CITY OF HALLANDALE BEACH
CHARTER REVIEW COMMITTEE

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FINAL REPORT

December 16, 2011

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I OVERVIEW

The City of Hallandale Beach Charter Review Committee (hereinafter "the Committee") exists pursuant to Sec. 2-121(a) of the Hallandale Beach City Code. It meets every eight years and is charged with the responsibility of identifying and addressing issues of concern to the city relevant to its charter.

After appointment by the City Commission (hereinafter "the Commission"), the Committee held its first meeting on June 21, 2011. Since then, it met on an ongoing basis and provided for public participation at its meetings. In addition to hearing from members of the public, it heard from members of the Commission, city staff, including the City Manager, and expert witnesses, including representatives from the Florida League of Cities and the Florida Initiative for Electoral Reform.

The Committee's efforts have led to the production of this report, which discusses the nature and reasons for each of the Committee's recommendations for changes to the charter. Except where noted, all recommendations were passed unanimously by the Committee. This report is being submitted within the six months contemplated by the above ordinance for such reports. It is accompanied by an outline of recommendations prepared by the Committee's counsel, which sets forth the specific charter language suggested by the Committee, as well as ballot summaries, grouping the recommendations into proposals the Committee believes should be placed before the electorate in the November, 2012, general election.

Under the heading for each section or subsection of this report that proposes a change or changes, the report will cite the provision(s) affected and will provide a reference to the page(s) of the outline of recommendations at which the specific charter language can be found. Formatting changes, such as renumbering provisions in light of suggested repeal of preceding provisions will not be specifically addressed in this report.

The members of the Committee were Anthony Musto, Chair; Andrew Markoff, Vice-Chair; Gerald Dean, Leo Grachow, Joe Johnson, Bill Julian, Marc Pomerantz, Members, and Alicia Moreno, Alternate Member. The Committee was greatly and ably assisted in performing its duties by its counsel, Susan Churuti, and its clerk, Bob King. It expresses its appreciation to those individuals for their service.

This report was approved by all members of the Committee. The accompanying outline of recommendations was approved by a 6-1 vote, with Mr. Markoff dissenting.

II RECOMMENDATIONS FOR CHARTER CHANGES

A CITY COMMISSIONERS

1 Election

Amending Art. III, Sec. 3.05, Art. IV, Secs. 4.01(3), 4.07(1): 53-54, 71-72, 74-75

The Committee spent a great deal of time on the question of whether there should be a change in the manner in which Commissioners are elected, specifically whether they should continue to be elected at large or whether they should be chosen from districts.

The Committee started with the premise that the demographics of Hallandale Beach make it difficult for individuals residing in certain areas of the city to be elected to the Commission. The Committee recognized that the city would be better served by having the perspective of residents of those areas represented on the Commission, or, at least, with those residents having a more realistic opportunity to be elected. Although our city is geographically small, lifestyles can differ greatly from neighborhood to neighborhood. Also, the fact that different parts of town have markedly different histories affects people's mindsets and attitudes. If voices from all the neighborhoods do not have a fair opportunity to be heard, the community as a whole suffers. The Committee also recognized that the circumstances that have existed over the years have resulted in a significant portion of our population feeling disenfranchised and believing that they have no meaningful input into city affairs, expenditure of funds, and policy decisions. To whatever extent this is or is not true, the perception is real and widespread. That alone is a matter of significant concern.

In weighing the plusses and minuses of the present system against those of districting, the Committee considered numerous factors. It was concerned that districting could result in Commissioners from particular districts putting the interests of the residents of those districts above those of the city as a whole. Because of this concern, the Committee fairly quickly decided against any recommendation that would have involved the use of single-member districts (those that would allow only residents of the district to vote for its district Commissioner) and instead considered only forms of residential districting (those that would allow all residents of the city to vote for all Commissioners despite a requirement that some or all Commissioners live in specified areas). The Committee also quickly determined that the Mayor should continue to be elected citywide and should be able to reside anywhere in the city.

The Committee also weighed the benefit of making sure that the various areas of the city would be represented on the Commission against the possibility that the best candidates in a given election might be from the same district, resulting in the election of a Commissioner or Commissioners at the expense of a better candidate or candidates. The Committee felt that this was a very real possibility if all of the Commissioners were elected by district or even if, as recommended by the last Charter Review Committee, one Commissioner were to be elected at large. Although the Committee recognized the importance of having the best possible Commissioners, it was not ready to abandon the idea of districting, as it felt that geographic representation is an important concept and that there exists a history of geographic underrepresentation in this city that needs to be addressed.

The Committee determined that the best way to balance the various competing concerns was to expand the Commission from five to seven members, with three elected by districts (the same number suggested by the last Charter Review Committee as the appropriate number to be elected in such a manner) and four, including the Mayor, elected at large. This approach would provide the badly needed geographic representation, while still affording the people the right to elect a majority of the Commission at large, as well as the right to vote for the Commissioners who would represent districts.

The Committee's recommendation in this regard was approved by a vote of 4-2, with Mr. Grachow and Mr. Markoff dissenting and Dr. Pomerantz absent.

