

Transcript of the Meeting of the  
CHARTER REVISION COMMISSION  
held on Wednesday, February 9, 2005  
John Jay College of Criminal Justice  
455 West 59th Street  
Borough of Manhattan

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Meeting convened at 7:26 p.m.

P R E S E N T

DR. ESTER FUCHS, Chair

COMMISSIONERS:

JENNIFER RAAB

ROBERT ABRAMS

CURTIS ARCHER

AMALIA BETANZOS

STEPHEN FIALA

DALL FORSYTHE

STANLEY GRAYSON

ANTHONY CROWELL

MARY McCORMICK

Also Present:

TERRI MATTHEWS, Executive director

CHAIRPERSON FUCHS: Okay, good evening, everyone. I'd like to call this meeting of the Charter Revision Commission to order. I hope everybody can hear me okay. If you can't, let me know, because we have the windows open here.

This is the third of three meetings in which we've been discussing baseline reports on the three issues that the Mayor has put before the Charter Revision Commission. This is a public meeting, I just want to remind everybody, not a hearing. In a public meeting, the public observes but does not have the opportunity to testify, but Commission members obviously will have the opportunity to speak and ask questions of the person who will be presenting testimony today.

I want to go over a couple of points of business and next steps. In March we plan to hold a series of public hearings, one in each borough, and members of the public will be invited to testify at these public hearings. We will also at several of these public hearings be asking experts to present testimony to the Commission.

The first public hearing will be on March 7th in Queens. It will be a public hearing and an expert forum and it will be at Queens Borough Hall. The second one will be in the Bronx, it will be a public

hearing and expert forum, it will be Wednesday, March 16th in the Bronx Borough President's hearing room.

The third public hearing will be in Brooklyn on Wednesday, March 23rd in the Brooklyn Public Library at Grand Army Plaza branch office and we have tentatively scheduled the fifth public hearing in Staten Island on March 30th and it will be hosted by our Commission member, Steve Fiala in the Staten Island meeting. We will have a sixth meeting scheduled in Manhattan and we have not scheduled that yet.

Just to remind everybody, these meetings will be up on our website and we will update the website as we update the public hearing schedule. Feel free to go to [www.nyc.gov/charter](http://www.nyc.gov/charter). Sounds like an infomercial.

COMM. FORSYTHE: What time are these hearings?

CHAIRPERSON FUCHS: All hearings start at 7 p.m. Anyone interested in updates about the work of the Charter Commission, you can go to that website, you can sign up on a signup sheet and receive information by regular mail or ask to be put on our e-mail mailing list. So we're trying to cover every form of communication here, from the regular mail service to e-mail to a website, and you are always welcome to write

to the Charter Revision Commission directly at 2 Lafayette Street, 14th floor, New York, New York 10007.

Today's meeting is the third, as I said, in our series of baseline meetings on issues that the Mayor asked us to look at in this Charter Commission. The topic of today's meeting is operational efficiency and accountability, and we are going to hear from Myrna Ramon, who is the First Deputy Director of the Mayor's Office of Operations, who is representing the director of the Office of Operations, Susan Kupferman.

Before I ask Ms. Ramon to speak, I would like to give you a little background of what she's been doing for the past, I won't give away your age, X number of years. In 1998 she joined the Mayor's Office of Operations as Deputy Director for infrastructure, regulatory and community services. Since 2000 she has served as the First Deputy Director under Director Susan Kupferman. Before that, she was Deputy Commissioner at the Department of Housing Preservation and Development under Commissioner Lillian Barrios-Paoli's leadership. Commissioner Barrios-Paoli has a board meeting tonight so is not able to attend.

She was also Executive Deputy Commissioner

at the Human Resources Commission of the City of New York, HRA. She worked before that for the New York

State Division of Housing and Community Renewal and for the Federal Equal Employment Opportunity Commission. She received her master's in education from Hunter College. We get a cheers from one of our Commissioners for that.

COMM. RAAB: All I want to know if she's a member of the alumni association and pays her dues.

CHAIRPERSON FUCHS: And she received her BA from Tufts University. If that is not a resume that qualifies somebody to speak to these issues of Government efficiency, I don't know what is.

It's really a pleasure to have Ms. Ramon testify before the Commission today. Thank you very much.

MS. RAMOS: Good evening, Chairman Fuchs and members of the Charter Revision Commission. My name is Myrna Ramon and I am First Deputy Director of the Mayor's Office of operations. I am here representing our director Susan Kupferman who unfortunately is not able to be here with you tonight due to a very timely or perhaps on-topic event, the approaching release of the

fiscal 2005 Preliminary Mayor's Management Report or PMMR.

Alas, were it not that the 2003 Charter proposal to eliminate the PMMR was defeated last year,

Susan would be with you here today. She sends apologies and regards.

I'll return to the topic of the MMR in a moment, but first let me thank you for the opportunity to discuss and brainstorm some of the concepts that are emerging from early discussions with Commissioners and our preliminary reviews of Charter revisions or mandates with an eye towards learning from the past without restricting our flexibility to respond to the evolving or changing needs of the times and of the public we serve.

As most of you already know, Operations is an oversight entity responsible for monitoring the performance of City agencies and facilitating agency and interagency initiatives to enhance the delivery of services to the public. We have played a lead or a supporting role over the years in a broad range of initiatives, including some of the restructuring and/or

creation of agencies established through prior Charter revisions, of the more recent creation of the 311 Citizen's Service Center and a variety of work groups such as the Citywide Road and Task Force and West Nile Virus Task Forces, to name a few. All of these opportunities give us a unique look into the inner workings of agencies.

