

February 25, 2015

To: Roger Randolph, Clerk of City of Tucson

From: Kasey C. Nye, Chairman City of Tucson- Charter Review Committee

Subject: Chairman's Summary of Committee Recommendations for Public Comment

City of Tucson Charter

The City of Tucson's Charter is the organizational document that defines Tucson's system of government. The Charter – which can only be changed by voters — gives Tucsonans instead of the State legislature, the power to determine the organization and powers of their local government. Similar to the Constitution, the Charter determines local elections and the duties and responsibilities of the City's elected and appointed officials. Tucson's Charter dates back to 1929 when Tucson's population was only 32,000 people. Over the past 20 years there have been several unsuccessful attempts to comprehensively reform the Charter.

Committee Review Committee Process

Last April, Tucson's Mayor and Council voted to establish a Committee to review Tucson's Charter and recommend changes that could be put before City voters in the November 2015 election. The Committee is composed of 15 members, two appointed by the Mayor and each Council Member, with one member appointed by the City Manager. Mayor and Council also retained Raphael Sonenshein from the Pat Brown Institute of Public Affairs at California State University, Los Angeles to facilitate the Committee. Sonenshein is a noted professor, and author, with extensive practical charter reform experience having served as executive director of the Los Angeles Charter Reform Commission, which helped create the first successful comprehensive reform of the Los Angeles City Charter in 75 years.

Since it began working in August 2014, the Committee has deliberated for more than 33 hours at 11 public meetings. The Committee began by reviewing the entire Charter, discussing perceived problems, and brainstorming topics that merit possible revision. It observed a theme of lack of trust in City Government by the public around issues of effectiveness, responsiveness, accountability, and responsibility. The Committee decided to conduct an in depth review of Form of Government, Elections, Fiscal and Administrative Authority, and Access to Government provisions in the Charter. After establishing goals for its recommendations, the Committee undertook a systematic process that permitted every topic to be publicly deliberated on at no less than two separate public meetings. The Committee is now publishing recommendations for public comment.

Public Comment Period

The public comment period is open through March 20, 2015. Written comments may be submitted to the City Clerk's Office by email to Cityclerk@tucsonaz.gov , or by mail to: City Clerk's Office, P.O. Box 27210, Tucson, AZ 85726. The Committee will also conduct public hearings where members of the public may address the Committee directly on:

March 10, 2015, 5 p.m. - El Pueblo Neighborhood Center, 101 W. Irvington Road

March 12, 2015, 5 p.m. - Morris K. Udall Regional Center, 7200 E. Tanque Verde Road

The Committee will meet again on Wednesday, March 25, 2015 to finalize its recommendations after taking the public's input into account. The Committee's recommendations will be presented to Mayor and Council in April. The public will again have an opportunity to provide input to Mayor and Council which has until July 7th to determine whether to place Charter changes on the November 3, 2015 ballot. If so, Tucson voters will have the power to decide whether to change the Charter.

Goals

The Committee adopted the following goals for his recommendations:

- The Charter structure City Government to provide a sense of trust in City Government and City Leaders.
- The Charter provide for accountability to and representation of voters, residents, and taxpayers.
- The Charter provide that City Government be carried out through transparent processes with clarity about responsibility.
- The Charter strengthens City Government’s capacity to position Tucson for a prosperous future.
- The Charter structure City Government to give elected and appointed officials appropriate authority, tools, and flexibility to effectively serve people that live, work, visit, or do business in Tucson.
- The Charter structure City Government to attract high quality elected and appointed officials.
- Ensure that the Charter reflects the diversity and values of our community (multi-cultural, multi-partisan, value the arts, neighborhoods, environment, businesses and people, etc.).

Recommendations

The Committee’s has three categories of recommendations described below —

- (1) Recommendations to Define Responsibilities and Improve Accountability;
- (2) Recommendations to Eliminate Unnecessary Fiscal Restrictions; and,
- (3) Recommendations to Address Important Omissions and Cleanup Issues.

