

CHARTER REVIEW COMMITTEE
MONDAY, JANUARY 13, 2020, 5 P.M.
MAYOR'S CEREMONIAL ROOM

MINUTES

PRESENT: Chair Clarke, Vice-Chair McQuern, and Members Barnhart, Beeman, Bristow, Clymer, Evans, Irving, MacKinney, Miller, Riemer, Teichert, Webb, and Zaragoza and Alternate McKeith

ABSENT: Member Mabon

STAFF PRESENT: Eva Arseo, Elliot Min, Colleen Nicol, and Susan Wilson

Chair Clarke convened the meeting at 5 p.m.

ORAL COMMUNICATIONS FROM THE AUDIENCE

Jason Hunter spoke regarding the General Fund Transfer; definitions of gross operating revenue, services, and professional services; whistleblower protections and mandatory reporting by employees; and limitation on length of contracts. Rich Gardner spoke regarding granting the Mayor a vote, overtime limitations, and the City budget. Kevin Dawson spoke regarding the City Council Consent Calendar, Charter amendment proposals not placed on the ballot, and fiscal responsibility.

APPROVAL OF MINUTES

Following discussion, it was moved by Member Webb and seconded by Member Clymer to approve the minutes of the meeting of December 9, 2019, as presented and amending to record Member Zaragoza voting no to grant the Mayor a vote and remove the veto power. Motion carried with Members Beeman and Irving abstaining.

EXCUSAL OF ABSENCES

Following discussion, it was moved by Member Barnhart and seconded by Member Bristow to excuse the absences of Malissa McKeith from the meeting of October 21, 2019, Art Angel and Ben Clymer from the meeting of November 18, 2019, and Matthew Irving and Art Angel from the meeting of December 9, 2019. Motion carried unanimously.

INTERVIEW WITH COUNCILMEMBER EDWARDS

Councilmember Edwards noted that the Mayor vote/veto and "crime of moral turpitude" standard for board and commission service are important issues. She stated that term limits for members of the City Council could be very useful and the discussion of City Council salaries is also important as the salary limits those

able to serve. Councilmember Edwards noted the importance of thinking carefully about items included on the City Council Consent Calendar so that all items can be heard as necessary. She supports creation of a Women's Commission and inclusion of minority viewpoints in the Committee's report to the City Council.

Councilmember Edwards continues to consider the impacts of an even number of voting members on the City Council and three members of the City Council on the same ballot as the Mayor. Councilmember Edwards is open to receiving information on topics discussed by the Committee that did not result in specific Charter amendment recommendations. She stated that the City Council should take the recommendations of all boards, commissions, and committees to the extent possible. Councilmember Edwards noted that she continues to learn and is open minded about the topic of Mayor vote/veto. She would like to hear more information on an elected or appointed independent City auditor.

INTERVIEW WITH COUNCILWOMAN PLASCENCIA

Chair Clarke announced that Councilwoman Plascencia was unable to attend due to a prior commitment and read the Councilwoman's written statement into the record. Councilwoman Plascencia wrote she believes granting the Mayor a vote would be confusing to constituents, particularly if the Mayor and Councilmember have opposing views.

INTERVIEW WITH COUNCILMEMBER FIERRO

Councilmember Fierro promised that all recommendations will be taken seriously and that the additional layer of citizen oversight is very important to the process. He feels that the bar for a Charter change needs to be very high. He remarked that if there are eight votes on the City Council the need for a higher number of votes for a matter to be approved is good. Although three Councilmembers share the ballot with the Mayor, he feels that a Councilmember should be prepared to vacate their seat if they wish to run for Mayor. He stated that dissenting opinions are important with the City Council making the final decision.

Councilmember Fierro supports adding the Budget Engagement Commission to the Charter. He prefers that boards and commissions be notified of City Council decisions contrary to their recommendations and the reasons supporting the decision. Councilmember Fierro sees a need to clarify the Mayor's veto by articulating what actions are subject to veto. He prefers clarification of the veto to granting the Mayor a vote. The Mayor represents a redundant constituency to the members of City Council.

Councilmember Fierro believes an inspector general should report to the citizens rather than serve as a Charter Officer although he has concern in creating an elected position. An appointed inspector general would represent a political

appointment. The Councilmember stated that if a law is broken, citizens should have access to remedy in the court, however, he is unable to identify any Charter violation that would rise to the level of litigation.