Tonight's topic, operational efficiency and accountability, lends itself well to the work that Operations does, particularly as it relates to one of the most public tools for accountability mandated by the Charter: The Mayor's Management Report.

In a few moments I will outline the process we follow to improve the document, but first I would like to note that based on the lessons learned from our retooling of the MMR and some of the preliminary discussions with agencies there are probably other opportunities to review the prescriptive nature of other performance-based tools and provisions in the Charter which may be more limiting in furthering accountability than perhaps the Charter intended. Further discussions with agencies will help us identify these additional mandates.



In order to effectuate change, we rely on our collaborative relationships with agencies and we rely a great deal on data, which is reported to us on a monthly, quarterly and annual basis to help us assess performance and help us collectively develop standards for the timeliness of service delivery, as well as the quality of it. This administration has placed a high value on accountability and transparency and by measuring current performance against targets and prior

performance, we are able to quantify progress, identify problems and develop strategies for change and improvement. The creation of the 311 Citizen Service Center as well as the increased use of technology demonstrate up-to-date strategies for not only keeping the public informed and easily connected to Government, but opportunities to link performance in ways the Charter never envisioned.

In the simplest of terms, making things better is what drives us as public servants and has been a motivating theme at the core of continuous improvement and reengineering efforts.

Section 12 of the City Charter mandates that

a preliminary management report summarizing actual agency performance for the first four months of the fiscal year be made public by January 30th and that an annual report be made public by September 17th. These dates can fluctuate, depending on the release of the City's financial plans. The report was created in the mid-1970's as part of the City's response to the fiscal crisis and near bankruptcy, and the accompanied perception that efficiency and effectiveness in delivering services needed improvement.

The basic requirement of the Charter is to present service statistics on the main areas of each

agency's mission, contrasting actual and target performance levels wherever possible, along with explanatory texts summarizing the factors, including budgetary ones affecting positive or negative performance. While these requirements represented an early milestone in a nationwide movement towards accountability in Government, unfortunately, in over a 25-year period the initial intent of producing a tool for public accountability got lost amid thousands of pages with a diminishing focus on outcomes that matter to the public and measure performance.

In September 2001, the MMR consisted of three volumes and over a thousand pages with almost 6,000 statistics, compared to 150 pages and a few hundred numbers in the first MMR published in 1977. While the book included a tremendous amount of information about city Government it had gone awry of the Charter's original intent.

In addition, technological enhancements afforded us a new opportunity to share this information more efficiently.

In his first State of the City address in 2002, Mayor Bloomberg directed our office to overhaul the Mayor's Management Report and make it a tool for open government, to make it a tool that reports results

that matter to the public.

In overhauling or remaking the report, we used some guiding principles which seem to lend themselves to the task we collectively share at present. Similar to the Charter which has expanded significantly over time, the MMR had grown too voluminous with information not germane to its intent. These documents need to improve and flow with change, not necessarily

grow in volume with change.

With the concept of an MMR as a public report card in mind, we began the process of retooling the document by reviewing past criticisms, best practices and recommendations made in reports published by the Council, the Independent Budget Office and the Comptroller's office, among others. We also conducted research into the reporting practices of 16 other municipalities. Surveys and interviews were undertaken with a wide range of stakeholders, including City agencies, elected officials, Government interest groups and academics. Several of you graciously participated in that process with us and shared your insights on making the document more meaningful and useful.

Revision of the MMR brought it closer to the original purpose as stated by the 1975 Charter Commission; accountability for quality of services and

achievement of performance objectives. This was done in the following ways:

By clearly stating goals and objectives. We've worked extensively with the agencies to make sure they articulated their goals and critical objectives in the simplest of terms and agency head signoff was

required. The outreach conducted helped us in formulating what we identified as key public service areas with related objectives. Performance measures and narrative were then organized by goal and objectives so that the material was better integrated and more comprehensively understood. By reflecting five year trends, the MMR tables were expanded to show five years worth of data rather than the two years, which gives a better picture of trends and fluctuations over time.

By setting meaningful service targets. The setting of goals and targets is an integral part of performance management, because they set a comparative basis for assessing success or failure. In using an approach based on best practices, the revised MMR allowed for targets where they would be meaningful and could be reliably forecast. Not every indicator lends itself to that criteria. In some cases trend data or comparative benchmarking statistics are a better tool for evaluating performance levels. Agencies are always

given the opportunity to review targets to insure they are in line with any budgetary changes that may have occurred from when the targets were originally set.

By emphasizing outcome measures. The proportion of outcomes or results-based indicators increased from 20 percent to 60 percent. While input or demand information can provide a context or framework for the public in terms of the scope of services to be accomplished, or the resources available for service operations, they do not give the reader a sense of what the agency did with that volume and what were the achieved results. Outcome indicators provide that type of information and are most valuable in measuring the direct impact of service delivery.

By eliminating unneeded narrative information unrelated to goals and objectives. Over time the MMR's mushroomed with information that was not relevant to the attainment of agency goals and objectives, information that was perhaps more conducive to other types of reports but not a performance-based document. Unnecessarily detailed footnotes that created more confusion than clarity were also eliminated and narrative sections now strive to discuss the factors affecting performance as well as plans for improvement.

Less critical indicators were moved to a

web-based presentation only and the clarity of both the

narrative and the indicator names was improved to make them more easily understood in a much more user-friendly format.

By improving the correlation to budget. Agency researches were grouped at the end of each agency section and an increased number of unit cost indicators were introduced, something we strive to continue expanding over time. As mentioned previously, targets can be revised to factor in budgetary impacts.

By accounting for changes to measurement. A section on noteworthy changes identified changes from previously published information, including revisions to data, revisions to definitions or the addition of new indicators or data that affect the evaluation of performance was added to each agency section.

