

1 CITY OF CORAL GABLES  
2 CHARTER REVIEW COMMITTEE  
3 VERBATIM TRANSCRIPT  
4 CORAL GABLES CITY HALL  
5 405 BILTMORE WAY, COMMISSION CHAMBERS  
6 CORAL GABLES, FLORIDA  
7 MONDAY, NOVEMBER 2, 2015, COMMENCING AT 7:00 P.M.

8 Board Members Present:

9 Raul Valdes-Fauli, Chairman  
10 Tom Korge  
11 Jimmy Morales  
12 Parker D. Thomson  
13 Richard Dewitt  
14 William Bonn  
15 Angelique Ortega-Fridman

16 City Staff and Consultants:

17 Craig E. Leen, City Attorney  
18 Miriam Ramos, Deputy City Attorney  
19 Yaneris Figueroa, Assistant City Attorney  
20 Cathy Swanson-Rivenbark, City Manager  
21 Bridgette N. Thornton, Esq., Outside Counsel

1 THEREUPON:

2 (The following proceedings were held.)

3 CHAIRMAN VALDES-FAULI: I'd like to call  
4 the meeting to order. This is the Charter  
5 Review Commission or Committee of the City of  
6 Coral Gables, meeting of today -- whatever date  
7 is today -- November 2nd, and I'd like to  
8 congratulate us, because we're all here, which  
9 is nice, and we don't have any problems with  
10 the telephone or listening or anything else,  
11 and I think we should get started.

12 We're going to be listening from the City  
13 Manager today, and I think that that should  
14 start the meeting, even if --

15 MR. LEEN: If I may, Mr. Chair, just to  
16 preface the City Manager's remarks, the reason  
17 why she's here today is to answer questions  
18 from the Committee regarding items related to  
19 her office, which is -- and specifically the  
20 following three issues that are on the agenda.

21 One is the Trial Board. And as you'll see,  
22 there is a proposal, which it was passed by  
23 this Committee at the last meeting, to  
24 eliminate the Trial Board. It has been brought  
25 back to you today with wording, for you to

1 review and make a final decision as to form on.

2 Second was Section 23 of the City Charter,  
3 which relates to the lines of authority between  
4 the Manager and the Commission. The Manager's  
5 authority over administrative staff placed in  
6 her charge, which is almost all of the  
7 administrative staff of the City, and the  
8 Commission's relationship with the City Manager  
9 in that respect. And, also, the ability to  
10 inquire, which is in Section 23.

11 And, in addition, there is a discussion  
12 regarding the auditor, and the City Manager,  
13 under the current structure, oversees an  
14 internal auditor, and she's here today to  
15 answer questions on that, as well, if you have  
16 any.

17 CHAIRMAN VALDES-FAULI: Thank you.

18 MR. LEEN: With that, I would --

19 CHAIRMAN VALDES-FAULI: All right. I have  
20 no comments, so shall we -- Mr. City Attorney,  
21 shall we call the City Manager for her to come  
22 up?

23 MR. LEEN: Yes, Mr. Mayor.

24 CHAIRMAN VALDES-FAULI: Oh, here she is.

25 MR. LEEN: Pardon me, Mr. Chair.

1 MS. SWANSON-RIVENBARK: Good evening. And,  
2 first of all, we really thank you for your  
3 service. Having a Charter Re-Write, so that it  
4 can live forward for the next 90 years, is  
5 really a wonderful gift that you give us, as we  
6 celebrate our 90th year.

7 As I was speaking with the City Attorney,  
8 he mentioned that I should be available for  
9 questions related to Article 23, regarding also  
10 the Trial Board, and the internal auditor, and  
11 so I'm happy to answer whatever questions.

12 I've been watching some of the proceedings  
13 online, and I've been really pleased with the  
14 cleanup that you all are doing and the  
15 clarifications, so that when we read the  
16 Charter, which is our living governing  
17 document, we know more about how to make sure  
18 that we honor it moving forward.

19 So whatever questions that you have on any  
20 of the --

21 CHAIRMAN VALDES-FAULI: Madam City Manager,  
22 before we start on the Trial Board, I'd like to  
23 make a proposal, that we not discuss that, and  
24 that we leave things as they are.

25 The reason is that in 2009 there was an

1 election. The question was sent to the voters,  
2 shall the Charter of the City of Coral Gables  
3 be amended to eliminate the Trial Board, and  
4 61.86 percent of the voters voted against the  
5 elimination of the Trial Board.

6 And just like we did with the mayorial  
7 term, where we respected the decision of the  
8 voters, I think we should do the same with the  
9 Trial Board.

10 In addition, I don't see any compelling  
11 reason to eliminate it. Since 1989, there has  
12 been only one hearing -- that is in 26 years --  
13 and that hearing, a building inspector  
14 termination, upheld after three hearings. So  
15 that in order to respect the decision of the  
16 voters, I think we should leave things as they  
17 stand.

18 I don't know what your comments are.

19 MR. DEWITT: I'd like to comment on that.

20 CHAIRMAN VALDES-FAULI: Go on.

21 MR. DEWITT: As I said, I might still be on  
22 the Trial Board. I'm not sure. I don't think  
23 anybody knows who is on there.

24 CHAIRMAN VALDES-FAULI: You don't even  
25 know.

1           MR. DEWITT: I think that this is  
2           misleading as to what expenses the City  
3           incurred in this, and I know that in the third  
4           one, we had many hearings, we had many lawyers  
5           involved, and it cost the City a considerable  
6           amount of money, and, at the same time, that  
7           employee was seeking judicial review, and so we  
8           had a dual track going on. So it wasn't a  
9           costless -- we had several hearings. We just  
10          never had a final hearing, is what I think this  
11          reflects.

12                 So I would still encourage you that the  
13          Trial Board is long past its usefulness and we  
14          should consider doing away with it.

15                 CHAIRMAN VALDES-FAULI: I agree with you,  
16          that it's long past its usefulness, but my  
17          contention is that the voters voted six years  
18          ago, and 61 percent decided to keep it.

19                 MR. DEWITT: I hear you.

20                 MR. MORALES: You know, I don't remember  
21          the 2009 vote. I guess, as a Manager myself  
22          now, the fact that you would want to give  
23          management level employees grievance rights,  
24          like you have in Collective Bargaining, makes  
25          absolutely no sense to me. You know, the whole

1 idea of management level employees or at will  
2 is, you know, the flexibility, among other  
3 things, to -- if you're going to move it and  
4 change the direction of an organization, to be  
5 able to do that.

6 To create a grievance process in the  
7 Charter for that -- I respect the voters. I  
8 understand that. Certainly on the issue of the  
9 term, to me that's a very political question.  
10 There's no right or wrong answer.

11 To me, this is so wrong in our Charter,  
12 that while I respect the vote, and if that's  
13 the direction that the group wants to go in --  
14 my vote would be to eliminate it, as has been  
15 proposed.

16 CHAIRMAN VALDES-FAULI: Madam City Manager,  
17 will you explain to our audience exactly when  
18 it comes into effect, how it works, how it  
19 functions, et cetera, et cetera?

20 MS. SWANSON-RIVENBARK: Well, it doesn't  
21 happen very often, thank goodness. When an  
22 employee at will is --

23 CHAIRMAN VALDES-FAULI: An employee at will  
24 is?

25 MS. SWANSON-RIVENBARK: A non-union

1 employee, and is either demoted or terminated,  
2 they have the right to call for a Trial Board.

3 Mr. Dewitt, you are not a member of the  
4 Trial Board right now, so you can relax.

5 MR. DEWITT: Glad to hear that.

6 MS. SWANSON-RIVENBARK: But what happened  
7 is, then, the Commission would identify two  
8 representatives that would sit at the Trial  
9 Board representing them, and the employees  
10 would pick two representatives, that would  
11 represent the employees, and, then, I believe,  
12 together, they pick a fifth one, and so there  
13 would be five members of the Trial Board.

14 And, Craig, correct me if I am wrong.

15 MR. LEEN: You're correct.

16 MS. SWANSON-RIVENBARK: And then they would  
17 listen to why the Manager made the actions that  
18 they did, and they would listen to the grieving  
19 party, and they would make a determination.

20 Is it a determination that is a  
21 recommendation to the Commission or does the  
22 Trial Board decide itself?

23 MR. LEEN: I mean, it's very interesting,  
24 because the language -- the test they apply is  
25 the efficiency of service. It's a very, very

1 general test. And the decision they make is,  
2 they determine whether the employee or officer  
3 is entitled to any compensation, allowance or  
4 adjustment, which decision shall be final. So  
5 whatever that means.

6 Obviously, they can award compensation. It  
7 appears, allowance or adjustment, they may be  
8 able to adjust the City Manager's decision, but  
9 these are very general terms. And as you see  
10 from the memo, it hasn't been used very much.

11 So there's not a lot of precedent.

12 MR. DEWITT: Well, what it has been used  
13 for, unfortunately, is, in essence, a way of  
14 leveraging the City. First of all, when I was  
15 -- and I'm glad to hear I'm not on it. The  
16 City Clerk wasn't sure of that the last time we  
17 were here.

18 The last time we were here, the City had  
19 outside counsel. The Trial Board had outside  
20 counsel. We had, you know, numerous hearings  
21 and discovery, and it all went to not, because  
22 they were using it as a negotiating tool, and  
23 they had litigation -- parallel litigation  
24 going at the same time.

25 If they've got parallel litigation, the

1 opportunity to do that, I don't see why we  
2 should create this expensive function for no  
3 reason.

4 MR. KORGE: Well, let's take it to its  
5 logical conclusion. There's the Trial Board  
6 hearing. They make a final decision, which  
7 apparently cannot be reviewed by the  
8 Commission, and they decide to start  
9 restructuring our government, because they  
10 don't like what decision the Manager may have  
11 made with respect to one of her at will  
12 employees. That's a real problem.

13 MR. LEEN: I need to make one --

14 MR. DEWITT: And you should be able -- the  
15 Manager should be able to fire management  
16 employees.

17 MR. LEEN: When you read it together with  
18 Section 23, though, which says that the  
19 Commission can hire whoever they wish, by  
20 direction of the Manager, I would think that  
21 the Commission could disagree with the Trial  
22 Board, and reinstate a person, under the way  
23 the Charter is presently written.

24 CHAIRMAN VALDES-FAULI: Say that again.

25 MR. LEEN: Well, because, remember, these

1 two -- one of the strange things about the  
2 Charter, you know, remaining neutral, but  
3 something sort of peculiar is that you have  
4 this Trial Board, who reviews decisions of the  
5 Manager with exempt employees, and then you  
6 have the Commission also having separate and  
7 parallel authority to hire, fire and reduce in  
8 grade.

9 And the interaction between those two has  
10 never really occurred. So it's hard to say  
11 what would happen in those circumstances. It  
12 would have to play out, because it's not  
13 happened, where someone was removed --

14 MR. KORGE: Well, then, at a minimum, there  
15 should be clarity on a final decision made by  
16 the Commission, regarding whatever finding the  
17 Trial Board should make. Otherwise, it's not  
18 clear and it shouldn't -- it just should not  
19 work that way.

20 MR. LEEN: There is no review of the Trial  
21 Board, though, by the Commission. You're  
22 absolutely right. I'm just saying, they have  
23 parallel and separate authority.

24 MR. KORGE: I understand. What I'm saying  
25 is that, if you're going to have a Trial Board

1 or an independent arbitrator of the Manager's  
2 decision regarding a particular employee, then  
3 that should be ultimately reviewed by the  
4 Commission.

5 Personally, I agree. We should just get  
6 rid of the Trial Board. I think it's a mistake  
7 to have the Trial Board. It doesn't even make  
8 sense to me. I don't understand how that fits  
9 in with the way the Government is structured.  
10 It's an anachronism.

11 CHAIRMAN VALDES-FAULI: Once again, let me  
12 clarify that this is non-union employees. This  
13 does not apply to the police. This does not  
14 apply to the general employees. And this does  
15 not apply to the firefighters. These are your  
16 appointments.

17 MS. SWANSON-RIVENBARK: Excuse me, Chair  
18 Valdes-Fauli. It applies to anyone that is not  
19 covered under a union.

20 CHAIRMAN VALDES-FAULI: Under a union  
21 contract, but it doesn't apply to the unions.

22 MS. SWANSON-RIVENBARK: But it does apply  
23 to departments within directors and assistant  
24 directors' command staff, that are not union,  
25 in both, police, fire and general employees.

1           CHAIRMAN VALDES-FAULI:   Non-union.

2           MR. BONN:   I would like to say that I think  
3           our Chair has made an excellent point about the  
4           vote of the public, but, you know, it was six  
5           years ago, and, I mean, who knows -- and there  
6           was no recommendation from a Charter Review  
7           Committee at that time, and, perhaps, the view  
8           would be different, especially if we -- and I  
9           think Mr. Dewitt has made an excellent point  
10          about the cost associated with these parallel  
11          tracks.

12          And so, you know, one would hope that the  
13          public would understand that in the next vote,  
14          but I would think it makes sense to -- you  
15          know, our charge, I guess, is to recommend  
16          things we think would be right for the City,  
17          and this one certainly seems to be one that  
18          fits the bill, in my opinion.

19          CHAIRMAN VALDES-FAULI:   All right.   Do I  
20          hear a motion on --

21          MR. DEWITT:   I'll make a motion.

22          CHAIRMAN VALDES-FAULI:   To eliminate the  
23          Trial Board?

24          MR. DEWITT:   Yes.

25          CHAIRMAN VALDES-FAULI:   Second?

1 MR. BONN: I'll second.

2 MR. MORALES: Second.

3 CHAIRMAN VALDES-FAULI: All right. Any  
4 discussion?

5 Okay. All those in favor say, aye.

6 (All members voted aye.)

7 CHAIRMAN VALDES-FAULI: Opposed?

8 All right. Next.

9 MR. LEEN: Okay. The next issue that  
10 relates to the City Manager is the auditor  
11 discussion. The reason why it relates to the  
12 City Manager is, the City Manager presently  
13 oversees an Internal Auditor.

14 Also, the City Manager, through the Finance  
15 Director, oversees an external auditor. And  
16 there's also interaction with the Budget  
17 Advisory Board.

18 The City Manager is better qualified to  
19 speak to this. She deals with this every day.  
20 So I would turn it over.

21 MS. SWANSON-RIVENBARK: Sure.

22 So the external auditor does make a  
23 presentation to the City Commission, through  
24 the Finance Director. The external auditor is  
25 evaluating the financial health of the City,

1 the validation of the statements that are  
2 prepared, and that is forwarded up to the City  
3 Commission.

4 As it relates to the internal auditor, who  
5 is in the City Manager's Office, that reports  
6 directly to the Manager, but we also have those  
7 audit reports presented to the Budget Audit  
8 Advisory Board, and they are appointed by the  
9 City Commission, and, in turn, those minutes  
10 are forwarded up to the City Commission for  
11 consideration.

