

## CHARTER COMMISSION

**February 26, 2003**

**5:00 PM**

Chairman Dykstra called the meeting to order.

The Clerk called the roll.

Present: Leona Dykstra, Bob Shaw, Donna Soucy (late), Brad Cook, Patrick Duffy, Keith Hirschmann, Leo Pepino, Michael Wihby

Messr: Deputy Solicitor Arnold

Absent: Nancy Tessier

Chairman Dykstra addressed item 3 on the agenda:

Minutes of meeting held February 12, 2003.

Commissioner Pepino moved to remove the item from the table. Commissioner Duffy duly seconded the motion.

It was voted to remove the item from the table with Commissioner Shaw duly recorded in opposition.

Commissioner Hirschmann stated I have on page 31 just in my comments, it's about a quarter of the way down. It says, "Commissioner Hirschmann stated you have." It should say, "Commissioner Hirschmann asked you have?" with a question mark. It was more sarcasm. I don't know if you can express sarcasm in here, but it'd be more of a question, "asked" rather than "stated", and then put a question mark at the end of the that because the way it's stated, it looks like I'm agreeing with Commissioner Shaw, and I don't think I was on that issue.

Chairman Dykstra stated we certainly wouldn't want that. We want to make sure everything is correct, okay. Are there any other corrections, deletion, additions?

On motion of Commissioner Hirschmann, duly seconded by Commissioner Pepino, it was voted to accept the February 12, 2003 minutes.

Chairman Dykstra addressed item 4 on the agenda:

Minutes of meeting held February 19, 2003.

Commissioner Hirschmann stated my correction was for the 19<sup>th</sup>. I was on the 12<sup>th</sup> when I made the correction. My correction was for the 19<sup>th</sup>.

Deputy Clerk Johnson stated I have it for the 19<sup>th</sup>.

On motion of Commissioner Duffy, duly seconded by Commissioner Pepino, it was voted to accept the February 19, 2003 minutes.

Chairman Dykstra addressed item 5 on the agenda:

Notice for reconsideration given by Commissioner Hirschmann relative to motion that effective January 1, 2006 the Mayor's salary shall be 80 percent of the Governor's salary for the State of New Hampshire, with benefits and no retirement plan; such salary to automatically increase at any time the Governor's salary increases. Unless changed by referendum, the Mayor's salary shall not be set in any other manner than as outlined herein. (Commissioners Cook, Duffy, Shaw Soucy and Tessier having voted yea. Commissioners Hirschmann, Pepino, Wihby, and Dykstra having voted nay.)

Commissioner Cook stated Madame Chair if I might, because Commissioner Soucy isn't here, I wonder if we could change the order of the meeting and do the review of language. I was wondering if we could have Clerk Johnson review the language that we received which she has requested to do while we await Commissioner Soucy so we can have the maximum number of participating members.

Commissioner Hirschmann asked is she expected.

Commissioner Cook responded I know Mrs. Tessier wasn't coming. I expect Ms. Soucy.

Chairman Dykstra stated we can certainly discuss this. No problem.

Commissioner Shaw asked would Commissioner Hirschmann postpone this tabled item until the next meeting? Is that possible?

Commissioner Hirschmann stated we'll do it later in the meeting.

Commissioner Shaw stated or even until the next meeting in case we...my point, Alderman, is this. We'll review this today and then the next meeting, we're going to bring the whole subject back up again, so what we would be doing is just going in circles when it would be much better that we kind of go in a straight line if possible. All I'm saying to you, yes. You bring it up today. We'll talk about this re-thing and then next week, I'm going to move for reconsideration again, of the same subject.

Chairman Dykstra stated Commissioner, I believe that...

Commissioner Shaw interjected well, I'm presuming.

Chairman Dykstra stated a notice for reconsideration means it's taken up at the next meeting, so I'm certainly going to extend that courtesy until Commissioner Soucy comes in.

Commissioner Shaw stated she's here.

Chairman Dykstra stated then we'll wait until later on, but it has to be taken up today. Oh, she is here. What we can do is we can go back to this after. We can deal with the March 31<sup>st</sup> number seven. There was a motion to have the City budget finished no later than March 31<sup>st</sup>. It was tabled at the last meeting. Who made that motion not to be removed until all members were present? How did that get in there? I don't remember that.

Deputy Clerk Johnson stated that was requested at the meeting.

Chairman Dykstra asked by whom?

Deputy Clerk Johnson stated I would have to go back to the minutes of the last meeting.

Chairman Dykstra stated I don't remember. Does anybody here remember requesting that?

Commissioner Cook responded yes.

Commissioner Dykstra asked who requested it?

Commissioner Cook stated I remember it being requested. I don't remember who requested it because the matter was of such importance to Commissioner Tessier because of the school budget aspect of the matter, and she said she couldn't be here. It was requested that it not be brought up until she was here at the next meeting.

Chairman Dykstra stated I don't remember a vote being taken on that or anything.

Commissioner Cook stated I don't remember a vote either.

Commissioner Shaw stated I thought we voted to have the budget be March 31<sup>st</sup> and it not be referred to the Finance Committee, that it be referred to the whole Board. We took a vote of that.

Chairman Dykstra stated it was tabled at the last meeting. Yes it was, Commissioner. You know, we do need to take things up. I mean, there could be a time when she's here and someone else is missing. What's the feeling of this Commission? Do you want to take this up? I mean I'm going to put it out there for all of you. Does anybody want to remove this from the table or do you want to wait?

Commissioner Hirschmann stated there's a lot of other items we could work on.

Chairman Dykstra stated all right. We can wait until the next meeting.

Commissioner Duffy stated I'd prefer that.

Chairman Dykstra addressed item six on the agenda:

Chairman Dykstra advises that the Commission can now proceed with reviewing language submitted by Deputy Clerk Johnson, and "Items flagged" listing.

Commissioner Cook stated my initial request, which I would renew because the Charter working draft materials the Clerk had requested an opportunity to review with us in anticipation for kind of setting the stage for all the other things we have to talk about, which was my understanding of why she wanted to do it. We received that last week and said we'd read it. If she could do that now, that would kind of set the stage for where we are. That was my only request.

Deputy Clerk Johnson stated the item he is referring to is part of item six, and I actually had it attached to your agenda in case people did not bring it back this time.

Chairman Dykstra asked is that the draft?

Deputy Clerk Johnson responded yes.

Chairman Dykstra asked what section are you looking at Brad or what did you want to discuss?

Commissioner Cook stated the 2003 Charter Draft, which we were given last week, but we hadn't had a chance to read. My understanding was from what we heard last week and from what I saw on the agenda, Carol had asked if she could review it with us to show the progress of where we are to date which also ties into the list of items that we haven't taken up yet, so there'd be a context for those things we still had to do, and I thought it would be helpful at the beginning of the meeting since we're going to take up, I hope, a lot of things during the meeting, to have that background and see where we are, and if she could run through it.

Chairman Dykstra stated sure, Carol, could you do that.

Deputy Clerk Johnson stated the draft that we submitted is entitled the 2003 Charter Draft, and there are portions in there...what we did is we set it up. We indicated where there were no changes from the 1982 or 1996 language. Those were pretty well just acted on by the Commission. There were a few sections where you will note in bold and italics that it was not clear whether or not it was intended that that language be carried forward, and we were looking for acceptance by the Commission of that portion of the language. That does not start basically until you get into Article II. Obviously these numbers sections will change as time goes on, but we've tagged them with sections for now. Section 2.02, composition of the Board of Aldermen, it's new language and some of it is the same as 1982. "The Board of Aldermen shall be composed of 12 aldermen, one residing in each of the separate wards of the city." I think that's pretty clear from the action that was taken. There is another portion of that language from the 82 Charter that says "the Board of Aldermen shall be the final judge of the election and qualifications of its members". We were not sure if the intent was to carry that language forward.

Commissioner Shaw stated excuse me a second. Does her mike turn up at all? I mean, it can't be heard over here at all. At least, I can't hear.

Deputy Clerk Johnson stated I can try and talk louder. Would that be better?

Commissioner Duffy stated that would be helpful.

Commissioner Shaw stated helpful, not better though, but helpful.

Deputy Clerk Johnson stated I'm referring to page two of the Charter draft. Where it says Section 2.02, composition of Board of Aldermen. The second sentence of that section is in bold and italics. The reason for that is we're not sure that the Commission intended to carry forward that sentence. I guess I would be looking for a motion to accept that language.

Chairman Dykstra read, "The Board of Aldermen shall be the final judge of the elections and qualifications of its members." Do I have a motion to accept that language? Is anyone ready to do that yet? I mean I don't want to go through and accept...how much do we have that we have to accept? Is there a lot in here, Carol?

Deputy Clerk Johnson responded it's just wherever it is bold and italicized, they were items that...

Chairman Dykstra interjected there's not too much.

Deputy Clerk Johnson stated you get into terms and definitions, but most of it is just language being carried forward. We wanted to make sure that that was the clear intent of the motion before we go carrying this language and then somebody says no, that's not what I intended when I made the motion.

Chairman Dykstra stated I understand. Do I have a motion to accept that language? "The Board of Aldermen shall be the final judge of the election and qualifications of its members."

Commissioner Shaw stated would it be possible for the Clerk to or the City Solicitor to explain how the Board of Aldermen will be called to order. I've been making this point. I mean, the Board of Aldermen shall decide the composition of the Board, so how do they meet? Who is the Chairman when they meet? How are they called to order? Who can make them appear here? The Board of Aldermen. That's my concern. You know. If they're going to decide their composition, and I favor but you know, how do they meet? Who are they, this Board of Aldermen? There's nothing in the Charter that brings 12 Aldermen to sit down at this table and run a meeting. Nothing.

Chairman Dykstra stated Bob, isn't this like at the first meeting when they kind of ratify the election in a way or something. It's kind of a procedural thing.

Commissioner Shaw stated my point is that it's the Mayor that chairs the meeting when the Board of Aldermen meet, all right, and if the Board of Aldermen meet, then it's called the Board of Mayor and Aldermen that meet, and therefore the question would be this. If the Mayor by State law has a right to veto any action by the Board or to vote when there is a tie, is this wording correct? That's my point.

