



SUMMARY OF ISSUES UNDER CONSIDERATION FOR CHARTER REVISION

MARCH 4, 2005

New York City Charter Revision Commission
2 Lafayette Street, 14th Floor
New York, NY 10007

NEW YORK CITY
charter
REVISION
COMMISSION

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MESSAGE FROM THE CHAIR

On August 19, 2004, Mayor Michael R. Bloomberg appointed me Chair of the Charter Revision Commission, and also appointed twelve distinguished leaders from the civic, academic, and business communities to serve as Commissioners. We are a highly diverse Commission, composed of individuals from different backgrounds with strong connections to all five boroughs of the City.

Mayor Bloomberg asked us, in the course of reviewing the entire Charter, to pay special attention to three areas: fiscal stability, administrative judicial reform and governmental efficiency and accountability. To such end, over the past months, Commission staff and I have been researching and providing background information on each of these topics to the Commissioners. In addition, Commission staff and I have met with members of civic organizations, nonprofit organizations, community advocacy groups, professional associations and academic institutions, as well as Commissioners of City agencies, to gather information and listen to their ideas for reform in these areas. These efforts will continue throughout our Charter revision process.

In order to establish the foundation for our Charter revision process, we have held three public meetings, one on each topic, at which we received testimony from a City government expert on the topic. Beginning in March, the Commission will hold public hearings in each of the five boroughs, at which the public will have the opportunity to testify about these three topics and any other topic related to the Charter. To encourage and facilitate public comment at the upcoming hearings, and throughout the rest of the Charter revision process, I have asked the Commission staff to prepare this *Summary of Issues under Consideration for Charter Revision*.

This Summary outlines the areas for potential reform on which the Commission has concentrated thus far. In the area of fiscal stability, the Commission has focused on what, if any, fiscal controls should be incorporated into the Charter, to replace or supplement certain expiring provisions of state law. Regarding administrative tribunal operations, the Commission has looked at the numerous administrative law tribunals throughout the City and questioned whether those tribunals would benefit from coordination of their operational policies and management practices, as well as whether their judges, hearing officers and the public would benefit from a more uniform code of conduct. Finally, with respect to governmental efficiency and accountability, the Commission has considered reforms that would enable City agencies to take advantage of technological progress and streamline operations.

As we embark on our first round of public hearings, I would like to propose that the following principles guide the Commission and the public as we continue this Charter revision process:

- The City must continue its exemplary fiscal planning and budgeting practices after the financial controls imposed by state law expire.
- All City administrative tribunals must have the highest standards of adjudicatory practice to ensure that disputes continue to be resolved fairly, impartially, efficiently and consistently.
- Past charter changes must be reviewed for unintended consequences that impede agencies' ability to deliver services effectively and efficiently, reforming them to ensure accountability while preserving flexibility.
- All aspects of the Charter must be reviewed, with the Commission open to all ideas that will strengthen New York City's future and promote innovation in municipal governance.

We have been conducting extensive outreach and invite all members of the public to submit comments through testimony at the public hearings, a schedule of which follows; via e-mail or through the Commission's website at www.nyc.gov/charter; or in writing to the Commission's office at 2 Lafayette Street, 14th Floor, New York, New York 10007, at any time in the coming months before the Commission finalizes its work.

We look forward to continue working with New Yorkers to improve the functioning of City government by revising our City's Charter. Indeed, I hope that New Yorkers from every community will join in the public discourse on how to improve the structure of our local government.

Ester R. Fuchs, Ph.D
Chair, Charter Revision Commission
March 4, 2005

SCHEDULE OF UPCOMING PUBLIC HEARINGS

The Commission is planning to hold public hearings in each borough of the City of New York. At these public hearings, the Commission will hear testimony from members of the public on the Charter. Certain public hearings will be preceded by an "expert forum," in which the Commission will hear from selected experts on a particular issue. The public will have the opportunity to observe the expert forum, but not to ask questions of those experts testifying before the Commission. The public will be invited to testify after the forum concludes and the public hearing portion of the evening begins.

Monday, March 7

- **Place:** Queens Borough Hall, 120-55 Queens Boulevard, Kew Gardens, NY 11424
- **Time:** Expert forum begins at 4 p.m. (Topic: Administrative Judicial Reform) Public hearing begins at 6 p.m.
- **Directions:** Take the E or F train to Union Turnpike. For further information, contact (718) 286-3000.

Wednesday, March 16

- **Place:** Bronx Borough President's Hearing Room, 198 East 161st Street, 2nd Floor, Bronx, NY 10451
- **Time:** 6 p.m.
- **Directions:** Take the 4 train to 161st Street. 198 East 161st Street is off Sheridan Avenue. For further information, contact (718) 590-3500.

Wednesday, March 23

- **Place:** Brooklyn Public Library, Grand Army Plaza, Brooklyn NY 11238
- **Time:** Expert forum begins at 4:30 p.m. (Topic: TBA) Public hearing begins at 6 p.m.
- **Directions:** Take the 2 or 3 train to Grand Army Plaza or Eastern Parkway/Brooklyn Museum of Art station, or take the Q train to 7th Avenue. For more information, contact 718-230-2100.

Wednesday, March 30

- **Place:** Richmond County Juror Assembly Center, 126 Stuyvesant Place, St. George, Staten Island, NY 10301
- **Time:** 6 p.m.
- **Directions:** The Richmond County Juror Assembly Center is walking distance from the Staten Island Ferry. After disembarking at the Staten Island terminal, proceed to Richmond Terrace and make a right. Then make a left on Schuyler Street and head uphill. At the top of the hill will

be Stuyvesant Place. By car, take the lower level of the Verrazano-Narrows Bridge and get off at the first exit, Bay Street. Following the exit ramp, go 2 ½ miles along Bay Street, until it turns into Richmond Terrace. From Richmond Terrace, make a left on Schuyler Street and continue to Stuyvesant Place. For further information on accessing this location, contact (718) 390-5396.