By leveraging technology. My Neighborhood Statistics, a geographic information application allows Internet users to seek comparative data for key indicators within New York City Community Boards, school districts or police precincts based on a specific street address or intersection. Technological enhancements also made the submission of information by agencies to operations somewhat less burdensome through improved document formats that were easily transmitted

electronically. More recently, multiagency initiatives were reflected in web based tables that capture statistics from the MMR, from two MMR sources, the print book and supplementary tables.

In general, the MMR now complies with Government accounting standards boards, or GASTB recommendations for clear performance reporting to the public, including easy access and formatting, multiple level of detail in reporting, for example you have the performance highlights where you look at the tables, you look at the web indicators or My Neighborhood Statistics, you see the data represented in a variety of ways, presentation of key inputs and outputs and other information along with outcomes and analysis of performance issues in relation to goals.

Each time we prepare the MMR we encourage agencies to take a fresh look at the document to insure it continues to reflect any changes to core mission objectives or priorities and incorporates the relevant associated indicators to measure service delivery so that the document is dynamic and as current as possible.

The remake of the MMR was aided by web-based technology to provide more information that can usually be packaged in a print report, including supplementary indicators, indicator definitions and mapping of key



statistics. Inclusion of 311 information taps into major new information technology that is expanding both service delivery information and the demand for services.

In recreating the MMR, we wanted to insure that the report gathered and reported information on the way City services affect the lives of the residents that was our intended public. What is it that agencies do on a daily basis that impacts the public? What are the desired outcomes? How is that performance measured in a meaningful way?

But the City's overall goal is not only to enhance the MMR, but to develop a comprehensive management system that can serve as a tool to manage by and a resource that citizens can use to understand what City Government is achieving.

In addition to the MMR, a number of agencies have citywide accountability programs or CAPSTAT indicators, some of which overlap with MMR indicators and some of which are more geared to the internal workings or day-to-day management of agency operations which do not impact the public directly.

Additionally, information generated by 311 can be increasingly used to validate and improve agency

performance over time. Ultimately, these various tools

provide different aspects of the performance management model for different uses by the public, senior executives and agency managers, and can be interwoven to reinforce and strengthen operational efficiency and accountability.

I know that a great deal of expertise on this topic rests with all of you, so I conclude here and welcome the chance to listen to your thoughts and ideas.

CHAIRPERSON FUCHS: Thank you very much, both to you and to Terri Matthews for really putting together a difficult and very informative presentation on this issue.

Do we have any comments from the Commission on this issue that we just heard from Ms. Ramon about?

Commissioner Forsythe?

COMM. FORSYTHE: I've actually followed with a good deal of admiration the work that the Office of Operations have done to revise the Mayor's Management Report and I was impressed with the care with which you solicited advice and your willingness to follow some of that advice. It was probably the same advice you would have given somebody that asked you.

I say all of that not as an introduction because I don't want to you misunderstand my question. Having listened to you and heard what you said, I'm not

quite sure what it is you want the Charter Revision Commission to do?

MS. RAMOS: Well, a couple of things that have emanated with some of the discussion with the agencies are some of the other types of reports that are a little bit more prescriptive that we should maybe look at to see, do they go to the intent of what the Charter wanted or are they so detail oriented that they're not getting to that point. So really look at some of the other reports in the way we looked at the MMR, is it meeting the intent that it was supposed to. Some of them have been problematic to some of the agencies for different reasons and in different ways, so sort of looking at that and maybe retooling that piece of it.

COMM. FORSYTHE: You're going to begin to do that now or you have that available now?

MS. RAMOS: Some of that information is coming out of the meetings with the agencies and the research that's been going on and will be ongoing.

CHAIRPERSON FUCHS: I could add one point here, which is in the background document that you've all received, there are two addendum, and one of the addendum, if you want to take a look at it, is a chart of essentially all of the reporting requirements that now agencies have to fulfill that exist in the Charter

and if you look at that document, you can see that it has the date of publication, the Charter history, who is legally obligated to prepare it and to whom it is supposed to be distributed, that is to say, The recipients of the document.

So it's a pretty long list of documents at this point, and one of the things in our conversations with agency heads was pretty simple, which is, wouldn't it be useful for the Commission at this point to take a look with their staff at these reporting requirements, since none of them have sunseting in them, and what we've discovered over time is what might have been useful in 1959 may no longer be used in 2005.

So the exercise that we're beginning to do is just to take a look at these reports, whether or not it's because of changing functions of agencies or because of technology, frankly, is this something we

should be continuing to do.

So it is in this sort of cleanup spirit that we talked about early on that we're looking at reporting requirements as an area that we could possibly help out agencies on their operational side.

Commissioner McCormick.

COMM. McCORMICK: Again, I commend the Office of Operations, you have done a great job in the

last few years in really becoming a leader in the country of how to do this kind of work well.

MS. RAMOS: Thank you.

COMM. McCORMICK: The suggestion that the Preliminary Mayor's Management Report be eliminated was defeated in 1973 and as I understand it, this is following up on what you said, Commissioner Fuchs, is what you're saying to us is let's not just look at that one, let's look at all sorts of reports, whether we ought to have them or not, correct?

MS. RAMOS: Correct.

COMM. McCORMICK: I assume you haven't changed your position on the need to eliminate the PMMR, is that correct?

MS. RAMOS: That's right.

COMM. CROWELL: How many reports are there?  
How many reports are required that Government agencies  
in the City produce?

MS. RAMOS: That list alone I think had  
about 25.

CHAIRPERSON FUCHS: No, there are about  
thirty here, I think.

