



Charter Review

Administrative Subcommittee Agenda

Tacoma Municipal Building North, 733 Market Street, Room 12
www.cityoftacoma.org/charterreview

March 18, 2014 – 7:00 p.m.

1. Call to Order
2. Roll Call
3. Approval of the Minutes of the March 5, 2014 Special Meeting
5. Review and Discuss Committee Criteria and Assignments
6. Public Comment
7. Committee Comments
8. Adjournment



The Legislative Function

In the Council-Manager Model, the Council was envisioned to serve in the role of a Municipal Corporation's Board of Directors. It performs the traditional role that one would find in the private or non-profit sector in that the duties are:

To govern the organization by establishing board policies and objectives;

To select, appoint and support and review the performance of the chief executive;

To ensure the availability of adequate financial resources;

Approve the annual budget;

Be held accountable to the stakeholders for the organization's performance;

Set salaries and compensation for the management of the organization.

State laws require the council to perform other duties, of course.

In the Mayor-Council Model, the Council performs more traditional legislative functions in several ways:

The council is a separate branch of government that runs its own meetings, sets its own agenda and selects its own presiding officer;

The council has its own, independent staff that serves at the pleasure of the body;

The council has the authority to promulgate its own ordinances or resolutions;

The council has the authority to confirm all major administrative appointments made by the mayor;

The council can pass its own ordinances through a two-thirds vote which would override a mayor's veto.

Alternatives to Article Three (The Administrative Branch)

Spokane Model (Mayor-CAO-Council) vs. NCL Model (Mayor-Council-CAO)

Features that are provided for or allowed in both models:

The Mayor is the chief executive officer duly elected by the voters in the jurisdiction.

The Mayor has the authority to appoint administrative heads subject to council approval (advise and consent).

The Mayor has the authority to remove department heads.

The Mayor prepares and presents a budget to the council. A budget message is submitted that sets forth the programs proposed for the city during the coming fiscal year.

The Mayor presents an annual "state-of-the-city" address to the council.

The Mayor has the power to veto ordinances or parts of an ordinance passed by the council with the council having the power to override the veto by a two thirds vote. (Check and balances).

Position of the Chief Administrative Officer in the Spokane Model:

The Spokane City Charter simply states that the Mayor can appoint and remove a CAO and can determine the title of the office (deputy mayor for example). The council does not confirm the appointment. The CAO shall "be under the supervision of the mayor and shall assist in the administering of the city government." The salary of the CAO shall be set by the Mayor subject to council approval.

Position of the CAO under the National Civic League Model:

The NCL describes a "shared authority" model where the CAO is nominated by the Mayor and approved by the council. The CAO serves under the supervision of the Mayor and can be removed by the Mayor. Unlike Spokane, the NCL recommends that the CAO's qualifications and duties be spelled out in the charter. The qualifications should mirror those of a city manager. The duties of the CAO, as enumerated, include: assisting the mayor in formulating the budget and capital programs presented to the council, providing central coordination of administrative agencies, assisting the council, if asked, in handling its policy-making authority and assisting the mayor in the recruitment of the key managers requiring approval by the council.

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Charter Review Committee, Sub-committee Analysis

Date: March 8, 2014

Review Members: Catherine Ushka
Eric Hahn

Article Reviewed: Article III

Section(s): 3.5/3/6

Titled: City Attorney

Summary:

Section III, Section 3.5: defines the method in which the City Attorney is hired and the Attorney's subsequent power to hire and terminate those reporting to him or her.

Section III, Section 3.6: describes the responsibilities of the City Attorney as they pertain to "the City Council, Manager, and all officers, departments, and boards of the city in matters relating to city affairs," and other legal responsibilities.

1. Other Articles and Sections related to this Section

Article III, Subsection 3.2: describes the relationship between the City Manager and the Council. In particular: "except for the purpose of inquiry, the Council and its members shall deal with administrative officers and employees under jurisdiction of the Manager solely through the Manager. Neither the Council nor any member thereof shall give orders to the Manager's subordinate . . .

2. General Analysis: Strengths, Weaknesses, Opportunities, Threats of this Policy

Strengths (internal):

Subsection 3.5

1. City Manager can select someone that is closely tied to his or her management philosophy, personal mission, vision, and values.
2. City Attorney has ability to appoint and remove those individuals that he or she believes support his or her management philosophy and are compatible his or her personal mission, vision, and values.
3. By extension, those reporting to the City Attorney would also be aligned with the City Manager.