Monday, April 4

- **Place:** Hunter College of the City University of New York, 695 Park Ave., New York, NY 10021, West Building, 8th Floor.
- **Time:** Expert forum begins at 4 p.m. (Topic: TBA) Public hearing begins at 6 p.m.
- **Directions:** Take the 6 train to 68th Street or the F train to 63rd Street. The West Building is located on the southwest corner of 68th Street and Lexington Avenue. Take the escalator to the 3rd floor, then the elevator to the 8th floor. For further information on accessing this location, contact (212) 772-4000.

The Mayor has asked this Commission, in reviewing the entire Charter, to pay special attention to fiscal stability, administrative judicial reform, and operational efficiency and accountability. Members of the public wishing to testify before the Commission may direct their comments to these topics or to any other aspect of the Charter.

The hearings are open to the public and anyone may register to speak. Individuals who wish to give testimony may do so by registering one-half hour before the hearing. Written testimony is encouraged and can be submitted at the hearings or sent to the New York City Charter Revision Commission at 2 Lafayette Street, 14th Floor, New York, New York 10007.

Individuals requesting spoken or sign language interpreters for any of these public hearings should contact Charter Revision Commission staff member Brian Geller, at (212) 788-2952, five (5) business days prior to the Public Hearing. TDD users should call Verizon Relay Services.

ABOUT THE COMMISSION

On August 19, 2004, Mayor Michael R. Bloomberg appointed Dr. Ester R. Fuchs as Chair of the Charter Revision Commission, and twelve other distinguished leaders from the civic, academic, and business communities to the Commission.

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 the U.S. Constitution has been amended only 27 times in its 216-year history, the Charter has been amended well over 100 times since 1989 by referendum and local law.

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 the City may conduct its affairs.

The Commission's Public Outreach Efforts

On August 26, 2004, the Commission held its initial public meeting. At that meeting, Chair Fuchs restated the Mayor's request that the Commission "explore issues of fiscal stability, judicial reform and administrative efficiency and accountability."¹ Dr. Fuchs also stressed that the Commission was committed to reviewing the entire Charter for reform, and encouraged the other Commissioners, the public and city agencies to suggest Charter-related reforms on any topic. Presentations followed about the Charter revision process and the work of past Commissions.

On November 3, 2004, the Commission held its second public meeting, at which Commissioners were briefed on some previous Charter revision proposals, and also raised issues of their own that they asked the staff to explore. Since then, the Commission has held three additional public meetings, on December 8, 2004, January 19, 2005, and February 9, 2005, which focused, respectively, on fiscal stability, administrative judicial reform, and operational efficiency

¹ Press Release: "Mayor Michael R. Bloomberg Announces Appointments to Charter Revision Commission," August 19, 2004.

and accountability. At each of these three meetings, a government expert presented testimony before the Commission.

The Commission established its public outreach practice at its inception. The Commission has and will continue to provide notice to the public of its meetings and hearings in numerous ways, including: (1) publishing notice of the meetings and hearings on the Commission website (www.nyc.gov/charter); (2) publishing notice of the meetings and hearings on a daily basis in the *City Record*; (3) advertising the meetings and hearings in English newspapers as well as in Spanish-, Chinese-, Russian-, and Korean-language newspapers; (4) providing notice of the meetings and hearings through paper and e-mail mailings; (5) televising the Commission's proceedings on NYC-TV; and (6) posting notice of the Commission's proceedings in a public location.

The Commission's website also provides a great deal of information to the public, including a copy of the Charter, a schedule of the Commission's meetings and hearings, transcripts of the Commission's meetings and hearings, biographical information about the thirteen commissioners, contact information for the Commission, a "send the Chair an e-mail" page, and archived materials from previous Commissions. In response to this Commission's outreach efforts, the Commission already has received numerous letters, telephone calls, e-mails, and online submissions either requesting information on or containing proposals for Charter revision.

Moreover, on October 20, 2004, Chair Fuchs sent a letter to the Commissioners of city agencies to solicit their suggestions for changes to the Charter that could improve service delivery in the City. In the following months, the Chair and Commission staff have had follow-up meetings with agency heads on their ideas for Charter reform. In January 2005, Chair Fuchs commenced a wide-ranging outreach effort to members of civic organizations, nonprofit organizations, community advocacy groups, professional associations and academic institutions to gather information and listen to their ideas for reform. These efforts will continue throughout our Charter revision process.

FISCAL STABILITY

New York City's fiscal stability is one of the major topics the Mayor asked the Charter Revision Commission to address. On December 8, 2004, the Commission held a public meeting on this topic, focusing particularly on the expiration in 2008 of the New York State Financial Emergency Act for the City of New York (FEA). Mark Page, Director of the Mayor's Office of Management and Budget, discussed the history and features of the FEA. A transcript of Mr. Page's testimony before the Commission is available on the Commission's website (www.nyc.gov/charter).

Expiration of the New York State Financial Emergency Act for the City of New York

Before 1975, the City spent more money than it was taking in and covered the resulting gap by issuing large amounts of short-term debt. These practices were exacerbated by inadequate reporting and accounting by the City. The result was a loss of access to the public credit markets, which precipitated a major financial crisis in 1975. In order to restore stability to the City's finances, the State Legislature enacted the FEA, which together with other measures taken during the 1970's, was critical to restoring the public credit markets' confidence in the City's ability to repay its debt.

Mr. Page observed that the FEA was the second legislative attempt to solve problems following the financial crisis. The first attempt, the Municipal Assistance Corporation (MAC) Act, temporarily solved the problem of the City's

lack of access to the credit market, but did not address the underlying problem: the City's inadequate financial management system. The FEA addressed the City's management shortcomings by imposing a fiscal planning apparatus *in addition to* the City's existing budget and financial management process. A primary feature of the FEA was the creation of the Financial Control Board (Control Board)² to oversee the City's financial affairs. The most significant financial management practice imposed by the FEA was what Mr. Page called a "backward-looking edit on performance." In addition, the City must balance its budget in accordance with generally accepted accounting principles for municipalities (GAAP), so that it does not end its fiscal year with an operating deficit of more than \$100 million.

