

TO: The Detroit Charter Revision Commission

FROM: The Detroit City Council

DATE: December 13, 2010

RE: **DETROIT CITY COUNCIL'S RECOMMENDATIONS TO THE
DETROIT CHARTER REVISION COMMISSION INCLUDING
ADDITIONAL RATIONALE**

As requested by the Charter Revision Commission, the Detroit City Council submits this supplemental report including additional rationale for its previously submitted recommendations. While we have offered our policy recommendations in the form of proposed charter language, the emphasis is on the **policy** rather than the specific language. For ease of review, the Charter sections addressed in our November 19th and 23d reports are included in numerical order.

¹Finally, the City Council takes this opportunity to respond to certain recommendations submitted by the Mayor, dated December 2, 2010, in the order in which they arise. Council's recommendations do not address sections 4-122, approval of contracts, and 6-307, privatization of city services. The Mayor, however, has recommended eliminating City Council's very significant role of approval of city contracts as long as the appropriation was approved during the budget process, arguing that it is inefficient. Whatever may arguably be inefficient about this longstanding and well-established process, it is nevertheless an appropriate and necessary safeguard in the government setting where public dollars are being spent. Alleged inefficiency, as grounds for such a monumental power shift in the Charter is not only specious, it is fallacious as well. First, the Council approval process takes only about two (2) weeks to fully run its course. Second, Council's oversight responsibilities in the expenditure of \$300 million in annual contracts requires independent safeguards. In addition, removing public oversight of contracts also removes all ability to monitor adherence to the privatization provisions of section 6-307.²

¹ Council's responses to the Mayor's recommendations are offset by asterisks throughout this report.

²The overall tenor of the Mayor's recommendations might be properly termed overreaching in that collectively, the Mayor would strip away Council's powers and duties in the following ways: a) removal of the power to approve all contracts with the City; b) removal of the power to make appointments to boards and commissions; c) eliminating oversight of privatization procedures; d) reducing oversight of the police commission; e) failure to correct conflict of interest problems historically associated with the role of the law department; etc. Coupled with the diffusion of City Council's collective power by moving to a district

§2-101 Qualification for Elective and Appointive Officers

Proposed Language:

A person must be a citizen of the United States, domiciled in the City of Detroit, and a qualified and registered voter of the City of Detroit at the time of filing for and while holding an elective office. The person shall have maintained his/her principal residence within the city of Detroit for at least one year before filing for election.

For any appointive city office, a person must be qualified to perform the duties of the office at the time of assuming the office and at all times while holding the office. The person's citizenship status, residence and voter registration, shall be as required by applicable law.

Rationale:

The proposed language adds a one-year domicile requirement to qualify for elective office in the city. Durational residency requirements have been the subject of conflicting case law. Such a domicile requirement is intended to ensure that elected officials are *bona fide* residents of the City of Detroit. The one-year period was chosen because it appears to be clearly permitted under the most recent applicable case law, and longer periods may not be permissible under earlier case law. A one-year durational residency requirement was upheld against legal challenge by the federal district court in Detroit in the case of *Joseph v City of Birmingham*, 510 F Supp 1319 (ED MI 1981). Similarly, the federal appellate court upheld such a one-year requirement for city council candidates residing in a ward in *City of Akron v Bell*, 660 F2d 166 (CA 6 1981). However, previous case law had questioned the enforceability of longer term requirements of residency in *Green v McKeon*, 468 F2d 883 (CA 6 1972).

The second paragraph regarding appointees reflects different policy considerations for different classifications of public servants. Regarding citizenship status, the current charter restricts City employment to citizens, and the proposed language would authorize the City to hire qualified legal immigrants. Regarding residency and voter registration, the proposed language is primarily intended to leave open the possibility of imposing a residence requirement for City of Detroit employees if state law changes to permit it.

This section should also require that district candidates for city council be domiciled within the district to qualify to serve the district. This requirement was inadvertently excluded from city council's recommendations.

format, the Mayor's proposals would move the office well beyond that of a strong mayor, into the realm of an autocrat with very little oversight from the city council. The terms balance of power - or even separation of power - would be almost meaningless.

§ 2-105 Definitions

Proposed Language:

Absence. *An elective officer or appointee shall be deemed absent for purposes of voting or other discharge of official duties if he or she is temporarily not physically present at a public meeting, or at the office where his/her duties are ordinarily performed at any given time. A temporary absence does not create a vacancy.*

Domicile. *The place where a person has his/her true, fixed, and permanent home.*

Vacancy. *The position of any elective officer or appointee shall become vacant only upon death, resignation, permanent disability or dismissal from the position as authorized by law or this Charter. A position shall not be deemed vacant if the officer or appointee has temporarily succeeded to or been appointed to another office. A temporary absence due to succession does not create a vacancy.*

Rationale:

Questions about the definition of absence arose during the previous City Council term in connection with the council president's succession to become interim mayor, as well as on other occasions when the council president was out of the country. "Absence" or "absent" is a word used in multiple places in the current Charter, but is nevertheless undefined.

The proposed language is intended to clearly define and limit what constitutes an "absence", and to distinguish it from "vacancy", as defined below, because "absence" and "vacancy" have different consequences. The connection should be noted to section 4-108, regarding absent council members being able to participate and vote by telephone or video connection, and section 5-108, regarding the consequences for the deputy mayor acting as mayor in the mayor's absence. It may be necessary to either add a requirement that the mayor invoke the deputy mayor's authority by notice each time s/he assumes the duties of the mayor because the mayor is absent, or alternatively modify the definition of "absence" regarding the mayor only, because the mayor frequently performs duties outside his or her office.

"Domicile" has been defined to support the proposed *bona fide* residency requirement in section 2-101. "Vacancy" has been modified to more clearly distinguish it from "absence," by providing that "vacancy" does not result from temporary succession or appointment to another office.

§ 2-107 Dismissal Proceedings

Proposed Language:

1. Recall.

Any elective officer provided for in this Charter may be recalled by voters of the city in the manner provided by law.

2. Forfeiture.

The position of an elective city officer or an appointee shall be forfeited if he or she:

- a. Lacks at any time any qualifications required by law or this Charter;*
- b. Commits acts of official misconduct, malfeasance or misfeasance in office, or willful neglect of the duties of office; or*
- c. Is convicted of or pleads guilty to a felony while holding the office or appointment.*

The city council shall be the judge of the grounds of forfeiture of an elective officer or an appointee, by two-thirds (2/3) vote of the city council members serving. A city council member charged with conduct constituting grounds for forfeiture may not participate in the resolution of the charge.

A person charged with conduct constituting grounds for forfeiture is entitled to due process, and upon timely request, to a public hearing before the city council. In the case of an officer or an appointee subject to forfeiture pursuant to subsection 2 (c), no hearing before city council shall be required. Notice of forfeiture proceedings and of the hearing, if requested, shall be published in the manner required by law for open public meetings of the city council. Decisions made by the city council under this section are subject to judicial review in a de novo hearing. The city council shall retain an independent professional legal advisor to assist it regarding the interpretation, application and enforcement of the rules for the hearing, admissibility of evidence, objections, motions and other legal issues arising in connection with the proceedings.

