



CRC MEMORANDUM



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THE PROPOSED DETROIT CITY CHARTER

The Charter Revision Commission, elected in November 2009, has proposed a new charter for the City of Detroit to be presented to Detroit voters at the November 8, 2011 election. The proposed charter does not represent a significant break with the past, but rather a revision of the present charter, which was adopted in 1997.

If the proposed charter is approved, it will take

effect on January 1, 2012. If the ballot question fails at the November 8 election, the commission may resubmit a revised draft or the same charter at a subsequent election. The three-year life of the Charter Commission will expire in May 2012. If the question also fails at a second election, the 1997 Charter will remain in effect. Voters would then be asked in 2018 whether to call for a Charter Revision Commission.

Introduction

The 1963 Michigan Constitution provides that the electors of every city have the right and responsibility of home rule. That right is enshrined in the city charter, which is written by locally elected charter commissioners, approved by the Governor, and adopted by the voters, within constraints established by Article VII, Section 22 of the 1963 Michigan Constitution and state statutes including the Home Rule Cities Act (PA 279 of 1909).

A city charter establishes the form of city government (strong mayor, weak mayor, and council/manager are common forms of city government) and the critical (and often state-mandated) processes associated with elections, budgeting, accounting, and planning. Charters establish key departments, but should allow sufficient flexibility in organizational structure for elected officials to meet changing conditions and needs. While some would argue that municipal charters are not intended to mandate programs, local charters (and state constitutions including Michigan's) have been used to establish specific programs valued by voters, enshrining and protecting those programs from change by elected officials.

Detroit Charter History

City residents in Michigan have not always enjoyed the right to establish their own governmental structure and rules. Prior to the 1908 Michigan Constitu-

tion, city charters were written by the state and imposed on local communities: Detroit's charters of 1802, 1815, and 1857 were written by the state legislature. In 1918, Detroit electors adopted the city's first home rule charter with a strong mayor form of government and a City Council with nine members elected at-large on a nonpartisan basis (the city's previous, state-mandated, legislative body had 42 members, with two elected from each of 21 wards, on a partisan basis). The second Detroit-developed home rule charter replaced the first on July 1, 1974. The current Detroit City Charter was approved by voters on November 5, 1996 and became effective on January 1, 1997. This charter requires that the issue of charter revision be submitted to the voters at the gubernatorial primary of 2018 and every fourth gubernatorial primary thereafter and provides that the issue of charter revision may also be submitted to the voters at other times in the manner provided by law. Accordingly, the Detroit City Council determined by a three-fifths vote to place the issue of charter revision on the ballot on May 5, 2009, and the electors of the City of Detroit voted to create a Charter Revision Commission to rewrite the 1997 charter. At the following general election on November 3, the nine members of the Commission were elected.

There were a number of reasons why Detroiters were ready to revisit the charter. High profile elected and appointed city officials had been charged with (and subsequently convicted of) criminal offenses, and



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the existing charter provisions for removing city officials from office proved to be ineffective. Vacant and dilapidated houses, storefronts, and factories littered the city, and some areas that were formerly neighborhoods had become largely vacant fields. The 2010 census would reveal that the city's population had declined from over 1.8 million in 1950 to about 714,000 in 2010, and that

the number of city residents had declined by a fourth just in the prior decade.

Charter Revision Commission

The Commission held a series of community meetings and "conventions" with citizens to exchange information about the city and its charter. That process resulted in over 570 proposed revisions

for the Commission's consideration, many addressing topics other than basic structural and procedural issues. Among the revisions included in the proposed charter that will be offered for voter approval are a number of provisions intended to reduce corruption as well as programs including green initiatives, city-wide recycling, and a feasibility

Highlights of Proposed Detroit City Charter

Elected and Appointed Offices:

- City Council: 7 members elected by district and 2 elected at large
- Board of Police Commissioners: 7 members elected by district, 4 appointed
- One year residency required at time of filing for elective office
- Requirements that members of various boards and commissions be appointed from non at-large districts

Prevent and Detect Corruption:

- Ethics provisions and structures
- Forfeiture and removal provisions

Departmental Changes

- Executive branch reorganization to reflect current status
- New "independent" branch of government
- New Office of Inspector General

New Governmental Processes

- Intragovernmental dispute resolution
- Proportional funding for independent departments
- Revenue estimating conferences
- Budget deficit notification requirement
- Process to eliminate redundancy
- Restrictions on departments' rule making authority
- Board of Review to hear appeals of Planning and Development administrative decisions

New Programs

- Green initiatives
- Feasibility study of city sponsored auto and property insurance
- City wide recycling

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study of the city providing auto and property insurance.

The Commission submitted a proposed charter to the Governor on May 31, 2011 and submitted further revisions to the Governor on June 17. Based on 15 issues identified by the Attorney General, the Governor returned that proposal to the Commission without his approval. Revisions were made and the charter was resubmitted to the Governor on August 16, 2011; further revisions were submitted on August 22. On August 25, the Governor approved the revised proposed charter, clearing the way for the proposal to be placed on the city's ballot on

Elected Offices

The proposed charter retains the strong mayor form of city organization and the elected city clerk, but provides that seven of the nine Detroit City Council members would be elected from non at-large districts and provides that seven of the 11 members of the Police Commission would be elected from non at-large districts. A new requirement was added for any individual seeking city elected office: that person must have been a resident and registered voter in the city for a full year at the time he or she files to run for city office. Those seeking election from a non at-large district must have been a resident and registered voter in that district for a year prior to filing. The term of office for all elected city officers is four years.

November 8, 2011.

While home rule city charters are written by locally elected charter commissioners, those charters must be consistent with state requirements. Approval by the Governor essentially confirms that the provisions contained in the proposed charter are consistent with constitutional and statutory requirements. Approval by the Governor does not mean that a proposed charter contains the most effective, efficient, or responsive structure, processes, or programs.

