



Charter Review Committee 2015 – 2016

Date: April 5, 2016

To: Honorable Mayor and Council Members

From: Bonnie Poulos, Chairperson Charter Review Committee

Re: Report of Charter Review Committee with Recommendations for Referral to the Voters

Charter Review Committee Process

The Charter Review Committee (the “CRC” or “Committee”) was originally formed on April 8, 2014 by Mayor and Council through adoption of Resolution No. 22213. Chair Kasey Nye submitted the Committee’s final report and recommendations to Mayor and Council on April 7, 2015.

On October 8, 2015, Mayor and Council adopted Resolution No. 22473 to extend the term of the CRC to December 31, 2016. The CRC was directed to review and make recommendations regarding possible amendments to the Charter especially with regard to the method and manner of the nomination and election of the mayor and council members and to those sections of the Charter related to the City’s taxing authority and financial flexibility. The resolution specified that the Committee provide a report with its recommendations to the Mayor and Council on or before April 1, 2016. Dr. Raphael Sonenshein, Director of the “Pat” Brown Institute for Public Affairs at California State University, Los Angeles, was retained to facilitate the Committee’s deliberations, as he had done with the earlier Committee.

Mayor, Council and the City Manager appointed 15 members to the Committee: 10 returning and 5 newly appointed members. The Committee elected Bonnie Poulos as Chair and Randi Dorman as Vice Chair.

Member	Role	Appointer
Ms. Bonnie Poulos	Chairperson	Ward 3
Ms. Randi Dorman	Vice-Chairperson	Ward 5
Mr. Bruce Burke	Member	Mayor
Mr. Tom Burke	Member	City Manager
Mr. Mark Crum	Member	Ward 6
Ms. Tannya Gaxiola	Member	Ward 3
Mr. John Hinderaker	Member	Ward 6
Mr. Joseph Howell	Member	Ward 1

Member	Role	Appointer
Mr. Luke Knipe	Member	Ward 1
Mr. Lenny Porges	Member	Ward 2
Mr. Tom Prezelski	Member	Ward 2
Mr. Jeff Rogers	Member	Mayor
Pastor D. Grady Scott	Member	Ward 5
Mr. John Springer	Member	Ward 4
Mr. Moon Joe Yee	Member	Ward 4

The first meeting of the reconstituted Committee was held on December 14, 2015 with a total of seven subsequent meetings in 2016 on January 4, January 11, January 25, February 8, February 22, March 7, and March 21. In accordance with the resolution by Mayor and Council, the Committee focused most of its discussion on assessing the City's financial flexibility in the Charter and the manner in which elections were held in the City. At each meeting there were two opportunities for members of the public to offer comments and present information to the Committee. Additionally, the Committee received written comments that were submitted to the City Clerk. All votes taken by the Committee were considered tentative until the end of the deliberations when final recommendations were adopted. With the help of the Clerk's office, a full, verbatim account of each meeting is available for anyone seeking to read a detailed account of the discussions.

The Committee unanimously re-adopted a set of goals to guide their consideration of the issues regarding changes to the Charter. The goals state that the Charter should:

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

The Committee spent considerable time studying different forms of local governance, receiving information and guidance from Dr. Sonenshein. City Attorney Mike Rankin apprised members of the recent decision of the 9th Circuit Court of Appeals regarding Tucson's form of elections that ruled the present system to be unconstitutional, and the implications of that decision should it be upheld after the appeal. Additionally, the Committee was made aware of a petition application to put the issue of "ward-only" elections on the ballot in 2017. The Committee deliberated on other provisions in the Charter related to the electoral process that might be recommended for change.

The Committee held its final meeting on March 21, 2016. Final recommendations were discussed and adopted. On most matters, the Committee reached either unanimity or a near consensus. On only two matters, described below, there was a clear division, and even here the Committee succeeded in narrowing the alternatives in each case from a larger number to only two.

Recommendations for Amending the City Charter

Financial Flexibility

The Committee members undertook deliberations on financial issues that were addressed in the Charter. They reviewed the recommendations of the previous Committee with regard to the prohibition on pledging of excise taxes, the imposition of a cap on the secondary property tax and the ability to raise the excise (sales) tax above the current cap of 2%. The City Finance Director, Silvia Amparano, presented information explaining the limitations in the Charter regarding taxing and bonding authority and provided a breakdown of the revenue stream for the City of Tucson.