12 The internal auditor today does the Police  
13 property record audit, fuel audit, operational  
14 audits, so that we can make sure we're  
15 operating with best practice, the highest  
16 efficiency in mind, and those recommendations  
17 are presented to me, and also the Budget  
18 Advisory Board, for implementation.

19 Today, we are actually evaluating whether  
20 or not we should have an internal auditor -- I  
21 know that sounds awkward -- or if we should  
22 have an external internal auditor, and that's  
23 really from an efficiency standpoint.

24 We have an outside accounting firm that is  
25 precluded from participating if the conclusion

1 is that we should do this on an external basis,  
2 but more from a cost efficient, how can we make  
3 sure that the best specialization is there,  
4 when we're evaluating best practices.

5 The Audit Advisory Board is involved in  
6 that. I've gone and presented with them, as  
7 well as the accounting firm that is doing that  
8 evaluation. The review is \$5,000. I don't  
9 think that is a high amount of money to pay to  
10 make sure that we are properly organized on the  
11 internal audit function, a function that this  
12 Commission and our office really believe in.

13 So we have it today as an internal auditor  
14 reporting to the Manager's Office, and if you  
15 have any questions regarding how that interacts  
16 with the Commission, as well as the Budget  
17 Audit Advisory Board, I'm happy to answer  
18 those.

19 MR. DEWITT: Cathy, can I ask a question?  
20 I didn't hear it. Does the external auditor,  
21 is it selected by the Commission or by you, and  
22 who do they report to?

23 MS. SWANSON-RIVENBARK: So the external  
24 auditor is selected by agreement with the  
25 Commission, you know, because the contract goes

1 up to the Commission, but it reports to the  
2 Finance Director, in preparing our financial  
3 statements.

4 MR. DEWITT: Do you not see a problem with  
5 that person that's supposed to be checking on  
6 that person on the Finance Department or the  
7 finance records?

8 MS. SWANSON-RIVENBARK: As a potential  
9 conflict of interest?

10 MR. DEWITT: Yeah.

11 MS. SWANSON-RIVENBARK: The way that the  
12 Commission -- they prepare a management letter.  
13 They report their findings to the City  
14 Commission. It is more from serving the staff  
15 in an administrative role. I don't think that  
16 it is validating or influencing what the  
17 external auditor is concluding. I don't think  
18 that that is an issue, but I --

19 MR. DEWITT: In business, we're used to  
20 seeing, you know, the external auditor report  
21 to the Board.

22 MS. SWANSON-RIVENBARK: Well, they do make  
23 their presentation to the Board. They do  
24 present -- they review all of our financial  
25 statements, and the Commission is briefed on

1 those.

2 MR. DEWITT: Or an Audit Committee, I  
3 should say.

4 MS. SWANSON-RIVENBARK: The Budget Advisory  
5 Board. Five members. I don't have an  
6 appointment on the Budget Advisory Board. I'm  
7 not asking for one -- it is five members  
8 only -- nor does the Finance have a member on  
9 that board.

10 So it is clearly a Commission appointed  
11 board, well qualified. There are auditors,  
12 there are internal auditors, there are CPAs on  
13 that Board. They review the -- McGladrey is  
14 our external auditor. They present to the  
15 Budget Advisory Board.

16 MR. KORGE: And, then, when the Budget  
17 Advisory Board is finished, it bounces it to  
18 the Commission for final --

19 MS. SWANSON-RIVENBARK: The findings come  
20 forward to the City Commission, and the  
21 Commission can ask whatever questions of the  
22 external auditor that they would like.

23 MR. KORGE: Then the Commission ultimately  
24 accepts -- assuming it's acceptable, accepts  
25 the report?

1 MS. SWANSON-RIVENBARK: Yes. Well, or  
2 doesn't, but it's their prerogative.

3 MR. KORGE: Right.

4 MR. LEEN: Mr. Chair, I was asked to look  
5 into the history of the auditor provision in  
6 the Charter, so I'll give my report at this  
7 time, too.

8 The 1954 City Charter, Section 56, included  
9 the following provision: "That the City  
10 Commission shall, as soon as practical, after  
11 the end of each fiscal year, cause to be made  
12 an audit of all accounts and financial affairs  
13 of the City covering the previous fiscal year,  
14 and upon receipt of the auditor's report, the  
15 Commission shall consider the same and take  
16 such action thereon as may be proper."

17 This was Section 56 of the compiled  
18 Charter.

19 In 2005, Section 56 was repealed by  
20 Ordinance Number 2005-05, as being superseded  
21 by the Home Rule Powers Act, along with Florida  
22 Statute Section 218.32.

23 I've looked at both, and I actually have a  
24 couple of opinions later regarding the Home  
25 Rule Powers Act. The theory upon which this

1 was removed was that it was part of the general  
2 powers granted through the Home Rule Powers Act  
3 to the City.

4 So the City continues, at the very least,  
5 to retain the power in Section 56 through its  
6 general powers.

7 Now, you know, the question of whether -- I  
8 have been asked about the Commission auditor  
9 and also about the internal auditor, and these  
10 different issues. It's really for the  
11 Committee to consider.

12 The one point I would make is that there is  
13 no question that the Commission can hire an  
14 outside auditor through contract or use the  
15 external auditor to have a greater role, if the  
16 Commission wishes. The Commission would just  
17 direct the Manager or the Commission would ask  
18 that the contract with the external auditor  
19 include more back and forth with the  
20 Commission, and they could always -- the  
21 Commission oversees all contracts ultimately of  
22 the City. So they always have that ability to  
23 ask questions.

24 I was asked about an employee, like, for  
25 example, if the City wanted to have a

1 Commission auditor, and whether that would be a  
2 Charter Officer or not. I think a lot of that  
3 depends on how much authority is given to that  
4 individual.

5 CHAIRMAN VALDES-FAULI: That's a different  
6 discussion, I think. Let's concentrate on the  
7 auditing function. And there were two auditors  
8 we're talking about here. One, the internal  
9 auditor that is hired by you and reports to the  
10 Finance Director, and I don't --

11 MS. SWANSON-RIVENBARK: Excuse me, sir.  
12 The internal auditor reports to me. The  
13 external auditor presents their reports --

14 CHAIRMAN VALDES-FAULI: No. No. Let's  
15 concentrate on the internal auditor. And I  
16 would have no problem to continue with the  
17 internal auditor reporting to you, because that  
18 is an internal function, and in most corporate  
19 world, that is the way it operates. So I would  
20 have no problem continuing like we are  
21 continuing.

22 I think the discussion here is the  
23 procedure for the external auditor, and, again,  
24 in the corporate world, the external auditor  
25 reports to the Board of Directors and not to

1 the Finance Director and not to the CEO or  
2 President, et cetera.

3 And that's, I think, what we're talking  
4 about here, the external auditor function.

5 MR. THOMSON: Mr. Chair, I'm frankly  
6 confused by several things that have been said  
7 here.

8 Mr. Leen talked about -- what's the statute  
9 called?

10 MR. LEEN: Which statute?

11 MR. THOMSON: The one you wrote a  
12 memorandum about.

13 MR. LEEN: Oh, about the Home Rule Powers  
14 Act.

15 MR. THOMSON: Home Rule Powers Act. Are  
16 you saying that to require certain things of  
17 the auditor, to report to the Commission, would  
18 violate the Home Rule Powers Act?

19 MR. LEEN: No.

20 MR. THOMSON: Because I don't understand  
21 how the Home Rule Powers Act applies to any of  
22 this. You have written a memorandum about its  
23 application to two sections, and effectively  
24 said that you have reached the opinion that the  
25 referendum requirement in those two sections is

1 illegal, and, therefore, should be stricken.

2 MR. LEEN: Yes.

3 MR. THOMSON: But where do the two fit  
4 together? Because what is being proposed here  
5 is, there be a definition of the audit  
6 responsibility to the Commission, and I'd like  
7 to know, what are the limits?

8 MR. LEEN: I understand.

9 The Home Rule Powers Act has a number of  
10 different provisions. One of which removes  
11 referendum requirements, except for in limited  
12 circumstances. There is another provision,  
13 that is a general grant of the police power to  
14 the City.

15 It used to be, before the Home Rule Powers  
16 Act, that Charters were done by Special Act,  
17 and so the Commission would have to receive  
18 authority from the State Legislature through a  
19 Special Act. The Home Rule Powers Act gave a  
20 general grant of authority to the City to  
21 legislate in any area that the State  
22 Legislature could act, unless the City  
23 Commission were preempted by State law, general  
24 law or a county charter.

25 So the City has a general grantive

1 authority, so it doesn't need to list all of  
2 the different powers anymore that it has. So  
3 we used to have a Charter that was very long,  
4 as you've mentioned, because we're in the  
5 process of re-writing it, with, you know, well  
6 over a hundred provisions in it.

7 A number of those were removed under the  
8 theory that they no longer needed to be listed,  
9 because now they were part of the general grant  
10 of authority. And so all I was saying was, it  
11 used to be that the Commission expressly had  
12 the authority to require an audit, and that was  
13 removed, by the Commission, under the  
14 recognition that that was part of the general  
15 grant of authority, so they no longer needed to  
16 have it written in the Charter.

17 So there's no question that the Commission  
18 has the authority to hire an outside auditor,  
19 if it wished. The only question, which we'll  
20 discuss later, I guess, is -- the only legal  
21 question, Charter question, is whether the  
22 appointment of an individual employee to be a  
23 Commission auditor, if that's what you were to  
24 recommend, would that require a Charter  
25 amendment or not.

1           And if you're interested in that, I'm  
2           prepared to discuss it, but at this point,  
3           we're not looking at that.

4           CHAIRMAN VALDES-FAULI: Let's focus on the  
5           audit function first.

6           MR. KORGE: On the external audit.

7           MR. THOMSON: What you're saying seems to  
8           say, as I understand it, that if an audit were  
9           required in the Charter, the Commission could,  
10          by ordinance, change that.

11          CHAIRMAN VALDES-FAULI: We can, under what  
12          we're doing, require that the outside auditor  
13          be hired by the Commission or not be hired by  
14          the Commission or continue as we are doing,  
15          which is, the Audit Committee appointed by  
16          us --

17          MR. THOMSON: But what I think I'm hearing  
18          from the City Attorney is that the  
19          Commission -- if that's put in a Charter  
20          amendment, and it becomes part of the Charter,  
21          the City Commission can nevertheless change it  
22          by ordinance.

23          MR. LEEN: What I'm saying is, the  
24          Commission already has the authority, without a  
25          Charter amendment, to hire an outside auditor

1 by contract.

2 MR. KORGE: Right, but let's walk through  
3 what he's saying. As I understand it, right  
4 now the Commission can do anything it wants  
5 with the audit, you know, by ordinance. It  
6 doesn't need a Charter provision to do that.

7 CHAIRMAN VALDES-FAULI: Right.

8 MR. LEEN: No.

9 MR. KORGE: If we adopt some Charter  
10 provision relating to audits, then that would,  
11 in that respect, limit the Commission's ability  
12 to change in the future? Would it or would it  
13 not?

14 MR. LEEN: Yes, that's true. If you  
15 limited it extensively, then -- whatever limit  
16 you place on the Charter, would limit their  
17 authority.

18 MR. KORGE: Right. And I had originally  
19 raised the question of an external audit,  
20 because I wanted to understand how that worked,  
21 and I wanted to be sure that ultimately the  
22 external auditor reported to the Commission  
23 itself, and that the potential conflict of  
24 interest, if it were reporting to the CFO or  
25 only to the Manager, would be avoided.

1           If the Commission is handling it properly  
2 now, I don't see any reason for a Charter  
3 amendment to force --

4           CHAIRMAN VALDES-FAULI: Which it is,  
5 because the Commission appoints the Audit  
6 Committee, without the intervention of the City  
7 Manager or the Finance Director, and the  
8 outside auditor, chosen by the Commission --

9           MR. KORGE: Right.

10          CHAIRMAN VALDES-FAULI: Or at least when I  
11 was Mayor, that's the way it was --

12          MS. SWANSON-RIVENBARK: It's a multi-year  
13 contract.

14          CHAIRMAN VALDES-FAULI: A multi-year  
15 contract, no more than a few years. And you  
16 have to change it every few years. It reports  
17 to your Audit Committee, appointed by you, and  
18 then that report is presented to the  
19 Commission.

20          MR. KORGE: Commission.

21          CHAIRMAN VALDES-FAULI: That's the way it  
22 works today.

23          MR. KORGE: That sounds right to me. Does  
24 that sound right to you?

25          CHAIRMAN VALDES-FAULI: That sounds very

1 right to me.

2 MR. KORGE: So I don't see a need for a  
3 Charter amendment, in my judgment.

4 MR. THOMSON: Well, I do, because I just  
5 think that it is that important that it be  
6 stated in the fundamental rule of the City,  
7 that the City must have an external audit, and  
8 the external auditor is appointed by the City  
9 Commission and reports to the City Commission.

10 MR. MORALES: Craig, doesn't State Law  
11 actually require an external audit? I don't  
12 think it's like a voluntary thing.

13 MR. LEEN: That's why when the ordinance,  
14 Number 2005-05, removed the provision, it  
15 mentioned also Section 218.32 of the Florida  
16 Statutes, which does talk about the external  
17 audit process.

18 I looked at it. We currently comply with  
19 that. The issue, I think, that's being raised,  
20 is that the auditor principally reports to the  
21 Financial Director, the external auditor, and  
22 the Budget Advisory Committee.

23 And I guess Mr. Thomson is saying, he  
24 believes that there should either be a separate  
25 auditor that reports to the Commission or that

1 that auditor should also report to the  
2 Commission.

3 All I'm saying is that the Commission could  
4 presently require at least that external  
5 auditor to report to the Commission, if it  
6 wanted to.

7 MR. KORGE: What does the Statute actually  
8 say, in terms of who is to be reporting to  
9 whom?

10 MR. LEEN: Why don't you keep discussing  
11 it, and I'll --

12 MR. DEWITT: I'd just like to interject. I  
13 agree with Parker, and I think some other folks  
14 have said the same thing. I think it's  
15 fundamental that the external auditor should  
16 report to the Board.

17 MR. KORGE: Yeah, but the statute already  
18 says that.

19 CHAIRMAN VALDES-FAULI: The external  
20 auditor will report to the Commission.

21 MR. DEWITT: But the question is, do we  
22 need to do anything to get there? I guess  
23 that's --

24 MR. LEEN: Well, you could require that in  
25 the Charter, but then that would --

1           CHAIRMAN VALDES-FAULI: Do you want to make  
2 that in the form of a motion and we'll adopt  
3 it?

4           MR. KORGE: Before you do that, let's find  
5 out what the statute actually says. It may be  
6 in the statute, and there's just no need to  
7 even deal with that.