Proposed Changes

The proposed charter does not

represent a significant break from the current or prior Detroit City Charters. Rather, it is a revision of the current charter. Changes proposed by the Charter Revision Commission to the existing charter can be broadly categorized as the redefinition of elected and appointed positions; structures and processes to prevent and detect corruption; and strategies to increase citizen involvement, reflect current state law or existing city practice, improve planning and management, and improve the lives of citizens.

The following analysis describes the most important changes proposed.

City Organization

At the November 2009 general election, voters approved a referendum that would change the method for electing City Council members from the existing nine members elected at-large to seven members elected in non at-large districts and two members elected at-large, effective in 2013. This change was included in the proposed charter, with districts (also called "wards") that are to be established by City Council.

While the person receiving the most votes automatically became City Council president and the person receiving the second highest number of votes became president pro tempore under the 1997 charter, the proposed charter authorizes City Council members to select the president and president pro tempore by majority vote at the first regular Coun-

cil session. The Council president and president pro temp may be removed from those leadership roles by a unanimous vote of the other members, according to the proposal.

In a new provision, seven members of the Board of Police Commissioners would be elected, one from each of the non at-large districts. An additional four Police Commissioners would be appointed by the Mayor, subject to City Council approval.

Vacancies in Elected Offices

A vacancy in the office of Mayor would continue to be filled by the City Council President (who, as noted previously, would be selected by Council from among the members), who would serve until a newly elected Mayor takes

office. A vacancy in City Council would be filled by appointment by a two-thirds vote of Council members, and that appointed member would serve until an elected member takes office (a new provision). A vacancy in the office of City Clerk would be filled by an individual selected by the City Council; that person would serve until replaced by someone elected to fill the unexpired term (a continuation of the current provision). A vacancy on the Board

of Police Commissioners would be filled by mayoral appointment subject to City Council approval, of a resident from the appropriate district, who would serve until an elected member takes office. In each case, the unexpired term would be filled at the next general election held not sooner than 180 days after the vacancy occurred.

The proposal provides that a regular city general election to fill elective offices of the city shall

be held on the first Tuesday after the first Monday in November, 2013, and every four years thereafter. Vacancies are to be filled at the next general election, which is defined as a city-wide election regardless of whether its purpose is to fill national, state, county, or city offices. Under state law, general elections are held in November of even numbered years. Under the proposed provision, the need for costly special elections to fill city vacancies would be eliminated.

City Organization and Departments

The proposed charter maintains the City Clerk and mandates the City Election Commission and Department of Elections as separate from the legislative and executive functions. The Office of the City Clerk is responsible for serving as City Council's clerk and maintaining records including city ordinances and resolutions. The Election Commission and Department of Elections are not required by state law, which allows the City Clerk to appoint assistants to help with elections, and may well increase cost pressures on the city.

Legislative Branch

The legislative branch would continue to be headed by the City Council, which adopts ordinances and resolutions; approves the budget and capital agenda, and has a number of other responsibilities. City Council would continue to appoint the nine members of the City Planning Commission, but one of the members would be appointed from each of the seven non at-large

districts. City Council also appoints the members of the Board of Review, which hears property assessment appeals. The City Council would appoint at least seven members to the Board of Zoning Appeals, with one from each the seven non at-large council districts. The Board of Zoning Appeals would have expanded authority not just to hear appeals from the administrative decisions of the Buildings, Safety Engineering, and Environmental Department and to hold hearings on non-conforming uses and structures and requests for variances, but also to hear appeals from administrative decisions of the Planning and Development Department, providing a new restraint on the executive branch.

Executive Branch

The Mayor is the chief executive of the city and is authorized to appoint the director of each executive branch department. The proposed charter removes the requirement that each executive

branch department director must appoint a deputy. Instead, the department director may, with the Mayor's consent, appoint a deputy.

The executive branch includes both programs that provide services directly to citizens and staff departments that support those programs by providing functions such as hiring, purchasing, accounting, etc. The organization of departments in the executive branch differs somewhat in the proposed charter (See Box on page 5).

The current charter allows the Mayor to assign the functions of an operating department to a staff department, reassign the functions of operating departments, combine operating departments, and create new departments (though not more than 36 departments may be included in the executive organization plan, exclusive of any department created under specific statutory authority). The proposed char-

Charter Departments in the Current and Proposed Detroit City Charters

Current Charter

Staff Departments

Budget
 Planning
 Finance
 Law
 Human Resources
 Environmental Affairs

Programs, Services and Activities

Arts
 Building
 Community and Economic Development
 Consumer Affairs
 Public Works
 Fire
 Historical
 Human Rights
 Police
 Public Lighting
 Recreation

Proposed Charter

Staff Departments

Budget
 Planning and Development
 Finance
 Human Resources
 Buildings, Safety Engineering, and Environmental

Programs, Services and Activities

Arts
 Public Works
 Fire
 Historical
 Human Rights
 Police
 Public Lighting
 Recreation
 Transportation
 Water and Sewerage
 Zoological Park

ter reflects the reassignments that have been made: Buildings and Safety Engineering was combined with Environmental Affairs; Community and Economic Development was combined with Planning. The proposal directs the Planning and Development Department to establish four strategic plans: one that supports community development including the creation and support of stable planned communities; one that pursues global trade; one for recruiting and retaining businesses; and one focused on emerging industries.

New language that reflects current operations provides that the Arts, Historical and Zoological Departments may be operated “directly or pursuant to an operat-

ing agreement.” This reflects the reality that each of these city-owned institutions is operated pursuant to an operating agreement with a non-profit entity. Continuing inclusion of these departments in the charter makes it more difficult for them to achieve independence, even though the city is currently unable to provide financial support at previous levels.

Detroit’s current and proposed charters prescribe more departments than does the average Michigan city charter. The prescription for these departments in the charter constrains the ability of the Mayor and City Council to react to changing service and financial needs. Elimination of a department from the charter does

not mean that that department would cease to exist, only that its special charter protection would be removed.