Chairman Dykstra stated I understand. I would think that if the votes are there, the Secretary of State has done that, it's just a procedural thing. But if you feel better adding the Board of Mayor and Aldermen, I have no problem to an amendment.

Commissioner Shaw stated my point is that how could a Board that doesn't meet, that can't be called, that doesn't have any structure to meet, how can it decide its composition? That's my point. I think the terminology that we're trying to bring forward is archaic at best and is put in there because nine other people thought it would be nice to say it that way when in reality, it is not true. It isn't that way unless the City Solicitor says, "Now listen, Mayor, the Board of Aldermen do meet."

Deputy Solicitor Arnold stated I guess I'm not really quite sure I understand the question, but I'll try and answer it anyway. The present Charter and the prior Charter both provide that the Mayor shall be the presiding officer at the initial meeting of the Board of Mayor and Aldermen. It's those Aldermen, which have been elected and sit down and have their initial meeting and elect their Chair. Pursuant to the Charter as I said, the Mayor is the presiding officer, always has been.

Commissioner Shaw stated should the correct terminology be Board of Mayor and Aldermen shall decide if they...that's my point. "The Board of Mayor and Aldermen shall be the final judge of the election and qualifications of its members."

Deputy Solicitor Arnold stated that's not what it says.

Commissioner Shaw stated I know it isn't what it says, and I don't know how a Board that can't meet can decide...

Chairman Dykstra responded it's in another part of the Charter.

Deputy Clerk Johnson stated it is.

Commissioner Cook stated the italicized language in bold is the same language that was in the 1982 Charter. It's the same language that was in the 1996 Charter,

it's the same language as almost every legislative body has in its language in its governing rules because in almost every case, it is only the sitting members of that Board who decide the qualifications of the Board. If the Mayor could participate in judging the qualifications of the Aldermen, that would be inconsistent with that principle. This is no change. I think it's been pointed out to us that we were talking when we voted, not including me, to have 12 Aldermen but we didn't act on or not act on the section that said they'd be the judge. I would make a motion that the italicized language be added to that section.

Commissioner Wihby duly seconded the motion.

Chairman Dykstra called for a vote. The motion carried with Alderman Shaw duly recorded in opposition.

Alderman Shaw stated reconsideration later.

Chairman Dykstra stated notice for reconsideration. That will be at the next meeting.

Commissioner Shaw stated I'm going to get the legality of this here. I've got to find...

Chairman Dykstra stated you gave a notice of reconsideration.

Commissioner Shaw stated I will. Yeah, I've given notice.

Chairman Dykstra stated I want to make a note that I don't want anything to be voted on until I'm present. Is that okay? I just want to make a note that I don't want anything voted on until I'm present, unless I'm here as we did with Commissioner Tessier.

Commissioner Shaw stated nobody can hear this side. There must be something.

Commissioner Hirschmann asked can you hear me speaking.

Commissioner Shaw responded I can hear you.

Commissioner Hirschmann stated Commissioner Cook is trying to point out to you, Commissioner Shaw, that there's administrative powers and there's legislative powers, and the Aldermen have the legislative policy making powers. The Mayor does not have the policy-making powers. The Mayor administers the policy of the Board of Mayor and Aldermen, but he doesn't set policy. He administers policy, so to make this correct, it has to say the Board of Aldermen

even though it's a misnomer in the context that you want it to be the Board of Mayor and Aldermen.

Commissioner Shaw stated but the Mayor does make policy, Alderman Hirschmann.

Commissioner Hirschmann stated excuse me, but if you take out the words "the Board" and if you just said "the Aldermen"...

Chairman Dykstra stated right now, we're not going to discuss it or anything. The thing is that you gave notice of reconsideration. That will be up at the next meeting. What was the vote? Five to one?

Deputy Clerk Johnson stated there was one recorded as opposed.

Chairman Dykstra stated so Commissioner Shaw was opposed, and he gave notice for reconsideration on this issue.

Deputy Clerk Johnson stated the other thing that I would just point out with regards to the composition of the Board of Aldermen, you also did approve at your last meeting a governing body language which has not been placed in this document as of yet, but it does refer to the Mayor and the Board of Aldermen acting as a body, so therefore you would have to have a composition of the Board of Aldermen accepted somewhere.

Chairman Dykstra stated that would address it. Before we go any further, I needed to address something on meetings, Carol. Section 2.06, we've got the regular meetings of the Board of Mayor and Aldermen held monthly, okay. Second part, that is fine. C...

Deputy Clerk Johnson stated C was the new language that the committee voted on.

Chairman Dykstra stated we voted on language, but to me, it doesn't seem to reflect what we wanted. I wanted to see if that's what we wanted, the intent. "The Board of Mayor and Aldermen shall provide a period of public comment at least monthly." That part had passed. "All standing aldermanic committees of the Board of Mayor and Aldermen shall also provide a period of public comment at regularly scheduled intervals." I thought we said that we wanted to have basically input or testimony at all meetings. Is that what we intended or I don't remember mentioning intervals. If you could address that.

Deputy Clerk Johnson stated if I could just explain why we put it that way, and we can certainly entertain any other language you want. There are some committees

that meet upon recess of the Board of Mayor and Aldermen during the regular session of the Board. For instance, Committee on Enrollment, Committee on Finance. In addition to that, you have some committees that don't meet every single month, let's say, so we can't say monthly. For instance, Bills on Second Reading, if it doesn't have any ordinances before, it might not meet for three months at a time. This would provide a mechanism that even those committees would have to have a regular schedule of sorts whether it be quarterly for something like that.

Chairman Dykstra stated but that would mean that they wouldn't be allowed to give testimony or speak at all meetings, just whenever they decided. Would that be what this is saying?

Deputy Clerk Johnson stated I think the intent, and maybe I was wrong, but my understanding was the intent that it is...lands and buildings meets once a month. I think the general sense was that all committees meet once a month and therefore every time they have a meeting, they should do...I mean you could do it as that way and exclude whatever is meeting during the recess of the Board if you want, but I don't think that in the middle of a Board meeting, when you recess by special action, that you want to open it up to public comment again.

Chairman Dykstra stated I can understand that, but that really wouldn't be like a regular scheduled meeting that's part of the Board of Mayor and Aldermen.

Deputy Clerk Johnson responded yes, it is. It's a posted meeting the same as anything else, as regular as any other one would be. That's the difficulty.

Commissioner Shaw stated I would like to make a motion that one word be taken out of this here. In Section 2.06c, "all standing committees". I'd like to take out the word "standing". All aldermanic committees of the Board of Mayor and Aldermen versus standing committees. Is that a problem for anybody, that that one word go because I want to take it out in other places where it appears, but for today, Section 2.06c just says, "all aldermanic committees of the Board of Mayor and Aldermen shall provide a period of public comment". Take the word standing out.

Commissioner Duffy duly seconded the motion.

Chairman Dykstra stated to remove standing and just say all aldermanic committees. Is that correct, Commissioner?

Commissioner Shaw responded yes.

Chairman Dykstra called for a vote, and the motion carried.

Commissioner Cook moved that the section as amended delete the word “intervals” at the end and add the following-- “meetings” in the place of the word “intervals” and parentheses (“except those held in recess of meetings of the full Board of Mayor and Aldermen”.)

Chairman Dykstra stated you must have read my mind because that’s what I had down here too.

Commissioner Hirschmann duly seconded the motion.

Commissioner Soucy stated I just wanted to express one concern in practical terms. There are times other than when the Board recesses when there are a series of meetings scheduled before an aldermanic meeting where sometimes I know there have been efforts made so that they don’t run over each other, but you’re then forcing the Board to set up a whole other set of rules and policies. Does somebody speak for two minutes or something else? I’m just concerned about the administration of forcing it every single committee meeting even when you have one item on an agenda that you know could be dealt with in short order. I agree that the participation level at the meetings should be increased. I’m just concerned about doing it at every single solitary meeting that’s called by the committee of the Board.

Commissioner Shaw stated of course, I’m opposed to C. I think I’m the only person that voted that we shouldn’t even have C. I think we should have and stated that, that we should have public comment at committee meetings and that the legislature, being the Aldermen, shouldn’t take public comment at all. That’s my personal opinion, but I wonder why the word comment. Can’t we have testimony instead?

Chairman Dykstra stated isn’t this public comment. Yes, we did mention testimony, but you said you didn’t want this. I thought this was what you supported.

Commissioner Shaw stated do you want them to come here and comment that the sun didn’t come up today or would we like to have them come here and give testimony as to why the sun didn’t come up today? The point is that in order to have an orderly form of government which nine of us are lucky enough to reconstitute this government and make it more efficient and effective for the citizens that come here. We really want them to go to committee meetings. I want them to go to the airport. Mr. Dillon’s here. And to give testimony to the

commissioners, you see, that's the difference. Public comment that the planes are making a noise is ridiculous. I don't think that's what we should be hearing.

Chairman Dykstra responded maybe you don't live there. I mean everybody has a right to their opinion, but the thing is there's a motion on the floor now to change it to regularly scheduled meetings and in parentheses except for...how was that stated Carol?

Commissioner Cook stated "except those held in recess of meetings of the full Board of Mayor and Aldermen."

Chairman Dykstra called for a vote. The motion carried with Commissioner Soucy duly recorded in opposition.

Commissioner Duffy interjected a suggestion relative to sequence of events this evening. We had as you know sent to us correspondence and communications that are outstanding, and that's something that if we could get that cleared up, it may be helpful since we may have members in the audience that are here for that explicit purpose.

Chairman Dykstra stated I certainly have no problem with that. We can go through this. You did vote to allow her to discuss this for informational purposes, but I have no problem with that. I think what Commissioner Duffy is speaking about...

Commissioner Duffy stated the tabled items.

Chairman Dykstra stated it's an addendum here. We have three. We're going to take them up separately. They're tabled items.

Commissioner Cook asked are we done going through this thing that Carol was going through?

Deputy Clerk Johnson stated I think the intent is to return.

