



2014 TACOMA CHARTER REVIEW A LOOK AT HOW YOUR CITY WORKS

Chair Bill Baarsma – Vice-Chair Catherine Ushka – Secretary Justin Leighton

Theresa Baker Gary Brackett Mabel Edmonds Tim Farrell Eric Hahn Dr. Charles Horne Mark Martinez Jim Merritt John Messina Kenneth Miller Patricia Talton Justin Van Dyk

Wednesday, April 16, 2014 at 7:00 p.m.

Charter Review Committee Agenda

1. Call to Order
2. Roll Call
3. Public Comment
4. New Form of Government and/or Mayor/Council/CAO
 1. Change from a Council-Manager form of government to a Mayor-Council-CAO form
 2. Preamble
- B. Article I Incorporation and General Powers
 1. Discussion of other proposed changes to Article I
- C. Article II Legislative
 1. Composition of City Council
 2. Organization of the Council
 3. Mayor Pro-Tempore
 4. Vice-Chair
 5. Legal Counsel for City Council
 6. Discussion of other proposed changes to Article II
- D. Article III Executive Branch (Formally Administrative)
 1. Executive Powers and Veto
 2. Appointments by Mayor and Confirmation
 3. Chief Administrative Officer Re-Appointment Process
 4. Chief Administrative Officer
 5. Removal of the Mayor
 6. Discussion of other proposed changes to Article III
- E. Article IV Public Utilities
 1. Discussion of other proposed changes to Article IV



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- F. Article V Nominations and Elections
 - 1. Councilmanic Districts
 - 2. Discussion of other proposed changes to Article V
 - G. Article VI
 - 1. Discussion of other proposed changes to Article VI
 - H. Article VII
 - 1. Discussion of other proposed changes to Article VII
 - I. Article VIII
 - 1. Discussion of other proposed changes to Article VIII
 - J. Article IX
 - 1. Discussion of other proposed changes to Article IX
 - K. Article X
 - 1. Discussion of other proposed changes to Article X
 - L. New Article XI
 - 1. Discussion of new provisions
 - 2. Discussion of existing provisions moved to the new section XI
- 5. Other Items to be considered
 - 6. Communications
 - 7. Other Business/Unfinished Business
 - 8. Committee Comments
 - 9. Adjournment



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Proposed Amendments, Change in FOG

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- preamble page 4
- composition of the City Council page 5
 - a. seven members
 - b. full time
 - c. salaries set by commission
- organization of the Council page 7
- Council staff page 8
- removal of the Mayor page 9
- the Mayor's veto power page 10
- appointments and confirmation page 11
- the CAO page 12
- all-district Council page 13
- performance review of the CAO page 14

Change from a Council-Manager form of government to a Mayor-Council-CAO form

The practical change in form of government [FOG] takes place in specific articles and sections of the Charter and are discussed elsewhere. Here we look at the rationales for and against the overall change.

Rationale: American democracy rests on a few basic tenets, among them

- the right of the people to elect those who govern
- the separation of powers among branches of government
- the value of deliberation in the legislative branch
- and the value of energetic action in the executive branch.

In Tacoma's current form of government, one of two things is true: either executive power resides in the City Manager; or it lies with the City Council.

If the Manager is our executive, then we are violating the fundamental right of the people to elect our own leaders.

If the Council is our executive, then we blur separation of powers and a confusion of the legislative and executive roles.

Consider Federalist Paper 70, where Hamilton writes about the drawbacks of a "plural executive" - a council or tribunal with executive powers:

"the mere diversity of views and opinions would alone be sufficient to tincture [taint] the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness. But one of the weightiest objections to a plurality in the Executive... is that it tends to conceal faults and destroy responsibility."

Neither of these choices is acceptable, and an increasing number of American cities agree. Here for example is an abstract from *the American Review of Public Administration*:

“Increasingly, scholars of local governments are calling attention to a new era of municipal reform and to the convergence of the mayor-council and council-manager forms of governments. A major conclusion of this literature is that these two familiar ideal types no longer adequately describe the structure of most American cities.
[4.8.14]

It is consistent with the principles of American democracy, consistent with growing practice across the U.S. and simply logical that we have an elected executive to lead the city, accompanied by a professional to manage city government.

