

CITY OF CORAL GABLES
CHARTER REVIEW COMMITTEE
VERBATIM TRANSCRIPT
CORAL GABLES CITY HALL
405 BILTMORE WAY, COMMISSION CHAMBERS
CORAL GABLES, FLORIDA
MONDAY, OCTOBER 19, 2015, COMMENCING AT 7:07 P.M.

Board Members Present:

Raul Valdes-Fauli, Chairman
Tom Korge
Angelique Ortega-Fridman
William Bonn
Parker D. Thomson
Richard Dewitt

 **ORIGINAL**

City Staff and Consultants:

Craig E. Leen, City Attorney
Miriam Ramos, Deputy City Attorney
Yaneris Figueroa, Assistant City Attorney
Walter Forman, City Clerk

2015 NOV - 6 PM 1:47

CITY OF CORAL GABLES
RECEIVED BY THE
OFFICE OF THE CITY CLERK

1 THEREUPON:

2 (The following proceedings were held:)

3 CHAIRMAN VALDES-FAULI: It's seven minutes past
4 7:00, and this is a public hearing of our Charter
5 Review Committee of the City of Coral Gables. This
6 is our fourth meeting.

7 And, Mr. City Attorney, do you have any comments
8 or shall we get on to prior business?

9 MR. LEEN: Thank you, Mr. Mayor, Mr. Chair.
10 The -- we have a number of proposed items based on
11 the instructions of the Committee. I'll also have
12 some comments at the end when we get to New Business.

13 And we also have a guest speaker, Ms. Thornton,
14 who was the former Deputy City Attorney, regarding
15 the Charter later in the proceedings. So it should
16 be a -- a good day today. And these items are
17 prepared for -- for a vote or for amendment. And you
18 could always vote on them with -- with the amendment
19 and we could put those in --

20 CHAIRMAN VALDES-FAULI: I would like to, if
21 possible, to vote on whatever comes up and just start
22 disposing of items in order to get to a conclusion.

23 And the first item to come is Proposed Amendment
24 to Section 15 regarding the Mayor's appointment of
25 the Vice Mayor.

1 As I -- as has been discussed, it has been
2 traditional for the Mayor -- I mean, always the Mayor
3 has appointed the Vice Mayor, even if that's not
4 in the Charter, and I think that makes perfect sense
5 because the Vice Mayor substitutes for the Mayor.

6 The only change I see here is that in the event
7 the Vice Mayor, the Mayor being absent, is unable to
8 undertake the Mayor's responsibilities, the
9 Commission as a whole shall appoint a Commissioner to
10 undertake the Mayor's duties, which I think is
11 logical.

12 MR. LEEN: Two -- two points, Mr. Chair. There's
13 a sentence that would be added to this, and I'm sorry
14 for the -- the late change, but before, in the event
15 of the Mayor's absence or disability, it would say
16 the Vice Mayor shall be appointed by the Mayor.

17 CHAIRMAN VALDES-FAULI: Yes.

18 MR. LEEN: And then one thing I would suggest for
19 the Committee to consider, is in the last sentence,
20 in the event that the Vice Mayor's unable to
21 undertake the Mayor's responsibilities, instead of
22 the Commission as a whole, I would recommend that say
23 the Mayor shall appoint a Commissioner to undertake
24 the Mayor's duties, the reason being that sometimes
25 this comes up when we get to a Mayoral signature on

1 a resolution or ordinance, it may be a month until
2 the Commission meets again during the summer or
3 during the holidays, and it would be useful if the
4 Mayor's out of town and the Vice Mayor's out of town,
5 to have the Mayor --

6 CHAIRMAN VALDES-FAULI: Okay.

7 MR. LEEN: -- be able to appoint a member of the
8 Commission to sign as opposed to the Commission.

9 CHAIRMAN VALDES-FAULI: That sounds logical, and
10 I don't think it's ever happened, but that sounds
11 logical to -- to -- yeah --

12 MR. LEEN: This is to -- suggested changes.

13 CHAIRMAN VALDES-FAULI: -- to provide for that.

14 Any objections to this being adopted?

15 MR. DEWITT: No. Actually, that makes a lot of
16 sense since the Mayor can always change the Vice
17 Mayor anyway. Right?

18 CHAIRMAN VALDES-FAULI: Okay.

19 All those in favor say "aye."

20 MR. KORGE: Aye.

21 MR. BONN: Aye.

22 MS. ORTEGA-FRIDMAN: Aye.

23 CHAIRMAN VALDES-FAULI: Opposed? Likewise.

24 All right.

25 Second: Section 11 of the City Code. And this

1 is removal of members of the Commission.

2 And this was a very controversial item.

3 And I think you proposed a -- or somebody -- you
4 did?

5 MR. DEWITT: No, I think --

6 MR. KORGE: Yeah, I -- I said --

7 CHAIRMAN VALDES-FAULI: Oh, you did.

8 MR. KORGE: -- the others sub- --

9 CHAIRMAN VALDES-FAULI: Yeah, you did.

10 MR. KORGE: -- substituted what Craig had
11 provided us.

12 CHAIRMAN VALDES-FAULI: Yeah. I looked that way
13 because he was --

14 MR. LEEN: Yes. Mr. Chair, there are two
15 proposed amendments for your consideration. One was
16 drafted by my office, and what it did was, it -- it
17 limited to some extent the reasons by which a member
18 could be expelled by a four-fifths vote and it
19 provided some -- some grounds, which would be that
20 there has to be a significant, another word we could
21 use is material, but we used significant violation as
22 determined by the City Commission. So they would be
23 the judge of that.

24 And then we listed what -- what it could be. It
25 could be the Charter, the Code of Ethics for the

1 State, the Code of Ethics for the County or the
2 City's Code of Ethics. The thinking being that there
3 are some provisions in the Charter, the one I can
4 think of off hand is the Interference Provision,
5 which says that if a member of the Commission directs
6 a member of the City staff underneath the Manager in
7 a performance of their function it -- it is an
8 automatic forfeiture of office. Well, there's never
9 been any provision that addresses that or who would
10 determine that. This is saying that the Commission
11 would determine that, essentially.

12 Likewise, if there's a significant violation of
13 the Ethics Code, this would allow the Commission to
14 be the judge of that.

15 Now I'm going to turn it over to Mr. Korge. He
16 also has presented an Amendment, which I met with him
17 and in my opinion is legally sufficient to the extent
18 this provision is legally sufficient.

19 And I need to make a caveat. If you look at the
20 case law in this area, there's -- there's not much
21 law addressing these type of provisions by the
22 Commission. As you're all aware, the Governor under
23 State law generally has the ability to suspend
24 members of the Commission for a felony, for example,
25 and then once that's resolved the Governor --

1 basically the suspension ends and the person comes
2 back. If the person is found guilty, the person is
3 removed.

4 So one concern raised by Mr. Korge before, which
5 is a legitimate concern, was that well, if the
6 Governor has this authority by State law, how does
7 the City have authority as well to remove someone?

8 My thinking was -- I had two responses. First --
9 and there's not case law in this area so we're
10 exercising our judgment here, legal judgment, is that
11 this is a provision that was in the compiled Charter
12 so it has the -- it was -- it was part of a Special
13 Act, it's a Special Act of the Legislature, so the
14 thinking is that the Legislature has permitted it,
15 it's an old provision, and we could go ahead and
16 enforce it in the appropriate circumstance.

17 Alternatively, the thinking was well, as long as
18 they're not interfering with the Governor's use of
19 authority, and this is under a different standard,
20 for example, a preponderance of the evidence standard
21 whereby the Commission has a hearing and decides, you
22 know, yeah, maybe they didn't commit a felony but we
23 still think that the conduct was unbecoming of a
24 Mayor, or unethical, or something like that and we
25 can remove by a four-fifths vote. That wouldn't be

1 directly contrary to the Governor's authority to
2 remove in the case of a felony, for example. That
3 was the thinking behind it.

4 But I have to tell you, if -- if an elected
5 official was removed using this provision, it's very
6 likely they would challenge it, as was seen recently
7 with Mayor Pizzi. It wasn't exactly the same
8 position -- same issue, and I'm referring by Mayor
9 Pizzi, of course, to Miami Lakes. They had the same
10 issue. It was a major case when he was suspended by
11 the Governor and then a new mayor came in under a
12 provision in the -- in the City Charter and that new
13 Mayor was elected, and then there was a -- basically
14 a contest -- a lawsuit between the new mayor and the
15 suspended mayor when -- when his -- when he was
16 acquitted in his case.

17 And so, you know, based on that I have to -- I
18 have to assume that there could be a -- a lawsuit if
19 the City ever exercised this authority.

20 Nevertheless, the authority may be useful to the
21 Commission in the appropriate circumstance, and it
22 may be something where they want to act, where
23 someone does something very inappropriate but doesn't
24 qualify for removal, permanent suspension and removal
25 by the Governor.

1 So with that I would turn it to you, and to Mr.
2 Korge to talk about his proposed amendment.

3 CHAIRMAN VALDES-FAULI: Talk about your --
4 yeah --

5 MR. LEEN: He attempts to address this issue.

6 MR. KORGE: Right.

7 So I took a different approach and looked at it
8 from a different perspective. I started with the
9 Florida Constitution which sets forth the bases on
10 which the Governor could remove a municipal officer,
11 and then went to the general -- general law, which
12 basically follows the Constitution. And then I asked
13 myself, what were we trying to do here?

14 What were we trying to do was set some sort of a
15 basis or standard by which the Commission would be
16 permitted to remove a member of the Commission. And
17 quite frankly, I took a very simplistic approach;
18 well, if the Constitution permits this for the
19 Governor on these standards, these standards should
20 certainly withstand judicial scrutiny if the
21 Commission doesn't. That doesn't really address the
22 question of whether the Commission even can
23 constitutionally remove a member of the Commission.

24 I don't -- as you said, there's no case law on
25 that so I don't know what the answer would be, and

1 that would be litigated in any event.

2 So this -- my proposal doesn't really eliminate
3 litigation. It simply addresses the -- the bases on
4 which to remove. If, if -- and I mean this does
5 not -- this alternative that -- that Craig prepared
6 referencing the various Ethic Codes, it seems
7 logical to me. I haven't read all those Ethics Codes
8 so I don't know what within those Ethics Codes would
9 constitute or might constitute a basis for removal,
10 and some of them may not be appropriate. I really
11 don't know. I haven't read those. And I think if
12 we're going to adopt that standard we should really
13 look at each of those Ethics Codes and decide
14 whether there is some part of those Ethics Codes that
15 we really don't think is appropriate to serve as the
16 basis for removal of a Commissioner.

17 The rest of what I did was -- in this was to deal
18 with, number one, what -- what will the Commission be
19 able to do if the Governor suspends a Commissioner
20 pending a -- a felony indictment? And I -- I -- I
21 believe very strongly that if that occurs, whatever
22 the Commission might have been able to do otherwise
23 has to be suspended until the indictment is acted on.
24 And in the meantime, the Commissioner will have been
25 suspended and the Commission will have appointed a

1 substitute during the period that the indictment is
2 pending.

3 And if the indictment is resolved in favor of the
4 Commissioner, then the Commission could come back on
5 the bases set forth in the statute and the
6 Constitution, which is broader than felony
7 convictions, to make an independent determination,
8 if the Commission wants to, to expel that member.

9 And then I've got some language in here dealing
10 with what happens in the interim with respect to the
11 existing law that provides that, you know, while
12 they're suspended they're still entitled to whatever
13 compensation and emoluments and so forth, this is out
14 of the statute, would otherwise be payable so we
15 don't get caught in a trap like that where we end up
16 doing something in excess of the authority permitted
17 by the Florida statutes.

18 And then the Amendment Section 8 basically
19 addresses the -- the election issue. That is, when
20 the Governor suspends an indicted Commissioner, that
21 Commission will appoint a temporary replacement.

22 In our existing Ordin- -- our existing Charter
23 says that -- that at the next biannual election,
24 whether it's the election for that term or not --
25 that particular Commissioner's term or not, the

1 -- the temporary opening will be up for -- for
2 reelection. And the -- the election of that
3 successor will only last as -- I think I -- from my
4 reading of the Pizzi Statute is only going to last as
5 long as the suspension lasts.

6 So if after that next biannual election the
7 temporary Commissioner, for example, is elected and
8 then the suspended Commission is -- is acquitted and
9 restored to office, which is automatic under the
10 statutes --

11 CHAIRMAN VALDES-FAULI: I don't think -- if his
12 time is up.

13 MR. KORGE: That's --

14 CHAIRMAN VALDES-FAULI: If his term is up.

15 MR. KORGE: No, if his term is not up.

16 CHAIRMAN VALDES-FAULI: Oh, if it isn't up, yeah.

17 MR. KORGE: Right.

18 CHAIRMAN VALDES-FAULI: Yeah, yeah.

19 MR. KORGE: So, for example, one year into the
20 term a Commissioner is indicted, and then two years
21 into the term the temporary Commissioner still being
22 there has to run for -- for election. Runs for
23 election, gets elected. Six months later the -- the
24 -- the suspended Commissioner is acquitted. That's,
25 under the statutes --

1 CHAIRMAN VALDES-FAULI: Reinstated.

2 MR. KORGE: That's the Pizzi Case.

3 CHAIRMAN VALDES-FAULI: But not if --

4 MR. KORGE: So I would add a section to Section 8
5 to make it very clear that we're not trying -- we're
6 not doing something that would contradict the result
7 of the Pizzi case.

8 CHAIRMAN VALDES-FAULI: Okay.

9 MR. KORGE: Stated most simply.

10 So that's what I did. And I think the real --
11 the real difference, if you cut through all of that,
12 legalese, the real question is, do we want to rely on
13 the constitutional and statutory basis for removal or
14 do we want to rely on these various ethics and also
15 the Charter? I mean that's a different -- the one
16 instance of the Charter removal for interfering with
17 -- with one of the employees, for example.

18 So those are the questions. I mean I'm not
19 wedded to anything in particular but if -- I feel --
20 I do feel that if we're going to go with -- with what
21 the -- the City Attorney's has recommended here or
22 suggested, namely relying on the various Ethics
23 Codes, violations of the Ethics Codes as the basis
24 for expelling a member, then we really should not act
25 yet, but should before the next meeting review,

1 unless you've already done that and can tell us
2 you're very comfortable with all the bases that --
3 that exist.

