City employees about the efficacy of Chapter 68. Indeed, for the same reasons, complainants should be notified of the disposition of their complaints.²⁸

A recommendation was also considered to require conflicts training for all public servants. The Commission agreed that requiring the agencies and the Board to collaborate on mandatory training programs would foster the Board's Charter mission and help employees to better understand the rules under which they work.²⁹

Finally, the Commission considered whether the Charter provisions governing salary increases for elected officials should be amended. The City Council currently has the power to adopt, and the Mayor to enact, local laws that increase their salaries, and the salaries of other elected officials, whenever they wish and in whatever amount they choose. These increases in salary can be made effective not only immediately, but

²⁸ It should be noted that such an amendment would make the City's provisions similar to those at the State Ethics Commission where notices of reasonable cause are public, and hearings are public at the option of the Commission. See Executive Law § 94(17). The State Ethics Commission's notices of reasonable cause are analogous to the Board's petitions. The Board would still be permitted to close the proceedings, including upon application of the respondent.

²⁹ See Testimony of Les Taub, Director of Training and Education, New York City Conflicts of Interest Board, Expert Briefing Transcript, August 14, 2001, p. 28-32.

also retroactively. Any such salary increases can create the appearance that the elected officials are acting out of self-interest, against the best interests of the public. It is for this reason that, under the U.S. Constitution, salary changes for members of Congress and the President cannot take effect until they have been re-elected to another term of office. Indeed, these Constitutional requirements create an effective check against an appearance of impropriety or abuse of power. Although the Commission viewed this proposal favorably, it received comments stating that issues concerning salary for elected officials can be left to the City's "Quadrennial Advisory Commission for the Review of Compensation Levels of Elected Officials," which provides recommendations to elected leaders on making appropriate decisions concerning salary increases pursuant to Administrative Code § 3-601.

Finally, the Commission received comments that while the City's conflicts of interest law provides to some degree a module for municipal ethics, it requires serious revision. The City's annual disclosure requirement, for example, is an "abomination...[it] fails to distinguish between high-level public servants with broad-ranging responsibilities and part-time, virtually volunteer board members with limited jurisdiction."³⁰

The Commission found several of these staff recommendations and public proposals to be meritorious. However, the issue of separate subpoena power and its attendant potential for conflict with the Department of Investigation's investigative processes proved problematic, and the Commission could not reach consensus on all of the recommendations. The Commission, therefore, decided not to recommend any changes to City's conflicts rules at this time. However, the Commission believes that several of the staff's recommendations and other proposals submitted to the Commission warrant further evaluation during the next election cycle.

C. Reforming the City's Building Inspections

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

During the past two decades, corruption scandals involving employees at the Department of Buildings ("DOB") have caused widespread concern that the integrity of

³⁰ Testimony of Henry G. Miller, Chair of the New York State Temporary State Commission on Local Government Ethics, Expert Briefing Transcript, August 14, 2001, p. 37.

DOB's function to ensure public safety by regulating construction and administering a range of local and State codes and statutes related to construction activity has been compromised and the public's safety put at risk. In response to these concerns, the Administration convened a "Task Force Examining Operations of the Department of Buildings" in September 2000. The Task Force published a final report of its findings and recommendations for reform in April 2001.

The report made clear that, because DOB's operations affect the safety, viability and cost of both public and private development citywide, major reengineering and operational reform were essential in order to improve service delivery and increase public confidence in DOB. Areas that were identified as being in need of immediate reform were those of construction and safety inspections and enforcement. To achieve the reform, the Task Force recommended that the New York City Fire Department ("FDNY") be given the same jurisdiction as DOB over those functions. DOB's inspections and enforcement functions have been overseen by the FDNY for several months pursuant to memorandum of understanding.

The Commission considered whether concurrent jurisdiction would enable the City to focus the resources and expertise of FDNY on the objectives of significantly improving the management, accountability, efficiency and emergency responsiveness with respect to inspections of buildings, while reducing the potential for corruption. FDNY has better technology, oversight of personnel and anti-corruption training than DOB and therefore is in a better position to conduct more efficient and effective scheduling of inspections. Enforcement functions could also be shared with FDNY.

The Commission considered other recommendations for reforming DOB, including an amendment to the criteria used by DOB for hiring building inspectors to facilitate the goal of effective enforcement. The Commission also evaluated whether to codify other functional transfers affecting the Department of Business Services ("DBS"), DOB and FDNY. The powers of DBS that are affected include construction on property not under DOB's jurisdiction, such as waterfront property, and the issuance of certain aviation operational permits where flammable gases or fuels are used. These are potentially dangerous operations, which do not take place at airports or heliports, and would likely be handled best by the FDNY. Indeed, these functions have, in fact, been

overseen by those agencies pursuant to a memorandum of understanding for some time.

The Commission carefully weighed the testimony received at public meetings and hearings. DOB's Inspector General, Dennis Curran, testified in support of the staff's recommendation to grant FDNY concurrent jurisdiction over DOB's inspections and enforcement functions, as did Deputy Commissioner Robert Brugger, who currently oversees the DOB-FDNY Joint Task Force on inspections and enforcement. Both experts testified that the consolidation had already made advances and had the potential for further efficiency and public safety gains, as well as the deterrence of corruption.

The Commission also heard testimony and received several written comments from opponents of the proposal. Indeed, it was this issue that generated some of the most vocal criticism during the Commission's public hearings. For example, the American Institute of Architects, Real Estate Board of New York ("REBNY"), Associated Builders and Owners of Greater New York, Rent Stabilization Association, Building Trades Employers Association, and the New York Building Congress all opposed the consolidation on the grounds that being required to deal with two separate agencies would impose additional costs and burdens on their constituents. Specifically, many of these organizations criticized the Fire Department's expertise and knowledge of building design, engineering and construction. They also expressed concern that giving one agency responsibility over permit approvals, and the other responsibility over final inspections, would create major problems for the industry, especially since the procedures, requirements and computer systems of each agency differ. The Commission was surprised, however, that given DOB's history of corruption, industry advocates, such as REBNY, were apparently content with the status quo and offered no alternative suggestions for reform.

The Commission also received written comments in opposition to the proposal from members of the City Council. Council Speaker Peter Vallone and Council Member Archie Spigner, Chair of the Council's Housing and Buildings Committee, opposed the proposal and indicated a belief that it would not cure the DOB's problems. They proposed that DOB be better professionalized or, alternatively, that a non-profit agency be created to conduct inspection and enforcement functions.

It should be noted that the Commission strived to reach a widespread consensus on all recommendations it proposed for Charter revision. Unfortunately, due to the complexity of this recommendation, it was unable to reach consensus. However, the Commission has determined that the portion of this proposal which clarified the powers of City officials to inspect properties and abate nuisances thereon properly belongs in the Commission's proposal on public safety, and that the other components of this proposal should be deferred for further consideration. Therefore, it is recommended that another Commission consider alternative reforms that may include the creation of a new entity to handle the functions currently being performed by the Joint Task Force.

7. OTHER ISSUES REVIEWED BY THE COMMISSION

The Commission also considered other issues presented to them by the staff but not recommended for Charter revision. Some of these issues were reviewed by other Charter Commissions which ultimately deferred them for further study. Other issues were presented in public comments that the staff believed should also be deferred for further study. Accordingly, the Commission defers further consideration of the following issues during this election cycle:

A. Elections and Elected Offices

- **Nonpartisan Elections**

The Commission considered the issue of whether elections for citywide offices of the Mayor, Comptroller and Public Advocate should be conducted on a nonpartisan basis.

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

candidates who receive the most votes in the primary advance to a run-off held on the general election day.