COMM. CROWELL: So those are reports  
separate from the general mandate that every City Agency  
produce an annual report on top of producing data that

would go into the PMMR and the MMR.

MS. RAMOS: I believe so, but Terri --

MS. MATTHEWS: Can I explain this chart just  
a little? I worked on this chart.

This chart basically takes you through the  
year and it's a mix of documents. A lot of the planning  
documents relate to the budget process and we're not  
suggesting that we're eliminating the budget process at  
all --

CHAIRPERSON FUCHS: Or all of these  
documents.

MS. MATTHEWS: Or all of these documents.

But I think it's important to look at how -- in 1975, one of the things we learned and it's in the background memo, is a lot of these documents went in as a result of past Charter Revision Commissions. The first one was in '75 which really created the MMR, that is like the foundation.

In the 1989 Charter, went another level and scattered through the Charter, lots of planning documents; capital planning documents, report on social indicators, and they're woven through the budget process, and the intent was to inform the debate about resource application, and so when you go through this -- I don't want you to think that we're suggesting

eliminating the preliminary budget. It's just to provide a context, because if you look at the planning documents, they relate to other processes, so we thought this would be helpful. So that's it.

CHAIRPERSON FUCHS: Commissioner Abrams.

COMM. ABRAMS: When these reports come out, does the press focus on them? Have you reviewed the recent history? Are there news stories about what these reports state?

MS. RAMOS: For the preliminary -- for the PMMR and the MMR, a lot of times the press does pick up some of the different statistics and usually there are in the days that follow the release, there are stories on some of the different indicators and the actual release of the document.

COMM. ABRAMS: And how about these other reports that are in the chart?

MS. MATTHEWS: From time to time, the capital planning documents do generate some interest. The ten year capital plan.

CHAIRPERSON FUCHS: This might be a useful way to look at this as well.

COMM. ABRAMS: Because the intent of the question is, if a lot of time and effort is going into these reports and then they wind up on a shelf with

anybody either within the Government or in the larger body politic reviewing it or the press so there can be a reflection on potential for policy change and editorializing by newspapers and other good government groups, then one might conclude that it's an enormous waste of time and money and energy.

If, however, focus and attention is given



and it does impact and influence policy, and I guess the Commissioners might be benefited if we knew the answer to these questions as it relates to the whole variety of reports that you've cited there, because if we were to evaluate whether or not they should be eliminated, I think this is an important background consideration.

MS. MATTHEWS: One other thing, it's not just simply elimination, but reducing the detail and introducing flexibility into the documents themselves so that what seemed to be important ten years ago for the content of a particular document -- it's not that the reporting is the problem, it's just in the Charter itself, the details of what is supposed to be reported is there and that is something that could also -- lifting some of the detail.

CHAIRPERSON FUCHS: I think these are two separate points and the Commissioner makes a very good point, which is just the question of the reports

themselves would be worth looking at to what extent they are actually used, discussed, focused upon, influence the policy debate, and then the other question I think is also a very good point that Terri makes, which is do

we want to provide some flexibility in this reporting procedure based upon changed circumstances, what Commissioners think might be important and also in some sense, really updating these reporting procedures which, many of which have never been looked at since they've been put in the Charter, and they do take a lot of time. So I think that Commissioner Abram's point here is really important.

Many of these reports take an incredible amount of time to produce. The Mayor's Office of Operations can tell you about the PMMR and the MMR, but the rest of the reports have a serious expenditure of time associated with it, too. We've interviewed Commissioners on that and we can get some data on that, too, from the agency heads.

Commissioner Forsythe.

COMM. FORSYTHE: I want to emphasize. I thought the distinction you made between the value of the report and the necessity of having that report in the Charter is an important question. I think absent some substantial effort to shrink the Charter in a large

way, which I think would be very interesting, whether it could be done in the next three or four months, I would

be very hesitant to propose we try to do that, but absent that, if you wind up taking a lot of reports, all of which probably have some constituency probably and taking them all out of the Charter -- I agree, certainly that the PMMR and that others, perhaps may be superfluous or not necessary in the Charter, you would send an unfortunate message that you want Government to be much less forthcoming about information to the public.

So I just note -- again, I do think that the idea of a truly short form Charter is a very attractive one, but I'm not sure I see that as a real option in the next couple of months.

CHAIRPERSON FUCHS: Any other comments?  
Commissioner Crowell?

COMM. CROWELL: How would a Charter Commission do you think go about approaching the issue of making some evaluation as to what reports may need some modifications in terms of the requirements that they hold or in terms of their relevance?

MS. MATTHEWS: Well, we've been holding meetings with agency heads. They are the preparers. We have also conducted a great deal of outreach among good

Government groups and other users of the material and we'll be talking to them about that. And, you know, we'll be doing some assessment from the users to see if we can identify what's useful and what isn't. It will be a combination of Government, because they prepare it, and some of these documents are for Government as well. You've got to look at the users as being the agencies in preparing their planning documents for the budget, so -- yes?

COMM. RAAB: I think the issue of users, Terri, too, the City Council also gets a lot of information from these documents. I think that would be another audience to really consider, because I think, Bob, it's another indicator of how useful the documents can be.

Sometimes the hearings are very important, I think, for the legislators to understand what an agency is really responsible for and the budget issues and I think others may be burdensome for the Council Members also that is a responsibility to read yet another document which is really repetitive or not good information, so I think that's another audience to consider.

CHAIRPERSON FUCHS: Commissioner Forsythe?

COMM. FORSYTHE: The nice thing about the

abolition of the PMMR as was recommended is that there was more data available than the PMMR provided and it was available sooner and it was more timely, so the proposal to eliminate the PMMR didn't propose to reduce information available to the public, it simply took away a requirement to publish a piece of paper instead of material that was already available on a much more timely fashion by other means.