4 MR. LEEN: Well, there are -- there are
5 immaterial -- no violation of an Ethics Code is
6 immaterial in the sense that everyone should try to
7 comply with Ethics Codes. I think that that's the
8 view in Coral Gables. That's the way that we --
9 that we operate. However, there are some violations,
10 for example, let's say that a gift is accepted over
11 \$100 and it's not reported. I don't know if a
12 Commissioner should be removed from office for
13 something like that.

14 If a Commissioner has a recurring conflict of
15 interest, though, that prevents the Commissioner,
16 based on their job that prevents them from being a
17 Commissioner and that causes an issue for the
18 Commission being able to have a quorum, for example,
19 on a number of occasions, that may be -- or if the
20 Commissioner votes notwithstanding the conflict of
21 interest repeatedly, or even once maybe, I think that
22 that may be a basis to consider, you know, removal
23 from office. I'm not -- That's ultimately up to the
24 Commission.

25 Another issue would be a significant Sunshine

1 violation. If -- if -- if Commissioners are meeting
2 in secret and they do it repeatedly in knowing
3 violation of the Sunshine Law, that -- that could
4 be a ground. That would be a significant violation.

5 MR. DEWITT: You'd have a hard time getting a
6 four-fifths vote though, if there's more than one of
7 them meeting --

8 CHAIRMAN VALDES-FAULI: I'm sorry --

9 MR. LEEN: I'm just -- I'm just -- I just -- I
10 don't think that this should be exercised much.

11 MR. THOMSON: You're suggesting --

12 MR. LEEN: It should be very rare.

13 CHAIRMAN VALDES-FAULI: Let's -- let's do it in
14 order.

15 Parker?

16 MR. THOMSON: Craig, I'm a bit confused.
17 Violating the Sunshine Law, at least would be a
18 crime.

19 If the Governor elects not to suspend them, are
20 you suggesting that then the Commission should have
21 the right to expend -- suspend him despite the
22 fact that the Florida Legislature has commissioned
23 the Governor to suspend in the case of a crime?

24 MR. LEEN: Well, let me give you an example.

25 A violation of the Sunshine or Public Records

1 Law -- let's say, for example, a Commissioner is not
2 providing public records even though they had the
3 clear duty to do so and they disagree with the City
4 Attorney's opinion, or a clear violation of the
5 Sunshine Law -- first of all, I believe those are
6 misdemeanors. I don't -- I don't believe they're
7 felonies.

8 Do you -- do you happen to know?

9 MS. RAMOS: They're misdemeanors.

10 MR. LEEN: They're misdemeanors.

11 And second of all, they may not be prosecuted.
12 It's very rare that there's a prosecution of the
13 Sunshine Law or the Public Records Law, and yet they
14 still cause significant issues for the City because
15 they expose us to liability.

16 For example, if there's a significant Sunshine
17 Law violation, regardless of whether it's intentional
18 or not, it can lead to the undoing of any action that
19 occurred after the Sunshine Law violation occurred.

20 Likewise, Public Records Law, if -- if there's a
21 refusal to provide public records, the City gets sued
22 and ultimately we would be liable for attorney's
23 fees.

24 Now, I'm not saying that that's going to be
25 sufficient for removal. I just wanted to give you

1 some examples of more material violations.

2 The concern I have right now is under the
3 four-fifths vote clause. I'll -- I'll be very clear
4 with my concern, there's no -- it's for misconduct,
5 but misconduct can be -- can be anything.

6 Now, I've issued a City Attorney opinion,
7 proposed City Attorney opinion, trying to define
8 what misconduct would be based on State law. But
9 what I don't want this provision to become from a
10 legal perspective is the ability to remove a
11 Commissioner for political reasons, or because the
12 Commissioner is unpopular or because the Commissioner
13 takes an action that's within their discretion
14 putting something on the Agenda and it's unpopular.

15 This is not a recall provision. This is not an
16 impeachment provision.

17 MR. KORGE: Let me --

18 MR. DEWITT: Tom, let me ask you a question.

19 MR. KORGE: Yeah.

20 MR. DEWITT: Would -- under your proposal, if a
21 Commissioner just didn't show up for meetings, missed
22 too many meetings, could they be removed under the --
23 under the provision you've got?

24 MR. KORGE: Not the way I read the Constitution,
25 no. The Constitution's very broad to begin with, so

1 let's start with that fact. I read at the last
2 meeting; malfeasance, misfeasance, neglect of duty,
3 drunkenness, incompetence, permanent inability to
4 perform official duties or commission of a felony.

5 The Constitution states -- address your concern,
6 Parker, because I have the same concern. It says,
7 Article 4, Section 7C, 'by order of the Governor, any
8 elected municipal official indicted for a crime
9 may be suspended from office until acquitted, an
10 office filled by appointment for a period of
11 suspension not to extend beyond the term unless these
12 powers are vested elsewhere by law or the municipal
13 Charter.'

14 So, I -- I mean I really don't even know what
15 powers under the municipal Charter we really would
16 have if we exercised it, if the Commission
17 exercised these powers, whatever -- whatever --
18 how ever we defined it would ultimately hold up. But
19 if we're going to give the Commission the power it
20 just seemed to me that it would narrow the -- the
21 bases to challenge the action if the bases for
22 removal were the same that the Governor has under the
23 statutes, okay, and -- and the Constitution.

24 Now, I know that doesn't lend a lot of clarity
25 because I read you the bases and that's not --

1 MR. DEWITT: Well, was neglect of duty one of
2 them?

3 MR. KORGE: Pardon me?

4 MR. DEWITT: Neglect of duty was one of the
5 bases?

6 MR. KORGE: Neglect of duty --

7 MR. DEWITT: So not showing up for Commission
8 meetings would be neglect of duty?

9 MR. KORGE: Yeah, it could be.

10 MR. DEWITT: Could be, yeah.

11 MR. KORGE: Now, if we wanted to be more narrow,
12 then we could be more narrow, I suppose, and have
13 the Commission vest with the Commission under the
14 Charter that power only for very certain specific
15 acts. I don't know.

16 I mean, I don't have an answer because there's no
17 case law really addressing that much. The most
18 recent case, as I said, was the Pizzi case, and in
19 that case the issue was just, you know, whether the
20 person who was elected in the intervening election
21 before the term of the mayor expired would keep that
22 office after the -- the mayor was acquitted. And the
23 court ruled no, that under the statute the suspension
24 was temporary and that -- that's going to supercede
25 any other decision, so...

1 MR. LEEN: Mr. Chair, if I could add something
2 in relation to that.

3 MR. KORGE: Yes.

4 MR. LEEN: And I -- I misspoke. What I meant to
5 say was, this is not a recall provision. It's more
6 like an impeachment provision, not that it's not an
7 impeachment provision.

8 My concern is, for example, although I don't
9 necessarily like to speak about it, it's -- to remove
10 the City Attorney or the City Manager or the
11 City Clerk is a three-fifths vote. But that's at
12 the pleasure of the Commission, and they can do that
13 for any reason they desire.

14 MR. KORGE: Right.

15 MR. LEEN: I don't think that this four-fifths
16 provision should be the same.

17 MR. KORGE: Right.

18 MR. LEEN: This should not just be because the
19 other four Commissioners don't agree with the fifth
20 Commissioner, because they've been elected by the
21 people.

22 So in my view it should be restricted to a
23 -- a legally sufficient -- a legally worthwhile --
24 a legally warranted basis. And, you know, ultimately
25 it's up to you and the Commission what that would be.

1 But if we're going to -- if we're going to amend
2 it, I would recommend putting -- either doing what
3 Mr. Korge recommended, which is make it directly
4 consistent with State law, recognizing the Governor's
5 authority, or providing different grounds for removal
6 that are separate from -- from the grounds that the
7 Governor has, and here it would be because of
8 these -- the specific violation of these provisions.

9 MR. KORGE: Well, the other -- the other
10 alternative is to take some of the grounds for which
11 the Governor could remove somebody and limit it to
12 those that we think are appropriate for the
13 Commission to remove them.

14 I really -- honestly, I don't know. It's very
15 amorphous. I mean I don't -- I don't know what the
16 right standard should be. I -- I was -- I kind of
17 like the idea of referring back to the -- the Code of
18 Ethics and so forth because that makes some sense to
19 me.

20 But there again, as you pointed out, you know,
21 a gift more than \$100 that isn't reported, that to me
22 is kind of a petty reason to remove a Commissioner.
23 And presumably, if the removal occurred for that
24 reason, the real reason is because they -- they don't
25 want that Commissioner on anymore, for whatever real

1 reason. There may be political reasons. So I -- I
2 don't know.

3 MR. THOMSON: Mr. Chair --

4 MR. KORGE: But I do feel very strongly that
5 referencing the -- the bases set forth in the
6 Constitution is a good starting point because it's
7 less susceptible to being challenged as invalid on
8 its face. You know?

9 CHAIRMAN VALDES-FAULI: Parker?

10 MR. THOMSON: First, a question to the City
11 Attorney.

12 As I understand from looking at Charter, there
13 are three bases in the Charter for a member of the
14 Commission to be terminated. One is, he moves out of
15 the City, he or she.

16 The second is that he interferes with the City
17 Manager by directly ordering an employee to do
18 something.

19 And the third is this misconduct provision. Am I
20 correct? Is there any other reason? Because I was
21 going to suggest that the instances that you --

22 MR. LEEN: Also --

23 MR. THOMSON: -- brought up, plus another one
24 that is not in here, are all capacity decisions.

25 It does seem to me if there -- if a Commissioner

1 becomes incapacitated -- now, there are various ways
2 of defining incapacitated. One would be that he has
3 a conflict of interest so that he can't -- he is not
4 capable of acting; two, he doesn't come to --

5 CHAIRMAN VALDES-FAULI: Meetings.

6 MR. THOMSON: -- Commission meetings. I would
7 rather deal with an incapacity clause as a ground
8 for removing a Commissioner rather than going through
9 all of these standards. Because if the person is
10 capable -- as I said at the last meeting, that person
11 was as much elected by the people as the other
12 four-fifths, and I have grave reservations about
13 suspending the -- the -- a -- a Commissioner except
14 on an objective standard, and in- -- incapacity is
15 something that can be objectively determined.

16 Your suggestion turns to the judgment of the
17 Commission about ethical issues, Charter provisions.

18 So I find them all problematic. But what you
19 suggested as conceivable problems all seem, to me,
20 to deal with lack of capacity.

21 CHAIRMAN VALDES-FAULI: So what -- what would you
22 suggest?

23 MR. THOMSON: I would suggest that I would, you
24 know, that I'd like look at language, but I would
25 be -- I would try and figure out a different --

1 first place, I'd love to see all the qualification
2 provisions put in one section so that the people know
3 what a Commissioner can be kicked out for without
4 having to read a Charter, I mean a whole Charter.
5 But I could see adding a capacity clause as a
6 legitimate City conclusion because if a person is
7 incapable of serving as a Commission, then the
8 people's choice just doesn't work.

9 MR. KORGE: Well, the -- the -- in that case, if
10 we go with that, the phrase that's in the
11 Constitution, that I would suggest is a good phrase
12 to use to define that very generally, is permanent
13 inability to perform official duties.

14 Now, what that would mean, I guess, is a case by
15 case determination, and, you know, I don't know that
16 we want to illuminate that further or not.

17 MR. THOMSON: Well, that -- that's another way
18 of -- I -- I would -- I think those words would be --
19 are the kind of thing you're talking about. There
20 are various word smithing that could be done to
21 determine capacity, Tom. I think your -- that those
22 words may -- may be the right ones.

23 CHAIRMAN VALDES-FAULI: Except a permanent
24 inability may mean death. I mean what if he's
25 incapacitated for six months -- or she?

1 MR. KORGE: I -- I don't know. I don't know if
2 there are any cases dealing with that. That's the
3 -- that's the whole point. But the phrase is out of
4 the Constitution. So I feel pretty good, if I had to
5 defend this, that I could go to a court and say look,
6 phrase is in the Constitution, certainly that's a
7 legitimate basis to remove a Commissioner, to expel a
8 Commissioner, and here's why we think it's a
9 permanent inability to perform the -- the official
10 functions or official duties of the Commissioner. I
11 don't know what that would be, you know, and, you
12 know, I suspect that a Commission would be very
13 reluctant, especially like this -- Commission like
14 City of Coral Gables to exercise that power.

15 CHAIRMAN VALDES-FAULI: Very reluctant, yeah.

16 MR. KORGE: But I mean, I don't know what to say.

17 It's -- we can leave it the way it is. At least
18 the one advantage of the way it's written is that it
19 was adopted pursuant to a Special Act and therefore
20 arguably will be valid no matter what.

21 It doesn't define what misconduct in office would
22 be, but, you know, arguably it predates the
23 Constitution, the current version of the
24 Constitution, and thus is valid as a matter of
25 Florida law.

1 MR. DEWITT: Chairman --

2 MR. KORGE: I -- I would start with trying to
3 make sure we have something that's valid.

4 CHAIRMAN VALDES-FAULI: Richard?

5 MR. DEWITT: Yeah. I think I'd prefer to have
6 something that's more specific and -- and if --
7 whatever the spe- -- the specificity is that we set.

8 The other issue I have, though, is the seven day
9 provision. I think that's sort of a very short fuse.
10 And we're talking about removing somebody who's an
11 elected official, I think seven days is -- you
12 know -- one day -- one week you're here, the next
13 week you're not. I think that's not giving due
14 process, that's not giving the time for somebody to
15 even find a -- put together a defense and trying to
16 stay in office, to protect their office if there's
17 going to be a hearing or something, so I would prefer
18 that we at least make it two or three weeks, 21 days,
19 20 days --

20 CHAIRMAN VALDES-FAULI: 15 days.

21 MR. DEWITT: 15, whatever, but more than
22 seven days; two weeks.

23 CHAIRMAN VALDES-FAULI: But that -- okay. But
24 let's get back to the --

25 MR. DEWITT: Yeah. I was just getting into --

1 CHAIRMAN VALDES-FAULI: Yeah, I agree with that,
2 but --

3 What's the feeling of the Board, the Committee?

4 MS. ORTEGA-FILDMAN: I'm sorry? Oh, I --

5 CHAIRMAN VALDES-FAULI: Yes.

6 MS. ORTEGA-FILDMAN: -- I would just say, I would
7 -- I think that I -- I have a handle on everyone
8 believing that this is inherently something that the
9 Commission should retain is the power to remove.