8           CHAIRMAN VALDES-FAULI: We've been told  
9 that we can do whatever we want, and they, in  
10 fact --

11          MR. KORGE: No, we can contradict the  
12 statute. If there's --

13          MR. LEEN: No, you're not going to  
14 contradict the statute. You can always require  
15 a higher level, if you wish.

16          MS. SWANSON-RIVENBARK: So there are  
17 multiple auditors. One is the internal  
18 auditor, who is looking more at the practices  
19 that are followed; the external auditor, which  
20 is validating our financial statements, seeing  
21 how we're handling cash, that kind of an  
22 extensive review. It's a three-month review.  
23 They report those findings to the Audit  
24 Advisory Board.

25                 We can very easily have them do a full

1 presentation, also, to the City Commission, so  
2 the Audit Advisory Board can forward to the  
3 Commission so they can hear that report. It's  
4 not our intention to have the Finance -- you  
5 know, they're not reporting to the Finance  
6 Director. They're ultimately reporting,  
7 through the Budget Advisory Board, to the City  
8 Commission.

9 And that has been how the Commission has  
10 preferred it, but it does not require a Charter  
11 amendment to revise that. We can have that  
12 presentation also made and that relationship  
13 also established with the City Commission  
14 itself.

15 MR. DEWITT: Well, Cathy, is it your  
16 position that it's not broke, don't fix it? Is  
17 that what you're trying to say?

18 MS. SWANSON-RIVENBARK: I think we can  
19 refine it, to understand the concerns, concerns  
20 that have not been raised by the Budget  
21 Advisory Board, but if you're raising them,  
22 we'll go back and we'll talk to them about how  
23 can we formalize that direct relationship with  
24 the City Commission on the validation of our  
25 financial health, which is a primary

1 responsibility of the Commission.

2 CHAIRMAN VALDES-FAULI: Parker, I think  
3 your feeling is that you should have something  
4 in the Charter that says that we should have  
5 the outside auditor chosen by and reporting to  
6 the City Commission; is that correct?

7 MR. THOMSON: Yes, and what the Manager  
8 said does not comfort me. It goes to an  
9 Advisory Committee, just like we're an Advisory  
10 Committee. It should go to the Commission.

11 CHAIRMAN VALDES-FAULI: Okay.

12 MR. THOMSON: And the Commission should  
13 decide if they want somebody else to opine on  
14 the subject, before they vote. That's fine.

15 CHAIRMAN VALDES-FAULI: Would you make that  
16 in the form of a motion?

17 MR. THOMSON: But it's the Commission that  
18 should make the decisions.

19 CHAIRMAN VALDES-FAULI: Is there a second  
20 to Parker's motion?

21 MR. DEWITT: I'll second that.

22 MR. KORGE: What's the motion?

23 CHAIRMAN VALDES-FAULI: The motion is that  
24 there be an outside auditor, chosen by the  
25 Commission, and reporting directly to the

1 Commission. Is that correct?

2 MR. THOMSON: Yes.

3 MS. SWANSON-RIVENBARK: Is that, just for  
4 clarification, the external auditor?

5 CHAIRMAN VALDES-FAULI: What?

6 MR. DEWITT: Yes.

7 MS. SWANSON-RIVENBARK: The external  
8 auditor should be selected by the Commission  
9 and should report directly to the Commission?

10 CHAIRMAN VALDES-FAULI: By the Commission.  
11 To the Commission, that's correct. There's  
12 been a motion and a second.

13 MS. ORTEGA-FRIDMAN: I have a question.  
14 I'm sorry to interrupt. May I?

15 So right now there is an external auditor,  
16 yes?

17 CHAIRMAN VALDES-FAULI: Yes.

18 MS. ORTEGA-FRIDMAN: Hired by the  
19 Commission through contract, right?

20 MS. SWANSON-RIVENBARK: Yes.

21 MR. LEEN: Yes.

22 MS. ORTEGA-FRIDMAN: So if the Commission  
23 wanted a report, they could include it in the  
24 contract?

25 CHAIRMAN VALDES-FAULI: Right.

1 MS. SWANSON-RIVENBARK: Yes.

2 MS. ORTEGA-FRIDMAN: They could include it  
3 in any directive. Have they never done that,  
4 and does the Commission want that? So why  
5 would we put it in the Charter, if through  
6 Commission action, through contract, and  
7 through all other kinds of channel, they can  
8 get that same report?

9 CHAIRMAN VALDES-FAULI: Parker's -- and if  
10 I may speak for you here, his feeling, and I  
11 sort of agree with it, is that this is such an  
12 essential function of the management of the  
13 running or the responsibility of the City  
14 Commission that it should be a Charter  
15 provision.

16 MS. ORTEGA-FRIDMAN: Say it again.

17 CHAIRMAN VALDES-FAULI: That it should be a  
18 Charter provision.

19 MS. ORTEGA-FRIDMAN: The Commission thinks  
20 that? Has the Commission ever --

21 CHAIRMAN VALDES-FAULI: No. No. No. That  
22 this is such an important function, the audit  
23 function, that it should be in the Charter,  
24 versus leaving it to the discretion of the  
25 Commission whether to appoint it or not appoint

1           it or having it report to the Commission or not  
2           report to the Commission.

3           MS. ORTEGA-FRIDMAN:   Okay.

4           MR. KORGE:   The manner in which it is  
5           exercised is what -- I think Parker is saying,  
6           be clear.  If it's included in the Charter, it  
7           could not be changed without a referendum.

8           MR. THOMSON:   Exactly.

9           MR. BONN:   I would have to agree.  I think  
10          that, you know, at least in private industry --  
11          I know that we're talking about a municipality  
12          here -- but this is how things work, and best  
13          practices have certainly moved in the  
14          direction, in that post Bernie Madoff days, to  
15          really trying to make very clear the lines of  
16          authority, and I would happen to agree with  
17          that.

18          MR. KORGE:   The only thing that I have some  
19          concern about is whether it's clear that the  
20          Commission could appoint a Committee or assign  
21          the initial review to a different Committee.

22          MR. THOMSON:   My idea would be, they can  
23          appoint any Committee they want, but they've  
24          got to make the decisions.

25          CHAIRMAN VALDES-FAULI:   Yeah, but they're

1 the ones who make that decision within the --

2 MR. THOMSON: If they want somebody's  
3 advice, fine.

4 MR. KORGE: Right.

5 CHAIRMAN VALDES-FAULI: All right. All in  
6 favor say, aye.

7 MR. THOMSON: I wouldn't restrict that, any  
8 advisors.

9 MR. KORGE: Well, before you decide, did  
10 you ever find the statute related to --

11 MR. LEEN: Yes, I have the statute. We're  
12 printing it out for you. The statute talks  
13 about annual financial reports, and it also  
14 talks about audits, if it's a local government  
15 that's required to do an audit. 218.39, which  
16 is the statute it refers to, would require us  
17 to do an audit, which we do every year. So we  
18 do comply with this.

19 I mean, I want to take a closer review,  
20 while I draft this proposed Charter amendment,  
21 and I'll come back to you at the next meeting,  
22 and I'll have a report for you, but it  
23 doesn't -- at least in my quick review of it,  
24 it doesn't seem to indicate that it would have  
25 to be the Commission. It doesn't say who would

1 have to review that.

2 We do have to provide a copy of the audit  
3 to the Department of, I believe it's Financial  
4 Services.

5 CHAIRMAN VALDES-FAULI: All right.

6 MR. MORALES: And I suspect where the  
7 Manager is grappling, because I'm grappling, is  
8 the word report is not really the right word.  
9 I mean, Staff reports to the Manager, and the  
10 Manager gives direction to Staff.

11 The auditor is hired by the City of Coral  
12 Gables. The client is the City of Coral  
13 Gables, no different than a corporation.

14 The auditor has obligations under  
15 government accounting standards, in terms of  
16 independence, in terms of reporting. The  
17 Manager can't tell them to ignore that.

18 Ultimately, what management normally does  
19 with the external auditor is, they are the ones  
20 who are providing the information and whatnot.  
21 They're not -- at the end of the day, the  
22 auditor has clear statutory and audit  
23 accounting firm ethics and standards that will  
24 guide what goes into that report, and all of  
25 those standards. The City doesn't provide that

1 direction. And the report is issued to the  
2 City of Coral Gables, it's not a report to  
3 anybody but, and it's presented to the City.  
4 It's presented to the Finance Committee, et  
5 cetera, et cetera.

6 So I guess what I'm trying to get at is,  
7 based on what she has described before, what is  
8 -- from the perspective of the people up here,  
9 what is not happening now, that we're trying to  
10 get to with the word, report, because I think  
11 the independent auditor is actually  
12 independent? They're technically giving us an  
13 independent report on the financial status of  
14 the City. They're not going to take orders  
15 from anybody, other than getting information, I  
16 believe, but -- that's what I'm not quite sure,  
17 what that provision will mean, therefore. Are  
18 they going to have to come to the City  
19 Commission with questions and request for  
20 information? Is that going to create  
21 administrative -- I'm just trying to understand  
22 what we're trying to get at, I guess.

23 MS. ORTEGA-FRIDMAN: That's exactly my  
24 question, as well. I just don't understand, if  
25 there are so many other avenues by which to get

1 the information, it's a public record, what's  
2 missing? What is this trying to solve that  
3 isn't happening right now?

4 MR. DEWITT: I think it has to do with  
5 assessing specific responsibility, is what I  
6 think it has to do with. You know, just to  
7 reflect back and not disparaging another city,  
8 but if you remember back a few years ago, the  
9 City of Miami ran into serious questions about  
10 this external audit and about their audits, and  
11 were under investigation by the SEC for bad  
12 financial --

13 MR. THOMSON: They still are.

14 MR. DEWITT: Still are.

15 But, you know, I just think it's assessing  
16 responsibility of making it clear who that line  
17 of responsibility is for selecting and working  
18 with the external auditor.

19 MS. SWANSON-RIVENBARK: And all excellent  
20 questions. Just know that the external auditor  
21 prepares a management report that is presented.  
22 It is not something that we have -- you know,  
23 that they need to go through my office for  
24 approval, and of the many specific powers and  
25 duties of the Manager and its Departments to

1 keep the Commission fully advised of the  
2 financial condition of the City, that is very  
3 much a part of what we do all year long.

4 And the Commission has, for several years,  
5 viewed the Budget Advisory Board as  
6 professionals in the field, as the ones that  
7 that report -- that the most dialog happens  
8 with them. The Commission reviews the budget.  
9 The Commission hears annual financial reports.  
10 They hear quarterly financial reports, but the  
11 Budget Advisory Board is the one that is  
12 meeting one-on-one with the external auditors.

13 MR. THOMSON: I'm a little confused by what  
14 you just said. The standard, in my  
15 understanding, is, the external auditor will  
16 submit to you, as the CEO, their comment on  
17 management, and you will respond to it, and  
18 that becomes part of the audit. It goes to the  
19 Commission.

20 MS. SWANSON-RIVENBARK: If there are  
21 findings that we need to respond to, then we do  
22 that.

23 MR. THOMSON: That's right. That would  
24 have their comments, your comments on their  
25 comments and that's part of the audit that goes

1 to the Commission.

2 MS. SWANSON-RIVENBARK: Correct.

3 CHAIRMAN VALDES-FAULI: All right. The  
4 motion has been made and second, where the City  
5 Commission will hire the external auditor and  
6 the external auditor will report to the City  
7 Commission.

8 All those in favor say, aye.

9 MR. BONN: Aye.

10 CHAIRMAN VALDES-FAULI: Aye.

11 MR. KORGE: Aye.

12 MR. DEWITT: Aye.

13 MR. MORALES: Aye.

14 CHAIRMAN VALDES-FAULI: Opposed? One  
15 opposed. Thank you.

16 All right. The third item having to do  
17 with the City Manager concerns responsibilities  
18 of reporting inquiries, and Mr. City Attorney,  
19 you want to --

20 MR. LEEN: Yes. First, on the auditor  
21 discussion, I'll prepare draft language, like I  
22 did this time, and you'll approve the form at  
23 the next meeting. It will also give you time  
24 to look at the statute.

25 Okay. So the next issue is Section 23.

1 That's on the agenda, because it was raised by  
2 the Committee at the last meeting as being  
3 something that was going to be looked at, and  
4 Section 23 relates to the lines of authority  
5 between the Commission and Manager.

6 This is the section that gives the  
7 Commission authority to, by resolution, direct  
8 the Manager to hire, fire or reduce in grade  
9 any employee within -- under the City Manager's  
10 charge.

11 Now, you need to know, that does not  
12 necessarily apply to employees within a  
13 bargaining unit. The Commission may have some  
14 authority in relation to that, but it's limited  
15 by the Collective Bargaining Agreement.

16 So, typically, this type of provision  
17 applies more to employees that are exempt, same  
18 as the Trial Board provision, very similar. So  
19 that's the first thing I want to say.

20 The second part of this Section 23 relates  
21 to the authority of the Commission regarding  
22 subordinates of the Manager, and it uses the  
23 term, subordinate, but employees that work for  
24 the Manager. And what it says is that the  
25 Commission cannot direct subordinates of the

1           Manager, except for in open session, which has  
2           been interpreted to mean that the Commission --

3           MR. DEWITT:   Except for a, what?

4           MR. LEEN:    Except for in open session,  
5           which has been interpreted to mean that the  
6           Commission, as a whole, can direct subordinates  
7           of the Manager, by a majority vote, in open  
8           session, like at a Commission Meeting.

9           Another part of this provision is the  
10          ability to inquire.  The Commission has the  
11          authority to inquire of Staff.  There's no  
12          limitation on that.  It can be any Staff  
13          Member.

14          MR. DEWITT:  The Commission, as a whole, or  
15          a Commissioner?

16          MR. LEEN:   Any individual Commissioner may  
17          inquire.

18          CHAIRMAN VALDES-FAULI:  Which is a very  
19          valuable provision for Commissioners, extremely  
20          valuable.

21          MR. LEEN:   So those are the different  
22          provisions.  I know Mr. Thomson had a proposal  
23          related to this, which, Mr. Chair, you may want  
24          to give him the floor.

25          CHAIRMAN VALDES-FAULI:  Yes.  Parker.

1           MR. THOMSON: Well, I'd first like to hear,  
2           if we could, the City Manager's comment on this  
3           section, because I know that Merrett Stierheim  
4           had problems with it. I personally have  
5           problems with it, because I don't know what the  
6           word "inquiry" is, and I think that has to be  
7           greatly clarified, but I'd rather hear from the  
8           City Manager, who is the one that has to live  
9           with this.

10          MS. SWANSON-RIVENBARK: Thank you, sir.

11          As a Commission-Manager form of government,  
12          the idea that it's the CEO that manages the  
13          day-to-day operations, it's the Commission that  
14          sets the big picture policy, having them  
15          involved in the hiring, firing, removal of  
16          employees can cause a tremendous amount of  
17          damage, quite honestly.