The FEA grants the Control Board substantial powers over city financial actions during a "Control Period," a period of time during which the City's fiscal situation warrants increased external supervision and control. A Control Period lasted from 1975 until 1986. The FEA also provides that, after the City satisfies several statutory conditions, a Control Period ends and the Control Board ceases to exercise many of these powers. During the period from 1986 to the present, often referred to the "sunset" phase of the Control Board, the Control Board monitors the City's financial affairs with reduced powers. The FEA requires the Control Board to re-impose a Control Period—a "sunrise" of the Control Board—upon the occurrence or likely occurrence of stated events, such

² The Control Board is comprised of seven members, four of whom are elected officials — the Governor, the City Comptroller, the State Comptroller and the Mayor — while the others are private citizens appointed by the Governor.

as an operating deficit of more than \$100 million at the end of a fiscal year or loss of access to the public credit markets. During the sunset phase, the Control Board monitors the City's financial plan on at least a quarterly basis to determine that the City and the Control Board may continue to operate under the sunset phase provisions.

The continuity and predictability afforded by the FEA's financial planning and management requirements succeeded in achieving a primary objective of the FEA. Mr. Page commented that under the FEA, the City has achieved 23 years of balanced budget results.

Key elements of the FEA, not in the Charter, that the City is presently required to follow when the Control Board is in "sunset" are:

Detailed four-year financial planning process. The FEA includes a detailed four-year planning process, which helps regularize the City's procedures for financial planning and ensures that the City is not exclusively focused upon the short-term adoption of a budget in June of every year. The Charter requires a four-year financial plan, but lacks the specificity of the FEA.

Ongoing balanced budget requirement. The FEA requires that the City's expense budget be balanced in accordance with GAAP. If the City ends a fiscal year with an operating deficit of more than \$100 million, the FEA requires the Control Board to re-impose a Control Period upon the City. The budgetary powers of the Mayor in the Charter operate together with this state

requirement for budget balance, so that, for example, the Mayor may decline to make expenditures that would result in the City entering into a Control Period. In contrast, the Charter requires that the City's annual expense budget be balanced at adoption, in accordance with GAAP, but has no provision requiring balance at the end of the fiscal year.

Restrictions on short-term debt. Short-term debt is generally issued in anticipation of the City's receiving certain revenues in the near future. The City's reliance on short-term debt played an important role in triggering the 1970's fiscal crisis. The FEA now generally limits the amount of short-term debt the City may assume so that it is not based upon unrealistic future revenue projections. In certain instances, the FEA also prohibits the issuance of short-term debt that matures in a subsequent fiscal year. The Charter contains some restrictions on short-term debt that are not as stringent as those in the FEA. State law also contains some additional restrictions.

Protections for city bondholders and related covenants. The FEA provides for the establishment of a general debt service fund, which is a separate fund that exists for the purpose of repaying city bondholders. Accounts within that fund also protect holders of city short-term debt, in certain circumstances. City real estate taxes are paid into the fund and retained for the payment of debt under a formula set forth in the FEA. The FEA authorizes the City to covenant with bondholders that it will maintain this fund, and the State has covenanted that it will not substantially impair the maintenance of the fund.

Similar covenants now protect other key provisions of the FEA that are set to expire in 2008. The Charter currently does not provide for a debt service fund, although the City has made certain limited covenants to keep a separate fund for paying debt service on its bonds that extend beyond 2008.

Financial Control Board and possibility of a Control Period. The Control Board reviews the City's financial plan and monitors the City's implementation of its plan, and must re-impose a Control Period on the City if certain events occur, or are about to occur. Such powers were useful at the time of the 1970's fiscal crisis, but also represented a substantial limitation upon the City's ability to govern itself. The concept of an oversight board and the entire concept of a Control Period (including what would trigger such a period and how the City's decision-making would change during such a period) are absent from the Charter.

Other Financial Management Issues

During the December meeting, two Commissioners raised financial management issues covered by neither the current Charter budget process nor the FEA. First, Commissioner Fiala raised a concern that local legislation adopted during the middle of the year often creates fiscal strain on the priorities articulated at budget adoption. While the City has been able to accommodate such mandates, Mr. Page noted that, when such mandates are imposed during the fiscal year, there is an element of "one-sided budgeting" that neither the Charter nor FEA requires the City to explicitly address. Section 33 of the

Charter requires that a fiscal impact statement accompanying any proposed law include an estimate of the fiscal impact on the revenues and expenditures of the proposed law or modification. The Charter does not, however, explicitly require the Council to address the source of funding for a local law that creates a new program during the fiscal year. Second, Commissioner McCormick raised a concern that the FEA's financial planning and management process does not meet the needs of important segments of the City's vendor community, such as the human services providers who need to plan for their operations as well. She believes there is insufficient articulation of planning for programmatic priorities in the current process.

The Commission seeks comment from the public about what provisions from the FEA should be included in the City's Charter in anticipation of the expiration of the FEA. In particular, the Commission seeks comment on whether any of the following should be included: the financial planning and management structure of the Financial Emergency Act; the on-going GAAP balanced budget requirement, subject to a stated limited operating deficit; short-term debt restrictions; establishment of a general debt service fund to pay bondholders and related city bondholder covenants; and an oversight mechanism.

ADMINISTRATIVE TRIBUNAL OPERATIONS

On January 19, 2005, the Commission held a public meeting on the topic of administrative judicial reform, focusing particularly on ways to improve management of the City's administrative justice system, one of the three topics the Mayor has asked the Commission to study. Carol Robles-Roman, Deputy Mayor for Legal Affairs and Counsel to the Mayor, discussed the need for, and history surrounding, the coordination of administrative tribunals. In particular, she discussed whether and how to establish a coordinator of administrative justice, as well as a code of conduct to govern the actions of administrative law judges and hearing officers. A transcript of Ms. Robles-Roman's testimony before the Commission is available on the Commission's website (www.nyc.gov/charter).

Ms. Robles-Roman noted at the outset that the City's administrative tribunals—or executive branch courts—are often the only forums where citizens have any significant interaction with city government, and thus the City's administrative law judges and hearing officers represent the face of justice in our city. It is critical that these tribunals continue to resolve disputes fairly, impartially, efficiently and consistently. Many New Yorkers, unfortunately, have had occasion to be offended by a rude cab driver, woken up by noise on the corner, given a parking ticket that they wish to challenge, believe they have been the subject of discrimination in violation of the City's Human Rights Law, or inconvenienced by one of the myriad everyday problems that affect the quality

of life in the City. The City's administrative tribunals are the primary place for settling these "quality of life" issues.