10 CHAIRMAN VALDES-FAULI: Yes.

11 MS. ORTEGA-FILDMAN: Beyond that, I absolutely
12 agree that there should be enumerated instances. So
13 in addition to the laws, the City interferes with the
14 Manager and misconduct, incapacitation either as
15 defined by us or as defined -- I know you could
16 provide -- do that by -- well, I guess you can't
17 really do that by ordinance, but incapacitation,
18 absence -- what is -- what is an excessive absence?
19 I don't know if you want to define it in terms of X
20 number of missed meetings or consecutive missed
21 meetings, conflict of interest that prevents them
22 from voting on a certain number of items. I'm not
23 sure that that is a level of specificity that should
24 be in a Charter, but --

25 CHAIRMAN VALDES-FAULI: Some Charters, and I

1 think Pinecrest does -- provides for three excused
2 and six unexcused or --

3 MR. KORGE: Is that enforceable?

4 CHAIRMAN VALDES-FAULI: I have no idea.

5 MR. KORGE: Well, that's the point -- that's the
6 point I've been trying to make.

7 CHAIRMAN VALDES-FAULI: Yeah.

8 MR. KORGE: You know. So we're putting something
9 in and we don't know if it's going to be valid.
10 That's what -- that's why I went the way I went.
11 That's the only reason I went that way.

12 MS. ORTEGA-FILDMAN: I have a question.

13 CHAIRMAN VALDES-FAULI: What's -- what's the
14 feeling with going with the City Attorney's proposal
15 and Tom's proposal? I mean, let's discuss each one
16 of them.

17 MR. BONN: I've listened to the discussion, I've
18 read all the materials, and I'm -- although I like
19 the idea of referring back to, you know, as the City
20 Attorney suggested, certain Ethics Codes and
21 ordinances and whatnot, I also think there's a lot to
22 be said for following in the footsteps of what law
23 there is on the subject, and especially going back to
24 the Constitution as Mr. Korge has recommended.

25 And I think that specificity is -- is good, but

1 sometimes flexibility is important too, you know,
2 because you don't really know what could be the issue
3 at the time.

4 I'm mindful of the fact that we don't want
5 someone to be taken out of office just for -- because
6 they're unpopular. But I think going back to the
7 standards there in -- in the Constitution following
8 with what Mr. Korge has proposed, I'm not sure that
9 would happen.

10 CHAIRMAN VALDES-FAULI: I think that would be
11 extremely unlikely for it to happen, but we are
12 drafting the Charter so, you know, we have to take
13 those contingencies into -- into mind.

14 Parker?

15 MR. THOMSON: I could not vote in favor of either
16 of the suggested changes.

17 I would vote and recommend an additional grounds
18 for removal of incapacity as the City Attorney might
19 draft and submit, and I would recommend removing the
20 current Section 11 and substituting something that
21 first grouped all the methods of -- of relieving the
22 Commissioner of her or his post, and adding an
23 incapacity clause.

24 CHAIRMAN VALDES-FAULI: Would you -- would you
25 feel comfortable with the City Attorney's proposal

1 adding the incapacity?

2 MR. THOMSON: No, I think that I could not
3 because all of this leaves it to the subjective
4 judgment of four Commissioners and I frankly don't
5 trust the subjective judgment of four Commissioners
6 as being ever objective. I think it's going to
7 include all of the factors, people that are angry at
8 one person because they don't think that -- that
9 Commissioner is performing with due decorum or is
10 being extremely difficult or whatever.

11 CHAIRMAN VALDES-FAULI: What about violation of,
12 you know, of --

13 MR. THOMSON: Violation of law I would, frankly,
14 leave to the Governor.

15 MR. KORGE: Well, let me make a couple
16 observations here, and I'm not -- I'm not disagreeing
17 with you necessarily. But first of all, I read some
18 of the cases and there -- you just can't -- there has
19 to be evidence substantiating the basis, and the
20 basis, whatever it is, has to be set forth before
21 there's a hearing on it. So I don't think -- and in
22 fact, there was one case where -- I can't remember
23 the facts exactly, but there had been a basis, but
24 they found a different basis than the one that was
25 set forth and the court said, you know, that's --

1 that may be a good basis to remove somebody or
2 to suspend somebody, but, you know, that wasn't the
3 basis that was originally set forth, so it
4 doesn't matter.

5 The second point I make is that, what do we do if
6 there's a -- an indictment for a felony, say bribery.
7 And although there's a preponderance of evidence
8 indicating the crime was committed, there is only
9 a preponderance of evidence. There is not -- there
10 is some reasonable doubt. Therefore, the Defendant
11 is acquitted, the Governor by -- by law has to -- the
12 person's automatically restored by law. So would
13 we then say that that person cannot be removed
14 further by the -- is that what you're saying, that
15 the -- that person under those facts could not be
16 expelled by the rest of the Commission?

17 I'm not sure I have a problem with not
18 expelling them and leaving it solely to the criminal
19 proceeding, but that's -- that's the fact that we're
20 most likely to find. That was the Pizzi case.

21 CHAIRMAN VALDES-FAULI: Let me put -- yeah, but
22 let me bring something up here.

23 Parker, I see that you're very, very difficult --
24 I mean very troubled by the ability of the Commission
25 to expel someone. But there are instances, or there

1 may be instances where the violation, the grievance,
2 the whatever, is very severe, very serious in a city
3 like Coral Gables where we have never had this and
4 the Governor takes no action, and I think the
5 Commission should have the right to bring this up,
6 have the Commissioner in question, 15-day notice and
7 oppose it and then he could take us to court, he can
8 take the City to court. If you give him a remedy, I
9 think that maybe your troubles may be lessened
10 because it -- it is not automatic and then he doesn't
11 have a recourse. I mean, I think that he would have
12 the ability to appeal and the ability to take the
13 City to court.

14 Yes?

15 MR. DEWITT: After listening to the discussion, I
16 -- I think -- I'm -- I am concerned about a
17 Commissioner being removed for political reasons and
18 whatnot, as Parker is.

19 I think Tom's approach is a narrower and more
20 conservative approach, and probably more defensible
21 because of the -- the open-endedness of the other
22 side. I would actually support Tom's approach with
23 a longer period of time before the hearing so --

24 CHAIRMAN VALDES-FAULI: Okay.

25 MR. BONN: I would agree --

1 CHAIRMAN VALDES-FAULI: Mr. Bonn?

2 MR. BONN: I would agree with Mr. Dewitt.

3 CHAIRMAN VALDES-FAULI: You? What do you think?

4 MS. ORTEGA-FILDMAN: I would agree with Mr.
5 Thomson. I would -- a lot of this is self-regulating
6 in the sense that if you're indicted, by the time you
7 go to trial and are acquitted your term is going to
8 be up anyway, so...

9 CHAIRMAN VALDES-FAULI: Not necessarily though.

10 MS. ORTEGA-FILDMAN: Not necessarily, but
11 probably in the overwhelming majority of the cases.
12 So what we're dealing with is the, you know, due --

13 MR. DEWITT: I think we're dealing with -- the
14 reason I'm saying this, is after hearing what some of
15 the grounds were for the Governor, that I -- I think
16 that there's things that are not going to hit the
17 Governor's radar and things that might be very
18 important to us here as a city and -- and not
19 important to a sitting Governor that the Commission
20 has to have some authority to do that even though it
21 should be used, you know, very cautiously and --

22 CHAIRMAN VALDES-FAULI: Would you like --

23 MR. DEWITT: -- and the reason I like Tom's is I
24 think it's more conservative and more predictable --

25 CHAIRMAN VALDES-FAULI: Would you like to make a

1 motion?

2 MR. DEWITT: I'll make a motion that we adopt
3 that --

4 CHAIRMAN VALDES-FAULI: Is there a second?

5 MR. DEWITT: -- with the -- at least a 15-day --

6 CHAIRMAN VALDES-FAULI: Yeah.

7 MR. BONN: I would -- I would second that, yes.

8 CHAIRMAN VALDES-FAULI: Okay. Discussion?

9 MR. THOMSON: Well, I've already said that I
10 cannot support that.

11 CHAIRMAN VALDES-FAULI: Okay. That's --
12 that's --

13 MR. KORGE: I'm torn myself, I've got to
14 say. I mean Parker makes a persuasive case that we
15 should limit it just to inability to perform,
16 essentially; incapacity.

17 CHAIRMAN VALDES-FAULI: But I think that -- I
18 think it should be much broader than that, and it
19 hasn't happened, but it may happen. I mean conflict
20 of interest we have in some of the Boards, conflict
21 of interest cases, not -- not getting to the severity
22 that would call for something like this, but I think
23 the Commission should have the ability to police its
24 own members, and I'm very much for having this for
25 grounds other than incapacity and then definition of

1 incapacity would be troublesome itself.

2 Let's take a vote. All those in favor?

3 MR. DEWITT: Aye.

4 MR. BONN: Aye.

5 MR. KORGE: Aye.

6 CHAIRMAN VALDES-FAULI: You?

7 MS. ORTEGA-FILDMAN: Oh, I'm opposed.

8 CHAIRMAN VALDES-FAULI: You're opposed.

9 You're opposed?

10 MR. THOMSON: Opposed.

11 CHAIRMAN VALDES-FAULI: And I am for.

12 All right. It Passes.

13 Okay. The next item is Review of Proposed
14 Amendment of Section 8 establishing a runoff
15 election.

16 We did -- Section 8 here. We approved the two
17 year term for the Mayor, we approved the five
18 Commissioners. We approved all of this. And we
19 approved the runoff.

20 When I thought about this, we have to have 15
21 days for the runoff. If the runoff is in a week, it
22 takes a week to get an ad in the Miami Herald, it
23 takes a week to -- you know, in order to get anything
24 on the Thursday Herald you have to have it ready by
25 Monday.

1 MR. KORGE: We have to advertise the election.

2 CHAIRMAN VALDES-FAULI: Huh?

3 MR. KORGE: We have to advertise the election.

4 CHAIRMAN VALDES-FAULI: Yeah. I mean there are -
5 -- 15 days I think would be logical. And then
6 there's usually one Commission meeting in April.
7 We can have the Commission taking office three days
8 after the 14 days, and I don't see any -- any problem
9 with that from a practical point of view.

10 So I would listen to -- I would entertain a
11 motion to have this as it is and have 15 days -- or
12 -- or 14 days versus seven for the runoff.

13 We've already approved them. It's not
14 something --

15 MR. KORGE: I'll make that motion.

16 I didn't really think about the 14 days till you
17 mentioned it.

18 I just want to point out, I think that it could
19 use one more rewrite. It was a little ambiguous.

20 CHAIRMAN VALDES-FAULI: Yes, yes, but the
21 concept --

22 MR. KORGE: The principle -- the concept sounds
23 fine.

24 CHAIRMAN VALDES-FAULI: All those in favor say
25 "aye."

1 MS. ORTEGA-FILDMAN: I have a question. We have
2 two -- two before us. We have one that says the
3 Tuesday after, and the other one says -- well, the
4 first Tuesday following the general election.

5 CHAIRMAN VALDES-FAULI: No, it has to be the
6 second Tuesday --

7 MS. ORTEGA-FILDMAN: -- and the other one says
8 two weeks.

9 CHAIRMAN VALDES-FAULI: -- that's what we're
10 amending.

11 MR. KORGE: Right.

12 MS. ORTEGA-FILDMAN: Right. So you're saying a
13 runoff shall be held two weeks after the general
14 election on a Tuesday?

15 MR. KORGE: Right, right.

16 MS. ORTEGA-FILDMAN: That's the one where --
17 that's before us?

18 CHAIRMAN VALDES-FAULI: Right. That's correct.
19 Because having it the first Tuesday doesn't give you
20 -- I mean you don't even know if you're going to go
21 into a runoff before you have to start printing
22 things and getting ads and whatever. So it's --

23 MS. ORTEGA-FILDMAN: Sure.

24 CHAIRMAN VALDES-FAULI: All right?

25 All those in favor say "aye."

1 MR. FORMAN: Mr. Chairman --

2 MR. DEWITT: Hold on a second. I think the --

3 MR. FORMAN: Mr. Chairman --

4 CHAIRMAN VALDES-FAULI: Yes.

5 MR. FORMAN: May I make a comment?

6 CHAIRMAN VALDES-FAULI: I will think about it.

7 Of course you can.

8 MR. KORGE: Just do it, Walter. Just do it.

9 CHAIRMAN VALDES-FAULI: Yeah, just do it.

10 MR. FORMAN: In dealing with Dade County
11 Elections Department, they -- they have traditionally
12 set the timeline at three weeks instead of two weeks.
13 Three weeks allows them enough time to prep in
14 between the two elections. They have to generate the
15 master ballot, first of all, and then they have to
16 print it, it has to be stuffed, it has to be mailed,
17 it goes to the post office.

18 They have recommended to us three weeks. If you
19 were to do a primary in November, traditionally
20 there's a three week turn around from municipalities
21 if they're on the -- if they were piggy-backing on
22 -- on the general election of November, it would
23 be --

24 CHAIRMAN VALDES-FAULI: Could they -- we've
25 decided April so let's not touch that. Could they do

1 two weeks?

2 MR. FORMAN: They said it's not practical, two
3 weeks. That's why I wanted to -- to make that
4 comment. I've been talking with them throughout the
5 day and --

6 CHAIRMAN VALDES-FAULI: Is there any objection
7 to having it three weeks afterwards?

8 MR. KORGE: I mean I -- politically it would be
9 better to have it the next day, but, you know, I got
10 that.

11 But let me -- let me ask you a different
12 question. It's got to be three weeks if the -- if
13 the County's telling us it has to be three weeks.

14 MR. DEWITT: Then three weeks it is.

15 MR. KORGE: But -- but just -- now we've got
16 three weeks of a lame duck commissioner or
17 commissioners or mayor. Is that an issue for us at
18 all? Do we really care?

19 CHAIRMAN VALDES-FAULI: I don't think it's an
20 issue. I mean Craig could tell us, but I think, you
21 know, two weeks would be much better, but if it has
22 to be three weeks, it will be three weeks.

23 MR. LEEN: Any legal issue with three weeks?
24 There's no legal issue.

25 MR. KORGE: No, not legal, political.

1 MR. LEEN: It's just a greater lame duck period.

2 MR. KORGE: Yeah. I mean, I'm just -- I'm just
3 asking a question.

4 CHAIRMAN VALDES-FAULI: By that time -- by that
5 the new Mayor or the new Commissioners will be in and
6 they will be consulted and, you know, that's -- and
7 we have to, prior to the election, make sure that
8 everything that needs to be taken care of in the
9 month of April is taken care of.

