



Richmond City Charter Review Commission

Richmond, Virginia

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July 6, 2009

Attached is a memorandum which sets forth preliminary recommendations of the Richmond City Charter Review Commission. The Commission is circulating these preliminary recommendations to the Mayor, Members of Council, and to Heads of City Departments and will post them for the public on the Commission's web site.

The Commission welcomes your thoughts and comments. Comments received by September 1st will be especially helpful, as the Commission plans to meet in early August and again in early September to revise these recommendations and address unresolved issues in its effort to complete its final report and recommendations by October.

Thank you for your careful attention to this important matter.

Recommendations may be submitted in writing to **Richmond City Charter Review Commission, 900 East Broad Street, Suite 305, Richmond, VA 23219**, or via email to charter.changes@richmondgov.com.

RICHMOND CITY CHARTER REVIEW COMMISSION

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Preliminary Recommendations – For Review and Comment
July 6, 2009

Process:

The Commission began its work by requesting the views of a broad constituency. We solicited input from present and past Mayors, Council Members, Heads of City Departments and a variety of others. We set up an online system for inputs from the general public. The Commission then elected to focus its efforts on the key issues highlighted by those sources and on the issues that had given rise to litigation between Mayor and Council.

Below are the current, preliminary recommendations of the Commission on those issues. We are sharing these recommendations with the Mayor, Council, their staff and heads of City Departments, and we will post them on the Commission website for public comment during July, August and September. We plan to offer further opportunities for comment during a public hearing to be scheduled in September. We expect to issue our final report and recommendations in October.

Recommendations:

1. Appointment and Removal of Council Staff

Current Status – Charter 5.02 grants the CAO power to appoint and remove employees in “administrative departments.” Section 5.03 grants the CAO “ultimate responsibility” for hiring and removal of “city personnel.” Some city employees (e.g. Council Chief of Staff’s office employees, Council Liaisons) arguably are not within “administrative departments.” The Charter does not explicitly address the power to hire and remove those employees. A dispute over this question led to a lawsuit in the previous administration.

Recommendation – Amend Charter section 4.02 to provide that Council may appoint employees to assist in its legislative, oversight and constituent relations functions, and that Council shall have the power to remove such employees. Amend section 5.03 to clarify that the CAO’s power relates to administrative personnel and does not extend to hiring/removal of “legislative” personnel appointed by Council.

Comment – This recommendation is consistent with Judge Margaret Spencer’s resolution of the previous lawsuit. It does present some drafting challenges in defining “legislative” and “administrative” personnel. The Commission is working with the City Attorney on appropriate language.

2. **City Attorney**

Current Status – Section 4.17 provides that the City Attorney shall be appointed by Council and shall serve at its pleasure.

Recommendation – Amend section 4.17 to provide that (a) the Mayor shall appoint the City Attorney subject to the advice and consent of a majority of Council; and (b) the appointment shall be for an indefinite term; and (c) the City Attorney may be removed from office by concurrence of the Mayor and a majority of Council.

Comment – The City Attorney serves as chief legal advisor to council, the mayor, CAO and all departments and agencies of the city. While all of those constituents rely on his advice, no single constituent is his “client.” Rather, the City Attorney represents the city itself as an entity, much like the general counsel of a corporation represents the corporation, not its individual officers and directors. In delicate matters regarding the respective powers of Council and the Mayor, the City Attorney must be free to exercise independent judgment and “call them as he sees them” when he offers legal advice. The current structure gives Council sole control over appointment and removal of the City Attorney. That appears to be a holdover from the Council-Manager form of government. The report accompanying the 1948 charter stated that the City Attorney’s “paramount duty is to advise the Council in its legislative and policy making functions” (p. 76). That no longer is the case, as a matter of structure or as a matter of daily practice.

The Commission believes that the City Attorney’s role as independent and neutral legal advisor to the City would best be served by a structure that provides Mayor and Council equal roles in appointment and removal of the City Attorney.

The term of office is a difficult issue. An indefinite term assures maximum independence. And it contributes to experienced judgment that comes from continuity in office. On the other hand, a fixed four-year term that coincides with the election of a new Mayor would give each new Mayor a say in appointing a City Attorney. But that practice could make the appointment more subject to political patronage. The Commission has not reached consensus on the term-of-office question. Currently, a majority favors an indefinite term while a minority view favors a longer and renewable fixed term (e.g. six or eight years).

3. **City Auditor**

Current Status – Section 4.18 provides that the City Auditor is appointed by Council for an indefinite term and Section 4.14 provides that Council may remove anyone appointed for an indefinite term.