Councilmember Fierro agrees the current salary for Councilmembers does not support a family and the position should be compensated as a full-time as it limits the pool of candidates.

INTERVIEW WITH COUNCILMEMBER HEMENWAY

Councilmember Hemenway stated the Mayor's veto powers need to be clarified and is unsure he would support granting the Mayor a vote. Councilmember Hemenway stated he will consider further if all Charter Review Committee recommendations should be placed on the ballot. The voters elected Councilmembers to make decisions and appointed bodies should not usurp that responsibility. He wishes to maintain the City Council's ability to decide which recommendations are placed on the ballot.

Councilmember Hemenway supports City Council compensation that matches the demands of the job. Although Councilmembers are elected to serve, the salary limits those who have the ability to do so. Labeling the job as part-time is disingenuous. He supports exploring the concept further. Councilmember Hemenway supports transparency and accountability and will further consider if the Budget Engagement Commission scope of work should be expanded.

Councilmember Hemenway supports discussion of an independent auditor to provide more accountability. He will also consider if placing all Charter Review Committee recommendations on the ballot is appropriate.

Member Beeman suggested tying Councilmember salaries to the median wage of the community. Member Barnhart noted that many regional issues can be controversial and there is merit in a citywide elected voice having a vote. Councilmember Hemenway responded that the Mayor currently has a voice and presides over the meetings. He believes the current structure is sufficient. He supports the Mayor's right to veto.

Councilmember Hemenway restated the pointed that the Charter Review Committee is an appointed group making recommendations to the City Council but also understands the desire that all recommendations be placed on the ballot. He is considering the matter further.

Member Evans suggested the City Council appoint a citizen committee to set City Council salaries. Member Webb noted that the charter limits salary increases to 5%. Member Bristow stated that the recommendations of the Charter Review Committee will represent extensive vetting, which he sees as a valuable process.

Chair Clarke noted the importance of sharing the pros and cons of split decisions with the City Council and that the recommendations of the Charter Review Committee are respected. The Committee worked hard on these issues over many months and Chair Clarke stated that the best way to get a healthy response from the voters is to place all measures with pros and cons on the ballot. Chair Clarke encouraged all Committee members to attend the City Council meeting when the recommendations are presented.

MAYOR INTERPRETATION OF POLICY - COMMENTS BY COUNCILMEMBER CONDER

The comments submitted by Councilmember Conder on whether the Mayor shall have the primary but not exclusive responsibility for interpreting the policies of the City, as set forth in Charter Section 405, were presented for consideration. Member Clymer noted the substantial number of changes that would be prompted by granting the Mayor a vote and removing the veto power. Following discussion, it was moved by Member Beeman and seconded by Member Clymer to receive and file the report. Motion carried unanimously.

RESTRICTIONS ON CITY COUNCIL POWER TO ENTER INTO CONTRACTS OR ISSUE DEBT WITHOUT VOTER APPROVAL - CITIZEN PRIVATE RIGHT OF ACTION

Jason Hunter supports placing protections in the Charter to require a supermajority vote of the City Council for contracts or debt beyond five or ten years and voter approval at some level.

Kevin Dawson recommended all contracts be in writing, noted the Budget Engagement Commission canceled the last meeting for lack of a quorum with an important Measure Z funds transfer on the agenda, and expressed support for establishment of a City auditor.

Alternate McKeith stated that the citizen private right of action was misplaced on the agenda. She is not confident City staff will implement fiscal constraints. The Charter Review Committee could recommend that the Budget Engagement Commission become a Charter commission with a clear scope to forward recommendations to the City Council. Member Irving concurred.

Following discussion, it was moved by Member Webb and seconded by Member Barnhart to make no change to the Charter with respect to the status of the Budget Engagement Commission.

Member Beeman stated that process of vetting gives the community more opportunity to be a part of the process and supports adding the Budget Engagement Commission to the Charter.

Member Evans stated that adding the Budget Engagement Commission to the Charter is irrelevant to what it does and suggested that contracts with employees, issuance of debt, and contracts over ten years require a supermajority.

Member Zaragoza supports addressing fiscal constraint in some way.

Following further discussion, a substitute motion was made by Member Bristow and seconded by Member Evans that contracts with collective bargaining units, contracts to issue debt, and contracts over ten years require a supermajority vote of the City Council and Board of Public Utilities, if applicable.

Alternate McKeith and Members Irving and Miller supported the substitute motion.