10 MR. KORGE: And I -- and I guess if they wanted
11 to reverse something they can do that.

12 CHAIRMAN VALDES-FAULI: Yeah, and there's nothing
13 we can do about it.

14 MR. KORGE: Yeah.

15 MR. THOMSON: Mr. Chair, just a question on
16 Walter.

17 The City of Miami has -- looks like it's going
18 to have another runoff. Do they have a three week
19 period?

20 MR. FORMAN: My -- my conversation with the
21 Elections Department, they said it's pretty standard
22 amongst municipalities that they provide a three week
23 period.

24 CHAIRMAN VALDES-FAULI: Okay. So it's three
25 weeks?

1 All in favor say "aye."

2 MR. DEWITT: Aye.

3 MR. KORGE: Aye.

4 MR. THOMSON: Aye.

5 MR. BONN: Aye.

6 MR. THOMSON: Sounds to me like the Elections
7 Department runs it, so...

8 CHAIRMAN VALDES-FAULI: Yeah.

9 Opposed?

10 And even if we wanted two weeks, we couldn't have
11 it, so...

12 MR. THOMSON: That's right.

13 MR. LEEN: So they will be -- it will be in three
14 weeks now?

15 CHAIRMAN VALDES-FAULI: Three weeks.

16 MR. LEEN: And you would have -- so the runoff
17 would be in two weeks and then the vote would be in
18 three weeks?

19 CHAIRMAN VALDES-FAULI: No, no, no, the --

20 MR. LEEN: The runoff would be in three weeks?

21 CHAIRMAN VALDES-FAULI: The runoff would be in
22 three weeks which is when the Elections Department
23 can accommodate us, and then take office three
24 days after the runoff.

25 MR. LEEN: I understand.

1 I'm sorry for having to leave. There's -- we're
2 having an issue. We have to station someone
3 downstairs to make sure people can get in.

4 Jimmy Morales is outside and his car is broken
5 down, so he's waiting for AAA. And I'm sorry about
6 that. And he's --

7 CHAIRMAN VALDES-FAULI: He has problems getting
8 in?

9 MR. LEEN: Well, we -- we have someone downstairs
10 opening the door if anyone comes.

11 CHAIRMAN VALDES-FAULI: Walter opened the door
12 for me. He didn't believe me that it was locked, and
13 it was locked, yeah.

14 MR. LEEN: So we have someone stationed
15 downstairs. No one else appears to be waiting to
16 come in, but we do have someone downstairs, and a
17 police officer is coming to make sure the doors are
18 kept open.

19 CHAIRMAN VALDES-FAULI: Anything else in -- in
20 this section?

21 MR. LEEN: I wanted to raise one issue regarding
22 Section 11. It's my understanding you approved
23 Tom's --

24 CHAIRMAN VALDES-FAULI: Yes.

25 MR. LEEN: -- Mr. Korge's proposal.

1 One issue is regarding incapacity. I just wanted
2 to get your direction on that. So for incapacity,
3 which would be added to Mr. Korge's proposal, or not?

4 MR. KORGE: No.

5 MR. LEEN: So there would be no grounds for --

6 MR. KORGE: It's already in -- no, incapacity
7 is already in the proposal through the Constitution
8 and general law.

9 MR. DEWITT: Is incapacity already there?

10 MR. KORGE: General law lists -- lists inability,
11 permanent inability -- general law says --

12 MR. LEEN: The general law says for felonies and
13 for -- could you -- -- could you -- do you mind
14 reading that?

15 MR. KORGE: Sure. The Governor may suspend from
16 office any elected or appointed municipal official
17 for malfeasance, misfeasance, neglect of duty,
18 habitual drunkenness, incompetence, or permanent
19 inability to perform official duties.

20 That's the incapacity.

21 MR. LEEN: Okay.

22 CHAIRMAN VALDES-FAULI: All right.

23 Next item, New Business: Identify additional
24 Charter sections --

25 MR. DEWITT: Stop, stop for a second.

1 So if somebody's incapacitated for four or five
2 months, they're -- they're still on the Commission?

3 MR. KORGE: That I don't know. I don't know how
4 it would be interpreted by a court because I haven't
5 found any cases that interpret it. So the answer --
6 the honest answer to your question is, I don't know.

7 MR. DEWITT: Well, maybe we should take Parker's
8 advice and stick incapacity in there.

9 MR. KORGE: Well, like I said, I mean I was
10 conflicted about that but then we'd have to define
11 it specifically.

12 MR. DEWITT: Define incapacity, yeah.

13 MR. KORGE: I mean, I don't know what to say.
14 And, obviously other -- by the way, I mean I was
15 genuinely confident. Just because I drafted this
16 doesn't mean that's the only way it could have gone
17 in my mind.

18 MR. DEWITT: No, no, I understand.

19 MR. KORGE: But, you know, other -- others have
20 done it differently.

21 Pinecrest, apparently, has specified a certain
22 number of meetings missed. So we could do that as
23 well. I -- you know, in my -- in my world I would
24 have just left it alone, honestly.

25 CHAIRMAN VALDES-FAULI: My recommendation would

1 be to leave it alone. I mean --

2 MR. DEWITT: Okay.

3 CHAIRMAN VALDES-FAULI: -- it would be obvious.

4 MR. LEEN: Mr. Korge, could you read into the
5 record the section that you're -- you're relying on?

6 MR. KORGE: Sure. Florida Statute section
7 112.51. You look at paragraph 1.

8 MR. LEEN: So -- and just to get further
9 clarification, so the Commission, that would be the
10 judge of whether those are present?

11 MR. KORGE: Right, for expelling by the
12 Commission. Correct.

13 MR. LEEN: Yes. So the Commission would use --
14 so even if the Governor doesn't do it, the Commission
15 could do it on any of those grounds based on its own,
16 even if the Governor hasn't done it on one of those
17 grounds?

18 MR. KORGE: Correct.

19 MR. LEEN: Okay.

20 MR. KORGE: And if -- but if the Governor does
21 act -- and the Governor invariably acts when -- when
22 an official is indicted. And if an official is
23 indicted the Governor will act. That suspends
24 whatever the Commission might otherwise be able to do
25 until such time as the -- the matter's adjudicated

1 and the suspended person is either permanently
2 removed or restored to the Commission.

3 CHAIRMAN VALDES-FAULI: All right.

4 MR. LEEN: One other -- one other issue. I don't
5 -- I'm sorry for -- we had talked about this. I
6 don't think it was addressed by the -- by the -- by
7 the Committee. But in terms of the person that
8 replaces that Commissioner, I remember we had spoken
9 about maybe that person just being appointed.

10 MR. KORGE: Okay. Section 8, the -- I think it's
11 already appointed.

12 MR. LEEN: It's -- we used the term elected, but
13 by elected do you mean elected by the Commissioners
14 because that's how it's referred to by --

15 MR. KORGE: Yeah. I believe -- let me see.

16 MR. LEEN: Because it says the Commissioner
17 elected to fill the vacancy of the suspended
18 Commissioner. But by elected --

19 MR. THOMSON: This is tagged -- this is just
20 tagged on to Section 8.

21 MR. KORGE: So it's elected by the --

22 MR. THOMSON: It says the election is by the
23 Commission.

24 MR. KORGE: Correct. And this added sentence
25 just deals with what happens if the person is --

1 MR. THOMSON: What does the word unoccupied mean
2 now? You insert- -- you inserted the word
3 unoccupied and I don't know what that means.

4 MR. KORGE: I think I got that out of the -- the
5 current Charter. I don't know where -- oh --

6 MR. LEEN: It does say elected by the Commission.
7 Mr. Thomson's correct. It's just I -- but it's --
8 this is out of context, so I wanted to make sure
9 that you intend to mean elected by the Commission.

10 MR. KORGE: Yes.

11 MR. LEEN: Okay.

12 MR. KORGE: Yes. Because that's where it comes
13 up in Section 8. I didn't repeat -- reproduce all of
14 Section 8.

15 MR. LEEN: I understand.

16 MR. KORGE: And unoccupied means that while that
17 person is suspended or expelled, the substituted
18 person, the person elected by the Commission will
19 fill the balance of the unoccupied term until the
20 earlier of the expiration of the term of the
21 suspended Commissioner or any reinstatement of the
22 suspended Commissioner. That I think follows
23 completely the --

24 MR. THOMSON: I think you get the same result if
25 you drop the word unoccupied out of it and serves the

1 remainder of the term.

2 MR. KORGE: Fine with me. I don't really care.

3 MR. LEEN: Which word do you want to remove?

4 MR. KORGE: Want to remove unoccupied, the
5 balance of the term that extends beyond the next
6 biannual election.

7 MR. LEEN: Of the term? Okay. I understand.
8 We will put this into -- so what we're going to do is
9 just change that sentence. We'll make -- we'll
10 probably put all of Section 8 in here when it goes
11 to the Commission so they can see.

12 And -- and did you direct me to add incapacity or
13 not to -- to Section 11?

14 MR. KORGE: To Section -- no, again, I -- it
15 just refers --

16 MR. LEEN: Want to keep it the way it is. Okay.

17 MR. KORGE: It refers to the general law and you
18 look at that statute and you find it there.

19 MR. LEEN: I just wanted to be clear. Okay. I
20 got it. Sorry about that.

21 CHAIRMAN VALDES-FAULI: All right. Next New
22 Business, we have to deal with --

23 MR. LEEN: I'm sorry. One other thing. Forgive
24 me, Mr. Mayor.

25 15 days? That's the --

1 CHAIRMAN VALDES-FAULI: Yes. 21 -- no, three
2 weeks.

3 MR. LEEN: Three weeks? No, no, in terms of the
4 Section 11 --

5 CHAIRMAN VALDES-FAULI: 15 days, yes.

6 MR. LEEN: -- how many days you're giving them
7 to --

8 CHAIRMAN VALDES-FAULI: 15 days.

9 MR. LEEN: So seven is being changed to 15?

10 CHAIRMAN VALDES-FAULI: Yeah, 15 days.

11 MR. LEEN: Okay. We got it.

12 MR. KORGE: Why not 14 days, two weeks? Wouldn't
13 it be the following -- two --

14 CHAIRMAN VALDES-FAULI: Let's compromise. 14 and
15 a half days.

16 MR. KORGE: Actually, it's three weeks now.
17 Right?

18 CHAIRMAN VALDES-FAULI: Because we -- whatever.
19 I mean --

20 MR. LEEN: What's the will of the Committee?

21 CHAIRMAN VALDES-FAULI: Three weeks.

22 MR. KORGE: So we've got three weeks --

23 CHAIRMAN VALDES-FAULI: No, no, he's talking
24 about the --

25 MR. KORGE: Oh. I'm good with whatever everybody

1 else is good with.

2 CHAIRMAN VALDES-FAULI: 15 days.

3 MR. LEEN: 15 days. Okay. So I'm going to
4 make these changes. I will circulate them to you,
5 but this is going directly -- this will go directly
6 to the Commission. It's not going to come back.
7 Okay? Same with the one about the Vice Mayor.

8 CHAIRMAN VALDES-FAULI: Okay. Next item. We
9 have two, I think, Sections left.

10 One is the City Manager and the City Manager's
11 powers, and the other one, which may or may not be
12 controversial, is having a Trial Board or not.

13 MR. LEEN: Forgive me, Mr. Mayor. On the runoff,
14 what was the final decision?

15 CHAIRMAN VALDES-FAULI: The Elections Department
16 says that three weeks is the earliest we can have it.

17 MR. LEEN: Everything else was fine with the
18 proposal?

19 CHAIRMAN VALDES-FAULI: Yeah.

20 MR. LEEN: And it's been approved?

21 CHAIRMAN VALDES-FAULI: Yeah.

22 MR. LEEN: Okay. So that will go -- I will -- I
23 will send to you drafts of everything, to the whole
24 Committee, that's going to the Commission as part of
25 a packet, but the only change that we'll make to

1 that is three -- and I'm -- and again, I'm sorry
2 about --

3 CHAIRMAN VALDES-FAULI: When are you going to
4 send this to the Commission?

5 MR. LEEN: Oh, I'm going to wait until you're
6 done.

7 CHAIRMAN VALDES-FAULI: Okay. Okay.

8 MR. LEEN: But I'm going to just --

9 CHAIRMAN VALDES-FAULI: Yeah, that's -- that's --

10 MR. LEEN: But prior to the next meeting I'll
11 send you everything that's going to the Commission.
12 If anyone has an issue you can always bring it up.
13 You can always reconsider at the next meeting if you
14 wish.

15 MR. DEWITT: I thought we were going to present
16 one package at the end of the Commission --

17 MR. LEEN: It will be, but I'm going to be
18 getting these ready so you can see them, but it's not
19 going to come back to you --

20 MR. DEWITT: Okay.

21 MR. LEEN: -- as -- as an individual item. Okay?

22 CHAIRMAN VALDES-FAULI: There are several --

23 MR. KORGE: What Section are we on?

24 CHAIRMAN VALDES-FAULI: The Powers of the City
25 Manager and Appointments, etcetera. We have the

1 Trial Board. And Parker was troubled with the
2 pension.

3 MR. DEWITT: Where -- where are we?

4 MR. THOMSON: I don't know where we are.

5 MR. LEEN: Mr. Chair --

6 CHAIRMAN VALDES-FAULI: New Business.

7 MR. LEEN: Mr. Chair, did we go over the revised
8 Charter yet?

9 CHAIRMAN VALDES-FAULI: No, we haven't. I was
10 thinking of doing that --

11 MR. LEEN: You want to do it at the end or do you
12 want to do New Business first?

13 MR. VALDES-FAULI: I was thinking of doing it at
14 the end.

15 MR. LEEN: Okay.

16 CHAIRMAN VALDES-FAULI: Yeah. And dealing with
17 these -- City Manager is Article -- or Section 10,
18 Article II.

19 MR. THOMSON: Section 10.

20 CHAIRMAN VALDES-FAULI: And in the new Charter
21 it's page 12 of 33.

22 MR. LEEN: Mr. -- Mr. Chair, the City Manager has
23 asked --

24 MR. THOMSON: Wait a minute. I have Section 10
25 as being Election to Office.

1 CHAIRMAN VALDES-FAULI: No, look at Section 10 --

2 MR. THOMSON: What Charter are we talking about?

3 Section 10?

4 CHAIRMAN VALDES-FAULI: Article II, City Manager.

5 Article II, City Manager. And in the new Charter

6 it's page 12.