The Committee was also concerned with the possibility (albeit an unlikely one) that a situation might arise in which no candidate seeks election from a particular district. It addressed that concern by recommending a provision that would award the seat for which no candidates filed to the candidate who received the greatest number of votes among the losing candidates for the other seats being contested at the same election. Any candidate elected in this manner would serve only a two-year term, however, with the residents of the affected district being given the opportunity therefore to run for the position in the next election.

The Committee suggests implementing its recommendations by having the Commission, no later than a year before the November, 2014, general election, draw the district lines and designate one of the two seats held by a Commissioner whose term will expire in 2014 as being one of the three residential districts. That seat, along with two new residential seats, as well as the other existing seat, will be contested in the November, 2014, general election and those elected will serve four year terms. The seats of remaining three members of the Commission (including the Mayor) will come up for reelection at their normal time (in 2016), and, in the future, the city will alternate every other election between electing four and three members of the Commission.

2 Term Limit for Mayor

Amending Art. III, Sec. 3.04: 63-64

Before the position of Mayor became one elected by the people, the Mayor was selected by the Commission, served a single term of two years, and could not succeed himself or herself as Mayor. When the idea of an elected Mayor was presented to the electorate, this limitation was removed, despite the fact that the ballot language did not specifically inform the voters of the removal and despite the fact that the voters had recently rejected a proposal to do away with the term limit. The Committee believes that it is good public policy to reinstate a term limit on the position of Mayor.

The position does not confer upon the incumbent any greater power than that vested in any other Commissioner. Rather, it determines who will preside over meetings, determine procedures, perform ceremonial functions, sign documents, and take other actions in the role of the city's representative. The Committee believes that the Commission, and the city, would benefit from the periodic injection of new approaches, perspectives and methods in the performance of these duties. Doing so would make Commissioners, city staff, and the public aware of alternatives and allow for choices among such alternatives. Further, changing Mayors periodically means that more members of the Commission will develop the contacts Mayors develop from occasions on which they represent the city. This broadening of networking possibilities can only benefit the city.

In addition, the lack of a term limit creates a situation in which, for no good reason, there is the potential for one individual to utilize the position of Mayor as a long term power base. People may well be reluctant to run head to head against an incumbent when they have the option of running for a position for which they need only to be one of the top vote getters. Moreover, it often forces a Commissioner who would like to become Mayor to run against an incumbent, thereby guaranteeing that the city will lose the service of at least one experienced member of the Commission.

Further, because of the circumstances noted above surrounding the removal of the term limit, the Committee's proposal appears to be in keeping with the people's most recent expression of their feelings on the matter at the polls.

The Committee does feel that the former limit of serving two years as Mayor is too short. A Mayor is now elected for four years, and should serve for that period. The old limit was based on the fact that the Mayor's term of service as Mayor had no relation to his or her tenure in office. Thus, if a Mayor still had time remaining on that tenure, he or she would remain on the City Commission as a regular Commissioner. Given the current system, the term limit should match the term.

It should also be noted that the Committee considered, and rejected, the idea of limiting the time that an individual can spend on the Commission. It was believed that if a person is doing a good job, it is in the best interest of the city for that person to be allowed to continue to do so. It was believed that the electorate, not a legal limitation, should tell incumbents when their service is no longer desired. This rationale did not extend to the position of Mayor, however, because a Mayor, once his or her term ends, is free to continue serving the public as a member of the Commission.

3 Vacancies in Office

a Mayor

Amending Art. III, Sec. 3.09(3)(a): 56-59

The charter is not clear on how a vacancy in the position of Mayor should be filled. Prior to the establishment of an elected Mayor, the answer was simple. The Vice-Mayor became Mayor and served the remainder of the Mayor's two-year term. After the next election, the Commission chose the Mayor for the following two years. The process had no impact on the Vice-Mayor's term as a member of the Commission.

Now that the Mayor is elected for a four-year term, however, any vacancy that occurs exists for the remainder of those four years. If the Vice-Mayor's term ends prior to that point, elevating him or her into the position of Mayor would mean that he or she would serve for an additional two years without ever having been elected to any position for that period of time. On the other hand, if the four year period expires before the end of the term to which the Vice-Mayor was elected, elevating him or her would cut two years off of the term to which he or she was elected. Some Vice-Mayors might prefer to be Mayor with the shortened term, while others might prefer to continue to serve out the term to which they were elected instead of becoming Mayor.

The Committee recommends resolving the confusion in this regard by having vacancies in the position of Mayor filled in the same manner as vacancies for other Commissioners. In other words, if the remaining time in the Mayor's term is less than one year, the Commission would appoint the Mayor; if the time is greater than one year, a special election would be held. Under this approach, if the Mayor's remaining term is less than a year, a Vice-Mayor, or any other Commissioner, will know that accepting the position will result in having to face election in the near future. He or she can then decide whether to seek the appointment or to continue serving his or her elected term. Similarly, if the Mayor's remaining term is more than a year, a

Vice-Mayor, or any other Commissioner, will decide whether to give up whatever time remains on his or her term in order to run for Mayor.

