

**Proposed Revisions to Article 6, Chapter 4 (Law Department) & §4-121 (Special Counsel)
For Consideration at April 9, 2011 Charter Commission Meeting**

Sec. 6-401. Law Department.

The Law Department is headed by the Corporation Counsel who is the duly authorized and official legal counsel for the City of Detroit and its constituent branches, units and agencies of government. The Mayor shall appoint the Corporation Counsel subject to approval of the City Council. However, if the City Council does not disapprove the appointment within thirty (30) days, the appointment it is deemed confirmed.

The Mayor may remove the Corporation Counsel without cause, with a two-thirds (2/3) majority vote of the membership of City Council. City Council may remove the Corporation Counsel, without cause, by a [two-thirds] vote [of one less than its entire membership] and concurrence of the Mayor. A Mayor occupying the Office of Mayor through succession under §5-109 (Succession to Office) may only remove Corporation Counsel with cause and approval of one less than the entire membership serving on City Council.

1. *Client and Representation*

The client of the Corporation Counsel is the City of Detroit as a body corporate. The agents and representatives of the City of Detroit, for purposes of receiving and directing legal services in a manner consistent with Corporation Counsel's professional obligations to the City of Detroit, as herein provided in this charter or allowed by law, shall be the Mayor, City Council and City Clerk.

Corporation Counsel represents the City of Detroit as a body corporate and may represent its branches of government, departments, agencies, elected officials and employees as required or allowed by law, charter, ordinance, city policy or contract. No branch or unit of government, department, agency, elected official or employee required or allowed to receive legal services by law, charter, ordinance, city policy or contract, may solicit or obtain formal legal advice, services or representation from an outside law firm without requesting and receiving the approval of Corporation Counsel, unless expressly allowed by charter. Upon request of an agency or officer, the Corporation Counsel may retain an outside attorney as special corporation counsel for any particular matter or proceeding.

Nothing in this section is intended to prevent any branch or officer of government from consulting with legal experts or convening meetings or hearings for the purpose of obtaining information necessary to execute their duties.

Sec. 6-408. ~~Special Counsel. Intra-Government Branch Dispute Resolution.~~

~~Upon request of an agency or officer, the corporation counsel may retain an outside attorney as special counsel for any particular matter or proceeding.~~

In all disputes between branches or units of city government, before any branch or unit can institute legal proceedings, they shall have first requested and obtained from Corporation Counsel a legal opinion which details which party's position is consistent with the current state of law. Corporation Counsel shall then instruct the branch or unit whose legal position is inconsistent with the current state of the law to obtain legal assistance and representation from an outside law firm if they intend to institute legal proceedings.

In cases of disputes between the branches of government, prior to filing a lawsuit or taking other legal action, the highest public officials from the disputing branches of government shall first meet to resolve the matter. In the case of the Executive branch the highest public official shall be the Mayor or designee; in the case of the Legislative branch it shall be the Council President or designee; and in case of the Office of the City Clerk shall be the City Clerk or designee. The parties shall engage in facilitation of the matter over a period of fourteen (14) calendar days, or more as agreed to by the parties, before taking legal action. The facilitation shall be conducted by a facilitator, mutually agreed to by the parties. Nothing in this section shall preclude a branch or unit of government from seeking a temporary restraining order, injunction or other emergency legal action based on irreparable harm, but this section shall be complied with if the court rules that no irreparable harm exists, in which case the facilitation period shall be twenty-eight (28) calendar days from the date of the court's decision, or longer as agreed to by the parties.

Sec. 6-405. Advice and Opinion.

Each branch and unit of government shall receive the legal advice and opinion of Corporation Counsel on matters pertaining to the execution of their functions and duties as governmental bodies and officials. Upon request, the Corporation Counsel shall give such legal advice or opinions to the Mayor, City Council, a members of the City Council, City Clerk or the head of any agency.

Sec. 4-121. Special Counsel.

~~The City Council may obtain the opinion or advice of an outside attorney in any matter pending before it~~ Where there exists a conflict of interest between the City Council and another branch of government, the City Council has the authority to retain an outside law firm who shall represent the City Council in legal proceedings, in accordance with §6-408 (Intra-Government Branch Dispute Resolution). The attorney must be licensed to practice law in Michigan ~~Such attorney~~ and shall not represent the city as a municipal corporation in any legal proceeding.