Shift in Power between Executive and Legislative Branches

The proposed charter strengthens the City Council and transfers certain authorities from the Mayor to the City Council. City Council would be strengthened by its new ability to elect and remove its own president and president pro tempore. The proposed charter also expands the authority of City Council to approve mayoral appointees: City Council approval would be required for the mayor’s appointments of the Chief of Police, Fire Commissioner, Director of Planning and Development, Di-

rector of Human Resources, and Corporation Counsel (the 1997 charter only required City Council approval of the Corporation Counsel). The four members of the Board of Police Commissioners appointed by the Mayor would require City Council approval. City Council would appoint three of the seven members of the Board of Ethics, and jointly with the Mayor appoint a fourth member. City Council would appoint one member of the nine-member Risk Management Council.

The authority of the City Council-appointed Board of Zoning Appeals would be expanded by ordinance to hear appeals of administrative decisions of the Planning and Development Department. It remains to be seen how this would affect the ability of that department to achieve its mission, which is expanded in the proposed charter.

City Council would determine whether the grounds for forfeiture of an elected office had been met, adopt rules for forfeiture hearings and hold those hearings. City Council would be required to adopt a debarment policy and procedure for city vendors and contractors that are found to have engaged in improper conduct,

limiting the ability of the Purchasing Division and other departments to grant contracts.

City Council is required to approve any new admission fee or service charge and any increase in an admission or service fee imposed by any city agency, as well as utility rates and parking violation fines. City Council would retain the authority to approve all sales of city property, and the section intended to inhibit the privatization of city services performed by city employees is retained. The requirement for City Council approval of contracts to purchase goods and services is unchanged. Budget deficits in any agency, department, of city-funded entity would have to be reported to City Council, with a plan to resolve the situation. Council's Fiscal Analysis Division would participate with other agencies in revenue estimating conferences twice a year.

A potentially problematical situation could arise from the overlapping functions assigned to City Council and the other oversight agencies. The establishment of non at-large districts is designed to invest seven Council members with responsibility for and to specific districts. For residents in

those districts, the City Council member from that district would be the expected first point of contact in the event of a problem with city services; this is consistent with the charter directive that the City Council may make investigations into the affairs of the city and the conduct of any city agency. That brings into question the role of the Ombudsperson as the collector, investigator, and compiler of citizen complaints.

Independent Departments and Offices

The proposed charter creates a new category of departments which it labels "Independent Departments and Offices." While the Mayor heads the executive branch and City Council heads the legislative branch, there is no entity designated as head of "Independent Departments and Offices," a particular problem when all of the constituent departments in the new branch are to be engaged in oversight of other departments and delineation of precise roles and responsibilities could be problematic. The departments in this category are described in the following section on "Oversight."

Prevent and Detect Corruption

The 1918 charter contained a number of legal constraints designed to ensure honest government. These constraints were subsequently thought to have restricted the city administration's ability to resolve problems and were removed or loosened in later charters. The proposed charter reflects recent city experience with official corruption by defining prohibited behavior in great detail; establishing new departmental structures intended to identify and eliminate fraud, corruption, and graft; and providing a new process for City Council to remove elected and appointed officials from office and to debar vendors and contractors from doing business with the city government. Ethics provisions extend to applicants for eligibility for a city contract or program.

Ethics Provisions

The existing charter prohibits the use of public office for private gain and establishes a seven-member Board of Ethics composed of five residents of the city appointed by the Mayor with City Council approval; the Corporation Counsel and the Director of the Department of Human Resources (both mayoral appointees). This Board is tasked with issuing advisory opinions and recommending improvements in the standards of conduct of elected officers, appointees, and employees and procedures related to those standards. This charter provision has been ineffective in preventing or addressing unethical and criminal behavior.

The proposed charter would also establish a seven-member Board of Ethics, but with three members appointed by the City Council, three appointed by the Mayor, and one jointly appointed by the Mayor and City Council. The Board of Ethics' role is expanded to include providing mandatory training for elected and appointed officers and employees who have "significant authority." The Board is authorized to issue penalties for violations, including public admonishment; recommendation that an employee be reviewed for disciplinary action; recommendation to City Council that an elected or appointed official be subject to removal or forfeiture proceedings; administrative sanction; or prosecution by the Law Department.

Unlike the current charter, the ethics section of the proposed charter specifically describes prohibited activities and extends the ethics requirements to individuals working for the city on personal services contracts. Elected and appointed officers, employees, and contractors may not neglect duties; disclose confidential information; misuse city property; engage in certain private employment; solicit improper loans or payments; improperly influence city decisions; accept gifts, gratuities, honoraria or other things of value, except those listed; or engage in campaign activities using city property or during working hours. Contractors and vendors are subject to disclosure provisions. Lobbyists are required to register and

report activities. Public servants are restricted from lobbying in connection with any matter in which that public servant was involved for one year after leaving employment. Public servants are restricted from accepting employment with a company that does business with the city if the public servant was involved in a contract with that company or if the employment would require sharing confidential information, for a period of one year after leaving employment.

Public servants with "significant authority" must disclose any direct or indirect financial interests in issues before the city; campaign contributions and expenses; and any family member employed by the city or making application to the city. Contractors and vendors are required to disclose the identity of all entities with any direct or indirect financial interest in a matter the vendor or contractor has before the city. All approved contracts would be required to be posted on the city's website, and all contractors would be required to provide a statement listing all political contributions to elective city officials within the previous four years as part of the original contract, any renewal or change order, and annually for the duration of the contract.

Consistent with efforts to better define individual responsibility, the proposed charter is more specific as to the person or board that is required to do certain tasks such as giving notice of a hear-

ing, clarifying who is to be held responsible.

The proposed charter directs the Corporation Counsel to prepare, and the City Council to implement, a debarment policy and procedure for all city vendors and contractors. The Inspector General would be the chief investigative agent; contractors and prospective contractors would be required to report improper, unethical or illegal activity or requests from elected officials or employees; debarment would be for a period up to 20 years; there would be no statute of limitations; and the city would be required to report suspect activity to state or federal authorities.