Chairman Dykstra responded Commissioner Duffy asked us to do this because there was someone interested in the audience. This won't take very long, and we can continue.

Commissioner Cook stated that's fine. I misunderstood what was going on.

**TABLED ITEM**

a) Communications from Alderman Ed Osborne

Chairman Dykstra stated it's just a courtesy. First of all, there was a communication from Alderman Ed Osborne, and you all have a copy of that.

On motion of Commissioner Duffy, duly seconded by Commissioner Shaw, Item a was removed from the table.

Commissioner Duffy moved that the communication from Alderman Osborne be received and filed. Commissioner Wihby duly seconded the motion. Chairman Dykstra called for a vote. The motion carried with Alderman Shaw duly recorded in opposition.

Commissioner Cook stated I'm in favor, but my question is did we ever vote on the motion to take it off the table?

Chairman Dykstra stated yes, we did. If you have a concern with this, a motion would be in order to basically send this back to the Aldermen?

Commissioner Shaw stated it's too late now. We've voted it down. We voted to throw it away.

Chairman Dykstra stated receive and file it yes, but it can be amended. You know that.

Commissioner Shaw stated we've taken the vote. It's over.

Chairman Dykstra stated fine. We're receiving and filing it. Let it be noted that Commissioner Shaw is opposed.

a) Communication from Robert A. "Howie" Howe

On motion of Commissioner Soucy, duly seconded by Commissioner Hirschmann, Item b was removed from the table.

On motion of Commissioner Soucy, duly seconded by Commissioner Cook, it was voted to receive and file the communication from Robert A. "Howie" Howe.

b) Communication from Paul Martel

On motion of Commissioner Duffy, duly seconded by Commissioner Hirschmann, Item c was removed from the table.

On motion of Commissioner Cook, duly seconded by Commissioner Hirschmann, it was voted to receive and file the communication from Paul Martel.

Chairman Dykstra stated now we can go back to the draft that Carol has put forth. We can continue on that.

Deputy Clerk Johnson stated Section 3.01 Officers and Department Heads. That was new language that had been voted on by the Commission, as we understood it.

Commissioner Shaw stated have we discussed this at all, department heads?

Chairman Dykstra responded yes, this is the new language we discussed.

Commissioner Shaw stated okay. Go ahead. Excuse me. I remember it now.

Commissioner Cook stated the language of the second sentence still begs the question that we haven't identified which is which officers are required by law. Now, I have no objection to this language being in this section, but some place, some time, we're going to have to receive a determination of what the officers are required by law because we were confused all through the last Charter, and I'd like to know the answer.

Chairman Dykstra stated what we're basically doing now is reviewing this. We just made a motion on that other one because it had to be done, but this here, we don't have to make any motions on this. We're just going to review it and get input.

Commissioner Shaw moved that "department heads and City officers shall be nominated by the Mayor and confirmed by the Board of Mayor and Aldermen, period." I'd like to amend 3.01. It says exactly the same thing, but it takes out the ambiguity of except as required by law, so department heads and City officers shall be nominated by the Mayor and confirmed by the Board of Mayor and Aldermen. That was our intent, period. That's the end of Section 3.01.

Commissioner Cook duly seconded the motion.

Commissioner Pepino stated what it says is City officers required by law shall be nominated by the Mayor and confirmed by the Board of Mayor and Aldermen. If we were in a town, these people would be elected. They would be on the ballot, so by the Mayor bringing them in and the Aldermen voting for them, it's the same

thing as the people voting for them. It's the same thing as being in a town, the same identical thing, and as far as wondering what officers are there by law, I gave you people a list three, four weeks ago of all them people that have to be nominated this way. There has to be an election held for them.

Commissioner Shaw stated there's questions in some people's mind that some people are department heads, and some are officers, all right. The thing is that we want our officers to be department heads too, so what we have stated here...I've stated is my amendment. I don't even know if I got a second. I don't know why I'm debating this.

Commissioner Cook stated I seconded it.

Commissioner Shaw stated department heads shall be nominated by the Mayor... and officers because I've stuck that line in there. That's it. It doesn't say if City officers are required by law. If the Board of Mayor and Aldermen wish to make somebody a City officer under what I propose, they could do it, you know. They won't get paid any extra. They won't be required to do anything extra. They are just high falootin' department heads. It just takes out a line and a half of the Charter that's not necessary. It's repetitive.

Commissioner Hirschmann stated I did some reading over the weekend and thinking as well. What I came up with is an idea that we would have department heads and City officers, and the distinction would be that department heads would serve as appointed and confirmed, but City officers would be the people that would have a term. That would be the distinction in my idea.

Commissioner Shaw stated that's in a separate section. What we're trying to decide first...I thought we'd go down...is first what is it that who's an officer and a department head, okay, that's all. And so we're just saying department heads and City officers. Then later we're going to mention who is a City officer. Would you like assessors to be a City officer? If that's what you want and you vote for that and it passes, that's it. That's the end of it, but who nominates them is in Section 3.01 and who confirms them, and all the other stuff that we want to do with department heads and officers is later. Am I getting my point across?

Commissioner Hirschmann stated I move to this language that exists.

Commissioner Duffy stated an alternative perhaps would be to bring up not just City officers, adding to that the required by law and have it all encompassing in that one sentence. At least I get the sense that Commissioner Shaw is as much troubled by the extra language and repetitiveness than he is about what's required by law and what isn't. So language could be "department heads and City officers

required by law shall be nominated by the Mayor and confirmed by the Board of Mayor and Aldermen, period.”

Commissioner Shaw stated I amend my motion.

Chairman Dykstra asked what motion is on the floor at this time.

Commissioner Shaw responded mine, to take out the final words. I’ve amended it to be what Commissioner Duffy said.

Chairman Dykstra stated we’ll vote on that amendment at this time, correct Carol. Could you repeat the wording on that? On Commissioner Duffy’s amendment?

Deputy Clerk Johnson stated Commissioner Duffy’s amendment was to have “department heads and City officers required by law shall be nominated by the Mayor and confirmed by the Board of Mayor and Aldermen.”

Commissioners Shaw and Cook stated period.

Commissioner Duffy stated and delete the next sentence.

Chairman Dykstra called for a vote. The motion carried.

Deputy Clerk Johnson stated that would be on the amendment. Now can we get a vote on the main motion as amended?

Chairman Dykstra called for a vote. The motion carried.

Chairman Dykstra asked Carol, when you’re talking about new language, is this what we basically supported at our previous meetings?

Deputy Clerk Johnson responded at the previous meetings, we’re going to move on to Section 3.02, at the previous meeting, the action was to approve Section 3.02 in its entirety but you added f which was new language to this section. That was regarding that report during the first week of January that was made by Commissioner Shaw, and again, this language could be changed to whatever, upon a vote of the Commission.

Chairman Dykstra stated we’re still just reviewing as I said.

Deputy Clerk Johnson stated we needed to give you something to work on.

Chairman Dykstra stated right exactly, we appreciate it. And nominations can be made, but we're reviewing this. This can be made next week, the week after.

Commissioner Shaw stated under c, 3.02 c. It says here the commission shall have no responsibility for personnel decisions or the administration of the department. I'd like to add a word. Budget. They don't have any say about the department's budget which then leaves, you know. The commission shall have no responsibility for personnel decisions or the administration of the department budget. I think department heads don't want the commissioners from my perspective to be part of their administering the budget, but I think there are other parts they might like input.

Deputy Clerk Johnson stated I don't have any objection to the change. I would just point out that I think that the statement "or administration of the department" is encompassing more than just the budgets. It's also the policies within the departments, so I don't know if you want to add another word in there for the budget or whether your intent is to remove other administrative responsibilities within the department.

Commissioner Shaw stated I thought the department head had responsibility for personnel and budgets, but I wanted to just reaffirm that...or the administration of the department budget.

Chairman Dykstra asked is there a second. There's no second. There's no further discussion on it. Is there another motion?

Commissioner Hirschmann stated I thought we moved some language that said advisory. Where is that?

Chairman Dykstra stated to consult, advise, and make policy recommendations in A. Is that what you mean?

Deputy Clerk Johnson responded this is the language from the 1996 Charter. All of a, b, c, d, e basically was setting it up as advisory. It starts off with a), which talks about policy recommendations.

Commissioner Shaw stated Madame Chairman, I need to ask the clerk, I guess. I would love to see put into the Charter in this section that commissioners were the appeal boards for employee, not concerns so much but you know, it's like a citizen's thing. You fire five people down at the Highway Department. I think they should have a review done by the commissioners of that department to see if the thing had been done...

Chairman Dykstra stated Commissioner, we supported that they be advisory, and if the Board chooses to you know, ask their advice on these things, they certainly can do so. That was a vote we took.

Commissioner Shaw interjected in five years, they only did it once.

Chairman Dykstra responded this is what we passed.

Commissioner Shaw stated so why don't we eliminate the whole thing.

Chairman Dykstra stated if you want to make a motion, then we will discuss it.

Commissioner Shaw stated no, I just...

Chairman Dykstra stated okay, then we will just continue. There has to be a second on these motions, or we're just going to be here forever. Okay, we could just continue, Carol.

Deputy Clerk Johnson stated so the last one on item f is that new language, and I just want to make sure that there's no opposition to that language. I just want to make sure that there's no opposition to the way we have placed that in as verbiage because that's the way the motion basically had read.

Chairman Dykstra asked are there any problems with that part? Even if you have a problem down the road. We're just reviewing these things.

Deputy Clerk Johnson stated Section 3.03 was just voted on as straight items out of the 1996 Charter, which was the old Section 3.12. And 3.13 was the next one, which we've just sort of renumbered again from the 1996 Charter which was voted on by this Commission. 3.05 is the 1996 Charter Section 3.14, and the language changes are reflected also in b, e, and g2, so you might want to just look at those real quick. Again that would be item b. We made a language change there to seven. The present one requires eight because it was considered to be a majority. Now that you have 12 Aldermen, we dropped that to seven. We wanted to make sure that was okay and then in e, presently it was nine which was representing at the time it was thought to be a two-thirds majority, so we put that at eight which would be your two-thirds majority for 12. And then we did the same thing in g2. We changed it from nine to eight because you're talking 12 Aldermen versus 14 now. We just basically tried to come up with the equivalent, and if you want something different in there, that's fine. We just wanted you to note those changes.