Under the Committee's proposal, during the time it takes to fill the position of Mayor, the Vice-Mayor would serve as Acting Mayor and, unless chosen as Mayor, would return to his or her former position after the process is concluded.

b Procedure

Amending Art. III, Sec. 3.09(3)(a): 56-59

When the Commission is called upon to fill a vacancy in office and cannot, after a week of deliberation, do so by a majority vote, the current procedure gives a second vote to the Mayor. While the Committee was concerned with vagueness of the language establishing this procedure—for example (a) How is deliberation defined? (2) What is a week of deliberation? Seven days from the first time the subject is broached? Seven days during which actual discussion occurs without regard to how long passes between the first and last of those days? Or something else?—it determined that it did not need to reach that issue. Rather, it feels that there should be a change in the procedure that will render the vagueness matter moot.

The Committee does not believe that there should be a situation in which the Mayor receives a second vote. As noted in the discussion of the term limit for the Mayor, the Mayor is not vested with any greater power than any other member of the Commission. His or her opinion should not carry any greater weight, therefore, than that of any other member. The current provision grants it such weight, however, and it does so in a manner that discourages Mayors from working toward resolutions because they know that they will have their way if they do nothing. Moreover, it puts pressure on other Commissioners to agree to a candidate they might not otherwise agree to when they see that a candidate even more unacceptable to them is favored by the Mayor.

The Committee therefore suggests that if Commissioners cannot reach a majority within 30 days of the occurrence of the vacancy, they must schedule a special election to be held within 45 days thereafter. It is believed that such an approach will encourage the Commissioners to work together to reach an acceptable compromise in order to keep the city operating properly and to avoid the expense of the special election.

B CITY OFFICERS

The charter establishes three city officers, the City Manager, the City Attorney, and the City Clerk. The Committee recommends changes relating to each of these officials. The Committee also considered a suggestion to create a fourth charter officer, an internal auditor. Although it decided not to endorse that suggestion, it does recommend a change in the current auditing process.

1 City Manager

Amending Art. VI, Sec. 6.03: 13-14

The Committee recommends that the City Manager be required to establish and maintain his or her primary residence in the city. This recommendation is based on the belief that in order to truly understand, and identify with, the concerns and issues relevant to our residents, the City Manager needs to be one of those residents. He or she needs to shop in the same grocery and drug stores, get gas at the same stations, eat in the same restaurants, patronize the same barbers, dry cleaners, and other service providers, as the people he or she serves. The City Manager needs to experience the same traffic problems, the same issues with utilities, the same problems with things like mail delivery or trash collection, we all do. His or her children should attend the same schools as ours. The complaints the City Manager hears over the dinner table from his or her spouse and children, as well as those from neighbors, should be ones relating to Hallandale Beach, not some other municipality. Similarly, the City Manager's personal involvement with local organizations and civic activities (and that of his or her family) should be focused here. Simply put, the Committee believes that the City Manager should live the job, just as Commissioners do, rather than merely work at it.

An additional benefit to a residency requirement would be that the City Manager would be much more likely to appear in person to deal with issues that arise in the evening or on weekends and that such appearances, even if for matters that would call for his or her presence regardless of where he or she lives, would occur more quickly. Another benefit would be that the addition of a highly paid professional (and often more than one in that such a professional may well be married to another such professional) to our community helps us economically and in terms of the human resources from which our city, our civic organizations, our houses of worship, our charities can draw.

It should be noted that there once existed a residency requirement for the City Manager, one that was eliminated for the convenience of the City Manager then serving. The reason for this removal was the lack of available housing options available to someone earning what the City Manager was being paid at the time. Given the increased range of options that now exists, and the fact that the City Manager is now making a salary that would clearly allow him or her to find appropriate housing within the city, this concern appears to no longer be of great significance.

The question was raised as to whether a residency requirement might reduce the number of applicants when the position of City Manager comes open in the future. The Committee believes that is unlikely that any such impact would be great and that the benefits of the requirement far outweigh any impact that might happen.

People generally apply to become a City Manager in order to take a step forward in their careers or to move from positions they no longer find desirable. It is unlikely that such people would be deterred from applying because of a residency requirement. Such requirements are common in the field of public administration and are viewed by persons pursuing careers in that field as something they expect to encounter.

Indeed, the Committee would suggest that an applicant who would not be willing to move to the city would likely be seeking the job to use it as a stepping stone to some other position that he or she deems more desirable. The Committee suggests that such an applicant would lack the level of commitment the City deserves and would not be a good fit for the City.

Moreover, the Committee believes that the benefits of having a City Manager who lives in the city will more than compensate for the mere possibility that some future potential applicant for some future opening might choose not to apply because of a residency requirement. The benefits of a residency requirement are real—and great. The possibility that such a requirement might deter some future applicant is pure speculation. Further, the city is going to receive strong applicants for such a desirable position under any circumstances, so there will never be a risk that an outstanding City Manager cannot be found. And paper credentials do not tell the whole story. A City Manager who lives in the city will be a better City Manager for doing so and will be a better City Manager than one who arrives with more impressive credentials but lives elsewhere. Being an ingrained part of the city will significantly elevate any City Manager's performance and that fact is much more important than the risk that somebody, sometime, might not apply for the job.

Finally, it should be noted that to believe that any great number of potential future applicants might not apply because of a residency requirement is to lack confidence in our city. The Committee knows that Hallandale Beach is a great place to live and it is sure that City Manager applicants will view the city in the same way. The Committee certainly wants its future City Managers to have that perspective. If living in this city is not appropriate for an applicant, that applicant need not apply.