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

As the 2001 primary election for citywide and other elected offices fast approaches, this Commission finds the case for nonpartisan elections more compelling than ever — especially in light of a campaign season that, to date, lacks a vigorous and substantive policy debate about the City's future. The Commission believes that one reason for this lack of debate stems from the City's current partisan system, one that tends to foster uniformity, rather than diversity of ideas. Indeed, because one major party has, with a few exceptions, dominated the City's political life for decades, many potential candidates feel compelled to identify themselves with that party and its platform in order to have any chance of success.

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

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

A nonpartisan system would give people from outside of a party's machinery a chance to compete with party insiders and loyalists on a more equal footing. Many candidates' fates, especially in the partisan primaries, hinge on whether they can successfully woo party bosses and their political foot soldiers. Newcomers and people with careers outside of politics often find it difficult to make a run for elective office because of their lack of access to party organizations. In a nonpartisan system, less-

connected candidates would find it far easier to make a run for elective office since there would not be a party-favorite candidate blocking any realistic chance for success. When coupled with the City's voluntary campaign finance program, which provides a generous level of public matching dollars to participating candidates, a nonpartisan system would make New York City, which is arguably one of the world's most diverse cities, also one of the easiest places for all of its citizens to effectively compete for public office.

This Commission agrees with the 1998 and 1999 Commissions that the City has the authority to change to nonpartisan elections. The authority to conduct such an election is derived from Article IX of the State Constitution and Municipal Home Rule Law § 10. In addition, the New York Court of Appeals has held that cities possess the authority to establish nonpartisan elections notwithstanding State Election Law. Bareham v. City of Rochester, 246 N.Y. 140 (1927). Indeed, the City's nonpartisan election scheme used to fill Council vacancies was recently upheld in City of New York v. Board of Elections, Index No. 41450/91 (Sup. Ct., New York Co.), aff'd, ___ A.D.2d ___, (1st Dept), lv. app. den., 77 N.Y.2d 938 (1991).

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

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

more extensive public discourse, and collaborative planning with the City's Board of Elections ("Board").

Although the staff recommended that the Commission defer the issue of nonpartisan elections for future consideration, the Commission nevertheless heard compelling testimony in support of such a Charter change. Independence Party candidates for City Council pointed out that while term limits and campaign finance reform have opened the door to election reform, the established political parties still control primary elections. The Democratic and Republican organizations have teams of lawyers to represent their candidates and can challenge opponents' petitions.³¹ Further, election poll inspectors and poll clerks must be registered in either the Democratic or Republican Party.³² Not surprisingly, it is widely perceived that powerful county leaders through a network of aligned special interests often determine primary elections.

Over 80 percent of the nation's largest municipalities use nonpartisan elections, including Los Angeles, Chicago, Detroit, Dallas and Houston. Interestingly, the Commission heard testimony that in 1997, 29 out of the 40 black mayors of cities with populations of 50,000 or more were elected in nonpartisan elections. Further, 44 percent of African-American youth between 18 and 25 identify themselves as independents.

The Commission believes that nonpartisan elections are the next phase of campaign reform. We urge the next Charter Revision Commission to consider whether elections for Mayor and other citywide offices should be conducted on a nonpartisan basis.

³¹ According to press reports, as of August 10, 2001, there were dozens of election law cases filed by candidates in Queens. Further, 60 percent of the ballot-access lawsuits filed in the U.S. are from New York State.

³² See New York City Board of Elections' Poll Worker Application available at www.vote.nyc.ny.us

Fifty Prominent Cities* that Hold Nonpartisan Elections for Mayor

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

· By population. Data obtained from 2000 Census.

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

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

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

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

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

governing mayoral succession, however, have the potential to create just such a scenario. The remedy for this undemocratic scheme is to adopt mayoral succession to mirror the succession rules for all other elected City offices: a prompt special election that must be held within 60 days of the occurrence of the vacancy.

a. Mayoral Succession

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

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

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

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

In 1989, however, the United States Supreme Court, in Board of Estimate v. Morris, 489 U.S. 688 (1989), declared the Board's voting scheme unconstitutional, holding that it violated the "one man, one vote" principle. Because Borough Presidents held equal amounts of power on the Board, the Court held that residents of some boroughs, such as Staten Island, were over-represented, while residents of other boroughs, such as Brooklyn, were under-represented. The Court ordered the City either to reorganize or to abolish its most important political structure. Between March 22 and August 2, 1989, the 1989 Charter Revision Commission worked to comply with the Court's ruling.

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

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

Nonetheless, the power and significance of the Council President was eviscerated when the 1989 Commission eliminated the Board of Estimate and, correspondingly, the Council President's two votes on that Board. Accordingly, the decision to eliminate the Board generated a long and heated debate over whether the Council President's responsibilities should be redefined or whether the office should be eliminated altogether. By an 8 to 6 vote, the 1989 Commission ultimately decided not to eliminate that office in what was part of a political compromise: certain Commissioners did not want then Council President Andrew Stein to be ousted from City government. Indeed, Commission Chair Frederick A. O. Schwarz, Jr. has since admitted that the office was kept, in part, to protect the Commission's majority coalition.³³ He also noted that this issue aroused "puzzling passion."³⁴

In the 1989 Commission's "Summary of Final Proposals," the Council President is described as "the city's 'Public Advocate' . . . charged with receiving, investigating and attempting to resolve individual citizen complaints."³⁵ Indeed, as the current Public Advocate has noted, he is the country's only elected ombudsman.³⁶ In 1993, the City Council passed Local Law 19, officially changing the title of that office from "President of the Council" to "Public Advocate." In passing that law, the Council acknowledged that "the most important duty of the President of the City Council is to serve as the public advocate for the citizens of New York City."³⁷ In short, the nature of the Council President's office was radically transformed and bore little relation to that of its predecessor under the Board of Estimate system. Therefore, given the evolution from Council President to Public Advocate, it makes no sense for that office holder to succeed to the mayoralty.³⁸

³³ The Policy and Politics of Charter Making, 42 N.Y.L. Sch. L. Rev. 723, 820 (1998).

³⁴ Id. at 818.

³⁵ Summary of Final Proposals, New York City Charter Revision Commission, August 1989, at 19.

³⁶ Mark Green & Laurel Eisner, The Public Advocate for New York City: An Analysis of the Country's Only Elected Ombudsman, 42 N.Y. L. Sch. L. Rev. 1093, 1095 (1998).

³⁷ Memorandum in Support, Local Law 19 for the year 1993.

³⁸ Indeed, a recent newspaper article disparaged the place and purpose of the Office of Public Advocate. It stated that "[p]olitical consultants and candidates say that...the job is so vague...because it does not seem to require any hard core skills...." See "Packed Race For an Office Few Voters Understand," New York Times, August 20, 2001, p. B1.

Indeed, the Commission heard numerous comments urging the Commission to propose that the Public Advocate be removed from the line of succession as well as to abolish the office of the Public Advocate. Several comments received, including comments from Council Speaker Peter Vallone, suggested that the position of vice mayor should be created either to serve as the successor to the mayoralty and complete a mayor's term, or to serve as mayor until such time that a special election could be held to fill the vacancy.

b. The Office of the Public Advocate

The 1999 Charter Revision Commission considered whether the powers of the Office of the Public Advocate, enumerated in Charter § 24, should be eliminated, altered or retained. In its staff's preliminary report, the recommendation was made to amend the Charter to remove the Public Advocate's ceremonial power to "preside" over the City Council, and for internal consistency, to eliminate the Public Advocate's stated authority to break a tie vote in the City Council, which could never occur because Charter § 34 provides that no local law or resolution shall be passed except by at least a majority affirmative vote of the 51 Council members.