Commissioner Soucy stated I hadn't noticed the provision before. It just didn't strike me, but in Section f, Carol, has there ever been an instance where someone's attendance has been reported to the Board.

Deputy Clerk Johnson responded I believe there was one instance.

Commissioner Soucy said there was. I just wasn't even aware of it. I didn't know if that was one of those things where it's never...

Commissioner Shaw stated places where a majority of the Board, I would like to just...I don't see why we have to have a super majority. If you said seven instead of eight, the Mayor, even though he might have nominated the person, I mean, he has veto power. I think six is the right answer. In other words, a majority of the Board of Mayor and Aldermen is probably the correct terminology. A majority of the Board of Mayor and Aldermen. There are procedures in State law that decides what is a majority of the Board of Mayor and Aldermen, so where we have listed down here there should be seven...or presently it is nine but there should be eight, we don't need to do that. That's my point. We don't need to say eight.

Deputy Clerk Johnson responded the only reason we did that was because the language stated nine, and we know it's not 14 Aldermen, so we dropped it to eight. The intent of the last Commission was to set it this way.

Commissioner Shaw stated no, you're correct in what you've done, but I want to remove all of that. Okay, there's no longer necessary to have eight aldermen approve. Six is the required number in my opinion.

Deputy Clerk Johnson stated if you use majority, the other point to that would be that a majority of the Board depending on the members present could be changed, so it may be seven on one instance. It may be six on another if you're not stating a specific number. That would be the only other...I just want to be clear on that.

Commissioner Shaw stated I don't think you should have super majorities. I make a motion that any reference to the number, it should be changed to the majority of the Board of Mayor and Aldermen versus seven, eight, six, or whatever.

Chairman Dykstra asked do I have a second to that motion? There's no second. That motion dies. We'll continue.

Commissioner Duffy stated excuse me. I'd like to second it for discussion.

Commissioner Cook stated my understanding of the way the Board of Mayor and Aldermen worked is this. The Mayor only gets to vote to break a tie. Is that right? He doesn't vote routinely on votes, right? So this would...

Deputy Clerk Johnson noted or veto.

Commissioner Cook stated and he can veto, but veto is different from routinely voting for something. If, and I understand where Commissioner Shaw is going, he says the Mayor and any six creates seven. That's enough of a majority to uphold the action, but inadvertently what we would be doing would be while the Mayor doesn't have a vote all the rest of the time, except to break a tie, his intent I think is to give the Mayor a vote here to create a seven which is power the Mayor doesn't already have, so I think there's a failure in the logic here because the Mayor can't do that because he doesn't have a vote, so he can't become the seventh. Isn't that correct? That's a question. That's not an argument. It's a question.

Commissioner Shaw responded I favor a strong Mayor form of government where the checks and balances, so if the Mayor has five votes against his nominee...six votes...seven votes against his nominee, he isn't going to win. So I'm saying that we want the Mayor to accomplish something in the City of Manchester and to move the City forward and in order to do that, I don't see why he has to have eight Aldermen confirm a position which incidentally, except for f in the last paragraph, gives them nothing to do. This seems to me, it's an honorary position, and I think six...a majority is the correct answer. That's seven people.

Commissioner Duffy stated it seems to me that Commissioner Shaw's concern is and I in principle agree with him that the majority vote should be sufficient. You'll notice that the requirement for the super majority seems to be in items e which is removal for cause as well as item g which is the appointment in the event of a failure on the part of the Mayor to identify someone within 90 days, and the real question is whether or not you need to have a super majority for those two instances. If we can agree that that isn't necessary, then I would think that Commissioner Shaw's point is well taken.

Commissioner Cook stated maybe I didn't learn my math right, but if the Mayor has no vote...the Mayor gets to nominate. That's a pretty good power. The Mayor gets to nominate, and if we said a majority of the Aldermen get to confirm, a majority of 12 is seven, and it says seven. Six is a tie. If it's a tie, the Mayor gets to vote to break the tie, so we're saying seven so that the Mayor doesn't get to put his own nominee in. It takes a majority of the Aldermen to do it, to put him in. That's not a super majority. That's a majority. I'm not arguing with

Commissioner Shaw's point about the strong Mayor. I think that's appropriate, but I'm lost under the belly of the logic here some place.

Commissioner Shaw asked would you suggest changing that answer from eight to seven.

Commissioner Cook responded the proposal is seven.

Commissioner Shaw stated I see an eight in other parts. I'm too far forward.

Chairman Dykstra stated basically, he's moved to make it seven instead of eight in that section to create a simple majority other than a super majority. I'm going to call for a vote at this time. All in favor say aye.

Commissioner Cook asked are we in b? Which section are we voting on?

Deputy Clerk Johnson stated the motion was to substitute a majority rather than having any numbers. Any place that there's a reference to a number, he's saying a simple majority. For all sections.

Commissioner Cook stated I just want clarification. For b, e, and g2 to just substitute the word majority. Simple majority.

Chairman Dykstra stated which would make it seven in all cases. Even for removal or anything, it would make it seven. Let's have a roll call, please. It was to make everything listed as a simple majority, just a majority.

Deputy Clerk Johnson stated simple majority in all instances. There is some confusion though because there are sections in here that refer to Board of Aldermen, so the Mayor would not have a vote.

A roll call vote was taken. Commissioners Cook, Duffy, and Shaw voted yea. Commissioners Hirschmann, Pepino, Soucy, Wihby, and Dykstra voted nay. The motion failed.

Commissioner Hirschmann stated I want to make a motion that the word seven is accepted.

Chairman Dykstra asked where are we looking at.

Commissioner Hirschmann stated I was looking at item b.

Chairman Dykstra stated item b is seven and then item e is an eight.

Deputy Clerk Johnson asked so e and g2, is that what you're referring to?

Chairman Dykstra asked are you looking at B and E to keep it at seven and eight?

Commissioner Shaw asked where are we?

Chairman Dykstra stated on section b where it says "shall not take office until the appointment has been confirmed by a vote of seven". It is presently eight. That is in Section b. We just went on to b, and then there's e, which says "removal for cause". It says removal on vote of eight. He wants to leave that to eight.

Commissioner Shaw interjected d is contrary to State law, by the Supreme Court.

Chairman Dykstra stated we're going on B and E right now, Commissioner. He's made a motion, and we're just clarifying the motion for you.

Commissioner Shaw asked what section of this thing here are you on?

Commissioner Dykstra responded Section b and Section e.

Deputy Clerk Johnson clarified b, e, and g2 will read seven, eight, and eight respectfully which is what we proposed in our language.

Chairman Dykstra stated it is listed in dark italics, seven, eight, and then again it's eight listed in g, Section 2.

Commissioner Hirschmann stated we're discussing the section that you were talking about for the past half an hour.

Commissioner Wihby seconded the motion.

Commissioner Soucy stated just to clarify, we're making a motion to stay with the language that's in there. Do we need to even do that?

Deputy Clerk Johnson responded the clerk had noted that we had made those changes because the language now says nine, so I think you should take a vote on what we've presented to you in the bold, yes. And that's what he's doing. He's basically saying what the clerk presented is what he's accepting.

Commissioner Shaw stated I'm going to make a verbal protest that one, what's going on here can't be heard. Second, what's going on here is confusing. Okay. I don't see how I'm able to vote on much of this. The sound in here is so bad that

you might just as well be in a different room, and I think when you're trying to go over this thing here that you should be in an atmosphere where you know, we can listen to each other, and it can be conducive to doing good business, all right. I can't hear you. I mean from that side, I'm serious now. Maybe, I'll have to move. From that side, except for Alderman Hirschmann, there's nothing but mumbling. Okay. He's the only one that can speak in a clear and concise manner so that I have my rights. I have a vote, and I have my rights to hear, and something's missing here in this whole discussion, so I've made my protest.

Chairman Dykstra called for a vote. The motion carried with Commissioners Shaw, Cook, and Duffy duly recorded in opposition.

Chairman Dykstra stated we can just continue on and review this. You don't have to make motions if you don't want to. We can just look at it and get some information from the clerk.

Commissioner Duffy stated Carol again, we'll ask you to speak right into that mike. I think it will help Commissioner Shaw and the rest of us.

Deputy Clerk Johnson stated Section 4.02. The only language that was acted on was the composition of the school committee, one residing in each of the separate wards. Terms and Definitions. There was a motion at one point to accept certain portions of that. We basically just plugged in all of the existing language relating to what we understood the motion to be. What we wanted to do was to have the Commission accept this language. We did underline sections that we were not sure what the Commission wanted to do with. For instance, 5.06, filing fee, in the old section, there was the \$50, school committee \$25, and other offices were \$5. Presently there is no fee for any other offices under the current Charter. We're not sure whether everybody understood that when they were acting. We just wanted to make sure.

Commissioner Hirschmann asked does that reflect the 82 Charter. The five dollars?

Deputy Clerk Johnson responded yes.

Commissioner Hirschmann stated that would be for a selectman and a moderator and a clerk.

Deputy Clerk Johnson responded right. There's no fee if you run for any of those elective offices or for instance the Charter Commission.

Commissioner Cook moved to delete the five dollars and put in no fee for the other offices. Commissioner Duffy duly seconded the motion.

Commissioner Cook stated if I could speak to it very briefly. The purpose of the change in the last Charter was that we had testimony from some folks that it was tough to get people for that and very frankly, five dollars isn't going to move or not move anything along in this world, and so it was just kind of an inducement to people to step forward.

Chairman Dykstra called for a vote. The motion carried.

Deputy Clerk Johnson stated 5.07, we have the filing period. In the 1982 Charter, the filing period was five consecutive working days, excluding Saturday and Sunday, which commenced on the first Monday in August each odd numbered year during which candidates for municipal office shall file. Presently, we have ten consecutive working days excluding Saturday and Sunday commencing on the second Monday in July. We're not sure which one you wanted to go with, so we figured we'd let you...