(1) Recommendations to Define Responsibilities and Improve Accountability

Tucson has a Council-Manager form of government. In a Council-Manager form of government a City Manager is responsible for directing City Staff to carry out the services provided by City Government. The City Manager is accountable to Elected Officials (Mayor and Council) who are responsible for setting policy as well as appointing, overseeing and directing the City Manager. Elected Officials are accountable to voters.

Tucson’s Charter, however, contains an unusual and confusing patchwork that spreads accountability for executive functions too diffusely among Mayor, Council, City Manager, and Department Directors. Tucson’s confusing patchwork of responsibility and accountability makes it unnecessarily difficult for City Government to be effective, and makes it unnecessarily challenging for people that live, work, visit, or do business in Tucson to access City Government or hold the City Government accountable if things go wrong.

In order to address these perceived problems, the Committee is recommending several possible amendments: (A) changes to the Mayor’s responsibilities, (B) changes to Council elections, (C) changes to the process for appointing and removing Department Directors, and (D) incorporating mutual respect and noninterference requirements from Tucson’s Code of Ethics Ordinance into the Charter.

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(A) Changes to the Mayor’s Responsibilities.

Under the current Charter, the Mayor is the elected chief executive of City Government and is responsible for setting the Council agenda and presiding at Council meetings. Despite having a vote to break a tie on some issues before the Council, the Mayor does not count toward a Council quorum and cannot vote on several significant matters such as removing the City Manager, Police Chief or Fire Chief, among others. The Committee voted to seek public comment on two alternative recommendations that would change the Mayor’s responsibilities:

Alternative 1. *Amend the Charter to grant the Mayor a full voice and vote on all matters before the Council and for the Mayor to count toward a quorum.*

Reasoning. This amendment would grant the Mayor the same authority that the Charter grants to Council Members on important issues such as whether to remove the City Manager, Police Chief or Fire Chief. The Committee unanimously agreed that, at a minimum, as the elected chief executive of City Government, the Mayor should have at least as much voting authority as Council Members in order to effectively lead City Government.

OR

Alternative 2. *Amend the Charter to eliminate the Mayor’s vote, but give the Mayor the responsibility to approve or veto all actions passed by City Council. Grant Council authority to override any veto with a supermajority (5 votes). If Alternative 2 is recommended, the Committee is also considering recommending adding a 7th Council Member to avoid tie votes and to make it easier for Council to override vetoes (5/6 to 5/7). The Committee is not contemplating adding a 7th ward, instead the additional 7th Council Member would, be elected in partisan at-large- elections (possibly with Wards 3, 5, and 6). The other Council Members would continue to represent the current 6 Wards. Adding a 7th Council Member is not required for Alternative 2.*

Reasoning. A veto is the kind of responsibility that the public expects the Mayor to have as Tucson’s elected chief executive. More importantly, a Mayoral veto/ Council override procedure would further the goal of increasing public trust in City Government by creating observable checks and balances that do not exist under the current Charter.

Alternative 1 had unanimous support, but Alternative 2 is preferred by a two-thirds majority (10-5) of the Committee.

(B) Changes to Council Elections.

The current Charter includes a unique election system for Council Members. Candidates must be residents of their Ward they intend to represent. Candidates must be nominated by their political party in a Ward-only primary. Party nominees then compete in a Citywide at-large general election.

Recommendation. *Retain the partisan elections but require candidates for Council to receive a majority of votes in the ward they are seeking represent in the general election.*

Reasoning. *This recommendation was the most controversial one for the Committee with strong proponents and strong detractors. Proponents point out that under the current Charter Council Members have often been elected to represent Wards that they lost the general election. They*

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argue that adopting this recommendation would make Council Members more accountable to the voters in the Ward they are elected represent instead of to the voters in other parts of the City. Detractors argue that the current Charter, makes Council Members accountable to the entire City while still maintaining geographic and ethnic diversity. They argue the current Charter forces Council Members to consider the interests of the City as a whole, and not just the narrow interests of the ward they represent which makes Council effective than in a ward only system.