3. Removal for cause.

Any appointee subject to removal for cause may be removed by the appointing authority for lack of qualifications, incompetence, neglect of duties, misconduct, conviction of a felony, pleading guilty to a felony, habitual unexcused non-attendance at meetings where the appointee's presence is required for the discharge of the duties of the position, or a violation of this Charter or any ordinance, rule or regulation. The appointing authority and applicable law will determine whether non-attendance is unexcused.

An appointee may not be removed under this sub-section without an opportunity for a public hearing before the appointing authority. A copy of the charges shall be furnished at least ten (10) days in advance of the hearing.

Rationale:

The need to revise this section of the current charter became clear during the previous administration, and in fact, motivated City Council to place the charter revision question on the ballot. In particular, the Wayne County Circuit Court ruled that although the section outlining forfeiture proceedings appeared in the charter, there were no specific provisions triggering forfeiture in the event of a violation, as required by section 2-107(2)(b). That defect has been remedied by the proposed language by importing the standard set forth in the state statute (MCL 168.327). The intent is to allow city government officials to deal with official misconduct, if necessary, without relying on outside authorities. A two-thirds majority vote requirement has been added to ensure that a bare majority of City Council cannot act without sufficient cause to persuade a super-majority.

Other minor changes are proposed to streamline the application of this section. *Pleading guilty* to a felony will also trigger the forfeiture of a position (prior to sentencing), and no trial before City Council is required in the event of a conviction or a guilty plea, as the official will have already received due process. The need for the explicit addition of the guilty plea arose during the last city council term, when a member entered such a plea in court, but had not been sentenced and therefore retained the right to withdraw the plea.

The requirement of an independent legal advisor to assist City Council with necessary legal rulings in the course of a forfeiture proceeding - such as making evidentiary rulings - is deemed to facilitate proceedings pursuant to law and due process, rather than risking arbitrary political action. Finally, the grounds for removing an appointee for cause have been consolidated, with emphasis on the appointing authority's power to define whether or not absence is unexcused for such purposes.

§2-108 Pay Plans

Proposed Language:

*All persons, except elective officers and those whose compensation is stated in collective bargaining contracts made effective under section 6-508, employed by the city and paid either in part or in whole from city appropriations shall be compensated in accordance with pay plans which have been approved by ordinance. **No person shall be paid a salary for service in two city positions simultaneously.***

The salaries of all city elective officers shall be determined by an elected officials compensation commission, which shall be created by an ordinance containing provisions as required by state law.

Rationale:

The proposed language is our best effort to prevent an individual from receiving more than one full-time salary while holding two titles that are combined into one dual capacity job. This issue recently arose under the current administration, in connection with an official who was publicly said to be receiving only \$1 for a position, while receiving a full salary for another position.

§2-110 General Provisions for Multi-Member Bodies

Proposed Language:

Any multi-member body created by this Charter or under section 7-103 of this Charter may select its officers and adopt rules of procedure. Its meetings shall be public and it shall make a record of its proceedings. The record shall be public. A majority of its members constitutes a quorum.

Rationale:

The February 15th beginning date for each term, as set forth in the current charter, was removed because, in practice, most boards do not adhere to this date.

§ 3-101. City Elections.

Proposed Language:

City elections shall be held on the dates provided for elections by state law.

If a vacancy occurs in the office of mayor, city council or city clerk it shall be filled by succession in the case of the mayor as provided in Section 5-109 and by appointment in the case of a city council member or the city clerk as provided in Sections 4-10? and 3-103 respectively, until the next general election in the city held not sooner than one-hundred and eighty (180) days after the occurrence of the vacancy.

The city council may, by resolution adopted not less than seventy (70) days before any election or special election, submit any proposal to the voters of the city.³

The city council may schedule a special election to fill a vacancy in the mayor's office, by two-thirds (2/3) vote of the city council members serving.

³ The provision for city council initiated ballot proposals was inadvertently omitted from City Council's memo dated November 19, 2010.

Rationale:

The language was changed to acknowledge that city elections shall be held only on the four dates per year (occurring in February, May, August and November), as mandated by state statute. Additionally, the language omits provision for special elections solely to fill a vacancy, but rather authorizes the filling of vacancies by appointment and succession until the next citywide election. For the Mayor only, due to the unique circumstances of the Mayor's office, the office may be filled at a special election authorized by a two-thirds vote of city council. This measure is intended to balance the cost of a special election with the right of the voters to choose an elected official at the earliest possible election, as well as the potential need for a special election under some unforeseeable circumstances, as a safety valve. This will alleviate the unfortunate situation that occurred in the city recently requiring four mayoral elections (2 primaries and 2 general elections) in one year - at great expense to the city.

This provision, with respect to council vacancies, mirrors section 4-104 of the city's 1974 charter, entitled "Filling Council Vacancies", which provided: "If a vacancy occurs on the city council, a majority of city council members serving shall appoint a successor who shall serve until a new elected city council member takes office. A city council member shall be elected (for the unexpired term, if any) at the next general election in the City held not sooner than 180 days after the occurrence of the vacancy." Despite this provision from the 1974 charter, at the December 4, 2010 charter convention, a representative from the city's law department indicated that language in MCL 117.3(a) of the Home Rule City Act requiring that the mayor and council members be elected would preclude temporary appointment to fill a vacancy. However, the charter has long provided a scheme for temporary succession in the event of a mayoral vacancy. Further, the Michigan Compiled Laws Annotated notes, "[t]he provision that each city charter shall provide for the election of a mayor was not intended to restrict the election of the mayor to a popular election and authorized the election of the mayor by the commission of a city which had adopted a commission form of government", citing *Kopcznski v Schriver (1917) 194 Mich 553, 161 NW 238*.

§3-105 Elective officers of the City

Proposed Language:

The elective officers of the City, who are full-time officials, are the Mayor, the City Clerk, and the members of City Council.

Rationale:

This language was added solely to clarify that these are full-time officials. The question arose during the previous City Council term in connection with the standing committee

structure (only three or four members in attendance at committee meetings), and has occasionally arisen from time to time in connection with City Council's summer and winter recess periods, when Council Members continue to work in their offices and at locations throughout the City, although they are not in session for regular public meetings in the Council committee of the whole room.

§3-106 Geographical basis for electing council members.

Proposed Language:

The City shall be divided into districts for the election of members of City Council. There shall be seven (7) council districts and one (1) at-large district established in the city and one (1) member shall be elected from each council district and four (4) members shall be elected at large.

The City Council shall draw and/or revise the boundaries of the districts within sixty (60) days after the figures from the Federal Decennial Census become available. The criteria in redistricting shall be equality of population, contiguous territory, compactness, natural boundaries, and all other applicable law. New district boundaries created within one hundred twenty (120) days of a city primary election shall become effective after the General election.

Rationale:

Language has been added to reflect a council-by-districts structure.⁴ Consistent with the preference expressed by the voters in 2009, the council proposes a seven-district system. City council recognizes that the 2009 configuration of seven district members and two at-large members was, at least in part, based upon the recognition that a more significant redesign of the body would be subject to a legal challenge as inappropriate for a charter **amendment**, and rather would require **revision** of the charter. During deliberations by the council discussing issues raised by the district system, it was noted that in many cities with legislators elected by district, the districts are considerably smaller than those proposed for Detroit.

