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# City of Detroit

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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director   
Legislative Policy Division (LPD) Staff

DATE: November 27, 2018

RE: **Charter Revision; Overview and Issues**

As Council Members know, the ballot initiative for a general City Charter revision was narrowly approved by Detroit voters in the August 2018 primary election. A new 9-member Charter Commission was elected on November 6, 2018 to revise the City Charter, and sworn in on November 20. This preliminary report is provided to: 1) advise Council and the public of the general background for a Charter Revision Commission in 2018-19; and 2) identify selected issues from the 2012 Charter Revision, without limitation or exclusion of meritorious new issues that Council Members or other Detroit residents may raise in the forthcoming Charter revision process.

### Overview

One primary difference between the forthcoming Charter revision process and the one that generated the current Charter that became effective in 2012 is the very different background and purposes of the process.

The current Charter, adopted by the voters in November 2011, effective January 1, 2012, arose out of relatively clear circumstances and intentions. A rogue Mayor had engaged in a wide range of corrupt and unethical practices, and Detroiters learned that City Council was powerless acting independently under the Charter to do anything about it.<sup>1</sup> This was the immediate impetus for that

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<sup>1</sup> The ex-Mayor resigned after the first day of a removal proceeding before the former Governor, which was initiated and conducted by City Council and its staff, pursuant to state law.

Charter revision, which was initiated by Council prior to the regularly scheduled August 2018 date. The primary intention was to improve the Charter's forfeiture-of-office provisions set forth at Sec. 2-107, to deal with abuses of office, which complemented enhanced ethics provisions in the new Charter,<sup>2</sup> and secondarily to address concerns that the office of Corporation Counsel could not represent City Council adequately regarding issues involving conflicts with the Mayor.

Without attempting at this time to set forth a comprehensive list of all changes adopted in 2012, the new Charter also:

- 1) fixed some technical problems with a previous Council-by-districts initiative adopted by the electorate in 2009, and required the new Council to elect its own leadership (Secs. 3-108 and 4-103); and
- 2) introduced the following more significant new features compared to the previous 1974 Charter:
  - Attempted to create more independence from the Mayor in the Charter-mandated position of Corporation Counsel and the Law Department (Sec. 7-5.201);<sup>3</sup>
  - Required mandatory, pre-filing intra-government dispute resolution procedures before litigation can be initiated between branches of government, such as Council and the Mayor (Sec. 7.5-208);
  - Gave City Council confirmation authority over the appointment of six (6) key department heads (Sec. 4-111);
  - Introduced a new Inspector General position to root out "waste, fraud and abuse" (Sec. 7-5.301);
  - Introduced new Green Initiatives and Technologies provisions assigned to the Buildings, Safety Engineering and Environmental Department (BSEED) (Sec. 6-509), including a recycling mandate (Sec. 7-403);
  - Required proportional funding for oversight agencies (sec. 8-214);

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<sup>2</sup> The Charter Commission Chair characterized the new Charter's ethics provisions set forth at Sec. 2-106.1 as a "Cujo" model, after a fierce attack dog featured in a Hollywood movie of that name.

<sup>3</sup> The new Charter also expressly makes Corporation Counsel responsible for enforcing compliance with the Charter (Sec. 7.5-209). There has been a great deal of informal debate about this, which places Corporation Counsel in the uncomfortable position of serving both as trusted legal advisor to City officials, and also as the enforcer of the Charter against these same public officials who are their clients. Both the increased independence of Corporation Counsel, and its expressly designated role as Charter enforcer, like most of the other major innovations listed here, have been less than robustly implemented in practice since 2012.

- Proposed the creation of Community Advisory Councils (Sec. 9-101);
- Expanded the duties of the City’s Risk Management Council (Secs. 9-701 and 9-702); and
- Proposed city-sponsored insurance assistance (Sec. 9-801), a well-intentioned reform that, to LPD’s understanding, proved simply impractical as well as probably impossible under state law.

Several of the above provisions have proven difficult to implement, and may deserve further study and possible amendment or repeal in a new Charter revision process.

In contrast, the 2018 Charter revision was driven by no particular policy imperatives. Rather, the previous 1997 Charter had stated that a new Charter revision initiative proposal should be on the summer 2018 primary election ballot, and the 2012 Charter Commission simply adopted that language verbatim (Sec. 9-403). As noted at the outset, a slim majority of City voters voted for this next Charter revision.