Oversight

The legislative body is traditionally charged not just with making policy, but also with oversight, and City Council would continue to have authority to “make investigations into the affairs of the city and the conduct of any city agency” (4-109) and to subpoena witnesses, administer oaths, take testimony, and require the production of evidence.

In addition to City Council oversight, the proposed charter establishes an elaborate oversight and investigation structure housed in a new “branch” of government which it calls “independent departments and offices.” Included are the Auditor General’s department with the Auditor General (the director of the department) appointed by a majority of City Council members; the Law Department with the Corporation

Counsel (the director of the department) appointed by the Mayor subject to the approval of City Council; the new Office of Inspector General with the Inspector General (the director of the department) appointed by a majority of City Council members; and the Ombudsperson appointed by two-thirds of City Council members.

In the proposed charter, all of these “independent departments and offices” are involved in various aspects of oversight, investigation, and reporting of city government activities. This new branch of city government is intended to prevent, discover, expose, and eliminate corruption, misfeasance, malfeasance, and mistakes, by establishing reviews from various perspectives. Elected officials could, however, be challenged to preclude the development of a duplicative and possibly competing web of expensive and time consuming processes that question and second guess administrators in the executive branch and possibly conflict with the traditional oversight role of the legislative branch. (The expanded role of the Board of Ethics, and of the Board of Review in reviewing administrative decisions of the Planning and Development Department, are other aspects of this new charter emphasis on oversight and restraint.)

The Auditor General’s role is expanded somewhat by the new requirement to prepare an annual risk-based audit plan and resources may be better used with the directive to focus audits on high risk agencies and/or pro-

cesses, and to make an annual financial analysis of all agencies not selected for audit in that year.

The proposed charter reflects the perception that the Law Department has at times appeared to be primarily responsive to the Mayor, who may now remove the Corporation Counsel without cause. The proposal contains language that is intended to make the Law Department more equitably represent the entire city government and clarifies that the Corporation Counsel “represents the City of Detroit as a body corporate” and that the agents and representatives of the city are the Mayor, City Council, and City Clerk. The proposed charter seeks to ensure more balanced legal representation by requiring a supermajority (two-thirds) vote of City Council for the Mayor to remove the Corporation Counsel without cause, and providing that the City Council may remove the Corporation Counsel by a two-thirds vote and the concurrence of the Mayor.

The proposal contains a process for intragovernmental dispute resolution which requires a unit of city government to obtain a legal opinion from the Corporation Counsel prior to instituting legal proceedings against another unit of city government, and requires the Corporation Counsel to instruct the unit whose position is inconsistent with the law to obtain an outside attorney if they intend to institute legal proceedings. The proposed process requires that the Mayor, Council President, and/or City Clerk engage in facilitation for at least 14

business days before taking legal action in a dispute between branches. "Facilitation" is to be conducted by a facilitator who is mutually agreed to by the parties, but is not defined. If all parties agreed, this process could be implemented under the current charter.

The Corporation Counsel is made responsible for enforcing compliance with the charter. This includes documenting violations by the executive or legislative branches, City Clerk, an elected official or other person subject to compliance with the charter; providing written notice of the violation to the offender; and directing actions to correct the violations (possibly duplicating efforts by the Board of Ethics and Inspector General). Should the violation not be corrected in the manner and timeframe required, Corporation Counsel is to take all reasonable action, including judicial action, to secure compliance.

Corporation Counsel is also made responsible for advising departments on risk reduction strategies to limit exposure to liabilities, a responsibility that is also assigned to the charter mandated Risk Management Council.

A new Inspector General would be appointed by City Council to a six-year term (no reappointment permitted) and would have a staff of attorneys, investigators, CPA auditors "as deemed necessary by the Inspector General." The Inspector General could be removed for cause by a two-thirds vote of City Council. The proposed Office of Inspector General

is intended "to ensure honesty and integrity in City Government by rooting out waste, abuse, fraud, and corruption," and the department head would be required to have law enforcement experience. The office would inspect any public servant, city agency, program or official act, contractor, subcontractor, business seeking contracts or person seeking certification of eligibility for participation in any city program. The proposed charter would give the Inspector General the authority to retain an outside attorney to represent his or her office (not the city). There appears to be a possibility of overlap with the role and responsibilities of the Board of Ethics, the Auditor General, and the Law Department.

This new department is not accompanied by a new source of funds, and will compete directly for financial resources with other General Fund activities such as Police, Fire, and Public Lighting.

The Ombudsperson is charged with investigating any official act of any agency except elected officers which aggrieves any person, as well as receiving and processing complaints, conducting investigations and hearings, and reporting findings. The salary of the Ombudsperson would be equal to that of the Auditor General. Again, the possibility of overlap with other "independent" offices and the City Council appears great.

The proposed charter would require the City Council to establish a "proportional" method to

fund oversight agencies. This formula would determine the funds to be allocated to the Office of Inspector General, Auditor General, Ombudsperson, and Board of Ethics, and other agencies to be determined by City Council. "The internal cost allocation plan shall determine the amount of funds to be appropriated to each agency for oversight functions." (8-214) Although the Law Department is given some oversight responsibility, it is not included in the charter-identified departments to be funded through the proposed formula. The formula would presumably be used by the Budget Department in the development of the Mayor's annual budget proposal.

Forfeiture and Removal from Office

The current charter provides for forfeiture of an elected or appointed office if the holder lacks the qualifications required by law or charter or is convicted of a felony while holding office. Forfeiture may also result if the officeholder violates a provision of the charter punishable by forfeiture, but the current charter does not contain any such provision.

By specifying prohibited activities, the proposed charter seeks to facilitate enforcement of ethical behavior and prosecution of violations. Voters may recall an elected city official, and the proposal also specifically describes actions that would automatically result in forfeiture of an elected office and actions that would allow City Council to determine whether an office should be forfeited.