(C) Changes to Department Director Appointment and Removal Process.

The current Charter contains a confusing patchwork of appointment and removal provisions. Further complicating matters, the current Charter applies an equally confusing patchwork to whether Department Directors are “at will” employees that may be terminated or moved for any reason including policy direction or have civil service protections to appeal discipline, removal or transfer to the Civil Service Commission to require the City to establish “just cause” Together these confusing patchworks hinder voters, elected officials, and City Manager’s ability to hold departments accountable.

Recommendation 1. *Change appointment and removal procedures as follows:*

- *Council’s appoints and removes the City Manager, City Clerk, City Attorney, and Magistrates with a majority vote (under Alternative 1 the Mayor would vote, under Alternative 2 the Mayor would approve or veto appointments subject to override Council);*
- *Granting the City Manager authority to appoint all other Department Directors with approval by a majority vote of Council (under Alternative 1 the Mayor would vote, under Alternative 2 the Mayor would approve or veto appointments subject to override Council);*
- *Granting City Manager sole authority to remove Department Directors.*

Reasoning. This amendment would greatly simplify and more clearly define the responsibilities of the City Manager and Elected Officials with respect to appointment and removal of Department Directors. Clearer responsibilities would help improve accountability. Department Directors would be accountable to the City Manager. The Manager would be accountable to the Elected Officials. Elected Officials are accountable to the voters.

Recommendation 2. *Make all Department Directors “at will” employees exempt from Civil Service Protections, except that the Police Chief and Fire Chief will retain their current limited advisory civil service appeal rights. **No change would be made to the civil service protections of rank-and-file employees.***

Reasoning. This amendment would grant the City Manager greater flexibility to make changes to department leadership and thereby put his or her, own management team in place to administer City business. This amendment would make department leadership more accountable to City residents and Elected Officials while protecting rank and file employees from undue political and special interest influence. The Committee found that the Police and Fire Chiefs have unique roles protecting the safety of the community that require some insulation from political influence. So the Committee voted for the Police and Fire chiefs to retain their current level of limited Civil Service protection.

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(D) Mutual Respect for Council-Manager Form of Government.

The current Charter does not expressly require the City Manager or departments to respect Elected Officials' policy setting and oversight authority. Nor does the current Charter require Elected Officials to respect and not interfere with the City Manager's responsibility for carrying out policies and delivering services. However, Mayor and Council adopted a Code of Ethics Ordinance in 2013 that expressly includes such a requirement.

Recommendation. *The Committee recommends incorporating the mutual respect and noninterference requirements in the Code of Ethics Ordinance into the Charter.*

Reasoning. It is important that the Charter is clear that both administration and elected officials understand and respect their roles under Tucson's form of government as established by the voters. The Ethics Ordinance articulates this principal well, and should be incorporated into the Charter.

(2) Recommendations to Eliminate Unnecessary Fiscal Restrictions

The current Charter contains a number of inflexible restrictions on the City's ability to manage its finances. The Committee recommends modifying or eliminating certain restrictions in the Charter that do not provide meaningful protections to taxpayers. Specifically (A) Modifying the Property Tax Cap, and (B) Eliminating the Prohibition on Pledging Sales Taxes.

(A) Modify the Property Tax Cap.

The Charter currently limits both primary and secondary property taxes to a combined total of \$1.75 per \$100 of assessed value.