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

• **Term Limits**

The Commission reviewed the issue of term limits. Charter § 1138 currently limits City elected officials to two terms. The 1999 Commission's final report pointed out that as a result of term limits, the current Mayor, Comptroller, Public Advocate, and four of the five Borough Presidents will be required to leave their offices at the end of their current terms. In addition, 35 members of the City Council will also be required to leave office. The 1999 Commission stated that the voters have twice expressed their opinions on this issue via referenda and have chosen to adopt term limits for City officials. Accordingly, the 1999 Commission decided not to revisit term limits or to consider the issue of whether term limits should be staggered to reduce the potential disruption to the City's government at this time. The outcome of this election cycle will be critical and

this issue should be monitored closely. Therefore, this Commission recommends consideration of this issue by another commission.

- **The Borough Presidents**

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

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

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

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

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

Also earlier this year, controversy arose concerning contributions made by investment advisers who perform services for the City in connection with the investment of City pension funds. In response, the Mayor proposed Int. 930, which would prohibit candidates who participate in the City's campaign finance program from accepting contributions from any investment adviser or manager who has performed services in connection with City pension funds, other than non-matchable contributions up to \$250 from investment advisers or managers entitled to vote for the candidate. The Committee on Governmental Operations held a hearing on Int. 930 in May 2001, but has taken no further action on the bill.

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

B. The Budget Process

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

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

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

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

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

- **Budget Modification Reform**

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

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

could lead to improved governmental efficiency in limited circumstances, and therefore required more debate. We agree.

- **Educational Initiatives**

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

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

- **City Council Budget Process**

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

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

- **Pension Audits**

Charter § 96 concerns the actuarial audits of pension funds and provides that "the comptroller, with the approval of the audit committee, biennially shall select an independent actuary to review and comment upon the financial soundness and probity of the actuarial assumptions employed by the City to calculate contributions to the City

pension funds. The report of the actuary shall be published in the City Record. No actuary may be selected more than twice consecutively.” Given the complexity and importance of this process, the audit takes a significant amount of time to complete. In fact, the Commission understands that such audits can take more than one-year to complete. Because of the requirement to complete this audit every two years, the practical result is that a new audit must begin shortly after each audit is completed, thereby creating a continuous audit cycle originally unintended by the Charter. The Commission recommends further study, after this election cycle, of whether lengthening the time between audits would allow for a more meaningful analyses.

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

Charter § 102(b) provides for an allocation to the Borough Presidents of five percent of the total amount of the “discretionary increases” which the mayor includes in the executive expense budget for the ensuing fiscal year. The Commission examined the issue and found that some debate exists about which year-to-year increases should be considered “discretionary” for the purposes of determining the proper allocation. The Commission therefore recommends further study of the issue after this election cycle.

C. Government Integrity

- **Honesty and Integrity in Elected Offices**

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

- **Union Finances**

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

D. Land Use Reform

- **Zoning Administration and City Planning**

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

The BSA, established by Charter § 659, is an independent board located within the Office of Administrative Trials and Hearings. Its basic function is to consider the granting of variances and the issuing of special permits, including hearing and deciding appeals arising from decisions or determinations of the Commissioner of Buildings, any order, requirement or decision of the Fire Commissioner, and any order, requirement or decision of the Commissioner of Transportation made in relation to the structures and uses of waterfront property under his or her jurisdiction. In its actual functions, BSA often resembles a court of equity, granting hardship exemptions and variances on the basis of the applicant's unusual circumstances.

The 1975 Charter Revision Commission was concerned about the integration of hardship variances with the City's overall planning policies. It found that such integration had not been achieved in part because BSA had repeatedly ignored the City Zoning Resolution's explicit standards governing variances (which is still often the case in 2001). Therefore, the 1975 Commission recommended that BSA be abolished and replaced with a new "Office of Zoning Administrator." This new office would effectively serve as a Zoning Board of Appeals like those found in many other jurisdictions, and would be established as a separate unit of what is now known as DCP. DCP, as

established by Charter § 191, is charged with physical planning and matters related to the development of the City, including the issuance of special permits. Its director is the chair of the City Planning Commission, which is charged with adopting and amending the Zoning Resolution, as well as considering applications for zoning changes.

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

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

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

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

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

- **Street Grade Changes**

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

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

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

- **Special Permits**

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

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

- **Further Timetable Reforms**

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

- **Mayoral Veto of Council Modifications**

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

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

and produce results that are not in the interest of either the City or the private development community.

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

- **Restructuring Terms of City Planning Commissioners**

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

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

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

- **Reducing Reporting Requirements**

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

- **The Hardship Appeals Panel**

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

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

- **Review of Office Space Acquisitions**

Charter § 195 requires the City Planning Commission (“CPC”) to review the purchase or lease of office space by City agencies. Unlike items subject to review under ULURP, there are no land use issues when the City rents or purchases office space in areas zoned for office use. This fact is recognized in the very nature of the § 195 process, which requires CPC review only in terms of compliance with “fair share criteria.” The policy objective underlying the inclusion of § 195 in the 1989 Charter

Revision was to ensure that, when the City proposes to purchase or lease office space in Manhattan south of 96th Street, consideration will be given to whether the facility can be located elsewhere to support economic development and revitalization of the City's regional business districts. The Council was given the authority to disapprove these CPC actions by a two-thirds vote.

The 1999 Commission considered a proposal to eliminate the CPC from the §195 review process. The proposal also would have modified that the Council's authority to disapprove of an office space acquisition by limiting it to review of large acquisitions by limiting. The 1999 Commission decided to delay resolution of this proposal to allow future debate and consideration. This Commission defers consideration of this issue at another time.

E. Government Reorganization

- **Elimination of the Department of Employment**

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

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

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

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

Currently, DYCD, pursuant to Charter § 734, oversees the City’s Youth Board, its interagency coordinating council on youth services. Further, it is responsible for the City’s 81 Beacons. Beacons are school-based community centers that are open after school, in the evenings and on weekends year round, offering young people educational, vocational and social activities. The Commission believes that DOE’s functions could be transferred to DYCD and recommends consideration of this issue during another election cycle.

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

The Commission was asked to review whether HASA should become a Charter agency since HRA’s primary focus is reducing dependency of public assistance. In 1997, the City Council passed Local Law 49, which codified the Division of AIDS Services (“DASIS”) within HRA³⁹.

In FY 2000, HRA created the HIV AIDS Services Administration (“HASA”), under which the Division of AIDS Services and Income Support (“DASIS”) is located, to better serve people with HIV and AIDS. HASA provides essential services and benefits to individuals and families with AIDS and advanced HIV illness to enable clients to manage

³⁹ Local Law expanded eligibility to individuals who can document that they have at any time been diagnosed with clinical symptomatic HIV illness or with AIDS as defined by the Centers for Disease Control and Prevention or the New York State AIDS Institute.

the illness and live their lives with the fullest independence and dignity possible. The Commission recommends that HASA remain within HRA, that its performance continue to be monitored, and that, thereafter, consideration by another commission be given to a future proposal.

- **A Centralized Franchise Agency**

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

- **The Board of Correction**

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

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

DOC's current policies and procedures are in place due to court decisions and orders regarding prison conditions.

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

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

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

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

- **Merger of DORIS and DCAS**

The 1999 Commission examined whether the Department of Records and Information Services ("DORIS") should be merged with the Department of Citywide Administrative Services ("DCAS"). DORIS is responsible for maintaining and storing the City's records and managing the City's archives. See Charter § 3003. DCAS is the City agency responsible for providing administrative services to all City agencies, such as the acquisition of goods, and for managing the City's real estate holdings, including

space for the storage of records. According to the 1999 Commission's final report, the merger of DORIS into DCAS has been urged on several grounds.

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

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

- **Consolidation of City Hearing Tribunals**

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

The staff members of the 1999 Charter Revision Commission believed that, while such a consolidation might be beneficial, there were a number of technical and legal

obstacles, including potential preemption of such changes by State law. The results of similar reorganizations, such as the transfer to the Office of Administrative Trials and Hearings of the Hearings Division of the New York City Human Rights Commission, should be studied. In addition, the issue of whether the Office of Administrative Trials and Hearings should be an entity independent of the Department of Citywide Administrative Services should be studied. The Commission agrees with the conclusion of the 1999 Commission staff that it is premature to make a recommendation on the subject and we recommend consideration of this issue during another election cycle.