Against:

Here’ why the International City/County Managers Association [ICMA] endorses the manager-council form and opposes an elected executive:

“Professional managers, much like executives running private sector corporations, bring together the leadership, vision, and focus on results needed to create better communities by:

- managing financial and human resources;
- delivering services;
- planning strategically for community development;
- using [performance metrics](#) systems to drive continuous improvement; and
- committing to high [ethical standards](#).

ICMA believes that communities benefit most when professional managers operate in a council-manager form of government.”

Preamble

We, the people of the City of Tacoma, pursuant to the authority granted by the Constitution and Laws of the State of Washington, and in order to avail ourselves of all powers granted to us, to create a form of government that has all the strengths of an organization with a clearly identified and empowered leader in the form of an elected mayor, an independent council that has clearly defined legislative authority and a city administrator appointed by the mayor and approved by the council, to retain the benefits of professional administration of the workings of the city, do hereby enact this charter.

Rationale: This language parallels the preamble to the U.S. Constitution. It makes clear the major change in this version of the Charter.

Against: Previous versions of the Charter have no preamble. This particular preamble focuses exclusively on the form of government, and fails to mention other important parts of city government.

Article II

THE LEGISLATIVE BRANCH

Composition of City Council

Section 2.1 – The Council shall be composed of seven (7) Councilmembers nominated and elected, as provided hereinafter.

At the next general municipal election to be held in the year 2015 on the date prescribed by state law, there shall be elected seven (7) councilmembers for terms beginning on the second Monday in January 2015, as set out hereinafter in section 10.13. Biennially thereafter, on the date prescribed by state law for general municipal elections, four (4) councilmembers shall be elected for like terms of four years. Councilmembers shall continue in office until their successors are elected and qualified. City Councilmembers shall hold no other employment while serving their office. The Council shall constitute the legislative body of the City and shall have authority, except as otherwise provided in this Charter, to exercise all powers of the City. Councilmembers salary shall be set by the Citizens Commission on Elected Salary as provided by this Charter. (Amendment approved by vote of the people September 18, 1973).

Discussion Note: This Section proposes three substantive changes.

First, the number of Council members would be reduced from eight to seven.

Rationale: With the removal of the Mayor from the Council, and given the desirability of an uneven number of members, the most obvious choices are to expand to nine members or contract to seven members. The smaller number is preferable because it makes it somewhat easier to form a majority and so streamlines the Council's work.

Against: A smaller Council could be vulnerable to control by a few members.

Second, members would have no other employment.

Rationale: This change has four drivers, particularly in light of the near-full time status of several current Council members. First, to maintain checks and balances between the Council and the executive branch, members

need broad and deep knowledge of city issues; acquiring such knowledge is time consuming. Second, excluding other employment reduces the potential for a real or perceived conflict of interest. Third, a full time role would attract a wider set of candidates for office, since some people cannot reconcile Council service with full time jobs. Fourth, members may be more attentive to constituent concerns.

Against: This change would professional-ize the legislative branch. Some people would not run for office because they would not want to give up their jobs or careers or professions. And with their livelihoods at stake, Council members might be more likely to make “political” decisions to curry favor among voters, rather than make independent decisions based on what might be best for the City.

Third, salaries would be set by a citizen commission.

Rationale: The current charter contains specific and out-dated salaries. It is a violation of state law to specify salaries in the Charter; but it could be a conflict of interest to ask the Council to establish salaries. Only one current Council member is scheduled to leave office in 2015, and so the alternative of a disinterested Council committee is not feasible. The citizen commission - with appropriate expert support - is a proven model.

Against: Citizens chosen at random cannot be expected to understand the complexity of salary benchmarking, nor can they be expected to have a uniform or necessarily appropriate view of government costs and constraints.

Discussion note: These two sections would establish the roles of a) a Mayor Pro Tem and b) a Council vice chair.

Organization of the Council

Section 2.4 – One member of the council shall serve as the Mayor Pro-Tempore, who shall serve as the presiding officer of the Council and shall rotate among councilmembers by seniority of years served on the Council and by position number with the most senior Council member who is in the lowest numerical position shall serve as the first presiding officer of the Council upon enactment of this charter.