Commissioner Shaw moved to substitute all the terminology in the 1997 Charter into Section 5.07 deleting all the references that were in the 1982 Charter. As presently written, ten days.

Deputy Clerk Johnson stated you want the ten days.

Commissioner Shaw stated I believe in the ten days.

Deputy Clerk Johnson stated but when do you want it, because we're talking August versus July. You're talking about using the July language as well. You want all of the language that's in the present Charter? Am I understanding?

Commissioner Shaw stated in the present Charter.

Commissioner Cook seconded the motion.

Commissioner Hirschmann stated I like the August date as a filing period. When the filing period is moved up to July, you're in essence putting the whole City in campaign mode in July. Once people declare as candidates, they're out actively campaigning. August seems a good time. I ran when I had to file in August, and it wasn't a problem. I see no reason why we have to go file in July. You're just prolonging the campaign season. That's all you're doing.

Commissioner Cook stated that's certainly a legitimate point. We debated this at the time of the last Charter, and the feeling was that the longer you have for people to file the better because people may be thinking about it and not do it, and the earlier you get them out, the more opportunity there is for people to get to know them, hear about them, think about them. I don't think anybody in the world wants longer political campaigns on the one hand. On the other hand, I think there's something to be said for people having a longer period of time to file and for people to have a longer period of time to get to know them.

Commissioner Shaw stated if August was chosen and if we did, and you know, I favor greatly that we allow people two weeks to at least sign up for office...so if you had it the first of August, that would be the 15<sup>th</sup> pretty much the earliest. Now, you've got a problem. The election is only three weeks away. I think we're talking about the September election aren't we, the primary? And I don't think it's fair to the candidates to say all you have is three weeks to run for office. Incidentally, I don't favor July at all. I favor that we be the first community in the State to move our primary up that the election is all done. In other words, just pick the day you want the election done for the primary, and I would favor June 15<sup>th</sup>, the primary is over. In other words, that's the day of the election, June 15<sup>th</sup>, before the kids go to vacation. Okay, no summer campaigning for some people because they've already been nominated. It's easier to get people to work on your campaigns when they're not off on vacations or anything. I favor the State of Maine method, what I'm telling you, and if you could look to effective government and efficient government, then you would not even choose July. You would say April maybe.

Commissioner Soucy stated regardless of which month we pick, I think people will begin their campaigning whenever they feel it's appropriate for them, but in terms of allowing the Clerk's office to prepare for the primary, moving up the filing period certainly gives more time to prepare for election day.

Chairman Dykstra stated that's a good point.

Commissioner Shaw stated can we move the question.

Chairman Dykstra stated let's clarify what this question is.

Deputy Clerk Johnson stated the question on the floor is to use the 1996 language which would be the ten consecutive working days excluding Saturday and Sunday commencing on the second Monday in July.

Chairman Dykstra called for a vote. The motion carried with Commissioners Hirschmann and Wihby duly recorded in opposition.

Commissioner Hirschmann stated why don't we just throw away the 1982 Charter because you know, I went out on a limb for Mayor Shaw to approve that 1982 Charter. That was his request, thinking that he wanted to use some of this language, and now he's just thrown it all away, so why don't we just throw away the 1982 Charter at this point? Throw it all in the dump and proceed with the 2003 Charter, because that's what you're doing.

Commissioner Shaw responded in the 1982 Charter at the original time, and it might have been changed some point in it, there was ten days that was allowed to file to run for office.

Deputy Clerk Johnson stated Section 5.08 nominating petitions. The only difference in the two languages is the other offices number of ten. Ten in the present Charter is none. We presumed you wanted to stay with ten, but we were just making a notation of that.

Commissioner Cook stated the reason for the petitions was in lieu of the fee. The fee was made zero for those other offices, so in lieu of zero, you don't need a petition, which is why none was put in. We've already made the other offices not five dollars but none, so it would be dumb to say you had to have a petition of ten instead of paying no money. I'd make a motion to go back to none.

Commissioner Duffy duly seconded the motion.

Commissioner Soucy stated could I further amend that motion to include the Commissioner of Welfare, 150 petitions.

Commissioners Cook and Shaw noted we eliminated that as an elected position.

Commissioner Soucy stated that's right.

Chairman Dykstra stated we're going to vote on this.

Deputy Clerk Johnson stated insert the word none for ten.

Chairman Dykstra called for a vote. The motion carried.

Deputy Clerk Johnson stated nominating papers. There were no differences. And Authority, I believe there's no change to that either.

Chairman Dykstra stated just remember, we can revisit all of these at any time.

Commissioner Duffy stated I'd like to make a motion that we adopt the language in the 1996 Charter and substitute what we have here. This is item 5.09. That's what we were talking about, right? Nominating papers. I think the language that's there again identifies the candidate as male instead of being neutral and with respect to gender, but in addition to that, it introduces other requirements that are not in the existing Charter which I think in fact are more appropriate, considering some of these offices.

Deputy Clerk Johnson stated the reason that the nominating papers are in there is because you now went back to a partisan election, and if don't have another provision, an independent could not run in a general election, so that is the reason for that language. It's the language from your 1982 Charter based on having a partisan election. There would otherwise be no provision for an independent to run.

Commissioner Duffy stated would you agree though that we need to correct the language, if nothing else.

Deputy Clerk Johnson responded we can correct the language.

Commissioner Duffy stated I'll withdraw my motion then and just suggest that the Clerk review that language.

Deputy Clerk Johnson stated Election of Officers, 5.11 basically is the language straight out of the 82.

Commissioner Hirschmann stated I want to go back to 5.10. The word may, I want changed to shall. Political calendar, second line in the middle, just make sure it gets done. They do it anyway.

Chairman Dykstra stated shall prepare a political calendar. Shall prepare a political calendar. Change may to shall.

Commissioner Shaw duly seconded the motion.

Chairman Dykstra called for a vote. The motion carried.

Deputy Clerk Johnson stated 5.11 is language from the 82 Charter with the exception of Welfare Commissioner. 5.12 is terms of office and vacancies. We made a notation there that presently other provisions apply for filling vacancies, and there are two specific sections that we referenced on there. We didn't know if you wanted to consider that as well.

Commissioner Shaw asked how is an aldermanic vacancy filled? By going to the ward and voting?

Chairman Dykstra responded election.

Commissioner Shaw stated I would move that for school committee, a special election be held to fill vacancies for the unexpired term.

Commissioner Dykstra asked what section is that in, Carol?

Deputy Clerk Johnson responded 5.12.

Commissioner Shaw asked does that include the Mayor is a special election or not? I didn't think it was.

Deputy Clerk Johnson stated can we deal with one issue at a time.

Chairman Dykstra responded yes, right. We were on 5.11, right. We'll get to that.

Deputy Clerk Johnson stated if I understand it right, he wants to say should a vacancy occur on the School Committee, a special election shall be ordered.

Commissioner Shaw stated I don't think they should fill the vacancy. I think they should order an election.

Deputy Clerk Johnson stated I don't have any objections to this being changed obviously. The only thing I would caution is that if the vacancy occurs during the month of August, you have an election going on, and then there gets confusion as to what's what.

Commissioner Shaw stated you notice that it says that the Board of Mayor and Aldermen shall order an election, you see, so I mean it's their prerogative. If there's a vacancy in August and an election is coming up, then they're not required to hold an election. I mean I want to give them the latitude, but I don't want them to fill the term. That's the key. I don't want an Alderman from Ward X saying, "I think this person here should be on the School Committee."

Deputy Clerk Johnson stated I guess I would ask to be allowed to come back with some language at the next meeting to accomplish that because I think if you say strictly order an election, it's not clear that they don't have to hold a special election, and you also probably want that person to be able to take office immediately upon the results of the general election and once the recount was recorded.

Chairman Dykstra asked is that okay with you to have Carol come back with that?

Commissioner Shaw stated I would favor that you rewrite it.

Chairman Dykstra stated we can still do this next time.

Deputy Clerk Johnson stated we can bring that back at the next meeting.

Commissioner Duffy stated I would agree. I withdraw my comment.

Chairman Dykstra stated all right. She can bring us that information at the next meeting.

Commissioner Cook stated point of order, Madame Chairman. I believe that what Carol was trying to do here with the help of the other staff was to draft what we had decided on. I'm not sure we had discussed or decided on who filled the Mayor's or the Aldermen or anybody else, so I don't think the non-presence here of anything means that this is the final language. I think they were trying to write down what we had decided, so I don't think we ever discussed those other things.

Chairman Dykstra stated no. He just asked to bring forth language. We can look at it next time. You're correct in that.

Deputy Clerk Johnson stated I guess at the same time, do you want us to bring in language for Aldermen and for the Mayor as well. Some are saying yes. Some are saying no.

Commissioner Soucy moved that the Clerk bring in language to cover the Mayor, Aldermen, and School Board. The Clerk asked for clarification as to whether or not we were considering just School Board members, filling the vacancies for only School Board members or if it included Aldermen and Mayor, and I just made a motion that she bring forth language for us to then discuss for all three offices.

Commissioner Hirschmann stated I want to discuss that, and then I want to vote on that. I don't want this just referred. I'd like to discuss this.

Chairman Dykstra responded we can discuss it, but they just asked for information to be brought forward on how they think it should be worded.

Commissioner Soucy stated the motion was just to request that language be presented at our next meeting. We'll then have a full discussion and an opportunity to vote on the proposed language.

Commissioner Hirschmann stated the existing language on the vacancy of a Mayor is appropriate. I don't know see why we would be changing that. The Board of Aldermen fill the vacancy of the Mayor without having an election. It would cost the taxpayers money.

Commissioner Shaw asked are you discussing 5.21?

Chairman Dykstra stated all right, go ahead. What are you discussing now?

Deputy Clerk Johnson stated I guess we're still on the issue of filling vacancies, terms of office and vacancies.

Chairman Dykstra stated you know, we don't even need a motion. Just bring forth whatever information in that area that might be helpful to this Commission.

Deputy Clerk Johnson stated we'll bring forth separate language for each based on having an election and from there, you can decide what you want to do.

Chairman Dykstra responded that would be fine. Thank you.