7 MR. THOMSON: Oh, we're looking at the new

8 Charter? I didn't -- I thought we were looking at

9 the old Charter we had.

10 MR. DEWITT: Yeah, I did too.

11 MR. THOMSON: The old Charter, Section 2.

12 MR. DEWITT: Section 2?

13 MR. THOMSON: Section 10.

14 MR. DEWITT: Where are we looking?

15 MR. KORGE: The Section 10.

16 MR. LEEN: We're talking about Sections 20

17 through 26 of the current Charter. These sections

18 establish the authority of the City Manager as chief

19 executive officer and then go through the lines of

20 authority between the Commission and the Manager

21 and also include the Trial Board authority.

22 Mr. Chair --

23 CHAIRMAN VALDES-FAULI: I understand that the

24 City Manager wanted to appear before us to address

25 these issues.

1 MR. LEEN: Yes.

2 CHAIRMAN VALDES-FAULI: So let's make sure that
3 she appears to --

4 MR. LEEN: Would you be able to identify, if
5 you're willing, identify what provisions you would
6 like to raise so she could prepare? Like, for
7 example, are you going to be raising the Trial Board
8 as an issue with -- what issues would you like to
9 look at?

10 CHAIRMAN VALDES-FAULI: I think we should be
11 raising the Trial Board as an issue. The Trial Board
12 is here, has always been here, and my understanding
13 is that it has always been very, very controversial
14 and ineffective.

15 MR. KORGE: I have a proposal for that.

16 CHAIRMAN VALDES-FAULI: Okay. Go ahead.

17 MR. KORGE: It's really simple, and I'm sure all
18 the lawyers here will appreciate it. We eliminate
19 the Trial Board and substitute a neutral umpire to
20 hear the case, be tried just like it would before the
21 Trial Board. Instead it would be a neutral umpire
22 appointed by the City and the -- the employee, or if
23 they can't agree they can go to the circuit court
24 quickly and get the neutral appointed, and then the
25 neutral would make its finding of fact and

1 conclusions and send that as a recommendation to the
2 Commission and the Commission can hear it from
3 there.

4 CHAIRMAN VALDES-FAULI: Can I --

5 Comments? Parker, Richard?

6 MR. DEWITT: Yeah, I've got a comment on it. I
7 -- and I have to clear it with the Clerk --

8 MR. THOMSON: I'm sorry, which -- which specific
9 Sectionion are we talking about?

10 MR. LEEN: Mr. Thomson, the Trial Board is --

11 MR. DEWITT: The Trial Board is --

12 MR. THOMSON: Section 22? Is that --

13 MR. DEWITT: In the papers we have I think is --
14 we're all looking for I think is where we are.

15 I'm not sure, I think I might still be on the
16 Trial Board. I was on the last one we had which
17 was --

18 MR. LEEN: Section 22.

19 MR. DEWITT: -- many, many years ago, and every
20 member of the Trial Board agreed we should get rid
21 of the Trial Board.

22 CHAIRMAN VALDES-FAULI: I'm sorry, you said --

23 MR. DEWITT: It's -- it's a -- it's a throw --
24 you're talking --

25 CHAIRMAN VALDES-FAULI: Go ahead.

1 MR. DEWITT: Yeah. No, the Trial Board is a
2 throw-back to the old civil service days and I think
3 has no use anymore. Like I said, I was on it. We
4 started to have one hearing. It's just another step,
5 another expense, a very big expense if they do have a
6 hearing before -- if they don't like what they get
7 there they're going to go to court, so just let them
8 go to court. I wouldn't even do the umpire. I
9 actually do that work.

10 CHAIRMAN VALDES-FAULI: I agree with it, that --

11 MR. DEWITT: There's just no --

12 MR. KORGE: Let me make this observation. I
13 mean, I want to eliminate the Trial Board too. I
14 think it's probably an unnecessary step. However, I
15 think that's been proposed in the past and it never
16 seems to pass.

17 Is that right?

18 MR. DEWITT: It was. It was proposed at one
19 time, and that's what I'm saying, all the members of
20 the Trial Board supported getting rid of the Trial
21 Board. It didn't pass but we've got a second bite of
22 the apple now to get rid of something that really
23 doesn't function. When was the last time -- the last
24 time we had it was when I was on it, I forget how
25 many years ago.

1 CHAIRMAN VALDES-FAULI: I served -- I served as
2 Mayor for eight years and I don't think we ever had a
3 Trial Board at all.

4 MR. KORGE: I can't -- I can't imagine how you
5 guys are all going to find the time to meet at the
6 same time. You can't, like, miss a meeting, you
7 know, because you're hearing evidence, so if -- I'm
8 just saying, you know, it's like a jury. You can't
9 -- a jury can't disappear for half of the trial.

10 MR. DEWITT: It's just a way to increase the cost
11 and force the City to settle.

12 MR. KORGE: Yeah. So I would agree -- I
13 certainly would agree just eliminate it. If the
14 Commission is unwilling to do that, for whatever
15 reasons, then the alternative of a neutral umpire, I
16 think would at least streamline it.

17 MR. DEWITT: Yeah.

18 CHAIRMAN VALDES-FAULI: Okay. Shall we go with
19 that proposal, umpire?

20 MR. LEEN: The -- well, I would -- I would
21 recommend hearing from the City Manager --

22 CHAIRMAN VALDES-FAULI: Okay.

23 MR. LEEN: -- at the next meeting.

24 What I could do is prepare text for you to change
25 it to an umpire. I mean one issue for the umpire

1 would be, right now there's not much of a standard in
2 the -- in the -- in the Charter for what would be the
3 standard of review or what they could order.

4 I recall, if you look at Section 22, it says that
5 you look at the efficiency of service. That's the
6 standard. Let me -- let me read it to you.

7 MR. DEWITT: The City Manager wants to have a
8 voice on the Trial Board? I thought it was just on
9 the City Manager's --

10 MR. KORGE: I talked to the City Manager about
11 this. She told me she doesn't have a problem with
12 the Trial Board because if she fires somebody there's
13 really a good reason and she's got it well
14 documented. So she's comfortable with somebody
15 overseeing what she's done and she doesn't have a
16 problem with that.

17 I thought the neutral umpire would eliminate
18 some complexity, streamline it, and it would be more
19 neutral than, you know, Commission appointed members
20 of the -- the Board, and then it would be reviewed by
21 the Commission, if it's okay. If the City Attorney
22 thinks that's not going to be a problem legally to
23 eliminate the Trial Board and just have them appeal
24 to the Commission directly --

25 CHAIRMAN VALDES-FAULI: I don't think it would

1 be a problem to eliminate the Trial Board.

2 MR. KORGE: Then I'm -- I'm good with that. I
3 really am, you know. You go through the same process
4 but now you're going just directly to the Commission.

5 The advantage of a neutral umpire, let me point
6 out, is that it eliminates for the Commission the
7 need to hear evidence in effect, because the umpire
8 would hear the evidence, make findings of facts.

9 MR. DEWITT: I don't -- you think that's good?

10 MR. LEEN: Well, here's -- here's the -- right
11 now the standard by which the City Manager could
12 remove or reduce in grade or suspend an -- an
13 employee of the City, and -- and I should caveat that
14 by saying this does not apply to employees within
15 the Bargaining Units, so typically it applies to
16 excluded employees, and typically, you know, for
17 example, director level employees.

18 So let's say, for example, a City Manager
19 hypothetically wanted to come in and remove
20 Directors. The standard that the Charter provides is
21 'which will promote the efficiency of service.'
22 That -- that's the standard. And then it says in the
23 event of such -- if there's a challenge to -- to the
24 City Manager's action it says, 'In the event of such
25 request and reply to thereto the matter shall then be

1 referred to the special Trial Board hereinafter
2 authorized which Trial Board shall there upon
3 investigate and determine the propriety of such
4 action and at the conclusion of its investigation
5 shall render a decision or verdict which shall be
6 final. The Trial Board may in its discretion conduct
7 hearings, summon witnesses and hear evidence. In its
8 decision the Trial Board may determine whether such
9 officer or employee is entitled to any compensation,
10 allowance or adjustment which decision shall likewise
11 be final.'

12 So this provision doesn't really indicate
13 whether the Trial Board can reinstate the person
14 because it only refers to compensation. It does use
15 the word adjustment which potentially could be an
16 adjustment of the decision, but I think that's highly
17 debatable.

18 So I do think that there may be a reason for you
19 to clarify this provision as to what would be --
20 regardless of whether you have an umpire or not --

21 CHAIRMAN VALDES-FAULI: But if we get rid of it,
22 then we don't have to clarify it.

23 MR. DEWITT: If we get rid of it, we don't have
24 to clarify it.

25 CHAIRMAN VALDES-FAULI: Yeah.

1 MR. DEWITT: Yeah.

2 MR. LEEN: That's true. If you eliminate the
3 Trial Board you would not have to clarify it.
4 That would --

5 CHAIRMAN VALDES-FAULI: The proposal -- the
6 proposal is to eliminate the Trial Board.

7 MR. DEWITT: Second.

8 MR. KORGE: Wait, wait, wait. There's no rush to
9 that. Let me ask a question.

10 What rights would have the employee have to
11 appeal to the Commission whatever decision the Trial
12 Board makes?

13 MR. LEEN: There is no appeal to the Commission
14 from the Trial Board.

15 MR. KORGE: Okay.

16 MR. LEEN: Now, the Commission also has authority
17 under Section 23 of the Charter to direct by
18 resolution duly adopted, direct or require
19 appointments, suspensions or discharges of City
20 officers or employees by the City Manager.

21 So the Commission has its own authority to do
22 that. It's always been interpreted, at least I've
23 always interpreted it, and it's my understanding that
24 this has been the interpretation in the past, that
25 the Commission is not subject to the Trial Board.

1 So if the Commission directs the removal, that's
2 not reviewed by the Trial Board. If the City Manager
3 removes the person, that is reviewable by the Trial
4 Board, not by the City Commission.

5 MR. KORGE: Okay. So if we remove that right to
6 review, the City Manager has ultimate power to hire
7 and fire, basically?

8 MR. LEEN: Yes.

9 MR. KORGE: Okay.

10 MR. DEWITT: Well, subject to judicial review.

11 MR. KORGE: Right. I mean --

12 MR. DEWITT: Which is what happened last time.
13 They were running in tandem. We had the Trial Board
14 going, we had a lawsuit going on.

15 MR. KORGE: I mean I'm good to eliminate the
16 Trial Board, honestly.

17 MR. LEEN: But the judicial review is not
18 the typical -- in my view is not certiori review by a
19 -- a court. It would be like if they had -- if they
20 had a ground to contest their firing based on the
21 Civil Rights law or something like that.

22 MR. KORGE: Right.

23 MR. LEEN: But it's not a typical review of the
24 discretion. There's no review of the discretion.

25 MR. KORGE: I'll make a motion to eliminate the

1 Trial Board.

2 And let me just ask the question. Alternatively,
3 if the Commission doesn't agree to that I would like
4 them to consider a neutral umpire, but I don't know
5 how to put that into a motion.

6 MR. DEWITT: I think you just did.

7 CHAIRMAN VALDES-FAULI: You -- you just did.

8 MR. KORGE: Oh, okay.

9 CHAIRMAN VALDES-FAULI: Shall we go with the
10 neutral umpire instead of the Trial Board? Neutral
11 umpire is cheaper, more expedient and it's one person
12 appointed by everybody as opposed to two by the
13 employee, two by the City, and then they choose a
14 third one, and that's very cumbersome.

15 MR. KORGE: I mean, I -- I'm good to eliminate
16 the Trial Board. If -- if everybody else agrees, I
17 would make that motion. And if the Commission
18 rejects that, I would make that motion that if the
19 Commission does reject it we would recommend instead
20 appointing a neutral umpire in lieu of the Trial
21 Board itself.

22 CHAIRMAN VALDES-FAULI: Okay. A motion has been
23 made.

24 Is there a second?

25 MR. DEWITT: Second.

1 CHAIRMAN VALDES-FAULI: All those in favor, say
2 "aye."

3 Aye.

4 MR. DEWITT: Aye.

5 MR. THOMSON: Aye.

6 MR. KORGE: Aye.

7 MR. BONN: Aye.

8 CHAIRMAN VALDES-FAULI: Opposed?

9 You're opposed?

10 MS. ORTEGA-FILDMAN: I -- may I?

11 CHAIRMAN VALDES-FAULI: Yes, of course.

12 MS. ORTEGA-FILDMAN: I think -- I would like
13 to -- this wasn't advertised for today, and I think
14 it would be very beneficial to hear from the Manager
15 what the Manager believes would be the proper
16 procedure for --

17 MR. KORGE: Sure.

18 CHAIRMAN VALDES-FAULI: Okay. Let's adopt this
19 resolution and then we'll hear from the City Manager
20 and we can always come back.

21 MR. LEEN: How about the resolution be
22 interpreted that I will go forward and prepare a
23 document, I guess removing the Trial Board --

24 MR. KORGE: Yeah, flush it out.

25 MR. LEEN: -- and, you know, how that would --

1 we have to take it out of this provision, so you'll
2 see it. That will come before you next time for a
3 vote as well because it will be a final, and we can
4 hear from the City Manager on her thoughts, and you
5 can always reconsider what you've done, if you like.

6 MR. KORGE: Yeah.

7 CHAIRMAN VALDES-FAULI: Next is the Charter
8 Review.

9 Would you like to address this?

10 MR. LEEN: Yes. I'd like to introduce this,
11 Mr. Chair.

12 At the request --

13 MR. THOMSON: I want --

14 MR. LEEN: Do you want to talk about the pension
15 first?

16 MR. THOMSON: Well, I don't care whether it's
17 tonight or another night. I want to address both
18 Section 23 and the pension section.

19 CHAIRMAN VALDES-FAULI: Let's do it now.

20 MR. THOMSON: It's fine by me.

21 MR. LEEN: Well, Section 23 being the lines of
22 authority between the --

23 MR. THOMSON: Correct.

24 MR. LEEN: All I would say, Mr. Thomson, is of
25 course you have the right to address it, but do you

1 -- before action is taken I know that the City
2 Manager has asked to be able to come to discuss it.

3 MR. THOMSON: That was what I was going to
4 suggest, exactly, that Section 23, it -- to me it is
5 extraordinarily confusing. I have no idea what
6 inquiry means, and at the end of it, I know in the
7 last sentence a Commissioner can forfeit her or his
8 seat by violating it, and I think it needs to be
9 very clear and I know that Merrett Stierheim sent a
10 copy of his letter objecting, objecting to Section
11 23, his letter to the City Commission.