**The complex question of which public policies, among an extraordinarily wide range of options, the new Charter Commission should address is wide open, and deserves serious consideration and consultation with Detroit elected officials and residents. And to be both fair and honest, serious consideration should be given to the axiom that “restraint is a far wiser course than revolution if chaos is to be avoided.”**

### **Discussion**

After adoption of the new Charter in 2011, which became effective in 2012, a few amendments were successfully submitted to the voters as Charter amendments and adopted at the next election:

- Sec. 2-106.4 Gifts and Gratuities: Authorizing an ordinance to determine what “other things of value” may be awarded but do not raise any serious ethical concerns.
- Sec. 2-106.5 One Year Post-Employment Prohibition: Narrowing this provision slightly to exempt personal service contracts, which do not present the same ethical concerns.
- Sec. 3-109 Nominating Petitions: Setting forth the specific number of petition signatures required for each elective office, instead of with reference to the number of votes cast at the preceding election.
- Sec. 7.5-203 Civil Litigation: Authorizing Corporation Counsel to take action on their own initiative pursuant to Sec. 7.5-209, rather than only when directed to do so by the Mayor.

The above amendments represented the technical issues that were most clearly problematic and easily resolved in the language of the 2012 Charter. In addition to them, Council and residents of the City may (or may not, depending on how they weigh the issues) wish to consider amending the following provisions:

- Sec. 7.5-201 Law Department: Provisions restricting City officials to receive advice and representation only from Corporation Counsel and the Law Department are unduly restrictive; City officials, including City Council when it is at odds with the Administration on particular issues, should have the same rights and scope of action as anyone else in Michigan when seeking legal representation and legal redress. This is especially problematic when lawyers hired by Council to advise them on matters are inhibited from doing so.
- Sec. 7.5-208 Intra-Government Dispute Resolution: These requirements, including the requirement that representation and advice come only from the Law Department and/or “outside” counsel, have proven to be cumbersome and to cause extreme delay in practice. They might well be eliminated, or significantly revised in some way that would make dispute resolution short of litigation more workable.
- Sec. 8-208 Budget Adoption: Expressly clarify that this applies to the Detroit Water and Sewerage Department (DWSD).
- Sec. 9-507 Service Fees: Expressly clarify that this applies to retail water, sewerage and drainage bills charged by the Detroit Water and Sewerage Department (DWSD).
- Sec. 7-1202 Powers of the Board of Water Commissioners: Expressly clarify that DWSD’s retail water, sewer and drainage charges shall be established by the board of water commissioners and shall be approved by the city council, as set forth in Section 56-3-12(c) of the City Code.
- Either delete or amend major innovations in the 2012 Charter listed above (green initiatives, community advisory councils, funding for oversight agencies, risk management council, and perhaps other provisions that could be improved after further study), that have so far proved in practice to be unworkable, generally at least in part because of drafting issues regarding their specific language.
- Provide that the Council President and President Pro Tem will be the two at-large members in order of the largest number of votes received, instead of Council electing its own leadership, which has proved to be very time-consuming and unnecessarily divisive in practice.
- Deal with the inherent conflict of interest plaguing Corporation Counsel as the official responsible for enforcing Charter compliance, where s/he also has to be trusted legal advisor for City officials and employees.

Based on events at the new Charter Commission’s initial meeting on November 20, LPD has a few friendly procedural suggestions intended to help the Commission organize itself to provide more control and direction over future meetings. The following are a few suggestions that may be passed on to the commission:

- Engage a person(s) to act as Parliamentarian for meeting and training for individual(s) if necessary;
- Adopt Robert's Rules of Order for parliamentary procedure;
- The CFO to draft for City Council's adoption a budget amendment that would determine the budget for the hiring of staff and for office space;
- Engage the Detroit Police Department to keep control of meetings, similar to how City Council's Executive Protection Unit serves City Council;
- Determine a general timeline on how the revision process will proceed, *i.e.* an overview of the current charter, engagement/comment process, writing process, etc.; and
- Determine where and how often the commission will meet.

LPD expects this will in all likelihood be only the first of many reports regarding the next Charter revision. There are many, many issues that may have to be debated and thought through in the course of making the Charter the most clear, useful and effective framework for local government that it can be. The above list of recommendations is most definitely not intended to be authoritative or comprehensive, only as a checklist of issues that have been the subject of previous consideration and debate. Council or residents may have other concerns, priorities or suggestions, and if so they should be brought forward. This preliminary report is intended to start that process and the conversations necessary to carry it forward.

If Council has any other questions or concerns regarding this subject, LPD will be happy to provide further research and analysis upon request.