Additionally, concern was raised that due to scarce city resources, competition among districts could be high. Increasing the number of at-large seats to four allows for greater attention to citywide issues, effectively balancing the competition. For these reasons, city council proposes the addition of two at-large members to the existing provision. Adding two (2) additional at-large members would not necessarily require an increase in the City's overall budget, nor an increase in City Council's current budget. Budgetary adjustments should not be a determinative factor in this analysis and decision, because those legitimate concerns can and should be dealt with during the annual budget process.

⁴ Section 3-107 (Nominating Positions) will also have to be revised to correspond to the structure established by section 3-106.

City council, as **the** local legislative body, shall draw the districts, consistent with the requirements of state law. (MCL 117.27a)

§4-101 City Council

The Charter Revision Commission requested that city council offer an enumeration of the body's duties for inclusion in the charter. Upon reflection, however, city council recommends that no additional language be added to this section, which reads:

The city council is the city's legislative body. It has the powers and duties provided by law or this Charter.

This language was adopted in the 1974 charter. While the 1918 charter contained an exhaustive list of both legislative and administrative powers of the city council (see attachment A), we see no reason to reintroduce such a list, which would serve only to limit the broad powers granted by the Home Rule City Act and the State Constitution. The Michigan Supreme Court held that “home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied.” *Detroit v Walker*, 445 Mich 682, 690 (1994). Further, Michigan’s Constitution provides:

Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. **Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.** Const 1963, art 7, § 22, (emphasis added).

§4-102 Meetings

Proposed Language:

The city council shall hold its first (1st) meeting in the first (1st) week of January after the regular city general election and, during ten (10) months of the year, shall meet every business day unless otherwise provided by resolution, at such times and places as it may provide.

During each calendar year, the city council shall hold evening meetings in each of the districts of the City, with times and dates to be determined by the city council.

Special meetings may be held at the call of the mayor, through a written communication, or at the call of four (4) or more city council members, through the signing of a notice. In accordance with the Open Meetings Act, the communication or notice shall be posted at least eighteen (18) hours before the meeting.

All business which the city council may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act, 1967 P.A. 267, MCL 15.261 et seq.; MSA 4.1800 et seq.

Rationale:

The evening meeting requirement has been changed to reflect the council-by- districts structure, and as a housekeeping measure, meeting times (like the dates) are to be determined by city council. In addition, the notice provision for calling a special meeting has been changed to comport with the state's Open Meetings Act.

§4-103 Selection of Council President and President Pro-Tempore

Proposed Language:

The President and President Pro-Tempore of City Council shall be selected, by majority vote of members serving, from the at-large membership of the body for the four (4) year term.

If a vacancy or an absence occurs in the position of city council president the president pro-tempore shall succeed to the position of president. If a vacancy or an absence occurs in the position of the president pro-tempore, the city council shall then select a president pro tempore for the remainder of the unexpired term or until the absence ends, as the case may be, by majority vote.

Rationale:

Language has been added to provide for city council's election of its leadership from the (4) at-large members, again to avoid increased competition among the district membership. Election of council leadership from the at-large membership is consistent with the provision adopted by the voters in 2009.

Language clarifying that the president returns to his/her city council position after temporarily succeeding to the office of the mayor is included in section 5-109.

§4-108 Voting

Proposed Language:

Except as otherwise provided by this Charter, no action of city council shall be effective unless adopted by at least a majority of city council members present. A city council member on excused absence, as defined by city council's rules, shall be allowed to vote by live voice or video transmission but shall not be included for purposes of determining a quorum.

Every city council member present shall vote on all questions, except as provided by state law, a city council member shall promptly disclose any pecuniary interest in a contract which the city council has the power to approve, and no city council member may vote upon any matter related to the approval of the contract in which the city council member has a pecuniary interest.

On all ordinances, and in all other matters on the demand of one (1) or more members of the city council, the yeas and nays shall be taken and entered in its journal.

Rationale:

This language adds a provision allowing participation/voting at a council meeting via telephonic or video conferencing where a member's absence is excused pursuant to council's rules and **a quorum is otherwise present**. This issue arose during one current council member's extended absence on medical leave, and has arisen in the past as well. The Open Meetings Act permits such participation by phone or video. See, *Goode v Michigan Dept of Social Services*, 143 Mich App 756 (1985), lv den 24 Mich 882 (1986); *AG Opinion 6835* (2/13/95).

The connection to the definition of "absence" in section 2-105 should be noted, as well as the need to define an "excused" absence in council's internal rules.

It should also be noted that questions have arisen several times in the recent past about whether or not various council members should vote on particular matters, where they have personal financial ownership interests or family connections with a contractor. The Charter Revision Commission may wish to address such questions in the context of the existing requirement that "[e]very city council member present shall vote on all questions," etc. Absent definition of what constitutes "pecuniary interest", city council has relied upon the city's ethics ordinance for guidance. Application of the broad definition contained in the ordinance has resulted in a council member abstaining from voting where a family member was merely employed by a large corporation seeking a contract with the city.

§ 4-111 Council Clerk

Proposed Language:

The city clerk shall serve as the city council's clerk and shall keep a record of all its ordinances, resolutions, and other proceedings and perform such other duties as it may provide. The city clerk shall provide a council clerk for all of city council's official meetings as requested.

Rationale:

The proposed language clarifies the duty of the city clerk to serve as the city council clerk at all official council meetings. Issues have arisen in the past about whether or not a Council meeting can go forward without a clerk's presence.

§ 4-112 Control of Property

Proposed Language:

Except as otherwise provided by this Charter, the city may not sell or in any way dispose of any property without approval by resolution of the city council.

The city council shall maintain an ordinance that provides for the acceptance of gifts of real and personal property and services to the City of Detroit

Rationale:

The sole purpose of the proposed language is to omit the time requirement for adoption of the ordinance.

§4-113 Separation of Powers

Proposed Language:

City council or its members, to the extent necessary in the performance of the duties of their offices, may communicate with city officers and employees who are subject to the direction and supervision of the mayor, with respect to the provision of city services, and to the extent practicable and consistent with mayoral control of city government departments, exercise management supervision of the performance of the directors and personnel of city government departments.

Rationale:

Language has been added changing the title of this section to reflect the city’s adoption of the separation of powers doctrine, which does not automatically apply to municipalities. City council recognizes the place of separation of powers in a strong mayor scheme of government, but also is aware that the implementation of a district election system for city council will create a heightened public expectation that district council members should be able to address district issues/problems currently under administrative control. Currently, council members are severely restricted from interaction with executive branch departments, except through council’s investigative authority. This proposal partially eliminates the prohibition on interference with the administration in the current charter, and authorizes council to interact with executive branch officials to the extent necessary in performance of the duties of their offices. The key language, “to the extent necessary,” is not defined – as considerable flexibility is warranted where the facts that would trigger interpretation of this section are as yet undefined.

§4-10_ Vacancy (New Provision)

Proposed Language:

If a vacancy occurs on the office of city council, the city council shall appoint a successor who shall serve until an elected city council member takes office. A city council member shall be elected (for the unexpired term, if any) at the next general election in the city held not sooner than one hundred eighty (180) days after the occurrence of the vacancy. All appointments made under this section must meet all qualifications required by this Charter.