The Committee unanimously agreed that the City government lacked sufficient financial flexibility in the Charter and that amendments to the Charter should aim to increase the City's ability to meet the public's needs in an effective and transparent manner.

Consistent with this view, the Committee recommends three changes to the Charter related to financial issues.

1. Ballot Measure granting the City greater flexibility to obtain cost-effective financing.

This ballot measure would remove the prohibition against using sales tax revenues when securing bond financing. The Committee voted unanimously to

Amend Chapter IV § 1 (16)(a) to delete the prohibition on pledging of excises taxes.
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Reasoning: As a result of this prohibition in the Charter, the City is forced to use bond structures known as 'Certificates of Participation' to secure financing. This generally results in higher interest rates to secure the repayment of bonds

without providing any meaningful protection to the taxpayers. No other Arizona charter city prohibits the use of sales tax revenue for securing bond financing. Removal of this prohibition would not increase taxes, nor would it make increasing taxes more likely. Removal of this prohibition would, however, allow the City to secure financing with more favorable rates.

2. Ballot Measure to grant the City greater flexibility to ask voters to approve bonds secured by property taxes.

This ballot measure would retain the \$1.75 per \$100 of assessed value on primary property taxes, but would have this cap apply to only primary property taxes and remove it from secondary property taxes. It would also change the title of the section to accurately reflect that it covers property taxes as well as business privilege taxes. The Committee voted unanimously to

Amend Chapter IV § 2 to change the heading to “Business privilege tax and property tax” and to modify the \$1.75 per \$100 of assessed value on ad valorem taxes so that it does not apply to secondary property taxes, but only so long as state law requires a majority of voters in an election to approve any increases to the secondary property tax on the ballot in a general election.

Reasoning: The Committee felt that the combined 1.75% cap on both primary and secondary property taxes adversely affects the City’s ability to bond for major improvement projects. No other jurisdiction in Arizona sets such a cap on both the primary and secondary tax. The State already sets limits on the primary property tax in that it can only increase 2% each year. Additionally, the secondary property taxes that must be used to repay bonds, can only be issued with prior voter approval. Since the City is already near the 1.75% combined cap imposed by the Charter, its ability to even ask voters to approve bond projects for infrastructure improvements is severely limited. Removal of the secondary property tax from the 1.75% cap would not increase taxes, but it would allow voters to determine if they want to tax themselves for bonds to improve the community.

3. Ballot measure providing greater flexibility in the Charter for increasing business privilege taxes.

This ballot measure addresses the 2% cap on business transaction privilege taxes. Committee members unanimously agreed that the Charter should be amended to provide for more flexibility with regard to sales taxes. Based on public comments received in 2015 when Charter changes were being considered and on a recent poll conducted by the City, the Committee felt that there is public support for some increase to the city sales tax. However, the Committee was equally divided on whether to recommend complete removal of the cap or to leave the current cap in place but allow an increase if approved by a majority of voters in a general election. The Committee voted 12 to 2 to

Amend Chapter IV § 2 to **either** remove the 2% transaction privilege tax or to specify that the transaction privilege tax shall not exceed 2% unless an increase is approved by a majority of voters in a general election.

Reasoning: Providing more flexibility in the Charter for increasing sales tax revenue is critical, in the view of the Committee. This revenue currently makes up about 40% of the General Fund.

This proposed amendment is not a tax increase, but would allow for tax increases in the future, either by action of the Mayor and Council or by a voter approved measure placed on a general election ballot. Members were divided on this issue with about half of the members in favor of removing the sales tax cap entirely with no voter approval required for future increases and the other half in favor of leaving the current cap in the Charter but allowing voters to determine if an increase is implemented. A number of those who supported the second alternative felt that while the removal of the cap would be the most desirable outcome, that it was infeasible in terms of public opinion.

The Committee felt strongly that Mayor and Council should hold hearings to allow the public to weigh in on such changes to the Charter before they are put forward in a ballot initiative, and use its best judgement on which is the more practical alternative.