The Mayor Pro-Tempore shall serve as Mayor in the event of the Mayor's resignation, removal from office, when delegated as such by the Mayor in writing to the council or when the Mayor may not be able to perform the duties as outlined in this charter.

OR

Mayor Pro-Tempore

Section 2.4 - The Council, at its first annual meeting, by a majority vote may designate one of its members as Mayor Pro-Tempore. The Mayor Pro-Tempore shall hold office at the pleasure of the City Council. And in the case of absence or temporary disability of the Mayor perform the duties of the Mayor except for the power to appoint or remove any officer or to veto any acts of the City Council.

Section 2.5 - The Council shall select annually at their first meeting of the year a Vice-Chair who shall serve in the absence of the Mayor Pro-Tempore and reserves those powers as outlined by this charter provided to the Mayor Pro-Tempore.

Rationale: The underlying value in changing government is our right to be led by elected officials. The establishment of a Mayor Pro Tem protects this value, by providing for an elected council member to act as Mayor in the Mayor's absence. Establishing a council vice chair is purely practical, ensuring the council has leadership should its leader be called to act as Mayor.

Against: Placing a council member in the mayor's role runs the risk of an ill-prepared mayor pro tem. It would be more appropriate to make the CAO acting mayor, with exclusions related to appointments and veto power.

Section 2.6 – The Council shall have the power to hire, contract or appoint staff, including but in no ways by limiting, special legal counsel, legislative staff, or legislative assistances as so long as there is funding in the approved budget as outlined in this charter.

Rationale: Given the complexity and breadth of city government, the Council needs specialized expertise to carry out its functions and ensure checks and balances. Such expertise is most commonly budget analysis and policy development. Staff need not be full time or permanent, but may come thru individual contracts or from one of several public policy organizations.

Against: This section builds a legislative bureaucracy, unnecessary in a city of our size. The executive branch has ample expertise, and a full time council should be able to probe vigorously enough to ensure appropriate checks and balances.

Section 3.7 - The Mayor may be removed from office after a hearing, for willful violation of duty, or for the commission of an offense involving moral turpitude, upon written notice from a majority of the City Council at least five days before the hearing. He or she shall have the right to present, to the aid of counsel, to offer evidence and to be heard in his or her own behalf. Upon an affirmative vote of two-thirds of all members of the City Council, acting as a court of impeachment, the office shall become vacant.

Discussion note: Counsel is reviewing both the due process implications and the precision of the moral turpitude phrase.

Rationale: This is another check against inappropriate concentration of power in the executive branch. While actual removal may never come to pass, the possibility may help keep executives in line - or lead to their resignation.

Against: This dilutes the power of the executive and inappropriately strengthens the legislative branch. The risk is especially great if council members have executive ambitions.

Section 3.1

(1) The Mayor shall be the Chief Executive Officer of the City...The Mayor shall have all executive powers of the City. .To veto any ordinance or section thereof adopted by the City Council except as otherwise provided in the Charter.

Rationale: The ability to veto legislation is fundamental to checks and balances; its counterpart is the veto over-ride, discussed elsewhere.

Against: Executive veto sets the stage for long, complicated debate between the two branches.

Appointments by Mayor and Confirmation

Section 3.2 – The Mayor shall have the authority to appoint and remove the chief officer of each executive department; and shall appoint the members of all boards and commissions except as otherwise determined by this Charter. The appointments of the Mayor shall be subject to confirmation by a majority of the City Council. If the City Council refuses to appoint any nominee of the Mayor for a board or commission, then the Mayor shall within 90 days thereafter nominate another person, and may continue to nominate until appointment. If the Mayor fails to make a nomination within 90 days then the City Council shall select a suitable person to fill the office.

Rationale: While department heads and board/commission appointees are set forward by the Mayor, these individuals should also feel loyalty to the council. Shared or dual appointment emphasizes this value. Later, in Section 3.8, this shared loyalty is discussed more specifically in relation to the City Attorney. There are clear parallels in the “advise and consent” role of the U.S. Senate and confirmation responsibilities in state government.