Cataloging the administrative tribunal system, Ms. Robles-Roman noted that the several tribunals employ over 500 lawyers either as administrative law judges (ALJs) or hearing officers, with many judges and hearing officers working on a per diem basis. The Office of Management and Budget reports that the City's tribunals processed more than 13 million summonses in 2004. These tribunals are vital to the orderly functioning of city government and hear a variety of matters each year, including employee discipline, the enforcement of civil violations, appeals of licensure denials, and challenges to real estate and commercial tax assessments.

Tribunal operations can be governed either by local or state law, or sometimes both. Some tribunals are stand-alone agencies like the Office of Administrative Trials and Hearings (OATH), which hears a wide range of cases referred from a variety of agencies, or the Tax Commission and the Tax Appeals Tribunal, which hear specialized challenges to real property and commercial tax assessment determined by the Department of Finance. Other tribunals are located within larger agencies, such as the Parking Violations Bureau (PVB), located within the Department of Finance, and the Environmental Control Board (ECB), located within the Department of Environmental Protection (DEP). The majority of tribunals located within agencies hear cases arising from the regulatory activities of those agencies, such as the tribunals at the Department

of Health and Mental Hygiene, the Department of Consumer Affairs and the Taxi and Limousine Commission (TLC). A notable exception is ECB, which over the years has been given jurisdiction over regulatory matters outside the purview of DEP.

The growth of administrative tribunals and devolution of matters to them occurred in the latter half of the last century, well after the expansion occurred at the State level.³ This growth in part was the result of burdens on the State court system placed by “quality of life” violations. The history of the ECB, initially created in 1972, provides a good example of the historical trend. After DEP obtained jurisdiction over ECB in 1977, the City worked with the Office of Court Administration and both city and state legislative bodies to expand ECB's role as an administrative tribunal. In 1979, a number of city laws and regulations, enforceable only at the Criminal Court, were transferred to the jurisdiction of ECB, and new areas of enforcement, such as street peddling and the Health Code, were made subject to ECB jurisdiction. In 1984, the devolution to ECB continued, with specified violations of the Building Code, the Fire Prevention Code and water use regulations made subject to ECB jurisdiction. In 1989, violations of Parks Department rules and regulations were devolved to ECB.⁴

As the administrative legal system has become a pervasive part of the modern urban landscape, however, so too has the perception of problems within the

³ Robert M. Benjamin, *Administrative Adjudication in the State of New York*, Report to Honorable Herbert H. Lehman, 1942 (1942 Report), p. 9.

⁴ From background materials on file.

system of administrative justice.⁵ The administrative justice system has been the subject of past Charter Revision Commissions' review and/or proposals, as well as the subject of other attempts at reform. Ms Robles-Roman surveyed the efforts at administrative judicial reform over the past two decades.

The 1988 Charter Revision Commission began to tackle adjudicatory reform when it set out to focus on the “front-end” of the system and “open up the city's rulemaking process and make it more accessible and understandable to the public by incorporating what is known as an 'administrative procedures act' in the charter.”⁶ While most of the 1988 Commission's successful ballot proposal that created the City Administrative Procedures Act (CAPA) focused on the rulemaking process, it also established minimum procedural standards for all city adjudicatory procedures—the “back-end” of the system.⁷ Charter §1046 provides minimum standards of due process for all agency adjudicatory processes other than the PVB. These minimum standards require agencies, among other things, to give all parties reasonable notice of an adjudicatory hearing; adopt rules governing agency procedures for adjudications and appeals; and afford all parties due process of law, including the opportunity to be represented by counsel at hearings.

In the Preliminary Budget for Fiscal Year 1995, the City proposed a consolidation of various administrative tribunals as part of an overall consolidation initiative. Consolidating certain administrative tribunals would

⁵ 1942 Report, p. 9.

⁶ 1988 Charter Revision Commission, *The Charter Review/Fall 1988*, p. 11.

⁷ Idem.

permit integration of collections, licensing and adjudication functions, enhance a focus on collection efforts and eliminate duplicative collection efforts.⁸ The City submitted a legislative package to the State Legislature for several years which was not realized in Albany, and Ms. Robles-Roman emphasized that such consolidation proposals are no longer part of the City's legislative agenda.

The 2003 Charter Revision Commission reviewed the area of administrative adjudication and observed that, unlike the criminal justice area, which is subject to coordination by the Criminal Justice Coordinator, there is no centralized mechanism to coordinate operational policy and management practices in the administrative justice area.⁹ The 2003 Commission proposed the creation of a coordinator of administrative justice within the Mayor's office, who would, among other things, advise and assist the Mayor in the coordination of policies, plans and operations common to the management of the City's administrative tribunals. The 2003 Commission identified several needs in the area of administrative justice, including a need to coordinate technology, enhance accountability and focus on improving the interaction between the public and the tribunals.

To that end, the 2003 proposal explicitly mandated coordination of the City's administrative tribunals by a establishing the new position of "Coordinator of

⁸ New York City Office of Management and Budget, Financial Plan 1995-1999, p. 2.

⁹ The Criminal Justice Coordinator was established in the 1975 Charter revision, which adapted an earlier entity, the Criminal Justice Coordinating Council. This Council was originally created in 1967 in response to the federal Law Enforcement Assistance Administration Act and later formally established by executive order in 1970. Thus, after 1967, areas of enforcement at the criminal courts that were later devolved to administrative tribunals had, before devolution, been subjected to the salutary effects of a coordinating entity.

Administrative Justice.” The Coordinator would provide policy advice about establishing and monitoring performance standards and measures for the administrative tribunals, developing technology-based management strategies for the tribunals, making budget recommendations for the tribunals, and establishing appropriate alternative dispute resolution programs for the tribunals. It was thought that creating this position would lead to modern operations, simplified procedures and greater uniformity, where appropriate, among tribunals to create business- and consumer-friendly system of administrative justice for New Yorkers. Additionally, the proposal would have granted the Mayor explicit authority to issue rules governing the professional conduct of administrative law judges and hearing officers. While there were no known integrity problems with the City’s administrative tribunals, the 2003 Commission believed that a single code of conduct would enhance accountability and professionalism. This proposal was defeated at referendum, with all other ballot proposals in 2003.