The Committee did consider an alternative option of exempting applicants who lived within a certain number of miles from the residency requirement. The reasoning behind this suggestion was that persons living nearby might hesitate to apply because they would not want to move. A person living a distance away, on the other hand, would know that he or she would have to move and, under such circumstances, there would be no reason not to have him or her relocate to Hallandale Beach. This alternative was rejected because the importance of having the City Manager live in the city was deemed to outweigh the marginal benefit of the fact that a few extra applications might be received for future City Manager openings.

The Committee's recommendation in this regard was approved by a vote of 6-1, with Mr. Markoff dissenting.

2 City Clerk

Amending Art. III, Sec. 3.07, Art. VI, Secs. 6.02, 6.05: 10-11, 16-19, 24-35

The Committee recommends that the City Clerk should be chosen by, and should report to, the City Commission. Further, the City Clerk should have an independent budget to be determined by the Commission.

Of three non-elected positions created and mandated by the charter, the City Manager and the City Attorney are chosen by the Commission, but the City Clerk is not. Rather, the City Clerk is hired by the City Manager, he or she reports to the City Manager, and his or her budget

is determined by the City Manager and submitted to the Commission as a mere part of an overall proposed budget. This approach has proven problematic and should be changed.

It is important to realize that unlike many supervisory positions, the City Clerk has to comply with many statutory requirements, perhaps most importantly in the area of public records, and it is the City Clerk who is personally at risk should those requirements not be met. Under the existing system, the City Manager decides what resources should be devoted to the City Clerk. Thus, the City Manager balances the needs of the City Clerk with those of other departments headed by individuals who do not face the same sorts of statutory requirements and allocates resources based upon his or her own assessment.

It has become clear to the Committee that this approach has resulted in the City Clerk not receiving the level of resources needed to meet the obligations imposed by law. Yet, there is no way for the City Clerk to bring the lack of resources to the attention of the Commission. He or she can advocate before the City Manager, but once the City Manager makes a decision, the resources decided upon will be reflected in the proposed budget. It is unrealistic to think that any employee who serves under the City Manager is going to argue against the allocation being recommended.

It should be realized that the Committee does not expect that the Commission will automatically approve any budgetary request by an independent City Clerk. Rather, it seeks an approach that will bring the City Clerk's perspective before the Commission. It is anticipated that the City Clerk and the City Manager will work together and that, most years, with the City Manager knowing that he or she no longer has the power to dictate the proposed budget, they will be able to agree on a proposal. In the event that they cannot, the Commission can, and should, give great weight to the City Manager's thoughts on the matter. But the final decision, given the nature of the City Clerk's duties, needs to be that of the Commission.

Complying with the law is a matter of great seriousness. It is something that the Commission must supervise. There must be a process that alerts the Commission to the dangers of underfunding, dangers that could leave the city open to penalties and lawsuits. In addition, if the person responsible for such compliance is not doing his or her job properly, the Commission needs to know and needs to be in a position to take action to require that the situation be corrected or to remove the person who is not ensuring compliance. Further, complaints from citizens about difficulties need to go to responsive elected officials, not to an insulated City Manager. Having the City Clerk appointed by and reporting to the Commission, as is the case with each of the only other two charter officers, would accomplish these goals.

The Committee's belief in this regard is strengthened by what it learned of the existing procedures. Presently (and historically), the City Clerk is not allowed to make a binding determination when a public records request is made. Rather, all requests are reviewed by both the City Manager's Office and the City Attorney's Office. The Committee recognizes that there are certainly requests that should be reviewed by the City Attorney, but feels that the vast majority of requests should simply be complied with immediately or, if that is not possible, with little delay. There is no reason for the City Manager to review requests. Indeed, a requirement for such review transfers the responsibility that under the law lies with the City Clerk to the City Manager, with the consequences for improper action remaining with the City Clerk. While the city has recognized that its process needs streamlining, it does not appear that the city is

approaching the issue with the seriousness it requires. The City Manager indicated to the Committee that when requests are still pending after seven days, certain procedures are brought into play. The Committee believes that there are very few requests that should take anywhere near seven days to deal with. Indeed, it should be an unusual request that cannot be met or denied within seven minutes. Certainly, any review procedures should not be delayed for such a long period of time.

It should additionally be noted that an independent City Clerk should result in a higher level of professionalism. Presently, the City Clerk has been an afterthought, usually hired internally and often, as has recently been the case, serving in a second capacity, in another department, as well. The position needs to be given a greater priority and the Committee's recommendation will do that. The Commission, being responsible to the people for the selection, will take into account factors such as professional certification, involvement with professional organizations, and exposure to continuing education programs. And the city and its residents will reap the benefits.

The Committee's recommendation in this regard was unanimous, except with regard to the City Clerk having an independent budget. That portion of this recommendation was approved by a vote of 6-1, with Mr. Julian dissenting, and

3 City Attorney

Amending Art. III, Sec. 3.07, Art. VI, Secs. 6.01, 6.05: 10-11, 16-19, 21-22

The Committee recommends a requirement that the City Attorney be a full time city employee with no affiliation with any law firm. This recommendation grew from concerns the Committee developed as the Commission recently went through the process of selecting a new City Attorney. Although the Commission did select an individual to serve as a full time city employee, it gave serious consideration to the possibility of engaging the services of a law firm. The Committee commends the Commission for the conclusion it reached, but expresses alarm that it actually considered deviating from an approach that has served this city well and that the Committee believes is clearly in the best interests of the city.