12 CHAIRMAN VALDES-FAULI: Right.

13 MR. THOMSON: And I wanted very much to hear the
14 City Manager address this because I think it needs
15 some repair.

16 CHAIRMAN VALDES-FAULI: Very good idea. Yeah.

17 MR. LEEN: So, Mr. Chair, in response to that
18 what I will -- for Section 23 I will ask the City
19 Manager to come to the next meeting and we can
20 present at least our interpretation of Section 23 as
21 it's been applied and then you can decide what you
22 would recommend.

23 CHAIRMAN VALDES-FAULI: Now, the pension, can we
24 take that up?

25 MR. THOMSON: The Pension section, as I observed

1 at the last meeting, pensions are a huge cost to
2 municipalities and -- and counties, and states for
3 that matter, and reading every newspaper that a
4 pension problem somewhere is going to drive that
5 particular governmental position in -- into the
6 ground.

7 Under those circumstances, I think that the
8 provision in the Charter should give the Commission
9 the maximum power to deal with pensions rather than a
10 minimum power. And as I read this Section, it is
11 limited to procedural changes in the pension plan.
12 Otherwise you can't change anything.

13 I -- feeling this way, I asked a friend who's a
14 member of the Retirement Board to look at it. He
15 said he agreed with me and asked my permission to
16 submit it to the attorney to the Retirement Board.
17 And the attorney to the Retirement Board said that he
18 believed that -- he believed that the Charter is not
19 in conformance with even with what the present
20 pension plan is and suggested that he and the City
21 Attorney come up with a redraft that would meet what
22 they at least believe would be the requirements of
23 today's pension plan. And that -- that is my
24 recommendation, that we ask them to do that.

25 CHAIRMAN VALDES-FAULI: Very good.

1 MR. KORGE: I'll second that.

2 CHAIRMAN VALDES-FAULI: Yeah. Okay. Let --
3 let's do that. I don't think we have to take a vote
4 on this, but yes, the recommendation is a good one
5 and it's --

6 MR. LEEN: What I plan to do, I -- I was able to
7 speak with Mr. Thomson directly, and now I can say
8 this in front of all of you in open session, the --
9 we should look -- we should look at that section.
10 It's likely that a portion of it may be void under
11 the Municipal Home Rule Powers Act because it
12 significantly limits the power of the Commission and
13 that's one of the purposes of the Home Rule Powers
14 Act, is to remove those sort of limitations on the
15 Commission from acting. However, it is presently
16 in the written Charter. So my office will take a
17 look at it. I will talk to the Board attorney for
18 the Pension Board, as Mr. Thomson suggested, and then
19 I will circulate something for the next meeting.

20 MR. DEWITT: Can I ask a question, Craig?

21 Does the Commission have or maybe this is a
22 restriction, does the Commission have the authority
23 to move the City to the State pension system or to
24 move to a -- to a more traditional business-type
25 pension system --

1 MR. LEEN: We've been looking at --

2 MR. DEWITT: -- 401K type, a government type
3 401K? Do we have the authority -- authority to do
4 that?

5 MR. LEEN: We've been looking at that very issue.

6 My understanding, and not -- it's not that that's
7 imminent or anything like that and I want to be
8 clear, but we've looked at that issue and -- and are
9 looking at that issue in relation to -- and this has
10 been publicly stated in front of the Commission
11 too -- in relation to a 401A plan, and then as part
12 of that we've looked at, well, what about FRS, what
13 about these other options?

14 My understanding is yes, we would have the
15 ability to move to FRS under certain circumstances,
16 but that's still being flushed out and we're also
17 receiving opinions from our tax attorney, our
18 outside tax attorney, on pension issues.

19 MR. DEWITT: Is the limitation the current
20 Charter or is the limitation the State law?

21 MR. LEEN: The limitation is not the Charter.
22 Although, you -- if this provision were interpreted
23 in a certain way it may limit the power of the
24 Commission to do that. Again, though, I think
25 there's a real issue with the Home Rule Powers Act.

1 MR. KORGE: You better touch bases with your
2 labor attorney too.

3 MR. LEEN: Of course. And our -- our labor
4 attorney is also involved in that issue.

5 And it's very possible the City will not take
6 action. So I'm not -- you know, the -- whenever you
7 talk about the pension people, care deeply about it
8 because it affects their long term future.

9 MR. KORGE: Of course.

10 MR. LEEN: Anything that would ever be done would
11 have to be fully vetted and discussed, and we would
12 not take away people's vested rights, obviously. We
13 couldn't. It's not legal.

14 So -- but to be -- to answer your question, we
15 are looking at that question. I probably will have
16 more information about that at the next meeting.

17 CHAIRMAN VALDES-FAULI: Yes?

18 MS. ORTEGA-FILDMAN: Just a question. For the
19 next meeting, the -- the Manager will be able to
20 address all of these issues of the pension plan or
21 will just that just be for a future meeting?

22 MR. LEEN: The pension -- the pension plan, what
23 I was going to look at, I was going to talk to the
24 Board attorney about how this provision could be
25 changed or whether it's -- it's valid. And if it's

1 invalid, what should be done about it? Should parts
2 of it be removed, does there need to be a Charter
3 amendment? Perhaps there's something positive that
4 can be done on it.

5 MS. ORTEGA-FILDMAN: I mean, just from my
6 perspective I would like to hear what it is that the
7 Commission would theoretically want to do and why
8 they are now prohibited from doing it so that we
9 could try to rectify that if they want -- so they
10 could say, look, we've tried to do this in the past
11 and this is what's frustrated us, you know, under the
12 Charter what can we change in order to effectuate
13 whatever move they want to make.

14 CHAIRMAN VALDES-FAULI: I understand.

15 MR. DEWITT: I think if there is anything in the
16 Charter that's prohibiting or limiting the
17 Commission I think we really need to look at that and
18 so that if a Commission now or in the future decides
19 that they'd like to alter the pension plan to a 401K
20 or a State system, that our Charter doesn't do
21 anything to prohibit them from doing that.

22 MR. LEEN: Understood. Also remember, many of
23 the changes related to the pension go through the
24 Collective Bargaining process, and that Collective
25 Bargaining process takes precedence over the Charter

1 provisions.

2 CHAIRMAN VALDES-FAULI: All right.

3 MR. LEEN: So there's -- it's a complicated issue
4 but we will have an answer for you at the next
5 meeting.

6 MR. DEWITT: Okay.

7 CHAIRMAN VALDES-FAULI: Good.

8 All right. The next, and maybe final, is the
9 Charter Amendment process -- I'm sorry, the -- what
10 you have sent us, which is the Charter of the City of
11 Coral Gables as revised.

12 And you want to address the issue?

13 MR. LEEN: Thank you, Mr. Mayor.

14 This request initially came about through
15 Mr. Thomson --

16 CHAIRMAN VALDES-FAULI: Yes.

17 MR. LEEN: -- who proposed amending -- maybe
18 amending is not the correct word -- revising the
19 Charter to make it more readable to ensure that the
20 first paragraph of the Charter didn't discuss
21 dissolution of the government, when really what they
22 meant was dissolution of a government many decades
23 ago and not this government, and addressing other --
24 the fact that there were many gaps in the Charter of
25 a -- so the Charter might go from -- I'm not

1 referring specifically to this Charter -- but 30 to
2 40 to 47, that there are some provisions that are
3 like 18 and a half, things like that.

4 So the goal of this effort, and I -- and I asked
5 the Former Deputy City Attorney, Bridgette Thornton,
6 to go through the whole Charter to look at the
7 legislative history and make sure it was correct,
8 because another thing I noticed was that some of the
9 sections didn't really have a history, it just said
10 compiled Charter but didn't indicate where they came
11 from. And we want to know whether they come from
12 Special Acts of the Legislature or a referendum.
13 That's useful to know for -- for legal reasons. Also
14 for history.

15 So I asked her to look at that. And she looked
16 through the history of the Charter and different
17 provisions adopting it.

18 And then lastly, I asked her to prepare a forward
19 -- forward to the Charter explaining what was
20 happening and so it -- that that would be the
21 beginning of the Charter.

22 And I know a couple of you have -- I know that
23 you, Mr. Korge, have sent some edits, so we're
24 looking at those. And I also received edits from a
25 resident, so we're looking at those.

1 And with that, I would ask Ms. Thornton to come
2 up to briefly talk about what you did in your effort
3 to review the Charter, and then to receive the
4 comments from the Board.

5 MR. THOMSON: We discussed briefly, before the
6 meeting, the fact that -- that the previous Charter,
7 present Charter has related -- something called
8 related provisions, and if they're part of the
9 Charter they aren't included in the redraft, and if
10 they aren't part of the Charter, then --

11 MR. LEEN: Yes.

12 MR. THOMSON: -- we need to know that; either
13 are or they aren't.

14 MR. LEEN: One issue that came up, and
15 Mr. Thomson raised, was that there's two -- I believe
16 there's two provisions that are considered related
17 laws that we -- that are not in the restated -- the
18 revised Charter. Ms. Thornton didn't look at them
19 because they're not designated as part of the
20 Charter. However, they appear to have some level of
21 dignity, so -- maybe beyond that of an ordinance,
22 so this is going to be brought back to you after we
23 receive your comments, and I'm asking Ms. Thornton to
24 look at the related law provisions and determine
25 exactly what they are and where they came from, and

1 if they have the same dignity as the Charter or
2 whether they're simply an ordinance. So with that I
3 turn --

4 MS. THORNTON: Are you referring to the related
5 laws in Sub Part B --

6 MR. LEEN: Yes.

7 MS. THORNTON: -- of the Charter?

8 MR. LEEN: Yes.

9 MS. THORNTON: Okay. I looked at that today and
10 I came to the conclusion that they weren't officially
11 a part of the Charter because I looked at the
12 compiled Charter as well, and within the compiled
13 Charter, the Charter provisions end and then you'll
14 see it has a -- actually, let me pull that for you
15 because I don't -- I don't have that right here with
16 me, so let me just grab that.

17 MR. THOMSON: Don't worry about it. Just --

18 MR. LEEN: We'll come back on that. Don't worry
19 about --

20 MR. THOMSON: I don't know that it needs to be
21 responded to. I -- I -- you go with your regular
22 presentation.

23 MS. THORNTON: Okay.

24 MR. LEEN: Yeah, do your regular presentation.

25 MS. THORNTON: Okay. Well, I apologize for -- I

1 didn't know I was going to do a full presentation
2 tonight.

3 But at the request of the City Attorney's Office
4 I took a look at the current version of the Charter
5 that's on Muni Code, and I went through that and I
6 compared it to the compiled Charter which you can
7 find through a simple Google search. This is from
8 1954, and this is what put together all the prior
9 versions of the Charter into one document.

10 After doing that, I -- I compared the two and
11 then I went through the current version of the Code
12 and tried to find legal support within the current
13 version for every provision within the Code. And
14 that was difficult and a bit tedious, to say the
15 least, but -- especially when it came to things that
16 were done by referendum because we had -- I had to do
17 a search of laws going back to the 1920s and 1930s,
18 if possible, online. But I was able to find most of
19 them.

20 And so I've updated the Charter to reflect that
21 legislative history, as well as to delete the
22 reserved and/or the repealed provisions that are
23 currently still -- they still have a section number
24 in the current version of the Charter but there's
25 nothing there. So that's what I did.

1 If you have any questions, please feel free to
2 ask.

3 MR. KORGE: Yeah, how many -- how many Advils did
4 you have to go through for this?

5 MS. THORNTON: It was a lot. There were beer
6 breaks at the end of the evening when I said that's
7 enough.

8 MR. KORGE: I -- I like what you did. I don't
9 know if there's a desire to rephrase some of the
10 language which is -- you know, I mean it could be
11 probably -- it could have been written more clearly
12 to begin with but it -- what you did raised a
13 question in my mind. I'm impressed that you got as
14 much done as you did, honestly.

15 MS. THORNTON: Oh. Well, thank you.

16 MR. KORGE: My question is, I suspect you can't
17 say with a hundred percent certainty whether the
18 current Charter you could trace everything back
19 to the original statutes and Acts and so forth with
20 a hundred percent certainty? I'm just guessing.

21 MS. THORNTON: No --

22 MR. KORGE: Okay.

23 MS. THORNTON: -- because some of those Acts
24 from the 1920s and 1940s, despite my best efforts, I
25 could not pull them. We'd probably have to go to

1 Tallahassee down into the stacks somewhere.

2 MR. KORGE: And maybe then you still wouldn't
3 find it, and it would take forever.

4 MS. THORNTON: Probably.

5 MR. KORGE: And we've got a Charter that we've
6 been relying on. So that raised a question in my
7 mind. Is there some way that we could ratify
8 whatever -- even if we rewrite for purposes of
9 clarity only as opposed to actual changes, like
10 Section 11, is there some way that we could have that
11 ratified so that nobody could ever come back and say
12 you missed something that came up in the 1918 Special
13 Act of the Legislature? Is there some way that we
14 could --

15 Anybody got an idea? Can we ratify this in some
16 way?

17 MR. DEWITT: Let me ask you a question, if I
18 could, in connection with what you're saying.

19 Is there a model Charter, are there model
20 Charters that we could use to clean this thing up
21 more efficiently and instead of going through and
22 have the whole -- as Tom's saying, have -- have the
23 Commission just ratify that as a Charter and have
24 it go out? Or does that just not make sense?

25 MR. LEEN: You know, this is a very unique City,

1 has a unique history. There probably are model
2 Charters that we could circulate. We did circulate
3 some example Charters from other municipalities and
4 we could probably find ones that are more recent or
5 from the -- from the --

6 MR. DEWITT: Well, it would be nice to have one
7 where the courts have interpreted things, you know.

8 MR. LEEN: Well, the issue is that the courts
9 don't interpret Charters that often. It's very
10 rare.

11 We could -- there -- there are certainly, for
12 example, the Florida League of Cities or the -- the
13 -- the similar association for the United States, we
14 could ask them for model Charters to provide you if
15 you'd like to look -- take a look at them. I'm happy
16 to do that.

17 The issue I -- the -- the concern for me is that
18 if we -- if we submit this to referendum in total,
19 first of all, it would be very hard to draft that
20 ballot question because there would be a lot of -- it
21 depends on what we're doing in that particular
22 Charter.

23 And the Charter's already legal. It's a legal
24 Charter. It -- a -- it's a legal, not illegal, is a
25 legal Charter and it has been -- under the Home Rule

1 Powers Act, the Commission has acted by ordinance to
2 address which parts remain in the Charter and which
3 parts become ordinances.