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

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

- **The Taxi and Limousine Commission**

The 1999 Commission reviewed issues concerning the Taxi and Limousine Commission (“TLC”) and stated that TLC is charged with various, sometimes conflicting, responsibilities. In addition, the 1999 Commission noted that certain functions of TLC overlap with the programs of various other agencies, including the Departments of Consumer Affairs, Transportation, Environmental Protection and the Commission on Human Rights. The 1999 Commission wrote that the extent of the overlap of functions between TLC and other agencies made it appropriate to consider a broad spectrum of reorganization proposals. However, due to the complexity of the questions presented, the 1999 Commission decided not to resolve any issues concerning TLC at that time

and recommended that potential consolidations be studied in the future. This Commission recommends consideration of this issue during another election cycle.

- **Department of Transportation**

The Commission received a suggestion that the Charter be revised to reflect the various inter-agency transfers of responsibility that were made during the Giuliani administration involving the City's Department of Transportation ("DOT"). Although parking violation operations and highway construction are now performed by agencies other than the Department of Transportation, the Charter still includes those specific deputies within the DOT for those functions. Therefore, it has been suggested that Charter § 2902 be revised to reflect DOT's current alignment by authorizing the commissioner to appoint four deputies, one of whom shall be in charge of bridge operations and be a licensed professional engineer in good standing under the Education Law. The Commission recommends consideration of these suggestions during another election cycle.

- **Independent Budget Office**

The Commission re-examined an issue studied by the 1999 Commission of whether the Independent Budget Office ("IBO") should continue to be funded with public money. The IBO is an independent office, established by Charter § 259 which is not under the control of the mayor. The IBO performs the function of providing budget information to the public and to elected officials. While this office is intended to be an independent body, the Charter requires that its budget not be less than 10% of the budget for the Office of Management and Budget. The 1999 Commission concluded that the IBO's functions are for the most part redundant, due to the fact that many government entities and private groups are already engaged in reviewing and analyzing the City's Budget. Among these are the Council, City Comptroller, State Financial Control Board, and the State Comptroller. While the 1999 Commission stated that the existence of the IBO merely adds another fiscal monitor to the Budget review process, it concluded that more time was needed to analyze past reports that have been issued by the IBO, in order to make a more precise assessment as to whether this office should continue to receive public money. This Commission agrees with that conclusion and deferred further consideration of this issue to another election cycle.

- **The Art Commission**

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

In its preliminary recommendations to the Commission, the 1999 Charter Commission Staff suggested that the Art Commission's functions are unduly burdensome, that its essential functions are duplicative of programs at other agencies, and that meaningful savings could be achieved by abolishing it. The 1999 staff also noted that the Department of Parks and Recreation already exercises jurisdiction over structures and works of art located within the New York City park system, and that the Landmarks Preservation Commission has jurisdiction over structures that are within historic districts or that primarily concern a landmark or a landmark site. However, the 1999 Commission also received numerous public comments advocating for the continued existence of the Art Commission. The 1999 Commission concluded that the issues regarding the Art Commission were too complex to be resolved without extensive further study. Accordingly, on July 29, 1999, the Commission deferred further consideration of whether the Commission should be abolished or reorganized. This Commission deferred further consideration of this issue to another election cycle.

- **Office of Veterans' Affairs**

The Commission received written comment and testimony from a member of the public concerning the City's Office of Veterans' Affairs. Pursuant to Charter § 14, the office advises the Mayor on issues and projects impacting veterans, offers information and makes referrals for veterans and members of the military who may require the assistance of the U.S. Department of Veterans' Affairs, the New York State Division of Veterans' Affairs, the U.S. Department of Defense, City Agencies, and relevant service

providers throughout the City, and supports both veteran and military initiatives in the City.

It was recommended that the Charter's definition of a veteran be made consistent with definitions found in other laws, and that alterations be made to the composition of the City's Veterans' Advisory Board by expanding it from six to eight members, with terms of two years, and consisting of two members appointed by the Mayor, one member appointed by the Council Speaker, and one member each appointed by the Borough Presidents. It was suggested that an expanded board would broaden discourse about issues affecting veterans in various parts of the City and provide more opportunities for them to serve on the board. The Commission believes that issues affecting veterans are important and that these proposals should be studied further by another commission.

F. The City's Purchasing Procedures

- **Emergency Procurements**

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

- **Procurement with Another Governmental Entity**

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

State law. In light of the PPB's action, this Commission believes that a Charter change is no longer necessary.

G. Public Accessibility

- **Protecting the Rights of the Disabled**

Charter § 2903(a)(15) mandates the Department of Transportation ("DOT") to manage a program where applicants whose medical condition is certified by the Department of Health can apply for special parking permits. Several years ago, Charter § 2903(a)(15) was amended by the Council to increase from one to ten the number of license plates allowed to be listed on each disability parking permit. The Commission reviewed reports which stated change has led to a great increase in the fraudulent use of permits, thereby decreasing the amount of available parking for those most in need. The Commission believes that the issue of handicapped parking permits should be examined by another commission to determine whether a Charter change is needed to deter the fraudulent use of permits while ensuring maximum flexibility and accessibility for those who need them.

APPENDIX A

SUMMARY OF COMMENTS OF ELECTED OFFICIALS

The Commission has considered these elected officials' proposals and recommends their consideration by future commissions.

SUMMARY OF COMMENTS OF ELECTED OFFICIALS

A. CITY ELECTED OFFICIALS

Council Member and Speaker Peter Vallone

(By written submission dated August 15, 2001)

Believes that the charter revision process involves in-depth study and analysis of the functioning and processes of government. Criticized the Commission in that the time between the dates in which the staff recommendations were released to the public and the close of the comment period was less than three weeks. Also believes that this makes serious and meaningful participation in the process by a wide range of interested groups and individuals virtually impossible.

Stated that the proposals to merge certain agencies and functions are not appropriate subjects for Charter Revision Commission and are better left to the legislative process, which would provide opportunity for more focused and substantially greater participation by affected communities and parties.

Believes that requirements concerning such issues as gun ownership and possession do not belong in a short form Charter since they have nothing to do with the structure and functioning of City government.

Opposes making the Administration for Children Services, the Office of Emergency Management, the Office to Combat Domestic Violence, the Human Rights Commission, and the Mayor's Office of Immigrant Affairs Charter agencies on the grounds that such action should occur through the legislative process. Argues that many of these proposals, such as those dealing with the Office to Combat Domestic Violence, the Human Rights Commission, and the Office of Immigrant Affairs have never been submitted to the City Council for consideration.

Challenges the proposal concerning the Human Rights Commission on the grounds that it contains troubling language that could be interpreted to allow the Mayor to exercise legislative functions through Executive Order.

Opposes the proposed merger of the Department of Health and the Department of Mental Health, Mental Retardation, and Alcohol Services because such action should only be taken through the legislative process where extensive public hearings and debate afford the opportunity for all people affected by the proposal to be heard. Notes that during the public hearing in the Bronx, most of the public comment was in opposition to the proposed merger. Recommends that any action should be left to the new administration and City Council.

Opposes the proposal regarding the Organized Crime Control Commission. Believes that while a single anti-corruption commission that would pool and efficiently use resources would be helpful, the creation of such an entity should only be done through the legislative process. Also believes that the current proposal contains language that

could be construed to allow the new Commission to set license issuance and revocation standards different from the language currently contained in each of the local laws regulating the individual industries. Argues that to the extent that the proposal intends to give the proposed new agency the power to change legislatively enacted standards, such action is poor public policy, violates the doctrine of separation of powers by giving an executive agency legislative functions, and constitutes an unlawful delegation of legislative authority without sufficient standards.