Having a full time city employee as the City Attorney serves many purposes. It ensures that the City Attorney will always be available, even on short notice. Such a City Attorney can be called to a discussion among employees, between employees and the public, to committee or board meetings, or to many other situations on a moment's notice. Moreover, such a City Attorney is accessible to city employees, who feel free to walk into his or her office to ask about or check on legal matters. This is important from two perspectives. First, there is an obvious benefit to having no delay in getting legal advice. Second, having the City Attorney easily accessible encourages elected officials and city employees to seek legal advice. With an outside firm, employees may well view the seeking of legal advice as more trouble than it is worth. The City Manager told the Committee of how, despite the high regard in which he holds the attorney who served as Interim City Attorney over the last few months, he prefers having the City Attorney available at any time on premises. The Committee also heard about staff's hesitancy to contact outside counsel that presently serve the city and the need to get approval before doing so.

It should additionally be noted that having a City Attorney who is a full time city employee encourages informal interaction between the City Attorney and city employees, who will know each other, go to lunch together, and see each other on a daily basis. This fact will increase the chances that the City Attorney will be consulted as to, or will otherwise become aware of, legal matters in time to prevent future legal disputes. Because of the fact that a full time, on site, City Attorney will be active at the initial stages of potential legal issues, having such a City Attorney will likely save the city a significant amount of money in the long run. Analyzing the cost by just looking to the statistics regarding internal costs versus external costs is a superficial form of analysis. Common sense dictates that the approach recommended by the Committee is the one that will provide the greatest fiscal benefit.

Additionally, the use of a law firm could create difficulties when the firm also represents other cities which have interests that are not identical to those of Hallandale Beach. Further, such use almost requires the use of that firm's specialists for matters that require specialized expertise. The Committee feels that the city should feel free to fully review all options in such situations. Finally, the Committee is concerned that some future Commissioners might wish to utilize a law firm in order to gain political benefits, as such firms are generally well connected and known to be sources for and conduits in seeking assistance in campaign financing.

The Committee was surprised to learn that the City Attorney does not have his or her own budget. Rather, as is the case with the City Clerk's budget, the legal budget is determined by the City Manager and submitted to the City Commission as part of a proposed overall budget. The same rationale underlying the Committee's recommendation that the City Clerk be given an independent budget applies to the City Attorney as well. In fact, it applies with greater force under the existing charter because the City Attorney is already an independent officer hired and serving at the pleasure of the Commission. Thus, the Committee recommends a change that provides for an independent budget for the City Attorney.

One other change relates to the City Attorney and that is the inclusion of language specifically authorizing the appointment of Assistant City Attorneys and, with the approval of the Commission, of special counsel. Such appointments have been made for years, and, if challenged, would likely be deemed to be within the inherent authority of the City Attorney, but the proposed change resolves any doubt about the propriety of the appointments and conforms the charter to the existing practice.

The Committee's recommendation in this regard was unanimous, except with regard to the City Attorney having an independent budget, which was approved by a vote of 6-1, with Mr. Julian dissenting, and with regard to the City Attorney not having ties to law firms, which was approved by a vote of 6-1, with Mr. Markoff dissenting.

4 Housekeeping

Amending Art. III, Sec. 3.07(3), Art. VI, Secs. 6.05 (1), (2), (3), (4), (6): 10-11, 16, 18

Changes are recommended to various provisions to make them consistent with the recommendations set above. Those provisions are Art. III, Sec. 3.07(3) and Art. VI, Secs. 6.05(1), (2), (3), (4), and (6).

5 Internal Auditor

Amending Art. V, Sec. 5.04: 7-8

The idea of creating an internal auditor position was presented to the Committee and was discussed in depth. The Committee was sympathetic to the goals that were sought to be furthered by the creation of such a position. Fiscal accountability is a matter of great importance and an independent perspective on fiscal matters is critical. Nonetheless, the Committee does not recommend that a new office be established. The Committee feels that a full time city employee serving as an internal auditor would not have the perspective needed to maintain the independence and the objectivity necessary for the proper performance of his or her duties. He or she would become part of the culture, would be influenced by the perspectives of fellow employees, and would view things as an employee, not as the independent observer that the city needs. The Committee did feel that the present requirement of having an independent accountant or firm conduct an annual audit could be improved, however, by making sure that different accountants or firms became involved in the process. Doing so is a good audit practice, would prevent the person or firm from overly indentifying with city employees and/or their perspective, and would make sure that different perspectives come into play periodically. The Committee therefore recommends limiting any accountant or firm to no more than two years of service.

C PROCEDURES FOR CHANGING THE CHARTER

1 By the Commission

Repealing Art. VII, Sec. 8.01(1): 48-50

The Committee recommends the repeal of the charter provision that presently allows the Commission to amend the charter in all but certain specified areas. This provision emasculates the charter, turning it into a charter in name only. A charter should be the governing document of a city, the equivalent of a constitution. It should provide the framework within which the Commission must operate, define what the Commission can do, and make clear what it cannot. If the Commission can change the charter on its own, it has no framework. It has no limits. The Committee strongly believes that this situation must be changed. The power to change the charter should belong to the people of the city, and to the people alone. It is of note that the Committee was informed by a representative of the Florida League of Cities that no other city in Florida has a provision of this nature. Hallandale Beach is thus out of step with the principles underlying the concept of a charter, with the purposes of a charter, and with not just a majority, and not just an overwhelming majority, but with the every local governmental entity in Florida. Change is not just called for. It is imperative.