Finally, Ms. Robles-Roman outlined current administrative efforts to improve the workings of the City’s administrative tribunals. She has opened a dialogue on technology, ethics and best management practices among the various tribunal chief judges by hosting a retreat of administrative law judges and hearing officers and conducting a survey of chief administrative law judges.

Ms. Robles-Roman stated that the survey responses and the retreat dialogue illustrates that great differences in operational, educational and ethical

practices continue to exist among the various tribunals. Specifically, there are differences in the use of technologies and operational strategies for case and docket management, recording or transcription of hearings, and in dealing with the public. There are also differences in the way the tribunals provide for training and continuing legal education. Finally, while tribunal adjudicatory staff are generally subject to the City's conflicts of interest law that applies generally to all public servants and the New York State Code of Professional Responsibility, to the extent they are lawyers, they do not consistently follow the State's Code of Judicial Conduct (which applies to state court judges) or any other similar code. Two task forces—one focusing on technology and best practices and the other focusing on judicial ethics and conflicts of interest—will continue to explore these issues with the aim of developing a common resource guide for tribunals as well as future training programs.

The Commission seeks comment from the public on whether the City's administrative tribunals would benefit from coordination, and, if so, how it should be structured; whether a code of conduct should be established, and if so, how it should be developed, adopted and enforced; and, whether other steps should be taken to improve the management of the City's administrative justice system.

GOVERNMENTAL EFFICIENCY AND ACCOUNTABILITY

The use of innovative technology to improve government efficiency and accountability has been a hallmark of the Bloomberg Administration and a focus of the Commission since its first public meeting on August 26, 2004. Since then, the Chair and the staff have researched Charter-related issues bearing on operational efficiency and administrative reform. This line of inquiry was reinforced when, at the November 3, 2004 public meeting, the commissioners requested that the staff solicit such ideas from city departments. The Chair and the staff have now met with the heads of many agencies – a process that is still ongoing – to identify possible changes to the Charter that would improve governmental operations.

On February 9, 2005, the Commission held a public meeting on the topic of governmental efficiency and accountability. Myrna Ramon, First Deputy Director of the Mayor's Office of Operations, speaking for the Director of the Mayor's Office of Operations, Susan Kupferman, discussed these issues, focusing primarily on the Bloomberg Administration's reinvention of the Mayor's Management Report (MMR) to make it a more useful tool for assessing the delivery of services. Ms. Ramon's testimony before the Commission is available on the Commission's website (www.nyc.gov/charter). From these efforts, three major themes related to governmental efficiency and accountability have emerged.

Reforming the Charter to Take Advantage of Technology

Several Commissioners expressed a particular interest in examining how the Charter can be amended to take advantage of recent technological advances. The 1989 Charter Revision Commission made broad and significant changes in the structure of city government, but did not focus on the role technology might play in expediting government operations and making government more responsive to the citizenry. In the intervening years, a technological revolution has occurred, one that is dramatically changing city government's operational and informational capacity. This year's Charter revision process provides an opportunity for the Commission to think about the benefits to the City by using technology to improve service delivery.

The 311 Citizen Service Center is an excellent example of how technology can promote efficient and effective government. The Bloomberg Administration implemented 311 in 2003. Utilizing the expertise of the Department of Information Technology and Telecommunications, 311 made government more accessible by making it possible for people to request and receive information about city government services by calling one simple telephone number. By embracing technology, 311 has helped the Administration improve government efficiency and represents the adoption of a customer service approach to the delivery of services. Moreover, the data produced as a result of calls to 311

has provided the Administration with a new means of identifying service needs and aided in the development of new ways to deliver services.

The potential of technology to streamline government and enhance inter-agency collaboration is great. The Chair and the Commission staff are meeting with the heads of city agencies to discuss how technological innovations can help streamline operations, improve service quality and make government more accessible to citizens.

During several of the Commission meetings, Commissioners pointed to the benefits of technology as a tool for City government. At the Commission's November meeting, Commissioner Crowell noted that the 1989 Commission did not focus on the role that technology could play in the planning and reporting processes and that consequently some of those processes may be outdated. Commissioner Forsythe, following up on Commissioner Crowell's remark, noted that he has been observing innovators who have used technology as the leverage point for change and thought that this leveraging of technology could "trigger a new approach to Charter writing." At the most recent Commission meeting, Commissioner McCormick identified another benefit from using technology, demonstrated by the 311 system, which is raising the standard for government accountability and responsiveness.

Reforming Reporting Requirements in the Charter

Ms. Ramon observed in her testimony that the Bloomberg Administration has placed a high value on accountability and transparency, as demonstrated by the reinvention of the MMR. By measuring current performance against targets and prior performance, the City has been able to assess progress, detect problems, and develop strategies for improvement. Municipal agencies now use performance data to determine whether they are meeting their goals and how to better manage their work. Such data is also a useful yardstick for the public in evaluating the adequacy of city operations.

Different user groups need different types of performance data or reporting. For example, agencies use performance data as an internal management tool to monitor their sub-program activities and measure their results against interim, as well as overall, targets and objectives. The public is most often interested in performance data that assess an agency's performance as a whole, often expressed as outcomes, which contributes to the performance of the City government as a whole.

The Charter requires a variety of city agencies and elected officials to produce several performance-based and planning documents. For example, the Charter requires the Mayor to prepare a Report on Social Indicators, analyzing the social, economic, and environmental health of the City, and proposing strategies for addressing concerns raised in those areas. The Charter also requires the Comptroller to prepare a Report on the State of the City's

Finances, and requires the Office of Management and Budget and the Department of City Planning jointly to prepare a Draft Ten-Year Capital Strategy, describing the strategy for developing the City's capital facilities over the next ten years. Past Charter Revision Commissions have introduced reporting requirements as one way of increasing agency efficiency and accountability. Indeed, the City's current performance management and reporting system is the combined legacy of the 1975 and 1989 Commissions.¹⁰ A chart setting forth the Charter's most significant reporting requirements is attached to this report as Appendix A.