Recommendation 1. *Modify this restriction to apply the \$1.75 limit only to the primary property tax.*

Reasoning. This restriction was incorporated into the Charter in 1969, when \$1.75 had the same purchasing power at \$11.29 does today. Tucson is also the only jurisdiction in Arizona that applies a cap to both primary and secondary property taxes in the aggregate. State law prohibits the Tucson increasing the primary tax more than 2% per year, making substantial increases to the primary property tax by the City Council impossible. Most importantly, secondary property taxes must be used to repay bonds that can only be issued with voter approval. Thus, no increase in the secondary property tax could occur without the voters' approval. The Committee found that the current cap on secondary property taxes prevents the City from even asking voters to consider capital project that could improve Tucson's infrastructure, neighborhoods, and economy.

(B) Eliminate Prohibition on Pledging Sales Taxes.

The Charter currently prohibits Tucson from using sales tax revenue to secure bonds financing (loans).

Recommendation. *The Committee recommends that this restriction be eliminated from the Charter.*

Reasoning. Again, Tucson is the only Arizona city with a Charter that prevents it from using sales tax revenues to secure the repayment of bonds. The Committee could not identify any reason that would arguably support retaining this provision in the Charter. The Committee believes that the City's inability to use sales tax revenues to secure the repayment of bonds forces Tucson to use less flexible financing vehicles that carry higher interest rates and other charges but provides no meaningful protection to taxpayers or the City's general fund in return. Removing this provision

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from the Charter would not increase taxes or make tax increases more likely, but it would allow the City to obtain financing on more favorable terms.

(3) Recommendations to Address Important Omissions and Cleanup Issues

The Committee observed important omissions and technical cleanup issues with the current Charter in order to reflect the Tucson community and its values, and reflect changes in the lives of Tucsonans since the charter was first created in 1929. Specifically (A) Adding a preamble; (B) Amending Enumerated Powers; and (C) Cleanup.

(A) Preamble.

The current Charter does not contain a preamble

Recommendation. *Add a preamble to the Charter to encourage interpreting and implementing the Charter in a manner consistent with the Tucson's core values including, among other things, valuing Arts and Culture, the Environment, Diversity, Transparency, Prosperous Economy, and Equal Protection of all Tucsonans.*

Reasoning. Despite not having legal force, Preambles can be important for shaping future policy debates, interpreting the Charter and Ordinances, implementing policies, and delivering City services. The Committee believes a preamble should be added to the Charter that reflects Tucson's values.

(B) Enumerated Powers.

The current Charter includes two extensive lists of enumerated powers that are very specific. At times the Charter's specificity is used to argue that the City lacks the authority to take actions. This problem has been emphasized by arts and culture community.

Recommendation. *Add specific language to the enumerated powers that makes clear the City has express authority to undertake and fund arts and culture projects. The Committee is also considering adding express references to the City's authority to act to implement such additional values as improving the Tucson economy, improving the environment, improving Government transparency, and improving access to government.*

Reasoning. A preamble does not have the force of law and does not expressly create authority for government action. The Committee believes Tucson City Government should have authority to take such actions as are necessary to implement community values.

(C) Cleanup.

The Charter exclusively uses masculine pronouns, has several numbering mistakes, refers to departments, positions and technologies that no longer exist or have been replaced (i.e. Transportation Director for Superintendent of Streets)

Recommendation. *"Clean up" the Charter to be gender neutral, repair numbering, and identify correct titles and departments; modify problem enumerations of powers and duties topics that refer to technologies or practices that have changed or are likely to change over time.*

Reasoning. Cleaning up the charter will make it a more usable document for future generations.

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Rejected Items

In its deliberations, the Committee considered possible amendments to various other areas of the Charter that merit highlighting as the public considers these recommendations. The following is a short list of notable items that were overwhelmingly rejected by the Committee include:

- Increasing the Charter's campaign finance limits.
- Increasing salaries for elected officials, or altering the Charter's process for changing elected official's salaries (the Tucson Elected Official Compensation Commission is currently deliberating whether to recommend increasing salaries for Mayor and Council).
- Imposing term limits.
- Increasing Charter imposed limits on sales and excise taxes.

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