18          The City Commission has not exercised that  
19          right, or, at least, in my knowledge of the  
20          City for probably 25, 30 years, I haven't seen  
21          them direct that. Clearly, their input is  
22          always important, but an actual direction on a  
23          three-two vote as to an action that should be  
24          taken on a personnel matter, I don't see the  
25          Commission exercising that, but it is clearly

1 in our Charter.

2 On the role of inquiry, I think the way  
3 that we operate it today is, any Commissioner  
4 has the opportunity to get information from  
5 director level and higher, for information, and  
6 we do that, so that they can get it as fast as  
7 they can, rather than going through our office  
8 and having to get that, you know, managed  
9 information flow in and out.

10 The directors all notify me when they've  
11 received an inquiry. It's not directing it  
12 with use of resources, but it's more  
13 information, like the traffic counts or  
14 information regarding what's happening with a  
15 Zoning hearing. It is not, "Please, prepare  
16 this report and present it back to me."

17 So there is an opportunity today for the  
18 Commission -- each Commissioner to have direct  
19 conversation with directors. Directors keep me  
20 informed on it. I'd prefer that it not go  
21 lower, to other employees, because it is  
22 intimidating for our employees and it also can  
23 be confusing for the process.

24 So today we have a situation where  
25 directors -- Commissioners are allowed to

1 communicate directly with directors. We are  
2 notified by them. And I think the process, the  
3 Commission is comfortable with that.

4 There were some prior experiences that I  
5 think helped shape that desire to communicate  
6 directly with directors, and, I think, from our  
7 standpoint, it works.

8 I'm more concerned with the idea that the  
9 Commission, by a three-two vote, could actually  
10 direct the hiring or firing of Staff. I think  
11 that when you're creating a culture, when  
12 you're ensuring accountability, when you want  
13 to make sure that all of the ethics, the  
14 backgrounds, the integrity are in place, having  
15 Commissioners play the role of personnel  
16 manager, when it's one of the most important  
17 responsibilities of an executive, I would  
18 prefer that they not exercise that.

19 They haven't exercised it yet.

20 CHAIRMAN VALDES-FAULI: You're talking  
21 about hiring.

22 MS. SWANSON-RIVENBARK: Hiring and firing,  
23 the way that it shows.

24 CHAIRMAN VALDES-FAULI: And firing.

25 MS. SWANSON-RIVENBARK: They haven't

1 exercised it at this point, and we've had good  
2 conversations about that.

3 CHAIRMAN VALDES-FAULI: Okay. In my time,  
4 I did tell the then City Manager or threatened  
5 the then City Manager, that if he didn't get  
6 rid of some people, we would get rid of some  
7 people, and that worked.

8 MS. SWANSON-RIVENBARK: Well --

9 MR. KORGE: If I might suggest, the proper  
10 way, I think, from a management standpoint,  
11 would be -- in that instance, if you felt that  
12 strongly about it, to tell the Manager, "Either  
13 you get rid of them or you're gone," you know,  
14 because otherwise basically you're  
15 undercutting -- we're undercutting the Manager,  
16 by doing it that way.

17 If the Manager feels strongly enough --

18 CHAIRMAN VALDES-FAULI: I hear you. I hear  
19 you, but there's a quantum leap between getting  
20 rid of a police chief -- and I'm talking about  
21 a long time ago -- and getting rid of the  
22 Manager.

23 MR. KORGE: Right.

24 CHAIRMAN VALDES-FAULI: Maybe it's not  
25 worth it to get rid of the Manager, where the

1 manager is defending or through inertia has an  
2 employee or a director, who is not performing  
3 his or her duties.

4 MR. KORGE: But the whole idea is that the  
5 Manager's performance ultimately depends on the  
6 people under the Manager.

7 CHAIRMAN VALDES-FAULI: No, I hear your  
8 arguments, but I don't agree that we should --  
9 I think that it is valuable for the Commission,  
10 with a four-fifth vote, to have the ability to  
11 get rid of some people.

12 MS. SWANSON-RIVENBARK: Well, Mr. Chair, I  
13 was here at the time when you were mayor --

14 CHAIRMAN VALDES-FAULI: You were here at  
15 the time.

16 MS. SWANSON-RIVENBARK: And I remember --

17 CHAIRMAN VALDES-FAULI: And you remember  
18 that incident.

19 MS. SWANSON-RIVENBARK: -- a series of  
20 incidents, actually, and so the way that I've  
21 shared with our Commission, if they're not  
22 happy with the performance of any one of the  
23 employees that report to me, then they need to  
24 get rid of me.

25 If I can't make the corrections that are

1 necessary, then they have the right, at any  
2 time, 48 hours special notice or every two  
3 weeks, to remove the Manager.

4 MR. THOMSON: Mr. Chair --

5 CHAIRMAN VALDES-FAULI: Yes, sir.

6 MR. THOMSON: -- I drafted some language.  
7 Frankly, I happen to agree with the Manager's  
8 comments, but I am leery of diminishing the  
9 Commission's authority to act, because if the  
10 Manager doesn't like it, the Manager can  
11 resign.

12 I mean, there's always the play between the  
13 Manager and the Commission. Upping it to a  
14 four-fifth vote would help. I was mainly  
15 concerned about the word, "Inquiry."

16 I found that in County Charter, the word  
17 "inquiry" is defined, and it's defined as part  
18 of the phrase, "Inquiries and Investigations,"  
19 and I did have a dialog with the City Attorney  
20 both, in writing and verbally, and he pointed  
21 out to me that inquiries of an informational  
22 nature could be helpful, as long as they don't  
23 go too far down -- such as to the Manager or  
24 any department head, rather than a lower  
25 employee, that any Commissioner can have an

1 inquiry of an informational nature, but an  
2 inquiry that is something beyond that really is  
3 an investigation, and that should be by the  
4 Commission, operating in open session, with  
5 full power to issue subpoenas or do anything  
6 they want to do.

7 And I drafted something that -- I drafted a  
8 new suggestion, but that's the essence of what  
9 I think should be done, and I would add to it,  
10 the idea that a Commission action of ordering  
11 or hiring should be by a four-fifth vote.

12 CHAIRMAN VALDES-FAULI: Thank you.

13 I would disagree with the Commission having  
14 the power to order the hiring of anybody. That  
15 person is going to be working under the City  
16 Manager, who has, under the Charter, managerial  
17 responsibilities and responsibilities for the  
18 performance of that person, and we would be  
19 imposing an extraneous person or somebody that  
20 the City Manager could not work with or  
21 possibly could not work with, and that would  
22 create, you know, a very unhealthy situation.

23 I agree with the rest of your comments, as  
24 to inquiry, as opposed to investigation, and  
25 limiting it to the directors and the City

1           Manager, but -- and maybe the firing would work  
2           by getting rid of the City Manager and not the  
3           employees, but I would oppose the Commission's  
4           ability to force the hiring of any director or  
5           employee on the City Manager.

6           MR. THOMSON: Well, I don't disagree with  
7           what you said.

8           CHAIRMAN VALDES-FAULI: Okay.  
9           Yes, sir.

10          MR. DEWITT: I agree with the Manager. I  
11          think that if you're going to put somebody in  
12          charge, and especially in a city, in a  
13          government, you have to have a direct line of  
14          authority. That person has to have the  
15          authority to do it. If they're not doing the  
16          job, you get rid of them, and if they don't  
17          have the Staff under control, they're not doing  
18          their job, but you don't undercut them and you  
19          don't impose people on them.

20          You expected them to gain results in what  
21          they're doing. You give them the authority to  
22          do it.

23          CHAIRMAN VALDES-FAULI: Mr. City Attorney,  
24          did you get the gist of all of this, I hope?

25          MR. LEEN: I did. I heard everything that

1           you said. I don't have a direction as to what  
2           to do.

3           CHAIRMAN VALDES-FAULI: Okay. And, Parker,  
4           correct me if I'm wrong, but the gist of it is  
5           that the Commission shall have the power to  
6           inquire from the City Manager, of course, and  
7           the directors, but not below. And the City  
8           Commission shall not be able to force the  
9           dismissal of an employee, shall not. And,  
10          Third, that the City Commission shall not have  
11          the power to force the hiring of any director  
12          or employee, that that function will be  
13          exclusively the City Manager's function.

14                 So is that correct?

15           MR. THOMSON: Yes.

16           MR. LEEN: So what I'm hearing or what you  
17          just said, the way I would interpret that is,  
18          so you would want the first sentence of Section  
19          23, which says, "The Commission, by Resolution  
20          duly adopted, may direct or require  
21          appointment, suspensions or discharges of City  
22          Officers or employees by the City Manager," to  
23          be removed. That will be stricken.

24                 The second sentence is "But none of the  
25          Commissioners may otherwise direct or request

1 the appointment of any person to or his removal  
2 from the service of the City by the City  
3 Manager or any of its subordinates," you'd want  
4 that principle to remain, "Except for the  
5 purpose of inquiry, the Commission and its  
6 members shall otherwise deal with that portion  
7 of the administrative service for which the  
8 manager is responsible solely through the  
9 Manager."

10 You would want "inquiry" to be defined?

11 CHAIRMAN VALDES-FAULI: Defined as  
12 obtaining information.

13 MR. LEEN: And you would want to limit the  
14 Commissioners from being able to inquire of any  
15 employee below a director?

16 CHAIRMAN VALDES-FAULI: No employee below  
17 director, just director and above.

18 MR. KORGE: Well, I disagree with that.

19 CHAIRMAN VALDES-FAULI: Okay.

20 MR. KORGE: Here's what I think. I think  
21 that that's in the discretion of the Manager.  
22 If this Manager wants the directors to be  
23 able -- or the Commission to be able to talk to  
24 her directors, then she would just say that's  
25 okay. She may want, on a particular occasion,

1 for the Commissioner to talk, not to the  
2 director, but to some line employee, because  
3 that person has particular information helpful  
4 for that particular Commissioner.

5 In other words, I would leave it to the  
6 Manager to decide who, you know, should be  
7 providing information to the Commission. And  
8 if the Commission is uncomfortable with that,  
9 if we get a Manager that is closing all of the  
10 lines of information off, fire that person. I  
11 mean, that person shouldn't be our Manager.

12 But I don't think --

13 MR. LEEN: You want to remove the authority  
14 to inquire? Completely, then have it be  
15 delegated?

16 CHAIRMAN VALDES-FAULI: No, to the  
17 contrary.

18 MR. KORGE: No. No.

19 MR. LEEN: That would be delegated by the  
20 Manager?

21 MR. KORGE: No. It says here now, "For  
22 purposes of the inquiry," which we say is  
23 obtaining information.

24 MR. LEEN: Right how they have a right to  
25 inquire.

1           MR. KORGE: Right. "The Commission and its  
2 members shall otherwise deal with that portion  
3 of the administration service, for which the  
4 Manager is responsible, solely through the  
5 manager," and that we can't give -- the  
6 Commission can't give authorities to  
7 subordinates, et cetera.

8           So I would leave that the way it's written.  
9 That doesn't mean that the Commissioner  
10 cannot -- or the Commission cannot talk to  
11 directors, for example.

12           CHAIRMAN VALDES-FAULI: I'm sorry. Go  
13 through that again.

14           MR. DEWITT: Yeah, I'm confused at this  
15 point about what you're saying.

16           Why don't we do this, it might be easier if  
17 we bifurcate the issue of hiring and firing  
18 from the issue of inquiry, because I think  
19 it's --

20           MR. KORGE: Well, I think that's already  
21 been done. I think that we're all in agreement  
22 that hiring and firing is the Manager's  
23 responsibility.

24           CHAIRMAN VALDES-FAULI: Right.

25           MR. KORGE: The question now is, whether

1           this third sentence in Section 23 should be  
2           modified or eliminated. And it says, in  
3           pertinent part, "Except for the purpose of  
4           inquiry -- except for the purpose of inquiry,  
5           the Commission and its members shall otherwise  
6           deal with the portion of the administrative  
7           service for which the Manager is responsible  
8           solely through the Manager."

9           Now, I'm not sure what that -- and I'm  
10          reading it for the third time. I'm not sure  
11          what that means. What does that mean?

12          MR. LEEN: Well, it's been interpreted to  
13          mean that the individual Commissioners can ask  
14          questions and receive information from any  
15          employee, and the limitation on that is, if it  
16          requires the expenditure of funds by the  
17          City -- so an administrative function, they  
18          essentially have to do an investigation -- we  
19          have said that that has to be done either by  
20          direction of the Commission as a whole or by  
21          direction of the City Manager.

22          So an individual Commissioner cannot  
23          require one employee to spend City funds to  
24          respond to an inquiry, but if they have a  
25          specific question, they can ask the question

1 and receive the information in response.

2 That's the way it's been interpreted.

3 Remember, every Commissioner, at the very  
4 least, has the right to make a public records  
5 request, has the First Amendment right to speak  
6 to people, and members of the government. So  
7 there's only so much you can do with this  
8 provision --

9 MR. KORGE: Right.

10 MR. LEEN: -- without running afoul of  
11 those provisions.

12 MR. DEWITT: Yeah. I mean, we want to make  
13 sure -- I mean, if there's a hurricane or  
14 something and the Mayor wants to talk to the  
15 Fire Chief or somebody at the Emergency Center,  
16 he doesn't have to try and find the Manager to  
17 do that.

18 CHAIRMAN VALDES-FAULI: I view this as an  
19 irate neighbors come and say, "My permit for  
20 whatever has been stuck. I've been there 23  
21 times and every time I go, and I correct the  
22 22nd problem or the 21st or the 20th, but they  
23 come up with a 24th problem."

24 And when I was in a responsible position,  
25 I'd call whoever it was that was requiring the

1 24th permit, and say, "What the heck is going  
2 wrong? What's happening?"

3 And I got an answer, and I gave the  
4 individual citizen -- resident the answer, and  
5 sometimes the resident was pleased and  
6 sometimes he wasn't, but that was a very  
7 valuable authority.

8 MR. KORGE: I have no problem with that.

9 MR. DEWITT: I don't have a problem with  
10 that.

11 CHAIRMAN VALDES-FAULI: And you couldn't do  
12 that if you limited that ability to directors  
13 and above.

14 MR. DEWITT: Yeah.

15 MR. KORGE: What I have a problem is --  
16 well, first of all, I would not -- I don't know  
17 that I would change it, but what I have a  
18 problem with is, for you, as the Mayor, to go  
19 and say to that person -- "You know, they've  
20 come up -- they've met all 22 and you came up  
21 with Number 23 objection. We're done. Give  
22 them the permit."