Opposes the proposal to provide for concurrent jurisdiction by both the Fire Department and the Department of Buildings over inspection and enforcement functions currently exercised exclusively by the Department of Buildings. States that this proposal is consistent with a Mayoral Task Force recommendation that also proposed such a transfer of authority, and Int. No. 922 which was sponsored on behalf of the Mayor this past year in the City Council. Subsequent to the submission of Int. No. 922, the City Council released a report in June 2001, setting forth the Council's concerns with the recommendations of the Mayoral Task Force. The report noted the Council's concerns that the Task Force failed to indicate why transferring inspection and enforcement functions to the Fire Department would cure the Department of Buildings' problems. The report went on to recommend the implementation of the Task Force's proposals to professionalize the Department of Buildings, streamline plan examination and permit services, review the administration of licensing for trades people, institute anti-corruption measures and implement technological upgrades and innovations. The report also recommended additional improvements, such as increase in salaries and staffing levels, more defined promotional opportunities, and creation of a Deputy Commissioner for inspections and enforcement. The report alternatively proposed that a non-profit agency be created to conduct inspection and enforcement functions. Criticized the Mayor in failing to respond to City Council's June 2001 report regarding the Department of Buildings. Argues that these issues and concerns should be addressed prior to further consideration of changes that would allow sharing or transfer of inspection and enforcement functions.

Opposes the proposal on gun ownership/possession and crime reporting in schools on the ground that such considerations should not be part of a short form Charter since they are completely unrelated to the functioning of City government. Also argues that such proposals should be adopted by local law as provisions in the City's Administrative Code.

States that as to the issue of school crime reporting requirements, the Council is currently in the midst of negotiating proposed legislation with the Administration that was only submitted by the Mayor in late May 2001 as Int. No. 933. States that the Administration submitted the legislation without receiving input from, or conducting outreach to, all interested parties. Also states the Council raised concerns that the proposed bill was too broad and would result in over-reporting of minor infractions and school discipline matters. It also treated adult on student crime the same as student on student crime, when clearly there are qualitative differences. States that in the hearings that were held on the bill, there was still concern as to the bill's breadth, including the fact that school employees would have to report crimes that occurred or will occur at any location where direct contact between an employee or volunteer and a child occurs.

Moreover, states that advocates express their opposition to the bill and that parochial schools advised the Council that they had no input in the drafting process. Asserts that there is State legislation pending that would amend the State school crimes reporting bill to include New York City and that Council staff is studying what impact, if any, this legislation could have on the proposed local reporting requirement.

Opposes the proposal regarding the conflicts of interest on the grounds that although it enhances the Conflicts of Interest Board's powers, it fails to make it a truly independent agency. Proposes that the Conflicts of Interest Board be reconfigured to make it a truly independent board. Specifically recommends that the Mayor and the council each appoint two members of the Board and the Mayor and the Speaker of the Council jointly appoint a fifth member to serve as a chair. Further recommends that this newly configured Conflicts of Interest Board be given its own investigatory power, independent of the Department of Investigation, to investigate allegations of conflicts of interest on its own in furtherance of its enforcement of the conflicts of interest rules. Proposes that Chapter 68 of the Charter regarding conflicts of interest be reviewed. Asserts that in many instances the language of this chapter is vague or even contradictory and should be rewritten in plain English.

Opposes the proposal on procurement regarding increasing the small purchase limit on the grounds that it would subject fewer contracts to oversight during a time in which the public seems to be calling for greater oversight of government contracting. Notes that during City Council hearings concerns were raised that even under the current limitations, contract splitting by agencies was occurring so that the small purchase limitations could be circumvented. Argues that by doubling and quadrupling the limits could result in even larger contracts being broken up into contracts that would fall beneath the increased limits, thereby shielding an even greater number of contracts from competition and the higher degree of scrutiny to which competitively bid contracts are subject.

Disturbed by the proposed amendment to Charter § 328, which would remove the power of the Comptroller to register contracts that are below the \$100,000 small purchase threshold. Believes that this lack of review by the Comptroller will only ensure fewer safeguards and oversight in the contracting process and ensure more abuses of contract splitting by various City agencies. Notes that the issue of contract splitting is not discussed in the Commission's report and appears to require greater consideration before increasing the small purchase limits.

Opposes the proposed amendments to the registration process of contracts claiming that they are troubling and represent a drastic shift in the City because they ensure that contracts are properly registered. Notes that the proposed amendment would require, with few exceptions, contracts to be registered automatically within 30 days of submission to the Comptroller. States that in order to streamline the City's registration process, possible amendments should ensure that vendors are paid in a timely manner and that the City avoid the number or retroactive contracts that currently exist.

Claims that the proposed amendments to the registration process risk jeopardizing the current role of the Comptroller in the contracting process and would turn an important

oversight role into on that is solely ministerial. Asserts that by proposing to mandate an automatic 30 day time limit, the Charter Revision Commission fails to recognize that many contracts are prepared by City agencies come into the Comptroller's office with incomplete documentation or are not signed by the appropriate personnel. Consequently, the Comptroller's office cannot register such contracts "as is" and must reach out to the agencies in order to obtain complete and accurate information prior to registration. Believes that a Charter amendment that would "deem" contracts registered unless the Comptroller objects might result in contracts being registered that perhaps should not have been.

Urges, insofar as the proposed amendments to the registration process is concerned, that comments from City agencies, the Comptroller's office, and the vendor community in order to truly demonstrate the delay of a substantial portion of contracts occur not at agency level, but rather, as a result of delays by the Comptroller's office in the registration process. Believes that this final and invaluable opportunity for independent contract review by the Comptroller should not be eroded, absent a serious and detailed dialogue on this shift in how the City does business.

Opposes the proposed amendment to Charter § 326 which would increase the threshold level for public hearings from \$100,000 to \$500,000. States that the decision to curtail public participation in any government forum raises serious concerns and should not be done without first permitting an open discussion on the merits. Believes that low public attendance at contract hearings does not necessarily mean that the monetary threshold should be raised as a cure all in eliminating contract delays. Also concerned that the proposed amendment gives the PPB, a Mayoral controlled board, the power to increase the monetary thresholds by rule change rather than by legislative amendments to the Charter.

Proposes that Charter § 1515, which gives the Mayor sole responsibility to estimate non-property tax revenues, should be re-written to create a process of consensus revenue forecasting. This process would require that the Mayor and the Council agree on an estimate of non-property tax revenues for the financial plan period. Should the Mayor and the Council be unable to arrive at a consensus, the Comptroller should be given the power to set the estimate at a point that is between the two forecasts. Believes that consensus revenue forecasting will not create a tendency to produce optimistic forecasts because the Emergency Financial Control Act requires a balanced budget. Also believes that this will produce a more balanced budget process between the executive the legislative branches of government and prevent a Mayor from "trumping" the ability of the legislature to pass a budget by artificially lowering the revenue estimate.

Proposes that the position of "Vice Mayor" be created. States that with this proposal, the Vice Mayor would run in both the general and primary elections on a ticket with the Mayor and would be elected at the primary and general elections jointly with the Mayor by the casting by each elector of a single vote applicable to both offices. The persons having the highest number of votes cast jointly for them for Mayor and Vice-Mayor respectively would be elected. States that the Vice-Mayor would be the assistant chief executive office of the City with such duties and powers as delegated by the Mayor.

The Vice Mayor would preside over meetings and would succeed to the Office of the Mayor in case of an emergency. The proposed local law would become effective for the November, 2005 election and every election thereafter.

Proposes that an independent contract review board be considered and that such board would be comprised of both mayoral, council and comptroller appointments entrusted with approving contracts in excess of \$2 million. Proposes that this board could review major contracts to ensure that awards are consistent with the rules governing request for proposals or other solicitations and that were contracts are awarded via other procurement methods, that the process utilized was proper. This board would help protect the integrity of the contracting process by ensuring that no one single branch of government has exclusive control over the awards of substantial contracts.