Deputy Clerk Johnson stated moving on to qualifications for office. 5.18 and 5.20 are just straightforward language that was already voted on. 5.21, this language was based on the action taken, but we were looking for clarification of the wording. The question comes in as to whether or not you want to say to hold the office or whether you want to say to file as a candidate because the present wording is to file as a candidate for the office.

Chairman Dykstra stated but you should live here a year before you can file. Is that the intent of this? It doesn't seem to be.

Deputy Clerk Johnson stated the old Charter talks about holding office, and we just substituted one year three years whereas the new language talks about when they file, they need to have residency for a year. We wanted to clarify whether you want it to be at the time of filing or whether that is at the point that they take office.

Chairman Dykstra stated I would think the time of filing, but go ahead Commissioner.

Commissioner Cook stated I think there's a difference. When I first read this, and I compared them, I said there isn't a difference, but I think there's a difference. If somebody from Concord files and runs for office in Manchester and decides

they'll move to Manchester only if they are elected, they could do it under this. If somebody has to be a resident of the City when they file and has to have been here for a year before, they're already here. Now, the year is the maximum we're allowed under State law, as I understand it which is why we have the one-year instead of the three years. That's why that changed, but there's a big difference between allowing somebody to move into the City and qualify between their election and swearing in, which is now two weeks but still...and making them be a resident when they file, so I think we should go back to the 1996 language, and I think Carol has pointed out an important although relatively minor thing.

Chairman Dykstra stated so that they would live here a year when they file. I agree with that. Any other discussion on that?

Commissioner Hirschmann stated I just wanted to change the words here. There's a "he" and change it to "said person". 5.21 Mayor in the first sentence...

Commissioner Duffy stated Madame Chair, I think if we're changing the language to the 1996 Charter, that takes care of it. The gender neutral has to be incorporated in any event, but the language in the 96, which has been proposed, takes care of that as an issue.

Commissioner Hirschmann asked was there a vote that I missed? I didn't vote.

Chairman Dykstra stated we didn't vote on it yet.

Commissioner Duffy stated there's been a motion, I believe.

Chairman Dykstra responded we're discussing.

Commissioner Hirschmann stated I was changing "he" to "said person" but is there new language, Pat, that you want put in there? Is there new language that you want?

Commissioner Duffy responded the language I would suggest is the language that's in the current Charter. Under 5.19, substitute that for what's being proposed in bold type here under 5.21.

Deputy Clerk Johnson stated the language in the 96 Charter reads, "To file as a candidate for the office of Mayor or Commissioner of Welfare (which we removed), one must be a resident of the City for one year immediately preceding and shall continue to be a resident of the City during (it says) his term of office." 5.19 of the 1996 Charter. If the concern is to correct the hises or the hes, it would

just be the last one. There is a “his” term, so we would change it to “said person’s term”.

Commissioner Duffy stated if I may, first of all, we agree. In the heading, we strike the Commissioner of Welfare out of that. Secondly, the language is fine except for and again, the last line of that “during his term of office”. It’s during “the term of office”. You know, that kind of language I think would be helpful so that we don’t spend a lot of time keep repeating this business of whether it’s he, she, or it. All right. Just take all that references out.

Deputy Clerk Johnson stated we would replace it with “the”. We don’t have a second to the motion, so if Commissioner Cook wants to restate the motion.

Chairman Dykstra stated we still have Aldermen in there. We don’t have Alderpersons. I mean if you do that, to go back and change every reference to gender, I mean I don’t know.

Commissioner Shaw asked did we have motion that was made and seconded to do anything yet.

Deputy Clerk Johnson responded not yet.

Commissioner Shaw moved that all the language in the 1982 Charter as it relates to 18, 19, and 20 remain as written in the 1982 Charter. It pretty much says that a person can’t hold an office unless they’re born or naturalized in the United States. That sounds good to me. Registered voter. “To hold an elected office a person must be registered to vote.” Okay, that sounds good to me. 19 had domicile. Domicile is very important I think. Got rid of Aldermen who moved. And 21 as we had amended.

Chairman Dykstra stated we’re on 5.21. I guess we have already dealt with that.

Deputy Clerk Johnson stated 5.18 and 5.20 were already acted on by the Commission at a previous meeting. The question is on 5.21, and we don’t have a motion of the floor at this time that has been seconded. We had a motion from Commissioner Cook to replace to file as a candidate for the office of Mayor with the 1996 language.

Commissioner Duffy duly seconded the motion.

Commissioner Soucy asked does the motion on the floor right now include the change that was previously discussed in the last line about “the” term of office?

Deputy Clerk Johnson stated Commissioner Cook had not placed that in initially. I guess you need to refer back to him whether that's his intent.

Commissioner Cook stated "the" term of office, I agree with what Commissioner Duffy said.

Deputy Clerk Johnson stated so if we understand it, it would read "the term of office" at the end, and is Commissioner Duffy seconding it in that verbiage?

Commissioner Duffy stated that's part of my motion.

Deputy Clerk Johnson stated so that is the motion on the floor.

Chairman Dykstra called for a vote. The motion carried.

Commissioner Hirschmann stated we're going back to that one.

Chairman Dykstra stated let's get through this, cause we do have other things we have to do today.

Deputy Clerk Johnson stated the next item containing new language based on the motion was Section 8.08 Oaths. That's new language, which we took, based on a motion, and we sort of did up. The others were previously acted on, just to replace them as they stated. We're on 8.08, and that was based on a motion by Commissioner Shaw, I do believe. If he wants to review that and make any comment on whether we understood what he was saying.

Chairman Dykstra stated two weeks following this. So that's when they take office in November, right?

Deputy Clerk Johnson responded right. Basically, it's calling for an inaugural event to occur two weeks after the election.

Commissioner Shaw stated I thought we voted that. Didn't we vote that?

Chairman Dykstra responded we voted for everything here that's been...

Commissioner Shaw asked so why...what are we...going to take another motion...

Deputy Clerk Johnson responded we took your motion, and we put into language, and we want to make sure that that's the language you want.

Commissioner Shaw stated yes. Thank you. I apologize.

Deputy Clerk Johnson stated the only other new one, and this was a real confusing one for us, was Charter Enforcement, 8.16. If it's our understanding, you adopted this language that's presented here.

Chairman Dykstra stated if that's what it was. It was that one that Kevin Clougherty submitted. There were two parts. Is this the exact wording?

Deputy Clerk Johnson stated it was Alderman Hirschmann that made the motion initially, so perhaps he could review it.

Commissioner Hirschmann asked what section are you on now?

Chairman Dykstra stated Violations, the last. Is that what we had? Is that the exacting wording, Carol?

Deputy Clerk Johnson responded that was my understanding.

Chairman Dykstra stated that was voted on and passed, so that has already been passed, the Charter Enforcement.

Deputy Clerk Johnson stated what we will attempt to do at the next meeting is to bring back some more language, to sort of go through in the same fashion. I don't know that we'll get it with your agenda, cause we only have one day to prepare the agenda this week.

Chairman Dykstra stated right now we're going to go back to...

Deputy Clerk Johnson interjected Item 5.

Chairman Dykstra addressed item 5 on the agenda:

Notice for reconsideration given by Commissioner Hirschmann relative to motion that effective January 1, 2006 the Mayor's salary shall be 80 percent of the Governor's salary for the State of New Hampshire, with benefits and no retirement plan; such salary to automatically increase at any time the Governor's salary increases. Unless changed by referendum, the Mayor's salary shall not be set in any other manner than as outlined herein. (Commissioners Cook, Duffy, Shaw Soucy and Tessier having voted yea. Commissioners Hirschmann, Pepino, Wihby, and Dykstra having voted nay.)

Commissioner Hirschmann moved for reconsideration.

Commissioner Pepino duly seconded the motion.

Commissioner Shaw stated the motion is whether we want to reconsider though.

Chairman Dykstra stated that's correct.

Commissioner Shaw stated you'd like to discuss why we should reconsider or not reconsider. I didn't know if he's going to speak to the issue itself which is not up for debate.

Chairman Dykstra responded no, to the motion of reconsideration, I said. That's exactly what I said.

Commissioner Shaw stated I just hope that this conversation that we're going to have is on the one issue before us, whether we should reconsider or not, not whether the salary is fair or not. I don't think that's...

Chairman Dykstra interjected I have just said that, Commissioner. I can't make it any clearer.

Commissioner Shaw stated he's made a motion and Commissioner Pepino seconded it.

Chairman Dykstra stated he's going to be speaking to reconsideration.

Commissioner Hirschmann asked am I allowed to speak?

Chairman Dykstra responded yes, you certainly can.

Commissioner Hirschmann noted the reason that I called for reconsideration is not the money. It's the process, and the process would be that our hands, the City fathers' hands would be tied in the future. They would not be allowed...no referendum of voters or anything can change this. All I'm going to say is I would rather see language in the Charter that says the Aldermen can every May decide the salary of the Mayor, something to that effect, not that it's tied to a person's salary out of City government that has nothing to do with the City of Manchester, that the voters can't have any input on. It just doesn't seem...it's something anti-Manchester that you're doing here, Bob. I would rather see honestly if it said \$82,000. That would be more acceptable than what's been proposed. That's all I'm going to say.

A roll call vote was taken. Commissioners Hirschmann, Pepino, Wihby, and Dykstra voted yea. Commissioners Cook, Duffy, Shaw, and Soucy voted nay. The motion failed.

Commissioner Pepino gave notice to reconsider the reconsideration.

Commissioner Shaw stated I think that if you know, and some other people wouldn't agree with me on this here, but if Alderman Hirschmann, Commissioner Hirschmann wishes to discuss the Mayor's salary at any time as long as we are in session, I mean motions on that, I perceive and I'm not ruling for the Chair, but I think those motions are in order.

Chairman Dykstra stated right. He didn't make a motion on it.

Commissioner Shaw stated I know that, but I just wanted to point out to him that any time he wished to make a motion on the Mayor's salary...

Chairman Dykstra stated I'm sure he understands that. I did ask him that.

Commissioner Shaw stated reconsidering reconsiderations and reconsidering, I'm not sure why we do that. We ought to be allowed just to make a motion, cause we want to.