23 CHAIRMAN VALDES-FAULI: No. No. No. I  
24 wouldn't give them --

25 MR. KORGE: No. No. I know. I would have

1 a problem with that. I know that you wouldn't  
2 do that, and I know that no other Commissioner  
3 would ever do that, and we all understand that,  
4 and I think that's probably -- I think that's  
5 what it says now.

6 (Unintelligible.)

7 MR. LEEN: They can't. They can't direct.

8 MR. KORGE: So, I think, the language as  
9 it's written, is okay.

10 MR. LEEN: They can't presently direct.  
11 If they directed, as you said, if they actually  
12 ordered the person to do it, that would  
13 actually be an automatic forfeiture of their  
14 office.

15 MS. SWANSON-RIVENBARK: And so I don't  
16 think that's exactly what the Chair was  
17 speaking about, but, today, you'll be happy to  
18 know, we have an ombudsman, who goes through  
19 all that red tape regarding permitting, so we  
20 don't have the problems that we've had in the  
21 past.

22 CHAIRMAN VALDES-FAULI: I mentioned,  
23 permitting, but it has to do with other things,  
24 too.

25 MS. SWANSON-RIVENBARK: I understand.

1           MR. THOMSON: I think that when we have a  
2           Manager -- a Manager-Commission form of  
3           government, the Commission is intended to stay  
4           out of operational matters, and, therefore,  
5           they shouldn't be permitted to do that, because  
6           that violates the whole integrity of the  
7           Manager.

8           The manager appoints the Department heads.  
9           That's fine. I mean, she appoints them. They  
10          are the Department heads. You can talk to a  
11          Department head, is my view.

12          Talking below that can, and, therefore,  
13          should not be permitted to interfere with sound  
14          management -- if I start talking to Joe Smith,  
15          who is three layers down, the Department head  
16          may not even know about it. It destroys the  
17          integrity of the management system.

18          Beyond that, Tom, I just don't understand  
19          the word, "Inquiry." I think, if you mean by,  
20          "inquiry," information, you ought to have a  
21          broad right to -- Commission to have any  
22          information that they need, but if "inquiry"  
23          means more than that, and I think it does --

24          CHAIRMAN VALDES-FAULI: Substitute  
25          "inquiry" for obtaining information.

1           MR. THOMSON: You know, I just suggested,  
2           used at the County, investigations and  
3           inquiries, and say informational inquiries are  
4           fine by any single Commissioner. You go  
5           further, by that, towards an investigation,  
6           then it's a Commission matter.

7           MR. KORGE: Well, I would suggest, on  
8           Section 23, then, that we delete the first  
9           sentence, and that the word "inquiry" be  
10          changed to, "For purposes of obtaining  
11          information," instead of inquiry.

12          MR. THOMSON: Again --

13          MR. LEEN: Maybe, "except for the purpose  
14          of inquiries to obtain information"?

15          MR. THOMSON: Yeah. That's possible, sure.

16          MR. KORGE: Yeah.

17          MR. THOMSON: If we get a draft from the  
18          City Attorney --

19          MR. KORGE: We'll take a look at it.

20          MR. LEEN: The next provision I need to ask  
21          you about, then, is -- shall we continue  
22          reading, it goes, "For which the Manager is  
23          responsible, solely through the Manager, and  
24          neither the Commission, except in open session,  
25          nor any member thereof shall give orders to any

1 subordinate of the Manager."

2 I raise that, because, as it's presently  
3 worded, the Commission may give orders to  
4 subordinates of the Manager, in open session.

5 Do you want that to be changed? That means  
6 that the Commission, by resolution --

7 MR. THOMSON: I don't think a single  
8 Commissioner can give an order.

9 MR. LEEN: No. No. The Commission.

10 MR. KORGE: The Commission as a whole.

11 MR. LEEN: Like if they pass a  
12 resolution --

13 MR. THOMSON: The Commission as a whole can  
14 give orders all of the time.

15 MR. DEWITT: Yeah, I think they should give  
16 the order to the Manager, though.

17 MR. LEEN: Well, if you changed it, it  
18 would always go through the Manager. Right now  
19 it can be -- they can give orders --

20 MR. DEWITT: I mean, it's the same thing as  
21 hiring and firing employees. I mean --

22 MR. LEEN: Right now sometimes they order  
23 the Finance Director, sometimes they direct the  
24 Manager, but typically it's assumed that the  
25 Manager is the chief executive, so it's all the

1           Manager's authority.

2           MR. DEWITT: Well, that's just a clerk, you  
3 know, of the attorney (sic) --

4           MR. MORALES: I mean, you know, if, for  
5 example, the motion is, we direct the Public  
6 Works Department to go conduct a traffic study  
7 on, you know, Bird Road, okay. You know, yes,  
8 the Manager will oversee that, but, I mean, I  
9 don't think the Commission will have a problem  
10 with it, providing it to the management team,  
11 whatever that is. It just may be directed at a  
12 particular department for -- directing the  
13 Procurement Department to prepare an RFP, but  
14 ultimately it's obviously under the auspices of  
15 the Manager.

16           The issue on information, I guess, one  
17 little nuance, which is always -- when I've  
18 been a City Attorney, as the City Manager, as a  
19 Commissioner, sometimes a request for  
20 information requires a lot of work.

21           MR. LEEN: Yes.

22           MR. MORALES: I mean, you know, if, for  
23 example, the request for information is, can  
24 you do a twenty-year analysis of, you know,  
25 crime statistics -- I mean, you know, you could

1 suddenly have a \$20,000, you know, consulting  
2 firm having to be hired.

3 So I don't know how you all have  
4 interpreted that. One thing is to solicit  
5 readily available information. You know, how  
6 many stop lights, whatever. Another thing is  
7 asking for significant Staff work, to create  
8 information that may not even exist at this  
9 point in time.

10 MR. THOMSON: That's not information.  
11 That's not an information request, in common  
12 parlance, and, of course, the answer is, can  
13 you do this? The answer is, yes, for \$25,000.

14 MR. LEEN: What I would say is, the way  
15 it's been interpreted is, if the Commissioner  
16 asks for information, assuming it's not  
17 protected by some confidentiality statute or  
18 something like that, they're entitled to the  
19 information. The City can't hide information,  
20 because it's good or bad. So they have to be  
21 given the information.

22 If it requires the expenditures of time and  
23 resources, that director should go to the City  
24 Manager or whoever her designee is for that,  
25 and if they think that it's too much, then it

1 would go to the Commission. The Manager could  
2 decide it, and, then, if there's a  
3 disagreement, then the Commission would decide.  
4 That's how it's been presently interpreted,  
5 that the Commission could, essentially, based  
6 on its power to conduct inquiries and  
7 investigations, it could order that be done,  
8 but then the Commission is making almost a  
9 policy level decision, to invest funds into  
10 that type of investigation. That's the way  
11 it's been interpreted.

12 MR. DEWITT: But that's the Commission as a  
13 whole, though.

14 MR. LEEN: That's the Commission as a whole  
15 at that point.

16 Whenever I say, "The Commission in open  
17 session," I'm referring to the Commission as a  
18 whole. Now, typically, individual  
19 Commissioners, in open session, have given  
20 directives to the Manager, but -- and I'm not  
21 talking necessarily about this City Manager.  
22 I'm just saying, in general, in my four and a  
23 half years here -- and if the Manager  
24 disagrees, although typically they don't, but  
25 if they do, the Commission, then, would vote on

1 that.

2 So it's always been understood that one  
3 Commissioner cannot direct anyone -- actually,  
4 cannot, cannot direct -- because, ultimately,  
5 they act as a Commission. A Commissioner  
6 cannot direct the City Manager.

7 CHAIRMAN VALDES-FAULI: Right.

8 MR. LEEN: -- cannot direct Staff, cannot  
9 direct the City Attorney or the City Clerk, in  
10 terms of policy type level functions. Instead,  
11 that has to be done by the Commission.

12 What individual Commissioners can do is,  
13 they can direct me to draft them a resolution  
14 or ordinance. They can direct the City Manager  
15 to obtain information for them. They can  
16 direct a Staff member to obtain information,  
17 but the broader decision-making has always been  
18 understood to be the Commission.

19 So when -- and maybe I'm talking too long  
20 on this, but when a Commissioner has asked for  
21 something, and no Commissioner objects, and the  
22 Manager says, "Of course, we'll do that," it's  
23 assumed that the Commission and the Manager  
24 agree. We never require a vote, though.  
25 Usually the Commissioner will say, "Madam

1           Manager, can you do this?"

2                   And she says, "Yes."

3                   And that's how it's been resolved.

4           MR. MORALES: Now, you just made an  
5           interesting point, which I think goes to a  
6           question that was asked earlier, which is, this  
7           language about "that portion of the  
8           administrative service which the Manager is  
9           responsible," because if it's something under  
10          the Clerk or the City Attorney, there are  
11          instances where an individual Commissioner can  
12          direct you to prepare a resolution.

13                  MR. LEEN: Yes.

14          MR. MORALES: Or the Clerk to put something  
15          on the agenda.

16                  MR. LEEN: Yes.

17          MR. MORALES: Those are different. That's  
18          why I think it's limited to the Manager, on  
19          that context, because there are times when the  
20          City Attorney or the Clerk may be directed by  
21          an individual Commissioner to do something --

22                  MR. LEEN: Yes.

23          MR. MORALES: -- in connection with their  
24          function, that is very relevant.

25                  MR. LEEN: Yes.

1           MR. MORALES: So that's why I do think this  
2 was limited to the Manager.

3           MR. LEEN: There are a few parts of the  
4 Code and the Charter where an individual  
5 Commissioner has power or authority, and one of  
6 them is, exactly, to put something on the  
7 agenda. So, in that respect, myself, the City  
8 Manager and the City Clerk, depending on what  
9 aspect of that, we would have the duty to work  
10 with the --

11           MR. MORALES: Or may ask you for an opinion  
12 on a conflict of interest or may ask you --

13           MR. LEEN: Yes.

14           MR. MORALES: I mean, there are instances  
15 where a Commissioner will ask you to do  
16 something.

17           MR. LEEN: Yes, and I have a duty to  
18 respond.

19           MR. MORALES: Right.

20           CHAIRMAN VALDES-FAULI: All right.

21           MR. KORGE: Well, I have a motion.

22           CHAIRMAN VALDES-FAULI: Yes. Yes, sir.

23           MR. KORGE: Here's my motion. For Section  
24 23, eliminate the first sentence of Section 23,  
25 which reads, "The Commission by resolution duly

1           adopted may direct or require appointments,  
2           suspensions or discharges of City officers or  
3           employees by the City Manager."

4           And, then, the second sentence would just  
5           be grammatically changed, to get rid of the  
6           "but" and the word "otherwise," and that would  
7           be the entire amendment.

8           CHAIRMAN VALDES-FAULI: All right.

9           MR. KORGE: Oh, excuse me, and then the  
10          provision -- the third sentence, which begins,  
11          "Except for the purpose of inquiry," we would  
12          insert the words, "to obtain information."

13          CHAIRMAN VALDES-FAULI: Right. All right.  
14          Is there a second?

15          MR. MORALES: Second.

16          CHAIRMAN VALDES-FAULI: All those in favor  
17          say, aye.

18          MR. BONN: Aye.

19          MR. MORALES: Aye.

20          MR. KORGE: Aye.

21          CHAIRMAN VALDES-FAULI: Aye.

22          Opposed?

23          MS. ORTEGA-FRIDMAN: I have a question.

24          MR. THOMSON: Does that limit the City  
25          Attorney to come back with --

1           MR. LEEN: No, I'm going to come back with  
2 language, again, as to the form, and, remember,  
3 you can always --

4           CHAIRMAN VALDES-FAULI: We can discuss  
5 afterwards, yes.

6           MR. LEEN: -- every one of these -- like  
7 today, we have three. You get to take another  
8 look at it.

9           MR. THOMSON: I would like to see what the  
10 possibilities are.

11          MR. LEEN: This is just non-directed. I'm  
12 going to go and redraft --

13          MR. KORGE: That's my motion.

14          CHAIRMAN VALDES-FAULI: No, this is a  
15 directive for you to draft it in this, and then  
16 we always have the ability to --

17          MR. LEEN: To bring back the final  
18 language. You approved the language and you  
19 can adjust it at that time.

20           One other question. The last sentence, was  
21 there -- I'm sorry, a point of order, was there  
22 a full vote?

23          CHAIRMAN VALDES-FAULI: Yes, there was. It  
24 was a full vote.

25          MR. LEEN: Did you vote?

1 MS. ORTEGA-FRIDMAN: I didn't. I just was  
2 going to ask a question. But may I ask a  
3 question of the Chair?

4 CHAIRMAN VALDES-FAULI: Go ahead.

5 MS. ORTEGA-FRIDMAN: So, on the one hand,  
6 you said, this is a power that, as a Mayor and  
7 sitting Commissioner, was something that you  
8 felt gave you leverage and was a positive.  
9 What do you think as between -- in terms of the  
10 ability to suspend or appointment, et cetera?

11 You think it should be eliminated or should  
12 it stay?

13 CHAIRMAN VALDES-FAULI: I think it is very  
14 healthy for the City Manager to have sole  
15 responsibility for hiring and firing, and if we  
16 don't agree with that, then we fire the City  
17 Manager.

18 In terms of inquiry, I think that, you  
19 know, inquiry for the purpose of obtaining  
20 information satisfies what I think should be  
21 there.

22 MS. ORTEGA-FRIDMAN: Okay.

23 MR. LEEN: Okay. So did you want to lodge  
24 a vote?

25 MS. ORTEGA-FRIDMAN: I'll vote in favor.

1           MR. LEEN:   Okay.   So then the last -- I had  
2           a question about the last sentence.   I think,  
3           Mr. Thomson, that you had -- maybe it was you  
4           or maybe it was something else we were working  
5           on, but right now it says, "Any violation of  
6           the provisions of the section by a Member of  
7           the Commission shall be a forfeiture of the  
8           office of such Member."

9           I recall being proposed or perhaps I had  
10          just thought that maybe it should say, "As  
11          determined by the Commission" or something.  
12          Right now, this provision --

13          CHAIRMAN VALDES-FAULI:   I think it should  
14          be by "As determined by the Commission," and  
15          not getting into an --

16          MR. LEEN:   Okay.

17          CHAIRMAN VALDES-FAULI:   -- argument as to  
18          what constitutes forfeiture or what would  
19          require a forfeiture.

20          MR. LEEN:   And that my tie into the  
21          provision.

22          MR. KORGE:   I would be willing to accept  
23          that as a friendly -- if somebody wants to make  
24          it as an amendment or I'll amend my motion to  
25          incorporate that, as well, into the last

1 sentence.