The Committee's recommendation in this regard was approved by a vote of 5-1, with Mr. Markoff dissenting and Mr. Dean absent.

2 Through the Charter Review Process

The Committee also recommends several changes to the charter review process.

a Protecting the Requirement for Periodic Review

Creating Art. VIII, Sec. 8.01(3): 66-69

First, the Committee suggests moving the requirement for periodic charter review into the charter itself so that (assuming the Committee's recommendation that the Commission no longer be allowed to amend the charter) it will be insulated from any possible determination by a future Commission that such review is not necessary. The Committee would further recommend, once this change is accomplished, that the Commission repeal as duplicative and unnecessary Sec. 2-121 of the City Code, which presently sets forth the requirement.

The Committee's recommendation in this regard was approved by a vote of 5-1, with Mr. Markoff dissenting and Dr. Pomerantz absent.

b Maximizing Voter Participation

Creating Art. VIII, Sec. 8.01(3)(a): 66-69

Second, the Committee suggests that future Charter Review Committees be convened within a time frame that will allow for their recommendations to go on the ballot at the time of Presidential elections. It is believed that doing so will maximize participation among the electorate with regard to issues that would not likely draw a large number of voters in other elections. Nothing included in the Committee's recommendations, however, would preclude the Commission from calling for charter review on a more frequent basis. The recommendations would simply require that review occur during the year of every other Presidential election.

c Committee Diversity

Creating Art. VIII, Sec. 8.01(3)(b): 66, 68

Third, the Committee believes that a change should be made regarding the method of selecting future Charter Review Committees. The Committee as a whole strongly believes that each of its members are well qualified and that each Commissioner did an excellent job in making his or her appointment(s). The Committee recognizes, however, that its product would have benefitted from a greater level of diversity and that the public's acceptance of that product would be greater under such circumstances. While the Committee was racially and geographically diverse, its members (other than the alternate) were all male and none were Hispanic. The Committee believes that it would have been a stronger entity had the perspectives of women and Hispanics been given a direct voice as Committee members. The Committee recognizes that the deficiency in this regard was an unfortunate outgrowth of a good law, the Sunshine Law. Because Commissioners could not discuss their appointments, no Commissioner had a perspective that allowed him or her to look at the overall composition of the Committee. No Commissioner was able, therefore, to take diversity into account in making his or her selection.

At the same time, on what at first blush might appear to be an unrelated matter, the Committee questioned why the appointment process calls for the Mayor and the Vice-Mayor to receive two appointments, with the other Commissioners each getting just one. The Committee saw no reason for this disparity. Moreover, while nothing of the sort happened with this

Committee, the current procedure would allow for a situation in which a Mayor and Vice-Mayor who viewed certain issues one way could pack the Committee and receive majority votes on the matters in dispute, even if the other three Commissioners looked at the issues differently.

The Committee found that each of its two concerns could be addressed with a single change. The Committee suggests that, in selecting future Committees, each Commissioner, including the Mayor and the Vice-Mayor, be given one appointment only. The members so appointed then would then select two additional Committee members and they would do so with the direction that they seek to correct any deficiencies in the area of diversity with their appointments. Of course, if the Commissioners' selections provide an appropriately diverse Committee, diversity would not have to come into play in the Committee's considerations.

d Direct Ballot Access

Creating Art. VIII, Sec. 8.01(3)(h): 67, 69

Fourth, the Committee recommends that any proposals that are passed by a super majority of future Charter Review Committees (five affirmative votes if the present seven member Committee is retained, and six if a nine member Committee results from the recommendations to increase the size of the Commission from five to seven) should be presented without change to the electorate regardless of how the Commission views the proposals. Presently, of course, recommendations of Charter Review Committees only go on the ballot if the Commission allows them to do so. The Committee does not believe that when proposals are passed by a supermajority, the Commission should be able to keep the people from deciding the matters at issue. Future Charter Review Committees will be appointed either entirely by the Commission or primarily by the Commission with two members added by the Commission's appointees. Thus, the Commission should have confidence in the Committee's product and should allow the voters to consider it. The Committee notes that the last Charter Review Committee made a similar recommendation and that the Commission declined to place it on the ballot. The Committee suggests that the fact that two Committees have reached the same conclusion only underscores the importance of this concept and that it strongly demonstrates that the citizens of Hallandale Beach should be given the opportunity to vote on the proposal.

The Committee's recommendation in this regard was approved by a vote of 5-1, with Mr. Markoff dissenting and Mr. Dean absent.

e Maximizing the Use of Electronic Media

Creating Art. VIII, Sec. (3)(f): 67, 69

The Committee did its best to make its proceedings as accessible as possible to the public. They were televised live, were available on streaming video, and could be viewed after they occurred on the city website. It believes strongly that the more available the proceedings are, the more interest the people of the city will have in them, the more likely it will be that the people will become involved in the process, and the more informed the public will be. The Committee therefore recommends including in the charter a requirement that future Charter Review Committees maximize the use of electronic media to further these goals.