So, I mean, that one seemed very smart to me and there may be others that are very smart as well in this document, but many of these are documents that I've never read but that I assume have great value to particular audiences and would be badly missed by those audiences.

CHAIRPERSON FUCHS: Commissioner Crowell?

COMM. CROWELL: How are we using 311 right now in connection to data that's ultimately presented in the PMMR and the MMR.

MS. RAMOS: We've been slowly but surely integrating a lot of it. One of it is sort of demand, the top five calls that each of the agencies are getting or the top complaints. Some of the agencies already have MMR indicators that measure response time that links back to these top complaint categories, so we want to keep expanding that and making that linkage a lot

stronger, and just use using -- we used some of the data also to look at operational issues where there is overlap jurisdiction so it's leading us to look at operational efficiencies for that perspective.

So more and more not only with the books, we're trying to integrate information more and more, and I think it's come away with the perception of a focus.

COMM. CROWELL: How much information is available on the web at a given time? In other words, PMMR gives a snapshot so does the MMR. You have things like My Neighborhood and things like that, which are practically in realtime, updated every day or frequently, so I can look every couple of days and maybe get a new number as to what's going on.

MS. RAMOS: And the intent is with time to use those mechanisms to be alternatives for putting out some of the information that will give you much more frequent information, and that's the direction that they're trying to move. That's using technology to maximize getting the information out there. That is the goal, that is the vision.

COMM. CROWELL: So technology is really outpacing what a statute can provide in terms of

deliverance.

MS. RAMOS: Yes. It's come a long ways,

yes.

COMM. McCORMICK: I have a question about that and that is we're really talking about making dated information accessible. Whether the Charter says it's got to be accessible or it's got to be accessible in a particular way is what I think we're talking about, and I think what you're hearing from us is that we want transparency, we want the data available, we want it quality and up to date and what are the best ways to do that.

MS. RAMOS: Exactly.

COMM. McCORMICK: So all the users can get it. It would be interesting to me as you do your work to continue your chart here and add to it some of the questions that others have asked about cost, use, I'd like to know length. Could it be put on the web? If we put something on the web, I would think we'd want to say that it had to be there, right, just because the web is there you don't want to assume it will happen, I think it still ought to be there by statute.

CHAIRPERSON FUCHS: Any other questions?

Yes. Commissioner Betanzos.

COMM. BETANZOS: I would feel very strongly that each of the articles that were put in the reports that were called for, are called for because Charter

Commissions in the past heard a lot of testimony requesting that this information be made available. So I would not be too cavalier about just saying that we could get rid of it, but really doing it after very careful thought and provision that the information be made available easily to the public. Otherwise I would be very opposed to it.

CHAIRPERSON FUCHS: We take that comment very seriously. We understand your point and we agree.

Are there any other comments?

Thank you for presenting that very, I think, informative presentation. I bet everybody didn't know how many reports were really required in the Charter. That might be a question on Jeopardy some day.

COMM. FORSYTHE: Or how many statistics there are in the MMR.

CHAIRPERSON FUCHS: Ramona, you really did us in with the statistics in the MMR.



Our third issue on the agenda is new business. Before I ask the Commission members if they have new business, I have some new business to present to the Commission.

I've given everybody on the Commission a copy of a letter received by myself. I was cc'd on this letter as well as Mayor Bloomberg who the letter was

addressed to, on January 26th from the Speaker of the City Council, Gifford Miller, requesting that the Charter Revision Commission put on the ballot, and I quote, "The question on the proposed construction of a stadium on Manhattan's Far West Side."

You all have a copy of the letter in front of you. What I would like to do this evening is discuss this letter and how we as a Commission can respond to this letter and before I open it up for discussion to Commission members, I want to briefly explain to you what my opinion is with regard to this request.

I think at this moment that this is not an appropriate issue for consideration before this Commission. The Speaker has asked us to, quote, "take this matter directly to the people" and, quotes, "give

every citizen of the City a chance to express his or her opinion on how to proceed."

In short, what the Speaker is requesting in this letter is that we use the Charter Commission to create a public opinion poll through the referendum process. What I initially did upon receipt of this letter is to confer with counsel. We have expert counsel to the Charter Commission and I've been advised that State and Local Law do not provide any authority for a public opinion poll referendum to be imposed by a

Charter Revision Commission. There is New York case law which firmly establishes that we cannot use the referendum process to have the public weigh in on any individual projects.

So from a legal point of view, this is not in the mandate of a Charter Revision Commission.

From a policy perspective, we also think that this is not really part of a Charter revision process, and to put it very simply and very specifically, Charters set forth structure, not projects, and certainly not individual projects. We look at the Charter Commission on broad systemic issues of operation and administration for the entire City

Government, and not the merits of any one particular project. A Charter Revision Commission, as we know from the past, is intended to take a long-term broad perspective on Governmental issues that affect, as I said, structure, operation and operation of service delivery in the City as a whole. And we were not created and Commission in the past have never been created to inject themselves into disputes about particular development projects.

I strongly believe that it would really divert the Commission from its charge, from the charge that the Mayor set out for us, to examine really

critical structural issues, the crucial fiscal issues that are presented to us because of the expiration of the Financial Emergency Act, the issues around administrative judicial reform and the issues that we're talking about today around creating efficiencies in Government.

So it shouldn't be surprising to anyone here today that no Charter Revision Commission in the past has ever proposed a referendum on a particular land use project. So it's not simply what we do today or what we

consider today, but what has been the history of how Charter Revision Commissions have been used, and to my knowledge no specific land use projects or any other specific major capital expenditure has ever been put before voters in a referendum, either by Charter Revision Commission or in any other way, and there are myriad examples we can talk about of development projects which you might think could have and should have been put before the public in a referendum, but we haven't gone there as a City.