Guy Molinari, Staten Island Borough President

(Presented by Dan Donovan, Chief of Staff)

(Public Hearing Transcript, August 8, 2001, pp. 10-17)

Supports making ACS a charter agency.

Supports making OEM a charter agency.

Supports the merger of the DOH and DMH.

Supports making the Human Rights Commission a charter agency.

Proposes that Charter § 363, which allows proposed City franchises to be kept in limbo before the Council for an unlimited amount of time, be changed.

Bronx Borough President Fernando Ferrer

(As presented by Delores Campbell)

(Public Hearing Transcript, August 9, 2001, pp. 47-49)

Believes that the schedule provided by the current Charter Revision Commission for public hearing barely allows for minimal participation by conducting only five public hearings all within a nine-day period in the month of August.

Opposes the proposed merger of the Department of Health and the Department of Mental Health, Mental Retardation, and Alcoholism Services, although he praises the individual efforts of both agencies and note that both have served the people of the City of New York well.

Believes that the report fails to consider issues that should be topics of charter revision: creating an independent CCRB by baselining its funding as a percent of the NYPD budget and establishing a mechanism to make the appointed CCRB members reflective of the City and less controlled by the administration.

Queens Borough President Claire Shulman

(As presented by Peter Magnani, Deputy Borough President)
(Public Hearing Transcript, August 14, 2001, p. 4)

Believes that ACS and OEM should be made Charter agencies.

Supports Commission staff's recommendation regarding domestic violence services and immigrant affairs

Supports Commission staff's recommendations regarding Organized Crime Control Commission, gun free school safety zones, and ban on gun sales to persons under 21 years of age.

Manhattan Borough President C. Virginia Fields

(Public Hearing Transcript, August 15, 2001, p. 115)

Concerned by both the process and the substance of the proceeding. Having only one public hearing in each borough does not provide time or opportunity for the meaningful reforms suggested by the public. Since many new officials will be elected in November as a result of term limits, now is not the time to be amending the City's basic governing document.

Concerned with the consolidation of the Department of Health with the Department of Mental Retardation and Alcoholism Services. States that mental health advocates feel strongly that the merger would adversely affect and marginalize government's role in addressing mental health issues. Many advocates believe that the one commissioner/two agency approach of the past three years has resulted in the neglect of the full needs of Department of Mental Health and that merging the two agencies increases the likelihood that City government's commitment to mental health matters will regress.

A number of the proposals should be left to the newly elected City Council for their consideration and study. Although many of the recommendations have merit, they do not rise to a level requiring Charter amendment.

Urges the Commission to refrain from placing Charter reform on this year's ballot.

States that these hearings would be better used to prepare a comprehensive report on the area of city government that the next government should address during its term, either through legislation or charter amendment.

Brooklyn Borough President Howard Golden

(As presented by Frank Panizzo)
(Public Hearing Transcript, August 8, 2001, pp.15-24)

Supports making ACS, City Human Rights Commission, the Office of Immigrant Affairs and the Office to Combat Domestic Violence Charter agencies on the grounds that it would help to focus the City's resources in these areas and the issues affecting them. It

would also strengthen the City's ability to make these services available to eligible residents.

Earnestly supports proposals on school crime reporting, firearms possession near a school and restricting firearms licenses or permits to adults 21 years or older and believes that these issues should be among our top priorities.

Believes that the proposed initiatives are legislative in nature and do not really belong in a short form charter and calls upon the City Council to act in these areas now

Supports the OEM proposal and Organized Crime on the grounds that no one would question the need to combat organized crime and to plan for and coordinate response to emergencies. States that these initiatives are being very well addressed and could continue as they are while keeping the charter streamlined.

Believes that the proposal to streamline the procurement process deserves consideration and makes the following recommendations: first, require agency heads to send a copy of the scope of services for any procurement of \$250,000 or more to the affected Borough President for review and comment at least 20 days before the publication of any notice of intent or notice of solicitation for such procurement, except in the case of emergencies. Second, the Charter should be amended to should establish a Procurement, Franchise and Concession Review Committee (PFCRC) in place of the current Franchise and Concession review Committee. The PFCRC would consist of the Mayor, who would serve as its Chair, the Corporation Counsel, the Director of OMB, the Comptroller and the affected Borough President. The PFCRC would approve the award other than an open competitive sealed bid process, contracts of \$250,000 or more, and concessions with revenues of \$100,000 or more as well as franchises, after public hearing and upon public notice. The affirmative vote of at least four members should be required to approve the award of a contract franchise concession or any other act of the PFCRC. Where an item relates to or affects more than one borough, the affected Borough Presidents would select one Borough President to exercise the vote.

Noted that the Commission staff suggested no land use recommendations to make ULURP a clearer and more efficient process and to reduce delay. He offers some suggestions for the Commission's consideration. Criticizes the ULURP as lengthy and notes that the least efficient part is the pre-certification review of ULURP applications. Recommends that explicit pre-certification standards should be adopted. If met by applicants, the Department of City Planning should be mandated to certify a ULURP application within 60 days.

Also believes that affected communities and elected officials should be given an opportunity under ULURP to review the siting of City funded programs, which are not located on City owned or leased property. Believes that too often ULURP is avoided by contracting out or privatization of programs that are conducted on non-City owned or leased property. Although the community may be affected, or impacted, it is thereby deprived of an opportunity for review and comment. Recommends that Charter § 197-c be amended to include the review of City funded programs within ULURP. Also

recommends that Charter § 203(a) be amended to include the consideration of non-City facilities in addition to City facilities in determining the fair distribution among communities for the location of City facilities. Lastly recommends that Charter § 204(a) be amended to require inclusion of data and information regarding non-City facilities as well in the Mayor's Citywide Statement of Needs.

Applauds the staff's proposal regarding safeguarding government integrity and recommends a more open, transparent government. Specifically proposes that the Charter be amended to require agency heads to provide information to elected officials with reasonable promptness and that the failure to provide such information should be a misdemeanor.

Proposes that Charter §§ 102 and 211, regarding borough expense and capital budget allocations, should be made clearer. Specifically recommends that these sections should be amended to require the Comptroller to certify the amount, which is 5 percent of the total amount of the discretionary increases in the executive expense budget, and the amount, which is 5 percent of the appropriations in the executive capital budget.

Council Member Archie Spigner
Chairperson, City Council Housing and Buildings Committee
(By written submission dated August 22, 2001)

Opposes the proposal to provide for concurrent jurisdiction by both the Fire Department and the Department of Buildings over inspection and enforcement functions currently exercised exclusively by the Department of Buildings. Believes that the Mayor never offered a cogent explanation as to why moving DOB enforcement to FDNY would address the problems of corruption and inefficiency at DOB. Does not believe that the Charter process is the best way to evaluate the proposed changes. Believes that a hearing on the bill before the Housing and Building Committee, of which he is Chair, would be appropriate once the Administration provides a written response to the issues raised by the Council's report, released last June, on the subject.

Council Member James Oddo

Supports making ACS a charter agency.

Council Member Madeline Provenzano
(Public Hearing Transcript, August 9, 2001, pp. 14-17)

Supports the creation of ACS as a charter agency on the grounds that it is the first agency in the history of the City of New York dedicated solely to serving children and their families. Notes that since 1996, the ACS has seen impressive reforms and improvements in services including more children being served closer to home, by better-trained, better-paid caseworkers. Praised the computer management system used by ACS as helping to protect children by providing caseworkers with up to the minute records.

Impressed by ACS's successful implementation of the policy to foster care children into adoptive homes. Also pleased that the foster care population is down from 42,000 to 31,000. Similarly, she is delighted with the news that the average caseworker load is down from 27 to 12.