Grounds for Mandatory Forfeiture:

- Lacks qualifications required by law or charter (citizen of the U.S., resident and qualified voter of the city and of the appropriate district for one year at the time of filing for office);
- Pleads to or is convicted of a felony while holding office;
- Engages in official misconduct;
- Willful or gross neglect of duty;
- Corrupt conduct in office; and
- Any other misfeasance or malfeasance.

Grounds for Permissive Forfeiture:

- Based on a recommendation of the Board of Ethics, is found by three-fourths vote of City Council to have violated the ethics ordinance or ethics provisions of the charter;
- Refuses to cooperate in an investigation of the Inspector General, Board of Ethics, or Ombudsperson;
- Neglects or refuses to comply with provisions of the charter after being given an opportunity to comply; and
- Violates a provision of the charter punishable by forfeiture.

City Council would charge an elected official with actions that are grounds for forfeiture by means of a resolution that provides the factual basis for the charge; a supermajority (two-thirds) vote would be necessary to adopt such a resolution. The City Clerk would send a certified copy of the resolution to the official. An elected officer charged

with conduct that constitutes grounds for forfeiture would be entitled to a public hearing before City Council and to outside legal representation paid by the city. City Council would make the determination for forfeiture, which would be subject to judicial review.

The proposed charter confirms that an appointee who serves at the pleasure of the appointing authority may be removed without cause. An appointee who is removable for cause may be removed for the following reasons:

- Lack of qualifications
- Incompetence
- Neglect of duties
- Misconduct
- Pleading to or conviction of a felony
- Violation of the charter
- Violation of federal or state law
- Violation of any city ordinance, rule or regulation
- Any reason that would be grounds for forfeiture of an elective office

The appointee who is to be removed for cause must be furnished with the charges and has the right to a hearing before the appointing authority.

Part of the intent of delineating the conditions and actions that would result in the loss of an elected or appointed position is to prevent the occurrence of those conditions and actions. The benefits of codification of grounds for forfeiture and removal from office include having a specific list of transgressions that are clear

and well-known, and a process that can be followed to allow the government to rid itself of corrupt officials without necessarily waiting for a court conviction on a criminal matter. The danger of such codification, combined with the very extensive assignment of oversight among various agencies, is that it could result in governance that is conservative, rule bound, and incapable of addressing the city's many challenges.

Transparency

As required by state law, all meetings of boards and commissions, including the City Council, are subject to the Open Meetings Act (PA 276 of 1976). Records of proceedings, and all records of the city, are available to the public under the Michigan Freedom of Information Act (PA 442 of 1976). The proposed charter seeks to expand the transparency of city government by requiring that all city contracts are to be posted on the city's website, and that information must be updated if the contract is amended or renewed. Contractors would be required to file annually a Statement of Political Contributions and Expenditures listing payment to elective city officials within the past four years.

The proposed charter would require disclosure by public servants who exercise "significant authority" (this term is not defined and may be subject to different interpretations) of any financial interest in any matter pending before City Council or any other agency of the city; any interest in property that is sub-

ject to decision by the city; campaign contributions and expenditures; and the identity of any family member who is employed by the city or is making application to the city. Contractors and vendors would be required to disclose the identities of all entities and persons with any financial interest in a matter the vendor or contractor has pending before City Council or any other city agency. Lobbyists would be required to register and report activities.

The Planning and Development Department is required to notify any Citizens District Council, Citizen Advisory Council, or Community Development Corporation of any hearing about a proposal that could impact the citizens in those areas.

As noted, rules governing dealings between the city and the public could only be established

or changed after a public hearing. Ordinances become effective only on publication.

Accessibility is also addressed in the proposed charter. City Council is required to hold at least eight meetings in neighborhoods each year. The Mayor would be required to hold at least one meeting in each of the seven council districts each year. A city wide meeting would also be required before each September 30.

Administrative Rules

The authority of departments in the executive branch to establish rules for their interactions with the public would be curtailed under the proposed charter. Section 2-111 of the proposed charter states that when a city ordinance permits or requires a department head to promulgate a rule governing dealings be-

tween the city and the public, the department head must give notice and hold a public hearing on the proposed rule or proposed hearing procedure. Adopted rules must be published in a daily newspaper of general circulation and included in the City Code. It is unclear if City Council must authorize a department head or board to promulgate a rule governing dealings between the city and the public, or whether the new requirements apply only where Council has addressed that issue in ordinance. Department heads are prohibited "from promulgating rules or procedures which are substantive in nature and required to be enacted through ordinance."

As noted, the Board of Review would be authorized to hear appeals of administrative decisions of the Planning and Development Department.

New Programs and Initiatives

Improve Planning and Management

The city had a cumulative budget deficit of \$155.7 million at June 30, 2010, after selling \$249.8 million of fiscal stabilization bonds in March, 2010. The prior years deficit reflected in the 2011-12 City of Detroit budget is \$208.9 million. The proposed charter attempts to address the issue of fiscal control as well as a number of other management issues.

The Budget Department would remain separate from the Finance Department in the proposed charter. Separating budgeting from

the treasury, assessment, purchasing, accounting, and pension functions in the Finance Department may provide a valuable independent voice in financial planning and may serve to prevent collusion and fraud, but requires close coordination and sharing of information between the departments. An alternative position would be to allow the Mayor to determine whether the budgeting function should be made part of the Finance Department, with one appointee in charge of all financial operations.

Although the basic budgeting process is largely defined in state

law, three new processes would be imposed by the proposed charter. In addition to the proportional funding system for oversight agencies noted above, there are provisions for deficit notification and biannual revenue estimating conferences. It should be noted that any of these procedures could be adopted by the city without being included in the charter.

Budget Deficit Notification

The proposed charter would require the head of any agency, department, or city-funded entity to immediately notify the Mayor and

Budget Director in writing when that person determines that the budget is in deficit. Within ten days, the Budget Director must then request a hearing with City Council to inform them and outline actions to remedy the deficit.