Against: This is an unnecessary intrusion on executive powers, and weakens the Mayor’s ability to shape the administration.

Chief Administrative Officer

Section 3.4 – The Mayor shall appoint, subject to confirmation by City Council, a Chief Administrative Officer (CAO). The CAO shall be appointed on the basis of their training, experience, and other administrative qualifications for the office and without regard to their place of residence at the time of appointment, but during their term of office shall reside within the City. The CAO shall, under the general supervision of the Mayor, assist in administering city government. The Mayor will have the authority to remove the CAO. The salary of the CAO shall be fixed by the Mayor subject to approval by the City Council.

Rationale: This section ensures a professional manager be put in place to operate the city, thereby combining the best feature of the Council-Manager system with the benefits of an elected executive. The section also recognizes two distinctions: first, the difference between leading and managing; and second, the difference between managing city government and leading the city.

Against: A CAO is duplicative; an elected executive should be able to manage as well as lead the city.

Section 5.4

The qualified electors of each election district, and they only, shall nominate from among their number candidates for the office of council member of such election district to be voted for at the following general election.

Rationale: The change to an all-district council ensures equal geographic representation across the city, and makes it more likely council members will be personally known to their constituents. At large members overwhelmingly come from the north and west ends of the city, essentially over-representing those areas on the council.

Against: Since many issues are city-wide, geographic representation is less important than a broad perspective. At large members provide this perspective, freeing district members to address constituent concerns.

Article III

New Section

Current Charter Language

None

Recommended Language:

Article III, Section 3.3

Upon assumption of initial term of office or re-election of the Mayor, the City Council shall review the Chief Administrative Officer's performance and shall vote on whether to reconfirm the re-appointment of the Chief Administrative Officer, with the affirmative vote of a majority of the Council in a public meeting necessary to effect such confirmation. The first review and vote on whether to reconfirm the Chief Administrative Officer shall be set for 2015.

Rationale for Change:

The purpose of the Council/Mayor/Chief Administrative Officer (CAO) form of government (FOG) is to distinguish it from the Council/Mayor FOG by weakening the powers and potential Mayoral abuse of administrative functions and retain the goal of professional management as in the Council/Manager FOG.

The goal of the Council/Mayor/CAO is to provide the community with voter-approved executive (leadership and goal-setting) leadership by the Mayor and professional management by the CAO. The defined position of the CAO is to insulate the administrative powers of the city from any politically-motivated (constituent rewards or opposition punishments) actions of the Mayor.

To do so, the Council/Mayor/CAO FOG must have CAO qualifications and powers, as evidenced in our draft. But it also must have checks and balances. Even though the proposed FOG cites the CAO is responsible to the Council for the administration of all units of the city government, it

provides no Council powers for evaluation or to bring a maverick CAO to heel.

So far, the only check on the CAO is the initial confirmation by the Council and service at the pleasure of the Mayor. This situation captures the CAO under the authority of the Mayor. It is less Council oversight than is afforded the Council in the present Council/Manager FOG or by the Public Utilities Subcommittee's recommendation for Council oversight and reconfirmation of the Director of Utilities.

It might be considered that the Council should approve the "firing" of a CAO. However, the Council should be aware of the "firing" and prudently examine the appointment of another CAO. Thus, the Mayor is left free to judiciously collaborate with the Mayor's appointed CAO during the Mayoral term of office.

The effective date for this recommendation is set to coincide with the election cycle imposed with charter acceptance, if done so, by the electorate and the assumption of office by the present Mayor as so envisioned in the current draft of the FOG proposal. It also gives the Mayor the opportunity to appoint a new CAO upon the demise or removal of a presiding Mayor.

Rationale against Change:

This proposal diminishes the overall goal of the change in a FOG. The Charter Review Committee's majority has expressed its interest in providing the electorate the opportunity to select a FOG that will provide it with directly-elected executive leadership to affect changes in city policy and administration mirroring the public policy choices of the electorate.