Supports making the Human Rights Commission a Charter agency. States that the Human Rights Commission has proven itself to be a potent defender of the City's most vulnerable, by enforcing the City's human rights laws that prohibit discrimination. Notes that the Commission has made impressive gains, particularly in expanding the use of mediation as an alternative to litigation.

Supports making the Office of Immigrant Affairs a Charter agency. Believes that as a Charter agency, the Office of Immigrant Affairs will be strengthened and given additional abilities to implement policy and provide services to an expanding, ever diverse population of immigrants.

Believes in creating "Gun-Free" School Safety Zones and that no young person under the age of 21 in New York City needs a gun for recreation or any other purpose.

Council Member June M. Eisland

(As presented by Judith Kramer)
(Public Hearing Transcript, August 8, 2001, p.35)

Opposes the proposed merger of the Department of Health and the Department of Mental Health, Mental Retardation and Alcoholism Services on the grounds that if the City Council had thought this was worthwhile effort it would have done so legislatively. Stated that the City Council chose not to do that because it was poor public policy.

Council Member Michael Abel

(As presented by Ozzie Egas)
(Public Hearing Transcript, August 8, 2001, p. 10)

Believes that ACS should be made a Charter agency.

Supports the recommendation regarding school crime reporting.

Council Member Pedro Espada

(As presented by Andrew Cohen, Chief of Staff)
(Public Hearing Transcript, August 9, 2001, p. 54)

Opposed to the merger of DOH/DMH.

Strongly supports proposal to limit handguns.

Believes that OEM should be elevated to a Charter agency.

Supports making Immigrant Affairs a Charter agency.

Strongly support a streamlining of the government purchasing process.

Council Member Eva Moskowitz

(As presented by Mr. Sabar)

(Public Hearing Transcript, August 15, 2001, p. 118-119)

Supports making ACS a Charter agency.

Council Member Herb Berman

Chairperson, City Council Finance Committee

(Public Hearing Transcript, August 9, 2001, p. 54)

Believes that the majority of the Charter revision proposals should be left to the legislative process.

Believes that the proposals to make the Human Rights Commission, the Office of Domestic Violence, and the Office of Immigration charter agencies are worthy proposals; however, they have never been presented to the City Council.

Supports the proposals concerning the restructuring of agencies and school safety on the grounds that they are meritorious ideas but believes the details of such proposals need to be worked out.

Believes that the school crime-reporting proposal would overwhelm the Police Department and therefore undermine the entire initiative.

Believes that the legislative process is the appropriate forum in which to craft the proposals presented, not a month long Charter Commission.

Insofar as the proposed changes in the contracting process which would require contracts to be registered within 30 days of submission, believes that there are problems with the current contracting process which results in enormous delays. However, the current registration process is the tail end of the entire contracting process and the only portion of the process in which there is a possibility of some independent oversight. This proposal would turn a process in which there is room for some oversight into one that is solely ministerial. Also believes that contracting issues should be addressed through the legislative process.

Is an advocate of making ACS a charter agency; however, it should be afforded that status by the legislative process.

Favors the proposal for "gun-free" safety zones but should be done through the legislative process.

Opposes DOH/DMH merger and believes that the current set up can be improved with appropriate funding and the appropriate commitment by the Mayor and funded by the Council.

Council Member Martin Golden

(As presented by Simon Schmuen)

(Public Hearing Transcript, August 16, 2001, p. 14)

Supports making ACS a Charter agency and as well as the proposal to establish an Office to Combat Domestic Violence.

Supports the establishment of a Department of Emergency Management as a Charter agency.

APPENDIX B

SUMMARY OF PUBLIC PROPOSALS RECEIVED BY THE COMMISSION THROUGH AUGUST 24, 2001

SUMMARY OF PUBLIC PROPOSALS

The Commission received many public comments between from the time the Commission was appointed on June 15, 2001, to the time the Commission voted on the proposals on August 24, 2001. Indeed, the Commission received many letters containing general issues for investigation by the Commission, in addition to substantive proposals for Charter revision.

This document summarizes the public proposals and categorizes them by the issue areas addressed the Commission's Final Report. Those areas include child protection, crime in schools, government reorganization, gun violence, human rights, immigrant affairs, procurement, public health, and public safety. Some issues addressed by the public proposals fell outside the purview of these categories or the Charter in general. All public proposals were reviewed and considered by the Commission.

GOVERNMENT REORGANIZATION

Empowering the Fire Department to Oversee Building Inspections

- The excessive funds generated by the Department of Buildings should be used for more staff and better trained staff, which would move the process more rapidly.

GUN VIOLENCE

- The Charter should be amended to increase penalties for illegal possession of a firearm.

HUMAN RIGHTS

Human Rights Commission

- If Human Rights Commission is made an agency, a consultant should be hired to reorganize the Commission and it should be included in the Mayor's Management Report.

Office of Immigrant Affairs

- The Mayor's Office of Immigrant Affairs should be strengthened, especially in the area of language interpretation services.

PUBLIC HEALTH

Merger of DMH and DOH

- There should be an appointment of one first Deputy Commissioner who reports directly to the Commissioner and two Executive Deputy Commissioners: one for Health and one for Mental Hygiene Services who report to the First Deputy Commissioner.
- Any new appointee to the post of Commissioner of a new Department of Public Health should be someone who is highly knowledgeable to not only general health needs but also behavioral health needs.

- The Commission should remove the merger from its final list of proposed charter revisions.
- The City's budget should include a proposal for reorganization instead of a merger. Instead of one Office of Public Health, there should be an Office of Public Health and an Office on Developmental Disabilities.

Expanding Board of Health

- Three of the new members of the expanded Board of Health should have behavioral health expertise and one of the members should be chairman of the community services board of the Department of Mental Health.

PROCUREMENT

- DCAS should be permitted to delegate agency specific procurements.
- Small purchase limit should be raised to \$400,000 for all categories.
- The Charter should be amended to allow for a more rational approach to human services contracting.
- The Mayor's Office of Contracts should establish a publicly accessible tracking system that would allow the public to track the status of contracts once an award has been made.

PUBLIC SAFETY

Office of Emergency Management

- The OEM proposal should be amended to require that OEM coordinate and implement training programs for public safety and health, including emergency response drills that include paid professionals and original volunteer NYC Civil Defense Professionals.
- With respect to OEM's ability to obtain federal and other funding for emergency management, the proposal should be amended to specifically earmark funding, particularly for their assigned Civil Defense volunteers

Organized Crime Control Commission

- The creation of Organized Crime Control Commission should be tailored so as not to overlap any functions currently being performed by the New York City Police Department's Bureau of Organized Crime Control.
- The Organized Crime Control Commission's name should be changed to the Business Integrity Control Commission.

School Crime Reporting

- The School Crime Reporting proposal should be broadened to establish a hate-free school zone by explicitly requiring the reporting of bias related harassment or other violent crime.

OTHER SUGGESTIONS

- The Charter Revision Commission should include nonpartisan elections in its ballot proposal.
- The Public Advocate's office should be removed from the line of succession.
- The Public Advocate's office should be eliminated.
- A position of Vice-Mayor should be created within the Charter.
- Self-certification should not be permitted by the Department of Buildings.
- The method of selecting Community Board members should be changed. Half of the Board members should be elected and the other half should continue to be appointed by the Borough President.
- An Executive Order should be issued to all agencies mandating that one copy of all the agency documents be sent to the Department of Records and Information Services ("DORIS").
- Hours of operation and physical space for DORIS should be expanded.
- DORIS should act as the City's chief reference research librarian.
- The Charter should be amended to allow the public greater access to information and documents related to elected officials.
- Community Boards should have the services of legal counsel, provided by the Corporation Counsel's office.
- The Charter should be amended to clarify the definition of a veteran to conform to the definition of the Federal Department of Veterans Affairs and the State Department of Veterans Affairs.
- The Veterans' Advisory Board needs to be expanded to include appointments by the Borough President.
- The Veterans' Advisory Board should have staggered two-year terms instead of the current three-year terms.