In the city government, operations are organized on a departmental basis, but budgeting and fiscal control also relies on a fund basis (general fund; enterprise agencies' funds; grants, debt service, and other funds). A deficit in one department or activity, whether overspending an appropriation or collecting less revenue than expected, may well be balanced by a surplus in another department or activity in the same fund. A different approach to addressing the problem would be for the Mayor to require the Budget Department to make more frequent surplus/deficit estimates and to share that information with City Council, to hold or reject personnel and purchasing requisitions as necessary to control expenditures, and to seek City Council approval for deficit reduction measures on the appropriate fund basis.

Revenue Estimating Conference

Twice a year, the Finance Director, Budget Director, Auditor General, and director of the City Council's Fiscal Analysis Section would be required to hold a revenue estimating conference. In addition to considering revenues for activities funded by the General Fund, the participants are to compile a list of all delinquent receivables and recommend the most efficient means to collect this revenue. The proposed char-

ter contains no mandate for a consensus revenue estimate, nor is there a requirement that the product be used in the budget process. This process could be implemented without inclusion in the charter, if all parties agreed.

Since 1992, the State of Michigan has held revenue estimating conferences each January and May (and sometimes more frequently if called by one of the conference principals). These conferences, which are part of the budget process, include the state Budget Director or the State Treasurer and the directors of the House and Senate Fiscal Agencies; additional participants may include the Governor, senior Treasury officials, and outside economists. At the January conference, national and state economic indicators are used to estimate revenues for the next fiscal year. The May conference is used to update the consensus revenue estimate using the latest data. "Upon completion of the revised consensus revenue estimate, legislative leadership meets with the Governor and the State Budget Director in an attempt to establish final spending targets for each state department. The process of target setting also involves discussion and attempts for agreement on other overall budget issues including boilerplate language, revenue bills, and other statutory changes to be included in the final budget. Reports of the agreements reached during target setting are then provided to the Legislature."¹

¹ State Budget Office, Budget Process, at www.michigan.gov/budget.

Eliminate Duplication

Section 9-405, Elimination of Redundancy in Government, would add a new requirement that every effort be made to reduce duplication of efforts and increase and maintain efficiency in city operations. Within 180 days of the charter taking effect, and annually thereafter, the executive and legislative branches and City Clerk would be required to conduct a comprehensive evaluation of programs, services, activities, policies, and operations to identify and eliminate redundancy. It is unclear whether the "independent agencies and departments," which appear to have significantly overlapping duties, would be required to participate in this annual process, and it is unclear which agency would be responsible for preparing the required, annual, compiled Report on Elimination of Redundancy. This process could be implemented whether or not included in the city charter.

Section 9-405 states "As much as practicable attempts shall be made to realign service delivery systems and eliminate operational duplication and inefficiency, which may include cooperative agreements with other government entities as allowed by law." The 1963 Michigan Constitution, a number of state statutes, and a number of Citizens Research Council publications address the issue of service sharing among units of government. There is a great deal of operational overlap between the City of Detroit and Wayne County in public health, police and sheriff's functions, assessment and equalization, purchasing, budgeting and account-

ing, human resources including pension administration, and many other functions. There is operational overlay between the city and the state in income tax collection, purchasing, pension administration, and many other functions. There are functions that are performed both by the city government and the Detroit Public Schools. Charter language mandating departments and programs may inhibit efforts to realign service delivery systems and eliminate operational duplication and inefficiency.

Generally in Michigan, public health is a county function. The proposed charter does not institutionalize the city's Department of Health and Wellness Promotion as a charter department, but rather repeats the current charter language: "The city is responsible for providing an adequate level of health services, both physical and mental, to all its residents." (7-201) The proposed charter would require that the executive branch prepare an annual report on the state of health of the city (presumably city residents) and expands the advisory commission for health to at least seven members, with one member appointed from each of the seven non at-large districts.

Risk Management

The 1997 charter established an advisory Risk Management Council comprised of the Corporation Counsel, Chief of Police, Finance Director, Human Resources Director, and Auditor General. The pro-

posed charter expands the membership to include a qualified, cabinet level official appointed by the Mayor to serve as chairperson, a City Council appointee who is a city employee, the Inspector General, and the Transportation Director. While the proposed charter states that the "Council is an advisory body to the Mayor," it also gives the Council the "authority to implement the Mayor's directives concerning implementation of policies, programs and activities to minimize exposure or liability of the City to claims and damages." This would appear to grant operational powers to a body explicitly described as advisory. Furthermore, the role of the Council appears to overlap with that of other agencies: "Corporation Counsel shall advise city departments, agencies and entities on risk reduction strategies that are necessary to limit or eliminate the city's exposure to liability." (7.5-210)

In spite of the fact that Detroit and other cities have eliminated their involvement in city owned and operated hospitals due to the extraordinary liability costs, the proposed charter retains a provision (9-402) that "The City shall provide, by ordinance, for the operation of any city hospital by a division of a public health agency, by a department of hospitals, or by a non-profit public corporation..."

Green Initiatives

The proposed charter adds a major initiative to the Buildings,

Safety Engineering and Environmental Department. That department is required to study, prepare, and implement a long-term strategic plan "for the establishment, use and support of green initiatives, technologies and businesses, utilizing public and private partners." This Green Initiatives and Sustainable Technologies Plan (GIST Plan) "shall be comprehensive and may include solar, wind, thermal and other forms of alternative and renewal energy production and uses; alternative fuels; or other sustainable technologies and endeavors; green public works, construction and building programs; and any other green initiative or technology considered feasible." (6-509) The Department is also charged with consulting with other departments regarding implementation of alternative and renewable energy policies or programs. It should be noted that such an initiative, if considered desirable, could be undertaken without inclusion in the city charter.