While measuring results and reporting outcome-based information are vital to agency efficiency and effectiveness, there are costs to collecting and reporting data. The prescriptive nature of the present Charter-defined reporting system often has made the collection of performance-based information an end in itself instead of a useful tool for agencies, elected officials and the public. Designing and implementing effective performance systems are challenging, even more so in New York City where significant public services are contracted

¹⁰ For example, the Mayor's Management Report (MMR), an important part of the performance-based reporting system, came to the Charter by way of the 1975 State Charter Revision Commission, in an effort to increase the "accountability of the Mayor and line agencies to the public for the quality of services and the achievement of performance objectives." Preliminary Recommendations of the State Charter Revision Commission for New York City, 1975, p. 35. Similarly, the 1989 Commission, which introduced many performance and planning documents into the budget provisions of the Charter, did so with an eye toward making the budget process "an open and informed debate to set the city's budget priorities in a fiscally responsible manner" and focusing that process "on ends (programs, objectives and results) as well as means (money, staff and materials)." 1989 Charter Revision Commission, "The Chair's Recommendations for Charter Revision," April 24, 1989, p. 1.

out to non-public entities.¹¹ Since the 1975 and 1989 Commissions created our present system, technological innovation and a nationwide government experience in managing for results and reporting results have emerged that can now provide this Commission with tools and a methodology to review the present system and make it more efficient, effective, and relevant to a variety of users.

The issue of performance-based reporting elicited a wide-ranging discussion among the Commissioners. Commissioner Abrams asked for more information on the extent to which those reports are covered in the media as an indication of their usefulness and relevance. Commissioner Raab added that the Council is an important user of many reports that may not necessarily get press attention. As an example of how technology is outpacing what the Charter-required reporting system provides, Commissioner Crowell noted that newly created web-based reports, such as *My Neighborhood*, which are not required by the Charter, are updated practically in real time. Both Commissioners McCormick and Betzanos expressed concern that the public's need for information and transparency, insured by Charter provisions, remain part of the discussion about reforming reporting requirements.

¹¹ Dall Forsythe, *Quicker, Better, Cheaper? Managing Performance in American Government*. Ch. 18 (New York: Rockefeller Institute Press, 2001).

Reforming Provisions of the Charter that Inhibit Agency Flexibility

For the past several months, the Chair and the Commission staff have been meeting with agency heads to identify changes to the Charter that will improve service delivery. Agency heads have consistently pointed to details in the Charter that do not give them the flexibility they require to meet their mandated objectives. In many cases, detailed provisions written long ago do not permit technology to streamline activities and actually impede inter-agency collaboration.

The Charter is a dynamic document. From the 1936 Charter, which outlined the organic structure of city government in 43 chapters, 22 of which established city agencies, we now have a Charter with more than 70 chapters, about half of which establish city agencies and empower them to perform many different tasks with varying levels of specificity. As the City's governmental structure has adapted to changing times, so has its Charter. Today should be no different. The Charter must give our elected officials and agencies the flexibility and tools to get their work done; it should not be an obstacle to service delivery, agency efficiency or accountability.

The Commission seeks comment from the public on how the Charter might be amended to facilitate efficient and effective delivery of municipal services through technology; to make the current performance-based planning and reporting system less prescriptive and more efficient and relevant to a wide range of users; and to increase flexibility and efficiency in agency operations while maintaining high levels of accountability.

ABOUT THE COMMISSIONERS

Dr. Ester R. Fuchs (Chair), Special Advisor to the Mayor for Governance and Strategic Planning, is on leave from her position as Professor of Political Science and Public Affairs and Director of the Center for Urban Research and Policy at Columbia University and Barnard College.

Dr. Dall Forsythe (Vice Chair) is the Chief Administrative Officer of the Episcopal Diocese of New York. He is the former Budget Director for New York State and the New York City Board of Education.

Stephen J. Fiala (Secretary) is the County Clerk and Commissioner of Jurors for Richmond County. He is a former member of the New York City Council.

Robert Abrams is a partner of Stroock & Stroock & Lavan LLP. He was formerly the New York State Attorney General. He also served as the Borough President of the Bronx and was a member of the New York State Assembly.

Curtis L. Archer is Executive Director of the Rockaway Development and Revitalization Corporation and is the former Director of Small Business Development for the Upper Manhattan Empowerment Zone.

Dr. Lilliam Barrios-Paoli is the President and CEO of Safe Space, Inc. She previously served as the Senior Vice President and Chief Executive for Agency Services of the United Way of New York City. She has also served as Commissioner of New York City's Human Resources Administration, Department of Housing and Preservation and Development, Department of Personnel and Department of Employment. She is a resident of Manhattan.

Amalia Victoria Betanzos is President of Wildcat Service Corporation a non-profit employment program. Formerly, she was a Commissioner of the Department of Youth Services and an Executive Secretary to Mayor John Lindsay, and a member of two previous Charter Revision Commissions.

David Chen is the Executive Director of the Chinese-American Planning Council and is the founding Chairman of the Board of Directors of the Chung Pak Local Development Corporation.

Anthony Crowell is Special Counsel to Mayor Michael R. Bloomberg and a former Executive Director and General Counsel to several previous Charter Revision Commissions. He is an adjunct Professor at Brooklyn and New York Law Schools.

Stanley E. Grayson is the President and Chief Operating Officer of M.R. Beal & Company. He was a former Managing Director and Director of Prudential Securities Public Finance Department. Prior to his investment-banking career, Mr. Grayson held several senior positions within New York City government, including Deputy Mayor for Finance and Economic Development, Finance Commissioner and Chief Executive Officer of the New York City Industrial Development Agency.

Dr. Mary McCormick is President of the Fund for the City of New York. She is a former Special Assistant to New York City's Deputy Mayor for Labor Relations and Personnel and a professor at Columbia University.

Stephanie Palmer is the Executive Director of the New York City Mission Society and is the former Executive Director of Human Services Council of New York City.

Jennifer J. Raab is the President of Hunter College. She is the former Chair of the New York City Landmarks Preservation Commission.