The Mayor, with the help of a qualified administrator (CAO), must be able to direct the administrative functions of government in order to achieve the goals expressed during the election. If deprived of the power to affect the administration of the city, the Mayor will be left without actual power, retaining only the "bully pulpit," a power the Mayor presently has, even

being deprived of a vote on the Council as under the present Council/Manager FOG.

This is unnecessary and an overreach by the Council into the executive function of administration of government when Council powers should be restricted to legislative policy and budget approval.

It violates management principles by making the CAO responsible to two supervisors. The CAO would not be only accountable to the hiring and review authority of the Mayor, the CAO's nominal supervisor with whom the CAO shares the administrative duties of the city government.

That collaborative relationship between the Mayor and CAO must be strong for an effective development of budgets to fund administrative government and to carry out the goals of the Mayor as reflected in the Mayor's election mandate

April 16, 2014

Amendment XX: **Add to Article III, Section 3.3**

Re: City Council Override of Certain City Manager Decisions/Directives

Current Language:

Section 3.3: The Manager shall supervise and be responsible for the effective management of the administrative affairs of the City. He shall give the general direction to the programs and activities of all city departments and offices, except those removed from his jurisdiction by this charter, and shall be responsible for the proper execution of the policies set by the Council and the enforcement of all laws and ordinances. He shall keep the Council informed of the conditions and needs of the City and shall make such reports and recommendations as he may deem desirable or as may be requested by the Council.

Recommended Language:

Add to the end of Section 3.3: ... **By a majority vote of the Council, the Council shall have the authority to override a decision or directive of the City Manager when the City Manager's decision or directive is considered counter to the Council's intent.**

Rationale for Change:

The Council can only change a decision or directive of the City Manager by enacting an ordinance that could take longer than action dictates or by terminating the City Manager. The "nuclear option" of terminating the City Manager is an unrealistic option for decisions or directives that rest short of this action.

Rational against Change:

The risk of the Council micro-managing the decisions or directives of the City Manager may be considered too disruptive to the City Manager's ability to run the City.

End of Proposed Amendment.

ISSUE: Section 6.6 of the Charter prohibits City officers or employees (including elected officials and members of City boards and commissions) from entering contracts with the City if the employee has financial interest in the contract. Arguably, contracts involving electrical and water conservation measures administered by the City utilities, are void where City officers or employees as the beneficiaries of or participants in the conservation programs. Although state ethics law for municipal officers (RCW 42.23) and the City's Code of Ethics would allow such contracts under most circumstances, RCW 42.23.060 states that if the State ethics laws for municipal employees conflicts with any City Charter provision then the City Charter shall control if its contains stricter requirements than state law. The proposed amendment to the City Charter would allow City officers and employees to enter into contracts with the City to take advantage of conservation measures offered by the various city utilities and would avoid potential issues regarding the legitimacy of such contracts.

PROPOSED AMENDMENT TO ARTICLE VI, Section 6.6 for the purpose of allowing City Officers and Employees to enter into contracts with the City for utility electrical and conservation programs.

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Current Language

Section 6.6 - No officer or employee of the City shall have a financial interest, directly or indirectly, in any contract, sale, lease, or purchase with or for the use of the City; or accept, directly or indirectly, any compensation, gratuity, or reward from any other person who is financially interested therein. Provided, however, an officer or employee does not have a prohibited interest if the officer or employee has a remote interest as defined by state law. Violation of any provision of this section may work a forfeiture of the office of the person violating the same and the contract sale, lease, or purchase shall be void. (Amendments approved by vote of the people November 2, 2004.)

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Proposed Amendment

Section 6.6 - No officer or employee of the City shall have a financial interest, directly or indirectly, in any contract, sale, lease, or purchase with or for the use of the City; or accept, directly or indirectly, any compensation, gratuity, or reward from any other person who is financially interested therein. Provided, however, an officer or employee does not have a prohibited interest if the officer or employee has a remote interest as defined by state law or if the nature of the contract with the City is for the furnishing of electrical, water, or other utility services and conservation measures at the same rates and on the same terms as are available to the public generally. - Violation of any provision of this section may work a forfeiture of the office of the person violating the same and the contract sale, lease, or purchase shall be void. (Amendments approved by vote of the people November 2, 2004.)

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