4 One issue that's come up is I do think that there
5 are some provisions that may have been removed from
6 the Charter that probably should be in there, which
7 will come up in a little bit. We'll discuss that.

8 The best -- the best way to reenact the Charter,
9 I would suggest would be by ordinance, and unless
10 we're making a material change to what's presently in
11 the Charter, then it would have to go to referendum
12 pursuant to the Dade County Charter.

13 CHAIRMAN VALDES-FAULI: I'm very much to, you
14 know -- do what you say which is adopt whatever
15 changes we can by ordinance. You know, very, very
16 much so.

17 MR. DEWITT: That's what -- I was just asking if
18 it's a bad idea. It sounds like it's a bad idea. I
19 didn't want to do that.

20 MR. LEEN: Well, it's complicated. It's
21 ultimately up to you.

22 Mr. Thomson is correct. This Charter, the way
23 that it's currently written, doesn't -- doesn't read
24 like a Constitution. It has parts missing, parts
25 that have been removed, some parts --

1 CHAIRMAN VALDES-FAULI: Can we clean that up?

2 MR. LEEN: Well, that's what we've tried to do.

3 MS. THORNTON: That's what I've tried to do as
4 best I could.

5 MR. DEWITT: But if it's unhappily drafted, it's
6 unhappily drafted.

7 MR. LEEN: We have not edited the actual
8 provisions.

9 I did receive, for example, from one resident,
10 Mr. Bolsky (phonetic), I did receive an edited -- I
11 received an edited version of the Charter. I also
12 believe I received one from Mr. Korge.

13 MR. KORGE: No, I didn't --

14 MR. LEEN: No, no, it wasn't -- was it Mr.
15 Thomson? One of you sent me an edited version of the
16 Charter as well.

17 MR. KORGE: I sent you --

18 MR. LEEN: Or the forward.

19 MR. KORGE: -- red line changes to the forward.

20 MR. LEEN: To the forward.

21 MR. KORGE: To make it a little clearer. That's
22 all.

23 MR. LEEN: Yes. Not to the charter.

24 We could edit the Charter itself but the issue
25 will be then, are these making material changes or

1 are they just semantic changes? If it's material
2 they have to go to the -- they have to go to the
3 electorate.

4 MR. DEWITT: Who determines whether it's
5 material?

6 MR. LEEN: Probably the City Commission would
7 determine that, and then someone can always
8 challenge that if they wanted to.

9 CHAIRMAN VALDES-FAULI: And if the City
10 Commission is acting in good faith, and I don't think
11 that there's anything here where anybody would profit
12 from it, I don't think it would be challenged.

13 MR. LEEN: The issue is, if you're only making
14 semantic changes there's nothing to present to the
15 electorate. Because when they look at the -- the
16 question of the ballot title they're always looking
17 at well, does this fairly reflect the change? In my
18 opinion, you do not need to put on something that
19 doesn't change the Charter. It's just -- it's just
20 words. But the -- but as lawyers know, I mean a
21 change in a word sometimes does make an actual
22 difference to the substance. You have to be very
23 careful.

24 MR. DEWITT: At some point it's got to be cleaned
25 up. It's going to have to be done. Maybe this isn't

1 the point but --

2 MR. LEEN: Yeah.

3 MR. DEWITT: -- if we're dealing with
4 something that dates -- some of the provisions date
5 back to the 1920s, maybe it's getting close to that
6 time.

7 MR. LEEN: It's up to this Committee.

8 CHAIRMAN VALDES-FAULI: Will you clean this up?

9 MR. LEEN: Do you want me -- so -- so you want us
10 to actually edit the actual provisions? Do you --

11 CHAIRMAN VALDES-FAULI: I want you to reflect
12 what's here but editing it --

13 MR. DEWITT: Uniform manner.

14 CHAIRMAN VALDES-FAULI: Huh?

15 MR. DEWITT: In a uniform approach to common
16 terms -- common --

17 CHAIRMAN VALDES-FAULI: Can we do that?

18 MR. LEEN: Yes, I -- yes, in my opinion you can
19 -- we could do that.

20 CHAIRMAN VALDES-FAULI: Okay.

21 MR. LEEN: Ultimately, the Commission would have
22 to decide, but the more we make changes, the more
23 someone could argue that it needs to go to
24 referendum.

25 CHAIRMAN VALDES-FAULI: But I'm not talking about

1 making substantive changes --

2 MR. LEEN: I agree.

3 CHAIRMAN VALDES-FAULI: -- and I'm talking about
4 incorporating what we have decided here, which are
5 changes, and in a public meeting and everybody has --

6 MR. KORGE: You're a great lawyer. You know that
7 one person's semantic change is another person's
8 substance.

9 CHAIRMAN VALDES-FAULI: Right, right. But I
10 think we could defend it. I mean there will always
11 be somebody challenging whatever it is out there.

12 Work on it and see what we can come up with.

13 MR. LEEN: Okay. We'll take a look at it.

14 CHAIRMAN VALDES-FAULI: All right. And the City
15 Commission will decide what has to go to referendum,
16 and I imagine that there are things that should.

17 MR. LEEN: Well, here's the thing, though, if we
18 were really going to rewrite it we would do more than
19 simply -- we would want to rewrite the whole thing.
20 If we're going to really submit it to referendum,
21 this would be the opportunity. If that's what the
22 Committee thinks, then we need to rewrite the whole
23 -- the whole document.

24 MR. KORGE: Submit the whole document for
25 referendum?

1 CHAIRMAN VALDES-FAULI: Yeah, but you submit
2 changes to referendum but you don't submit rewriting
3 and incorporating the same provisions to referendum;
4 do you?

5 MR. LEEN: No.

6 CHAIRMAN VALDES-FAULI: Okay. That -- that's
7 what I'm asking you to do.

8 MR. LEEN: Okay. I understand. That's what
9 we'll try and do.

10 MR. DEWITT: I didn't hear what you said that
11 you're asking him to do.

12 CHAIRMAN VALDES-FAULI: I'm not asking him to
13 rewrite it and making any changes. I'm asking him to
14 rewrite it incorporating our changes, the ones we
15 have met -- the ones we have made, and the rest,
16 leaving it the same but making it more readable and
17 clearer.

18 MR. KORGE: Then our changes would be submitted
19 for referendum, the -- the grammatical cleaning up of
20 and the renumbering would go to the Commission for
21 ratification.

22 MR. DEWITT: Well, if you're going to submit it
23 for referendum, why not just -- just get a 21st
24 century Charter and do it correctly without using --

25 MR. KORGE: Well, I'm trying --

1 MR. DEWITT: -- without using language from the
2 twenties and ideas from the twenties that --

3 CHAIRMAN VALDES-FAULI: I'm trying to --

4 MR. KORGE: That becomes a bigger -- a much
5 bigger election.

6 CHAIRMAN VALDES-FAULI: Yeah.

7 MR. DEWITT: Might be a bigger election, but
8 probably an easier job.

9 MR. THOMSON: Yeah, well, the Constitution of the
10 United States has lasted for 200 years, but it had
11 better authors, far better authors.

12 CHAIRMAN VALDES-FAULI: All right. Next is the
13 referendum -- or not referendum. I guess we can
14 discuss that at the next --

15 MR. LEEN: Yes.

16 CHAIRMAN VALDES-FAULI: -- at the next meeting.

17 MR. LEEN: I'm sorry, Mr. Mayor.

18 CHAIRMAN VALDES-FAULI: Go ahead.

19 MR. LEEN: Looking at what we've done, is the
20 -- is the sense of the Committee that you like that
21 it's been renumbered, it's -- we've removed the
22 -- the missing numbers?

23 CHAIRMAN VALDES-FAULI: Yes.

24 MR. LEEN: Now, one issue that came up was a
25 number of provisions had been removed from the

1 Charter. We looked at what was the document that did
2 that, and it was an ordinance of the City Commission
3 that was very general. It didn't specify which
4 provisions were removed. It simply just said there's
5 these general powers and other powers become
6 ordinances, or something to that effect.

7 MS. THORNTON: Something along those lines.

8 MR. LEEN: Some of those provisions are not even
9 in the Code, as far as I could tell, and I'm not
10 sure what happened to them.

11 The concern I have is that -- the concern I have
12 is that a number of these provisions are actually
13 helpful to the City. They're operative provisions
14 that gave power to the City to do things. One of the
15 powers, for example, was the power to issue summonses
16 so that people could come before the City Commission.
17 That's not in any ordinance, although we're actually
18 looking at a subpoena ordinance to address that
19 issue. But there's other provisions like that, and I
20 think you've identified six such provisions. There's
21 other ones as well.

22 What I was thinking of doing for the next meeting
23 was having all the provisions presented to you and we
24 can go through them one by one and determine
25 whether you think these are worthwhile or not.

1 MR. KORGE: Sure, but I would suggest I want -- I
2 want it to read that we have the maximum -- the City
3 has whatever the maximum power that -- that it would
4 have under the Home Rule Charter. That's what I
5 would say.

6 MR. LEEN: Yes.

7 MR. KORGE: And make it very clear that the only
8 limitations are limitations set forth by the
9 Constitution, general law or the County Home Rule
10 Charter to the extent that it limits our Charter.

11 MR. LEEN: Well, and one way to address that
12 would be to take these provisions that have been
13 eliminated and just direct that they be made
14 ordinances, because that's what the law had said.
15 These really should have been made ordinances because
16 then they would still be law. The City --

17 MR. KORGE: Do we have to -- if -- if we have an
18 enabling provision in the Charter that says we're
19 taking the maximum Home Rule powers permitted by
20 law, do we have to also enumerate each power that we
21 would have?

22 MR. LEEN: No, but these are -- but there's an
23 issue about self-execution. The general grant of
24 power in the Charter is not self-executing. There
25 are specific provisions in the Charter that actually

1 were self-executing. They granted power to the City
2 and they were removed. So the City's authority
3 decreased when that happened, and that's not what was
4 supposed to happen under the Home Rule Powers Act.
5 The City's authority was not supposed to be reduced.

6 MR. KORGE: Well, if the City has the power to
7 issue a subpoena but it's not listed in an ordinance
8 or in the Charter specifically, then the City can't
9 exercise that power?

10 MR. LEEN: So what happened was, the City could
11 exercise that power under the old Charter, and it was
12 removed, and until the City adopts an ordinance
13 granting that authority, by law it doesn't have that
14 authority anymore.

15 CHAIRMAN VALDES-FAULI: So the City should adopt
16 an ordinance giving it some more power?

17 MR. KORGE: So you're saying that -- that no
18 matter how broad the Charter enables the City to act
19 under its Home Rule Charter, it can't actually act
20 unless it enumerates exactly what it -- it can do?

21 MR. LEEN: By ordinance, or in the Charter.

22 MR. KORGE: By ordinance or in the Charter?
23 That's correct? That's a correct statement of law?

24 MR. LEEN: Yes, because the general grant of
25 authority --

1 MR. KORGE: I don't know that.

2 MR. LEEN: That -- that's my -- that's my view of
3 the law. I mean that's -- the problem is that this
4 is a general grant of authority, but -- for example,
5 the State has a general grant of authority in the
6 Constitution but it's by statutes that they act.

7 And the Home Rule Power Act says that the City
8 can legislate to the full extent that the Legislature
9 can unless we act contrary to the statutes.

10 MR. KORGE: We still have to legislate.

11 MR. LEEN: But we still have to legislate.
12 Otherwise all we have is a general grant of power.
13 But there's no standards, there's no --

14 MR. KORGE: Then you need to enumerate
15 everything. Like you said, you need to put it in an
16 ordinance -- probably in an ordinance, really.

17 MR. LEEN: Maybe it should go in an ordinance.
18 But I do think it's a real issue that should be
19 addressed.

20 MR. KORGE: Yeah.

21 MR. LEEN: At least we should know what powers
22 have been lost by the City.

23 What I suggest is that we list all of them. A
24 couple provisions are illegal. There are some
25 provisions in the old Charter that are illegal. I

1 want to be clear about that. There -- there -- there
2 -- you know, it was an old Charter. There are some
3 archaic provisions that -- that are
4 completely illegal.

5 CHAIRMAN VALDES-FAULI: Well, you'll clean them
6 up --

7 MR. LEEN: Those have been removed.

8 CHAIRMAN VALDES-FAULI: Okay.

9 MR. DEWITT: When you're talking about the
10 old Charter, you're talking about the Charter we're
11 operating under now?

12 MR. LEEN: No, I'm talking about the compiled
13 Charter from the fifties.

14 MR. DEWITT: Oh.

15 MR. LEEN: Which before the Home Rule Powers Act
16 there are some older provisions that are illegal.
17 Those are -- those are removed, but there's other
18 provisions that are perfectly legal that are -- I
19 can't find what happened to them. They just were
20 removed. And I think these were -- they're
21 problematic. It decreased the authority of the
22 Commission. It probably at least should be put into
23 an ordinance.

24 CHAIRMAN VALDES-FAULI: Okay.

25 MS. THORNTON: In fact, some of the most

1 problematic provisions, such as the segregation
2 provision, was removed by referendum. But some of
3 these other provisions, I could not locate the
4 source.

5 CHAIRMAN VALDES-FAULI: I'm sorry, what
6 was removed by referendum?

7 MS. THORNTON: There was a segregation
8 provision under Chapter -- it's Section 7 in the
9 old --

10 CHAIRMAN VALDES-FAULI: And what provision?

11 MS. THORNTON: Segregation.

12 MR. THOMSON: Segregation.

13 CHAIRMAN VALDES-FAULI: Segregation, like
14 segregation?

15 MR. KORGE: It's illegal anyways.

16 MS. THORNTON: Correct.

17 CHAIRMAN VALDES-FAULI: That's ridiculous.

18 MS. THORNTON: Right. Well, that was removed by
19 referendum.

20 CHAIRMAN VALDES-FAULI: When was it removed by
21 referendum?

22 MS. THORNTON: I believe in 1974.

23 CHAIRMAN VALDES-FAULI: '74?

24 MS. THORNTON: Right. There were actually two
25 votes. It failed the first vote.

1 CHAIRMAN VALDES-FAULI: That's awful.

2 MS. THORNTON: I'm sorry?

3 CHAIRMAN VALDES-FAULI: That's awful, I said.

4 MS. THORNTON: Yes --

5 CHAIRMAN VALDES-FAULI: Not that it was removed,
6 but that it was there in the first place.

7 MS. THORNTON: Right. I understand what
8 you're saying.

9 But I'm saying that particular provision was
10 removed by referendum, but there's a whole bunch more
11 that were removed, but I cannot find a source of
12 legislative authority for their removal.