D REFERENDUM AND INITIATIVE

The Committee recommends several changes relating to referendum and initiative.

1 Allowing Referendums at Any Time

Repealing Art. IV, Sec. 4.11(4): 36-37

The Committee recommends repealing the provision requiring that referendum petitions be filed within 60 days after adoption by the Commission of the ordinance sought to be reconsidered. The Committee sees no reason for this provision. Further, it recognizes that there may be times when the reasons or need for reconsidering an ordinance may become apparent only after a period of time has passed and people have had the opportunity to gauge the impact of the ordinance and the manner of its application. Repeal of this provision is therefore appropriate.

2 A Realistic Time Limitation

Amending Art. IV, Secs. 4.12(1), (2): 38-39

The Committee recommends expanding from two days to five business days the time for filing a notice of intention to amend an insufficient referendum petition or to request review by the Commission. The Committee believes that two days is an unreasonably short time limitation. Indeed, a person receiving notice of a deficiency late on a Friday or on the Saturday of a three-day weekend would be incapable of filing within the specified period. The Committee believes that five business days is a fair time period that draws a proper balance between affording a petitioner sufficient time to comply avoiding practical difficulties for the city.

3 Abolishing the Presumption that Ordinances are Invalid

Repealing Art. IV, Sec. 4.13: 43

The Committee recommends the repeal of the provision suspending ordinances that are the subject of referendum petitions deemed to be sufficient. This provision in essence establishes a presumption of invalidity as to challenged ordinances, a presumption that is at odds with those normally engaged in by reviewing authorities. Moreover, it has the effect of disrupting city operations when it is not clear whether there will ever be a need to do so. Further, it allows persons who want an ordinance to be ineffective for a specific time period during which they wish to take some action to achieve that end by merely collecting the requisite number of signatures. Under such circumstances, those individuals would be able to take the action they want even when the referendum is later rejected by the voters. Indeed, such persons might not even care about the ultimate result once they have been able to act as they wanted. These same concerns could also result in someone being able to force the city to take some action prohibited by the suspended ordinance. In addition, having ordinances suspended might result in the Commission feeling that it has to have special elections in order to minimize the impact of such suspensions. Those elections would cost the city significant amounts of money, something the Committee wishes to avoid whenever possible.

The Committee's recommendation in this regard was approved by a vote of 5-1, with Mr. Grachow dissenting and Mr. Dean absent.

4 Precluding Withdrawal of Petitions After Certification

Repealing Art. IV, Sec. 4.14(3): 40-41

The Committee recommends the repeal of the provision allowing four members of a petitioner's committee to withdraw a petition for referendum or initiative at any time prior to the 15th day before a vote. Once a petition has been certified, it is no longer the property of the committee, but is the property of the thousands of voters who signed it. Four people should not be able to thwart the will of so many. Additionally, this provision invites political deals under which four people receive certain promises or benefits in return for withdrawing a petition, an action which may work only to their personal benefit, not to that of the people who signed the petition.

5 Avoiding the Expense of Special Elections

Repealing Art. IV, Sec. 4.14(2): 40-41, 45-46

Presently, when a referendum or initiative petition is to be submitted to the electorate, the Commission is required to do so by special election. Such elections are very expensive and, in many instances, the subject matter of the petition may not require immediate resolution. On the other hand, there are times when the issue involved must be dealt with as quickly as possible. The Committee therefore recommends an amendment that would allow the Commission to determine whether to hold a special election or to place the matter on the ballot during the next general election. The Committee has confidence that the Commission will properly weigh the need for a more expeditious resolution against the costs involved and reach appropriate conclusions in light of the facts relevant to each individual case.

E MISCELLANEOUS

The Committee recommends numerous changes designed to conform with law, eliminate outdated language, provide clarification, or take action that is believed to be non-controversial. Those changes are set forth below:

1 Art. I, Sec. 1.04: 27-28

Upon the advice of its counsel, the Committee recommends the repeal of the provision providing that certain special acts of the legislature shall be considered amendments to the charter. Such acts are not as a matter of law charter amendments. Automatically accepting them as such is to cede to the legislature a right reserved to the voters of the city. Moreover, deeming special acts to be part of the charter would be misleading because charters can be amended by the people, while special acts cannot.

2 Art. III, Sec. 3.04: 63

Although unlikely, there could be a tie among more than two candidates for the position of Mayor or Vice-Mayor. The current wording provides for ties to be decided by lot, but it refers only to ties between two candidates. The Committee recommends a change that would make it clear that the same process should apply to all ties, regardless of the number of candidates

involved. A similar change is recommended with regard to Art. IV, Sec. 4.07, which establishes the same process for Commissioners.

3 Art. III, Sec. 3.05: 53-54

The Committee recommends adding language to clarify the fact that the Mayor is also a Commissioner. Doing so makes it clear that references in other provisions of the charter to the Commission or to Commissioners include the Mayor.

4 Art. III, Sec. 3.08: 2-3

This provision currently purports to establish its violation as a misdemeanor. The law is clear, however, that only the state legislature can define criminal offenses. The Committee therefore recommends that the wording be changed to reflect that violations will be punishable as provided by law, which, in the absence of any legislative action, will mean that they will be treated as any other code violation.