Chairman Dykstra responded there are plenty of motions that have been brought up here have been changed so far.

Commissioner Pepino stated I'd like to make a motion we talk about the Mayor's salary.

Commissioner Hirschmann duly seconded the motion.

Chairman Dykstra called for a vote.

Chairman Dykstra stated four to four, so evidently, we don't discuss the Mayor's salary.

Commissioner Pepino stated wait a minute now, they just made a recommendation over there if I wanted to bring up the Mayor's salary, they have no problem.

Chairman Dykstra interjected well evidently, they did.

Commissioner Pepino stated so here I am bring up the Mayor's salary...

Commissioner Dykstra stated we can't discuss it because there was no vote there, so we're going to have to move on to something else.

Commissioner Pepino moved to adjourn.

Chairman Dykstra asked for a second.

Commissioner Duffy stated excuse me, Madame Chair, there's item six on the agenda that I think we...

Commissioner Pepino interjected a motion to adjourn is non-debatable.

Chairman Dykstra stated evidently I thought that was supposed to be when all members were present.

Commissioner Duffy stated are we satisfied that the City Clerk is satisfied that we've covered those items that have been flagged.

Chairman Dykstra responded I don't think it's up to the City Clerk. A motion has been made to be adjourned. Is there a second to the adjournment? No one wants to adjourn. Okay, then we can further discuss. When you're talking about seven, is that what you're talking about, Commissioner?

Deputy Clerk Johnson explained he's talking about the items flagged listing that's listed as item number six. The remaining items that were flagged for discussion.

Chairman Dykstra responded right, there are certain items in there flagged for discussion, and as I said at previous meetings, they can come up at any time.

Commissioner Cook stated I have a matter for discussion.

(Commissioner Cook handed out to Commissioners a one-page sheet with proposed sections 6.11 and 6.12).

Commissioner Cook stated this is not a substitution as I understand it for anything we've done so far. When Mr. Clougherty was here and all this is trying to do, and I did this this afternoon and it's not magic, but when Mr. Clougherty was here, he indicated that he thought there was a problem with the combined role that he had and we have discussed also the homogenization of the various roles that the head of the Finance Department or the Finance Officer or whatever it is has. And he indicated that the audit role homogenized with the budget officer's role seemed inconsistent to him. The easier of these...well neither of them is too complicated. 6.12 is the provision of the present Charter, which follows from the prior Charter

on the independent audit. It presently says that the Finance Officer shall arrange for bids for an auditor and shall supervise the process. The highlighted language in 6.12 as printed on this thing says, "There shall be an audit committee of the Board of Mayor and Aldermen which shall be a standing committee and which shall through a competitive bid process provide for the selection of the independent auditors in accordance with the City's procurement code." What that did was replace "the Finance Officer shall acting through a competitive bid process provide for the selection of the independent auditors" and made an audit committee of the Board which makes this consistent with the way that audits are performed elsewhere which means the auditors are selected by a process and then report to a committee and then to the full Board. That would seem to me to solve Mr. Clougherty's quandary of being the Finance Officer, the Budget Officer, and also arranging the audit of his own work. The first 6.11, and we probably should discuss these separately, but 6.11 makes clear that the department head of the Finance Department shall be nominated by the Mayor, confirmed by the Board of Mayor and Aldermen. That is consistent with the language we had on the appointment of department heads and City officers. "He shall serve as Department Head in the same relationship to the Mayor as other department heads." Then it says, "In addition, he shall assist the Mayor in formulating the budget of the City." One of the incongruities I think that people have noticed in Manchester City government is we have a Finance Department and we have a Finance Officer or whatever you want to call him, and the budget is prepared largely by one of the assistants to the Mayor, and it isn't designated that the Finance Department person does the budget, and this I think addresses that. Then it says, "He shall provide such financial information to the Board of Mayor and Aldermen as shall be requested of him by the Board" and we can change him to head of the Finance Department "and shall perform the function of the Treasurer". That picks up two other concerns. One is the concern of the former Aldermen on this board which is we want financial information, we should be able to get it from the Finance Department and not have some filter in the way. That takes care of that, and as you heard previously, the Treasurer's position in the City of Manchester was allowed to be done away with some time ago by State legislation to create the Finance Officer's position, which is what this does, and that picks that up. What I've tried to do here is address Mr. Clougherty's concerns and a bunch of the other concerns we've heard in the finance area, and this is more for discussion than for a vote. I'm not making a motion at this point, but there are a lot of things floating around in there.

Commissioner Shaw stated since we're only commenting, I'm presuming this came you know through the Finance Department for our consideration.

Commissioner Cook responded well actually, I wrote it this afternoon based on what Mr. Clougherty said.

Commissioner Shaw stated did you really? Then the part that I would object to in addition, he shall assist the Mayor. Now, the way the budget is made is that the Mayor shall ask the assistance of those people that he wishes to assist him in making the budget. This is ridiculous that...I would like to see in the Charter not what Mr. Cook has put in here but a definition of what the Finance Department really is. It's a service department that pays the bills, okay, collects the money and puts it in the bank. End of discussion. End of discussion. That's it. That's what their job is. That's what the Finance Directors of most firms are, okay. Going out for bonding, I consider part of that if I didn't state it. So what we have is a Finance Department in the City of Manchester that now not only wants to run every department in the City of Manchester, but it wishes to run those parts that haven't been given to it by the Aldermen. Major mistake on 6.11. 6.12 is harmless except that it requires the Aldermen to have an audit committee when I favor the Aldermen having the right to do what they wish.

Commissioner Hirschmann stated just looking at Commissioner Cook's handout, the key component that seems to be missing just for discussion purposes is the internal auditor that audits all 20 odd departments reports to Kevin Clougherty now, so what happens to him? This only mentions independent audit.

Commissioner Cook stated I believe, if I could comment on that, I believe that's covered in 6.11 in the non-highlighted section, which is picked up from the existing Charter, to maintain accounting control over the finances of the City. I believe the internal audit is part of the finance control over the finances.

Commissioner Hirschmann responded but what Kevin Clougherty advocated in his direct testimony to this committee was that he wanted to have the internal auditor out of his department as well, that that person isn't necessarily a department head but he is independent of the Finance Office, so the fox isn't auditing, you know, their own department.

Commissioner Cook stated that's a legitimate comment, Madame Chairman. I think maybe 6.12 could be changed from independent audit to audit and have two sections, internal audit and external audit. I think that's a fair comment.

Commissioner Hirschmann stated just for everyone's comfort level, we're not necessarily creating a position in government. The position already exists. It just exists under the umbrella of the Finance Department. It's just a matter of where in administration somewhere that that internal auditor goes.

Commissioner Duffy stated I'd just like to pick up on a comment made by Commissioner Shaw. Again, we're looking at the Finance Department head as

similar to a CFO if you will in a corporate situation. The fact of the matter is to suggest that the primary purpose of the Finance Department is to pay the bills is I think shortsighted. That's basically a function called accounts payable, and that's one of many other functions that exists within any kind of a finance organization. There's no question that there is a need for this position to participate in looking at and forecasting budget and developing a budget with the Mayor in this instance, so I think that we do need to have better language to describe what this position is all about and what the key functions are.

Commissioner Shaw stated maybe we could have somebody come before us and talk about the word audit because you see, some people think of an audit as "Let's see, we bought 50 beans. Did we get 50? Did we order 60 and only get 50?" No. The kind of audit that the Aldermen want and the Mayor wants is the quality of the services that are supposed to be performed by the department. It's not whether you bought a box of rubber bands and should you pay for it or not pay for it which is a perception some people have about the audit thing here which the auditors of the City of Manchester, the outside auditors probably don't get into, the quality of the service that's provided. Okay. You send an auditor out to look how the snow plowing is getting done. Is the money coming in correctly? I stood downstairs today and paid a ticket. God, I tell you. It's like pulling teeth in this City. Maybe we should audit how tickets are paid. You know what I'm saying? So first of all, it would be great in the Charter if we defined the role of the City Finance Officer and what we want from him, what we need from him, and you'll find that I've pretty much. I missed a thing or two, but I pretty much zeroed in what he's supposed to be doing. In his testimony to us, he said the departments don't like me, okay, but he's glad about that because it indicates he's doing a good job, but it's just the reverse. It might be they don't like him because he has a perception how everything should be run in the City. I do not want to give the Finance Director of this City the right to decide what is proper or how the City is run.

Commissioner Duffy stated I think as well intentioned as Commissioner Shaw is relative to this matter, we need to better clarify as mentioned by Commissioner Cook the difference between operational audits and financial audits. Operational audits are what Commissioner Shaw was just talking about. Financial audits are customarily done by an engaged external entity that has that as their primary function. So we needn't confuse the two, and perhaps one other way to clarify this...the term independent audit I don't think does the job for us, and I think we need to have language in there that would make that distinction between audits that are done in terms of the operation of the City that come under the purview of the finance head of the City versus the financial audit that's performed by an independent entity.

Commissioner Cook stated I have a suggestion. This has been very helpful, and the reason I wrote this was to get it on the table so we can start, cause this is a reasonably complex matter. If I might with the leave of the board, and anybody who has input that wants to give it to me, I would welcome it. This input has been important. I'd like to bring in next week a revised version of this thing that's going to try to address some of the objections in 6.11 and split in 6.12 the audit function into internal and external and see if we can do better because this has been helpful. If I might try again next week.

Commissioner Hirschmann stated I appreciate the debate on the issue. I'm just letting you know I still believe, I really believe in my heart that the Finance Officer, the Treasurer or whatever you want to call him, I still think he should be an officer of the City and that the role is very underestimated, the role that he plays between the Aldermen and the Mayor. He serves equally the Mayor and the Aldermen, and I think to change that structure, you're doing a disservice to the Aldermen of the City that represent their constituents. Right now, they have access to the Finance Director, and I think that they're going to lose that access, that if this is changed and they want to go off and have a discussion with the Finance Director, they will be guilty of interference in the future because they'll be going to chase a department head. Right now, they can any time they want to get to the Finance Director and get important information at the time and precise moment that they need it. Financial data, reports, anything to do with the financial markets, there's a lot of considerate information that the Finance Director has provided to me and many other Aldermen, and I think that the role...you're going to diminish the role of the Aldermen getting that input. You're going to turn this person into a department head, and I think it's really a disservice to what the structure...