Form of Elections

4. Ballot measure to change the form of elections in the City to a version of ward-only elections.

City Attorney Mike Rankin apprised members of the recent decision of the 9th Circuit Court of Appeals regarding Tucson's form of elections that ruled the present system to be unconstitutional, and the implications of that decision should it be upheld after the appeal. Additionally, the Committee was made aware of a petition application to put the issue of "ward-only" elections on the ballot in 2017. The Committee deliberated on other provisions in the Charter related to the electoral process that might be recommended for change.

The Committee spent considerable time studying different forms of local governance, receiving information and guidance from Dr. Sonenshein. Information was provided on other forms of governance and four of them were examined in greater detail with an explanation of their benefits and faults:

- the current system (ward-only primary followed by at large general)
- at large (city-wide primary and general)
- ward-only, also called "district" (ward-only primary and general)

- hybrid consisting of 6 ward-only elected council members plus 2 at large elected council members, all members with equal status with respect to offices, services and length of terms.

Based on the straw votes taken during the meetings, Committee members were divided on whether to recommend a new electoral process for Council members and what process to recommend. The Committee heard from the City Attorney that in the event our form of elections was upheld to be unconstitutional, the legal opinion was that Council members should be elected at large unless the Charter was changed to reflect election by ward.

The Committee unanimously agreed while the current system continues to be a reasonable way to run elections in Tucson, the court decision, plus voter requests for a ward-only system, made it imperative to consider other election systems. A number of members stated that the court decision provided an opportunity to take a new look at the city's election process. As a result, there was unanimous agreement to seek consensus among these other alternatives.

After considerable discussion, the Committee was unanimous in recommending that at large elections of Council members, not be adopted. In examining the remaining choices, the Committee was also unanimous that some version of ward-only elections should be placed before the voters and that only one alternative should be so presented.

However, the Committee was divided as to which form of ward elections should be recommended: the basic ward-only model, or a ward-only model with two additional members elected at large.

Some noted that the ward-only was the simplest change for the present, while others contended that the hybrid system was a lesser change because it retained some of the at large features of the current system.

After further deliberation the Committee recommended by unanimous vote that

Mayor and Council should hold public hearings to solicit input regarding two alternatives to our present system (Chapter XVI § 9) with one being 6 Council members, all elected by ward, and the other being 6 Council members elected by ward plus 2 additional Council members elected at large, all with equal status. Based on public input, Mayor and Council should put forward one form to be voted on in a general election.
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Reasoning: Although the Committee reached consensus that some version of ward-only representation was far preferable to at large elections, the members could not come to consensus about whether to recommend a ward-only (6 members) or a hybrid (6 ward-only plus 2 at large) system to replace the current system.

Advocates for the ward-only system felt that representatives selected by the voters within a ward could speak better for the interests of those residents than a

representative chosen by people who did not live within the ward. They felt that the system of nominating and electing representatives from a geographic area with only electors living within that area was common to democratic elections throughout the State and nationally. The ward-only process also gave members of different political parties the same opportunity to elect representatives. They also questioned the cost of adding two new councilmembers and were unclear as to what role the at-large councilmembers would play on the council.

Advocates for the hybrid system feel that it was a more appropriate system for this city because it balanced the representation by ward with some of the at-large representation and influence that voters were accustomed to. They felt that the two at-large councilmembers would ensure that there was enough of a voice for the city as a whole, plus feel it was appropriate to add two more council seats given that the City had not increased the number of council members since 1929 when the City had 35,000 residents. In addition, the CRC felt that the ward-only system would diminish voter turnout and felt that there were ways to add two council members without incurring much additional cost.

Because of the pressing need to make a change if the court ruling was upheld, the Committee chose to send both recommendations on to Mayor and Council with the hope that further public discussion would clarify which alternative to present to voters.

5. Ballot measure to eliminate the staggered election cycle for the Mayor and Council.

The Committee also considered a number of other elections changes, such as timing of the elections, role of the Mayor, the number of council seats, term limits, partisan versus non-partisan elections and campaign financing. Each was examined to determine whether changes would result in greater voter participation and improved citizen representation. It was agreed that most of the related issues were best dealt with at a later time.