Subsection 3.6

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1. The City Attorney is available to consult with and assist the Mayor/City Council in all matters legal that pertain to City Affairs.
2. The City Attorney is available to review all legal documents germane to City Affairs as requested by Mayor/City Council

Weaknesses (internal):

Section 3.5

1. City Manager is the final determinant in the selection of key administrative personnel. This could result in selections determined by the City Manager's predispositions and not the best candidate possible.
2. The relationship between the City Manager's appointed City Attorney and the City Mayor/Council can be determined or influenced by the relationship of the Manager to the Council. This could lend itself to potential benign or hostile conflicts between the City Attorney and the Mayor/Council, as they have no ability to influence the City Attorney's hiring or termination.
3. Potentially, inquiries made by Mayor/Council Members could either not be responded to or limited in response and supported or justified by the City Manager.

Section 3.6

1. A conflict of interest potentially may exist as a result that the City Attorney responsibility is to the City Manager and not to the Mayor/City Attorney.

Opportunities (external):

Section 3.5

1. Structure Change could make the hiring of the City Attorney more indicative of a broad City philosophy and not that of one person, which could enhance prospects of finding better candidates.
2. Structure change could make the hiring of the City Attorney's subordinates subject to oversight by more than one person (City Manager) so there are assurances of a more objective hiring practice, which could broaden the pool and objective selection of qualified candidates.
3. Hiring changes of key administrative personnel such as the City Attorney to require advice and consent of the City Council. Thereby, assuring broader acceptance by Mayor/Council Members, and the selection of candidates potentially more diverse and/or capable of supporting legislative driven policies.

Section 3.6

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1. Reporting structure change so the City Attorney reports directly to the City Council could afford the Council the capability to act in a more timely and well-informed matter, thereby enabling better decision-making and the ability to act upon ideas without delay. Enhancing the Council's capabilities in this manner could impact the growth and development the City in a positive and progressive way.
2. Reporting structure change could limit any potential for adverse representation by the City Attorney because of serving a conflicting client (City Manager).

Threats (external):

Section 3.5

1. City growth and development could stagnate because of a recalcitrance City Manager as currently empowered by the Charter, and the subsequent impact on the support that the City Attorney may feel compelled to withhold from the Mayor/Council.

Section 3.6

1. City Manager's ability to *broker* the interaction, and therefore the relationship, between the City Attorney and Mayor/City Council could inhibit timely and responsive support, as well as comprehensive responses from the City Attorney, and thereby, inhibiting the Mayor/Council's ability act.
2. As a result of an assertion of a claim by the Mayor/City Council against the City Manager, or vice-a-versa, the City Attorney may find him or herself unable to provide fair or biased representation to either party, thus requiring the unnecessary expense of outside counsel.

3. Opinions for Consideration

1. **Solutions to the City Attorney's Charter Imposed Conflict of Interest Problem, by Heather E. Kimmel, Ohio State University, 2005**
(Excerpt)

The law of ethics for city attorneys in conflict of interest situations is fundamentally

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unclear. City attorney conflicts of interest have recently been reported in the media with some frequency. Because of the prevalence of such conflicts and the degree of disruption they cause, the problem must be addressed. Although the first requirement in determining whether there is a conflict of interest is to “clearly identify the client,”¹²⁰ no useful model exists that takes account of the city attorney’s charter-imposed duty to represent the mayor and the city council at the same time. Considering the city attorney’s ethical obligations in the context of the method of her selection and the scope of her representation is helpful in minimizing some types of conflicts of interest, but inadequately addresses other types. Because of this uncertainty, solutions that avoid conflicts of interest need to be explored.

Providing the city council with its own permanent representation via a charter amendment both clearly identifies the client and at the same time removes the possibility of conflicts of interest when the mayor’s interests are different from the council’s interests. This is the best solution and one that can be implemented in every city.

2. American Bar Association Model Rules of Professional Conduct

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing

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4. Conclusions/Recommendations

Article III may have the potential to lend itself to creating a conflict of interest for the City Attorney in who he or she serves, and subsequently the quality of service that is extended to the Mayor and/or City Counsel. It also could sponsor poor hiring practices with regards to key administrative positions because it empowers the City Manager with sole authority. These issues could inhibit communications between the key support by administrative personnel by way of the City Manager's capability to control and broker the relationship between them and the Mayor and City Counsel.

While this cursory analysis suggests that a change to Article III is necessary, there are far too few data points available to make that conclusion.

It further research is necessary, and that documented best practices from studies and cities with demonstrated histories of success be produced.

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