Rationale:

This provision will allow city council to temporarily fill a vacancy in its membership. Such vacancies have occurred in both of the last two city council terms. The appointed council member would have to stand for election at the next regularly scheduled election. In a council-by-districts structure, the appointed member would have to be a resident of the district, assuming that is a requirement for election as a district representative, and all other applicable requirements would also have to be met to be eligible for such appointment. See also the discussion, *supra*, under section 3-101 addressing the filling of vacancies.

§4-119 Veto

Proposed Language:

Every ordinance or resolution of the city council, except quasi-judicial acts of the city council including any under section 9-302, appointments by the city council or action taken under section 2-107 (2-3), 4-102, 4-105, 4-108, 4-109, 4-120, 7-1006, or 12-110 of

this charter, shall be presented by the city clerk to the mayor within four (4) business days after adjournment of the meeting at which the ordinance or resolution is adopted.

The mayor, within seven (7) days of receipt of an ordinance or resolution, shall return it to the city clerk with or without approval, or with a veto and a written statement explaining the veto. However, with respect to an ordinance, the mayor shall notify the city clerk of a veto in any reasonable manner within twenty-four (24) hours after the mayor's office received written notice from the city clerk that the emergency ordinance has been adopted.

An ordinance approved by the mayor shall be deemed enacted thereupon. An ordinance returned to the city clerk neither approved nor vetoed by the mayor shall be deemed enacted upon receipt by the city clerk. The mayor shall return any resolution neither approved nor vetoed to the city clerk with a written statement explaining the reason the resolution was neither approved nor vetoed. An ordinance or resolution not returned to the city clerk within seven (7) days of receipt by the mayor shall be deemed enacted upon expiration of the seven (7) day period; however, with respect to an emergency ordinance, should the mayor fail to notify the city clerk of a veto within twenty-four (24) hours of receipt by the mayor's office of notice that the ordinance has been adopted, the ordinance shall be deemed enacted upon expiration of the twenty-four (24) hour period.

An ordinance or resolution vetoed by the mayor can be reconsidered by the city council only at a regular or special meeting within one (1) week after receipt of the mayor's veto. A two-thirds (2/3) majority of city council members serving may pass the ordinance or resolution over the mayor's veto.

Rationale:

The sole change in the last paragraph is to add the words “or special,” to allow city council to respond to a mayoral veto during a special meeting, as allowed under the Open Meetings Act and Council’s own rules. This issue has arisen periodically in the past, particularly during recess periods when city council desires to override a mayoral veto, and the law department has indicated that it cannot do so in a special session. The proposed language would overcome this technical issue that has arisen in the past.

§ 4-201 Auditor General

Proposed Language:

The auditor general shall be appointed by a two-thirds (2/3) majority of the city council members serving. The auditor general shall be a certified public accountant.

§ 4-204. Employees.

To carry out the responsibilities of the office, the auditor general may, within appropriations, appoint employees who are exempt from article 6, chapter 5 of this Charter.

§4-20? Vacancy (New Provision)

If a vacancy occurs in the office of auditor general, the city council shall, within sixty (60) days, fill the office for a full term.

§ 4-206. Limitations.

The auditor general may hold no other city, county or state office.

Except as otherwise provided in this Charter, the auditor general shall not have any duties, responsibilities or office with any other city agency, nor be custodian of any cash or securities belonging to the city other than the appropriation to the office of the auditor general.

§4-304 Salary

The salary of the ombudsperson shall be within the same pay range as the auditor general, as established in the City's Official Compensation Schedule.

Rationale:

These provisions are being offered as an attempt to harmonize the powers of the ombudsperson's office and the auditor general's office. The auditor general has expressed concern regarding the difficulty in filling staff positions in an efficient manner. This proposed section 4-204 would give the office more flexibility in hiring staff.

The Charter Revision Commission may wish to consider adding a provision requiring that city council determine these officials' pay rate within the same pay grade. Currently, section 4-304 requires that the ombudsperson's salary is equal to that of the auditor general.

§ _- 100 Corporation Counsel

(New Article Located Under Neither The Executive Nor The Legislative Branches)

Proposed Language:

The law department is headed by the corporation counsel. The mayor shall appoint the corporation counsel, subject to approval of the city council. However, if the city council does not disapprove of the appointment within thirty (30) days, the appointment is confirmed.

The mayor, with the approval of city council by majority vote, may remove the corporation council without cause. The corporation counsel may be removed for cause by either the mayor or city council pursuant to section 2-107, paragraph 3.

The corporation counsel shall be responsible for advising and representing both the legislative and executive branches, and the elected and appointed officials thereof, in connection with their official duties and responsibilities.

Rationale:

A proposed new location for the office of corporation counsel and the law department has been suggested, under neither the executive nor the legislative branch, to reflect the needed independence of the position. This would enable the corporation counsel to serve both branches of government without fear of reprisal. Language has been added giving city council a role in removing corporation counsel without cause if initiated by the mayor. Corporation counsel is also subject to removal for cause pursuant to the provisions of section 2-107, initiated by either city council or the mayor.

During the past term in particular, and in previous terms as well, conflicts and perceived conflicts have arisen between the executive and legislative branches resulting in the need for legal counsel. Occasionally, the conflict has resulted in litigation, requiring special counsel for city council. However, most often, smaller perceived conflicts arise, limiting the efficacy of the services corporation counsel provides to city council. For example, if city council requests a legal opinion with respect to a proposal advanced by the administration, the corporation counsel – taking direction from the mayor – may be in a position of conflict if asked to give an unbiased assessment to the council. This has been an ongoing dilemma and there may be no easy answer.

However, the administration’s proposal that does no more than require that all legal advice and representation must come from the corporation counsel does nothing to address the problem. Further, the administration’s suggestion under section 4-121, “special counsel”, which provides, “[a]ny city appointee or employee, who is a member of the State Bar of Michigan but is without charter authority to act as an attorney, shall not be designated as outside counsel,” is without merit. A member of the state bar does not need charter authority to “act as an attorney.” That individual **is an attorney by virtue of membership in the bar. These provisions read together disempower city council by denying it adequate, responsive legal services. Another option must be found. Finally, the mayor’s commentary indicates that if city council were permitted to be represented by a city employee (presumably not a member of the law department), that individual would be “double dipping.” This comment is misleading. When attorneys from the research and analysis division (clearly, the mayor’s target) have represented city council, they have not been “retained” to do so, but rather have provided the services they are qualified to provide, and been compensated by their regular salaries.**⁵

⁵ The current problems with the inability of the corporation counsel to serve and represent both the mayor and city council equitably has never been more apparent than is evidenced by the administration's December 2, 2010 document to this body. The law department's participation in drafting and presenting the mayor's recommendations, which significantly undercut city council's authority and governmental role, was done without ever consulting with the council, and entirely at the mayor's direction.

§ 5-102 *The Executive Branch*

Proposed Language:

Except as necessary in performance of the duties of city council members' offices, administrative authority for the implementation of programs, services and activities of city government shall be the responsibility of the executive branch.

Rationale:

Language has been added eliminating the exclusive implementation of administrative functions by the executive branch, and authorizing Council to interact with executive branch officials **to the extent necessary in performance of the duties of their offices**. See also the discussion, *supra*, with respect to section 4-113.

§5-103 *Mayoral Appointments*

Proposed Language:

The mayor may appoint a secretary and other necessary assistants.