Recycling

The Public Works Department would be required to develop and implement a comprehensive city-wide recycling plan; the plan and all revisions would have to be approved by City Council before implementation. This could be accomplished without inclusion in the city charter, however, inclusion in the charter is intended to ensure that a comprehensive, city-wide recycling plan will be developed and implemented.

Selected Retained Provisions

Property Tax Collection

Sections 8-401 through 8-403 relating to property taxes are unchanged in the proposed charter, even though the process described in Section 403 is no longer valid. "State, county and school taxes shall be collected and returned by the City Treasurer in accordance with state law. However, except as otherwise provided by law or ordinance, city property taxes shall not be returned to the Wayne County Treasurer under state law." Subsequent subsections also continue the nonapplicable language in the 1997 charter, which has been superseded by state law. According to the city's own June 30, 2010 Comprehensive Annual Financial Report, "The Wayne County Treasurer (Treasurer) is required by the General Property Tax Law, as amended, to collect delinquent real property taxes levied by the City. Under the Act, the Treasurer pays the City in full for delinquent real property taxes owned according to the delinquent tax roll transferred to the County Treasurer. Taxes eligible for payment include all delinquent taxes, except taxes on personal property, due and payable to the City. The Treasurer is then responsible for the collection of the outstanding delinquent taxes. The County retains all interest

and penalties generated by the delinquent taxes to offset its collection costs. Real property taxes not collected within two years after the sale to the County are charged back to the City."²

Retirement Systems

Those city pension benefits that are already earned are protected in the state constitution.

Cost pressures associated with pensions and other post employment benefits are becoming ever more severe. The state's new Economic Vitality Incentive Program (PA 63 of 2011), which replaced statutory state revenue sharing, establishes criteria for funding eligibility that includes caps on the annual amount a local government may contribute to retirement plans for new hires and limits on the maximum multiplier and average final compensation for local governments' defined benefit plans.

The proposed charter continues the existing pension board provisions, only adding one retiree member to the Police and Fire Retirement System Board. An alternative approach would en-

courage an evaluation of the benefits associated with joining the statewide Michigan Municipal Employees' Retirement System.

Anti-Privatization

The current charter includes a provision that requires very extensive evaluations and reports, as well as a two-thirds vote of the City Council, to transfer the provision of a public service from city government employees to a non-governmental person or entity.

Detroit Public Schools and the city government have for many years been the largest employers in Detroit, providing relatively well paid jobs with good benefits. Those public sector jobs are valued by Detroit residents, but, as noted, the city government is operating at a very significant deficit. Elected leaders in Detroit and in every other Michigan local government are struggling to reduce costs and maintain essential service levels for residents. Especially under these conditions of severe fiscal distress, an alternative approach would be to empower city officials to better utilize alternative approaches to service delivery. This could allow elected officials flexibility in seeking ways to provide services in the most cost efficient and economic manner.

² City of Detroit, June 30, 2010 Comprehensive Annual Financial Report. p. 71.

Greater Citizen Participation

The opportunity for citizens to serve on boards and commissions would be expanded, and the proposal provides that city-wide commissions are to be as representative of the people being served as possible. The goal of greater citizen participation could, however, obfuscate the lines of responsibility between the appointing authority (Mayor or City Council) and the department or agency service provider.

Several boards must include one member from each of the seven City Council districts (See Box below).

Other boards and commissions established in the proposed charter are as follows:

- Advisory Fire Commission: four members appointed by the Mayor, three members appointed by the Mayor from

a list of four submitted by City Council

- Arts Commission: seven members appointed by the Mayor
- Board of Ethics: three members appointed by Council, three members appointed by the Mayor, one member jointly appointed
- Board of Water Commissioners: seven members appointed by the Mayor; at least four must be Detroit residents
- Civil Service Commission: two members appointed by the Mayor, two members appointed by City Council, one member jointly appointed
- Council of the Arts: 15 members appointed by the Mayor
- Election Commission: City Clerk, President of City Council, Corporation Counsel
- Zoological Parks Commission: five members appointed by the Mayor

munity Advisory Council districts would be the same as the districts from which non at-large City Council members are elected. Each Council would have five members elected from that district, one youth member, and one member to represent senior issues. If seven Community Advisory Councils were established with seven members each, there would be a total of 49 elected and appointed members to those Councils, substantially increasing citizen participation. Each Community Advisory Council would be required to hold public meetings at least four times each year. The City Council member from that district, or their designee, would be required to attend all meetings of a Community Advisory Council.

Advisory Councils are to be established by City Council on receipt of a petition from at least ten percent of the electors voting at the last municipal general election in the district. The role of these councils would include communicating concerns to City Council about the delivery of programs and services; assisting in community problem solving; disseminating information and providing advice on employment opportunities, code enforcement, and other concerns in the district. Advisory Council members would have to become familiar with the Master Plan for the city and for their district. Members of Community Advisory Councils would meet annually with the Mayor and City Council to discuss challenges and resources required. Commu-

Board or Commission	Total Members
Advisory Commission for Health	at least 7
Advisory Recreation Commission	at least 7
Advisory Transportation Commission	at least 7
Appointed Board of Review*	at least 7
Board of Zoning Appeals	at least 7
City Planning Commission	9
Historical Commission	13
Human Rights Commission	11
Public Lighting Commission	not fewer than 8 districts**

* City Council may sit as the Board of Review "to the extent allowed by law."

**The language is confusing: "An advisory commission for recreation, comprised of not fewer than eight (8) districts, shall be created...Seven of the members shall be appointed, one (1) each, from the non at-large City Council districts."

As in the original 1997 charter, the proposed charter provides for the establishment of Community Advisory Councils intended to improve citizen access to government. There could be up to seven of these Councils; the geography of Com-

nity Advisory Councils would not be funded by the city government, but could accept donations or grants from other sources.

The proposed charter provides for 189 elected and appointed mem-

bers of boards, commissions, and councils, excluding those who are appointed by virtue of their city positions (excluding, for example, the Risk Management Council, the Election Commission, and the pension boards). Nearly all of

these appointed board, commission, and council members will be city residents. An unknown amount of departmental time and effort will be required to support active policy-making and advisory boards and commissions.