So both from a legal point of view and a policy point of view, I think this would be a mistake for us as a Commission to consider this as a proposal that we would want to put before the voters.

I felt that it was extremely important that

I did not respond myself as Chair of the Charter Commission to this letter from the Speaker, but rather bring this before the members of the Commission for discussion this evening. I've given you a copy of the letter and you're aware of these issues, and while I've drafted a letter that I think we could use to respond to the Speaker, before I even consider reading that into the record, I would like to open this up for discussion

among members of the Charter Revision Commission.

Commissioner Abrams.

COMM. ABRAMS: Madam Chair, did I understand correctly from your initial comment that you have checked with counsel and counsel has indicated that it would be inappropriate, impossible for such a proposal to be submitted to the voters by this Commission?

CHAIRPERSON FUCHS: I have checked with counsel, we have a special counsel to the Commission, and they have determined that under State and Local Law as currently written does not provide any authority to us to offer a public opinion poll-type referendum to the public, so yes.

COMM. ABRAMS: I think it might be helpful to the Commission if there was a writing to that effect. Who rendered that opinion or judgment?

CHAIRPERSON FUCHS: My counsel, they're both

here today, the two special counsels to the Commission, Spencer Fisher and Abbe Gluck.

Commissioner Crowell?

COMM. CROWELL: I'm okay.

CHAIRPERSON FUCHS: You looked like you were

going to --

COMM. CROWELL: I was going to say something, but --

COMM. ABRAMS: I'd like to ask counsel, did the Chair correctly state the fact that there is no authority for this Commission to entertain the ability to place this question before the voters?

MR. FISHER: As phrased, as the Speaker's letter is phrased, it discusses, as the Chair quoted it, "the need to make the people the ultimate authority" -- I'm just looking at some of the other quotes here: "Put to a vote of the people the question on the proposed construction of a stadium."

So to the extent that you construe that as some sort of advisory opinion of the people as to whether the City should build a stadium, some sort of poll of the people on this question, as the Chair stated, not only is there no history of that, there is case law to the effect that, and Attorney General opinions as well, to the extent that there is no

authority for a locality to decide to place a, what we call advisory referendum before the people.

But I guess the Chair also discussed her

policy view, because, I mean, is it even possible in your wildest imagination to formulate a referendum that includes the word "stadium." I think the Chair feels that's not a productive route to go down as a policy matter.

In any event, the Speaker seems to be calling for an advisory poll, just asking people whether they want a stadium and in a sense that's what he's calling, and for there's no precedent.

COMM. CROWELL: Mr. Fisher, there's no requirement that a stadium, or any project be put before a referendum, correct?

MR. FISHER: Yes, there is no requirement.

COMM. CROWELL: There's no requirement. And it is highly unusual for such a thing to be done, through a Charter Revision Commission, for a municipal Charter to be revised to provide for a project to create a stadium.

MR. FISHER: In New York City history, it would be unprecedented.

COMM. CROWELL: So aside from there's no legal reason to do that, in connection to the policy,

consideration as Chair Fuchs has put forth, I would also put forth that even discussion of a stadium when it's not required by law, certainly not within the mandate or the contemplation of the Municipal Home Rule law would certainly detract from the mission of the Commission when we were asked to review the Charter as it is that sets forth the governmental structure and to review and propose to the extent we find it necessary, important revisions to reform the Charter reform certain governmental process.

This would serve as an extreme distraction from that process and certainly something I would be unwilling to undertake. As the former executive director and counsel to other Commissions that had highly charged issues, I would certainly be unwilling to undertake that because it would render our work here for the past three months, it would derail us from that important mission for something that I believe is being handled in another public venue through proper procedural channels and that's my opinion on it, both legally, substantively and experientially.

MR. FISHER: I would also add to the effect that I would beware of attempts to style a mandatory referendum, style an advisory referendum as a dressed up mandatory referendum that attempts to circumvent case



law. There's a case in the '60s, Kupferman against Katz, that involved attempts to sort of concoct a referendum on off track betting, which was criticized by the Court. It was ultimately allowed to go forward only because it was not challenged in a timely manner, but the Appellate Division stated it was a transparent attempt to formulate a mandatory referendum on a technical basis, which will not suffice if the attempt is to merely avoid governmental responsibility and shift the burden of decisions to public opinion polls.

So, again, the attempt to perhaps manufacture a question, which is in reality an attempt to go to the people on something that really is a matter for elected officials to decide, I think should be viewed with some skepticism both as a legal and I guess the Chair would say as a policy matter.

CHAIRPERSON FUCHS: Commissioner Grayson.

COMM. GRAYSON: I like Anthony's passion on this subject, which is good. I guess I've got a couple of thoughts. One, I guess in Government the thing that always troubles me is when we say we've never done something as the reason not to do it, so I guess I would say that alone I would never argue is a persuasive reason not to go forward.

But having said that, you know, when you

look at a proposal like this, what I read in it is this project, this economic development or whatever you want to call it, development project, is of a magnitude that therefore may arise to the level of now being subject to a referendum and vote. When you go down that road, I guess I would suggest to the Commission that that's a very dangerous road to go down, because next year when we select which project is going to be of a magnitude that therefore some extraordinary effort ought to occur.