Recommendation – Amend section 4.18 (a) to provide that the Mayor shall appoint the City Auditor subject to the advice and consent of a majority of Council; and (b) the appointment shall be for an indefinite term; and (c) the City Auditor may be removed from office by concurrence of the Mayor and a majority of Council.

Comment – Just like the City Attorney, the City Auditor serves the city as an entity and must exercise independent judgment. Just as with the City Attorney, the Commission feels the Auditor’s role as an independent and neutral investigator is best served by a structure that provides mayor and council equal roles in appointment and removal.

3A. City Assessor – The City Assessor currently is appointed by Council, but functions in many respects as a component of city administration. The Commission is considering whether the authority to appoint and remove the City Assessor should be modified in any respect. The Commission continues to study this question and does not yet have a recommendation.

4. Appointment of CAO/Acting CAO

A. Appointments

Current Status – Under 5.01.1, the Mayor appoints the CAO subject to advice and consent of a majority of Council, and the CAO serves at the Mayor’s pleasure. The Charter does not set time limits for the process or provide for any contingency where the Mayor and Council are unable to agree on a CAO.

Recommendation – Amend section 5.01.1 to: (a) Establish time limits for the Mayor’s designation of CAO and Council’s vote to accept/refuse the selection. (Our proposal calls for the Mayor to submit an appointment within 180 days of a vacancy and for Council to approve or reject within 30 days.); (b) Provide for a “second try” at the process with a fixed time limit (Our proposal calls for the Mayor to submit a second appointee within 30 days of rejection of the first and for Council to approve/reject within 30 days thereafter.); and (c) If there remains no agreement, submit the decision to a neutral body for selection. See *Comment* below regarding selection by neutral body.

Comment – The Commission sought a solution that would avoid extended periods without a CAO. Time limits should serve to move the process more expeditiously but, of course, Mayor and Council still may not agree on a candidate. Under that circumstance, the only way to avoid an indefinite vacancy would be to submit the choice to a neutral body. We also believe the prospect of decision by a neutral body would create an incentive for Mayor and Council to resolve disagreements.

Identifying the neutral body and establishing the format for selection pose difficult issues which the Commission is still considering. One proposal would provide for a petition to the Richmond Circuit Court, which would then make the appointment. The Virginia Code (section 24.2-228) provides for a similar practice in appointing interim members to fill vacancies on Council. Another proposal would be to create an independent panel of persons with experience in city government to make the selection. In either event, an additional question would be whether the court/panel would be empowered to choose a candidate from names provided by the Mayor, by Council, by both, or from other sources. The Commission continues to study these questions.

B. Acting CAO

Current Status -- In case of absence, incapacity or resignation of the CAO, section 5.07 provides that the Mayor shall appoint an acting CAO, subject to advice and consent of Council, from among the heads of departments.

Recommendation – Amend Chapter 5 to provide that the CAO shall designate a senior deputy CAO (SDCAO). Upon a vacancy in the office of CAO, the SDCAO would serve as Acting CAO until appointment of a CAO by Mayor and approval by Council. Include in Chapter 5 the requirement (in a new Section 5.02.1) that the SDCAO receive the advice and consent of Council.

Comment – The Commission acknowledges the importance of having continuity in the CAO/Acting CAO position with Council approval. Under this approach a CAO, while in office and in the normal course of business, would identify a person (SDCAO) who would fill the role of CAO in the event of a later vacancy. The SDCAO might be designated from among existing heads of departments or, if Council chose to create and fund an additional position, the SDCAO might hold that position and have additional duties. In either event, the SDCAO would be “pre-designated” before any vacancy occurred in the office of CAO. Hence, in the case of vacancy, the succession of SDCAO to the office of CAO would be automatic. Failure of Mayor and Council to agree on an Acting CAO would not result in a continuing vacancy in the position.

5. Sale/Lease of Real Property

Current Status -- The Charter authorizes “the City” to sell or lease land and buildings belonging to the City (section 2.03). The “default powers” section of the Charter (section 4.02) provides that all powers vested in the City shall be exercised by Council except as otherwise provided. No other provision in the Charter explicitly authorizes the sale or lease of city real estate. Hence, by “default,” it would appear that the power to sell or lease real estate currently rests with Council. In addition, the Constitution of Virginia requires a three-fourths vote of a city’s governing body (i.e. Council) in order to sell its “public places.”

The Charter does not explicitly identify a role for the Mayor in sale or lease of property. The veto provision in Charter section 5.05(d) gives the Mayor the power to veto any ordinance that imposes a duty on him, on the CAO, or on an administrative department. Arguably, an ordinance calling for the sale or lease of property would impose such duties, but that could be unclear under some circumstances.