2 MR. LEEN: You're absolutely right. They  
3 should tie together with the provision.

4 MR. THOMSON: Well, I had suggested that it  
5 be changed to any willful violation, because I  
6 don't think it's --

7 MR. LEEN: Yes.

8 MR. KORGE: I certainly accept that, too,  
9 yes.

10 MR. THOMSON: And I had suggested that it  
11 should be -- I've got so many papers around  
12 here, I can't remember all of the things  
13 that --

14 MR. LEEN: I think you had said, "Willful  
15 violation," and I think you had put, "By the  
16 Commission, as determined by the Commission."

17 MR. THOMSON: I think that's correct. In  
18 the County, it's by Circuit Court. The County  
19 has a similar provision or did have.

20 CHAIRMAN VALDES-FAULI: All right. Okay.  
21 Madam City Manager, do you have any other  
22 comments?

23 MS. SWANSON-RIVENBARK: No.

24 Again, we thank the Board for all of the  
25 good work. Any public that is watching, I hope

1           they realize our financial house is in strong  
2           order. We just got our AAA bond rating back.  
3           So we'll take the concerns, though, about  
4           external auditor to the Budget Advisory Board,  
5           also, because while you are managing through  
6           that change, we may go ahead and just implement  
7           it in advance of your report being finalized.  
8           So we appreciate all of it.

9           CHAIRMAN VALDES-FAULI: Thank you.

10          MR. KORGE: Do we have to make a vote on  
11          that final amendment, with all of the changes?  
12          We did?

13          MR. LEEN: Do you, by unanimous consent,  
14          agree with that last sentence?

15          MR. BONN: Yes.

16          MR. LEEN: Because I'm going to bring it  
17          back to you for a final vote, anyway. So I  
18          have my direction. I know what to do.

19          CHAIRMAN VALDES-FAULI: Thank you very  
20          much, Madam City Manager.

21          MR. BONN: Thank you very much.

22          CHAIRMAN VALDES-FAULI: You can stay, if  
23          you want.

24          MS. SWANSON-RIVENBARK: Oh, absolutely, I  
25          will.

1           MR. LEEN:   Okay.   Mr. Chair, the next item  
2           we have for you is approval of form for  
3           proposed amendments, and we have Section 8,  
4           Section 11 and Section 15.   Section 8, I  
5           rewrote a little bit, as well, because when I  
6           took a look at it, I just felt it was hard to  
7           read, and it may be further rewritten as part  
8           of the Re-write of the Charter, but I tried to  
9           divide it up into additional paragraphs, and  
10          make it clearer exactly what was meant, and,  
11          you know, this paragraph is about these two  
12          Commissioners, this paragraph is about those  
13          two Commissioners, et cetera.

14                 One point that was actually raised by the  
15                 City Manager, and I would be open to including  
16                 it in this, is, she had a concern that majority  
17                 might be considered to be plurality, that maybe  
18                 it should say, you know, 50 percent plus one.

19                 Sometimes I've seen that, and I would leave  
20                 that to you, but -- or maybe we could put a  
21                 sentence saying, a majority would be 50 percent  
22                 plus one.

23                 MR. THOMSON:   I mean, it's not a majority  
24                 of a quorum.   It's --

25                 MR. LEEN:   Majority of the whole or a

1 majority of those who are voting, a majority  
2 plus one of those voting.

3 MR. DEWITT: Where are you? Where are we  
4 talking about?

5 MR. KORGE: Craig, I forgot to send it to  
6 you. I had marked up --

7 MR. DEWITT: Where are you?

8 MR. LEEN: It's in Section 8 throughout.  
9 It talks about a majority, and the idea is, the  
10 purpose of this provision is, instead of a  
11 plurality, which is whoever receives the most,  
12 even if it's not a majority of the vote, gets  
13 elected presently.

14 Now we're establishing a runoff, you  
15 recommended a runoff to the Commission and to  
16 the electorate, but it's to make it clear that  
17 it's now a 50 percent plus one of the  
18 electorate voting, is what would elect someone.

19 And that's either in the original vote or  
20 in the runoff, but it has to occur before the  
21 person is elected.

22 CHAIRMAN VALDES-FAULI: Right. I think  
23 majority is -- or maybe the first time you  
24 mention majority, say, you know, fifty percent  
25 plus one.

1 MR. DEWITT: I can't hear you. I couldn't  
2 hear you. If you could speak up.

3 CHAIRMAN VALDES-FAULI: No, the first time  
4 he says majority, define it as 50 percent plus  
5 one.

6 MR. DEWITT: Yeah.

7 MR. THOMSON: Correct.

8 MR. LEEN: I will add that to the --

9 MR. KORGE: Well, I don't think you need to  
10 define a majority, in my personal opinion,  
11 Number One.

12 Number Two, I think there's still some gaps  
13 in here, and I apologize, I had taken the memo  
14 dated October 29th and marked it up, and I  
15 forgot to send it to you to look at.

16 MR. LEEN: Okay.

17 MR. KORGE: What I'd suggest is that you  
18 take a look at this, in conjunction with this,  
19 because I think there's some gaps in there. I  
20 agree with you, as it was written, it's  
21 confusing.

22 MR. LEEN: I tried to make as few changes  
23 to the form as possible. If you direct me,  
24 I'll re-write the whole thing, but then it will  
25 read completely different, because we wouldn't

1 refer to the dates.

2 This refers to 1987 and 1985.

3 MR. DEWITT: Yeah, why is that in there?

4 MR. KORGE: It does, but it's still bad.

5 It's still confusing to me. This is what I  
6 would recommend. I recommend that you re-write  
7 it, okay?

8 MR. LEEN: Completely?

9 MR. KORGE: Yeah, because it's confusing.  
10 I mean, just even dealing with, "A majority of  
11 the votes as not received by one candidate  
12 during the general election, a runoff should be  
13 held three weeks after the general election, on  
14 a Tuesday." We should specify that it's  
15 between the two top vote-getters and not just  
16 another -- I mean, like details like that,  
17 that, I think, in connection with this  
18 particular section, would be worthwhile  
19 incorporating.

20 So what I can do, if everybody is  
21 agreeable, so we can save time tonight, I can  
22 give you what I had marked up and you can  
23 figure out how to put it in English.

24 CHAIRMAN VALDES-FAULI: And put it in the  
25 form of a paragraph. I like this very much, as

1           opposed to what we had.

2           MR. KORGE:   Yeah.   Yeah.

3           MR. THOMSON:   Mr. Chair --

4           MR. LEEN:   I mean, the issue we're going to  
5           run into is that -- is what to do with the  
6           present Commissioners, because at least the  
7           benefit of this provision is, it still provides  
8           for the present Commissioners, because you can  
9           look at it and see, okay, '85, '89, '93 --

10          MR. KORGE:   The dates -- I agree with you.  
11          The dates may be necessary, but I would go  
12          through it and the redo the whole thing.

13          MR. BONN:   I would have to agree with  
14          Mr. Korge.   I'm not sure majority needs to be  
15          defined, as compared to plurality.   I think  
16          they have different -- aside from that, I think  
17          it's a good point, because I was reading  
18          through, and I took the advise in your e-mail,  
19          which I thought was excellent, to just read  
20          this fresh, you know, read it cold, you know,  
21          look at it, and I thought, you know, there were  
22          a couple of things later on that it could have  
23          been stated a little bit earlier.

24          Are we only talking about Section 8 at this  
25          point or are we looking at all three of these?

1 MR. LEEN: We're looking at just 8, but the  
2 entire Section 8, which includes a few things.

3 MR. DEWITT: And I think you've got to make  
4 it clear that the runoff is between the two top  
5 vote-getters, you know.

6 MR. BONN: It does say that. It does say  
7 it. You get to the second page, that's --

8 MR. THOMSON: Mr. Chair --

9 MR. DEWITT: On the second page, okay.

10 MR. BONN: Yeah, the second full paragraph.

11 MR. DEWITT: Oh, I see it. Yeah, I see it.  
12 Third full paragraph.

13 MR. THOMSON: Mr. Chair, I've got just,  
14 again, a clarification. You refer twice to  
15 recall, as provided by the Charter and as  
16 provided by Section 22. I couldn't find it in  
17 Section 22, and I thought you had told us, in  
18 the past, that recall was governed by the State  
19 Statute.

20 MR. LEEN: All right. Show me which  
21 paragraph.

22 MR. THOMSON: On Page 2, the third line  
23 says, "As provided by the Charter."

24 MR. LEEN: I see. In the second to last  
25 paragraph, "Except as provided by Section 22

1 regarding recall."

2 MR. THOMSON: Yes. It says, "By the  
3 Charter," three paragraphs earlier.

4 MR. LEEN: This provision was not -- I'm  
5 sorry, I didn't mean to interrupt. I'm sorry.

6 MR. THOMSON: And I said, I don't find  
7 anything in Chapter 22. Maybe I'm looking at  
8 the wrong place. And I thought further, you  
9 had said, in the past, that recall was governed  
10 by the State Statute and not by the Charter. I  
11 just want you to clarify that.

12 If recall is governed by the Charter, then  
13 the Charter has got to provide for it. That's  
14 all.

15 MR. LEEN: You're absolutely right. This  
16 paragraph, at least that portion of it, we did  
17 not look at, because that wasn't part of the  
18 amendment. Although you're absolutely right,  
19 we should address it, but then I would draw  
20 your attention to the last sentence of that  
21 paragraph, "A member of the Commission ceasing  
22 to possess any of the qualifications specified  
23 in the Charter or if convicted of a felony  
24 while in office, shall immediately and  
25 automatically forfeit his office."

1           This provision, you know, you may want us  
2           to address, in light of the other provision  
3           you're about to vote on.

4           I mean, there's a lot of provisions in this  
5           Charter that have been superseded. So we  
6           could -- you're asking me then to -- so this  
7           entire provision will be rewritten?

8           MR. THOMSON: That's what Tom asked you  
9           for, yeah.

10          MR. LEEN: That's what the direction is?  
11          Okay.

12          CHAIRMAN VALDES-FAULI: All right. Section  
13          11 --

14          MR. THOMSON: A fresh start, with a clean  
15          piece of paper.

16          CHAIRMAN VALDES-FAULI: What?

17          MR. THOMSON: A fresh start, on a clean  
18          piece of paper.

19          MR. KORGE: Yeah.

20          CHAIRMAN VALDES-FAULI: Section 11, Rules  
21          of Procedures, Expulsion and Quorum.

22          I think this reflects what we talked about.

23          MR. THOMSON: May I ask a couple of  
24          questions?

25          CHAIRMAN VALDES-FAULI: Yes, of course.

1 MR. THOMSON: First line, it says,  
2 "Commission may determine its own rules of  
3 procedure, punish its own members for  
4 misconduct."

5 Now, that's different than expel. What is  
6 punishing a member?

7 MR. KORGE: I don't know. That was in the  
8 original Charter. I don't know.

9 MR. THOMSON: I can't vote for it, as it  
10 is, because I don't even understand what it  
11 says. The Commission can punish one of its  
12 members. I don't understand it.

13 MR. LEEN: Well, we can re-write this whole  
14 provision, too. We only made the changes that  
15 were addressed.

16 MR. KORGE: Yeah.

17 MR. LEEN: So we didn't address -- we  
18 didn't address it.

19 MR. THOMSON: Well, I understand, "expel."  
20 I understand, "suspended." But I don't  
21 understand, "punish." And I would recommend  
22 that it not be included.

23 CHAIRMAN VALDES-FAULI: I agree with you,  
24 yes.

25 MR. MORALES: I agree.

1           MR. KORGE:    We can revise this and then  
2           vote again.    I mean --

3           MR. THOMSON:   Well, and then there is one  
4           that just -- you know, Tom, I already voted  
5           against this.

6           MR. KORGE:    Yeah, I know.

7           MR. THOMSON:   But there is a provision here  
8           that says, if the guy is acquitted and the  
9           Governor puts him back in office, that the  
10          Commission can vote to expel him for what the  
11          Governor has already reversed and put him back  
12          on.

13          MR. KORGE:    Well, let's talk about that,  
14          because here's what happens.

15          MR. LEEN:     But that's what it says.   It is  
16          indeed what it says.

17          MR. KORGE:    Parker, here's what happens.  
18          The Governor automatically suspends anybody  
19          that's indicted or charged with a felony.

20          CHAIRMAN VALDES-FAULI:   Felony, right.

21          MR. KORGE:    And, then, if that person is  
22          acquitted, the Governor is supposed to restore  
23          him, but, in fact, in the case of Miami Lakes,  
24          the Governor refused to do that.   So the Court  
25          ordered that he be restored.

1           MR. THOMSON: You know what you remind me  
2 of, I once took a deposition of a leader -- I  
3 think it was in Hartford, about an insurance  
4 policy, and he could tell me every lawsuit --  
5 what lawsuit generated this language, but he  
6 couldn't tell me what the thing meant, when he  
7 was finished with it.

8           MR. DEWITT: What does "punish" mean? I  
9 don't know.

10          MR. THOMSON: It seems to me odd that if  
11 the person is acquitted, so the Governor  
12 restores him, that the Commission can then  
13 expel him.

14          MR. KORGE: Why? Why is that odd?

15          CHAIRMAN VALDES-FAULI: Why? I think that  
16 makes all the sense in the world. It allows  
17 the Commission to police itself.

18          MR. THOMSON: I voted against it before, so  
19 I'll just leave it that way.

20          MR. KORGE: Well, I disagree with you on  
21 that. I think it makes -- first, I think it's  
22 important that if the Governor acts before the  
23 Commission does on some particular allegation,  
24 for example, that the Commission can't do  
25 anything more, until the Governor's actions are

1 concluded, because it's just -- you know, it's  
2 a bad situation.

3 Since the Governor generally only acts when  
4 there is an indictment or a charge of a felony,  
5 once that occurs, the Commission shouldn't be  
6 involved in any way, until that is adjudicated,  
7 and during that period, the alleged perpetrator  
8 of the crime has been suspended, so --

9 MR. THOMSON: He's out of the realm.

10 MR. KORGE: So that's not an issue. I  
11 agree with you, the phrase, "Punish its own  
12 members for misconduct," I don't know what it  
13 means. I think it should be stricken.

14 CHAIRMAN VALDES-FAULI: Yeah.

15 MR. KORGE: You know, if you want to expel,  
16 expel. And the other thing I would change  
17 here, even though the language came from me  
18 originally, is, it says, "If the Governor  
19 suspends a member before the Commission votes  
20 to expel the member, the Commission may not act  
21 further to expel the member" -- I would change  
22 the last phrase, that says, "Until the Governor  
23 revokes the suspension and restores the  
24 member," and say, "Until the member is restored  
25 to office."

1           Because, in the Miami Lakes situation, the  
2           Governor really technically did not restore him  
3           to office, a Court did, and so, you know, it's  
4           just -- I would put that in the passive tense,  
5           because it doesn't matter whether the Governor  
6           or the Court restores the person, that is the  
7           triggering event.