City's Reporting and Planning Documents

Appendix A

Report Name/Content	Publication Date	Charter History	Preparer(s)	Recipient(s)
Report on Social Indicators: Analyzes social, economic and environmental health of City and proposes strategies to address issues raised in such analysis.	Late August (no later than 60 days before CBs submit Community Board budget priorities)	Charter § 16 introduced by 1989 CRC	Mayor	Council, Borough Presidents, Community Boards (CBs)
Borough Strategic Policy Statements: Contents include summary of most significant long-term issues faced by Borough, policy goals related to such issues and proposed strategies for meeting such goals. In preparation, Borough Presidents consult with CBs.	On or before first September 1 of every Mayoral term	Charter § 82 (14) introduced by 1989 CRC	Borough Presidents	Mayor, Council and CBs
Capital Plant Inventory and Maintenance Estimates: For each agency, Capital Plant Inventory and Maintenance Estimates set forth condition assessment and annual maintenance schedule for major capital assets of agency, and estimated amounts necessary, for Financial Plan Period ¹² , to maintain such assets in good repair consistent with maintenance schedules.	October 1	Charter §1110-a introduced by 1988 CRC	All agencies	Mayor, Council, Comptroller and City Planning Commission
Comptroller's Revenue Report: Certificate of actual revenues for previous fiscal year; Mayor uses for Comparison of Actual Revenues to Estimated Revenues.	November 1	Charter §229 (a) consists of a revision by 1989 CRC to pre-1989 Charter §129 introduced by 1975 CRC	Comptroller	Mayor

¹² Financial Plan Period consists of next fiscal year and following three fiscal years.

Report Name/Content	Publication Date	Charter History	Preparer(s)	Recipient(s)
<p>Draft 10-Year Capital Strategy: Contents include narrative describing strategy for development of City’s capital facilities for next 10 fiscal years, capital commitments expected to be made during each of next 10 fiscal years and maps. In preparation of Draft, Office of Management and Budget (OMB) and Department of City Planning (DCP) consider, among other items, Strategic Policy Statement and Comparison of Adopted Budget and 10-Year Capital Strategy.</p>	November 1 in every even-numbered year	Charter §§ 215, 228 introduced by 1989 CRC	OMB and DCP	Mayor, Council, Borough Presidents and City Planning Commission
<p>Comparison of Actual Revenues to Estimated Revenues: Comparison of actual revenues to estimated revenues in the adopted budget for previous fiscal year is accompanied by detailed listing and explanation of variances.</p>	November 15	Charter §229 (b) consists of a revision by 1989 CRC to pre-1989 Charter §129 introduced by 1975 CRC	Mayor	Published in City Record
<p>Preliminary City Strategic Policy Statement: Contents include summary of most significant long-term issues faced by City, policy goals related to such issues and proposed strategies for meeting such goals. In preparation of Preliminary Strategic Policy Statement, Mayor considers Borough Strategic Policy Statements.</p>	1st November 15 of every Mayoral term	Charter §17 introduced by 1989 CRC	Mayor	Council, Borough Presidents and CBs
<p>Citywide Statement of Needs: Identifies new City Facilities¹³, significant expansions to City facilities and closures or significant reductions of City Facilities. The Charter lists events, without dates, preceding Mayor’s presentation of the Citywide Statement of Needs:</p> <ul style="list-style-type: none"> • Community District Needs Statements: Community Boards submit to Mayor (Charter §2800(d)(10)). • Departmental Statement of Needs for City Facilities: Each agency submits to Mayor after having reviewed Community District Needs Statements (Charter §204(e)). 	November 15	Charter §§ 204, 2800(d)(10) introduced by 1989 CRC	Mayor	Council, Borough Presidents, Borough Boards and CBs. Also made available to public in each Borough public library main branch.

¹³ City Facilities are facilities (1) used or occupied/to be used or occupied to meet City needs that are located on real property owned or leased by City or (2) operated by City pursuant to written agreement on behalf of City.

Report Name/Content	Publication Date	Charter History	Preparer(s)	Recipient(s)
				CBs hold public hearings.
Comptroller's Report on Capital Debt and Obligations: Report sets forth, among other things, amount and nature of all obligations authorized for capital projects and City's financial condition with advice as to maximum amount and nature of debt and reserves which City may soundly incur for capital projects during Financial Plan Period.	December 1	Charter §232 consists of a revision by 1989 CRC to pre-1989 Charter § 212 introduced by Local Law 15 of 1933	Comptroller	Mayor, Council and City Planning Commission
Report on State of City's Finances: Report on state of City's economy and finances, including evaluations of Financial Plan, as updated.	December 15	Charter § 233 introduced by 1989 CRC	Comptroller	Council (stated meeting)
Preliminary Certificate on Capital Debt and Obligations: Sets forth maximum amount of debt and reserves City may soundly incur for capital projects during Financial Plan Period.	January 16	Charter § 235 consists of a revision by 1989 CRC to pre-1989 Charter § 213 introduced by 1975 CRC	Mayor	Council, Comptroller, Borough Presidents, and City Planning Commission
Preliminary Budget: Consists of three component budgets—expense, capital and revenue—and includes update of Financial Plan. Following planning documents/processes are incorporated into Preliminary Budget: <ul style="list-style-type: none"> • Community Board Budget Priorities: Submitted no later than 30 days before Mayor receives Departmental Estimates, 	January 16	Charter § 236 consists of a revision by 1989 CRC to pre-1989 Charter § 112-a introduced by Local Law 6 of 1979 Charter § 230 introduced by 1989 CRC	Mayor CBs	Council, Borough Presidents, CBs, Borough Boards, City Planning Commission and DCP Mayor and