Chair Clarke reminded the Committee that this work must be completed by May and the proposed list of measures for the end of the ballot is lengthy.

Assistant City Attorney Wilson reported that only at-will employees have contracts and that the Board of Public Utilities has independent authority to approve contracts over ten years. Supermajority requirements would apply to both the City Council and the Board of Public Utilities.

Vice-Chair McQuern noted hearing an undercurrent of anti-democracy. A supermajority lets a minority rule. She expressed concern with obstacles to City Council decision-making and that supermajority votes fundamentally change democratic practices. Member Clymer stated that the State legislature requires a supermajority for taxation and not all City Council decisions should be by supermajority.

Chair Clarke reminded the committee of their personal abilities to use personal resources to research and draft motions for committee consideration. He encouraged the committee to refrain from convening additional meetings.

Member Teichert expressed concern that more research is needed such as the number of contracts over ten years, the nature of those contracts, impacts of delayed decisions, competitive bidding process impacts, major infrastructure contracts, and contract extensions.

Member Barnhart stated that Charter as written serves the City well. Ten-year bonds are common and necessary for City business. Large capital projects could be halted by a minority vote.

Subsequently, the substitute motion failed for lack of a majority vote with Members Bristow, Clymer, Evans, Irving, MacKinney, Miller, and Zaragoza voting

aye and Members Clarke, McQuern, Barnhart, Beeman, Riemer, Teichert, and Webb voting no.

A vote on the main motion was deemed moot as a motion is not required to take no action.

Chair Clarke announced that the citizen private right of action was resolved at the prior meeting with the Committee recommending no change to the Charter on that issue.

CREATION OF INSPECTOR GENERAL POSITION

Following discussion, it was moved by Member McQuern and seconded by Member Webb to decline to forward a recommendation to the City Council on the proposal of creating an inspector general position.

Member Clymer expressed opposition to the motion and noted that the current Internal Audit Division has been unstaffed since July of 2019.

Assistant City Attorney Wilson confirmed the vacancies due to employee turnover and that the City Manager's Office has solicited bids for an auditor which has not yet been presented to the City Council.

Member Webb stated that an inspector general hired by the City Manager is not effective and an elected position will not accomplish what the Committee seeks. He stated that an external auditor reporting to the City Council makes sense.

Chair Clarke noted that any Charter auditing function would be subject to a City Council approved budget. Member Beeman noted that a Charter measure to create a City auditor failed in a prior election. Member Beeman noted that citizens don't feel they have an avenue to effectively raise concerns regarding fraud, waste, etc. She supports future hearings and public comment to determine the appropriate course of action. She suggests creation of a body to handle complaints with a published report.

Alternate McKeith supports creation of an inspector general position. Member Webb stated that the Charter requires employment of an independent auditor and that the perfect solution will not be found by amending the Charter.

Member Webb left the meeting at 7:29 p.m.

Member Riemer stated she was unclear about the daily duties of an inspector general as proposed. Alternate McKeith noted that the auditor in the Charter is a financial auditor. Member Clymer supports an elected inspector general.

Member McQuern feels it is premature to make a recommendation on this matter without additional information and discussion.

Following discussion, a substitute motion was made by Member Beeman and seconded by Member Miller to recommend a Charter amendment providing that "The City Council shall on an annual basis publish a comprehensive report specifying the nature of any written complaints from community members, claims, whistle blower complaints, audits and/or investigation (collective investigations) undertaken by the City, its staff, or outside consultants; the outcome of those investigations; and the annual budget (including internal costs) expended to undertake the investigations. The City Council shall consider adoption of a Charter Amendment for the appointment of an Inspector General to oversee all investigations."

Following further discussion, a second substitute motion was moved by Member Irving and seconded by Member Zaragoza, and subsequently amended, to recommend a Charter amendment providing that "The City Council shall on an annual basis publish a comprehensive report specifying the nature of any written complaints from community members and whistle blower complaints, audits and/or investigation (collective investigations) undertaken by the City, its staff, or outside consultants; the outcome of those investigations; and the annual budget (including internal costs) expended to undertake the investigations. The report shall include the nature of the complaint and merits without names or confidential information."

Member Teichert questioned the meaning of "claim" and that such reporting may require additional staffing. Member McKeith reported that other cities publish an annual report. Member Bristow noted that questioning the meaning of "claim" is a legitimate concern as the term "claim" has legal meaning.