8           CHAIRMAN VALDES-FAULI: All right.

9           MR. KORGE: Does that make sense to  
10          everybody?

11          MR. LEEN: Yes.

12          MR. KORGE: So I would move to accept this  
13          language, delete "Punish its own members for  
14          misconduct," and insert, where it says, "Until  
15          the Governor revokes the suspension; until the  
16          member is restored."

17          MR. LEEN: I would raise one point of  
18          inquire, though. If you remove the word,  
19          "punish its own members," what if the  
20          Commission wished to censure a member and not  
21          expel them?

22          MR. DEWITT: Why don't we say, "censure,"  
23          rather than --

24          MR. KORGE: We can say, "Censure." We can  
25          change "punish" to "censure."

1           MR. LEEN: You know, the only other  
2 punishment listed in here is expulsion, which  
3 is a very severe punishment.

4           MR. KORGE: Right.

5           MR. LEEN: You may want them to have at  
6 least some leeway to do something less than  
7 expulsion.

8           CHAIRMAN VALDES-FAULI: All right. Do you  
9 accept that?

10          MR. MORALES: Like Parker, I have problems  
11 with Section 11. I mean, "Punishing its  
12 members," are you going to fine somebody? Are  
13 you going to compel attendance? Are you going  
14 to send the police to grab them and bring them  
15 to the meeting, so they have to be here?

16          The political abuse potentially in having  
17 four members of an elected body censure  
18 somebody for completely subjective stuff --  
19 there's nothing here that even creates any  
20 objectivity.

21          Okay. If they miss three meetings or if  
22 they -- I mean, it's just -- I don't know. I  
23 have a real problem with a group of elected  
24 officials -- I mean, we had a debate the other  
25 night where people tried to beat up a U.S.

1 Senator for not showing up to vote, and he went  
2 into the debate by saying, "Hey, you never beat  
3 up anybody for not showing up to vote," and  
4 that's a U.S. Senator.

5 I don't know, my view is, in the political  
6 context, the people should decide whether their  
7 elected officials should remain in office,  
8 unless you have a felony situation, like the  
9 Governor. That's just my view.

10 CHAIRMAN VALDES-FAULI: If you're elected,  
11 you should be -- you should have the duty to  
12 show up. And if somebody doesn't show up, as  
13 opposed to the Senate, you are a municipal  
14 body, that runs a City, as opposed to debates  
15 in the abstract as to the, you know,  
16 possibility of war somewhere.

17 I think that it's very important to show up  
18 and it's very important to vote, and we should  
19 be able to censure, punish, expel somebody who  
20 doesn't show up for six, seven, eight straight  
21 meetings, because he or she is somewhere  
22 vacationing or something.

23 MR. KORGE: Well, I'll just make this  
24 observation. Honestly, I don't care if they're  
25 censure or -- in there or not. I agree that

1 "punishment" is kind of open-ended. It doesn't  
2 really tell us anything. It's, therefore,  
3 problematic.

4 But, you know, the Congress can censure its  
5 members for misconduct.

6 CHAIRMAN VALDES-FAULI: Yeah.

7 MR. KORGE: And I don't really care. I  
8 mean, if you guys feel strongly about it, we  
9 can just take it out.

10 CHAIRMAN VALDES-FAULI: Put "censure."

11 MR. KORGE: Or put "censure." I'm good  
12 either way, you know.

13 CHAIRMAN VALDES-FAULI: Is everybody  
14 comfortable with "censure"?

15 MR. DEWITT: I'm comfortable with  
16 "censure."

17 MR. BONN: Yes.

18 CHAIRMAN VALDES-FAULI: Yes?

19 MR. LEEN: So it would say, the  
20 Commission --

21 MR. DEWITT: I think, "punish," is -- I  
22 agree with Parker. Punish is not a good word.

23 MR. LEEN: So let me go through the first  
24 sentence, based on what it sounds like you may  
25 do. "The Commission may determine its own

1 rules of procedure" -- you're fine with that --  
2 "Censure it's own members for misconduct, and  
3 may compel the attendance of members."

4 CHAIRMAN VALDES-FAULI: Right.

5 MR. LEEN: It sounds like it's being  
6 suggested that that be removed? Are you  
7 suggesting that that be removed?

8 CHAIRMAN VALDES-FAULI: I'm not suggesting  
9 it.

10 MR. LEEN: No. No. Mr. Morales. You had  
11 -- "May compel the attendance of members," you  
12 had raised that.

13 MR. MORALES: I mean, look, "censure," you  
14 can always vote to condemn the actions of an  
15 elected official. I have no problem with --  
16 that's free speech by the body, as well.

17 But beyond "censure," I mean, you know,  
18 other punishment, I don't know what that means.  
19 Compelling attendance, what does compel  
20 attendance mean?

21 MR. LEEN: The only situation I can see it  
22 coming up is if -- well, aside from in an  
23 emergency situation, where the Commission had  
24 to act, was -- let's say you had a  
25 quasi-judicial hearing and due process required

1           that the Commission have a quorum, and you kept  
2           missing it, and missing it, and missing it. At  
3           some point, the Commission has to act.

4           So I could see it being used in that  
5           circumstance, although, even then, they  
6           probably -- the Commission couldn't do it,  
7           because they would not have a quorum. I mean,  
8           the whole purpose would be, they needed a  
9           quorum to act.

10          So you're probably right. It probably will  
11          never be used.

12          CHAIRMAN VALDES-FAULI: Okay. Do we keep  
13          it there?

14          MR. KORGE: Well, I'm certainly willing to  
15          agree to change the word "punish" to "censure."

16          CHAIRMAN VALDES-FAULI: All right.

17          MR. KORGE: I agree that "punish" doesn't  
18          say anything.

19          CHAIRMAN VALDES-FAULI: All right. Let's  
20          adopt "censure."

21          MR. DEWITT: I think we should take the  
22          word "punishment" out, and use "censure" or  
23          something else.

24          MR. KORGE: I'm sorry, "censure"?

25          MR. BONN: I could not hear you, Richard.

1 I'm sorry.

2 I could not hear you. I'm sorry.

3 MR. DEWITT: Oh, I'm sorry. I think the  
4 word "punish" is too broad and doesn't make  
5 sense. But I think "censure," if you wanted to  
6 give the Commission the right to censure a  
7 member, you could do that.

8 CHAIRMAN VALDES-FAULI: Okay. Let's adopt,  
9 censure, if there are no -- okay.

10 And then --

11 MR. KORGE: And then that clause, "Until  
12 the Governor revokes the suspension and  
13 restores the member to office," I would just  
14 rephrase that, "Until the member is restored to  
15 office."

16 CHAIRMAN VALDES-FAULI: Right.

17 MR. MORALES: Let me ask, where are you  
18 going with that? So, let's say -- take the  
19 Pizzi situation. An individual is acquitted of  
20 the crime for which they were suspended. The  
21 Governor reinstates them, because they're no  
22 longer criminally charged with anything.

23 You're saying, the City Commission, at that  
24 point, could then still say, "Well, that's all  
25 right. We don't want you here anyway."

1           MR. KORGE: Right. And let me give you an  
2           example. Let's assume he's acquitted on the  
3           grounds of, what do they call it, entrapment,  
4           okay. He committed the crime, hypothetical --  
5           I'm not talking about Mayor Pizzi, but just  
6           generally. Some Commissioner committed a  
7           crime, you know, accepted a bribe, for example,  
8           but the thought of the crime was legally placed  
9           into the mind of the Commissioner by the  
10          police, hypothetically.

11          Then, in that instance, the Commission may  
12          feel that, you know, under those circumstances,  
13          they're not -- they don't want that  
14          Commissioner around anymore, and that would be  
15          a basis to remove the Commissioner.

16          MR. BONN: I would have to agree with  
17          Mr. Korge and the Chair on this one. I really  
18          would. I mean, there could be -- you know,  
19          there are so many nuances involved in any one  
20          of these situations that for us to speculate  
21          now is impossible. I think it's good to leave  
22          the ability here for the Commission to act.

23          CHAIRMAN VALDES-FAULI: Yeah, I think it's  
24          very good.

25          All right. So we leave it.

1 MR. LEEN: Okay. What about the remainder  
2 of the provision?

3 MR. THOMSON: You want a motion to approve  
4 Section 15 --

5 MR. LEEN: Which is those changes --

6 CHAIRMAN VALDES-FAULI: Is there a motion  
7 to approve Section 15 as re-drafted?

8 MR. THOMSON: I'd like to make a motion to  
9 approve Section 15, as written.

10 MR. LEEN: Section 11. Oh, now we're  
11 moving to Section 15? So was Section 11 -- I'm  
12 sorry --

13 MR. BONN: No, 11. 11.

14 MR. KORGE: The changes to 11.

15 CHAIRMAN VALDES-FAULI: Yeah.

16 MR. LEEN: There's two changes, "censure,"  
17 instead of "punish," and the language toward  
18 the end --

19 CHAIRMAN VALDES-FAULI: All those in favor  
20 say, aye.

21 MR. BONN: Aye.

22 MR. KORGE: Aye.

23 MR. DEWITT: Aye.

24 CHAIRMAN VALDES-FAULI: Aye.

25 Opposed?

1 MR. MORALES: Opposed.

2 MR. PARKER: Opposed.

3 MR. MORALES: No.

4 CHAIRMAN VALDES-FAULI: Okay. There are two  
5 opposed, and the rest are, aye.

6 MR. LEEN: Okay. So we will not bring back  
7 Section 11 at this point. We'll make the  
8 changes. I will publish it to you. If any of  
9 you have an issue with it, you can bring it  
10 back up.

11 CHAIRMAN VALDES-FAULI: Section 15.  
12 There's a motion to approve.

13 MR. BONN: I do have a question on Section  
14 15, really, for the City Attorney.

15 CHAIRMAN VALDES-FAULI: Go ahead.

16 MR. BONN: And forgive me, Craig. In the  
17 last sentence, it says, "In the event that the  
18 Vice Mayor is unable to undertake the Mayor's  
19 responsibilities, the Mayor shall appoint a  
20 Commissioner to undertake the Mayor's duties."

21 And the way I sort of read the gist of this  
22 section is, if the Mayor, for some reason, is  
23 incapacitated or not available or whatever,  
24 then the Vice Mayor will step in.

25 Is there anywhere else in the Charter, and

1 I couldn't find it, that if the Mayor is  
2 incapacitated and the Vice Mayor is not  
3 available or is incapacitated, someone else can  
4 appoint a Commissioner to undertake the Mayor's  
5 duties?

6 CHAIRMAN VALDES-FAULI: No, there isn't.

7 MR. BONN: There isn't?

8 MR. DEWITT: Well, we redrafted that. The  
9 intent was that the Mayor was out of town or  
10 couldn't do it, we were thinking of  
11 incapacitated --

12 MR. LEEN: Let me --

13 MR. DEWITT: He appoints the Vice Mayor, so  
14 that's why --

15 MR. LEEN: Section 15 right now says,  
16 "During his absence or disability, his duties  
17 shall be performed by another member appointed  
18 by the Commission."

19 And so right now the Commission would  
20 appoint the person, other than the Mayor, and  
21 the thought was, well, if the Mayor appoints  
22 the Vice Mayor under this proposal, and the  
23 Vice Mayor is out of town --

24 MR. BONN: Is not available, yes.

25 MR. LEEN: -- the problem with having the

1 Commission do it is, sometimes you have to act  
2 in a day. Like we may need a signature.

3 MR. BONN: Yes. Right.

4 MR. LEEN: And do we have to go back to the  
5 Commission to have -- it's really the Mayor's  
6 authority. It's delegated.

7 CHAIRMAN VALDES-FAULI: That's the way it  
8 has worked forever. So we're just formalizing  
9 it.

10 MR. BONN: Good. Okay. Thank you very  
11 much. No, that's great.

12 CHAIRMAN VALDES-FAULI: All right. Next is  
13 the municipal --

14 MR. DEWITT: Did we approve that?

15 MR. LEEN: No, there's no vote. We need a  
16 vote on Section 15. Mr. Chair?

17 CHAIRMAN VALDES-FAULI: All those in favor  
18 say, aye.

19 (Thereupon, all members voted aye.)

20 CHAIRMAN VALDES-FAULI: Opposed?

21 All right. The next is presentation  
22 regarding Municipal Home Rule Powers Act and  
23 Hotel and Pension Provisions.

24 Do you have a memorandum for us?

25 MR. LEEN: Yes. I have a brief

1 presentation.

2 CHAIRMAN VALDES-FAULI: A very good  
3 presentation.

4 MR. LEEN: Thank you.

5 What I would say about this is that the  
6 Home Rule Powers Act, the purpose of that act  
7 was two-fold -- it did a number of things, but  
8 there were two principal purposes. One was to  
9 grant Home Rule to cities, a general police  
10 power, and, Two, to remove impediments to  
11 Commission action, principally in the form of  
12 referendum requirements.

13 These two sections of the Charter retain  
14 referendum requirements, which have not been  
15 applied by the City in recent times. As to --  
16 the one regarding the Biltmore, it's largely  
17 superseded, because the Biltmore Hotel has been  
18 in place for many, many years. There's a  
19 current lease agreement, and so -- and, in  
20 fact, that provision is being moved, according  
21 to the proposed revised Charter, into basically  
22 a historical appendix, and so that could just  
23 be editorially deleted, in my opinion.

24 CHAIRMAN VALDES-FAULI: Okay.

25 MR. LEEN: The section related to the

1 pension is more relevant, because we do  
2 presently have a pension, and the City does  
3 make amendments to the pension from time to  
4 time and has made them over the last decade.

5 The City has not applied the referendum  
6 requirement. I spoke with our outside pension  
7 counsel, Jim Lynn, and he provided to me a  
8 Third District case, as to one reason why,  
9 which is that -- and it's in your packets, in  
10 case you're interested -- but because of  
11 Collective Bargaining, the Third District has  
12 held that a referendum requirement violates the  
13 principles of Collective Bargaining, because  
14 the public is not in the room bargaining, and  
15 it basically allows a veto to the public over  
16 the Collective Bargaining process. And so the  
17 Third District found that that was not lawful.

18 In addition, the Home Rule Powers Act has  
19 these limitations on referendum requirements.  
20 There is an exception related to rights of  
21 employees. I view that as more of a  
22 substantive exception. And what that means is,  
23 if a referendum requirement protected the  
24 rights of employees -- like, for example, you  
25 know, if the Trial Board -- although that would

1 go to a referendum, your proposal, but that  
2 might be a right of an employee, the right to  
3 the Trial Board, for example.

4 The pension provision is not a right of an  
5 employee, in terms of changing it, because the  
6 change could be either positive or negative, in  
7 my view. I think this is more procedural,  
8 whether you go to a referendum or not.

9 It's not like it says you only go to  
10 referendum when employees are hurt, which might  
11 be more of -- or negatively affected, which  
12 might be more of a substantive provision.