I understand the argument for an open process, I understand the argument for getting New Yorkers in toto involved in the decision making, but I as a Commission member resist and think it also inappropriate to use this Commission as a forum to do that. I'm not sure that it's consistent with the mission of the Charter Commission and I think certainly as one who spent a lot of years in economic development in the City of New York, to come up with a test as to why a project like this should be subject to Charter revision will in future years be an issue that others will have to address every step along the way.

I would hate to -- this is not the first time the City of New York has undertaken a project of huge, arguably huge magnitude and huge impact, and I

think to have or artificially put a process like this,

also all great intention, I think it's detrimental to the City's overall development effort.

CHAIRPERSON FUCHS: Commissioner Forsythe.

COMM. FORSYTHE: If we're going to share our views with you, I'd be glad to do that. I think that this is the wrong way to use a Charter Revision Commission, so that's one comment. The second, and I guess this is echoing what Commissioner Grayson said, I think this is the wrong way to make development decisions. There are lots of ways for the public to have input into the development process. The Charter specifies a large number of those methods, and I think that those are appropriate and I don't think that a referendum is the right way to make development decisions and I don't think, not only do I not think the stadium should be on the ballot, neither do I think there should be on the ballot a proposal to change the Charter process to allow such referenda or decisions.

CHAIRPERSON FUCHS: Commissioner Raab?

COMM. RAAB: Actually, it's not only a bad idea to use the Charter for development decisions, but

this is a request to make a spending decision, it's actually about an allocation of money, which I think is a worse slippery slope to decide in this forum. I wonder if you want to read us some of the ideas you have

in a response if that's how you want to move forward tonight.

CHAIRPERSON FUCHS: I'd like to move forward that way. I'd just like to make sure that all the Commissioners have an opportunity -- Commissioner Betanzos.

COMM. BETANZOS: I've been on several Charter Revision Commissions. In fact, I've been accused by some of my friends of being a Charter junkie. I enjoy reading the Charter, which I think proves something very wrong with me. But aside from that, I really consider it a very serious enterprise. I think it's tremendously important that when we're on a Charter Commission, when we're studying the Charter we do exactly that.

I'm not ready for us to go to referenda on a hundred and one issues or any other Charter Commission in the future to be suggested to do that, so I really feel that we should reject this idea and get ahead with

the business of looking at the Charter, which I, frankly, see a lot of things that need to be changed.

CHAIRPERSON FUCHS: Commissioner Archer.

COMM. ARCHER: Echoing a lot of things that were said, when I was asked to serve here, I understood it was not to look at line items, referendums about

development projects in the City that might be taking place. Out where I am in the Rockaways, there could have been a million reasons to call referendums about projects going on there, approaching even that level here, \$700 million, but I understand my work doesn't involve that, and I think this would be the wrong forum to entertain such a request.

CHAIRPERSON FUCHS: Thank you. Commissioner Fiala.

COMM. FIALA: Thank you, Madam Chair.

I would like you all just to indulge me for two or three minutes. I'm a Charter junkie, too, and I told you all that when we met in our Charter meeting.

CHAIRPERSON FUCHS: We wanted you anyway.

COMM. FIALA: You wanted me anyway, so right, I appreciate you giving me the opportunity to

speak. Because I have some strong thoughts on this and it transcends this letter and transcends our response.

I said at our organizational meeting that we had a unique opportunity to do something that recent Charter Revision Commissions had not been able to do because of the interference of politics. We live in a world where politics is inevitable, but I share the view with my colleagues here who have expressed, and I'll paraphrase, this to me is a distraction to this body and

to this body politic in the New York City.

I said in the organizational meeting that we could use this both as an opportunity to reform the Charter, tweak things where needed, revise, amend, delete where needed, and at the same time do something that is sorely lacking, not only in this City, but in our aging democracy, and that is to reestablish a connection between the role of the individual and the Government; the role of the represented and the representatives. So my thoughts on this are quite strong.

I served in the City Council. More than anything, I'm a student of politics. I've studied the Charter revisions going back to the very beginning of

our City. I have read the document from cover to cover, and that isn't easy. But, what I do know is this: A Charter is nothing more than a legal document establishing, as you've indicated, several of you, you used the word "structure" you used the word "responsibilities" and "functions" you used the word "framework." That's what it is, it's a framework for how we, the people of New York, govern ourselves. We're not sovereign. The State of New York grants us the ability to govern ourselves and we do this through our Charter.

As much as folks would like to think we are a direct democracy, we are not, and the last time I checked -- I'm prepared to go to the grave on this one, because I think we've got the best damned experiment in the history of mankind -- we are a Republic, a Republic, a representative democracy. The people elect people to make the decisions on their behalf hopefully, the people have chosen people whom they feel best subscribe to their views and will best represent their interests in City Hall or in Albany or in Washington.

We cede a little bit of our power to people

who are supposed to take the time to study complex issues, whether they be \$700 million economic development programs, whether they be social service programs, whether they be budgetary items. We cede a certain level of power.

This State does not have referendum and initiative. Contrary to popular opinion, we don't have referendum and initiative. This is a Charter Revision Commission. This is not a referendum or initiative discussion group. Let's be clear about that. I don't speak on behalf of the Commission, I speak only on behalf of myself, but the public has got to wake up and realize who's in charge. You elected a Mayor and a City Council. They're the ones with the responsibility. If

you don't like what they do, vote them out.

If I may, this letter, if it is taken to its logical conclusion from my standpoint, isn't about whether or not we should have a stadium. First of all, I'm not a lawyer, but Mr. Attorney General, I would imagine that the judiciary and those in your position would say this issue isn't quite ripe yet. There is no proposal at this stage that is fixed. Right now there's a competing offer out there, so I don't know what we're



doing in this front. It's not ripe yet in the public policy arena.