Except as otherwise provided by law or this Charter, the mayor shall appoint, and the city council shall approve, each department of the executive branch a director who serves as head of the department. As used in this chapter, "director" means the administrative head of each department regardless of the title or interim status of a particular director. However, if the city council does not disapprove of the appointment within thirty (30) days, the appointment is confirmed. Each Director can be removed by the mayor with the approval of city council.

Rationale:

Language has been added empowering Council to confirm appointment and termination of department heads. Again, this is an effort to balance the expectations of the citizens for increased access to services through the institution of a council-by-districts system. Council members will be able to more effectively account to the citizens if the departments delivering services are responsive to city council.

**The administration's proposals with respect to section 5-103 would allow for a greatly expanded administrative staff. Further, the administration's suggested additional language with respect to requiring that appointments to boards, commissions, and other multi-member bodies be made by the mayor, unless required by state law, would severely undercut the authority of city council and lead to further imbalance in the structure of governance. Such a suggestion would undermine the effectiveness of many boards and commissions that are currently in place, such as

the Cable Commission, where the relevant subject matter requires balance and independence between and among both branches of government.**

§ 5-108 Deputy Mayor

Proposed Language:

By a writing filed with the city clerk, the mayor shall designate a member of the mayoral staff or the director of a department of the executive branch as the deputy mayor. The mayor may terminate the designation without cause by filing a notice of termination with the city clerk.

During the absence, or temporary disability as established by a written qualified medical opinion, of the mayor, the deputy mayor shall be acting mayor and shall exercise all the powers and perform all the duties of the mayor to the full extent permitted by law, except that the deputy mayor may not:

- 1. Exercise any power of appointment to or removal from office, except in an emergency declared by a two-thirds (2/3) majority of city council members serving; or*
- 2. Approve or veto any ordinance or resolution within the first five (5) days of the seven (7) days allowed under section 4-119 for exercise of the mayor's veto power.*

Rationale:

This language defines “temporary disability” and differentiates it from “absence.” Because the last several Mayors have appointed persons whose permanent job title was “Deputy Mayor,” the Charter Revision Commission may wish to add language requiring that the mayor give official written notice to the clerk, whenever the deputy mayor is acting as mayor. See also the rationale, *supra*, regarding the definition of “absence” under section 2-105. Concerns arose during the previous administration when the mayor was absent for various reasons, as to whether or not the deputy mayor was acting as the mayor during those periods.

§ 5-109 Succession to Office

Proposed Language:

If a vacancy occurs in the office of mayor, the city council president shall succeed to the office until a new mayor is elected. When a new mayor is sworn in, the city council president shall return to his/her office.

Rationale:

This language clarifies that the city council president shall return to the position of council president following the swearing-in of an elected mayor, an issue that arose under the previous administration.

§5-10_ Community Meetings

Proposed Language:

During each calendar year, the mayor shall hold evening meetings in each of the districts of the City, with times and dates to be determined by the mayor.

Rationale:

The language requires that the mayor, like city council, hold community evening meetings during the year, and has been drafted to include the anticipated introduction of a council-by-districts structure. Experience teaches that many of the issues raised by residents at city council's evening meetings require administration action to resolve, and it would improve the responsiveness of local government if the mayor, like the city council, were available to discuss such issues with residents at convenient times on a regular basis.

§6-203 Current Planning

Proposed Language:

The planning department shall have continuing liaison with all agencies of the executive branch. It may assign any relevant study to any executive branch agency. Any agency, with knowledge and consent of the planning department director, may undertake the study of any development matter within the scope of its duties. The planning department shall receive all reports concerning development matters and other information that it requests. The planning department director shall, with the head of any agency involved, evaluate all reports and information received by the planning department in light of the policies, programs and priorities of the mayor and the master plan, as provided in the Michigan Planning Enabling Act, Sec. 49 (MCL 125.3849).

Rationale:

This language is proposed by the city planning commission to conform to state law.

§ 6-206 Executive Planning Council

Proposed Language:

The executive planning council is composed of:

1. *The planning director;*
2. *The director of each department of the executive branch (or a person from the department designated by the director) with responsibility in the following areas:*
 - A. *Housing.*
 - B. *Commercial or industrial development.*
 - C. *Transportation.*
 - D. *Recreation and parks.*
 - E. *Environmental protection.*
 - F. *Human resources development or public health.*
 - G. *Capital agenda and capital budget.*
 - H. *Enforcement of codes.*
3. *The city planning commission director;*
4. *Other persons whom the mayor may appoint including, where possible, the persons responsible for the development activities of other governmental and private organizations operating in the city.*

Rationale:

The sole purpose of the additional language is to add the city planning commission to the executive planning council.

§ [6-403] Civil Litigation

(Note: This section should be included in the Corporation Counsel article.)

Proposed Language:

The corporation counsel shall defend all actions or proceedings against the city.

The corporation counsel shall prosecute all actions or proceedings to which the city is a party or in which the city is a party or in which the city has a legal interest, when directed to do so by the mayor.

Upon request, the corporation counsel may represent any officer or employee of the city in any action or proceeding involving official duties.

No civil litigation of the city may be settled without the consent of the city council. Unless otherwise provided by ordinance, settlement of all pre-litigation claims shall be approved by city council.

The corporation counsel shall develop a procedure to annually issue memoranda to all city department heads summarizing claims that have been paid by the city and recommending possible ways to prevent claims from arising in the future.

Rationale:

In the past, issues have arisen involving settlement of large and sometimes controversial pre-litigation claims that were **not** presented to city council for approval. This proposed language would require city council to approve pre-litigation settlements. Additionally, it would require the corporation counsel to issue annual claims reports to the affected department heads in an effort to enhance risk management.

§ 6-506 Non-Discrimination

Proposed Language:

No city employee or applicant for employment may be discriminated against because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, familial status, marital status, or any status protected by the laws of the State of Michigan or the United States of America. The human resources department shall take all action permitted by law to ensure fair and equitable treatment of all employees and applicants for employment.

Rationale:

The current charter language was changed to reflect the protected classes under State law, including the Elliott-Larson Civil Rights Act and similar civil rights statutes, as well as to retain the current charter's reference to sexual orientation. "Disability" was inadvertently omitted as a specific category and should be added as a protected class, although it is encompassed by the catch-all "or any status prohibited by the laws of the State of Michigan or the United States of America."

§6-509 Classification of Positions

Proposed Language:

The human resources director shall prepare, maintain, and from time to time revise a classification plan for all positions in the classified service. The classification plan shall include an appropriate title for each class and a description of the duties and responsibilities of positions in the class. The human resources director may consult with the heads of city agencies in the preparation of those descriptions.

The classification plan and any revision of it shall be filed with the city clerk and shall be a public record. The plan or any revision shall become effective thirty (30) days after filing, except that, within the thirty (30) day period, the civil service commission may, on its own initiative or at the request of any classified employee or the head of any agency affected, review the classification plan or any revision and, after giving the human resources director a full hearing, may make changes if it finds upon clear and convincing evidence that the description or classification of any position or positions is improper.

Any changes to the classification plan, including title and scope of work shall be approved by city council. Such requests should be accompanied by detailed justification for the change(s).

Rationale:

This language is proposed by city council's Fiscal Analysis Division in order to provide greater oversight and control over departmental spending by tying it directly to specific job titles provided for in the city's jobs classification plan.

§ 6-516 Residence

Proposed Language:

The city may, by ordinance, establish residency requirements for city employment to the extent permitted by law.