Improve Quality of Life

There is nothing in the proposed charter that would reduce tax rates on citizens, increase revenues to fund city services, or cause infrastructure to be repaired. There are, however, provisions requiring the city to commission a feasibility study of city provided automobile and/or property insurance and a requirement that the city government's television channels be maintained for the benefit of citizens.

City Sponsored Insurance Assistance

Among the miscellaneous provisions in the proposed charter is one that states that, to the ex-

tent allowed by law, the city "may establish an insurance system to provide, support, supplement, or otherwise assist in the provision of automobile and/or property insurance for City residents." The Mayor and City Council would be required to commission a feasibility study that demonstrated the ability of the city to fund, sustain, and operate the insurance system in a fiscally responsible manner. City Council would have the authority to discontinue the operation of any insurance program implemented under Section 9-801 of the proposed charter. It is important to note that the charter requirement is for the city to commission a feasibility study, not

to implement an automobile and/or property insurance program.

Television Channels

The proposed charter would require the city to operate and maintain its television channels for the benefit of the citizens of Detroit. At least one channel would be dedicated to broadcast the affairs of city government and at least one channel would be dedicated to educational, cultural, and arts programming. The proposed charter defines the city's television channels as public assets and prevents their sale without the approval of city voters.

Conclusion

A well managed city has both an effective governmental structure and competent and honest leaders. The purpose of a city's charter is to establish the basic governmental structure, the legal authority, and essential processes of city government. A good charter provides elected officials with enough direction to set the course for government, but enough latitude to manage operations efficiently and effectively and to respond to changing conditions.

The process used to deliberate and draft the proposed charter included extensive citizen input, allowing Detroit residents to reflect on their history and to express the values and issues that are especially important to them. The proposed charter reflects many of these values and issues, and seeks to impose restrictions on elected officials and those doing business with the city in order to ensure honesty and good government. The extensive structures and processes proposed to ensure honesty and transparency in city government testify to the importance citizens and charter commissioners place on this issue. The emphasis on the independence of the Law Department and the creation of a mediating role for that department addresses the desire for a new and better relationship between the executive and legislative branches. Shifting more responsibility to the legislative branch also speaks to a desire for a change in the balance of power.

Proposed charter provisions that restrict the ability of elected officials to streamline the city government may include unnecessary charter mandated departments, duplicative functions, unnecessary separation of functions, retirement provisions, and restrictions on privatization. The proposed City of Detroit Charter reduces the net number of charter mandated departments slightly. Detroit voters' attachment to the Arts, Historical, and Zoological Departments (the city's jewels) may be such that those departments should be enshrined in the city's foundational document. It may be that it is essential to voters that the Budget Department be maintained separate from the Finance Department to ensure an objective voice, or that the very important planning function be assigned to both the legislative and executive branches. Public lighting is a public safety issue, and while it may be very desirable to find a more dependable way to provide public lighting services to residents, electors may believe that the Public Lighting Department should continue to be enshrined in the charter. In a poor city where many residents depend on public transportation, enshrining the city's Transportation Department in the proposed charter may be appropriate, even though an effective regional transportation system that gets city residents to jobs in the suburbs has been a goal for decades. Voters may decide that familiar departments should be protected in the charter, but a different approach with fewer char-

ter mandated departments would allow more flexibility to meet changing conditions and opportunities. Taking these service departments out of the charter does not mean that the department ceases to exist or that the service is no longer provided. It merely creates the latitude for elected officials to make changes if deemed necessary.

Like other cities in Michigan, Detroit is challenged by declining tax bases and reduced state revenue sharing. The proposed charter could exacerbate fiscal challenges by mandating an additional oversight department and a variety of new programs and processes, adding to spending pressures in a time of revenue constraints. It is up to the voters to determine whether this trade-off reflects their concerns and values.

Many local charters and state constitutions begin as concise, economical documents that reflect the basics of governmental structure and authority, and are subsequently amended by addition of special programs that voters decide should be protected from political pressure. The proposed charter includes special programs (green initiatives, recycling, city-sponsored insurance) that are not related to the structure of city government, that could be implemented under the current charter, and that some would argue do not belong in a city charter. The proposed charter also includes a number of pro-

cesses (revenue estimating conferences, deficit notification, elimination of duplication) that also could be instituted under any charter, including the current City of Detroit Charter, that does not specifically prohibit those processes. But because these programs and processes have not been implemented (even though they could be), inclusion in the charter provides certainty to citizens that these programs and processes will be implemented.

The most striking aspect of the proposed charter is the very strong requirements designed to prevent and detect misfeasance and malfeasance, and to rid the city of those who engage in corrupt practices. Every public document is a product of the events and issues that precede it, and the recent investigation, indict-

ment, conviction, and incarceration of a former mayor and council member (as well as executive and legislative staff and contractors), and the use of the Law Department by that mayor, inform the proposed City of Detroit Charter. Specific changes that may be related to these events include strengthened ethics, investigatory, and oversight provisions and a shift in the balance of power between the executive and legislative branches. While proposals designed to ensure that such abuses do not recur may be necessary to satisfy both the authors and the voters, the charter should also establish a governmental structure that is workable and effective, fair and representative, efficient and economical, and that allows elected officials appropriate authority to meet probable changes in fiscal and operational

conditions. Voters will have the opportunity to decide whether the provisions in this proposal impose too intrusive restrictions on elected officials or whether, given the history and values of the citizens, restrictions are necessary and desired.

In a city with the economic erosion, high tax rates, population loss, deteriorated infrastructure, and associated other problems that face Detroit, a city charter should be focused on providing a governmental framework that, to the extent possible, positions the city for economic growth and job creation. If approved, the proposed charter should make it easier for the city to remove officials who engage in corrupt practices, but it will very probably not significantly change the economic or financial path the city is on.