

DETROIT CHARTER REVISION COMMISSION
PROPOSAL/ISSUE REVIEW SUMMARY

ISSUE NUMBER: BF 64

ISSUE CATEGORY: Budget & Finance

SOURCE: Richard Mack, Esq.

RELATED CHARTER SECTIONS: §6-307 (Privatization)

Letter, December 26, 2010

RELEVANT ORDINANCE SECTION: 18-5-100 to **RELEVANT LAW(S):**

18-5-109

ISSUE/PROPOSAL STATEMENT: Add language recognizing City is prohibited from privatizing services of existing employees of a department or existing job classification; Remove the City's ability to obtain contractual services which are an expansion or addition to services already provided by governmental employees, unless an emergency condition is declared in compliance with City laws. Further, the City shall demonstrate that no employees who perform(ed) those services are currently laid off, demoted, or otherwise displaced, and subject to recall, prior to the City Council approval of the contract; Require the City Clerk to maintain the information referenced in 4-112 (as revised by this author) within 180 days of the effective date of the new Charter.

Sec. 6-307. - Privatization.

The city shall provide by ordinance for a process by which the city shall act prior to any determination or action to enter into any agreement, by which a non-governmental person or entity provides services to the city substantially similar in whole or in part, to services provided by a regular employee of a department or agency of the city, or provided by existing City job classifications. Such ordinance shall provide for the following:

1. The preparation of a comprehensive report which details the need for the privatization.
2. Comprehensive written estimates of the total current costs to the city of the agency providing the subject services in the most cost efficient manner, including all direct and indirect costs.
3. A requirement for approval of the legislative body to solicit bids for the privatization, after its review of the comprehensive report and cost analysis.
4. An opportunity for the affected employees to organize and prepare a bid to provide the subject services.

5. A process whereby the agency prepares a comprehensive written analysis of all bids of public employees and non-governmental entities, which would include, but not be limited to the cost of the bid to provide the services, contract performance; and unemployment, pension or other accrued benefits resulting from loss of agency employees.
6. Other factors to be included in the consideration, other than cost, which could affect the public interest including the effect of transfer of services from the public to the private sector on the access, delivery or quality of services to be provided; the reduction in the employment level of city residents; the differences in work rules and management practices of the workers in the private sector, including those related to legal and constitutional protections and any loss of accountability to city residents which would result from the services being provided by a non-governmental person or entity.
7. The provision that any final recommendation for the privatization of services would require the two-thirds (2/3) approval of the legislative body, which would be required to certify that it was its determination that the availability and quality of the subject services would be likely to equal or exceed the quality of services which could be provided by regular agency employees.
8. Provisions which would require the annual evaluation of the privatized services and the providing of such evaluation to the city council.

No provision of this section should be construed to abrogate or limit any legal rights afforded to the employees under the collective bargaining process.

Nothing in this section shall supersede provisions of section 6-517 of this Charter.

~~As of the effective date of this Charter, the City shall not obtain contractual services which are an expansion or addition to services already provided by governmental employees, or where the contractual services are a replacement for existing governmental positions, unless the City complies with City laws which permit the declaration of an emergency. The City shall demonstrate that no employees who perform(ed) those services are currently laid off, demoted, or otherwise displaced, and subject to recall, prior to the City Council approval of the contract.~~

Deleted: In addition, nothing in the ordinance should be construed as prohibiting the city from obtaining

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An ordinance implementing this section shall be adopted within one hundred and eighty (180) days of the effective date of this Charter.

~~Within one hundred and eighty (180) days of the effective date of this charter, the City Clerk shall maintain the information addressed in Section 4-122 above.~~

RATIONALE: "We obviously disagree with the Mayor's suggestions regarding the Privatization Ordinance. He is incorrect regarding the exclusive applicability to non-unionized employees. Indeed, the court rulings which have been issued thus far regarding the Privatization Ordinance, relate to unionized employees, even though the actions were brought by individuals and not party unions."-Richard Mack, Esq., Letter, December 26, 2010.

ANALYSIS:

DISPOSITION/COMMISSION ACTION:

NOTES: "Historical Charter Analysis of Privatization", dated August 5, 2010.