Recommendation – Amend section 5.05(d) to clarify that the veto power extends to any sale or lease of real property, subject to Council override. (See below for a related recommendation on the veto power generally. If that recommendation is adopted, it would encompass this recommendation as well.)

Comment – The Virginia Constitution and the current Charter require approval of real estate transactions by Council. The Commission does not seek to change that (and no Charter amendment could trump the constitution in any event).

The Mayor's veto power could add a useful balance, allowing the Mayor to disapprove of a transaction and at least require reconsideration by Council. Council, of course, would retain authority to override (and would be required to approve a sale by three-fourths vote in any event under the constitution).

We are concerned, however, that the scope of the veto power may be ambiguous. Section 5.05(d) creates a power to veto only those ordinances that "impose [a] duty" on the Mayor, CAO or department head. It is unclear whether that power would extend to some or all ordinances calling for sale or lease of real estate. The solution, we believe, is to amend the veto provision. The simplest amendment would explicitly extend veto power to any ordinance (see below).

6. Mayor's Veto Power

Current Status – Section 5.05(d) grants the Mayor power to veto any ordinance that "impos[es] ... duties" on him, the CAO or any department head.

Recommendation – Amend section 5.05(d) to provide that the Mayor has power to veto any ordinance, subject to the existing override power of Council.

Comment -- The breadth of the Mayor's veto power is unclear under the Charter. Some ordinances may explicitly require the Mayor or CAO to perform some act and would clearly fall within the veto power. But other ordinances, while not explicitly requiring the Mayor, CAO or a department head to act, might still create some duty to act as a practical matter. (e.g. an ordinance banning Frisbees in public parks imposes no duty directly, but would require administrative action to enforce; an ordinance leasing real estate (see above) might implicitly require a City department to provide keys, remove furniture, etc.). The Commission believes the veto power needs greater clarity. A general veto power applicable to any ordinance would be clear, unambiguous and would be consistent with the balance of legislative and executive power in most American jurisdictions.

7. Budget Process

A. Budget Adoption

Current Status – Chapter 6 of the Charter prescribes a procedure and a time sequence under which the Mayor proposes a budget, Council adopts or amends it, the Mayor may veto items, and Council may override vetoes.

Recommendation -- The Commission believes the budget adoption procedures are sufficiently clear and does not recommend any amendments.

B. Budget Amendments or Fund Transfers after Adoption

Current Status – Under Section 6.16, after a budget is adopted for the fiscal year, any budget changes or transfers from one department to another must be initiated by the Mayor and approved by six votes of Council.

Recommendation – The Commission believes the current Charter is sufficiently clear and does not recommend any amendment.

8. Investigations/Inspector General

Current Status – Under section 4.16(a), the Council has power to investigate matters pertaining to any department, agency or officer of the City. Similarly, under section 4.16(b) the Mayor, CAO, City Auditor, and heads of departments and commissions all have power to investigate matters relating to the performance of their duties. Section 4.16(c) provides power to subpoena records and witnesses in connection with any investigation. The Commission was asked to consider a variety of issues, including whether investigative power should be more limited or whether a separate office of Inspector General should be created.

Recommendations -- The Commission believes the current Charter is clear, reasonably balanced and provides self-limiting mechanisms that could serve to curb abuses of investigative power. The legislative branch and executive branch have independent and equal powers. While investigative power is spread widely across departments, the Mayor and CAO are in a position to prevent abuses through their authority to appoint and remove department heads. The Commission is not aware of any history of substantial abuse of investigative power and does not recommend a change.

As noted in part 2 above, the Commission believes that an independent City Auditor serves a crucial investigative function. The Commission's recommendation regarding appointment and removal of the Auditor is designed to strengthen that function.

9. Boards and Commissions

In the course of addressing issues relating to the appointment and removal of City officers, the Commission noted an additional issue relating to the appointment of members of boards and commissions. A variety of commissions and boards play important roles in the operation of city government. Many have a direct impact on the functions of city departments that are otherwise under operational control of the CAO. As a general rule, either under the Charter or pursuant to ordinance, most of those commissioners and board members are appointed by Council. In many instances the Mayor has no direct role in such appointments. In its final report, the Charter Review Commission may call for a review of the appointment and removal authority for city boards and commissions with a view toward considering the appropriate balance between Council and Mayor in making appointments.

10. Dispute Resolution

The Commission was asked to consider Charter amendments that might provide a mechanism, short of a lawsuit, for resolving potential future disagreements over the relative powers of Mayor and Council. We continue to pursue that question. Our tentative conclusion is that mandatory dispute resolution processes, written into a Charter, may be impractical. Nevertheless, in our final report we hope to include some recommendations for voluntary steps that may help guide future efforts to resolve disputes.