13 Anyhow, my review of this, and I asked  
14 outside counsel to take a look at it, as well,  
15 but -- who also opined the same way, but my  
16 opinion is that that would be a second ground.  
17 And, really, the principal ground, I gave to  
18 you, but a second ground, in addition to the  
19 one related to the Third District decision, for  
20 why that provision has been superseded and it  
21 should be stricken.

22 CHAIRMAN VALDES-FAULI: So the  
23 recommendation is to strike the provision?

24 MR. LEEN: What I propose to do is, by  
25 opinion of the City Attorney, to delete --

1           which under Section 2-201 of the Code, I have  
2           the authority to do -- to delete those  
3           provisions, that portion of the provision that  
4           has been superseded by general law.

5                     And then I would present that to the  
6           Commission, with your report, and the  
7           Commission doesn't have to adopt that, but they  
8           could adopt that, if they wish, as part of  
9           their final decision on this matter, but they  
10          didn't have to. It would be effective on its  
11          own.

12                    And what would happen is, there would be a  
13          note regarding the memo, and if someone wanted  
14          to challenge that, they could always attempt  
15          to, but, in my view, it would be  
16          self-effectuating, because it's a City Attorney  
17          opinion, based on application of general law  
18          and the Municipal Home Rule Powers Act.

19                    That's what the Municipal Home Rule Powers  
20          Act did. The whole purpose of it was, it  
21          didn't require the Commissions to remove  
22          provisions from their Charter or referendum.  
23          It was largely done by opinions of City  
24          Attorneys, sometimes through adoption by the  
25          Commission, that these were null and void

1 provisions. That was the whole purpose of that  
2 act.

3 So this would just be making the Charter  
4 reflect what the actuality is and what the  
5 current practice of the City is.

6 CHAIRMAN VALDES-FAULI: Are there any  
7 comments?

8 All right. We agree with you.

9 Next item is, the Charter, you know,  
10 re-drafting and such --

11 MR. LEEN: And I would like to thank the  
12 Committee for raising both, the Biltmore Hotel  
13 and the pension provision, because I think it's  
14 important that that be addressed, so the people  
15 aren't confused, because it's important that  
16 our Charter reflect the reality.

17 CHAIRMAN VALDES-FAULI: Status report  
18 regarding the Rewrite of Charter.

19 MR. LEEN: Yes. At this point, I'd ask  
20 Special Counsel to come up. This is not going  
21 to be -- the intention was for this not to be  
22 discussed today, because we gave you quite a  
23 significant packet.

24 And, now, in fact, based on additional  
25 instructions from the Committee, we're going to

1 have to make some additional changes, but  
2 Special Counsel is here, if you have any  
3 directions or questions.

4 MR. MORALES: I haven't had a chance to  
5 review it.

6 CHAIRMAN VALDES-FAULI: No, I haven't.

7 MS. THORNTON: I figured as much. It was a  
8 fairly extensive rewrite, so it's pretty long.

9 MR. KORGE: Oh, my gosh.

10 CHAIRMAN VALDES-FAULI: All right.

11 MR. KORGE: Yeah.

12 CHAIRMAN VALDES-FAULI: Thank you very  
13 much.

14 MS. THORNTON: I tried to act as you  
15 requested.

16 CHAIRMAN VALDES-FAULI: We'll ask  
17 questions, if you want, but you -- we'll make  
18 them up.

19 MS. THORNTON: No. Well, many of you  
20 probably haven't had a chance to read it all.

21 CHAIRMAN VALDES-FAULI: Thank you.

22 MS. THORNTON: So I'll come back to the  
23 next one. Hopefully you'll be ready by then.

24 CHAIRMAN VALDES-FAULI: Thank you very  
25 much.

1 MR. LEEN: And one issue that came up --

2 MR. KORGE: Once this is rewritten, as I  
3 understand it, this rewrite, which is really  
4 just putting it into more modern English, and  
5 it's not -- the substantive changes that would  
6 go by referendum, this will not go by  
7 referendum or will it?

8 MR. LEEN: In my opinion, that would be up  
9 to the Commission to decide. I believe -- you  
10 know, the problem with sending it to referendum  
11 is that, what are you telling the voters to  
12 vote on? Because if there's truly not a  
13 substantive change, then there's not a  
14 substantive change. You're basically having  
15 them vote on editorial changes or edits, and,  
16 you know, in my -- I haven't seen a situation  
17 like that, but my opinion would be that that  
18 could be done by the Commission or by the City  
19 Attorney.

20 MR. KORGE: Uh-huh. Okay.

21 MR. LEEN: You know, with the  
22 recommendation of this Board.

23 MR. KORGE: Okay.

24 CHAIRMAN VALDES-FAULI: All right.

25 MR. LEEN: What we would do, though -- by

1 the way, just to be extra careful, we would  
2 keep a copy of the old Charter, probably, in an  
3 appendix. So anyone would know what it said.  
4 And these amendments, which would be approved  
5 by ordinance, likely -- likely this will be  
6 approved by ordinance, because that's the next  
7 closest most formal thing you can do.

8 MR. KORGE: Right.

9 MR. LEEN: And that would become the  
10 readable part.

11 The goal is to put it into like a pamphlet,  
12 like Miami-Dade County has, where people could  
13 read it, and it would make sense. They would  
14 understand what it means.

15 CHAIRMAN VALDES-FAULI: Okay.

16 MR. LEEN: Unless you had any other  
17 suggestions. That was my thinking.

18 MR. MORALES: Javier Soto walks around with  
19 that Charter.

20 MR. LEEN: You still walk around with it?

21 MR. MORALES: No, Javier Soto.

22 MR. LEEN: Javier Soto does.

23 MR. MORALES: He always has one on him.

24 CHAIRMAN VALDES-FAULI: Really?

25 MR. MORALES: Oh, yeah.

1           I have a question, just on old business,  
2           because I wasn't here last week or last  
3           meeting. I apologize for my crazy night that  
4           night.

5           Was the auditor discussion also going to  
6           have any component of the Commission Auditor  
7           Model like Jacksonville and Miami-Dade County?

8           MR. LEEN: Yes. I'm prepared to discuss  
9           it, but it sounded like, at the time when I  
10          raised it, the Committee was more focused on  
11          the external auditor.

12          Regarding the Commission auditor, if the  
13          Commission were to do that, it depends on how  
14          much authority you give to that individual. I  
15          gave you two opinions. One related to the City  
16          Architect and one related to the City -- pardon  
17          me, the Commission Aide.

18          MR. MORALES: Yeah, but is that on the  
19          table or not?

20          MR. LEEN: It was on the table, but it  
21          hasn't been addressed, and I didn't want to  
22          inject myself into the proceeding.

23          MR. DEWITT: You know, cause it's already  
24          late.

25          MR. MORALES: Can we put it on?

1 MR. LEEN: Yes.

2 MR. MORALES: Can I ask -- next week, so we  
3 have that discussion, because at least one  
4 Commissioner has asked me to -- you know, asked  
5 me --

6 MR. LEEN: Of course. What I can do is, I  
7 can discuss -- there's two opinions that you  
8 have in this packet regarding the City  
9 Architect and the Commissioner Aide.

10 And, basically, and I won't go into it at  
11 length, then, but the interpretation of my  
12 office, which, of course, you and the  
13 Commission could change by a referendum or by  
14 ordinance, in certain circumstances, the  
15 opinion of my office has been -- is that the  
16 Manager is the Chief Executive Officer of the  
17 City. The Manager has all of the  
18 administrative authority of the City.

19 So any administrative officer of the City  
20 has to be underneath the Manager, and you can't  
21 create a Charter Officer by ordinance, of  
22 someone that needs to be under the Manager.  
23 And that was basically the opinion I gave  
24 regarding the City Architect.

25 MR. MORALES: No, I think the Commissioner

1 is talking about -- I think we understand that.  
2 The issue is, do we want to recommend or think  
3 about recommending a Charter position, like in  
4 Jacksonville or the County, right?

5 MR. LEEN: No, I understand. I just want  
6 to finish this, because it's important to  
7 understand. There's also the Commission Aide  
8 position, and I've given an opinion that each  
9 of the -- you have the City Attorney, the City  
10 Manager, the City Clerk and the City  
11 Commission, and you have the Mayor, which is  
12 part of the City Commission.

13 They're allowed to have their own  
14 assistants, for example. That's what the  
15 Commission Aide position -- Commission Aide is  
16 a little more than an assistant, actually.  
17 They're more like a legislative aide and an  
18 assistant, combined, but that individual can  
19 work directly by the Commission.

20 The precedent that was done by the  
21 Commission was to put that person under the  
22 City Clerk. So that was the history of that.

23 The issue would be, if you have a  
24 Commission auditor, who is someone who  
25 assists -- it's an individual who is assisting

1 the Commission in their oversight role, making  
2 inquiries, looking into departments, you would  
3 not need to do a Charter Amendment to do that.

4 But if you want an actual Commission  
5 Auditor, similar to what the County has, with  
6 an office, with people under that person, that  
7 has, in a sense, some degree of administrative  
8 authority, then you would need to do -- it's  
9 ultimately up to the Commission to decide, but  
10 my opinion would be, that's going more toward  
11 the City Architect than having a Charter  
12 Amendment.

13 So it depends on how much authority you wan  
14 to give to that person. It depends on the  
15 vision of that particular Commissioner, how  
16 much authority you want to give.

17 MR. MORALES: We can talk about that next  
18 week.

19 CHAIRMAN VALDES-FAULI: Okay. Next  
20 meeting. Date of next meeting.

21 I would suggest Monday the 9th.

22 MR. BONN: I know I'm out of town. I  
23 apologize. I'm back the 16th.

24 MR. DEWITT: What dates are you  
25 considering?

1           CHAIRMAN VALDES-FAULI: No, I was  
2 suggesting Monday the 9th, and he will be back  
3 Monday the 16th.

4           MR. BONN: Monday, November 16th. Does  
5 that work for everybody?

6           MR. DEWITT: November, what?

7           MR. BONN: 16th. Monday.

8           MR. DEWITT: I'm unfortunately out of town  
9 from the 14th through the 22nd.

10          MR. BONN: I get back on the 12th, if that  
11 helps at all. I could do the 12th or the 13th.

12          MR. DEWITT: I can do the 13th, as well.

13          CHAIRMAN VALDES-FAULI: The 12th?

14          MR. BONN: Thursday the 12th?

15          CHAIRMAN VALDES-FAULI: Thursday the 12th?

16          MR. KORGE: I'm good the 12th.

17          MS. ORTEGA-FRIDMAN: I can't do the 12th.  
18 Sorry.

19          MR. DEWITT: I'm back -- well, the  
20 following week is Thanksgiving, but I can do  
21 any day before the Thanksgiving holiday.

22          MR. KORGE: Will the 12th work for you?

23          MR. DEWITT: The 12th works for me, but it  
24 doesn't work for her.

25          MR. KORGE: Oh, it doesn't work for you?

1 Okay.

2 MR. DEWITT: I can do the 23rd, 24th, 25th,  
3 those three days -- one of those.

4 CHAIRMAN VALDES-FAULI: And I'm leaving on  
5 the 25th for 14 days.

6 MR. DEWITT: What about the 24th?

7 MR. MORALES: 24th works for me.

8 MR. DEWITT: 24th works for me.

9 CHAIRMAN VALDES-FAULI: Parker? The 24th?

10 MR. THOMSON: What day of the week is that?

11 MR. BONN: Tuesday.

12 MR. LEEN: It's a Tuesday.

13 MR. BONN: How about Monday the 23rd or  
14 Tuesday the 24th? I don't care either way.

15 MR. DEWITT: I'm good both of those days.

16 CHAIRMAN VALDES-FAULI: Monday the 23rd?

17 MR. BONN: Monday the 23rd? That's the  
18 Monday before Thanksgiving.

19 CHAIRMAN VALDES-FAULI: Okay. We can do it  
20 Monday the 23rd.

21 MR. LEEN: What time?

22 MR. BONN: Any time is good for me.

23 MR. LEEN: Monday, November 23rd --

24 MR. MORALES: No, 23rd is not good for me.  
25 Tuesday night is good. Monday night is not

1 good.

2 MR. BONN: Oh, Monday is not good for you.

3 MR. MORALES: The 24th works.

4 CHAIRMAN VALDES-FAULI: The 24th?

5 MR. LEEN: At 7:00 p.m.?

6 MR. MORALES: 7:00, sure.

7 MS. ORTEGA-FRIDMAN: The 24th?

8 MR. LEEN: The 24th.

9 MR. BONN: Yeah.

10 MR. MORALES: All right.

11 MR. LEEN: And what I will have for you for  
12 the next meeting is a Rewrite of Section 8, as  
13 well as more on the Commission Auditor  
14 position.

15 MR. MORALES: And I'll send you some  
16 (inaudible) just to circulate.

17 MR. LEEN: I understand. And you're  
18 looking more at a Charter Amendment, adding the  
19 Commission Auditor?

20 MR. MORALES: Yeah.

21 MR. LEEN: Do you want me to prepare  
22 anything or do you want -- need to circulate  
23 what you propose?

24 CHAIRMAN VALDES-FAULI: Why do you want a  
25 Commission Auditor?

1           MR. MORALES: I mean, because it's already  
2 getting to nine o'clock, but I'll circulate  
3 just the County one and the Jacksonville model.  
4 Then we can talk -- there's some policy issues.  
5 Some jurisdictions have done it.

6           You know, query Coral Gables is too small a  
7 jurisdiction, that kind of thing, but, you  
8 know, I was the one who sponsored it at the  
9 County many years ago.

10          CHAIRMAN VALDES-FAULI: Yeah, but the  
11 County is --

12          MR. MORALES: Understood. No. No. No. I  
13 just wanted to make sure it's on the table.

14          CHAIRMAN VALDES-FAULI: Okay.

15          MR. BONN: I would suggest we not ask the  
16 City Attorney or his staff to take the time  
17 drafting anything yet, until we have a chance  
18 to talk about it.

19          MR. MORALES: No, I agree. I agree. I  
20 totally agree.

21          CHAIRMAN VALDES-FAULI: Thank you very  
22 much.

23          MR. LEEN: Thank you, but I'm happy to help  
24 all of you. So just provide it to me, and I'll  
25 circulate it to everybody and you can have it

1 to take a look at it.

2 CHAIRMAN VALDES-FAULI: Thank you very  
3 much. Ladies and gentlemen, meeting adjourned.  
4 Thank you.

5 (Thereupon, the meeting was concluded at  
6 8:50 p.m.)

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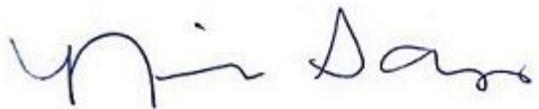
STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, NIEVES SANCHEZ, Court Reporter, and a Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 19th day of November, 2015.



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NIEVES SANCHEZ