One related issue, however, received unanimous support from the Committee to recommend: eliminating the staggered election cycle for the Mayor and Council positions regardless of which election system is to be adopted.

Amend the Charter (Chapter XVI § 4) to provide for the Mayor and Council members to be elected at the same time starting with the 2019 election cycle.
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Reasoning: When ward-only elections were being discussed it was noted that the staggered election of the Mayor plus 3 of the council seats followed two years later with the remaining 3 council seats could unfairly bias both voter turnout and possibly the results. The Committee agreed unanimously that ward-only elections must be paired with the removal of staggered elections. In addition, district elections, appearing on the ballot without any citywide candidates, were

likely to draw fewer people to the polls than citywide elections that were currently conducted in Tucson in the general election.

The fear that the entire elected body might turn over if all seats were voted on in a single election cycle was greatly diminished when ward-only elections take place. More importantly with ward-only elections, having all ward representatives elected at the same time as the Mayor (who is elected at large) would likely increase overall voter turnout. In addition, the cost savings for running one election instead of two is a significant, albeit 'one-time' (once every 4 years), benefit to the budget. Regardless of whether voters elect to change the Charter provisions to a version of ward-only elections, there was unanimous agreement among Committee members that it is time to eliminate the staggered election calendar and elect all members in the same election.

Overall recommendations

6. Recommendation for the Mayor and Council to conduct further analysis and to hold public hearings on the Ballot Measures before placing them on a ballot.

Both the sales tax recommendation and the recommendation regarding the form of elections will generate significant public interest. Soliciting additional public input prior to writing a ballot initiative will help ensure that a ballot measures will receive voter support. The Committee agreed unanimously to recommend that Mayor and Council ask for a staff analysis of the ward-only versus hybrid systems, especially as to cost, and to hold further public hearings on the changes related to the sales tax and the form of elections. The Committee did hear public comment on these matters. However, in light of great community significance of these issues, and the limited time for the Committee to complete its work, we believe that a wider array of stakeholders can productively be heard with the alternatives having been winnowed down by the Committee to only two in each case.

7. Recommendation that each Charter change be placed on the ballot as a separate item.

Charter changes have been presented to voters in 13 elections since 1991. In reviewing the changes that were put forward (38) and tallying how many received voter approval (13), it is obvious that voters are very selective about what changes they will approve. By separating out all ballot items that are not dependent on each other, the chances of receiving voter approval increases for individual issues. Since none of the Committee's recommendations are dependent on each other for effective implementation, the Committee recommended unanimously that the Charter changes be put on the ballot as separate items.

8. Recommendation that Charter changes be placed on a ballot in a regular election.

Committee members believed strongly that these changes to the Charter should be put forward to the voters in a general election when turnout is higher than in a special election. It is important that changes of this significance to our governing document be put forward when there is a likelihood of good voter response. Therefore, the Committee respectfully and unanimously recommends that Charter changes be put onto a ballot in a regular election.

Conclusion

Over the past three and a half months, the Charter Review Committee (CRC) has held 8 public meetings lasting approximately 20 hours. Ten of the 15 members were re-appointed from the 2015 CRC and all of the members demonstrated a sincere commitment to the process. Each individual who was appointed brought thoughtful comments and perspectives to the table. The facilitator, Dr. Sonenshein, was an immense resource, without whom we would have struggled far more than we did, especially with the issues surrounding representative governance. He also helped us to discover when we were on common ground, which was essential to arriving at consensus. The City staff assistance was excellent, and we thank the City Attorney, the City Clerk, and their very capable staffs. They provided us with timely information and brought clarity to our understanding of the complex fiscal and election issues with which we grappled. We would also like to thank the members of the public who came, made comments, sat through meetings and contributed to our discussion of the issues. I am honored to have served as Chair for this Committee and hope that you will be able to use our recommendations to improve how we govern ourselves in the future.

c: Randi Dorman, Vice-Chairperson
Members of Charter Review Committee
Michael Ortega, City Manager
Michael Rankin, City Attorney
Roger Randolph, City Clerk
Dr. Raphe Sonenshein, Consultant