Commissioner Cook stated if I could answer that. In this document, there was no presupposition on what we're going to decide who the officers are. I happen to think one of the ones that's clearer in the statutes than others is that the head finance person whoever it is probably is an officer of the City. The problem we had last time, and the problem we're grappling with this time is those officers whoever they are who also head departments have a dual role, and I was not presuming in here that we weren't making the person an officer, and what I tried to do in that third sentence on providing information directly to the Board, not through the Mayor, was that those people could have that access. That's what I was trying to do there. If I didn't do it as elegantly as possible, help me with it. This is a very important provision, and it shouldn't be screwed up for Brownie points on any side.

Commissioner Hirschmann stated the testimony that Kevin Clougherty gave us...

Commissioner Shaw interjected throw it out.

Commissioner Hirschmann continued...he makes quite a high salary. I don't know if it's \$100,000 a year, but it's quite a high salary for his role, and I think you'd be changing his role somewhat. Anyone that comes before you and asks that some of their responsibility be taken away, I'd really like that looked at a little bit. If you take away 33 percent of someone's administrative function, I mean, you're changing a job significantly. I think that should be taken into consideration.

Commissioner Shaw stated it would be nice if we could make a motion that he get 80 percent of the Treasurer of the State of New Hampshire. That would be great, but barring that, I like what is written in the 1982 Charter where it says of the Mayor, and this is the confusion that the last Charter Commission when it removed the finance person from direct control, but I'm on item number 2.05 g in the old Charter, and it's quite interesting because I operated under this so I have some prior knowledge. "The Mayor shall exercise general supervision and control over the expenditures of all appropriations and shall be responsible for establishing a budget format and procedures for the adoption of an annual budget reviewing all department budget requests and making recommendations to the Board of Mayor and Aldermen on proposed financial policies, appropriations, and revenues." I want you to keep in mind that we really don't want the Mayor to be hamstrung where he is the person and somewhere else in the Charter, and he shall present to the Board of Mayor and Aldermen his budget. He's supposed to consult with...it said in the old Charter, he had to consult with John Hoben, the Finance Department, and the City Clerk, okay, and the Aldermen used to say to him, "Did you consult with him?" "Course, I gave it to him yesterday." Okay, because you see the Charter clearly stated that it shall be the Mayor's budget that will be presented to the Aldermen in the format that he wishes. You don't want to give somebody in the other part of the building where they have the right to review what the Mayor is doing. We don't want that. If the Mayor is smart, he asks Finance for help, and because if we made this line now, he just says, "Send me somebody. I need it done right today" because he has supervising authority over the City's management. Don't go with this thing as it's written. I agree with Commissioner Cook. Hopefully, he'll rewrite it and take out any concept at all that the Treasurer is anything but the head bookkeeper of the City of Manchester.

Commissioner Dykstra stated is there any further discussion on this. Okay, we're just going to keep this for informational purposes.

Commissioner Shaw asked can we make one motion at least. Get it out of the way. Maybe help the citizens of Manchester with this particular issue. I'd like to make a motion that we send a letter to the Board of Aldermen stating that we

would request that they put on the November ballot the issue of subcommittees at the School Department, whether they should have or not have town representation. I think it's important because I think the Aldermen should be discussing the issue instead of the Charter Commission. It's going to come up that it should be in our Charter.

Chairman Dykstra asked for a second to the motion.

Commissioner Shaw stated I guess not, but the towns will never get their representation.

Chairman Dykstra stated is there anything else that anybody would like to discuss.

Commissioner Pepino stated I'd like to discuss the Mayor's pay raise.

Chairman Dykstra responded you want to discuss the Mayor's pay raise. Right now, you gave notice of reconsideration because you voted in the negative, so I would have to rule you would have to discuss this at the next meeting because you gave notice.

Commissioner Soucy stated may I make a motion at this time that on the list that we were given of flagged items, item four which in the present Charter that we're under is Section 2.04, power to delegate authority, I'd like to move the language that's in the 1996 Charter.

Commissioner Shaw asked what does it say in 2.04 now?

Commissioner Soucy responded it provides that the Board of Mayor and Aldermen may delegate its powers, "may be lawfully delegated to authorities, boards, commissions, departments or officers" and that the Board "shall not in the exercise of this power decrease the administrative and executive powers of the Mayor and department heads as granted by this Charter."

Commissioner Cook duly seconded the motion.

Commissioner Hirschmann asked if the intent is to keep the commissions advisory, why are we putting language in so that someone can make them powerful?

Commissioner Soucy responded the issue of whether they're advisory or not I believe has already been decided that they will be advisory. I'm just putting in the language that when the decision was originally made to make them advisory complemented that. That should the Board on occasion want to seek input other

than the report that Commissioner Shaw had recommended that's language before us as well, that the Board have that opportunity to seek the input of the commissions and boards that are dealing directly with a specific department of the City.

Commissioner Shaw stated I like the old one in its entirety. I do not like the concept that we can't reduce what we want to do within departments, and departments shall not be decreased. Somewhere else in the new Charter, it says that they can reorganize, so in the old one it just clearly states that they have the right to do what they want, the Aldermen and the Mayor. The Mayor doesn't have the right to do what he wants, but the Aldermen and the Mayor together have the right to do what they want, and I like that. That's the form of government I like best.

Commissioner Cook stated the intent of the delegation section, 2.04 in the 1996 Charter, which had nothing to do with decreasing the power of the departments, which is what Commissioner Shaw was referring to. I think they're separate questions, but in any event, the intent was that we as a Charter Commission then, and I would submit that we as a Charter Commission now aren't smart enough to know what's going to happen three or four years from now vis a vis any department and its need for additional supervision, additional input and so that the Mayor and Aldermen as they dealt with it as the Board that was vested with supervisory power and are the ones who could delegate the power or not at their will could delegate some of their powers if they didn't think the XYZ committee of the Board had enough time to supervise a \$100 million department. They could delegate some of their power with the right to take it back to a commission, but that we as a Charter Commission looking forward ten years, six years, whatever period of time we were looking forward didn't know enough to know that, which is why that just purely enabling but not mandatory provision was put in the Charter. It was never as has been pointed out here many times has never been exercised. That was only once they asked for an opinion. This is delegating the power for administrative supervision.

Commissioner Shaw stated I would go along with Commissioner Soucy's suggestion if we could just take out three words in 2.04b, and that is after the word in the next to last line, the powers of the Mayor as granted by this Charter. In other words, the Board of Aldermen shall not decrease the powers of the Mayor as granted by the Charter. But putting in the words "and department heads"...the Aldermen can't do it. It just says that if the Aldermen find that it's in the best interests of the City, and I know Mr. Clougherty would go along with this, that the Finance Department, City Solicitor's office be joined together you know, wouldn't increase his salary of course, but "and department heads" is wrong. Okay, it's not what we intended in this particular...at least not what I would have intended for

department heads to be granted any more power than the Aldermen wish to grant them. And the people. I make a motion that we amend Commissioner Soucy's remarks and take out "and department heads" out of 2.04b.

Chairman Dykstra stated there's an amendment. We'll vote on the amendment.

Commissioner Shaw stated you need a second. You don't have any. No second.

Chairman Dykstra stated no second. Okay, the amendment dies, and we'll continue discussion.

Commissioner Duffy stated oh, there is no second. I was just having discussion on the amendment.

Chairman Dykstra explained he made an amendment, and we asked for a second. There was no second to his amendment. So, you're fine. Just go ahead.

Commissioner Duffy stated I'm about to comment on the motion on the floor made by Commissioner Soucy relative to Section 2.04. As troubling as it is to me that it has not been exercised, I think that there is value, keeping in mind that this is the Board of Aldermen that we're talking about specifically, and although it hasn't been exercised in the life of this particular section which is new in 1996, it certainly seems to make sense to have that available should in the wisdom of the Board of Aldermen that perhaps there is an occasion to exercise this particular provision of the Charter.

Commissioner Hirschmann stated the fear that I have is that any one department, it doesn't matter who it is but the Aldermen could decide, seven Aldermen in the future could decide that they want to direct policy to the commission around the department head. If you changed it to say that the Aldermen would direct the policy to the department head, and the department head can deal with his commission, I mean you have department heads that are making very high salaries, most of them close to \$100,000, accountable and responsible for their departments, accountable to the Aldermen to be hired or fired or not, but then you're going to delegate away things in their department away from them. You're shaking your head no, but I'm telling you what can happen with that language.

Commissioner Cook stated 2.04b, because we had the exact same concern that you just expressed when we drafted this language, the Board of Aldermen shall not in the exercise of this power decrease the administrative and executive powers of the Mayor and department heads, shall not as granted by this Charter. What this allowed the Aldermen to delegate is what the Aldermen had. The Aldermen do not have executive power. They have policy power. They have supervisory

power. They cannot delegate what they don't have. The chief executive directs the department head who directs the employees of the department. That's a line relationship. That cannot be diminished. That's what that b means, so they can't go around. They can't delegate it. If they tried to abrogate that by saying we're giving the department head's power to the board or the commission, they can't by Charter. That's what b means, and that was to keep separate the policy and supervisory role from the executive role because we agreed with exactly what you just said.

Chairman Dykstra called for the vote. A voice vote was taken.

Chairman Dykstra declared the motion fails.

Commissioner Soucy asked for a roll call, stating it was unclear to me on the voice vote.

A roll call vote was taken. Commissioners Cook, Duffy, and Soucy voted yea. Commissioners Hirschmann, Pepino, Shaw, Wihby, and Dykstra voted nay. The motion failed.

There being no further business to come before the Commission, on motion by Commissioner Cook, duly seconded by Commissioner Soucy, it was voted to adjourn.

Respectfully submitted,

Deputy City Clerk

Approved for Commission: \_\_\_\_\_  
Donna M. Soucy, Secretary