Rationale:

The proposed language conforms to State law regarding residency requirements for city employment, leaving open the option of altering the requirement by ordinance in the event State law is changed.

§ 6-601 Department of Environment, Alternative and Renewable Energy, and Recycling

Proposed Language:

The Department of Environment, Alternative and Renewable Energy, and Recycling is headed by the director.

§6-602 General Purpose

The purpose of this chapter is to conserve and protect the natural resources of the City of Detroit in the interest of the health, safety and welfare of the people, to protect limited environmental resources for the future benefit of city residents, labor force and visitors, and to promote alternative, and renewable, energy and recycling.

§6-603 Powers and Duties.

The department of environment, alternative and renewable energy, and recycling shall:

- 1. Develop and implement a coordinated and comprehensive environmental policy for the City of Detroit;*
- 2. Administer, enforce, manage and coordinate compliance by the City of Detroit with federal, state and local environmental laws and regulations;*
- 3. Coordinate environmental programs for protection and conservation of land, water and air resources;*
- 4. Develop and implement programs for response to emergency conditions which pose an immediate danger to health and safety to the people of Detroit or to the city's environment;*
- 5. Provide consultation with City departments regarding the implementation of any policies or programs concerning alternative and renewable energy or recycling;*
- 6. Advise, consult and cooperate with agencies of the federal, state and local governments in furtherance of the purposes of this chapter;*
- 7. Develop and coordinate policy, programs and procedures for remediation, redevelopment and reuse of contaminated land sites in the City of Detroit;*

8. *Develop and coordinate policy, programs and procedures to encourage and promote innovative and competitively viable sustainable economic development in the City of Detroit consistent with protection of the environment;*

9. *Provide technical support and assistance to other city departments in environmental matters, including response to federal, state and local governmental enforcement activities; qualification for eligible grant moneys, etc.;*

10. *Develop plans and proposals for joint cooperative investigation and research with the public and with private agencies and organizations on methods for eliminating or reducing land, air and water pollution;*

11. *Collect and disseminate appropriate educational literature and information, and otherwise promote education programs for the purposes of advising the general public of the necessity and methods for pollution prevention, securing public cooperation in pollution prevention measures and increasing public awareness of the importance of environmental protection and conservation of natural resources;*

12. *Do any and all other acts which may be necessary for the implementation of the powers and duties conferred on the department under this chapter.*

Rationale:

The sole purpose of the proposed amendments is to add recycling and alternative and renewable energy to the responsibilities of the Department of Environment.

§ 7-301 Detroit Institute of Arts

Proposed Language:

The arts department is headed by a seven (7) member commission. The members of the commission shall be appointed by and serve at the pleasure of the mayor.

The term of membership on the commission is four (4) years, and not more than two (2) members' terms expire each year.

The commission shall appoint, with the approval of the mayor, the arts director and a deputy arts director. The director and the deputy director serve at the pleasure of the commission.

The arts department shall maintain and operate the Detroit Institute of Arts directly or pursuant to an operating agreement.

§ 7-1601 Detroit Zoo

Proposed Language:

The zoological parks department is headed by the zoological director. The zoological parks department shall maintain and operate the city's zoological parks directly or pursuant to an operational agreement.

§ 7-901 Detroit Historical Society

Proposed Language:

The historical department is headed by a nine (9) member commission. The members of the commission shall be appointed by and serve at the pleasure of the mayor.

The term of membership on the commission is four (4) years, and not more than three (3) members' terms expire each year.

The commission shall appoint, with the approval of the mayor, a museums director and a deputy museums director. The director and the deputy director serve at the pleasure of the commission.

The historical department shall maintain and operate the city's historical museums directly or pursuant to an operating agreement.

Rationale:

The purpose of the language added to sections regarding the DIA, the Zoo and the Historical Museums, is to reflect and authorize their management pursuant to operating agreements, while retaining city ownership and control over the underlying assets.

§ 7-1004 Duties [Human Rights Department]

Proposed Language:

Subject to policies established by the commission, the department shall.

1. Investigate complaints of unlawful discrimination against any person because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, familial status, marital status, or any status prohibited by the laws of the State of Michigan or the United States of America, in violation of any ordinance or law within the city's jurisdiction, and secure equal protection of civil rights without discrimination. The

city shall implement this section by ordinance. The human rights department may cooperate with other civil rights and enforcement agencies in the resolution of complaints, where cooperation is requested or where jurisdiction is concurrent.

2. Secure the rights of citizens to service from city government without discrimination; and

3. Endeavor to increase mutual understanding among the residents of the community, to promote good will, and to work cooperatively with other agencies of government, community groups and organizations, and other persons to eliminate discrimination and the results of past discrimination.

Rationale:

The current charter language was changed to reflect the protected classes under State law, including, the Elliott-Larson Civil Rights Act and other civil rights statutes, as well as retaining the current charter's reference to sexual orientation. "Disability" as a protected status was inadvertently omitted as a specific category and should be added, although it is encompassed by the catch-all "or any status prohibited by the laws of the State of Michigan or the United States of America."

§7-1102 Board of Police Commissioners

Proposed Language:

The police department is headed by a five (5) member board of police commissioners. The members of the board shall be appointed as follows: two (2) who shall be appointed by the city council, two (2) who shall be appointed by the mayor; and one (1) who shall be appointed by the mayor from a list of three (3) candidates submitted to the mayor by the city council. The term of membership on the board is five (5) years and not more than one (1) member's term expires each year. None of the board members may be removed by the respective appointing authority except for cause. In the case of city council, a 2/3 vote of city council shall be required to remove a member of the board. All members of the board must be residents and registered voters of the city. As nearly as possible, the board shall be representative of the total community. The board shall elect a chairman annually. A member of the board may not serve consecutive terms as chairman, nor may a person serve more than five (5) years consecutively as a member of the board. The board shall meet at the call of its chairman, but shall meet at least once each week. All meetings shall be public except that the board may, in its discretion, publicly reserve specified subjects for executive session, as permitted by law. No member of the board shall have been an employee or elective or appointive officer of the city within three (3) years prior to appointment or while serving as a member of the board.

Rationale:

The proposed language would change the appointment and removal process for police commissioners, adding a role for city council to reflect the importance of civilian control and neutrality of this oversight body. Since the chief of police is under the day-to-day control of the mayor, city council input into the composition of the board of police commissioners is especially important. The authority for compensation of board members has also been eliminated.

It should be noted that the need for increased balance and oversight of the police function, and particularly more equity in the appointment of commissioners, was also a prime motivating factor for city council in moving for charter revision at this time. The administration's proposals with respect to reducing the authority of the board of police commissioners runs contrary to this concern.

§7-1103 Duties of the Board of Police Commissioners

Proposed Language:

The board shall:

- 1. In consultation with the chief of police, and with the approval of the mayor, establish policies, rules and regulations;*
- 2. Review and approve the departmental budget before its submission to the mayor, and the Budget Director shall take direction from the Board in preparing the departmental budget;*
- 3. Receive and resolve, as provided in this chapter, any complaint concerning the operation of the police department;*
- 4. Act as final authority in imposing or reviewing discipline of employees of the department;*
- 5. Make an annual report to the mayor, the city council, and the public of the department's activities during the previous year, including the handling of crime and complaints, and of future plans;*
- 6. Confer with the Administration prior to negotiations with all departmental unions.*

The board may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the board shall apply to the appropriate court. The board may delegate in writing to a member of its staff the powers to administer oaths and take testimony. A delegation is revocable at the will of the board and does not prevent exercise of any power by the board.