Report Name/Content	Publication Date	Charter History	Preparer(s)	Recipient(s)
<p>statements include expense and capital budget priorities for next fiscal year. (§ 230)</p> <ul style="list-style-type: none"> • Departmental Estimates: Submitted whenever Mayor directs agencies, Departmental Estimates set forth estimated expense and capital budget requirements of each agency for next fiscal year (next succeeding 3 fiscal years in the case of capital), as well as estimated revenue budget; agencies that deliver local services and agencies with capital projects must consult with appropriate Community Boards and consider Community Board Budget Priorities when preparing Departmental Estimates. (§§ 231, 100, 212) 		Charter § 231 consists of a revision by 1989 CRC to pre-1989 Charter § 112 (d) introduced by Local Law 11 of 1933	Agencies	Borough President Mayor
Comments on Draft 10-Year Capital Strategy	January 16 in odd-numbered years	Charter § 234 introduced by 1989 CRC	City Planning Commission	Mayor, Borough Presidents and Council
Preliminary Mayor's Management Report (PMMR): Contains for each agency, statement of actual performance for first 4 months of current fiscal year and proposed performance goals and measures for next fiscal year reflecting budgetary decisions in Preliminary Budget.	January 30	Charter § 12 introduced by 1975 CRC	Mayor	Council
Final Strategic Policy Statement: Includes changes and revisions to Preliminary Strategic Policy Statement. Mayor makes annual communication to Council about City finances, government and affairs, with summary statements of agency activities and progress in implementing goals and strategies contained in most recent Strategic Policy Statement. (§ 5)	2nd February 1 of every Mayor term	Charter § 17 introduced by 1989 CRC	Mayor	Council, Borough Presidents and CBs

Report Name/Content	Publication Date	Charter History	Preparer(s)	Recipient(s)
Borough/Community Board Comment on Citywide Statement of Needs	90 days after November 15	Charter § 204(f) introduced by 1989 CRC	Borough Presidents and Community Boards	Mayor and DCP
Community Board Statements on Preliminary Budget: Statements consist of assessment of responsiveness of Preliminary Budget to earlier Community Board Budget Priorities.	February 15	Charter §238 consists of a revision by 1989 CRC to pre-1989 Charter § 112-a (b) introduced by Local Law 6 of 1979	CBs (public hearings)	Mayor, Council, OMB Director, Borough President and Borough Board
Tax Benefit Report: Includes, among other items, listing of all exclusions, exemptions, abatements, credits or other benefits allowed against City tax liability. ¹⁴	February 15	Charter §240 introduced by 1989 CRC	Mayor	Council
Borough Board Budget Priorities: Consist of comprehensive statements on Borough budget priorities.	February 25	Charter §241 consists of a revision by 1989 CRC to pre-1989 Charter § 112-a (c) introduced by Local Law 6 of 1979	Borough Boards (public hearings)	Mayor, Council and OMB Director
Comptroller Statement of Debt Service: Contains schedule of appropriations required during next fiscal year for debt service.	March 1	Charter §242 consists of a revision by 1989 CRC to pre-1989 Charter § 113 introduced by Local Law 11 of 1933	Comptroller	Mayor and Council
Borough President Proposed Modifications of Preliminary Budget: Consists of proposed modifications of the Preliminary Budget, taking into consideration related Community and Borough Board Budget Priorities. In preparation of the Executive Budget, Mayor must consult with Borough Presidents. (§§ 244 and 245)	March 10	Charter §244 introduced by 1989 CRC	Borough President	Mayor and Council

¹⁴ Tax Benefit Report comes out on same day Commissioner of Finance submits, to Mayor, estimate of assessed valuation and statement of taxes due and uncollected. Local Law 69 of 1993 requires the City's Economic Development Corporation to report annually on its business retention/economic development agreements.

Report Name/Content	Publication Date	Charter History	Preparer(s)	Recipient(s)
Council Response on Preliminary Budget: Contains findings and recommendations on preliminary budget after public hearings, by Council Committees, have been held in connection with, among other things, Preliminary Budget, Community Board Budget Priorities and Borough Presidents' recommendations.	March 25	Charter §247 consists of a revision by 1989 CRC to pre-1989 Charter § 115 introduced by 1975 CRC	Council	Mayor
Council Report on PMMR: Contains findings and recommendations on PMMR, after Council holds public hearings on PMMR and agencies' proposed program and performance goals and measures.	By April 8	Charter § 12 introduced by 1975 CRC		
Executive Budget:	April 26	Charter §249 consists of a revision by 1989 CRC to pre-1989 Charter § 117 introduced by Local Law 11 of 1933	Mayor	Council
Ten Year Capital Strategy	April 26 in odd-numbered years	Charter §§ 248, 215 introduced by 1989 CRC	Mayor	
Borough President Response to Executive Budget	May 6	Charter §251 introduced by 1989 CRC	Borough Presidents	Mayor and Council

Report Name/Content	Publication Date	Charter History	Preparer(s)	Recipient(s)
Council Hearings on Executive Budget	May 6 - May 25	Charter §253 consists of a revision by 1989 CRC to pre-1989 Charter § 119 introduced by Local Law 11 of 1933.		
Budget Adoption: Council adopts the budget, subject to veto of Mayor and override by Council; Council can alter Executive Budget by increasing, decreasing, adding or omitting any unit of appropriation and adding, omitting or changing any term or condition related to any appropriation.	No later than June 30	Charter §§254 and 255 consist of a revision by 1989 CRC to pre-1989 Charter §§ 120, 121 introduced by 1975 CRC		
Comparison of Adopted Budget and 10-Year Capital Strategy	No later than 30 days after budget adopted	Charter § 257 introduced by 1989 CRC	Mayor	Published as appendix to 10-Year Capital Strategy
Mayor's Management Report (MMR): Among other things, MMR contains program performance goals for current fiscal year, statement of actual performance for previous fiscal year and appendix indicating the relationship between program performance goals and corresponding expenditures from previous fiscal year.	September 17	Charter § 12 was introduced by 1975 CRC	Mayor	Council
Annual Audit: Annual audit of City's consolidated operating accounts and year-end assets, performed by certified public	Circa. October 30	Charter § 95 introduced by 1975	Comptroller	CAFR

Report Name/Content	Publication Date	Charter History	Preparer(s)	Recipient(s)
accountants, is presented by Comptroller in Comprehensive Annual Financial Report (CAFR).		CRC		
<i>Miscellaneous</i>				
Fiscal Impact Statements: All local laws must be accompanied by Fiscal Impact Statement, which contains estimates of fiscal implications of local law on adopted budget.	At adoption of local law	Charter § 33 introduced by 1989 CRC	Council	
Unit of Appropriation: Units of appropriation, lowest level of detail in adopted budget, shall represent amount requested for personal service or other than personal service for particular program, purpose, activity or institution.	At budget adoption	Charter § 100(c) introduced by 1989 CRC		