13 CHAIRMAN VALDES-FAULI: City Attorney, and
14 madame --

15 MR. LEEN: There's an extensive -- what you'll
16 find when we provide you this -- this list of
17 provisions is there's an extensive amount of
18 authority that the Commission had by -- by -- by
19 Special Act, similar to what the County Commission
20 had. If you look at the County Charter today, it
21 has a lot of enumerated powers. Even though the
22 County also has a general grant of broad power,
23 there's also specific powers it has which are quite
24 broad.

25 I -- as City Attorney, I think that these

1 provisions are useful to the City and they -- at
2 the very least they're -- they're -- they don't hurt
3 the City to have them in the Charter because they
4 provide -- it's very clear that this power's provided
5 notwithstanding the general grant of power, and the
6 City already has the authority to act because these
7 were self-executing provisions.

8 Anyway, I don't want to belabor the point. I was
9 concerned about it.

10 CHAIRMAN VALDES-FAULI: Yeah.

11 The next item is date of the next meeting.

12 And to throw a date out there, I would say
13 Monday, November 9th, three weeks from now.

14 Parker, Richard?

15 MR. THOMSON: What's the date you're suggesting?

16 CHAIRMAN VALDES-FAULI: November 9th, Monday.

17 MR. BONN: Unfortunately, I will be out of town.
18 I apologize.

19 MR. LEEN: That actually is the one day that the
20 City Manager could not.

21 CHAIRMAN VALDES-FAULI: Okay. What about
22 Wednesday, the 11th?

23 MR. DEWITT: I can do that. I can do the 11th.

24 MS. ORTEGA-FILDMAN: That's Veteran's Day.

25 MR. DEWITT: Isn't Veteran's Day celebrated on

1 Monday?

2 CHAIRMAN VALDES-FAULI: Okay. The 12th?

3 MR. DEWITT: 12th is good.

4 CHAIRMAN VALDES-FAULI: So probably the following
5 week.

6 MR. BONN: Want to do Monday, the 16th,
7 Mr. Chair?

8 MR. DEWITT: I'm -- unfortunately, I'm gone from
9 the 14th through the next week. Any other time of
10 the month.

11 CHAIRMAN VALDES-FAULI: What about the 12th?

12 MR. DEWITT: I'm fine on the 12th, the 13th,
13 the 10th.

14 MR. BONN: I get back the 12th. I could do the
15 13th any time.

16 CHAIRMAN VALDES-FAULI: I don't want to do the
17 evening of the 13th. That's a Friday.

18 What about a week before?

19 Monday, November 2nd?

20 MR. BONN: I leave at 2:00. No, excuse me. I
21 get back to Miami at 5:00. I apologize. I could do
22 that in the evening. I land, like at 5:30.

23 MR. DEWITT: November 2nd is it?

24 MR. THOMSON: The only problem I have with the
25 2nd is, is that enough time for you to do what you've

1 agreed to do, because I'll tell you, getting stuff on
2 the day of the meeting is not useful to me.

3 MR. LEEN: Yes, you will. The only thing that
4 may not -- the only thing we'll have trouble with
5 is potentially rewriting the whole Charter by that
6 date, so there may have to be one more meeting after
7 that, but we could tell you our progress.

8 CHAIRMAN VALDES-FAULI: Yeah, but let's -- let's
9 meet that day, if we all can do it, and have the City
10 Manager appear before us and try to wind it up
11 subject to, you know, you getting your job done.
12 Is that okay?

13 MR. LEEN: I understand.

14 CHAIRMAN VALDES-FAULI: All right. So that's
15 Monday, November 2nd. At 7:00, at 6:00, 5:00?

16 MR. BONN: I land at 5:30.

17 CHAIRMAN VALDES-FAULI: Okay. Let's do it at
18 7:00. Fine.

19 MR. BONN: And I know, Mr. Chair, at the last
20 meeting at the very end there was some discussion
21 about -- and this is something that would be of
22 interest, I'm sure, to the City Manager, whether or
23 not the police head, head of the police department
24 should report to the Commission or the City Manager.
25 I don't know. That's my -- I couldn't hear too well

1 on that call. I was participating by phone. I don't
2 know if that's already been resolved or --

3 CHAIRMAN VALDES-FAULI: I think that --

4 MR. KORGE: That issue's been resolved.

5 CHAIRMAN VALDES-FAULI: We resolved that we're
6 not going to do it, yeah.

7 MR. BONN: Okay. Thank you.

8 MR. DEWITT: We resolved that we're not going
9 to suggest that. Is that what I heard you say,
10 Mr. Chair?

11 CHAIRMAN VALDES-FAULI: I don't think that
12 there's any sense, unless you tell me otherwise, to
13 have the Chief of Police be an appointed official.

14 MR. DEWITT: I think it would be a huge mistake
15 to have the Chief of Police an appointed official.

16 CHAIRMAN VALDES-FAULI: Precisely. Yeah. Okay.
17 So it's Monday, the -- November 2nd. Monday,
18 November 2nd at 7:00 p.m. All right? Okay.

19 And you'll notify the City Manager and whoever
20 else has to be notified?

21 MR. LEEN: Yes. And we will circulate the
22 provisions that were passed today. So you can just
23 have them -- if you have any issue with any of them
24 you can bring them up at the next meeting but we're
25 not going to put it on the agenda.

1 CHAIRMAN VALDES-FAULI: Let's talk about the
2 agenda.

3 MR. LEEN: For the next meeting the focus will be
4 on the City Manager and the -- the issues you've
5 asked us to look into.

6 CHAIRMAN VALDES-FAULI: And you will try to have
7 the --

8 MR. LEEN: In advance, aside from the Charter
9 itself which we're -- it may take a little bit of
10 time to fully revise, but we should have that at the
11 next meeting, which will likely be your last meeting
12 from what I --

13 MR. DEWITT: Could you have the City -- could you
14 give us sort of a -- an outline of what issues the
15 City Manager is going to address?

16 MR. LEEN: Yes. Although I think she mostly
17 wanted to be here to speak to you -- since Section 23
18 has been raised I'll ask her to -- to speak on that
19 and her experience with it.

20 MR. DEWITT: If we just have an outline of the
21 different issues so we could think about it.

22 MR. LEEN: I'll ask her.

23 CHAIRMAN VALDES-FAULI: All right. Anything
24 else, ladies and gentlemen?

25 MR. KORGE: Oh, Board of Architects.

1 CHAIRMAN VALDES-FAULI: That shouldn't be in
2 there, but --

3 MR. KORGE: The suggestion was made that the
4 Commission should appoint the Board, not the Manager.
5 We can discuss it.

6 CHAIRMAN VALDES-FAULI: We can discuss it. I
7 would be opposed to that. I would be opposed to that
8 because everybody has an architect friend and I think
9 the City Manager is more impartial than --

10 MR. KORGE: Okay. I don't really -- I'm not --

11 MR. DEWITT: What was the issue, Tom -- or Mr.
12 Chairman?

13 CHAIRMAN VALDES-FAULI: No, the Board of
14 Architects is appointed by the City Manager. The
15 -- the appointees have to be architects and the
16 alternative is to have the Commission appoint the
17 Board of Architects. I think that goes to the
18 essence of the City in terms of aesthetics and in
19 terms of architectural integrity, and I think the
20 City Manager has more control than each
21 Commissioner appointing his or her friend to the
22 Board. I would speak very much to have the City
23 Manager or somebody -- not a Commissioner making
24 those appointments, and I -- I've lived through it.
25 It doesn't --

1 MR. KORGE: There were a couple other issues;
2 increasing the procurement bid amount from \$25,000 to
3 \$50,000 and how the external -- who the external
4 auditor should be.

5 CHAIRMAN VALDES-FAULI: But That's done by
6 ordinance, isn't it, the debt amount -- I mean the
7 indebtedness amount?

8 MR. THOMSON: Actually, Tom, 25,000 in then money
9 when it was created is probably a helluva lot more
10 than 50,000 now.

11 MR. KORGE: I mean I don't -- I just think --

12 CHAIRMAN VALDES-FAULI: I think that was raised,
13 when I was mayor it was 5,000 and it was raised to
14 25.

15 MR. KORGE: That may be in the Charter?

16 CHAIRMAN VALDES-FAULI: Why is that in the
17 Charter?

18 MR. KORGE: The procurement bid amount for
19 Public Works.

20 MR. LEEN: There's -- it's interesting that's in
21 the Charter. That's something that normally would
22 have been voided by the Home Rule Powers Act.
23 Mr. Zonner, former City Attorney, sent that to
24 referendum.

25 My view, it's still likely void under the

1 Home Rule Powers Act. But there's a -- there's a
2 debate, I guess, among the City Attorneys. I believe
3 Liz Hernandez, my predecessor, believes that that's
4 something that needs to be amended by referendum. I
5 think that that is the type -- exact type of
6 provision that was -- in fact, that's the example
7 provision if you -- if you look at the books about
8 what sort of provisions were removed by the Home Rule
9 Powers Act. It was these types of provision on
10 procurement.

11 So I don't believe that even a referendum can
12 change State law. State law said that provision was
13 removed from the Charter. So, anyhow, it's never
14 really come up as a issue that I had to decide.

15 CHAIRMAN VALDES-FAULI: If State law says it
16 should be removed, let's remove it.

17 MR. LEEN: Well, I think -- I mean, my view is it
18 was void when the State law was passed, regardless of
19 what -- I mean, you could sue --

20 MR. KORGE: We could ratify that by referendum if
21 we wanted to.

22 MR. LEEN: We could, yes.

23 MR. KORGE: Or the Commission could remove it by
24 ordinance, if it wanted to, is what you're saying?

25 MR. LEEN: Yes. What I'm saying is that I

1 believe it was void. However -- it's complicated,
2 you know. It was -- it was still sent to the voters
3 later to amend. So now the voters have spoken on it.
4 Of course, the voters were never told that the
5 provision didn't exist because -- so maybe the voters
6 wouldn't have wanted to put any limitation on it.

7 So I think that there's a good argument that the
8 limitation doesn't prevent the City from acting.

9 CHAIRMAN VALDES-FAULI: What was the other one
10 you mentioned?

11 MR. KORGE: The other one I think is important
12 and deserves discussion with the Manager too is to
13 who the external auditor reports.

14 I think he should report to the Commission. I
15 don't think he does now.

16 CHAIRMAN VALDES-FAULI: My experience is that
17 they report to the Commission.

18 MR. LEEN: Who?

19 CHAIRMAN VALDES-FAULI: The auditors.

20 MR. KORGE: External auditor.

21 CHAIRMAN VALDES-FAULI: They report to the City
22 -- I mean to the Finance Director but it comes before
23 the Commission every time.

24 MR. LEEN: That's something I'd want to research.
25 Generally, they deal directly with the Finance

1 Director, although a report may come before you.
2 I have to look into that.

3 MR. KORGE: Take a look.

4 MR. THOMSON: I agree with Tom. The City
5 auditors should be reporting to the ultimate
6 -- ultimate leaders of this community, which is the
7 City Commission.

8 MR. LEEN: Well, that may be an issue you want to
9 address. It used to actually be in the Charter.
10 There was a provision about auditing as well, which
11 was removed. So this -- this is an example. This is
12 a provision that was addressed. It's no longer
13 in the Charter even though it was never expressly
14 removed by the Commission.

15 MR. KORGE: Well, why don't you just take a look
16 at it and let us know how it's -- it's actually done.
17 And if it's not done by reporting ultimately to the
18 Commission -- I personally think it should be --

19 CHAIRMAN VALDES-FAULI: It should be.

20 MR. KORGE: -- and we should address it.

21 MR. BONN: I agree.

22 MR. LEEN: That may be something you should
23 address to the City Manager as well --

24 MR. KORGE: I will.

25 MR. LEEN: -- when she speaks next week.

1 MR. KORGE: Absolutely.

2 MR. LEEN: Okay.

3 CHAIRMAN VALDES-FAULI: Anything else?

4 MR. DEWITT: Are you saying that the auditors
5 don't report to the Commission at this point?

6 MR. LEEN: I've never seen the -- well, I
7 don't want to say -- I'm not -- I don't usually get
8 involved in issues of auditing aside from providing
9 the legal aspect of the audit, which is the claims
10 that we have.

11 Let me look into that. I do know that the
12 auditors generally deal with the Finance Director,
13 but it's very possible a report comes to the
14 Commission.

15 CHAIRMAN VALDES-FAULI: My experience has been --

16 MR. THOMSON: The model -- the model in the
17 -- in the private world under SEC rules and
18 everything else is the auditor reports to the Audit
19 Committee of the Board of Directors and then
20 to the -- the Audit Committee reports to the Board.
21 That's the standard format, and that should be the
22 same here.

23 MR. LEEN: I will look into the issue and have a
24 report for you at the next meeting as to what the
25 current state is here, what we're doing here, and

1 then you can decide what would be best.

2 CHAIRMAN VALDES-FAULI: Okay. Anything else?

3 Thank you. Have a good evening, everybody.

4 Meeting adjourned.

5 MR. LEEN: I just wanted to be clear that we had
6 a police officer downstairs to let people in.

7 I'm the City Attorney. When we went downstairs I
8 wanted to make it clear that we had someone from -- I
9 had previously spoken about making sure there was
10 access to the meeting today. It's on television,
11 it's been televised. Previously I believe the Clerk
12 was downstairs to allow, for example, members of the
13 Committee in.

14 When we found out earlier in the meeting that the
15 doors were closed, I called -- I had one of my staff
16 stand downstairs to let anyone come in who wanted to.
17 No one came. And then I had a police officer come
18 downstairs to stand there to let people in in case
19 anyone wanted to come in. We have not been made
20 aware of anyone who was unable to attend the meeting
21 today. So in my view, it satisfies the Sunshine Law.
22 When we saw the issue come up we immediately
23 addressed it.

24 Thank you.

25 (Proceedings were concluded at 8:51 p.m.)

C E R T I F I C A T E

STATE OF FLORIDA:

SS:

COUNTY OF MIAMI-DADE:

I, JANINE P. CARROLL, Court Reporter and a Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did report the foregoing proceedings and that the transcript is a true and correct record of my stenographic notes.

Dated this 29th day of October, 2015.


JANINE P. CARROLL