Rationale:

The proposed language strengthens the board's authority with respect to the budget and gives the board input with respect to union negotiations. In the past, instances have arisen where the Police Department budget was initially approved by the commission, but then later changed by the mayor before it was submitted to city council for approval. It is deemed important to require consultation with the police commission throughout the budget process.

Contrary to city council's recommendation that the police commission be given **more oversight of the departmental budget, the mayor seeks to limit the commission's role further - to mere consult and comment before submission to the mayor. The mayor's recommendations suggest that current charter section 7-1105 be revised to indicate that the police department is headed by the chief of police, instead of the current hierarchy, which requires that the police department is headed by a five member board of police commissioners. The mayor's commentary indicates that the "Home Rule City Act does not require that the charter establish a Board of Police Commissioners." While that may be true, it is surely not prohibited, and in fact, the existence of the Board of Police Commissioners is the outgrowth of the rather notorious history of this particular police department in this particular community -- *i.e.*, S.T.R.E.S.S., the current federal consent decree under which the department is operating, etc.

§ 7-1105 Chief of Police

Proposed Language:

The mayor shall appoint a chief of police, subject to approval by the city council, who is skilled and experienced in police administration or law enforcement. The chief of police serves at the pleasure of the mayor.

§7-1106 Duties of the police chief

Proposed Language:

The chief of police is the chief executive officer of the police department and shall administer the department under the policies, rules, and regulations established by the board and shall:

- 1. Organize the department with the approval of the board;*
- 2. Recommend rules, regulations, and procedures to the board for its approval;*
- 3. Prepare the annual budget for the police department;*
- 4. Hire, promote, commend, transfer, and discipline employees of the department; have authority to suspend and discharge employees of the department under*

5. *Except as otherwise provided by the board, keep and control all property, books, records, and equipment belonging to the department or held by the department as evidence;*
6. *Submit to the board an annual report of the operations of the department for forwarding to the mayor, the city council, and the public;*
7. *Present annually a police department operations improvement plan. The plan shall be filed with the city clerk, distributed to the mayor and city council, and be a public record;*
8. *Exercise such other powers as conferred by the board;*
9. *Shall attend all meetings of the Board of Police Commissioners, to the extent practicable, and speak on any issue but may not vote.*

The chief, with the consent of the board, may appoint necessary deputy chiefs. The chief may attend all meetings of the board and speak on any issue but may not vote.

Rationale:

The proposed language gives city council a role in appointment of the chief of police, and adds the requirement that the chief of police attend meetings of the board of police commissioners. Due to the great significance of the position of chief of police, it is deemed important to make the position more responsive to the people than to the mayor alone.

§7-1114 Promotions [Police]

Proposed Language:

The chief of police shall make all promotions within the department. All promotions shall be with the approval of the board.

Promotions shall be made on the basis of competitive examinations administered by the director of police personnel except for positions above the rank of lieutenant or its equivalent. The division of police personnel will prepare all examinations with the concurrence of the board. No person who has taken an examination and has been placed on a register of employees eligible for promotion, may be passed over in favor of an employee with a lower examination score, unless the chief of police files with the board and the division of police personnel written reasons for the bypass, identifying the expertise or special skills the person possesses that are vital to the position, and the promotion is approved by four (4) of the commission members serving.

Rationale:

The proposed language requires specific reasons for bypassing merit test results. Adherence to objective test results, except in the presence of overriding special considerations of expertise or skills that are expressly disclosed on the record, are critical to Police Department morale.

§ 7-1401 Department [Transportation]

Proposed Language:

Except where the Department is party to a regional transportation system or joint operating agreement, the transportation department shall:

- 1. Own, maintain, and operate a public transportation system above, on, or below the surface of the ground, or in any combination thereof, utilizing technology known or to be developed;*
- 2. Operate the system within the city and to a distance outside the city as permitted by law;*
- 3. Exercise or recommend the exercise of other functions and powers provided by law or ordinance, including the specific powers of the city to finance transportation under sections 8-401, 8-503(4), and 8-602 of the Charter.*

Rationale:

The sole purpose of the proposed language would be to allow the transportation department to participate in a regional transportation system.

§8-102 Periodic Review [Planning Procedure]

Proposed Language:

After approval of the plan, every five years the mayor shall propose any amendments necessary to keep the plan current and the city council shall consider the mayor's proposed amendments and make the modifications in the plan that it deems necessary.

Rationale:

The proposed language is amended to require a five-year review of the master plan, which is consistent with common practice and easier to manage.

§8-104 Purpose of the Plan

Proposed Language:

The Master Plan of Policies is a set of guidelines that shall be considered by the Mayor and others in proposing, and the City Council in evaluating and implementing, specific proposals for the total development of the City and the benefit of its residents.

Rationale:

The proposed language **requires** consideration of the Master Plan.

§ 8-202 Capital Agenda [Budget]

Proposed Language:

1. *On or before November 1 (1st) each even numbered year, the mayor shall submit a proposed capital agenda for the next five (5) fiscal years to the city council.*

2. *The capital agenda shall state:*

A. *All physical improvements and related studies and surveys, all property of a permanent nature, and all equipment for any improvement when first (1st) erected or acquired, to be financed during the next five (5) fiscal years in whole or in part from funds subject to control or appropriation by the city, along with information as to the necessity for these facilities;*

B. *Capital expenditures which are planned for each of the next five (5) fiscal years;*

C. *The estimated annual cost of operating the facilities to be constructed or acquired; and*

D. *Other information pertinent to the evaluation of the capital agenda.*

For each separate purpose, project, facility, or other property there shall be shown the amount and the source of any money that has been spent or encumbered, or is intended to be spent or encumbered before the beginning of the next fiscal year and also the amount and the source of any money that is intended to be spent during each of the next five (5) years. This information may be revised and extended each year for capital improvements still pending or in process of construction or acquisition.

The city council may delete projects from the capital agenda as submitted to it, but it may not otherwise amend the capital agenda until it has requested the recommendations of the planning director. The city council shall not be bound by those recommendations and may act without them if they are not received within thirty (30) days from the date requested.

3. *The city council shall publish in one (1) or more daily newspapers of general circulation in the city a general summary of the capital agenda and a notice stating:*

A. *The time and places where copies of the proposed capital agenda are available for public inspection; and*

B. *The time and place, not less than two (2) weeks after the publication, for a public hearing on the proposed capital agenda.*

The head of any agency has the right, and it shall be a duty when requested by the city council, to appear and be heard.

4. *At the conclusion of its deliberation, but not later than March first (1st) of the following year, the city council shall approve a five (5) year capital agenda for the city. If the city council fails to take action by March first (1st), the proposed capital agenda shall be deemed approved.*

Rationale:

The proposed language changes the date on which the Mayor shall submit the proposed capital agenda to the City Council, to allow adequate time for Council to review the voluminous and complex document.

§ 8-203 Annual Budget

Proposed Language:

In accordance with law, the city shall establish by ordinance, dates upon which the mayor shall submit to the city council a proposed biennial budget for two fiscal years, and city council to complete consideration of the budget. Proposed capital appropriations shall be set forth in a separate section of the budget.