What is clear is that we're still a Republic, these folks were elected, and they're the ones who ultimately make these decisions. This letter, there's an illogical conclusion to the premise here, and I suggest that the logical extension of this letter is far more consequential. You know how I could enter this letter and make this justifiable where I would be willing to entertain a discussion? Make it about the framework of Government, framework or structure. If this body is the body that will determine whether or not we throw out referendum or initiative, something the State doesn't have -- this is outside of framework, this is outside of structure, this is a specific issue, a specific issue relating to finance and economic

development. But if you want to make it about framework, and I'm not suggesting this, it's a nice academic exercise and Madam Chair you appreciate this from your former life --

CHAIRPERSON FUCHS: Boy, do I appreciate my former life.

(Laughter.)

COMM. FIALA: I would submit it raises a larger question, and that is, is this a precursor to the ending of a Republic and a move to direct democracy? Think about this, folks. If so, why do we need a Legislature if they're going to punt on decisions they don't want to deal with. They're going to punt it to the people who made a decision and voted for this Government in 1989. This is the Charter the people of New York decided was what they wanted to be governed by. A Mayor, a City Council. That's the larger question.

I doubt very much that's the conclusion that the Speaker or the City Council was thinking about, but that's where I would take it. Is this questioning the relevancy of the Legislature? I believe there is a relevancy of the Legislature in the City of New York. This is a distraction.

I'm proud to be part of this body. We've listened to testimony that most of the people in the

outside world, including the Council Members, would say is boring as hell, because it deals with structure and framework, it deals with process, it deals with responsibilities. And most people don't want to delve

into the minutia, but we have.

We have an opportunity to place before the voters issues of consequence and you all know a couple that I'm strongly in favor of. Let's not allow this to distract us. We had an agenda here tonight. We've had something added in, a monkey wrench thrown in. I would like to hear the Chair's letter, but I will urge, I strongly urge that we move forward. We can't have this distraction. We're a Republic. The topic that's being presented is larger than us. Let's move on. If the people want to change that, they can change it. If people want referendum and initiative, talk to the Governor and the State Legislature, not the New York City Charter Revision Commission.

CHAIRPERSON FUCHS: Thank you. Are there any other comments from Commission members? If there are no other comments, I would like to read into the record a proposed letter of response to the Speaker.

"Dear Speaker Miller: This is in response to your letter of January 26, 2005 to Mayor Bloomberg, a copy of which you addressed to me, in which you

suggested that the Charter Revision Commission place on

the ballot a 'question on the proposed construction of a stadium on Manhattan's Far West Side.'

"I have conferred with my Commission. Upon consideration of your proposal, it is the view of the Charter Revision Commission that this question is not appropriate for consideration by our Commission. As an initial matter, regardless of the existence of a Charter Revision Commission, it is our understanding that there is no legal authority for a referendum of the nature you describe. With respect to the Charter Revision Commission in particular, the role of such a Commission is to consider systemic issues concerning the operation and administration of City Government as set forth in the City Charter, not to consider specific development projects.

"To that end, Mayor Bloomberg has charged the Commission as it reviews the entire Charter to pay special attention to the broad issues of fiscal stability, administrative law reform and operational efficiency and accountability. In our opinion, it would be an inappropriate use of the Charter revision process to turn the Commission's focus away from these important systemic governmental issues in order to review instead the merits of a particular land use project.

"Sincerely, the Charter Revision Commission,  
Ester R. Fuchs Chair," cc to Mayor Bloomberg and to all  
members of the Commission.

This is a draft and I can send this out to  
members of the Commission for final confirmation, but I  
would like to put before the Commission as a vote, can I  
get a proposal to vote on accepting this response to the  
Speaker's letter after I receive final corroboration,  
final approval from members of the Commission through an  
e-mail version of the letter.

COMM. FORSYTHE: So moved.

COMM. McCORMICK: Second.

CHAIRPERSON FUCHS: All in favor?

(Chorus of "Ayes.")

CHAIRPERSON FUCHS: All opposed? The  
Commission unanimously accepts this letter in draft  
form, and we will get a final version and approve it  
within the next day and get it out to the Speaker.

I would particularly like to thank everybody  
on this Commission and really appreciate their expertise  
on this matter and for sharing that at this session and  
I would like to thank everybody for their passion on  
this issue and therefore their willingness to stay the  
course on the, in many ways, more difficult issues that  
were laid out by all of you in your comments, the issues

of systemic reform.

COMM. CROWELL: I was thinking about some ideas and speaking to the Charter Commission staff and I think what we should do, and I just conferred with Spencer, I think we should make this final tonight in terms of, to insure consistency with the Open Meetings Law, and you should just say this will be substantially in this form, there will be no substantive changes to the form of the letter and so long as we approve it that way, I think we comply with all statutory requirements.

CHAIRPERSON FUCHS: Can I have a motion that approves this letter substantially in this form?

COMM. FORSYTHE: So moved.

COMM. GRAYSON: Second.

CHAIRPERSON FUCHS: All in favor?

(Chorus of "Ayes.")

CHAIRPERSON FUCHS: All opposed? None.  
Thank you for that. And I reiterate, and I thank the Commission for reviewing this very important issue and I think in a very responsible way.

Are there any other issues that members of the Commission would like to bring before the Commission this evening?

COMM. FIALA: Motion to adjourn.

CHAIRPERSON FUCHS: I have a motion to

adjourn. All in favor?

(Chorus of "Ayes.")

CHAIRPERSON FUCHS: All opposed? Thank you  
very much.

(Time noted: 8:36 p.m.)

C E R T I F I C A T I O N

I, LINDA FISHER, a Registered Professional Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

LINDA FISHER, RPR  
Shorthand Reporter