Kevin Dawson stated that the City Manager has directed employees to move funding inappropriately and that elected officials cannot be trusted. He added that the City provided defense for a prior Councilmember regarding a land use issue and that outside legal counsel was hired without contracts.

Member Evans cited Charter Section 1113 which requires hiring of an independent auditor and the City Council's ability to direct further review of Departments. He suggested strengthening current auditor provisions.

Subsequently, the second substitute motion was amended to recommend a Charter amendment providing that "The City Council shall on an annual basis publish a comprehensive report specifying the nature of any written complaints from community members and whistle blower complaints alleging fraud, waste, and abuse, or other criminal conduct."

Following further discussion, the second substitute motion, as amended, carried with Members Clarke, McQuern, Barnhart, Beeman, Bristow, Clymer, Evans, Miller, Irving, MacKinney, Riemer, and Zaragoza voting aye and Member Teichert voting no.

REFERENCES TO "MAYOR AND MEMBERS OF THE CITY COUNCIL" AND MAYOR PRO TEMPORE VOTING

Assistant City Attorney Wilson summarized the report regarding references to "Mayor and Members of the City Council" in Charter Section 403 and Mayor Pro Tempore voting in Section 405.

Following discussion, it was moved by Member Teichert and seconded by Member Evans to recommend to the City Council to delete "the Mayor and" from Section 403 and change Section 405 to read, "the Mayor Pro Tempore...shall vote as a member of the Council." The motion carried with Members Clarke, Barnhart, McQuern, Bristow, Evans, MacKinney, Miller, and Teichert voting aye and Members Beeman, Clymer, Irving, Reimer, and Zaragoza voting no.

VOTING REQUIREMENTS FOR EMERGENCY ORDINANCES

Chair Clarke noted that the report on voting requirements for emergency ordinances was provided for information only. No formal action was required or taken.

CITY MANAGER RECOMMENDATIONS - BUDGET DISTRIBUTION - APPROPRIATIONS FOR CAPITAL PROJECTS

Member Barnhart informed the Committee of the subcommittee meeting with the City Manager narrowing the recommendations to electronic distribution of the Budget and clarification of appropriations for capital projects only.

Following discussion, it was moved by Member Barnhart and seconded by Member Beeman to recommend Charter amendments to amend Charter Sections 1103, 1104, and 1111 to create efficiencies through the use of electronic information formats for distribution of the budget and to further clarify appropriations for capital projects as presented in the written staff report. The motion carried unanimously.

REVIEW OF CHARTER AMENDMENT CONCEPTUAL APPROVAL LIST

There were no comments on the Charter amendment conceptual approval list.

ORAL COMMUNICATIONS FROM THE AUDIENCE

There was no one present wishing to speak.

ITEMS FOR FUTURE COMMITTEE CONSIDERATION AS REQUESTED BY CHARTER REVIEW COMMITTEE MEMBERS

Member Teichert requested drafting of the report to the City Council be added to the workplan and offered her assistance in its preparation. Chair Clarke requested staff to prepare a final City Council report for the Committee's review including split votes and a summary of positions.

Member Irving suggested an additional Committee meeting to review the draft City Council report, if needed.

Member MacKinney commented that not all current proposals will move forward after Committee review and prioritization.

Chair Clarke stated that the tentatively approved measures will be included in the report in table format and review will commence at the next meeting. Chair Clarke encouraged the Committee members to reach out to community contacts and share the tentative recommendations. The recommendations will again be addressed on March 9, 2020, with a final decision on April 13, 2020. He assured the Committee that majority and minority views will be published with clarity.

Member Evans requested that Councilmember Plascencia be invited for an interview at the next meeting. The City Clerk agreed to extend the invitation.

Member Evans requested reconsideration of supermajority vote requirements. Chair Clarke agreed to the request.

Member McKeith stated that the water sales issue was not discussed earlier in the meeting. Chair Clarke agreed to place water sales on the next meeting agenda.

Member Beeman noted that language she proposed was not voted upon and requested Committee ideas log entries 4 (transparency), 5 (replace "citizen" with "community member"), and 6 (publications in newspapers) as well as reconsideration of log entry 7 regarding "crime of moral turpitude" be added to the next agenda. Member Beeman further requested consideration of adding language to item 4 on the conceptual approval list to have a standing Charter Review Committee appointed and to reduce the Charter review process from eight to four years.

The Committee adjourned at 8:32 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Nicol", is written over a horizontal line.

COLLEEN J. NICOL
City Clerk