Before November first (1st) of each even-numbered year and prior to submitting a proposed operating budget, the departments of police, fire, public works, water and sewerage, recreation, health and public lighting shall conduct a public meeting to review programs, services and activities to be included in the budget and receive public comment.

Departments shall publish a general summary of program, service and activities funded in the current fiscal year, in one (1) or more daily newspapers of general circulation in the city. The summary shall include funds spent or encumbered in the current fiscal year. The notice shall be published not less than ten (10) days before the day on which the meeting is held, and shall state the date, time and place of the meeting.

Rationale:

The proposed language requires a biennial budget process, as opposed to the current annual process. Pursuant to the State Uniform Budget and Accounting Act, the approved operation budget must be an annual budget, so the second year budget would be an estimated budget for planning purposes. If the Charter Revision Commission agrees that biennial budgeting is desirable, the proposed language would have to be modified to reflect the distinction between an actual budget for spending purposes in the first year and an estimated budget for planning purposes in the second year.

§ 8-205 Form of Appropriation

Proposed Language:

All appropriations to each agency shall be made in lump sums to the agency's specific programs, services or activities or to additional classes as the mayor may recommend in the proposed budget, subject to amendment by deletion, addition or substitution by the city council. However, the accounts of each agency shall be maintained in such detail as required by generally accepted standards of financial reporting. A uniform system of accounts shall be established as required by state law.

The proposed and adopted budget shall contain a detailed listing of all city classified and exempt positions in support of the required appropriations in each agency necessary to fund the positions. This detailed listing of the positions is a required section of the budget. City Council approval of this detailed listing is required as a part of the budget process. All changes in the detailed listing of positions after the adoption of the budget during the operating year must be approved by the City Council.

The city council may request such supporting data for each appropriation, as it deems necessary.

Rationale:

The proposed language requires a modified program budget structure. While appropriations and revenues can continue to be made on a “program basis,” it requires city council approval for all changes to the associated **positions** in the budget, both during the budget process and during the operating year. Council would be required to approve all positions by title and number of full-time equivalents, allowing city council additional oversight of personnel issues.

§ 8-210 Amendments after Adoption

Proposed Language:

Excess Revenue Reporting After Budget Adoption: During the fiscal year, the mayor shall advise the city council whenever there are revenue collections in excess of those estimated in the budget.

Rationale:

Language has been added requiring the mayor to communicate the existence of unexpected surplus revenue during the fiscal year to city council.

§ 8-212 Deficits in Budget to Be Reported

Proposed Language:

Where, during the fiscal year, the head of an agency or a city-funded entity determines that his or her budget is in a deficit situation, the head shall immediately notify, in writing, the mayor and the budget director of the circumstances surrounding the deficit. Within ten (10) business days of notification, the budget director shall request a hearing with the city council to apprise the body of the situation and to provide necessary actions to remedy the situation.

Rationale:

The proposed language for this new section requires that city department heads that are deemed responsible for deficit spending appear before city council to assure that the State-required balanced budget is maintained.

§ 8-213 Revenue Estimate Consensus

Proposed Language:

The directors of the finance department, budget department, auditor general and city council's fiscal analysis division shall hold a revenue estimating conference two times per year.

The revenues under consideration shall include all general fund, solid waste fund, and risk-management fund revenues, and revenues of enterprise agencies that require a general fund subsidy.

Rationale:

The proposed language would require the budget department to have annual revenue estimating conferences with city council staff, and would improve the timeliness, accuracy and usefulness of revenue estimates in adopting the city budget by addressing issues of revenue earlier in the budget process.

§ 9-301 Regulatory Power and Review

Proposed Language:

The city may, in the exercise of its police power, enact, implement and enforce all laws, rules and regulations tending to the health, order, convenience, and comfort of the people and the city, for the prevention and punishment of injuries and offenses to the public, and for the protection of life and the security of property, to the maximum extent allowed by law.

The city's police power has for its object the improvement of social and economic conditions affecting the community at large and collectively, with a view to bring about the greatest good of the greatest number of people, exercised in conformity with applicable laws from time to time as varying social conditions demand.

Rationale:

The proposed language clarifies the language of the existing charter, and explicitly states that the city's police power is the extent of that essential power of local government as recognized by Michigan law.

§ 9-302 Appellate Review

Proposed Language:

All final decisions, findings, rulings and orders of any city administrative officer or agency under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, at a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

This section shall not be construed to diminish the right of any party to seek or receive any legal or equitable remedies in any court or other tribunal, pursuant to law or equity.

Rationale:

The proposed language conforms to the state constitution, article 6, section 28.

§ 9-507 Service Fees

Proposed Language

Any agency of the city may, with the approval of the city council, charge an admission or service fee to any facility operated, or for any service provided, by an agency.

The approval of the city council shall also be required for any change in any such admission or service fee.

Rationale:

The proposed language clarifies that city council must approve fee changes. The issue has arisen in the past that, although council must approve charging such fees, the law department has argued that they can subsequently be changed without council approval. In order to provide an effective check and balance on executive branch power to charge and modify fees, including giving the public the right to contest increased fees, it is deemed important to explicitly require council approval of all such fees and modifications.

§ 9-510 Incentives for City-Based Businesses

Proposed Language:

The city shall provide by ordinance for incentives to business entities located within the city of Detroit, to the extent permitted by law.

The city may adopt a purchasing ordinance with a system of incentives for Detroit-based businesses. The incentives may provide for businesses located in economic zones of the city, or for community-based enterprises, as defined by ordinance.

This ordinance shall be enacted no more than one hundred and eighty (180) days after adoption of this Charter.

Rationale:

The proposed language is amended to conform to current state law with respect to race and gender set-asides.

§ 9-701 Risk Management Council

Proposed Language:

The risk management council shall be comprised of:

- 1. A chairperson who shall be an appropriately qualified mayoral cabinet-level official, such as the chief operating officer, chief financial officer, or whoever has overall responsibility for operations management of the City, who shall be charged with the responsibility of overseeing the risk management council and its production of a strategic risk management annual report.*
- 2. The corporation counsel;*
- 3. The chief of police;*
- 4. The finance director;*
- 5. The human resources director;*
- 6. The auditor general; and*
- 7. A city council designee.*

Members may serve by deputy or a person designated from the department.

§ 9-702. Risk Management Department.

The risk management department shall be headed by a group executive risk management professional who is directly accountable to the mayor, with authority over safety, liability and risk reduction in all city government agencies and operations.

The risk management department shall make recommendations to the mayor, and shall have authority to implement the mayor's directives with the approval of city council, concerning implementation of policies, programs and activities to minimize exposure or liability of the city to claims and damages.

The risk management director shall annually investigate the administration and effectiveness of safety, liability and risk reduction functions in each city agency, and report findings and recommendations to the mayor and city council. The city shall make an annual appropriation for the operation of the risk management department that is adequate to perform these functions.

Rationale:

The proposed language addresses the need for a stronger risk management system, and requires additional reporting responsibilities for the risk management council. Additionally, a city council representative is added to the members of the risk management council.

Thank you for the opportunity to provide these recommendations. If this Body has any other questions or concerns, please do not hesitate to contact us.

Charles Pugh, President
Detroit City Council