- The Commission staff should review the number of Deputy Commissioners authorized by the Charter.
- Charter § 434 should be amended to clarify that the Police Commissioner has control over “all members of the Police Department” both uniform and civilian.
- The merger of the School Safety Division and the Housing and Transit Police with the Police Department should be codified in the Charter.
- The Charter should be amended to enumerate how many members of the Police Department of a particular rank there should be.
- The Commission should not propose any changes to the Charter as it related to the Art Commission.
- The power of the Art Commission should be strengthened.
- Charter § 437, which indicates that the Police Commissioner can appoint one intelligent individual who shall visit the courts, should be repealed. The Police Department currently has a large legal bureau staff and therefore, this section is now not necessary.
- A special commission should be created for eliminating infectious diseases and viruses.
- The Charter should be amended concerning redistricting to require that all waterfronts be in the same Council district as the adjacent upland residential area for at least four blocks to one-quarter mile.
- A new agency should be created with responsibilities for developing City waterfront.
- The Department of Citywide Administrative Services (“DCAS”) should be given the authority to review the purchase of the lease of office space by city agencies.
- School vouchers should be included in a Charter Revision proposal.
- The City Planning Commission should be replaced with a new commission consisting of the heads of DOT, DEP, HPD, City Planning and the Borough Presidents.
- The Borough Presidents should be eliminated and replaced by a Borough Manager.
- The Commission should decide whether Council Members should serve two four-year terms, two five-year terms or two six-year terms.
- The Landmarks Preservation Commission’s budget and scope of authority should be reduced.

- The power of the Borough President's Office should be expanded.
- The Commission should present just one proposal, which amends the revision process. This proposal should provide that the membership of the commission be selected in even numbers by the City Council and the Mayor, with the Borough Presidents collectively selecting an additional member to be the chair. The Charter should require that at least six months pass between when the commission presents the final proposal to the voters and the election to ensure time for voters to learn about the proposals.
- The Commission on Public Information and Communications ("COPIC") should be separated from the Public Advocate's Office. Its membership should be expanded, and the chair selected by its members. Additionally, the Charter should be amended to ensure that COPIC is provided with an adequate budget and staff.
- DOITT and DORIS should become operating units of COPIC. The Commissioners of DOITT and DORIS should be appointed by the Mayor with the advice and consent of COPIC.

APPENDIX C

DEPARTMENT OF HEALTH AND DEPARTMENT OF MENTAL HEALTH INDICATORS

Department Of Health Indicators

<i>Indicator</i>	<i>Year</i>	1990	1994	2000	Comments
Infant Mortality Rate (IMR) (Deaths within 12 months (per 1,000 live births))	CY	11.6	9.0	6.7	2000 rate is lowest IMR in city history
HIV/AIDS					
- New Cases Reported	CY	6,507	12,534	6,075	59% decline since peak in 1993
- New Pediatric Cases Reported	CY	179	200	25	89% decline since peak in 1993
- Deaths	CY	4,616	7,102	1,957	Lowest level since 1985
Tuberculosis					
- New Cases (case per 100,00 persons)	CY	3,520 (48.1)	2,995 (40.9)	1,332 (16.2)	Lowest recorded level (65% decline from peak in 1992)
Multiple Drug Resistant Levels		441	176	25	94% decline since peak in 1992
Sexually Transmitted Diseases					
- Total	FY	96,020	83,665	73,972	Chlamydia became reportable after 1994
- Gonorrhea (case rate per 100,000 persons)	CY	35,236 (481.2)	19,246 (262.81)	11,669 (158.2)	
- Syphilis (case rate per 100,000 persons)	FY	4,265 (58.2)	864 (8.5)	117 (1.6)	
Teen Births (percent total births)	CY	10.1	10.6	8.6	Lowest teen birth rate in 30 years
Asthma (hospitalization rates per 1,000 pop.)					
- 0 – 4 years of age	CY	12.31	14.61	10.35	For (0-14 Years Olds) Lowest rates in NYC since 1988
- 5-14 years of age	CY	5.25	7.09	4.35	
Lead Poisoning	CY		1,969	615	69% decline since 1994
≥20 micrograms/dl			16,965	7,539	56% decline since 1994
≥10 micrograms/dl					

<i>Indicator</i>	<i>Year</i>	<i>1990</i>	<i>1994</i>	<i>2000</i>	<i>Comments</i>
Window Falls					
- Preventable Falls	CY	31	22	7	
- Preventable Fatalities	CY	6	2	0	
Pest Control					
- Total Complaints	FY	17,106	21,714	19,358	
- Inspections in Response to Complaints	FY	14,100	16,584	15,791	
- Extermination in Response to Complaints	FY	34,452	32,555	50,427	
- Total Inspections Made	FY			43,886	
- Rat Bites	FY	247	245	165	
Restaurant Inspections	FY	11,750	9,190	22,848	Since 1998, inspections of food service establishments at $\geq 98.4\%$

Indicator	Year	1990	1996	2000	Comments
Emergency Department					
- Related to illicit drugs	CY		40,471	31,885	21% decline since 1996 in NYC 32% increase nationwide in other metro areas
- Related to cocaine use			21,592	14,250	34% decline since 1996 63% increase nationwide
Suicide		646	605	446	31% decline in 1990s 26% decline since 1994 no decline nationwide
Lifenet Information and Referral Line			11,000	38,000	Calls seeking referrals to mental health and substance treatment more than tripled in the past 5 years

Assisted Outpatient Treatment (Kendra's Law) 11/1999 - 8/2001 1069 mentally ill individuals (who were previously not receiving treatment) have been ordered by courts to receive mental health services. (NYC is responsible for 87% of those receiving court-ordered treatment in NY State).

Community-Based Services 444 new community based programs address mental illness needs \$87.7 million dollars in new State funding to NYC from the Community Mental Health Reinvestment Act of 1993.

Housing Supportive housing for mentally ill adults living in New York City has risen from 6,088 units in Fiscal 1994, to 11,021 units in Fiscal 2002, with another 2,000 units under development.

APPENDIX D

BALLOT QUESTIONS

BALLOT QUESTIONS

Proposals Recommended by the New York City Charter Revision Commission.

August 24, 2001

Question 1 – CHILDREN'S SERVICES

Shall the City Charter be amended to make the Administration for Children's Services an independent Charter agency to provide for the care and protection of children?

Question 2 – GUN VIOLENCE AND SCHOOL SAFETY

Shall the City Charter be amended to: (i) create "gun-free" school safety zones within 1,000 feet of every school; (ii) ban the sale of any type of gun to persons under the age of 21; and (iii) require Board of Education employees to report immediately to the Police Department suspected crimes, including sex offenses and violent crimes, that occur in public schools?

Question 3 – HUMAN RIGHTS

Shall the City Charter be amended to: (i) make the Human Rights Commission a Charter agency to protect civil rights; (ii) make the Office of Immigrant Affairs a Charter agency to assist immigrants; and (iii) protect immigrants' rights to access City services?

Question 4 – PUBLIC HEALTH

Shall the City Charter be amended to integrate the City's health and mental health services by creating a unified Department of Public Health as a Charter agency, and to expand the Board of Health to eleven members to provide for broader diversity of health, mental health and science professionals on the Board?

Question 5 – PUBLIC SAFETY

Shall the City Charter be amended to establish the Emergency Management Department, Organized Crime Control Commission and Office to Combat Domestic Violence as Charter agencies to advance public safety?

*Note: The New York City Board of Elections has advised the Commission that these Questions will appear on the ballot as Question numbers 2 through 6 because a State ballot question, Question number 1, is required to be placed as the first question.

APPENDIX E

BALLOT QUESTION ABSTRACTS