5 Art. III, Sec. 3.09(2)(b): 56-59

This provision currently states that Commissioners shall forfeit their offices if they violate "any standard of conduct or code of ethics established by law for public officials." This provision is written so broadly that a Commissioner could be removed from office for violating a standard established by another state or one that pertains to some other office. The Committee therefore recommends amending the language to make clear that the provision only applies to violations of standards or codes pertaining to the office the Commissioner holds.

6 Art. IV, Sec. 4.06: 33-34

This provision as currently written contains outdated language relating to the transition from spring elections to November elections. The Committee recommends simplifying the provision to reflect the election procedure now in effect. Also, the Committee recommends the elimination of the designation of the language of the section as being paragraph (1) because there is no paragraph (2). The reference to the paragraph number is likely the vestige of some prior version of the provision that included at least another numbered paragraph. It is no longer necessary.

7 Art. IV, Sec. 4.07: 74-75

See discussion of Art. III, Sec. 3.04.

8 Art. V, Sec. 5.09: 30-31, 77-78

Two changes are recommended regarding this provision, which deals with the personnel system. First, the deletion of language indicating that merit and fitness should be demonstrated by "examination or other evidence of competence." This recommendation, based upon the advice of counsel, is intended to bring the provision into compliance with state and federal law.

Second, the inclusion of language requiring consistency with general law regarding the employment of relatives. Presently, the city has restrictions on such employment that exceed those established by general law. This approach raises some legal concerns and it deprives the

city of the right to consider potentially attractive applicants. The only reason asserted by city staff for the stricter restrictions was a fear that supervisors would automatically hire relatives of employees. If that is true, the problem lies with the supervisors, not with the general law, which the Committee believes should set the standard. It is important to note, however, that this recommendation is not intended to preclude consideration of the fact that an applicant has a relative working for the city as a factor, positive or negative, in any particular case.

The Committee approved the first of these recommendations unanimously and the second by a vote of 4-1, with Mr. Markoff dissenting and Mr. Julian and Dr. Pomerantz absent.

III OTHER RECOMMENDATIONS

In a few areas, the Committee looked into the possibility of recommending changes to the charter, decided that such changes were not called for, but determined that comments should be made to the Commission regarding the subjects at issue. Those comments follow:

A CODE OF ETHICS

The idea of developing a code of ethics for City Commissioners was presented to the Committee and was discussed. It was determined that such a project would be too massive in nature to be fully and properly considered as part of the charter review process, which involves many other subjects and a defined time frame. The problems in this regard would only be aggravated by the uncertain legal status of the ethical code recently adopted by the county and of the applicability of that code to cities. The Committee recommends that, after the various legal issues have been determined, the Commission, should it desire the development of a code of ethics, appoint an ad hoc committee and charge it with the responsibility of achieving that goal.

B COMMISSIONERS NOT VOTING

It came to the Committee's attention that the Commission has adopted a policy of counting a failure to vote by a Commissioner on a matter before the Commission as a vote in favor of the majority position on the matter. The Committee finds this policy disturbing. In the first place, a Commissioner cannot, as a matter of law, decline to vote. If he or she is present, the Commissioner is required to vote and his or her failure to do so is a violation of law. Moreover, recording such failures in the manner prescribed by this policy could leave Commission actions open to challenge. The Committee urges the Commission to abandon this policy.

IV CONCLUSION

The members of the Committee wish to express their appreciation to the Commission for giving them the opportunity to serve their community in what they all believe to have been a very worthwhile and important endeavor. The Committee stresses, however, that the question of just how worthwhile and how important their efforts prove to be depend to a large extent on how the Commission deals with the recommendations set forth in this report.

Each of the Committee's recommendations represents the thinking, the analysis, and the conclusions of a group of citizens the Commission entrusted with the task of making them. The Committee urges each Commissioner to refrain from using his or her own feelings on a matter at issue as a barometer for determining whether that issue should reach the ballot. Rather,

Commissioners should give deference to the Committee's determinations. They should, unless there exists some strong reason unrelated to whether they agree with the Committee or not, such as a real concern over the legality of a recommendation, give the public a chance to decide whether they agree with what the Committee proposes.

While the Committee believes that this approach should apply to all of its recommendations, it suggests that it is particularly applicable to recommendations that have been made by a prior Committee, such as those regarding districting and direct ballot access. It is also particularly applicable with regard to recommendations relating to matters that were once law or policy and that were changed in a manner other than by an unambiguous vote of the people, matters such as the residency requirement for the City Manager and the term limit for the Mayor.

The recommendations in this report, if put into effect, will make our great city even greater. They will improve our government, they will improve our processes, they will improve our lives. The Committee is proud to have fired up the engines of a train to a better future for Hallandale Beach. It invites the Commission to climb aboard and eagerly awaits it doing so.

Respectfully submitted,

THE HALLANDALE BEACH CHARTER REVIEW COMMITTEE

ANTHONY MUSTO, Chair

ANDREW MARKOFF, Vice-Chair

GERALD DEAN, Member

LEO GRACHOW, Member

JOE JOHNSON, Member

BILL JULIAN, Member

MARC POMERANTZ, Member

ALICIA MORENO, Alternate Member